

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

In re EXPRESS ENERGY SERVICES OPERATING, LP, et al., Debtors.	§ § § § § § § § §	Chapter 11 Case No. 09-38044 Jointly Administered
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**NOTICE OF FILING OF “CLEAN” AND “BLACK-LINED” VERSIONS OF
THE DEBTORS’ JOINT PLAN OF REORGANIZATION UNDER
CHAPTER 11 OF THE BANKRUPTCY CODE DATED AS OF NOVEMBER 3, 2009**

PLEASE TAKE NOTICE that on October 27, 2009, Express Energy Services Operating, LP and certain of its affiliated debtors, as debtors in possession (collectively, the “**Debtors**”), filed a Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated as of October 27, 2009 [Docket No. 17] (the “**Original Plan**”).

PLEASE TAKE FURTHER NOTICE that, on November 3, 2009, the Debtors updated the case caption and date reflected in the Original Plan (the “**November Plan**”).

PLEASE TAKE FURTHER NOTICE that attached hereto as **Exhibit A** is a copy of the November Plan and attached hereto as **Exhibit B** is a “black-line” comparing the November Plan against the Original Plan.

Dated: December 2, 2009
Houston, Texas

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Debtors in Possession

EXHIBIT A

PLAN DATED AS OF NOVEMBER 3, 2009

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

	§	
	§	
In re	§	Chapter 11
	§	
EXPRESS ENERGY SERVICES	§	
OPERATING, LP, et al.,	§	Case No. 09-38044
	§	
	§	
Debtors.	§	
	§	
	§	
	§	Jointly Administered

**DEBTORS' JOINT PLAN OF REORGANIZATION
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE
DATED AS OF NOVEMBER 3, 2009**

Express Energy Services Operating, LP; Express Energy Services (2008) LLC; Express Energy Services Holding, LP; Express Energy Services GP, LLC; Express Energy Services CT, LP; Express Energy Services Ark, LP; Express Energy Services P&A, LP; Express Energy Services WL, LP; Express – Byrd R&S GP, LLC; Express – Byrd R&S Oilfield Services, L.P.; Express – MBCC GP, LLC; Express – MBCC, Ltd.; Express – Mike Byrd Casing Crews GP, LLC; Express – Mike Byrd Casing Crews, Ltd.; Express – R&S Tong Services GP, LLC; Express – R&S Tong Services, Ltd.; Express – BAH Leasing GP, LLC; Express – BAH Leasing, Ltd.; D&D Tongs GP, LLC; D&D Tongs, L.P.; Express – North Trail Oilfield Services, GP, LLC; Express – North Trail Oilfield Services, Ltd.; Express Ace Rat Hole Service GP, LLC; and Express – Ace Rat Hole Service, Ltd. propose the following joint chapter 11 plan of reorganization pursuant to section 1121(a) of the Bankruptcy Code:

**ARTICLE I
DEFINITIONS AND INTERPRETATION**

A. Definitions.

The following terms used herein shall have the respective meanings set forth below:

1.1 **Agent** means Credit Suisse, Cayman Islands Branch, as administrative and collateral agent under the Senior Secured Credit Agreement.

1.2 **Agent's Professionals** means Akin Gump Strauss Hauer & Feld LLP.

1.3 **Administrative Expense Claim** means any right to payment constituting a cost or expense of administration of the Reorganization Cases Allowed under sections 330, 503(b), 507(a)(2) and 507(b) of the Bankruptcy Code, including, without limitation, (a) any actual and necessary costs and expenses of preserving the Debtors' estates, (b) any actual and necessary costs and expenses of operating the Debtors' businesses, (c) any indebtedness or obligations incurred or assumed by the Debtors in Possession during the Reorganization Cases and (d) any compensation for professional services rendered and reimbursement of expenses incurred. Any fees or charges assessed against the estates of the Debtors under section 1930 of chapter 123 of title 28 of the United States Code is excluded from the definition of Administrative Expense Claim and shall be paid in accordance with section 13.7 of the Plan.

1.4 **Affiliate** has the meaning set forth in section 101(2) of the Bankruptcy Code.

1.5 **Allowed** means, with reference to any Claim against the Debtors, (a) any Claim against any Debtor that has been listed by such Debtor in its Schedules (as such Schedules may be amended by the Debtors from time to time in accordance with Bankruptcy Rule 1009) as liquidated in amount and not Disputed or Contingent and for which no contrary proof of Claim has been filed or no timely objection to allowance or request for estimation has been interposed, (b) any timely filed proof of Claim as to which no objection has been or is interposed in accordance with section 7.1 of the Plan or such other applicable period of limitation fixed by the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules or the Bankruptcy Court or as to which any objection has been determined by a Final Order to the extent such objection is determined in favor of the respective holder of such Claim, (c) any Claim expressly allowed by a Final Order or under the Plan, (d) any Claim that is compromised, settled or otherwise resolved pursuant to the authority granted to the Reorganized Debtors pursuant to a Final Order of the Bankruptcy Court or under section 11.8 of the Plan; *provided, however*, that Claims allowed solely for the purpose of voting to accept or reject the Plan pursuant to an order of the Bankruptcy Court shall not be considered "Allowed Claims." Unless otherwise specified in the Plan or by order of the Bankruptcy Court, "Allowed Administrative Expense Claim" or "Allowed Claim" shall not, for any

purpose under the Plan, include interest on such Claim from and after the Commencement Date.

1.6 **Allowed Senior Secured Claim** means the Allowed Claim of the Senior Secured Lenders under the Senior Credit Agreement in the amount of \$330.13 million.

1.7 **Answer and Counterclaim** means the Original Answer and Counterclaim dated September 21, 2009 filed by Express and Express 2008 in connection with the Brewer Lawsuit.

1.8 **Ballot** means the form distributed to each holder of an impaired Claim that is entitled to vote to accept or reject the Plan on which is to be indicated an acceptance or rejection of the Plan.

1.9 **Bankruptcy Code** means title 11 of the United States Code, as amended from time to time.

1.10 **Bankruptcy Court** means the United States Bankruptcy Court for the Southern District of Texas, Houston Division, or any other court of the United States having jurisdiction over the Reorganization Cases.

1.11 **Bankruptcy Rules** means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, as amended from time to time.

1.12 **Benefit Plans** means all employee benefit plans, policies and programs sponsored by any of the Debtors, including, without limitation, all medical and health insurance, life insurance, dental insurance, and disability benefits and coverage (as such term is defined in section 1114 of the Bankruptcy Code).

1.13 **Brewer** means Darrell Brewer.

1.14 **Brewer Lawsuit** means the Original Petition styled *Darrell Brewer v. Express Energy Services Operating, LP and Express Energy Services (2008) LLC* (Cause No. 2009-53824) in the District Court of Harris County, Texas, 125th Judicial District.

1.15 **Business Day** means any day other than a Saturday, Sunday or any other day on which banking institutions in New York, New York are required or authorized to close by law or executive order.

1.16 **Cash** means legal tender of the United States of America.

1.17 **Claim** has the meaning set forth in section 101(5) of the Bankruptcy Code.

1.18 **Class** means a category of holders of Claims or Existing Equity Interests set forth in Article IV of the Plan.

1.19 **Collateral** means any property or interest in property of the estates of the Debtors subject to a Lien, charge or other encumbrance to secure the payment or performance of a Claim, which Lien, charge or other encumbrance is not subject to avoidance or otherwise invalid under the Bankruptcy Code or applicable state law.

1.20 **Commencement Date** means October 27, 2009, the date on which the Debtors commenced their Reorganization Cases.

1.21 **Confirmation Date** means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket.

1.22 **Confirmation Hearing** means the hearing conducted by the Bankruptcy Court pursuant to section 1128(a) of the Bankruptcy Code to consider confirmation of the Plan, as such hearing may be adjourned or continued from time to time.

1.23 **Confirmation Order** means the order of the Bankruptcy Court confirming the Plan.

1.24 **Consenting Lenders** means the Senior Secured Lender parties to the Plan Support Agreement.

1.25 **Consulting Agreement** means the Separation and Consulting Agreement and Release effective as of November 18, 2008 between Express 2008, Express, and Brewer.

1.26 **Contingent Claim** means any Claim, the liability for which attaches or is dependent upon the occurrence or happening of, or is triggered by, an event, which event has not yet occurred, happened or been triggered as of the date on which such Claim is sought to be estimated or an objection to such Claim is filed, whether or not such event is within the actual or presumed contemplation of the holder of such Claim and whether or not a relationship between the holder of such Claim and the applicable Debtor now or hereafter exists or previously existed.

1.27 **Debtors** means each of Express; Express 2008; Express Energy Services Holding, LP; Express Energy Services GP, LLC; Express Energy Services CT, LP; Express Energy Services Ark, LP; Express Energy Services P&A, LP; Express Energy Services WL, LP; Express – Byrd R&S GP, LLC; Express – Byrd R&S Oilfield Services, L.P.; Express – MBCC GP, LLC; Express – MBCC, Ltd.; Express – Mike Byrd Casing Crews GP, LLC; Express – Mike Byrd Casing Crews, Ltd.; Express – R&S Tong Services GP, LLC; Express – R&S Tong Services, Ltd.; Express – BAH Leasing GP, LLC; Express – BAH Leasing, Ltd.; D&D Tongs GP, LLC; D&D Tongs, L.P.; Express – North Trail Oilfield Services, GP, LLC; Express – North Trail Oilfield Services, Ltd.; Express Ace Rat Hole Service GP, LLC; and Express – Ace Rat Hole Service, Ltd.

1.28 **Debtors in Possession** means the Debtors in their capacity as debtors in possession in the Reorganization Cases under sections 1107(a) and 1108 of the Bankruptcy Code.

1.29 **DIP Agent** means the agent under the DIP Facility.

1.30 **DIP Facility** means that postpetition financing revolving credit facility with the DIP Lenders to provide commitments under a debtor-in-possession credit facility in a maximum aggregate principal amount of up to \$20 million on the terms specified in the Term Sheet.

1.31 **DIP Facility Claim** means any Claim or obligation of the Debtors arising under or in connection with the DIP Facility.

1.32 **DIP Lenders** means the lenders party to the DIP Facility.

1.33 **Disbursing Agent** means any entity in its capacity as a disbursing agent.

1.34 **Disclosure Statement** means that certain disclosure statement relating to the Plan, including, without limitation, all exhibits and schedules thereto, as the same may be amended, supplemented or otherwise modified from time to time, as approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code.

1.35 **Disclosure Statement Order** means the order of the Bankruptcy Court preliminarily approving, among other things, the Disclosure Statement and establishing certain procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan.

1.36 **Disputed** means, with reference to any Administrative Expense Claim or Claim, any such Administrative Expense Claim or Claim (a) to the extent neither Allowed nor disallowed under the Plan or a Final Order nor deemed Allowed under section 502, 503 or 1111 of the Bankruptcy Code, (b) which has been or hereafter is listed by a Debtor on its Schedules as Unliquidated, Disputed or Contingent and which has not been resolved by written agreement of the parties or a Final Order, or (c) as to which the Debtors or any other party in interest has interposed a timely objection and/or request for estimation in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules, which objection or request for estimation has not been withdrawn or determined by a Final Order. Prior to the earlier of the time an objection has been timely filed and the expiration of the time within which to object to such Claim set forth herein or otherwise established by order of the Bankruptcy Court, a Claim shall be considered a Disputed Claim to the extent that the amount of the Claim specified in a proof of Claim exceeds the amount of the Claim scheduled by the Debtor as not Disputed, Contingent or Unliquidated.

1.37 **Distribution Date** means a date on which the Disbursing Agent makes a distribution to holders of Allowed General Unsecured Claims.

1.38 **Distribution Pro Rata Share** means, as of any Distribution Date, the ratio (expressed as a percentage) of the amount of an Allowed General Unsecured Claim to the aggregate amount of all Allowed General Unsecured Claims at such date plus the Disputed Claim amount of all remaining Disputed General Unsecured Claims.

1.39 **Distribution Record Date** means the date that is five (5) Business Days from and after the Confirmation Date.

1.40 **Escrow Agreement** means that certain Escrow Agreement dated as of July 11, 2008 by and among Express 2008, Wachovia Capital Partners 2006 LLC, Brewer, Mike Byrd, and JPMorgan Chase Bank, N.A., as escrow agent.

1.41 **Existing Equity Interests** means all instruments evidencing an ownership interest in the Debtors, whether or not transferable, and all options, or rights, contractual or otherwise, to acquire any such interests, all as of the Effective Date.

1.42 **Express** means Express Energy Services Operating, LP.

1.43 **Express 2008** means Express Energy Services (2008) LLC.

1.44 **Effective Date** means a Business Day selected by the Debtors on or after the Confirmation Date, on which (a) no stay of the Confirmation Order is in effect and (b) the conditions precedent to the effectiveness of the Plan specified in section 10.1 of the Plan shall have been satisfied or waived as provided in section 10.2.

1.45 **Exit Facility** means the post-Effective Date credit facility, the material terms of which are set forth as an exhibit to the Plan Supplement and which shall be in form and substance acceptable to the Required Holders.

1.46 **Final Order** means an order or judgment of a court of competent jurisdiction that has been entered on the docket maintained by the clerk of such court and has not been reversed, vacated or stayed and as to which (a) the time to appeal, petition for *certiorari* or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari* or other proceedings for a new trial, reargument or rehearing shall then be pending or, (b) if an appeal, writ of *certiorari*, new trial, reargument or rehearing thereof has been sought, (i) such order or judgment shall have been affirmed by the highest court to which such order was appealed, *certiorari* shall have been denied or a new trial, reargument or rehearing shall have been denied or resulted in no modification of such order and (ii) the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or the Local Bankruptcy Rules, may be filed relating to such order shall not prevent such order from being a Final Order.

1.47 **General Unsecured Claim** means any Claim against the Debtors other than a DIP Facility Claim, Administrative Expense Claim, Priority Tax Claim, Select Priority Claim, Miscellaneous Secured Claim, Senior Secured Claim, or Existing Equity Interest, *provided, however*, unsecured deficiency Claims arising under the Senior Secured Credit Agreement shall not be classified as General Unsecured Claims under this Plan.

1.48 **Indemnity Escrow Account** means Escrow Account No. 000002747920698 established pursuant to the Escrow Agreement.

1.49 **Initial Distribution Date** means a date after the Effective Date that is selected by the Reorganized Debtors in their sole discretion but, in any event, is within one hundred and eighty (180) days after the date of service of notice of the Confirmation Date.

1.50 **Intercompany Claim** means any Claim against any Debtor held by another Debtor.

1.51 **Lien** has the meaning set forth in section 101(37) of the Bankruptcy Code.

1.52 **Local Bankruptcy Rules** means the Local Bankruptcy Rules for the Southern District of Texas, Houston Division, as amended from time to time.

1.53 **Macquarie Group** means Macquarie Capital Group Limited, together with certain of its affiliates and affiliate-managed funds.

1.54 **Miscellaneous Secured Claim** means a Secured Claim other than a Senior Secured Claim.

1.55 **New Equity Units** means the membership interests of Reorganized Express to be authorized and issued on the Effective Date, pursuant to the Plan and as provided in the New LLC Agreement, which shall constitute all of the direct or indirect equity of Reorganized Express subject to dilution by profits interests issued under the Postconfirmation Incentive Plan, and have the terms set forth in the Plan Supplement.

1.56 **New LLC Agreement** means the limited liability agreement of Reorganized Express, dated as of the Effective Date, in substantially the same form set forth in the Plan Supplement.

1.57 **Person** means an individual, partnership, corporation, limited liability company, cooperative, trust, unincorporated organization, association, joint venture, government or agency or political subdivision thereof or any other form of legal entity.

1.58 **Plan** means this Joint Plan of Reorganization, including, without limitation, the exhibits and schedules hereto, as the same may be amended or modified from time to time in accordance with the provisions of the Bankruptcy Code and the terms hereof.

1.59 **Plan Supplement** means the supplement or supplements to the Plan containing certain documents relevant to the implementation of the Plan specified in section 13.6 of the Plan.

1.60 **Plan Support Agreement** means that Plan Support Agreement dated as of October 27, 2009, between the Debtors, the Agent, and the Consenting Lenders.

1.61 **Postconfirmation Board** means the board of managers of Reorganized Express which will be disclosed in the Plan Supplement.

1.62 **Postconfirmation Incentive Plans** means those certain post-Effective Date employee incentive plans to be implemented and which will provide designated employees of Reorganized Express (i) with Membership Interests in Reorganized Express constituting profits interest entitled, in the aggregate, to 10% of all distributions by Reorganized Express at such time as the holders of New Equity Units have received, in the aggregate, cumulative cash distributions equal to \$90 million and (ii) cash bonuses for upon achievement of certain performance goals to be determined by the Reorganized Express board of directors, in each case, as more fully described in the Term Sheet.

1.63 **Postconfirmation Organizational Documents** means each certificate of incorporation, certificate of formation, limited liability company agreement, bylaws, and other organizational documents, including the New LLC Agreement, forms of which shall be included in the Plan Supplement.

1.64 **Priority Tax Claim** means any Claim of a governmental unit of the kind entitled to priority in payment as specified in sections 502(i) and 507(a)(8) of the Bankruptcy Code.

