

**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
	§	

**NOTICE OF FILING OF PROPOSED ORDER CONFIRMING THE DEBTORS' JOINT
PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

PLEASE TAKE NOTICE that on October 27, 2009, Express Energy Services Operating, LP and certain of its affiliated debtors, as debtors in possession, filed a Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated as of October 27, 2009 [Docket No. 17] (as updated on November 3, 2009 [Docket No. 171]).

PLEASE TAKE FURTHER NOTICE that attached hereto as **Exhibit A** is a copy of the proposed Order Confirming the Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code.

Dated: December 4, 2009
Houston, Texas

By: /s/ Alfredo R. Pérez
Alfredo R. Pérez (15776275)

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Debtors in Possession

EXHIBIT A

**Order Confirming Debtors' Joint Plan of Reorganization
Under Chapter 11 of the Bankruptcy Code**

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
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EXPRESS ENERGY SERVICES	§	
OPERATING, LP, <i>et al.</i> ,	§	Case No. 09-38044
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Debtors.	§	Jointly Administered
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ORDER CONFIRMING JOINT PLAN OF REORGANIZATION OF EXPRESS ENERGY SERVICES OPERATING, LP AND ITS AFFILIATED DEBTORS UNDER CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE

[Related to Docket Nos. 17, 18, 44, 171, 172, 177]

Express Energy Services Operating, LP and its affiliated debtors in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “**Debtors**”) having proposed and filed the Joint Plan of Reorganization of Under Chapter 11 of the United States Bankruptcy Code, dated October 27, 2009 [Docket No. 17] (as updated on November 3, 2009 [Docket No. 171], the “**Plan**”),¹ with the United States Bankruptcy Court for the Southern District of Texas (the “**Bankruptcy Court**”); and the Bankruptcy Court having entered, after due notice and a hearing, an Order Pursuant to Debtors’ Emergency Motion to (I) Approve Disclosure Statement and the Form and Manner of Service Related Thereto; (II) Set Dates for the Objection Deadline and Hearing Relating to Confirmation of the Plan; and (III) Authorize Related Relief (the “**Disclosure Statement Order**”) [Docket No. 44]; and the Disclosure Statement for the Debtors’ Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code [Docket No. 18] (as may be modified and amended, the “**Disclosure**

¹ Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to such terms in the Plan. A copy of the Plan is attached hereto as **Exhibit A**.

Statement”) and the Plan and the Solicitation Packages (as defined below) having been distributed to holders of Claims entitled to vote thereon as provided in the Disclosure Statement Order; and due notice of (i) entry of the Disclosure Statement Order; (ii) the Confirmation Hearing; and (iii) the deadline for voting on, and/or objecting to, the Plan having been provided to holders of Claims against and Existing Equity Interests in the Debtors and other parties in interest in accordance with the Disclosure Statement Order, the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and the Bankruptcy Local Rules for the Southern District of Texas (the “**Local Rules**”); and such notice being sufficient under the circumstances and no other or further notice being required; and objections to the Plan having been interposed by (i) Ector CAD, Gregg County, Harris County, Jackson County, Northwest ISD, Sharyland ISD, South Texas College, South Texas ISD, Tarrant County, Victoria County, Wise CAD, and Wise County (the “**First Taxing Authority Objection**”) [Docket No. 166]; (ii) Fort Worth ISD, Johnson County, Hill County College, City of Keene, Keene ISD, City of Cleburne, Cleburne ISD, and Joshua ISD (the “**Second Taxing Authority Objection**”) [Docket No. 157]; (iii) Brazos County, County of Freestone, Midland Central Appraisal District, and County of Taylor (the “**Third Taxing Authority Objection**”) [Docket No. 141]; (iv) the Texas Workforce Commission (the “**TWC Objection**”) [Docket No. 111]; and (v) Brewer (the “**Brewer Objection**,” [Docket No. 165] and together with the First Taxing Authority Objection, the Second Taxing Authority Objection, the Third Taxing Authority Objection, and the TWC Objection, the “**Objections**”); and the Objections having been resolved prior to the Confirmation Hearing or having been overruled; and upon consideration of (i) the Debtors’ Memorandum of Law in Support of Confirmation of Debtors’ Plan (the “**Confirmation Brief**”) [Docket No. 179]; (ii) the Declaration of Jeffrey S. Stein of The Garden City Group, Inc. Certifying

