



ENTERED
06/12/2020

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re: KP ENGINEERING, LP, <i>et al.</i> , <div style="text-align: right;">Debtors.¹</div>	§ § § § § § § § §	Chapter 11 Case No. 19-34698 (DRJ) (Jointly Administered)
---	---	---

ORDER CONFIRMING THIRD AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF KP ENGINEERING, LP AND KP ENGINEERING, LLC

On June 11, 2020, the Court conducted a hearing (the “Confirmation Hearing”) to consider Confirmation of the *Third Amended Joint Chapter 11 Plan of Reorganization of KP Engineering, LP and KP Engineering, LLC*, dated May 15, 2020 [Doc. No. 530], as modified and supplemented on June 10, 2020 [Doc. No. 568-1], Filed by KP Engineering, LP and KP Engineering, LLC, as debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned jointly administered Bankruptcy Cases. As referred to herein, the “Plan” shall be the Plan attached to this Confirmation Order as **Exhibit 1**, along with all modifications referred to herein.² Having considered the Plan, and based on the evidence presented at the Confirmation Hearing, including the Declaration of Douglas J. Brickley in Support of Confirmation of the Plan [Doc. No. 566-1] (the “Brickley Declaration”), the Debtors’ Ballot Summary [Doc. No. 566-2] (the “Ballot Summary”), the arguments and representations of counsel, and the entire record in the Bankruptcy Cases, the Court makes the following findings

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: KP Engineering, LP (7785) and KP Engineering, LLC (0296). The location of the Debtors’ corporate headquarters and the Debtors’ service address is: 5555 Old Jacksonville Highway, Tyler, TX 75703.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Plan attached hereto as **Exhibit 1**, the KP Engineering Liquidation Trust Agreement attached hereto as **Exhibit 2**, or the Disclosure Statement [Doc. No. 531], as applicable.

of fact and conclusions of law (the “Findings of Fact and Conclusions of Law”) in support of Confirmation of the Plan pursuant to Bankruptcy Rule 7052, as made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

All Findings of Fact and Conclusions of Law announced by the Court at the Confirmation Hearing are incorporated herein by reference for all purposes to the extent not inconsistent herewith. To the extent that any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such. To the extent any of the following Conclusions of Law constitute Findings of Fact, they are adopted as such.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Introduction

1. On August 23, 2019 (the “Petition Date”), the Debtors Filed voluntary petitions for relief under Chapter 11, title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the “Court”). Debtor KPE LP was assigned case number 19-34698, and Debtor KPE LLC was assigned case number 19-34699. The Bankruptcy Cases have been consolidated for procedural purposes only and are jointly administered under KPE LP’s case number 19-34698. Since the Petition Date, the Debtors have operated their businesses and managed their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in the Bankruptcy Cases. On September 6, 2019, the United States Trustee Filed its *Notice of Appointment of Official Committee of Unsecured Creditors* [Doc. No. 108].

2. On February 28, 2019, the Debtors Filed their *Joint Chapter 11 Plan of Reorganization of KP Engineering, LP and KP Engineering, LLC* [Doc. No. 437] and their

Disclosure Statement in Support of Joint Chapter 11 Plan of Reorganization of KP Engineering, LP and KP Engineering, LLC [Doc. No. 438]. Amended versions of the Plan and Disclosure Statement were Filed on April 19, 2020 [Doc. Nos. 487 and 488, respectively] and April 21, 2020 [Doc. Nos. 496 and 497, respectively]. On May 15, 2020, the Debtors Filed their third amended Plan and Disclosure Statement [Doc. Nos. 530 and 531, respectively]. This version of the Plan was solicited by the Debtors.

3. The Court makes these Findings of Fact and Conclusions of Law with respect to Confirmation of the Debtors' *Third Amended Joint Chapter 11 Plan of Reorganization of KP Engineering, LP and KP Engineering, LLC*, dated May 15, 2020, as modified and supplemented on June 10, 2020, and attached hereto as **Exhibit 1**.

B. Jurisdiction and Venue

4. The Court has jurisdiction over this matter under 28 U.S.C. § 1334. Confirmation of this Plan is a core matter under 28 U.S.C. § 157(b). Venue is proper in the Court under 28 U.S.C. §§ 1408 and 1409.

C. Eligibility for Relief

5. The Debtors were and continue to be eligible for relief under section 109 of the Bankruptcy Code.

D. Solicitation Materials and Related Matters

6. On April 1, 2020, the Debtors Filed their *Emergency Motion for Entry of an Order Approving (I) Adequacy of the Disclosure Statement; (II) Form of Solicitation Materials; and (III) Procedures for Soliciting and Voting on the Joint Chapter 11 Plan of Reorganization* [Doc. No. 454].

7. On April 20, 2020, the Court entered its *Order Granting Debtors' Emergency Motion for Entry of an Order Approving (I) Adequacy of the Disclosure Statement; (II) Form of Solicitation Materials; and (III) Procedures for Soliciting and Voting on the Joint Chapter 11 Plan of Reorganization* [Doc. No. 494].

8. After a mediation that resulted in a settlement and further amendments to the Plan and Disclosure Statement being Filed, the Court held a status conference on May 11, 2020 regarding the Debtors' Plan and Disclosure Statement. On May 15, 2020, the Court entered its *Amended Order Granting Debtors' Motion for Entry of an Order Approving (I) Adequacy of the Disclosure Statement; (II) Form of Solicitation Materials; and (III) Procedures for Soliciting and Voting on the Joint Chapter 11 Plan of Reorganization* (the "Disclosure Statement Approval Order") [Doc. No. 529].

9. Pursuant to the Disclosure Statement Approval Order, on May 18, 2020, the Debtors Filed a *Notice of Filing Solicitation Materials* [Doc. No. 533].

10. On May 19, 2020, the Debtors caused the Solicitation Materials (as defined in the Disclosure Statement Approval Order) to be served upon Holders of Claims and Interests in the Voting Classes [Doc. No. 540].

11. On June 10, 2020, the Debtors Filed a *Notice of Filing Plan Documents* [Doc. No. 566]. The materials contained in the Plan Documents comply with the terms of the Plan and the Disclosure Statement Approval Order, and the filing and notice of such documents was good and proper.

12. On June 10, 2020, the Debtors Filed their Ballot Summary. The procedures by which Ballots were received and tabulated in the Ballot Summary was fair and properly

conducted in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Approval Order.

E. Objections to Confirmation of the Plan and Disposition Thereof

13. The Debtors received certain objections to the Plan [Doc. Nos. 520, 545, 546, 548, 549, 550, 551, and 552] (collectively, the “Confirmation Objections”). As stated on the record at the Confirmation Hearing, all of these Confirmation Objections were resolved as set forth in this Confirmation Order. To the extent such Confirmation Objections were not withdrawn or otherwise resolved, the record demonstrates by a clear preponderance of the evidence that the Plan should be confirmed, and the Confirmation Objections should be overruled.

F. Confirmation Hearing

14. On June 11, 2020 at 2:00 p.m. (prevailing Central Time), the Court held the Confirmation Hearing. At the Confirmation Hearing, the Debtors established the following record in support of Confirmation of the Plan: (a) all documents identified on the Debtors’ Witness and Exhibit List Filed in the Bankruptcy Cases in support of Confirmation; (b) the Brickley Declaration; (c) the testimony at the Confirmation Hearing; (d) the evidence in respect of transmittal and service of the Solicitation Materials; (e) the Ballot Summary; (f) the entire record of the Bankruptcy Cases and the docket maintained by the clerk of the Court and/or its duly appointed agent, including, without limitation, all pleadings and other documents Filed, all orders entered, and evidence and argument made, proffered, or adduced at the hearings held before the Court during the pendency of the Bankruptcy Cases, as to all of which the Court takes judicial notice; (f) the statements and argument of counsel on the record at the Confirmation

Hearing; and (g) all papers and pleadings Filed with the Court in support of, in opposition to, or otherwise in connection with Confirmation of the Plan.

G. Applicable Confirmation Requirements

15. To confirm the Plan, the Debtors are required to demonstrate that the Plan satisfies the provisions of Bankruptcy Code section 1129 by a preponderance of the evidence. *See Heartland Fed. Sav. & Loan Assoc. v. Briscoe Enters., Ltd. II (In re Briscoe Enters., Ltd. II)*, 994 F.2d 1160, 1165 (5th Cir. 1993), *cert. denied*, 510 U.S. 992 (1993).

i. 11 U.S.C. § 1129(a)(1) and (a)(2): Compliance with Title 11

16. The classification and treatment of Claims and Interests are described in Articles II and III of the Plan, and the Plan implementation procedures are described in Article IV of the Plan. The classification of Claims and Interests described in the Plan satisfies the standards of section 1122 of the Bankruptcy Code, and the Plan complies with the applicable provisions of section 1123 of the Bankruptcy Code. The requirements of section 1129(a)(1) of the Bankruptcy Code are therefore satisfied. The Debtors have complied with the terms of the Disclosure Statement Approval Order, and the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, Bankruptcy Local Rules for the Southern District of Texas, and the Procedures for Complex Chapter 11 Cases in the Southern District of Texas. As a result, the requirements of section 1129(a)(2) of the Bankruptcy Code are satisfied.

ii. 11 U.S.C. § 1129(a)(3): Plan Proposed in Good Faith

17. The Debtors have proposed the Plan with the legitimate and honest purpose of reorganizing their financial affairs and making distributions to Holders of Claims and Interests. The Plan has not been proposed by any means forbidden by law. The Plan fairly achieves a result consistent with the objectives and purposes of the Bankruptcy Code. The Plan is the result

of good faith, arm's-length negotiations among the Debtors and Holders of Claims and Interests. Accordingly, the Plan has been proposed in good faith and not by any means forbidden by law as required by section 1129(a)(3) of the Bankruptcy Code.

iii. 11 U.S.C. § 1129(a)(4): Disclosure and Approval of Payments

18. Any payment made, or to be made, by the Debtors for services or for costs and expenses during or in connection with the Bankruptcy Cases, or in connection with the Plan and incident to the Bankruptcy Cases, has been approved by, or is subject to the approval of the Court as reasonable, as required by section 1129(a)(4) of the Bankruptcy Code.

iv. 11 U.S.C. § 1129(a)(5): Disclosure of Management and Payments to Insiders

19. As required by section 1129(a)(5) of the Bankruptcy Code, the Debtors have disclosed the identities of the individuals proposed to serve as the Directors and Officers of Reorganized Debtors after the Effective Date of the Plan. Further, the Debtors have adequately disclosed the identities of the Current Directors and Officers who are Insiders of the Debtors.

v. 11 U.S.C. § 1129(a)(6): Regulatory Rate Approval

20. The Plan does not provide for a "rate change" as contemplated by section 1129(a)(6) of the Bankruptcy Code, and therefore, section 1129(a)(6) does not apply to the Plan.

vi. 11 U.S.C. § 1129(a)(7): Best Interest of Creditors Test

21. The Debtors prepared a Liquidation Analysis with respect to a hypothetical liquidation of the Debtors' assets under chapter 7 of the Bankruptcy Code. The Liquidation Analysis was attached as Exhibit 2 to the Disclosure Statement. [Doc. No. 531-2]. The Court accepts the results of the Liquidation Analysis. Based on the Liquidation Analysis, with respect to each Impaired Class of Claims or Interests, (a) each Holder of a Claim or Interest of such Class has either accepted the Plan, or (b) will receive or retain under the Plan on account of such

Claim or Interest, property of a value, as of the Effective Date, that is not less than the amount that the Holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. The requirements of section 1129(a)(7) of the Bankruptcy Code are therefore satisfied.

vii. 11 U.S.C. § 1129(a)(8): Acceptance of Plan by All Classes

22. Section 1129(a)(8) of the Bankruptcy Code requires that, with respect to each Class of Claims or Interests, such Class has either accepted the Plan or is not Impaired under the Plan. As depicted in the Ballot Summary, all Classes of Claims and Interests who were entitled to vote on the Plan either voted to accept the Plan or are deemed to have accepted the Plan, and therefore, the requirements of section 1129(a)(8) are satisfied.

23. Alternatively, to the extent the requirements of section 1129(a)(8) of the Bankruptcy Code have not been satisfied, the Plan meets the “cramdown” requirements of section 1129(b) of the Bankruptcy Code. Specifically, the Plan is fair and equitable to the extent that the Holder of any Claim or Interest that is junior to the Claims of such Class will not receive or retain any property under the Plan on account of such junior Claim or Interest. Further, the Plan does not unfairly discriminate with respect to any Class of Claims or Interests because no Class is afforded treatment which is disproportionate to the treatment afforded other Classes of equal rank. Accordingly, and notwithstanding the non-acceptance by Impaired Classes of Claims described in the Ballot Summary, the Debtors’ Plan meets the requirements to effect a “cramdown” consistent with the provisions of section 1129 of the Bankruptcy code.

viii. 11 U.S.C. § 1129(a)(9): Payment of Priority Claims

24. Section 1129(a)(9) of the Bankruptcy Code provides for the treatment of Claims entitled to priority under sections 507(a)(1)-(8) of the Bankruptcy Code. Under section

1129(a)(9)(A) of the Bankruptcy Code, Holders of section 507(a)(2) and (a)(3) Claims must receive Cash equal to the Allowed amount of such Claim. Section 1129(a)(9)(B) provides that, except to the extent the Holder of a Claim has otherwise agreed to a different treatment, Holders of section 507(a)(1) and (a)(4)-(a)(7) Claims must receive deferred Cash payments of a value equal to the Allowed amount of such Claims if the Class has accepted the Plan or, if not, Cash equal to the Allowed amount of such Claim. The Plan satisfies these requirements, and, therefore, complies with sections 1129(a)(9)(A) and (B) of the Bankruptcy Code.

25. Under section 1129(a)(9)(C) of the Bankruptcy Code, holders of claims under section 507(a)(8) or secured tax claims must receive regular installment payments in cash, (a) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim; (b) over a period ending not later than five (5) years after the date of the order for relief under Bankruptcy Code sections 301, 302 or 303; and (iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan. The Debtors' Plan satisfies such requirements and therefore complies with section 1129(a)(9)(C) of the Bankruptcy Code.

ix. 11 U.S.C. § 1129(a)(10): At Least One Impaired Class Has Accepted the Plan

26. Section 1129(a)(10) of the Bankruptcy Code provides that if one or more classes of claims is impaired under the plan, at least one class must have accepted the plan, without including any votes of insiders. Here, without including acceptance of the Plan by any Insider, Classes 2, 6, and 7 have voted to accept the Plan. The Plan therefore satisfies the requirements of section 1129(a)(10) of the Bankruptcy Code.

x. 11 U.S.C. § 1129(a)(11): Feasibility

27. At the Confirmation Hearing, the Debtors offered certain Exhibits, including the Brickley Declaration, in order to demonstrate the feasibility of the Plan. Based on the testimony

and the supporting documentary evidence presented, the Court finds that the Plan adequately implements the reorganization of the Debtors and their businesses and the restructuring of their financial obligations. The testimony set forth in the Brickley Declaration is credible and the Debtors can be expected to achieve operational results sufficient to satisfy the obligations required under the Plan. Further, Confirmation of the Plan is not likely to be followed by liquidation or further need for financial restructuring by the Debtors. Accordingly, the Plan is feasible and complies with section 1129(a)(11) of the Bankruptcy Code.

xi. 11 U.S.C. § 1129(a)(12): Payment of Fees

28. The Plan provides that, until the Bankruptcy Cases are closed, all fees incurred under 28 U.S.C. § 1930(a)(6) will be paid by each Reorganized Debtor. Thus, the Plan complies with section 1129(a)(13) of the Bankruptcy Code.

xii. 11 U.S.C. § 1129(a)(13): Retiree Benefits

29. The Debtors do not maintain a retirement plan as defined by section 1114 of the Bankruptcy Code, and therefore the Plan does not require the payment of retiree benefits.

xiii. 11 U.S.C. § 1129(a)(14): Domestic Support Obligations

30. The Debtors are not required to pay a domestic support obligations, either under a judicial or administrative order or by statute, and therefore section 1129(a)(14) of the Bankruptcy Code is inapplicable.

xiv. 11 U.S.C. § 1129(a)(15): Objection to Plan Confirmation by a Holder of an Unsecured Claim

31. The Debtors are not individuals, and therefore section 1129(a)(15) of the Bankruptcy Code is inapplicable.

xv. 11 U.S.C. § 1129(a)(16): Restrictions on Transfers of Property by Nonprofit Entities

32. The Debtors are a moneyed, commercial partnership and limited liability company, respectively, and therefore section 1129(a)(16) of the Bankruptcy Code is inapplicable.

xvi. 11 U.S.C. § 1129(b)

33. Under section 1129(b) of the Bankruptcy Code, the court “shall confirm the plan ... if the plan does not discriminate unfairly, and it is fair and equitable, with respect to each class of claims or interest is impaired under, and has not accepted, the plan.” *See* 11 U.S.C. § 1129(b). For purposes of section 1129(b), the Plan is fair and equitable to the extent that the Holder of any Claim or Interest that is junior to the Claims of such Class will not receive or retain any property under the Plan on account of such junior Claim or Interest. The Court finds that the Plan does not discriminate unfairly, is fair and equitable, and otherwise satisfied the elements of 1129(b) of the Bankruptcy Code.

xvii. 11 U.S.C. § 1129(d)

34. The primary purpose of the Plan is not avoidance of taxes or avoidance of the requirements of Section 5 of the Securities Act. As a result, the Plan complies with section 1129(d) of the Bankruptcy Code.

H. Conclusion

35. The Debtors have demonstrated that the Plan provisions comply with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules, including sections 1122, 1123, and 1129 of the Bankruptcy Code, and are reasonable and appropriate.

II. ORDER

Based on the Findings of Fact and Conclusions of Law, the Court has determined that the Plan satisfies the applicable provisions of the Bankruptcy Code and should therefore be confirmed. It is therefore hereby **ORDERED** that:

36. The foregoing Findings of Fact and the Conclusions of Law constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052, made applicable to these proceedings by Bankruptcy Rule 9014. All additional findings of fact and conclusions of law announced by the Court at the Confirmation Hearing in relation to Confirmation of the Plan, including the Court's rulings with respect to Confirmation, are hereby incorporated into this Confirmation Order. All Findings of Fact or Conclusions of Law constitute rulings of the Court, and are part of this Confirmation Order and adopted as such.

A. Confirmation of the Plan and Approval of Plan Documents

37. The Plan is CONFIRMED in its entirety under section 1129 of the Bankruptcy Code, and all of the terms and conditions contained in the Plan are APPROVED. The Debtors and the KP Engineering Liquidation Trustee, as applicable, are authorized to implement the Plan in accordance with the terms and provisions of the Plan, Liquidation Trust Agreement, and this Confirmation Order. The Debtors, upon written notice to and in consultation with the Liquidation Trustee, are authorized to modify the Plan through and including the Effective Date in accordance with Bankruptcy Code section 1127 without further order of the Court to the extent necessary to make any changes required or appropriate to implement, effectuate, and consummate the Plan, the terms of this Confirmation Order, the KP Engineering Liquidation Trust Agreement, and the transactions respectively contemplated under each of the foregoing. If the Liquidation Trustee opposes the Debtors' modifications of the Plan, the Liquidation Trustee

has the necessary standing to object to the proposed modification and may seek an order of the Court, on notice and opportunity to object, on an expedited basis, and the Court shall resolve the dispute.

38. The Plan Documents, as Filed with the Court, are necessary and appropriate to effectuate the transactions contemplated under the Plan, and are APPROVED and deemed part of the Plan as if fully set forth therein. The Debtors, upon written notice to and in consultation with the Liquidation Trustee, are authorized to modify the Plan Documents through and including the Effective Date, along with such other certificates, documents, and instruments that may be necessary or appropriate to effectuate the transactions contemplated under the Plan. If the Liquidation Trustee opposes the Debtors' modifications of the Plan Documents, the Liquidation Trustee has the necessary standing to object to the proposed modification and may seek an order of the Court, on notice and an opportunity to object, on an expedited basis, and the Court shall resolve the dispute. All of the Plan Documents comply with the terms of the Plan, and the filing and notice of such Plan Documents was good and proper and in accordance with the Bankruptcy Code and Bankruptcy Rules, and no other or further notice is required. The Plan and Plan Documents have been negotiated in good faith at arm's length and shall, on and after the Effective Date, constitute legal, valid, binding, and authorized obligations of the respective parties thereto and will be enforceable in accordance with their terms. The Plan, including all transactions contemplated by the Plan and Plan Documents, represents the exercise of the sound business judgment of the Debtors, and is in the best interests of the Debtors, Holders of Claims and Interests, and all parties in interest.

B. Resolution of Confirmation Objections

39. The Confirmation Objection timely Filed by Smith County at Docket No. 549 has been resolved by agreement as set forth herein. Smith County shall retain its statutory Lien securing its post-petition tax debt until such time as the tax debt is paid in full. The Debtors shall pay the post-petition ad valorem tax liability (tax year 2020 and subsequent tax years) owing to Smith County in the ordinary course of business as such tax debt comes due and prior to said ad valorem taxes becoming delinquent without the need of Smith County to File an Administrative Expense Claim and/or request for payment. In the event the 2020 taxes are not paid prior to delinquency as required under Texas law, penalties and interest shall accrue as provided under Texas law and Smith County is authorized to immediately commence any and all collection actions authorized under Texas law, in state court without further order of this Court.

40. The Confirmation Objections timely Filed by Ken Baxter (“Baxter”) and Ric Steele (“Ric Steele”) at Docket No. 550 and Tony Freeman (“Freeman”) at Docket No. 552 have been resolved by agreement, as set forth herein. Notwithstanding anything in the Plan, the Plan Documents, and this Confirmation Order, the Court finds, concludes and orders as follows with respect to Baxter, Ric Steele, and Freeman:

- a. Baxter and Ric Steele timely Filed a *Notice of Rejection of Chapter 11 Plan Releases* [Doc. No. 542] and Tony Freeman timely Filed a *Notice of Opposition to Consensual Releases* [Doc. No. 543].
- b. In the adversary proceeding styled *Official Committee of Unsecured Creditors on Behalf of KP Engineering, LP and KP Engineering, LLC v. Brandon T. Steele, et al.*, Case No. 20-03035 in the United States Bankruptcy Court for the Southern District of Texas (the “3035 Adversary Proceeding”), Baxter, Ric Steele, and Freeman have: (i) filed Answers and Counterclaims asserting defenses and seeking affirmative relief, including attorneys’ fees; (ii) filed demands for a jury trial; and (iii) as to Freeman only, sought relief that he claims arise from that certain Settlement Agreement, effective as of January 1, 2016, among Debtors, Freeman, Andrea Freeman, and other persons and entities (“Freeman Settlement Agreement”).

- c. The releases and injunction in Article VIII of the Plan do not impact, limit, or prejudice the respective rights of Baxter, Ric Steele, and Freeman, in the 3035 Adversary Proceeding or in any subsequent preserved and unasserted litigation, including: (i) their jury trial rights; (ii) their rights to assert any defenses or affirmative defenses, including, but not limited to, those presently asserted in the pleadings in the 3035 Adversary Proceeding and including specifically the assertion of rights of offset and recoupment without the limitations found in Article VIII.F. of the Plan; and (iii) any requests for affirmative relief. The Plan, the Plan Documents, and this Confirmation Order will not affect the enforceability of the Freeman Settlement Agreement by, or against, any party to the Freeman Settlement Agreement, including in connection with the 3035 Adversary Proceeding; *provided, however*, that the Debtors have rejected the Freeman Settlement Agreement pursuant to the Plan, and Freeman agrees that such rejection will not give rise to any responsibility or liability of, or create any claim by Freeman, against the Reorganized Debtors.
- d. For the removal of doubt, with respect to the 3035 Adversary Proceeding, nothing in the Plan, Plan Documents, and this Confirmation Order shall prejudice the rights of Ric Steele, Baxter, or Freeman to assert any: (i) response under the applicable rules of civil procedure; (ii) any defense; and (iii) any request for attorney fees and costs.
- e. Any potential claims or causes of action, including Causes of Action constituting Liquidation Trust Assets, that are preserved, unfiled, and assert-able against Baxter, Ric Steele, or Freeman in, *inter alia*, the 3035 Adversary Proceeding will not impact, limit, or otherwise prejudice their respective rights, including: (i) jury trial rights; (ii) the rights to assert any defenses or affirmative defenses, including, but not limited to, those asserted in their respective Answers and Counterclaims; and (iii) any other requests for relief of Baxter, Ric Steele, and Freeman. The Plan, Plan Documents, and this Confirmation Order will not affect the enforceability of the Freeman Settlement Agreement by, or against, any party to the Freeman Settlement Agreement, including in connection with the 3035 Adversary Proceeding; *provided, however*, that the Debtors have rejected the Freeman Settlement Agreement pursuant to the Plan, and Freeman agrees that such rejection will not give rise to any responsibility or liability of, or create any claim by Freeman, against the Reorganized Debtors.
- f. The Plan, Plan Documents, and this Confirmation Order: (i) shall have no preclusive effect (whether by operation of res judicata, collateral estoppel, law of the case, or otherwise) that impacts the disposition of the 3035 Adversary Proceeding or related withdrawn action; and (ii) with regard to the Freeman Settlement Agreement, shall not (a) impact, limit, or otherwise prejudice any non-Debtor parties' rights and benefits under the Freeman Settlement Agreement, (b) act as a rejection of any remaining responsibilities of any non-Debtor party to the Freeman Settlement Agreement, or (c) otherwise affect any positions, defenses, claims, counterclaims, and third-party claims, including recoupment, offset, and other affirmative defenses that may arise in favor of non-Debtor parties to the Freeman Settlement Agreement and the terms therein.

- g. The Plan, Plan Documents, and this Confirmation Order shall not impact, limit, or otherwise prejudice the rights, if any, of Baxter, Steele, and Freeman under any D&O insurance policy.

41. All timely Filed Confirmation Objections, or any other untimely objections to Confirmation of the Plan, that were not withdrawn or otherwise resolved at or before the Confirmation Hearing are expressly overruled, except as set forth in this Confirmation Order.

C. Establishment of the KP Engineering Liquidation Trust

42. The Plan provides for the creation of the KP Engineering Liquidation Trust. Confirmation of the Plan shall effect the formation of the Liquidation Trust and shall be governed by the Liquidation Trust Agreement. The form and content of the Liquidation Trust Agreement attached hereto as **Exhibit 2** is approved and incorporated by reference herein.

43. Michael D. Warner shall serve as the Liquidation Trustee until death, resignation, discharge, or the appointment of a successor in accordance with the Liquidation Trust Agreement. In the exercise of his authority on behalf of the Liquidation Trust, the Liquidation Trustee will have certain responsibilities and powers, and shall administer the Liquidation Trust Assets for the benefit of the Liquidation Trust Beneficiaries pursuant to the terms and conditions of the Plan, Liquidation Trust Agreement, and this Confirmation Order. In addition to the rights and duties provided in the Plan, Liquidation Trust Agreement, and this Confirmation Order, the Liquidation Trustee shall be entitled to all rights, privileges, and immunities provided under applicable non-bankruptcy law, including, but not limited to, all rights, privileges, and immunities provided to a trustee under Texas law.

D. Implementation of the Plan

44. Pursuant to section 1123(a)(5)(D) of the Bankruptcy Code, on the Effective Date, or as soon thereafter as is reasonably practicable, the Debtors, Reorganized Debtors, and

Liquidation Trustee, as applicable, may take all actions as may be necessary or appropriate to effect any action described in, approved by, contemplated by, or necessary to effectuate the Plan and the Liquidation Trust.

45. All such actions taken or caused to be taken consistent with the terms of the Plan, Liquidation Trust Agreement, and Confirmation Order, including any such actions taken prior to the entry of the Confirmation Order, shall be deemed to have been authorized and approved by the Court without further order under any applicable laws or regulations.

46. On the Effective Date, except to the extent otherwise provided in the Plan or Plan Documents, all notes, instruments, certificates, and other documents evidencing Claims or Interests shall be cancelled and the obligations of the Debtors or Liquidation Trustee, if any, shall be deemed satisfied in full, cancelled, discharged, and of no force or effect. Holders of, or parties to, such cancelled instruments, securities, and other documentation will have no rights arising from or relating to such instruments, securities, and other documentation, or the cancellation thereof, except the rights provided pursuant to the Plan, Liquidation Trust Agreement, and this Confirmation Order.

E. Settlement of Claims and Controversies

47. Pursuant to section 1123(b)(3)(A) of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the distributions and other benefits provided under the Plan, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims and controversies relating to the rights that a Holder of a Claim or Interest may have with respect to such Claim or Interest or any distribution on account thereof, including, for the avoidance of doubt, the compromise and settlement of the Committee Litigation against Texas Capital Bank, N.A. The entry of this Confirmation Order shall constitute the Court's approval, as of the

Effective Date, of each of the compromises and settlements embodied in the Plan, including the treatment of Claims and Interests under the Plan, and the Court's finding that all such compromises or settlements are: (i) in the best interest of the Debtors, the Estates, the Reorganized Debtors, and their respective creditors and stakeholders; (ii) fair, equitable and within the range of reasonableness; and (iii) satisfy the requirements of Bankruptcy Rule 9019 and Bankruptcy Code section 1123(b)(3)(A). The provisions of the Plan, including, without limitation, the Plan's release, injunction, exculpation and compromise provisions, are mutually dependent.

F. Effects of Confirmation of the Plan

48. The provisions of the Plan, Plan Documents, Liquidation Trust Agreement, and this Confirmation Order are binding on the Debtors, Reorganized Debtors, Liquidation Trustee, each Holder of a Claim or Interest, each non-Debtor counterparty to an Executory Contract or Unexpired Lease with either Debtor, any other interested party in the Bankruptcy Cases, and each of the foregoing's respective agents, heirs, successors, and assigns, regardless of whether such Entity Filed a Proof of Claim or voted to accept the Plan.

49. Upon entry of this Confirmation Order, the Debtors, Reorganized Debtors, Liquidation Trustee, and their respective Directors and Officers, agents, attorneys, and Professionals, as applicable, are authorized and directed to effect any and all actions contemplated or required by the Plan or Plan Documents, including, but not limited to, the Exit Financing Documents, New Organizational Documents, Liquidation Trust Agreement, Initial Trust Payment, Subsequent Trust Payments, and Trust Letter of Credit. On and after the Effective Date, the Debtors, Reorganized Debtors, Liquidation Trustee and their respective Directors and Officers, agents, attorneys, and Professionals are authorized and directed to take all

necessary and appropriate steps and corporate action to implement the terms of the Plan, regardless of whether such actions are specifically referred to in the Plan or this Confirmation Order.

50. Except as otherwise provided by the Plan or this Confirmation Order, the rights afforded under the Plan and the treatment of Claims and Interests under the Plan are in exchange for and in complete satisfaction, discharge, and release of, all Claims against or Interests in the Debtors and their Estates (including Retained Causes of Action), and the Liquidation Trust.

51. Except as otherwise provided in the Plan, this Confirmation Order, or separate Final Order of the Court, all injunctions or automatic stays provided for in the Bankruptcy Cases under sections 105 and 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect through the Effective Date.

52. Except as otherwise provided in section 1141 of the Bankruptcy Code, and subject to the occurrence of the Effective Date, on and after the entry of this Confirmation Order, the provisions of the Plan and Liquidation Trust Agreement shall bind every Holder of a Claim against or Interest in the Debtors and inure to the benefit of and be binding on such Holder's respective successors and assigns, regardless of whether the Claim or Interest of such Holder is Impaired under the Plan and whether such Holder has voted to accept or reject the Plan.

G. Vesting of Assets Free and Clear of Liens, Claims and Encumbrances

53. Except as otherwise provided in the Plan, Plan Documents, Liquidation Trust Agreement, or this Confirmation Order, all Estate Property of either Debtor, and any property acquired by a Debtor or Reorganized Debtor under the Plan, will vest in the applicable Reorganized Debtor or Liquidation Trust, as applicable under the Plan, free and clear of all Claims, Liens, Interests, charges, and other encumbrances. On and after the Effective Date and,

in the case of a Secured Claim, upon satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date pursuant to the terms and conditions of the Plan, except as otherwise provided in the Plan or this Confirmation Order, each Reorganized Debtor may operate its business and may use, acquire, or dispose of property and compromise or settle any Claims, Interests, or Retained Causes of Action without supervision or approval by the Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. Failure to include a Cause of Action on the Schedule of Retained Causes of Action shall not constitute a waiver or release of such Cause of Action.

H. Continued Corporate Existence

54. The Debtors shall continue to exist after the Effective Date as Reorganized Debtors in accordance with the applicable laws of the respective jurisdictions in which they are formed or organized and pursuant to their respective bylaws (or other formation documents) in effect prior to the Petition Date, except to the extent such bylaws (or other formation documents) are amended or restated by the New Organizational Documents which are expressly approved herein.

I. Exit Financing

55. Texas Capital Bank, as the prepetition secured lender under the Prepetition Loan Documents, and as assignee of the DIP Loan Claim from BTS Enterprises under the DIP Facility Documents, provided funding to the Debtors both prior to and after the Petition Date. Neither the TCB Secured Claim nor the DIP Loan Claim are subject to dispute, offset or reduction. Except as otherwise provided in the Plan, the Plan Documents, and this Confirmation Order, TCB shall retain its Liens and security interests in the applicable collateral for all obligations of each of the Debtors of any kind or nature owing to TCB or the DIP Lender.

56. Upon entry of this Confirmation Order, and in consideration for the terms and conditions contained in the Plan, TCB has agreed to provide certain Exit Financing to the Debtors, including through the DIP Lender, which Exit Financing is to be used by the Reorganized Debtors following Confirmation of the Plan. Such Exit Financing shall include conversion of the DIP Loan Claim and the New Liquidity Facility, all as more fully set forth in the Plan and Exit Financing Documents.

57. The terms and conditions of the Exit Financing set forth in the Plan and Exit Financing Documents are hereby expressly approved. The Debtors, the DIP Lender, TCB, and any other necessary party to the Exit Financing, are authorized and directed to take any and all actions contemplated to be taken by them under the Plan, including, without limitation, the execution and delivery of the Exit Financing Documents all other documents referenced therein or contemplated thereby.

58. Upon entry of this Confirmation Order, the security interests and Liens granted to TCB and the DIP Lender in the applicable collateral of the Debtors shall continue in full force and effect in connection with the Exit Financing and all loans made to the Debtors by TCB or the DIP Lender prior to Confirmation of the Plan. All such Liens shall continue to be valid and perfected Liens, without regard to applicable federal, state or local filing and recording statutes, *nunc pro tunc* as of the date of Confirmation and without further action of any party. All financing statements which have been, or may be, executed and filed in connection with the Exit Financing and applicable Exit Financing Documents shall be deemed to have been filed, and the security interests and Liens evidenced thereby shall be deemed perfected *nunc pro tunc* as of the Confirmation Date.