1.65 **Released Parties** means (a) each current and past director, officer, employee, manager, agent, partner, and member of (i) the Debtors, (ii) the holders of Senior Secured Claims, (iii) the holders of Existing Equity Interests, (iv) the Sponsor, (v) the Sponsor Designee Managers, (vi) the Rollover Designee Manager, (vii) the Agent and its Affiliates, (viii) the DIP Agent, and (ix) each DIP Lender; (b) each Sponsor; (c) each current and past Sponsor Designee Manager; (d) each present Rollover Designee Manager; (e) each holder of a Senior Secured Claim; (f) each holder of an Existing Equity Interest; (g) the Agent and its Affiliates; (h) the DIP Agent; (i) each DIP Lender; and (j) each Advisor of the Debtors, the holders of Senior Secured Claims, the holders of Existing Equity Interests, the Sponsor, the Sponsor Designee Managers, the Rollover Designee Managers, the Agent, the DIP Agent, and the DIP Lenders. For purposes of this definition, "**Advisors**" means each financial advisor, investment banker, professional, accountant and attorney, and each of their respective employees, parent corporations, subsidiaries, affiliates and partners. In addition, for purposes of this definition, "**Sponsor**," "**Sponsor Designee Managers**," and "**Rollover Designee Manager**" shall have the meanings ascribed to such terms in the Second Amended and Restated Limited Liability Company Agreement of Express 2008, dated as of November 18, 2008.

1.66 **Reorganization Cases** means the jointly administered cases commenced by the Debtors under chapter 11 of the Bankruptcy Code.

1.67 **Reorganized Debtors** means each of the Debtors as entities on and after the Effective Date.

1.68 **Reorganized Express** means Express on and after the Effective Date.

1.69 **Required Holders** means the holders of a majority in aggregate amount of Allowed Senior Secured Claims.

1.70 **Restructuring Transactions** means the transactions described in section 5.2(a) of the Plan.

1.71 **Schedules** means, collectively, the schedules of assets and liabilities, schedules of current income and expenditures, schedules of executory contracts and unexpired leases and statements of financial affairs filed by the Debtors under section 521 of the Bankruptcy Code, Bankruptcy Rule 1007 and the Official Bankruptcy Forms in the Reorganization Cases, as may have been amended or supplemented through the Confirmation Date pursuant to Bankruptcy Rule 1007.

1.72 **Secured Claim** means any Claim that is 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, in the event that such Claim is subject to a permissible setoff under section 553 of the Bankruptcy Code, to the extent of such permissible setoff.

1.73 **Select Priority Claim** means a Claim entitled to priority in payment as specified in section 507(a)(4), (5), (6) or (7) of the Bankruptcy Code.

1.74 **Senior Secured Claim** means a Claim held by a Senior Secured Lender in an amount equal to all amounts due to such person under any Senior Secured Debt Document including, but not limited to, any Claim in respect of swaps and/or hedge agreements constituting "Secured Obligations" under the Senior Secured Guarantee and Security Agreement.

1.75 **Senior Secured Credit Agreement** means that certain Credit Agreement dated as of July 11, 2008, by and among Express, as borrower, Express 2008, as guarantor, the Agent, and the Senior Secured Lenders listed therein, as the same may be amended from time to time.

1.76 **Senior Secured Debt Documents** means, collectively, the Senior Secured Credit Agreement, the Senior Secured Guarantee and Security Agreement and all other mortgages, agreements, documents and instruments made or executed in connection with or pursuant thereto, including without limitation all deposit account control agreements, financing statements and other security agreements.

1.77 **Senior Secured Guarantee and Security Agreement** means that certain Guarantee and Security Agreement dated as of July 8, 2008 by and among Express, certain domestic subsidiaries of Express, and the Agent, as may have been amended from time to time.

1.78 **Senior Secured Lender** means a holder of a Senior Secured Claim.

1.79 **Tax Code** means the Internal Revenue Code of 1986, as amended.

1.80 **Term Sheet** means that certain Express Energy Services Operating, LP Summary of Principal Terms of Proposed Plan of Reorganization attached as Exhibit A to the Plan Support Agreement.

1.81 **Transaction Agreement** means that certain Transaction Agreement dated as of June 8, 2008, by and among Express Energy Services Holding, LP, Express, Express Energy Services GP, LLC, the Sellers and Seller Representatives party thereto, Express 2008, Express Merger Subsidiary 1 LLC, and Express Merger Subsidiary 2 LLC, as amended by the amendments thereto dated as of July 8, 2008 and November 18, 2008.

1.82 **Unliquidated Claim** means any Claim, the amount of liability for which has not been fixed, whether pursuant to agreement, applicable law or otherwise, as of the date on which such Claim is asserted or sought to be estimated.

1.83 **U.S. Trustee** means the United States Trustee appointed under section 581 of title 28 of the United States Code.

B. Interpretation; Application of Definitions and Rules of Construction.

Unless otherwise specified, all section, article, schedule or exhibit references in the Plan are to the respective section in, article of or schedule or exhibit, to the Plan or the Plan Supplement, as the same may be amended, waived or modified from time to time. The words “herein,” “hereof,” “hereto,” “hereunder” and other words of similar import refer to the Plan as a whole and not to any particular section, subsection or clause contained in the Plan. A term used herein that is not defined herein shall have the meaning assigned to that term in the Bankruptcy Code. The rules of construction contained in section 102 of the Bankruptcy Code shall apply to the construction of the Plan. The headings in the Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof. In computing any period of time prescribed or allowed by the Plan, unless otherwise expressly provided, the provisions of Bankruptcy Rule 9006(a) shall apply.

**ARTICLE II
PROVISIONS FOR PAYMENT OF UNCLASSIFIED
ADMINISTRATIVE EXPENSE, PROFESSIONAL, AND TAX CLAIMS**

2.1 **Administrative Expense Claims.**

Except to the extent that any entity entitled to payment of any Allowed Administrative Expense Claim agrees to a less favorable treatment, each holder of an Allowed Administrative Expense Claim shall receive Cash in an amount equal to such Allowed Administrative Expense Claim on the later of the Effective Date and the date such Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or as soon thereafter as is practicable; *provided, however*, that Allowed Administrative Expense Claims representing liabilities incurred in the ordinary course of business by the Debtors shall be paid in full and performed by the Debtors or Reorganized Debtors, as the case may be, in the ordinary course of business in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing or other documents relating to such transactions.

2.2 *DIP Facility Claims.*

Except to the extent that a DIP Lender agrees to a different treatment, the DIP Facility Claims shall be paid in full, in Cash, as soon as reasonably practicable following the Effective Date.

2.3 *Professional Compensation and Reimbursement Claims.*

All entities seeking awards by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Confirmation Date under sections 330, 331, 503(b)(2), 503(b)(3), 503(b)(4) or 503(b)(5) of the Bankruptcy Code shall (a) file, on or before the date that is forty-five (45) days after the Effective Date their respective applications for final allowances of compensation for services rendered and reimbursement of expenses incurred and (b) be paid in full, in Cash, in such amounts as are Allowed by the Bankruptcy Court in accordance with the order relating to or Allowing any such Administrative Expense Claim. The Reorganized Debtors are authorized to pay compensation for professional services rendered and reimbursement of expenses incurred after the Confirmation Date in the ordinary course and without the need for Bankruptcy Court approval.

2.4 *Priority Tax Claims.*

Except to the extent that a holder of an Allowed Priority Tax Claim agrees to a different treatment, each holder of an Allowed Priority Tax Claim shall receive, at the sole option of the Debtors or the Reorganized Debtors, (a) on the Effective Date, or as soon thereafter as is practicable, Cash in an amount equal to such Allowed Priority Tax Claim or, (b) commencing on the Effective Date, or as soon thereafter as is practicable, and continuing over a period not exceeding five (5) years from and after the Commencement Date, equal semi-annual Cash payments in an aggregate amount equal to such Allowed Priority Tax Claim, together with interest for the period after the Effective Date at the rate determined under applicable non-bankruptcy law. All Allowed Priority Tax Claims that have not accrued on or before the Effective Date shall be paid in the ordinary course of business as such obligations become due.

**ARTICLE III
CLASSIFICATION OF CLAIMS AND
EXISTING EQUITY INTERESTS, IMPAIRMENT AND VOTING**

The following table designates the Classes of Claims against and Existing Equity Interests in the Debtors and specifies which of those Classes are (i) impaired or unimpaired by the Plan and (ii) entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code or deemed to reject the Plan.

Class	Designation	Impairment	Entitled to Vote
Class 1	Select Priority Claims	Unimpaired	No (deemed to accept)
Class 2	Miscellaneous Secured Claims	Unimpaired	No (deemed to accept)
Class 3	Senior Secured Claims	Impaired	Yes
Class 4	General Unsecured Claims	Impaired	Yes
Class 5	Existing Equity Interests	Impaired	No (deemed to reject)

**ARTICLE IV
PROVISIONS FOR TREATMENT OF CLAIMS AND
EXISTING EQUITY INTERESTS**

4.1 *Select Priority Claims (Class 1).*

(a) Impairment and Voting. Class 1 is unimpaired by the Plan. Each holder of an Allowed Select Priority Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

(b) Distributions. Except to the extent that a holder of an Allowed Select Priority Claim agrees to a different treatment, each holder of an Allowed Select Priority Claim shall receive Cash in an amount equal to such Allowed Select Priority Claim on the later of the Effective Date and the date such Allowed Select Priority Claim becomes an Allowed Select Priority Claim, or as soon thereafter as is practicable.

4.2 *Miscellaneous Secured Claims (Class 2).*

(a) Impairment and Voting. Class 2 is unimpaired by the Plan. Each holder of an Allowed Miscellaneous Secured Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

(b) Distributions. Except to the extent that a holder of an Allowed Miscellaneous Secured Claim agrees to a less favorable treatment, on the Effective Date, at the sole option of the Debtors, (i) each Allowed Miscellaneous Secured Claim shall be reinstated and rendered unimpaired in accordance with section 1124(2) of the Bankruptcy Code, or (ii) each holder of an Allowed Miscellaneous Secured Claim shall receive, in full satisfaction of such Claim, either (a) a note with periodic Cash payments having a present value equal to the amount of such holder's Allowed Miscellaneous Secured Claim, (b) the proceeds of the sale or disposition of its Collateral securing such Claim to the extent of the value of the holder's secured interest in such Collateral, (c) the Collateral securing such Claim and any interest on such Claim required to be paid pursuant to section 506(b) of the Bankruptcy Code, or (d) such other distribution as necessary to satisfy the requirements of the Bankruptcy Code.

4.3 *Senior Secured Claims (Class 3).*

(a) Impairment and Voting. Class 3 is impaired by the Plan. Each holder of a Senior Secured Claim is entitled to vote to accept or reject the Plan.

(b) Distributions. The Allowed Senior Secured Claims shall be allowed in the aggregate amount of \$330.13 million. On the Effective Date each holder of an Allowed Senior Secured Claim shall receive its pro rata share of 100% of the New Equity Units. The Allowed Senior Secured Claims constituting the unpaid fees and expenses incurred by the Agent and the Agent's Professionals shall be paid in full in Cash on the Effective Date.

4.4 ***General Unsecured Claims (Class 4).***

(a) Impairment and Voting. Class 4 is impaired by the Plan. Each holder of a General Unsecured Claim is entitled to vote to accept or reject the Plan.

(b) Distributions. Except to the extent that a holder of an Allowed General Unsecured Claim agrees to a less favorable treatment, on the Effective Date, or as soon thereafter as is practicable, such holder will be entitled to receive the following:

(i) Distributions to Class 4 Holders of General Unsecured Claims if Class 4 Votes to Accept the Plan. If Class 4 votes to accept the Plan, each holder of an Allowed General Unsecured Claim shall receive its Distribution Pro Rata Share in Cash from a fund in an amount equal to \$400,000.

(ii) Distributions to Class 4 Holders of General Unsecured Claims if Class 4 Votes to Reject the Plan. If Class 4 votes to reject the Plan, each holder of an Allowed General Unsecured Claim shall receive its Distribution Pro Rata Share in Cash from a fund in an amount equal to \$100,000.

(c) On the Effective Date, the Debtors shall fund either \$400,000 in accordance with section 4.4(b)(i) above or \$100,000 in accordance with section 4.4(b)(ii) above, as the case may be, in Cash into a segregated account maintained by the Disbursing Agent for the benefit of holders of Allowed General Unsecured Claims. From any distribution made to the holder of an Allowed General Unsecured Claim, there shall be deducted the amount of any distribution previously distributed to such holder on account of such Allowed General Unsecured Claim.

4.5 ***Existing Equity Interests (Class 5).***

(a) Impairment and Voting. Class 5 is impaired by the Plan. Each holder of an Existing Equity Interest is deemed to reject the Plan and is not entitled to vote to accept or reject the Plan.

(b) Distributions. On the Effective Date, the Existing Equity Interests shall be cancelled and each holder of an Allowed Existing Equity Interest shall receive no distribution on account of such Existing Equity Interest.

**ARTICLE V
MEANS OF IMPLEMENTATION**

5.1 *Intercompany Claims.*

Notwithstanding anything to the contrary herein, Intercompany Claims will be adjusted, continued or discharged to the extent determined appropriate by the Debtors or the Reorganized Debtors, in their sole discretion. Any such transaction may be effected on or subsequent to the Effective Date without any further action by the Debtors, the Debtors in Possession, or the Reorganized Debtors.

5.2 *Restructuring and Other Transactions.*

(a) *Restructuring Transactions.*

On the Effective Date, the following Restructuring Transactions shall be effectuated in the order set forth:

(i) Simultaneously, (A) in accordance with section 4.5 of the Plan, all of the Existing Equity Interests shall be cancelled, and (B) in accordance with section 4.3 of the Plan, Reorganized Express shall issue the New Equity Units to the holders of Allowed Senior Secured Claims in full satisfaction of their Claims (and in proportion to the relative values of their Claims); and

(ii) The holders of Allowed Senior Secured Claims shall gift 2% of the New Equity Units issued and received under the Plan to the Macquarie Group.

(b) *Consistent Tax Reporting.*

(i) All parties (including the Reorganized Debtors, the holders of Existing Equity Interests and the holders of New Equity Units) shall report for all federal income tax purposes consistent with the form of the Restructuring Transactions; and

(ii) As soon as possible after the Effective Date, but in no event later than thirty (30) days thereafter, the Postconfirmation Board shall determine the value of the New Equity Units as of the Effective Date (as appropriate for federal income tax purposes). The valuation shall be used consistently by all parties (including the Reorganized Debtors, the holders of Existing Equity Interests and the holders of New Equity Units) for all federal income tax purposes.

5.3 *Cancellation of Existing Agreements and Existing Equity Interests.*

Except (a) as otherwise expressly provided in the Plan, (b) with respect to executory contracts or unexpired leases that have been assumed by the Debtors, (c) for purposes of evidencing a right to distributions under the Plan, or (d) with respect to any Claim that is reinstated and rendered unimpaired under the Plan, upon the effectiveness of the Plan, the Senior

Secured Debt Documents, all Existing Equity Interests, the DIP Facility, and other instruments evidencing any Claims against the Debtors or Existing Equity Interests in the Debtors shall be deemed automatically cancelled without further act or action under any applicable agreement, law, regulation, order or rule and the obligations of the Debtors thereunder shall be discharged.

5.4 *Incurrence of New Indebtedness.*

The Reorganized Debtors' entry into the Exit Facility and the incurrence of the indebtedness thereunder on the Effective Date is hereby authorized without the need for any further corporate action and without any further action by holders of Claims or Existing Equity Interests.

5.5 *Merger/Dissolution/Consolidation.*

On or as of the Effective Date or as soon as practicable thereafter and without further need for any further action, the Reorganized Debtors may (a) cause any or all of the Debtors to be merged into one or more of the Reorganized Debtors, dissolved or otherwise consolidated, (b) cause the transfer of assets between or among the Reorganized Debtors, or (c) engage in any other transaction in furtherance of the Plan.

5.6 *Cancellation of Liens.*

Except as otherwise provided in the Plan, upon the occurrence of the Effective Date, any Lien securing any Secured Claim shall be deemed released, and the holder of such Secured Claim shall be authorized and directed to release any Collateral or other property of any Debtor (including any cash Collateral) held by such holder and to take such actions as may be requested by the Reorganized Debtors to evidence the release of such lien, including the execution, delivery and filing or recording of such releases.

5.7 *Substantive Consolidation of Debtors for Plan Purposes Only.*

(a) Given the number of separate legal entities, the Debtors believe it would be inefficient to propose, vote on and make distributions in respect of entity-specific claims. Accordingly the Debtors are proposing solely for administrative convenience to consolidate for certain purposes. Entry of the Confirmation Order shall constitute the approval, pursuant to section 105(a) of the Bankruptcy Code, effective as of the Effective Date, of the limited substantive consolidation of the Reorganization Cases for the purposes of voting, confirmation and distribution as provided in this Plan. On and after the Effective Date: (i) no distributions shall be made under the Plan on account of the Intercompany Claims among the Debtors; (ii) all guarantees by any of the Debtors of the obligations of any other Debtor arising prior to the Effective Date shall be deemed eliminated so that any Claim against any Debtor and any guarantee thereof executed by any other Debtor and any joint and several liability of any of the Debtors shall be deemed to be one obligation of the deemed consolidated Debtors; and (iii) each and every Claim filed or to be filed in the Reorganization Cases shall be deemed filed against the consolidated Debtors and shall be deemed one Claim against and obligation of the deemed consolidated Debtors.