the Methodology for the Tabulation of Votes and Results of Voting with Respect to the Plan [Docket No. 178] (describing the methodology for the tabulation and results of voting with respect to the Plan and evidencing that the Debtors have received the requisite acceptances of the Plan in both number and amount as required by section 1126 of the Bankruptcy Code) (the “**Voting Certification**”); (iii) the Declaration of Darron Anderson in Support of Confirmation of the Plan (the “**Anderson Declaration**”); (iv) the Declaration of James Davis in Support of Confirmation of the Plan (the “**Davis Declaration**”); and (v) the Declaration of Dean Swick in Support of Confirmation of the Plan (the “**Swick Declaration**”); and the evidence adduced at the hearing to consider confirmation of the Plan been held before this Court on December 7, 2009 (the “**Confirmation Hearing**”); and the Bankruptcy Court having reviewed and considered the Plan, the Disclosure Statement, the Disclosure Statement Order, and the Confirmation Brief; and the appearance of all interested parties having been duly noted in the record of the Confirmation Hearing, including the testimony therein and the exhibits admitted into evidence; and upon all of the proceedings had before the Bankruptcy Court and upon the entire record of the Confirmation Hearing; and the Bankruptcy Court having determined based upon all of the foregoing that the Plan should be confirmed, as reflected by the Bankruptcy Court’s rulings made herein and on the record of the Confirmation Hearing; and after due deliberation and sufficient cause appearing therefor, it is hereby DETERMINED, FOUND, ADJUDGED, DECREED:

FINDINGS OF FACT

A. **Findings.** The findings set forth herein and on the record of the Confirmation Hearing constitute the Bankruptcy Court’s findings of fact pursuant to Rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as

such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. Exclusive Jurisdiction, Venue, Core Proceeding. This Court has jurisdiction over the Debtors' Chapter 11 Cases (as defined below), the confirmation of the Plan and the Objections pursuant to 28 U.S.C. § 1334. Confirmation of the Plan is a core proceeding pursuant to 28 U.S.C. § 157(b), and this Court has jurisdiction to enter a final order with respect thereto. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Commencement and Joint Administration of the Debtors' Chapter 11 Cases. On October 27, 2009 (the "Commencement Date"), the Debtors commenced with this Court voluntary cases under chapter 11 of the Bankruptcy Code (the "Chapter 11 Cases"). The Debtors have operated their business and managed their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee has been appointed in these Chapter 11 Cases. On November 30, 2009, the United States Trustee for the Southern District of Texas (the "U.S. Trustee") filed a Report of Inability to Appoint a Creditors' Committee [Docket No. 163].

D. Judicial Notice. The Bankruptcy Court takes judicial notice of the docket of the Debtors' Chapter 11 Cases maintained by the Clerk of the Bankruptcy Court, including, without limitation, all pleadings and other documents filed, all orders entered, and all evidence and arguments made, proffered, adduced and/or presented at the hearings held before the Bankruptcy Court during the pendency of the Debtors' Chapter 11 Cases.

E. Burden of Proof. The Debtors have met their burden of proving the elements of sections 1129(a) and (b) of the Bankruptcy Code by a preponderance of the evidence.

F. Solicitation and Notice. On October 29, 2009, the Bankruptcy Court entered the Disclosure Statement Order, which, among other things, preliminarily approved the Disclosure Statement, finding that it contained “adequate information” within the meaning of section 1125 of the Bankruptcy Code, and established procedures for the Debtors’ solicitation of votes of acceptances and rejections with respect to the Plan. The (i) Disclosure Statement (with a copy of the Plan attached thereto); (ii) Disclosure Statement Order; (iii) Confirmation Hearing Notice; and (iv) appropriate ballots for voting on the Plan (the “**Ballots**”) (collectively, the “**Solicitation Packages**”) were served in compliance with the Bankruptcy Rules, the Local Rules, and the Disclosure Statement Order. As described in the Disclosure Statement Order, (i) the service of the Solicitation Packages was adequate and sufficient under the circumstances of these Chapter 11 Cases, and (ii) adequate and sufficient notice of the Confirmation Hearing and other requirements, deadlines, hearings and matters described in the Disclosure Statement Order were timely provided in compliance with the Bankruptcy Rules, and provided due process to all parties in interest as set forth below.

