



U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

TAWANA C. MARSHALL, CLERK  
THE DATE OF ENTRY IS  
ON THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed October 30, 2015

  
United States Bankruptcy Judge

---

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re: § Chapter 11  
ERG Intermediate Holdings, LLC, §  
*et al.*,<sup>1</sup> § Jointly Administered  
Debtors. § Case No.: 15-31858-hdh-11

---

**ORDER CONFIRMING THE FIRST AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION DATED SEPTEMBER 18, 2015, AS AMENDED, IN RESPECT OF ERG INTERMEDIATE HOLDINGS, LLC AND ITS AFFILIATED DEBTORS**

Based on the findings of fact and conclusions of law (the “Findings of Fact and Conclusions of Law”) entered by this Bankruptcy Court relating to the *First Amended Joint Chapter 11 Plan of Reorganization Dated September 18, 2015 in Respect of ERG Intermediate Holdings, LLC and Its Affiliated Debtors* [Docket No. 518] (as amended, the “Plan”),<sup>2</sup> a true and

---

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are ERG Intermediate Holdings, LLC (2521); ERG Resources, L.L.C. (0408); West Cat Canyon, L.L.C. (7377); ERG Interests, LLC (2081); and ERG Operating Company, LLC (8385). ERG Intermediate Holdings, LLC is the direct or indirect parent of each of its affiliated Debtors. The mailing address for each of the Debtors, with the exception of ERG Operating Company, LLC, is 333 Clay Street Suite 4400, Houston, TX 77002. The mailing address for ERG Operating Company, LLC is 4900 California Avenue Suite 300B, Bakersfield, CA 93309. The above addresses are listed solely for the purposes of notices and communications.

<sup>2</sup> Where the context requires, each capitalized term used but not otherwise defined herein shall have the meaning ascribed to such term in the Plan.

correct copy of which is attached hereto as Exhibit A and the supporting disclosure statement [Docket No. 519] (the “Disclosure Statement”), it is hereby ORDERED, ADJUDGED DECREED, AND DETERMINED as follows:

**Approval of the Disclosure Statement and Confirmation of the Plan**

1. Pursuant to section 1125 of the Bankruptcy Code and Bankruptcy Rule 3017(b), the Disclosure Statement is **APPROVED** on a final basis.

2. Pursuant to section 1129 of the Bankruptcy Code, the Plan, as amended, modified, clarified, and/or supplemented as provided in this Confirmation Order, is hereby **CONFIRMED** and all terms and conditions set forth therein are **APPROVED** as amended, modified, clarified, and/or supplemented herein. The Objections identified in paragraph 90 of this Confirmation Order are resolved as set forth therein. All other objections are **OVERRULED** and denied.

3. The following are hereby incorporated by reference into and are an integral part of this Confirmation Order: (i) the Plan, (ii) the exhibits to the Plan, and (iii) the Plan Documents, including the Plan Supplement. The failure to reference any particular Plan Document or any provision of a Plan Document or the Plan in this Confirmation Order will have no effect on the Bankruptcy Court’s approval and authorization of, or the validity of, binding effect or enforceability of, the Plan and the Plan Documents in their entirety.

**Findings of Fact and Conclusions of Law**

4. The Findings of Fact and Conclusions of Law are incorporated into this Confirmation Order as if fully restated herein.

**Consolidation**

5. Subject to the occurrence of the Effective Date, solely for purposes of voting, confirmation, and distribution, pursuant to Section 4.1 of the Plan, the Estates are hereby

substantively consolidated. Such consolidation shall not affect any Debtor's status as a separate legal entity.

**Compromises and Settlements Under the Plan**

6. The settlements and compromises set forth in the Plan are approved in all respects, including the Approved Settlement and Transaction Support Agreement, which the Bankruptcy Court approved by separate order on August 26, 2015 [Docket No. 450].

**Exit Facility**

7. The Exit Facility is approved in all respects.

8. The Debtors are authorized and directed to execute, deliver, and perform their respective obligations under and in connection with the Exit Facility.

9. As of the Effective Date, the Exit Facility Loan Documents are valid, binding, and enforceable on the Debtors in accordance with their terms.

10. As of the Effective Date, the Exit Facility Lien is a binding, continuing, enforceable, fully perfected, first priority Lien, subject only to Liens permitted under the Exit Facility.

11. On the Effective Date, the Reorganized Debtors shall draw on the Exit Facility an amount sufficient to satisfy all DIP Facility Claims and shall pay the proceeds of such draw to the DIP Agent in full satisfaction of the DIP Facility Claims or make such other arrangements for satisfaction of the DIP Facility Claims as directed by the DIP Agent in writing. Upon full payment and satisfaction of all DIP Facility Claims, the DIP Liens shall be discharged.

12. On the Effective Date, the Reorganized Debtors shall draw on the Exit Facility in an amount equal to (i) the Confirmation Payment and shall pay the proceeds of such draw to R.

Kelly Plato in full satisfaction thereof and (ii) the Exempt Assets Trust Advance and shall transfer such amount to the Exempt Assets Trust.

**Amended and Restated Prepetition Loan Documents**

13. The Amended and Restated Prepetition Loan Documents are approved in all respects.

14. The Debtors are authorized and directed to execute, deliver, and perform their respective obligations under and in connection with the Amended and Restated Prepetition Loan Documents.

15. The Amended and Restated Prepetition Loan Documents, including, without limitation, any intercreditor agreements, are valid, binding, and enforceable on the Debtors in accordance with their terms.

16. The Liens reaffirmed under the Amended Restated Prepetition Loan Documents are binding, continuing, enforceable, fully perfected, first priority Liens, subject only to Exit Facility Liens.

17. The execution and effectiveness of the Amended and Restated Prepetition Loan Documents does not extinguish, discharge or release any obligations outstanding under or Liens granted in connection with the Prepetition Loan Documents. Further, the effectiveness of the Amended and Restated Prepetition Loan Documents shall not be construed as a novation of any Prepetition Facility Claims, all of which shall remain in full force and effect, except as expressly modified by the Amended and Restated Prepetition Loan Documents.

18. The Prepetition Agent shall be entitled to receive all Production Proceeds (as defined in the Amended and Restated Prepetition Loan Documents) as permitted by the Amended and Restated Prepetition Loan Documents, and the receipt of such Production

Proceeds shall not constitute a violation of section 726 of the California Code of Civil Procedure or trigger any anti-deficiency law.

**Classification and Treatment**

19. All Claims and Membership Interests shall be, and hereby are, classified and treated as set forth in the Plan. The Plan's classification scheme shall be, and hereby is, approved.

20. The treatment of all Claims and Membership Interests as provided in the Plan and the Plan Documents shall be, and hereby is, approved.

**Administrative Claims**

21. The failure to timely file and serve notice of an Administrative Claim as provided in the Plan shall result in the Administrative Claim being forever barred and discharged.

22. The failure to timely file and serve a Fee Application as provided in the Plan shall result in the Fee Claim being forever barred and discharged.

23. To the extent the Fee Claims of Professionals retained by the Committee exceed the cap set forth in the Approved Settlement and Transaction Support Agreement, any such fees and expenses shall not be paid by the Prepetition Agent from any collateral of the Prepetition Agent or by the Debtors from proceeds of the DIP Facility, provided, that the Committee's right to pay such fees and expenses from the Exempt Assets in accordance with Section 3 of the Approved Settlement and Transaction Support Agreement is preserved.

**Materialmen's Lien Claims**

24. On the Effective Date, each Claim secured by a Materialmen's Lien that was either perfected (i) under section 546 of the Bankruptcy Code or (ii) prior to the Petition Date, under applicable non-bankruptcy law (each a "Potentially Secured Materialmen's Lien Claim"), shall be deemed a disputed Claim and not an Allowed Claim.

25. The Prepetition Agent shall have standing to challenge the status of such Claim as an Other Secured Claim and to otherwise object to such Claim.

26. The Bankruptcy Court shall retain jurisdiction to hear and determine any objections to a Potentially Secured Materialmen's Lien Claim and to determine the validity and extent of any such Claim.

27. If the Bankruptcy Court determines that the Materialmen's Lien securing such Potentially Secured Materialmen's Lien Claim is senior to the Prepetition Facility Liens, then such Claim shall be deemed an Allowed Other Secured Claim and shall be paid as set forth in Section 4.1(c) of the Plan.

28. If the Bankruptcy Court determines that the Prepetition Facility Liens are senior to the Materialmen's Lien securing such Potentially Secured Materialmen's Lien Claim, then such Materialmen's Lien shall be null, void and unenforceable and such Potentially Secured Materialmen's Lien Claim shall be treated as a Class 5 - Unsecured Claim for all purposes.

29. On the Effective Date, all Claims secured or alleged to be secured by Materialmen's Liens that are not Potentially Secured Materialmen's Lien Claims shall be treated as Class 5 - Unsecured Claims for all purposes and all Liens securing such Claims shall be deemed null, void and unenforceable as of such date.

**Indemnification Claims**

30. This Confirmation Order constitutes an objection by the Prepetition Agent to any Claim for indemnification arising from conduct that occurred prior to the Petition Date and asserted on account of any provision contained in any Prepetition Indemnification Agreement (an “Indemnification Claim”). Because this Confirmation Order is an objection to all Indemnification Claims, no Indemnification Claim is an Allowed Claim unless and until it is Allowed by a subsequent Final Order.

31. The Prepetition Agent shall have exclusive standing to prosecute objections to any Indemnification Claim for the benefit of the Estates; provided that any settlement of an Indemnification Claim shall be subject to Bankruptcy Court approval pursuant to the standards applicable to requests for approval pursuant to Bankruptcy Rule 9019. Further, the Prepetition Agent shall have the sole standing on behalf of itself and, as estate representative pursuant to section 1123(b)(3) of the Bankruptcy Code, on behalf of the Debtors’ Estates to resolve any disputes concerning Section 7.10(b) of the Plan and any such disputes shall be resolved by the Bankruptcy Court.

32. To the extent any such Indemnification Claim is Allowed, such Indemnification Claim shall constitute an Allowed Unsecured Claim and shall be treated as a Class 5 – Unsecured Claim for purposes of the Plan. Without limiting the foregoing, none of the Reorganized Debtors or their successors or assigns shall be liable for any Indemnification Claim which arose from, in whole or in part, conduct which occurred prior to the Effective Date.

33. Without limiting any other provision of the Plan, the Assets shall hereby revest in the applicable Reorganized Debtors free and clear of any Lien, restriction, covenant or interest constituting or relating to a Claim for indemnification, including an Indemnification Claim,

arising on account of any Prepetition Indemnification Agreement, unless the Prepetition Indemnification Agreement containing such Lien, restriction, covenant, or interest is expressly assumed pursuant to the Plan. This Bankruptcy Court shall enter all other orders required under section 1142(b) of the Bankruptcy Code to implement the relief granted in this paragraph.

34. The Bankruptcy Court shall retain jurisdiction to hear and determine any objections to an Indemnification Claim and to determine the validity of any Lien, restriction, covenant or interest constituting or relating to a Claim for indemnification.

**Other Secured Claims**

35. The Prepetition Agent shall have standing to object to an Other Secured Claim.

**Enforceability of Plan and Plan Documents**

36. Pursuant to sections 1123(a), 1141(a) and 1142 of the Bankruptcy Code and the provisions of this Confirmation Order, the Plan and all Plan-related documents (including, but not limited to, the Plan Documents and Plan Supplement) shall be, and hereby are, valid, binding and enforceable notwithstanding any otherwise applicable non-bankruptcy law. Each of the Plan Documents, including the Plan Supplement (to the extent not already approved by order of this Bankruptcy Court) is hereby approved. The Debtors and the Reorganized Debtors, as applicable, may modify, amend, or enter into the Plan Documents, without further order of the Bankruptcy Court, in accordance with the provisions of the Plan, including, without limitation, Section 7.7 of the Plan.

**Authorization to Implement the Plan**

37. Upon the entry of this Confirmation Order, the Debtors, the Reorganized Debtors, the ERG Plan Trustee, and the Exempt Assets Trustee are authorized to take or cause to be taken all corporate, trust, and limited liability company actions necessary or appropriate to implement all provisions of, and to consummate, the Plan, on and after the Effective Date, including,



without limitation, (i) the appointment of the ERG Plan Trustee as the sole director of the Reorganized Debtors; (ii) the appointment of officers of the Reorganized Debtors in accordance with the Plan; (iii) the adoption of the Reorganized Debtor Operating Agreements, which shall supersede the prior articles of incorporation, limited liability company agreements, by-laws, or other organizational documents, as appropriate of each of the Reorganized Debtors; (iv) actions as are necessary or appropriate to close any of the Other Debtors' Chapter 11 Cases, and to execute, enter into, deliver, record, or otherwise make effective all documents arising in connection therewith, including, without limitation, the Plan Documents (as they may be amended or modified as contemplated or permitted by the Plan), including the Amended and Restated Prepetition Loan Documents and the Exit Facility Loan Documents and the cancellation, nullification, and voiding of the ERG Interests Royalty Interest; and (v) actions as are necessary or appropriate to execute, enter into, deliver, record, or otherwise make effective all Plan Documents (as they may be amended or modified as contemplated or permitted by the Plan).

38. All such actions taken or caused to be taken, including, among other things, the incurrence of all obligations contemplated by the Plan and the Approved Settlement and Transaction Support Agreement and the making of Plan Distributions, shall be, and hereby are, authorized and approved by the Bankruptcy Court such that no further approval, act or action need to be taken under any applicable law, order, rule or regulation, including without limitation, any action otherwise required by the members, stockholders, directors, or managers of the Debtors, the Reorganized Debtors, or any of their Affiliates.

39. The approvals and authorizations specifically set forth in this Confirmation Order are not intended to limit the authority of the Debtors, the Reorganized Debtors, the ERG Plan

Trustee, the Exempt Assets Trustee, or any of their Affiliates to take any and all actions necessary or appropriate to implement, effectuate and consummate any and all documents or transactions contemplated by the Plan or this Confirmation Order.

**Cancellation of Instruments and Securities**

40. Upon the occurrence of the Effective Date, all Membership Interests in Intermediate Holdings shall be cancelled.

41. Further, upon the occurrence of the Effective Date, the ERG Interests Royalty Interest shall be cancelled, nullified, and voided, and ERG Interests shall no longer have any rights whatsoever in respect of the ERG Interests Royalty Interest or the cancellation, nullification, or voiding thereof.

**Issuance of New Membership Interests**

42. The issuance of the new Membership Interests in Reorganized Intermediate Holdings is hereby authorized without the need for any further corporate action or authorization or approval by the Bankruptcy Court. The new Membership Interests are exempt from registration under the Securities Act and state securities laws pursuant to section 1145 of the Bankruptcy Code.

43. On the Effective Date, the new Membership Interests in Reorganized Intermediate Holdings shall be issued to the ERG Plan Trust, free and clear of any and all Liens, Claims, and interests other than (i) the Exit Facility Liens and (ii) the Prepetition Facility Liens. The new Membership Interests in Reorganized Intermediate Holdings shall be certificated and transferred to the possession of the Exit Facility Agent and the Prepetition Agent, with such other documentation as may be needed to perfect the Liens of the Exit Facility Agent and the Prepetition Agent in and to such new Membership Interests.

**Membership Interests Held by the Other Debtors**

44. The Membership Interest in each Other Debtor shall revert in the Reorganized Debtor that held such Membership Interest immediately prior to the Effective Date without the need for any further authorization or approval by the Bankruptcy Court. All such Membership Interests shall be certificated and transferred to the possession of the Exit Facility Agent and the Prepetition Agent with such other documentation as may be needed to perfect the Liens of the Exit Facility Agent and the Prepetition Agent in and to such new Membership Interests.

**Royalty Interests/Oil & Gas Leases**

45. The Prepetition Agent shall have exclusive standing to prosecute in its sole and absolute discretion any and all Avoidance Actions relating to, on account of, or otherwise in respect of the RCPTX Royalty Interest and any transfer thereof and shall be designated the estate representative of the Estates under section 1123(b)(3) of the Bankruptcy Code for purposes of asserting such Avoidance Actions. Such Avoidance Actions shall not constitute Transferred Causes of Action and shall be preserved notwithstanding the confirmation of the Plan. Further, nothing in the Plan shall impair the rights of the Prepetition Agent to foreclose upon any Lien it may have in respect of the RCPTX Royalty Interest.

46. On the Effective Date, each Debtor's right, title, and interest in and to all of such Debtor's oil and gas leases relating to the California Assets, including those oil and gas leases set forth on Schedule 3 to the Plan, shall revert in such Debtor as reorganized hereby on the terms and conditions set forth in the Plan, including as provided in Section 7.4 and Section 14.4 of the Plan.

**Separate Existence/Revesting of Assets**

47. The Reorganized Debtors shall continue to exist after the Effective Date as separate entities, with all the powers available to such legal entities, in accordance with applicable law.

48. Upon the occurrence of the Effective Date, except as otherwise expressly provided in the Plan, title to all of the Assets of each Debtor's Estate, other than the Exempt Assets, shall revest in each such Debtor free and clear of all Liens, Claims, interests, other than (i) the Liens granted in connection with the Exit Facility and (ii) the Prepetition Facility Liens and without further order of the Bankruptcy Court. In the interest of clarity, nothing in the Plan or this Confirmation Order shall limit, modify, discharge or affect any of the liens granted in connection with the Exit Facility or the Prepetition Facility Liens. On and after the occurrence of the Effective Date, except as otherwise provided in the Plan, the Reorganized Debtors may operate their businesses and may use, acquire and dispose of their Assets free of any restrictions of the Bankruptcy Code.

**Preservation of Causes of Action for Prosecution Following the Effective Date**

49. The Plan and Disclosure Statement have described all the Causes of Action of the Debtors and the Estates preserved thereby with adequate specificity and clarity so as to advise potential defendants of potential claims against them. Other than the Released Causes of Action of the Debtors and the Estates and any other Cause of Action of the Debtors and the Estates specifically and expressly released in the Plan, all other Causes of Action of the Debtors and the Estates are preserved and may be asserted and prosecuted as provided in the Plan and this Confirmation Order.

**Retention of Causes of Action by the Reorganized Debtors**

50. Except for the Transferred Causes of Action, the Released Causes of Action, and as otherwise specifically set forth in the Plan or in a Final Order, all Causes of Action of the Debtors and their Estates shall, upon the occurrence of the Effective Date, be vested in the Reorganized Debtors. Except as otherwise provided in the Plan, the rights of the Reorganized Debtors to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date.

51. The Reorganized Debtors expressly reserve all rights to prosecute any and all Causes of Action (other than the Transferred Causes of Action, the Released Causes of Action, and as otherwise provided for in the Plan and herein) against any Person. Other than the Causes of Action expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Final Order, the Debtors expressly reserve all Causes of Action (other than the Transferred Causes of Action) for later adjudication.

**Transferred Causes of Action**

52. All Transferred Causes of Action of the Debtors and their Estates shall, upon the occurrence of the Effective Date, be vested in the Exempt Assets Trust. Except as otherwise provided in the Plan, the rights of the Exempt Assets Trustee to commence, prosecute, or settle such Transferred Cause of Action shall be preserved notwithstanding the occurrence of the Effective Date.

53. Nothing in the Plan or otherwise shall impair, modify, impede, compromise or limit the ability of the Exempt Assets Trust to investigate and prosecute the Transferred Causes of Action and all such Causes of Action are expressly preserved notwithstanding the occurrence

of the Effective Date. The Exempt Assets Trustee shall be the Estate representative designated to prosecute any and all Transferred Causes of Action.

54. The Exempt Assets Trust expressly reserves all rights to prosecute any and all Transferred Causes of Action against any Person at any time and for any reason. The Exempt Assets Trust reserves all Transferred Causes of Action for later adjudication.

#### **Disbursing Agent/Distributions**

55. Upon the occurrence of the Effective Date, (i) the Reorganized Debtors shall be appointed to serve as the Disbursing Agent with respect to all Administrative Claims, Tax Claims, Priority Claims, Cure Claims, and Other Secured Claims; (ii) the Exempt Assets Trustee shall be appointed to serve as the Disbursing Agent with respect to Convenience Claims and holders of Exempt Assets Trust Beneficial Interests; and (iii) the ERG Plan Trustee shall be appointed to serve as the Disbursing Agent with respect to holders of ERG Plan Trust Beneficial Interests.

56. Each of the Reorganized Debtors, the Exempt Assets Trustee, and the ERG Plan Trustee, in their respective capacities as a Disbursing Agent, shall have all powers, rights, protections, obligations, and duties afforded or imposed upon the Disbursing Agent under the Plan, but solely with respect to those Claims and Membership Interests on account of which the applicable Disbursing Agent is designated to make Plan Distributions under the Plan and Plan Documents, provided that the ERG Plan Trustee or the Reorganized Debtors shall not agree or consent to the reclassification of any Claim as an Unsecured Claim without either the written consent of the Exempt Assets Trustee or approval of the Bankruptcy Court under Bankruptcy Rule 9019. Notwithstanding the foregoing, the Exempt Assets Trustee, in its capacity as the Disbursing Agent with respect to the holders of Exempt Assets Trust Beneficial Interests, shall

have sole and exclusive authority to object to Unsecured Claims and Convenience Claims and the ERG Plan Trustee, in its capacity as Disbursing Agent with respect to holders of ERG Plan Trust Beneficial Interests, shall be bound by (i) the outcome of any such objection, whether achieved by litigation, settlement, or otherwise; and (ii) the consequences of any failure to file such an objection. Nothing in the Plan or herein shall affect the rights of the Prepetition Agent to object to an Other Secured Claim or a Potentially Secured Materialmen's Lien Claim or exercise any of its rights under Section 7.10 of the Plan.

57. Distributions under the Plan to each holder of an Allowed Insured Claim shall be in accordance with the treatment provided under the Plan for the Class in which such Allowed Insured Claim is classified, but solely to the extent that such Allowed Insured Claim is not satisfied from proceeds payable to the holder thereof under any pertinent insurance policies and applicable law. Nothing in Section 9.8 of the Plan shall constitute a waiver of any Claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action or liabilities that any Person may hold against any other Person, including the Debtors' insurance carriers.

58. The applicable Disbursing Agent or any other Person with standing to object shall file objections to Claims and Membership Interests, if any, with the Bankruptcy Court as soon as practicable but in any event not later than (i) the date that is one hundred and eighty (180) days after the Effective Date; or (ii) such later date as may be established by order of the Bankruptcy Court upon motion of the applicable Disbursing Agent or other Person with standing, provided that the Exempt Assets Trustee shall be permitted in his discretion to allow Unsecured Claims prior to the Objection Deadline. The applicable Disbursing Agent or other Person with standing shall serve any objection to a Claim upon the holder of the Claim to which the applicable Disbursing Agent or other Person with standing objects. For the avoidance of doubt, except as

otherwise provided in this Confirmation Order or in the Plan, the Exempt Assets Trustee shall have the sole and exclusive authority to object to Unsecured Claims and Convenience Claims. Further, the Exempt Assets Trustee shall retain all of his rights under applicable law (if any) to intervene in any proceeding brought by the Prepetition Agent pursuant to Section 4.1(c) and Section 7.10 of the Plan and the Prepetition Agent shall reserve all of its rights under applicable law to object to any such intervention.

59. Subject to other provisions of the Plan governing authority and standing to object to Claims and Membership Interests, the applicable Disbursing Agent may object to the Allowance of Claims and Membership Interests filed with the Bankruptcy Court with respect to which liability is disputed in whole or in part. All objections that are filed and prosecuted as provided in the Plan and herein shall be litigated to Final Order or compromised and settled in accordance with the Plan.

#### **Insurance and Indemnity Obligations**

60. From and after the Effective Date, each of the Debtors' insurance policies, including, without limitation, any and all directors and officers or similar liability and fiduciary (including ERISA) insurance or tail policies, in existence immediately prior to the Effective Date shall be reinstated (or replaced by a like policy) and continued in accordance with its terms and shall, to the extent applicable, be deemed assumed by the applicable Reorganized Debtor pursuant to section 365 of the Bankruptcy Code and the Plan. Each insurance carrier under such policies shall continue to honor and administer the policies with respect to the Reorganized Debtors in the same manner and according to the same terms and practices applicable to the Debtors prior to the Effective Date.



61. Subject to the immediately following paragraph, the obligations of each Debtor or Reorganized Debtor to indemnify any person who is serving or has served as one of its managers, officers, or employees as of the Petition Date by reason of such person's prior or future service in such a capacity or as a manager, officer, or employee of another corporation, partnership or other legal entity, to the extent provided in the applicable certificates of incorporation, by-laws or similar constituent documents, by statutory law or by written agreement, policies or procedures of or with such Debtor, will be deemed and treated as executory contracts that are assumed by the applicable Debtor or Reorganized Debtor pursuant to section 365 of the Bankruptcy Code and the Plan as of the Effective Date. Accordingly, such indemnification obligations will survive and be unaffected this Confirmation Order, irrespective of whether such indemnification is owed for an act or event occurring before or after the Petition Date, unless otherwise provided in the Plan or this Confirmation Order.

62. Notwithstanding anything else to the contrary contained in the Plan or this Confirmation Order, including Section 7.16 of the Plan and the immediately preceding paragraph, none of the Debtors or the Reorganized Debtors shall be liable for or assume in any manner any obligation to indemnify Scott Y. Wood, except to the extent such indemnification is paid for by any insurance available immediately prior to the Effective Date.

#### **The ERG Plan Trust**

63. The ERG Plan Trust Declaration, substantially in the form filed as a Plan Document, is hereby approved and shall be fully enforceable according to its terms.

64. The ERG Plan Trust shall be administered by Sean Clements, Managing Director, Opportune LLP, whose appointment is hereby approved. The terms of the ERG Plan Trustee's compensation as set forth in Exhibit I of the Plan is hereby approved. The ERG Plan Trustee

shall have all powers, rights, duties and protections afforded the ERG Plan Trustee under the Plan and any applicable Plan Document, including the ERG Plan Trust Declaration. On the Effective Date, the ERG Plan Trustee shall be appointed as the sole manager/director of each of the Reorganized Debtors and shall have all of the powers of a manager/director under the Reorganized Debtor Operating Agreements and applicable law.

65. For the avoidance of doubt, neither CLMG Corp., in its capacity as the Prepetition Agent and/or the Exit Facility Agent, nor the Prepetition Lenders, nor the Exit Facility Lenders control the ERG Plan Trust, the ERG Plan Trustee, the Debtors, or the Reorganized Debtors. Further, the ERG Plan Trust is not a joint venture with CLMG Corp., the Prepetition Lenders, or the Exit Facility Agent.

#### **The Exempt Assets Trust**

66. The Exempt Assets Trust Declaration, substantially in the form filed as a Plan Document, is hereby approved and shall be fully enforceable according to its terms.

67. The Exempt Assets Trust shall be administered initially by Jason Searcy, whose appointment is hereby approved. The terms of the Exempt Assets Trustee's compensation are disclosed in the Plan Supplement and are hereby approved. The Exempt Assets Trustee shall have all powers, rights, duties and protections afforded the Exempt Assets Trustee under the Plan and any applicable Plan Document, including the Exempt Assets Trust Declaration.

68. The Exempt Assets Trustee shall have the power to administer the assets of the Exempt Assets Trust, including, without limitation, prosecution of the Nabors Lawsuit, in a manner consistent with the Exempt Assets Trust Declaration and the Plan, and the Exempt Assets Trustee shall be the Estate representative designated to prosecute any and all Transferred Causes of Action.

69. On the Effective Date, the Exempt Assets, including, without limitation, the Nabors Lawsuit, and the Exempt Assets Trust Advance shall vest in the Exempt Assets Trust, free and clear of any and all Liens, Claims and other interests, exclusively for the benefit of the holders of Exempt Assets Trust Beneficial Interests on the terms and conditions set forth in the Plan, the Approved Settlement and Transaction Support Agreement and the Exempt Assets Trust Declaration. Without limiting the generality of the foregoing, on the Effective Date, pursuant to sections 1123(b)(2) and 1123(b)(3) of the Bankruptcy Code, the purchase and sale agreement underlying the Nabors Lawsuit, all ancillary agreements related thereto, and all of the rights of the Debtors thereunder shall be deemed assumed, assigned, and transferred to the Exempt Assets Trust in compliance with Section 365 of the Bankruptcy Code free and clear of all Liens, Claims and other interests and shall be fully available to the Exempt Assets Trustee for the purpose of prosecuting the Nabors Lawsuit, provided, however, that nothing in this provision shall be construed as a judicial determination of (a) the existence or nonexistence of any default under the purchase and sale agreement underlying the Nabors Lawsuit and any ancillary agreements related thereto; (b) the allowance or disallowance of claims held by Nabors arising from the events that occurred in connection with such purchase and sale agreement and any ancillary agreements related thereto; (c) the cure amount owed by the Debtors as a result of assuming such purchase and sale agreement and any ancillary agreements related thereto; or (d) whether or not the underlying purchase and sale agreement and any ancillary agreements related thereto have already been terminated.

**Executory Contracts and Unexpired Leases**

70. Except as otherwise provided for in the Plan, on the Effective Date, all executory contracts and unexpired leases of the Debtors shall be, and hereby are, assumed or rejected in accordance with Article XII of the Plan.

71. The assumption of each of the executory contracts and unexpired leases that is designated to be assumed as set forth in the Schedule of Assumed Executory Contracts and Unexpired Leases or as otherwise designated as being assumed in Section 12.1 of the Plan and for which no timely objection was filed as required by Section 12.1(b) of the Plan is approved pursuant to sections 365(a) and (b) of the Bankruptcy Code, is in the best interests of the Debtors and the Estates, and any objections to such assumption are hereby deemed waived in all respects.

72. Any Cure Claims under each executory contract and unexpired lease to be assumed under the Plan shall be satisfied pursuant to section 365(b)(1) of the Bankruptcy Code: (i) by payment of the cure amount listed on the Schedule of Assumed Executory Contracts and Unexpired Leases in Cash on the Effective Date by the Disbursing Agent; or (ii) on such other terms as agreed to by the Disbursing Agent and the non-Debtor counterparty to such executory contract or unexpired lease.

