UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

In re	)	
	)	
GENERAL MOLY, INC.	)	Case No. 20-17493-EEB
EIN: 91-0232000	)	
	)	Chapter 11
Debtor-in-Possession.	)	
	)	

PLAN OF REORGANIZATION OF GENERAL MOLY, INC., PURSUANT TO CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE, DATED DECEMBER 4, 2020

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INTRODUCTION

General Moly, Inc., a Delaware corporation, as debtor and debtor-in-possession, hereby proposes the following plan of reorganization, which Plan provides for the resolution of outstanding Claims against, and equity Interests in, the Debtor pursuant to the provisions of Chapter 11 of the Bankruptcy Code. The Debtor, as proponent of the Plan, requests Confirmation of the Plan pursuant to Section 1129 of the Bankruptcy Code. **For the avoidance of doubt, the Debtor's non-Debtor subsidiaries and affiliates did not file bankruptcy petitions and are not subject to the Chapter 11 Case or the Plan.**

In summary, but subject to the specific details as outlined herein, the Plan provides for (i) the reorganization of the Debtor, (ii) the emergence of the Debtor from the Chapter 11 Case as the Reorganized Debtor and (iii) distributions to be made to Holders of Allowed Claims against the Debtor as provided for under the Plan, and (iv) cancellation of Interests in the Debtor.

Under Section 1125(b) of the Bankruptcy Code, a vote to accept or reject the Plan cannot be solicited from the Holder of a Claim or Interest until such time as the Disclosure Statement has been approved by the Bankruptcy Court and distributed to Holders of Claims and Interests. The Disclosure Statement relating to the Plan was approved by the Bankruptcy Court in the Disclosure Statement Order and has been distributed simultaneously with the Plan to all Holders of Claims whose votes are being solicited. The Disclosure Statement contains, among other things, (a) a discussion of the Debtor's history, moly project, business, and operations, (b) the Projections for the Reorganized Debtor's future operations, (c) summary of significant events which have occurred to date in the Bankruptcy Case, (d) a summary of the means of implementing and funding the Plan, (e) the procedures for voting on the Plan, (f) a summary and analysis of the Plan and distributions under the Plan, (g) risk factors associated with the Plan, and (h) a discussion of certain post-Confirmation transactions that will, among other things, result in the exchange of the equity interests of the Reorganized Debtor for proportionate equity interests in a holding company (referred to below as "New Moly LLC") that will also hold equity in a separate entity with leases and claims to a separate molybdenum project in British Columbia, Canada.

No materials, other than the Plan and the accompanying Disclosure Statement, Disclosure Statement Order, and ballots sent by the Debtor to Holders of Claims voting on the Plan with the Disclosure Statement and this Plan, have been approved by the Debtor or the Bankruptcy Court for use in soliciting acceptances or rejections of the Plan. ALL HOLDERS OF CLAIMS AGAINST THE DEBTOR WHO ARE ENTITLED TO VOTE ON THE PLAN ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT, AND ANY EXHIBITS ATTACHED THERETO, IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

Subject to the restrictions and requirements set forth in Section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications to the Plan set forth in Article XIV of the Plan, the Debtor expressly reserves its rights to alter, amend, modify, revoke, or withdraw the Plan, one or more times, prior to the Effective Date.

IN THE OPINION OF THE DEBTOR, THE TREATMENT OF CLAIMS AND INTERESTS UNDER THE PLAN CONTEMPLATES A GREATER RECOVERY THAN THAT WHICH IS LIKELY TO BE ACHIEVED UNDER OTHER ALTERNATIVES FOR THE REORGANIZATION OR LIQUIDATION OF THE DEBTOR. ACCORDINGLY, THE DEBTOR BELIEVES THAT CONFIRMATION OF THE PLAN IS IN THE BEST INTERESTS OF CREDITORS , AND THE DEBTOR RECOMMENDS THAT CREDITORS VOTE TO ACCEPT THE PLAN.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, UNLESS OTHERWISE STATED, ALL STATEMENTS IN THE PLAN AND IN THE ACCOMPANYING DISCLOSURE STATEMENT CONCERNING THE HISTORY OF THE DEBTOR'S BUSINESS, THE PAST OR PRESENT FINANCIAL CONDITION OF THE DEBTOR, THE PROJECTIONS FOR THE FUTURE OPERATIONS OF THE REORGANIZED DEBTOR, TRANSACTIONS TO WHICH THE DEBTOR WAS OR IS A PARTY, OR THE EFFECT OF CONFIRMATION OF THE PLAN ON HOLDERS OF CLAIMS AGAINST, OR INTEREST IN, THE DEBTOR IS ATTRIBUTABLE EXCLUSIVELY TO THE DEBTOR AND NOT TO ANY OTHER PARTY.

ARTICLE I
DEFINITIONS, RULES OF INTERPRETATION, AND COMPUTATION OF TIME

A. Scope of Definitions

For purposes of the Plan, except as expressly provided otherwise or unless the context requires otherwise, all capitalized terms not otherwise defined shall have the meanings ascribed to them in Article I.B of the Plan. Any term used in the Plan that is not defined herein, but is defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules.

B. Definitions

1.1 **"Administrative Claim"** means a Claim for payment of an administrative expense of a kind specified in Section 503(b) of the Bankruptcy Code and entitled to priority pursuant to Section 507(a)(2) of the Bankruptcy Code, including, but not limited to, the actual, necessary costs and expenses, incurred on or after the Petition Date, of preserving the Estate and operating the business of the Debtor, including the DIP Facility Claim, wages, salaries, or commissions for services rendered after the commencement of the Chapter 11 Case, Section 503(b)(9) Claims, Professional Claims, and all fees and charges assessed against the Estate under chapter 123 of title 28 of the United States Code, and all Allowed Claims that are entitled to be treated as Administrative Claims pursuant to a Final Order of the Bankruptcy Court. In no event shall any Claim set out in a Proof of Claim or any application, motion, request or other Bankruptcy Court approved pleading be deemed to be an Allowed Administrative Claim without further order of the Bankruptcy Court.

1.2 **"Administrative Claims Bar Date"** means the deadline for filing proofs of or requests for payment of Administrative Claims, which shall be sixty (60) days after the Effective Date, unless otherwise ordered by the Bankruptcy Court, and except with respect to DIP Facility

Claims and Professional Claims, which shall be Allowed and treated subject to the provisions of Section 2.2 and 2.3 hereof, as applicable.

1.3 **"Affiliates"** has the meaning ascribed to such term by Section 101(2) of the Bankruptcy Code.

1.4 **"Allowed"** means, for distribution purposes, a Claim or Interest, or any portion thereof, or a particular Class of Claims or Interests (a) that has been allowed by an Order of the Bankruptcy Court (or such other court as the Reorganized Debtor and the Holder of such Claim or Interest agree may adjudicate such Claim or Interest and objections thereto), (b) which is Scheduled as liquidated and noncontingent (other than a Claim that is Scheduled at zero, in an unknown amount, or as disputed) but shall only be deemed enforceable and payable in the amount and to the extent such Claim is Scheduled in a dollar amount that is liquidated and noncontingent, (c) for which a Proof of Claim in a liquidated amount has been timely filed with the Bankruptcy Court and as to which either (i) no objection to its allowance has been filed within the periods of limitation fixed by this Plan, the Bankruptcy Code, or by any order of the Bankruptcy Court, or (ii) any objection to its allowance has been settled or withdrawn, or has been denied by a Final Order of the Bankruptcy Court, or (d) that is expressly allowed in a liquidated amount or otherwise pursuant to this Plan.

1.5 **"Allowed Employment Claim Amount"** means the dollar amount of the Allowed Claim asserted by the holder of an Employment Claim and which amount shall be capped pursuant to Section 502(b)(7) of the Bankruptcy Code, if applicable.

1.6 **"Allowed Secured Claim Amount"** means the dollar amount of an Allowed Claim asserted by the Holder of a Secured Claim and which amount shall be equal to the dollar value of such Allowed Secured Claim as agreed to by the Debtor or which dollar value shall be determined by the Bankruptcy Court in accordance with the provisions of Section 506(a)(1) of the Bankruptcy Code.

1.7 **"Avoidance Actions"** means any and all actual or potential claims and causes of action to avoid a transfer of property or an obligation incurred by the Debtor and its recovery, subordination, or other remedies that may be brought by and on behalf of the Debtor and its estate under the Bankruptcy Code or applicable non-bankruptcy law, including actions or remedies under Section 502, 510, 542, 544, 545, 547 through 553, and 724(a) of the Bankruptcy Code.

1.8 **"Bankruptcy Code"** means the Bankruptcy Reform Act of 1978, as amended and codified in title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as in effect on the date hereof but, with respect to amendments to the Bankruptcy Code subsequent to commencement of the Chapter 11 Case, only to the extent that such amendments were made expressly applicable to bankruptcy cases filed before the enactment of such amendments.

1.9 **"Bankruptcy Court"** means the United States Bankruptcy Court for the District of Colorado or such other court as may have jurisdiction over the Chapter 11 Case.

1.10 **"Bankruptcy Rules"** means (a) the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms, as amended and promulgated under Section 2075 of title 28 of the United States Code, (b) the Federal Rules of Civil Procedure, as amended and promulgated under Section 2072 of title 28 of the United States Code, as applicable to the Chapter 11 Case or proceedings therein, (c) the Local Rules of the Bankruptcy Court, as applicable to the Chapter 11 Case or proceedings therein, and (d) any standing Final Orders governing practice and procedure issued by the Bankruptcy Court, each as in effect on the Petition Date, together with all amendments and modifications thereto to the extent applicable to the Chapter 11 Case or proceedings herein, as the case may be.

1.11 **"Bar Date"** means the deadline set by the Bankruptcy Court pursuant to the Bar Date Order or other Final Order for filing a Proof of Claim in the Chapter 11 Case, as the context may require.

1.12 **"Bar Date Order"** means the order entered by the Bankruptcy Court on November 23, 2020 (Docket No. 59).

1.13 **"Business Day"** means any day other than (a) a Saturday, (b) a Sunday, (c) a "legal holiday" (as "legal holiday" is defined in Bankruptcy Rule 9006(a)), or (d) a day on which commercial banks in Denver, Colorado are required or authorized to close by law.

1.14 **"Cash"** means legal tender of the United States of America, a certified check, a cashier's check, a wire transfer of immediately available funds from any source, or a check from the Reorganized Debtor drawn on a domestic bank and equivalents thereof.

1.15 **"Causes of Action"** means any and all actions, claims, proceedings, causes of action, suits, accounts, demands, controversies, agreements, promises, rights to legal remedies, rights to equitable remedies, rights to payment and claims, whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured, and whether asserted or assertable, in contract or in tort, directly or derivatively, in law, equity or otherwise, including actions brought prior to the Petition Date, actions under chapter 5 of the Bankruptcy Code, including any Avoidance Action, and actions against any Entity for failure to pay for products or services provided or rendered by any Debtor, all claims, suits or proceedings relating to enforcement of the Debtor's intellectual property rights, including patents, copyrights and trademarks, and all claims or causes of action seeking recovery of the Debtor's or the Reorganized Debtor's accounts receivable or other receivables or rights to payment created or arising in the ordinary course of the Debtor's or the Reorganized Debtor's businesses, based in whole or in part upon any act or omission or other event occurring prior to the Petition Date or during the course of the Chapter 11 Case, including through the Effective Date.

1.16 **"Certificate"** means any instrument evidencing a Claim or an Interest.

1.17 **"Chapter 11 Case"** means the voluntary case commenced by the Debtor under chapter 11 of the Bankruptcy Code, currently pending before the Bankruptcy Court, and administered under Case Number 20-17493-EEB.

1.18 **"Claim"** means a claim against the Debtor, whether or not asserted, as defined in Section 101(5) of the Bankruptcy Code, or an Administrative Claim, as applicable.

1.19 **"Claims Estimation Motion"** means any motion filed by the Debtor seeking determination or estimation, for the purpose of setting a reserve, of the validity, priority, status, extent and/or amount of any Claim or Claims.

1.20 **"Claims Objection Deadline"** means, as applicable (except for Administrative Claims), (a) the day that is the later of the first Business Day that is at least one-hundred eighty (180) days after the Effective Date or (b) such later date as may be established by the Bankruptcy Court upon request of the Reorganized Debtor without further notice to parties-in-interest.

1.21 **"Class"** means a category of Holders of Claims or Interests classified together pursuant to Sections 1122 and 1123(a)(1) of the Bankruptcy Code, as described in Article III of the Plan.

1.22 **"Confirmation"** means the entry, within the meaning of Bankruptcy Rules 5003 and 9012, of the Confirmation Order, subject to all conditions specified in Section 12.1 having been satisfied or waived, in accordance with the terms herein.

1.23 **"Confirmation Date"** means the date on which Confirmation occurs.

1.24 **"Confirmation Hearing"** means the hearing which will be held before the Bankruptcy Court to consider Confirmation of the Plan and related matters pursuant to Section 1128(a) of the Bankruptcy Code, as such hearing may be adjourned or continued from time to time.

1.25 **"Confirmation Order"** means the order of the Bankruptcy Court entered in the Chapter 11 Case confirming the Plan under Section 1129 and other applicable Sections of the Bankruptcy Code, which order shall be in form and substance acceptable to the Debtor, as such order may be amended, modified or supplemented.

1.26 **"Conversion Amount"** means the dollar amount of an Allowed Note Holder Claim when multiplied by 0.75 as further described in Section 4.1 of the Plan.

1.27 **"Creditor"** has meaning ascribed to such term in Section 101(10) of the Bankruptcy Code.

1.28 **"Cure"** means the payment or other honoring of all obligations required to be paid or honored in connection with the assumption of an Executory Contract or Unexpired Lease pursuant to Section 365 of the Bankruptcy Code, including (a) the cure of any non-monetary defaults to the extent required, if at all, pursuant to Section 365 of the Bankruptcy Code, and (b) with respect to monetary defaults, the distribution, within a reasonable period of time following the Effective Date, of Cash, or such other property as may be agreed upon by the parties or ordered by the Bankruptcy Court, with respect to the assumption (or assumption and assignment) of an

Executory Contract or Unexpired Lease, pursuant to Section 365(b) of the Bankruptcy Code, in an amount equal to all unpaid monetary obligations or such other amount as may be agreed upon by the parties, under such Executory Contract or Unexpired Lease, to the extent such obligations are enforceable under the Bankruptcy Code and applicable non-bankruptcy law.

1.29 **"Cure Notice"** means the notice as described and defined in Section 8.5(a).

1.30 **"Cure Objection Deadline"** shall mean the deadline set forth in the Cure Notice for the filing and service of an objection to the Cure described in the Cure Notice.

1.31 **"Debtor"** means, General Moly, Inc., the above captioned debtor-in-possession in the Chapter 11 Case.

1.32 **"Definitive Documentation"** means the agreements, instruments, and other documents entered into to implement and consummate the transactions contemplated by the RSA, including, for avoidance of doubt, the term sheets attached thereto, all of which shall be executed by the deadline set forth in the RSA and attached to the Disclosure Statement.

1.33 **"DIP Agreement"** means that certain Senior Superpriority Debtor-in-Possession Credit Agreement, dated as of November 18, 2020, among the Debtor, as borrower, and the DIP Lenders, as has been or may be amended, restated, supplemented or otherwise modified from time to time.