G. As is evidenced by the Affidavit of Solicitation Mailing, dated November 6, 2009, of Patrick M. Leathem, Esq., a Bankruptcy Consultant with The Garden City Group, Inc. (“**GCG**”) [Docket No. 81], all parties required to be provided notice of the Confirmation Hearing (including the deadline for filing and serving objections to confirmation of the Plan) have been given due, proper, timely and adequate notice in compliance with the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order, and have had an opportunity to appear and be heard with respect thereto. No other or further notice is required.

H. Voting. Votes on the Plan were solicited after disclosure of “adequate information” as defined in section 1125 of the Bankruptcy Code. As evidenced by the Voting

Certification, votes to accept or reject the Plan have been solicited and tabulated fairly, in good faith and in a manner consistent with the Disclosure Statement Order, the Bankruptcy Code, and the Bankruptcy Rules.

I. Plan Supplement. On December 2, 2009, the Debtors filed that certain supplement to the Plan [Docket No. 172] (as revised on December 4, 2009 [Docket No. 177], the “**Plan Supplement**”) which includes, among other things, the following documents: (i) a form Limited Liability Company Agreement of Express Energy Services, LLC; (ii) a form Agreement and Plan of Conversion, including all exhibits attached thereto; (iii) biographical information for three of the initial managers of Express Energy Services, LLC; (iv) a list of executory contracts and unexpired leases to be rejected under the Plan; and (v) a list of assumed executory contracts and unexpired leases with cure amounts. All such materials comply with the terms of the Plan, and the filing and notice of such documents is good and proper in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules and no other or further notice is or shall be required.

Compliance With Section 1129 of the Bankruptcy Code

J. Plan Compliance with the Bankruptcy Code (11 U.S.C. § 1129(a)(1)). The Plan complies with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

K. Proper Classification (11 U.S.C. §§ 1122, 123(a)(1)). In addition to Administrative Expense Claims, DIP Facility Claims, Professional Compensation and Reimbursement Claims, and Priority Tax Claims in Article II of the Plan, which need not be classified, Article III of the Plan designates the following four classes of Claims and one class of Existing Equity Interests: Class 1 (Select Priority Claims), Class 2 (Miscellaneous Secured Claims), Class 3 (Senior Secured Claims), Class 4 (General Unsecured Claims), and Class 5

(Existing Equity Interests). Each of the Claims or Existing Equity Interests, as the case may be, in each particular Class is substantially similar to the other Claims or Existing Equity Interests in such Class. Valid business, legal and factual reasons exist for separately classifying the various Claims and Existing Equity Interests pursuant to the Plan, and such Classes do not unfairly discriminate between holders of Claims and Existing Equity Interests. The Plan therefore satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

L. Specified Unimpaired Classes (11 U.S.C. § 1123(a)(2)). Sections 4.1 and 4.2 of the Plan specify that Class 1 (Select Priority Claims) and Class 2 (Miscellaneous Secured Claims) are unimpaired by the Plan, thereby complying with section 1123(a)(2) of the Bankruptcy Code. The Plan therefore satisfies section 1123(a)(2) of the Bankruptcy Code.

M. Specified Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)). Sections 4.3, 4.4, and 4.5 of the Plan specify that Class 3 (Senior Secured Claims), Class 4 (General Unsecured Claims), and Class 5 (Existing Equity Interests) as impaired pursuant to the Plan, thereby complying with section 1123(a)(3) of the Bankruptcy Code. The Plan therefore satisfies section 1123(a)(3) of the Bankruptcy Code.

N. No Discrimination (11 U.S.C. § 1123(a)(4)). The Plan provides for the same treatment for each Claim or Existing Equity Interest in each respective Class unless the holder of a particular Claim or Existing Equity Interest has agreed to a less favorable treatment on account of such Claim or Existing Equity Interest, thereby satisfying section 1123(a)(4) of the Bankruptcy Code. The Plan therefore satisfies section 1123(a)(4) of the Bankruptcy Code.