73. The rejection of the Rejected Contracts, including, without limitation, each of the executory contracts and unexpired leases that is designated to be rejected as set forth in the Schedule of Rejected Executory Contracts and Unexpired Leases, is approved pursuant to sections 365(a) of the Bankruptcy Code. Such rejected executory contracts and unexpired leases are burdensome to the Estates and rejection thereof is in the best interests of the Debtors and their Estates.

74. Inclusion of a contract, lease or other agreement on the Schedule of Rejected Executory Contracts and Unexpired Leases, or omission of a contract, lease or other agreement from the Schedule of Assumed Executory Contracts and Unexpired Leases and the Schedule of Rejected Executory Contracts and Unexpired Leases, constitutes adequate and sufficient notice that (i) any Claims arising thereunder or related thereto shall be treated as Unsecured Claims under the Plan, and (ii) the Debtors are no longer bound by, or otherwise obligated to perform, any such obligations, transactions, or undertakings relating thereto or arising thereunder.

75. The listing of a document on the Schedule of Assumed Executory Contracts and Unexpired Leases or the Schedule of Rejected Executory Contracts and Unexpired Leases shall not constitute an admission by the Debtors that such document is an executory contract or that the Debtors have any liability thereunder.

76. Claims created by the rejection of executory contracts and unexpired leases or the expiration or termination of any executory contract or unexpired lease prior to the Confirmation Date shall be Class 5 - Unsecured Claims and must be filed with the Bankruptcy Court and served on the Debtors or, if after the Effective Date, the Reorganized Debtors, the Exempt Assets Trustee, and the ERG Plan Trustee, as provided in the Plan.

77. Any such Claims for which a proof of claim is not filed and served by the deadlines set forth in the Plan will be forever barred from assertion and shall not be enforceable against the Debtors, their Estates, or the Exempt Assets Trust. Except as otherwise ordered by the Bankruptcy Court, all such Claims that are timely filed as provided in the Plan and herein shall be treated as Unsecured Claims under the Plan subject to objection by the Disbursing Agent.

### **Releases and Exculpations**

78. The releases and exculpations set forth in Sections 7.5(g), 7.6(i), 8.2, 14.1, 14.2, 14.3, 14.4, 14.5, and 14.6 of the Plan are hereby incorporated herein by reference and shall be, and hereby are, approved as set forth herein, and shall be effective without further action upon the occurrence of the Effective Date. Notwithstanding the foregoing, Section 14.3 of the Plan shall not apply to RCPTX except with respect to any act taken or omitted to be taken in the Chapter 11 Case, including in connection with or related to the Plan, the exhibits to the Plan and the Plan Supplement, the Disclosure Statement, any transaction proposed in connection with or related thereto, or any contract, instrument, release or other agreement or document created or entered into in connection therewith; provided, however, that the foregoing provisions will have no effect on: (a) the liability of any Person that would otherwise result from the failure to perform or pay any obligation or liability under the Plan or any contract, instrument, release or other agreement or document to be entered into or delivered in connection with the Plan or (b) the liability of any Person that would otherwise result from any such act or omission to the extent that such act or omission is determined in a Final Order to have constituted gross negligence or willful misconduct.

79. The exculpation provided in Section 14.3 of the Plan is approved but should be construed, and will only be effective, to the extent that it is consistent with the applicable provisions of the Bankruptcy Code and case law in the Fifth Circuit. In addition, the exculpation provided in Section 14.3 of the Plan shall be limited to acts which occurred after the Petition Date. Any claims made against Exculpated Parties for acts described in Section 14.3 of the Plan shall be filed in the United States Bankruptcy Court for the Northern District of Texas, and this Court retains jurisdiction to consider same.

80. As of the Effective Date, for good and valuable consideration, the Debtors shall and shall be deemed to release and forever waive and discharge any and all Lambert Road Avoidance Actions.

81. Notwithstanding anything else contained in the Plan or this Confirmation Order, including any release or exculpation set forth in the Plan or herein, but subject to the terms of the Restructuring Support Agreement, the rights of the Prepetition Agent and the Prepetition Lenders under applicable law to enforce their respective rights under, in connection with, or related to the Prepetition Loan Documents against non-Debtor parties shall be unaffected by the Plan, this Confirmation Order, or the Amended and Restated Prepetition Loan Documents and nothing contained in or caused by the Plan, this Confirmation Order, or the Amended and Restated Prepetition Loan Documents shall serve as a defense for or discharge or release of any non-Debtor parties or their assets, including the Wood Parties and RCPTX, in any action to enforce the rights of the Prepetition Agent or the Prepetition Lenders against such non-Debtor parties or assets held by non-Debtors parties. Without limiting the generality of the foregoing, the reinstatement of the Prepetition Loan Documents pursuant to the terms of the Amended and Restated Prepetition Loan Documents shall not (i) serve to cure any defaults under the Prepetition Loan Documents or otherwise as to any non-Debtor parties or their assets (including the Wood Parties and RCPTX); or (ii) impair, limit, or otherwise modify any guaranties, mortgages, security documents, or other documents executed by Scott Y. Wood relating to or otherwise in respect of the Prepetition Loan Documents, but subject to the Restructuring Support Agreement. Further, the enforcement of any Liens granted under the Prepetition Loan Documents against any non-Debtor parties shall not entitle the Reorganized Debtors to assert any defense against the

Prepetition Agent or the Prepetition Lenders under Section 726 of the California Code of Civil Procedure or any similar statute.

**Retention of Jurisdiction**

82. Pursuant to sections 105(a) and 1142 of the Bankruptcy Code, the Bankruptcy Court shall retain and shall have jurisdiction over any matter: (i) arising under the Bankruptcy Code; (ii) arising in or related to the Chapter 11 Case, the Plan, or this Confirmation Order; or (iii) that relates to the matters set forth in Article XIII of the Plan.

**Effect of Confirmation**

83. The rights afforded in the Plan and the treatment of all Claims and Membership Interests in the Plan shall be in exchange for and in complete satisfaction, discharge, and release of all Claims of any nature whatsoever against the Debtors, the Estates, or any of their Assets. Except as otherwise provided in the Plan or this Confirmation Order, on the Effective Date, all Claims against the Debtors and the Debtors in Possession shall be satisfied, discharged, and released in full. Except as otherwise provided in the Plan or this Confirmation Order, all Persons shall be precluded and forever barred from asserting against the Debtors, the Estates, the Reorganized Debtors, the Assets, or the Exempt Assets Trust any Claims or Causes of Action arising from or based upon any event, occurrence, condition, thing, act, omission, transaction, or other activity of any kind or nature that occurred or came into existence prior to the Effective Date, whether or not the facts of or legal bases therefor were known or existed prior to the Effective Date and all such Claims and Causes of Action shall be automatically and forever discharged.

84. Except as set forth in Section 4.1(b) of the Plan, or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and



concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, Liens against any property of the Estates 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 Debtors and their successors and assigns. For the avoidance of doubt, and without limiting the generality of the foregoing, the following Liens shall be unaffected by the Plan and Confirmation Order: (i) the Prepetition Facility Liens; and (ii) the DIP Liens, which, in the case the of the Liens identified in the foregoing clauses (i) and (ii), are legal, valid, enforceable, first-priority, non-avoidable, and not subject to contest, avoidance, attack, offset, re-characterization, subordination or other challenge of any kind or nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise, provided, that, upon the occurrence of the Effective Date, (i) the Prepetition Liens and the DIP Liens in the Exempt Assets only shall be waived and released by operation of Section 4 of the Approved Settlement and Transaction Support Agreement in accordance with the terms thereof; and (ii) the Exit Facility Liens shall attach to the Reorganized Debtors' Assets in accordance with the terms of the Exit Facility Loan Documents.

85. Except as otherwise provided in the Plan or this Confirmation Order, on the Effective Date, the Debtors and their Estates shall be deemed fully discharged and released from any and all Claims, including, but not limited to, demands and liabilities that arose before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), and 502(i) of the Bankruptcy Code, whether or not (i) a proof of claim based upon such debt is filed or deemed filed under section 501 of the Bankruptcy Code; (ii) a Claim based upon such debt is allowed under section 502 of the Bankruptcy Code; or (iii) the holder of a Claim based upon such debt

has accepted the Plan. Except as otherwise provided in the Plan or this Confirmation Order, this Confirmation Order shall be a judicial determination of discharge of all liabilities of the Debtors and their Estates to the extent provided in the Plan and this Confirmation Order. As provided in section 524 of the Bankruptcy Code, such discharge shall void any judgment against the Debtors and their Estates to the extent it relates to a discharged Claim, and operates as an injunction against the prosecution of any action against the Debtors, their Estates or their Assets to the extent it relates to a discharged Claim.

86. Pursuant to section 1146 of the Bankruptcy Code, the issuance, transfer, or exchange of notes under the Plan, the creation of any mortgage, deed of trust, lien, pledge or other security interest, the making or assignment of any lease or sublease, or the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan, shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax to the fullest extent provided in section 1146(a) of the Bankruptcy Code. All filing or recording officers (or any other Person with authority over any of the foregoing), wherever located and by whomever appointed, shall comply with the requirements of section 1146(a) of the Bankruptcy Code, shall forego the collection of any such tax or governmental assessment, and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment. To effectuate the terms of this Confirmation Order and Section 15.7 of the Plan, this Bankruptcy Court may enter any order necessary or appropriate to implement Section 15.7 of the Plan.

#### **Injunctions**

87. **On the Effective Date, all Persons who have been, are, or may be holders of Claims against or Membership Interests in the Debtors shall be permanently enjoined from**

**taking any of the following actions against or affecting the Reorganized Debtors, the Debtors, the Estates, the Assets, the Disbursing Agent, the ERG Plan Trust, the Exempt Assets Trust, or any of their respective current or former members, directors, managers, officers, employees, agents, trustees, professionals or successors and assigns (other than Scott Y. Wood and his non-Debtor Affiliates) or their respective assets and property with respect to such Claims or Membership Interests (other than actions brought to enforce any rights or obligations under the Plan and other than with respect to the Prepetition Facility Claims):**

- i. commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including, without limitation, all suits, actions, and proceedings that are pending as of the Effective Date, which must be withdrawn or dismissed with prejudice);**
- ii. enforcing, levying, attaching, collecting or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree or order;**
- iii. creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance; and**
- iv. asserting any setoff, right of subrogation or recoupment of any kind; provided, that any defenses, offsets or counterclaims which the Debtors may have or assert in respect of the above referenced Claims are fully preserved in accordance with Section 15.11 of the Plan.**

88. This Confirmation Order enjoins permanently the assertion or prosecution by any Person, whether directly, derivatively or otherwise, of any Claims released pursuant to the Plan.

89. Nothing contained in Section 14.7 of the Plan shall affect the rights of (i) the Exempt Assets Trust from asserting, prosecuting, or enforcing any judgment obtained in respect of any Transferred Cause of Action; or (ii) the Prepetition Agent and the Prepetition Lenders from asserting, prosecuting, or enforcing against any non-Debtor party any rights in respect of or

relating to the Prepetition Loan Documents, including rights against or in respect of the RCPTX Royalty Interest and/or Scott Y. Wood in respect of any and all associated guaranties and mortgages, subject to the terms of the Restructuring Support Agreement.

**Special Provisions Regarding Resolution of the Objections**

90. The following provisions reflect the consensual resolution of the Objections raised prior to the deadline for objecting to the Plan:

A. With reference to (a) the objection to the Plan filed by the Texas Comptroller of Public Accounts (the "Comptroller") [Docket No. 572] and (b) the objection to the Plan filed by Galveston County, Harris County, and Orange County (collectively, the "Counties") [Docket No. 582], and notwithstanding any contrary provision contained in the Plan or other provision of this Confirmation Order, nothing in the Plan or Confirmation Order shall prejudice the Comptroller or the Counties from exercising setoff rights against the Debtors or Reorganized Debtors to the extent permitted by 11 U.S.C. § 553. Further, the Allowed Claims of the Comptroller and the Counties shall include interest on such Claims pursuant to applicable non-bankruptcy law.

B. With reference to the informal objection asserted by the Department of Justice, Environmental Enforcement Section, it is agreed that nothing in this Confirmation Order or the Plan discharges, releases, resolves, exculpates, precludes, or enjoins: (i) any environmental liability to any governmental unit that is not a Claim as defined in 11 U.S.C. § 101(5); (ii) any environmental Claim of any governmental unit arising on or after the Effective Date; (iii) any environmental liability to any governmental unit on the part of any entity as the owner or operator of property after the Effective Date; (iv) any liability to the United States on the part of any person or entity other than the Debtors or Reorganized Debtors; or (v) any valid right of

setoff or recoupment of the United States. Nothing in this Confirmation Order divests any tribunal of any jurisdiction it may have under police or regulatory law to interpret this Confirmation Order or to adjudicate any defense asserted under this Confirmation Order. Further, nothing in this Confirmation Order or the Plan discharges, releases, resolves, exculpates, precludes, or enjoins: (i) any liability to the United States that is not a Claim as defined in 11 U.S.C. § 101(5); or (ii) any Claim of the United States first arising on or after the Effective Date.

### **Miscellaneous Provisions**

91. The stay in effect in the Chapter 11 Cases pursuant to section 362(a) of the Bankruptcy Code shall continue to be in effect until the Effective Date, and at that time shall be dissolved and of no further force or effect, subject to the injunctions set forth in this Confirmation Order, Sections 5.3 and 14.7 of the Plan and/or sections 524 and 1141 of the Bankruptcy Code; provided, however, that nothing herein shall bar the taking of such other actions as are necessary to effectuate the transactions contemplated by the Plan or by this Confirmation Order prior to the Effective Date.

92. During the period from the Confirmation Date through and until the Effective Date, the Debtors shall continue to operate their businesses as Debtors in Possession, subject to the oversight of the Bankruptcy Court as provided in the Bankruptcy Code, the Bankruptcy Rules, and all orders of the Bankruptcy Court that are then in full force and effect.

93. On the Effective Date, the Committee shall dissolve automatically, and the members thereof shall be released and discharged from all duties and obligations arising from or related to their membership, provided, however, that (i) the Committee shall continue in existence and its Professionals shall continue to be retained with respect to any applications for allowance of compensation and reimbursement of expenses pending on the Effective Date or

filed and served after the Effective Date pursuant to the terms of the Plan; and (ii) the Exempt Assets Trust shall be deemed the successor to the Committee with respect to any motions seeking to enforce the Plan and the transactions contemplated in the Plan or this Confirmation Order and any pending appeals and related proceedings. The Professionals retained by the Committee and the respective members thereof shall not be entitled to assert any Fee Claims for any services rendered or expenses incurred on behalf of the Committee after the Effective Date, except for fees for time spent and expenses incurred: (i) in connection with any applications for allowance of compensation and reimbursement of expenses pending on the Effective Date or filed and served after the Effective Date pursuant to the terms of the Plan; or (ii) in connection with any appeal pending as of the Effective Date, including any appeal of this Confirmation Order.

94. To the extent that any provisions of this Confirmation Order may be inconsistent with the terms of the Plan or any Plan Documents, the terms of this Confirmation Order shall take precedence and be binding and conclusive, unless otherwise provided herein.

95. Notwithstanding Bankruptcy Rules 3020(e), 6004(h), 6006(d), and 7062, to the extent applicable, the Bankruptcy Court finds that there is no reason for delay in the implementation of this Confirmation Order and, thus, this Confirmation Order shall be effective and enforceable immediately upon entry.

96. Notwithstanding anything else in the Plan or this Confirmation Order, on or before November 1, 2015, the Debtors and/or the Reorganized Debtors may make a regular rent payment to the landlord in respect of the Debtors' offices located at Three Allen Center, 333 Clay Street, Suite 4400, Houston, TX 77002 (the "Houston Office"). Upon the making of such payment, the Reorganized Debtors shall be entitled to remain in possession of such premises

through November 30, 2015. Without limiting the generality of the foregoing, the Debtors or the Reorganized Debtors shall have through November 30, 2015 to assume or reject the unexpired lease in respect of the Houston Office.

97. Notwithstanding any contrary treatment contained in the Plan or Confirmation Order, and with reference to that certain Water Agreement and Grant of Easement executed on May 31, 1983 and recorded as Document 1988-015644 in the records of Santa Barbara County (the "Water Agreement") by and between Bruce Conway and ERG Operating Company (as the successors of Fulton and Gato, respectively, and each as defined in the Water Agreement), and in exchange for (i) two payments of \$1,500 each by ERG Operating to Bruce Conway and (ii) the surrender by ERG Operating to Bruce Conway of an ICE engine located on the Tognazinni lease, (a) Bruce Conway is hereby deemed to release any Claim against the Debtors' estates he may have arising from or related to the Water Agreement and (b) no further performance shall be owed under the Water Agreement by the parties thereto.

**Form of Notice and Effective Date**

98. The form of notice of Effective Date, attached hereto as Exhibit B, is approved and shall be published by the Debtors in the *Houston Chronicle* and the *Los Angeles Times* promptly following the occurrence of the Effective Date.

###END OF ORDER###

Submitted by:

Tom A. Howley, State Bar No. 24010115  
JONES DAY  
717 Texas Avenue, Suite 3300  
Houston, Texas 77002  
Telephone: (832) 239-3939  
tahowley@jonesday.com

Thomas E Lauria, State Bar No. 11998025  
WHITE & CASE LLP  
Southeast Financial Center, Suite 4900  
200 South Biscayne Blvd.  
Miami, FL 33131  
Telephone: (305) 371-2700  
Facsimile: (305) 358-5744  
tlauria@whitecase.com

Brad B. Erens  
Joseph A. Florczak  
JONES DAY  
77 West Wacker  
Chicago, Illinois 60601  
Telephone: (312) 782-3939  
bberens@jonesday.com  
jflorczak@jonesday.com

Craig H. Averch, State Bar No. 01451020  
Roberto J. Kampfner (admitted *pro hac vice*)  
WHITE & CASE LLP  
555 South Flower Street, Ste. 2700  
Los Angeles, CA 90071  
Telephone: (213) 620-7700  
Facsimile: (213) 452-2329  
caverch@whitecase.com  
rkampfner@whitecase.com

*Attorneys for the Debtors*

*Attorneys for CLMG Corp., in its capacity as  
the Prepetition Agent*



**EXHIBIT A**

First Amended Joint Chapter 11 Plan of Reorganization Dated September 18, 2015,  
as Amended, in Respect of ERG Intermediate Holdings, LLC and Its Affiliated Debtors

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re

ERG Intermediate Holdings, LLC, et al.,<sup>1</sup>

Debtors.

Chapter 11

Jointly Administered

Case No. 15-31858-HDH

---

**FIRST AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION DATED  
SEPTEMBER 18, 2015, AS AMENDED, IN RESPECT OF ERG INTERMEDIATE  
HOLDINGS, LLC AND ITS AFFILIATED DEBTORS**

---

Tom A. Howley  
JONES DAY  
717 Texas Avenue, Suite 3300  
Houston, Texas 77002  
Telephone: (832) 239-3939  
Facsimile:  
tahowley@jonesday.com

Brad B. Erens  
Joseph A. Florczak  
JONES DAY  
77 West Wacker  
Chicago, Illinois 60601  
Telephone: (312) 782-3939  
Facsimile:  
bberens@jonesday.com  
jflorczak@jonesday.com

*Attorneys for the Debtors*

Thomas E Lauria, State Bar No. 11998025  
WHITE & CASE LLP  
Southeast Financial Center, Suite 4900  
200 South Biscayne Blvd.  
Miami, FL 33131  
Telephone: (305) 371-2700  
Facsimile: (305) 358-5744  
tlauria@whitecase.com

Craig H. Averch, State Bar No. 01451020  
Roberto J. Kampfner (admitted *pro hac vice*)  
WHITE & CASE LLP  
633 West Fifth Street, Suite 1900  
Los Angeles, CA 90071  
Telephone: (213) 620-7700  
Facsimile: (213) 452-2329  
caverch@whitecase.com  
rkampfner@whitecase.com

*Attorneys for CLMG Corp., in its capacity as the  
Petition Agent*

---

<sup>1</sup> The Debtors in these cases and the last four digits of their respective federal tax identification numbers are ERG Intermediate Holdings, LLC (2521); ERG Resources, L.L.C. (0408); West Cat Canyon, L.L.C. (7377); ERG Interests, LLC (2081); and ERG Operating Company, LLC (8385). ERG Intermediate Holdings, LLC is the direct or indirect parent of each of its affiliated Debtors. The mailing address for each of the Debtors, with the exception of ERG Operating Company, LLC, is 333 Clay Street, Suite 4400, Houston, TX 77002. The mailing address for ERG Operating Company, LLC is 4900 California Avenue, Suite 300B, Bakersfield, CA 93309. The above addresses are listed solely for the purposes of notices and communications.

**TABLE OF CONTENTS**

ARTICLE I	DEFINITIONS AND INTERPRETATION .....	1
1.1	Definitions.....	1
1.2	Interpretation.....	1
1.3	Application of Definitions and Rules of Construction Set Forth in the Bankruptcy Code.....	1
1.4	Other Terms.....	1
1.5	Appendices and Plan Documents.....	1
ARTICLE II	CLASSIFICATION OF CLAIMS AND MEMBERSHIP INTERESTS .....	2
2.1	Administrative Claims and Tax Claims.....	2
2.2	Classification of Claims and Membership Interests.....	2
2.3	Separate Classification of Secured Claims.....	3
ARTICLE III	IDENTIFICATION OF IMPAIRED CLASSES OF CLAIMS AND MEMBERSHIP INTERESTS .....	3
3.1	Unimpaired Classes of Claims and Membership Interests.....	3
3.2	Impaired Classes of Claims and Membership Interests.....	3
3.3	Impairment Controversies.....	3
ARTICLE IV	PROVISIONS FOR TREATMENT OF CLAIMS AND MEMBERSHIP INTERESTS UNDER THE PLAN .....	3
4.1	Treatment of Claims.....	3
(a)	Class 1 – Priority Claims.....	4
(b)	Class 2 – Prepetition Facility Claims.....	4
(c)	Class 3 – Other Secured Claims.....	4
(d)	Class 4 –Convenience Claims.....	5
(e)	Class 5 – Unsecured Claims.....	5
(f)	Class 6 – Intercompany Claims.....	5
(g)	Class 7 – Intermediate Holdings Membership Interests.....	5
(h)	Class 8 – Other Debtor Membership Interests.....	5
ARTICLE V	PROVISIONS FOR TREATMENT OF UNCLASSIFIED CLAIMS UNDER THE PLAN .....	6
5.1	Unclassified Claims.....	6
5.2	Treatment of Administrative Claims.....	6
(a)	Time for Filing Administrative Claims.....	6
(b)	Time for Filing Fee Claims.....	6
(c)	Allowance of Administrative Claims/Fee Claims.....	7
(d)	Payment of Allowed Administrative Claims.....	7
(e)	DIP Facility Claims.....	7
5.3	Treatment of Tax Claims.....	7

ARTICLE VI	ACCEPTANCE OR REJECTION OF THE PLAN; EFFECT OF REJECTION BY ONE OR MORE CLASSES OF CLAIMS .....	8
6.1	Classes Entitled to Vote.....	8
6.2	Presumed Acceptance of the Plan.....	8
6.3	Class Acceptance Requirement.....	8
6.4	Vacant Classes.....	8
6.5	Cramdown.....	8
ARTICLE VII	MEANS FOR IMPLEMENTATION OF THE PLAN.....	9
7.1	Operations Between the Confirmation Date and the Effective Date.....	9
7.2	Approved Settlement and Transaction Support Agreement.....	9
7.3	Certain Settlements.....	9
7.4	The Reorganized Debtors.....	9
7.5	ERG Plan Trust.....	10
	(a) Formation.....	10
	(b) The ERG Plan Trustee.....	12
	(c) Certain Amounts.....	12
	(d) Vesting of Property.....	12
	(e) Purpose of the ERG Plan Trust.....	12
	(f) Termination of ERG Plan Trust.....	12
	(g) Certain Exculpations.....	13
7.6	Exempt Assets Trust.....	13
	(a) Formation.....	13
	(b) Exempt Assets Trustee.....	13
	(c) Nabors Lawsuit.....	14
	(d) Certain Amounts.....	14
	(e) Transfer of Assets.....	14
	(f) Purpose of the Exempt Assets Trust.....	15
	(g) Termination of Exempt Assets Trust.....	15
	(h) Certain Obligations of the Debtors.....	15
	(i) Certain Exculpations.....	16
7.7	Corporate Action.....	16
7.8	Management and Officers.....	17
7.9	Exit Facility.....	17
7.10	Certain Indemnification Obligations.....	17
	(a) Indemnification Claims.....	17
	(b) Termination of Certain Interests.....	17
7.11	Transferred Causes of Action.....	18
7.12	Other Causes of Action.....	18
7.13	Sources of Cash for Plan Distributions.....	18
7.14	Effect on Royalty Interests and Oil & Gas Leases.....	19
	(a) Royalty Interests.....	19
	(b) Oil & Gas Leases.....	19
7.15	Restructuring Transactions.....	19

7.16	Obligations to Insure and Indemnify Managers, Officers and Employees.....	20	
7.17	Reinstatement and Continuation of Insurance Policies. ....	20	
7.18	Continuation of Bonding Facility. ....	21	
7.19	Rights in Respect of Prepetition Facility Claims Against Third Parties Unaffected. ....	22	
ARTICLE VIII	DISBURSING AGENT .....	22	
8.1	Powers and Duties of the Disbursing Agent. ....	23	
8.2	Exculpation of Disbursing Agent.....	23	
ARTICLE IX	PLAN DISTRIBUTION PROVISIONS.....	24	
9.1	Plan Distributions.....	24	
9.2	Address for Delivery of Plan Distributions/Unclaimed Plan Distributions.....	24	
9.3	Distribution Record Date .....	24	
9.4	De Minimis Plan Distributions. ....	25	
9.5	Time Bar to Cash Payments.....	25	
9.6	Manner of Payment Under the Plan.....	25	
9.7	Fractional Plan Distributions. ....	25	
9.8	Special Provisions Regarding Insured Claims.....	25	
9.9	Surrender and Cancellation of Instruments.....	26	
ARTICLE X	PROCEDURES FOR RESOLVING AND TREATING CONTESTED CLAIMS .....	26	
10.1	Objection Deadline. ....	26	
10.2	Tort Claims. ....	26	
10.3	Prosecution of Contested Claims.....	27	
10.4	Authority to Amend Schedules.....	28	
10.5	Enforcement of Bar Date Order.....	28	
10.6	Claims Settlement. ....	28	
10.7	Entitlement to Plan Distributions upon Allowance. ....	28	
ARTICLE XI	CONDITIONS PRECEDENT TO CONFIRMATION OF THE PLAN AND THE OCCURRENCE OF THE EFFECTIVE DATE .....	29	
11.1	Conditions Precedent to Confirmation.....	29	
11.2	Conditions Precedent to the Effective Date.....	29	
11.3	Waiver of Conditions.....	30	
11.4	Effect of Non-Occurrence of the Effective Date. ....	30	
ARTICLE XII	TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES		31
12.1	Assumption and Rejection of Executory Contracts and Unexpired Leases.....	31	
12.2	Cure Claims. ....	32	
12.3	Claims Arising from Rejection, Expiration or Termination. ....	33	

ARTICLE XIII	RETENTION OF JURISDICTION .....	33
13.1	Scope of Retention of Jurisdiction.....	33
13.2	Failure of the Bankruptcy Court to Exercise Jurisdiction.....	35
ARTICLE XIV	SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS.....	35
14.1	Satisfaction of Claims.....	35
14.2	Release of Liens.....	35
14.3	Exculpation.....	36
14.4	Discharge of Claims and Termination of Membership Interests.....	36
14.5	Release by Debtors.....	37
14.6	General Release by Holders of Claims and Membership Interests.....	37
14.7	Injunctions.....	37
ARTICLE XV	MISCELLANEOUS PROVISIONS.....	38
15.1	Payment of Statutory Fees.....	38
15.2	Dissolution of Creditors' Committee.....	38
15.3	Notices.....	39
15.4	Headings.....	40
15.5	Governing Law.....	40
15.6	Expedited Determination.....	40
15.7	Exemption from Transfer Taxes.....	40
15.8	Notice of Entry of Confirmation Order and Relevant Dates.....	41
15.9	Interest and Attorneys' Fees.....	41
15.10	Modification of the Plan.....	41
15.11	Setoff Rights.....	41
15.12	Compliance with Tax Requirements.....	42
15.13	Binding Effect.....	42
15.14	Severability.....	42
15.15	No Admissions.....	42

**EXHIBITS TO THE PLAN<sup>2</sup>**

Exhibit A ..... Glossary of Defined Terms

**EXHIBITS TO THE PLAN SUPPLEMENT**

Exhibit A ..... Approved Settlement and Transaction Support Agreement

Exhibit B ..... ERG Plan Trust Declaration

---

<sup>2</sup> To the extent certain exhibits are not included herein, such exhibits to this Plan and the Plan Supplement will be filed with the Bankruptcy Court no later than 10 days before the Voting Deadline. The exhibits shall be made available on the internet site address <http://dm.epiq11.com/ERG> once they are filed. The Debtors reserve the right to modify, amend, supplement, restate or withdraw the exhibits after they are filed and shall promptly make such changes available on the internet site address <http://dm.epiq11.com/ERG>.

Exhibit C .....Exempt Assets Trust Declaration  
Exhibit D ..... Exit Facility Loan Documents  
Exhibit E ..... Form of Exit Facility ORRI  
Exhibit F ..... Amended and Restated Prepetition Loan Documents  
Exhibit G .....Reorganized Debtor Operating Agreements  
Exhibit H ..... Restructuring Support Agreement  
Exhibit I..... List and Compensation of Management of Reorganized Debtors

**SCHEDULES TO THE PLAN**

Schedule 1 ..... Schedule of Assumed Executory Contracts and Unexpired Leases  
Schedule 2 ..... Schedule of Rejected Executory Contracts and Unexpired Leases  
Schedule 3 .....Schedule of Oil & Gas Leases Related to the California Assets

ERG Intermediate Holdings, LLC and its affiliated debtors and debtors in possession in the above captioned jointly administered chapter 11 proceedings (the “**Debtors**”) and CLMG Corp, the Prepetition Agent, hereby jointly propose the following chapter 11 plan for the Debtors:

## **ARTICLE I**

### **DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions.**

Where the context requires, each capitalized term used herein shall have the meaning ascribed to such term in the Glossary of Defined Terms attached to the Plan as Exhibit A.