59. This Confirmation Order, and approval of the Exit Financing Documents as set forth herein, shall be valid and binding upon the Debtors, their Estates, the Reorganized Debtors, Holders of Claims and Interests, and all other parties in interest, as applicable, from and after the entry of this Confirmation Order, subject only to the Liens specifically provided for in the Debtors' Plan and applicable Plan Documents.

60. As set forth in Article IV.E of the Plan, and notwithstanding anything to the contrary in this Confirmation Order, to the extent the restructuring transactions with Brandon Steele and BTS Enterprises is not completed on terms acceptable to TCB, then TCB shall have no obligation for any funding, agreements or concessions under the Plan or the restructuring with Brandon Steele and BTS Enterprises.

61. Notwithstanding anything to the contrary elsewhere in this Confirmation Order or the Plan, after the Effective Date, this Court shall not retain jurisdiction to interpret, enforce, adjudicate or resolve disputes or otherwise hear or decide any matters pertaining to the Exit Financing Documents including, without limitation, concerning the enforcement of the provisions thereof or the enforcement of remedies thereunder, all of which shall be governed by and determined under applicable non-bankruptcy law and forums; *provided, however*, that the Court shall retain jurisdiction to adjudicate or resolve disputes or otherwise hear or decide matters pertaining to the Trust Letter of Credit.

J. Release of Liens

62. The Debtors shall continue to operate their businesses in the ordinary course as Reorganized Debtors and perform their duties in connection with the Plan. Except as otherwise expressly provided in the Plan, Liquidation Trust Agreement, Exit Financing Documents, or Confirmation Order, all assets and property of the Debtors shall be vested in the Reorganized

Debtors free and clear of all Liens, Claims and Interests, and all such Liens, Claims and Interests are hereby extinguished.

63. Except as otherwise provided in the Plan, Liquidation Trust Agreement, Exit Financing Documents, Confirmation Order, or in any contract, instrument or other agreement or document entered into in connection with the Consummation of the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests 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.

64. Each Holder of a Secured Claim, or a Claim that is purportedly secured by any security interest or Lien shall, on or before the Effective Date, and concurrently with the applicable distributions made pursuant to the Plan, be authorized and directed to release to the Debtors or Reorganized Debtors, as applicable, any collateral or other property of a Debtor (including any Cash collateral and possessory collateral) held by such Holder (and the applicable agents for such Holder), and to take such actions as may be reasonably required or requested by the Reorganized Debtors to evidence the release of such Lien, including the execution, delivery, and filing or recording of such releases. To the extent any of the foregoing actions, whether arising prior to the Effective Date or thereafter, require action to be taken by the Holders or applicable agents for such Holders of Secured Claims, the Debtors or Reorganized Debtors, as applicable, shall pay the reasonable and documented fees and expenses of the Holders or applicable agents for such Holder or such Secured Claims, without the need for any further application or notice to or action, order, or approval of the Court. No distributions under the Plan shall be made to or on behalf of any Secured Claim Holder by the Reorganized Debtors or

Liquidation Trustee unless and until such Holder complies with any outstanding demand that it execute and deliver to the Debtors or Reorganized Debtors such release of Liens.

K. Provisions Related to Executory Contracts and Unexpired Leases

65. In accordance with Article V of the Plan, all Executory Contracts and Unexpired Leases designated on the Schedule of Rejected Contracts attached as an Exhibit to the Plan, and which was Filed and served by the Debtors prior to the commencement of the Confirmation Hearing, are deemed rejected pursuant to section 365 of the Bankruptcy Code. Unless otherwise indicated or provided in a separate order of the Court, rejections or assumptions of Executory Contracts and Unexpired Leases pursuant to the Plan are effective as of the Effective Date.

66. In accordance with Article V of the Plan, all Executory Contracts and Unexpired Leases of the Debtors that were not previously assumed or rejected by prior order of the Court, and are not designated on the Schedule of Rejected Contracts, are deemed assumed pursuant to section 365 of the Bankruptcy Code. Each Executory Contract and Unexpired Lease assumed pursuant to the Plan or by order of the Court but not assigned to a third party before the Effective Date shall vest in, and be fully enforceable by, the applicable Reorganized Debtor as of the Effective Date in accordance with its terms, except as may be modified by the provisions of the Plan, any order of the Court authorizing and providing for its assumption, or any applicable law. Each Executory Contract and Unexpired Lease that is assumed by the Debtors shall include any and all modifications, amendments, supplements, restatements, or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affects such Executory Contract or Unexpired Lease.

67. The payment of any applicable Cure Claim amount, the resolution of any Cure Claim dispute, and the entry of this Confirmation Order by the Court shall constitute approval of

the assumptions and rejections provided for in the Plan pursuant to sections 365(a) and 1123 of the Bankruptcy Code as of the Effective Date.

68. Any and all objections to the assumption of any Executory Contract or Unexpired Lease, or the provision of adequate assurance of future performance pursuant to section 365 of the Bankruptcy Code, are required to be Filed with Court within thirty (30) days of the Effective Date. With respect to each Executory Contract or Unexpired Lease to be assumed by the Debtors, and subject to Article V.D of the Plan, the Cure Claim amount required to cure any defaults by the Debtors existing as of the Effective Date shall be zero dollars (\$0.00). All non-Debtor counterparties to the Executory Contracts and Unexpired Leases that fail to timely assert a Cure Claim in accordance with Article V.D of the Plan are deemed to have consented to such assumption and cure amount of zero dollars (\$0.00), and shall be forever barred, estopped and enjoined from challenging the validity of such assumption or the cure amount, or from asserting, collecting, or seeking to collect any amount or default relating thereto against the Reorganized Debtors. Upon payment of the applicable Cure Claim by the Reorganized Debtors, if any, such Claims shall be deemed fully released and satisfied, and all Proofs of Claim based upon an Executory Contract or Unexpired Lease that has been assumed in the Bankruptcy Cases or pursuant to this Confirmation Order shall be deemed disallowed and expunged without any further notice to or action by any party or order of the Court.

69. As of the Effective Date, the Reorganized Debtors shall assume all insurance policies, and such policies shall continue in full force and effect in accordance with their respective terms and applicable non-bankruptcy law, and Reorganized Debtors shall remain liable for all obligations (including Claims) thereunder regardless of when such obligations (including Claims) arise or become due or liquidated as if the Bankruptcy Cases had not

occurred. Consistent with the foregoing, any obligations that come due under the terms of such insurance policies after the effective time of the assumption shall be deemed to arise after the Effective Date, such that the Reorganized Debtors shall not be released from any such obligations.

70. Any term of any policy, contract, or other obligation applicable to either Debtor shall be void and of no further force or effect to the extent that such policy, contract, or other obligation is conditioned on, creates an obligation of the Debtor as a result of, or gives rise to a right of any Entity based on any of the following: (i) the insolvency or financial condition of a Debtor (prior to the Effective Date); (ii) the commencement of the Bankruptcy Cases; or (iii) the Confirmation or Consummation of the Plan.

71. Unless otherwise provided by a separate Final Order of the Court, any Claim resulting from the rejection of an Executory Contract or Unexpired Lease pursuant to the Plan shall be Filed with the Court within thirty (30) days after the later of: (i) the date of an order of the Court (including this Confirmation Order) approving such rejection, (ii) the effective date of such rejection, or (iii) the Effective Date of the Plan. Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not Filed with the Court within such time will be automatically disallowed, forever barred from assertion, and shall not be enforceable against the Debtors, the Reorganized Debtors, the Estates, their property, or the Liquidation Trust without the need for any objection by the Reorganized Debtors or Liquidation Trustee, further notice to, or action, order or approval of the Court or any other Entity, and any such Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully satisfied, released, and discharged, notwithstanding anything in the Debtors' Schedules or a Proof of Claim to the contrary. All Allowed Claims arising from the rejection of the Debtors' Executory

Contracts or Unexpired Leases shall be classified as General Unsecured Claims and shall be treated in accordance with Article III.C.7 of the Plan.

72. Unless otherwise provided in the Plan, all of the Debtors' employee wage, compensation, and benefit programs in place as of the Effective Date shall be assumed by the Reorganized Debtors and shall remain in place as of the Effective Date, and the Reorganized Debtors may, in their sole discretion, continue to honor such agreements, arrangements, programs, and plans. Notwithstanding the foregoing, pursuant to Bankruptcy Code section 1129(a)(13), from and after the Effective Date, all retiree benefits (as such term is defined in section 1114 of the Bankruptcy Code), if any, shall continue to be paid in accordance with applicable law.

L. Release and Exculpation Provisions Approved; Discharge of Claims Against and Interests in the Debtors

73. On and after the Effective Date, and except as provided in this Confirmation Order, all injunctions, releases, and exculpation provisions set forth in Article VIII of the Plan, are hereby approved, and shall be effective and binding on all Entities, to the fullest extent provided therein; *provided, however*, that the consensual third-party release provisions set forth in Article VIII shall not be binding on any Entity that timely rejected such third-party release provisions in accordance with the Disclosure Statement Approval Order.

74. Upon the Effective Date and in consideration of the distributions to be made under the Plan, except as otherwise provided in the Plan, this Confirmation Order, or any stipulation Filed between the Debtors and a Holder of Claims against the Debtors, each Holder of a Claim or Interest and any successor, assign, and affiliate of such Holder shall be deemed to have forever waived, released, and discharged the Debtors, to the fullest extent permitted by section 1141 of the Bankruptcy Code, of and from any and all Claims, Interests, rights, and

liabilities that arose prior to the Effective Date. Except as otherwise provided in the Plan, all Holders of Claims and Interests and their successors, assigns, and affiliates shall be forever precluded and enjoined, pursuant to sections 105, 524, and 1141 of the Bankruptcy Code, from prosecuting or asserting any such discharged Claim against or terminated Interest in any Debtor or any Reorganized Debtor.

75. The exculpation provided in Article VIII.E of the Plan is approved but should be construed, and 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 Article VIII.E of the Plan shall be limited to acts which occurred after the Petition Date. Any claims against Exculpated Parties for acts described in Article VIII.E of the Plan shall be filed in the United States Bankruptcy Court for the Southern District of Texas, Houston Division, and this Court retains exclusive jurisdiction to consider such claims.

76. Except as otherwise expressly provided in the Plan or this Confirmation Order, or for obligations issued or required to be paid pursuant to the Plan or this Confirmation Order, all Entities who have held, hold, or may hold Claims or Interests that have been satisfied, released, discharged, or are subject to exculpation are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, the Exculpated Parties, or the Released Parties: (i) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (ii) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims or Interests; (iii) creating, perfecting, or enforcing any encumbrance of any kind against such Entities or the

property or the estates of such Entities on account of or in connection with or with respect to any such Claims or Interests; (iv) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such Claims or Interests unless such Holder has Filed a motion requesting the right to perform such setoff on or before the Effective Date, and notwithstanding an indication of a Claim or Interest or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to applicable law or otherwise; and (v) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests released or settled pursuant to the Plan.

77. Upon Confirmation of the Plan, all Holders of Claims and Interests and their respective current and former employees, agents, officers, directors, principals, and direct and indirect Affiliates shall be enjoined from taking any actions to interfere with the implementation or Consummation of the Plan. Each Holder of any Allowed Claim or Allowed Interest, as applicable, by accepting, or being eligible to accept, distributions under or reinstatement of such Claim or Interest, as applicable, pursuant to the Plan and Liquidation Trust Agreement, shall be deemed to have consented to the injunction provisions set forth in the Plan.

78. Texas Capital Bank timely Filed pleadings electing to opt out of any non-Debtor releases granted in the Plan. For the avoidance of doubt, any release granted in the Plan shall not affect or impair any obligation owing to TCB from Brandon Steele, BTS Enterprises, or any non-Debtor related Entity of Brandon Steele or BTS Enterprises.

M. Claims Resolution Procedures Approved

79. The procedures for resolving contingent, unliquidated, or Disputed Claims by the Reorganized Debtors or Liquidation Trustee, as outlined in Article VII of the Plan, are hereby approved.

N. Professional Compensation

80. All requests for payment of Professional Compensation Claims for services rendered and reimbursement of expenses incurred prior to the Effective Date shall be Filed no later than the Professional Compensation Claim Bar Date, consistent with the procedures under Article II.C of the Plan. Objections to Professional Compensation Claims must be Filed and served on the Reorganized Debtors and the Professional to whose application the objections are addressed no later than the Professional Compensation Claim Objection Deadline. The Court shall determine the Allowed amounts of such Professional Compensation Claims after notice and a hearing in accordance with the procedures established by the Court. Allowed Professional Compensation Claims shall be paid by the Reorganized Debtors in Cash within ten (10) days of the entry of a Final Order allowing such Claims.

O. Post-Confirmation Professional Fees and Expenses

81. Except as otherwise specifically provided in the Plan, from and after the Confirmation Date, but effective as of the Effective Date, the Debtors and the Reorganized Debtors, as applicable, shall, in the ordinary course of business and without any further notice to or action, order, approval of the Court, pay in Cash the reasonable and documented legal, professional, or other fees and expenses related to implementation of the Plan and Consummation incurred by the Debtors. Upon the Confirmation Date, any requirement that Professionals comply with sections 327 through 331, 363, and 1103 of the Bankruptcy Code in

seeking retention or compensation for services rendered after such date shall terminate, and the Debtors may employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Court.

P. Retention of Causes of Action

82. Except as otherwise provided in the Plan or Liquidation Trust Agreement, nothing contained in the Plan, Liquidation Trust Agreement, or this Confirmation Order shall be deemed to be a waiver or relinquishment of any rights, claims, Causes of Action, rights of setoff or recoupment, or other legal or equitable defenses that the Debtors had immediately before the Effective Date on behalf of the Estates or of themselves in accordance with any provision of the Bankruptcy Code or any applicable non-bankruptcy law. Except as otherwise provided in the Plan, the Reorganized Debtors or the Liquidation Trustee, as applicable, shall have, retain, reserve, and be entitled to assert all such claims, Causes of Action, rights of setoff or recoupment, and other legal or equitable defenses as fully as if the Bankruptcy Cases had not been commenced, and all of the Debtors' legal and equitable rights in respect of any Unimpaired Claim may be asserted after the Effective Date to the same extent as if the Bankruptcy Cases had not been commenced.

83. No Person or Entity may rely on the absence of specific reference to any Cause of Action in the Plan, Plan Documents, Liquidation Trust Agreement, or the Disclosure Statement as any indication that the Reorganized Debtors (with respect to Retained Causes of Action) or the Liquidation Trustee (with respect to KP Engineering Liquidation Trust Assets) will not pursue any and all available Causes of Action.

Q. Setoffs and Recoupments

84. Except as expressly provided in the Plan, including, for the avoidance of doubt, with respect to TCB or DIP Lender, the Liquidation Trustee, on behalf of the Liquidation Trust, may, pursuant to section 553 of the Bankruptcy Code, set off and/or recoup against any Plan distributions to be made on account of any Allowed Claim, any and all claims, rights, and Causes of Action that the Liquidation Trust may hold against the Holder of such Allowed Claim to the extent such setoff or recoupment is either (i) agreed in amount by the Liquidation Trustee, on behalf of the Liquidation Trust and Holder of such Allowed Claim or (ii) otherwise adjudicated by the Bankruptcy Court or another court of competent jurisdiction; *provided, however*, that neither the failure to effectuate a setoff or recoupment nor the allowance of any Claim hereunder shall constitute a waiver or release by either Liquidation Trustee, on behalf of the Liquidation Trust, or its successor of any and all claims, rights, and Causes of Action that such Liquidation Trustee, on behalf of the Liquidation Trust, or its successor may possess against the applicable Holder. In no event shall any Holder of Claims against, or Interests in, the Debtors be entitled to recoup any such Claim or Interest against any claim, right, or Cause of Action of the Debtors, the Reorganized Debtors, or the Liquidation Trust, as applicable, unless such Holder has actually performed such recoupment and provided notice thereof in writing to the Debtors in accordance with Article XII.F of the Plan on or before the Effective Date, notwithstanding any indication in any Proof of Claim or otherwise that such Holder asserts, has, or intends to preserve any right of recoupment..

R. Non-Material Modifications to the Plan

85. After solicitation, the Debtors made certain non-material modifications to clarify certain terms and provisions of the Plan, and effectuate the intent of the Plan to reserve the rights

of parties in interest. The non-material modifications to the Plan are approved and incorporated into the Plan as if fully set forth therein.

86. Pursuant to Disclosure Statement Approval Order, the Court established June 5, 2020 as the deadline to object to the Confirmation of the Plan (the “Confirmation Objection Deadline”). Prior to, and based on the agreement of the Debtors and the applicable party, following the Confirmation Objection Deadline, the Debtors received informal comments to the Plan from the Committee and certain Holders of Claims against the Debtors. The Debtors negotiated resolutions of the comments and on June, 10, 2020, the Debtors Filed a Plan supplement, which is the Plan attached hereto as **Exhibit 1**. Pursuant to Bankruptcy Rule 3019, the Plan, as supplemented, does not (i) constitute a material modification of the Plan under section 1127 of the Bankruptcy Code, (ii) require additional disclosure under section 1125 of the Bankruptcy Code, (iii) cause the Plan to fail to meet the requirements of sections 1122 or 1123 of the Bankruptcy Code, (iv) materially and adversely change the treatment of any Claims or Interests, (v) require re-Solicitation to any Holders of Claims or Interests, or (vi) require that any such Holders of Claims or Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan. Under the circumstances, the form and manner of notice of the Plan Supplement is adequate, no other or further notice of the Plan Supplement is necessary or required. In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all Holders of Claims or Interests who voted to accept the Plan or who are conclusively presumed to have accepted the Plan, as supplemented.

S. Miscellaneous Confirmation Provisions

87. Notwithstanding anything else to the contrary in the Plan or Confirmation Order, these provisions will govern the treatment of the claims of the Texas Comptroller of Public

Accounts (the “Comptroller”): (i) nothing in the Plan or Confirmation Order shall affect, enjoin, or impair any statutory or common law setoff rights of the Comptroller in accordance with 11 U.S.C. § 553; (ii) nothing in the Plan or Confirmation Order shall affect, enjoin, or impair any rights of the Comptroller to pursue any non-debtor third parties for tax debts or claims; (iii) nothing in the Plan or Confirmation Order shall be construed to preclude the payment of interest on the Comptroller’s administrative expense tax claims; (iv) to the extent that interest is payable with respect to any administrative expense, priority or secured tax claim of the Comptroller, the interest rate shall be the statutory rate of interest, currently 5.75% per annum; and (v) the Comptroller is not required to File a motion or application for payment of administrative expense claims pursuant to 11 U.S.C. § 503(b)(1)(D); the Comptroller’s administrative expense claims are allowed upon filing, subject to objection on substantive grounds.

88. Nothing in this Confirmation Order or the Plan discharges, releases, precludes, or enjoins: (i) any liability to any governmental unit as defined in 11 U.S.C. § 101(27) (“Governmental Unit”) that is not a “claim” as defined in 11 U.S.C. § 101(5); (ii) any “claim” as defined in 11 U.S.C. § 101(5) of a Governmental Unit arising on or after the Confirmation Date; (iii) any police or regulatory liability to a Governmental Unit that any entity would be subject to after the Confirmation Date; or (iv) any liability to a Governmental Unit on the part of any non-Debtor. Nor shall anything in this Confirmation Order or the Plan enjoin or otherwise bar a Governmental Unit from asserting or enforcing, outside this Court, any liability described in the preceding sentence. Notwithstanding any provision of the Plan, this Confirmation Order, or any implementing or supplementing Plan Documents, the United States' setoff rights under federal law as recognized in section 553 of the Bankruptcy Code, and recoupment rights, shall be preserved and are unaffected. 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 the Plan or to adjudicate any defense asserted under this Confirmation Order or the Plan.

89. Notwithstanding anything to the contrary in this Confirmation Order, the Plan and/or any of the other Plan Documents, and/or the transactions contemplated thereby, or the acceptance by (i) The Dow Chemical Company and/or its affiliates (collectively, "Dow"); (ii) Targa Pipeline Mid-Continent WestTex LLC, Targa Channelview LLC and/or their affiliates (collectively, "Targa"); or (iii) MarkWest Ohio Fractionation Company LLC and/or its affiliates (collectively, "MarkWest") of any distributions under the Plan, Dow's, Targa's, or MarkWest's rights to assert any claims or causes of action (including rights of setoff or recoupment) against, and in response to any claims or Causes of Action that have been or may be asserted against Dow, Targa, or MarkWest by the Debtors, the Reorganized Debtors, the KP Engineering Liquidation Trustee, the Debtors' Estates and/or any party acting on their behalf, shall not in any way be compromised, limited, reduced, restricted, enjoined or otherwise affected; *provided, however,* that Dow, Targa, and MarkWest shall not be entitled to any affirmative recovery from the Debtors, the KP Engineering Liquidation Trust or the Reorganized Debtors with respect to any such claims or causes of action except to the extent Claim No. 60 in the amount of \$15,077.15 Filed by Dow in Case No. 19-34698 (the "Dow Claim"), Proofs of Claim Filed by Targa (the "Targa Claims"), and/or Claim No. 86 Filed by MarkWest in Case No. 19-34698 and any amendments thereto, including any amendment related to the rejection of MarkWest's contract (the "MarkWest Claim"), are Allowed in the Bankruptcy Cases, in which case Dow, Targa, and/or MarkWest, as applicable, shall receive a distribution with respect to the Allowed Dow Claim, Allowed Targa Claims, and/or Allowed MarkWest Claim in accordance with the terms of the Plan.

90. Notwithstanding anything in the Plan, Plan Documents, or this Confirmation Order, to the extent the Liquidation Trustee recovers funds alleged to be construction trust funds within the meaning of Chapter 162 of the Texas Property Code, or other applicable law, without obtaining an order from a court of competent jurisdiction directing the distribution of such funds, the Liquidation Trustee shall, after notice and hearing, seek an order from this Court directing the distributions of the funds. To the extent the Liquidation Trustee has obtained a final, non-appealable order from another court of competent jurisdiction directing the distribution of such funds, the Liquidation Trustee is authorized to distribute such funds without further notice to or action, order, or approval of this Court. For the avoidance of doubt, this paragraph applies to alleged construction trust funds recovered from any and all KPE Assigned Channelview Claims, KPE Assigned Johnson Claims, and KPE Assigned Geismar VI Claims.

91. This Confirmation Order is in recordable form, and shall be accepted by any filing or recording officer or authority of any applicable Governmental Unit for filing and recording purposes without further or additional orders, certifications, or other supporting documents. Each federal, state, commonwealth, local, foreign, or other governmental agency is hereby authorized to accept any and all documents, mortgages, and instruments necessary or appropriate to effectuate, implement or consummate the transactions contemplated by the Plan, any applicable Plan Documents, and this Confirmation Order.

92. Under section 1146(c) of the Bankruptcy Code, the issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under the Plan or any applicable Plan Documents, shall not be taxed under any law imposing a stamp tax or similar tax. The appropriate state or local government officials or agents are directed to forego the collection of any such tax or governmental assessment and to accept for filing and recordation

any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

93. To the extent that, under applicable non-bankruptcy law, any of the actions contemplated in the Plan would otherwise require the consent or approval of the Holders of Interests in the Debtors, this Confirmation Order shall constitute such consent or approval, and such actions shall be, and are deemed to have been, taken by unanimous action of the Holders of Interests in the Debtors.

94. Pursuant to sections 1123(a) and 1142(a) of the Bankruptcy Code, the provisions of the Plan and this Confirmation Order, and all other agreements and documents executed and delivered pursuant to the Plan, shall apply and be enforceable notwithstanding any otherwise applicable non-bankruptcy law.

95. The Debtors, the Reorganized Debtors, and the Liquidation Trustee, as applicable, shall have the right, to the fullest extent permitted by section 1142 of the Bankruptcy Code, to apply to the Court for an order, notwithstanding any otherwise applicable non-bankruptcy law, directing any appropriate Entity to execute and deliver an instrument or perform any other act necessary to implement the Plan, the Plan Documents, or the provisions of this Confirmation Order.

96. Notwithstanding anything set forth in the Plan or this Confirmation Order, a condition to the Effective Date is the receipt of the fully executed Trust Letter of Credit by the Liquidation Trust, in form and substance acceptable to the Debtors, Texas Capital Bank, and the Liquidation Trustee. Any and all disputes with respect to the terms of the Trust Letter of Credit that cannot be resolved by the parties shall be presented to the Court, for consideration on an expedited basis.

97. Notwithstanding anything set forth in the Plan or this Confirmation Order, a condition to the Effective Date is approval by the Debtors and the Liquidation Trustee of the New Organizational Documents. Any and all disputes with respect to the terms of the New Organizational Documents that cannot be resolved by the parties shall be presented to the Court for consideration on an expedited basis.

98. Notwithstanding anything to the contrary set forth in the Plan or this Confirmation Order, a condition to the Effective Date is approval by the Debtors, the DIP Lender, Texas Capital Bank, and the Liquidation Trustee, of the Exit Financing Documents. Any and all disputes with respect to the terms of the Exit Financing Documents that cannot be resolved by the parties shall be presented to the Court for consideration on an expedited basis.

99. On and after the Effective Date, pursuant to sections 105 and 1142 of the Bankruptcy Code, the Court, except as otherwise provided in the Plan or in this Confirmation Order, shall retain jurisdiction over all matters arising out of, and related to, the Bankruptcy Cases, including, but not limited to, jurisdiction over the matters set forth in Article XI of the Plan.

100. If any or all of this Confirmation Order is hereafter reversed, modified, or vacated by subsequent order of the Court or any other court, such reversal, modification, or vacation shall not affect the validity of the acts or obligations incurred or undertaken under or in connection with the Plan before the Debtors, Reorganized Debtors or Liquidation Trustee receive written notice of any such order, nor shall such reversal, modification, or vacation of this Confirmation Order affect the validity or enforceability of such act or obligation. Notwithstanding any such reversal, modification, or vacation of this Confirmation Order, any such act or obligation incurred or undertaken pursuant to, and in reliance on, this Confirmation Order before the

effective date of such reversal, modification, or vacation shall be governed in all respects by the provisions of this Confirmation Order, the Plan, and all documents, instruments, and agreements related thereto or any amendments or modifications thereto.

101. The failure to include specifically any particular provision of the Plan in this Confirmation Order will not diminish the effectiveness of such provision, nor constitute a waiver thereof, it being the intent of the Court that the Plan is confirmed in its entirety.

102. The provisions of the Plan and this Confirmation Order, including the Findings of Fact and Conclusions of Law entered contemporaneously with this Confirmation Order, are nonseverable and mutually dependent.

103. All fees charged pursuant to 28 U.S.C. § 1930 shall be timely paid by each of the Reorganized Debtors for each quarter (including any fraction thereof) until the Bankruptcy Cases are converted, dismissed, or closed, whichever occurs first.

104. On the Effective Date, and following the payment of all amounts under the Plan required to be paid on the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127 of the Bankruptcy Code.

105. This Confirmation Order is a Final Order and the period in which an appeal must be Filed shall commence upon the entry hereof. The requirements under Bankruptcy Rule 3020(e) that an order confirming a plan is stayed until the expiration of fourteen (14) days after entry of the order are hereby waived. This Confirmation Order shall take effect immediately and shall not be stayed pursuant to Bankruptcy Rule 3020(e), 6004(h), 6006(d), or 7062.

106. In the event of any direct conflict or inconsistency between any provision of this Confirmation Order, on the one hand, and the provisions of the Liquidation Trust Agreement, on the other hand, the provisions of this Confirmation Order shall govern and control. In the event

of any direct conflict or inconsistency between any provision of the Liquidation Trust Agreement, on the one hand, and the provisions of the Plan, on the other hand, the provisions of the Plan shall govern and control, except with respect to the administration and structure of the Liquidation Trust, for which the Liquidation Trust Agreement shall govern and control. Notwithstanding the foregoing, the Liquidation Trustee may apply or move the Court for resolution of any dispute concerning the foregoing.

107. On the Effective Date, the Debtors shall File a notice of the occurrence of the Effective Date (the “Effective Date Notice”) with the Court. As soon as reasonably practicable after the occurrence of the Effective Date, the Reorganized Debtors shall serve the Effective Date Notice on all Holders of Claims and Interests, the U.S. Trustee, and other parties in interest, by causing the Effective Date Notice to be delivered to such parties by first class United States mail.

Signed: June 12, 2020.



DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Plan

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	
	§	Chapter 11
	§	
KP ENGINEERING, LP, <i>et al.</i> ,	§	Case No. 19-34698 (DRJ)
	§	
Debtors. ¹	§	(Jointly Administered)
	§	
	§	

**THIRD AMENDED JOINT CHAPTER 11 PLAN OF
REORGANIZATION OF KP ENGINEERING, LP AND KP ENGINEERING, LLC**

OKIN ADAMS LLP

Christopher Adams
Texas Bar No. 24009857
James W. Bartlett, Jr.
Texas Bar No. 00795238
Ryan A. O'Connor
Texas Bar No. 24098190
1113 Vine St., Suite 240
Houston, Texas 77002
Tel: 713.228.4100
Fax: 888.865.2118
Email: cadams@okinadams.com
Email: jbartlett@okinadams.com
Email: roconnor@okinadams.com

ATTORNEYS FOR THE DEBTORS

Dated: June 10, 2020

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: KP Engineering, LP (7785) and KP Engineering, LLC (0296). The location of the Debtors' corporate headquarters and the Debtors' service address is: 5555 Old Jacksonville Highway, Tyler, TX 75703.

TABLE OF CONTENTS

	Page
ARTICLE I. DEFINED TERMS, RULES OF INTERPRETATION, CONSTRUCTION OF TERMS, COMPUTATION OF TIME, AND GOVERNING LAW	
A. Defined Terms	1
B. Rules of Interpretation and Construction of Terms	13
C. Computation of Time	14
D. Governing Law	14
E. Reference to Monetary Figures	14
F. Incorporation of Documents by Reference	14
ARTICLE II. ADMINISTRATIVE CLAIMS AND PRIORITY CLAIMS	
A. Administrative Claims	15
B. DIP Loan Claim	16
C. Professional Compensation Claims	16
D. Priority Tax Claims	16
ARTICLE III. CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS	
A. Classification in General	17
B. Summary of Classification of Claims and Interests	17
C. Treatment of Claims and Interests	18
D. Special Provision Governing Unimpaired Claims	25
E. Elimination of Vacant Classes	25
F. Controversy Concerning Impairment	26
G. Subordinated Claims	26
H. No Waiver.....	26
ARTICLE IV. MEANS FOR IMPLEMENTATION OF THE PLAN	
A. Corporate Existence	26
B. Reorganized Debtors	27
C. Directors and Officers of the Reorganized Debtors.....	27
D. Vesting of Assets in the Reorganized Debtors.....	27
E. Exit Financing	27
F. Establishment of the KP Engineering Liquidation Trust	29
G. Appointment of KP Engineering Liquidation Trustee	30
H. Vesting and Transfer of Assets to the KP Engineering Liquidation Trust	30
I. Escrow of New Equity Interests	32
J. Limited Subordination of TCB's Right to Proceeds.....	32
K. KP Engineering Liquidation Trust Expenses	33
L. Beneficiaries of the KP Engineering Liquidation Trust	33
M. Preservation of Right to Conduct Investigations.....	34
N. Federal Income Tax Treatment of KP Engineering Liquidation Trust.....	34
O. Termination of the KP Engineering Liquidation Trust	34
P. Corporate Action of the Debtors	35
Q. Effectuating Documents; Further Transactions.....	35
R. Retained Causes of Action.....	36

ARTICLE V. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption and Rejection of Executory Contracts and Unexpired Leases36
 B. Indemnification Obligations37
 C. Claims Based on Rejection of Executory Contracts or Unexpired Leases.....37
 D. Cure of Defaults for Executory Contracts and Unexpired Leases Assumed.....38
 E. Preexisting Obligations to Debtors.....39
 F. Modifications, Amendments, Supplements, Restatements, or Other Agreements.....39
 G. Reservation of Rights.....39
 H. Nonoccurrence of Effective Date39
 I. Contracts and Leases Entered Into After the Petition Date.....39

ARTICLE VI. PROVISIONS GOVERNING DISTRIBUTIONS

A. Timing and Calculation of Distributions40
 B. Rights and Powers of Reorganized Debtors to Make Distributions40
 C. Delivery of Distributions; Undeliverable or Unclaimed Distributions41
 D. Manner of Payment.....42
 E. Distributions to Holders of Disputed Claims42
 F. Compliance with Tax Requirements42
 G. Allocations42
 H. No Post-Petition Interest on Claims43
 I. Foreign Currency Exchange Rate43
 J. Setoffs and Recoupment43
 K. Claims Paid or Payable by Third Parties43

ARTICLE VII. PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED, AND DISPUTED CLAIMS

A. Claims Administration Responsibilities44
 B. Estimation of Claims and Interests45
 C. Adjustment to Claims or Interests Without Objection45
 D. Time to File Objections to Claims.....46
 E. Disallowance of Claims or Interests.....46
 F. Amendments to Claims or Interests47
 G. No Distributions Pending Allowance47
 H. Distributions After Allowance47

ARTICLE VIII. SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS

A. Release and Discharge of Debtors47
 B. Release of Liens48
 C. Releases by the Debtors48
 D. Releases by Holders of Claims and Interests49
 E. Exculpation.....49
 F. Injunction.....49
 G. Protections Against Discriminatory Treatment50
 H. Reimbursement or Contribution50

ARTICLE IX. CONDITIONS PRECEDENT TO CONFIRMATION AND CONSUMMATION	
A. Conditions Precedent to Confirmation	51
B. Conditions Precedent to Effectiveness.....	51
C. Waiver of Conditions	51
D. Effect of Failure of Conditions	51
ARTICLE X. MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN	
A. Modifications and Amendments	52
B. Effect of Confirmation on Modifications.....	52
C. Revocation or Withdrawal of Plan	52
ARTICLE XI. RETENTION OF JURISDICTION.....	52
ARTICLE XII. MISCELLANEOUS PROVISIONS	
A. Immediate Binding Effect	55
B. Additional Documents	55
C. Payment of Statutory Fees	55
D. Reservation of Rights	55
E. Successors & Assigns.....	55
F. Notices	56
G. Term of Injunctions or Stays	56
H. Entire Agreement	56
I. Exhibits.....	56
J. Nonseverability of Plan Provisions	57
K. Plan Proposed in Good Faith.....	57
L. Closing the Bankruptcy Cases.....	57
M. Waiver or Estoppel	57
N. Controlling Document	57

INTRODUCTION

KP Engineering, LP and KP Engineering, LLC, as Debtors and Debtors-in-Possession in the above-captioned jointly administered Bankruptcy Cases, hereby propose this Plan of reorganization under Bankruptcy Code section 1121 for the resolution of outstanding Claims against, and Interests in, the Debtors.