O. Implementation of the Plan (11 U.S.C. § 1123(a)(5)). The Plan, together with the documents and agreements contemplated in the Plan Supplement (collectively, the “Plan Documents”), provide adequate and proper means for the implementation of the Plan as required

by section 1123(a)(5) of the Bankruptcy Code. The Plan therefore satisfies section 1123(a)(5) of the Bankruptcy Code.

P. Non-Voting Equity Securities (11 U.S.C. § 1123(a)(6)). The Plan does not provide for the issuance of nonvoting equity securities, thereby satisfying section 1123(a)(6) of the Bankruptcy Code.

Q. Designation of Managers and Officers (11 U.S.C. § 1123(a)(7)). Sections 9.2 and 9.4 of the Plan contains provisions with respect to the manner of the selection of managers and officers of Reorganized Express that are consistent with the interests of creditors, equity security holders, and public policy, thereby satisfying section 1123(a)(7) of the Bankruptcy Code.

R. Additional Plan Provisions (11 U.S.C. § 1123(b)). The other provisions of the Plan are appropriate and consistent with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1123(b) of the Bankruptcy Code. The failure to specifically address a provision of the Bankruptcy Code in this Confirmation Order shall not diminish or impair the effectiveness of this Confirmation Order.

S. Impairment/Unimpairment of Classes of Claims and Existing Equity Interests (§ 1123(b)(1)). As contemplated by section 1123(b)(1) of the Bankruptcy Code, (a) Claims in Class 1 (Select Priority Claims) and Class 2 (Miscellaneous Secured Claims) are not impaired by the Plan; and (b) Claims in Class 3 (Senior Secured Claims), Class 4 (General Unsecured Claims), and interests in Class 5 (Existing Equity Interests) are impaired by the Plan.

T. Assumption and Rejection of Executory Contracts (11 U.S.C. § 1123(b)(2)). In accordance with section 1123(b)(2) of the Bankruptcy Code, Section 8.1 of the Plan provides that all executory contracts and unexpired leases that exist between the Debtors and any person

or entity shall be deemed assumed by the Debtors as of the Effective Date, except for any executory contract or unexpired lease (i) that has been assumed or rejected pursuant to an order of the Bankruptcy Court entered prior to the Effective Date; (ii) previously expired or terminated on its own terms; (iii) as to which a motion for approval of the assumption or rejection of such executory contract or unexpired lease has been filed and served prior to the Confirmation Date; or (iv) that is specifically designated in the Plan Supplement as a contract or lease to be rejected pursuant to the Plan; provided, however, that the Debtors reserve the right, on or prior to the Effective Date, to amend the Plan Supplement to delete any executory contract or unexpired lease therefrom or add any executory contract or unexpired lease thereto, in which event such executory contract(s) or unexpired lease(s) shall be deemed to be, respectively, either rejected or assumed. Accordingly, the Plan satisfies the requirements of section 1123(b)(2) of the Bankruptcy Code.

U. Payments Related to Assumption of Contracts and Leases (11 U.S.C. § 1123(d)).

Section 8.2 of the Plan provides for the satisfaction of default claims associated with each executory contract and unexpired lease to be assumed pursuant to the Plan in accordance with section 365(b)(1) of the Bankruptcy Code. All cure amounts will be determined in accordance with the underlying agreements and applicable bankruptcy and nonbankruptcy law. Thus, the Plan complies with section 1123(d) of the Bankruptcy Code.

V. Debtors' Compliance with the Bankruptcy Code (11 U.S.C. § 1129(a)(2)).

Except as otherwise provided or permitted by orders of the Bankruptcy Court, the Debtors have complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the Disclosure Statement Order in transmitting the Solicitation Packages and in

tabulating the votes with respect to the Plan, thereby complying with section 1125 with respect to the Disclosure Statement and the Plan.