#### **1.2 Interpretation.**

Unless otherwise specified, all section, article, and exhibit references in the Plan are to the respective section in, article of, or exhibit to, the Plan, as the same may be amended, waived, or modified from time to time. Words denoting the singular number shall include the plural number and vice versa, as appropriate, and words denoting one gender shall include the other gender. The terms “include” and “including” shall be construed as “include, without limitation” and “including, without limitation,” respectively.

#### **1.3 Application of Definitions and Rules of Construction Set Forth in the Bankruptcy Code.**

Words and terms defined in section 101 of the Bankruptcy Code shall have the same meanings when used in the Plan, unless a different definition is given in the Glossary of Defined Terms. The rules of construction contained in section 102 of the Bankruptcy Code shall apply to the construction of the Plan.

#### **1.4 Other Terms.**

The words “herein,” “hereof,” “hereto,” “hereunder,” and others of similar import refer to the Plan as a whole and not to any particular section, subsection, or clause contained in the Plan.

#### **1.5 Appendices and Plan Documents.**

All appendices to the Plan and the Plan Documents are incorporated into the Plan by this reference and are a part of the Plan as if set forth in full herein. All Plan Documents not otherwise filed herewith shall be filed with the clerk of the Bankruptcy Court in the Plan Supplement no later than 10 days before the Voting Deadline. In the event of any inconsistency between the terms of the Plan and any Plan Documents, the terms of the Plan shall control except with respect to the Exit Facility Loan Documents, which shall control over the terms of the Plan in the event of any inconsistency. Holders of Claims may obtain a copy of the Plan Documents, once filed, by a written request sent to the following address:



Jones Day  
717 Texas, Suite 3300  
Houston, Texas 77002-2712  
Attn: Thomas A. Howley  
Telephone: (832) 239-3939  
Facsimile: (832) 239-3600

## ARTICLE II

### **CLASSIFICATION OF CLAIMS AND MEMBERSHIP INTERESTS**

For the purposes of organization, voting and all confirmation matters, all Claims against and Membership Interests in the Debtors shall be classified as set forth in this Article II.

#### **2.1 Administrative Claims and Tax Claims.**

As provided by section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Tax Claims shall not be classified under the Plan, and shall instead be treated separately as unclassified Claims on the terms set forth in Article V.

#### **2.2 Classification of Claims and Membership Interests.**

The classes of Claims against and Membership Interests in the Debtors shall be classified under the Plan as follows:

Class 1 – Priority Claims. Class 1 shall consist of all Priority Claims against the Debtors.

Class 2 – Prepetition Facility Claims. Class 2 shall consist of the Prepetition Facility Claims.

Class 3 – Other Secured Claims. Class 3 shall consist of all Other Secured Claims against the Debtors.

Class 4 – Convenience Claims. Class 4 shall consist of all Convenience Claims against the Debtors.

Class 5 – Unsecured Claims. Class 5 shall consist of all Unsecured Claims against the Debtors.

Class 6 – Intercompany Claims. Class 6 shall consist of Claims held by one Debtor against another Debtor.

Class 7 – Intermediate Holdings Membership Interests. Class 7 shall consist of the Membership Interests in Debtor Intermediate Holdings.

Class 8 – Other Debtor Membership Interests. Class 8 shall consist of the Membership Interests in the Other Debtors.

### **2.3 Separate Classification of Secured Claims.**

Although Other Secured Claims against the Debtors have been placed in one category for ease of reference, each Other Secured Claim shall be treated as a separate class for purposes of voting on the Plan and receiving Plan Distributions. Such classes comprised of individual Other Secured Claims shall be designated as Class 3A, Class 3B, Class 3C, etc.

## **ARTICLE III**

### **IDENTIFICATION OF IMPAIRED CLASSES OF CLAIMS AND MEMBERSHIP INTERESTS**

#### **3.1 Unimpaired Classes of Claims and Membership Interests.**

The following classes of Claims and Membership Interests are not impaired under the Plan: Class 1 – Priority Claims, Class 3 – Other Secured Claims that are reinstated, Class 4 – Convenience Claims, Class 6 – Intercompany Claims, and Class 8 – Other Debtor Membership Interests.

#### **3.2 Impaired Classes of Claims and Membership Interests.**

The following classes of Claims and Membership Interests are impaired under the Plan: Class 2 – Prepetition Facility Claims, Class 5 – Unsecured Claims, and Class 7 – Intermediate Holdings Membership Interests.

#### **3.3 Impairment Controversies.**

If a controversy arises as to whether any Claim or Membership Interest or any class of Claims or Membership Interests is impaired under the Plan, the Bankruptcy Court shall, after notice and a hearing, determine such controversy.

## **ARTICLE IV**

### **PROVISIONS FOR TREATMENT OF CLAIMS AND MEMBERSHIP INTERESTS UNDER THE PLAN**

#### **4.1 Treatment of Claims.**

The Plan treats the Debtors as comprising a single Estate solely for purposes of voting on the Plan, confirmation of the Plan and making Plan Distributions in respect of Claims against and Membership Interests in the Debtors under the Plan. Such treatment shall not affect any Debtor's status as a separate legal entity, change the organizational structure of the Debtors' business enterprise, constitute a change of control of any Debtor for any purpose, cause a merger or consolidation of any legal entities, nor cause the transfer of any assets; and all Debtors shall continue to exist as separate legal entities. The above treatment serves only as a mechanism to effect a fair distribution of value to the Debtors' constituencies. In addition, the above treatment shall not constitute a waiver of the mutuality requirement for setoff under section 553 of the Bankruptcy Code.

The Plan serves as a motion seeking entry of an order consolidating the Estates for purposes of voting and distribution only. Unless an objection to such consolidation or case closing is made in writing by any creditor affected by the Plan, filed with the Bankruptcy Court and served on the Debtors on or before the Plan objection deadline as established by the Bankruptcy Court, the consolidation and case closing order (which may be the Confirmation Order) may be entered by the Bankruptcy Court. In the event any such objections are timely filed, a hearing with respect thereto shall occur at or before the Confirmation Hearing.

The classes of Claims against and Membership Interests in the Debtors shall be treated under the Plan as follows:

(a) Class 1 – Priority Claims.

Each holder of an Allowed Priority Claim against any Debtor shall receive, in full satisfaction of such Allowed Priority Claim, on the applicable Plan Distribution Date, Cash in the amount of such holder's Allowed Priority Claim.

(b) Class 2 – Prepetition Facility Claims.

On the Effective Date, the Prepetition Facility Claims shall be reinstated and Allowed in their entirety in such amount as set forth in the Plan Supplement, and the Prepetition Lenders shall retain the Prepetition Facility Liens in and to the Prepetition Facility Collateral (other than Exempt Assets transferred to the Exempt Assets Trust on the Effective Date), subject only to Liens granted by the Debtors in connection with the Exit Facility and Liens permitted under the Exit Facility Loan Documents and the Amended and Restated Prepetition Loan Documents. Without limiting the generality of the foregoing, and subject to the rights against third parties described in Section 7.19, the Prepetition Loan Documents, as amended and restated by the Amended and Restated Prepetition Loan Documents, shall provide for: (A) the payment and/or accrual of interest at the Post-Effective Date Interest Rate, (B) the maturity of the Prepetition Facility Claims on the third anniversary of the Effective Date, subject to extension in the sole and absolute discretion of the Prepetition Agent, and (C) the payment of the ERG Sharing Amount to the ERG Plan Trust as set forth in Section 7.5(a)(ii) of the Plan.

(c) Class 3 – Other Secured Claims.

Except to the extent that a holder of an Allowed Other Secured Claim agrees to a different treatment, on the applicable Plan Distribution Date, each Allowed Other Secured Claim shall, at the option of the Disbursing Agent, (i) be reinstated and rendered unimpaired in accordance with section 1124(2) of the Bankruptcy Code; (ii) receive Cash in an amount equal to such Allowed Other Secured Claim, including any interest on such Allowed Other Secured Claim required to be paid pursuant to section 506(b) of the Bankruptcy Code; or (iii) receive the collateral securing its Allowed Other Secured Claim and any interest on such Allowed Other Secured Claim required to be paid pursuant to section 506(b) of the Bankruptcy Code, in each case, in full and complete satisfaction of such Allowed Other Secured Claim. Other Secured Claims relating to Materialmen's Liens shall be Allowed only as set forth in the paragraph below.

On the Effective Date, each Claim secured by a Materialmen's Lien that was either

perfected under (a) section 546 of the Bankruptcy Code or (b) prior to the Petition Date, under applicable non-bankruptcy law (each a “Potentially Secured Materialmen’s Lien Claim”), shall be deemed a disputed Claim and not an Allowed Claim. The Prepetition Agent shall have standing to challenge the status of such Claim as an Other Secured Claim and to otherwise object to such Claim. If the Bankruptcy Court determines that the Materialmen’s Lien securing such Potentially Secured Materialmen’s Lien Claim is senior to the Prepetition Facility Liens, such Claim shall be deemed an Allowed Other Secured Claim and shall be paid as set forth in this Section 4.1(c). If the Bankruptcy Court determines that the Prepetition Facility Liens are senior to the Materialmen’s Liens securing such Potentially Secured Materialmen’s Lien Claim, such Materialmen’s Liens shall be null, void and unenforceable and such Potentially Secured Materialmen’s Lien Claim shall be treated as an Unsecured Claim for all purposes. On the Effective Date, all Claims secured by a Materialmen’s Liens that are not Potentially Secured Materialmen’s Lien Claims shall be treated as Unsecured Claims for all purposes and all Liens securing such Claims shall be deemed null, void and unenforceable as of such date.

(d) Class 4 – Convenience Claims.

On the applicable Plan Distribution Date, each holder of an Allowed Convenience Claim will receive Cash in the amount of such holder’s Allowed Convenience Claim from the Exempt Assets Trust.

(e) Class 5 – Unsecured Claims.

Each holder of an Allowed Unsecured Claim shall receive, on the applicable Plan Distribution Date, its Pro Rata Share of the Exempt Assets Trust Beneficial Interests.

(f) Class 6 – Intercompany Claims.

On the Effective Date, Intercompany Claims will be reinstated.

(g) Class 7 – Intermediate Holdings Membership Interests.

Each holder of a Membership Interest in Intermediate Holdings shall receive, on the applicable Plan Distribution Date (or as soon as reasonably practicable thereafter), its Pro Rata Share of (a) the Class B ERG Plan Trust Beneficial Interests and (b) the residual amount of net proceeds of the Nabors Lawsuit from the Exempt Assets Trust after satisfaction in full of all Allowed Unsecured Claims, including interest.

(h) Class 8 – Other Debtor Membership Interests.

The Membership Interests in the Other Debtors shall not be canceled, but shall be reinstated for the benefit of the Reorganized Debtor which is the holder thereof.

## ARTICLE V

### PROVISIONS FOR TREATMENT OF UNCLASSIFIED CLAIMS UNDER THE PLAN

#### 5.1 Unclassified Claims.

Administrative Claims and Tax Claims are treated in accordance with sections 1129(a)(9)(A) and 1129(a)(9)(C) of the Bankruptcy Code, respectively. Such Claims are not designated as classes of Claims for the purposes of this Plan or for the purposes of sections 1123, 1124, 1125, 1126 or 1129 of the Bankruptcy Code.

#### 5.2 Treatment of Administrative Claims.

All Administrative Claims shall be treated as follows:

(a) Time for Filing Administrative Claims.

The holder of an Administrative Claim, other than (i) a Fee Claim; (ii) a liability incurred and payable in the ordinary course of business by the Estate (and not past due); (iii) an Administrative Claim that has been Allowed on or before the Effective Date; or (iv) a DIP Facility Claim, must file with the Bankruptcy Court and serve on the Reorganized Debtors, the Exempt Assets Trustee, and the Office of the United States Trustee, notice of such Administrative Claim within forty (40) days after service of Notice of Effective Date. Such notice must include at a minimum (A) the name of the holder of the Claim; (B) the amount of the Claim; and (C) the basis of the Claim. **Failure to file and serve such notice timely and properly shall result in the Administrative Claim being forever barred and discharged.**

(b) Time for Filing Fee Claims.

Professional Persons asserting a Fee Claim for services rendered before the Effective Date must, unless previously filed, file with the Bankruptcy Court and serve on the Reorganized Debtors and the Disbursing Agent and such other entities who are designated by the Bankruptcy Rules, the Professional Fee Order, the Confirmation Order or other order of the Bankruptcy Court an application for final Allowance of such Fee Claim no later than 30 days after the Confirmation Date; provided, however, that any Professional Person who may receive compensation or reimbursement of expenses pursuant to the Ordinary Course Professionals Order may continue to receive such compensation and reimbursement of expenses for services rendered before the Effective Date pursuant to the Ordinary Course Professionals Order without further Bankruptcy Court review or approval (except as provided in the Ordinary Course Professionals Order). Objections to any Fee Claim must be filed with the Bankruptcy Court and served on the Reorganized Debtors and the Disbursing Agent and the requesting party by the later of (A) 14 days after the Filing of the applicable request for payment of the Fee Claim or (B) such other period of limitation as may be specifically fixed by a Final Order for objecting to such Fee Claims. To the extent necessary, the Confirmation Order shall amend and supersede any previously entered order of the Bankruptcy Court regarding the payment of Fee Claims, provided, however, that in no event shall the Plan or the Confirmation Order modify or affect any limitation on the amount of any Fee Claim, whether individually or in the aggregate, contained in (i) the Final DIP Order, (ii) any budget in effect thereunder, or (iii) the Approved

Settlement and Transaction Support Agreement. Without limiting the generality of the foregoing, to the extent the Fee Claims of Professionals retained by the Committee exceed the cap set forth in the Approved Settlement and Transaction Support Agreement, any such fees and expenses shall not be paid by the Prepetition Agent from any collateral of the Prepetition Agent or by the Debtors from proceeds of the DIP Facility, provided, that the Committee reserves the right to pay such fees and expenses from the Exempt Assets in accordance with Section 3 of the Approved Settlement and Transaction Support Agreement. **The failure to timely file and serve a Fee Application shall result in the Fee Claim being forever barred and discharged.**

(c) Allowance of Administrative Claims/Fee Claims.

An Administrative Claim with respect to which notice has been properly filed and served pursuant to Section 5.2(a) shall become an Allowed Administrative Claim if no objection is filed within sixty (60) days after the later of (i) the Effective Date; and (ii) the date of service of the applicable notice of Administrative Claim or such later date as may be approved by the Bankruptcy Court on motion of a party in interest, without notice or a hearing. If an objection is filed within such 60-day period (or any extension thereof), the Administrative Claim shall become an Allowed Administrative Claim only to the extent allowed by Final Order.

(d) Payment of Allowed Administrative Claims.

On the applicable Plan Distribution Date, each holder of an Allowed Administrative Claim shall receive (i) the amount of such holder's Allowed Claim in one Cash payment; or (ii) such other treatment as may be agreed upon in writing by such holder and the Debtors (or, if after the Effective Date, the Disbursing Agent); provided, that such treatment shall not provide a return to such holder having a present value as of the Effective Date in excess of such holder's Allowed Administrative Claim; and provided, further that an Administrative Claim representing a liability incurred and payable in the ordinary course of business of the Estates shall be paid by the Debtors in the ordinary course of business.

(e) DIP Facility Claims.

On or before the Effective Date, the Debtors shall pay to the DIP Agent all principal, interest, fees and other amounts due and owing under or in respect of the DIP Facility in Cash.

### **5.3 Treatment of Tax Claims.**

Each holder of an Allowed Tax Claim will receive in full satisfaction of such Allowed Tax Claim (a) Cash in the full amount of such Allowed Tax Claim on the applicable Plan Distribution Date and (b) Cash in the full amount of any interest due in respect of such Allowed Tax Claim pursuant to applicable non-bankruptcy law.

## ARTICLE VI

### **ACCEPTANCE OR REJECTION OF THE PLAN; EFFECT OF REJECTION BY ONE OR MORE CLASSES OF CLAIMS**

#### **6.1 Classes Entitled to Vote.**

Except for Class 1 – Priority Claims, Class 3 – Other Secured Claims that are to be reinstated, Class 4 – Convenience Claims, Class 6 – Intercompany Claims, and Class 8 – Other Debtor Membership Interests, all classes of Claims and Membership Interests are entitled to vote on the Plan.

#### **6.2 Presumed Acceptance of the Plan.**

Class 1 – Priority Claims, Class 3 – Other Secured Claims that are to be reinstated, Class 4 – Convenience Claims, Class 6 – Intercompany Claims, and Class 8 – Other Debtor Membership Interests are unimpaired. Each holder of a Claim in such classes is presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code and is not entitled to vote to accept or reject the Plan.

#### **6.3 Class Acceptance Requirement.**

A class of Claims shall have accepted the Plan if it is accepted by at least two-thirds (2/3) in amount and more than one-half (1/2) in number of the Allowed Claims in such class that have voted on the Plan. A class of Membership Interest shall have accepted the Plan if it is accepted by holders of at least two-thirds (2/3) in amount of the Allowed Membership Interests in that class that have voted on the Plan.

#### **6.4 Vacant Classes.**

Any Class of Claims or Membership Interests that does not have a holder of an Allowed Claim or Allowed Membership Interest (or a Claim or Membership Interest temporarily Allowed by the Bankruptcy Court) in an amount greater than zero as of the date of the Confirmation Hearing shall be considered vacant and shall be presumed to have accepted the Plan.

#### **6.5 Cramdown.**

If all applicable requirements for confirmation of the Plan are met as set forth in section 1129(a)(1) through (16) of the Bankruptcy Code, except subsection (8) thereof, then the Plan shall be treated as a request that the Bankruptcy Court confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code, notwithstanding the failure to satisfy the requirements of section 1129(a)(8), on the basis that the Plan is fair and equitable and does not discriminate unfairly with respect to each class of Claims and Membership Interests that is impaired under, and has not accepted, the Plan.

## ARTICLE VII

### MEANS FOR IMPLEMENTATION OF THE PLAN

#### **7.1 Operations Between the Confirmation Date and the Effective Date.**

During the period from the Confirmation Date through and until the Effective Date, the Debtors shall continue to operate their businesses as debtors in possession, subject to the oversight of the Bankruptcy Court as provided in the Bankruptcy Code, the Bankruptcy Rules and all orders of the Bankruptcy Court that are then in full force and effect.

#### **7.2 Approved Settlement and Transaction Support Agreement.**

The Approved Settlement and Transaction Support Agreement is incorporated into and made part of the Plan. In the event of any conflict between the Plan and the Approved Settlement and Transaction Support Agreement concerning the Exempt Assets or the Exempt Assets Trust, the terms of the Approved Settlement and Transaction Support Agreement shall control. In the event of any other conflicts, the Plan shall control, provided that the Plan shall not serve to modify the limit on Fee Claims payable to Professional Persons of the Committee contained in the Approved Settlement and Transaction Support Agreement.

#### **7.3 Certain Settlements.**

Pursuant to section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019, the Plan constitutes a settlement of certain existing and potential disputes concerning the value of the Prepetition Facility Claims. Upon the timely making by the Prepetition Agent of its election under section 1111(b)(2) of the Bankruptcy Code, the Prepetition Facility Collateral shall be deemed, for the purposes of the Plan, to have a value of not less than the aggregate amount of the Prepetition Facility Claims, and the Prepetition Facility Claims shall be deemed for the purposes of the Plan to be fully secured.

#### **7.4 The Reorganized Debtors.**

(a) On the Effective Date, each of the following shall occur or shall be deemed to have occurred, as applicable, in the following order:

(i) The ERG Plan Trust shall be formed in accordance with Section 7.5 of the Plan and the Exempt Assets Trust shall be formed in accordance with Section 7.6 of the Plan.

(ii) All of the Membership Interests in Intermediate Holdings shall be cancelled and new Membership Interests in Reorganized Intermediate Holdings shall be issued to the ERG Plan Trust, free and clear of any and all Liens, Claims, and interests other than (A) the Liens granted in connection with the Exit Facility and (B) the Prepetition Facility Liens. The new Membership Interests in Reorganized Intermediate Holdings shall be certificated and transferred to the possession of the Exit Facility Agent and Prepetition Agent, with such other documentation as may be needed to



perfect the Liens of the Exit Facility Agent and Prepetition Agent in and to such new Membership Interests;

(iii) All of the Membership Interests in the Other Debtors shall revest in the Reorganized Debtor that held such Membership Interests immediately prior to the Effective Date. All such Membership Interests shall be certificated and transferred to the possession of the Exit Facility Agent and Prepetition Agent with such other documentation as may be needed to perfect the Liens of the Exit Facility Agent and the Prepetition Agent in and to such new Membership Interests;

(iv) The ERG Interests Royalty Interest shall be canceled, nullified, and voided, and ERG Interests shall no longer have any rights whatsoever in respect of the ERG Interests Royalty Interest or the cancellation, nullification, or voiding thereof;

(v) Except as otherwise set forth in the Plan, all of the Assets of each Debtor's Estate, other than Exempt Assets, shall revest in each such Debtor free and clear of any and all Liens, Claims, and interests other than (A) the Liens granted in connection with the Exit Facility and (B) the Prepetition Facility Liens;

(vi) The Prepetition Loan Documents shall be amended and restated as set forth in the Amended and Restated Prepetition Loan Documents and shall preserve in favor of the Prepetition Agent the Prepetition Facility Liens in the Prepetition Facility Collateral;

(vii) The Exit Facility shall become effective in accordance with its terms and shall grant the Exit Facility Agent the Exit Facility Liens in the Exit Facility Collateral and the Exit Facility Agent shall receive the Exit Facility ORRI; and

(viii) The Reorganized Debtors shall draw on the Exit Facility an amount sufficient to satisfy all DIP Facility Claims and the Confirmation Payment and shall pay the proceeds of such draw to the DIP Agent in full satisfaction of the DIP Facility Claims. Upon full payment and satisfaction of all DIP Facility Claims, the DIP Liens shall be discharged.

(b) The Reorganized Debtors shall be deemed a Disbursing Agent under the Plan when making distributions to holders of Allowed Administrative Claims, Cure Claims, Allowed Priority Claims, Allowed Tax Claims, and Allowed Other Secured Claims.

## **7.5 ERG Plan Trust.**

(a) Formation. Pursuant to section 1123(a)(5) of the Bankruptcy Code, on the Effective Date, the ERG Plan Trust shall be created pursuant to the ERG Plan Trust Declaration. The ERG Plan Trust Declaration shall constitute a Plan Document and shall only contain terms and conditions consistent with the Plan and reasonably acceptable to the Exit Facility Agent and the Pre-Petition Agent. Without limiting the generality of the foregoing, the ERG Plan Trust Declaration shall:

(i) Provide that the ERG Plan Trust shall reduce the ERG Plan Trust Property to Cash, including by directing the Reorganized Debtors to (A) operate their Assets in compliance with all applicable laws and regulations, including in compliance with the Reorganized Debtor Operating Agreements; (B) comply in all respects with the terms of the Amended and Restated Prepetition Loan Documents and the Exit Facility Loan Documents; (C) implement curative measures to improve production and reduce operational costs; (D) direct capital improvements deemed necessary or appropriate to enhance the value of the Assets held by the Reorganized Debtors; (E) prepare for direct or indirect sale of the Assets held by the Reorganized Debtors, including by a sale of the Membership Interests in ERG Intermediate Holdings, in a manner that is reasonably calculated to maximize the value of such Assets, subject to the terms of the ERG Plan Trust Declaration, the Amended and Restated Prepetition Loan Documents and the Exit Facility Loan Documents; and (F) consummate a sale described in the immediately preceding clause (E) within three (3) years of the Effective Date or such other period as agreed in writing by the Exit Facility Lenders and the Prepetition Lenders; and

(ii) provide for the distribution of the proceeds of all Assets sold or otherwise liquidated outside the ordinary course of business in the following order:

First, to the ERG Plan Trust in an amount equal to the ERG Plan Trustee's good faith estimate of the actual and necessary costs of administering the ERG Plan Trust plus a reasonable reserve for the winding up of the affairs of the ERG Plan Trust, which amount shall be maintained by the ERG Plan Trust in a segregated account and used only for such purposes, with any excess contained in such account upon the winding up of the ERG Plan Trust to be applied in accordance with this waterfall except that the ERG Sharing Amount shall not be paid out of any such excess;

Second, to pay in full all Exit Facility Claims, including all of the principal, interest, fees and other obligations owed by the Reorganized Debtors in respect of the Exit Facility Loan Documents;

Third, to pay in full all of the Prepetition Facility Claims, including all of the principal, interest, fees and other obligations owed by the Reorganized Debtors in respect of the Prepetition Loan Documents, provided, that the ERG Sharing Amount shall be distributed to or retained by the ERG Plan Trust (as the case may be) for ratable distribution to the ERG Plan Trust Beneficial Interests as set forth in the "Fifth" clause below;

Fourth, to pay unsecured claims, if any, incurred after the Effective Date of the Plan; and

Fifth, to the ERG Plan Trust, which shall apply any such proceeds in the following order: (A) to the holder of the Class A ERG Plan Trust Beneficial Interests, until the holders of Allowed Unsecured Claims have received, in the aggregate and from all sources (including from the Exempt Assets Trust), an amount equal to such Allowed Unsecured Claims, including interest; and (B), ratably, to the holders of Class B ERG Plan Trust Beneficial Interests.

(b) The ERG Plan Trustee. The ERG Plan Trust shall be administered by the ERG Plan Trustee, which shall be identified prior to the commencement of the Confirmation Hearing by the Debtors. The ERG Plan Trustee shall be reasonably acceptable to the Prepetition Lenders and the Exit Facility Lenders. The appointment of the initial ERG Plan Trustee and the terms of its compensation shall be reasonable and subject to the approval of the Bankruptcy Court. The ERG Plan Trustee shall have the power to administer the assets of the ERG Plan Trust in a manner consistent with the Plan and the ERG Plan Trust Declaration. Without limiting the generality of the foregoing, the ERG Plan Trustee shall (i) hold and administer the ERG Plan Trust Property; (ii) have the power and authority to retain, as an expense of the ERG Plan Trust, such attorneys, advisors, other professionals and employees as may be appropriate to perform the duties required of the ERG Plan Trustee hereunder or in the ERG Plan Trust Declaration; (iii) make distributions as provided in the ERG Plan Trust Declaration and the Plan; (iv) prepare tax returns for the ERG Plan Trust and provide such tax documentation as may be required to the holders of ERG Plan Trust Beneficial Interests; and (v) provide periodic reports and updates regarding the status of the administration of the ERG Plan Trust. The ERG Plan Trustee shall be deemed a Disbursing Agent under the Plan when making distributions to holders of ERG Plan Trust Beneficial Interests pursuant to the ERG Plan Trust Declaration.

(c) Certain Amounts. During the period from the Confirmation Date to the Effective Date, the Debtors shall reimburse the ERG Plan Trustee for the actual and necessary out-of-pocket expenses incurred by it (whether before or after the Confirmation Date) in preparing to assume its responsibilities under the ERG Plan Trust Declaration in an aggregate amount not to exceed \$50,000.

(d) Vesting of Property. On the Effective Date, the ERG Plan Trust Property shall vest in the ERG Plan Trust, free and clear of any Liens, Claims, or other interests other than (i) the Liens granted in connection with the Exit Facility and (ii) the Prepetition Facility Liens, and shall be administered for the benefit of the holders of ERG Plan Trust Beneficial Interests on the terms and conditions set forth in the Plan and the ERG Plan Trust Declaration.

(e) Purpose of the ERG Plan Trust. The ERG Plan Trust shall be established for the primary purpose of liquidating its assets in accordance with Treas. Reg. § 301.7701-4(d) with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the ERG Plan Trust. Accordingly, the ERG Plan Trustee shall, in an expeditious but orderly manner, liquidate and convert to Cash the non-Cash ERG Plan Trust Property, make timely distributions to the holders of ERG Plan Trust Beneficial Interests (subject to Section 7.5(a)(ii)), and not unduly prolong the duration of the ERG Plan Trust. The ERG Plan Trust shall not be deemed a successor-in-interest of any Debtor for any purpose. The Assets held in the ERG Plan Trust will be deemed held in a “disputed ownership fund” under Treas. Reg. § 1.468B-9, and as such the ERG Plan Trust shall be a taxable entity for federal income tax purposes. As soon as practicable after the Effective Date, the ERG Plan Trustee shall value the assets of the ERG Plan Trust as set forth in the ERG Plan Trust Declaration. The valuation shall be used consistently by all parties for all federal income tax purposes. The Bankruptcy Court shall resolve any dispute regarding such valuation.

(f) Termination of ERG Plan Trust. The ERG Plan Trust will terminate as soon as practicable, but not later than the fifth (5th) anniversary of the Effective Date; provided

that, within six months prior to the fifth (5th) anniversary of the Effective Date (or such later date as may be permitted by order of the Bankruptcy Court as described in this Section 7.5(f)), the Bankruptcy Court, upon motion by a party in interest, may extend the term of the ERG Plan Trust for a finite period, if such an extension is necessary to liquidate the assets of the ERG Plan Trust or for other good cause. Multiple extensions of the termination of the ERG Plan Trust may be obtained so long as Bankruptcy Court approval is obtained prior to the expiration of each extended term and the ERG Plan Trustee receives an opinion of counsel or a favorable ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the ERG Plan Trust as a grantor trust for federal income tax purposes.

(g) Certain Exculpations. The ERG Plan Trustee, together with its agents and representatives, are exculpated pursuant to the Plan by all Persons, holders of Claims and other parties in interest, from any and all Causes of Action (including any Causes of Action concerning the environment, protection of the environment, environmental contaminants, health, or human safety), arising out of the discharge of the powers and duties conferred upon the ERG Plan Trustee by the ERG Plan Trust Declaration, the Plan, any Final Order of the Bankruptcy Court entered pursuant to or in the furtherance of the Plan, or applicable law, except solely for actions or omissions arising out of the ERG Plan Trustee's gross negligence, wrongful conversion of ERG Plan Trust Property, or other willful misconduct.