ARTICLE I. DEFINED TERMS, RULES OF INTERPRETATION, CONSTRUCTION OF TERMS, COMPUTATION OF TIME, AND GOVERNING LAW

A. Defined Terms

For purposes of this Plan, except as expressly provided or unless the context otherwise requires, all capitalized terms not otherwise defined shall have meanings ascribed to them in this Article. Any term used in this Plan that is not defined herein but is defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or Bankruptcy Rules. Whenever the context requires, such terms shall include the plural as well as the singular number, the masculine gender shall include the feminine, and the feminine gender shall include the masculine.

Administrative Claim or ***Administrative Expense Claims*** means a Claim, Cause of Action, right, or other liability, or the portion thereof, that is entitled to priority under Bankruptcy Code sections 326, 327, 330, 503(b), 506(c), 507(a)(2), 507(b), and 1103, including: (i) the actual and necessary costs and expenses incurred after the Petition Date of preserving the Estates and/or in connection with operating the Debtors' businesses (such as wages, salaries, or payments for goods and services); (ii) Professional Compensation Claims; and (iii) all fees and charges assessed against either Estate under 28 U.S.C. § 1930.

Administrative Claim Bar Date means, except as provided in Article II herein, the first Business Day that is thirty (30) days after the Effective Date or such earlier deadline as established by an order of the Bankruptcy Court.

Affiliate has the meaning prescribed in Bankruptcy Code section 101(2).

Allowed means, with respect to any Claim or Interest, except as otherwise provided in the Plan, a Claim or Interest allowable under Bankruptcy Code section 502 that: (i) has been allowed by a Final Order, including but not limited to any Final Order estimating claims for purposes of confirming this Plan; (ii) either has been Scheduled as a liquidated, non-contingent, undisputed Claim in an amount greater than zero in the Debtors' Schedules, as the same may from time to time be amended in accordance with the Bankruptcy Code, Bankruptcy Rules or order of the Bankruptcy Court, or is the subject of a timely Filed and liquidated Proof of Claim as to which either no objection to its allowance has been Filed (either by way of objection or amendment to the Schedules) within the periods of limitation fixed by the Bankruptcy Code or by any order of the Bankruptcy Court, or any objection to its allowance has been settled, waived through payment, or withdrawn, or has been denied by a Final Order; or (iii) is expressly allowed in a liquidated amount in the Plan; *provided, however*, that with respect to an Administrative Claim, "Allowed"

means an Administrative Claim as to which a timely request for payment has been made in accordance with this Plan (if such written request is required) or other Administrative Claim, in each case as to which (a) a timely objection has not been Filed, or (b) a timely objection is Filed and such objection has been settled, waived through payment, or withdrawn, or has been denied by a Final Order.

Aviation Sale Proceeds means the amount of net proceeds in Cash realized from the sale of the 2009 Cessna Citation CJ3 525B-327 airplane by BTS Aviation, LLC, a former subsidiary of KP Engineering, LP and current subsidiary of BTS Enterprises, to C3 AIR, LLC and Southland Amusements & Vending, Inc. during the Bankruptcy Cases.

Avoidance Actions means any and all actual or potential claims and Causes of Action that have been, or may be, commenced before or after the Effective Date, to avoid a transfer of property or an obligation incurred by either Debtor pursuant to any applicable section of the Bankruptcy Code, including Bankruptcy Code sections 544, 545, 547, 548, 549, 550, 551, 553(b), and 724(a), or under similar or related state or federal statutes and common law.

Bankruptcy Cases means the Chapter 11 bankruptcy cases commenced by the Debtors upon the Filing of the voluntary petitions on the Petition Date; styled *In re KP Engineering, LP*, Case No. 19-34698-11 (DRJ), and *In re KP Engineering, LLC*, Case No. 19-34699-11 (DRJ). The Bankruptcy Cases are jointly administered under Case No. 19-34698, and any reference to a document or pleading Filed in the Bankruptcy Case shall mean Case No. 19-34698.

Bankruptcy Code means title 11 of the United States Code, 11 U.S.C. §§ 101-1532.

Bankruptcy Court means the United States Bankruptcy Court for the Southern District of Texas, Houston Division.

Bankruptcy Estate(s) or **Estate(s)** means the estate of either Debtor created under section 541 of the Bankruptcy Code upon the Filing of the Bankruptcy Cases, and all Estate Property comprising the estates.

Bankruptcy Rules means, collectively, the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms, as amended, the Federal Rules of Civil Procedure, as amended and made applicable to the Bankruptcy Cases or ancillary proceedings, and the Bankruptcy Local Rules of the Bankruptcy Court, as applicable to the Bankruptcy Cases or ancillary proceedings, as the case may be.

Bar Date means January 13, 2020, the date established by the Bankruptcy Court by which Proofs of Claim must be Filed with respect to such Claims, other than Administrative Claims, Claims held by Governmental Units, or other Claims or Interests for which the Bankruptcy Court entered an order excluding Holders of such Claims or Interests from the requirement of Filing Proofs of Claim.

Brandon Steele or **Steele** means Brandon T. Steele.

BTS Enterprises means BTS Enterprises, Inc., the sole limited partner of KP Engineering, LP.

Business Day means any day other than a Saturday, Sunday, or a “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

Cash means cash and cash equivalents, including bank deposits, checks, and other similar items in legal tender of the United States of America.

Causes of Action means any claims, interests, damages, remedies, demands, rights, actions, suits, obligations, liabilities, accounts, defenses, offsets, powers, privileges, licenses, liens, indemnities, guaranties, and franchises of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, now existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, secured or unsecured, assertable, directly or derivatively, matured or unmatured, suspected or unsuspected, in contract, tort, law, equity, or otherwise. This term also includes: (a) all rights of setoff, counterclaim, or recoupment and claims under contracts or for breaches of duties imposed by law; (b) the right to object to or otherwise contest Claims or Interests; (c) Avoidance Actions; and (d) such claims and defenses as fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code.

Channelview Adversary Proceeding means the adversary proceeding styled *Saulsbury Industries, Inc. v. KP Engineering, L.P., Targa Channelview, LLC, and Smith & Loveless, Inc.*, Case No. 20-03122 in the United States Bankruptcy Court for the Southern District of Texas, Houston Division.

Channelview Creditors means those certain Holders of Claims against Debtor KPE LP in Class 5 arising from the Channelview Project that have filed Liens against the Channelview Project.

Channelview Creditor Claims means those certain Claims of the Channelview Creditors against Debtor KPE LP.

Channelview Project means Debtor KPE LP’s design, procurement of equipment, and construction of a crude oil splitter in Channelview, Texas pursuant to that certain Agreement for Engineering, Procurement and Construction dated April 15, 2016 between Debtor KPE LP and Targa Terminals, LLC, as amended and assigned to Targa Channelview.

Channelview Retainage means the amount that Targa Channelview holds as retainage in connection with the Channelview Project, and is the subject of the Channelview Adversary Proceeding.

Chief Restructuring Officer means Douglas J. Brickley, as appointed and employed by the Debtors pursuant to the Bankruptcy Court’s order [Doc. No. 258].

Claim means a claim against any portion of the Bankruptcy Estate(s) of either Debtor, whether or not asserted, as defined in section 105(5) of the Bankruptcy Code.

Claims Register means the official register of Claims.

Class means a category of Claims or Interests as described in the Plan pursuant to Bankruptcy Code section 1122(a).

CM/ECF means the Bankruptcy Court’s Case Management and Electronic Case Filing system.

Confirmation means entry by the Bankruptcy Court of the Confirmation Order confirming this Plan.

Confirmation Date means the date of entry by the Bankruptcy Court of the Confirmation Order.

Confirmation Hearing means the hearing held by the Bankruptcy Court to consider Confirmation of the Plan.

Confirmation Order means the order of the Bankruptcy Court confirming the Plan pursuant to Bankruptcy Code section 1129.

Consummation means the occurrence of the Effective Date.

Committee means the Official Committee of Unsecured Creditors in the Bankruptcy Cases.

Committee Litigation means the litigation initiated by the Committee against any third party, whether before or after the Filing of this Plan or entry of the Confirmation Order, including, but not limited to, the following adversary proceedings: (1) *Official Committee of Unsecured Creditors on Behalf of KP Engineering, LP and KP Engineering, LLC v. Brandon T. Steele, et. al.*, Case No. 20-03035 in the United States Bankruptcy Court for the Southern District of Texas, Houston Division; and (2) *Official Committee of Unsecured Creditors on Behalf of KP Engineering, LP and KP Engineering, LLC v. Texas Capital Bank, National Association*, Case No. 20-03030 in the United States Bankruptcy Court for the Southern District of Texas, Houston Division.

Cure Claim means a Claim based upon either Debtor's default on an Executory Contract or Unexpired Lease at the time such contract or lease is assumed by either Debtor pursuant to Bankruptcy Code section 365.

Current Directors and Officers means the directors and officers of the Debtors who were directors and officers of the Debtors as of the Petition Date.

Debtor means one of the Debtors, as applicable in the context.

Debtors means, collectively, KP Engineering, LP and KP Engineering, LLC.

DIP Collateral means all of KP Engineering, LP's presently owned or hereafter acquired property and assets, whether such property and assets were acquired before or after the Petition Date, of any kind or nature, whether real or personal, tangible or intangible, wherever located, and the proceeds and products thereof, as specifically defined by the DIP Loan Order.

DIP Facility means the debtor-in-possession secured financing authorized by the DIP Loan Order and advanced by the DIP Lender pursuant to the DIP Note.

DIP Facility Documents means those certain documents evidencing the terms and conditions of the DIP Facility between the Debtor and DIP Lender, including (a) the Interim DIP Loan Order; (b) the Final DIP Loan Order; and (c) the DIP Note and attached Security Agreement.

DIP Liens means those certain valid, binding, and enforceable liens, mortgages and/or security interests granted to the DIP Lender pursuant to Bankruptcy Code sections 363, 364(c), and 364(d), as security for the DIP Facility and other post-petition costs payable under the DIP Note, as specifically defined by the DIP Loan Order.

DIP Lender means BTS Enterprises, Inc.

DIP Loan Claim means a Claim arising under or relating to the DIP Facility, Interim DIP Loan Order or the Final DIP Loan Order, including any and all fees, interest paid in kind, and accrued but unpaid interest and fees arising under the DIP Facility Documents, and all obligations defined thereunder. Pursuant to the Final DIP Loan Order, the DIP Loan Claim is held by Texas Capital Bank, as assignee of BTS Enterprises, in accordance with the terms of that certain Collateral Assignment of Note.

DIP Note means that certain Debtor in Possession Secured Promissory Note between the Debtor and the DIP Lender attached to the DIP Loan Order, including any subsequent amendments, modifications and/or supplements thereto, and the corresponding Security Agreement, as defined therein.

Disputed Claim means a Claim in a particular Class as to which a Proof of Claim has been Filed or is deemed to have been Filed under applicable law or an Administrative Claim as to which an objection has been Filed in accordance with the Plan, the Bankruptcy Code or the Bankruptcy Rules, and such objection has not been withdrawn, settled, resolved, or determined by a Final Order. For purposes of the Plan, a Claim is a Disputed Claim prior to any objection to the extent that: (a) the amount of a Claim specified in a Proof of Claim exceeds the amount of any corresponding Claim scheduled by the applicable Debtor in the Schedules of Assets and Liabilities; (b) any corresponding Claim scheduled by the applicable Debtor in the Schedules of Assets and Liabilities has been scheduled as disputed, contingent or unliquidated, irrespective of the amount scheduled; (c) no corresponding Claim has been scheduled by the applicable Debtor in the Schedules of Assets and Liabilities; or (d) the Claim is subject to disallowance pursuant to Bankruptcy Code section 502(d).

Distribution Record Date means the Confirmation Date.

Effective Date means the date that is the first Business Day after the Confirmation Date, on which: (a) no stay of the Confirmation Order is in effect; and (b) all conditions precedent to the effectiveness of the Plan have been satisfied or waived as provided in the Plan.

Entity means any Person, estate, trust, Governmental Unit, or United States trustee, as set forth in Bankruptcy Code section 101(15).

Estate Property means all right, title, and interest in and to any and all property of every kind or nature, owned by either Debtor or their Estates pursuant to, and as defined by, Bankruptcy Code section 541.

Exculpated Parties means, collectively, the Debtors, the DIP Lender, Texas Capital Bank, Michael D. Warner as the proposed Liquidation Trustee, and counsel for the Committee, and with respect to each of the foregoing Entities, any of their respective current officers, directors, Professionals,

advisors, accountants, attorneys, investment bankers, consultants, employees, agents and other representatives (but solely in their capacity as such).

Executory Contract means an executory contract or unexpired lease as such terms are used in Bankruptcy Code section 365, including all operating leases, capital leases, and contracts to which either Debtor is a party or beneficiary. For the avoidance of doubt, this term specifically excludes that certain Settlement Agreement dated as of July 30, 2019 between KPE LP and Praxair.

Exhibit means an exhibit annexed to the Plan, as may be amended, modified or supplemented.

Exit Financing means the new financing provided to the Debtors and Reorganized Debtors by the DIP Lender, with funds provided by TCB, upon the Effective Date of the Plan which is to include conversion of the DIP Loan Claim and the New Liquidity Financing.

Exit Financing Documents means those certain documents, including the credit agreement, security agreement and/or other loan documents related to or evidencing the loans, liens, collateral, and all terms, conditions, rights and obligations thereunder or in connection therewith, governing the Exit Financing, each in form and substance acceptable to the Debtors, the DIP Lender, and Texas Capital Bank, and to be dated as of the Effective Date.

File, Filed, or Filing means, as to any document or pleading, properly and timely file, filed or filing with the Bankruptcy Court or its authorized designee in the Bankruptcy Case.

Final DIP Loan Order means the Bankruptcy Court's *Final Order (I) Authorizing Debtor to (A) Obtain Postpetition Financing on a Secured, Superpriority Basis and (B) Use Cash Collateral, (II) Granting Adequate Protection, and (III) Granting Related Relief* [Doc. No. 235].

Final Order means an order or judgment of the Bankruptcy Court, or another court of competent jurisdiction, the operation or effect of which has not been stayed, reversed, or amended and as to which order or judgment (or any revision, modification, or amendment thereof) the time to appeal or seek review or rehearing has expired and as to which no appeal or petition for review or rehearing was Filed or, if Filed, remains pending.

GAAP means the generally accepted accounting principles as in effect from time to time in the United States.

Geismar VI Creditors means those certain Holders of Claims against Debtor KPE LP in Class 6 arising from the Geismar VI Project that have filed Liens against the Geismar VI Project.

Geismar VI Creditor Claims means those certain Claims of the Geismar VI Creditors against Debtor KPE LP.

Geismar VI Project means Debtor KPE LP's design, procurement of equipment, and construction to expand Praxair's carbon monoxide production plant in Geismar, Louisiana pursuant to that certain fixed-price Agreement for Engineering, Procurement and Construction dated on or about October 10, 2016 between Debtor KPE LP and Praxair, as amended.

Geismar VI Retainage means the amount that Praxair remained indebted to KPE LP for the retainage under the Geismar VI Project contract as of the Petition Date.

General Unsecured Claim means an Unsecured Claim that is not: (a) an Administrative Claim; (b) a Professional Compensation Claim; (c) a Priority Tax Claim; or (d) a Priority Non-Tax Claim. For the avoidance of doubt, this term specifically includes any deficiency Unsecured Claims arising from Allowed Other Secured Claims in Class 3, the Channelview Project, the Geismar VI Project, and the Johnson Project.

Governmental Unit means any governmental unit, as defined in Bankruptcy Code section 101(27).

Holder means (a) as to any Claim, (i) the owner or holder of such Claim as such is reflected on the Proof of Claim Filed with respect to such Claim, or (ii) if no Proof of Claim has been Filed with respect to such Claim, the owner or holder of such Claim as such is reflected on the Schedules or the books and records of the Debtors or as otherwise determined by order of the Bankruptcy Court, or (iii) if the owner or holder of such Claim has assigned or transferred the Claim to a third party and the Debtors have received sufficient written evidence of such assignment or transfer, from the assignee or transferee prior to the Distribution Record Date; and (b) as to any Equity Interest, the record owner or holder of such Equity Interest as shown on the stock register that is maintained by the Debtors or as otherwise determined by order of the Bankruptcy Court.

Impaired or Impairment means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is impaired within the meaning of Bankruptcy Code section 1124.

Initial Trust Payment means the five hundred thousand dollars (\$500,000) from the New Liquidity Facility that is to be paid to the Liquidation Trust from the Reorganized Debtors within five (5) days after the Effective Date.

Insider has the meaning set forth in Bankruptcy Code section 101(31).

Interest, Equity Interest, or Membership Interest means any ownership interest in a Debtor, as of the Petition Date, including, but not limited to, an interest in any issued, unissued, authorized or outstanding shares or stock, including ordinary shares, common stock, preferred stock, or other instrument evidencing any fixed or contingent ownership interest in the Debtor, whether or not transferable, together with any warrants, options, or contractual rights to purchase or acquire such interests at any time and all rights arising with respect thereto.

Interim DIP Loan Order means the *Fourth Agreed Interim Order (I) Authorizing Debtor to (A) Obtain Postpetition Financing on a Secured, Superpriority Basis and (B) Use Cash Collateral, (II) Granting Adequate Protection, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief* [Doc. No. 182] and any other interim orders of the Bankruptcy Court relating to financing.

IRS means the Internal Revenue Service.

Johnson Creditors means those certain Holders of Claims against Debtor KPE LP in Class 4 as a result of the Johnson Project and related Johnson Project Litigation that have filed Liens against the Johnson Project.

Johnson Creditor Claims means those certain Claims of the Johnson Creditors against Debtor KPE LP.

Johnson Interpleaded Funds means the amounts interpleaded by Targa Pipeline into the registry of the Southern District of Texas in connection with the Johnson Project Litigation, including: (a) the approximately \$5 million retainage withheld by Targa Pipeline pursuant to that certain construction contract between KPE LP and Targa Pipeline; and (b) the additional amounts pursuant to applicable state law.

Johnson Project means Debtor KPE LP's design, procurement of equipment, and construction of a 200 million cubic foot per day gas cryogenic processing plant in Midland County, Texas pursuant to that certain Agreement for Engineering, Procurement and Construction effective August 3, 2017 between Debtor KPE LP and Targa Pipeline, as amended.

Johnson Project Litigation means that certain litigation between the Debtors, Brandon Steele, the Johnson Creditors, and the owner of the Johnson Project, Targa Pipeline, which was initiated in the Midland County, Texas, District Court, and styled *Hancock Mechanical LLC v. KP Engineering, LP*, Cause No. CV54856. Since the Petition Date, the Johnson Project Litigation was (a) removed to the United States District Court for the Western District of Texas, (b) transferred to the United States District Court for the Southern District of Texas and (c) referred to this Bankruptcy Court.

Judicial Code means title 28 of the United States Code, 28 U.S.C. §§ 1 – 4001.

KPE Assigned Channelview Claims means any and all claims and Causes of Action of the Debtors against Targa Channelview, Targa Terminals, LLC, and Saulsbury Industries, Inc. arising from the Channelview Project which shall be assigned to the KP Engineering Liquidation Trust to be pursued and liquidated for the benefit of the Liquidation Trust Beneficiaries, including Causes of Action to recover the Channelview Retainage.

KPE Assigned Johnson Claims means any and all claims and Causes of Action of the Debtors against Targa Pipeline arising from the Johnson Project which shall be assigned to the KP Engineering Liquidation Trust to be pursued and liquidated for the benefit of the Liquidation Trust Beneficiaries.

KPE Assigned Geismar VI Claims means any and all claims and Causes of Action of the Debtors against Praxair arising from the Geismar VI Project which shall be assigned to the KP Engineering Liquidation Trust to be pursued and liquidated for the benefit of the Liquidation Trust Beneficiaries, including Causes of Action to recover the Geismar VI Retainage.

KPE LLC means Debtor KP Engineering, LLC.

KPE LP means Debtor KP Engineering, LP.

KP Engineering Liquidation Trust or **Liquidation Trust** means the trust established under the Plan pursuant to the Liquidation Trust Agreement. With respect to any action required or permitted to be taken by the KP Engineering Liquidation Trust, the term includes the Liquidation Trustee,

or any other person authorized to take such action in accordance with the Liquidation Trust Agreement.

KP Engineering Liquidation Trust Agreement or ***Liquidation Trust Agreement*** means the agreement creating the KP Engineering Liquidation Trust to be implemented pursuant to Article IV of the Plan, which terms are consistent with the terms of the Plan. To the extent the Liquidation Trust Agreement is not filed with the Plan, it will be filed in the Bankruptcy Cases prior to the Confirmation Hearing.

KP Engineering Liquidation Trust Assets or ***Liquidation Trust Assets*** means the assets transferred to the KP Engineering Liquidation Trust pursuant to the terms of this Plan and the Liquidation Trust Agreement. This term specifically includes: (i) all Causes of Action, other than Retained Causes of Action, including those specifically identified in Article IV.H.; (ii) Committee Litigation against Brandon Steele; (iii) KPE Assigned Channelview Claims; (iv) KPE Assigned Johnson Claims; (v) KPE Assigned Geismar VI Claims; (vi) any and all of the Debtors' other claims and Causes of Action against Targa Resources Corp. and its affiliates, including Targa Pipeline, Targa Terminals, LLC and Targa Channelview; (vii) all claims and Causes of Action the Debtors held against Current Officers and Directors as of the Petition Date; (viii) all of the Debtors' other claims against and interests in the proceeds of the foregoing Causes of Action; (ix) contingent, reversionary interests in the Channelview Retainage, the Geismar VI Retainage, and the Johnson Interpleaded Funds; *provided, however*, that such contingent, reversionary interests remain subject to satisfaction of liens and other Claims in accordance with applicable law and lien priority as of the Petition Date; and (x) contingent interests in the New Equity Interests held in escrow by the Liquidation Trustee pending the adjudication by Final Order or other resolution of the Committee Litigation against Brandon Steele. For the avoidance of doubt, this term specifically excludes the Committee Litigation or Lienholder Litigation against TCB which is compromised and released in the Plan pursuant to Bankruptcy Rule 9019, and all other right, interests, or claims of the Debtors' Estates that could be asserted as Retained Causes of Action.

KP Engineering Liquidation Trust Beneficiaries or ***Liquidation Trust Beneficiaries*** means a Person or Entity holding an Allowed Claim against either Debtor's Estate in Classes 3, 4, 5, 6, or 7 which could be satisfied by the funds and proceeds of the KP Engineering Liquidation Trust in accordance with their treatment under this Plan and the Liquidation Trust Agreement.

KP Engineering Liquidation Trustee or ***Liquidation Trustee*** means the trustee of the KP Engineering Liquidation Trust after his or her appointment pursuant to the Plan and the Liquidation Trust Agreement.

Lien means a lien, security interest, or other interest or encumbrance asserted against any Estate Property as defined in Bankruptcy Code section 101(37).

Lienholder Litigation means the lawsuit initiated by Hancock Mechanical, LLC, Pierce Construction and Maintenance Co., Inc., Bounds Construction II, LLC, Consolidated Electrical Distributors, Inc., and Dealers Electrical Supply Company the Committee against TCB entitled *Hancock Mechanical, LLC, et al. v. Texas Capital Bank, National Ass'n*, No. 20-03029, in the United States Bankruptcy Court for the Southern District of Texas, Houston Division.

Mediated Settlement means the settlement reached at the mediation between the Debtors, the Committee, TCB and Brandon Steele during the Bankruptcy Cases, which is memorialized in the Mediated Settlement Term Sheet attached to the Disclosure Statement as Exhibit 6.

New Equity Interests means one hundred percent (100%) of the partnership interests or membership interests, as applicable, in the Reorganized Debtors, which shall be deemed duly authorized, validly issued, fully paid, and non-assessable as of the Effective Date.

New Liquidity Facility means the additional financing advanced by TCB to the DIP Lender pursuant to Article IV.E.3. and the Exit Financing Documents.

New Organizational Documents means the form of articles of incorporation, certificates of designation, partnership agreement, membership agreement, bylaws, or such other applicable formation or corporate governance documents of each of the Reorganized Debtors to be executed in connection with the Plan, Liquidation Trust Agreement, and issuance of New Equity Interests.

Other Secured Claim means any Secured Claim that is not a DIP Loan claim, Secured Tax Claim, or TCB Secured Claim. Other Secured Claims shall not include any such claims secured by Liens that are avoidable, unperfected, subject to subordination, or otherwise unenforceable.

Partner Receivable means the sum of \$13,169,773.12 owed and paid by Steele to KPE LP prior to the Petition Date in connection with certain prepetition transactions between Steele and the Debtors, the proceeds of which were paid by the Debtors to TCB to reduce the outstanding balance under the Prepetition Loan Documents.

Person means and includes natural persons, corporations, limited partnerships, general partnerships, joint ventures, trusts, land trusts, business trusts, unincorporated organizations, or other legal entities, regardless of whether they are governments, agencies, or political subdivisions thereof.

Petition Date means August 23, 2019, the date on which the Debtors commenced the Bankruptcy Cases.

Plan means the Third Amended Chapter 11 Plan of Reorganization Filed by the Debtors, as such document may be amended, modified or supplemented from time to time.

Plan Documents means, collectively: (i) those documents, Exhibits, Schedules and forms thereof in furtherance of Confirmation and Consummation of the Plan and/or to be executed in order to consummate the transactions contemplated under the Plan, which shall be Filed by the Debtors with the Bankruptcy Court as soon as reasonably practicable prior to the Confirmation Hearing, or such later date as may be approved by the Bankruptcy Court; and (ii) any additional documents Filed with the Bankruptcy Court prior to the Effective Date as amendments to such previously Filed Plan Documents. The Plan Documents include, but are not limited to: (a) the Schedule of Rejected Contracts and Leases; (b) the Schedule of Retained Causes of Action; (c) the Exit Financing Documents; (d) the KP Engineering Liquidation Trust Agreement; and (e) the New Organizational Documents.

Post-Effective Date Equity Distribution means the distribution of the New Equity Interests authorized and issued by the Reorganized Debtors and to be distributed as ordered by the Bankruptcy Court, or another court of competent jurisdiction, in connection with the adjudication or other resolution of the Committee Litigation against Brandon Steele.

Praxair means Praxair, Inc.

Prepetition Loan Documents means that certain Credit Agreement dated May 15, 2017 between Debtor KPE LP, as borrower, and TCB, as prepetition secured lender, as modified by (i) that certain Loan Modification Agreement, dated June 8, 2018 between Debtor KPE, LP and TCB; (ii) that certain Promissory Note dated June 8, 2018 executed by Debtor KPE LP and payable to TCB in the original principal amount of \$25,000,000; (iii) that certain Security Agreement dated May 15, 2017 executed by Debtor KPE LP and TCB; (iv) that certain Guaranty Agreement dated May 15, 2017 executed by Brandon Steele in favor of TCB; and (v) all other documents, instruments and agreements executed and/or delivered in connection with the foregoing.

Priority Non-Tax Claim means a Claim asserted under Bankruptcy Code sections 507(a)(3-7 and 9-10).

Priority Tax Claim means a Claim asserted under Bankruptcy Code section 507(a)(8).

Pro Rata means the proportion that an Allowed Claim or an Allowed Interest in a particular Class bears to the aggregate amount of Allowed Claims or Allowed Interests in that Class.

Professional means an Entity: (a) employed pursuant to a Bankruptcy Court order in accordance with sections 327, 363, or 1103 of the Bankruptcy Code and to be compensated for services rendered prior to or on the Confirmation Date, pursuant to sections 327, 328, 329, 330, 331, and 363 of the Bankruptcy Code; or (b) awarded compensation and reimbursement by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code. For the avoidance of doubt, this term includes, but is not limited to, Professionals employed by the Debtors and the Committee.

Professional Compensation Claim means a Claim for compensation or reimbursement of expenses of a Professional incurred on and after the Petition Date and prior to the Effective Date, including fees and expenses incurred in preparing final fee applications and participating in hearings on such applications, and requested in accordance with the provisions of Bankruptcy Code sections 326, 327, 328, 330, 331, 502(b) or 1103.

Professional Compensation Claim Bar Date means, except as provided in Article II herein, forty-five (45) days after the Effective Date.

Professional Compensation Claim Objection Deadline means twenty-one (21) days after the Professional Compensation Claim Bar Date.

Proponent(s) means either or both Debtors, as the context requires.

Proof of Claim means a proof of Claim Filed against either Debtor in the Bankruptcy Cases by the applicable Bar Date.

Reinstate, Reinstated, or Reinstatement means, with respect to Claims and Interests, that the Claim or Interest shall be rendered Unimpaired in accordance with Bankruptcy Code section 1124.

Released Party(ies) means, individually and collectively as the context requires, and solely in their capacities as such, the Debtors, and with respect to the Debtors, their Professionals, successors, assigns, subsidiaries, Affiliates, managed accounts and funds, Chief Restructuring Officer, principals, shareholders, members, partners, managers, employees, subcontractors, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, management companies, fund advisors, and other professionals, and such Entities' respective heirs, executors, estates, servants, and nominees. For the avoidance of doubt, this term specifically excludes those Persons or Entities identified in the chart set forth in Article IV.H. of the Plan.

Releasing Party means the Holders of Claims or Interests in Classes 1, 2, 3, 4, 5, 6 and 7 that are entitled to receive distributions under the Plan.

Reorganized Debtors means, collectively, the Debtors, or any successors or assigns, by merger, consolidation, or otherwise, on and after the Effective Date.

Retained Causes of Action means all Causes of Action set forth on the Schedule of Retained Causes of Action, but shall not include any action against a Released Party.

Schedules means, collectively, the Schedule of Assets and Liabilities, Schedule of Equity Security Holders, Schedule of Rejected Contracts and Leases, and Schedule of Retained Causes of Action filed by the Debtors in the Bankruptcy Cases.

Schedule of Assets and Liabilities means the schedules of assets and liabilities Filed by the Debtors in the Bankruptcy Cases, as may be amended, modified, or supplemented.

Schedule of Equity Security Holders means the schedule of Interests required to be Filed pursuant to Bankruptcy Rule 1007(a)(3).

Schedule of Rejected Contracts and Leases means the schedule of Executory Contracts and Unexpired Leases to be rejected by the Debtors, to be Filed as an Exhibit to the Plan.

Schedule of Retained Causes of Action means the Retained Causes of Action set forth on the schedule to be Filed as an Exhibit to the Plan.

Secured Claim means a Claim: (a) secured by a Lien on collateral to the extent of the value of such collateral, as determined in accordance with section 506(a) of the Bankruptcy Code or (b) subject to a valid right of setoff pursuant to section 553 of the Bankruptcy Code.

Secured Tax Claim means a Secured Claim for taxes held by a Governmental Unit, including cities, counties, school districts, and hospital districts, (a) entitled by statute to assess taxes based on the value or use of real and personal property and to obtain an encumbrance against such property to secure payment of such taxes or (b) entitled to obtain an encumbrance on property to secure payment of any tax claim specified in Bankruptcy Code section 507(a)(8). Secured Tax Claims shall not include any such Claims secured by liens / security interests that are avoidable, unperfected, subject to subordination, or otherwise unenforceable.

Securities Act means the Securities Act of 1933, as amended, 15 U.S.C. §§ 77a-77aa, or any similar federal, state, or local laws or regulations.

Subordinated Claim means a Claim that is subordinated to General Unsecured Claims pursuant to (a) a contract or agreement, (b) a Final Order declaring that such Claim is subordinated in right or payment, or (c) any applicable provision of the Bankruptcy Code, including Bankruptcy Code section 510, or other applicable law. Subordinated Claims specifically include any Claim for punitive damages provided for under applicable law.

Subsequent Trust Payments means the sixteen (16) monthly payments in the amount of fifty thousand dollars (\$50,000) each made by the Reorganized Debtors to the KP Engineering Liquidation Trust beginning on October 1, 2020 and continuing on the first Business Day of each month thereafter until all payments (total of \$800,000) have been made.

Targa Channelview means Targa Channelview LLC.

Targa Pipeline means Targa Pipeline Mid-Continent WestTex LLC, a subsidiary of Targa Resources Corp.

Texas Capital Bank or **TCB** means Texas Capital Bank, N.A.

TCB Secured Claim means TCB's Claim for the outstanding balance as of the Petition Date of \$8,743,207.21 plus all interest and fees accrued thereon, owed by KPE LP, as borrower, to TCB, as the prepetition secured lender, pursuant those certain Prepetition Loan Documents entered into between KPE LP and TCB.

Trust Letter of Credit means the letter of credit issued by TCB in favor of the KP Engineering Liquidation Trust securing the payment of the first one hundred fifty thousand dollars (\$150,000) in Subsequent Trust Payments which shall thereafter expire.

Unexpired Lease means a lease to which either Debtor is a party that is subject to assumption or rejection under Bankruptcy Code section 365.

Unimpaired means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is not impaired within the meaning of Bankruptcy Code section 1124.

Unsecured Claim means a Claim that is not a Secured Claim and that is not entitled to priority under Bankruptcy Code section 507(a)(1-9). The term specifically includes, pursuant to Bankruptcy Code section 506(a), any Claim of a creditor against either Debtor to the extent that such creditor's Claim is greater than the value of the Lien securing such Claim, any Claim for damages resulting from rejection of any Executory Contract or Unexpired Lease under Bankruptcy Code section 365, any tort Claims or contractual Claims or Claims arising from damage or harm to the environment and, and any Claim not otherwise classified under the Plan.

B. Rules of Interpretation and Construction of Terms

For purposes of this Plan: (1) any reference in this Plan to a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and

conditions means that such document shall be substantially in such form or substantially on such terms and conditions; (2) any reference in this Plan to an existing document or Exhibit Filed or to be Filed means that document or Exhibit as it may have been or may be amended, supplemented, or otherwise modified; (3) unless otherwise specified, all references in this Plan to Sections or Articles are references to Sections or Articles of or to this Plan; (4) the words “herein,” “hereto,” “hereunder,” and other words of similar import refer to this Plan in its entirety rather than to a particular portion of this Plan; (5) captions and headings contained in the Plan are inserted for convenience and reference only, and are not intended to be part of or to affect the interpretation of the Plan; (6) wherever appropriate from the context, each term stated in either the singular or the plural includes the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and neuter gender; (7) any reference to an Entity as a Holder of a Claim or Interest includes the Entity’s successors and assigns; (8) any reference to docket numbers of documents Filed in the Bankruptcy Case are references to docket numbers under the Bankruptcy Court’s CM/ECF system; and (9) the rules of construction set forth in Bankruptcy Code section 102 and the Bankruptcy Rules shall apply.