(b) The substantive consolidation referred to in section 5.7(a) shall not (other than for purposes related to funding distributions under the Plan and as set forth above in section 5.7(a)) affect, however: (i) the legal and organizational structure of the Reorganized Debtors; (ii) pre- and post-Commencement Date Liens, guarantees and security interests that are required to be maintained (x) in connection with executory contracts that were entered into during the Reorganization Cases or that have been or will be assumed pursuant to section 365 of the Bankruptcy Code, (y) pursuant to the Plan, or (z) in connection with the Exit Facility and the DIP Facility; or (iii) distributions out of any insurance policies or distributions out of proceeds of such policies. As of the Effective Date, each of the Reorganized Debtors shall be deemed to be properly capitalized, legally separate and distinct entities.

(c) For the avoidance of doubt, the limited substantive consolidation contemplated herein shall not be construed as substantive consolidation for any other purpose than that described in subpart (a) of this section. The Debtors believe that no creditor will receive a recovery inferior to that which it would receive if they proposed a plan that was completely separate as to each entity. If any party in interest challenges the proposed consolidation the Debtors reserve the right to establish at the confirmation hearing the ability to confirm the Plan on an entity-by-entity basis.

ARTICLE VI PROVISIONS GOVERNING VOTING AND DISTRIBUTIONS

6.1 *Voting of Claims.*

Each holder of an Allowed Claim in an impaired class of Claims that is entitled to vote on the Plan pursuant to Article III and Article IV of the Plan shall be entitled to vote separately to accept or reject the Plan, as provided in such order as is entered by the Bankruptcy Court establishing procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan, or any other order of the Bankruptcy Court.

6.2 *Nonconsensual Confirmation.*

If any impaired class of Claims entitled to vote shall not accept the Plan by the requisite statutory majority provided in section 1126(c) of the Bankruptcy Code, the Debtors reserve the right to amend the Plan in accordance with section 13.4 of the Plan or undertake to have the Bankruptcy Court confirm the Plan under section 1129(b) of the Bankruptcy Code or both. With respect to impaired classes of claims that are deemed to reject the Plan, the Debtors shall request that the Bankruptcy Court confirm the Plan pursuant to section 1129(b) of the Bankruptcy Code.

6.3 *Distributions on Allowed General Unsecured Claims.*

Distributions with respect to holders of Allowed General Unsecured Claims shall only be made on each Distribution Date; *provided, however*, that, if any Disputed General Unsecured Claim becomes Allowed subsequent to the Initial Distribution Date, the Reorganized Debtors may, in their sole discretion, make a distribution with respect to such Claim prior to a Distribution Date. All Allowed General Unsecured Claims held by a creditor shall be aggregated

and treated as a single Claim. At the written request of the Reorganized Debtors or the Disbursing Agent, any creditor holding multiple Allowed General Unsecured Claims shall provide to the Reorganized Debtors or the Disbursing Agent, as the case may be, a single address to which any distributions shall be sent.

6.4 *Date of Distributions.*

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.

6.5 *Disbursing Agent.*

All distributions under the Plan shall be made by Reorganized Express as Disbursing Agent or such other entity designated by Reorganized Express as a Disbursing Agent.

6.6 *Rights and Powers of Disbursing Agent.*

The Disbursing Agent shall be empowered to (a) effect all actions and execute all agreements, instruments and other documents necessary to perform its duties under the Plan, (b) make all distributions contemplated hereby, (c) employ professionals to represent it with respect to its responsibilities, and (d) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to the Plan or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions hereof.

6.7 *Delivery of Distributions.*

Subject to Bankruptcy Rule 9010, all distributions to any holder of an Allowed Claim or Allowed Administrative Expense Claim shall be made at the address of such holder as set forth on the Schedules filed with the Bankruptcy Court or on the books and records of the Debtors or its agents, as applicable, unless the Debtors or Reorganized Debtors have been notified in writing of a change of address, including, without limitation, by the filing of a proof of Claim by such holder that contains an address for such holder different than the address of such holder as set forth on the Schedules. Nothing in this Plan shall require the Reorganized Debtors to attempt to locate any holder of an Allowed Claim.

6.8 *Unclaimed Distributions.*

All distributions under the Plan that are unclaimed for a period of one (1) year after distribution thereof shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and reinvested in the Reorganized Debtors and any entitlement of any holder of any Claims to such distributions shall be extinguished and forever barred.

6.9 *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 and Existing Equity Interests as maintained by the Debtors, or their respective agents, shall be deemed closed, and there shall be no further changes in the record holders of any of the Claims or Existing Equity Interests. The Debtors or the Reorganized Debtors, as applicable, shall have no obligation to recognize any transfer of the Claims or Existing Equity Interests occurring on or after the Distribution Record Date. The Debtors, the Reorganized Debtors or any party responsible for making distributions pursuant to this section 6 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.

6.10 *No Fractional Shares of New Equity Units.*

No fractional shares of New Equity Units shall be issued or distributed under the Plan and no Cash shall be distributed in lieu of such fractional shares. When any distribution pursuant to the Plan would otherwise result in the issuance of a number of shares of New Equity Units that is not a whole number, the actual distribution of shares of New Equity Units shall be rounded as follows: (a) fractions of one-half ($\frac{1}{2}$) or greater shall be rounded to the next higher whole number and (b) fractions of less than one-half ($\frac{1}{2}$) shall be rounded to the next lower whole number with no further payment therefor. The total number of authorized shares of New Equity Units to be distributed to holders of Allowed Claims shall be adjusted as necessary to account for the foregoing rounding.

6.11 *Manner of Payment.*

At the option of the Disbursing Agent, any Cash payment to be made hereunder may be made by a check or wire transfer or as otherwise required or provided in applicable agreements. All distributions of Cash to the creditors of each of the Debtors under the Plan shall be made by, or on behalf of, the applicable Debtor.

6.12 *Cash Distributions.*

No payment of Cash less than one hundred dollars (\$100) shall be made to any holder of an Allowed Claim unless a request therefor is made in writing to the Reorganized Debtors.

6.13 *Setoffs and Recoupment.*

The Debtors may, but shall not be required to, setoff against or recoup from any Claim and the payments to be made pursuant to the Plan in respect of such Claim any Claims of any nature whatsoever that the Debtors may have against the claimant, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors or Reorganized Debtors of any such claim they may have against such claimant.

6.14 *Allocation of Plan Distributions Between Principal and Interest.*

To the extent that any Allowed Claim entitled to a distribution under the Plan consists of indebtedness and other amounts (such as accrued but unpaid interest thereon), such distribution shall be allocated first to the principal amount of the Claim (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claim, to such other amounts.

6.15 *No Postpetition Interest on Claims.*

To the extent that a Disputed Claim becomes an Allowed Claim after the Effective Date, the holder of such Claim shall not be entitled to any interest thereon.

**ARTICLE VII
PROCEDURES FOR TREATING DISPUTED
CLAIMS UNDER PLAN OF REORGANIZATION**

7.1 *Objections to Claims.*

Except insofar as a Claim is Allowed under the Plan, the Debtors, the Reorganized Debtors or any other party in interest shall be entitled to object to Claims, if necessary.

7.2 *No Distributions.*

Notwithstanding any other provision hereof, if any portion of a Claim or Administrative Expense Claim is Disputed, no payment or distribution provided hereunder shall be made on account of such Claim or Administrative Expense Claim unless and until such Disputed Claim or Disputed Administrative Expense Claim becomes Allowed. There shall be no distributions under the Plan for any Claim that is equitably subordinated pursuant to section 510 of the Bankruptcy Code.

7.3 *Distributions After Allowance.*

To the extent that a Disputed Claim or Disputed Administrative Expense Claim ultimately becomes an Allowed Claim or Allowed Administrative Expense Claim, distributions (if any) shall be made to the holder of such Allowed Claim or Allowed Administrative Expense Claim in accordance with the provisions of the Plan.

7.4 *Estimation of Claims.*

The Debtors and the Reorganized Debtors may at any time request that the Bankruptcy Court estimate any Contingent, Unliquidated, or Disputed Claim pursuant to section 502(c) of the Bankruptcy Code, regardless of whether the Debtor 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 Claim at any time during litigation concerning any objection to any Claim, including, without limitation, during the pendency of any appeal relating

to any such objection. In the event that the Bankruptcy Court estimates any Contingent, Unliquidated, or Disputed Claim, the amount so estimated shall constitute either the allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Reorganized Debtors may pursue supplementary proceedings to object to the allowance of such Claim. All of the aforementioned objection, estimation, and resolution procedures are intended to be cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

ARTICLE VIII EXECUTORY CONTRACTS AND UNEXPIRED LEASES

8.1 *Assumption and Rejection of Contracts and Leases.*

Except as otherwise provided herein, or in any contract, instrument, release, indenture, or other agreement or document entered into in connection with this Plan, as of the Effective Date, the Debtors shall be deemed to have assumed each executory contract and unexpired lease to which it is a party, unless such contract or lease (a) was previously assumed or rejected by the Debtors, (b) previously expired or terminated pursuant to its own terms, (c) is the subject of a motion to reject filed by the Debtors on or before the Confirmation Date or (d) is set forth in a schedule, as an executory contract or unexpired lease to be rejected, if any, filed by the Debtors as part of the Plan Supplement. The Confirmation Order shall constitute an order of the Bankruptcy Court under sections 365 and 1123(b) of the Bankruptcy Code approving the contract and lease assumptions or rejections described above, as of the Effective Date.

Each executory contract and unexpired lease that is assumed and relates to the use, ability to acquire, or occupancy of real property shall include (a) all modifications, amendments, supplements, restatements, or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affect such executory contract or unexpired lease and (b) all executory contracts or unexpired leases appurtenant to the premises, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, powers, uses, usufructs, reciprocal easement agreements, vaults, tunnel or bridge agreements or franchises, and any other interests in real estate or rights *in rem* related to such premises, unless any of the foregoing agreements has been rejected pursuant to an order of the Bankruptcy Court.

8.2 *Cure of Defaults.*

Any monetary amounts by which any executory contract and unexpired lease to be assumed hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtors upon assumption thereof or as soon as practicable thereafter. If there is a dispute regarding (a) the nature or amount of any cure, (b) the ability of the Debtors or any assignee to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under the contract or lease to be assumed or (c) any other matter

pertaining to assumption, any cure shall occur following the entry of a Final Order resolving the dispute and approving the assumption or assumption and assignment, as the case may be.

8.3 *Rejection Claims.*

All Claims arising out of the rejection of executory contracts and unexpired leases must be served upon the Debtors and their counsel within thirty (30) days after the date of entry of an order of the Bankruptcy Court approving such rejection. Any Claims not filed within such time shall be forever barred from assertion against the Debtors, their estates, and their property.

8.4 *Indemnification Obligations.*

Subject to the occurrence of the Effective Date, the obligations of the Debtors as of the Commencement Date to indemnify, defend, reimburse or limit the liability of managers, officers or employees who are managers, officers or employees of the Debtors on or after the Confirmation Date, respectively, against any claims or causes of action as provided in the Debtors' articles of organization, certificates of incorporation, bylaws, other organizational documents or applicable law, shall survive confirmation of the Plan, remain unaffected thereby and not be discharged, irrespective of whether such indemnification, defense, reimbursement or limitation is owed in connection with an event occurring before or after the Commencement Date.

8.5 *Insurance Policies.*

Unless specifically rejected by order of the Bankruptcy Court, all of the Debtors' insurance policies and any agreements, documents or instruments relating thereto, are treated as executory contracts that are assumed under the Plan. Nothing contained in this section shall constitute or be deemed a waiver of any cause of action that the Debtors may hold against any entity, including, without limitation, the insurer, under any of the Debtors' policies of insurance.

8.6 *Benefit Plans.*

Notwithstanding anything contained in the Plan to the contrary, unless rejected by order of the Bankruptcy Court, the Reorganized Debtors shall continue to honor, in the ordinary course of business, all employee compensation and Benefit Plans of the Debtors, including Benefit Plans and programs subject to sections 1114 and 1129(a)(13) of the Bankruptcy Code, entered into before or after the Commencement Date and not since terminated.

ARTICLE IX CORPORATE GOVERNANCE AND MANAGEMENT OF THE REORGANIZED DEBTORS

9.1 *General.*

On the Effective Date, the management, control and operation of Reorganized Express and the other Reorganized Debtors shall become the general responsibility of the Postconfirmation Board of Reorganized Express.

9.2 *Postconfirmation Board of Reorganized Express.*

The initial Postconfirmation Board of Reorganized Express shall consist of five members, one of whom shall be the Debtors' chief executive officer and the remaining four of whom shall be selected by the Required Holders.

9.3 *Filing of Postconfirmation Organizational Documents.*

On the Effective Date, or as soon thereafter as practicable, to the extent necessary, the Reorganized Debtors, in form reasonably acceptable to the Agent and the Required Holders, shall file their Postconfirmation Organizational Documents, as required or deemed appropriate, with the appropriate Persons in their respective jurisdictions of incorporation or establishment.

9.4 *Officers of the Reorganized Debtors.*

The officers of the Debtors immediately prior to the Effective Date shall serve as the initial officers of the Reorganized Debtors on and after the Effective Date. Such officers shall serve in accordance with applicable non-bankruptcy law, any employment agreement with the Reorganized Debtors and the Postconfirmation Organizational Documents.

**ARTICLE X
CONDITIONS PRECEDENT TO EFFECTIVE DATE**

10.1 *Conditions Precedent to Effectiveness.*

The Effective Date shall not occur and the Plan shall not become effective unless and until the following conditions are satisfied in full or waived in accordance with section 10.2 of the Plan:

(a) The clerk of the Bankruptcy Court shall have entered the Confirmation Order, which shall be in form and substance acceptable to the Debtors, the Agent, and the Required Holders;

(b) The New LLC Agreement in form and substance acceptable to the Required Holders, shall have been executed by Reorganized Express.

(c) The conditions precedent to the effectiveness of the Exit Facility are satisfied or waived by the parties thereto and the Reorganized Debtors have access to funding under the Exit Facility;

(d) All actions and all agreements, instruments or other documents necessary to implement the terms and provisions of the Plan are effected or executed and delivered, as applicable, in form and substance satisfactory to the Debtors; and

(e) All authorizations, consents and regulatory approvals, if any, required by the Debtors in connection with the consummation of the Plan are obtained and not revoked.

10.2 *Waiver of Conditions.*

Each of the conditions precedent in section 10.1 hereof may be waived, in whole or in part, by the Debtors, subject to the reasonable consent of the Required Holders. Any such waivers may be effected at any time, without notice, without leave or order of the Bankruptcy Court and without any formal action.

10.3 *Satisfaction of Conditions.*

Except as expressly provided or permitted in the Plan, any actions required to be taken on the Effective Date shall take place and shall be deemed to have occurred simultaneously, and no such action shall be deemed to have occurred prior to the taking of any other such action. In the event that one or more of the conditions specified in section 10.1 of the Plan have not occurred or otherwise been waived pursuant to section 10.2 of the Plan, (a) the Confirmation Order shall be vacated, (b) the Debtors and all holders of Claims and interests, including any Existing Equity Interests, shall be restored to the *status quo ante* as of the day immediately preceding the Confirmation Date as though the Confirmation Date never occurred, (c) the Debtors' obligations with respect to Claims and Existing Equity Interests shall remain unchanged and nothing contained herein shall constitute or be deemed a waiver or release of any Claims or Existing Equity Interests by or against the Debtors or any other person or to prejudice in any manner the rights of the Debtors or any person in any further proceedings involving the Debtors, and (d) no distributions under the Plan shall be made.

**ARTICLE XI
EFFECT OF CONFIRMATION**

11.1 *Continued Vesting of Assets.*

On the Effective Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, the Debtors, their properties and interests in property and their operations shall be released from the custody and jurisdiction of the Bankruptcy Court, and all property of the estates of the Debtors shall continue to vest in the Reorganized Debtors free and clear of all Claims, Liens, encumbrances, charges and other interests, except as provided in the Plan. From and after the Effective Date, the Reorganized Debtors may operate their business and may use, acquire and dispose of property free of any restrictions of the Bankruptcy Code, the Bankruptcy Rules or the Local Bankruptcy Rules, subject to the terms and conditions of the Plan.

11.2 *Binding Effect.*

Subject to the occurrence of the Effective Date, on and after the Confirmation Date, the provisions of the Plan shall bind any holder of a Claim against, or Existing Equity Interest in, the Debtors and such holder's respective successors and assigns, whether or not the Claim or Existing Equity Interests of such holder is impaired under the Plan, whether or not such holder has accepted the Plan and whether or not such holder is entitled to a distribution under the Plan.

11.3 *Discharge of Claims and Termination of Existing Equity Interests.*

Except as provided in the Plan, the rights afforded in and the payments and distributions to be made under the Plan shall terminate all Existing Equity Interests and discharge all existing debts and Claims of any kind, nature or description whatsoever against or in the Debtors or any of their assets or properties to the fullest extent permitted by section 1141 of the Bankruptcy Code. Except as provided in the Plan, upon the Effective Date, all existing Claims against the Debtors and Existing Equity Interests shall be, and shall be deemed to be, discharged and terminated, and all holders of such Claims and Existing Equity Interests shall be precluded and enjoined from asserting against the Debtors, the Reorganized Debtors, their successors or assignees or any of their assets or properties, any other or further Claim or Existing Equity Interest based upon any act or omission, transaction or other activity of any kind or nature that occurred prior to the Effective Date, whether or not such holder has filed a proof of Claim or proof of Existing Equity Interest and whether or not the facts or legal bases therefor were known or existed prior to the Effective Date.