## **7.6 Exempt Assets Trust.**

(a) Formation. Pursuant to section 1123(a)(5) of the Bankruptcy Code, on the Effective Date the Exempt Assets Trust shall be created pursuant to the Exempt Assets Trust Declaration. The Exempt Assets Trust Declaration shall constitute a Plan Document and shall only contain terms and conditions consistent with the Plan. Without limiting the generality of the foregoing, the Exempt Assets Trust Declaration shall require that all Cash Exempt Assets Trust Property, including the proceeds of the Exempt Assets, be applied in the following order:

First, paid in full satisfaction of any outstanding expenses arising from the administration of the Exempt Assets Trust;

Second, retained as a reasonable reserve for the winding up of the affairs of the Exempt Assets Trust; and

Third, ratably, paid to the holders of the Exempt Assets Trust Beneficial Interests, until such holders have received, in the aggregate and from all sources (including from the ERG Plan Trust) on account of their Unsecured Claims, an amount equal to the amount of all Allowed Unsecured Claims, including interest.

The residual amount of proceeds of the Nabors Lawsuit shall be remitted by the Exempt Assets Trust to former holders of Membership Interests in Intermediate Holdings after satisfaction in full of all Allowed Unsecured Claims, including interest.

(b) Exempt Assets Trustee. The Exempt Assets Trust shall be administered by the Exempt Assets Trustee. Jason Searcy shall be the initial Exempt Assets Trustee. The terms of the compensation of the Exempt Assets Trustee shall be disclosed in the Plan Supplement. The Exempt Assets Trustee shall have the power to administer the assets of the

Exempt Assets Trust in a manner consistent with the Exempt Assets Trust Declaration and the Plan and the Exempt Assets Trustee shall be the Estate representative designated to prosecute any and all Transferred Causes of Action. Without limiting the generality of the foregoing, the Exempt Assets Trustee shall (i) hold and administer the assets of the Exempt Assets Trust; (ii) in accordance with section 1123(b)(3) of the Bankruptcy Code, serve as representative of the Estates with respect to all Transferred Causes of Action and have the sole power and authority to evaluate and determine strategy with respect to the Transferred Causes of Action and to litigate, settle, transfer, release or abandon any such Transferred Causes of Action on behalf of the Exempt Assets Trust; (iii) have authority to pay all out of pocket expenses incurred in connection with the prosecution of the Transferred Causes of Action from assets of the Exempt Assets Trust; (iv) have the power and authority to retain, as an expense of the Exempt Assets Trust, such attorneys, advisors, other professionals and employees as may be appropriate to perform the duties required of the Exempt Assets Trustee hereunder or in the Exempt Assets Trust Declaration; provided that, on the Effective Date, the Exempt Assets Trust shall enter into a retention agreement with Gibbs and Bruns LLP (“G&B”) on the same terms and conditions as G&B’s existing retention agreement with the Debtors, which newly-executed retention agreement shall supersede in all respects the existing retention agreement between the Debtors and G&B in respect of the Nabors Lawsuit; (v) make distributions as provided in the Exempt Assets Trust Declaration and this Plan; and (vi) provide periodic reports and updates regarding the status of the administration of the Exempt Assets Trust. The Exempt Assets Trustee shall be deemed a Disbursing Agent under the Plan when making distributions to holders of Exempt Assets Trust Beneficial Interests pursuant to the Exempt Assets Trust Declaration.

(c) Nabors Lawsuit. The Exempt Assets Trustee shall keep the Nabors Lawsuit Oversight Committee reasonably apprised of the Exempt Assets Trustee’s actions and all material developments in the Nabors Lawsuit. Notwithstanding anything else in the Plan to the contrary, the Exempt Assets Trustee shall not settle the Nabors Lawsuit without the approval of the majority of the members of the Nabors Lawsuit Oversight Committee as constituted at the time of any proposed settlement and without approval of the Bankruptcy Court pursuant to Bankruptcy Rule 9019.

(d) Certain Amounts. During the period from the Confirmation Date to the Effective Date, the Debtors shall reimburse the Exempt Assets Trustee for the actual and necessary out-of-pocket expenses incurred by it (whether before or after the Confirmation Date) in preparing to assume its responsibilities under the Exempt Assets Trust Declaration in an aggregate amount not to exceed \$50,000. On the Effective Date, according to the terms of the Approved Settlement and Transaction Support Agreement, the Exit Facility Lender shall fund the Exempt Assets Trust Advance.

(e) Transfer of Assets. On the Effective Date, the Exempt Assets and the Exempt Assets Trust Advance shall vest in the Exempt Assets Trust, free and clear of any and all Liens, Claims and other interests, exclusively for the benefit of the holders of Exempt Assets Trust Beneficial Interests on the terms and conditions set forth in the Plan, the Approved Settlement and Transaction Support Agreement and the Exempt Assets Trust Declaration. Without limiting the generality of the foregoing, on the Effective Date, pursuant to sections 1123(b)(2) and 1123(b)(3) of the Bankruptcy Code, the purchase and sale agreement relating to the Nabors Lawsuit, all ancillary agreements related thereto and all of the rights of the Debtors

thereunder shall be deemed assumed, assigned and transferred to the Exempt Assets Trust free and clear of all Liens, Claims and other interests and shall be fully available to the Exempt Assets Trustee for the purpose of prosecuting the Nabors Lawsuit.

(f) Purpose of the Exempt Assets Trust. The Exempt Assets Trust shall be established for the primary purpose of liquidating its assets in accordance with Treas. Reg. § 301.7701-4(d) with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Exempt Assets Trust. Accordingly, the Exempt Assets Trustee shall, in an expeditious but orderly manner, liquidate and convert to Cash the non-Cash Exempt Assets Trust Property, including the Transferred Causes of Action, make timely distributions to the holders of Exempt Assets Trust Beneficial Interests, and not unduly prolong the duration of the Exempt Assets Trust. The Exempt Assets Trust shall not be deemed a successor-in-interest of the Debtors for any purpose other than as specifically set forth herein or in the Exempt Assets Trust Declaration. The Exempt Assets Trust is intended to qualify as a “grantor trust” for federal income tax purposes with the holders of Exempt Assets Trust Interests treated as grantors and owners of the Exempt Assets Trust. As soon as practicable after the Effective Date, the Exempt Assets Trustee shall value the assets of the Exempt Assets Trust based on the good faith determination of the Exempt Assets Trustee. The valuation shall be used consistently by all parties for all federal income tax purposes. The Bankruptcy Court shall resolve any dispute regarding such valuation.

(g) Termination of Exempt Assets Trust. The Exempt Assets Trust will terminate as soon as practicable, but not later than the fifth (5th) anniversary of the Effective Date; provided, however, that, within six months prior to the fifth (5th) anniversary of the Effective Date (or such later date as may be permitted by order of the Bankruptcy Court as described in this Section 7.6(g)), the Bankruptcy Court, upon motion by a party in interest, may extend the term of the Exempt Assets Trust for a finite period, if such an extension is necessary to liquidate the assets of the Exempt Assets Trust or for other good cause. Multiple extensions of the termination of the Exempt Assets Trust may be obtained so long as Bankruptcy Court approval is obtained prior to the expiration of each extended term and the Exempt Assets Trustee receives an opinion of counsel or a favorable ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the Exempt Assets Trust as a grantor trust for federal income tax purposes.

(h) Certain Obligations of the Debtors. The Reorganized Debtors shall cooperate in a commercially reasonable manner and in good faith with the Exempt Assets Trustee to assure that the Exempt Assets Trust has full and complete access to the Debtors’ books and records in connection with its duty to prosecute the Transferred Causes of Action and object to Unsecured Claims and Convenience Claims. Without limiting the generality of the foregoing, the Reorganized Debtors shall (i) preserve all records and documents (including any electronic records and documents) related to the Transferred Causes of Action until the earlier of (y) the fifth (5th) anniversary of the Effective Date, and (z) thirty (30) days after receiving notice of a sale of all or substantially all of the Assets of the Reorganized Debtors or Membership Interests in the Reorganized Debtors, or if actions related to the Transferred Causes of Action remain pending as of the earlier of such dates, until the Exempt Assets Trustee notifies the Reorganized Debtors that such records are no longer required to be preserved; and (ii) provide

the Exempt Assets Trustee with reasonable access to review and copy such records and documents.

(i) Certain Exculpations. The Exempt Assets Trustee, together with its agents and representatives, are exculpated pursuant to the Plan by all Persons, holders of Claims and other parties in interest, from any and all Causes of Action, arising out of the discharge of the powers and duties conferred upon the Exempt Assets Trustee by the Exempt Assets Trust Declaration, the Plan, any Final Order of the Bankruptcy Court entered pursuant to or in the furtherance of the Plan, or applicable law, except solely for actions or omissions arising out of the Exempt Assets Trustee's gross negligence or willful misconduct.

(j) Wood Claims. Notwithstanding anything else in the Plan to the contrary, the Exempt Assets Trustee shall not settle any Transferred Causes of Action against Scott Y. Wood or any of his non-Debtor affiliates without approval of the Bankruptcy Court pursuant to Bankruptcy Rule 9019. All rights to object to such 9019 settlement on any grounds (including, without limitation, the right to object to any provisions granting Mr. Wood the right to control settlement decisions about the Nabors Litigation) are preserved notwithstanding anything else contained in this Plan.

## **7.7 Corporate Action.**

Pursuant to section 1142 of the Bankruptcy Code, and any applicable provision of the business corporation law of the State of Texas or any other applicable state, the entry of the Confirmation Order shall constitute authorization for the Debtors and the Reorganized Debtors to take or cause to be taken all corporate and limited liability company actions necessary or appropriate to consummate and implement the provisions of the Plan prior to, on and after the Effective Date, and all such actions taken or caused to be taken shall be deemed to have been authorized and approved by the Bankruptcy Court, including, without limitation: (a) the appointment of the ERG Plan Trustee as the sole director of the Reorganized Debtors, (b) the appointment of officers in accordance with the Plan; (c) the adoption of the Reorganized Debtor Operating Agreements, which shall supersede the prior articles of organization, limited liability company agreements, by-laws or other organizational documents, as appropriate, of each of the Reorganized Debtors; and (d) actions as are necessary or appropriate to close any of the Other Debtors' Chapter 11 Cases. All such actions shall be deemed to have occurred and shall be in effect pursuant to applicable non-bankruptcy law and the Bankruptcy Code, without any requirement of further action by the members, stockholders, directors or managers of the Debtors, the Reorganized Debtors or any of their Affiliates. On the Effective Date, the appropriate officers, directors, members and managers of the Debtors and the Reorganized Debtors are authorized and directed to execute, deliver, record, or take such other action as is necessary to give effect to or otherwise implement the agreements, documents and instruments contemplated by this Plan in the name of and on behalf of the Debtors and/or the Reorganized Debtors, as applicable, including the recordation of evidence of the cancellation, nullification, and voiding of the ERG Interests Royalty Interest effected by Section 7.4(a)(iv) of the Plan.

## 7.8 Management and Officers.

The Reorganized Debtors shall be managed in accordance with the Reorganized Debtor Operating Agreements which shall, among other things, provide that the Reorganized Debtors shall engage for the purposes of operating the California Assets one or more contract operators acceptable to the Exit Facility Lenders and the Prepetition Lenders. The ERG Plan Trust shall be the sole member of Intermediate Holdings. Further, the ERG Plan Trustee shall serve as the sole manager/director of each Reorganized Debtor. Without limiting the generality of the foregoing, subject to applicable law, from and after the Effective Date, the officers of the Reorganized Debtors shall be selected and appointed, in accordance with, and pursuant to, the provisions of applicable law and the Reorganized Debtor Operating Agreements. Nothing in this Plan shall constitute an assumption by the Debtors or the Reorganized Debtors of any Claims of or obligations to the Debtors' employees, except as provided in Section 7.16. Nothing in this Section 7.8 shall release any Cause of Action of any Estate.

## 7.9 Exit Facility.

On the Effective Date, the Reorganized Debtors shall enter into the Exit Facility, which shall provide, subject to the terms set forth in the Exit Facility Loan Documents, loans to the Reorganized Debtors for general corporate purposes in a principal amount of up to \$150 million, which amount shall include (1) any amounts then due under the DIP Facility; (2) the Confirmation Payment; and (3) the Exempt Assets Trust Advance to the Exempt Assets Trust as required by Section 7.6(d) of the Plan.

## 7.10 Certain Indemnification Obligations.

(a) Indemnification Claims. The entry of the Confirmation Order shall constitute an objection by the Prepetition Agent to any Claim for indemnification arising from conduct that occurred prior to the Petition Date and asserted on account of any provision contained in any Prepetition Indemnification Agreement (an "Indemnification Claim"). The Prepetition Agent shall prosecute its objections to any such Indemnification Claim for the benefit of the Estates and shall have exclusive standing to do so; provided that any settlement of an Indemnification Claim shall be subject to Bankruptcy Court approval pursuant to Bankruptcy Rule 9019. To the extent any such Indemnification Claim is Allowed, such Indemnification Claim shall constitute an Allowed Unsecured Claim and shall be treated as a Class 5 – Unsecured Claim for purposes of the Plan. Without limiting the foregoing, none of the Reorganized Debtors or their successors or assigns shall be liable for any Indemnification Claim which arose from, in whole or in part, conduct which occurred prior to the Effective Date.

(b) Termination of Certain Interests. Without limiting any other provision of the Plan, upon the entry of the Confirmation Order, the Assets shall revert in the applicable Reorganized Debtors free and clear of any Lien, restriction, covenant or interest constituting or relating to a Claim for indemnification unless the Prepetition Indemnification Agreement containing such Lien, restriction, covenant or interest is expressly assumed pursuant to the Plan. The Prepetition Agent shall have the sole standing on behalf of itself and, as estate representative pursuant to section 1123(b)(3), on behalf of the Debtors' estates to resolve any disputes concerning this provision and any such disputes shall be resolved by the Bankruptcy Court.



### **7.11 Transferred Causes of Action.**

Nothing in the Plan or otherwise shall impair, modify, impede, compromise or limit the ability of the Exempt Assets Trust to investigate and prosecute the Transferred Causes of Action and all such Causes of Action are expressly preserved notwithstanding the occurrence of the Effective Date. **No Person may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any Transferred Cause of Action against them as any indication that the Exempt Assets Trust will not pursue any and all available Causes of Action against them. The Exempt Assets Trust expressly reserves all rights to prosecute any and all Transferred Causes of Action against any Person at any time and for any reason. The Exempt Assets Trust reserves all Transferred 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) or laches, shall apply to such Causes of Action upon or after the confirmation or consummation of the Plan.**

### **7.12 Other Causes of Action.**

Except for the Transferred Causes of Action, the Released Causes of Action, and as otherwise specifically provided in the Plan or in a Final Order of the Bankruptcy Court, all Causes of Action of the Debtors and their Estates shall, upon the occurrence of the Effective Date, be vested in the Reorganized Debtors. Except as otherwise provided in the Plan, the rights of the Reorganized Debtors to commence, prosecute or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date.

**No Person may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any Cause of Action against them as any indication that the Reorganized Debtors will not pursue any and all available Causes of Action against them. The Reorganized Debtors expressly reserve all rights to prosecute any and all Causes of Action (other than the Transferred Causes of Action and Released Causes of Action) against any Person. Other than Causes of Action expressly waived, relinquished, exculpated, released, compromised or settled in the Plan or a Final Order, the Debtors expressly reserve all Causes of Action (other than the Transferred 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) or laches, shall apply to such Causes of Action upon or after the confirmation or consummation of the Plan.**

### **7.13 Sources of Cash for Plan Distributions.**

All Cash necessary for the Reorganized Debtors to make Plan Distributions in the Reorganized Debtors' capacities as Disbursing Agent in respect of Allowed Administrative Claims, Allowed Cure Claims, Allowed Priority Claims, Allowed Tax Claims, and Allowed Other Secured Claims shall be obtained from Cash on hand or from the Exit Facility. All Cash necessary for the ERG Plan Trustee to make payments and Plan Distributions in its capacity as Disbursing Agent to holders of ERG Plan Trust Beneficial Interests shall be obtained from ERG Plan Trust Property in accordance with the terms of the ERG Plan Trust Declaration; provided,

that, the Exit Facility may be used to fund the reasonable actual and necessary expenses of the ERG Plan Trustee in a manner to be described in the Exit Facility Documents. All Cash necessary for the Exempt Assets Trustee to make payments and Plan Distributions in its capacity as Disbursing Agent to holders of Exempt Assets Trust Beneficial Interests shall be obtained from the Exempt Assets Trust Property in accordance with the terms of the Exempt Assets Trust Declaration.

All liabilities and expenses accrued by the Reorganized Debtors on and after 12:00 a.m. Pacific Time on the Effective Date shall be the obligations of the Reorganized Debtors and enforceable in accordance with applicable law.

#### **7.14 Effect on Royalty Interests and Oil & Gas Leases.**

(a) Royalty Interests. Except with respect to the cancelation of the ERG Interests Royalty Interests, nothing in the Plan shall affect, modify, or impair the rights of any holder of a royalty interest in the production of the Assets which is otherwise valid, perfected, unavoidable and enforceable in accordance with applicable law to receive royalty or other payments which become due on and after the Effective Date. The Prepetition Agent shall have exclusive standing to prosecute in its sole and absolute discretion any and all Avoidance Actions relating to, on account of, or otherwise in respect of the RCPTX Royalty Interest and any transfer thereof and shall be designated the estate representative of the Debtors' estates under section 1123(b)(3) of the Bankruptcy Code for purposes of asserting such Avoidance Actions. Such Avoidance Actions shall not constitute Transferred Causes of Action and shall be preserved notwithstanding the confirmation of the Plan. Further, nothing in the Plan shall impair the rights of the Prepetition Agent to foreclose upon any Lien it may have in respect of the RCPTX Royalty Interest.

(b) Oil & Gas Leases. On the Effective Date, each Debtor's right, title and interest in and to all of such Debtor's oil & gas leases relating to the California Assets, including those oil & gas leases set forth on Schedule 3, shall revert in such Debtor as reorganized hereby on the terms and conditions set forth in the Plan, including as provided in Section 7.4 and Section 14.4 hereof.

#### **7.15 Restructuring Transactions.**

On or after the Confirmation Date, subject to the terms of the Exit Facility, the applicable Debtors or Reorganized Debtors may enter into such Restructuring Transactions and may take such actions as the Debtors or the Reorganized Debtors determine to be necessary or appropriate to effect a corporate restructuring of their respective businesses, to simplify the overall corporate structure of the Reorganized Debtors, or to preserve the value of any available net operating losses and other favorable tax attributes and/or to maximize the value of the Reorganized Debtors, in each case only to the extent consistent with the terms of the Plan and with the consent of the Prepetition Agent, the Prepetition Lenders, the Exit Facility Agent, and the Exit Facility Lenders. Such Restructuring Transactions may include one or more transfers, mergers, consolidations, conversions, restructurings (including the issuance of one or more series of Interests in one or more of the Reorganized Debtors), dispositions, liquidations or dissolutions,

as may be determined by the Debtors or the Reorganized Debtors to be necessary or appropriate. The actions to effect these transactions may include: (a) the execution and delivery of appropriate agreements or other documents of transfer, merger, consolidation, conversion, restructuring, disposition, liquidation or dissolution containing terms that are consistent with the terms of the Plan and that satisfy the applicable requirements of applicable state law and such other terms to which the applicable Persons may agree; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption or delegation of any asset, property, right, liability, duty or obligation on terms consistent with the terms of the Plan and having such other terms to which the applicable Persons may agree; (c) the filing of appropriate certificates or articles of merger, consolidation, conversion, dissolution or change in corporate form pursuant to applicable state law; and (d) the taking of all other actions that the applicable Persons determine to be necessary or appropriate, including making filings or recordings that may be required by applicable state law in connection with such transactions. Notwithstanding anything else set forth in this Section 7.15 or elsewhere in the Plan, none of the Debtors or the Reorganized Debtors shall cause ERG Operating to cease to be the operator of record of any Assets as to which it is operator of record as of the Confirmation Date without the consent of the Prepetition Agent, the Prepetition Lenders, the Exit Facility Agent, and the Exit Facility Lenders.

#### **7.16 Obligations to Insure and Indemnify Managers, Officers and Employees.**

(a) Any and all directors and officers or similar liability and fiduciary (including ERISA) insurance or tail policies in existence as of the Effective Date shall be reinstated and continued in accordance with their terms and, to the extent applicable, shall be deemed assumed or assumed and assigned by the applicable Debtor or Reorganized Debtor, pursuant to section 365 of the Bankruptcy Code and the Plan. Each insurance carrier under such policies shall continue to honor and administer the policies with respect to the Reorganized Debtors in the same manner and according to the same terms and practices applicable to the Debtors prior to the Effective Date.

(b) The obligations of each Debtor or Reorganized Debtor to indemnify any person who is serving or has served as one of its managers, officers or employees as of the Petition Date by reason of such person's prior or future service in such a capacity or as a manager, officer or employee of another corporation, partnership or other legal entity, to the extent provided in the applicable certificates of incorporation, by-laws or similar constituent documents, by statutory law or by written agreement, policies or procedures of or with such Debtor, will be deemed and treated as executory contracts that are assumed by the applicable Debtor or Reorganized Debtor pursuant to the Plan and section 365 of the Bankruptcy Code as of the Effective Date. Accordingly, such indemnification obligations will survive and be unaffected by entry of the Confirmation Order, irrespective of whether such indemnification is owed for an act or event occurring before or after the Petition Date.

(c) Notwithstanding anything else to the contrary contained in the Plan, including this Section 7.16, neither the Debtors nor Reorganized Debtors shall be liable for or assume in any manner any obligation to indemnify Scott Y. Wood, except to the extent such indemnification is paid for by any insurance available immediately prior to the Effective Date.

#### **7.17 Reinstatement and Continuation of Insurance Policies.**

From and after the Effective Date, each of the Debtors' insurance policies in existence immediately prior to the Effective Date shall be reinstated (or replaced by a like policy) and continued in accordance with its terms and shall, to the extent applicable, be deemed assumed by the applicable Reorganized Debtor pursuant to section 365 of the Bankruptcy Code.

### **7.18 Continuation of Bonding Facility.**

This section governs the treatment of all payment and performance bonds, indemnity bonds, performance bonds, and surety bonds ("Surety Bonds") issued by U.S. Specialty Insurance Company ("Surety") relating to the Debtors along with all agreements ancillary, securing or related to such Surety Bonds (collectively, such Surety Bonds and agreements, the "Surety Bonds and Agreements") in existence immediately prior to the Effective Date, which Surety Bonds and Agreements include without limitation, the bonds and agreements listed on Schedule 1 of the Plan (Assumed Executory Contracts and Unexpired Leases), the Payment and Indemnity Agreement dated June 5, 2009, executed by ERG Resources, L.L.C. (as supplemented, "Payment Agreement"), the Collateral Agreement and Receipt dated effective April 21, 2010, between ERG Resources, L.L.C. and IndemCo, LP, for the benefit of Surety ("Surety Collateral Agreement"), and the Abandonment Sinking Fund Agreement between ERG Resources, L.L.C. and Surety dated April 28, 2010 ("Sinking Fund Agreement").

Notwithstanding any other provision of the Plan or Confirmation Order, from and after the Effective Date: (a) all Surety Bonds and Agreements, along with all claims, rights and obligations under the Surety Bonds and Agreements, are reinstated and left unimpaired by the Plan, shall continue in full force and effect according to their terms and with respect to the applicable Reorganized Debtors, and are not discharged or released by the Plan or the Confirmation Order, and (b) Debtors and the Reorganized Debtors remain bound by and obligated to fully perform the Surety Bonds and Agreements and all obligations thereunder. The Surety Bonds and Agreements, as applicable, are assumed by the subject Debtors and Reorganized Debtors pursuant to section 365 of the Bankruptcy Code. The Cure Claim for the Surety Bonds and Agreements as of November 1, 2015 is: (i) \$150,529.34 in payments due, and (ii) \$95,000 in attorneys' fees and expenses incurred by Surety in connection with protecting and enforcing its rights under the Surety Bonds and Agreements, including during these Chapter 11 Cases. Such Cure Claim shall be paid in cash when due under the terms of the Surety Bonds and Agreements and, if not sooner due, on the Effective Date. Such Cure Claim does not include or bar Cure Claims or payment obligations arising or accruing after November 1, 2015 under the terms of the Surety Bonds and Agreements.

Surety holds a first priority and most senior lien and security interest, right, claim and interest (collectively, the "Surety Lien") in certain funds in the Surety's possession in the approximate amount of \$4.75 million (collectively, such funds and associated account, the "Surety Account"), which funds are subject to and maintained under the Surety Collateral Agreement, in connection with the Sinking Fund Agreement. Accordingly, notwithstanding any other provision of the Plan or Confirmation Order, none of the liens, security interests and claims of the DIP Agent, the DIP Lenders, the Pre-Petition Agent, the Pre-Petition Lenders, the Exit Facility Agent and the Exit Facility Lenders will prime, be superior to, or outrank any liens, security interests, claims and rights of Surety and Indemco, L.P. in the Surety Account. From and after the Effective Date: (i) Surety shall retain possession of the Surety Account to secure the indebtedness, obligations, and

liabilities under the Surety Bonds and Agreements; (ii) Surety shall retain the Surety Lien as a first and most senior priority lien and security interest in and to the Surety Account (including any future or further payments into the Surety Account); and (iii) Surety shall retain all other claims, rights, liens and security interests in or against any other property or collateral, none of which are impaired or discharged by the Plan or Confirmation Order.

For the avoidance of doubt, the Sinking Fund Agreement requires two remaining payments of \$125,000 each on November 1, 2015 and February 1, 2016. The Debtors and Reorganized Debtors acknowledge that the Sinking Fund Agreement permits Surety to increase the security required by Surety even though Surety has not done so yet; provided that the Surety shall not increase the required security until on or after the first anniversary of the Effective Date unless the Reorganized Debtors fail to make a payment when due or an “Event of Default” occurs under the Prepetition Facility or the Exit Facility.

#### **7.19 Rights in Respect of Prepetition Facility Claims Against Third Parties Unaffected.**

Notwithstanding anything else contained in the Plan, including any release or exculpation set forth herein, but subject to the terms of the Restructuring Support Agreement, the rights of the Prepetition Agent and the Prepetition Lenders under applicable law to enforce their respective rights under, in connection with or related to the Prepetition Loan Documents against non-Debtor parties shall be unaffected by the Plan, the Confirmation Order or the Amended and Restated Prepetition Loan Documents and nothing contained in or caused by the Plan, the Confirmation Order or the Amended and Restated Prepetition Loan Documents shall serve as a defense for or discharge or release of any non-Debtor parties or their assets, including the Wood Parties and RCPTX, in any action to enforce the rights of the Prepetition Agent or the Prepetition Lenders against such non-Debtor parties or assets held by non-Debtors parties. Without limiting the generality of the foregoing, the reinstatement of the Prepetition Loan Documents pursuant to the terms of the Amended and Restated Prepetition Loan Documents shall not (i) serve to cure any defaults under the Prepetition Loan Documents or otherwise as to any non-Debtor parties or their assets (including the Wood Parties and RCPTX); or (ii) impair, limit, or otherwise modify any guaranties, mortgages, security documents, or other documents executed by Scott Y. Wood relating to or otherwise in respect of the Prepetition Loan Documents, but subject to the Restructuring Support Agreement. Further, the enforcement of any Liens granted under the Prepetition Loan Documents against any non-Debtor parties shall not entitle the Reorganized Debtors to assert any defense against the Prepetition Agent or the Prepetition Lenders under Section 726 of the California Code of Civil Procedure or any similar statute.

### **ARTICLE VIII**

#### **DISBURSING AGENT**

Upon the occurrence of the Effective Date, (a) the Reorganized Debtors shall be appointed to serve as the Disbursing Agent with respect to all Administrative Claims, Tax Claims, Priority Claims, Cure Claims, and Other Secured Claims; (b) the Exempt Assets Trustee shall be appointed to serve as the Disbursing Agent with respect to Convenience Claims and holders of Exempt Assets Trust Beneficial Interests; and (c) the ERG Plan Trustee shall be appointed to serve as the Disbursing Agent with respect to holders of ERG Plan Trust Beneficial

Interests. Each of the Reorganized Debtors, the Exempt Assets Trustee, and the ERG Plan Trustee, in their respective capacities as a Disbursing Agent, shall have all powers, rights, protections, obligations, and duties afforded or imposed upon the Disbursing Agent under the Plan, but solely with respect to those Claims and Membership Interests on account of which the applicable Disbursing Agent is designated to make Plan Distributions under the Plan and Plan Documents, provided that the ERG Plan Trustee shall not agree or consent to the reclassification of any Claim as an Unsecured Claim without either the written consent of the Exempt Assets Trustee or approval of the Bankruptcy Court under Bankruptcy Rule 9019. Notwithstanding the foregoing, the Exempt Assets Trustee, in its capacity as the Disbursing Agent with respect to the holders of Exempt Assets Trust Beneficial Interests, shall have sole and exclusive authority to object to Unsecured Claims and Convenience Claims and the ERG Plan Trustee, in its capacity as Disbursing Agent with respect to holders of ERG Plan Trust Beneficial Interests, shall be bound by (i) the outcome of any such objection, whether achieved by litigation, settlement, or otherwise; and (ii) the consequences of any failure to file such an objection. Nothing herein shall affect the rights of the Prepetition Agent to object to a Potentially Secured Materialmen's Lien Claim or exercise any of its rights under Section 7.10.