C. Computation of Time

All times referenced in this Plan are prevailing Central Time. In computing any period of time, date, or deadline prescribed or allowed in the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply. If the date on which a transaction may or must occur pursuant to the Plan shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day.

D. Governing Law

Subject to the provisions of any contract, certificate of incorporation, by-law, instrument, release, or other agreement or document entered into in connection with the Plan, the rights and obligations arising pursuant to the Plan shall be governed by, and construed and enforced in accordance with, applicable federal law, including the Bankruptcy Code and the Bankruptcy Rules.

E. Reference to Monetary Figures

All references in the Plan to monetary figures shall refer to currency of the United States of America, unless otherwise expressly provided.

F. Incorporation of Documents by Reference

This Plan incorporates by reference certain documents relating to the Debtors that are not presented herein or delivered herewith. The documents that have been Filed in the Bankruptcy Case are incorporated by reference herein in their entirety, including all amendments thereto Filed prior to the date set for Confirmation, including the following documents: (a) the Debtors’ Schedules of Assets and Liabilities and all amendments thereto [Doc. Nos. 191,193, 373 and 374] and (b) the Statements of Financial Affairs, including exhibits [Doc. Nos. 192 and 194]. Documents and pleadings Filed in the Bankruptcy Case may be downloaded from the website maintained by the Debtors’ notice and claim agent, Omni Agent Solutions, at: <https://cases.omniagentsolutions.com>.

**ARTICLE II.
ADMINISTRATIVE CLAIMS AND PRIORITY CLAIMS**

In accordance with Bankruptcy Code section 1123(a)(1), Administrative Claims, Professional Compensation Claims, the DIP Loan Claim, and Priority Tax Claims have not been classified for purposes of voting on, or receiving distributions under, the Plan, and, thus, are excluded from the Classes of Claims and Interests set forth in Article III hereof.

A. Administrative Claims

Unless otherwise agreed to by the Holder of an Allowed Administrative Claim and the Reorganized Debtors, each Holder of an Allowed Administrative Claim (other than Holders of Professional Compensation Claims, the DIP Loan Claim, and Claims for fees and expenses pursuant to section 1930 of chapter 123 of title 28 of the United States Code) will receive in full and final satisfaction of its Administrative Claim an amount of Cash, including Cash from Aviation Sale Proceeds, equal to the amount of such Allowed Administrative Claim in accordance with the following: (i) if an Administrative Claim is Allowed on or prior to the Effective Date, on the Effective Date or as soon as reasonably practicable thereafter; or (ii) if such Administrative Claim is not Allowed as of the Effective Date, no later than ten (10) days after the date on which an order allowing such Administrative Claim becomes a Final Order, or as soon as reasonably practicable thereafter. Notwithstanding anything contained in this Article, the Debtors shall continue paying their employees, utilities, insurance finance premiums, and other workforce and insurance obligations in accordance with the Bankruptcy Court's orders and approved practices. [Doc. Nos. 40, 48, 49, 51 and 52]. For the avoidance of doubt, to the extent a Holder of an Administrative Claim is not being paid by the Debtors in the ordinary course, such Holder must File a request for payment of such Administrative Claim by the Administrative Claim Bar Date as set forth below.

Except for Professional Compensation Claims, and unless previously Filed, requests for payment of Administrative Claims must be Filed and served on the Reorganized Debtors no later than the Administrative Claim Bar Date. Objections to such requests must be Filed and served on the Reorganized Debtors and the requesting party by the later of (i) thirty (30) days after the Effective Date; or (ii) thirty (30) days after the Filing of the applicable request for payment of the Administrative Claims, if applicable. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior Bankruptcy Court orders, the Allowed amounts, if any, of Administrative Claims shall be determined by, and satisfied in accordance with a Final Order of, the Bankruptcy Court; *provided, however*, that in no event shall any portion of the Initial Trust Payment be used for the payment of Administrative Claims.

Holders of Administrative Claims that are required to File and serve a request for such payment of such Administrative Claims that do not File and serve such request by the Administrative Claim Bar Date shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Reorganized Debtors or their property, and such Administrative Claims shall be deemed discharged as of the Effective Date without the need for any objection from the Reorganized Debtors or any action by the Bankruptcy Court.

B. DIP Loan Claim

The DIP Loan Claim shall be Allowed in an amount equal to the amount of such DIP Loan Claim accrued or incurred as of the Effective Date, without setoff, deduction or counterclaim, subject to the provisions of the Interim DIP Loan Order, Final DIP Loan Order, DIP Facility Documents, and this Plan. On the Effective Date, except to the extent that the Holder of the Allowed DIP Loan Claim agrees to a less favorable treatment, the Allowed DIP Loan Claim shall be refinanced and converted into Exit Financing which, in addition to the New Liquidity Facility, shall consist of a \$3.25 million post-petition term loan facility pursuant to the terms and conditions of the applicable Exit Financing Documents to be executed between Debtor KPE LP, the DIP Lender, and TCB.

As more fully set forth in Article IV.E – Exit Financing, below, in accordance with the Exit Financing Documents, and in exchange for the mutual promises and covenants therein, BTS Enterprises shall fund the Reorganized Debtors’ ongoing post-Confirmation operations and expenses through and including the Effective Date. The Exit Financing that is actually funded from the Confirmation Date through and including the Effective Date shall be included in the DIP Loan Claim and subject to all terms and conditions, and secured by the same DIP Liens and security interests, that are provided in the Final DIP Loan Order and other DIP Facility Documents. Specifically, TCB, as assignee of the DIP Loan Claim from BTS Enterprises pursuant to the Final DIP Loan Order and that certain Collateral Assignment of Note, shall retain its second priority DIP Liens (subordinated only to the TCB Secured Claim) and security interest in, to and against the applicable collateral for all amounts relating to its DIP Loan Claim. The DIP Loan Claim shall mature and be payable to the DIP Lender in accordance with the terms and conditions of the applicable Exit Financing Documents between Debtor KPE LP and BTS Enterprises.

C. Professional Compensation Claims

All requests for payment of Professional Compensation Claims for services rendered and reimbursement of expenses incurred prior to the Effective Date must be Filed no later than the Professional Compensation Claim Bar Date. Objections to Professional Compensation Claims must be Filed and served on the Reorganized Debtors and the Professional to whose application the objections are addressed no later than the Professional Compensation Claim Objection Deadline. The Bankruptcy Court shall determine the Allowed amounts of such Professional Compensation Claims after notice and hearing in accordance with the procedures established by the Bankruptcy Court, including the Compensation Procedures as set forth and defined in the *Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* [Doc. No. 369]. Allowed Professional Compensation Claims shall be paid by the Reorganized Debtors in Cash, including Cash from Aviation Sale Proceeds, within ten (10) days of the entry of a Final Order allowing such Claims.

D. Priority Tax Claims

Except (a) to the extent that the Holders of Allowed Priority Tax Claims have not already been paid, satisfied or otherwise released prior to the Effective Date, and (b) to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, then in full and final satisfaction, settlement, release, and discharge of, and in exchange for each Allowed Priority Tax

Claim, each Holder of Allowed Priority Tax Claim shall receive from the applicable Reorganized Debtor on the later of (i) the Effective Date; (ii) the date such Priority Tax Claim becomes an Allowed Claim; (iii) the date on which such Allowed Priority Tax Claim first becomes due and payable; or (iv) as soon thereafter as is reasonably practicable, an amount in Cash, including Cash from Aviation Sale Proceeds, equal to the unpaid amount of such Allowed Priority Tax Claim; provided, however, that the applicable Reorganized Debtor shall have the right to pay any Allowed Priority Tax Claim, or the remaining balance of such Claim, in full in Cash at any time on or after the Effective Date, without premium or penalty.

**ARTICLE III.
CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

A. Classification in General

Except for the Claims addressed in Article II of the Plan, all Claims and Interests are classified in the Classes set forth below in accordance with section 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or an Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim or an Interest also is classified in a particular Class for the purpose of receiving distributions under the Plan only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and has not been paid, released, or otherwise satisfied.

B. Summary of Classification of Claims and Interests

The classification of Claims and Interests against the Debtors pursuant to the Plan is as follows:

Class	Claims and Interests	Status	Voting Rights
Class 1	Allowed Priority Non-Tax	Unimpaired	Not Entitled to Vote
Class 2	Allowed Texas Capital Bank Secured Claim	Impaired	Entitled to Vote
Class 3	Allowed Other Secured Claims	Impaired	Entitled to Vote
Class 4	Allowed Johnson Creditor Claims	Impaired	Entitled to Vote
Class 5	Allowed Channelview Creditor Claims	Impaired	Entitled to Vote
Class 6	Allowed Geismar VI Creditor Claims	Impaired	Entitled to Vote
Class 7	Allowed General Unsecured Claims	Impaired	Entitled to Vote
Class 8	Allowed Equity Interests	Impaired	Entitled to Vote

C. Treatment of Claims and Interests

1. Class 1 – Except to the extent that a Holder of an Allowed Priority Non-Tax Claim agrees to a less favorable treatment, each Holder of an Allowed Priority Non-Tax Claim shall receive, on or after the Effective Date, in full and final satisfaction, compromise, settlement, release, and discharge of and in exchange for each Priority Non-Tax Claim, (i) payment in full in Cash of its Allowed Class 1 Claim; or (ii) such other treatment as is consistent with the requirements of Bankruptcy Code section 1129(a)(9).

Class 1 is Unimpaired under the Plan. Holders of Allowed Claims in Class 1 are conclusively presumed to have accepted the Plan, and solicitation of acceptances with respect to such Class is not required.

2. Class 2 – On the Effective Date, except to the extent Texas Capital Bank agrees to a less favorable treatment, the principal balance, fees and interest of the TCB Secured Claim shall be refinanced and converted into a post-petition term loan pursuant to the terms and conditions of the applicable Exit Financing Documents. As more fully set forth in the Exit Financing Documents, and notwithstanding anything to the contrary therein, payment of the Allowed TCB Secured Claim in Class 2 shall consist of the following:

- (i) Monthly principal and interest payments based on a sixty (60) month amortization schedule.
- (ii) On May 1st of each calendar year after the Effective Date (or, if May 1st is not a Business Day, then the first Business Day thereafter), an annual principal payment equal to seventy-five percent (75%) of the prior year's excess cash flow of KPE LP, as such excess cash flow may be calculated and determined by the Exit Financing Documents.
- (iii) To the extent any portion of the Allowed TCB Secured Claim remains unsatisfied after payment of the foregoing, such Holder of the Allowed TCB Secured Claim shall receive all remaining principal upon the first Business Day that is the twenty-fourth (24th) month after the Effective Date.
- (iv) The Class 2 Claim may be paid, purchased or refinanced by BTS Enterprises, Brandon Steele or any related Entity at any time following closing on terms acceptable to TCB.

As more fully set forth in the Exit Financing Documents, and notwithstanding anything to the contrary therein, the Exit Financing shall be secured by, among other things, the assets of the Reorganized Debtors, and TCB shall have and retain its first priority lien and security interest in, to and against such collateral for all amounts relating to the Prepetition Loan Documents and the Allowed TCB Secured Claim. All of TCB's liens granted in the Prepetition Loan Documents shall relate back to the date of their original perfection, without interruption, and without regard to applicable federal, state or local filing and recording statutes, *nunc pro tunc*, as of the date of Confirmation of the Plan. The current assumption is for the Debtors to emerge from Chapter 11

with an Effective Date of June 22, 2020. The first principal payment would occur by July 31, 2020.

This Plan, and the treatment of Class 2 herein, constitutes a motion by the Debtors pursuant to Bankruptcy Rule 9019 and applicable Fifth Circuit law to compromise and settle the Committee Litigation and Lienholder Litigation against TCB. Bankruptcy Rule 9019(a) states that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement....” FED. R. BANKR. P. 9019(a). The merits of a proposed compromise should be judged under the criteria set forth in *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 (1968). *Anderson* requires that a compromise must be “fair and equitable.” *Anderson*, 390 U.S. at 424; *see also In re AWECO, Inc.*, 725 F.2d 293, 298 (5th Cir. 1994) (explaining that a bankruptcy court may approve a compromise as part of a plan of reorganization if it is “fair and equitable” under the *Anderson* standard). The terms “fair and equitable” mean that: (i) senior interests are entitled to full priority over junior interests; and (ii) the settlement is reasonable in relation to the likely awards of litigation. *In re Cajun Elec. Power Coop.*, 119 F.3d 349, 355 (5th Cir. 1997); *In re Jackson Brewing Co.*, 724 F.2d 599, 602 (5th Cir. 1980). In particular, the Bankruptcy Court must evaluate and set forth in a comprehensible fashion: (i) the probability of success in the litigation, with due consideration for the uncertainty in fact and law; (ii) the complexity and likely duration of the litigation and any attendant expense, inconvenience and delay; and (iii) all other factors bearing on the wisdom of the compromise. With respect to the first factor, it is unnecessary to conduct a mini-trial to determine the probable outcome of any claims waived in the settlement. *Cajun Elec.*, 119 F.3d at 365. “The judge need only apprise himself of the relevant facts and law so that he can make an informed and intelligent decision....” *Id.* (quoting *La Salle Nat’l Bank v. Holland (In re American Reserve Corp.)*, 841 F.2d 159, 163 (7th Cir. 1987)). Under the rubric of the third, catch-all provision, the Fifth Circuit has specified two additional factors that bear on the decision to approve a proposed settlement. First, the Bankruptcy Court should consider the best interests of the creditors, “with proper deference to their reasonable views.” *Connecticut Gen. Life. Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortgage Corp.)*, 68 F.3d 914, 917 (5th Cir. 1995). Second, the Bankruptcy Court should consider “the extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion.” *Id.* at 918 (internal citations omitted). The Debtors propose that the following settlement and compromise of the Committee Litigation against TCB is fair and equitable, and should therefore be approved by the Bankruptcy Court.

On the Confirmation Date, and in consideration of: (i) the undertaking set forth herein; (ii) the agreement to provide Exit Financing, which Exit Financing will include an additional \$500,000 to fund the Initial Trust Payment, and the provision of the Trust Letter of Credit to secure the first three (3) Subsequent Trust Payments; (iii) the release of Liens on the Aviation Sale Proceeds; (iv) the subordination of its Liens to any validly, timely and properly obtained Liens in the Channelview Retainage, the Geismar VI Retainage, and Johnson Interpleaded Funds and the retention of any first Lien in the Debtors’ interest in those funds; (v) subordination of its Liens on the New Equity Interests to the claims of the Liquidation Trust pending outcome of the Committee Litigation against Brandon Steele; (vi) the limited subordination of its right to sales proceeds of certain non-Debtor entities as described in Article V.J.; and (vii) other good and valuable consideration, the Debtors shall automatically and forever remise, release and discharge TCB and each of its subsidiaries and affiliates, corporations, companies, divisions, predecessors, successors

and assigns and each and all of their directors, officers, employees, attorneys, accountants, consultants and other agents, of and from any and all claims, demands, agreements, contracts, covenants, actions, suits, causes of action, obligations, controversies, costs, expenses, accounts, damages, judgments, losses and liabilities of whatever kind or nature, in law, equity or otherwise, whether known or unknown, whether or not concealed or hidden, which they have had, may have had, or now have, or which any of their predecessors, successors or assigns hereafter can, shall or may have, for or by reason of any matter, cause or thing whatsoever, whenever arising to and including the Confirmation Date, including, but without limitation, any and all claims or causes of action which were or might have been asserted in the Bankruptcy Cases, or any adversary proceeding that may be commenced or may have been commenced in connection therewith, including any right to surcharge the collateral of TCB under section 506(c) of the Bankruptcy Code and any right to recover payment of the Partner Receivable. The release shall be immediately effective upon Confirmation of the Plan, without the necessity of any further act and shall be binding upon the Debtors and all of their subsidiaries, affiliates, trustees, receivers, managing agents, disbursing agents, and any subsequent Chapter 7 or Chapter 11 trustee that may be appointed in these Bankruptcy Cases. For the avoidance of all doubt, and notwithstanding anything to the contrary in this this Plan, the foregoing release provisions specifically apply to any Committee Litigation that has been, or could have been, initiated against TCB by the Committee during the Bankruptcy Cases pursuant to the Bankruptcy Court's order [Doc. No. 399] and to the Lienholder Litigation, but such releases do not apply to the Trust Letter of Credit. Within five (5) Business Days of the Confirmation Date, the Committee Litigation and Lienholder Litigation against TCB shall be dismissed with prejudice to refiling.

The first factor in the analysis—likelihood of success—supports approval of the proposed compromise with TCB in this Plan.

Committee Litigation. The Committee has asserted Causes of Action against TCB in the Committee Litigation that, among other things, challenge the perfection of TCB's Liens against Estate Property, including Aviation Sale Proceeds, pursuant to the Prepetition Loan Documents and seeks to avoid and recover at least \$21 million in transfers, payments, and incurred obligations in the two-year period prior to the Petition Date. [Adv. No. 20-03030, Doc. No. 1]. TCB disputes, *inter alia*, the Committee's assertions that TCB received that amount of funds, that the TCB Liens were not properly perfected or that any of the Debtors' payments to TCB on account of the Prepetition Loan Documents are avoidable under any legal theory. While the Committee is confident that it would prevail on at least some of the issues in the Committee Litigation against TCB and recover some amount for the benefit of the Holders of Allowed Class 7 Claims, there is also a substantial risk that the Bankruptcy Court would find that all of TCB's Liens are properly perfected and the Debtors' payments to TCB are not avoidable or recoverable. In weighing the likelihood of success of the Committee Litigation against the benefits of the proposed compromise set forth above, the Debtors believe that the compromise is a fair and equitable resolution that ensures a better result for the general creditor body. Accordingly, this factor weighs in favor of approving the compromise.

Lienholder Litigation. Plaintiffs Hancock Mechanical LLC, Pierce Construction and Maintenance Co., Inc., Bounds Construction II LLC, Consolidated Electrical Distributors,

Inc., and Dealers Electrical Supply Co. are Johnson Project Creditors and parties to the Johnson Project Litigation. Plaintiffs instituted challenge actions against TCB, as contemplated by the Final DIP Order, seeking, *inter alia*, declaratory relief regarding the Johnson Interpleaded Funds and TCB's assertion of a Lien against the same. TCB disputes the plaintiffs' assertion that the Prepetition Loan Documents do not encumber the Johnson Interpleaded Funds. Nevertheless, as consideration for the compromise described herein, TCB has agreed to the subordination of its Liens to any validly, timely and properly obtained Liens in the Johnson Interpleaded Funds and the retention of any first Lien in the Debtors' interest in the Johnson Interpleaded Funds.

The second factor—potential duration and expense—also weighs in favor of the compromise.

Committee Litigation. To date, the Committee has spent significant time and resources analyzing the Causes of Action against TCB, and it is likely that the Liquidation Trustee would do the same on and after the Effective Date if the compromise were not approved by the Bankruptcy Court. Continuing the Committee Litigation against TCB would further increase the expense to the detriment of all creditors and delay these Bankruptcy Cases or the distributions to Liquidation Trust Beneficiaries if the Committee Litigation against TCB were placed into the Liquidation Trust.

Lienholder Litigation. The Lienholder Litigation is a result of an ongoing dispute related to the Johnson Project that played a significant role in the Debtors' decision to seek Chapter 11 relief. The Debtors, their Estates, TCB and the plaintiffs in the Lienholder Litigation have incurred substantial expenses as a result of the Johnson Project Litigation and Lienholder Litigation. Without TCB's agreement in this Plan to subordinate its Liens against the Johnson Interpleaded Funds, the Lienholder Litigation would likely continue for the foreseeable future and result in additional expense and delay of a resolution to the detriment of all Holders of Class 4 Claims, not just the plaintiffs in the Lienholder Litigation.

The final factor—wisdom of the compromise—supports approval of the compromise with TCB and release of the Committee Litigation against TCB. The Fifth Circuit has instructed that the “desires of the creditors are not binding.” *Cajun Elec.*, 119 F.3d at 538 (citing *In re Foster*, 68 F.3d at 917). “The test is not the desires of the majority [of creditors] as such, but the interests of the creditors, taking into account their reasonable views.” *Id.*

Committee Litigation and Lienholder Litigation. The best interests of all creditors in these Bankruptcy Cases is for TCB to undertake the obligations set forth in the Plan to: (i) provide the necessary Exit Financing to ensure Plan Confirmation and Consummation; (ii) release its Liens on the Aviation Sale Proceeds to support payment of the Administrative Expense Claims; and (iii) subordinate its various other Liens described above, including with respect to the Channelview Retainage, Geismar VI Retainage, and Johnson Interpleaded Funds, for the benefit of Holders of Claims and Interests in Classes 4, 5, 6, 7 and 8. Further, the compromise with TCB and Class 2 treatment herein are the result of an adversarial process and extensive arms-length negotiations between the Chief

Restructuring Officer and TCB to ensure the best overall outcome to the Debtors' entire creditor constituency. There is no evidence to support a finding that the Debtors and the Chief Restructuring Officer are anything other than adverse to TCB, or that they have settled this dispute through any improper collusive mechanism.

Notably, with the Mediated Settlement in place, the Committee supports the compromise and settlement with TCB described herein, including, but not limited to, TCB receiving a full and complete release and dismissal from the Committee Litigation. In light of the foregoing, and considering the additional consideration provided by TCB pursuant to the Mediated Settlement, the Debtors submit that this compromise with TCB and Class 2 treatment should be approved by the Bankruptcy Court in all respects pursuant to Bankruptcy Rule 9019 and applicable Fifth Circuit law.

Class 2 is Impaired under the Plan. Holders of Allowed Claims in Class 2 are entitled to vote to accept or reject the Plan.

3. Class 3 – Class 3 shall consist of other Secured Claims that are not DIP Loan Claims, TCB Secured Claims, or Secured Tax Claims. On or after the Effective Date, and except to the extent that a Holder of an Allowed Other Secured Claim agrees to a less favorable treatment, each Holder of an Allowed Other Secured Claim shall receive, in full and final satisfaction, compromise, release, and discharge of and in exchange for each Other Secured Claim, the following:

- (i) As relates to any collateral (other than TCB's collateral) that is subject to a prepetition agreement and that has not been sold or surrendered during the Bankruptcy Cases, the Debtors shall, solely as relates to such collateral, remain bound by and perform in accordance with the applicable agreement, including, but not limited to, making such payments as remain outstanding under the respective agreements in accordance with the terms and conditions thereof; *provided, however*, that the maturity of such prepetition agreements shall be extended as set forth in the Exhibits to this Plan, which additional payments shall be made as cure for any payments not made by the Debtors. For the avoidance of doubt, any Lien granted in or to the respective Holder's collateral pursuant to the respective agreement shall be retained by, and for the benefit of, such Holder of an Allowed Other Secured Claim in Class 3, subject to the DIP Lien and TCB's Liens arising from the TCB Secured Claim and/or the Exit Financing.
- (ii) Except as provided in the Plan with respect to the Aviation Sale Proceeds, as relates to any collateral that has been sold pursuant to a Bankruptcy Court order during the Bankruptcy Cases, (x) a Secured Claim in the amount of such sale proceeds, which shall be paid in accordance with the applicable Bankruptcy Court order, and (y) a deficiency Claim, which shall be treated as a General Unsecured Claim in Class 7.
- (iii) For purposes of voting and Confirmation, each Other Secured Claim shall be classified in separate subclasses within Class 3 – *i.e.* 3(a); 3(b); 3(c); etc.

Class 3 is Impaired under the Plan. Holders of Allowed Claims in Class 3 are entitled to vote to accept or reject the Plan.

4. *Class 4* – The members of Class 4 shall consist of the Johnson Creditors as Holders of Johnson Creditor Claims against the Debtors arising from the Johnson Project and related Johnson Project Litigation. Prior to the Petition Date, the Debtors and Brandon Steele were involved in the Johnson Project Litigation with all, or substantially all, of the Johnson Creditors, and the owner of the Johnson Project, Targa Pipeline. On the Effective Date, and except to the extent that a Holder of an Allowed Johnson Creditor Claim agrees to a less favorable treatment, each Holder of an Allowed Johnson Creditor Claim will receive, in full and final satisfaction, compromise, settlement, release, and discharge of and in exchange for each Class 4 Claim, the following treatment under the Plan:

- (i) Upon (a) the settlement of the Johnson Project Litigation or (b) entry of a final order in the Johnson Project Litigation, the Johnson Interpleaded Funds will be distributed to Holders of Allowed Johnson Creditor Claims, Targa Pipeline, or the KP Engineering Liquidation Trust, pursuant to the terms of such settlement or final order. The Plan shall not alter any of the liens, claims, or rights, if any, of any of the Johnson Creditors or other interested Entities (x) as to the Johnson Interpleaded Funds or (y) against any non-Debtor party or its property.
- (ii) To the extent any Allowed Johnson Creditor Claim remains unsatisfied after payment of the foregoing, such Holder of the Allowed Johnson Creditor Claim shall be a Liquidation Trust Beneficiary of the KP Engineering Liquidation Trust and be entitled to an Allowed General Unsecured Claim in Class 7 in the amount of the deficiency.
- (iii) To the extent any Johnson Interpleaded Funds are transferred to the KP Engineering Liquidation Trust pursuant to Article III.C.4(i), above, and remain undistributed after satisfaction of the Allowed Johnson Creditor Claims as described in Article III.C.4(i), such excess Johnson Interpleaded Funds shall be distributed, without further order of the Bankruptcy Court, by the KP Engineering Liquidation Trust pursuant to the terms of the Liquidation Trust Agreement.

Class 4 is Impaired under the Plan. Holders of Allowed Claims in Class 4 are entitled to vote to accept or reject the Plan.

5. *Class 5* – The members of Class 5 shall consist of the Channelview Creditors as Holders of Channelview Creditor Claims against the Debtors arising from the Channelview Project and related Channelview Adversary Proceeding. Prior to the Petition Date, KPE LP completed all, or substantially all, of the work relating to the Channelview Project, which is owned by Targa Channelview. On the Effective Date, and except to the extent that a Holder of an Allowed Channelview Creditor Claim agrees to a less favorable treatment, each Holder of an Allowed Channelview Creditor Claim will receive, in full and final satisfaction, compromise, settlement, release, and discharge of and in exchange for each Class 5 Claim, the following treatment under the Plan:

- (i) The Channelview Retainage will be distributed to Holders of Allowed Channelview Creditor Claims, or the KP Engineering Liquidation Trust, pursuant to (a) applicable state law, (b) the terms of any settlement of the Channelview Adversary Proceeding, or (c) the terms of a final order in the Channelview Adversary Proceeding. The Plan shall not alter any of the liens, claims, or rights, if any, of the Channelview Creditors or other interested Entities (x) as to the Channelview Retainage or (y) against any non-Debtor party or its property.
- (ii) To the extent any Allowed Channelview Creditor Claim remains unsatisfied after payment of the foregoing, such Holder of the Allowed Channelview Creditor Claim shall be a Liquidation Trust Beneficiary of the KP Engineering Liquidation Trust and be entitled to an Allowed General Unsecured Claim in Class 7 in the amount of the deficiency.
- (iii) To the extent any portion of the Channelview Retainage is transferred to the KP Engineering Liquidation Trust pursuant Article III.C.5(i), above, and remains undistributed after satisfaction of the Allowed Channelview Creditor Claims as described in Article III.C.5(i), such excess Channelview Retainage shall be distributed, without further order of the Bankruptcy Court, by the KP Engineering Liquidation Trust pursuant to the terms of the Liquidation Trust Agreement.

Class 5 is Impaired under the Plan. Holders of Allowed Claims in Class 5 are entitled to vote to accept or reject the Plan.

6. Class 6 – The members of Class 6 shall consist of the Geismar VI Creditors as Holders of Geismar VI Creditor Claims against the Debtors arising from the Geismar VI Project. Prior to the Petition Date, KPE LP completed all, or substantially all, of the work relating to that certain Geismar VI Project, which is owned by Praxair. On the Effective Date, and except to the extent that a Holder of an Allowed Geismar VI Creditor Claim agrees to a less favorable treatment, each Holder of an Allowed Geismar VI Creditor Claim will receive, in full and final satisfaction, compromise, settlement, release, and discharge of and in exchange for each Class 6 Claim, the following treatment under the Plan:

- (i) The Geismar VI Retainage will be distributed to Holders of Allowed Geismar VI Creditor Claims, or the KP Engineering Liquidation Trust, pursuant to applicable state law. The Plan shall not alter any of the liens, claims, or rights, if any, of the Geismar VI Creditors or other interested Entities (x) as to the Geismar VI Retainage or (y) against any non-Debtor party or its property.
- (ii) To the extent any Allowed Geismar VI Creditor Claim remains unsatisfied after payment of the foregoing, such Holder of the Allowed Geismar VI Creditor Claim shall be a Liquidation Trust Beneficiary of the KP Engineering Liquidation Trust and be entitled to an Allowed General Unsecured Claim in Class 7 in the amount of the deficiency.
- (iii) To the extent any portion of the Geismar VI Retainage is transferred to the KP Engineering Liquidation Trust pursuant to Article III.C.6(i), above, and remains

undistributed after satisfaction of the Allowed Geismar VI Creditor Claims as described in Article III.C.6(i), such excess Geismar VI Retainage shall be distributed, without further order of the Bankruptcy Court, by the KP Engineering Liquidation Trust pursuant to the terms of the Liquidation Trust Agreement.

Class 6 is Impaired under the Plan. Holders of Allowed Claims in Class 6 are entitled to vote to accept or reject the Plan.

7. Class 7 – Class 7 shall consist of the Allowed General Unsecured Claims of all of the Debtors' General Unsecured Creditors including to the extent that Holders of Claims in Classes 3, 4, 5, and 6 have Allowed deficiency Claims. On the Effective Date, except to the extent that a Holder of an Allowed Class 7 Claim agrees to a less favorable treatment, Holders of Allowed Class 7 Claims shall receive, in full and final satisfaction, compromise, settlement, release, and discharge of and in exchange for each Class 7 Claim, a Pro Rata interest in the Liquidation Trust in accordance with the Liquidation Trust Agreement.

Class 7 is Impaired under the Plan. Holders of Allowed Claims in Class 7 are entitled to vote to accept or reject the Plan.

8. Class 8 – Class 8 shall consist of the Allowed Equity Interests in the Debtors. On the Effective Date, in exchange for: (i) the value provided by agreeing to work for the Debtors during the Bankruptcy Cases (including while being a target of Committee Litigation); (ii) continued work for the Reorganized Debtors after Confirmation; and (iii) an agreement to (x) contribute \$100,000 of Cash into the Reorganized Debtors, (y) contribute, or otherwise agree not to contest the contribution of, the Aviation Sale Proceeds to fund payments of Allowed Administrative Expense Claims, and (z) guarantee the New Liquidity Facility from TCB, except as to the Initial Trust Payment, as further consideration for TCB to provide Exit Financing, Holders of Allowed Equity Interests in the Debtors shall receive New Equity Interests in the Reorganized Debtors; *provided, however*, that such authorized and issued New Equity Interests in the Reorganized Debtors will not be distributed to Allowed Equity Interest Holders until the Post-Effective Date Equity Distribution date. For the avoidance of doubt, the Post-Effective Date Equity Distribution shall not occur until, and shall remain subject to, the adjudication by Final Order, or other resolution or compromise, of the pending Committee Litigation against Brandon Steele.

Class 8 is Impaired under the Plan. Holders of Allowed Claims in Class 8 are entitled to vote to accept or reject the Plan.

D. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan shall affect the Debtors' rights with respect to any Unimpaired Claims, including, all rights in respect of legal and equitable defenses to, or setoffs or recoupments against, any such Unimpaired Claims.

E. Elimination of Vacant Classes

Any Class of Claims or Interests that does not have a Holder of an Allowed Claim or Allowed Interest or a Claim or Interests temporarily Allowed by the Bankruptcy Court as of the

date of the Confirmation Hearing shall be deemed eliminated from the Plan.

F. Controversy Concerning Impairment

If any controversy arises as to whether any Claims or Interests, or any Class of Claims or Interests, are Impaired, the Bankruptcy Court shall, after notice and hearing, determine such controversy concerning impairment. Failure to timely File an objection in the Bankruptcy Case shall result in such Person or Entity waiving any objection to the Impairment classifications set forth in the Plan.

G. Subordinated Claims

The allowance, classification, and treatment of all Allowed Claims and Allowed Interests and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Reorganized Debtors reserve the right to re-classify any Allowed Claim or Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

H. No Waiver

Nothing contained in the Plan shall be construed to waive the Debtors' or other Person's right to object on any basis to any Claim or Interest prior to the Effective Date.

**ARTICLE IV.
MEANS FOR IMPLEMENTATION OF THE PLAN**

A. Corporate Existence

Except as otherwise provided in the Plan, the Debtors shall continue to exist after the Effective Date as a separate limited partnership and limited liability company, respectively, with all the powers of a limited partnership or limited liability company, as the case may be, pursuant to the applicable law in the jurisdiction in which the Debtors are formed and pursuant to their respective by-laws (or other formation documents) in effect prior to the Effective Date, except to the extent such by-laws (or other formation documents) are amended or restated by the New Organizational Documents or otherwise under the Plan. To the extent such documents are amended or restated by the New Organizational Documents, they are deemed to be amended and restated pursuant to the Plan and require no further action or approval (other than any requisite filings required under applicable state, or federal law). Neither the preparation nor the filing of the New Organizational Documents shall be deemed to create a new corporate or other legal entity, and the New Organizational Documents shall only be deemed amendments to, or amendments and restatements of, applicable organizational documents for purposes of any change of control determination. Each Holder of an Allowed Equity Interest in Class 8 entitled to receive New Equity Interests in the Reorganized Debtors under the Plan shall be required to execute, and agree to be bound by, the New Organizational Documents.

For so long as the Committee Litigation against Brandon Steele remains pending, the New Organizational Documents shall control the corporate existence, actions and governance of the Reorganized Debtors, and shall include such limitations on the transfer of assets and other management controls as may be agreed by the Debtors, the Committee, the Liquidation Trustee Brandon Steele and BTS Enterprises. Except as provided in the New Organizational Documents, normal corporate governance of the Reorganized Debtors shall occur. Upon the date of the Post-Effective Date Equity Distribution, if any, the Reorganized Debtors may amend and restate their respective New Organizational Documents and other constituent documents as permitted by the laws of their respective states of incorporation and their respective New Organizational Documents.

B. Reorganized Debtors

On the Effective Date, the Reorganized Debtors shall have the authority to adopt any other agreements, documents, and instruments and to take any other actions contemplated under the Plan as necessary to consummate the Plan and establish the KP Engineering Liquidation Trust.

C. Directors and Officers of the Reorganized Debtors

On the Effective Date, the Current Directors and Officers of the Debtors shall be established as the Directors and Officers of the Reorganized Debtors.