W. Plan Proposed in Good Faith (11 U.S.C. § 1129 (a)(3)). The Debtors are the proponents for the Plan. The Debtors have proposed the Plan (including all documents necessary to effectuate the Plan) in good faith and not by any means forbidden by law, thereby complying with section 1129(a)(3) of the Bankruptcy Code. The Debtors' good faith is evident from the Anderson Declaration, the Davis Declaration, the Swick Declaration, the record of these Chapter 11 Cases, including the record of the hearing to preliminarily approve the Disclosure Statement, the record of the Confirmation Hearing, and other proceedings held in connection with these Chapter 11 Cases. The Plan is based upon extensive, arms'-length negotiations between and among the Debtors, the Agent, where applicable, other parties in interest, and represents the culmination of months of intensive negotiations and discussions among all parties. The Plan contemplates and is premised upon the financial restructuring of the Debtors by refinancing, restructuring, converting, exchanging, and continuing substantially all of the Debtors' prepetition senior secured debt into equity in the Reorganized Debtors. The Plan provides for a distribution of the value of the Debtors' estates to creditors in accordance with the priorities and provisions of the Bankruptcy Code. Moreover, the Plan achieves the primary objectives underlying a chapter 11 bankruptcy: the reorganization of a debtor and the distribution of value to creditors for amounts owing. The Plan accomplishes these goals by providing the means through which the Debtors and their successors-in-interest, the Reorganized Debtors, may continue to operate as a viable entity and effectuate distributions to their creditors. Inasmuch as the Plan promotes the rehabilitative objectives and purposes of the Bankruptcy Code, the Plan

and the related documents have been filed in good faith and the Debtors have satisfied its obligations under section 1129(a)(3) of the Bankruptcy Code.

X. Payment for Services or Cost and Expenses (11 U.S.C. § 1129(a)(4)). All payments made or to be made by the Debtors for services or for costs and expenses in connection with these Chapter 11 Cases, or in connection with the Plan and incident to these Chapter 11 Cases, have been approved by, or are subject to the approval of, the Court as reasonable, thereby satisfying section 1129(a)(4) of the Bankruptcy Code.

Y. Managers, Officers, and Insiders (11 U.S.C. § 1129(a)(5)). The Debtors have complied with section 1129(a)(5) of the Bankruptcy Code. The identity and affiliations of the persons proposed to serve as the initial managers of Reorganized Express after the confirmation of the Plan have been fully disclosed in the Plan Supplement and the appointment to, or continuance in, such offices of such persons is consistent with the interests of holders of Claims against, and Existing Equity Interests in, the Debtors and with public policy. In accordance with the provisions of the Plan, from and after the Effective Date, the initial board of managers of the Reorganized Debtors shall consist of Darron Anderson, Richard Maybaum, Mark Lawrence, and two members to be proposed later. The foregoing composition complies with Section 9.2 of the Plan. In addition, Section 9.4 of the Plan provides that 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. In accordance with section 1129(a)(5)(B) of the Bankruptcy, Section 9.4 of the Plan also provides that such officers shall serve in accordance with applicable non-bankruptcy law, any employment agreement with the Reorganized Debtors, and the Postconfirmation Organizational Documents.

Z. No Rate Changes (11 U.S.C. § 1129(a)(6)). No rates are being changed that require approval of a governmental regulatory commission, and accordingly, this section is inapplicable to the Plan.

AA. Best Interests of Creditors (11 U.S.C. § 1129(a)(7)). As demonstrated by the Swick Declaration and the liquidation analysis contained in the Disclosure Statement, which employed commonly accepted methodologies and reasonable assumptions, with respect to each impaired class of Claims against or Existing Equity Interests in the Debtors, each holder of a Claim or Existing Equity Interest in such Class has accepted the Plan or will receive or retain pursuant to the Plan on account of such Claim or Existing Equity Interest property of a value, as of the Effective Date, that is not less than the amount that such holder would so receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on the Effective Date. Accordingly, the Plan satisfies section 1129(a)(7) of the Bankruptcy Code.

BB. Acceptance by Certain Classes (11 U.S.C. 1129(a)(8)). Class 1 (Select Priority Claims) and Class 2 (Miscellaneous Secured Claims) are unimpaired under the Plan and are, therefore, conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Class 3 (Senior Secured Claims) and Class 4 (General Unsecured Claims), which are impaired Classes of Claims eligible to vote, have affirmatively voted to accept the Plan. As such, section 1129(a)(8) of the Bankruptcy Code is satisfied with respect to these Classes of Claims. Because holders of Existing Equity Interests in Class 5 will not receive or retain any property on account of their interests in the Debtors, Class 5 (Existing Equity Interests) is deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. If, and to the extent, section 1129(a)(8) of the Bankruptcy Code is not satisfied with

respect to Class 5, the Plan may nevertheless be confirmed because the Plan satisfies section 1129(b) of the Bankruptcy Code with respect to Class 5.