### **8.1 Powers and Duties of the Disbursing Agent.**

Pursuant to the terms and provisions of the Plan, each respective Disbursing Agent shall be empowered and directed to (a) take all steps and execute all instruments and documents necessary to make Plan Distributions on account of Allowed Claims and Membership Interests; (b) comply with the Plan and the obligations thereunder; (c) employ, retain, or replace professionals to represent it with respect to its responsibilities; (d) object to Claims and Membership Interests as specified in the Plan, and prosecute such objections; (e) compromise and settle any issue or dispute regarding the amount, validity, priority, treatment, or Allowance of any Claim or Membership Interest as provided in the Plan; (f) make annual and other periodic reports regarding the status of distributions under the Plan to the holders of Allowed Claims and Membership Interests that are outstanding at such time, with such reports to be made available upon request to the holder of any Contested Claim or Membership Interest; and (g) exercise such other powers as may be vested in the Disbursing Agent pursuant to the Plan, the Plan Documents or order of the Bankruptcy Court.

### **8.2 Exculpation of Disbursing Agent.**

**Except as otherwise provided in this Section 8.2, the Disbursing Agent, together with its officers, directors, employees, agents, and representatives, are exculpated pursuant to the Plan by all Persons, holders of Claims and all other parties in interest, from any and all Causes of Action arising out of the discharge of the powers and duties conferred upon the Disbursing Agent (and each of its respective paying agents), by the Plan, any Final Order of the Bankruptcy Court entered pursuant to or in the furtherance of the Plan, or applicable law, except solely for actions or omissions arising out of the Disbursing Agent's willful misconduct or gross negligence. No holder of a Claim or representative thereof, shall have or pursue any Cause of Action (a) against the Disbursing Agent or its respective officers, directors, employees, agents, and representatives for making Plan Distributions in accordance with the Plan; or (b) against any holder of a Claim for receiving or retaining Plan Distributions as provided for by the Plan. Nothing contained in this Section 8.2 shall**

**preclude or impair any holder of an Allowed Claim from bringing an action in the Bankruptcy Court against the Disbursing Agent to compel the making of Plan Distributions contemplated by the Plan on account of such Claim.**

## **ARTICLE IX**

### **PLAN DISTRIBUTION PROVISIONS**

#### **9.1 Plan Distributions.**

The Disbursing Agent shall make all Plan Distributions in accordance with the terms of the Plan. In the event a Plan Distribution shall be payable on a day other than a Business Day, such Plan Distribution shall instead be paid on the immediately succeeding Business Day, but shall be deemed to have been made on the date otherwise due. For federal income tax purposes, except to the extent a Plan Distribution is made in connection with reinstatement of an obligation pursuant to section 1124 of the Bankruptcy Code (including the Prepetition Facility Claims), a Plan Distribution will be allocated first to the principal amount of a Claim and then, to the extent the Plan Distribution exceeds the principal amount of the Claim, to the portion of the Claim representing accrued but unpaid interest.

#### **9.2 Address for Delivery of Plan Distributions/Unclaimed Plan Distributions.**

Subject to Bankruptcy Rule 9010, any Plan Distribution or delivery to a holder of an Allowed Claim shall be made at the address of such holder as set forth on the latest date of the following documents: (a) the Schedules; (b) the proof of Claim filed by such holder; (c) any notice of assignment filed with the Bankruptcy Court with respect to such Claim pursuant to Bankruptcy Rule 3001(e); and (d) any notice served on the Disbursing Agent by such holder giving details of a change of address. If any Plan Distribution is returned to the Disbursing Agent as undeliverable, no Plan Distributions shall be made to such holder unless the Disbursing Agent is notified of such holder's then current address within ninety (90) days after such Plan Distribution was returned. After such date, if such notice was not provided, a holder shall have forfeited its right to receive such Plan Distribution and the undeliverable distribution shall automatically revert without restriction to the Disbursing Agent for distribution or other application in accordance with the provision of the Plan.

#### **9.3 Distribution Record Date**

Except as otherwise provided in a Final Order of the Bankruptcy Court, the transferees of any Claims that are transferred pursuant to Bankruptcy Rule 3001 on or prior to the Distribution Record Date will be treated as the holders of such Claims for all purposes, notwithstanding that any period provided by Bankruptcy Rule 3001 for objecting to such transfer has not expired by the Distribution Record Date. The Disbursing Agent will have no obligation to recognize the transfer or sale of any Claim that occurs after 4:00 p.m. Central Time on the Distribution Record Date and will be entitled for all purposes herein to recognize and make distributions only to those holders who are holders of such Claims as of the close of business on the Distribution Record Date.

**9.4 De Minimis Plan Distributions.**

No Plan Distribution of less than twenty-five dollars (\$25.00) shall be made by the Disbursing Agent to the holder of any Claim unless a request therefor is made in writing to the Disbursing Agent within ninety (90) days of the Effective Date. Each Plan Distribution of less than twenty-five dollars (\$25.00) as to which no request is made as provided in this Section 9.4 shall automatically revert without restriction to the Disbursing Agent on the ninety-first (91st) day after the Effective Date for distribution or other application in accordance with the terms of the Plan.

**9.5 Time Bar to Cash Payments.**

Checks issued in respect of Allowed Claims shall be null and void if not negotiated within one hundred and eighty (180) days after the date of issuance thereof. Requests for reissuance of any voided check shall be made directly to the Disbursing Agent by the Person to whom such check was originally issued. Any claim in respect of such a voided check shall be made within thirty days (30) days after the date upon which such check was deemed void. If no request is made as provided in the preceding sentence, any claims in respect of such voided check shall be discharged and forever barred and such unclaimed Plan Distribution shall revert without restriction to the Disbursing Agent for distribution or other application in accordance with the terms of the Plan.

**9.6 Manner of Payment Under the Plan.**

Unless the Person receiving a Plan Distribution agrees otherwise, any Plan Distribution to be made in Cash under the Plan shall be made, at the election of the Disbursing Agent, by check drawn on a domestic bank or by wire transfer from a domestic bank. Cash payments to foreign creditors may, in addition to the foregoing, be made at the option of the Disbursing Agent in such funds and by such means as are necessary or customary in a particular foreign jurisdiction.

**9.7 Fractional Plan Distributions.**

Notwithstanding anything to the contrary contained herein, no Plan Distributions of fractions of dollars will be made. Fractions of dollars shall be rounded to the nearest whole unit (with any amount equal to or less than one-half dollar to be rounded down).

**9.8 Special Provisions Regarding Insured Claims.**

Distributions under the Plan to each holder of an Allowed Insured Claim shall be in accordance with the treatment provided under the Plan for the Class in which such Allowed Insured Claim is classified, but solely to the extent that such Allowed Insured Claim is not satisfied from proceeds payable to the holder thereof under any pertinent insurance policies and applicable law. Nothing in this Section 9.8 shall constitute a waiver of any Claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action or liabilities that any Person may hold against any other Person, including the Debtors' insurance carriers.



## **9.9 Surrender and Cancellation of Instruments.**

As a condition to receiving any Plan Distribution, on or before the Plan Distribution Date, the holder of an Allowed Claim evidenced by a certificate, instrument or note other than any such certificate, instrument or note that is being reinstated or being left unimpaired under the Plan, shall (a) surrender such certificate, instrument or note representing such Claim, except to the extent assumed by the Debtors; and (b) execute and deliver such other documents as may be necessary to effectuate the Plan. Such certificate, instrument or note shall thereafter be canceled and extinguished. The Disbursing Agent shall have the right to withhold any Plan Distribution to be made to or on behalf of any holder of such Claims unless and until (1) such certificates, instruments or notes are surrendered; or (2) any relevant holder provides to the Disbursing Agent an affidavit of loss or such other documents as may be required by the Disbursing Agent together with an appropriate indemnity in the customary form. Any such holder who fails to surrender such certificates, instruments or notes or otherwise fails to deliver an affidavit of loss and indemnity prior to the second anniversary of the Effective Date, shall be deemed to have forfeited its Claims and shall not participate in any Plan Distribution. All property which would otherwise have been distributable on account of such forfeited Claims shall revert to the Disbursing Agent.

## **ARTICLE X**

### **PROCEDURES FOR RESOLVING AND TREATING CONTESTED CLAIMS**

#### **10.1 Objection Deadline.**

The applicable Disbursing Agent or any other Person with standing to object shall file objections to Claims and Membership Interests, if any, with the Bankruptcy Court as soon as practicable but in any event not later than (a) the date that is one hundred and eighty (180) days after the Effective Date; or (b) such later date as may be established by order of the Bankruptcy Court upon motion of the applicable Disbursing Agent or other Person with standing, provided that the Exempt Assets Trustee shall be permitted in his discretion to allow Unsecured Claims prior to the Objection Deadline. The applicable Disbursing Agent or other Person with standing shall serve any objection to a Claim upon the holder of the Claim to which the applicable Disbursing Agent or other Person with standing objects. For the avoidance of doubt, except as provided in Section 4.1(c) and Section 7.10 of the Plan, the Exempt Assets Trustee shall have the sole and exclusive authority to object to Unsecured Claims and Convenience Claims. Further, the Exempt Assets Trustee shall retain all of his rights under applicable law (if any) to intervene in any proceeding brought by the Prepetition Agent pursuant to Section 4.1(c) and Section 7.10 of the Plan and the Prepetition Agent shall reserve all of its rights under applicable law to object to any such intervention.

#### **10.2 Tort Claims.**

After the Effective Date, at the Exempt Assets Trustee's option, any unliquidated Tort Claim (as to which a proof of Claim was timely filed) not resolved through Final Order of the Bankruptcy Court or as agreed to by the holder of such unliquidated Tort Claim and the Exempt Assets Trustee, shall be (a) determined and liquidated in the administrative or judicial tribunal(s)

in which it is pending on the Effective Date or, if no action was pending on the Effective Date, in any administrative or judicial tribunal of appropriate jurisdiction; (b) estimated, pursuant to section 502(c) of the Bankruptcy Code, in a proceeding before the United States District Court for the Northern District of Texas; or (c) resolved through an alternative dispute resolution program approved by the Bankruptcy Court after notice and a hearing. The Exempt Assets Trustee may exercise any of the above options by service upon the holder of the applicable Tort Claim of a notice informing the holder of such Tort Claim that the Exempt Assets Trustee has exercised such option. Upon the Exempt Assets Trustee's service of such notice, the injunction set forth in Section 14.7 and the automatic stay imposed by operation of section 362 of the Bankruptcy Code, shall be deemed modified, without the necessity for further Bankruptcy Court approval, solely to the extent necessary to allow the parties to determine or liquidate the Tort Claim in the applicable administrative or judicial tribunal(s). Notwithstanding the foregoing, at all times prior to or after the Effective Date, the Bankruptcy Court shall retain jurisdiction relating to Tort Claims, including the Exempt Assets Trustee's rights to have such Claims determined and/or liquidated in the Bankruptcy Court (or the United States District Court having jurisdiction over the Chapter 11 Cases) pursuant to section 157(b)(2)(B) of title 28 of the United States Code, as may be applicable. Any Tort Claim determined and liquidated pursuant to a judgment obtained in accordance with this Section 10.2 and applicable non-bankruptcy law that is no longer appealable or subject to review shall be deemed an Allowed Claim, as applicable, in Class 5 in such liquidated amount, provided that only the amount of such Allowed Claim that is less than or equal to the Debtors' self-insured retention or deductible in connection with any applicable insurance policy and that cannot be satisfied from proceeds of insurance payable to the holder of such Allowed Claim under the Debtors' insurance policies shall be treated as an Allowed Claim for the purposes of distributions under the Plan. In the event a Tort Claim is determined and liquidated pursuant to a judgment or order that is obtained in accordance with this Section 10.2 and is no longer appealable or subject to review, and applicable non-bankruptcy law provides for no recovery against the applicable Debtor, such Tort Claim shall be deemed expunged without the necessity for further Bankruptcy Court approval upon the Exempt Assets Trustee's service of a copy of such judgment or order upon the holder of such Tort Claim. Nothing contained in this Section 10.2 shall constitute or be deemed a waiver of any Claim, right or Cause of Action that a Debtor or the Exempt Assets Trust may have against any Person in connection with or arising out of any Tort Claim, including but not limited to any rights under section 157(b)(5) of title 28 of the United States Code. All Claims, demands, rights, defenses and Causes of Action that the Debtors or the Exempt Assets Trust may have against any Person in connection with or arising out of any Tort Claim are expressly retained and preserved.

### **10.3 Prosecution of Contested Claims.**

Subject to other provisions of the Plan governing authority and standing to object to Claims and Membership Interests, the applicable Disbursing Agent may object to the Allowance of Claims and Membership Interests filed with the Bankruptcy Court with respect to which liability is disputed in whole or in part. All objections that are filed and prosecuted as provided herein shall be litigated to Final Order or compromised and settled in accordance with Section 10.6 of the Plan.

#### **10.4 Authority to Amend Schedules.**

After the Effective Date, without approval of the Bankruptcy Court, (a) the Reorganized Debtors will have authority to amend the Schedules with respect to any Other Secured Claim, Tax Claim or Priority Claim; provided that the Reorganized Debtors shall not be permitted to amend the Schedules to add any Unsecured Claims without the consent of the Exempt Assets Trustee or approval of the Bankruptcy Court and (b) the Exempt Assets Trustee will have the authority to amend the Schedules with respect to any Unsecured Claim or Convenience Claim. The Disbursing Agent will have authority to make distributions based on such amended Schedules without approval of the Bankruptcy Court. If any such amendment to the Schedules reduces the amount of a Claim or changes the nature or priority of a Claim, the holder of such Claim shall be provided with notice of such amendment and such holder shall have 21 days to file an objection to such amendment with the Bankruptcy Court. If no such objection is filed, the Disbursing Agent may proceed with distributions based on such amended Schedules without approval of the Bankruptcy Court.

#### **10.5 Enforcement of Bar Date Order.**

In accordance with the Bar Date Order, any Person that (i) failed to file a proof of Claim by the applicable Bar Date or (ii) failed to file a proof of Claim by the applicable Bar Date and was not otherwise permitted to file a proof of Claim after the applicable Bar Date by a Final Order of the Bankruptcy Court is and shall be barred, estopped and enjoined from asserting any Claim (i) in an amount that exceeds the amount, if any, that is identified in the Schedules on behalf of such Person as undisputed, noncontingent and liquidated; or (ii) of a different nature or a different classification than any Claim identified in the Schedules on behalf of such Person.

#### **10.6 Claims Settlement.**

Notwithstanding any requirements that may be imposed pursuant to Bankruptcy Rule 9019, from and after the Effective Date, the Disbursing Agent shall have authority to settle or compromise all Claims and Causes of Action, subject to the other provisions of the Plan, without further review or approval of the Bankruptcy Court.

#### **10.7 Entitlement to Plan Distributions upon Allowance.**

Notwithstanding any other provision of the Plan, no Plan Distribution shall be made with respect to any Claim to the extent it is a Contested Claim, unless and until such Contested Claim becomes an Allowed Claim. When a Claim that is not an Allowed Claim as of the Effective Date becomes an Allowed Claim (regardless of when) the holder of such Allowed Claim shall thereupon become entitled to receive the Plan Distributions in respect of such Claim, the same as though such Claim had been an Allowed Claim on the Effective Date.

## ARTICLE XI

### **CONDITIONS PRECEDENT TO CONFIRMATION OF THE PLAN AND THE OCCURRENCE OF THE EFFECTIVE DATE**

#### **11.1 Conditions Precedent to Confirmation.**

The following are conditions precedent to confirmation of the Plan:

(a) The clerk of the Bankruptcy Court shall have entered an order or orders in form and substance satisfactory to Debtors, the Exit Facility Agent and the Prepetition Agent (i) approving the Disclosure Statement as containing “adequate information” pursuant to section 1125 of the Bankruptcy Code; (ii) authorizing the solicitation of votes with respect to the Plan; (iii) determining that all votes are binding and have been properly tabulated as acceptances or rejections of the Plan; (iv) confirming and giving effect to the terms and provisions of the Plan; (v) determining that all applicable tests, standards and burdens in connection with the Plan have been duly satisfied and met by the Debtors and the Plan; (vi) approving the Plan Documents; and (vii) authorizing the Debtors to (A) execute, enter into, and deliver the Plan Documents and (B) execute, implement, and take all actions otherwise necessary or appropriate to give effect to the transactions and transfers of Assets contemplated by the Plan and the Plan Documents;

(b) The ERG Plan Trust Declaration and all Plan and Confirmation Order provisions governing the ERG Plan Trust Declaration are in a form reasonably satisfactory to the Debtors, the Exit Facility Agent and the Prepetition Agent; and

(c) The Exempt Assets Trust Declaration and all Plan and Confirmation Order provisions governing the Exempt Assets Trust Declaration are in a form and substance reasonably satisfactory to the Debtors and the Committee, provided that the Exempt Assets Trust Declaration and all Plan and Confirmation Order provisions governing the Exempt Assets Trust Declaration shall include all provisions required by the Bankruptcy Court to make the Plan confirmable.

#### **11.2 Conditions Precedent to the Effective Date.**

The following are conditions precedent to the Effective Date, the satisfaction of which shall be determined in the discretion of the Prepetition Agent and the Exit Facility Agent:

(a) The Confirmation Order shall have been entered by the clerk of the Bankruptcy Court, in a form acceptable to the Debtors, the Prepetition Agent and the Exit Facility Agent, and the Confirmation Order shall be in full force and effect and not subject to any stay or injunction;

(b) The provisions of the Confirmation Order governing the Exempt Assets Trust Declaration are in a form and substance reasonably satisfactory to the Debtors and the Committee; provided that the Confirmation Order shall include all provisions required by the Bankruptcy Court to make the Plan confirmable;

(c) All necessary consents, authorizations and approvals shall have been given for the transfers of property and the payments provided for or contemplated by the Plan, including satisfaction or waiver of all conditions to the obligations of the Debtors under the Plan and the Plan Documents;

(d) All conditions to the effectiveness of the Amended and Restated Prepetition Loan Documents other than the occurrence of the Effective Date have been satisfied or waived by the Prepetition Agent in accordance with the terms of the Amended and Restated Prepetition Loan Documents;

(e) The Exit Facility shall have been approved by the Exit Facility Lenders and all conditions to the availability of the Exit Facility other than the occurrence of the Effective Date have been satisfied or waived in accordance with the terms of the Exit Facility Credit Agreement;

(f) The Plan Documents, in each case in a form and substance acceptable to the Debtors, the Prepetition Agent and the Exit Facility Agent, shall be executed by the relevant parties thereto;

(g) All conditions to the effectiveness of the ERG Plan Trust Declaration other than the occurrence of the Effective Date shall have been satisfied or waived;

(h) All conditions to the effectiveness of the Exempt Assets Trust Declaration other than the occurrence of the Effective Date shall have been satisfied or waived;

(i) The Debtors shall have sufficient funds or the ability to obtain sufficient funds to make all the payments required to be made under the Plan as of the Effective Date; and

(j) All of the conditions in this Section 11.2(a) through (i) shall have occurred or otherwise be satisfied on or prior to November 30, 2015.

### **11.3 Waiver of Conditions.**

The Debtors, with the consent of the Prepetition Agent and the Exit Facility Agent, may, collectively, waive any one or more of the conditions set forth in Sections 11.1 or 11.2 in a writing executed by each of them without notice or order of the Bankruptcy Court and without notice to any parties in interest; provided that the conditions precedent set forth in Section 11.1(c) and Section 11.2(b) shall not be waived without the consent of the Committee.

### **11.4 Effect of Non-Occurrence of the Effective Date.**

If the Effective Date shall not occur on or prior to November 30, 2015, the Plan shall be null and void and nothing contained in the Plan shall: (a) constitute a waiver or release of any Claims against the Debtors; (b) prejudice in any manner the rights of the Debtors, including any right to seek a further extension of the exclusivity periods under section 1121(d) of the Bankruptcy Code to the extent such rights have not otherwise been terminated; or (c) constitute an admission, acknowledgement, offer or undertaking by the Reorganized Debtors or any other party in interest.

## ARTICLE XII

### **TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

#### **12.1 Assumption and Rejection of Executory Contracts and Unexpired Leases.**

(a) On the Effective Date, all executory contracts and unexpired leases of the Debtors shall be treated pursuant to the provisions of section 365 of the Bankruptcy Code, as follows:

(i) each contract and lease listed in the Schedule of Rejected Executory Contracts and Unexpired Leases, which schedule shall be in form and substance reasonably satisfactory to the Prepetition Agent and the Exit Facility Agent, shall be rejected; (ii) each contract and lease listed in the Schedule of Assumed Executory Contracts and Unexpired Leases, which schedule shall be in form and substance reasonably satisfactory to the Prepetition Agent and the Exit Facility Lenders, shall be assumed. The Debtors shall file the Schedule of Assumed Executory Contracts and Unexpired Leases and the Schedule of Rejected Executory Contracts and Unexpired Leases with the Plan Supplement. The Debtors shall use commercially reasonable good faith efforts to identify all executory contracts and unexpired leases subject to rejection in the Schedule of Rejected Executory Contracts and Unexpired Leases. If an executory contract or unexpired lease is omitted from the Schedule of Rejected Executory Contracts and Unexpired Leases and is not included in the Schedule of Assumed Executory Contracts and Unexpired Leases, such executory contract or unexpired lease shall, nonetheless be deemed rejected pursuant to the terms of this Article XII, except for any executory contract or unexpired lease that (i) has previously been assumed or rejected pursuant to order of the Bankruptcy Court; (ii) is the subject of a separate motion to assume or reject filed by the Debtors pursuant to section 365 of the Bankruptcy Code before the Confirmation Date; or (iii) is the subject of a dispute over the amount or manner of cure pursuant to Section 12.2 hereof and for which the Debtors make a motion to reject such contract or lease based upon the existence of such dispute filed at any time.

(b) Any non-Debtor counterparty to an agreement being assumed hereunder that disputes (i) the amount of any cure payments; (ii) the Reorganized Debtors' ability to provide adequate assurance of future performance; or (iii) any other matter pertaining to the assumption or assignment of such agreement must file with the Bankruptcy Court, and serve upon the Debtors, a written objection (an "Assumption Objection"), which objection shall set forth the basis for the dispute by no later than 14 days prior to the Confirmation Hearing. If a non-Debtor counterparty fails to file and serve an Assumption Objection, the non-Debtor counterparty shall be deemed to have waived any and all objections to the assumption of the relevant agreement as proposed by the Debtors, including the lack of any cure obligations.

(c) The Plan shall constitute a motion to assume or reject such executory contracts and unexpired leases set forth in Section 12.1(a), and the Debtors shall have no liability thereunder except as is specifically provided in the Plan. The Debtors reserve the right to amend, with the consent of the Prepetition Agent and the Exit Facility Agent, the Schedule of Rejected Executory Contracts and Unexpired Leases and the Schedule of Assumed Executory Contracts and Unexpired Leases on or prior to the Confirmation Date to delete any executory contract or unexpired lease therefrom or add any executory contract or unexpired lease thereto, in which event such executory contract(s) and unexpired lease(s) shall be deemed to be, respectively, assumed or rejected by the Debtors pursuant to this Article XII. The Debtors shall provide

notice of any amendments to the Schedule of Rejected Executory Contracts and Unexpired Leases or the Schedule of Assumed Executory Contracts and Unexpired Leases to (i) the Prepetition Agent and the Exit Facility Agent; and (ii) the non-Debtor counterparties to the executory contracts or unexpired lease affected thereby. The listing of a document on the Schedule of Rejected Executory Contracts and Unexpired Leases or the Schedule of Assumed Executory Contracts and Unexpired Leases shall not constitute an admission by the Debtors that such document is an executory contract or that the Debtors have any liability thereunder. Entry of the Confirmation Order by the clerk of the Bankruptcy Court shall constitute approval of the assumptions or rejections under this Section 12.1 pursuant to sections 365(a) and (b) of the Bankruptcy Code without further order of the Bankruptcy Court and a finding by the Bankruptcy Court that each such rejection or assumption is in the best interests of the Debtors and their respective Estates.

(d) Inclusion of a contract, lease or other agreement on the Schedule of Rejected Executory Contracts and Unexpired Leases shall constitute adequate and sufficient notice that (i) any Claims arising thereunder or related thereto shall be treated as Unsecured Claims under the Plan; and (ii) the Debtors are no longer bound by, or otherwise obligated to perform, any such obligations, transactions, or undertakings relating thereto or arising thereunder.

## **12.2 Cure Claims.**

To the extent that such Claims constitute monetary defaults, the Cure Claims associated with each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code: (1) by payment of the Cure Claim in Cash on or after the Effective Date; or (2) on such other terms as are agreed to by the parties to such Executory Contract or Unexpired Lease. Pursuant to section 365(b)(2)(D) of the Bankruptcy Code, no Cure Claim shall be allowed for a penalty rate or other form of default rate of interest. If there is an unresolved dispute regarding: (1) the amount of any Cure Claim; (2) the ability of the Reorganized Debtors or any assignee to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under the contract or lease to be assumed; or (3) any other matter pertaining to assumption of such contract or lease, the payment of any Cure Claim required by section 365(b)(1) of the Bankruptcy Code shall be made following the resolution of such dispute by the parties or the entry of a Final Order resolving the dispute and approving the assumption. For assumptions of Executory Contracts or Unexpired Leases between Debtors, the Reorganized Debtor assuming such contract may cure any monetary default (1) by treating such amount as either a direct or indirect contribution to capital or distribution (as appropriate) or (2) through an intercompany account balance in lieu of payment in cash. No sections or provisions of any Executory Contract or Unexpired Lease that purport to provide for additional payments, penalties, charges, rent acceleration or other financial accommodations in favor of the non-debtor third party thereto shall have any force and effect, and such provisions constitute unenforceable anti-assignment provisions under section 365(f) of the Bankruptcy Code and are otherwise unenforceable under section 365(e) of the Bankruptcy Code and/or applicable case law. Any Cure Claims under each executory contract and unexpired lease to be assumed under this Plan shall be satisfied pursuant to section 365(b)(1) of the Bankruptcy Code: (a) by payment of the cure amount listed on the Schedule of Assumed Executory Contracts and Unexpired Leases in Cash on the Effective Date by the Disbursing Agent; or (b) on such other terms as agreed to by the Disbursing Agent and the non-Debtor

counterparty to such executory contract or unexpired lease. In the event a non-Debtor counterparty files an Assumption Objection, the cure payments required by section 365(b)(1) of the Bankruptcy Code to such non-Debtor counterparty shall be made following the entry of a Final Order resolving the dispute and approving assumption or assignment, as applicable.

### **12.3 Claims Arising from Rejection, Expiration or Termination.**

Claims created by the rejection of executory contracts and unexpired leases or the expiration or termination of any executory contract or unexpired lease prior to the Confirmation Date shall be Unsecured Claims and must be filed with the Bankruptcy Court and served on the Debtors or, if after the Effective Date, the Reorganized Debtors, the Exempt Assets Trustee, and the ERG Plan Trustee: (a) in the case of an executory contract or unexpired lease rejected by the Debtors prior to the Confirmation Date, in accordance with the order rejecting such executory contract or unexpired lease; or (b) in the case of an executory contract or unexpired lease that (i) was terminated or expired by its terms prior to the Confirmation Date; or (ii) is rejected pursuant to the Plan, no later than thirty (30) days after the Confirmation Date. Any such Claims for which a proof of claim is not filed and served by the deadlines set forth herein will be forever barred from assertion and shall not be enforceable against the Debtors or their Estates. Except as otherwise ordered by the Bankruptcy Court, all such Claims that are timely filed as provided herein shall be treated as Unsecured Claims under the Plan subject to objection by the Disbursing Agent.

## **ARTICLE XIII**

### **RETENTION OF JURISDICTION**

#### **13.1 Scope of Retention of Jurisdiction.**

Pursuant to sections 105(a) and 1142 of the Bankruptcy Code, the Bankruptcy Court shall retain and shall have exclusive jurisdiction over any matter (a) arising under the Bankruptcy Code; or (b) arising in or related to the Chapter 11 Cases or the Plan, including the following:

(i) To hear and determine any and all motions or applications pending on the Confirmation Date or thereafter brought in accordance with Article XII hereof for the assumption, assumption and assignment or rejection of executory contracts or unexpired leases to which the Debtors are a party or with respect to which the Debtors may be liable, and to hear and determine any and all Claims and any related disputes (including the exercise or enforcement of setoff or recoupment rights, or rights against any third party or the property of any third party resulting therefrom or from the expiration, termination or liquidation of any executory contract or unexpired lease);

(ii) To determine any and all adversary proceedings, applications, motions, and contested or litigated matters that may be pending on the Effective Date or that, pursuant to the Plan, may be instituted by the Prepetition Agent, the Exit Facility Agent, the Disbursing Agent, the ERG Plan Trustee, the Exempt Assets Trustee or the Reorganized Debtors, as applicable, after the Effective Date;



(iii) To hear and determine any objections to the Allowance of Claims, whether filed, asserted, or made before or after the Effective Date, including to hear and determine any objections to the classification of any Claim and to allow, disallow or estimate any Contested Claim in whole or in part;

(iv) To hear and determine any objections to an Indemnification Claim and to determine the validity and extent of any indemnification obligations of the Debtors related to an Indemnification Claim, including under the terms of any prepetition settlement agreement;

(v) To issue such orders in aid of execution of the Plan to the extent authorized or contemplated by section 1142 of the Bankruptcy Code;

(vi) To consider any modifications of the Plan, remedy any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including the Confirmation Order;

(vii) To hear and determine all Fee Applications and applications for allowances of compensation and reimbursement of any other fees and expenses authorized to be paid or reimbursed under the Plan or the Bankruptcy Code;

(viii) To hear and determine all controversies, suits, and disputes that may relate to, impact upon, or arise in connection with the Chapter 11 Cases, the Plan, the Plan Documents or their interpretation, implementation, enforcement, or consummation, including any disputes that may arise under Section 7.10;

(ix) To hear and determine all controversies, suits, and disputes that may relate to, impact upon, or arise in connection with the Confirmation Order (and all exhibits to the Plan and the Plan Supplement) or its interpretation, implementation, enforcement, or consummation;

(x) To the extent that Bankruptcy Court approval is required, to consider and act on the compromise and settlement of any Claim or Cause of Action by, on behalf of, or against the Estates;

(xi) To determine such other matters that may be set forth in the Plan, or the Confirmation Order, or that may arise in connection with the Plan, or the Confirmation Order;

(xii) To hear and determine matters concerning state, local, or federal taxes, fines, or penalties, or additions to taxes or other obligations for which the Debtors, the ERG Plan Trustee, the Exempt Assets Trustee, or the Disbursing Agent may be liable, directly or indirectly, in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

(xiii) To hear and determine all controversies, suits, and disputes that may relate to, impact upon, or arise in connection with any setoff and/or recoupment rights of the Debtors or any Person under the Plan;

(xiv) To hear and determine all controversies, suits, and disputes that may relate to, impact upon, or arise in connection with Causes of Action of the Debtors (including Avoidance Actions and Transferred Causes of Action) commenced by the Debtors, the Exempt Assets Trustee, or the Disbursing Agent, or any third parties, as applicable, before or after the Effective Date;

(xv) To enter an order or final decree closing the Chapter 11 Cases;

(xvi) To issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Person with consummation, implementation or enforcement of the Plan or the Confirmation Order; and

(xvii) To hear and determine any other matters related hereto and not inconsistent with chapter 11 of the Bankruptcy Code.