D. Vesting of Assets in the Reorganized Debtors

Other than the KP Engineering Liquidation Trust Assets, on the Effective Date, all property in the Estates, all Retained Causes of Action, and any property acquired by the Debtors pursuant to the Plan shall vest in the respective Reorganized Debtors free and clear of all Liens, Claims, charges, or other encumbrances, except those Liens granted under any agreement, instrument, or other document incorporated in the Plan, including the Exit Financing Documents.

On and after the Effective Date, the Reorganized Debtors may operate their businesses and may use, acquire, or dispose of property and compromise or settle any Claims, Interests, or Retained Causes of Action in accordance with Article VI of the Plan without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

E. Exit Financing

1. *In General.* On the Effective Date, the Reorganized Debtors, BTS Enterprises and TCB shall execute the Exit Financing Documents. The Exit Financing documents shall be filed as Plan Documents or otherwise attached as Exhibits to the Plan. It shall be a condition precedent to the execution of the Exit Financing Documents by TCB that certain indebtedness of BTS Enterprises and Brandon Steele be restructured as set forth in the Exhibits hereto. To the extent that this Plan is not confirmed on terms acceptable to TCB and/or such restructuring with Brandon Steele and BTS Enterprises is not completed on terms acceptable to TCB, then TCB shall have no obligation for any funding, agreements or concessions under this Plan or the restructuring with

Brandon Steele and BTS Enterprises. Brandon Steele has personally guaranteed all obligations owed by BTS Enterprises to TCB other than the Initial Trust Payment. In the ordinary course of preparing and executing the Exit Financing Documents, and in consideration for the Exit Financing, Brandon Steele will execute a consent and acknowledgement that his guaranty remains in full force and effect.

2. *The First Component of the Exit Financing Is Conversion of the DIP Loan Claim.*

In accordance with the Exit Financing Documents, and notwithstanding anything to the contrary therein, TCB, through a new \$3.25 million post-petition term loan facility to BTS Enterprises, will provide Exit Financing to Reorganized Debtor KPE LP. Such Exit Financing shall be used to refinance the DIP Loan Claim pursuant to the terms and conditions of the applicable Exit Financing Documents. Brandon Steele agrees to execute a new secured guaranty of the Exit Financing provided to KPE LP, other than the Initial Trust Payment. BTS Enterprises shall retain its second priority DIP Liens (subordinated only to the TCB Secured Claim) and security interest in, to, and against the applicable collateral for all amounts relating to its DIP Loan Claim, including all rights granted to BTS Enterprises in the DIP Note, DIP Facility Documents, Interim DIP Loan Order, and Final DIP Loan Order, which shall be collaterally assigned to TCB. Payment of the Exit Financing as it relates to the DIP Loan Claim shall consist of the following:

- (i) Monthly principal and interest payments based on a sixty (60) month amortization schedule.
- (ii) Beginning on May 1st (or, if May 1st is not a Business Day, then the first Business Day thereafter) of the year the Allowed TCB Secured Claim in Class 2 is paid in full, and on May 1st of each calendar year thereafter, an annual principal payment equal to seventy-five percent (75%) of the prior year's excess cash flow of KPE LP, as such excess cash flow may be calculated and determined by the Exit Financing Documents. If payment in full of the Allowed TCB Secured Claim in Class 2 occurs after May 1st of any given calendar year, the first excess cash flow payments shall begin on May 1st of the following calendar year.
- (iii) To the extent any portion of the Exit Financing, as it specifically relates to the DIP Loan Claim and conversion of the DIP Facility, remains unsatisfied after payment of the foregoing, such unsatisfied Exit Financing portion shall be paid in a lump sum at maturity pursuant to the terms and conditions of the Exit Financing Documents, or at such other time as the Reorganized Debtors and TCB may agree.

3. *The Second Component of the Exit Financing is the New Liquidity Facility.*

In accordance with the Exit Financing Documents, and notwithstanding anything to the contrary therein, TCB, through a new \$2 million term loan facility to BTS Enterprises, will provide the New Liquidity Facility to BTS Enterprises for use by Reorganized Debtor KPE LP. Of the \$2 million New Liquidity Facility, \$1.5 million shall be used by the Reorganized Debtors as general working capital pursuant to the terms and conditions of the applicable Exit Financing Documents. The remaining \$500,000 shall fund the Initial Trust Payment. Brandon Steele agrees to execute a new secured guaranty of the Exit Financing provided to KPE LP; *provided, however*, that Brandon Steele shall not be required to personally guarantee the Initial Trust Payment. The Exit Financing

will also include the Trust Letter of Credit, which will secure the first \$150,000 in Subsequent Trust Payments owed by the Reorganized Debtors to the Liquidation Trust and which will expire thereafter. The Exit Financing will be cross-pledged and cross-defaulted with all debts of the Reorganized Debtors, KPE Realty, BTS Enterprises, and Brandon Steele. BTS Enterprises shall have a second priority Lien (subordinated only to the TCB Secured Claim) and security in, to, and against the assets of the Reorganized Debtors securing the amount of the New Liquidity Facility, including all rights granted to BTS Enterprises in the Exit Financing Documents, which shall be collaterally assigned to TCB. Payment of the Exit Financing as it specifically relates to the New Liquidity Facility provided by TCB, shall consist of the following:

- (i) Monthly interest payments.
- (ii) To the extent any portion of the Exit Financing, as it specifically relates to the New Liquidity Facility, remains unsatisfied after payment of the foregoing, such unsatisfied Exit Financing portion shall be paid in a lump sum at maturity pursuant to the terms and conditions of the Exit Financing Documents, or at such other time as the Reorganized Debtors and TCB may agree.
- (iii) The new term loan facility of \$2 million provided as the New Liquidity Facility and the new term loan facility of \$3.25 million provided to convert the DIP Loan Claim shall be combined into one single term note payable in accordance with the terms of the Exit Financing Documents.

F. Establishment of the KP Engineering Liquidation Trust

On the Effective Date, the Liquidation Trustee shall sign the Liquidation Trust Agreement and, in his or her capacity as Liquidation Trustee, accept all Liquidation Trust Assets on behalf of the beneficiaries thereof, and be authorized to obtain, seek the turnover, liquidate, and collect all of the Liquidation Trust Assets not in his or her possession. The KP Engineering Liquidation Trust will then be deemed created and effective without any further action by the Bankruptcy Court or any Person as of the Effective Date. Thereupon, and except as expressly provided in the Plan or Liquidation Trust Agreement, the Debtors shall not have any interest in, or with respect to, the Liquidation Trust Assets. Notwithstanding anything herein to the contrary, the Debtors and the Liquidation Trustee shall be bound by the terms of the Liquidation Trust Agreement.

The Liquidation Trust shall be established for the purposes of (i) accepting and holding the Liquidation Trust Assets, including the Initial Trust Payment and the Subsequent Trust Payments from the Reorganized Debtors; (ii) prosecuting and resolving the litigation and Causes of Action belonging to the Liquidation Trust; (iii) resolving the Claims in Classes 3, 4, 5, 6, and 7; (iv) maximizing recovery of the Liquidation Trust Assets for the benefit of the Liquidation Trust Beneficiaries; (v) holding the contingent interests in the New Equity Interests in escrow pending the adjudication by Final Order or other resolution of the Committee Litigation against Brandon Steele; and (vi) distributing the proceeds of the Liquidation Trust Assets to the Liquidation Trust Beneficiaries in accordance with this Plan and the Liquidation Trust Agreement, with no objective to continue or engage in the conduct of a trade or business, except only in the event and to the extent necessary for, and consistent with, the litigation purposes of the Liquidation Trust.

G. Appointment of KP Engineering Liquidation Trustee

The Committee and the Debtors have agreed that Michael Warner will be the Liquidation Trustee. Following appointment, the Liquidation Trustee shall act only in accordance with the Plan, Confirmation Order, and the Liquidation Trust Agreement, and in such capacity shall represent the respective Estates pursuant to sections 1123(a)(5), (a)(7) and (b)(3)(B) of the Bankruptcy Code. As such, the Liquidation Trustee will be vested with the authority and power (subject to the Confirmation Order, Liquidation Trust Agreement and New Organizational Documents, as applicable) to: (i) administer the Liquidation Trust; (ii) administer, investigate, prosecute, settle and abandon all Causes of Action constituting Liquidation Trust Assets in the name of, and for the benefit of, the Estates and the Liquidation Trust Beneficiaries; and (iii) liquidate any other Liquidation Trust Assets as may be assigned to the Liquidation Trust or otherwise become Liquidation Trust Assets at any time after the Effective Date. As the representative of the Estates, the Liquidation Trustee shall succeed to all of the rights and powers of the Debtors and the Estates with respect to those certain Causes of Action constituting Liquidation Trust Assets, and shall replace the Debtors and their Estates as the parties in interest in any such Causes of Action as of the Effective Date. The Confirmation Order shall provide the Liquidation Trustee with express authority to convey, transfer and assign any and all of the Liquidation Trust Assets and to take all actions necessary to effectuate the same; provided, however, that the Liquidation Trustee may not take any action to convey, transfer or assign the Liquidation Trust's contingent interests in the New Equity Interests held in escrow without obtaining a Final Order of the Bankruptcy Court authorizing such action.

After the Effective Date, the affairs of the Liquidation Trust and all Liquidation Trust Assets shall be managed under the direction of the Liquidation Trustee, as provided by the terms of the Plan, Confirmation Order, and Liquidation Trust Agreement. The Liquidation Trustee shall also have standing to monitor and seek Bankruptcy Court enforcement of the performance of obligations under the Plan, including, for the avoidance of doubt, obligations in the New Organizational Documents. The Liquidation Trustee shall continue to perform his or her duties until all proceeds of the Liquidation Trust Assets have been fully liquidated and distributed to the Liquidation Trust Beneficiaries. The selection of any successor Liquidation Trustee, if necessary, shall be made by the Bankruptcy Court in accordance with the Liquidation Trust Agreement after notice and a hearing. Notwithstanding anything to the contrary in this Article, the Liquidation Trust Agreement or the New Organizational Documents, the Liquidation Trustee shall not be considered a Director or Officer of the Reorganized Debtors or a Holder of any New Equity Interests in the Reorganized Debtors.

H. Vesting and Transfer of Assets to the KP Engineering Liquidation Trust

On the Effective Date, pursuant to the Plan and sections 1123, 1141 and 1146(a) of the Bankruptcy Code, the Debtors and their Estates are authorized and directed to transfer, grant, assign, convey, set over, and deliver to the Liquidation Trustee, for the benefit of the Liquidation Trust, all of the Debtors' right, title and interest in and to the KP Engineering Liquidation Trust assets free and clear of all Liens, Claims, encumbrances or interests of any kind in such property of any other or Holders of Claims against or Interests in the Debtors, except as otherwise expressly provided for in the Plan, including, for the avoidance of doubt, those certain Liens that are

specifically subordinated pursuant to the Plan. To the extent required to implement the transfer of the Liquidation Trust Assets from the Debtors and their Estates to the Liquidation Trust as provided herein, all Persons, Entities, and Governmental Units shall cooperate and assist the Debtors to implement the transfers contemplated in this Article.

The Liquidation Trust Assets shall include the Initial Trust Payment and the Subsequent Trust Payments from the Reorganized Debtors. To be clear, the total Cash consideration paid from the Reorganized Debtors to the Liquidation Trust shall consist of one (1) Initial Trust Payment of \$500,000 plus sixteen (16) Subsequent Trust Payments of \$50,000 each, for a total Cash consideration amount of \$1.3 million. Additionally, except as provided herein with respect to: (i) Committee Litigation against TCB, which is fully resolved and will be dismissed with prejudice; and (ii) all Retained Causes of Action preserved by the Reorganized Debtors, the Liquidation Trust Assets shall include all Causes of Action and the proceeds thereof, including, but not limited to, the following:

Defendant	Causes of Action, Including Pursuant to 11 U.S.C. §§ 105, 541, 542, 544, 547, 548, 550, 551 and TUFTA § 24.001 <i>et seq.</i> (as applicable)
Brandon T. Steele	Partnership distributions of at least \$55.7 million; increases to the Partner Receivable of at least \$12.7 million; breach of fiduciary duties; and guaranty of bank loans with TCB for Steele's benefit
Tony D. Freeman	Partnership distributions of at least \$4 million
Ric Steele	Partnership distributions of at least \$2.8 million
Ken Baxter	Partnership distributions of at least \$2.5 million
BTS Enterprises, Inc.	Partnership distributions of at least \$3.2 million; transfer of equity interests in KPE LP's former subsidiaries
Ryno Engineering, LLC	Partnership distributions of at least \$6 million
Steele Resources, LLC	Shared services payments of at least \$7.8 million and lease payments of at least \$160,000
KP Realty, LLC	Lease payments of at least \$2.9 million
KP Realty II, LLC	Lease payments of at least \$667,000
BTS Aviation	Payments to BTS Aviation related to the airplane of at least \$3.2 million
West Village Realty, LLC	Payments to West Village of at least \$5.2 million

Pursuant to the Bankruptcy Court's order [Doc. No. 399], the Committee has standing to pursue, and has already initiated Committee Litigation related to, some or all of the foregoing Causes of Action on behalf of the Debtors' creditors. For the avoidance of doubt, the KP Engineering Liquidation Trust Assets also include: (i) the KPE Assigned Channelview Claims; (ii) the KPE Assigned Johnson Claims; (iii) the KPE Assigned Geismar VI Claims; (iv) any and all of the Debtors' other claims and Causes of Action against Targa Resources Corp. and its affiliates, including Targa Pipeline, Targa Terminals, LLC and Targa Channelview; (v) all claims and Causes of Action the Debtors held against Current Officers and Directors as of the Petition Date; (vi) all of the Debtors' other claims against and interests in the proceeds of the foregoing Causes of Action; (vii) contingent, reversionary interests in the Channelview Retainage, the Geismar VI Retainage, and the Johnson Interpleaded Funds; provided, however, that such contingent, reversionary

interests remain subject to satisfaction of liens and other Claims in accordance with applicable law and lien priority as of the Petition Date; and (viii) contingent interests in the New Equity Interests held in escrow by the Liquidation Trustee pending the adjudication by Final Order or other resolution of the Committee Litigation against Brandon Steele.

I. Escrow of New Equity Interests

On the Effective Date, the authorized and issued New Equity Interests in the Reorganized Debtors shall be held in escrow by the Liquidation Trustee pursuant to the Plan, Liquidation Trust Agreement, and Confirmation Order, pending the adjudication or resolution of the Committee Litigation against Brandon Steele. TCB's Liens against the New Equity Interests shall be subordinated to the Liquidation Trust's claims against, and contingent interest in, such New Equity Interests, *provided, however*, that TCB's Liens in the New Equity Interests shall again become first priority upon the occurrence of the Post-Effective Date Equity Distribution, if any, to the extent that the Reorganized Debtors owe outstanding debt to TCB.

The Liquidation Trustee shall hold in escrow the rights to the New Equity Interests and shall not take any action and shall not have rights or ability to exercise any corporate governance with respect to such New Equity Interests unless and until there is a Final Order in favor of the Liquidation Trust against Brandon Steele. Upon the adjudication of the Committee Litigation against Brandon Steele by Final Order in favor of the Liquidation Trustee, the New Equity Interests shall be held by the Liquidation Trustee as security for the judgment against Brandon Steele, and the Liquidation Trustee shall have such collection rights and remedies as may be available under applicable law. Upon: (i) adjudication of the Committee Litigation against Brandon Steele by Final Order in favor of Brandon Steele; or (ii) the settlement or other resolution of such Committee Litigation against Brandon Steele, the Bankruptcy Court, or other court of competent jurisdiction, shall enter an order authorizing the Post-Effective Date Equity Distribution. Upon the occurrence of the Post-Effective Date Equity Distribution, all of the New Equity Interests held in escrow by the Liquidation Trustee shall be relinquished and distributed to Holders of Allowed Equity Interests in Class 8, and the Liquidation Trust's contingent interest in the New Equity Interests shall terminate.

J. Limited Subordination of TCB's Right to Proceeds

TCB shall subordinate its right to proceeds from the sale of stock or assets of KPE Realty, KPE Realty II and/or West Village after payment of debt to TCB of \$13.3 million in principal, plus interest, fees and expenses; *provided, however*, that: (i) such subordination will only be effective after a final and non-appealable judgment is obtained by the Liquidation Trustee against Brandon Steele; and (ii) the subordinated proceeds will not exceed \$5.0 million. There shall be no such subordination until the entry of a final and non-appealable judgment against Brandon Steele. No other equity or asset interests of Brandon Steele, whether held directly or indirectly, are included in this subordination.

K. KP Engineering Liquidation Trust Expenses

The Liquidation Trustee shall have authority to engage new, independent and disinterested counsel and other professionals as reasonably necessary to, among other things, investigate and prosecute the potential Causes of Action and liquidate the other KP Engineering Liquidation Trust Assets, *provided, however*, that nothing in the Plan, Confirmation Order, or KP Engineering Liquidation Trust Agreement shall prevent the Liquidation Trustee from retaining existing Professionals. Subject to the provisions of the Liquidation Trust Agreement, all costs, expenses and obligations incurred by the Trustee in administering the applicable provisions of this Plan, the Liquidation Trust, or in any manner connected, incidental or related thereto, in effecting distributions from the Liquidation Trust shall be a charge against the Liquidation Trust Assets remaining from time to time in the hands of the Liquidation Trustee. Such expenses, including the costs and expenses of counsel and other professionals, shall be paid in accordance with the provisions of this Plan and the Liquidation Trust Agreement, or pursuant to such other Final Order of the Bankruptcy Court, as necessary.

L. Beneficiaries of the KP Engineering Liquidation Trust

Holders of Allowed Claims in Classes 3, 4, 5, 6 and 7 shall be the only Liquidation Trust Beneficiaries of the KP Engineering Liquidation Trust. For the avoidance of doubt, Classes 3, 4, 5, and 6 are only Liquidation Trust Beneficiaries to the extent Holders of Allowed Claims in such Classes have a deficiency Unsecured Claim that falls into Class 7, and the Liquidation Trust shall have no obligation to administer collateral of Class 3 Claim Holders. Such Liquidation Trust Beneficiaries shall be bound by the terms and conditions of this Plan and the Liquidation Trust Agreement. The interests of the Liquidation Trust Beneficiaries in the Liquidation Trust shall be uncertificated and nontransferable. Distributions from the Liquidation Trust shall be made from the Liquidation Trust's Cash on hand, including Cash from: (i) the successful prosecution or settlement of any Causes of Action included in the Liquidation Trust Assets; (ii) the Johnson Interpleaded Funds; (iii) the Channelview Retainage; (iv) the Geismar VI Retainage; and (v) liquidation of the New Equity Interests; *provided, however*, that such liquidation is contingent on the adjudication or resolution of the pending Committee Litigation against Brandon Steele and the occurrence, or non-occurrence as the case may be, of the Post-Effective Date Equity Distribution.

Distributions of the Johnson Interpleaded Funds, the Channelview Retainage, and the Geismar VI Retainage may only be made in accordance with the treatment set forth in Article III.C to those certain Liquidation Trust Beneficiaries who are Holders of Allowed Claims in Classes 4, 5 and 6, respectively. Holders of Allowed General Unsecured Claims in Class 7 shall not be entitled to share in the distributions of the Johnson Interpleaded Funds, Channelview Retainage, or Geismar VI Retainage unless Cash from such funds remains after satisfaction of liens and other Claims, and is transferred to the Liquidation Trust in accordance with the applicable provisions of Article III.C hereof. Distributions to Liquidation Trust Beneficiaries who are Holders of Allowed Claims in Class 7 shall be made in accordance with the following priorities: (i) payment of the reimbursable expenses of the Liquidation Trustee; and (ii) payment of Allowed Class 7 Claims an amount in Cash equal to the respective Holder's Pro Rata share of the KP Engineering Liquidation Trust.

M. Preservation of Right to Conduct Investigations

The preservation for the Liquidation Trust of any and all rights to conduct investigations pursuant to Bankruptcy Rule 2004 is necessary and relevant to the liquidation and administration of the Liquidation Trust Assets. Accordingly, the Liquidation Trustee shall have the same rights as the Debtors and the Committee to conduct investigations pursuant to Bankruptcy Rule 2004 as those held by the Debtors and Committee prior to the Effective Date. Such powers to investigation pursuant to Bankruptcy Rule 2004 shall vest with the Liquidation Trustee and shall continue until dissolution of the KP Engineering Liquidation Trust.

The Debtors shall make available to the Liquidation Trustee the Debtors' books and records. Similarly, the Committee shall make available to the Liquidation Trustee all documents and records, including those produced by, or received from third parties during the Bankruptcy Cases, pertaining to any Committee Litigation and other investigations of claims or Causes of Action. To the fullest extent permitted by applicable law, any privilege that the Debtors may assert, including the attorney-client privilege, shall be available for the Liquidation Trustee in the performance of his or her duties on behalf of the Liquidation Trust. Nothing contained herein shall constitute a waiver or release of any: (i) valid objection to production, (ii) any privilege, including the attorney-client privilege; or (iii) work product doctrine, of any non-Debtor party. Any dispute regarding the applicability and/or any dispute related to such objection, privilege or work product doctrine is fully preserved and shall be resolved by the Bankruptcy Court or any other court of competent jurisdiction.

N. Federal Income Tax Treatment of KP Engineering Liquidation Trust

For federal income tax purposes, it is intended that the KP Engineering Liquidation Trust be classified as a liquidating trust under section 301.7701-4 of the Treasury regulations and that such trust be owned by its Liquidation Trust Beneficiaries. Accordingly, for federal income tax purposes, it is intended that the Liquidation Trust Beneficiaries be treated as if they had received a distribution from the Debtors' Estates of an undivided interest in each of the Liquidation Trust Assets (to the extent of the value of their respective shares in the applicable assets) and then contributed such interests to the Liquidation Trust, and the Liquidation Trust Beneficiaries will be treated as grantors and owners thereof.

O. Termination of the KP Engineering Liquidation Trust

The KP Engineering Liquidation Trust shall terminate upon the date on which all of the following events have occurred: (i) the Liquidation Trust Assets, including Causes of Action transferred and assigned to the Liquidation Trust, are fully resolved, abandoned or liquidated in accordance with the Plan and Liquidation Trust Agreement; (ii) the Cash proceeds have been completely distributed in accordance with the Plan and Liquidation Trust Agreement; (iii) all tax returns and any other filings or reports have been filed with the appropriate state or federal regulatory authorities; and (iv) the order closing the Bankruptcy Cases is a Final Order. Upon the occurrence of each of the foregoing events, the duties, responsibilities and powers of the Liquidation Trustee shall terminate, and the Liquidation Trustee shall be discharged. Except in

the circumstances set forth below, the Liquidation Trust shall terminate no later than five (5) years after the Effective Date in accordance with IRS revenue procedures.

The Bankruptcy Court may extend the term of the Liquidation Trust one or more times (not to exceed a total of four extensions, unless the Liquidation Trustee receives a favorable ruling from the IRS that any further extension would not adversely affect the status of the Liquidation Trust as a grantor trust for federal income tax purposes) for a finite period, not to exceed six (6) months per extension, upon a showing of good cause and based on the particular circumstance at issue. Each such extension must be approved by the Bankruptcy Court not less than thirty (30) days prior to the lapse of the term, or extended term, with notice thereof to all of the unpaid Liquidation Trust Beneficiaries. Failure to timely File a request for extension with the Bankruptcy Court shall result in dissolution, rather than automatic termination, and the Liquidation Trustee shall have such “wind-up” powers, both express and implied, as are necessary to, *inter alia*, (i) continue prosecuting any Causes of Action belonging to the Liquidation Trust; (ii) continue Claim administration responsibilities set forth in Article VII.A.2 of the Plan; and (iii) distribute the Cash proceeds of the Liquidation Trust Assets in a manner consistent with the Liquidation Trust Agreement. In no event shall the Liquidation Trust Beneficiaries be entitled to receive in-kind distributions from the Liquidation Trust.

P. Corporate Action of the Debtors

On the Effective Date, all actions contemplated under the Plan shall be deemed authorized and approved in all respects, including (i) the execution of the Liquidation Trust Agreement and transfer of the Liquidation Trust Assets to the Liquidation Trust; (ii) the rejection, assumption, or assumption and assignment, as applicable, of Executory Contracts and Unexpired Leases; and (iii) all other acts or actions contemplated or reasonably necessary or appropriate to promptly consummate the Plan (whether to occur before, on, or after the Effective Date).

All matters provided for in the Plan involving the corporate structure of the Debtors or the Reorganized Debtors, and any corporate action required by the Debtors or the Reorganized Debtors, as applicable, in connection with the Plan shall be deemed to have occurred and shall be in effect, without any requirement of further action by security holders, directors, or officers of the Debtors or the Reorganized Debtors, as applicable. On or prior to the Effective Date, the Directors and Officers of the Debtors shall be authorized and (as applicable) directed to issue, execute, and deliver the agreements, documents, securities, and instruments contemplated under the Plan (or necessary or desirable to effect the transactions contemplated under the Plan) in the name of and on behalf of the Reorganized Debtors, including, for the avoidance of doubt, authorization and issuance of the New Equity Interests in the Reorganized Debtors. The authorizations and approvals contemplated by Article IV of the Plan shall be effective notwithstanding any requirements under non-bankruptcy law.

Q. Effectuating Documents; Further Transactions

Except as otherwise provided for in the Plan, on and after the Effective Date, the Reorganized Debtors, and the Current Directors and Officers, are authorized to and may issue, execute, deliver, File, or record such contracts, securities, instruments, releases, and other agreements or documents and take such actions as may be necessary to effectuate, implement, and

further evidence the terms and conditions of the Plan in the name of, and on behalf of, the Reorganized Debtors, without the need for any approvals, authorization, or consents, except for those expressly required pursuant to the Plan.

R. Retained Causes of Action

Except as otherwise provided in the Plan, Plan Documents, Liquidation Trust Agreement, or in any other contract, instrument, release, or other agreement entered into in connection with the Plan, in accordance with Bankruptcy Code section 1123(b)(3), the Reorganized Debtors shall retain and shall have the exclusive right, authority, and discretion to (without further order of the Bankruptcy Court) determine and to initiate, File, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any and all Retained Causes of Action that the Debtors or their Estates may hold against any Entity, whether arising before or after the Petition Date and unless released herein. The Debtors reserve and shall retain the foregoing Retained Causes of Action notwithstanding the rejection of any Executory Contract or Unexpired Lease during the Bankruptcy Cases. For the avoidance of doubt, the foregoing authority to initiate, File, prosecute and litigate expressly excludes those certain claims, Causes of Action and Committee Litigation belonging exclusively to the Liquidation Trust for the benefit of the Liquidation Trust Beneficiaries.

ARTICLE V.

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption and Rejection of Executory Contracts and Unexpired Leases

On the Effective Date, except as otherwise provided in the Plan or Plan Documents, all Executory Contracts or Unexpired Leases that currently exist between the Debtors and another Person or Entity, and are not listed on the Schedule of Rejected Contracts, shall be deemed assumed by the applicable Debtor with a cure amount of zero dollars (\$0.00) unless they (i) were previously assumed or rejected by that Debtor; or (ii) are subject to a motion to reject Executory Contracts or Unexpired Leases that is pending on the Confirmation Date.

Entry of the Confirmation Order by the Bankruptcy Court shall constitute an order approving the assumptions or rejections of the Executory Contracts and Unexpired Leases set forth in the Schedule of Rejected Contracts and Leases pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Any motions to assume Executory Contracts or Unexpired Leases pending on the Effective Date shall be subject to approval by the Bankruptcy Court on or after the Effective Date by a Final Order. Each Executory Contract and Unexpired Lease assumed pursuant to Article V of the Plan or by any order of the Bankruptcy Court, which has not been assigned to a third party prior to the Confirmation Date, shall re-vest in and be fully enforceable by the applicable Reorganized Debtor in accordance with its terms, except as such terms are modified by the provisions of the Plan or any order of the Bankruptcy Court authorizing and providing for its assumption under applicable federal law. Notwithstanding anything to the contrary in the Plan, the Debtors or the Reorganized Debtors, as applicable, reserve the right to alter, amend, modify, or supplement the Schedules identified in the Plan at any time prior to the Effective Date.

Notwithstanding anything in the Plan to the contrary, the Reorganized Debtors shall be deemed to have assumed all of the Debtors' D&O liability insurance policies pursuant to section 365(a) of the Bankruptcy Code effective as of the Effective Date. Entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the Reorganized Debtors' foregoing assumption of each of the unexpired D&O liability insurance policies. Notwithstanding anything to the contrary contained in the Plan, Confirmation of the Plan shall not discharge, impair, or otherwise modify any indemnity obligations assumed by the foregoing assumption of the D&O liability insurance policies, and each such indemnity obligation will be deemed and treated as an Executory Contract that has been assumed by the Debtors under the Plan as to which no Proof of Claim need be Filed. In addition, after the Effective Date, none of the Reorganized Debtors shall terminate or otherwise reduce the coverage under any D&O liability insurance policies (including any "tail policy") in effect on or after the Petition Date, with respect to conduct occurring prior thereto, and all Current Officers and Directors, and officers of the Debtors who served in such capacity at any time prior to the Effective Date, shall be entitled to the full benefits of any such policy for the full term of such policy, to the extent set forth therein, regardless of whether those Persons remain in such positions after the Effective Date.

B. Indemnification Obligations

All indemnification provisions, consistent with applicable law, currently in place (whether in the by-laws, certificates of incorporation or formation, limited liability company agreements, limited partnership agreements, other organizational documents, board resolutions, indemnification agreements, employment contracts, or otherwise) for the Current Directors and Officers, managers, employees, attorneys, accountants, investment bankers, and other Professionals of the Debtors, as applicable, shall be reinstated and remain intact, irrevocable, and shall survive the Effective Date on terms no less favorable to such Current Directors and Officers, managers, employees, attorneys, accountants, investment bankers, and other Professionals of the Debtors than the indemnification provisions in place prior to the Effective Date; provided, however, that all indemnification obligations arising prior to the Effective Date under the foregoing indemnification provisions shall not constitute obligations of the Reorganized Debtors. For the avoidance of all doubt, all indemnification obligations of the Debtors prior to the Effective Date, whether known or unknown, asserted or assertable, shall constitute General Unsecured Claims against the Debtors' Estates and shall be subject to all terms, conditions and treatment of Class 7 Claims under the Plan.

C. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Unless otherwise provided by a Final Order of the Bankruptcy Court, all Proofs of Claim, with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, pursuant to the Plan or the Confirmation Order, if any, must be Filed with the Bankruptcy Court within thirty (30) days after the later of (i) the date of entry of any order of the Bankruptcy Court (including the Confirmation Order) approving such rejection; (ii) the effective date of such rejection; or (iii) the Effective Date of the Plan. Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not Filed with the Bankruptcy Court within such time will be automatically disallowed, forever barred from assertion, and shall not be enforceable against the Debtors or the Reorganized Debtors, the Estates, or their property without the need for any

objection by the Reorganized Debtors or the KP Engineering Liquidation Trust or further notice to, or action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully satisfied, released, and discharged, notwithstanding anything in the Schedules or a Proof of Claim to the contrary. All Allowed Claims arising from the rejection of either Debtor's Executory Contracts or Unexpired Leases shall be classified as General Unsecured Claims and shall be treated in accordance with Article III.C.7 hereof.

D. Cure of Defaults for Executory Contracts and Unexpired Leases Assumed

Any monetary default under 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, by payment of the Cure Claim amount in Cash, subject to the limitation described below, or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree.

Within thirty (30) days of the entry of the Effective Date, any counter-party to an Executory Contract or Unexpired Lease being assumed by either Debtor asserting a Cure Claim in connection with the assumption of any Unexpired Lease or Executory Contract under Article V (except those counter-parties whose Unexpired Leases or Executory Contracts have been previously assumed by a Final Order of the Bankruptcy Court), must file such Cure Claim with the Bankruptcy Court asserting all alleged amounts accrued or alleged defaults through the Effective Date. Any party that fails to file a Cure Claim by this deadline shall be forever barred from asserting, collecting or seeking to collect any amounts or defaults relating thereto against the Reorganized Debtors. The Reorganized Debtors shall have sixty (60) days from the Effective Date to file an objection to any Cure Claim. Any disputed Cure Claims shall be resolved either consensually or by the Bankruptcy Court. Except as may otherwise be agreed to by the parties, by no later than ninety (90) days following the Effective Date, the Reorganized Debtors shall cure all undisputed Cure Claims. All disputed Cure Claims shall be cured either within thirty (30) days after the entry of a Final Order determining the amount, if any, of the applicable Debtor's liability with respect thereto or as may otherwise be agreed to by the parties.

In the event of a dispute regarding (i) 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 Executory Contract or Unexpired Lease to be assumed, or (ii) any other matter pertaining to assumption, the cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order or orders resolving the dispute and approving the assumption. The Debtors shall provide for notices of proposed assumption and proposed cure amounts and for procedures for objecting thereto and resolution of disputes by the Bankruptcy Court.

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

assumed shall be deemed disallowed and expunged, without further notice to or action, order, or approval of the Bankruptcy Court.

E. Preexisting Obligations to Debtors

Rejection of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of preexisting obligations owed to the applicable Debtors or the Reorganized Debtors under such Executory Contracts or Unexpired Leases. In particular, notwithstanding any non-bankruptcy law to the contrary, the Reorganized Debtors expressly reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide, warranties or continued maintenance obligations on goods previously purchased by the Debtors contracting from non-Debtor counterparties to rejected Executory Contracts or Unexpired Leases.

F. Modifications, Amendments, Supplements, Restatements, or Other Agreements

Unless otherwise provided in the Plan, each Executory Contract or Unexpired Lease that is assumed shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and all Executory Contracts and Unexpired Leases related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated under this Plan.

G. Reservation of Rights

Neither the exclusion nor inclusion of any Executory Contract or Unexpired Lease on the Schedule of Rejected Contracts and Leases, nor anything contained in the Plan, shall constitute an admission by either Debtor that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that the applicable Reorganized Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtor or Reorganized Debtor, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter the treatment of such contract or lease under the Plan.

H. Nonoccurrence of Effective Date

In the event that the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting Executory Contracts and Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code.

I. Contracts and Leases Entered Into After the Petition Date

Contracts and leases entered into after the Petition Date, if any, including any Executory Contract and Unexpired Leases assumed by either Debtor during the Bankruptcy Cases, will be performed by such Debtor in the ordinary course of business. Accordingly, such contracts and

leases (including any assumed Executory Contracts and Unexpired Leases) will survive and remain unaffected by entry of the Confirmation Order.