11.4 *Discharge of Debtors.*

Upon the Effective Date, in consideration of the distributions to be made under the Plan and except as otherwise expressly provided in the Plan, each holder (as well as any trustees and agents on behalf of each holder) of a Claim or Existing Equity Interest and any 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, Existing Equity Interests, rights and liabilities that arose prior to the Effective Date. Upon the Effective Date, all such persons shall be forever precluded and enjoined, pursuant to section 524 of the Bankruptcy Code, from prosecuting or asserting any such discharged Claim against or terminated Existing Equity Interest in the Debtors.

11.5 *Terms of Injunctions or Stays.*

(a) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, ALL PERSONS WHO HAVE HELD, HOLD OR MAY HOLD CLAIMS AGAINST OR EXISTING EQUITY INTERESTS IN ANY DEBTOR ARE PERMANENTLY ENJOINED, FROM AND AFTER THE EFFECTIVE DATE, FROM (I) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ANY SUCH CLAIM OR EXISTING EQUITY INTEREST AGAINST ANY REORGANIZED DEBTOR, (II) THE ENFORCEMENT, ATTACHMENT, COLLECTION OR RECOVERY BY ANY MANNER OR MEANS OF ANY JUDGMENT, AWARD, DECREE OR ORDER AGAINST ANY REORGANIZED DEBTOR WITH RESPECT TO ANY SUCH CLAIM OR EXISTING EQUITY INTEREST, (III) CREATING, PERFECTING OR ENFORCING ANY ENCUMBRANCE OF ANY KIND AGAINST ANY REORGANIZED DEBTOR, OR AGAINST THE PROPERTY OR INTERESTS IN PROPERTY OF ANY REORGANIZED DEBTOR, AS APPLICABLE WITH RESPECT TO ANY SUCH CLAIM OR EXISTING EQUITY INTEREST, (IV) ASSERTING ANY RIGHT OF SETOFF, SUBROGATION OR RECOUPMENT OF ANY KIND AGAINST ANY OBLIGATION DUE FROM ANY REORGANIZED DEBTOR, OR AGAINST THE PROPERTY OR INTERESTS IN

PROPERTY OF ANY REORGANIZED DEBTOR WITH RESPECT TO ANY SUCH CLAIM OR EXISTING EQUITY INTEREST, AND (V) PURSUING ANY CLAIM RELEASED PURSUANT TO THIS ARTICLE XI OF THE PLAN.

(b) UNLESS OTHERWISE PROVIDED, ALL INJUNCTIONS OR STAYS ARISING UNDER OR ENTERED DURING THE REORGANIZATION CASES UNDER SECTION 105 OR 362 OF THE BANKRUPTCY CODE, OR OTHERWISE, AND IN EXISTENCE ON THE CONFIRMATION DATE, SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL THE LATER OF THE EFFECTIVE DATE AND THE DATE INDICATED IN THE ORDER PROVIDING FOR SUCH INJUNCTION OR STAY.

11.6 *Exculpation.*

None of the Debtors, the Agent, the Senior Secured Lenders, holders of Existing Equity Interests, the DIP Lenders, and the DIP Agent and their respective officers, directors, managers, employees, accountants, financial advisors, investment bankers, agents, restructuring advisors, and attorneys, and each of their respective agents and representatives (but solely in their capacities as such) shall have or incur any liability for any Claim, cause of action or other assertion of liability for any act taken or omitted to be taken in connection with, or arising out of, the Reorganization Cases, the formulation, dissemination, confirmation, consummation or administration of the Plan, property to be distributed under the Plan or any other act or omission in connection with the Reorganization Cases, the Plan, the Disclosure Statement or any contract, instrument, document or other agreement related thereto; *provided, however*, that the foregoing shall not affect the liability of any Person that otherwise would result from any such act or omission to the extent such act or omission is determined by a Final Order to have constituted willful misconduct or gross negligence.

11.7 *Releases.*

(a) **RELEASES.** EXCEPT FOR THE RIGHT TO ENFORCE THE PLAN, EACH RELEASED PARTY SHALL, EFFECTIVE UPON THE OCCURRENCE OF THE EFFECTIVE DATE, BE DEEMED TO FOREVER RELEASE, WAIVE AND DISCHARGE EACH OF THE OTHER RELEASED PARTIES OF AND FROM ANY AND ALL CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, DEMANDS, DEBTS, RIGHTS, CAUSES OF ACTION AND LIABILITIES WHATSOEVER IN CONNECTION WITH OR RELATED TO THE DEBTORS, THE REORGANIZATION CASES, THE PLAN, OR ANY SENIOR SECURED DEBT DOCUMENTS, WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, THEN EXISTING OR THEREAFTER ARISING, IN LAW, EQUITY OR OTHERWISE, THAT ARE BASED IN WHOLE OR IN PART ON ANY ACT, OMISSION, TRANSACTION, EVENT, OR OTHER OCCURRENCE TAKING PLACE ON OR PRIOR TO THE EFFECTIVE DATE IN ANY WAY RELATING TO THE DEBTORS, THE REORGANIZED DEBTORS, THE REORGANIZATION CASES, THE PLAN, OR ANY SENIOR SECURED DEBT DOCUMENTS; *PROVIDED, HOWEVER*, THAT THE FOREGOING SHALL NOT OPERATE AS A WAIVER OR RELEASE FROM ANY CAUSES OF ACTION ARISING OUT OF (I) THE WILLFUL MISCONDUCT OR

GROSS NEGLIGENCE OF ANY SUCH RELEASED PARTY AS DETERMINED BY A FINAL ORDER ENTERED BY A COURT OF COMPETENT JURISDICTION; (II) THE ESCROW AGREEMENT; (III) THE INDEMNITY ESCROW ACCOUNT; (IV) THE BREWER LAWSUIT; (V) THE ANSWER AND COUNTERCLAIM; (VI) THE CONSULTING AGREEMENT; AND (VII) NON-COMPETE/NON-SOLICITATION PROVISIONS IN THE TRANSACTION AGREEMENT.

(b) **RELEASES BY HOLDERS OF CLAIMS AND EXISTING EQUITY INTERESTS.** EXCEPT FOR THE RIGHT TO ENFORCE THE PLAN, EACH PERSON WHO VOTES TO ACCEPT THE PLAN, OR WHO, DIRECTLY OR INDIRECTLY, IS ENTITLED TO RECEIVE A DISTRIBUTION UNDER THE PLAN, INCLUDING PERSONS ENTITLED TO RECEIVE A DISTRIBUTION VIA AN ATTORNEY OR AGENT, SHALL BE DEEMED TO FOREVER RELEASE, WAIVE AND DISCHARGE EACH OF THE RELEASED PARTIES OF AND FROM ANY AND ALL CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, DEMANDS, DEBTS, RIGHTS, CAUSES OF ACTION AND LIABILITIES WHATSOEVER IN CONNECTION WITH OR RELATED TO THE DEBTORS, THE REORGANIZATION CASES, OR THE PLAN, WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, THEN EXISTING OR THEREAFTER ARISING, IN LAW, EQUITY OR OTHERWISE, THAT ARE BASED IN WHOLE OR IN PART ON ANY ACT, OMISSION, TRANSACTION, EVENT, OR OTHER OCCURRENCE TAKING PLACE ON OR PRIOR TO THE EFFECTIVE DATE IN ANY WAY RELATING TO THE DEBTORS, THE REORGANIZED DEBTORS, THE REORGANIZATION CASES, OR THE PLAN; *PROVIDED, HOWEVER*, THAT THE FOREGOING SHALL NOT OPERATE AS A WAIVER OR RELEASE FROM ANY CAUSES OF ACTION ARISING OUT OF THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF ANY SUCH PERSON AS DETERMINED BY A FINAL ORDER ENTERED BY A COURT OF COMPETENT JURISDICTION.

11.8 *Preservation of Claims.*

Except as otherwise provided in the Plan, as of the Effective Date, pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, any action, cause of action, liability, obligation, right, suit, debt, sum of money, damage, judgment, claim and demand whatsoever, whether known or unknown, in law, equity or otherwise, accruing to the Debtors will become assets of the Reorganized Debtors, and the Reorganized Debtors will have the authority to commence and prosecute such causes of action for the benefit of the estates of the Debtors, including, but not limited to, equitable subordination actions, recovery causes of action and objections to claims under sections 105, 502, 510, 542 through 551, and 553 of the Bankruptcy Code, and claims arising under or relating to the Escrow Agreement, the Indemnity Escrow Account, Brewer, the Brewer Lawsuit, the Answer and Counterclaim, the Consulting Agreement, and/or non-compete/non-solicitation provisions in the Transaction Agreement. After the Effective Date, the Reorganized Debtors will have the authority to compromise and settle, otherwise resolve, discontinue, abandon or dismiss all such causes of action without approval of the Bankruptcy Court.

11.9 *Reservation of Rights.*

The Plan shall have no force or effect unless and until the Effective Date. Prior to the Effective Date, none of the filing of the Plan, any statement or provision contained in the Plan, or action taken by the Debtors with respect to the Plan shall be, or shall be deemed to be, an admission or waiver of any rights of any Debtor or any other party with respect to any Claims or Existing Equity Interests or any other matter.

**ARTICLE XII
RETENTION OF JURISDICTION**

The Bankruptcy Court shall have exclusive jurisdiction of all matters arising out of, or related to, the Reorganization Cases and the Plan pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code, including, without limitation:

- (a) To hear and determine pending applications for the assumption or rejection of executory contracts or unexpired leases and the allowance of cure amounts and Claims resulting therefrom;
- (b) To determine any and all adversary proceedings, applications and contested matters;
- (c) To hear and determine all applications for compensation and reimbursement of expenses under sections 330, 331 and 503(b) of the Bankruptcy Code;
- (d) To hear and determine any timely objections to, or requests for estimation of Disputed Administrative Expense Claims and Disputed Claims, in whole or in part;
- (e) To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified or vacated;
- (f) To issue such orders in aid of execution of the Plan, to the extent authorized by section 1142 of the Bankruptcy Code;
- (g) To consider any amendments to or modifications of the Plan or to cure any defect or omission, or reconcile any inconsistency, in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;
- (h) To hear and determine disputes or issues arising in connection with the interpretation, implementation or enforcement of the Plan, the Confirmation Order, any transactions or payments contemplated hereby, any agreement, instrument, or other document governing or relating to any of the foregoing or any settlement approved by the Bankruptcy Court;
- (i) To hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code (including, without limitation, any request by the Debtors prior to the Effective Date or request by the Reorganized

Debtors after the Effective Date for an expedited determination of tax under section 505(b) of the Bankruptcy Code);

(j) To hear and determine all disputes involving the existence, scope and nature of the discharges granted under the Plan, the Confirmation Order or the Bankruptcy Code;

(k) To issue injunctions and effect any other actions that may be necessary or appropriate to restrain interference by any person or entity with the consummation, implementation or enforcement of the Plan, the Confirmation Order or any other order of the Bankruptcy Court;

(l) To determine such other matters and for such other purposes as may be provided in the Confirmation Order;

(m) To hear and determine any rights, Claims or causes of action held by or accruing to the Debtors pursuant to the Bankruptcy Code or pursuant to any federal or state statute or legal theory;

(n) To enter a final decree closing the Reorganization Cases; and

(o) To hear any other matter not inconsistent with the Bankruptcy Code.

ARTICLE XIII MISCELLANEOUS PROVISIONS

13.1 *Effectuating Documents and Further Transactions.*

On or before the Effective Date, and without the need for any further order or authority, the Debtors shall file with the Bankruptcy Court or execute, as appropriate, such agreements and other documents that are in form and substance satisfactory to them as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Reorganized Debtors are authorized to execute, deliver, file, or record such contracts, instruments, releases, indentures and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan and any securities issued pursuant to the Plan.

13.2 *Withholding and Reporting Requirements.*

In connection with the Plan and all instruments issued in connection therewith and distributed thereon, any party issuing any instrument or making any distribution under the Plan shall comply with all applicable withholding and reporting requirements imposed by any federal, state or local taxing authority, and all distributions under the Plan shall be subject to any such withholding or reporting requirements. Notwithstanding the above, each holder of an Allowed Claim that is to receive a distribution under the Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed on such holder by

any governmental unit, including income, withholding and other tax obligations, on account of such distribution. Any party issuing any instrument or making any distribution under the Plan has the right, but not the obligation, to not make a distribution until such holder has made arrangements satisfactory to such issuing or disbursing party for payment of any such tax obligations.

13.3 *Corporate Action.*

On the Effective Date, all matters provided for under the Plan that would otherwise require approval of the managers of one or more of the Debtors or Reorganized Debtors, as the case may be, shall be in effect from and after the Effective Date pursuant to the applicable general corporation law of the states in which the Debtors or the Reorganized Debtors are incorporated or established, without any requirement of further action by the managers of the Debtors or the Reorganized Debtors. On the Effective Date, or as soon thereafter as is practicable, the Reorganized Debtors shall, if required, file their amended articles of organization or certificates of incorporation, as the case may be, with the Secretary of State of the state in which each such entity is (or will be) organized, in accordance with the applicable general business law of each such jurisdiction.

13.4 *Modification of Plan.*

Alterations, amendments or modifications of or to the Plan may be proposed in writing by the Debtors at any time prior to the Confirmation Date, provided that the Plan, as altered, amended or modified satisfies the conditions of sections 1122 and 1123 of the Bankruptcy Code and the Debtors shall have complied with section 1125 of the Bankruptcy Code. The Plan may be altered, amended or modified at any time after the Confirmation Date and before substantial consummation, provided that the Plan, as altered, amended or modified, satisfies the requirements of sections 1122 and 1123 of the Bankruptcy Code and the Bankruptcy Court, after notice and a hearing, confirms the Plan, as altered, amended or modified, under section 1129 of the Bankruptcy Code and the circumstances warrant such alterations, amendments or modifications. A holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended or modified, if the proposed alteration, amendment or modification does not materially and adversely change the treatment of the Claim of such holder.

Prior to the Effective Date, the Debtors may make appropriate technical adjustments and modifications to the Plan without further order or approval of the Bankruptcy Court, provided that such technical adjustments and modifications do not adversely affect in a material way the treatment of holders of Claims or Existing Equity Interests.

13.5 *Revocation or Withdrawal of the Plan.*

The Debtors reserve the right to revoke or withdraw the Plan prior to the Confirmation Date. If the Debtors revoke or withdraw the Plan prior to the Confirmation Date, then the Plan shall be deemed null and void. In such event, nothing contained herein shall constitute or be deemed a waiver or release of any Claims or Existing Equity Interests by or

against the Debtors or any other person or to prejudice in any manner the rights of the Debtors or any person in any further proceedings involving the Debtors.

13.6 *Plan Supplement.*

A draft form of the Plan Documents to be entered into as of the Effective Date and any other appropriate documents shall be contained in the Plan Supplement and filed with the Clerk of the Bankruptcy Court five (5) days prior to the Confirmation Hearing. Copies of the Plan Supplement may also be obtained without charge at the website maintained by the Debtors' claims and noticing agent, <http://www.expressenergyinfo.com>. All documents filed in these cases may also be viewed (a) during regular business hours (9:00 am to 4:00 pm prevailing Central Time weekdays, except legal holidays) at the U.S. Bankruptcy Court for the Southern District of Texas, 515 Rusk Street, Houston, Texas, 77002 and (b) electronically on the PACER system at <https://ecf.txsb.uscourts.gov> as they become available. Holders of Claims against or Existing Equity Interests in the Debtors may also obtain a copy of the Plan Supplement upon written request to the Debtors in accordance with section 13.15.

13.7 *Payment of Statutory Fees.*

All fees payable under section 1930 of chapter 123 of title 28 of the United States Code, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid on the Effective Date.

13.8 *Dissolution of Statutory Committees and Cessation of Fee and Expense Payment.*

Any statutory committees appointed in the Reorganization Cases shall dissolve on the Effective Date. Provided that all such fees and expenses payable as of the Effective Date have been paid in full, the Reorganized Debtors shall not be responsible for paying any fees and expenses incurred after the Effective Date by the Agent's Professionals and any professionals retained by any statutory committees.

13.9 *Exemption from Transfer Taxes.*

Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer or exchange of notes or equity securities under or in connection with the Plan, the creation of any mortgage, deed of trust or other security interest, the making or assignment of any lease or sublease or the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan, including, without limitation, the Exit Facility, any merger agreements or agreements of consolidation, deeds, bills of sale or assignments executed in connection with any of the transactions contemplated under the Plan shall not be subject to any stamp, real estate transfer, mortgage recording or other similar tax.

13.10 *Expedited Tax Determination.*

The Debtors and the Reorganized Debtors are authorized to request an expedited determination of taxes under section 505(b) of the Bankruptcy Code for any or all returns filed

for, or on behalf of, the Debtors for any and all taxable periods (or portions thereof) ending after the Commencement Date through and including the Effective Date.

13.11 Exhibits/Schedules.

All exhibits and schedules to the Plan, including the Plan Supplement, are incorporated into and are a part of the Plan as if set forth in full herein.

13.12 Substantial Consummation.

On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

13.13 Severability of Plan Provisions.

In the event that, prior to the Confirmation Date, 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 shall remain in full force and effect and shall 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 valid and enforceable in accordance with its terms.

13.14 Governing Law.

Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent an exhibit to the Plan or Plan Supplement provides otherwise (in which case the governing law specified therein shall be applicable to such exhibit), the rights, duties, and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Texas without giving effect to its principles of conflict of laws.