1.34 **"DIP Facility"** means the debtor-in-possession financing facility, consisting of a loan facility, provided to the Debtor by the DIP Lenders pursuant to the DIP Agreement as authorized by the Bankruptcy Court pursuant to the DIP Facility Order, as may be amended or modified from time to time.

1.35 **"DIP Facility Claim"** means any Claim arising under, derived from, based upon, or as a result of the DIP Facility.

1.36 **"DIP Facility Order"** means, collectively, (a) the Interim Order entered by the Bankruptcy Count on November 24, 2020 (Docket No. 64) and the Final Order expected to be entered by the Bankruptcy Court on or about December 15, 2020, authorizing and approving the DIP Facility and the agreements related thereto, and (b) any and all Final Orders entered by the Bankruptcy Court authorizing and approving amendments or modifications to the DIP Agreement or either the Interim Order or Final Order described in the foregoing clause (a). The term "DIP Facility Order" includes any and all annexes, exhibits, documents, etc. attached thereto.

1.37 **"DIP Lenders"** means collectively, New Moly LLC, a Delaware limited liability company, as agent and majority lender, and Bruce D. Hansen and Bong T. Hansen, as minority lenders, and their participants and/or assigns, as the Lenders under the DIP Agreement and the Holder of the DIP Facility Claim.

1.38 **"DIP Obligations"** means all obligations owed by the Debtor to the DIP Lenders in connection with the DIP Facility.

1.39 **"DIP Superpriority Claims"** has the meaning ascribed to it in the DIP Order.

1.40 **"Disallowed"** means any of (a) a Claim, or any portion thereof, that has been disallowed by an order of the Bankruptcy Court or a settlement, or as provided in the Plan, (b) a Claim or any portion thereof that is Scheduled at zero or as contingent, disputed, or unliquidated and as to which a Proof of Claim bar date has been established but no Proof of Claim has been timely filed or deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or otherwise deemed timely filed under applicable law, or (c) a Claim or any portion thereof that is not Scheduled and as to which a bar date has been established but no Proof of Claim has been timely filed or deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or otherwise deemed timely filed under applicable law.

1.41 **"Disclosure Statement"** means the disclosure statement or any supplements thereto (including the Plan Supplement and all schedules thereto or referenced therein) that relates to the Plan, as such disclosure statement may be amended, modified, or supplemented from time to time in accordance with the terms therein, as submitted and filed by the Debtor pursuant to Sections 1125 and 1127 of the Bankruptcy Code and Bankruptcy Rule 3017 and as approved by the Bankruptcy Court in the Disclosure Statement Order, which Disclosure Statement (and all Exhibits thereto), and as such Disclosure Statement may be amended, supplemented, modified or amended and restated from time to time.

1.42 **"Disclosure Statement Order"** means the Order entered by the Bankruptcy Court approving the Disclosure Statement, as containing, among other things, "adequate information" as required by Section 1125 of the Bankruptcy Code and solicitation procedures related thereto including, but not limited to, setting various deadlines in connection with Conformation of the Plan.

1.43 **"Disputed"** means with respect to a Claim, (a) any Claim as to which any Debtor or other parties-in-interest in accordance with applicable law have interposed an objection or request for estimation in accordance with the Bankruptcy Code and the Bankruptcy Rules, or any Claim otherwise disputed by any Debtor, or other parties-in-interest in accordance with applicable law, which objection has not been withdrawn or determined by a Final Order, (b) any Claim scheduled by the Debtor as contingent, unliquidated, or disputed, (c) any Claim which amends a Claim scheduled by the Debtor as contingent, unliquidated, or disputed, or (d) any Claim prior to it having become an Allowed Claim.

1.44 **"Distribution Agent"** means the Reorganized Debtor, or any other Entity selected by the Reorganized Debtor, in its sole discretion, to make or facilitate distributions pursuant to the Plan.

1.45 **"Distribution Date"** means the date or dates under the Plan when Cash or property is required to be distributed to the Holders of Allowed Claims in accordance with the Plan, including the Initial Distribution.

1.46 **"Distribution Record Date"** means the date for determining which Holders of Allowed Claims are eligible to receive distributions under the Plan, which shall be immediately after entry of the Confirmation Order, or (b) such other date as designated by an order of the Bankruptcy Court.

1.47 **"Effective Date"** means the date on which the Plan shall take effect, which date shall be a Business Day on or after the Confirmation Date on which: (a) no stay of the Confirmation Order is in effect; and (b) all conditions precedent to the effectiveness of this Plan specified in Section 12.2, have been satisfied, or, if capable of being waived in accordance with the terms herein, waived, which date shall be specified in a notice filed by the Reorganized Debtor with the Bankruptcy Court.

1.48 **"Employment Claim"** means a Claim of an employee or former employee of the Debtor and arising from the employee's employment relationship or employment contract with the Debtor including, without limitation, any Claim for wages, compensation, unpaid expense reimbursements and damages resulting from the termination of an employment contract and which Claim is not an Allowed Other Priority Claim.

1.49 **"Entity"** has the meaning ascribed to such term in Section 101(15) of the Bankruptcy Code.

1.50 **"Equity Security"** has the meaning ascribed to such term in Section 101(16) of the Bankruptcy Code.

1.51 **"ERISA"** means the Employee Retirement Income Security Act of 1974.

1.52 **"Estate"** means the bankruptcy estate of the Debtor created pursuant to Section 541 of the Bankruptcy Code.

1.53 **"Exculpated Claim"** means any claim (as defined in Section 101(5) of the Bankruptcy Code) or Legal Proceeding against any Entity arising after the Petition Date and before the Confirmation Date related to any act or omission in connection with, relating to, or arising out of the Debtor's restructuring, the Chapter 11 Case, the RSA, the DIP Facility, or the Definitive Documentation, formulation, preparation, dissemination, negotiation, or filing of the Disclosure Statement, the Plan, the settlement of Claims or renegotiation of Executory Contracts or Unexpired Leases, the negotiation of the RSA, the Plan, the DIP Agreement, the Plan Supplement, the Definitive Documentation, or any contract, instrument, release, or other agreement or document created or entered into in connection with the Disclosure Statement or Plan, the DIP Facility, the RSA, or the Definitive Documentation, the filing of the Chapter 11 Case, the pursuit of Confirmation, the pursuit of consummation of the Plan, the administration, consummation, and implementation of the Plan or the Definitive Documentation, including the issuance of Plan securities, the distribution of property under the Plan, or any other transaction contemplated by the Plan, Disclosure Statement, RSA, Definitive Documentation, the DIP Agreement, or in furtherance thereof; *provided* that any such claim or Legal Proceeding related to the RSA, DIP Facility, or the Definitive Documentation shall be deemed to have arisen after the Petition Date.

1.54 **"Exculpated Parties"** means, collectively, each of the following solely in their respective capacities as such: (a) the Debtor, and each of its successors and assigns, (b) the Reorganized Debtor, (c) the DIP Lenders, (d) the parties to the RSA, and (e) with respect to each of the foregoing parties in clauses (a) through (d), such parties' subsidiaries, Affiliates, officers, directors, principals, members, managers, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other representatives and professionals; provided, that, solely with respect to the Debtor's directors and officers, this clause (e) shall apply only to (i) the existing directors (and their counsel) and (ii) the Debtor's officers who continued to serve in such roles as of December 4, 2020 (the initial filing date of the Plan).

1.55 **"Executory Contract"** means any contract to which any Debtor is a party that is subject to assumption or rejection under Sections 365 or 1123 of the Bankruptcy Code.

1.56 **"Exhibit"** means an exhibit annexed either to the Plan, contained in the Plan Supplement, or annexed as an appendix to the Disclosure Statement.

1.57 **"Face Amount"** means, (a) when used in reference to a Disputed Claim or Disallowed Claim, the full stated liquidated amount claimed by the Holder of a Claim in any Proof of Claim, or amendment thereof in accordance with applicable law, timely filed with the Bankruptcy Court or otherwise deemed timely filed by any order of the Bankruptcy Court or other applicable bankruptcy law, or the amount estimated for such Claim in an order of the Bankruptcy Court, and (b) when used in reference to an Allowed Claim or Allowed Interest, the Allowed amount of such Claim or Interest. If none of the foregoing applies, the Face Amount of the Claim shall be zero ($0) dollars.

1.58 **"Final Decree"** means the decree contemplated under Bankruptcy Rule 3022.

1.59 **"Final Order"** means an order or judgment, the operation or effect of which has not been reversed, stayed, vacated, modified, or amended, is in full force and effect, and as to which order or judgment (or any reversal, stay, vacation, modification, or amendment thereof) (a) the time to appeal, seek certiorari, or request reargument or further review or rehearing has expired and no appeal, petition for certiorari, or request for reargument or further review or rehearing has been timely filed, or (b) any appeal that has been or may be taken or any petition for certiorari or request for reargument or further review or rehearing that has been or may be filed has been resolved by the highest court to which the order or judgment was appealed, from which certiorari was sought, or to which the request was made, and no further appeal or petition for certiorari or request for reargument or further review or rehearing has been or can be taken for granted; provided, however, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedures, or any analogous rule under the Bankruptcy Rules, may be filed relating to such order or judgement shall not prevent such order or judgement from being a Final Order; provided, further, that the Debtor or Reorganized Debtor, as applicable, reserve the right to waive any appeal period for an order or judgment to become a Final Order.

1.60 **"General Unsecured Claim"** means any Claim that is not an Administrative Claim, DIP Facility Claim, Priority Tax Claim, Note Holder Claim, Trade Creditor Claim, Employment Claim, or Other Priority Claim. Without limiting the foregoing, General Unsecured Claims include all Rejection Damages Claims that are not Allowed Section 503(b)(9) Claims.

1.61 **"Governmental Unit"** means the definition ascribed to such term in Section 101(27) of the Bankruptcy Code.

1.62 **"Holder"** means a holder of a Claim against or Interest in the Debtor.

1.63 **"Impaired"** means impaired within the meaning of Section 1124 of the Bankruptcy Code.

1.64 **"Indemnification Provisions"** means each of the indemnification provisions, agreement or obligations of the Debtor in place as of the Petition Date, whether in the bylaws, certificate of incorporation, articles of organization or other formation documents, board resolutions to employment contracts, in each case for the benefit of the current and former directors, officers, members, employees, attorneys, or other professionals and agents of the Debtor.

1.65 **"Initial Distribution"** means as soon as reasonably practical following the Effective Date (as determined by the Reorganized Debtor).

1.66 **"Insurance Contract"** is defined in Section 8.4 of the Plan.

1.67 **"Insurance Claim"** is defined in Section 8.4 of the Plan.

1.68 **"Interest"** means any "Equity Security" of the Debtor or any "Equity Security Holder" as those terms are defined in Sections 101(16) and (17) of the Bankruptcy Code.

1.69 **"Law"** means any law (statutory or common), statute, regulation, rule, code or ordinance enacted, adopted, issued, or promulgated by any Governmental Unit.

1.70 **"Legal Proceeding"** means legal, governmental, administrative, judicial, or regulatory investigations, audits, actions, suits, claims, arbitrations, demands, demand letters, notices of noncompliance or violation, or proceedings.

1.71 **"Lien"** has the meaning ascribed to such term in Section 101(37) of the Bankruptcy Code.

1.72 **"Lien Deficiency Claim"** means that portion of an Allowed Claim asserted by the Holder of a Secured Claim which is determined to be an unsecured claim within the meaning of Section 506(a)(1) of the Bankruptcy Code.

1.73 **"Local Rules"** means the local rules of the Bankruptcy Court, as in effect on the Petition Date, together with all amendments and modifications thereto that were subsequently made applicable to the Chapter 11 Case.

1.74 **"New Articles of Incorporation"** means the articles of organization, certificates of formation, or functional equivalent thereof, as applicable, of the Reorganized Debtor, the form of which shall be included in the Plan Supplement, and subject to Section 6.7 hereof.

1.75 **"New Board"** means the initial board of directors or functional equivalent thereof, as applicable, of the Reorganized Debtor as designated pursuant to Section 6.8.

1.76 **"New Bylaws"** means the bylaws, or functional equivalent thereof, as applicable, of the Reorganized Debtor, the provisions of which shall be consistent with the requirements of the Plan, and subject to Section 6.7 hereof.

1.77 **"New Corporate Governance Documents"** means, as applicable, (a) the New Articles of Incorporation, and (b) the New Bylaws in each case the provisions of which shall be consistent with the requirements of the Plan, and subject to Section 6.7 hereof.

1.78 **"Note Holder Claim"** means a Claim against the Debtor and arising under promissory notes executed by Debtor in favor of the following Persons: (i) Steve Mooney; (ii) Bruce D. Hansen; (iii) William Matlock; (iv) Gary A. Loving & Lynn S. Loving Family Trust; (v) Bella Holdings LLC; (vi) Robert & Dolores Pennington; (vii); Kenneth D. Hansen (viii) Lee Shumway; (ix) David A. Chaput; (x) Kathleen A. Antony; (xi) Michael K. Branstetter, IRA; (xii) Robert S. Roswell; (xiii) Eric & Lorena Kolstad; and (xiv) Michael & Nancy Branstetter.

1.79 **"Other Priority Claim"** means any Claim, other than an Administrative Claim or Priority Tax Claim entitled to priority payment as specified in Section 507(a) of the Bankruptcy Code.

1.80 **"Periodic Distribution Date"** means, as applicable, (a) the Distribution Date, as to the first distribution made by the Distribution Agent, and (b) thereafter, such Business Days selected by the Reorganized Debtor in its reasonable discretion, which shall be no less frequent than once every three (3) months unless otherwise determined by the Reorganized Debtor.

1.81 **"Person"** has the meaning ascribed to such term in Section 101(41) of the Bankruptcy Code.

1.82 **"Petition Date"** means November 18, 2020.

1.83 **"Plan"** means this plan of reorganization of the Debtor in the Chapter 11 Case, proposed under chapter 11 of title 11, United States Code, effective as of the Effective Date and as may be modified in accordance with the Bankruptcy Code, Bankruptcy Rules, and the terms herein, including all Exhibits to the Plan, including, without limitation, those Exhibits that are or will be contained in the Plan Supplement and all Exhibits therein, as the same may be amended, supplemented, modified or amended and restated from time to time in accordance with the provisions of the Plan and the Bankruptcy Code.

1.84 **"Plan Supplement"** means the supplement or supplements to the Plan containing certain Exhibits and documents relevant to the implementation of the Plan, to be filed with the Bankruptcy Court, including without limitation the Definitive Documentation.

1.85 **"Plan Supplement Filing Date"** means the date on which the Plan Supplement shall be filed with the Bankruptcy Court, which date shall be at least seven days prior to the Voting Deadline or such other date as may be approved by the Bankruptcy Court without further notice.

1.86 **"Plan Transaction Documents"** means all definitive documents and agreements to which the Debtor or Reorganized Debtor will be a party as contemplated by the Plan, including (a) the Plan and any documentation or agreements related thereto, (b) the Confirmation Order and pleadings in support of entry thereof, (c) the Disclosure Statement, the solicitation materials in respect of the Plan, the motion to approve the Disclosure Statement, and the Disclosure Statement Approval Order, and (d) all documents that will comprise the Plan Supplement.