### **13.2 Failure of the Bankruptcy Court to Exercise Jurisdiction.**

If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under, or related to the Chapter 11 Cases, including the matters set forth in Section 13.1 of the Plan, the provisions of this Article XIII shall have no effect upon and shall not control, prohibit, or limit the exercise of jurisdiction by any other court having jurisdiction with respect to such matter.

## **ARTICLE XIV**

### **SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS**

#### **14.1 Satisfaction of Claims.**

Except as set forth in Section 4.1(b), (1) the rights afforded in the Plan and the treatment of all Claims herein shall be in exchange for and in complete satisfaction, discharge, and release of all Claims of any nature whatsoever against the Debtors, the Estates or any of their respective Assets and (2) on the Effective Date, all Claims against the Debtors and the Estates shall be satisfied, discharged and released in full. Except as set forth in Section 4.1(b), all Persons shall be precluded and forever barred from asserting against the Reorganized Debtors, the Debtors, the Estates and any of their Assets any Claims or Causes of Action arising from any event, occurrence, condition, thing, act, omission, transaction, or other activity of any kind or nature that occurred or came into existence prior to the Effective Date, whether or not the facts of or legal bases therefor were known or existed prior to the Effective Date. The provisions of this Section 14.1 shall not apply to the Prepetition Facility Claims, and the Prepetition Facility Claims shall not be discharged under the Plan or the Confirmation Order.

#### **14.2 Release of Liens.**

Except as set forth in Section 4.1(b), or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim,

satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, Liens against any property of the Estates 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 Debtors and their successors and assigns. For the avoidance of doubt, and without limiting the generality of the foregoing, the following Liens shall be unaffected by the Plan and Confirmation Order: (i) the Prepetition Facility Liens; and (ii) the DIP Liens, each of which are legal, valid, enforceable, first-priority, non-avoidable, and not subject to contest, avoidance, attack, offset, re-characterization, subordination or other challenge of any kind or nature under the Bankruptcy Code, applicable non-bankruptcy law or otherwise, provided, that, upon the occurrence of the Effective Date, (i) the Prepetition Liens and the DIP Liens in the Exempt Assets only shall be waived and released by operation of Section 4 of the Approved Settlement and Transaction Support Agreement in accordance with the terms thereof; and (ii) the Exit Facility Liens shall attach to the Reorganized Debtors' Assets in accordance with the terms of the Exit Facility Loan Documents.

### **14.3 Exculpation.**

**From and after the Effective Date, the Exculpated Parties will neither have nor incur any liability to any Person, and no holder of a Claim or Membership Interest, no other party in interest and none of their respective Representatives, shall have any right of action against any Exculpated Party, for any act taken or omitted to be taken in connection with, related to, arising out of, or in any manner in contemplation of the Chapter 11 Cases, or the events leading thereto, or the consideration, formulation, preparation, dissemination, implementation, confirmation or consummation of the Chapter 11 Cases, any document or agreement related thereto, the Plan, the exhibits to the Plan and the Plan Supplement, the Disclosure Statement, any transaction proposed in connection with or in contemplation of the Chapter 11 Cases or the events leading thereto, or any contract, instrument, release or other agreement or document created or entered into or any other act taken or omitted to be taken, in connection therewith; provided, however, that the foregoing provisions will have no effect on: (a) the liability of any Person that would otherwise result from the failure to perform or pay any obligation or liability under the Plan or any contract, instrument, release or other agreement or document to be entered into or delivered in connection with the Plan or (b) the liability of any Person that would otherwise result from any such act or omission to the extent that such act or omission is determined in a Final Order to have constituted gross negligence or willful misconduct.**

### **14.4 Discharge of Claims and Termination of Membership Interests.**

Pursuant to section 1141(d) of the Bankruptcy Code, and, except as set forth in Section 4.1(b) or in any contract, instrument, or other agreement or document created pursuant to the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of Claims, Membership Interests, and Causes of Action of any nature whatsoever, including any interest accrued from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Membership Interests, including demands, liabilities, and Causes of

Action that arose before the Effective Date, any contingent or non contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Membership Interests subject to the Effective Date occurring. The provisions of this Section 14.4 shall not apply to the Prepetition Facility Claims.

#### **14.5 Release by Debtors.**

**As of the Effective Date, for good and valuable consideration, the Debtors shall and shall be deemed to release and forever waive and discharge any and all Lambert Road Avoidance Actions. In addition, the Debtors and the Reorganized Debtors, on behalf of themselves and their Affiliates, the Estates and their respective successors, assigns and any and all entities who may purport to claim by, through, for or because of them will forever release, waive and discharge all Claims that they have, or had against any Released Party except with respect to any obligations arising under or in connection with the Plan, including in connection with any agreement, document, or contract entered into or delivered in connection with the Plan; provided that the foregoing provisions will have no effect on the liability of any Person that would otherwise result from any act or omission since the Petition Date to the extent that such act or omission is determined in a Final Order to have constituted willful misconduct.**

#### **14.6 General Release by Holders of Claims and Membership Interests**

As of the Effective Date, in consideration for the obligations of the Debtors and the Reorganized Debtors under the Plan and the Cash, contracts, instruments, releases, agreements or documents to be entered into or delivered in connection with the Plan, except for the Prepetition Agent and the Prepetition Lenders, each holder of a Claim or Membership Interest (solely in its capacity as such) that votes in favor of the Plan to the fullest extent permissible under law, will be deemed to forever release, waive and discharge all Claims in any way relating to a Debtor, the Chapter 11 Cases, the Estates, the Plan, the exhibits to the Plan and the Plan Supplement, the Disclosure Statement, or the Prepetition Facility that such Person has, had or may have against any Released Party (which release will be in addition to the discharge of Claims provided herein and under the Confirmation Order and the Bankruptcy Code), except with respect to any obligations arising under or in connection with the Plan or any act, event, injury, omission, transaction, or agreement arising after the Effective Date (other than Claims relating to such act, event, injury, omission, transaction or agreement first arising or occurring prior to the Effective Date); provided, however, that the foregoing provisions will have no effect on the liability of any Person that would otherwise result from any such act or omission to the extent that such act or omission is determined in a Final Order to have constituted willful misconduct.

#### **14.7 Injunctions.**

On the Effective Date, all Persons who have been, are, or may be holders of Claims against or Membership Interests in the Debtors shall be permanently enjoined from taking any of the following actions against or affecting the Reorganized Debtors, the Debtors, the Estates, the Assets, the Disbursing Agent, the ERG Plan Trust, the Exempt Assets Trust, or any of their

respective current or former members, directors, managers, officers, employees, agents, trustees, professionals or successors and assigns (other than Scott Y. Wood and his non-Debtor Affiliates) or their respective assets and property with respect to such Claims or Membership Interests (other than actions brought to enforce any rights or obligations under the Plan and other than with respect to the Prepetition Facility Claims):

(i) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including all suits, actions, and proceedings that are pending as of the Effective Date, which must be withdrawn or dismissed with prejudice);

(ii) enforcing, levying, attaching, collecting or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree or order;

(iii) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance; and

(iv) asserting any setoff, right of subrogation or recoupment of any kind; provided, that any defenses, offsets or counterclaims which the Debtors may have or assert in respect of the above referenced Claims are fully preserved in accordance with Section 15.11.

In addition, the Confirmation Order will enjoin permanently the commencement or prosecution by any Person, whether directly, derivatively or otherwise, of any Claims released pursuant to the Plan. Nothing contained in this Section 14.7 shall affect the rights of (i) the Exempt Assets Trust from asserting, prosecuting, or enforcing any judgment obtained in respect of any Transferred Cause of Action; or (ii) the Prepetition Agent and the Prepetition Lenders from asserting, prosecuting, or enforcing against any non-Debtor party any rights in respect of or relating to the Prepetition Loan Documents, including rights against Scott Y. Wood in respect of any and all associated guaranties and mortgages, subject to the terms of the Restructuring Support Agreement.

## ARTICLE XV

### MISCELLANEOUS PROVISIONS

#### **15.1 Payment of Statutory Fees.**

All fees payable pursuant to section 1930 of title 28 of the United States Code, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid by the Debtors on or before the Effective Date.

#### **15.2 Dissolution of Creditors' Committee**

On the Effective Date, the Committee shall dissolve, and the members thereof shall be released and discharged from all duties and obligations arising from or related to their membership, provided, however, that (1) the Committee shall continue in existence and its

Professionals shall continue to be retained with respect to any applications for allowance of compensation and reimbursement of expenses pending on the Effective Date or filed and served after the Effective Date pursuant to the terms of the Plan and (2) the Exempt Assets Trust shall be deemed the successor to the Committee with respect to any motions seeking to enforce the Plan and the transactions contemplated hereunder or the Confirmation Order and any pending appeals and related proceedings. The Professionals retained by the Committee and the respective members thereof shall not be entitled to assert any Fee Claims for any services rendered or expenses incurred on behalf of the Committee after the Effective Date, except for fees for time spent and expenses incurred: (1) in connection with any applications for allowance of compensation and reimbursement of expenses pending on the Effective Date or filed and served after the Effective Date pursuant to the terms of the Plan; or (2) in connection with any appeal pending as of the Effective Date, including any appeal of the Confirmation Order.

### **15.3 Notices.**

Any notices, requests, and demands required or permitted to be provided under the Plan, in order to be effective, shall be in writing (including, without express or implied limitation, by facsimile transmission), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

If to the Debtors:

Jones Day  
717 Texas Avenue, Suite 3300  
Houston, Texas 77002  
Attn: Tom A. Howley

With a copy to:

ERG Resources, LLC  
Three Allen Center  
333 Clay Street, Suite 4400  
Houston, TX 77002  
Attn: Kelly Plato

If to the Prepetition Agent or the DIP Agent:

CLMG Corp.  
7195 Dallas Parkway  
Plano, TX 75024  
Attn: James Erwin

With a copy to:

White & Case LLP  
555 South Flower Street, Suite 2700  
Los Angeles, CA 90071

Attn: Roberto J. Kampfner

If to the Committee:

Pachulski Stang Ziehl & Jones LLP  
780 Third Avenue, 34th Floor  
New York, NY 10017  
Attn: Robert J. Feinstein

If to the Exempt Assets Trustee:

Jason R. Searcy  
SEARCY & SEARCY P.C.  
446 Forest Square  
P.O. Box 3929  
Longview, TX 75606

With a copy to:

Pachulski Stang Ziehl & Jones LLP  
780 Third Avenue, 34th Floor  
New York, NY 10017  
Attn: Robert J. Feinstein

#### **15.4 Headings.**

The headings used in the Plan are inserted for convenience only, and neither constitute a portion of the Plan nor in any manner affect the construction of the provisions of the Plan.

#### **15.5 Governing Law.**

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and the Bankruptcy Rules), the laws of the State of New York, without giving effect to the conflicts of laws principles thereof, shall govern the construction of the Plan and any agreements, documents, and instruments executed in connection with the Plan, except as otherwise expressly provided in such instruments, agreements or documents.

#### **15.6 Expedited Determination.**

The Reorganized Debtors are hereby authorized to file a request for expedited determination under section 505(b) of the Bankruptcy Code for all tax returns filed with respect to the Debtors.

#### **15.7 Exemption from Transfer Taxes.**

Pursuant to section 1146 of the Bankruptcy Code, the issuance, transfer, or exchange of notes or equity securities under the Plan, the creation of any mortgage, deed of trust, Lien, pledge or other security interest, the making or assignment of any lease or sublease, or the making or

delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan, shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax.

### **15.8 Notice of Effective Date and Relevant Dates.**

Promptly upon the occurrence of the Effective Date, the Debtors shall publish as directed by the Bankruptcy Court and serve on all known parties in interest and holders of Claims and Membership Interests, notice of the occurrence of the Effective Date and all relevant deadlines and dates under the Plan, including, but not limited to, the deadline for filing notice of Administrative Claims, and the deadline for filing rejection damage Claims.

### **15.9 Interest and Attorneys' Fees.**

Interest accrued after the Petition Date will accrue and be paid on Claims only to the extent specifically provided for in this Plan, the Confirmation Order or as otherwise required by the Bankruptcy Court or by applicable law. No award or reimbursement of attorneys' fees or related expenses or disbursements shall be allowed on, or in connection with, any Claim, except as set forth in the Plan or as ordered by the Bankruptcy Court.

### **15.10 Modification of the Plan.**

As provided in section 1127 of the Bankruptcy Code, modification of the Plan may be proposed in writing by the Debtors, with the consent of the Prepetition Agent, the Prepetition Lenders, the Exit Facility Agent, and the Exit Facility Lenders, at any time before confirmation, provided that the Plan, as modified, meets the requirements of sections 1122 and 1123 of the Bankruptcy Code, and the Debtors shall have complied with section 1125 of the Bankruptcy Code; provided, further that any provisions of the Plan relating to the Exempt Assets or the Exempt Assets Trust shall not be modified without the consent of the Committee, except to the extent required to make the Plan confirmable. The Debtors, with the consent of the Prepetition Agent and the Exit Facility Agent, may modify the Plan at any time after confirmation and before substantial consummation, provided that the Plan, as modified, meets the requirements of sections 1122 and 1123 of the Bankruptcy Code and the Bankruptcy Court, after notice and a hearing, confirms the Plan as modified, under section 1129 of the Bankruptcy Code, and the circumstances warrant such modifications; provided, further that any provisions of the Plan relating to the Exempt Assets or the Exempt Assets Trust shall not be modified without the consent of the Committee, except to the extent required to make the Plan confirmable. A holder of a Claim that has accepted the Plan shall be deemed to have accepted such Plan as modified if the proposed alteration, amendment or modification does not materially and adversely change the treatment of the Claim of such holder.

### **15.11 Setoff Rights.**

In the event that the Debtors have a Claim of any nature whatsoever against the holder of an Administrative Claim, Tax Claim, Priority Claim, Other Secured Claim, or Unsecured Claim, in each case against the Debtors accruing prior to the Effective Date, then the Disbursing Agent may, but is not required to, set off against the Claim (and any payments or other Plan Distributions to be made in respect of such Claim hereunder) against the Debtors' claim against



such holder, subject to the provisions of sections 553, 556 and 560 of the Bankruptcy Code. Neither the failure to set off nor the Allowance of any Claim under the Plan shall constitute a waiver or release of any Claims that the Debtors may have against the holder of any Claim.

#### **15.12 Compliance with Tax Requirements.**

In connection with the Plan, the Debtors, the Disbursing Agent, the ERG Plan Trustee and the Exempt Assets Trustee, as applicable, shall comply with all withholding and reporting requirements imposed by federal, state, local, and foreign taxing authorities and all Plan Distributions hereunder shall be subject to such withholding and reporting requirements. Notwithstanding the above, each holder of an Allowed Claim that is to receive a Plan Distribution shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any government unit, including income, withholding and other tax obligations, on account of such Plan Distribution. The Disbursing Agent has the right, but not the obligation, to not make a Plan Distribution until such holder has made arrangements satisfactory to the Disbursing Agent for payment of any such tax obligations.

#### **15.13 Binding Effect.**

The Plan shall be binding upon the Debtors, the holders of all Claims and all parties in interest and their respective successors and assigns. To the extent any provision of the Disclosure Statement or any other solicitation document may be inconsistent with the terms of the Plan, the terms of the Plan shall be binding and conclusive.

#### **15.14 Severability.**

**IN THE EVENT THE BANKRUPTCY COURT DETERMINES THAT ANY PROVISION OF THE PLAN IS UNENFORCEABLE EITHER ON ITS FACE OR AS APPLIED TO ANY CLAIM OR TRANSACTION, THE DEBTORS MAY MODIFY THE PLAN IN ACCORDANCE WITH SECTION 15.10 SO THAT SUCH PROVISION SHALL NOT BE APPLICABLE TO THE HOLDER OF ANY SUCH CLAIM OR TRANSACTION; PROVIDED, THAT ANY PROVISIONS OF THE PLAN RELATING TO THE EXEMPT ASSETS OR THE EXEMPT ASSETS TRUST SHALL NOT BE MODIFIED WITHOUT THE CONSENT OF THE COMMITTEE, EXCEPT TO THE EXTENT REQUIRED TO MAKE THE PLAN CONFIRMABLE. SUCH A DETERMINATION OF UNENFORCEABILITY SHALL NOT (A) LIMIT OR AFFECT THE ENFORCEABILITY AND OPERATIVE EFFECT OF ANY OTHER PROVISION OF THE PLAN; OR (B) REQUIRE THE RESOLICITATION OF ANY ACCEPTANCE OR REJECTION OF THE PLAN.**

#### **15.15 No Admissions.**

**AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND OTHER CAUSES OF ACTION OR THREATENED CAUSES OF ACTIONS, THIS PLAN SHALL NOT CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, STIPULATION, OR WAIVER, BUT RATHER AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS. THIS PLAN SHALL NOT BE ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING NOR SHALL IT BE CONSTRUED TO BE**

**CONCLUSIVE ADVICE ON THE TAX, SECURITIES, AND OTHER LEGAL EFFECTS  
OF THE PLAN AS TO HOLDERS OF CLAIMS AGAINST THE DEBTORS AND  
DEBTORS IN POSSESSION IN THE CHAPTER 11 CASES.**

[Signature Page to Follow]

Dated: October 21, 2015

Respectfully submitted,

ERG INTERMEDIATE HOLDINGS, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ERG RESOURCES, L.L.C.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ERG INTERESTS, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ERG OPERATING COMPANY, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

WEST CAT CANYON, L.L.C.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

WHITE & CASE LLP

By: /s/ Roberto J. Kampfner

Craig H. Averch, State Bar No. 01451020  
Roberto J. Kampfner, admitted *pro hac vice*  
633 West Fifth Street, Suite 1900  
Los Angeles, CA 90071  
Telephone: (213) 620-7700  
Facsimile: (213) 452-2329  
caverch@whitecase.com  
rkampfner@whitecase.com

—and—

Thomas E Lauria, State Bar No. 11998025  
Southeast Financial Center, Suite 4900  
200 South Biscayne Boulevard  
Miami, FL 33131  
Telephone: (305) 371-2700  
Facsimile: (305) 358-5744  
tlauria@whitecase.com

*Attorneys for CLMG Corp., in its capacity as  
the Prepetition Agent*

**EXHIBIT A**

**GLOSSARY OF DEFINED TERMS**

1. “Administrative Claim” means a Claim incurred by the Debtors (or their Estates) after the Petition Date and before the Effective Date for a cost or expense of administration in the Chapter 11 Cases entitled to priority under sections 503(b) and 507(a)(1) of the Bankruptcy Code, including Fee Claims and the DIP Facility Claims.
2. “Affiliate” means, with respect to any Person, all Persons that would fall within the definition assigned to such term in section 101(2) of the Bankruptcy Code, if such Person was a debtor in a case under the Bankruptcy Code.
3. “Allowance” means the process by which a Claim may become Allowed.
4. “Allowed,” when used
  - (a) with respect to any Claim, except for a Claim that is an Administrative Claim, means such Claim to the extent it is not a Contested Claim or a Disallowed Claim; and
  - (b) with respect to an Administrative Claim, means such Administrative Claim to the extent it has become fixed in amount and priority pursuant to the procedures set forth in the Plan.
5. “Amended and Restated Prepetition Loan Documents” means the Prepetition Loan Documents as amended and restated, with such amendment and restatement made effective as of the Effective Date.
6. “Approved Settlement and Transaction Support Agreement” means the Settlement and Transaction Support Agreement by and among the Prepetition Agent, the DIP Agent, the Prepetition Lenders, and the DIP Lender; and the Committee dated as of August 6, 2015 and approved by the Bankruptcy Court on August 26, 2015.
7. “Assets” means, all of the Debtors’ right, title and interest of any nature in property of any kind, wherever located, as specified in section 541 of the Bankruptcy Code.
8. “Assumption Objection” has the meaning set forth in Section 12.1(b) of the Plan.
9. “Avoidance Actions” means all Causes of Action of the Estates that arise under chapter 5 of the Bankruptcy Code.
10. “Bankruptcy Code” means title 11 of the United States Code, 11 U.S.C. §§ 101 et seq., as applicable to the Chapter 11 Cases.
11. “Bankruptcy Court” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or such other court having jurisdiction over the Chapter 11 Cases.

12. “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure, as prescribed by the United States Supreme Court pursuant to section 2075 of title 28 of the United States Code and as applicable to the Chapter 11 Cases.
13. “Bar Date” means the applicable bar date by which a proof of Claim or request for payment of Administrative Claim must be or must have been filed, as established by an order of the Bankruptcy Court, including the Bar Date Order and the Confirmation Order.
14. “Bar Date Order” means the Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof [Docket No. 179].
15. “Business Day” means any day other than a Saturday, a Sunday or any other day on which commercial banks are required or authorized to close for business in Dallas, Texas.
16. “California Assets” means all assets of the Debtors, wherever located, relating to the Debtors’ operations in the State of California, including the “Mortgaged Properties” as such term is defined in the California Mortgage.
17. “California Mortgage” means the Mortgage, Deed of Trust, Assignment, Security Agreement, Fixture Filing and Financing Statement from ERG Resources to Lawrence C. Adams, Trustee, for the benefit of the Prepetition Agent, dated January 24, 2013 and recorded in the Official Records of the County of Santa Barbara, California as record 2013-0006360.
18. “Cash” means legal tender of the United States of America.
19. “Cat Canyon” means West Cat Canyon, L.L.C.
20. “Causes of Action” means all claims, rights, actions, causes of action, liabilities, obligations, suits, debts, remedies, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages or judgments, whether known or unknown, liquidated or unliquidated, fixed or contingent, matured or unmatured, foreseen or unforeseen, asserted or unasserted, arising in law, equity or otherwise. For the avoidance of doubt, Avoidance Actions constitute Causes of Action.
21. “Chapter 11 Cases” means the chapter 11 cases of the Debtors jointly administered before the Bankruptcy Court under lead case 15-31858-HDH.
22. “Claim” means (a) any right to payment, whether or not such right is known or unknown, reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (b) any right to an equitable remedy for breach of performance if such breach gives rise to a right of payment, whether or not such right to an equitable remedy is known or unknown, reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured. For avoidance of doubt, “Claim” includes a right to payment, or equitable relief that gives rise to a right to payment, that has or has not accrued under non-bankruptcy law that is created by one or more acts or omissions of the Debtors if: (a) the act(s) or omission(s) occurred before or at the time of the Effective Date; (b) the act(s) or omission(s) may be sufficient to establish liability when injuries and/or damages are manifested; or (c) at the time of or prior to the Effective Date, the Debtors have received one or more demands for payment for injuries or damages arising from such acts or omissions.

23. “Class A ERG Plan Trust Beneficial Interests” means those certain class A beneficial interests issued in the ERG Plan Trust in connection with, and subject to, the Plan, the Confirmation Order, and the ERG Plan Trust Declaration.
24. “Class B ERG Plan Trust Beneficial Interests” means those certain class B beneficial interests issued in the ERG Plan Trust in connection with, and subject to, the Plan, the Confirmation Order, and the ERG Plan Trust Declaration.
25. “Committee” means the Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases.
26. “Confirmation Date” means the date of entry of the Confirmation Order.
27. “Confirmation Hearing” means the hearing before the Bankruptcy Court to consider confirmation of the Plan.
28. “Confirmation Order” means the order entered by the Bankruptcy Court confirming the Plan, as amended or modified pursuant to the terms of the Plan or the Confirmation Order.
29. “Confirmation Payment” shall mean a \$700,000 payment in Cash to be made to R. Kelly Plato on the Effective Date from the Exit Facility in lieu of any payments to Mr. Plato under the Employee Order.
30. “Contested” when used with respect to a Claim, means such Claim (a) to the extent it is listed in the Schedules as disputed, contingent, or unliquidated, in whole or in part, and as to which no proof of claim has been filed; (b) if it is listed in the Schedules as undisputed, liquidated, and not contingent and as to which a proof of claim has been filed with the Bankruptcy Court, to the extent (i) the proof of claim amount exceeds the amount indicated in the Schedules; or (ii) the proof of claim priority differs from the priority set forth in the Schedules, in each case as to which an objection was filed on or before the Objection Deadline, unless and to the extent allowed in amount and/or priority by a Final Order of the Bankruptcy Court; (c) if it is not listed in the Schedules or was listed in the Schedules as disputed, contingent or unliquidated, in whole or in part, but as to which a proof of claim has been filed with the Bankruptcy Court, in each case as to which an objection was filed on or before the Objection Deadline, unless and to the extent allowed in amount and/or priority by a Final Order of the Bankruptcy Court; or (d) as to which an objection has been filed on or before the Effective Date; provided, that a Claim that is fixed in amount and priority pursuant to the Plan or by Final Order on or before the Effective Date shall not be a Contested Claim.
31. “Convenience Claim” means a Claim Allowed in an amount of no more than \$5,000.
32. “Cure Claims” means the amount under each executory contract and unexpired lease to be assumed under this Plan that must be paid pursuant to section 365(b)(1) of the Bankruptcy Code.
33. “Debtors” means Cat Canyon, Intermediate Holdings, ERG Interests, ERG Operating, and ERG Resources.

34. “Debtors in Possession” means the Debtors, in their capacities as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

35. “DIP Agent” means CLMG Corp. in its capacity as Administrative Agent and Collateral Agent under the DIP Credit Agreement.

36. “DIP Credit Agreement” means the Senior Secured Superpriority Debtor-In-Possession Credit Agreement by and among ERG Resources, the DIP Agent, and the DIP Lender as approved by the Bankruptcy Court on a final basis on June 15, 2015 and from time to time amended.

37. “DIP Facility” means the credit facility established pursuant to the terms of the DIP Credit Agreement.

38. “DIP Facility Claims” means the claims of the DIP Agent and the DIP Lender against the Debtors arising under or otherwise in respect of the DIP Facility.

39. “DIP Lender” means LNV Corporation in its capacity as Lender under the DIP Credit Agreement and any other Person or entity that becomes party to the DIP Credit Agreement as a Lender thereunder.

40. “DIP Liens” means the Liens securing the Debtors’ obligations in respect of the DIP Facility as described in the Final Order Pursuant to Sections 361, 362, 363 and 364 of the Bankruptcy Code and Rule 4001 of the Federal Rules of Bankruptcy Procedure Authorizing the Debtors to (i) Use Cash Collateral of the Pre-Petition Secured Parties, (ii) Obtain Postpetition Financing and (iii) Provide Adequate Protection to the Pre-Petition Secured Parties [Docket No. 282].

41. “Disallowed” when used with respect to a Claim, means a Claim, or such portion of a Claim, that has been disallowed by a Final Order.

42. “Distribution Record Date” means the close of business on the Confirmation Date.

43. “Disbursing Agent” means, (i) with respect to the ERG Plan Trust Beneficial Interests, the ERG Plan Trustee; (ii) with respect to Convenience Claims and the holders of Exempt Assets Trust Beneficial Interests, the Exempt Assets Trustee; and (iii) with respect to all other Claims and Membership Interests, the Reorganized Debtors.

44. “Disclosure Statement” means the disclosure statement filed with respect to the Plan, as it may be amended, supplemented, or otherwise modified from time to time, and the exhibits and schedules thereto.

45. “Effective Date” means a date selected by the Debtors which shall be a Business Day that is no later than five (5) Business Days after all of the conditions specified in Section 11.2 have been satisfied or waived (to the extent waivable).

46. “Employee Order” means the Order (A) Approving Payment of Key Employee Incentives, (B) Approving Severance Program and (C) Granting Certain Related Relief [Docket No. 332].



47. “ERG Interests” means ERG Interests, LLC.
48. “ERG Interests Royalty Interest” means any and all royalty interests in respect of the California Assets conveyed to ERG Interests, including the overriding royalty interest recorded in the Official Records of the County of Santa Barbara, California as record 2014-0007615.
49. “ERG Plan Trust” means the trust created pursuant to Section 7.5 of the Plan, the Confirmation Order, and the ERG Plan Trust Declaration.
50. “ERG Plan Trust Beneficial Interests” shall mean the beneficial interests, however classified, issued in the ERG Plan Trust in connection with, and subject to, the Plan, the Confirmation Order, and the ERG Plan Trust Declaration.
51. “ERG Plan Trust Declaration” means the declaration of trust to be entered into by the Debtors and the ERG Plan Trustee on the Effective Date. The ERG Plan Trust Declaration shall be in substantially the form filed with the Bankruptcy Court as a Plan Document.
52. “ERG Plan Trust Property” means all of the assets held at any time by the ERG Plan Trust, including the Membership Interests in Reorganized Intermediate Holdings and any proceeds thereof and any dividends and distributions paid on account thereof.
53. “ERG Plan Trustee” means the Person appointed to serve as the trustee of the ERG Plan Trust and any successor trustee.
54. “ERG Operating” means ERG Operating Company, LLC.
55. “ERG Resources” means ERG Resources, L.L.C.
56. “ERG Sharing Amount” means the lesser of (a) 0.5 percent (0.5%) of the amount payable to the Prepetition Agent on account of the Prepetition Facility Claims from the proceeds of the direct or indirect sale of the California Assets; and (b) \$500,000. For the avoidance of doubt, the ERG Sharing Amount shall be distributed to the ERG Plan Trust only upon the direct or indirect sale of the California Assets.
57. “Estates” means the estates of the Debtors created by section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Cases.
58. “Exculpated Parties” means, collectively and individually, the Released Parties, the Debtors and Reorganized Debtors, any employees or members of the Debtors who were employed by or were members of the Debtors prior to the Petition Date, and any Disbursing Agent (solely in such capacity); provided that the Exculpated Parties shall not include Scott Y. Wood or any of his non-Debtor Affiliates, including CTS Properties, Ltd.
59. “Executory Contract or Unexpired Lease” means a prepetition contract or lease to which a Debtor is a party that is subject to assumption, assumption and assignment or rejection under section 365 of the Bankruptcy Code and includes any modifications, amendments, addenda or supplements thereto or restatements thereof.