13.15 Notices.

All notices, requests and demands to or upon the Debtors shall be in writing (including by facsimile transmission) to be effective 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:

Express Energy Services Operating, LP
3200 Southwest Freeway, Suite 2000
Houston, Texas 77027
Attn: Darron Anderson
Telephone: (713) 625-7400
Facsimile: (713) 625-7403

with a copy to:

Weil, Gotshal & Manges LLP
700 Louisiana Street, Suite 1600
Houston, Texas 77002
Attn: Alfredo R. Pérez, Esq.
Telephone: (713) 546-5000
Facsimile: (713) 224-9511

Dated: Houston, Texas
November 3, 2009

Respectfully submitted,

EXPRESS ENERGY SERVICES OPERATING, LP
AND ITS AFFILIATED DEBTORS

By: /s/ Darron Anderson
Name: Darron Anderson
Title: Chief Executive Officer

EXHIBIT B

BLACK-LINE

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

In re

EXPRESS ENERGY SERVICES
OPERATING, LP, *et al.*,

Debtors.

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Chapter 11

Case No. 09-~~_____~~ (~~---~~) 38044

~~Joint Administration Requested~~
Jointly Administered

DEBTORS' JOINT PLAN OF REORGANIZATION
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE
DATED AS OF ~~OCTOBER 27,~~ NOVEMBER 3, 2009

Express Energy Services Operating, LP; Express Energy Services (2008) LLC; Express Energy Services Holding, LP; Express Energy Services GP, LLC; Express Energy Services CT, LP; Express Energy Services Ark, LP; Express Energy Services P&A, LP; Express Energy Services WL, LP; Express – Byrd R&S GP, LLC; Express – Byrd R&S Oilfield Services, L.P.; Express – MBCC GP, LLC; Express – MBCC, Ltd.; Express – Mike Byrd Casing Crews GP, LLC; Express – Mike Byrd Casing Crews, Ltd.; Express – R&S Tong Services GP, LLC; Express – R&S Tong Services, Ltd.; Express – BAH Leasing GP, LLC; Express – BAH Leasing, Ltd.; D&D Tongs GP, LLC; D&D Tongs, L.P.; Express – North Trail Oilfield Services, GP, LLC; Express – North Trail Oilfield Services, Ltd.; Express Ace Rat Hole Service GP, LLC; and Express – Ace Rat Hole Service, Ltd. propose the following joint chapter 11 plan of reorganization pursuant to section 1121(a) of the Bankruptcy Code:

ARTICLE I
DEFINITIONS AND INTERPRETATION

A. Definitions.

The following terms used herein shall have the respective meanings set forth below:

1.1 **Agent** means Credit Suisse, Cayman Islands Branch, as administrative and collateral agent under the Senior Secured Credit Agreement.

1.2 **Agent's Professionals** means Akin Gump Strauss Hauer & Feld LLP.

1.3 **Administrative Expense Claim** means any right to payment constituting a cost or expense of administration of the Reorganization Cases Allowed under sections 330, 503(b), 507(a)(2) and 507(b) of the Bankruptcy Code, including, without limitation, (a) any actual and necessary costs and expenses of preserving the Debtors' estates, (b) any actual and necessary costs and expenses of operating the Debtors' businesses, (c) any indebtedness or obligations incurred or assumed by the Debtors in Possession during the Reorganization Cases and (d) any compensation for professional services rendered and reimbursement of expenses incurred. Any fees or charges assessed against the estates of the Debtors under section 1930 of chapter 123 of title 28 of the United States Code is excluded from the definition of Administrative Expense Claim and shall be paid in accordance with section 13.7 of the Plan.

1.4 **Affiliate** has the meaning set forth in section 101(2) of the Bankruptcy Code.

1.5 **Allowed** means, with reference to any Claim against the Debtors, (a) any Claim against any Debtor that has been listed by such Debtor in its Schedules (as such Schedules may be amended by the Debtors from time to time in accordance with Bankruptcy Rule 1009) as liquidated in amount and not Disputed or Contingent and for which no contrary proof of Claim has been filed or no timely objection to allowance or request for estimation has been interposed, (b) any timely filed proof of Claim as to which no objection has been or is interposed in accordance with section 7.1 of the Plan or such other applicable period of limitation fixed by the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules or the Bankruptcy Court or as to which any objection has been determined by a Final Order to the extent such objection is determined in favor of the respective holder of such Claim, (c) any Claim expressly allowed by a Final Order or under the Plan, (d) any Claim that is compromised, settled or otherwise resolved pursuant to the authority granted to the Reorganized Debtors pursuant to a Final Order of the Bankruptcy Court or under section 11.8 of the Plan; *provided, however*, that Claims allowed solely for the purpose of voting to accept or reject the Plan pursuant to an order of the Bankruptcy Court shall not be considered "Allowed Claims." Unless otherwise specified in the Plan or by order of the Bankruptcy Court, "Allowed Administrative Expense Claim" or "Allowed Claim" shall not, for any

purpose under the Plan, include interest on such Claim from and after the Commencement Date.

1.6 **Allowed Senior Secured Claim** means the Allowed Claim of the Senior Secured Lenders under the Senior Credit Agreement in the amount of \$330.13 million.

1.7 **Answer and Counterclaim** means the Original Answer and Counterclaim dated September 21, 2009 filed by Express and Express 2008 in connection with the Brewer Lawsuit.

1.8 **Ballot** means the form distributed to each holder of an impaired Claim that is entitled to vote to accept or reject the Plan on which is to be indicated an acceptance or rejection of the Plan.

1.9 **Bankruptcy Code** means title 11 of the United States Code, as amended from time to time.

1.10 **Bankruptcy Court** means the United States Bankruptcy Court for the Southern District of Texas, Houston Division, or any other court of the United States having jurisdiction over the Reorganization Cases.

1.11 **Bankruptcy Rules** means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, as amended from time to time.

1.12 **Benefit Plans** means all employee benefit plans, policies and programs sponsored by any of the Debtors, including, without limitation, all medical and health insurance, life insurance, dental insurance, and disability benefits and coverage (as such term is defined in section 1114 of the Bankruptcy Code).

1.13 **Brewer** means Darrell Brewer.

1.14 **Brewer Lawsuit** means the Original Petition styled *Darrell Brewer v. Express Energy Services Operating, LP and Express Energy Services (2008) LLC* (Cause No. 2009-53824) in the District Court of Harris County, Texas, 125th Judicial District.

1.15 **Business Day** means any day other than a Saturday, Sunday or any other day on which banking institutions in New York, New York are required or authorized to close by law or executive order.

1.16 **Cash** means legal tender of the United States of America.

1.17 **Claim** has the meaning set forth in section 101(5) of the Bankruptcy Code.

1.18 **Class** means a category of holders of Claims or Existing Equity Interests set forth in Article IV of the Plan.

1.19 **Collateral** means any property or interest in property of the estates of the Debtors subject to a Lien, charge or other encumbrance to secure the payment or performance of a Claim, which Lien, charge or other encumbrance is not subject to avoidance or otherwise invalid under the Bankruptcy Code or applicable state law.

1.20 **Commencement Date** means October 27, 2009, the date on which the Debtors commenced their Reorganization Cases.

1.21 **Confirmation Date** means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket.

1.22 **Confirmation Hearing** means the hearing conducted by the Bankruptcy Court pursuant to section 1128(a) of the Bankruptcy Code to consider confirmation of the Plan, as such hearing may be adjourned or continued from time to time.

1.23 **Confirmation Order** means the order of the Bankruptcy Court confirming the Plan.

1.24 **Consenting Lenders** means the Senior Secured Lender parties to the Plan Support Agreement.

1.25 **Consulting Agreement** means the Separation and Consulting Agreement and Release effective as of November 18, 2008 between Express 2008, Express, and Brewer.

1.26 **Contingent Claim** means any Claim, the liability for which attaches or is dependent upon the occurrence or happening of, or is triggered by, an event, which event has not yet occurred, happened or been triggered as of the date on which such Claim is sought to be estimated or an objection to such Claim is filed, whether or not such event is within the actual or presumed contemplation of the holder of such Claim and whether or not a relationship between the holder of such Claim and the applicable Debtor now or hereafter exists or previously existed.

1.27 **Debtors** means each of Express; Express 2008; Express Energy Services Holding, LP; Express Energy Services GP, LLC; Express Energy Services CT, LP; Express Energy Services Ark, LP; Express Energy Services P&A, LP; Express Energy Services WL, LP; Express – Byrd R&S GP, LLC; Express – Byrd R&S Oilfield Services, L.P.; Express – MBCC GP, LLC; Express – MBCC, Ltd.; Express – Mike Byrd Casing Crews GP, LLC; Express – Mike Byrd Casing Crews, Ltd.; Express – R&S Tong Services GP, LLC; Express – R&S Tong Services, Ltd.; Express – BAH Leasing GP, LLC; Express – BAH Leasing, Ltd.; D&D Tongs GP, LLC; D&D Tongs, L.P.; Express – North Trail Oilfield Services, GP, LLC; Express – North Trail Oilfield Services, Ltd.; Express Ace Rat Hole Service GP, LLC; and Express – Ace Rat Hole Service, Ltd.

1.28 **Debtors in Possession** means the Debtors in their capacity as debtors in possession in the Reorganization Cases under sections 1107(a) and 1108 of the Bankruptcy Code.

1.29 **DIP Agent** means the agent under the DIP Facility.

1.30 **DIP Facility** means that postpetition financing revolving credit facility with the DIP Lenders to provide commitments under a debtor-in-possession credit facility in a maximum aggregate principal amount of up to \$20 million on the terms specified in the Term Sheet.

1.31 **DIP Facility Claim** means any Claim or obligation of the Debtors arising under or in connection with the DIP Facility.

1.32 **DIP Lenders** means the lenders party to the DIP Facility.

1.33 **Disbursing Agent** means any entity in its capacity as a disbursing agent.

1.34 **Disclosure Statement** means that certain disclosure statement relating to the Plan, including, without limitation, all exhibits and schedules thereto, as the same may be amended, supplemented or otherwise modified from time to time, as approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code.

1.35 **Disclosure Statement Order** means the order of the Bankruptcy Court preliminarily approving, among other things, the Disclosure Statement and establishing certain procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan.

1.36 **Disputed** means, with reference to any Administrative Expense Claim or Claim, any such Administrative Expense Claim or Claim (a) to the extent neither Allowed nor disallowed under the Plan or a Final Order nor deemed Allowed under section 502, 503 or 1111 of the Bankruptcy Code, (b) which has been or hereafter is listed by a Debtor on its Schedules as Unliquidated, Disputed or Contingent and which has not been resolved by written agreement of the parties or a Final Order, or (c) as to which the Debtors or any other party in interest has interposed a timely objection and/or request for estimation in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules, which objection or request for estimation has not been withdrawn or determined by a Final Order. Prior to the earlier of the time an objection has been timely filed and the expiration of the time within which to object to such Claim set forth herein or otherwise established by order of the Bankruptcy Court, a Claim shall be considered a Disputed Claim to the extent that the amount of the Claim specified in a proof of Claim exceeds the amount of the Claim scheduled by the Debtor as not Disputed, Contingent or Unliquidated.

1.37 **Distribution Date** means a date on which the Disbursing Agent makes a distribution to holders of Allowed General Unsecured Claims.

1.38 **Distribution Pro Rata Share** means, as of any Distribution Date, the ratio (expressed as a percentage) of the amount of an Allowed General Unsecured Claim to the aggregate amount of all Allowed General Unsecured Claims at such date plus the Disputed Claim amount of all remaining Disputed General Unsecured Claims.

1.39 **Distribution Record Date** means the date that is five (5) Business Days from and after the Confirmation Date.

1.40 **Escrow Agreement** means that certain Escrow Agreement dated as of July 11, 2008 by and among Express 2008, Wachovia Capital Partners 2006 LLC, Brewer, Mike Byrd, and JPMorgan Chase Bank, N.A., as escrow agent.

1.41 **Existing Equity Interests** means all instruments evidencing an ownership interest in the Debtors, whether or not transferable, and all options, or rights, contractual or otherwise, to acquire any such interests, all as of the Effective Date.

1.42 **Express** means Express Energy Services Operating, LP.

1.43 **Express 2008** means Express Energy Services (2008) LLC.

1.44 **Effective Date** means a Business Day selected by the Debtors on or after the Confirmation Date, on which (a) no stay of the Confirmation Order is in effect and (b) the conditions precedent to the effectiveness of the Plan specified in section 10.1 of the Plan shall have been satisfied or waived as provided in section 10.2.

1.45 **Exit Facility** means the post-Effective Date credit facility, the material terms of which are set forth as an exhibit to the Plan Supplement and which shall be in form and substance acceptable to the Required Holders.

1.46 **Final Order** means an order or judgment of a court of competent jurisdiction that has been entered on the docket maintained by the clerk of such court and has not been reversed, vacated or stayed and as to which (a) the time to appeal, petition for *certiorari* or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari* or other proceedings for a new trial, reargument or rehearing shall then be pending or, (b) if an appeal, writ of *certiorari*, new trial, reargument or rehearing thereof has been sought, (i) such order or judgment shall have been affirmed by the highest court to which such order was appealed, *certiorari* shall have been denied or a new trial, reargument or rehearing shall have been denied or resulted in no modification of such order and (ii) the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or the Local Bankruptcy Rules, may be filed relating to such order shall not prevent such order from being a Final Order.

1.47 **General Unsecured Claim** means any Claim against the Debtors other than a DIP Facility Claim, Administrative Expense Claim, Priority Tax Claim, Select Priority Claim, Miscellaneous Secured Claim, Senior Secured Claim, or Existing Equity Interest, *provided, however*, unsecured deficiency Claims arising under the Senior Secured Credit Agreement shall not be classified as General Unsecured Claims under this Plan.

1.48 **Indemnity Escrow Account** means Escrow Account No. 000002747920698 established pursuant to the Escrow Agreement.

1.49 **Initial Distribution Date** means a date after the Effective Date that is selected by the Reorganized Debtors in their sole discretion but, in any event, is within one hundred and eighty (180) days after the date of service of notice of the Confirmation Date.

1.50 **Intercompany Claim** means any Claim against any Debtor held by another Debtor.

1.51 **Lien** has the meaning set forth in section 101(37) of the Bankruptcy Code.

1.52 **Local Bankruptcy Rules** means the Local Bankruptcy Rules for the Southern District of Texas, Houston Division, as amended from time to time.

1.53 **Macquarie Group** means Macquarie Capital Group Limited, together with certain of its affiliates and affiliate-managed funds.

1.54 **Miscellaneous Secured Claim** means a Secured Claim other than a Senior Secured Claim.

1.55 **New Equity Units** means the membership interests of Reorganized Express to be authorized and issued on the Effective Date, pursuant to the Plan and as provided in the New LLC Agreement, which shall constitute all of the direct or indirect equity of Reorganized Express subject to dilution by profits interests issued under the Postconfirmation Incentive Plan, and have the terms set forth in the Plan Supplement.

1.56 **New LLC Agreement** means the limited liability agreement of Reorganized Express, dated as of the Effective Date, in substantially the same form set forth in the Plan Supplement.

1.57 **Person** means an individual, partnership, corporation, limited liability company, cooperative, trust, unincorporated organization, association, joint venture, government or agency or political subdivision thereof or any other form of legal entity.

1.58 **Plan** means this Joint Plan of Reorganization, including, without limitation, the exhibits and schedules hereto, as the same may be amended or modified from time to time in accordance with the provisions of the Bankruptcy Code and the terms hereof.

1.59 **Plan Supplement** means the supplement or supplements to the Plan containing certain documents relevant to the implementation of the Plan specified in section 13.6 of the Plan.

1.60 **Plan Support Agreement** means that Plan Support Agreement dated as of October 27, 2009, between the Debtors, the Agent, and the Consenting Lenders.

1.61 **Postconfirmation Board** means the board of managers of Reorganized Express which will be disclosed in the Plan Supplement.

1.62 **Postconfirmation Incentive Plans** means those certain post-Effective Date employee incentive plans to be implemented and which will provide designated employees of Reorganized Express (i) with Membership Interests in Reorganized Express constituting profits interest entitled, in the aggregate, to 10% of all distributions by Reorganized Express at such time as the holders of New Equity Units have received, in the aggregate, cumulative cash distributions equal to \$90 million and (ii) cash bonuses for upon achievement of certain performance goals to be determined by the Reorganized Express board of directors, in each case, as more fully described in the Term Sheet.

1.63 **Postconfirmation Organizational Documents** means each certificate of incorporation, certificate of formation, limited liability company agreement, bylaws, and other organizational documents, including the New LLC Agreement, forms of which shall be included in the Plan Supplement.

1.64 **Priority Tax Claim** means any Claim of a governmental unit of the kind entitled to priority in payment as specified in sections 502(i) and 507(a)(8) of the Bankruptcy Code.

1.65 **Released Parties** means (a) each current and past director, officer, employee, manager, agent, partner, and member of (i) the Debtors, (ii) the holders of Senior Secured Claims, (iii) the holders of Existing Equity Interests, (iv) the Sponsor, (v) the Sponsor Designee Managers, (vi) the Rollover Designee Manager, (vii) the Agent and its Affiliates, (viii) the DIP Agent, and (ix) each DIP Lender; (b) each Sponsor; (c) each current and past Sponsor Designee Manager; (d) each present Rollover Designee Manager; (e) each holder of a Senior Secured Claim; (f) each holder of an Existing Equity Interest; (g) the Agent and its Affiliates; (h) the DIP Agent; (i) each DIP Lender; and (j) each Advisor of the Debtors, the holders of Senior Secured Claims, the holders of Existing Equity Interests, the Sponsor, the Sponsor Designee Managers, the Rollover Designee Managers, the Agent, the DIP Agent, and the DIP Lenders. For purposes of this definition, "**Advisors**" means each financial advisor, investment banker, professional, accountant and attorney, and each of their respective employees, parent corporations, subsidiaries, affiliates and partners. In addition, for purposes of this definition, "**Sponsor**," "**Sponsor Designee Managers**," and "**Rollover Designee Manager**" shall have the meanings ascribed to such terms in the Second Amended and Restated Limited Liability Company Agreement of Express 2008, dated as of November 18, 2008.