**ARTICLE VI.
PROVISIONS GOVERNING DISTRIBUTIONS**

A. Timing and Calculation of Distributions

As soon as reasonably practicable (as determined by the Debtors) after the Effective Date, in accordance with Articles II and III hereof, the Reorganized Debtors or the Chief Restructuring Officer, as the case may be, shall make distributions to Holders of Allowed Administrative Expense Claims (including Allowed Professional Compensation Claims), Allowed Priority Non-Tax Claims in Class 1, Allowed Other Secured Claims in Class 3 (only to the extent the Claim is Secured), and Allowed Equity Interests in Class 8. Distributions to Holders of Allowed Administrative Expense Claims (including Allowed Professional Compensation Claims) and Allowed Class 1 Claims shall be made from the Aviation Sale Proceeds and \$100,000 in Cash to be contributed by Equity Interest Holders in Class 8, which shall be held in the Chief Restructuring Officer's client trust account at Signature Bank (Account No. xxxxxx3831) pending distribution.

As soon as reasonably practicable (as determined by the Liquidation Trustee) after the Effective Date, the Liquidation Trustee shall make distributions to the Liquidation Trust Beneficiaries consisting of the Allowed Other Secured Claims, Allowed Johnson Creditor Claims in Class 4, Allowed Channelview Creditor Claims in Class 5, Allowed Geismar VI Creditor Claims in Class 6 and Allowed General Unsecured Claims in Class 7 in accordance with priorities and treatments set forth in Article III. For the avoidance of doubt, distributions to Holders of Allowed Claims in Classes 3, 4, 5, and 6 as described herein shall only be made by the Liquidation Trustee to the extent of any deficiency Unsecured Claim.

Unless otherwise provided in the Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Allowed Interest on the Effective Date, on the date that such Claim or Interest becomes an Allowed Claim or Allowed Interest), each Holder of an Allowed Claim shall receive the full amount of the distributions that the Plan provides for Allowed Claims or Allowed Interests (as applicable) in the applicable Class. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent that there are Disputed Claims, distributions on account of any such Disputed Claims shall be made pursuant to the provisions set forth in Article VI.E of the Plan. Except as otherwise provided in the Plan, Holders of Claims or Interests shall not be entitled to interest, dividends, or accruals on the distributions provided for in the Plan, regardless of whether such distributions are delivered on or at any time after the Effective Date.

B. Rights and Powers of the Reorganized Debtors to Make Distributions

Subject to Article IV of the Plan, all distributions under the Plan, except those from the Liquidation Trust, shall be made by the Reorganized Debtors or the Chief Restructuring Officer, as the case may be. The Reorganized Debtors and the Chief Restructuring Officer shall not be

required to give any bond or surety or other security for the performance of their duties unless otherwise ordered by the Bankruptcy Court.

The Reorganized Debtors and the Chief Restructuring Officer shall be empowered to: (i) effect all actions and execute all agreements, instruments, and other documents necessary to perform their duties under the Plan; (ii) make all distributions contemplated hereby; and (iii) exercise such powers as may be vested in the Reorganized Debtors by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Reorganized Debtors to be necessary and proper to implement the provisions hereof.

C. Delivery of Distributions; Undeliverable or Unclaimed Distributions

1. *Record Date for Distribution.* As of the close of business on the Distribution Record Date, the various transfer registers for each of the Classes of Claims or Interests as maintained by the Debtors or their respective agents shall be closed, and the Debtors or their respective agents shall not be required to make any further changes in the record holders of any of the Claims or Interests. The Debtors or the Liquidation Trustee (as applicable) shall have no obligation to recognize any transfer of the Claims or Interests occurring on or after the Distribution Record Date. The Debtors or the Liquidation Trustee shall be entitled to recognize and deal for all purposes hereunder only with those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date, to the extent applicable.

2. *Delivery of Distributions in General.* Except as otherwise provided herein, the Debtors or the Liquidation Trustee (as applicable) shall make distributions to Holders of Allowed Claims and Allowed Interests as of the Distribution Record Date at the address for each such Holder as indicated in the Debtors' records as of the date of any such distribution; *provided, however,* that the manner of such distributions shall be determined at the discretion of the Reorganized Debtors or Liquidation Trustee; *provided further, however,* that the address for each Holder of an Allowed Claim shall be deemed to be the address set forth in any Proof of Claim Filed by that Holder.

3. *Minimum Distributions.* To the extent Cash is distributed under the Plan, no Cash payment of less than \$50.00 shall be made to a Holder of an Allowed Claim on account of such Allowed Claim, and such amounts shall be retained by the Reorganized Debtors or KP Engineering Liquidation Trust, depending on the Class of the Holder's Claim.

4. *Undeliverable Distributions and Unclaimed Property.* In the event that any distribution to any Holder of Allowed Claims or Allowed Interests is returned as undeliverable, no distribution to such Holder shall be made unless and until the Debtors or Liquidation Trustee (as applicable) have reasonably attempted to determine the then-current address of such Holder, at which time such distribution shall be made to such Holder without interest; *provided, however,* that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of one (1) year from the Effective Date. After such date, all unclaimed property or interests in property shall revert to the Reorganized Debtors or KP Engineering Liquidation Trust (as applicable) automatically and without need for a further order by the Bankruptcy Court (notwithstanding any applicable federal, provincial or state escheat, abandoned,

or unclaimed property laws to the contrary), and the Claim of any Holder of Claims and Interests to such property or Interest in property shall be discharged and forever barred.

D. Manner of Payment

Any distribution under the Plan to Holders of Allowed Claims, whether from the Reorganized Debtors or the Liquidation Trustee, shall be made in Cash. At the option of the Reorganized Debtors or Liquidation Trustee, as applicable, any Cash payment to be made hereunder may be made by check or wire transfer or as otherwise required or provided in applicable Plan Documents, Liquidation Trust Agreement, or ancillary agreements.

E. Distributions to Holders of Disputed Claims

Except as otherwise provided in the Plan or Liquidation Trust Agreement, distributions on account of Disputed Claims shall be withheld by the Debtors or Liquidation Trustee until such Claims have been either Allowed or Disallowed. To the extent a Disputed Claim becomes Allowed, the distribution reserved for such Claim shall be distributed to the Holder thereof as soon as practicable in accordance with the Plan. To the extent a Disputed Claim becomes Disallowed, the distribution reserved for such Claim shall revert to the Reorganized Debtors or KP Engineering Liquidation Trust (as applicable) automatically and without need for a further order by the Bankruptcy Court.

F. Compliance with Tax Requirements

In connection with the Plan, to the extent applicable, the Reorganized Debtors and Liquidation Trustee shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Reorganized Debtors and Liquidation Trustee shall be authorized to take all actions necessary to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms they believe are reasonable and appropriate. To the extent the Reorganized Debtors or Liquidation Trustee make distributions to Holders of Allowed Claims or Interests, the Reorganized Debtors and Liquidation Trustee reserve their right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, liens, and encumbrances.

G. Allocations

Distributions with respect to Allowed Claims shall be allocated first to the principal amount of such Claims (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claims, to any portion of such Claims for accrued but unpaid interest.

H. No Post-Petition Interest on Claims

Unless otherwise specifically provided for in the Plan or the Confirmation Order, or required by applicable bankruptcy and non-bankruptcy law, post-petition interest shall not accrue or be paid on any prepetition Claims against the Debtors, and no Holder of a prepetition Claim against either Debtor shall be entitled to interest accruing on or after the Petition Date on any such prepetition Claim.

I. Foreign Currency Exchange Rate

Except as otherwise provided in a Bankruptcy Court order, as of the Effective Date, any Claim asserted in currency other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency as published in The Wall Street Journal, National Edition, on the Petition Date.

J. Setoffs and Recoupment

Except as expressly provided in the Plan, including, for the avoidance of doubt, with respect to TCB or DIP Lender, the Liquidation Trustee, on behalf of the Liquidation Trust, may, pursuant to section 553 of the Bankruptcy Code, set off and/or recoup against any Plan distributions to be made on account of any Allowed Claim, any and all claims, rights, and Causes of Action that the Liquidation Trust may hold against the Holder of such Allowed Claim to the extent such setoff or recoupment is either (i) agreed in amount by the Liquidation Trustee, on behalf of the Liquidation Trust and Holder of such Allowed Claim or (ii) otherwise adjudicated by the Bankruptcy Court or another court of competent jurisdiction; *provided, however*, that neither the failure to effectuate a setoff or recoupment nor the allowance of any Claim hereunder shall constitute a waiver or release by either Liquidation Trustee, on behalf of the Liquidation Trust, or its successor of any and all claims, rights, and Causes of Action that such Liquidation Trustee, on behalf of the Liquidation Trust, or its successor may possess against the applicable Holder. In no event shall any Holder of Claims against, or Interests in, the Debtors be entitled to recoup any such Claim or Interest against any claim, right, or Cause of Action of the Debtors, the Reorganized Debtors, or the Liquidation Trust, as applicable, unless such Holder has actually performed such recoupment and provided notice thereof in writing to the Debtors in accordance with Article XII.F of the Plan on or before the Effective Date, notwithstanding any indication in any Proof of Claim or otherwise that such Holder asserts, has, or intends to preserve any right of recoupment.

K. Claims Paid or Payable by Third Parties

1. Claims Paid by Third Parties. The Debtors, the Reorganized Debtors or the Liquidation Trustee, as applicable, shall reduce in full a Claim, and such Claim shall be disallowed without a Claim objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment in full on account of such Claim from a party that is not the Debtors, Reorganized Debtors or Liquidation Trustee. Subject to the last sentence of this paragraph, to the extent a Holder of a Claim receives a distribution under the Plan on account of such Claim and receives payment from a third party that is not the Debtors, Reorganized Debtors or Liquidation Trustee on account of

such Claim, such Holder shall, within fourteen (14) days of receipt thereof, repay or return the distribution received from the Reorganized Debtors or KP Engineering Liquidation Trustee, as applicable, to the extent the Holder's total recovery exceeds the amount such Holder was entitled to receive under the Plan on account of the Claim. The failure of such Holder to timely repay or return such distribution shall result in the Holder owing the applicable Reorganized Debtor or KP Engineering Liquidation Trust annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the 14-day grace period specified above until the amount is repaid.

2. *Claims Payable by Third Parties.* No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' insurance policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtors' insurers agrees to satisfy in full or in part a Claim (if and to the extent the underlying claim forming the basis of the Claim against either Debtor is adjudicated by a court of competent jurisdiction), then immediately upon such insurers' agreement to satisfy all or part of the Claim, the applicable portion of such Claim against either Debtor shall be deemed expunged without a Claims objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

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

ARTICLE VII. PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED, AND DISPUTED CLAIMS

A. Claims Administration Responsibilities

1. *Rights of the Reorganized Debtors.* Except as otherwise specifically provided in the Plan or KP Engineering Liquidation Trust Agreement, after the Effective Date, the Reorganized Debtors, with respect to all Claims and Interests in Classes 1, 3, and 8, shall have the authority to: (i) File, withdraw, or litigate to judgment, objections to Claims or Interests; (ii) settle or compromise any Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court; and (iii) administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court. After the Effective Date, the Reorganized Debtors shall have and retain any and all rights and defenses the Debtors had with respect to any Interests or Claims, other than Claims in Classes 4, 5, 6 and 7, immediately prior to the Effective Date.

2. *Rights of the Liquidation Trustee.* Except as otherwise specifically provided in the Plan or Liquidation Trust Agreement, after the Effective Date, the Liquidation Trustee, with respect to all Claims in Classes 3, 4, 5, 6, and 7, shall have authority (and exclusive authority with

respect to all Claims in Classes 4, 5, 6, and 7) to: (i) File, withdraw, or litigate to judgment, objections to Claims; (ii) settle or compromise any Disputed Claim (x) for settlements resulting in an Allowed Claim in an amount of less than \$100,000, without any further notice to or action, order, or approval by the Bankruptcy Court and (y) for settlements resulting in an Allowed Claim equal to and greater than \$100,000, with fourteen (14) calendar days negative notice via the Bankruptcy Court's CM/ECF system, and Bankruptcy Court approval if a timely objections is Filed; and (iii) administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court. After the Effective Date, the Liquidation Trustee shall have and retain any and all rights and defenses the Debtors had with respect to any Claims in Classes 3, 4, 5, 6 and 7 immediately prior to the Effective Date.

B. Estimation of Claims and Interests

Before or after the Effective Date, the Debtors or Liquidation Trustee (as applicable) may at any time request that the Bankruptcy Court estimate any Disputed Claim or Disputed Interest that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously objected to such Claim or Interest or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim or Interest, including during the litigation of any objection to any Claim or Interest and any appeal relating to such objection. Notwithstanding any provision to the contrary in the Plan or Liquidation Trust Agreement, a Claim or Interest that has been expunged from the Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars (\$0.00) unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim or Interest, that estimated amount shall constitute a maximum limitation on such Claim or Interest for all purposes under the Plan (including for purposes of distributions), and the Reorganized Debtors or Liquidation Trustee may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim or Interest. The determination of Claims in estimation hearings shall be binding for purposes of establishing the maximum amount of the Claim for purposes of allowance and distribution. All of the aforementioned Claims objection, estimation, and resolution procedures are cumulative and not exclusive of one another. Procedures for specific estimation hearings, including provisions for discovery, shall be set by the Bankruptcy Court giving due consideration to applicable Bankruptcy Rules and the need for prompt determination of the Disputed Claim.

C. Adjustment to Claims or Interests Without Objection

Any Claim or Interest that has been paid or satisfied, or any Claim or Interest that has been amended or superseded, may be adjusted or expunged on the Claims Register by the Reorganized Debtors or Liquidation Trustee, as applicable, without any further notice to or action, order, or approval of the Bankruptcy Court.

D. Time to File Objections to Claims

Except as otherwise specifically provided in the Plan, any objections to Claims shall be Filed on or before the later of: (i) one hundred twenty (120) days after the Effective Date, or (ii) such other period of limitation as may be specifically fixed by a Final Order of the Bankruptcy Court for objecting to such Claims.

Notwithstanding any authority to the contrary, an objection to a Claim shall be deemed properly served on the Holder of the Claim if the Debtors or Liquidation Trustee, as applicable, effects service in any of the following manners: (a) in accordance with Federal Rule of Civil Procedure 4, as modified and made applicable by Bankruptcy Rule 7004, (b) to the extent counsel for the Holder of a Claim is unknown, by first class mail, postage prepaid, on the signatory on the Proof of Claim or other representative identified on the Proof of Claim or any attachment thereto, or (c) by first class mail, postage prepaid, on any counsel that has Filed a notice of appearance in the Bankruptcy Cases on behalf of the Holder of a Claim.

Disputed Claims shall be fixed or liquidated in the Bankruptcy Court as core proceedings within the meaning of 28 U.S.C. § 157(b)(2)(B) unless the Bankruptcy Court orders otherwise. If the fixing or liquidation of a contingent or unliquidated Claim would cause undue delay in the administration of the Bankruptcy Cases, such Claim shall be estimated by the Bankruptcy Court for purposes of allowance and distribution. The Reorganized Debtors or Liquidation Trustee, as applicable, may request at any time that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether the Debtors previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection.

E. Disallowance of Claims or Interests

Except as otherwise specifically provided in the Plan, including, for the avoidance of doubt, with respect to those certain Causes of Action and Committee Litigation belonging to the KP Engineering Liquidation Trust, any Claims or Interests held by Entities from which property is recoverable under section 542, 543, 550, or 553 of the Bankruptcy Code, or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and Holders of such Claims or Interests may not receive any distributions on account of such Claims until such time as any objection to those Claims or Interests have been settled or a Bankruptcy Court order with respect thereto has been entered.

Except as provided herein or otherwise agreed, any and all Proofs of Claim Filed after the Bar Date shall be deemed disallowed and expunged as of the Effective Date without any further notice to or action, order, or approval of the Bankruptcy Court, and Holders of such Claims may not receive any distributions on account of such Claims, unless on or before the Confirmation Hearing such late Claim has been deemed timely Filed by a Final Order.

F. Amendments to Claims or Interests

On or after the Effective Date, a Claim or Interest may not be Filed or amended without the express prior authorization of the Bankruptcy Court, the Reorganized Debtors, or the Liquidation Trustee, as applicable in accordance with the respective Claims administration responsibilities in Article VII.A. hereof, and any such new or amended Claim or Interest that is Filed shall be deemed disallowed in full and expunged without any further action.

G. No Distributions Pending Allowance

If any objection to a Claim or Interest or portion thereof is Filed as set forth in Article VII.D hereof, no payment or distribution provided under the Plan shall be made on account of such Claim or Interest or portion thereof unless and until such Disputed Claim or Interest becomes an Allowed Claim or Interest.

H. Distributions After Allowance

To the extent that a Disputed Claim ultimately becomes an Allowed Claim or Allowed Interest, distributions (if any) shall be made to the Holder of such Allowed Claim or Allowed Interest (as applicable) in accordance with the provisions of the Plan. As soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim or Disputed Interest becomes a Final Order, the Debtors (or the Liquidation Trustee as the case may be) shall provide to the Holder of such Claim or Interest the distribution (if any) to which such Holder is entitled under the Plan as of the Effective Date, without any interest, dividends, or accruals to be paid on account of such Claim or Interest unless required under applicable bankruptcy law.

**ARTICLE VIII.
SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS**

A. Release and Discharge of Debtors

Pursuant to Bankruptcy Code section 1141(d), and except as otherwise specifically provided in the Plan, KP Engineering Liquidation Trust Agreement, or in any contract, instrument, or other agreement or document created pursuant to the Plan, the distributions, rights, and treatment that are provided for in the Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of Claims, Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests 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 Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability (including withdrawal liability) to the extent such Claims or Interests related to services performed by employees of the Debtors prior to the Effective Date and that arise from a termination of 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, in each case whether or not: (1) a Proof of Claim based upon such debt or right is Filed or deemed Filed pursuant to section 501 of the Bankruptcy

Code; or (2) a Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to section 502 of the Bankruptcy Code. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests subject to the occurrence of the Effective Date.

B. Release of Liens

Except as otherwise provided in the Plan, or 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, except for Secured Claims that the Debtors elect to Reinstate, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estate shall be fully released and discharged, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the applicable Reorganized Debtor and its successors and assigns. On and after the Effective Date, any Holder of such Secured Claim (and the applicable agents for such Holder), at the expense of the Reorganized Debtors, shall be authorized and directed to release any collateral or other property of either Debtor (including any Cash collateral and possessory collateral) held by such Holder (and the applicable agents for such Holder), and to take such actions as may be reasonably requested by the Reorganized Debtors to evidence the release of such Lien, including the execution, delivery, and filing or recording of such releases. The presentation or Filing of the Confirmation Order to or with any federal, state, provincial, or local agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such Liens.

C. Releases by the Debtors

Pursuant to section 1123(b) of the Bankruptcy Code, for good and valuable consideration, on and after the Effective Date, each Released Party is deemed released and discharged by the Debtors, the Reorganized Debtors, and the Estates, in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all other Entities who may purport to assert any Cause of Action, directly or derivatively, by, through, for, or because of the foregoing Entities, from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtors, that the Debtors, the Reorganized Debtors, or the Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim against, or Interest in, the Debtors or other Entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtors' in- or out-of-court restructuring efforts, the Bankruptcy Cases, the Plan, the KP Engineering Liquidation Trust, or any contract, instrument, release, or other agreement or document created or entered into in connection with the Plan, the Liquidation Trust Agreement, the Filing of the Bankruptcy Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, or the distribution of property under the Plan, Liquidation Trust Agreement, or any other related agreement, or upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date. Notwithstanding anything contained herein to the contrary, the foregoing release does not release any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan.

For the avoidance of doubt, (i) the release in this Section, and the term Released Party, specifically excludes those Persons or Entities identified in the chart set forth in Article IV.H.; and (ii) except with respect to the release of TCB set forth in Article III.C.2, the release in this Section shall not apply to release or discharge any Person or Entity from any liability whatsoever to the Debtors in connection with the Committee Litigation, or any other Causes of Action identified as KP Engineering Liquidation Trust Assets.

D. Releases by Holders of Claims and Interests

As of the Effective Date, each Releasing Party is deemed to have released and discharged the Debtors, Reorganized Debtors, and Released Parties from any and all Causes of Action, whether known or unknown, including derivative claims, asserted on behalf of the Debtors, that such Entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors' in- or out-of-court restructuring efforts, the Bankruptcy Cases, the formulation, preparation dissemination, negotiation, or Filing of the Plan, the KP Engineering Liquidation Trust Agreement, or the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, or the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date. Notwithstanding anything contained herein to the contrary, the foregoing release does not release any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan.

For the avoidance of doubt, (i) the release in this Section specifically excludes the release of those certain claims identified in the chart set forth in Article IV.H.; and (ii) except with respect to the release of TCB set forth in Article III.C.2, the release in this Section shall not apply to release or discharge any Person or Entity from any liability whatsoever to the Debtors in connection with the Committee Litigation, or any other Causes of Action identified as KP Engineering Liquidation Trust Assets.

E. Exculpation

The Exculpated Parties shall not have or incur any liability to any Holder of a Claim or Interest, for any act, event, or omission from the Petition Date to the Effective Date in connection with or arising out of the Bankruptcy Cases, the Confirmation of the Plan, the Consummation of the Plan, the administration of the Plan, the creation or transfer of Estate property to the KP Engineering Liquidation Trust, or the assets and property to be distributed pursuant to the Plan or Liquidation Trust (including unclaimed property under the Plan), unless such Entity's action is determined as: (i) bad faith; (ii) actual fraud; (iii) willful misconduct; or (iv) gross negligence, in each case by a Final Order of a court of competent jurisdiction. Each Entity may reasonably rely upon the opinions of counsel, certified public accountants, and other experts or professionals employed thereby.

F. Injunction

Except as otherwise expressly provided in the Plan or for obligations issued or required to be paid pursuant to the Plan or the Confirmation Order, all Entities who have held, hold, or may

hold Claims or Interests that have been satisfied, released, discharged, or are subject to exculpation are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, the Liquidation Trustee, the Exculpated Parties, or the Released Parties: (1) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims or Interests; (3) creating, perfecting, or enforcing any encumbrance of any kind against such Entities or the property or the estates of such Entities on account of or in connection with or with respect to any such Claims or Interests; (4) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property of such Entities on account of, in connection with, or with respect to any such Claims or Interests unless such Holder has Filed a motion requesting the right to perform such setoff on or before the Effective Date, and notwithstanding an indication of a Claim or Interest or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to applicable law or otherwise; and (5) commencing or continuing in any manner any action or other proceeding of any kind on account of, in connection with, or with respect to any such Claims or Interests released or settled pursuant to the Plan.

Upon Confirmation of the Plan, all Holders of Claims and Interests and their respective current and former employees, agents, officers, directors, principals, and direct and indirect Affiliates shall be enjoined from taking any actions to interfere with the implementation or Consummation of the Plan. Each Holder of any Allowed Claim or Allowed Interest, as applicable, by accepting, or being eligible to accept, distributions under or Reinstatement of such Claim or Interest, as applicable, pursuant to the Plan, shall be deemed to have consented to the injunction provisions set forth in the Plan.

G. Protections Against Discriminatory Treatment

Consistent with section 525 of the Bankruptcy Code and the Supremacy Clause of the U.S. Constitution, all Entities, including Governmental Units, shall not discriminate against the Reorganized Debtors or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, the Reorganized Debtors, or another Entity with whom the Reorganized Debtors have been associated, solely because the Reorganized Debtors have been debtors under chapter 11 of the Bankruptcy Code, have been insolvent before the commencement of the Bankruptcy Cases (or during the Bankruptcy Cases but before the Debtors are granted or denied a discharge), or have not paid a debt that is dischargeable in the Bankruptcy Cases.

H. Reimbursement or Contribution

If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent as of the time of allowance or disallowance, such Claim shall be forever disallowed and expunged notwithstanding section 502(j) of the Bankruptcy Code, unless prior to the Confirmation Date: (i) such Claim has been adjudicated as non-contingent; or (ii) the relevant Holder of a Claim has Filed a non-contingent Proof of Claim on account of such Claim and a Final

Order has been entered prior to the Confirmation Date determining such Claim is no longer contingent.

**ARTICLE IX.
CONDITIONS PRECEDENT TO
CONFIRMATION AND CONSUMMATION**

A. Conditions Precedent to Confirmation

The following are conditions precedent to Confirmation of the Plan that shall be satisfied or waived in writing in accordance with Article IX.C. of the Plan:

1. The Plan and Confirmation Order shall be in form and substance acceptable to the Debtors.

B. Conditions Precedent to Effectiveness

1. The Bankruptcy Court shall have entered the Confirmation Order in a form and substance acceptable to the Debtors and shall not (a) have been reversed or vacated, (b) be subject to a then-effective stay, or (c) have been modified or amended;

2. The Plan, including any amendments, modifications, or supplements thereto, and inclusive of any amendments, modifications, or supplements made after the Confirmation Date but before the Effective Date, shall be in form and substance acceptable to the Debtors; and

3. The KP Engineering Liquidation Trust Agreement shall be in form and substance acceptable to the Debtors; and

4. The Exit Financing Documents shall have been executed as of the Effective Date.

C. Waiver of Conditions

The conditions to Confirmation and the Effective Date set forth in this Article may be waived only with the prior written consent of the Debtors without notice, leave, or order of the Bankruptcy Court or any formal action other than proceedings to confirm or consummate the Plan.

D. Effect of Failure of Conditions

If Consummation does not occur, then the Plan and Liquidation Trust Agreement shall be null and void in all respects and nothing contained in the Plan shall: (i) constitute a waiver or release of Claims, Interests, or Causes of Action by the Debtors; (ii) prejudice in any manner the rights of the Debtors, any Holders of Claims or Interests, or any other Person or Entity; or (iii) constitute an admission, acknowledgement, offer, or undertaking by the Debtors, any Holders of Claims or Interests, or any other Person or Entity.

**ARTICLE X.
MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN**

A. Modifications and Amendments

Except as otherwise specifically provided in the Plan, the Debtors reserve the right to modify the Plan, whether such modification is material or immaterial, and seek Confirmation consistent with the Bankruptcy Code. Subject to those restrictions on modifications set forth in the Plan and the requirements of section 1127 of the Bankruptcy Code, Bankruptcy Rule 3019, and, to the extent applicable, sections 1122, 1123 and 1125 of the Bankruptcy Code, the Debtors expressly reserve their rights to revoke or withdraw, or, to alter, amend, or modify the Plan, one or more times, after Confirmation, and, to the extent necessary may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan, or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan.

B. Effect of Confirmation on Modifications

Entry of a Confirmation Order shall mean that all modifications or amendments to the Plan made pursuant Section A., above, are approved pursuant to Bankruptcy Code section 1127(a) and do not require additional disclosure under Bankruptcy Rule 3019.

C. Revocation or Withdrawal of Plan

The Debtors reserve their rights to revoke or withdraw the Plan prior to the Confirmation Date and to File subsequent plans of reorganization. If the Debtors revoke or withdraw the Plan, then: (i) the Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of any Claim or Interests or Class of Claims or Interests), assumption or rejection of Executory Contracts and Unexpired Leases effected under the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (iii) nothing contained in the Plan shall (a) constitute a waiver or release of any Claims or Interests; (b) prejudice in any manner the rights of the Debtors or any other Entity; or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtors or any other Person or Entity.

**ARTICLE XI.
RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or relating to, the Bankruptcy Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to:

1. Allow, disallow, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of any Claim or Interest, including the resolution of any requests for payment of any Administrative Claim and the resolution of any objections to the

secured or unsecured status, priority, amount, or allowance of Claims or Interests;

2. Decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;

3. Resolve any matters related to: (a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which either Debtor is a party or with respect to which either Debtor may be liable and to hear, determine, and, if necessary, liquidate, any Claims arising therefrom, including Cure Claims pursuant to section 365 of the Bankruptcy Code; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; (c) the Reorganized Debtors amending, modifying, or supplementing, after the Effective Date, pursuant to Article V hereof, the Schedules of Executory Contracts and Unexpired Leases to be assumed or rejected or otherwise; and (d) any dispute regarding whether a contract or lease is or was executory or expired;

4. Ensure that distributions to Holders of Allowed Claims and Allowed Interests (as applicable) are accomplished pursuant to the provisions of the Plan and Liquidation Trust Agreement;

5. Adjudicate, decide, or resolve any motions, adversary proceedings, any other contested or litigated matters, and grant or deny any applications involving the Debtors that may be pending on the Effective Date;

6. Adjudicate, decide, or resolve all matters related to section 1141 of the Bankruptcy Code;

7. Enter and implement such orders as may be necessary to execute, implement, or consummate the provisions of the Plan, the Liquidation Trust Agreement, and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan;

8. Enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

9. Resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the Consummation, interpretation, or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;

10. Issue injunctions, enter and implement other orders, or take such other actions as may be necessary to restrain interference by any Person or Entity with respect to Consummation or enforcement of the Plan;

11. Resolve any cases, controversies, suits, disputes or Causes of Action with respect to the releases, injunctions, and other provisions contained in Article VIII hereof and enter such orders as may be necessary to implement such releases, injunctions and other provisions;

12. Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by the Holder of a Claim or Interest for amounts not timely repaid pursuant to Article VI.K hereof;

13. Enter and implement such orders as are necessary if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

14. Determine any other matters that may arise in connection with or related to the Plan, the Liquidation Trust Agreement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document created in connection with the Plan;

15. Enter an order closing the Bankruptcy Cases;

16. Adjudicate any and all disputes arising from or relating to distributions under the Plan;

17. Consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

18. Determine requests for the payment of Claims and Interests entitled to priority pursuant to section 507 of the Bankruptcy Code;

19. Hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan, the KP Engineering Liquidation Trust Agreement, or the Confirmation Order, including disputes arising under agreements, documents, or instruments executed in connection with the Plan;

20. Hear and determine matters concerning state, local, and federal taxes in accordance with sections 363, 505, and 1146 of the Bankruptcy Code;

21. Hear and determine all disputes involving the existence, nature, scope, or enforcement of any exculpations, discharges, injunctions and releases granted in the Plan, including under Article VIII hereof, regardless of whether such termination occurred prior to or after the Effective Date;

22. Enforce all orders previously entered by the Bankruptcy Court; and

23. Hear any other matter not inconsistent with the Bankruptcy Code.

Notwithstanding the foregoing, or any other term of the Plan, nothing contained in the Plan or Confirmation Order shall constitute a waiver of any party's right to a trial by jury in any adversary proceeding or contested matter, or otherwise purport to broaden the Bankruptcy Court's post-Confirmation subject matter jurisdiction.

ARTICLE XII.
MISCELLANEOUS PROVISIONS

A. Immediate Binding Effect

Subject to Article IX hereof, and notwithstanding Bankruptcy Rules 3020(e), 6004(h), 7062, or otherwise, upon the occurrence of the Effective date, the terms of the Plan shall be immediately effective and enforceable and deemed binding upon: (1) the Estates; (2) the Reorganized Debtors; (3) all Holders of Claims or Interests (regardless of whether such Holders are deemed to have accepted the Plan); (4) all Entities that are parties to or are subject to the settlements, compromises, releases, discharges, and injunctions described in the Plan; (5) each Entity acquiring property under the Plan or Liquidation Trust Agreement; and (6) any and all non-Debtor parties to Executory Contracts and Unexpired Leases.

B. Additional Documents

On or before the Effective Date, the Debtors may file with the Bankruptcy Court such Plan Documents, including Exit Financing Documents, and other documents or agreements as may be necessary to effectuate and further evidence the terms and conditions of the Plan or KP Engineering Liquidation Trust Agreement. The Debtors or the Reorganized Debtors, as applicable, and all Holders of Claims or Interests receiving distributions pursuant to the Plan and Liquidation Trust Agreement and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

C. Payment of Statutory Fees

All fees payable pursuant to section 1930(a) of the Judicial Code, as determined by the Bankruptcy Court at a hearing pursuant to section 1128 of the Bankruptcy Code, shall be paid by the Reorganized Debtors for each quarter (including any fraction thereof) until the Bankruptcy Cases are converted, dismissed, or closed—whichever occurs first.

D. Reservation of Rights

Except as expressly set forth in the Plan, the Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order, and the Confirmation Order shall have no force or effect if the Effective Date does not occur. None of the Filing of the Plan, any statement or provision contained in the Plan, or the taking of an action by the Debtors with respect to the Plan, or the Liquidation Trust Agreement shall be, or shall be deemed to be, an admission or waiver of any rights of the Debtors with respect to the Holders of Claims or Interests prior to the Effective Date.

E. Successors & Assigns

The rights, benefits, and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign,

Affiliate, officer, director, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

F. Notices

All notices, requests, and demands to or upon the Debtors to be effective shall be in writing (including any 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:

OKIN ADAMS LLP
Christopher Adams
James W. Bartlett, Jr.
Ryan A. O'Connor
1113 Vine St., Suite 240
Houston, Texas 77002
Tel: 713.228.4100
Fax: 888.865.2118
cadams@okinadams.com
jbartlett@okinadams.com
roconnor@okinadams.com

G. Term of Injunctions or Stays

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Bankruptcy Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

H. Entire Agreement

Except as otherwise indicated, the Plan (including, for the avoidance of doubt, the Plan Documents) supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which are deemed merged and integrated into the Plan.

I. Exhibits

All Exhibits and documents attached to the Plan are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the Exhibits and documents are Filed, copies of such Exhibits and documents shall be available upon written request to the Debtors' counsel at the address set forth herein or by downloading such Exhibits and documents from the Bankruptcy Court's CM/ECF filing system or the website maintained by the Debtors' notice and claim agent, Omni Agent Solutions, at <https://cases.omniagentsolutions.com>. To the extent any Exhibit or

document is inconsistent with the terms of the Plan, unless otherwise ordered by the Bankruptcy Court, the non-exhibit or non-document portion of the Plan shall control.

J. Nonseverability of Plan Provisions

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the Debtor's consent; and (3) nonseverable and mutually dependent.

K. Plan Proposed in Good Faith

Upon entry of the Confirmation Order, the Debtors will be deemed to have proposed the Plan in good faith and in compliance with the Bankruptcy Code, and pursuant to section 1125(e) of the Bankruptcy Code, the Debtors and each of their Affiliates, agents, representatives, members, principals, shareholders, officers, directors, employees, advisors, and attorneys will be deemed to have participated in good faith and in compliance with the Bankruptcy Code, and, therefore, neither any of such individuals or Entities or the Reorganized Debtors will have any liability for the violation of any applicable law, rule, or regulation governing the proposal of the Plan or participation in the Bankruptcy Cases.

L. Closing the Bankruptcy Cases

The Reorganized Debtors shall, promptly after the administration of the Bankruptcy Cases, on notice and hearing, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Bankruptcy Cases.

M. Waiver or Estoppel

Each Holder of a Claim or an Interest shall be deemed to have waived any right to assert any arguments, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, secured or not subordinated by virtue of an agreement made with the Debtors, Liquidation Trustee, or their counsel, or any other Entity, if such agreement was not disclosed in the Plan or papers Filed with the Bankruptcy Court prior to the Confirmation Date.