60. “Exempt Assets” means (a) the “Exempt Assets” as such term is defined in the Approved Settlement and Transaction Support Agreement; (b) the Membership Interests in ERG Holdings, LLC; and (c) the Class A ERG Plan Trust Beneficial Interests.

61. “Exempt Assets Trust” means the trust created pursuant to Section 7.6 of the Plan, the Confirmation Order, and the Exempt Assets Trust Declaration.

62. “Exempt Assets Trust Advance” means an advance by the Exit Facility Lender on the Effective Date in the amount of \$1,000,000 from the Exit Facility into the Exempt Assets Trust for purposes of liquidating the Exempt Assets and otherwise administering the Exempt Assets Trust as provided in the Approved Settlement and Transaction Support Agreement.

63. “Exempt Assets Trust Beneficial Interests” shall means the beneficial interests issued in the Exempt Assets Trust in connection with, and subject to, the Plan, the Confirmation Order, and the Exempt Assets Trust Declaration.

64. “Exempt Assets Trust Declaration” means the declaration of trust to be entered into by the Debtors and the Exempt Assets Trustee on the Effective Date. The Exempt Assets Trust Declaration shall be in substantially the form filed with the Bankruptcy Court as a Plan Document.

65. “Exempt Assets Trust Property” means all of the assets held at any time by the Exempt Assets Trust, including (a) the Exempt Assets and any proceeds thereof and (b) the Exempt Assets Trust Advance.

66. “Exempt Assets Trustee” means Jason Searcy and any successor Exempt Assets Trustee.

67. “Exit Facility” means the credit facility established pursuant to the terms of the Exit Facility Credit Agreement secured by the Exit Facility Lien and having availability of up to \$150 million.

68. “Exit Facility Agent” means CLMG Corporation, in its capacity as administrative agent and collateral agent under the Exit Facility.

69. “Exit Facility Claims” means all claims of the Exit Facility Agent and the Exit Facility Lenders against the Reorganized Debtors arising in respect of the Exit Facility Loan Documents.

70. “Exit Facility Collateral” means all of the assets of the Reorganized Debtors.

71. “Exit Facility Credit Agreement” means the credit agreement in connection with the Exit Facility.

72. “Exit Facility Lenders” means the lenders from time to time party to the Exit Facility Credit Agreement and any other Person that becomes a party to the Exit Facility Credit Agreement as a Lender thereunder.

73. “Exit Facility Lien” means a first priority, exclusive, fully enforceable and perfected Lien in and to the Exit Facility Collateral to be granted by the Reorganized Debtors to the Exit

Facility Agent in connection with the Exit Facility, subject only to Liens permitted under the Exit Facility.

74. “Exit Facility Loan Documents” means the Exit Facility Credit Agreement and any security agreements, financing statements, mortgages, deeds of trust and other instruments and documents executed in connection therewith.

75. “Exit Facility ORRI” means the 3% overriding royalty interest to be granted to the Exit Facility Agent, for the benefit of the Exit Facility Lenders, on the Effective Date.

76. “Fee Application” means an application of a Professional Person for Allowance of a Fee Claim.

77. “Fee Claim” means a Claim of a Professional Person.

78. “Final DIP Order” means the Final Order Pursuant to Sections 361, 362, 363 and 364 of the Bankruptcy Code and Rule 4001 of the Federal Rules of Bankruptcy Procedure Authorizing the Debtors to (i) Use Cash Collateral of the Pre-Petition Secured Parties, (ii) Obtain Postpetition Financing and (iii) Provide Adequate Protection to the Pre-Petition Secured Parties [Docket No. 282].

79. “Final Order” means (a) an order or judgment of the Bankruptcy Court or any other court or adjudicative body as to which the time to appeal, petition for certiorari, or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing shall then be pending; or (b) in the event that an appeal, writ of certiorari, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court or any other court or adjudicative body shall have been affirmed by the highest court to which such order was appealed, or certiorari has been denied, or from which reargument or rehearing was sought, and the time to take any further appeal, petition for certiorari or move for reargument or rehearing shall have expired; provided, that no order shall fail to be a Final Order solely because of the possibility that a motion pursuant to section 502(j) of the Bankruptcy Code, Rule 59 or Rule 60 of the Federal Rules of Civil Procedure or Bankruptcy Rule 9024 may be filed with respect to such order.

80. “G&B” has the meaning set forth in Section 7.6(b) of the Plan.

81. “Glossary of Defined Terms” means this Exhibit A to the Plan.

82. “Indemnification Claim” has the meaning ascribed to such term in Section 7.10 of the Plan.

83. “Insured Claim” means that portion of any Claim arising from an incident or occurrence alleged to have occurred prior to the Effective Date that is covered under an insurance policy applicable to the Debtors or their businesses.

84. “Intercompany Claim” means any Claim held by one Debtor against another Debtor.

85. “Intermediate Holdings” means ERG Intermediate Holdings, LLC.

86. “Lambert Road Avoidance Actions” means any and all actions seeking (a) avoidance of any transfer of the Lambert Road Property; or (b) recovery of the value of the Lambert Road Property or any proceeds thereof.

87. “Lambert Road Property” means the property commonly known as 200 Lambert Road, Carpinteria, California 93013 and designated by the Santa Barbara County Assessor as parcel 005 210 047.

88. “Lien” means a lien as defined in section 101(37) of the Bankruptcy Code.

89. “Materialmen’s Liens” means any Liens granted by statute on the Debtors’ real property to secure payments due to materialmen for work done on the Debtors’ real property, including works of improvement.

90. “Membership Interests” means the equity securities (as defined in section 101(16) of the Bankruptcy Code) in the Debtors.

91. “Nabors Lawsuit” means Case No. 2012-16446, ERG Resources LLC v. Nabors Global Holdings II, et. al., 61st Judicial District Court, Harris County, Texas.

92. “Nabors Lawsuit Oversight Committee” means a three (3) member board consisting of one (1) member appointed by Scott Y. Wood and two (2) members appointed by the Committee, provided that if there is a settlement between Scott Y. Wood and the Committee before the Effective Date, then the Nabors Lawsuit Oversight Committee shall be a five (5) member board consisting of three (3) members appointed by Scott Y. Wood and (2) two members appointed by the Committee. In no event shall Scott Y. Wood be a member of the Nabors Lawsuit Oversight Committee.

93. “Notice of Effective Date” means the notice of the Effective Date to be filed with the Bankruptcy Court and mailed to holders of Claims by the claims, noticing, and balloting agent appointed in the Chapter 11 Cases pursuant to section 156(c) of title 28 of the United States Code.

94. “Objection Deadline” means the deadline for filing objections to Claims as set forth in Section 10.1 of the Plan.

95. “Ordinary Course Professionals Order” means the Bankruptcy Court’s Order Authorizing Retention and Payment of Professionals Utilized by the Debtors in the Ordinary Course of Business [Docket No. 247].

96. “Other Debtors” means all of the Debtors other than Intermediate Holdings.

97. “Other Secured Claim” means (a) a Claim other than a DIP Facility Claim and a Prepetition Facility Claim secured by a Lien on any Assets, which Lien is valid, perfected, and enforceable under applicable law and is not subject to avoidance under the Bankruptcy Code or applicable non-bankruptcy law, and which is duly established in the Chapter 11 Cases, but only to the extent of the value of the holder’s interest in the collateral that secures payment of the Claim; (b) a Claim against the Debtors that is subject to a valid right of recoupment or setoff under section 553 of the Bankruptcy Code, but only to the extent of the Allowed amount subject

to recoupment or setoff as provided in section 506(a) of the Bankruptcy Code; and (c) a Claim deemed or treated under the Plan as a secured claim; provided, however, that, to the extent that the value of such interest is less than the amount of the Claim which has the benefit of such security, the unsecured portion of such Claim shall be treated as an Unsecured Claim unless, in any such case the class of which such Claim is a part makes a valid and timely election in accordance with section 1111(b) of the Bankruptcy Code to have such Claim treated as a secured claim to the extent Allowed.

98. “Payment Agreement” has the meaning set forth in Section 7.18.

99. “Person” means an individual, corporation, partnership, limited liability company, joint venture, trust, estate, unincorporated association, unincorporated organization, governmental entity, or political subdivision thereof, or any other entity.

100. “Petition Date” means April 30, 2015.

101. “Plan” means this chapter 11 plan, either in its present form or as it may be amended, supplemented, or otherwise modified from time to time, and the exhibits and schedules hereto and to the Plan Supplement, as the same may be in effect at the time such reference becomes operative.

102. “Plan Distribution” means the payment or distribution under the Plan of Cash, Assets, securities or instruments evidencing an obligation under the Plan to the holder of an Allowed Claim.

103. “Plan Distribution Date” means (a) with respect each Claim that is an Allowed Claim on the Effective Date, a date that is as soon as reasonably practicable after the Effective Date, except with respect to DIP Facility Claims, as to which “Plan Distribution Date” means the Effective Date; and (b) with respect to each claim that is not Allowed on the Effective Date, a date that is as soon as reasonably practicable after the date that such Claim is Allowed.

104. “Plan Documents” means the forms of documents that aid in effectuating the Plan as specifically identified as such herein and in the Plan Supplement and filed with the Bankruptcy Court as specified in Section 1.5 of the Plan including, the Exit Facility Loan Documents, the Amended and Restated Prepetition Loan Documents, the Exempt Assets Trust Declaration, and the ERG Plan Trust Declaration.

105. “Plan Supplement” means the compilation of documents, schedules and exhibits to be Filed no later than 10 days prior to the Voting Deadline, as each may thereafter be altered, amended, modified or supplemented in accordance with the terms hereof and in accordance with the Bankruptcy Code and Bankruptcy Rules.

106. “Post-Effective Date Interest Rate” means, at any time on and after the Effective Date, the rate of interest accruing under the Amended and Restated Loan Documents, which, on the Effective Date, is expected to be 13%.

107. “Potentially Secured Materialmen’s Liens” has the meaning set forth in Section 4.1(c).

108. “Prepetition Agent” means CLMG Corp. in its capacity as Administrative Agent and Collateral Agent under the Prepetition Credit Agreement.

109. “Prepetition Credit Agreement” means that certain Credit Agreement by and among the Prepetition Agent, the Prepetition Lenders, and ERG Resources dated as of January 24, 2013, as amended by that certain First Amendment to Credit Agreement, dated as of August 14, 2014, and as further amended, restated, supplemented and/or otherwise modified from time to time.

110. “Prepetition Facility” means the credit facility established pursuant to the terms of the Prepetition Credit Agreement.

111. “Prepetition Facility Claims” means all claims of the Prepetition Agent and the Prepetition Lenders against the Debtors arising in respect of the Prepetition Loan Documents.

112. “Prepetition Facility Collateral” means the property subject to the Prepetition Facility Liens.

113. “Prepetition Facility Liens” means those liens granted pursuant to the Prepetition Security Documents.

114. “Prepetition Guaranty” means that certain Guaranty by ERG Resources, Intermediate Holdings, Cat Canyon, ERG Operating, and ERG Interests in favor of the Prepetition Agent dated as of January 24, 2013, as amended, restated, supplemented and/or otherwise modified from time to time.

115. “Prepetition Indemnification Agreement” means any (i) purchase agreement or lease executed by any of the Debtors; (ii) grant deed received by any of the Debtors or under which any of the Debtors was or is a grantee; (iii) assignment under which any of the Debtors was or is an assignee; or (iv) settlement or other agreement, in each case executed prior to the Effective Date and pertaining to the California Assets.

116. “Prepetition Lenders” means LNV Corporation in its capacity as Lender under the Prepetition Credit Agreement and any other Person that becomes a party to the Prepetition Credit Agreement as a Lender thereunder.

117. “Prepetition Loan Documents” means, in each case as amended and/or restated from time to time, including pursuant to the Amended and Restated Prepetition Loan Documents, the Prepetition Credit Agreement and all other definitive agreements, certificates, documents, instruments and writings at any time delivered in connection therewith, including the Prepetition Guaranty and the Prepetition Security Documents.

118. “Prepetition Security Agreement” means that certain Security Agreement by and among ERG Resources; Intermediate Holdings, Cat Canyon, ERG Operating, and ERG Interests, as subsidiary guarantors; and the Prepetition Agent dated as of January 24, 2013, as amended, restated, supplemented and/or otherwise modified from time to time.

119. “Prepetition Security Documents” means the California Mortgage, the Texas Mortgage, the Prepetition Security Agreement, and all other documents granting a Lien or otherwise relating to a Lien in property of the Debtors in favor of the Prepetition Agent.

120. “Priority Claim” means any Claim to the extent such Claim is entitled to priority in right of payment under section 507(a) of the Bankruptcy Code, other than Other Secured Claims, Administrative Claims, and Tax Claims.

121. “Pro Rata Share” means, with respect to each Claim within a class, the share of the property (such as ERG Plan Trust Beneficial Interests or Exempt Assets Trust Interests) available for distribution on account of Claims within the class that is proportionate to the Allowed amount of the Claim relative to the aggregate dollar amount of Claims which may become Allowed within the class.

122. “Professional Fee Order” means the Bankruptcy Court’s Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals [Docket No. 256].

123. “Professional Person” means a Person retained or to be compensated for services rendered or costs incurred after the Petition Date and on or prior to the Effective Date pursuant to sections 327, 328, 329, 330, 331, 503(b), or 1103 of the Bankruptcy Code in the Chapter 11 Cases.

124. “RCPTX Royalty Interest” means (i) the overriding royalty interest referenced in the assignment of overriding royalty interest recorded in the Official Records of the County of Santa Barbara, California as record 2014-0005745; and (ii) the non-participating royalty interest assigned pursuant to the assignment of non-participating royalty interest recorded in the Official Records of Santa Barbara, California as record 2014-005746.

125. “Released Causes of Action” means the Causes of Action released pursuant to Section 14.5 of the Plan.

126. “Released Parties” means, individually and collectively, the Debtors’ Representatives, the Committee and its current and former members (solely in their capacity as such), the Prepetition Agent, the Prepetition Lenders, the DIP Agent, the DIP Lender, the Exit Facility Agent, the Exit Facility Lender, and the Representatives of each of the foregoing (solely in their capacities as such); provided that the Released Parties shall not include Scott Y. Wood or any of his non-Debtor Affiliates, including CTS Properties, Ltd.

127. “Reorganized,” when describing one or more of the Debtors, means such Debtor, Debtors or any successors thereto, by merger, consolidation, or otherwise, on or after the Effective Date.

128. “Reorganized Debtor Operating Agreements” means the operating agreements governing the Reorganized Debtors, which shall be in form and substance satisfactory to the Exit Facility Agent and the Prepetition Agent, and which shall be filed as part of the Plan Supplement.

129. “Representatives” means, with respect to any Person, any officer, manager, affiliate, subsidiary, attorney, advisor, investment banker, financial advisor, accountant or other professional of such Person, in each case in such capacity, serving on or after the Petition Date.

130. “Restructuring Support Agreement” means the Restructuring Support Agreement dated April 30, 2015 among Wood, CLMG Corp, as administrative agent for the Prepetition Lenders, and the Debtors, as such agreement is amended from time to time.

131. “Restructuring Transactions” means, collectively, those mergers, consolidations, restructurings, asset transfers, dispositions, liquidations or dissolutions that the Debtors or Reorganized Debtors determine to be necessary or appropriate in connection with the Plan or the Debtors’ emergence from the Chapter 11 Cases and not in violation of the other provisions of the Plan or the terms of the Amended and Restated Prepetition Facility and the Exit Facility.

132. “Schedules” means the schedules of assets and liabilities and list of equity interests and the statements of financial affairs filed by the Debtors with the Bankruptcy Court, as required by section 521 of the Bankruptcy Code and in conformity with the Official Bankruptcy Forms of the Bankruptcy Rules, as such schedules and statements have been or may be amended or supplemented by the Debtors in Possession from time to time in accordance with Bankruptcy Rule 1009.

133. “Sinking Fund Agreement” has the meaning set forth in Section 7.18.

134. “Surety” has the meaning set forth in Section 7.18.

135. “Surety Agreement” has the meaning set forth in Section 7.18.

136. “Surety Bonds” has the meaning set forth in Section 7.18.

137. “Surety Bonds and Agreements” has the meaning set forth in Section 7.18.

138. “Surety Collateral Agreement” has the meaning set forth in Section 7.18.

139. “Surety Lien” has the meaning set forth in Section 7.18.

140. “Tax Claim” means a Claim against the Debtors that is of a kind specified in section 507(a)(8) of the Bankruptcy Code.

141. “Texas Mortgage” means the instrument recorded in the official records of Liberty County, Texas on January 29, 2013 as Instrument No. 2013014293.

142. “Tort Claim” means any Claim that has not been settled, compromised or otherwise resolved that: (a) is a tort or other similar Claim and/or arises out of allegations of personal injury, wrongful death, property damage, products liability or similar legal theories of recovery; or (b) arises under any federal, state or local statute, rule, regulation or ordinance governing, regulating or relating to health, safety, employment, civil rights, hazardous substances or the environment. In the interests of clarity, the Debtors acknowledge that actions taken by governmental units exclusively to enforce their police or regulatory powers under environmental laws do not constitute “Tort Claims” for purposes of Section 10.2 of the Plan.

143. “Transferred Causes of Action” means all Exempt Assets constituting Causes of Action, consisting of (a) the Nabors Lawsuit, (b) all Avoidance Actions other than (i) the Lambert Road Avoidance Actions, (ii) Avoidance Actions that the DIP Agent determines in its reasonable discretion are related to the California Assets; provided, that the DIP Agent and the DIP Lender shall not pursue any preference or fraudulent transfer actions against vendors and suppliers providing goods and services related to the California Assets and (iii) any Avoidance Actions against the Wood Parties relating to the conveyance of interests in the California Assets,



including royalties, overrides and similar interests and (c) all Causes of Action of the Debtors' Estates against the Wood Parties of any kind or nature whatsoever, including all such Causes of Action for breach of fiduciary duties, corporate waste, illegal dividends, excessive compensation and any other breaches of corporate duties other than any Avoidance Actions against any of the Wood Parties described in clause (b)(i), clause (b)(ii) or clause (b)(iii) of this definition, none of which constitute Transferred Causes of Action.

144. "Unsecured Claim" means any Claim against the Debtors that arose prior to the Petition Date other than a Claim arising under section 503(b)(9) of the Bankruptcy Code, a Convenience Claim, a Priority Claim, a Tax Claim, an Other Secured Claim, an Intercompany Claim, or a Prepetition Facility Claim.

145. "Voting Deadline" means the deadline for submitting ballots to either accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code that is specified in the Disclosure Statement, the ballots or related solicitation documents approved by the Bankruptcy Court.

146. "Wood Parties" means Scott Y. Wood, his family members and/or his non-Debtor Affiliates.

**SCHEDULE 1****SCHEDULE OF ASSUMED EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

	<b>Debtor</b>	<b>Counterparty</b>	<b>Category</b>	<b>Description</b>	<b>Cure Amount</b>
1.	ERG Operating Company, LLC	Elemet Markets, LLC.	Consulting Agreements	Carbon Agreement	\$0.00
2.	ERG Resources, LLC	BP Energy Company	Debt Agreements	ISDA 2002 Master Agreement	\$0.00
3.	ERG Operating Company, LLC	Chaparral Business Machines, Inc.	Equipment Leases	Office Equipment	\$925.00
4.	ERG Resources, LLC	Bright House	IT Agreements	Communications	\$421.00
5.	ERG Resources, LLC	Comcast Business	IT Agreements	Business Class Service Agreement - ID 6905723	\$0.00
6.	ERG Resources, LLC	IHS Global Inc.	IT Agreements	Software License Agreement	\$9,026.00
7.	ERG Resources, LLC	CoreLogic	License Agreements	Document Retrieval- Land Dept	\$124.00
8.	ERG Operating Company, LLC	Key Energy Services California, Inc.	Other Agreements	Drilling	\$0.00
9.	ERG Resources, LLC	AP Services, LLC	Professional Engagement Letters	Engagement Letter Dated March 24, 2015	\$0.00
10.	ERG Resources, LLC	Epiq Bankruptcy Solutions	Professional Engagement Letters	Engagement Letter Dated March 30, 2015	\$0.00
11.	ERG Resources, LLC	Jones Day	Professional Engagement Letters	Engagement Letter Dated December 10, 2014	\$0.00
12.	ERG Operating Company, LLC	Acquistapace Farms, Inc.	Purchase Agreements	Emissions	\$0.00
13.	ERG Operating Company, LLC	Phillips 66 Company	Purchase Agreements	Evergreen Purchase Agreement As Amended (No. ERL13TP50002)	\$0.00
14.	ERG Resources, LLC	Danari Bakersfield, LLC	Real Estate Leases	Office Lease - 4980 California Avenue, Suite 300B, Bakersfield	\$0.00

S2-1

	<b>Debtor</b>	<b>Counterparty</b>	<b>Category</b>	<b>Description</b>	<b>Cure Amount</b>
				CA, 93309 (As Amended)	
15.	ERG Resources, LLC	Holland Residential (Agent)	Real Estate Leases	Apartment Lease - #1003 E. Henry Avenue, Santa Maria, CA 93455	\$0.00
16.	ERG Resources, LLC	LNV Corporation	Royalty Agreements	ORRI from ERG Resources to LNV Corporation	\$0.00
17.	ERG Resources, LLC	Ford Motor Credit Company, LLC	Vehicle Leases	Master Lease Agreement - ERG Operating Company Master Lease (8/7/12)	\$5,027.00
18.	ERG Operating	Betteravia Farms, LLC	Other Agreements	Agreement for Purchase and Sale Nox/ROC	\$0.00
19.	ERG Operating	Williams Holding Company	Other Agreements	Horizontal Well Agreement	\$0.00
20.	ERG Resources	Williams Holding Company	Other Agreements	Agreement and Conveyance of Term	\$0.00
21.	ERG Resources	Williams Holding Company	Other Agreements	Agreement and Amendment of Agreement	\$0.00
22.	ERG Operating	Aera Energy	Other Agreements	3D survey permission	\$0.00
23.	ERG Resources, ERG Operating	Cat Canyon Royalty Owners	Other Agreements	Commingling Agreement	\$0.00
24.	ERG Resources, ERG Operating	Lawrence Michael, et al	Other Agreements	Global Settlement Release and Indemnity Agre	\$0.00
25.	ERG Resources, ERG Operating	Williams Holding Company	Other Agreements	Agreement	\$0.00
26.	ERG Resources, ERG Operating	Williams Holding Company, A.F. & C.A Fugler Inc., Gettly Oil	Other Agreements	Agreement and Amendment to Oil and Gas Lease	\$0.00
27.	ERG Resources, ERG Operating	US Specialty Insurance Inc. / Indemco LP	Surety Bonds	Surety Program (including any and all agreements with US Specialty and Indemco)	\$0.00

	<b>Debtor</b>	<b>Counterparty</b>	<b>Category</b>	<b>Description</b>	<b>Cure Amount</b>
28.	ERG Resources, LLC	US Specialty Insurance Inc.	Surety Bonds	Surety Bond B007638	\$975.00
29.	ERG Resources, LLC	US Specialty Insurance Inc.	Surety Bonds	Surety Bond B005609	\$0.00
30.	ERG Operating Company, LLC	US Specialty Insurance Inc.	Surety Bonds	Surety Bond B005630	\$0.00
31.	ERG Resources, LLC	US Specialty Insurance Inc.	Surety Bonds	Surety Bond B007953	\$0.00
32.	ERG Resources, LLC	Indemco, LP	Surety Bonds	Collateral Agreement and Receipt	\$0.00
33.	ERG Resources, LLC	Indemco, LP	Surety Bonds	Abandonment Sinking Fund Agreement	\$125,000.00
34.	ERG Operating Company, LLC	Area Energy LLC	Other Agreements	Joint Operating Agreement	\$0.00
35.	ERG Resources, LLC	Michael Family Trust	Other Agreements	Surface Lease, as amended	\$0.00
36.	ERG Resources, LLC	Cat Bl'ieu Enterprises Inc.	Other Agreements	Grazing Lease, as amended	\$0.00
37.	ERG Resources, LLC	Dutra Dairy Inc.	Other Agreements	Grazing Lease	\$0.00
38.	ERG Resources, LLC	Michael Ranch Trust	Other Agreements	Grazing Lease, Los Alamos Ranch	\$0.00
39.	ERG Resources, LLC	Rick Micahel	Other Agreements	Grazing Lease, Cantin	\$0.00
40.	ERG Resources, LLC	US Specialty Insurance Inc.	Surety Bonds	Surety Bond B008776	\$24,554.34
41.	ERG Resources, LLC	US Specialty Insurance Inc.	Surety Bonds	Payment Indemnity Contract No. 0780	\$0.00

**SCHEDULE 2****SCHEDULE OF REJECTED EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

	<b>Debtor</b>	<b>Counterparty</b>	<b>Category</b>	<b>Description</b>
1.	ERG Operating Company, LLC	Ali Fakhreddine	Employment Agreements	Accepted Offer Letter
2.	ERG Operating Company, LLC	Denny Dobson	Employment Agreements	Accepted Offer Letter
3.	ERG Operating Company, LLC	Michelle Adams Layton	Employment Agreements	Accepted Offer Letter
4.	ERG Operating Company, LLC	Tom Skinner	Employment Agreements	Accepted Offer Letter
5.	ERG Operating Company, LLC	Patricia Orange	Employment Agreements	Accepted Offer Letter
6.	ERG Resources, LLC	Ben Oakley	Employment Agreements	Accepted Offer Letter
7.	ERG Resources, LLC	Betty Walker	Employment Agreements	Employment Agreement
8.	ERG Resources, LLC	Phil Hosch	Employment Agreements	Accepted Offer Letter
9.	ERG Resources, LLC	R. Kelly Plato	Employment Agreements	Employment Agreement
10.	ERG Resources, LLC	Maribel Aguielera Offer Letter	Employment Agreements	
11.	ERG Resources, LLC	John Deacon Offer Letter	Employment Agreements	
12.	ERG Operating Company, LLC	De Lage Landen Financial	Equipment Leases	Land Office Equipment
13.	ERG Resources, LLC	Konica Minolta Business Solutions U.S.A., Inc.	Equipment Leases	Premier Lease Agreement; Bizhub C554E

S3-1

	<b>Debtor</b>	<b>Counterparty</b>	<b>Category</b>	<b>Description</b>
14.	ERG Resources, LLC	Xerox	Equipment Leases	Equipment Lease - Item W7346PCM
15.	ERG Resources, LLC	appriver	IT Agreements	Spam Filtering
16.	ERG Resources, LLC	Crosswood Technology Group	IT Agreements	IT Consulting Agreement
17.	ERG Resources, LLC	Logix Communications, LP	IT Agreements	Service Agreement - Internet and Fax to Email Service
18.	ERG Resources, LLC	Citigroup Global Markets, Inc.	Professional Engagement Letters	Executed Engagement Letter dtd 12/30/14
19.	ERG Resources, LLC	DLA Piper (US)	Professional Engagement Letters	Engagement Letter
20.	ERG Resources, LLC	Macquarie Capital (USA), Inc.	Professional Engagement Letters	Executed Engagement Letter dtd 12/4/2014
21.	ERG Resources, LLC	Macquarie Capital (USA), Inc.	Professional Engagement Letters	Executed Engagement Letter, attachments and amendments
22.	ERG Resources, LLC	Reicker, Pfau, Pyle & McRoy	Professional Engagement Letters	Engagement Letter Dated April 22, 2015
23.	ERG Resources, LLC	Gray, Reed & McGraw, P.C.	Professional Engagement Letters	
24.	ERG Resources, LLC	Three Allen Center Co. LLC	Real Estate Leases	Office Lease - Three Allen Center Suite #4400 (As Amended)
25.	ERG Operating Company, LLC	AECOM Technical Services, Inc.	Service Agreements	Air Quality
26.	ERG Operating Company, LLC	B & L Equipment Rentals, Inc.	Service Agreements	Equipment
27.	ERG Operating Company, LLC	BARC	Service Agreements	Paper Recycling
28.	ERG Operating Company, LLC	BMI Pac West Inc.	Service Agreements	Air Conditioning Maintenance
29.	ERG Operating Company, LLC	Bob's Jungle	Service Agreements	Interior Plant Maintenance
30.	ERG Operating	Brad Modlin	Service Agreements	Labor, Steam Gen

S3-2

	<b>Debtor</b>	<b>Counterparty</b>	<b>Category</b>	<b>Description</b>
	Company, LLC			
31.	ERG Operating Company, LLC	C. D. Lyon Construction, Inc.	Service Agreements	Labor, Material
32.	ERG Operating Company, LLC	Central Coast Piping	Service Agreements	Labor
33.	ERG Operating Company, LLC	Collings and Associates, LLC.	Service Agreements	Legal
34.	ERG Operating Company, LLC	Compliance Services, Inc.	Service Agreements	Pipeline & Compliance Consulting
35.	ERG Operating Company, LLC	Condition Monitoring Services, Inc	Service Agreements	Emissions Testing
36.	ERG Operating Company, LLC	CSS Drilling Tools	Service Agreements	Drilling Tools
37.	ERG Operating Company, LLC	CSS Inc.	Service Agreements	Labor, Material
38.	ERG Operating Company, LLC	DHI Services Inc.	Service Agreements	Formation Evaluation Services
39.	ERG Operating Company, LLC	Diversified Project Services International	Service Agreements	Engineering Svcs
40.	ERG Operating Company, LLC	Driltek, Inc.	Service Agreements	Engineering, Planning, Operations Management
41.	ERG Operating Company, LLC	Electrical Solutions Corporation	Service Agreements	Electical Maint
42.	ERG Operating Company, LLC	Energy Link Industrial Service, Inc.	Service Agreements	Equipment, Services
43.	ERG Operating Company, LLC	Engel & Gray, Inc.	Service Agreements	Legal
44.	ERG Operating Company, LLC	Enviroscaping, Inc.	Service Agreements	Fencing
45.	ERG Operating Company, LLC	EnviroTech Consultants, Inc.	Service Agreements	Environmental