1.66 **Reorganization Cases** means the jointly administered cases commenced by the Debtors under chapter 11 of the Bankruptcy Code.

1.67 **Reorganized Debtors** means each of the Debtors as entities on and after the Effective Date.

1.68 **Reorganized Express** means Express on and after the Effective Date.

1.69 **Required Holders** means the holders of a majority in aggregate amount of Allowed Senior Secured Claims.

1.70 **Restructuring Transactions** means the transactions described in section 5.2(a) of the Plan.

1.71 **Schedules** means, collectively, the schedules of assets and liabilities, schedules of current income and expenditures, schedules of executory contracts and unexpired leases and statements of financial affairs filed by the Debtors under section 521 of the Bankruptcy Code, Bankruptcy Rule 1007 and the Official Bankruptcy Forms in the Reorganization Cases, as may have been amended or supplemented through the Confirmation Date pursuant to Bankruptcy Rule 1007.

1.72 **Secured Claim** means any Claim that is 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, in the event that such Claim is subject to a permissible setoff under section 553 of the Bankruptcy Code, to the extent of such permissible setoff.

1.73 **Select Priority Claim** means a Claim entitled to priority in payment as specified in section 507(a)(4), (5), (6) or (7) of the Bankruptcy Code.

1.74 **Senior Secured Claim** means a Claim held by a Senior Secured Lender in an amount equal to all amounts due to such person under any Senior Secured Debt Document including, but not limited to, any Claim in respect of swaps and/or hedge agreements constituting "Secured Obligations" under the Senior Secured Guarantee and Security Agreement.

1.75 **Senior Secured Credit Agreement** means that certain Credit Agreement dated as of July 11, 2008, by and among Express, as borrower, Express 2008, as guarantor, the Agent, and the Senior Secured Lenders listed therein, as the same may be amended from time to time.

1.76 **Senior Secured Debt Documents** means, collectively, the Senior Secured Credit Agreement, the Senior Secured Guarantee and Security Agreement and all other mortgages, agreements, documents and instruments made or executed in connection with or pursuant thereto, including without limitation all deposit account control agreements, financing statements and other security agreements.

1.77 **Senior Secured Guarantee and Security Agreement** means that certain Guarantee and Security Agreement dated as of July 8, 2008 by and among Express, certain domestic subsidiaries of Express, and the Agent, as may have been amended from time to time.

1.78 **Senior Secured Lender** means a holder of a Senior Secured Claim.

1.79 **Tax Code** means the Internal Revenue Code of 1986, as amended.

1.80 **Term Sheet** means that certain Express Energy Services Operating, LP Summary of Principal Terms of Proposed Plan of Reorganization attached as Exhibit A to the Plan Support Agreement.

1.81 **Transaction Agreement** means that certain Transaction Agreement dated as of June 8, 2008, by and among Express Energy Services Holding, LP, Express, Express Energy Services GP, LLC, the Sellers and Seller Representatives party thereto, Express 2008, Express Merger Subsidiary 1 LLC, and Express Merger Subsidiary 2 LLC, as amended by the amendments thereto dated as of July 8, 2008 and November 18, 2008.

1.82 **Unliquidated Claim** means any Claim, the amount of liability for which has not been fixed, whether pursuant to agreement, applicable law or otherwise, as of the date on which such Claim is asserted or sought to be estimated.

1.83 **U.S. Trustee** means the United States Trustee appointed under section 581 of title 28 of the United States Code.

B. Interpretation; Application of Definitions and Rules of Construction.

Unless otherwise specified, all section, article, schedule or exhibit references in the Plan are to the respective section in, article of or schedule or exhibit, to the Plan or the Plan Supplement, as the same may be amended, waived or modified from time to time. The words “herein,” “hereof,” “hereto,” “hereunder” and other words of similar import refer to the Plan as a whole and not to any particular section, subsection or clause contained in the Plan. A term used herein that is not defined herein shall have the meaning assigned to that term in the Bankruptcy Code. The rules of construction contained in section 102 of the Bankruptcy Code shall apply to the construction of the Plan. The headings in the Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof. In computing any period of time prescribed or allowed by the Plan, unless otherwise expressly provided, the provisions of Bankruptcy Rule 9006(a) shall apply.

ARTICLE II
PROVISIONS FOR PAYMENT OF UNCLASSIFIED
ADMINISTRATIVE EXPENSE, PROFESSIONAL, AND TAX CLAIMS

2.1 **Administrative Expense Claims.**

Except to the extent that any entity entitled to payment of any Allowed Administrative Expense Claim agrees to a less favorable treatment, each holder of an Allowed Administrative Expense Claim shall receive Cash in an amount equal to such Allowed Administrative Expense Claim on the later of the Effective Date and the date such Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or as soon thereafter as is practicable; *provided, however*, that Allowed Administrative Expense Claims representing liabilities incurred in the ordinary course of business by the Debtors shall be paid in full and performed by the Debtors or Reorganized Debtors, as the case may be, in the ordinary course of business in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing or other documents relating to such transactions.

2.2 *DIP Facility Claims.*

Except to the extent that a DIP Lender agrees to a different treatment, the DIP Facility Claims shall be paid in full, in Cash, as soon as reasonably practicable following the Effective Date.

2.3 *Professional Compensation and Reimbursement Claims.*

All entities seeking awards by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Confirmation Date under sections 330, 331, 503(b)(2), 503(b)(3), 503(b)(4) or 503(b)(5) of the Bankruptcy Code shall (a) file, on or before the date that is forty-five (45) days after the Effective Date their respective applications for final allowances of compensation for services rendered and reimbursement of expenses incurred and (b) be paid in full, in Cash, in such amounts as are Allowed by the Bankruptcy Court in accordance with the order relating to or Allowing any such Administrative Expense Claim. The Reorganized Debtors are authorized to pay compensation for professional services rendered and reimbursement of expenses incurred after the Confirmation Date in the ordinary course and without the need for Bankruptcy Court approval.

2.4 *Priority Tax Claims.*

Except to the extent that a holder of an Allowed Priority Tax Claim agrees to a different treatment, each holder of an Allowed Priority Tax Claim shall receive, at the sole option of the Debtors or the Reorganized Debtors, (a) on the Effective Date, or as soon thereafter as is practicable, Cash in an amount equal to such Allowed Priority Tax Claim or, (b) commencing on the Effective Date, or as soon thereafter as is practicable, and continuing over a period not exceeding five (5) years from and after the Commencement Date, equal semi-annual Cash payments in an aggregate amount equal to such Allowed Priority Tax Claim, together with interest for the period after the Effective Date at the rate determined under applicable non-bankruptcy law. All Allowed Priority Tax Claims that have not accrued on or before the Effective Date shall be paid in the ordinary course of business as such obligations become due.

ARTICLE III CLASSIFICATION OF CLAIMS AND EXISTING EQUITY INTERESTS, IMPAIRMENT AND VOTING

The following table designates the Classes of Claims against and Existing Equity Interests in the Debtors and specifies which of those Classes are (i) impaired or unimpaired by the Plan and (ii) entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code or deemed to reject the Plan.

Class	Designation	Impairment	Entitled to Vote
Class 1	Select Priority Claims	Unimpaired	No (deemed to accept)
Class 2	Miscellaneous Secured Claims	Unimpaired	No (deemed to accept)
Class 3	Senior Secured Claims	Impaired	Yes

Class 4	General Unsecured Claims	Impaired	Yes
Class 5	Existing Equity Interests	Impaired	No (deemed to reject)

**ARTICLE IV
PROVISIONS FOR TREATMENT OF CLAIMS AND
EXISTING EQUITY INTERESTS**

4.1 *Select Priority Claims (Class 1).*

(a) Impairment and Voting. Class 1 is unimpaired by the Plan. Each holder of an Allowed Select Priority Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

(b) Distributions. Except to the extent that a holder of an Allowed Select Priority Claim agrees to a different treatment, each holder of an Allowed Select Priority Claim shall receive Cash in an amount equal to such Allowed Select Priority Claim on the later of the Effective Date and the date such Allowed Select Priority Claim becomes an Allowed Select Priority Claim, or as soon thereafter as is practicable.

4.2 *Miscellaneous Secured Claims (Class 2).*

(a) Impairment and Voting. Class 2 is unimpaired by the Plan. Each holder of an Allowed Miscellaneous Secured Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

(b) Distributions. Except to the extent that a holder of an Allowed Miscellaneous Secured Claim agrees to a less favorable treatment, on the Effective Date, at the sole option of the Debtors, (i) each Allowed Miscellaneous Secured Claim shall be reinstated and rendered unimpaired in accordance with section 1124(2) of the Bankruptcy Code, or (ii) each holder of an Allowed Miscellaneous Secured Claim shall receive, in full satisfaction of such Claim, either (a) a note with periodic Cash payments having a present value equal to the amount of such holder's Allowed Miscellaneous Secured Claim, (b) the proceeds of the sale or disposition of its Collateral securing such Claim to the extent of the value of the holder's secured interest in such Collateral, (c) the Collateral securing such Claim and any interest on such Claim required to be paid pursuant to section 506(b) of the Bankruptcy Code, or (d) such other distribution as necessary to satisfy the requirements of the Bankruptcy Code.

4.3 *Senior Secured Claims (Class 3).*

(a) Impairment and Voting. Class 3 is impaired by the Plan. Each holder of a Senior Secured Claim is entitled to vote to accept or reject the Plan.

(b) Distributions. The Allowed Senior Secured Claims shall be allowed in the aggregate amount of \$330.13 million. On the Effective Date each holder of an Allowed Senior Secured Claim shall receive its pro rata share of 100% of the New Equity Units. The Allowed Senior Secured Claims constituting the unpaid fees and expenses incurred by the Agent and the Agent's Professionals shall be paid in full in Cash on the Effective Date.

4.4 ***General Unsecured Claims (Class 4).***

(a) **Impairment and Voting.** Class 4 is impaired by the Plan. Each holder of a General Unsecured Claim is entitled to vote to accept or reject the Plan.

(b) **Distributions.** Except to the extent that a holder of an Allowed General Unsecured Claim agrees to a less favorable treatment, on the Effective Date, or as soon thereafter as is practicable, such holder will be entitled to receive the following:

(i) Distributions to Class 4 Holders of General Unsecured Claims if Class 4 Votes to Accept the Plan. If Class 4 votes to accept the Plan, each holder of an Allowed General Unsecured Claim shall receive its Distribution Pro Rata Share in Cash from a fund in an amount equal to \$400,000.

(ii) Distributions to Class 4 Holders of General Unsecured Claims if Class 4 Votes to Reject the Plan. If Class 4 votes to reject the Plan, each holder of an Allowed General Unsecured Claim shall receive its Distribution Pro Rata Share in Cash from a fund in an amount equal to \$100,000.

(c) On the Effective Date, the Debtors shall fund either \$400,000 in accordance with section 4.4(b)(i) above or \$100,000 in accordance with section 4.4(b)(ii) above, as the case may be, in Cash into a segregated account maintained by the Disbursing Agent for the benefit of holders of Allowed General Unsecured Claims. From any distribution made to the holder of an Allowed General Unsecured Claim, there shall be deducted the amount of any distribution previously distributed to such holder on account of such Allowed General Unsecured Claim.

4.5 ***Existing Equity Interests (Class 5).***

(a) **Impairment and Voting.** Class 5 is impaired by the Plan. Each holder of an Existing Equity Interest is deemed to reject the Plan and is not entitled to vote to accept or reject the Plan.

(b) **Distributions.** On the Effective Date, the Existing Equity Interests shall be cancelled and each holder of an Allowed Existing Equity Interest shall receive no distribution on account of such Existing Equity Interest.

**ARTICLE V
MEANS OF IMPLEMENTATION**

5.1 ***Intercompany Claims.***

Notwithstanding anything to the contrary herein, Intercompany Claims will be adjusted, continued or discharged to the extent determined appropriate by the Debtors or the Reorganized Debtors, in their sole discretion. Any such transaction may be effected on or subsequent to the Effective Date without any further action by the Debtors, the Debtors in Possession, or the Reorganized Debtors.

5.2 *Restructuring and Other Transactions.*

(a) **Restructuring Transactions.**

On the Effective Date, the following Restructuring Transactions shall be effectuated in the order set forth:

(i) Simultaneously, (A) in accordance with section 4.5 of the Plan, all of the Existing Equity Interests shall be cancelled, and (B) in accordance with section 4.3 of the Plan, Reorganized Express shall issue the New Equity Units to the holders of Allowed Senior Secured Claims in full satisfaction of their Claims (and in proportion to the relative values of their Claims); and

(ii) The holders of Allowed Senior Secured Claims shall gift 2% of the New Equity Units issued and received under the Plan to the Macquarie Group.

(b) **Consistent Tax Reporting.**

(i) All parties (including the Reorganized Debtors, the holders of Existing Equity Interests and the holders of New Equity Units) shall report for all federal income tax purposes consistent with the form of the Restructuring Transactions; and

(ii) As soon as possible after the Effective Date, but in no event later than thirty (30) days thereafter, the Postconfirmation Board shall determine the value of the New Equity Units as of the Effective Date (as appropriate for federal income tax purposes). The valuation shall be used consistently by all parties (including the Reorganized Debtors, the holders of Existing Equity Interests and the holders of New Equity Units) for all federal income tax purposes.

5.3 *Cancellation of Existing Agreements and Existing Equity Interests.*

Except (a) as otherwise expressly provided in the Plan, (b) with respect to executory contracts or unexpired leases that have been assumed by the Debtors, (c) for purposes of evidencing a right to distributions under the Plan, or (d) with respect to any Claim that is reinstated and rendered unimpaired under the Plan, upon the effectiveness of the Plan, the Senior Secured Debt Documents, all Existing Equity Interests, the DIP Facility, and other instruments evidencing any Claims against the Debtors or Existing Equity Interests in the Debtors shall be deemed automatically cancelled without further act or action under any applicable agreement, law, regulation, order or rule and the obligations of the Debtors thereunder shall be discharged.

5.4 *Incurrence of New Indebtedness.*

The Reorganized Debtors' entry into the Exit Facility and the incurrence of the indebtedness thereunder on the Effective Date is hereby authorized without the need for any further corporate action and without any further action by holders of Claims or Existing Equity Interests.

5.5 *Merger/Dissolution/Consolidation.*

On or as of the Effective Date or as soon as practicable thereafter and without further need for any further action, the Reorganized Debtors may (a) cause any or all of the Debtors to be merged into one or more of the Reorganized Debtors, dissolved or otherwise consolidated, (b) cause the transfer of assets between or among the Reorganized Debtors, or (c) engage in any other transaction in furtherance of the Plan.

5.6 *Cancellation of Liens.*

Except as otherwise provided in the Plan, upon the occurrence of the Effective Date, any Lien securing any Secured Claim shall be deemed released, and the holder of such Secured Claim shall be authorized and directed to release any Collateral or other property of any Debtor (including any cash Collateral) held by such holder and to take such actions as may be requested by the Reorganized Debtors to evidence the release of such lien, including the execution, delivery and filing or recording of such releases.

5.7 *Substantive Consolidation of Debtors for Plan Purposes Only.*

(a) Given the number of separate legal entities, the Debtors believe it would be inefficient to propose, vote on and make distributions in respect of entity-specific claims. Accordingly the Debtors are proposing solely for administrative convenience to consolidate for certain purposes. Entry of the Confirmation Order shall constitute the approval, pursuant to section 105(a) of the Bankruptcy Code, effective as of the Effective Date, of the limited substantive consolidation of the Reorganization Cases for the purposes of voting, confirmation and distribution as provided in this Plan. On and after the Effective Date: (i) no distributions shall be made under the Plan on account of the Intercompany Claims among the Debtors; (ii) all guarantees by any of the Debtors of the obligations of any other Debtor arising prior to the Effective Date shall be deemed eliminated so that any Claim against any Debtor and any guarantee thereof executed by any other Debtor and any joint and several liability of any of the Debtors shall be deemed to be one obligation of the deemed consolidated Debtors; and (iii) each and every Claim filed or to be filed in the Reorganization Cases shall be deemed filed against the consolidated Debtors and shall be deemed one Claim against and obligation of the deemed consolidated Debtors.

(b) The substantive consolidation referred to in section 5.7(a) shall not (other than for purposes related to funding distributions under the Plan and as set forth above in section 5.7(a)) affect, however: (i) the legal and organizational structure of the Reorganized Debtors; (ii) pre- and post-Commencement Date Liens, guarantees and security interests that are required to be maintained (x) in connection with executory contracts that were entered into during the Reorganization Cases or that have been or will be assumed pursuant to section 365 of the Bankruptcy Code, (y) pursuant to the Plan, or (z) in connection with the Exit Facility and the DIP Facility; or (iii) distributions out of any insurance policies or distributions out of proceeds of such policies. As of the Effective Date, each of the Reorganized Debtors shall be deemed to be properly capitalized, legally separate and distinct entities.