CC. Treatment of Administrative Expense Claims, DIP Facility Claims, Professional Compensation and Reimbursement Claims, and Priority Tax Claims (11 U.S.C. § 1129(a)(9)).

The treatment of Administrative Expense Claims, DIP Facility Claims, Professional Compensation and Reimbursement Claims, and Priority Tax Claims pursuant to Sections 2.1, 2.2, 2.3 and 2.4 of the Plan satisfies the requirements of sections 1129(a)(9)(A), (C), and (D) of the Bankruptcy Code. The treatment of Select Priority Claims pursuant to Section 4.1 of the Plan satisfies the requirements of sections 1129(a)(9)(B) of the Bankruptcy Code, as applicable.

DD. Acceptance by Impaired Classes (11 U.S.C. § 1129(a)(10)). Class 3 (Senior Secured Claims) and Class 4 (General Unsecured Claims), each of which is impaired pursuant to the Plan and entitled to vote, voted to accept the Plan by the requisite majorities, determined without including any acceptance of the Plan by any insider, thereby satisfying the requirements of section 1129(a)(10) of the Bankruptcy Code.

EE. Feasibility (11 U.S.C. § 1129 (a)(11)). The information in the Disclosure Statement and the evidence proffered or adduced at the Confirmation Hearing and in the Anderson and Davis Declarations further demonstrating the sufficiency of the funding for the Plan: (i) is persuasive and credible; (ii) has not been controverted by other evidence; and (iii) establishes that the Plan is feasible, there is a reasonable likelihood that the Reorganized Debtors will meet their financial obligations under the Plan in the ordinary course of business, and confirmation of the Plan is not likely to be followed by the liquidation or need for further financial reorganization of the Reorganized Debtors, thereby satisfying the requirements of section 1129(a)(11) of the Bankruptcy Code.

FF. Payment of Statutory Fees (11 U.S.C. § 1129(a)(12)). As required pursuant to Section 13.7 of the Plan, all fees payable under section 1930 of title 28 of the United States Code have been or will be paid on the Effective Date and will continue to be paid thereafter as required, thereby satisfying the requirements of section 1129(a)(12) of the Bankruptcy Code.

GG. Continuation of Retiree Benefits (11 U.S.C. § 1129(a)(13)). The Debtors have no retiree benefit plans as described in section 1129(a)(13) of the Bankruptcy Code.

HH. No Domestic Support Obligations (11 U.S.C. § 1129(a)(14)). The Debtors are not required by a judicial or administrative order, or by statute, to pay a domestic support obligation. Accordingly, section 1129(a)(14) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

II. The Debtors Are Not Individuals (11 U.S.C. § 1129(a)(15)). The Debtors are not individuals, and accordingly, section 1129(a)(15) of the Bankruptcy Code is inapplicable to these Chapter 11 Cases.

JJ. No Applicable Nonbankruptcy Law Regarding Transfers (11 U.S.C. § 1129(a)(16)). The Debtors are moneyed, business, or commercial corporations and/or partnerships, as the case may be, and accordingly, section 1129(a)(16) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

KK. No Unfair Discrimination; Fair and Equitable (11 U.S.C. § 1129(b)). The Debtors have requested that the Court confirm the Plan notwithstanding the fact that one impaired Class – Class 5 (Existing Equity Interests) (the “**Rejecting Class**”) – has been deemed to reject the Plan. The Debtors have satisfied the requirements of sections 1129(b)(1) and (b)(2) of the Bankruptcy Code with respect to the Rejecting Class. Based on the evidence proffered, adduced, and/or presented at the Confirmation Hearing and in the Anderson and Davis

Declarations, the Plan does not discriminate unfairly and is fair and equitable with respect to the Rejecting Class. As required by sections 1129(b)(1) and (b)(2) of the Bankruptcy Code, the Plan does not “unfairly discriminate” because the Rejecting Class is of a different legal nature and priority, and no Class of Claims or Existing Equity Interests of similar legal rights is receiving different treatment under the Plan. The Plan is fair and equitable as to the Rejecting Class because the Plan maintains the relative priority among the classes. Specifically, holders of Existing Equity Interests in Class 5 meet the requirements of section 1129(b)(2)(B) of the Bankruptcy Code because no junior interest will receive or retain any property under the Plan on account of such junior interests and the senior classes will not be paid in full. Based on the foregoing, the requirements of section 1129(b) of the Bankruptcy Code are met with respect to the Rejecting Class and the Plan may be confirmed notwithstanding the rejection by the Rejecting Class.