N. Controlling Document

In the event of an inconsistency between the Confirmation Order and the Plan, the Confirmation Order shall control.

Respectfully submitted on the 10th day of June, 2020.

KP ENGINEERING, LP

By: /s/ Douglas J. Brickley
Douglas J. Brickley
Chief Restructuring Officer

KP ENGINEERING, LLC

By: /s/ Douglas J. Brickley
Douglas J. Brickley
Chief Restructuring Officer

OKIN ADAMS LLP

By: /s/ Christopher Adams
Christopher Adams
Texas Bar No. 24009857
cadams@okinadams.com
James W. Bartlett, Jr.
Texas Bar No. 00795238
jbartlett@okinadams.com
Ryan A. O'Connor
Texas Bar No. 24098190
roconnor@okinadams.com
1113 Vine St., Suite 240
Houston, Texas 77002
Tel: 713.228.4100
Fax: 888.865.2118

ATTORNEYS FOR THE DEBTORS

Exhibit 1 - A

Schedule of Retained Causes of Action

Schedule of Retained Causes of Action¹

The Reorganized Debtors shall retain and may enforce, sue on, settle, compromise, otherwise resolve, discontinue, abandon, or dismiss all claims, rights, Causes of Action, suits, and proceedings, described in this Schedule of Retained Causes of Action (collectively, the “Retained Causes of Action”) without further order or approval of the Bankruptcy Court.

No Person or Entity may rely on the absence of a specific reference in the Plan, the Disclosure Statement or any related Plan Documents to any Retained Causes of Action against it as any indication that the Reorganized Debtors will not, or may not, pursue any and all available Retained Causes of Action against it. The Reorganized Debtors expressly reserve all rights to prosecute any and all Retained Causes of Action against any Person or Entity. Unless any Retained Causes of Action against a Person or Entity is expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Bankruptcy Court order, the Reorganized Debtors expressly reserve all Retained 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 Retained Causes of Action upon, after, or as consequence of, Confirmation or Consummation of the Debtors’ Plan. For the avoidance of doubt, all claims, Causes of Action, suits, and proceedings of the Debtors that are not Retained Causes of Action or KP Engineering Liquidation Trust Assets are waived as of the Effective Date. The following described claims and Causes of Action and litigation proceedings shall be Retained Causes of Actions:

1. **State Law Breach of Contract Claims**: Except as set forth in the Plan or this Schedule of Retained Causes of Action, any and all Causes of Action for (i) breach of contract for assumed contracts or post-petition contracts; (ii) breach of warranty; or (iii) breach of contract for any agreements entered into in connection with the Plan.

2. **Insurance Policy Claims**: Except as set forth in the Plan or this Schedule of Retained Causes of Action, any and all Causes of Action against any of the Debtors’ insurers arising out of such insurer’s obligations to the Debtors under the Debtors’ insurance policies. For purposes of clarity, Causes of Action against Current Directors and Officers are property of the KP Engineering Liquidation Trust.

3. **Rights Under Assumed Contracts**: Any rights, claims defenses, audit rights, or Causes of Action arising under any Executory Contract or Unexpired Lease assumed during the Bankruptcy Cases pursuant to section 365 of the Bankruptcy Code.

4. **General Litigation**: With respect to any of the non-Debtor Persons or Entities in paragraphs 1 through 3, above, and except as set forth in the Plan or this Schedule of Retained Causes of Action, the Debtors reserve the right to pursue potential litigation against any of such non-Debtor Persons’ or Entities’ present or former owners, officers, directors, employees, consultants, financial advisors, attorneys, accountants and other representatives, to the extent they are not otherwise released pursuant to Article VIII of the Plan. Claims against these Persons or Entities include, but are not limited to, fraud, fraudulent transfer, breach of contract, fraudulent

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Plan.

inducement, rescission, any declaratory action to remove any cloud to title of real property, breach of warranty, tortious interference, negligent misrepresentation, breach of fiduciary duty, piercing the corporate veil, alter ego, negligence, conspiracy to commit any of the foregoing torts or aiding and abetting in the commission of any of the foregoing torts.

Exhibit 1 - B

Schedule of Rejected Contracts and Leases

Schedule of Rejected Contracts and Leases

Debtor(s)	Contract Counterparty	Title	Description / Comments
KP Engineering, LP	KPE Realty II, LLC	Commercial Lease, effective July 31, 2017	Rejected during Bankruptcy Cases. See Doc. Nos. 439 and 440.
KP Engineering, LP	MarkWest Ohio Fractionation Company, LLC	Engineering, Design, Procurement, and Fabrication Agreement Lump Sum, effective August 17, 2018	Agreement related to 80,000 barrel per day fractionator and related equipment referred to as the Hopedale Fractionator V
KP Engineering, LP	Praxair, Inc.	Contract for Engineering, Procurement, Fabrication and Construction, effective July 7, 2016, as amended	Geismar VI Agreement related to the Geismar VI Project
KP Engineering, LP	Praxair, Inc.	Contract for Engineering, Procurement, Fabrication and Construction of a Syngas Separation Unit dated November 14, 2017, as amended	Geismar SSU Agreement related to the Geismar SSU Project
KP Engineering, LP	Targa Pipeline Mid-Continent WestTex LLC	Agreement for Engineering, Procurement and Construction Agreement, effective August 3, 2017	Agreement related to the Johnson Project
KP Engineering, LP	Targa Pipeline Mid-Continent WestTex LLC	Agreement for Engineering, Procurement and Construction, effective January 17, 2017	Agreement related to the Joyce Project
KP Engineering, LP	Targa Channelview LLC, as assignee of Targa Terminals LLC	Agreement for Engineering, Procurement and Construction, effective April 15, 2016, as amended	Agreement related to the Channelview Project

Debtor(s)	Contract Counterparty	Title	Description / Comments
KP Engineering, LP KP Engineering, LLC	Tony Freeman	Settlement Agreement, effective January 1, 2016, and all agreements executed in connection with the Settlement Agreement, including, but not limited to, that certain Guaranty Agreement, dated as of November 16, 2016, in favor of Tony Freeman	Agreement related to purchase of Freeman's equity interests in the Debtors and related Entities

Exhibit 2

KP Engineering Liquidation Trust Agreement

LIQUIDATION TRUST AGREEMENT

This Liquidation Trust Agreement (the “**Liquidation Trust Agreement**”), dated as of [DATE] (the “**Effective Date**”), by and among KP Engineering, LP and KP Engineering, LLC (together, the “**Debtors**”), Michael D. Warner, solely in his capacity as the trustee (the “**Liquidation Trustee**”), and the Committee is executed in order to establish a liquidation trust (the “**Liquidation Trust**”) pursuant to the *Third Amended Joint Chapter 11 Plan of Reorganization of KP Engineering, LP and KP Engineering, LLC* (as amended, supplemented, or modified in accordance with its terms, the “**Plan**”) [Docket No. 530]. Capitalized terms used in this Liquidation Trust Agreement and not otherwise defined shall have the meanings ascribed to them in the Plan.

WITNESSETH

WHEREAS, on August 23, 2019, both of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United State Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of Texas (the “**Bankruptcy Court**”);

WHEREAS, on May 15, 2020, the Debtors filed the Plan;

WHEREAS, on June __, 2020, the Bankruptcy Court entered an order confirming the Plan [Docket No. ___] (the “**Confirmation Order**”);

WHEREAS, the Liquidation Trust is created pursuant to, and to effectuate certain provisions of the Plan, pursuant to which the Liquidation Trust will hold the Liquidation Trust Assets;

WHEREAS, the Liquidation Trust is organized for the sole purpose of liquidating the Liquidation Trust Assets in an expeditious but orderly manner for the Liquidation Trust Beneficiaries, including the investigation and prosecution of the Causes of Action (other than Retained Causes of Action), with no objective to continue or engage in the conduct of a trade or business, except, to the extent reasonably necessary to effectuate, and consistent with, the liquidating purpose of the Liquidation Trust;

WHEREAS, the Liquidation Trust is intended to be classified for U.S. federal income tax purposes as a “**liquidation trust**” within the meaning of Treasury Regulation Section 301.7701-4(d) and thus as a “**grantor trust**” within the meaning of Sections 671 through 677 of the Internal Revenue Code of 1986, as amended (the “**IRC**”), with the Liquidation Trust Beneficiaries treated for U.S. federal income tax purposes as the grantors and owners of their respective shares of the Liquidation Trust Assets; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained in this Liquidation Trust Agreement and in the Plan, Debtors or, from and after the Effective Date, any successor thereto, by merger, consolidation, or otherwise (including the Reorganized Debtors), the Committee, and the Liquidation Trustee agree as follows:

ARTICLE 1

ESTABLISHMENT OF LITIGATION TRUST

1.1 Establishment of Liquidation Trust; Appointment of Liquidation Trustee.

(a) Pursuant to the Plan, the Debtors hereby establish a trust which shall be known as the “**KP Engineering Liquidation Trust**” on behalf of the Liquidation Trust Beneficiaries in accordance with this Liquidation Trust Agreement and the Plan.

(b) The Liquidation Trustee is hereby appointed as trustee of the Liquidation Trust and agrees to accept and hold the Liquidation Trust Assets in trust for the Liquidation Trust Beneficiaries subject to the terms of this Liquidation Trust Agreement, the Plan, and the Confirmation Order. The Liquidation Trustee (and any successor trustee serving from time to time duly appointed hereunder) shall have all the rights, powers, and duties set forth herein.

1.2 Transfer of Assets and Rights to Liquidation Trustee.

(a) Pursuant to the Plan, all of the Debtors’ right, title and interest in and to the Liquidation Trust Assets, including Causes of Action (other than Retained Causes of Action), are automatically vested in the Liquidation Trust on the Effective Date, free and clear of all Liens, charges, Claims, encumbrances, and interests, in accordance with Section 1141 of the Bankruptcy Code.

(b) All proceeds of Liquidation Trust Assets, including Causes of Action (other than Retained Causes of Action), recovered by the Liquidation Trust, whether recovered pursuant to the successful prosecution or settlement of the Causes of Action (other than Retained Causes of Action) and all other income earned with respect to the Liquidation Trust Assets shall be added to the Liquidation Trust Assets and held as a part thereof (and title thereto shall be vested in the Liquidation Trust).

(c) The Liquidation Trustee shall be the exclusive administrator of the Liquidation Trust for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate of each of the Debtors appointed pursuant to Section 1123(b)(3)(B) of the Bankruptcy Code, solely for purposes of carrying out the Liquidation Trustee’s duties under the Liquidation Trust Agreement. On the Effective Date, the Liquidation Trust shall stand in the shoes of the Debtors for all purposes with respect to (i) the Liquidation Trust Assets and (ii) the claims reconciliation process for Claims in Classes 4, 5, 6 and 7. For clarity: (x) deficiency claims, if any, of holders of Claims in Classes 3, 4, 5 and 6, will be treated as Claims in Class 7, and subject to the Claims objection process provided in Section 6.3 hereof; (y) the Liquidation Trustee shall have no duty or obligation to address distributions on or to, or allowances of the Claims in Class 3 (other than with respect to any deficiency Claim within Class 7), as such duty and obligation shall be undertaken by the Debtors or the Reorganized Debtors, as applicable.

(d) To the extent any Liquidation Trust Assets cannot be transferred to the Liquidation Trust because of a restriction on transferability under applicable non-bankruptcy law that is not superseded or preempted by Section 1123 of the Bankruptcy Code or any provision of the Bankruptcy Code, such Liquidation Trust Assets shall be deemed to have been retained by the

Debtors and the Liquidation Trustee shall be deemed to have been designated as a representative of the Debtors pursuant to Section 1123(b)(3)(B) of the Bankruptcy Code to enforce and pursue such Liquidation Trust Assets on behalf of the Debtors. Notwithstanding the foregoing, all proceeds of such Liquidation Trust Assets shall be transferred to the Liquidation Trust to be distributed to the Liquidation Trust Beneficiaries consistent with the Plan and this Liquidation Trust Agreement.

(e) The transfer of the Liquidation Trust Assets shall be exempt from any stamp, real estate transfer, mortgage reporting, sales, use, or other tax, pursuant to Section 1146(a) of the Bankruptcy Code.

(f) The Liquidation Trustee's receipt of any documents or communications (whether written or oral) shall not result in a waiver of any privileges (including without limitation attorney-client privilege, work-product privilege, or common interest privilege) and all such privileges are preserved. The Liquidation Trustee may waive any privilege on behalf of the Liquidation Trust or the Debtors, as applicable, with respect to the Liquidation Trust Assets and Claims in Classes 4, 5, 6, and 7.

1.3 Title to Liquidation Trust Assets.

(a) Transfer of the Liquidation Trust Assets to the Liquidation Trust shall be made for the benefit of the Liquidation Trust Beneficiaries to the extent provided for under the Plan. Upon the transfer of the Liquidation Trust Assets, the Liquidation Trust shall succeed to all of the right, title, and interest of the Debtors in and to the Liquidation Trust Assets and the Debtors and the Reorganized Debtors shall not have any further interest in or with respect to the Liquidation Trust Assets or the Liquidation Trust.

1.4 Nature and Purpose of Liquidation Trust.

(a) Purpose. The Liquidation Trust is organized and established as a trust, subject to the terms and conditions contained herein and in the Plan for the sole purpose of collecting, holding, administering, distributing and liquidating the Liquidation Trust Assets in an expeditious but orderly manner for the benefit of the Liquidation Trust Beneficiaries, including the investigation and prosecution of the Causes of Action (other than Retained Causes of Action), with no objective to continue or engage in the conduct of a trade or business, except, to the extent reasonably necessary to effectuate, and consistent with, the liquidating purpose of the Liquidation Trust.

(b) Actions of Liquidation Trustee. Subject to Section 3.6 hereof, the Liquidation Trustee shall, in an expeditious but orderly manner, liquidate and convert to cash the Liquidation Trust Assets, make timely distributions in accordance with Article 6 of this Liquidation Trust Agreement, and not unduly prolong the duration of the Liquidation Trust. The liquidation of the Liquidation Trust Assets may be accomplished through the prosecution, compromise and settlement, abandonment, dismissal or assignment of any or all claims, rights or causes of action, Causes of Action (other than Retained Causes of Action), or otherwise. As set forth in Article 8 herein, the Liquidation Trustee shall not have any liability for the outcome of

any such decision except for any damages caused by, respectively, either willful misconduct, fraud, or knowing violation of law.

(c) Relationship. This Liquidation Trust Agreement is intended to create a trust and a trust relationship and to be governed and construed in all respects as a trust. The Liquidation Trust is not intended to be, and shall not be deemed to be or treated as, a general partnership, limited partnership, joint venture, corporation, joint stock company or association, nor shall the Liquidation Trustee, or the Liquidation Trust Beneficiaries, or any of them, for any purpose be, or be deemed to be or treated in any way whatsoever to be, liable or responsible hereunder as partners or joint ventures. The relationship of the Liquidation Trust Beneficiaries to the Liquidation Trust, and the Liquidation Trustee shall be solely that of beneficiaries of a trust and shall not be deemed a principal or agency relationship, and their rights shall be limited to those conferred upon them by this Liquidation Trust Agreement.

1.5 Conflict.

The terms of this Liquidation Trust Agreement are intended to supplement the terms provided by the Plan and the Confirmation Order. In the event of any direct conflict or inconsistency between any provision of this Liquidation Trust Agreement, on the one hand, and the provisions of the Confirmation Order, on the other hand, the provisions of the Confirmation Order shall govern and control. In the event of any direct conflict or inconsistency between any provision of this Liquidation Trust Agreement, on the one hand, and the provisions of the Plan, on the other hand, the provisions of the Plan shall govern and control, except with respect to the administration and structure of the Liquidation Trust, for which this Liquidation Trust Agreement shall govern and control. Notwithstanding the foregoing, the Liquidation Trustee may apply or move the Bankruptcy Court for resolution of any dispute concerning the foregoing.

1.6 Appointment as Representative.

Upon the Effective Date, the Liquidation Trustee is appointed as the duly appointed representative of the Debtors and their estates with respect to the Liquidation Trust Assets and Claims in Classes 4, 5, 6, and 7, and, as such, upon such appointment, the Liquidation Trustee succeeds to all of the rights and powers of a trustee in bankruptcy with respect to prosecution of the Liquidation Trust Assets for the benefit of the Liquidation Trust Beneficiaries, and the reconciliation of Claims in Classes 4, 5, 6, and 7.

1.7 Reservation of Rights Regarding Causes of Action.

No Entity may rely on the absence of a specific reference in the Plan or the Plan Supplement to any Cause of Action against them as any indication that the Liquidation Trust will not pursue any and all available Causes of Action against them. The Liquidation Trust expressly reserves all rights to prosecute any and all Causes of Action against any Entity, except as otherwise provided in the Plan or an order of the Bankruptcy Court. Unless a specific Cause of Action against an Entity is expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or an order of the Bankruptcy Court, the Liquidation Trust expressly reserves such Causes of Action for later adjudication.

ARTICLE 2

LIQUIDATION TRUST INTERESTS

2.1 Beneficial Interests in the Liquidation Trust Assets.

The allocation and distribution of beneficial interests in the Liquidation Trust Assets shall be accomplished as set forth in this Liquidation Trust Agreement and the Plan.

2.2 Interests Beneficial Only.

The ownership of a beneficial interest in the Liquidation Trust Assets shall not entitle any such holder to any title in or to the Liquidation Trust Assets as such (which title shall be vested in the Liquidation Trust pursuant to Section 1.2 hereof) or to any right to call for a partition or division of the Liquidation Trust Assets or to require an accounting.

2.3 No Right to Accounting.

None of the Liquidation Trust Beneficiaries, their successors, assigns or creditors, or any other Entity shall have any right to an accounting by the Liquidation Trust or Liquidation Trustee, and the Liquidation Trustee shall not be obligated to provide any accounting to any Entity. Except as otherwise provided in this Liquidation Trust Agreement, the Confirmation Order, or other applicable law, nothing in this Liquidation Trust Agreement is intended to require the Liquidation Trustee at any time or for any purpose to file any accounting or seek approval of any court with respect to the administration of the Liquidation Trust or as a condition for making any advance, payment or distribution out of the Liquidation Trust Assets.

2.4 No Standing.

None of the Liquidation Trust Beneficiaries shall have standing to direct or to seek to direct the Liquidation Trust or Liquidation Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any person or entity upon or with respect to the Liquidation Trust Assets.

2.5 Evidence of Beneficial Interest.

Ownership of a beneficial interest in the Liquidation Trust Assets shall not be evidenced by any certificate, security, or receipt or in any other form or manner whatsoever, except as maintained on the books and records of the Liquidation Trust by the Liquidation Trustee.

2.6 Securities Law Registration.

It is intended that the beneficial interests in the Liquidation Trust Assets shall not constitute “**securities**” and shall not be certificated. Notwithstanding the foregoing procedure, nothing herein shall be deemed to preclude the Liquidation Trustee from amending this Liquidation Trust Agreement to make such changes as are deemed necessary or appropriate by the Liquidation Trustee, with the advice of counsel, to ensure that the Liquidation Trust is not subject to registration or reporting requirements of the Exchange Act, or the Investment Company Act.

ARTICLE 3

LIQUIDATION TRUSTEE

3.1 Funding and Payment of Liquidation Trust Expenses.

(a) The Liquidation Trustee may, in his or her discretion maintain an expense fund from the Liquidation Trust Assets (the “**Liquidation Trust Expense Fund**”) in an amount as is reasonably necessary to pay the Liquidation Trust Expenses (as defined herein) incurred or expected to be incurred.

3.2 Distributions to Liquidation Trust Beneficiaries.

The Liquidation Trustee shall distribute the net distributable Liquidation Trust Assets to the Liquidation Trust Beneficiaries in accordance with the provisions of Article 6 hereof and the Plan.

3.3 Tenure, Removal, and Replacement of Liquidation Trustee.

(a) The Liquidation Trustee shall serve until (i) resignation and the appointment of a successor pursuant to subsection (b) below, (ii) removal pursuant to subsection (c) below, or (iii) death.

(b) The Liquidation Trustee may resign by giving not less than sixty (60) days’ prior written notice to the Bankruptcy Court. Such resignation shall become effective on the later to occur of: (i) the day specified in such notice and (ii) the appointment of a successor Liquidation Trustee as provided herein and the acceptance by such successor of the appointment.

(c) The Liquidation Trustee may be removed for Cause (as defined in Section 4.8(c) hereof). Such removal shall become effective on entry of an Order of the Bankruptcy Court.

(d) In the event of the death, resignation pursuant to Section 3.3(b) hereof, or removal of the Liquidation Trustee pursuant to Section 3.3(c) hereof, the Bankruptcy Court, upon input of interested parties may appoint a successor Liquidation Trustee, subject to the requirement that any successor Liquidation Trustee be a “**United States person**” within the meaning of Section 7701(a)(30) of the IRC. Such appointment shall specify the date on which such appointment shall be effective.

(e) Immediately upon the appointment of any successor Liquidation Trustee, all rights, powers, duties, authority, and privileges of the predecessor Liquidation Trustee under this Liquidation Trust Agreement and the Plan shall be vested in and undertaken by the successor Liquidation Trustee without any further act. The successor Liquidation Trustee shall not be responsible for any act or omission of the predecessor Liquidation Trustee.

(f) Upon the appointment of a successor Liquidation Trustee, the predecessor Liquidation Trustee (or the duly appointed legal representative of a deceased Liquidation Trustee) shall, if applicable, when requested in writing by the successor Liquidation Trustee, execute and deliver an instrument or instruments conveying and transferring to such successor trustee upon the

trust herein expressed, without recourse to the predecessor Liquidation Trustee, all the estates, properties, rights, powers and trusts of such predecessor Liquidation Trustee, and shall duly assign, transfer, and deliver to such successor Liquidation Trustee all property and money held hereunder, and all other assets and documents relating to the Liquidation Trust and the Liquidation Trust Assets then in his or her possession and held hereunder.

(g) The appointment of a successor Liquidation Trustee will be evidenced by the filing with the Bankruptcy Court of a notice of appointment, which notice will include the name, address, and telephone number of the successor Liquidation Trustee.

3.4 Acceptance of Appointment by Successor Liquidation Trustee.

Any successor Liquidation Trustee appointed hereunder shall execute an instrument accepting such appointment and assuming all of the obligations of the predecessor Liquidation Trustee hereunder and thereupon the successor Liquidation Trustee shall, without any further act, become vested with all the estates, properties, rights, powers, trusts, and duties of his predecessor in the Liquidation Trust hereunder with like effect as if originally named herein.

3.5 Role of the Liquidation Trustee.

In furtherance of and consistent with the purpose of the Liquidation Trust, the Liquidation Trustee shall have the power to (i) prosecute, compromise and settle, abandon, assign, or dismiss for the benefit of the Liquidation Trust Beneficiaries all claims, rights, and Causes of Action (other than Retained Causes of Action) transferred to the Liquidation Trust (whether such suits are brought in the name of the Liquidation Trustee or otherwise), (ii) liquidate the Liquidation Trust Assets, and (iii) otherwise perform the functions and take the actions provided or permitted in this Liquidation Trust Agreement, subject to the terms and conditions contained herein. In all circumstances, the Liquidation Trustee shall act in the best interests of the Liquidation Trust and in furtherance of the purpose of the Liquidation Trust.

3.6 Authority of Liquidation Trustee.

Subject to any limitations contained herein, in the Plan, or the Confirmation Order, the Liquidation Trustee shall have the following powers and authorities on behalf of the Liquidation Trust:

(a) hold legal title to any Liquidation Trust Assets, including, without limitation, collecting and receiving any and all money and other property belonging to the Liquidation Trust and the right to vote any claim or interest relating to a Liquidation Trust Asset in a case under the Bankruptcy Code, or state law equivalent, and receive any distribution thereon;

(b) without the need for Bankruptcy Court approval, convey, transfer and assign any and all of the Liquidation Trust Assets and to take all actions necessary to effectuate the same; *provided*, however, that the Liquidation Trustee may not take any action to convey, transfer or assign the Liquidation Trust's contingent interests in the New Equity Interests held in escrow without obtaining a Final Order of the Bankruptcy Court, on notice and an opportunity to object, authorizing such action and only after there is a Final Order in favor of the Liquidation Trust against Brandon Steele in the Committee Litigation.

(c) investigate, commence, prosecute, abandon, or settle the Causes of Action (other than Retained Causes of Action), and enforce contracts or assert claims, defenses, offsets and privileges, but only as such duties and powers relate to the Liquidation Trust Assets; provided however, that the Liquidation Trustee may settle Causes of Action (i) asserting an affirmative demand of \$300,000 or more, with fourteen (14) calendar days' negative notice via the Bankruptcy Court's CM/ECF system, and Bankruptcy Court approval if a timely objection is filed, or (ii) asserting an affirmative demand of less than \$300,000 with no notice to parties-in-interest.

(d) without the need for Bankruptcy Court approval, to investigate, object to, subordinate, compromise, estimate, allow, settle, or abandon any Claims in Classes 4, 5, 6, and 7;

(e) protect and enforce the rights to the Liquidation Trust Assets by any method deemed appropriate including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

(f) obtain reasonable insurance coverage with respect to the liabilities and obligations of the Liquidation Trustee under this Liquidation Trust Agreement (in the form of an errors and omissions policy or otherwise), if the Liquidation Trustee determines that such insurance coverage is appropriate;

(g) obtain insurance coverage with respect to real and personal property that may become Liquidation Trust Assets, if any, if the Liquidation Trustee determines in good faith that such insurance coverage is appropriate;

(h) retain, without Bankruptcy Court approval, such professionals or other third-parties to assist with the administration of the Liquidation Trust and pay out of the Liquidation Trust Expense Fund, reasonable compensation for services rendered and reasonable and documented out-of-pocket expenses incurred by such parties; provided however, that with respect to the retention of professionals, within ten (10) days of any such retention, the Liquidation Trustee shall file a notice with the Bankruptcy Court disclosing the name of such professional or professionals.

(i) assert or, with the written consent of the Reorganized Debtors or an order of the Bankruptcy Court, waive any privilege or any defense on behalf of the Liquidation Trust or the Debtors with respect to the Liquidation Trust Assets or Claims in Classes 4, 5, 6, and 7;

(j) open and maintain bank and other deposit accounts, escrows and other accounts, calculate and implement distributions to the Liquidation Trust Beneficiaries as provided for or contemplated by the Plan, and take other actions consistent with the Plan and the implementation thereof, including the establishment, re-evaluation, adjustment and maintenance of appropriate reserves (including, but not limited to, the Liquidation Trust Expense Fund);

(k) establish and maintain a reserve for Disputed Claims in Classes 4, 5, 6, and 7 in accordance with the Plan (the "**Disputed GUC Reserve**");

(l) for U.S. federal income tax purposes (and, to the extent permitted by law, for state and local income tax purposes), (i) make an election pursuant to United States Treasury Regulation section 1.468B-9 to treat the Disputed GUC Reserve as a "**disputed ownership fund**"

within the meaning of that section, (ii) allocate taxable income or loss to the Disputed GUC Reserve with respect to any given taxable year (but only for the portion of the taxable year with respect to which such Claims are Disputed Claims), and (iii) distribute assets from the Disputed GUC Reserve as, when, and to the extent, such Disputed Claims either become Allowed or are otherwise resolved;

(m) invest the Liquidation Trust Assets in accordance with Section 3.14 hereof, incur obligations for reasonable and necessary expenses in liquidating and converting the Liquidation Trust Assets to Cash, and pay taxes and other obligations owed by the Liquidation Trust;

(n) examine any Entity, pursuant to the provisions of the Federal Rules of Evidence, the Federal Rules of Bankruptcy Procedure, or any other applicable law or rule, including to issue subpoenas for documents and testimony in connection with the Causes of Action (other than Retained Causes of Action) or Claims in Classes 4, 5, 6, and 7, and/or under Bankruptcy Rule 2004;

(o) take or refrain from taking any and all other actions that the Liquidation Trustee, reasonably deems necessary or convenient for the continuation, protection and maximization of the Liquidation Trust Assets or to carry out the purposes hereof;

(p) without the need for Bankruptcy Court approval, enter into one more agreements to obtain litigation funding with respect to the Causes of Action (other than Retained Causes of Action) and pledge and any all Liquidation Trust Assets in connection therewith;

(q) hold the contingent interests in the New Equity Interests, in escrow, pending the adjudication by Final Order or other resolution of the Committee Litigation against Brandon Steele, in accordance with the Plan, or as otherwise Ordered by the Bankruptcy Court, on notice and an opportunity to object;

(r) make distributions from the Liquidation Trust Assets to the Liquidation Trust Beneficiaries in accordance with the Plan and Article 6 hereof; and

(s) exercise all other powers and authorities of the Liquidation Trustee provided for under the Plan, the Confirmation Order, and this Liquidation Trust Agreement.

3.7 Limitation of Liquidation Trustee's Authority.

The Liquidation Trustee shall, on behalf of the Liquidation Trust, hold the Liquidation Trust out as a trust in the process of liquidation and not as an investment company. Notwithstanding anything herein to the contrary, the Liquidation Trustee shall not (i) be authorized to engage in any trade or business, (ii) take such actions inconsistent with the orderly liquidation of the Liquidation Trust Assets as are required or contemplated by applicable law, the Plan, the Confirmation Order, and this Liquidation Trust Agreement, or (iii) be authorized to engage in any investments or activities inconsistent with the treatment of the Liquidation Trust as a Liquidation Trust within the meaning of Treasury Regulation Section 301.7701-4(d) and in accordance with Rev. Proc. 94-45, 1994-2 C.B. 684.

3.8 Cooperation of the Reorganized Debtors.

The Reorganized Debtors shall reasonably cooperate with the Liquidation Trust, the Liquidation Trustee, and their agents and representatives in the administration of the Liquidation Trust and the Liquidation Trust Assets, including, providing reasonable access to books and records and current employees and officers, including for interviews, deposition, or testimony, with respect to: (i) the investigation, prosecution, compromise, and/or settlement of the Causes of Action (other than Retained Causes of Action); and (ii) contesting, settling, compromising, reconciling, and objecting to Claims in Classes 4, 5, 6, and 7, and in each case, the Liquidation Trust shall reimburse actual and reasonable out-of-pocket expenses incurred in connection with such cooperation. The Reorganized Debtors shall take all reasonable efforts to assist the Liquidation Trust with the foregoing and the Liquidation Trust may enter into agreements with the Reorganized Debtors and/or the Committee in order to obtain information from the Reorganized Debtors and/or the Committee on a confidential basis, without being restricted by or waiving any applicable work product, attorney-client, or other privilege. The Liquidation Trust's receipt of documents, information, or communications from the Reorganized Debtors or the Committee shall not constitute a waiver of any privilege. For the avoidance of doubt, the Liquidation Trust shall not be responsible for legal fees, hourly time for the Reorganized Debtors' employees or overhead, if any, incurred by the Reorganized Debtors in fulfilling its obligations under this Section.

3.9 Books and Records.

On or promptly after the Effective Date, the Reorganized Debtors shall transfer or make available to the Liquidation Trust copies of all of the Debtors' books and records that were provided to the Committee before the Effective Date and all other documents, data, and communications, including those maintained in electronic format and original documents, reasonably requested by the Liquidation Trustee pursuant to Section 3.8 of this Liquidation Trust Agreement (collectively, the "**Subject Books and Records**"); provided, however, that with respect to original documents that are proprietary to the Reorganized Debtors and that the Reorganized Debtors require in the operation of their business, the Reorganized Debtors may provide copies in lieu of originals, whether held by the Debtors or the Reorganized Debtors, or their respective employees, agents, advisors, attorneys, accountants, or any other professionals. In the event the Debtors provide copies in lieu of originals in accordance with the preceding sentence, the Debtors shall certify in writing that such copies are true, correct and complete; and the Liquidation Trustee may use such copies and the attendant certification as if such copies were original documents, in any action or proceeding brought by or against the Liquidation Trust. Similarly, on or promptly after the Effective Date, the Committee shall make available to the Liquidation Trustee all documents and records, including those produced by, or received from third parties during the Bankruptcy Cases, pertaining to any Committee Litigation and other investigations of the Causes of Action (other than Retained Causes of Action). Nothing contained herein shall constitute a waiver or release of any: (i) valid objection to production, (ii) any privilege, including the attorney-client privilege; or (iii) work product doctrine, of any non-Debtor party. Any dispute regarding the applicability and/or any dispute related to such objection, privilege or work product doctrine is fully preserved and shall be resolved by the Bankruptcy Court or any other court of competent jurisdiction.

3.10 Inquiries into Liquidation Trustee's Authority.

Except as otherwise set forth in the Liquidation Trust Agreement, no Entity dealing with the Liquidation Trust shall be obligated to inquire into the authority of the Liquidation Trustee in connection with the protection, conservation, or disposition of the Liquidation Trust Assets.

3.11 Compliance with Laws.

Any and all distributions of the Liquidation Trust Assets and proceeds of borrowings, if any, shall be in compliance with applicable laws, including, without limitation, applicable federal and state securities laws.

3.12 Compensation of Liquidation Trustee.

The Liquidation Trustee shall be reimbursed for reasonable costs and expenses incurred in accordance with his or her duties and compensated in accordance with the compensation schedule attached hereto as Schedule A. For the avoidance of doubt, all costs, expenses, and obligations incurred by the Liquidation Trustee in administering the applicable provisions of this Plan, the Liquidation Trust, or in any manner connected, incidental or related thereto (including, for the avoidance of doubt, time, fees, costs and expenses incurred in connection with negotiating and drafting this Liquidation Trust Agreement) shall be a charge against the Liquidation Trust Assets remaining from time to time in the hands of the Liquidation Trustee, and such fees, costs, and expenses shall be satisfied in full prior to making any distributions to the Liquidation Trust Beneficiaries.

3.13 Reliance by Liquidation Trustee.

(a) The Liquidation Trustee may rely, and shall be protected in acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by the Liquidation Trustee to be genuine and to have been signed or presented by the proper party or parties; and

(b) Entities dealing with the Liquidation Trustee shall look only to the Liquidation Trust Assets to satisfy any liability incurred by the Liquidation Trust or the Liquidation Trustee to such Entities in carrying out the terms of this Liquidation Trust Agreement, and the Liquidation Trustee shall not have any personal obligation to satisfy any such liability.

3.14 Investment and Safekeeping of Liquidation Trust Assets.

The Liquidation Trustee may invest all Liquidation Trust Assets only in cash, cash equivalents, U.S. Treasury securities, money market investments, and similar investments; provided, however, that the scope of any such permissible investments shall be limited to include only those investments, or shall be expanded to include any additional investments, as the case may be, that a Liquidation Trust within the meaning of Treasury Regulation Section 301.7701-4(d) may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the guidelines of the IRS, whether set forth in IRS rulings, other IRS pronouncements or otherwise.