(c) For the avoidance of doubt, the limited substantive consolidation contemplated herein shall not be construed as substantive consolidation for any other purpose than that described in subpart (a) of this section. The Debtors believe that no creditor will receive a recovery inferior to that which it would receive if they proposed a plan that was completely separate as to each entity. If any party in interest challenges the proposed consolidation the Debtors reserve the right to establish at the confirmation hearing the ability to confirm the Plan on an entity-by-entity basis.

ARTICLE VI PROVISIONS GOVERNING VOTING AND DISTRIBUTIONS

6.1 *Voting of Claims.*

Each holder of an Allowed Claim in an impaired class of Claims that is entitled to vote on the Plan pursuant to Article III and Article IV of the Plan shall be entitled to vote separately to accept or reject the Plan, as provided in such order as is entered by the Bankruptcy Court establishing procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan, or any other order of the Bankruptcy Court.

6.2 *Nonconsensual Confirmation.*

If any impaired class of Claims entitled to vote shall not accept the Plan by the requisite statutory majority provided in section 1126(c) of the Bankruptcy Code, the Debtors reserve the right to amend the Plan in accordance with section 13.4 of the Plan or undertake to have the Bankruptcy Court confirm the Plan under section 1129(b) of the Bankruptcy Code or both. With respect to impaired classes of claims that are deemed to reject the Plan, the Debtors shall request that the Bankruptcy Court confirm the Plan pursuant to section 1129(b) of the Bankruptcy Code.

6.3 *Distributions on Allowed General Unsecured Claims.*

Distributions with respect to holders of Allowed General Unsecured Claims shall only be made on each Distribution Date; *provided, however*, that, if any Disputed General Unsecured Claim becomes Allowed subsequent to the Initial Distribution Date, the Reorganized Debtors may, in their sole discretion, make a distribution with respect to such Claim prior to a Distribution Date. All Allowed General Unsecured Claims held by a creditor shall be aggregated and treated as a single Claim. At the written request of the Reorganized Debtors or the Disbursing Agent, any creditor holding multiple Allowed General Unsecured Claims shall provide to the Reorganized Debtors or the Disbursing Agent, as the case may be, a single address to which any distributions shall be sent.

6.4 *Date of Distributions.*

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.

6.5 *Disbursing Agent.*

All distributions under the Plan shall be made by Reorganized Express as Disbursing Agent or such other entity designated by Reorganized Express as a Disbursing Agent.

6.6 *Rights and Powers of Disbursing Agent.*

The Disbursing Agent shall be empowered to (a) effect all actions and execute all agreements, instruments and other documents necessary to perform its duties under the Plan, (b) make all distributions contemplated hereby, (c) employ professionals to represent it with respect to its responsibilities, and (d) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to the Plan or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions hereof.

6.7 *Delivery of Distributions.*

Subject to Bankruptcy Rule 9010, all distributions to any holder of an Allowed Claim or Allowed Administrative Expense Claim shall be made at the address of such holder as set forth on the Schedules filed with the Bankruptcy Court or on the books and records of the Debtors or its agents, as applicable, unless the Debtors or Reorganized Debtors have been notified in writing of a change of address, including, without limitation, by the filing of a proof of Claim by such holder that contains an address for such holder different than the address of such holder as set forth on the Schedules. Nothing in this Plan shall require the Reorganized Debtors to attempt to locate any holder of an Allowed Claim.

6.8 *Unclaimed Distributions.*

All distributions under the Plan that are unclaimed for a period of one (1) year after distribution thereof shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and reinvested in the Reorganized Debtors and any entitlement of any holder of any Claims to such distributions shall be extinguished and forever barred.

6.9 *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 and Existing Equity Interests as maintained by the Debtors, or their respective agents, shall be deemed closed, and there shall be no further changes in the record holders of any of the Claims or Existing Equity Interests. The Debtors or the Reorganized Debtors, as applicable, shall have no obligation to recognize any transfer of the Claims or Existing Equity Interests occurring on or after the Distribution Record Date. The Debtors, the Reorganized Debtors or any party responsible for making distributions pursuant to this section 6 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.

6.10 *No Fractional Shares of New Equity Units.*

No fractional shares of New Equity Units shall be issued or distributed under the Plan and no Cash shall be distributed in lieu of such fractional shares. When any distribution pursuant to the Plan would otherwise result in the issuance of a number of shares of New Equity Units that is not a whole number, the actual distribution of shares of New Equity Units shall be rounded as follows: (a) fractions of one-half ($\frac{1}{2}$) or greater shall be rounded to the next higher whole number and (b) fractions of less than one-half ($\frac{1}{2}$) shall be rounded to the next lower whole number with no further payment therefor. The total number of authorized shares of New Equity Units to be distributed to holders of Allowed Claims shall be adjusted as necessary to account for the foregoing rounding.

6.11 *Manner of Payment.*

At the option of the Disbursing Agent, any Cash payment to be made hereunder may be made by a check or wire transfer or as otherwise required or provided in applicable agreements. All distributions of Cash to the creditors of each of the Debtors under the Plan shall be made by, or on behalf of, the applicable Debtor.

6.12 *Cash Distributions.*

No payment of Cash less than one hundred dollars (\$100) shall be made to any holder of an Allowed Claim unless a request therefor is made in writing to the Reorganized Debtors.

6.13 *Setoffs and Recoupment.*

The Debtors may, but shall not be required to, setoff against or recoup from any Claim and the payments to be made pursuant to the Plan in respect of such Claim any Claims of any nature whatsoever that the Debtors may have against the claimant, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors or Reorganized Debtors of any such claim they may have against such claimant.

6.14 *Allocation of Plan Distributions Between Principal and Interest.*

To the extent that any Allowed Claim entitled to a distribution under the Plan consists of indebtedness and other amounts (such as accrued but unpaid interest thereon), such distribution shall be allocated first to the principal amount of the Claim (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claim, to such other amounts.

6.15 *No Postpetition Interest on Claims.*

To the extent that a Disputed Claim becomes an Allowed Claim after the Effective Date, the holder of such Claim shall not be entitled to any interest thereon.

**ARTICLE VII
PROCEDURES FOR TREATING DISPUTED
CLAIMS UNDER PLAN OF REORGANIZATION**

7.1 *Objections to Claims.*

Except insofar as a Claim is Allowed under the Plan, the Debtors, the Reorganized Debtors or any other party in interest shall be entitled to object to Claims, if necessary.

7.2 *No Distributions.*

Notwithstanding any other provision hereof, if any portion of a Claim or Administrative Expense Claim is Disputed, no payment or distribution provided hereunder shall be made on account of such Claim or Administrative Expense Claim unless and until such Disputed Claim or Disputed Administrative Expense Claim becomes Allowed. There shall be no distributions under the Plan for any Claim that is equitably subordinated pursuant to section 510 of the Bankruptcy Code.

7.3 *Distributions After Allowance.*

To the extent that a Disputed Claim or Disputed Administrative Expense Claim ultimately becomes an Allowed Claim or Allowed Administrative Expense Claim, distributions (if any) shall be made to the holder of such Allowed Claim or Allowed Administrative Expense Claim in accordance with the provisions of the Plan.

7.4 *Estimation of Claims.*

The Debtors and the Reorganized Debtors may at any time request that the Bankruptcy Court estimate any Contingent, Unliquidated, or Disputed Claim pursuant to section 502(c) of the Bankruptcy Code, regardless of whether the Debtor 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 Claim at any time during litigation concerning any objection to any Claim, including, without limitation, during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any Contingent, Unliquidated, or Disputed Claim, the amount so estimated shall constitute either the allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Reorganized Debtors may pursue supplementary proceedings to object to the allowance of such Claim. All of the aforementioned objection, estimation, and resolution procedures are intended to be cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

ARTICLE VIII
EXECUTORY CONTRACTS AND UNEXPIRED LEASES

8.1 *Assumption and Rejection of Contracts and Leases.*

Except as otherwise provided herein, or in any contract, instrument, release, indenture, or other agreement or document entered into in connection with this Plan, as of the Effective Date, the Debtors shall be deemed to have assumed each executory contract and unexpired lease to which it is a party, unless such contract or lease (a) was previously assumed or rejected by the Debtors, (b) previously expired or terminated pursuant to its own terms, (c) is the subject of a motion to reject filed by the Debtors on or before the Confirmation Date or (d) is set forth in a schedule, as an executory contract or unexpired lease to be rejected, if any, filed by the Debtors as part of the Plan Supplement. The Confirmation Order shall constitute an order of the Bankruptcy Court under sections 365 and 1123(b) of the Bankruptcy Code approving the contract and lease assumptions or rejections described above, as of the Effective Date.

Each executory contract and unexpired lease that is assumed and relates to the use, ability to acquire, or occupancy of real property shall include (a) all modifications, amendments, supplements, restatements, or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affect such executory contract or unexpired lease and (b) all executory contracts or unexpired leases appurtenant to the premises, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, powers, uses, usufructs, reciprocal easement agreements, vaults, tunnel or bridge agreements or franchises, and any other interests in real estate or rights *in rem* related to such premises, unless any of the foregoing agreements has been rejected pursuant to an order of the Bankruptcy Court.

8.2 *Cure of Defaults.*

Any monetary amounts by which any executory contract and unexpired lease to be assumed hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtors upon assumption thereof or as soon as practicable thereafter. If there is a dispute regarding (a) the nature or amount of any cure, (b) the ability of the Debtors or any assignee to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under the contract or lease to be assumed or (c) any other matter pertaining to assumption, any cure shall occur following the entry of a Final Order resolving the dispute and approving the assumption or assumption and assignment, as the case may be.

8.3 *Rejection Claims.*

All Claims arising out of the rejection of executory contracts and unexpired leases must be served upon the Debtors and their counsel within thirty (30) days after the date of entry of an order of the Bankruptcy Court approving such rejection. Any Claims not filed within such time shall be forever barred from assertion against the Debtors, their estates, and their property.

8.4 ***Indemnification Obligations.***

Subject to the occurrence of the Effective Date, the obligations of the Debtors as of the Commencement Date to indemnify, defend, reimburse or limit the liability of managers, officers or employees who are managers, officers or employees of the Debtors on or after the Confirmation Date, respectively, against any claims or causes of action as provided in the Debtors' articles of organization, certificates of incorporation, bylaws, other organizational documents or applicable law, shall survive confirmation of the Plan, remain unaffected thereby and not be discharged, irrespective of whether such indemnification, defense, reimbursement or limitation is owed in connection with an event occurring before or after the Commencement Date.

8.5 ***Insurance Policies.***

Unless specifically rejected by order of the Bankruptcy Court, all of the Debtors' insurance policies and any agreements, documents or instruments relating thereto, are treated as executory contracts that are assumed under the Plan. Nothing contained in this section shall constitute or be deemed a waiver of any cause of action that the Debtors may hold against any entity, including, without limitation, the insurer, under any of the Debtors' policies of insurance.

8.6 ***Benefit Plans.***

Notwithstanding anything contained in the Plan to the contrary, unless rejected by order of the Bankruptcy Court, the Reorganized Debtors shall continue to honor, in the ordinary course of business, all employee compensation and Benefit Plans of the Debtors, including Benefit Plans and programs subject to sections 1114 and 1129(a)(13) of the Bankruptcy Code, entered into before or after the Commencement Date and not since terminated.

**ARTICLE IX
CORPORATE GOVERNANCE AND MANAGEMENT
OF THE REORGANIZED DEBTORS**

9.1 ***General.***

On the Effective Date, the management, control and operation of Reorganized Express and the other Reorganized Debtors shall become the general responsibility of the Postconfirmation Board of Reorganized Express.

9.2 ***Postconfirmation Board of Reorganized Express.***

The initial Postconfirmation Board of Reorganized Express shall consist of five members, one of whom shall be the Debtors' chief executive officer and the remaining four of whom shall be selected by the Required Holders.

9.3 *Filing of Postconfirmation Organizational Documents.*

On the Effective Date, or as soon thereafter as practicable, to the extent necessary, the Reorganized Debtors, in form reasonably acceptable to the Agent and the Required Holders, shall file their Postconfirmation Organizational Documents, as required or deemed appropriate, with the appropriate Persons in their respective jurisdictions of incorporation or establishment.

9.4 *Officers of the Reorganized Debtors.*

The officers of the Debtors immediately prior to the Effective Date shall serve as the initial officers of the Reorganized Debtors on and after the Effective Date. Such officers shall serve in accordance with applicable non-bankruptcy law, any employment agreement with the Reorganized Debtors and the Postconfirmation Organizational Documents.

**ARTICLE X
CONDITIONS PRECEDENT TO EFFECTIVE DATE**

10.1 *Conditions Precedent to Effectiveness.*

The Effective Date shall not occur and the Plan shall not become effective unless and until the following conditions are satisfied in full or waived in accordance with section 10.2 of the Plan:

(a) The clerk of the Bankruptcy Court shall have entered the Confirmation Order, which shall be in form and substance acceptable to the Debtors, the Agent, and the Required Holders;

(b) The New LLC Agreement in form and substance acceptable to the Required Holders, shall have been executed by Reorganized Express.

(c) The conditions precedent to the effectiveness of the Exit Facility are satisfied or waived by the parties thereto and the Reorganized Debtors have access to funding under the Exit Facility;

(d) All actions and all agreements, instruments or other documents necessary to implement the terms and provisions of the Plan are effected or executed and delivered, as applicable, in form and substance satisfactory to the Debtors; and

(e) All authorizations, consents and regulatory approvals, if any, required by the Debtors in connection with the consummation of the Plan are obtained and not revoked.

10.2 *Waiver of Conditions.*

Each of the conditions precedent in section 10.1 hereof may be waived, in whole or in part, by the Debtors, subject to the reasonable consent of the Required Holders. Any such

waivers may be effected at any time, without notice, without leave or order of the Bankruptcy Court and without any formal action.

10.3 *Satisfaction of Conditions.*

Except as expressly provided or permitted in the Plan, any actions required to be taken on the Effective Date shall take place and shall be deemed to have occurred simultaneously, and no such action shall be deemed to have occurred prior to the taking of any other such action. In the event that one or more of the conditions specified in section 10.1 of the Plan have not occurred or otherwise been waived pursuant to section 10.2 of the Plan, (a) the Confirmation Order shall be vacated, (b) the Debtors and all holders of Claims and interests, including any Existing Equity Interests, shall be restored to the *status quo ante* as of the day immediately preceding the Confirmation Date as though the Confirmation Date never occurred, (c) the Debtors' obligations with respect to Claims and Existing Equity Interests shall remain unchanged and nothing contained herein shall constitute or be deemed a waiver or release of any Claims or Existing Equity Interests by or against the Debtors or any other person or to prejudice in any manner the rights of the Debtors or any person in any further proceedings involving the Debtors, and (d) no distributions under the Plan shall be made.

**ARTICLE XI
EFFECT OF CONFIRMATION**

11.1 *Continued Vesting of Assets.*

On the Effective Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, the Debtors, their properties and interests in property and their operations shall be released from the custody and jurisdiction of the Bankruptcy Court, and all property of the estates of the Debtors shall continue to vest in the Reorganized Debtors free and clear of all Claims, Liens, encumbrances, charges and other interests, except as provided in the Plan. From and after the Effective Date, the Reorganized Debtors may operate their business and may use, acquire and dispose of property free of any restrictions of the Bankruptcy Code, the Bankruptcy Rules or the Local Bankruptcy Rules, subject to the terms and conditions of the Plan.

11.2 *Binding Effect.*

Subject to the occurrence of the Effective Date, on and after the Confirmation Date, the provisions of the Plan shall bind any holder of a Claim against, or Existing Equity Interest in, the Debtors and such holder's respective successors and assigns, whether or not the Claim or Existing Equity Interests of such holder is impaired under the Plan, whether or not such holder has accepted the Plan and whether or not such holder is entitled to a distribution under the Plan.

11.3 *Discharge of Claims and Termination of Existing Equity Interests.*

Except as provided in the Plan, the rights afforded in and the payments and distributions to be made under the Plan shall terminate all Existing Equity Interests and discharge all existing debts and Claims of any kind, nature or description whatsoever against or in the

Debtors or any of their assets or properties to the fullest extent permitted by section 1141 of the Bankruptcy Code. Except as provided in the Plan, upon the Effective Date, all existing Claims against the Debtors and Existing Equity Interests shall be, and shall be deemed to be, discharged and terminated, and all holders of such Claims and Existing Equity Interests shall be precluded and enjoined from asserting against the Debtors, the Reorganized Debtors, their successors or assignees or any of their assets or properties, any other or further Claim or Existing Equity Interest based upon any act or omission, transaction or other activity of any kind or nature that occurred prior to the Effective Date, whether or not such holder has filed a proof of Claim or proof of Existing Equity Interest and whether or not the facts or legal bases therefor were known or existed prior to the Effective Date.

11.4 *Discharge of Debtors.*

Upon the Effective Date, in consideration of the distributions to be made under the Plan and except as otherwise expressly provided in the Plan, each holder (as well as any trustees and agents on behalf of each holder) of a Claim or Existing Equity Interest and any 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, Existing Equity Interests, rights and liabilities that arose prior to the Effective Date. Upon the Effective Date, all such persons shall be forever precluded and enjoined, pursuant to section 524 of the Bankruptcy Code, from prosecuting or asserting any such discharged Claim against or terminated Existing Equity Interest in the Debtors.