1.87 **"Prime Rate"** means the per annum rate of interest equal to the "prime rate," as published in the "Money Rates" column of the *Wall Street Journal*, as published on the Effective Date.

1.88 **"Priority Tax Claim"** means a Claim of a Governmental Unit that is entitled to a priority in payment pursuant to Section 507(a)(8) of the Bankruptcy Code.

1.89 **"Pro Rata"** means, with respect to Claims, at any time, the proportion that the Face Amount of a Claim in a particular Class or Classes bears to the aggregate Face Amount of all Claims (including Disputed Claims but excluding Disallowed Claims) in such Class or Classes at issue.

1.90 **"Professional"** means any Person (a) retained in the Chapter 11 Case as authorized by order of the Bankruptcy Court entered pursuant to Sections 327 or 1103 of the Bankruptcy Code or otherwise; or (b) awarded compensation and reimbursement by the Bankruptcy Court pursuant to Section 503(b)(4) of the Bankruptcy Code.

1.91 **"Professional Claim"** means an Administrative Claim of a Professional for compensation for services rendered or reimbursement of costs, expenses, or other charges and disbursements incurred relating to services rendered or expenses incurred after the Petition Date and prior to and including the Confirmation Date and which Claim remains unpaid as of the Confirmation Date.

1.92 **"Projections"** means the cash flow projections for the Reorganized Debtor included within the Budget as defined in and attached to the DIP Facility Order and which may be modified in the Plan Supplement.

1.93 **"Proof of Claim"** means a proof of claim filed or required to be filed with the Bankruptcy Court with respect to a Claim against the Debtor and filed pursuant to Bankruptcy Rule 3001, 3002, or 3003.

1.94 **"Reinstated"** or **"Reinstatement"** means (a) leaving unaltered the legal, equitable and contractual rights to which a Claim entitles the Claim Holder so as to leave such Claim Unimpaired in accordance with Section 1124 of the Bankruptcy Code, or (b) notwithstanding any contractual provision or applicable law that entitles the Claim Holder to demand or receive accelerated payment of such Claim after the occurrence of a default, (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in Section 365(b)(2) of the Bankruptcy Code; (ii) reinstating the maturity of such Claim as such maturity existed before such default; (iii) compensating the Claim Holder for any damages incurred as a result of any reasonable reliance by such Claim Holder on such contractual provision or such applicable law; and (iv) not otherwise altering the legal, equitable or contractual rights to which such Claim entitles the Claim Holder; provided, however, that any contractual right that does not pertain to the payment when due of principal and interest on the obligation on which such Claim is based, including, but not limited to, financial covenant ratios, negative pledge covenants, covenants or restrictions on merger or consolidation, "going dark" provisions, and affirmative covenants regarding corporate existence prohibiting certain transactions or actions contemplated by the Plan, or conditioning such transactions or actions on certain factors, shall not be required to be cured or reinstated in order to accomplish Reinstatement.

1.95 **"Rejection Damages Claim"** means any Claim on account of the rejection of an Executory Contract or Unexpired Lease pursuant to Section 365 of the Bankruptcy Code or the repudiation of such contract.

1.96 **"Reorganized Debtor"** means the Debtor or any successor thereto, by merger, consolidation, or otherwise, from and after the Effective Date.

1.97 **"Restructuring Transactions"** means the transactions contemplated by the Definitive Documentation.

1.98 **"RSA"** means the Restructuring Support Agreement, dated as of November 16, 2020, by and among: (i) the Debtor; (ii) the DIP Lenders; (iii) Bruce D. Hansen and Steve Mooney, as bondholders; and (iv) Nevada Moly, LLC, Kobeh Valley Ranch, LLC, POS-Minerals Corporation, Mount Hope Mines, Inc., Eureka Moly, LLC, Resource Capital Fund IV L.P., Resource Capital Fund VI L.P., and Avanti Kitsault Mine Ltd. (fka Alloycorp Mining Inc.), additional RSA Support Parties, along with the terms sheets and other exhibits attached thereto.

1.99 **"Scheduled"** means, with respect to any Claim, the status, priority, and amount, if any, of such Claim as set forth in the Schedules.

1.100 **"Schedules"** means the schedules of assets and liabilities and the statements of financial affairs filed in the Chapter 11 Case by the Debtor pursuant to Section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, which incorporate by reference the global notes and statement of limitations, methodology, and disclaimer regarding the Debtor's schedules and statements, as such schedules or statements have been or may be further modified, amended, or supplemented from time to time in accordance with Bankruptcy Rule 1009 or Final Orders of the Bankruptcy Court.

1.101 **"Section 503(b)(9) Claim"** means any Claim asserted under Section 503(b)(9) of the Bankruptcy Code equal to the value of any goods received by the Debtor within twenty (20) days before the Petition Date in which the goods have been sold to the Debtor in the Debtor's ordinary course of business.

1.102 **"Secured Claim"** means a Claim (a) secured by a valid and fully enforceable Lien on property of the Estate to the extent of the value of such property, as determined in accordance with Section 506(a) of the Bankruptcy Code or (b) subject to a valid right of setoff pursuant to Section 553 of the Bankruptcy Code.

1.103 **"Securities Act"** means the Securities Act of 1933, as now in effect or hereafter amended, and the rules and regulations of the United States Securities and Exchange Commission promulgated thereunder.

1.104 **"Security"** has the meaning ascribed to such term in Section 2(a)(1) of the Securities Act.

1.105 **"Servicer"** means any indenture trustee, agent, servicer, or other authorized representative of Holders of Claims or Interests recognized by the Debtor or Reorganized Debtor.

1.106 **"Subordinated Claim"** means any Claim against the Debtor that is subject to subordination under Section 510(b) or (c) of the Bankruptcy Code, whether arising from rescission of a purchase or sale of a Security of the Debtor or Affiliates of the Debtor, for damages arising from the purchase or sale of such a Security, or for reimbursement or contribution allowed under Section 502 of the Bankruptcy Code on account of such Claim, or otherwise, which Claim shall be subordinated to all Claims or Interests that are senior to or equal to the Claim or Interest represented by such Security.

1.107 **"Trade Creditor Claim"** means a Claim of a person not employed by the Debtor and which Claim arises from the Debtor's failure to pay in full the amounts owed to such person for goods or services provided to the Debtor in the ordinary course of business prior to the Petition Date.

1.108 **"Unclaimed Distribution"** means any distribution under the Plan on account of an Allowed Claim to a Holder that has not: (a) accepted a particular distribution or, in the case of distributions made by check, negotiated such check; (b) given notice to the Reorganized Debtor of an intent to accept a particular distribution; (c) responded to the Debtor's or Reorganized Debtor's request for information necessary to facilitate a particular distribution; or (d) taken any other action necessary to facilitate such distribution.

1.109 **"Unexpired Lease"** means a lease of nonresidential real property to which any Debtor is a party that is subject to assumption or rejection under Section 365 of the Bankruptcy Code.

1.110 **"Unimpaired"** means, with respect to a Class of Claims, a Class of Claims that is not Impaired.

1.111 **"United States"** means the United States of America.

1.112 **"United States Trustee"** means the Office of the United States Trustee for the District of Colorado.

1.113 **"Voting Deadline"** means the last day to submit a ballot accepting or rejecting the Plan as fixed by the Disclosure Statement Order.

C. Rules of Interpretation

For purposes of the Plan, unless otherwise provided herein, (a) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, shall include both the singular and the plural; (b) each pronoun stated in the masculine, feminine, or neuter includes the masculine, feminine, and neuter; (c) any reference in the Plan to an existing document or schedule filed or to be filed means such document or schedule, as it may have been or may be amended, modified, or supplemented; (d) any reference to an Entity as a Holder of a Claim or Interest includes that Entity's successors and assigns; (e) all references in the Plan to Sections, Articles, and Exhibits are references to Sections, Articles, and Exhibits of or to the Plan; (f) the words "herein," "hereunder," and "hereto" refer to the Plan in its entirety rather than to a particular portion of the Plan; (g) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (h) the rules of construction set forth in Section 102 of the Bankruptcy Code shall apply; (i) to the extent the Disclosure Statement is inconsistent with the terms of this Plan, this Plan shall control; (j) to the extent the Plan is inconsistent with the Confirmation Order, the Confirmation Order shall control; (k) any immaterial effectuating provision may be interpreted by the Reorganized Debtor in a manner that is consistent with the overall purpose and intent of the Plan without further Final Order of the Bankruptcy Court; and (l) to the extent that any right of any Entity (other than the Debtor or Reorganized Debtor) to consent to a matter, action or otherwise is unqualified, it shall be implied that such consent right may not be unreasonably withheld.

D. Computation of Time

In computing any period of time prescribed or allowed by the Plan, unless otherwise expressly provided, the provisions of Bankruptcy Rule 9006(a) shall apply.

E. References to Monetary Figures

All references in the Plan to monetary figures and dollar amounts shall refer to Cash, unless otherwise expressly provided for in the Plan.

F. Exhibits

All Exhibits are incorporated in their entirety into, and are a part of, the Plan as if set forth in full herein and, to the extent not annexed hereto, such Exhibits shall be filed with the Bankruptcy Court on or before the Plan Supplement Filing Date. After the Plan Supplement Filing Date, copies of Exhibits may be obtained upon written request to William Cross c/o Markus Williams Young & Hunsicker LLC, 1775 Sherman Street, Suite 1950, Denver, Colorado 80203; 303-830-0800; WCross@MarkusWilliams.com. To the extent any Exhibit is inconsistent with the terms of the Plan and unless otherwise provided for in the Confirmation Order, the terms of the Exhibit shall control as to the transactions contemplated thereby and the terms of the Plan shall control as to any Plan provision that may be required under the Exhibit.

ARTICLE II
TREATMENT OF ADMINISTRATIVE CLAIMS, DIP FACILITY CLAIM, PROFESSIONAL CLAIMS, AND PRIORITY TAX CLAIMS

2.1 Administrative Claims. Except to the extent that the Debtor (or the Reorganized Debtor) and a Holder of an Allowed Administrative Claim agree to less favorable treatment, a Holder of an Allowed Administrative Claim (other than the DIP Facility Claim, which shall be subject to Section 2.2 of the Plan, or a Professional Claim, which shall be subject to Section 2.3 of the Plan) shall receive, in full satisfaction, settlement, release, and discharge of, and in exchange for, such Administrative Claim, Cash equal to the unpaid portion of such Allowed Administrative Claim either (a) on the Distribution Date; (b) on the first Periodic Distribution Date occurring after the later of (i) 30 days after the date when an Administrative Claim becomes an Allowed Administrative Claim, or (ii) 30 days after the date when an Administrative Claim becomes payable pursuant to any agreement between the Debtor (or the Reorganized Debtor) and the Holder of such Administrative Claim; or (c) if the Allowed Administrative Claim is based on liabilities incurred by the Debtor in the ordinary course of its business after the Petition Date, in the ordinary course of business in accordance with the terms and conditions of the particular transaction giving rise to such Allowed Administrative Claims, without any further action by the Holders of such Allowed Administrative Claims; provided, however, that other than Holders of (i) DIP Facility Claims, (ii) Professional Claims, (iii) Administrative Claims Allowed by an order of the Bankruptcy Court on or before the Effective Date, or (iv) Administrative Claims that are not Disputed and arose in the ordinary course of business and were paid or are to be paid in accordance with the terms and conditions of the particular transaction giving rise to such Administrative Claim, the Holder of any Administrative Claim shall have filed a request for payment of an Administrative Claim form no later than the Administrative Claims Bar Date and such Claim shall have become an Allowed Administrative Claim. All requests for payment of an Administrative Claim must be filed with the Bankruptcy Court and served on counsel for the Debtor or the Reorganized Debtor by no later than the Administrative Claims Bar Date. Any request for payment of an Administrative Claim pursuant to this Section 2.1 that is not timely filed and served shall be Disallowed automatically without the need for any objection from the Reorganized Debtor. The Reorganized Debtor may settle an Administrative Claim without further Bankruptcy Court approval. In the event that the Reorganized Debtor objects to an Administrative Claim and there is no settlement, the Bankruptcy Court shall determine the Allowed amount of such Administrative Claim.

2.2 Allowed DIP Facility Claim.

(a) **Allowed DIP Facility Claim.** Pursuant to the DIP Facility Order, the Bankruptcy Court has approved advances from the DIP Lender to the Debtor. The DIP Facility Claim shall be fully Allowed as DIP Superpriority Claims in the amount of the DIP Obligations.

(b) **Payment of DIP Facility Claim.** Pursuant to Section 1129(a)(9)(A) of the Bankruptcy Code and as agreed between the Debtor (and the Reorganized Debtor) and each DIP Lender, each DIP Lender shall receive on the Effective Date, in full and final satisfaction, settlement, release, extinguishment, and discharge of the Allowed DIP Facility Claim, one membership interest in the Reorganized Debtor for each dollar owing to such DIP Lender under the DIP Facility on the Effective Date. The treatment afforded to the Allowed DIP Facility Claim in the Plan results in the Allowed DIP Facility Claim being deemed satisfied, discharged, cancelled, and released, and the Allowed DIP Facility Claim shall be of no further force and effect upon the full satisfaction of the Allowed DIP Facility Claim on the Effective Date in accordance with the Plan thereby satisfying the requirements of Section 1129(a)(9)(A) of the Bankruptcy Code.

2.3 Professional Claims.

(a) **Final Fee Applications.** All final requests for payment of Professional Claims must be filed no later than sixty (60) days after the Effective Date. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code, the Bankruptcy Rules and prior orders of the Bankruptcy Court, and after such sixty (60) day period has passed, the Allowed amounts of such Professional Claims and expenses shall be determined by the Bankruptcy Court.

(b) **Payment of Allowed Professional Claims.** Except to the extent that the Debtor (or the Reorganized Debtor) and a Holder of an Allowed Professional Claim agree to less favorable treatment, a Holder of an Allowed Professional Claim shall receive, in full satisfaction, settlement, release, and discharge of, and in exchange for, such Professional Claim, Cash equal to the unpaid portion of such Allowed Professional Claim either (a) on the Distribution Date; or (b) on the first Periodic Distribution Date occurring after the later of (i) 30 days after the date when the applicable Professional Claim becomes an Allowed Professional Claim, or (ii) 30 days after the date when a Professional Claim becomes payable pursuant to any agreement between the Debtor (or the Reorganized Debtor) and the Holder of such Professional Claim.

(c) **Post-Confirmation Date Retention.** Upon the Confirmation Date, any requirement that Professionals comply with Sections 327 through 331 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtor shall employ and pay Professionals in the ordinary course of business (including the reasonable fees and expenses incurred by Professionals in preparing, reviewing and prosecuting or addressing any issues with respect to final fee applications).