	<b>Debtor</b>	<b>Counterparty</b>	<b>Category</b>	<b>Description</b>
46.	ERG Operating Company, LLC	Excalibur Well Services Corp.	Service Agreements	Cement
47.	ERG Operating Company, LLC	H & B Equipment Co., Inc.	Service Agreements	Equipment, Services
48.	ERG Operating Company, LLC	Heritage Discoveries, Inc.	Service Agreements	Archeological Svcs
49.	ERG Operating Company, LLC	Hogg Drilling Specialty Construction, Inc.	Service Agreements	Downhole Svcs, Concrete
50.	ERG Operating Company, LLC	Hurley Company	Service Agreements	Environmental, Safety Training
51.	ERG Operating Company, LLC	J. D. Humann Landscape, Inc.	Service Agreements	Landscape Services
52.	ERG Operating Company, LLC	Lifeline Safety, LLC.	Service Agreements	Safety Consultant
53.	ERG Operating Company, LLC	MMI Services, Inc.	Service Agreements	Rig & crew, Supervision, Cement
54.	ERG Operating Company, LLC	Nextivia	Service Agreements	Phone Lines
55.	ERG Operating Company, LLC	NTS Inc.	Service Agreements	Sulfur Treat Foundation, Corridor Inst
56.	ERG Operating Company, LLC	Pacific Gas Technology Inc.	Service Agreements	Testing
57.	ERG Operating Company, LLC	Pacific Petroleum California, Inc.	Service Agreements	Labor, Rental
58.	ERG Operating Company, LLC	Packer Service Inc.	Service Agreements	Labor, Materials
59.	ERG Operating Company, LLC	Papi J's Gardening	Service Agreements	Gardening
60.	ERG Operating Company, LLC	Pat Phelan Construction	Service Agreements	Haul, Cleanup
61.	ERG Operating	Payette & Sons, Inc.	Service Agreements	Dust Control Soil Stabilization (Cleanup)



	<b>Debtor</b>	<b>Counterparty</b>	<b>Category</b>	<b>Description</b>
	Company, LLC			
62.	ERG Operating Company, LLC	Premier Crane & Transportation, Inc.	Service Agreements	Transportation
63.	ERG Operating Company, LLC	Process Instruments, Inc.	Service Agreements	Well Tests
64.	ERG Operating Company, LLC	ProChem Solutions	Service Agreements	Chemical, Labor
65.	ERG Operating Company, LLC	PROS Incorporated	Service Agreements	Equipment
66.	ERG Operating Company, LLC	Prousys, Inc.	Service Agreements	Onsite Support
67.	ERG Operating Company, LLC	Quinn Pumps California, Inc.	Service Agreements	Material
68.	ERG Operating Company, LLC	Reese Sales Company	Service Agreements	Material, Services
69.	ERG Operating Company, LLC	Rick Teixeira Welding, Inc.	Service Agreements	Welding
70.	ERG Operating Company, LLC	Robert Jones General Engineering, Inc.	Service Agreements	Engineering Svcs
71.	ERG Operating Company, LLC	Safety Tek Industries, Inc.	Service Agreements	Equipment Supply, Repair
72.	ERG Operating Company, LLC	SAGE Institute, Inc.	Service Agreements	Production Plans, Sales Pipeline
73.	ERG Operating Company, LLC	SCEC	Service Agreements	Testing on Steam Generators
74.	ERG Operating Company, LLC	SCS Tracer Environmental	Service Agreements	Regulatory Compliance & Maint
75.	ERG Operating Company, LLC	Southern Sierra General Engineering, Inc.	Service Agreements	Labor, Materials
76.	ERG Operating Company, LLC	SPEC Services, Inc.	Service Agreements	Engineering, Coalescer

	<b>Debtor</b>	<b>Counterparty</b>	<b>Category</b>	<b>Description</b>
77.	ERG Operating Company, LLC	Speeds Oil Tool Service, Inc.	Service Agreements	Labor, Materials
78.	ERG Operating Company, LLC	Superior Tank Company, Inc.	Service Agreements	Tanks
79.	ERG Operating Company, LLC	Sweet Oil Tool Rental, Inc.	Service Agreements	Tools
80.	ERG Operating Company, LLC	TJ Cross Engineers, Inc.	Service Agreements	Engineering Svcs
81.	ERG Operating Company, LLC	Vince Lopez Jr. & Sons, Inc.	Service Agreements	Labor, Materials
82.	ERG Operating Company, LLC	West Coast Casing, LLC	Service Agreements	Casing Equipment, Tools
83.	ERG Operating Company, LLC	West Coast Welding and Construction, Inc.	Service Agreements	Labor, Materials
84.	ERG Resources, LLC	Dowden Technical Services, Inc.	Service Agreements	Electical Maint
85.	ERG Resources, LLC	Gatlin Technical Services, Inc.	Service Agreements	RAR
86.	ERG Resources, LLC	JL Marine Construction	Service Agreements	Insulation Svcs
87.	ERG Resources, LLC	PC Mechanical, Inc.	Service Agreements	Maintenance
88.	ERG Resources, LLC	Scientific Drilling	Service Agreements	Equipment, Tools, Service
89.	ERG Resources, LLC	Affordable Janitorial	Service Agreements	
90.	ERG Resources, LLC	Brazelton Leasing Incorporated	Vehicle Leases	Vehicle Lease - 2013 Chevrolet C1500
91.	ERG Resources, ERG Operating	HVI Cat Canyon	Other Agreements	Water Delivery Agreement
92.	ERG Operating	HVI Cat Canyon, Greka	Other Agreements	First Amendment to Gas Handling
93.	ERG Operating	HVI Cat Canyon, Greka	Other Agreements	Gas Handling Agreement
94.	ERG Resources	RMR Energy Resources	Other Agreements	Assignment of Oil and Gas Leases
95.	ERG Resources	RMR Energy Resources	Other Agreements	Assignment of Oil and Gas Leases

	<b>Debtor</b>	<b>Counterparty</b>	<b>Category</b>	<b>Description</b>
96.	ERG Resources, LLC	R.E. Fulton	Other Agreements	Water Reservoir Lease
97.	ERG Operating Company, LLC	Accord Design Group, Inc.	Consulting Agreements	Roadway Surveying
98.	ERG Operating Company, LLC	Phil Sorbet	Employment Agreements	Employment Agreement
99.	ERG Resources, LLC	Thomas Counihan	Employment Agreements	Employment Agreement
100.	ERG Resources, LLC	Aspect Engineering Group	IT Agreements	Engineering Services
101.	ERG Operating Company, LLC	Enterprise Rental	Other Agreements	Business Vehicle Rental
102.	ERG Operating Company, LLC	Urban Planning Concepts, Inc.	Other Agreements	Permits
103.	ERG Operating Company, LLC	Trojan Petroleum, Inc.	Purchase Agreements	Labor
104.	ERG Operating Company, LLC	ACS Premier, Inc.	Service Agreements	Surveying, Mapping
105.	ERG Operating Company, LLC	Aeros Environmental, Inc.	Service Agreements	Environmental
106.	ERG Operating Company, LLC	Arrowhead Direct	Service Agreements	
107.	ERG Operating Company, LLC	Cannon Corporation	Service Agreements	Field Services
108.	ERG Operating Company, LLC	K.B. O'Sullivan Construction	Service Agreements	Remodel of Field Office
109.	ERG Operating Company, LLC	Turk's Kern Copy	Service Agreements	
110.	ERG Operating Company, LLC	Central Coast Tank Testing (DBA Baseline Enterprises)	Service Agreements	Testing
111.	ERG Operating	Nuzzo Environmental,	Service Agreements	Air Quality

	<b>Debtor</b>	<b>Counterparty</b>	<b>Category</b>	<b>Description</b>
	Company, LLC	Inc.		
112.	ERG Operating Company, LLC	Rancho La Laguna, LLC	Purchase Agreements	Emission Reduction Credits

**SCHEDULE 3****SCHEDULE OF OIL & GAS LEASES RELATED TO THE CALIFORNIA ASSETS**

<b>Debtor</b>	<b>Counterparty</b>	<b>Description</b>
1. ERG Resources, LLC	A F & C A FUGLER INC.	A.F. & C.A. Fugler Inc. Lease APN 101-040-017 (Lessee: Rock Energy, LLC n/k/a Petrorock LLC)
2. ERG Resources, LLC	A F & C A FUGLER INC.	A.F. & C.A. Fugler, Inc. Lease APN's 129-170-006 & 129-020-300 (Lessee: Amrich Energy Inc. et. al)
3. ERG Resources, LLC	Arkoma Production Co of TX	Bonetti Lease APN 101-040-006 (Lessee: G. Rodges & Associates, Inc.)
4. ERG Resources, LLC	Barbara B Green Trustee	Bonetti Lease APN 101-040-006
5. ERG Resources, LLC	California Trust Co	UCB/Dominion Lease; Multiple APN's
6. ERG Resources, LLC	CANTIN LAND OIL & DEV CO	Cantin Lease APN 129-180-015 (Lessee: The Texas Company)
7. ERG Resources, LLC	CAWLEY GILLESPIE & ASSOC	Fleisher Lease APN 101-040-005 & 011
8. ERG Resources, LLC	Charlotte H Sturgeon et al	Sturgeon Lease APN 101-070-008
9. ERG Resources, LLC	CLINT EDWARD GARRETT	Fleisher Lease APN 101-040-005 & 011
10. ERG Resources, LLC	DAVIS 1999 REVOCABLE LIVING TR	Preisker Lease APN 101-070-058, 101-070-068
11. ERG Resources, LLC	DILLON DOUGLAS CAWLEY	Fleisher Lease APN 101-040-005 & 011
12. ERG Resources, LLC	Edward McCoy	Bonetti Lease APN 101-040-006
13. ERG Resources, LLC	Edwina Petersen 1980 Trust	Preisker Lease APN 101-070-058, 101-070-068
14. ERG Resources, LLC	ELTON V TOGNAZZINI ETAL	Tognazzini Lease APN 129-180-011 & 129-110-020, 133-070-028, 029, 032, 033, 034 and 133-200-001 (Lessee: Gato Corporation)
15. ERG Resources, LLC	Frank McCoy	Bonetti Lease APN 101-040-006
16. ERG Resources, LLC	HAROLD D EINARSEN TRUST	Fleisher Lease APN 101-040-005 & 011
17. ERG Resources, LLC	James & Patricia McLanahan Rev Trst	Preisker Lease APN 101-070-058, 101-070-068

S4-1

	<b>Debtor</b>	<b>Counterparty</b>	<b>Description</b>
18.	ERG Resources, LLC	JAMES L WARREN	Bonetti Lease APN 101-040-006 (Lessee: G. Rodges & Associates, Inc.)
19.	ERG Resources, LLC	JEFFERY WARREN	Bonetti Lease APN 101-040-006 (Lessee: G. Rodges & Associates, Inc.)
20.	ERG Resources, LLC	Joanne Treloar	Preisker Lease APN 101-070-058, 101-070-068
21.	ERG Resources, LLC	JOHN & ELEANOR WICKENDEN FAMILY TRUST	John R. Wickenden/Dore Family Trust Lease APN 101-050-053; 054 & 017
22.	ERG Resources, LLC	JOHN A WARREN TRUST	Bonetti Lease APN 101-040-006 (Lessee: G. Rodges & Associates, Inc.)
23.	ERG Resources, LLC	JOHN BRADFORD PRUITT	Drumm Lease APN 101-070-002 (Lessee: Rock Energy LLC)
24.	ERG Resources, LLC	JORDAN DAVIDSON GARRETT	Fleisher Lease APN 101-040-005 & 011
25.	ERG Resources, LLC	Katherine P Durley	Preisker Lease APN 101-070-058, 101-070-068
26.	ERG Resources, LLC	Lynn Reynolds	Bonetti Lease APN 101-040-006
27.	ERG Resources, LLC	Mariella Edgar	Bonetti Lease APN 101-040-006
28.	ERG Resources, LLC	MICHAEL JAMES PRUITT	Drumm Lease APN 101-070-002 (Lessee: Rock Energy LLC)
29.	ERG Resources, LLC	Pamela Leigh Mueller, Life Tenant	Bonetti Lease APN 101-040-006
30.	ERG Resources, LLC	PHYLLIS FENDER	West Lease APN 101-040-013
31.	ERG Resources, LLC	Rebecca Gowing et al	Preisker Lease APN 101-070-058, 101-070-068
32.	ERG Resources, LLC	Richard D Rudd Spec Needs Tr 2005	Bonetti Lease APN 101-040-006
33.	ERG Resources, LLC	ROBERT L EINARSEN	Fleisher Lease APN 101-040-005 & 011
34.	ERG Resources, LLC	ROCHESTER MINERALS LP ETAL	Fleisher Lease APN 101-040-005 & 011
35.	ERG Resources, LLC	RONALD C RAY, TRUSTEE OF WOOD TRUST	West Lease APN 101-040-013
36.	ERG Resources, LLC	SCOTT AARON GARRETT	Fleisher Lease APN 101-040-005 & 011
37.	ERG Resources, LLC	Silverado Oil & Gas LLP	Bonetti Lease APN 101-040-006
38.	ERG Resources, LLC	Spindletop Exploration Co Inc	Bonetti Lease APN 101-040-006
39.	ERG Resources, LLC	SUN WEST TRUST	Bonetti Lease APN 101-040-006
40.	ERG Resources, LLC	Susan J Elliott	Preisker Lease APN 101-070-058, 101-070-068

	<b>Debtor</b>	<b>Counterparty</b>	<b>Description</b>
41.	ERG Resources, LLC	Trudi Reynolds	Bonetti Lease APN 101-040-006
42.	ERG Resources, LLC	United California Bank	UCB/Dominion Lease; Multiple APN's
43.	ERG Resources, LLC	VIKING EXPLORATION LLC	Fleisher Lease APN 101-040-005 & 011
44.	ERG Resources, LLC	WADE HAMPTON CAWLEY	Fleisher Lease APN 101-040-005 & 011
45.	ERG Resources, LLC	WICKENDEN CO	Wickenden Company Lease APN 133-070-023 and 036 (Lessee: Continental Oil Company)
46.	ERG Resources, LLC	WICKENDEN CO INC	Wickenden Company Inc. Lease APN 133-070-037; 038; 039; 023; 030; 036
47.	ERG Resources, LLC	WILDA M GRAY TRUST	West Lease APN 101-040-013
48.	ERG Resources, LLC	WILLIAMS HOLDING CO	Williams Holding Lease APN 129-210-006 (Lessee: Mario Perea, Individually and D/B/A RMR Energy)
49.	ERG Resources, LLC	WILLIAMS HOLDING COMPANY	Williams Holding Company Lease APN 101-040-010 and 015 & 024 (Lessee: Camrich Drilling Company)
50.	ERG Resources, LLC	WILLIAMS HOLDING COMPANY	Williams Holding Company Lease APN 101-070-006
51.	ERG Resources, LLC	Los Flores and Oil Company Leases (2)	Los Flores and Oil Company Leases (2)
52.	ERG Resources, LLC	David Tompkins Lease	David Tompkins Lease

**EXHIBIT B**

Notice of Effective Date



**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re:	§	Chapter 11
	§	
ERG Intermediate Holdings, LLC, <i>et al.</i> , <sup>1</sup>	§	Jointly Administered
	§	
Debtors.	§	Case No.: 15-31858-hdh-11

**NOTICE OF: (I) ENTRY OF ORDER  
CONFIRMING FIRST AMENDED JOINT CHAPTER 11 PLAN OF  
REORGANIZATION DATED SEPTEMBER 18, 2015, AS AMENDED, IN RESPECT OF  
ERG INTERMEDIATE HOLDINGS, LLC AND ITS AFFILIATED DEBTORS;  
(II) EFFECTIVE DATE; AND (III) BAR DATES FOR CERTAIN ADMINISTRATIVE  
CLAIMS, PROFESSIONAL FEE CLAIMS AND REJECTION DAMAGE CLAIMS**

**PLEASE TAKE NOTICE OF THE FOLLOWING:**

**1. Confirmation of the Plan.** On \_\_\_\_\_, 2015, the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court") entered an order (the "Confirmation Order") confirming the First Amended Joint Chapter 11 Plan of Reorganization Dated September 18, 2015, As Amended, In Respect of ERG Intermediate Holdings, LLC And Its Affiliated Debtors (the "Plan") in the chapter 11 cases of the above-captioned debtors (collectively, the "Debtors"). Unless otherwise defined in this Notice, capitalized terms and phrases used herein have the meanings given to them in the Plan and the Confirmation Order.

**2. Effective Date.** Pursuant to the Confirmation Order, the Debtors hereby certify and give notice that the Plan became effective in accordance with its terms, and the Effective Date occurred, on \_\_\_\_\_, 2015.

**3. Releases.**

**a. Releases by the Debtors and Reorganized Debtors.** As of the Effective Date, the Debtors and the Reorganized Debtors, on behalf of themselves and their

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are ERG Intermediate Holdings, LLC (2521); ERG Resources, L.L.C. (0408); West Cat Canyon, L.L.C. (7377); ERG Interests, LLC (2081); and ERG Operating Company, LLC (8385). ERG Intermediate Holdings, LLC is the direct or indirect parent of each of its affiliated Debtors. The mailing address for each of the Debtors, with the exception of ERG Operating Company, LLC, is 333 Clay Street Suite 4400, Houston, TX 77002. The mailing address for ERG Operating Company, LLC is 4900 California Avenue Suite 300B, Bakersfield, CA 93309. The above addresses are listed solely for the purposes of notices and communications.

Affiliates, the Estates and their respective successors, assigns and any and all entities who may purport to claim by, through, for or because of them, forever release, waive and discharge all Claims that they have, or had against any Released Party except with respect to any obligations arising under or in connection with the Plan, including in connection with any agreement, document, or contract entered into or delivered in connection with the Plan; provided that the foregoing provisions will have no effect on the liability of any Person otherwise resulting from any act or omission since the Petition Date to the extent that such act or omission is determined in a Final Order to have constituted willful misconduct. As of the Effective Date, without limiting the generality or effect of the foregoing, the Debtors are deemed to release and forever waive and discharge any and all Lambert Road Avoidance Actions.

**b. General Release by Holders of Claims and Membership**

**Interests.** As of the Effective Date, in consideration for the obligations of the Debtors and the Reorganized Debtors under the Plan and the Cash, contracts, instruments, releases, agreements or documents to be entered into or delivered in connection with the Plan, except for the Prepetition Agent and the Prepetition Lenders, each holder of a Claim or Membership Interest (solely in its capacity as such) that voted in favor of the Plan to the fullest extent permissible under law, is deemed to forever release, waive and discharge all Claims in any way relating to a Debtor, the Chapter 11 Cases, the Estates, the Plan, the exhibits to the Plan and the Plan Supplement, the Disclosure Statement, or the Prepetition Facility that such Person has, had or may have against any Released Party (which release will be in addition to the discharge of Claims provided in the Plan and under the Confirmation Order and the Bankruptcy Code), except with respect to any obligations arising under or in connection with the Plan or any act, event, injury, omission, transaction, or agreement arising after the Effective Date (other than Claims relating to such act, event, injury, omission, transaction or agreement first arising or occurring prior to the Effective Date); provided, however, that the foregoing provision has no effect on the liability of any Person otherwise resulting from any such act or omission to the extent that such act or omission is determined in a Final Order to have constituted willful misconduct.

**4. Discharge of Claims**

a. Pursuant to section 1141(d) of the Bankruptcy Code, and, except as set forth in Section 4.1(b) of the Plan or in any contract, instrument, or other agreement or document created pursuant to the Plan, the distributions, rights, and treatment that are provided in the Plan are in complete satisfaction, discharge, and release, effective as of the Effective Date, of Claims, Membership Interests, and Causes of Action of any nature whatsoever, including any interest accrued from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and interests in, the Debtors or any of their assets or properties, regardless of whether any property is distributed or retained pursuant to the Plan on account of such Claims and Membership Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any contingent or non contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code. The provisions of Section 14.4 of the Plan do not apply to the Prepetition Facility Claims.

b. In accordance with the foregoing, except as provided in the Plan or the Confirmation Order, the Confirmation Order is a judicial determination, as of the Effective

Date, of a discharge of all Claims, including any debts and liabilities against the Debtors, pursuant to sections 524 and 1141 of the Bankruptcy Code, and such discharge shall void any judgment obtained against a Debtor at any time, to the extent that such judgment relates to a discharged Claim.

## 5. Injunctions.

a. As of the Effective Date, all Persons who have been, are, or may be holders of Claims against or Membership Interests in the Debtors are permanently enjoined from taking any of the following actions against or affecting the Reorganized Debtors, the Debtors, the Estates, the Assets, the Disbursing Agent, the ERG Plan Trust, the Exempt Assets Trust, or any of their respective current or former members, directors, managers, officers, employees, agents, trustees, professionals or successors and assigns (other than Scott Y. Wood and his non-Debtor Affiliates) or their respective assets and property with respect to such Claims or Membership Interests (other than actions brought to enforce any rights or obligations under the Plan and other than with respect to the Prepetition Facility Claims):

- i. commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including all suits, actions, and proceedings that are pending as of the Effective Date, which must be withdrawn or dismissed with prejudice);
- ii. enforcing, levying, attaching, collecting or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree or order;
- iii. creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance; and
- iv. asserting any setoff, right of subrogation or recoupment of any kind; provided, that any defenses, offsets or counterclaims which the Debtors may have or assert in respect of the above referenced Claims are fully preserved in accordance with Section 15.11 of the Plan.

b. In addition, the Confirmation Order enjoins permanently the commencement or prosecution by any Person, whether directly, derivatively or otherwise, of any Claims released pursuant to the Plan. Nothing contained in Section 14.7 of the Plan affects the rights of (i) the Exempt Assets Trust from asserting, prosecuting, or enforcing any judgment obtained in respect of any Transferred Cause of Action; or (ii) the Prepetition Agent and the Prepetition Lenders from asserting, prosecuting, or enforcing against any non-Debtor party any rights in respect of or relating to the Prepetition Loan Documents, including rights against Scott Y. Wood in respect of any and all associated guaranties and mortgages, subject to the terms of the Restructuring Support Agreement.

**6. Bar Dates.**

a. **Time for Filing Administrative Claims.** The holder of an Administrative Claim, other than (i) a Fee Claim; (ii) a liability incurred and payable in the ordinary course of business by the Estate (and not past due); (iii) an Administrative Claim that has been Allowed on or before the Effective Date; or (iv) a DIP Facility Claim, must file with the Bankruptcy Court and serve on the Reorganized Debtors, the Exempt Assets Trustee, and the Office of the United States Trustee, notice of such Administrative Claim within forty (40) days after service of Notice of the Effective Date (i.e., by \_\_\_\_\_, 2015). Such notice must include at a minimum (A) the name of the holder of the Claim; (B) the amount of the Claim; and (C) the basis of the Claim. **Failure to file and serve such notice timely and properly shall result in the Administrative Claim being forever barred and discharged.**

b. **Time for Filing Fee Claims.** Professional Persons asserting a Fee Claim for services rendered before the Effective Date must, unless previously filed, file with the Bankruptcy Court and serve on the Reorganized Debtors and the Disbursing Agent and such other entities who are designated by the Bankruptcy Rules, the Professional Fee Order, the Confirmation Order or other order of the Bankruptcy Court an application for final Allowance of such Fee Claim no later than 30 days after the Confirmation Date; provided, however, that any Professional Person who may receive compensation or reimbursement of expenses pursuant to the Ordinary Course Professionals Order may continue to receive such compensation and reimbursement of expenses for services rendered before the Effective Date pursuant to the Ordinary Course Professionals Order without further Bankruptcy Court review or approval (except as provided in the Ordinary Course Professionals Order).

Objections to any Fee Claim must be filed with the Bankruptcy Court and served on the Reorganized Debtors and the Disbursing Agent and the requesting party by the later of (A) 14 days after the Filing of the applicable request for payment of the Fee Claim or (B) such other period of limitation as may be specifically fixed by a Final Order for objecting to such Fee Claims.

**The failure to timely file and serve a Fee Application shall result in the Fee Claim being forever barred and discharged.**

c. **Rejection Damage Claims.** Notwithstanding anything in the Bar Date Order to the contrary, Claims created by the rejection of executory contracts and unexpired leases or the expiration or termination of any executory contract or unexpired lease prior to the Confirmation Date are Unsecured Claims and must be filed with the Bankruptcy Court and served on the Debtors or, if after the Effective Date, the Reorganized Debtors, the Exempt Assets Trustee, and the ERG Plan Trustee: (a) in the case of an executory contract or unexpired lease rejected by the Debtors prior to the Confirmation Date, in accordance with the order rejecting such executory contract or unexpired lease; or (b) in the case of an executory contract or unexpired lease that (i) was terminated or expired by its terms prior to the Confirmation Date; or (ii) is rejected pursuant to the Plan, no later than thirty (30) days after the Confirmation Date (i.e., by \_\_\_\_\_, 2015.) Any such Claims for which a proof of claim is not filed and served by the deadlines set forth herein will be forever barred from assertion and shall not be enforceable against the Debtors or their Estates. Except as otherwise ordered by the Bankruptcy

Court, all such Claims that are timely filed as provided herein shall be treated as Unsecured Claims under the Plan subject to objection by the Disbursing Agent.

**7. Service Upon Claims and Noticing Agent.** Proofs of claim that are required to be filed in accordance with the terms of the Plan, the Confirmation Order or other applicable orders of the Bankruptcy Court must be served on the Debtors' claims and noticing agent, All proofs of claim must be filed so as to be received **on or before the applicable Bar Date**, at the following address:

**If via first class mail:**

ERG Intermediate Holdings, LLC Claims  
Processing Center  
c/o Epiq Bankruptcy Solutions, LLC  
P.O. Box 4419  
Beaverton, OR 97076-4419

**If via messenger or overnight mail:**

ERG Intermediate Holdings, LLC Claims  
Processing Center  
c/o Epiq Bankruptcy Solutions, LLC  
10300 SW Allen Blvd  
Beaverton, OR 97005

Proofs of claim will be deemed filed only when **actually received** by the Debtors' claims agent, Epiq Bankruptcy Solutions, LLC. **Proofs of claim may not be delivered by facsimile or electronic mail transmission.** Any facsimile or electronic mail submissions will not be accepted and will not be deemed filed until a proof of claim is submitted by one of the methods described above.

**8. Notice Parties' Service Addresses.** Any notices, requests, and demands required or permitted to be provided under the Plan, in order to be effective, shall be in writing (including, without express or implied limitation, by facsimile transmission), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

**If to the Debtors:**

Jones Day  
717 Texas Avenue, Suite 3300  
Houston, Texas 77002  
Attn: Tom A. Howley

With a copy to:

ERG Resources, LLC  
Three Allen Center  
333 Clay Street, Suite 4400  
Houston, TX 77002  
Attn: Kelly Plato

**If to the Prepetition Agent or the  
DIP Agent:**

CLMG Corp.  
7195 Dallas Parkway  
Plano, TX 75024  
Attn: James Erwin

With a copy to:

White & Case LLP  
555 South Flower Street, Suite  
2700  
Los Angeles, CA 90071  
Attn: Roberto J. Kampfner

**If to the Committee:**

Pachulski Stang Ziehl & Jones  
LLP  
780 Third Avenue, 34th Floor  
New York, NY 10017  
Attn: Robert J. Feinstein

**If to the Exempt Assets Trustee:**

Jason R. Searcy  
SEARCY & SEARCY P.C.  
446 Forest Square  
P.O. Box 3929  
Longview, TX 75606

**If to the ERG Plan Trustee:**

Sean Clements  
Opportune LLP  
711 Louisiana St #3100  
Houston, TX 77002

**If to the United States Trustee:**

Office of the United States Trustee  
1100 Commerce Street, Room 976,  
Dallas, TX 75242  
Attn: Erin Schmidt

With a copy to:  
Pachulski Stang Ziehl & Jones  
LLP  
780 Third Avenue, 34th Floor  
New York, NY 10017  
Attn: Robert J. Feinstein

**9. Copies of the Plan and the Confirmation Order.** Copies of the Plan and the Confirmation Order may be obtained free of charge at <http://dm.epiq11.com/ERG>.

Dated: \_\_\_\_\_, 2015

BY ORDER OF THE COURT

Tom A. Howley  
JONES DAY  
717 Texas Avenue, Suite 3300  
Houston, Texas 77002  
Telephone: (832) 239-3939  
Facsimile:  
tahowley@jonesday.com

Brad B. Erens  
Joseph A. Florczak  
JONES DAY  
77 West Wacker  
Chicago, Illinois 60601  
Telephone: (312) 782-3939  
Facsimile:  
bberens@jonesday.com  
jflorczak@jonesday.com

*Attorneys for the Debtors*

Thomas E Lauria, State Bar No. 11998025  
WHITE & CASE LLP  
Southeast Financial Center, Suite 4900  
200 South Biscayne Blvd.  
Miami, FL 33131  
Telephone: (305) 371-2700  
Facsimile: (305) 358-5744  
tlauria@whitecase.com

Craig H. Averch, State Bar No. 01451020  
Roberto J. Kampfner (admitted *pro hac vice*)  
WHITE & CASE LLP  
633 West Fifth Street, Suite 1900  
Los Angeles, CA 90071  
Telephone: (213) 620-7700  
Facsimile: (213) 452-2329  
caverch@whitecase.com  
rkampfner@whitecase.com

*Attorneys for CLMG Corp., in its capacity as the  
Prepetition Agent*