ARTICLE 4

TAX MATTERS

4.1 Tax Reporting.

(a) Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including receipt by the Liquidation Trustee of a private letter ruling, or the receipt of an adverse determination by the IRS upon audit if not contested by the Liquidation Trustee) and this Section 4.1, the Liquidation Trust shall be treated as a “**Liquidation Trust**” within the meaning of Treasury Regulation Section 301.7701-4(d) and thus as a “**grantor trust**” within the meaning of Sections 671 through 679 of the IRC, and all parties to the Liquidation Trust (including, without limitation, the Liquidation Trustee, the Debtors, the Reorganized Debtors, and the Liquidation Trust Beneficiaries) shall report consistently therewith for U.S. federal income tax purposes. Accordingly, for U.S. federal income tax purposes, the Liquidation Trust Assets shall be treated by all parties as having been distributed (subject to any obligations relating to such assets) by the Debtors to the Liquidation Trust Beneficiaries (other than any assets allocable to the Disputed GUC Reserve) pursuant to the Plan. Accordingly, the Liquidation Trust Beneficiaries shall be treated for U.S. federal income tax purposes as the grantors and owners of their respective share of the Liquidation Trust Assets (other than such Liquidation Trust Assets that are allocable to the Disputed GUC Reserve).

(b) As soon as practicable after the Effective Date, (i) the Liquidation Trustee shall determine the fair market value as of the Effective Date of all Liquidation Trust Assets, and such determined fair market value shall be used consistently by all parties to the Liquidation Trust Agreement for all U.S. federal income tax purposes, and (ii) the Liquidation Trustee shall make such valuation available from time to time to all parties to the Liquidation Trust Agreement, to the extent relevant to such parties for tax purposes.

(c) The Liquidation Trustee shall file returns for the Liquidation Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a) and in accordance with this Article 5. The Liquidation Trustee shall, in his discretion, make any applicable tax elections on behalf of the Liquidation Trust. The Liquidation Trustee shall annually send to each Liquidation Trust Beneficiary a separate statement setting forth such Liquidation Trust Beneficiary’s share of items of income, gain, loss, deduction, or credit, in accordance with applicable Treasury Regulations and Rev. Proc. 94-45, 1994-2 C. B. 684, file (or cause to be filed) any other statements, returns (including any information returns) or disclosures relating to the Liquidation Trust that is required by any governmental authority or applicable law, and pay taxes, if any, properly payable by the Liquidation Trust.

(d) Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the receipt by the Liquidation Trustee of a private letter ruling if the Liquidation Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Liquidation Trustee), the Liquidation Trustee may, in its sole discretion, (i) timely elect to treat any Liquidation Trust Assets allocable to, or retained on account of, the Disputed GUC Reserve, as a “**disputed ownership fund**” governed by Treasury Regulation Section 1.468B-9, and (ii) to the extent permitted by applicable law, report consistently

with the foregoing for state and local income tax purposes. All parties to the Liquidation Trust Agreement shall report for U.S. federal, state and local income tax purposes consistently with the foregoing.

(e) The Liquidation Trustee may request an expedited determination of taxes of the Liquidation Trust, including the Disputed GUC Reserve, under Section 505(b) of the Bankruptcy Code for all tax returns filed for, or on behalf of, the Liquidation Trust for all taxable periods through the dissolution of the Liquidation Trust.

4.2 Trust Taxable Income; Allocations.

(a) Subject to Section 4.2(c) hereof, all Liquidation Trust earnings shall be taxable to the Liquidation Trust Beneficiaries.

(b) Subject to Section 4.2(c) hereof, allocations of Liquidation Trust taxable income shall be determined by reference to the manner in which an amount of cash equal to such taxable income would be distributed if, immediately prior to such deemed distribution, the Liquidation Trust had distributed all of its other assets (valued for this purpose at their tax book value) to the Liquidation Trust Beneficiaries, taking into account all prior and concurrent distributions from the Liquidation Trust (including all distributions held in the Disputed GUC Reserve). Similarly, taxable loss of the Liquidation Trust will be allocated by reference to the manner in which an economic loss would be borne immediately after a liquidating distribution of the Liquidation Trust. The tax book value of the Liquidation Trust Assets for this purpose shall equal their fair market value upon the Effective Date, adjusted in either case in accordance with tax accounting principles prescribed by the IRC, the regulations and other applicable administrative and judicial authorities and pronouncements.

(c) The Liquidation Trustee shall be responsible for causing the Liquidation Trust to pay, out of the Liquidation Trust Assets, any taxes imposed on the Liquidation Trust or its assets, including the Disputed GUC Reserve (in the latter instance, first out of any Cash allocable to, or retained on account of, the Disputed General Unsecured Claim to which such tax relates), including any income that may arise upon the distribution of the assets from the Disputed GUC Reserve. In the event, and to the extent, any Cash retained on account of a Disputed General Unsecured Claim is insufficient to pay the portion of any such taxes attributable to the taxable income arising from the assets allocable to, or retained on account of such claim such that such portion of the taxes is paid (in whole or in part) from other available Cash, such other cash sources shall be (i) reimbursed from any subsequent Cash amounts retained on account of such claim, or (ii) to the extent such claim has subsequently been resolved, deducted from any amounts otherwise distributable by the Liquidation Trustee as a result of the resolution of such claim.

4.3 Withholding.

The Liquidation Trustee may withhold and pay to the appropriate taxing authority all amounts required to be withheld pursuant to the IRC or any provision of any foreign, state, or local tax law with respect to any payment or distribution by the Liquidation Trust to or any amounts received or earned by the Liquidation Trust distributable or allocable to the Liquidation Trust Beneficiaries (including beneficiaries that are not “**United States persons**” within the meaning of

the IRC). The Liquidation Trustee may effect any withholding with respect to a Liquidation Trust Beneficiary by reducing the amount currently or subsequently distributable to such beneficiary by the amount withheld. All such amounts withheld from distributions and paid to the appropriate taxing authority shall be treated as amounts distributed to such Liquidation Trust Beneficiaries for all purposes of this Liquidation Trust Agreement.

ARTICLE 5

DISTRIBUTIONS

5.1 Allocation of Liquidation Trust Assets.

(a) After payment of Liquidation Trust Expenses and reserving funds for the Liquidation Trust Expense Fund and the Disputed GUC Reserve, distributions from the Liquidation Trust shall be made from the Liquidation Trust's Cash on hand, including Cash from: (i) the successful prosecution or settlement of any Causes of Action (other than Retained Causes of Action); (ii) the Johnson Interpleaded Funds; (iii) the Channelview Retainage; (iv) the Geismar VI Retainage; and (v) liquidation of the New Equity Interests; provided, however, that such liquidation is contingent on the adjudication by Final Order, or other resolution or compromise, of the pending Committee Litigation against Brandon Steele in favor of the Liquidation Trust, resulting in the New Equity Interests, then held in escrow, in accordance with the Plan and this Liquidation Trust Agreement, becoming non-contingent and no longer subject to such escrow and the occurrence of a Post-Effective Date Equity Distribution in favor of the Liquidation Trust; and provided, further, that the Liquidation Trustee is authorized to distribute to creditors (x) the initial Liquidation Trust payment; (y) the subsequent Liquidation Trust payments and (z) any funds that cannot be delivered as set forth in Section 5.5 of this Liquidation Trust Agreement.

(b) Distributions of the Johnson Interpleaded Funds, the Channelview Retainage, and the Geismar VI Retainage may only be made in accordance with the treatment set forth in Article III.C of the Plan to those certain Liquidation Trust Beneficiaries who are Holders of Allowed Claims in Classes 4, 5 and 6, respectively. Holders of Allowed General Unsecured Claims in Class 7 shall not be entitled to share in the distributions of the Johnson Interpleaded Funds, Channelview Retainage, or Geismar VI Retainage unless Cash from such funds remains after satisfaction of liens and other Claims, against such Funds or Retainage, in accordance with applicable law and lien priority as of the Petition Date.

(c) Distributions to Liquidation Trust Beneficiaries who are Holders of Allowed Claims in Class 7 shall be made in accordance with the following priorities: (i) payment of the Liquidation Trustee's compensation, pursuant to Section 3.12; (ii) the reimbursable expenses of the Liquidation Trustee; and (iii) the payment of Allowed Class 7 Claims in an amount in Cash equal to the respective Holder's Pro Rata share of the Liquidation Trust Assets.

5.2 Distribution Record Date.

As of the close of business on the Distribution Record Date, the various transfer registers for each of the Classes of Claims or Interests as maintained by the Debtors or their respective agents shall be closed, and the Debtors or their respective agents shall not be required

to make any further changes in the record holders of any of the Claims or Interests. The Debtors or the Liquidation Trustee (as applicable) shall have no obligation to recognize any transfer of the Claims or Interests occurring on or after the Distribution Record Date. The Liquidation Trustee shall be entitled to recognize and deal for all purposes hereunder only with those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date, to the extent applicable.

5.3 Delivery of Distributions in General.

Except as otherwise provided herein, the Plan, or the Confirmation Order, the Liquidation Trustee shall make distributions to Holders of Allowed Claims in Classes 4, 5, 6 and 7 as of the Distribution Record Date at the address for each such Holder as indicated in the Debtors' records as of the date of any such distribution; provided, however, that the manner of such distributions shall be determined at the discretion of the Liquidation Trustee; provided further, however, that the address for each Holder of an Allowed Claim shall be deemed to be the address set forth in any Proof of Claim Filed by that Holder.

5.4 Minimum Distributions.

To the extent Cash is distributed under the Plan, no Cash payment of less than \$50.00 shall be made to a Holder of an Allowed Claim on account of such Allowed Claim, and such amounts shall be retained by the Liquidation Trust. In the event that the Liquidation Trust retains Cash pursuant to this Section 5.4 that would otherwise be distributed, such amount shall be accounted for and distributed at a later date, should such distribution then due such Holder, including the retained amount, equal or exceed \$50.00. No interest shall accrue, for the benefit of the holder of such Allowed Claim, on such retained amount.

5.5 Undeliverable Distributions and Unclaimed Property.

In the event that any distribution to any Holder of an Allowed Claim is returned as undeliverable, no distribution to such Holder shall be made unless and until the Debtors or Liquidation Trustee (as applicable) have reasonably attempted to determine the then-current address of such Holder, at which time such distribution shall be made to such Holder without interest; provided, however, that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of one (1) year from the Effective Date. After such date, all unclaimed property or interests in property shall revert to the Liquidation Trust automatically and without need for a further order by the Bankruptcy Court (notwithstanding any applicable federal, provincial or state escheat, abandoned, or unclaimed property laws to the contrary), and the Claim to such property or Interest in property shall be discharged and forever barred.

5.6 Manner of Payment.

Any distribution under the Plan to Holders of Allowed Claims shall be made in Cash. At the option of the Liquidation Trustee, as applicable, any Cash payment to be made hereunder may be made by check or wire transfer, in the discretion of the Liquidation Trustee.

5.7 Distributions to Holders of Disputed Claims.

Except as otherwise provided in the Plan, distributions on account of Disputed Claims shall be withheld by the Liquidation Trustee until such Claims have been either Allowed or Disallowed. To the extent a Disputed Claim becomes Allowed, the distribution reserved for such Claim shall be distributed to the Holder thereof as soon as practicable in accordance with the Plan and the Liquidation Trust Agreement. To the extent a Disputed Claim becomes Disallowed, the distribution reserved for such Claim shall revert to the Liquidation Trust automatically and without need for a further order by the Bankruptcy Court.

5.8 Allocations.

Distributions with respect to Allowed Claims shall be allocated first to the principal amount of such Claims (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claims, to any portion of such Claims for accrued but unpaid interest.

5.9 No Post-Petition Interest on Claims.

Unless otherwise specifically provided for in the Plan or the Confirmation Order, or required by applicable bankruptcy and non-bankruptcy law, post-petition interest shall not accrue or be paid on any prepetition Claims against the Debtors, and no Holder of a prepetition Claim against either Debtor shall be entitled to interest accruing on or after the Petition Date on any such prepetition Claim.

5.10 Foreign Currency Exchange Rate.

Except as otherwise provided in a Bankruptcy Court order, as of the Effective Date, any Claim asserted in currency other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency as published in The Wall Street Journal, National Edition, on the Petition Date.

5.11 Setoffs and Recoupments.

The Liquidation Trust may, but shall not be required to, set off or recoup against any Claim, and any distribution to be made on account of such Claim, any and all claims, rights, causes of action, and Causes of Action (other than Retained Causes of Action) of any nature whatsoever that the Debtors or the Liquidation Trust may have (as successor to the Debtors) against the Holder of such Claim pursuant to the Bankruptcy Code or applicable non-bankruptcy law; provided that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Liquidation Trust of any claims, rights, causes of action, or Causes of Action (other than Retained Causes of Action), the Liquidation Trust may possess against the Holder of such Claim.

5.12 Claims Paid by Third Parties.

The Liquidation Trustee shall reduce in full (or partially, as applicable) a Claim in Classes 4, 5, 6, and 7, and such Claim shall be disallowed without a Claim objection having to be

Filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment in full or partial, on account of such Claim from a party that is not the Debtors, Reorganized Debtors or Liquidation Trustee. Subject to the last sentence of this paragraph, to the extent a Holder of a Claim receives a distribution under the Plan on account of such Claim and receives payment from a third party that is not the Debtors, Reorganized Debtors or Liquidation Trustee on account of such Claim, such Holder shall, within fourteen (14) days of receipt thereof, repay or return the distribution received from the Reorganized Debtors or the Liquidation Trustee, as applicable, to the extent the Holder's total recovery exceeds the amount such Holder was entitled to receive under the Plan on account of the Claim. The failure of such Holder to timely repay or return such distribution shall result in the Holder owing the applicable Reorganized Debtor or the Liquidation Trust annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the 14-day grace period specified above until the amount is repaid.

5.13 Applicability of Insurance Policies.

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

5.14 Withholding and Reporting Requirements.

(a) In connection with the Plan, any party issuing any instrument or making any distribution described in the Plan shall comply with all applicable withholding and reporting requirements imposed by any federal, state, or local taxing authority, and all distributions pursuant to the Plan and all related agreements shall be subject to any such withholding or reporting requirements. In the case of a non-Cash distribution that is subject to withholding, the distributing party may withhold an appropriate portion of such distributed property and either (i) sell such withheld property to generate Cash necessary to pay over the withholding tax (or reimburse the distributing party for any advance payment of the withholding tax), or (ii) pay the withholding tax using its own funds and retain such withheld property. Any amounts withheld pursuant to the preceding sentence shall be deemed to have been distributed to and received by the applicable recipient for all purposes of the Plan. Notwithstanding the foregoing, any Entity that receives a distribution hereunder shall have responsibility for any taxes imposed by any governmental unit, including, without limitation, income, withholding, and other taxes, on account of such distribution. The Liquidation Trustee shall have the right, but not the obligation, to not make a distribution until such recipient has made arrangements satisfactory to such issuing or disbursing party for payment of any such tax obligations.

(b) Any party entitled to receive any property as an issuance or distribution hereunder shall, upon request, deliver to the Liquidation Trust an appropriate Form W-9 or (if the payee is a foreign Entity) Form W-8. If such request is made by the Liquidation Trustee and the holder fails to comply before the earlier of (i) the date that is one hundred and eighty (180) days after the request is made and (ii) the date that is one hundred and eighty (180) days after the date

of distribution, the amount of such distribution shall irrevocably revert to the applicable Liquidation Trust and any Claim or Liquidation Trust Interest in respect of such distribution shall be discharged and forever barred from assertion against the Liquidation Trust or the Liquidation Trust Assets.

ARTICLE 6

PROCEDURES FOR DISPUTED CLAIMS

6.1 Rights of the Liquidation Trustee.

Except as otherwise specifically provided in the Plan or Liquidation Trust Agreement, after the Effective Date, the Liquidation Trustee, with respect to all Claims in Classes 3, 4, 5, 6, and 7, shall have authority (and exclusive authority with respect to all Claims in Classes 4, 5, 6, and 7) to: (i) File, withdraw, or litigate to judgment, objections to Claims; (ii) settle or compromise any Disputed Claim (x) for settlements resulting in an Allowed Claim in an amount of less than \$100,000, without any further notice to or action, order, or approval by the Bankruptcy Court and (y) for settlements resulting in an Allowed Claim equal to and greater than \$100,000, with fourteen (14) calendar days negative notice via the Bankruptcy Court's CM/ECF system, and Bankruptcy Court approval if a timely objections is Filed; and (iii) administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court. After the Effective Date, the Liquidation Trustee shall have and retain any and all rights and defenses the Debtors had with respect to any Claims in Classes 3, 4, 5, 6 and 7 immediately prior to the Effective Date.

6.2 Estimation of Claims.

After the Effective Date, the Liquidation Trustee may, with respect to Claims in Classes 4, 5, 6 and 7, at any time request that the Bankruptcy Court estimate any Disputed Claim that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim, including during the litigation of any objection to any Claim and any appeal relating to such objection.

6.3 Objections to Claims.

Except as otherwise specifically provided in the Plan, any objections to Claims shall be Filed on or before the later of: (i) one hundred twenty (120) days after the Effective Date, or (ii) such other period of limitation as may be specifically fixed by a Final Order of the Bankruptcy Court for objecting to such Claims.

6.4 No Distributions Pending Allowance.

If any objection to a Claim or portion thereof is Filed as set forth in Article VII.D of the Plan, no payment or distribution provided under the Plan shall be made on account of such Claim or portion thereof unless and until such Disputed Claim becomes an Allowed Claim.

6.5 Distributions After Allowance.

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions (if any) shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Plan. As soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the Liquidation Trustee shall provide to the Holder of such Claim the distribution (if any) to which such Holder is entitled under the Plan as of the Effective Date, without any interest, dividends, or accruals to be paid on account of such Claim.

ARTICLE 7

STANDARD OF CARE; EXCULPATION; INDEMNIFICATION

7.1 Standard of Care; Exculpation.

(a) To the fullest extent permitted by applicable law, none of the Liquidation Trustee, or his/her respective directors, shareholders, officers, employees, agents, attorneys, affiliates, members, advisors or other professionals, shall be liable for any damages arising out of the creation, operation or termination of the Liquidation Trust, including actions taken or omitted in fulfillment of duties with respect to the Liquidation Trust, except in the case of such Entity's willful misconduct, intentional fraud, or knowing violation of law as determined by a Final Order; provided, that in no event will any such Entity be liable for indirect, punitive, incidental, exemplary, consequential or special damages (including but not limited to lost profits) under any circumstances. In performing his duties under this Liquidation Trust Agreement, the Liquidation Trustee shall have no liability for any action taken in accordance with the advice of counsel, accountants, appraisers and other professionals retained by the Liquidation Trust or the Liquidation Trustee; provided, that, the Liquidation Trustee shall not be under any obligation to consult with attorneys, accountants, financial advisors, or agents, and a good faith determination not to consult with attorneys, accountants, financial advisors, or other agents shall not result in the imposition of liability on the Liquidation Trustee. None of the provisions of this Liquidation Trust Agreement shall require the Liquidation Trustee to expend or risk his own funds or otherwise incur personal financial liability in the performance of any of his duties hereunder or in the exercise of any of his rights and powers. Notwithstanding the foregoing, nothing in this Section shall relieve the Liquidation Trustee from any liability for any actions or omissions arising out of his willful misconduct, intentional fraud, or knowing violation of law; provided that in no event will the Liquidation Trustee be liable for indirect, punitive, incidental, exemplary, consequential, or special damages (including but not limited to lost profits) under any circumstances.

(b) The Liquidation Trustee shall not be subject to any personal liability whatsoever, whether in tort, contract, or otherwise, to any Entity in connection with the creation, operation, or termination of the Liquidation Trust to the fullest extent permitted under applicable law, and all Entities claiming against the Liquidation Trustee, or otherwise asserting claims of any nature in connection with affairs of the Liquidation Trust, shall look solely to the Liquidation Trust Assets for satisfaction of any such claims, except in the case of such Entity's willful misconduct, intentional fraud, or knowing violation of law as determined by a Final Order; provided, that in no

event will such Entity be liable for indirect, punitive, incidental, exemplary, consequential or special damages (including but not limited to lost profits) under any circumstances.

(c) Except as provided herein, nothing contained in this Liquidation Trust Agreement, the Plan or the Confirmation Order shall be deemed to be an assumption by such Entities referenced in subsection (a) above of any of the liabilities, obligations or duties of the Debtors or shall be deemed to be or contain a covenant or agreement by the Liquidation Trustee to assume or accept any such liability, obligation or duty.

7.2 Fiduciary Duties.

To the extent that, at law or in equity, the Liquidation Trustee has duties (including fiduciary duties) and liabilities relating hereto, to the Liquidation Trust, the Liquidation Trust Beneficiaries, or the Reorganized Debtors, it is hereby understood and agreed by the parties to this Liquidation Trust Agreement and the Liquidation Trust Beneficiaries that such duties and liabilities are eliminated to the fullest extent permitted by applicable law, and replaced by the duties and liabilities expressly set forth in this Liquidation Trust Agreement with respect to the Liquidation Trustee.

7.3 Indemnification of Liquidation Trustee.

(a) To the fullest extent permitted by law, the Liquidation Trust, to the extent of its assets legally available for that purpose, shall defend, indemnify and hold harmless the Liquidation Trustee and each of its/his directors, members, employers, affiliates, shareholders, partners, officers, agents, employees, attorneys, advisors, and other professionals (each, an “**Indemnified Person**”) from and against any and all losses, liabilities, claims, actions, suits, taxes, costs, reasonable and documented out-of-pocket expenses (including, without limitation, fees and expenses of attorneys and other advisors and any court costs incurred by any Indemnified Person) or damage of any kind, type or nature, whether arising in tort, contract or otherwise or liability by reason of or in connection with this Liquidation Trust Agreement, the Liquidation Trust, anything any Indemnified Person did, does, or refrains from doing in connection with the business or affairs of the Liquidation Trust (collectively, “**Losses**”), except to the extent that such Losses resulted primarily from the Indemnified Person’s willful misconduct, intentional fraud, or knowing violation of law as determined by a Final Order. The Liquidation Trust shall pay in advance or reimburse reasonable and documented out-of-pocket expenses (including, without limitation, attorney’s fees and the costs of investigating, preparing, defending or settling such action) incurred by the Indemnified Person who is or is threatened to be named or made a defendant or a respondent in a proceeding by reason of or in connection with this Liquidation Trust Agreement, the Liquidation Trust, anything any Indemnified Person did, does, or refrains from doing in connection with the business or affairs of the Liquidation Trust.

(b) Any Indemnified Person may waive the benefits of indemnification under this Section 7.3, but only by an instrument in writing executed by such Indemnified Person.

(c) The rights to indemnification under this Section 8.3 are not exclusive of other rights which any Indemnified Person may otherwise have at law or in equity, including without limitation common law rights to indemnification or contribution. Nothing in this Section

8.3 will affect the rights or obligations of any Entity (or the limitations on those rights or obligations) under this Liquidation Trust Agreement, or any other agreement or instrument to which that Entity is a party.

ARTICLE 8

TERM; TERMINATION OF LITIGATION TRUST

8.1 Term; Termination of Liquidation Trust.

(a) The Liquidation Trust shall terminate upon the date on which all of the following events have occurred: (i) the Liquidation Trust Assets, including Causes of Action (other than Retained Causes of Action) are fully resolved, abandoned, or liquidated in accordance with the Plan and this Liquidation Trust Agreement; (ii) the Cash proceeds have been completely distributed in accordance with the Plan and this Liquidation Trust Agreement; (iii) all tax returns and any other filings or reports have been filed with the appropriate state or federal regulatory authorities; and (iv) the order closing the Bankruptcy Cases is a Final Order.

(b) Upon the occurrence of each of the foregoing events, the duties, responsibilities and powers of the Liquidation Trustee shall terminate, and the Liquidation Trustee shall be discharged. Except in the circumstances set forth below, the Liquidation Trust shall terminate no later than five (5) years after the Effective Date in accordance with IRS revenue procedures.

(c) The Bankruptcy Court may extend the term of the Liquidation Trust one or more times (not to exceed a total of four extensions, unless the Liquidation Trustee receives a favorable ruling from the IRS that any further extension would not adversely affect the status of the Liquidation Trust as a grantor trust for federal income tax purposes) for a finite period, not to exceed six (6) months per extension, upon a showing of good cause and based on the particular circumstance at issue. Each such extension must be approved by the Bankruptcy Court not less than thirty (30) days prior to the lapse of the term, or extended term, with notice thereof to all of the unpaid Liquidation Trust Beneficiaries. Failure to timely File a request for extension with the Bankruptcy Court shall result in dissolution, rather than automatic termination, and the Liquidation Trustee shall have such “wind-up” powers, both express and implied, as are necessary to, inter alia, (i) continue prosecuting any Causes of Action (other than Retained Causes of Action); (ii) continue Claim administration responsibilities set forth in Article VII.A.2 of the Plan; and (iii) distribute the Cash proceeds of the Liquidation Trust Assets in a manner consistent with the Plan and this Liquidation Trust Agreement. In no event shall the Liquidation Trust Beneficiaries be entitled to receive in-kind distributions from the Liquidation Trust.

(d) If at any time the Liquidation Trustee determines that the anticipated expense of administering the Liquidation Trust so as to make a distribution to the Liquidation Trust Beneficiaries is likely to exceed the value of the assets remaining in the Liquidation Trust, the Liquidation Trustee may apply to the Bankruptcy Court for authority to (i) reserve any amount necessary to dissolve the Liquidation Trust, (ii) donate any balance to a charitable organization (A) described in Section 501(c)(3) of the IRC, (B) exempt from U.S. federal income tax under Section 501(a) of the IRC, and (C) that is not a “**private foundation**”, as defined in Section 509(a)

of the IRC, and (iii) dissolve the Liquidation Trust. Upon receipt of such authority from the Bankruptcy Court, the Liquidation Trustee shall notify each Liquidation Trust Beneficiary.

8.2 Continuance of Trust for Winding Up.

After the dissolution of the Liquidation Trust and for the purpose of litigation and winding up the affairs of the Liquidation Trust, the Liquidation Trustee shall continue to act as such until his duties have been fully performed. Prior to the final distribution of all of the remaining Liquidation Trust Assets, the Liquidation Trustee shall be entitled to reserve from such assets any and all amounts required to provide for the Liquidation Trust Expenses, until such time as the winding up of the Liquidation Trust is completed. Except as otherwise specifically provided herein, upon the termination of the Liquidation Trust, and the Liquidation Trustee shall have no further duties or obligations hereunder.

ARTICLE 9

AMENDMENT AND WAIVER

9.1 Amendment and Waiver.

(a) With consent of the Reorganized Debtors, the Liquidation Trustee may amend, supplement or waive any non-material provision of, this Liquidation Trust Agreement, without approval of the Bankruptcy Court or the consent of any Liquidation Trust Beneficiary: (i) to cure any ambiguity, omission, defect or inconsistency in this Liquidation Trust Agreement provided that such amendments, supplements or waivers shall not contravene or otherwise be inconsistent with the terms of the Plan and the Confirmation Order, adversely affect the distributions to be made or other rights under this Liquidation Trust Agreement to any of the Liquidation Trust Beneficiaries, or adversely affect the U.S. federal income tax status of the Liquidation Trust as a “**Liquidation Trust**”; (ii) to comply with any requirements in connection with the U.S. federal income tax status of the Liquidation Trust as a “Liquidation Trust”; (iii) to comply with any requirements in connection with maintaining that the Liquidation Trust is not subject to registration or reporting requirements of the Exchange Act or the Investment Company Act; (iv) to make the Liquidation Trust a reporting entity and, in such event, to comply with any requirements of the Exchange Act or the Investment Company Act; and (v) to evidence and provide for the acceptance of appointment hereunder by a successor trustee in accordance with the terms of this Liquidation Trust Agreement.

(b) In the event that the Reorganized Debtors do not consent pursuant to subsection (a) above, then upon fourteen (14) calendar days’ negative notice, *via* the Bankruptcy Courts, CM/ECF system, and an opportunity to object, and upon order of the Bankruptcy Court, the Liquidation Trustee may amend, supplement or waive any provision of this Liquidation Trust Agreement.

ARTICLE 10

MISCELLANEOUS PROVISIONS

10.1 Intention of Parties to Establish a Liquidation Trust.

This Liquidation Trust Agreement is intended to create a “**Liquidation Trust**” for U.S. federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a trust and any ambiguity herein shall be construed consistent herewith and, if necessary, this Liquidation Trust Agreement may be amended in accordance with Section 9.1 hereof to comply with such U.S. federal income tax laws, which amendments may apply retroactively.

10.2 Reimbursement of Trust Litigation Costs.

If the Liquidation Trustee or the Liquidation Trust is the prevailing party in a dispute regarding the provisions of this Liquidation Trust Agreement or the enforcement thereof, the Liquidation Trustee or the Liquidation Trust shall be entitled to collect any and all costs, reasonable and documented out-of-pocket expenses and fees, including attorneys’ fees, from the non-prevailing party (other than the Liquidation Trustee) incurred in connection with such dispute or enforcement action. To the extent that the Liquidation Trust has advanced such amounts, the Liquidation Trust may recover such amounts from the non-prevailing party if such non-prevailing party is not entitled to indemnification therefor.

10.3 Laws as to Construction.

This Liquidation Trust Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to whether any conflicts of law would require the application of the law of another jurisdiction.

10.4 Jurisdiction.

Without limiting any Entity’s right to appeal any order of the Bankruptcy Court or to seek withdrawal of the reference with regard to any matter, (i) the Bankruptcy Court and the courts of the State of Texas shall each have jurisdiction to enforce the terms of this Liquidation Trust Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Liquidation Trust Agreement, any breach or default hereunder, or the transactions contemplated hereby, and (ii) any and all actions related to the foregoing shall be filed and maintained only in the Bankruptcy Court or the courts of the State of Texas, and the parties, including the Liquidation Trust Beneficiaries hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and the courts of the State of Texas.

10.5 Severability.

If any provision of this Liquidation Trust Agreement or the application thereof to any Entity or circumstance shall be finally determined by a court of competent jurisdiction to be invalid, or unenforceable to any extent, the remainder of this Liquidation Trust Agreement, or the application of such provision to Entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Liquidation Trust Agreement shall be valid and enforced to the fullest extent permitted by law.

10.6 Notices.

Notwithstanding the following paragraph, in all events, any notice or obligation of the Liquidation Trustee to notify the Liquidation Trust Beneficiaries shall be made by the Bankruptcy Court's CM/ECF system only. It shall be incumbent upon Liquidation Trust Beneficiaries to assure that their CM/ECF notice information is correct thereon.

Other than as provided in the preceding paragraph or as specifically provided elsewhere in this Liquidation Trust Agreement, all notices, requests or other communications to the parties hereto shall be in writing and shall be sufficiently given only if: (i) sent by electronic mail; (ii) delivered in person; (iii) sent by registered or certified mail, return receipt requested; (iv) sent by the Bankruptcy Court's CM/ECF system; or (v) sent by commercial delivery service or courier; provided, however, that the parties agree to use reasonable efforts to send all notices, requests, and other communications by electronic mail unless it is otherwise impractical or burdensome to do so. Until a change of address is communicated, as provided below, all notices, requests and other communications shall be sent to the parties at the addresses below. With respect to all notices, requests or other communications to the Liquidation Trustee, notice shall be sufficiently given only if separate notice is transmitted to each of the individual notice parties, as provided below.

If to the Liquidation Trustee, to:

Michael D. Warner, Esq.
Cole Schotz, P.C.
301 Commerce Street, Suite 1700
Fort Worth, TX 76102
mwarner@coleschotz.com

All notices shall be effective and shall be deemed delivered: (i) if by personal delivery, delivery service or courier, on the date of delivery; (ii) if by electronic mail on the date of receipt; (iii) if by the Bankruptcy Court's CM/ECF System on the date the notice/pleading appears on the Bankruptcy Court's Docket; and (iii) if by mail, on the date of receipt. Any party from time to time may change its address, electronic mail address, or other information for the purpose of notices to that party by giving notice specifying such change to the other party hereto and by filing on the Bankruptcy Court's CM/ECF System.

10.7 Fiscal Year.

The fiscal year of the Liquidation Trust will begin on the first day of January and end on the last day of December of each year.

10.8 Headings.

The section headings contained in this Liquidation Trust Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Liquidation Trust Agreement or of any term or provision hereof.

10.9 Counterparts.

This Liquidation Trust Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original instrument, but all together shall constitute one agreement.

10.10 Confidentiality.

The Liquidation Trustee and each successor (each a “**Covered Person**”) shall, during the period that they serve in such capacity under this Liquidation Trust Agreement and following either the termination of this Liquidation Trust Agreement or such individual’s removal, incapacity, or resignation hereunder, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any entity to which any of the Liquidation Trust Assets relates or of which it has become aware in its capacity (the “**Information**”), except to the extent disclosure is required by applicable law, order, regulation or legal process. In the event that any Covered Person is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigation, demand or similar legal process) to disclose any Information, such Covered Person will furnish only that portion of the Information, which the Covered Person, advised by counsel, is legally required to and exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Information.

10.11 Entire Agreement.

This Liquidation Trust Agreement (including the Recitals), the Confirmation Order, and the Plan (including any documents ancillary thereto) constitute the entire agreement by and among the parties hereto with respect to the subject matter hereof, and there are no representations, warranties, covenants or obligations except as set forth herein or therein. This Liquidation Trust Agreement and the Plan supersede all prior and contemporaneous agreements, understandings, negotiations, discussions, written or oral, of the parties hereto, relating to any transaction contemplated hereunder. Except as otherwise specifically provided herein, the Confirmation Order, or in the Plan, nothing in this Liquidation Trust Agreement is intended or shall be construed to confer upon or to give any person other than the parties thereto and their respective heirs, administrators, executors, successors, or assigns any right to remedies under or by reason of this Liquidation Trust Agreement.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have either executed and acknowledged this Liquidation Trust Agreement or caused it to be executed and acknowledged on their behalf by their duly authorized officers, with an Effective Date of this Liquidation Trust Agreement, as defined above.

**KP ENGINEERING, LP AND KP
ENGINEERING, LLC**

By: _____
Name:
Title:

THE COMMITTEE:

By:
Title: Its Chairperson

THE LIQUIDATION TRUSTEE:

Michael D. Warner

Schedule A

Trustee Compensation Schedule

The Liquidation Trustee, Michael D. Warner, will be compensated at the initial hourly rate of \$775; with such rate to increase, no more than 7.5% on the commencement of each new calendar year. Such hourly rate, will be exclusive of the reimbursement of all costs and expenses reasonably incurred, without markup.