2.4 **Priority Tax Claims.** On the Distribution Date, except to the extent that the Debtor (or Reorganized Debtor) and a Holder of an Allowed Priority Tax Claim agree to a less favorable treatment, each Holder of an Allowed Priority Tax Claim due and payable on or before the Effective Date shall receive one of the following treatments on account of such Claim: (a) Cash in an amount equal to the amount of such Allowed Priority Tax Claim, (b) Cash in an amount agreed to by the Debtor (or the Reorganized Debtor) and such Holder, provided, however, that such parties may further agree for the payment of such Allowed Priority Tax Claim to occur at a later date, or

(c) at the sole option of the Debtor, Cash in the aggregate amount of such Allowed Priority Tax Claim payable in installment payments over a period of not more than five (5) years after the Petition Date pursuant to Section 1129(a)(9)(C) of the Bankruptcy Code. To the extent any Allowed Priority Tax Claim is not due and owing on the Effective Date, such Claim shall be paid in full in Cash in accordance with the terms of any agreement between the Debtor and the Holder of such Claim, or as may be due and payable under applicable non-bankruptcy law or in the ordinary course of business.

ARTICLE III
CLASSIFICATION, TREATMENT, AND VOTING OF CLAIMS AND INTERESTS

3.1 Classification of Claims and Interests.

(a) Pursuant to Sections 1122 and 1123 of the Bankruptcy Code, set forth below is a designation of classes of Claims and Interests. A Claim or Interest is placed in a particular Class for the purposes of voting on the Plan and, to the extent applicable, receiving distributions and payments pursuant to the Plan only to the extent that such Claim or Interest is an Allowed Claim or an Allowed Interest in that Class and such Claim or Interest has not been paid, released, or otherwise settled prior to the Effective Date. In accordance with Section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims of the kinds specified in Sections 507(a)(2) and 507(a)(8) of the Bankruptcy Code have not been classified and their treatment is set forth in Article II above.

(b) The Plan is a single plan of reorganization. The classification of Claims and Interests (as applicable) under the Plan is as set forth below.

Classification	Description
Class 1	Allowed Note Holder Claims
Class 2	Allowed Trade Creditor Claims
Class 3	Allowed Employment Claims
Class 4	Allowed Other Priority Claims
Class 5	Allowed General Unsecured Claims
Class 6	Interests

ARTICLE IV
PROVISIONS FOR TREATMENT OF CLAIMS AND INTERESTS

4.1 Allowed Note Holder Claims (Class 1)

(a) Classification: Class 1 consists of every Allowed Note Holder Claim.

(b) Treatment: Except to the extent that a Holder of an Allowed Note Holder Claim agrees to a less favorable treatment and subject to Section 10.6, in full and final satisfaction, settlement, release, and discharge of and in exchange for each and every Allowed Note Holder

Claim, each Holder of an Allowed Note Holder Claim shall receive Cash or property, at the option of the Holder of such Allowed Claim, pursuant to one of the following two options, to be selected on the ballot submitted to accept or reject the Plan on account of such Allowed Note Holder Claim; *provided* that if no selection is made or the Holder of such Allowed Note Holder Claim votes to reject the Plan, such Holder shall be deemed to have elected option (i) below:

(i) On the Effective Date, or as soon as practicable thereafter, each Holder of an Allowed Note Holder Claim shall receive membership interests in the Reorganized Debtor using the following calculation: total dollar amount of Allowed Note Holder Claim x 75% = Conversion Amount, and which Conversion Amount shall receive one membership interest in the Reorganized Debtor for each dollar of the Conversion Amount; or

(ii) On the Effective Date, or as soon as practicable thereafter, each Holder of an Allowed Note Holder Claim shall receive a Cash payment equal to 75% of its Allowed Note Holder Claim.

(c) Voting: Class 1 is Impaired and the Holders of Allowed Class 1 Claims are entitled to vote to accept or reject the Plan.

4.2 Allowed Trade Creditor Claims (Class 2)

(a) Classification: Class 2 consists of every Allowed Trade Creditor Claim.

(b) Treatment: Except as otherwise provided in and subject to Section 10.6 of the Plan, and except to the extent that a Holder of an Allowed Trade Creditor Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each and every Allowed Trade Creditor Claim, each such Holder of an Allowed Trade Creditor Claim shall receive a Cash payment equal to 75% of its Allowed Trade Creditor Claim. Cash payments to Holders of Allowed Trade Creditor Claims shall be made at the option of the Debtor (or the Reorganized Debtor) as follows: on the first Periodic Distribution Date occurring after the later of (i) the Effective Date, and (ii) the date such Trade Creditor Claim becomes an Allowed Claim.

(c) Voting: Class 2 is Impaired and the Holders of Allowed Class 2 Claims are entitled to vote to accept or reject the Plan.

4.3 Allowed Employment Claims (Class 3)

(a) Classification: Class 3 consists of every Allowed Employment Claim.

(b) Treatment: Except as otherwise provided in and subject to Section 10.6 of the Plan, and except to the extent that a Holder of an Allowed Employment Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each and every Allowed Employment Claim, each such Holder of an Allowed Employment Claim shall receive a Cash payment equal to 75% of its Allowed Employment Claim. Cash payments to Holders of Allowed Employment Claims shall be made at the option of the

Debtor (or the Reorganized Debtor) as follows: on the first Periodic Distribution Date occurring after the later of (i) the Effective Date and (ii) the date such Employment Claim becomes an Allowed Claim.

(c) Voting: Class 3 is Impaired and the Holder of any Allowed Employment Claim is entitled to vote to accept or reject the Plan.

4.4 Other Priority Claims (Class 4)

(a) Classification: Class 4 consists of all Allowed Other Priority Claims.

(b) Treatment: Except as otherwise provided in and subject to Section 10.6 of the Plan, and except to the extent that a Holder of an Allowed Other Priority Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each and every Allowed Other Priority Claim, each such Holder of an Allowed Other Priority Claim shall, at the option of the Debtor (or the Reorganized Debtor): (x) be paid in full in Cash on the first Periodic Distribution Date occurring after the later of (i) the Effective Date and (ii) the date such Other Priority Claim becomes an Allowed Claim or (y) otherwise be left Unimpaired; provided, however, that Other Priority Claims that arise in the ordinary course of the Debtor's business and which are not due and payable on or before the Effective Date shall be paid in the ordinary course of business in accordance with the terms thereof.

(c) Voting: Class 4 Claims are Unimpaired, and Holders of Allowed Other Priority Claims are conclusively presumed to have accepted the Plan pursuant to Section 1126(f) of the Bankruptcy Code. Therefore, Holders of Allowed Other Priority Claims are not entitled to vote to accept or reject the Plan.

4.5 General Unsecured Claims (Class 5)

(a) Classification: Class 5 consists of all Allowed General Unsecured Claims.

(b) Treatment: Except as otherwise provided in and subject to Section 10.6 of the Plan and except to the extent that a Holder of an Allowed General Unsecured Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each and every Allowed General Unsecured Claim, each Holder of an Allowed General Unsecured Claim shall receive a Cash payment equal to 75% of its Allowed General Unsecured Claim, to be made at the option of the Debtor (or the Reorganized Debtor) as follows: on the first Periodic Distribution Date occurring after the later of (i) the Effective Date and (ii) the date such General Unsecured Claim becomes an Allowed Claim.

(c) Voting: Class 5 Claims are Impaired and Holders of Allowed General Unsecured Claims are entitled to vote to accept or reject the Plan.

4.6 Interests (Class 6)

(a) Classification: Class 6 consists of all Interests.

(b) Treatment: On the Effective Date, all Interests in the Debtor shall be cancelled without further action by the Debtor or Reorganized Debtor and the obligations of the Debtor and Reorganized Debtor thereunder shall be discharged. Holders of Interests shall receive no property under the Plan on account of such Interests.

(c) Voting: Class 6 Interests are Impaired, and Holders of Allowed Class 6 Interests are deemed to have rejected the Plan pursuant to Section 1126(g) of the Bankruptcy Code. Therefore, Holders of Allowed Class 6 Interests are not entitled to vote to accept or reject the Plan.

ARTICLE V
ACCEPTANCE

5.1 Classes Entitled to Vote. All Classes, except Class 4 and Class 6, are entitled to vote to accept or reject the Plan. By operation of law, Class 4 is deemed to have accepted the Plan and is not entitled to vote. By operation of law, Class 6 is deemed to have rejected the Plan and is not entitled to vote.

5.2 Acceptance by Impaired Classes. An Impaired Class of Claims shall have accepted this Plan if, not counting the vote of any Holder designated under Section 1126(e) of the Bankruptcy Code, (a) the Holders of at least two-thirds in amount of the Allowed Claims actually voting in the Class have voted to accept this Plan and (b) the Holders of more than one-half in number of the Allowed Claims actually voting in the Class have voted to accept the Plan.

5.3 Elimination of Classes. To the extent applicable, any Class that does not contain an Allowed Claim or any Claim temporarily Allowed for voting purposes under Bankruptcy Rule 3018, as of the date of commencement of the Confirmation Hearing, shall be deemed to have been deleted from the Plan for purposes of (a) voting to accept or reject the Plan and (b) determining whether it has accepted or rejected the Plan under Section 1129(a)(8) of the Bankruptcy Code.

5.4 Deemed Acceptance if No Votes Cast. If any Holders of Claims eligible to vote in a particular Class fail to vote to accept or reject the Plan, then the Holder of such Claim shall be deemed to have accepted the Plan.

5.5 Cramdown. To the extent necessary, the Debtor shall request confirmation of the Plan, as it may be modified from time to time, under Section 1129(b) of the Bankruptcy Code. The Debtor reserves the right to modify the Plan to the extent, if any, that confirmation pursuant to Section 1129(b) of the Bankruptcy Code requires modification.

ARTICLE VI
MEANS FOR IMPLEMENTATION OF THE PLAN

6.1 General Settlement of Claims and Interests. Pursuant to Section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan shall constitute good-faith compromise and settlement of all Claims and Interests and controversies relating to the contractual, legal, and subordination rights that a Holder of a Claim or Interest may have with respect to any Allowed Claim or Interest or any distribution to be made on account of such Allowed Claim or Interest.

6.2 Sources of Cash for Plan Distributions. All Cash required for payments to be made under the Plan on and after the Effective Date shall be obtained from (i) Cash on hand at the Debtor; and (ii) proceeds of the DIP Facility.

6.3 Exemptions from Securities Act Registration Requirements. Except as otherwise set forth in the Plan, the offering, issuance, and distribution of any Securities pursuant to the Plan and any and all settlement agreements incorporated therein will be exempt from the registration requirements of Section 5 of the Securities Act pursuant to Section 1145 of the Bankruptcy Code, Section 4(a)(2) of the Securities Act, or any other available exemption from registration under the Securities Act, as applicable. Section 4(a)(2) of the Securities Act exempts transactions not involving a public offering, and Section 506 of Regulation D of the Securities Act provides a safe harbor under Section 4(a)(2) for transactions that meet certain requirements. In addition, under Section 1145 of the Bankruptcy Code, if applicable, any Securities issued pursuant to the Plan and any and all settlement agreements incorporated therein will be freely transferable under the Securities Act by the recipients thereof, subject to (1) the provisions of Section 1145(b)(1) of the Bankruptcy Code relating to the definition of an underwriter in Section 2(a)(11) of the Securities Act, and compliance with any applicable state or foreign securities laws, if any, and the rules and regulations of the United States Securities and Exchange Commission, if any, applicable at the time of any future transfer of such Securities or instruments, (2) the restrictions, if any, on the transferability of such Securities and instruments, including restrictions contained, and (3) any other applicable regulatory approval. Except as otherwise set forth in the Plan, in reliance upon these exemptions, the offer, issuance, and distribution of Securities will not be registered under the Securities Act or any applicable state Blue Sky Laws, and may not be transferred, encumbered or otherwise disposed of in the absence of such registration or an exemption therefrom under the Securities Act or under such laws and regulations thereunder. Accordingly, the Securities may be subject to restrictions on transfer as set forth in the governing documents to such Securities.

6.4 Cancellation of Securities, Instruments, Certificates and Agreements. On the Effective Date, except as otherwise specifically provided for herein, (a) all agreements (other than assumed contracts), credit agreements, prepetition loan documents and any other note, bond, indenture, Certificate, or other instrument or document evidencing or creating any indebtedness or obligation of or ownership interest in the Debtor shall be cancelled and (b) the obligations of, Claims against, and/or Interests in the Debtor under, relating, or pertaining to any agreements, indentures, certificates of designation, bylaws, or certificate or articles of incorporation or similar documents governing the Debtor's Securities and any other note, bond, indenture, Certificate, or other instrument or document evidencing or creating any indebtedness or obligation of the Debtor shall be released and discharged and cancelled.

6.5 Issuance and Distribution of New Securities; Execution of Plan Documents. Except as otherwise provided in the Plan, on or as soon as reasonably practicable after the Effective Date, the Reorganized Debtor shall issue and/or deliver all Securities, notes, instruments, Certificates, and other documents required to be issued pursuant to the Plan.

6.6 Continued Company Existence and Equity Interests in Reorganized Debtor.

(a) As of the Effective Date, the Debtor shall become the Reorganized Debtor, a limited liability company organized under the laws of the State of Delaware, with all the powers of a limited liability company under applicable law in the jurisdiction in which the Reorganized Debtor is organized and pursuant to its respective articles of organization and bylaws or other organizational documents in effect after the Effective Date, without prejudice to any right to terminate such existence (whether by merger or otherwise) under applicable law after the Effective Date. To the extent such documents are amended, such documents are deemed to be amended pursuant to the Plan without any further notice to or action, order, or approval of the Bankruptcy Court or any other court of competent jurisdiction (other than the requisite filings required under applicable state, provincial, or federal law).

(b) Except as otherwise provided in the Plan, the continued existence, operation, and ownership of Affiliates is a material component of the business of the Debtor and the Reorganized Debtor, as applicable, and, as set forth in Section 11.1 of the Plan, all of the Debtor's equity interests and other property interests in such Affiliates shall vest in the Reorganized Debtor or its successor on the Effective Date.

6.7 Articles of Incorporation and Bylaws. The articles of organization and bylaws (or other formation documents relating to limited liability companies, limited partnership, or other forms of Entity) of the Reorganized Debtor shall be prepared in a form as may be required to be consistent with the provisions of the Plan and the Bankruptcy Code. After the Effective Date, the Reorganized Debtor may amend and restate its respective certificates of incorporation, articles of organization and bylaws (or other formation documents relating to limited liability companies, limited partnership, or other forms of Entity affiliated with the Debtor) as permitted by the Plan, applicable state corporation law, limited liabilities act and its respective charters and bylaws or other organizational documents.

6.8 Managers and Officers of Reorganized Debtor. Pursuant to Section 1129(a)(5) of the Bankruptcy Code, the identity and affiliations of each proposed manager of the Reorganized Debtor and each of the initial officers of the Reorganized Debtor (and, to the extent such Person is an insider, the nature of any compensation for such Person) shall be disclosed in the Disclosure Statement, Plan Supplement or as announced on the record at the Confirmation Hearing. The number of managers and the identities thereof, and any senior officers of the Reorganized Debtor not presently serving in such capacity, shall be determined by a Plan Supplement to be filed on or before the date of the Disclosure Statement Order.

6.9 Corporate Action. Each of the matters provided for under the Plan involving the corporate or company structure of the Debtor or the Reorganized Debtor or corporate or company action to be taken by or required of the Debtor or the Reorganized Debtor shall, as of the Effective Date, be deemed to have occurred and be effective as provided herein, and shall be authorized, approved, and to the extent taken prior to the Effective Date, ratified in all respects without any requirement of further action by stockholders, creditors, or directors of the Debtor or the Reorganized Debtor.