11.5 *Terms of Injunctions or Stays.*

(a) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, ALL PERSONS WHO HAVE HELD, HOLD OR MAY HOLD CLAIMS AGAINST OR EXISTING EQUITY INTERESTS IN ANY DEBTOR ARE PERMANENTLY ENJOINED, FROM AND AFTER THE EFFECTIVE DATE, FROM (I) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ANY SUCH CLAIM OR EXISTING EQUITY INTEREST AGAINST ANY REORGANIZED DEBTOR, (II) THE ENFORCEMENT, ATTACHMENT, COLLECTION OR RECOVERY BY ANY MANNER OR MEANS OF ANY JUDGMENT, AWARD, DECREE OR ORDER AGAINST ANY REORGANIZED DEBTOR WITH RESPECT TO ANY SUCH CLAIM OR EXISTING EQUITY INTEREST, (III) CREATING, PERFECTING OR ENFORCING ANY ENCUMBRANCE OF ANY KIND AGAINST ANY REORGANIZED DEBTOR, OR AGAINST THE PROPERTY OR INTERESTS IN PROPERTY OF ANY REORGANIZED DEBTOR, AS APPLICABLE WITH RESPECT TO ANY SUCH CLAIM OR EXISTING EQUITY INTEREST, (IV) ASSERTING ANY RIGHT OF SETOFF, SUBROGATION OR RECOUPMENT OF ANY KIND AGAINST ANY OBLIGATION DUE FROM ANY REORGANIZED DEBTOR, OR AGAINST THE PROPERTY OR INTERESTS IN PROPERTY OF ANY REORGANIZED DEBTOR WITH RESPECT TO ANY SUCH CLAIM OR EXISTING EQUITY INTEREST, AND (V) PURSUING ANY CLAIM RELEASED PURSUANT TO THIS ARTICLE XI OF THE PLAN.

(b) UNLESS OTHERWISE PROVIDED, ALL INJUNCTIONS OR STAYS ARISING UNDER OR ENTERED DURING THE REORGANIZATION CASES UNDER SECTION 105 OR 362 OF THE BANKRUPTCY CODE, OR OTHERWISE, AND IN EXISTENCE ON THE CONFIRMATION DATE, SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL THE LATER OF THE EFFECTIVE DATE AND THE DATE INDICATED IN THE ORDER PROVIDING FOR SUCH INJUNCTION OR STAY.

11.6 *Exculpation.*

None of the Debtors, the Agent, the Senior Secured Lenders, holders of Existing Equity Interests, the DIP Lenders, and the DIP Agent and their respective officers, directors, managers, employees, accountants, financial advisors, investment bankers, agents, restructuring advisors, and attorneys, and each of their respective agents and representatives (but solely in their capacities as such) shall have or incur any liability for any Claim, cause of action or other assertion of liability for any act taken or omitted to be taken in connection with, or arising out of, the Reorganization Cases, the formulation, dissemination, confirmation, consummation or administration of the Plan, property to be distributed under the Plan or any other act or omission in connection with the Reorganization Cases, the Plan, the Disclosure Statement or any contract, instrument, document or other agreement related thereto; *provided, however*, that the foregoing shall not affect the liability of any Person that otherwise would result from any such act or omission to the extent such act or omission is determined by a Final Order to have constituted willful misconduct or gross negligence.

11.7 *Releases.*

(a) **RELEASES.** EXCEPT FOR THE RIGHT TO ENFORCE THE PLAN, EACH RELEASED PARTY SHALL, EFFECTIVE UPON THE OCCURRENCE OF THE EFFECTIVE DATE, BE DEEMED TO FOREVER RELEASE, WAIVE AND DISCHARGE EACH OF THE OTHER RELEASED PARTIES OF AND FROM ANY AND ALL CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, DEMANDS, DEBTS, RIGHTS, CAUSES OF ACTION AND LIABILITIES WHATSOEVER IN CONNECTION WITH OR RELATED TO THE DEBTORS, THE REORGANIZATION CASES, THE PLAN, OR ANY SENIOR SECURED DEBT DOCUMENTS, WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, THEN EXISTING OR THEREAFTER ARISING, IN LAW, EQUITY OR OTHERWISE, THAT ARE BASED IN WHOLE OR IN PART ON ANY ACT, OMISSION, TRANSACTION, EVENT, OR OTHER OCCURRENCE TAKING PLACE ON OR PRIOR TO THE EFFECTIVE DATE IN ANY WAY RELATING TO THE DEBTORS, THE REORGANIZED DEBTORS, THE REORGANIZATION CASES, THE PLAN, OR ANY SENIOR SECURED DEBT DOCUMENTS; *PROVIDED, HOWEVER*, THAT THE FOREGOING SHALL NOT OPERATE AS A WAIVER OR RELEASE FROM ANY CAUSES OF ACTION ARISING OUT OF (I) THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF ANY SUCH RELEASED PARTY AS DETERMINED BY A FINAL ORDER ENTERED BY A COURT OF COMPETENT JURISDICTION; (II) THE ESCROW AGREEMENT; (III) THE INDEMNITY ESCROW ACCOUNT; (IV) THE BREWER LAWSUIT; (V) THE ANSWER AND COUNTERCLAIM; (VI) THE

CONSULTING AGREEMENT; AND (VII) NON-COMPETE/NON-SOLICITATION PROVISIONS IN THE TRANSACTION AGREEMENT.

(b) **RELEASES BY HOLDERS OF CLAIMS AND EXISTING EQUITY INTERESTS.** EXCEPT FOR THE RIGHT TO ENFORCE THE PLAN, EACH PERSON WHO VOTES TO ACCEPT THE PLAN, OR WHO, DIRECTLY OR INDIRECTLY, IS ENTITLED TO RECEIVE A DISTRIBUTION UNDER THE PLAN, INCLUDING PERSONS ENTITLED TO RECEIVE A DISTRIBUTION VIA AN ATTORNEY OR AGENT, SHALL BE DEEMED TO FOREVER RELEASE, WAIVE AND DISCHARGE EACH OF THE RELEASED PARTIES OF AND FROM ANY AND ALL CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, DEMANDS, DEBTS, RIGHTS, CAUSES OF ACTION AND LIABILITIES WHATSOEVER IN CONNECTION WITH OR RELATED TO THE DEBTORS, THE REORGANIZATION CASES, OR THE PLAN, WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, THEN EXISTING OR THEREAFTER ARISING, IN LAW, EQUITY OR OTHERWISE, THAT ARE BASED IN WHOLE OR IN PART ON ANY ACT, OMISSION, TRANSACTION, EVENT, OR OTHER OCCURRENCE TAKING PLACE ON OR PRIOR TO THE EFFECTIVE DATE IN ANY WAY RELATING TO THE DEBTORS, THE REORGANIZED DEBTORS, THE REORGANIZATION CASES, OR THE PLAN; *PROVIDED, HOWEVER*, THAT THE FOREGOING SHALL NOT OPERATE AS A WAIVER OR RELEASE FROM ANY CAUSES OF ACTION ARISING OUT OF THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF ANY SUCH PERSON AS DETERMINED BY A FINAL ORDER ENTERED BY A COURT OF COMPETENT JURISDICTION.

11.8 *Preservation of Claims.*

Except as otherwise provided in the Plan, as of the Effective Date, pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, any action, cause of action, liability, obligation, right, suit, debt, sum of money, damage, judgment, claim and demand whatsoever, whether known or unknown, in law, equity or otherwise, accruing to the Debtors will become assets of the Reorganized Debtors, and the Reorganized Debtors will have the authority to commence and prosecute such causes of action for the benefit of the estates of the Debtors, including, but not limited to, equitable subordination actions, recovery causes of action and objections to claims under sections 105, 502, 510, 542 through 551, and 553 of the Bankruptcy Code, and claims arising under or relating to the Escrow Agreement, the Indemnity Escrow Account, Brewer, the Brewer Lawsuit, the Answer and Counterclaim, the Consulting Agreement, and/or non-compete/non-solicitation provisions in the Transaction Agreement. After the Effective Date, the Reorganized Debtors will have the authority to compromise and settle, otherwise resolve, discontinue, abandon or dismiss all such causes of action without approval of the Bankruptcy Court.

11.9 *Reservation of Rights.*

The Plan shall have no force or effect unless and until the Effective Date. Prior to the Effective Date, none of the filing of the Plan, any statement or provision contained in the

Plan, or action taken by the Debtors with respect to the Plan shall be, or shall be deemed to be, an admission or waiver of any rights of any Debtor or any other party with respect to any Claims or Existing Equity Interests or any other matter.

ARTICLE XII RETENTION OF JURISDICTION

The Bankruptcy Court shall have exclusive jurisdiction of all matters arising out of, or related to, the Reorganization Cases and the Plan pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code, including, without limitation:

- (a) To hear and determine pending applications for the assumption or rejection of executory contracts or unexpired leases and the allowance of cure amounts and Claims resulting therefrom;
- (b) To determine any and all adversary proceedings, applications and contested matters;
- (c) To hear and determine all applications for compensation and reimbursement of expenses under sections 330, 331 and 503(b) of the Bankruptcy Code;
- (d) To hear and determine any timely objections to, or requests for estimation of Disputed Administrative Expense Claims and Disputed Claims, in whole or in part;
- (e) To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified or vacated;
- (f) To issue such orders in aid of execution of the Plan, to the extent authorized by section 1142 of the Bankruptcy Code;
- (g) To consider any amendments to or modifications of the Plan or to cure any defect or omission, or reconcile any inconsistency, in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;
- (h) To hear and determine disputes or issues arising in connection with the interpretation, implementation or enforcement of the Plan, the Confirmation Order, any transactions or payments contemplated hereby, any agreement, instrument, or other document governing or relating to any of the foregoing or any settlement approved by the Bankruptcy Court;
- (i) To hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code (including, without limitation, any request by the Debtors prior to the Effective Date or request by the Reorganized Debtors after the Effective Date for an expedited determination of tax under section 505(b) of the Bankruptcy Code);

(j) To hear and determine all disputes involving the existence, scope and nature of the discharges granted under the Plan, the Confirmation Order or the Bankruptcy Code;

(k) To issue injunctions and effect any other actions that may be necessary or appropriate to restrain interference by any person or entity with the consummation, implementation or enforcement of the Plan, the Confirmation Order or any other order of the Bankruptcy Court;

(l) To determine such other matters and for such other purposes as may be provided in the Confirmation Order;

(m) To hear and determine any rights, Claims or causes of action held by or accruing to the Debtors pursuant to the Bankruptcy Code or pursuant to any federal or state statute or legal theory;

(n) To enter a final decree closing the Reorganization Cases; and

(o) To hear any other matter not inconsistent with the Bankruptcy Code.

ARTICLE XIII MISCELLANEOUS PROVISIONS

13.1 *Effectuating Documents and Further Transactions.*

On or before the Effective Date, and without the need for any further order or authority, the Debtors shall file with the Bankruptcy Court or execute, as appropriate, such agreements and other documents that are in form and substance satisfactory to them as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Reorganized Debtors are authorized to execute, deliver, file, or record such contracts, instruments, releases, indentures and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan and any securities issued pursuant to the Plan.

13.2 *Withholding and Reporting Requirements.*

In connection with the Plan and all instruments issued in connection therewith and distributed thereon, any party issuing any instrument or making any distribution under the Plan shall comply with all applicable withholding and reporting requirements imposed by any federal, state or local taxing authority, and all distributions under the Plan shall be subject to any such withholding or reporting requirements. Notwithstanding the above, each holder of an Allowed Claim that is to receive a distribution under the Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed on such holder by any governmental unit, including income, withholding and other tax obligations, on account of such distribution. Any party issuing any instrument or making any distribution under the Plan has the right, but not the obligation, to not make a distribution until such holder has made

arrangements satisfactory to such issuing or disbursing party for payment of any such tax obligations.

13.3 *Corporate Action.*

On the Effective Date, all matters provided for under the Plan that would otherwise require approval of the managers of one or more of the Debtors or Reorganized Debtors, as the case may be, shall be in effect from and after the Effective Date pursuant to the applicable general corporation law of the states in which the Debtors or the Reorganized Debtors are incorporated or established, without any requirement of further action by the managers of the Debtors or the Reorganized Debtors. On the Effective Date, or as soon thereafter as is practicable, the Reorganized Debtors shall, if required, file their amended articles of organization or certificates of incorporation, as the case may be, with the Secretary of State of the state in which each such entity is (or will be) organized, in accordance with the applicable general business law of each such jurisdiction.

13.4 *Modification of Plan.*

Alterations, amendments or modifications of or to the Plan may be proposed in writing by the Debtors at any time prior to the Confirmation Date, provided that the Plan, as altered, amended or modified satisfies the conditions of sections 1122 and 1123 of the Bankruptcy Code and the Debtors shall have complied with section 1125 of the Bankruptcy Code. The Plan may be altered, amended or modified at any time after the Confirmation Date and before substantial consummation, provided that the Plan, as altered, amended or modified, satisfies the requirements of sections 1122 and 1123 of the Bankruptcy Code and the Bankruptcy Court, after notice and a hearing, confirms the Plan, as altered, amended or modified, under section 1129 of the Bankruptcy Code and the circumstances warrant such alterations, amendments or modifications. A holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended or modified, if the proposed alteration, amendment or modification does not materially and adversely change the treatment of the Claim of such holder.

Prior to the Effective Date, the Debtors may make appropriate technical adjustments and modifications to the Plan without further order or approval of the Bankruptcy Court, provided that such technical adjustments and modifications do not adversely affect in a material way the treatment of holders of Claims or Existing Equity Interests.

13.5 *Revocation or Withdrawal of the Plan.*

The Debtors reserve the right to revoke or withdraw the Plan prior to the Confirmation Date. If the Debtors revoke or withdraw the Plan prior to the Confirmation Date, then the Plan shall be deemed null and void. In such event, nothing contained herein shall constitute or be deemed a waiver or release of any Claims or Existing Equity Interests by or against the Debtors or any other person or to prejudice in any manner the rights of the Debtors or any person in any further proceedings involving the Debtors.

13.6 Plan Supplement.

A draft form of the Plan Documents to be entered into as of the Effective Date and any other appropriate documents shall be contained in the Plan Supplement and filed with the Clerk of the Bankruptcy Court five (5) days prior to the Confirmation Hearing. Copies of the Plan Supplement may also be obtained without charge at the website maintained by the Debtors' claims and noticing agent, <http://www.expressenergyinfo.com>. All documents filed in these cases may also be viewed (a) during regular business hours (9:00 am to 4:00 pm prevailing Central Time weekdays, except legal holidays) at the U.S. Bankruptcy Court for the Southern District of Texas, 515 Rusk Street, Houston, Texas, 77002 and (b) electronically on the PACER system at <https://ecf.txsb.uscourts.gov> as they become available. Holders of Claims against or Existing Equity Interests in the Debtors may also obtain a copy of the Plan Supplement upon written request to the Debtors in accordance with section 13.15.

13.7 Payment of Statutory Fees.

All fees payable under section 1930 of chapter 123 of title 28 of the United States Code, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid on the Effective Date.

13.8 Dissolution of Statutory Committees and Cessation of Fee and Expense Payment.

Any statutory committees appointed in the Reorganization Cases shall dissolve on the Effective Date. Provided that all such fees and expenses payable as of the Effective Date have been paid in full, the Reorganized Debtors shall not be responsible for paying any fees and expenses incurred after the Effective Date by the Agent's Professionals and any professionals retained by any statutory committees.

13.9 Exemption from Transfer Taxes.

Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer or exchange of notes or equity securities under or in connection with the Plan, the creation of any mortgage, deed of trust or other security interest, the making or assignment of any lease or sublease or the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan, including, without limitation, the Exit Facility, any merger agreements or agreements of consolidation, deeds, bills of sale or assignments executed in connection with any of the transactions contemplated under the Plan shall not be subject to any stamp, real estate transfer, mortgage recording or other similar tax.

13.10 Expedited Tax Determination.

The Debtors and the Reorganized Debtors are authorized to request an expedited determination of taxes under section 505(b) of the Bankruptcy Code for any or all returns filed for, or on behalf of, the Debtors for any and all taxable periods (or portions thereof) ending after the Commencement Date through and including the Effective Date.

13.11 *Exhibits/Schedules.*

All exhibits and schedules to the Plan, including the Plan Supplement, are incorporated into and are a part of the Plan as if set forth in full herein.

13.12 *Substantial Consummation.*

On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

13.13 *Severability of Plan Provisions.*

In the event that, prior to the Confirmation Date, 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 shall remain in full force and effect and shall 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 valid and enforceable in accordance with its terms.

13.14 *Governing Law.*

Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent an exhibit to the Plan or Plan Supplement provides otherwise (in which case the governing law specified therein shall be applicable to such exhibit), the rights, duties, and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Texas without giving effect to its principles of conflict of laws.

13.15 *Notices.*

All notices, requests and demands to or upon the Debtors shall be in writing (including by facsimile transmission) to be effective 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:

Express Energy Services Operating, LP
3200 Southwest Freeway, Suite 2000
Houston, Texas 77027
Attn: Darron Anderson
Telephone: (713) 625-7400
Facsimile: (713) 625-7403

with a copy to:

Weil, Gotshal & Manges LLP
700 Louisiana Street, Suite 1600
Houston, Texas 77002
Attn: Alfredo R. Pérez, Esq.
Telephone: (713) 546-5000
Facsimile: (713) 224-9511

Dated: Houston, Texas

~~October 27,~~ November 3, 2009

Respectfully submitted,

EXPRESS ENERGY SERVICES OPERATING, LP
AND ITS AFFILIATED DEBTORS

By: /s/ Darron Anderson
Name: Darron Anderson
Title: Chief Executive Officer