6.10 Effectuating Documents; Further Transactions. On and after the Confirmation Date, subject to the occurrence of the Effective Date, the Debtor and the Reorganized Debtor, and the managers and officers thereof and members of the New Board, shall be authorized to and may issue, execute, deliver, file, or record such contracts, Securities, instruments, articles, releases, indentures, and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan and to implement and consummate the Restructuring Transactions, or to otherwise comply with applicable law, in the name of and on behalf of the Reorganized Debtor, without the need for any approvals, authorizations, or consents except for those expressly required pursuant to the Plan.

6.11 Employment, Retirement, Indemnification and Other Agreements and Employee Compensation Programs.

(a) **Employment Agreements**. To the extent that the Debtor intends for any employment, retirement, indemnification or other agreement with its respective directors, officers, managing members and employees to remain in place after the Effective Date, the Debtor, will list such agreement on the list of "Assumed Executory Contracts and Unexpired Leases" contained in Exhibit 8.1 of the Plan, and such agreement will be assumed as of the Effective Date. If the Debtor does not list such agreement on the list of "Assumed Executory Contracts and Unexpired Leases" contained in Exhibit 8.1, such agreement shall be deemed rejected. The Reorganized Debtor may also enter into new employment arrangements and/or change in control agreements with individuals who will serve as officers of the Reorganized Debtor after the Effective Date. On the Effective Date or as soon as reasonably practicable thereafter, the Reorganized Debtor shall adopt, approve, and authorize any new employment arrangements with respect to such officers of the Reorganized Debtor without further action, order, or approval of the Bankruptcy Court.

(b) **Other Incentive Plans and Employee Benefits.** Unless otherwise specified in the Plan, on and after the Effective Date, the Reorganized Debtor shall have the discretion, to (a) amend, adopt, assume, terminate, cancel and/or honor, in the ordinary course of business or as otherwise provided herein, any contracts, agreements, policies, programs, and plans for, among other things, compensation, pursuant to the terms thereof or hereof, including the employee compensation plans, any incentive plan, 401(k) plan, health care benefits, disability benefits, deferred compensation benefits, savings, severance benefits, retirement benefits, welfare benefits, workers' compensation benefits, life insurance, and accidental death and dismemberment insurance for the directors, officers, and employees of the Debtor who served in such capacity from and after the Petition Date, and (b) honor, in the ordinary course of business, Claims of employees employed as of the Effective Date for accrued vacation time arising prior to the Petition Date.

6.12 Preservation of Causes of Action. In accordance with Section 1123(b)(3) of the Bankruptcy Code, the Reorganized Debtor shall retain and may (but is not required to) enforce all rights to commence and pursue any and all Causes of Action, and such Causes of Action shall vest in the Reorganized Debtor as of the Effective Date. The Reorganized Debtor, in its sole and absolute discretion, shall determine whether to bring, settle, release, compromise, or enforce such Causes of Action (or decline to do any of the foregoing), and shall not be required to seek further approval of the Bankruptcy Court for such action. The Reorganized Debtor or any successors may pursue such litigation claims in accordance with the best interests of the Reorganized Debtor or any successor holding such rights of action. **No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against them as any indication that the Debtor or the Reorganized Debtor will not pursue any and all available Causes of Action against them. The Debtor and the Reorganized Debtor expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise provided in the Plan.** Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in writing pursuant to a document only executed by the Reorganized Debtor, the Reorganized Debtor expressly reserves all Causes of Action for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), waiver or laches, shall apply to such Causes of Action upon, after, or as a consequence of Confirmation or consummation of the Plan.

6.13 Reservation of Rights. With respect to Avoidance Actions, the Debtor and the Reorganized Debtor, as applicable, reserve all rights, including the right under Section 502(d) of the Bankruptcy Code to use defensively the Avoidance Actions as a basis to object to all or any part of a claim against the Estate asserted by a creditor which remains in possession of, or otherwise obtains the benefit of, the avoidable transfer.

6.14 Exemption from Certain Transfer Taxes and Recording Fees. Pursuant to Section 1146(a) of the Bankruptcy Code, all transfers of property contemplated herein, even if accomplished after the Effective Date, are being accomplished pursuant to the Plan and shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, sales tax, use tax, or other similar tax or governmental assessment to the fullest extent contemplated by Section 1146(a) of the Bankruptcy Code, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents to forgo the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

6.15 Insured Claims. Notwithstanding anything to the contrary contained herein, to the extent the Debtor has insurance with respect to any Allowed Claim, the Holder of such Allowed Claim shall (a) be paid any amount from the proceeds of insurance to the extent that the Claim is insured and (b) solely for the portion of such Claim that is not subject to coverage by the applicable insurance policy, receive the treatment provided for in the Plan for Allowed General Unsecured Claims.

6.16 Intercompany Account Settlement. The Debtor and the Reorganized Debtor, and their respective Affiliates, will be entitled to transfer funds between and among themselves as they determine to be necessary or appropriate to enable the Reorganized Debtor to satisfy its obligations under the Plan.

6.17 Private Company. It is anticipated that the Reorganized Debtor shall be a private company or corporation as of the Effective Date and shall not register any of its respective equity with the Securities Exchange Commission or list such equity on an exchange; provided, however, that, to the extent applicable, the Reorganized Debtor may implement procedures to facilitate trading of such equity, e.g., providing investors with access (on a secure website) to current information concerning the Reorganized Debtor and its subsidiaries on a consolidated basis.

ARTICLE VII
INTENTIONALLY OMITTED

ARTICLE VIII
UNEXPIRED LEASES AND EXECUTORY CONTRACTS

8.1 Rejection of Executory Contracts and Unexpired Leases.

(a) **Automatic Rejection**. Except as otherwise provided herein, each Executory Contract and Unexpired Lease shall be deemed automatically rejected pursuant to Sections 365 and 1123 of the Bankruptcy Code as of the Effective Date, unless any such Executory Contract or Unexpired Lease: (a) is listed on the schedule of "Assumed Executory Contracts and Unexpired Leases" contained in Exhibit 8.1 of the Plan; (b) has been previously assumed by the Debtor by Final Order of the Bankruptcy Court or has been assumed by the Debtor by Final Order of the Bankruptcy Court as of the Effective Date, which Final Order becomes a Final Order after the Effective Date; (c) is the subject of a motion to assume or reject pending as of the Effective Date; (d) is an Executory Contract related to any Intercompany Claim; or (e) is otherwise assumed pursuant to the terms herein.

The Confirmation Order will constitute a Final Order of the Bankruptcy Court approving such rejections pursuant to Sections 365 and 1123 of the Bankruptcy Code as of the Effective Date. Counterparties to Executory Contracts or Unexpired Leases that are deemed rejected as of the Effective Date shall have the right to assert any Claim on account of the rejection of such Executory Contracts or Unexpired Leases, including under Section 502(g) of the Bankruptcy Code, subject to compliance with the requirements herein.

(b) **Preexisting Obligations to the Debtor Under Executory Contracts and Unexpired Leases.** To the extent not inconsistent with the Plan, rejection of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of pre-existing obligations owed to the Debtor under such contracts or leases. In particular, notwithstanding any non-bankruptcy law to the contrary and to the extent consistent with the Plan, the Reorganized Debtor expressly reserves and does not waive any right to receive, or any continuing obligation of a counterparty to provide, warranties or continued maintenance obligations on goods previously purchased by the contracting Debtor or the Reorganized Debtor, as applicable, from counterparties to rejected or repudiated Executory Contracts.

(c) **Claims Procedures Related to Rejection of Executory Contracts or Unexpired Leases.** Unless otherwise provided by a Bankruptcy Court Final Order, any Proof of Claim asserting Claims arising from the rejection of the Executory Contracts and Unexpired Leases pursuant to the Plan or otherwise must be filed with the Bankruptcy Court (or any claims and solicitation agent appointed by the Bankruptcy Court) no later than thirty (30) days after the later of the Effective Date or the effective date of rejection. Any Proof of Claim arising from the rejection of the Executory Contracts or Unexpired Leases that are not timely filed shall be disallowed automatically and forever barred, estopped, and enjoined from assertion and shall not be enforceable against the Debtor or the Reorganized Debtor, without the need for any objection by the Reorganized Debtor or any further notice to or action, order, or approval of the Bankruptcy Court, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully satisfied, released, and discharged, notwithstanding anything in the Schedules or a Proof of Claim to the contrary. All Allowed Claims arising from the rejection of the Executory Contracts and Unexpired Leases shall be classified as General Unsecured Claims.

(d) **Reservation of Rights.** Notwithstanding anything to the contrary herein, prior to sixty (60) days after the Effective Date, the Debtor (or the Reorganized Debtor), may amend its decision with respect to the rejection of any Executory Contract or Unexpired Lease, and any amended decision shall be binding on the contract counterparty.

8.2 Assumption of Executory Contracts and Unexpired Leases. Upon the occurrence of the Effective Date, each Executory Contract or Unexpired Lease listed on the schedule of "Assumed Executory Contracts and Unexpired Leases" in Exhibit 8.1 of the Plan shall be assumed, or assumed and assigned, as applicable, and shall vest in and be fully enforceable by the Reorganized Debtor or its assignee in accordance with its terms, except as modified by the provisions of the Plan or any Final Order of the Bankruptcy Court authorizing or providing for its assumption or applicable federal law. With respect to each such Executory Contract and Unexpired Lease, the Debtor, shall have designated a proposed Cure, and the assumption of such Executory Contracts and Unexpired Leases may be conditioned upon the disposition of all issues with respect to such Cure. The Confirmation Order shall constitute an order of the Bankruptcy Court approving any such assumptions pursuant to Sections 365(a) and 1123 of the Bankruptcy Code.

(a) **Modifications, Amendments, Supplements, Restatements, or Other Agreements.** Unless otherwise provided in the Plan, each Executory Contract or Unexpired Lease that is assumed shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated pursuant hereunder. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith.

(b) **Proof of Claim Based on Executory Contracts or Unexpired Leases that Have Been Assumed.** Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed in the Chapter 11 Case, including hereunder, except a Proof of Claim asserting Cure amounts, pursuant to the Final Order approving such assumption, including the Confirmation Order, shall be deemed disallowed and expunged from the claims register as of the Effective Date without any further notice to or action, order, or approval of the Bankruptcy Court.

8.3 Indemnification Provisions. Notwithstanding anything herein to the contrary, as of the Effective Date, the Indemnification Provisions shall be treated as though they are executory contracts and that the Debtor shall assume (and assign to the Reorganized Debtor if necessary to continue the Indemnification Provisions in full force) pursuant to Section 365(a) of the Bankruptcy Code. Entry of Confirmation Order shall constitute the Bankruptcy Court's approval of the Debtor's foregoing assumption of each of the Indemnification Provisions.

8.4 Insurance Policies. Notwithstanding anything to the contrary in the Disclosure Statement, the Plan, the Plan Documents, the Plan Supplement, any other document related to any of the foregoing or any other Final Order of the Bankruptcy Court (including, without limitation, any other provision that purports to be preemptory or supervening or grants an injunction or release, including, but not limited to, the injunctions set forth in Section 11.6 of the Plan): (a) on the Effective Date, the Debtor shall assume and assign to the Reorganized Debtor all insurance policies except those specific insurance policies (and all agreements related thereto) that are set forth in the Plan Supplement, which will be rejected as such insurance policies may be amended or modified (such assumed insurance policies and related agreements, collectively, the "Insurance Contracts"); (b) other than as expressly set forth in this Section 8.4, nothing in the Disclosure Statement, the Plan, the Plan Documents, the Plan Supplement or the Confirmation Order alters, modifies or otherwise amends the terms and conditions of (or the coverage provided by) any of the Insurance Contracts, provided, however that the Debtor or Reorganized Debtor, as applicable, shall retain the right to challenge any amounts owed under the Insurance Contracts in accordance with its terms, and the rights and obligations of the parties under the Insurance Contracts, whether or not such Insurance Contracts are executory or were in effect before or after the Petition Date, shall remain fully enforceable by the parties after the Effective Date of the Plan; (c) nothing in the Disclosure Statement, the Plan, the Plan Documents, Plan Supplement, the Confirmation Order, any prepetition administrative claim bar date order (or notice) or claim objection order alters or modifies the duty, if any, that the insurers and/or third party administrators have to pay claims covered by the Insurance Contracts in accordance with the terms of the Insurance Contracts; and (d) the automatic stay of Bankruptcy Code Section 362(a) and the injunctions set forth in Section 11.6 of the Plan, if and to the extent applicable, shall be deemed lifted without further order of the Bankruptcy Court, solely to permit: (A) claimants with valid claims covered by any of the Insurance Contracts ("Insurance Claims") to proceed with their claims; (B) insurers and/or third party administrators to administer, handle, defend, settle, and/or pay, in the ordinary course of business and subject to the terms of the Insurance Contracts, without further order of the Bankruptcy Court, (i) all Insurance Claims, and (ii) all costs in relation to each of the foregoing; and (C) the insurers and/or third party administrators to take other actions relating thereto, to the extent permissible under applicable non-bankruptcy law, each in accordance with the terms of the Insurance Contracts.

8.5 Cure Procedures and Payments Related to Assumption of Executory Contracts and Unexpired Leases. With respect to each of the Executory Contracts or Unexpired Leases listed on the schedule of "Assumed Executory Contracts and Unexpired Leases," the Debtor, shall have designated a proposed Cure, and the assumption of such Executory Contract or Unexpired Lease shall be conditioned upon the disposition of all issues with respect to Cure. Such Cure shall be satisfied by the Debtor or its assignee, if any, by payment of the Cure in Cash within thirty (30) days following the occurrence of the Effective Date or as soon as reasonably practicable thereafter, or on such other terms as may be ordered by the Bankruptcy Court or agreed upon by the parties, to the applicable Executory Contract or Unexpired Lease without any further notice to or action, order, or approval of the Bankruptcy Court. Any provisions or terms of the Executory Contracts or Unexpired Leases to be assumed pursuant to the Plan that are, or may be, alleged to be in default, shall be satisfied solely by Cure, or by an agreed-upon waiver of Cure. If there is a dispute regarding such Cure, the ability of the Reorganized Debtor or any assignee to provide "adequate assurance of future performance" within the meaning of Section 365 of the Bankruptcy Code, or any other matter pertaining to assumption, then payment of Cure shall occur as soon as reasonably practicable after entry of a Final Order resolving such dispute, approving such assumption (and, if applicable, assignment), or as may be agreed upon by the Debtor, or the Reorganized Debtor, as applicable, and the counterparty to the Executory Contract or Unexpired Lease. The Debtor, or the Reorganized Debtor, as applicable, reserves the right either to reject or nullify the assumption of any Executory Contract or Unexpired Lease after a Final Order determining the Cure or any request for adequate assurance of future performance required to assume such Executory Contract or Unexpired Lease is made.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Cures, Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption.

(a) **Cure Notice.** Prior to the Confirmation Hearing, and pursuant to the assumption and rejection procedures set forth in this Article VIII, the Debtor shall serve upon counterparties to such Executory Contracts and Unexpired Leases a notice ("Cure Notice") of the proposed assumption that will (i) list the applicable Cure, if any, (ii) describe the procedures for filing objections to the proposed assumption or assumption and assignment of the applicable Executory Contract or Unexpired Lease, (iii) describe the procedures for filing objections to the proposed Cure of the applicable Executory Contract or Unexpired Lease, and (iv) explain the process by which related disputes will be resolved by the Bankruptcy Court. If no objection is timely received, (x) the non-Debtor party to the Assumed Contract shall be deemed to have consented to the assumption of the applicable Executory Contract or Unexpired Lease and shall be forever barred from asserting any objection with regard to such assumption, and (y) the proposed Cure Amount shall be controlling, notwithstanding anything to the contrary in any applicable Executory Contract or Unexpired Lease or other document as of the date of the filing of the Plan, and the non-Debtor party to an applicable Executory Contract or Unexpired Lease shall be deemed to have consented to the Cure Amount and shall be forever barred from asserting, collecting, or seeking to collect any additional amounts relating thereto against the Debtor or the Reorganized Debtor, or the property of any of them.

(b) **Cure Objections.** If a proper and timely objection to the Cure Notice or proposed Cure is filed by the Cure Objection Deadline, the Cure shall be equal to (i) the amount agreed to between the Debtor or Reorganized Debtor and the applicable counterparty, or, (ii) to the extent the Debtor or Reorganized Debtor and counterparty do not reach an agreement regarding any Cure or any other matter related to assumption, the Bankruptcy Court shall determine the Allowed amount of such Cure and any related issues. Objections, if any, to the proposed assumption and/or Cure must be in writing, filed with the Bankruptcy Court and served in hard-copy form so that they are actually received by the Cure Objection Deadline.

(c) **Hearing with Respect to Objections.** If an objection to the proposed assumption and/or to the Cure is timely filed and received in accordance with the procedures set forth in Section 8.5(b), and the parties do not reach a consensual resolution of such objection, a hearing with respect to such objection shall be held at such time scheduled by the Bankruptcy Court or the Debtor or Reorganized Debtor. Objections to the proposed Cure Amount or assumption of an Executory Contract or Unexpired Lease will not be treated as objections to Confirmation of the Plan.

(d) **Reservation of Rights.** Notwithstanding anything to the contrary herein, prior to the Effective Date, the Debtor, may amend its decision with respect to the assumption of any Executory Contract or Unexpired Lease and provide a new notice amending the information provided in the applicable notice, subject to the Assumption and Rejection Procedures. In the case of an Executory Contract or Unexpired Lease designated for assumption that is the subject of a Cure Objection which has not been resolved prior to the Effective Date, the Debtor may designate such Executory Contract or Unexpired Lease for rejection at any time prior to the payment of the Cure.

8.6 Contracts, Intercompany Contracts, and Leases Entered into After the Petition Date. Contracts and leases entered into after the Petition Date by the Debtor, and any Executory Contracts and Unexpired Leases assumed by the Debtor, may be performed by the Reorganized Debtor in the ordinary course of business and in accordance with the terms of such Executory Contract or Unexpired Lease.

8.7 General Reservation of Rights. Neither the exclusion nor inclusion of any contract or lease on Exhibit 8.1 of the Plan, in the Plan Supplement, nor anything contained in the Plan, shall constitute an admission by the Debtor that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that the Reorganized Debtor, or any of its Affiliates, has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtor or the Reorganized Debtor, as applicable, shall have forty-five (45) days following entry of a Final Order resolving such dispute to alter its treatment of such contract or lease.

ARTICLE IX
PROCEDURES FOR RESOLVING DISPUTED CLAIMS AND INTERESTS

9.1 Determination of Claims and Interests. After the Effective Date, the Reorganized Debtor shall have and retain any and all rights and defenses the Debtor had with respect to any Claim or Interest immediately prior to the Effective Date, including the Causes of Action retained pursuant to Section 6.12, except with respect to any Claim or Interest deemed Allowed under the Plan.

Except as expressly provided in the Plan or in any Final Order entered in the Chapter 11 Case prior to the Effective Date (including the Confirmation Order), no Claim or Interest shall become an Allowed Claim or Interest unless and until such Claim or Interest is deemed Allowed by the Debtor or Reorganized Debtor or the Bankruptcy Court has entered a Final Order, including the Confirmation Order, in the Chapter 11 Case allowing such Claim or Interest. All settled claims approved prior to the Effective Date pursuant to a Final Order of the Bankruptcy Court, pursuant to Bankruptcy Rule 9019 or otherwise shall be binding on all parties. For the avoidance of doubt, any Claim determined and liquidated pursuant to (a) a Final Order of the Bankruptcy Court or (b) applicable non-bankruptcy law (which determination has not been stayed, reversed, or amended and as to which determination or any revision, modification, or amendment thereof) the time to appeal or seek review or rehearing has expired and as to which no appeal or petition for review or rehearing was filed or, if filed, remains pending) shall be deemed an Allowed Claim in such liquidated amount and satisfied in accordance with the Plan.

Nothing contained in this Section 9.1 shall constitute or be deemed a waiver of any claim, right, or Cause of Action that the Debtor or the Reorganized Debtor may have against any Entity in connection with or arising out of any Claim, including, without limitation, any rights under Section 157(b) of title 28 of the United States Code.

9.2 Claims Administration Responsibility. Except as otherwise specifically provided for in the Plan, after the Effective Date, the Reorganized Debtor shall retain exclusive responsibility for (a) administering, disputing, objecting to, compromising, or otherwise resolving all Claims against, and Interests in, the Debtor, including, without limitations, (i) filing, withdrawing, or litigating to judgment objections to Claims or Interests, (ii) settling or compromising any Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court, and (iii) administering and adjusting the claims register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court, and (b) in coordination with the Distribution Agent and pursuant to Article X of the Plan making distributions (if any) with respect to all Claims and Interests.

9.3 Objections to Claims. Unless otherwise extended by the Bankruptcy Court, any objections to Claims (other than Administrative Claims) shall be served and filed on or before the Claims Objection Deadline (or such later date as may be established by the Bankruptcy Court upon request of the Reorganized Debtor without further notice to parties-in-interest). Notwithstanding any authority to the contrary, an objection to a Claim shall be deemed properly served on the Holder of the Claim if the Debtor or the Reorganized Debtor effect service in any of the following manners: (a) in accordance with Federal Rule of Civil Procedure 4, as modified and made applicable by Bankruptcy Rule 7004, (b) to the extent counsel for a Holder of a Claim or Interest is unknown, by first class mail, postage prepaid, on the signatory on the Proof of Claim or other representative identified on the Proof of Claim or any attachment thereto (or at the last known addresses of such Holders of Claims if no Proof of Claim is filed or if the Debtor have been notified in writing of a change of address), or (c) by first class mail, postage prepaid, on any counsel that has appeared on behalf of the Holder of the Claim in the Chapter 11 Case and has not withdrawn such appearance.

9.4 Disallowance of Claims. EXCEPT AS OTHERWISE AGREED, ANY PROOF OF CLAIM FILED AFTER THE APPLICABLE DEADLINE FOR FILING SUCH PROOF OF CLAIM SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO, OR ACTION, ORDER, OR APPROVAL OF

THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM IS DEEMED TIMELY FILED BY A FINAL ORDER OF THE BANKRUPTCY COURT.

Nothing herein shall in any way alter, impair, or abridge the legal effect of the Bar Date Order, or the rights of the Debtor, the Reorganized Debtor, or other parties-in-interest to object to Claims on the grounds that they are time barred or otherwise subject to disallowance or modification.

All Claims of any Entity from which property is sought by the Debtor or the Reorganized Debtor under Section 542, 543, 550, or 553 of the Bankruptcy Code or that the Debtor or the Reorganized Debtor allege is a transferee of a transfer that is avoidable under Section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code shall be deemed Disallowed if (a) the Entity, on the one hand, and the Debtor or the Reorganized Debtor, on the other hand, agree or the Bankruptcy Court has determined by Final Order that such Entity or transferee is liable to turn over any property or monies under any of the aforementioned Sections of the Bankruptcy Code and (b) such Entity or transferee has failed to turn over such property by the date set forth in such agreement or Final Order.

9.5 Estimation of Claims. Before or after the Effective Date, the Debtor or the Reorganized Debtor, as applicable, may (but is not required to) at any time request that the Bankruptcy Court estimate a Disputed Claim pursuant to Section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or Interest or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any Disputed Claim, including during the litigation of any objection to any Disputed Claim or during the pendency of any appeal relating to such objection. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute a maximum limitation on such Claim for all purposes under the Plan (including for purposes of distributions), without prejudice to the Holder of such Claim's right to request that estimation should be for the purpose of determining the Allowed amount of such Claim, and the Reorganized Debtor may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim. All of the objection, estimation, settlement, and resolution procedures set forth in the Plan are cumulative and not necessarily exclusive of one another. Disputed Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

9.6 No Interest on Disputed Claims. Unless otherwise specifically provided for in the Plan or as otherwise required by Section 506(b) of the Bankruptcy Code, and except for the DIP Facility Claim, post-petition interest shall not accrue or be paid on Claims or Interests, and no Holder of a Claim or Interest shall be entitled to interest accruing on or after the Petition Date on any Claim or Interest. Additionally, and without limiting the foregoing, unless otherwise specifically provided for in the Plan or as otherwise required by Section 506(b) of the Bankruptcy Code, interest shall not accrue or be paid on any Disputed Claim in respect of the period from the Effective Date to the date a final distribution is made, when and if such Disputed Claim becomes an Allowed Claim.

9.7 Amendments to Claims. On or after the Confirmation Date, except as otherwise provided herein, a Claim may not be filed or amended without the authorization of the Bankruptcy Court or the Reorganized Debtor, and, to the extent such authorization is not received, any such new or amended Claim filed shall be deemed Disallowed in full and expunged without any further notice to or action, order, or approval of the Bankruptcy Court.

ARTICLE X
PROVISIONS GOVERNING DISTRIBUTIONS

10.1 Distributions to Holders of Allowed Claims. The provisions of this Article X shall apply to distributions and payments made to Holders of Allowed Claims and shall be subject to, as applicable, the terms of Article 4 of the Plan.

10.2 Time of Distributions. Except as otherwise provided for herein or ordered by the Bankruptcy Court, distributions and payments under the Plan shall be made on the later of (a) the Distribution Date or (b) on the first Periodic Distribution Date that is at least 30 days after a Claim becomes Allowed; provided, however, that the Reorganized Debtor may, in its sole discretion, make one-time distributions or payments on a date that is not a Periodic Distribution Date.

10.3 Distribution Agent. The Distribution Agent shall make all distributions and payments required under the Plan except (a) as set forth in Article 10.5 below and (b) with respect to any Holder of a Claim whose Claim is governed by an agreement and is administered by a servicer or agent, which distributions and payments shall be deposited with the appropriate servicer or agent, as applicable, who shall deliver such distributions to the Holders of Claims in accordance with the provisions of the Plan and the terms of any governing agreement.

10.4 Currency. Except as otherwise provided in the Plan or Bankruptcy Court Final Order, as of the Effective Date, any Claim asserted in currency other than U.S. Dollars shall be automatically deemed converted to the equivalent U.S. Dollar value using the exchange rate as of Effective Date at 4:00 p.m. prevailing Mountain Time, mid-range spot rate of exchange for the applicable currency as published in the next The Wall Street Journal, National Edition following the Effective Date.

10.5 Distributions on Account of Claims Allowed as of the Effective Date. Except as otherwise provided in the Plan, a Final Order, or as otherwise agreed to by the relevant parties, the Distribution Agent shall make initial distributions and payments under the Plan on account of Allowed Claims on the initial Distribution Date, subject to the Reorganized Debtor's rights to object to Claims that have not been Allowed; provided, however, that (i) Allowed Administrative Claims with respect to liabilities incurred by the Debtor in the ordinary course of business during the Chapter 11 Case or assumed by the Debtor prior to the Effective Date shall be paid or performed in the ordinary course of business in accordance with the terms and conditions of any controlling agreements, course of dealing, course of business, or industry practice, and (ii) Allowed Priority Tax Claims shall be paid in full in Cash on the Distribution Date or in installment payments over a period not more than five years after the Petition Date pursuant to Section 1129(a)(9)(C) of the Bankruptcy Code. To the extent any Allowed Priority Tax Claim is not due and owing on the Effective Date, such Claim shall be paid in full in Cash in accordance with the terms of any agreement between the Debtor and the Holder of such Claim, or as may be due and payable under applicable non-bankruptcy law or in the ordinary course of business.

10.6 Distributions on Account of Claims Allowed After the Effective Date.

(a) **No Distributions Pending Allowance.** No payments or distributions shall be made with respect to all or any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by a Final Order of the Bankruptcy Court, and the Disputed Claim has become an Allowed Claim. All objections to Claims must be filed on or before the Claims Objection Deadline.

(b) **Distributions After Allowance.** Payments and distributions to each respective Holder of a Claim on account of a Disputed Claim, to the extent that it ultimately becomes an Allowed Claim, shall be made in accordance with provisions of the Plan that govern distributions or payments to such Holder of a Claim. On the first Periodic Distribution Date that is at least 30 days following the date when a Disputed Claim becomes an Allowed Claim, the Distribution Agent shall distribute to the Holder of such Allowed Claim the distribution or payment that such Holder is entitled under the Plan as of the Effective Date, without any interest to be paid on account of such Claim or Interest unless required under applicable bankruptcy law; provided, however, (i) Disputed Claims that are Administrative Claims with respect to liabilities incurred by the Debtor in the ordinary course of business during the Chapter 11 Case or assumed by the Debtor on or before the Effective Date that become Allowed after the Effective Date shall be paid or performed in the ordinary course of business in accordance with the terms and conditions of any controlling agreements, course of dealing, course of business, or industry practice, and (ii) Disputed Claims that are Allowed Priority Tax Claims after the Effective Date shall be paid in full in Cash on the Periodic Distribution Date that is at least 30 days after the Disputed Claim becomes an Allowed Claim or over a five-year period as provided in Section 1129(a)(9)(C) of the Bankruptcy Code with annual interest provided by applicable non-bankruptcy law.

(c) **Special Rules for Distributions to Holders of Disputed Claims.** Notwithstanding any provision otherwise in the Plan and except as otherwise agreed by the relevant parties no partial payments and no partial distributions shall be made with respect to a Disputed Claim until all such disputes in connection with such Disputed Claim have been resolved by settlement or Final Order. All distributions made pursuant to the Plan on account of a Disputed Claim that is deemed an Allowed Claim by the Bankruptcy Court shall be made together with any dividends, payments, or other distributions made on account of, as well as any obligations arising from, the distributed property as if such Allowed Claim had been an Allowed Claim on the dates distributions and payments were previously made to Holders of Allowed Claims included in the applicable Class; provided, however, that no interest shall be paid on account of such Allowed Claims unless required under applicable bankruptcy law or the Plan.

10.7 Delivery of Distributions.

(a) **Record Date for Distributions.** On the Distribution Record Date, the claims register shall be closed and the Distribution Agent shall be authorized and entitled to recognize only those record Holders listed on the claims register or the most recently filed

Schedules submitted by the Debtor as of the close of business on the Distribution Record Date. Notwithstanding the foregoing, if a Claim or Interest is transferred less than 20 days before the Distribution Record Date, the Distribution Agent shall make distributions and payments to the transferee only to the extent practicable and in any event only if the relevant transfer form contains an unconditional and explicit certification and waiver of any objection to the transfer by the transferor.

(b) **Allowed Claims**. Distributions and payments to Holders of Allowed Claims shall be made by the Distribution Agent or the appropriate Servicer (i) at the addresses set forth on the Proof of Claim filed by such Holders of Claims (or at the last known addresses of such Holders of Claims if no Proof of Claim is filed or if the Debtor have been notified in writing of a change of address), (ii) at the addresses set forth in any written notices of address changes delivered to the Distribution Agent after the date of any related Proof of Claim, (iii) at the addresses reflected in the Schedules if no Proof of Claim has been filed and the Distribution Agent has not received a written notice of a change of address, or (iv) in the case of a Holder of a Claim whose Claim is governed by an agreement and administered by a Servicer, at the addresses contained in the official records of such Servicer. The Debtor, the Reorganized Debtor, and the Distribution Agent, as applicable, shall not incur any liability whatsoever on account of any distributions under the Plan.

(c) **Undeliverable Distributions.** If any distribution and payments to a Holder of a Claim is returned as undeliverable, no further distributions or payments to such Holder of such Claim shall be made unless and until the Distribution Agent or the appropriate Servicer is notified of then-current address of such Holder of the Claim, at which time all missed distributions and payments shall be made to such Holder of the Claim without interest, dividends, or accruals of any kind on the next Periodic Distribution Date. Amounts in respect of undeliverable distributions and payments shall be returned to the Reorganized Debtor until such distributions or payments are claimed.

(d) **Reversion.** Any distribution under the Plan that is an Unclaimed Distribution for a period of six months after such distribution shall be deemed unclaimed property under Section 347(b) of the Bankruptcy Code and such Unclaimed Distribution shall revert to and vest in the Reorganized Debtor free of any restrictions thereon. Upon vesting, the Claim of any Holder or successor to such Holder with respect to such property shall be cancelled, discharged, and forever barred, notwithstanding federal or state escheat, abandoned, or unclaimed property laws to the contrary. The provisions of the Plan regarding undeliverable distributions and Unclaimed Distributions shall apply with equal force to distributions that are issued by the Debtor, the Reorganized Debtor, or the Distribution Agent made pursuant to any indenture or Certificate (but only with respect to the initial distribution by the Servicer to Holders that are entitled to be recognized under the relevant indenture or Certificate and not with respect to Entities to whom those recognized Holders distribute), notwithstanding any provision in such indenture or Certificate to the contrary and notwithstanding any otherwise applicable federal or state escheat, abandoned, or unclaimed property law.

(e) **De Minimis Distributions**. Notwithstanding any other provision of the Plan to the contrary, the Reorganized Debtor, the Distribution Agent, and any Servicer shall not be required to make a distribution or payment on account of an Allowed Claim if (i) the aggregate amount of all distributions and payments authorized to be made on the Periodic Distribution Date in question is or has a value less than $5,000; provided that the Reorganized Debtor shall make, or cause to be made, a distribution or payment owing on a Periodic Distribution Date of less than $5,000 if the Reorganized Debtor expects that such Periodic Distribution Date shall be the final Periodic Distribution Date; or (ii) the amount to be distributed to the specific Holder of the Allowed Claim on the particular Periodic Distribution Date does not both (x) constitute a final distribution to such Holder and (y) have a value of at least $50.00.

(f) **Fractional Distributions.** Notwithstanding any other provision of the Plan to the contrary, the Reorganized Debtor, and the Distribution Agent, shall not be required to make partial distributions or distributions of payments of fractions of dollars. Whenever any payment of Cash of a fraction of a dollar pursuant to the Plan would otherwise be required, the actual payment shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars or less being rounded down.

10.8 Surrender of Securities or Instruments. As soon as practicable after the Effective Date, each Holder of a Claim shall surrender its note(s) and/or certificates to the Debtor or Reorganized Debtor. No distributions under the Plan shall be made for or on behalf of such Holder unless and until such note(s) and/or certificates are received by the Debtor or Reorganized Debtor or the loss, theft or destruction of such note(s) and/or certificates is established to the reasonable satisfaction of the Debtor or Reorganized Debtor, which satisfaction may require such Holder to submit (a) a lost instrument affidavit and (b) an indemnity bond holding the Debtor and the Reorganized Debtor, harmless in respect of such note and distributions made thereof. Upon compliance with this Section 10.8 such Holder shall, for all purposes under the Plan, be deemed to have surrendered such Claim. Any Holder that fails to surrender such note(s) and/or certificates or satisfactorily explain its non-availability to the applicable Debtor or Reorganized Debtor within one (1) year of the Effective Date shall be deemed to have no further Claim against the Debtor, or the Reorganized Debtor (or its property) in respect of such Claim and shall not participate in any distribution under the Plan. All property in respect of such forfeited distributions, including interest thereon, shall be promptly returned to the Reorganized Debtor, and any such security shall be cancelled.

10.9 Compliance Matters. In connection with the Plan and all instruments issued in connection therewith and distributions thereunder, to the extent applicable, the Debtor, Reorganized Debtor and the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Reorganized Debtor and the Distribution Agent shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms they believe are reasonable and appropriate. The Reorganized Debtor reserves the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, Liens, and encumbrances.

10.10 Claims Paid or Payable by Third Parties.

(a) **Claims Paid by Third Parties.** The Debtor and Reorganized Debtor shall reduce in full a Claim to the extent that the Holder of such Claim receives payment in full on account of such Claim from a party that is not the Debtor or the Reorganized Debtor. To the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not the Debtor or the Reorganized Debtor on account of such Claim, such Holder shall, within two weeks of receipt thereof, repay or return the distribution to the Reorganized Debtor, to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan.

(b) **Claims Payable by Insurance Carriers.** No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtor's insurance policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtor's insurers agrees to satisfy in full a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurers' agreement, such Claim may be expunged to the extent of any agreed upon satisfaction on the claims register by the Claims and Solicitation Agent without a Claims objection having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

(c) **Applicability of Insurance Policies.** Except as otherwise provided in the Plan, distributions to Holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Nothing contained in the Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtor or any Entity may hold against any other Entity, including insurers under any policies of insurance, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

10.11 Setoffs. Except as otherwise expressly provided for in the Plan and except with respect to any DIP Facility Claim, and any distribution on account thereof, the Reorganized Debtor pursuant to the Bankruptcy Code (including Section 553 of the Bankruptcy Code), applicable non-bankruptcy law, or as may be agreed to by the Holder of a Claim, may set off against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Allowed Claim (before any distribution is made on account of such Allowed Claim), any Claims, rights, and Causes of Action of any nature that the Debtor or the Reorganized Debtor, as applicable, may hold against the Holder of such Allowed Claim, to the extent such Claims, rights, or Causes of Action against such Holder have not been otherwise compromised or settled on or prior to the Effective Date (whether pursuant to the Plan or otherwise); provided, however, that neither the failure to effect such a setoff nor the allowance of any Claim pursuant to the Plan shall constitute a waiver or release by the Reorganized Debtor of any such Claims, rights, and Causes of Action that the Reorganized Debtor may possess against such Holder. In no event shall any Holder of Claims be entitled to set off any Claim against any Claim, right, or Cause of Action of the Debtor or the Reorganized Debtor, as applicable, unless such Holder has filed a motion with the Bankruptcy Court requesting the authority to perform such setoff on or before the Confirmation Date, and notwithstanding any indication in any Proof of Claim or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to Section 553 or otherwise.

10.12 Allocation of Plan Distributions Between Principal and Interest. To the extent that any Allowed Claim entitled to a distribution under the Plan is composed of indebtedness and accrued but unpaid interest thereon, such distribution shall, to the extent permitted by applicable law, be allocated for federal income tax purposes to the principal amount of the Claim first and then, to the extent the consideration exceeds the principal amount of the Claim, to the portion of such Claim representing accrued but unpaid interest.

ARTICLE XI
EFFECT OF THE PLAN ON CLAIMS AND INTERESTS

11.1 Vesting of Assets. Except as otherwise explicitly provided in the Plan, on the Effective Date, all property comprising the Estate (including Causes of Action, but excluding property that has been abandoned pursuant to a Final Order of the Bankruptcy Court) shall vest in the Reorganized Debtor which, unless otherwise indicated in the Plan, as Debtor, owned such property or interest in property as of the Effective Date, free and clear of all Claims, Liens, charges, encumbrances, rights, and interests, except the DIP Facility until such time as the DIP Facility Claim is paid in full through the issuance of equity interests in the Reorganized Debtor as required by this Plan. As of and following the Effective Date, the Reorganized Debtor may operate its business and use, acquire, and dispose of property and settle and compromise Claims, Interests, or Causes of Action without supervision of the Bankruptcy Court, free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the Plan or the Confirmation Order.

11.2 Discharge of the Debtor. Pursuant to Section 1141(d) of the Bankruptcy Code, except as otherwise specifically provided in the Plan or the Confirmation Order, and effective as of the Effective Date: (a) the distributions and rights that are provided in the Plan, if any, and the treatment of all Claims and Interests shall be in exchange for and in complete satisfaction, discharge, and release of all Claims and Causes of Action, whether known or unknown, including any interest accrued on such Claims from and after the Petition Date, against, liabilities of, Liens on, obligations of, rights against, and Interests in the Debtor or any of its assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims, rights, and Interests, including, but not limited to, Claims and Interests that arose before the Effective Date and all debts of the kind specified in Sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not (i) a Proof of Claim or interest based upon such Claim, debt, right, or Interest is filed or deemed filed under Section 501 of the Bankruptcy Code, (ii) a Claim or Interest based upon such Claim, debt, right, or Interest is allowed under Section 502 of the Bankruptcy Code, or (iii) the Holder of such a Claim, right, or Interest accepted the Plan; (b) the Plan shall bind all Holders of Claims and Interests notwithstanding whether any such Holders failed to vote to accept or reject the Plan or voted to reject the Plan; (c) all Claims and Interests shall be satisfied, discharged, and released in full, and the Debtor's liability with respect thereto shall be extinguished completely, including any liability of the kind specified under Section 502(g) of the Bankruptcy Code; and (d) all Entities shall be precluded from asserting against the Debtor, the Estate, the Reorganized Debtor, its successors and assigns, and its assets and properties any other Claims or Interests based upon any documents, instruments, or any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date. The Confirmation Order shall be a judicial determination of the discharge of all Claims against and Interests in the Debtor, subject to the occurrence of the Effective Date.

11.3 Compromises and Settlements. The Plan is intended to incorporate the agreements reached and the settlement described in the Plan and Disclosure Statement. In accordance with Section 9.2 of the Plan, pursuant to Bankruptcy Rule 9019(a), the Debtor may compromise and settle various (a) Claims or Interests and (b) Causes of Action that the Debtor have against other Entities up to and including the Effective Date. After the Effective Date, any such right shall pass to the Reorganized Debtor, and as contemplated in Section 11.1 of the Plan, without the need for further approval of the Bankruptcy Court. Pursuant to Section 363 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan or any distribution to be made on account of an Allowed Claim, the provisions of the Plan shall constitute a good faith compromise of all Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a Holder of a Claim or Interest may have with respect to any Allowed Claim or Allowed Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Interests and controversies, as well as a finding by the Bankruptcy Court that any such compromise or settlement is in the best interests of the Debtor, its Estate, and Holders of Claims and Interests, and is fair, equitable, and reasonable.

11.4 Exculpation and Limitation of Liability. Subject to Section 11.5 of the Plan, the Exculpated Parties shall neither have, nor incur any liability to any Entity for any Exculpated Claim; provided, however, that the foregoing "exculpation" shall have no effect on the liability of any Entity that results from any such act or omission that is determined in a Final Order to have constituted gross negligence, willful misconduct, or intentional fraud to the extent imposed by applicable non-bankruptcy law. Subject to the foregoing limitations, the Exculpated Parties have, and upon Confirmation shall be deemed to have, participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code, as applicable, pursuant to the Plan and, therefore, are not and shall not be liable at any time for claims arising after the Petition Date and before the Confirmation Date for the violations of any applicable, law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

11.5 Exclusions and Limitations on Exculpation, Indemnification, and Releases. Notwithstanding anything in the Plan to the contrary, no provision of the Plan or the Confirmation Order, including, without limitation, any exculpation, indemnification, or release provision, shall modify, release, or otherwise limit the liability of any Entity not specifically released or exculpated hereunder or pursuant to a Final Order of the Bankruptcy Court, including, without limitation, any Entity who is a co-obligor or joint tortfeasor of a Released Party or who is otherwise liable under theories of vicarious or other derivative liability.

11.6 Injunction. Subject to Section 11.5 of the Plan, the satisfaction, release, and discharge pursuant to this Article XI shall act as an injunction against any Entity commencing or continuing any action, employment of process, or act to collect, offset, or recover any Claim, Interest, or Cause of Action satisfied, released or to be released, exculpated or to be exculpated, including any Exculpated Claim, or discharged under the Plan or pursuant to the Confirmation Order to the fullest extent authorized or provided by the Bankruptcy Code, including, without limitation, to the extent provided for or authorized by Sections 524 and 1141 thereof.

11.7 Subordination Rights.

(a) Except as otherwise provided in the Plan, the allowance, classification and treatment of all Allowed Claims and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims in each Class in connection with any contractual, legal and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, Section 510(b) of the Bankruptcy Code, or otherwise and all Claims and all rights and claims between or among Holders of Claims relating in any manner whatsoever to distributions on account of Claims or Interests, based upon any claimed subordination rights, whether asserted or unasserted, legal or equitable, shall be deemed satisfied by the distributions under the Plan to Holders of Claims having such subordination rights, and such subordination rights shall be deemed waived, released, discharged, and terminated as of the Effective Date. Except as otherwise specifically provided for in the Plan, distributions to the various Classes of Claims hereunder shall not be subject to levy, garnishment, attachment, or like legal process by any Holder of a Claim by reason of any subordination rights or otherwise, so that each Holder of a Claim shall have and receive the benefit of the distributions in the manner set forth in the Plan.

(b) Except as otherwise provided in the Plan (including Plan Exhibits), the Confirmation Order or a Final Order of the Bankruptcy Court, the right of the Debtor or the Reorganized Debtor to seek subordination of any Claim or Interest pursuant to Section 510 of the Bankruptcy Code is fully reserved, and the treatment afforded any Claim or Interest that becomes a subordinated Claim or Interest at any time shall be modified to reflect such subordination; provided, however, that the Debtor and the Reorganized Debtor shall not seek subordination of any DIP Facility Claim and such Claim is Allowed in full and not subject to any subordination of any kind. Unless the Plan (including Plan Exhibits) or the Confirmation Order otherwise provide, no distributions shall be made on account of a Claim subordinated pursuant to this Section 11.7(b) unless ordered by the Bankruptcy Court.

11.8 Protection Against Discriminatory Treatment. Consistent with Section 525 of the Bankruptcy Code and paragraph 2 of Article VI of the United States Constitution, no Governmental Unit shall discriminate against the Reorganized Debtor or deny, revoke, suspend, or refuse to renew a license, permit, entitlement, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, the Reorganized Debtor, or another Entity with whom such the Reorganized Debtor has been associated, solely because the Debtor has been a debtor under Chapter 11, has been insolvent before the commencement of the Chapter 11 Case (or during the Chapter 11 Case but before the Debtor is granted or denied a discharge), or has not paid a debt that is dischargeable in the Chapter 11 Case.

11.9 Recoupment. In no event shall any Holder of Claims or Interests be entitled to recoup any Claim or Interest against any Claim, right, or Cause of Action of the Debtor or the Reorganized Debtor, as applicable, unless such Holder actually has performed such recoupment and provided notice thereof in writing to the Debtor on or before the Effective Date, notwithstanding any indication in any Proof of Claim or Interest or otherwise that such Holder asserts, has, or intends to preserve any right of recoupment.

11.10 Release of Liens. Except as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estate shall be fully released, and discharged, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Reorganized Debtor and its successors and assigns.

11.11 Reimbursement or Contribution. If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to Section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent as of the Effective Date, such Claim shall be forever Disallowed notwithstanding Section 502(j) of the Bankruptcy Code, unless prior to the Effective Date (1) such Claim has been adjudicated as noncontingent or (2) the relevant Holder of a Claim has filed a noncontingent Proof of Claim on account of such Claim and a Final Order has been entered determining such Claim as no longer contingent.

ARTICLE XII
CONDITIONS PRECEDENT

12.1 Conditions to Confirmation. The following are conditions precedent to the Confirmation of the Plan, each of which may be satisfied or waived in accordance with Section 12.3 of the Plan:

(a) the Bankruptcy Court shall have entered the final DIP Facility Order in a form and substance reasonably satisfactory to the Debtor and the DIP Lenders;

(b) the Definitive Documentation shall have been executed and delivered;

(c) the RSA shall remain in full force and effect and not have been terminated;

(d) the Bankruptcy Court shall have entered the Disclosure Statement Order;

(e) the Confirmation Order shall be in form and substance reasonably satisfactory to the Debtor, the Reorganized Debtor, and the DIP Lenders.

12.2 Conditions to the Effective Date of the Plan. The following are conditions precedent to the occurrence of the Effective Date, each of which may be satisfied or waived in accordance with Section 12.3 of the Plan:

(a) the Bankruptcy Court shall have entered the Disclosure Statement Order, and such order shall be a Final Order;

(b) the Bankruptcy Court shall have entered the Confirmation Order, and which Order has not been modified, stayed, vacated, amended or reversed and as to which no reargument, rehearing or reconsideration is pending and the time for the filing such reargument, rehearing or reconsideration requests has expired.

(c) the DIP Lenders shall have fully funded the DIP Facility in the total amount of $1.4 million.

(d) the Definitive Documentation shall be of full force and effect, fully binding on, and enforceable against, the parties thereto;

(e) all Plan Transaction Documents shall be in form and substance reasonably satisfactory to the Debtor and the Reorganized Debtor;

(f) the organizational documents of the Reorganized Debtor as contemplated herein shall be in form and substance reasonably satisfactory to the Debtor and the Reorganized Debtor, shall have been adopted and (where required by applicable law) filed with the applicable authorities of the relevant jurisdictions of organization and shall have become effective in accordance with such jurisdiction's corporation or limited liability company laws;

(g) all authorizations, consents, certifications, approvals, rulings, no action letters, opinions or other documents or actions required by any law, regulation or order to be received or to occur in order to implement the Plan on the Effective Date shall have been obtained or shall have occurred unless failure to do so will not have a material adverse effect on the Reorganized Debtor;

(h) the New Board and senior management shall have been selected as contemplated by the Plan;

(i) all other documents and agreements necessary to implement the Plan on the Effective Date shall have been executed and delivered and all other actions required to be taken in connection with the Effective Date shall have occurred in form and substance and in a manner reasonably satisfactory to the Debtor and the Reorganized Debtor; and

(j) all statutory fees and obligations then due and payable to the Office of the United States Trustee shall have been paid and satisfied in full.

12.3 Waiver of Conditions Precedent. The conditions set forth in Sections 12.1 and 12.2 may be waived, in whole or in part, by agreement among (a) the Debtor, (b) the Reorganized Debtor, and (c) the DIP Lenders, without any notice to any other parties-in-interest or the Bankruptcy Court and without a hearing.

12.4 Notice of Effective Date. The Debtor shall file with the Bankruptcy Court a notice of the occurrence of the Effective Date within a reasonable period of time after the conditions in Section 12.2 of the Plan have been satisfied or waived pursuant to Section 12.3 of the Plan.

12.5 Effect of Non-Occurrence of Effective Date or Conditions to Consummation. If the Effective Date fails to occur, or otherwise prior to consummation of the Plan the Confirmation Order is vacated pursuant to a Final Order, then except as provided in any Final

Order of the Bankruptcy Court vacating the Confirmation Order, the Plan will be null and void in all respects, and nothing contained in the Plan or Disclosure Statement shall (a) constitute a waiver or release of any Claims, Interests, or Causes of Action, (b) prejudice in any manner the rights of the Debtor or any other Entity, or (c) constitute an admission, acknowledgment, offer, or undertaking of any sort by the Debtor or any other Entity.

ARTICLE XIII
RETENTION OF JURISDICTION

Pursuant to Sections 105(a) and 1142 of the Bankruptcy Code, the Bankruptcy Court shall have exclusive jurisdiction of all matters arising out of, and related to, the Chapter 11 Case and the Plan, including jurisdiction to:

(a) resolve any matters related to Executory Contracts and Unexpired Leases, including: (i) the assumption, assumption and assignment, or rejection of Executory Contracts or Unexpired Leases to which the Debtor is a party or with respect to which the Debtor may be liable, and to hear and determine the allowance of Claims resulting therefrom including the amount of Cure, if any, required to be paid; (ii) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; (iii) the Reorganized Debtor's amendment, modification, or supplement after the Effective Date, pursuant to Article VIII of the Plan, of the lists of Executory Contracts and Unexpired Leases to be assumed or rejected or otherwise; and (iv) any dispute regarding whether a contract or lease is or was executory or expired;

(b) adjudicate any and all adversary proceedings, applications, and contested matters that may be commenced or maintained pursuant to the Chapter 11 Case, the Plan, or that were the subject of proceedings before the Bankruptcy Court prior to the Effective Date, proceedings to adjudicate the allowance of Disputed Claims and Disputed Interests, and all controversies and issues arising from or relating to any of the foregoing;

(c) ensure that distributions to Holders of Allowed Claims are accomplished as provided herein and adjudicate any and all disputes arising from or relating to distributions under the Plan;

(d) allow in whole or in part, disallow in whole or in part, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of any Claim or Interest, including hearing and determining any and all objections to the allowance or estimation of Claims or Interests filed, both before and after the Confirmation Date, including any objections to the classification of any Claim or Interest, and the resolution of request for payment of any Administrative Claim;

(e) hear and determine or resolve any and all matters related to Causes of Action;

(f) enter and implement such orders as may be appropriate if the Confirmation Order is for any reason stayed, revoked, modified, and/or vacated;

(g) issue and implement orders in aid of execution, implementation, or consummation of this Plan;

(h) consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

(i) hear and determine all applications for allowance of compensation and reimbursement of Professional Claims under the Plan or under Sections 330, 331, 503(b), 1103, and 1129(a)(4) of the Bankruptcy Code;

(j) determine requests for the payment of Claims entitled to priority under Section 507(a)(1) of the Bankruptcy Code, including compensation and reimbursement of expenses of parties entitled thereto;

(k) adjudicate, decide, or resolve any and all matters related to Section 1141 of the Bankruptcy Code;

(l) hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan or the Confirmation Order, including disputes arising under agreements, documents, or instruments executed in connection with the Plan and disputes arising in connection with any Entity's obligations incurred in connection with the Plan;

(m) hear and determine all suits or adversary proceedings to recover assets of the Debtor and property of its Estate, wherever located;

(n) hear and determine matters concerning state, local, and federal taxes in accordance with Sections 346, 505, and 1146 of the Bankruptcy Code;

(o) resolve any matters relating to the pre- and post-confirmation sales of the Debtor's assets;

(p) hear any other matter not inconsistent with the Bankruptcy Code;

(q) hear and determine all disputes involving the existence, nature or scope of the Debtor's discharge;

(r) enter a Final Decree closing the Chapter 11 Case;

(s) enforce all orders previously entered by the Bankruptcy Court; and

(t) hear and determine all matters relating to any Bankruptcy Code Section 510(b) Claims.

All of the foregoing applies following the Effective Date; provided, that from the Confirmation Date through the Effective Date, in addition to the foregoing, the Bankruptcy Court shall retain jurisdiction with respect to all other matters of the Plan that were subject to its jurisdiction prior to the Confirmation Date; provided, further, that the Bankruptcy Court shall not have nor retain exclusive jurisdiction over any post-Effective Date agreement. Nothing contained herein shall be construed to increase, decrease, or otherwise modify the independence, sovereignty or jurisdiction of the Bankruptcy Court.

ARTICLE XIV
MISCELLANEOUS PROVISIONS

14.1 Binding Effect. Upon the Effective Date, the Plan shall be binding upon and inure to the benefit of the Debtor, the Reorganized Debtor, all current and former Holders of Claims, all current and former Holders of Interests, and all other parties-in-interest and their respective heirs, successors, and assigns.

14.2 Payment of Statutory Fees. All fees payable pursuant to Section 1930 of title 28 of the United States Code, as of the entry of the Confirmation Order as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid on the Effective Date. The Reorganized Debtor shall continue to pay fees pursuant to Section 1930 of title 28 of the United States Code until the Chapter 11 Case are closed by entry of the Final Decree; provided however, and following the Effective Date the Reorganized Debtor reserve the right to seek a judicial determination that the payments and distributions made by the Reorganized Debtor in the ordinary course of business or made pursuant to and in accordance with the Plan are not "disbursements" within the meaning of 28 U.S.C. Section 1930(a)(6) and should not be used in calculating or determining the fees owing to the United States trustee following the Effective Date.

14.3 Payment of Certain Additional Professional Fees. To the extent not paid prior to the Effective Date, on the Effective Date, the Reorganized Debtor shall pay all obligations required to be paid under any order of the Bankruptcy Court authorizing the payment of any Professional Claim in Cash until such obligations are satisfied in full or as otherwise agreed to buy the Holder of such Professional Claim.

14.4 Modification and Amendments. The Debtor, may alter, amend, or modify the Plan under Section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date. After the Confirmation Date and prior to substantial consummation of this Plan as defined in Section 1101(2) of the Bankruptcy Code, the Debtor or Reorganized Debtor may, institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, and such matters as may be necessary to carry out the purposes and effects of the Plan.

14.5 Confirmation of the Plan. The Debtor requests Confirmation of the Plan under Section 1129(b) of the Bankruptcy Code with respect to any Impaired Class that does not accept the Plan pursuant to Section 1126 of the Bankruptcy Code. The Debtor reserves the right to amend the Plan, to any extent, if any, that Confirmation pursuant to Section 1129(b) of the Bankruptcy Code requires modification.

14.6 Additional Documents. On or before the Effective Date, the Debtor, may file with the Bankruptcy Court such agreements or other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtor or the Reorganized Debtor, as applicable, and Holders of Claims receiving distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provision and intent of the Plan.

14.7 Revocation, Withdrawal, or Non-Consummation.

(a) **Right to Revoke or Withdraw.** The Debtor reserves the right to revoke or withdraw the Plan at any time prior to the Effective Date and file subsequent chapter 11 plans.

(b) **Effect of Withdrawal, Revocation, or Non-Consummation.** If the Debtor revokes or withdraws the Plan prior to the Effective Date, or if the Confirmation Date or the Effective Date does not occur, then the Plan, any settlement or compromise approved as part of the Plan (including the fixing or limiting to an amount certain any Claim or Class of Claims or the allocation of the distributions to be made hereunder), the assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan shall be null and void in all respects. In such event, nothing contained herein or in the Disclosure Statement, and no acts taken in preparation for consummation of the Plan, shall be deemed to constitute a waiver or release of any Claims, Interests, or Causes of Action by or against the Debtor or any other Entity, to prejudice in any manner the rights and defenses of the Debtor, the Holder of a Claim or Interest, or any Entity in any further proceedings involving the Debtor, or to constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtor or any other Entity.

14.8 Notices. After the Effective Date, any pleading, notice, or other document required by the Plan to be served on or delivered to the Reorganized Debtor shall be served on:

If to the Reorganized Debtor:

Thomas M. Kim
1518 Blake Street
Denver, CO 80202

with a copy to:

Markus Williams Young & Hunsicker LLC
1775 Sherman Street, Suite 1950
Denver, Colorado 80203
Attn: John F. Young

If to the Office of the United States Trustee:

Office of the U.S. Trustee
Byron G. Rogers Federal Building
1961 Stout St., Ste. 12-200

Denver, CO 80294

14.9 Term of Injunctions or Stays. Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Case pursuant to Sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court, and existing on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

14.10 Closing of Chapter 11 Case and Final Decree. Thirty (30) days after the Effective Date or as soon as possible thereafter and upon "substantial consummation" as defined in 11 U.S.C. § 1101(2), the Court will close the Debtor's Chapter 11 Case and enter a Final Decree. While the Chapter 11 Case is closed and during administration of the Plan, the injunction under 11 U.S.C. §§ 524(a) and 1141(d)(1) will remain in effect. Upon completion of all payments under the Plan, the Reorganized Debtor may file a Notice of Completion of Plan Payments accompanied by a certificate of service showing service upon all creditors and parties-in-interest, and the Chapter 11 Case will be automatically re-opened pursuant to 11 U.S.C. § 350 with the payment of the applicable fee.

14.11 Governing Law. Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of Colorado shall govern the construction and implementation of the Plan, any agreements, documents, and instruments executed in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreements shall control). Corporate governance matters shall be governed by the laws of the state of incorporation of the Reorganized Debtor.

14.12 Entire Agreement. Except as otherwise indicated, the Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

14.13 Severability. If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is (a) valid and enforceable pursuant to its terms, (b) integral to the Plan and may not be deleted or modified without the Debtor's consent, and (c) non-severable and mutually dependent.

14.14 No Waiver or Estoppel. Upon the Effective Date, each Holder of a Claim or Interest shall be deemed to have waived any right to assert that its Claim or Interest should be Allowed in a certain amount, in a certain priority, be secured, or not be subordinated by virtue of an agreement made with the Debtor and/or its counsel, the Creditors' Committee and/or its counsel, or any other party, if such agreement was not disclosed in the Plan, the Disclosure Statement, or papers filed with the Bankruptcy Court.

14.15 Conflicts. In the event that the provisions of the Disclosure Statement and the provisions of the Plan conflict, the terms of the Plan shall govern. In the event that the provisions of the Plan and the provisions of the Confirmation Order conflict, the terms of the Confirmation Order shall govern.

Dated December 4, 2020.

Respectfully submitted,

GENERAL MOLY INC.

/s/ Thomas M. Kim
Thomas M. Kim, Chief Restructuring Officer

EXHIBIT 8.1
SCHEDULE OF ASSUMED EXECUTORY CONTARACTS AND UNEXPIRED LEASES

1. Restructuring Support Agreement a/k/a RSA date November 16, 2020.