LL. Only One Plan (11 U.S.C. § 1129(c)). The Plan is the only plan filed in this case, and accordingly, section 1129(c) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

MM. Principal Purpose of the Plan (11 U.S.C. § 1129(d)). The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of Section 5 of the Securities Act of 1933, thereby satisfying the requirements of section 1129(d) of the Bankruptcy Code.

NN. Small Business Case (11 U.S.C. § 1129(e)). None of these Chapter 11 Cases are a “small business case,” as that term is defined in the Bankruptcy Code, and, accordingly, section 1129(e) of the Bankruptcy Code is inapplicable.

OO. Good-Faith Solicitation (11 U.S.C. § 1125(e)). Based on the record before the Bankruptcy Court in these Chapter 11 Cases, the Debtors are deemed to have solicited acceptances of the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code, including without limitation, sections 1125(a) and (e) of the Bankruptcy Code, and any applicable non-bankruptcy law, rule, or regulation governing the adequacy of disclosure in connection with such solicitation.

PP. Satisfaction of Confirmation Requirements. Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code.

QQ. Implementation. All documents necessary to implement the Plan and all other relevant and necessary documents have been negotiated in good faith and at arms' length and shall, upon completion of documentation and execution, be valid, binding, and enforceable agreements and not be in conflict with any federal or state law.

RR. Good Faith. The Debtors, the Agent, the Consenting Holders and all of their respective members, officers, directors, agents, financial advisers, attorneys, employees, partners, affiliates, and representatives, (i) have acted in good faith in negotiating, formulating and confirming the Plan and agreements, compromises, settlements, transactions and transfers contemplated thereby, and (ii) will act in good faith in proceeding to (a) consummate the Plan and the agreements, compromises, settlements, transactions, and transfers contemplated thereby and (b) take the actions authorized and directed or contemplated by this Confirmation Order.

SS. Executory Contracts and Unexpired Leases. The Debtors have satisfied the provisions of section 365 of the Bankruptcy Code with respect to the assumption, assignment and rejection of executory contracts and unexpired leases pursuant to the Plan.

TT. Transfers by Debtors. The issuance of the New Equity Units shall be free and clear of all Liens, charges, Claims, encumbrances, and other interests. All transfers of property of the Debtors' estate shall be free and clear of all Liens, charges, Claims, encumbrances, and other interests, except as otherwise expressly provided in the Plan, the Plan Documents, or this Confirmation Order.

UU. Injunction, Exculpation, and Releases. The Court has jurisdiction under sections 1334(a) and (b) of title 28 of the United States Code to approve the injunction, releases, and exculpation set forth in Article XI of the Plan. Such provisions, in accordance with section 105(a) of the Bankruptcy Code, (i) are essential to the formulation and implementation of the Plan, as provided in section 1123 of the Bankruptcy Code; (ii) confer substantial benefits on the Debtors' estates; (iii) are fair and reasonable; and (iv) are in the best interests of the Debtors, their estates, and parties in interest. Further, the exculpations and releases in the Plan do not relieve any party of liability for an act or omission to the extent such act or omission is determined by a Final Order to have constituted willful misconduct or gross negligence or the other exceptions set forth therein. Based upon the record of these Chapter 11 Cases and the evidence proffered, adduced, and/or presented at the Confirmation Hearing, this Court finds that the injunction, exculpation, and releases set forth in Article XI of the Plan are consistent with the Bankruptcy Code.

VV. Compromise and Settlement. Pursuant to Bankruptcy Rule 9019, in consideration for the classification, distribution and other benefits provided under the Plan, upon the Effective Date, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims or controversies resolved pursuant to the Plan. All Plan distributions made to creditors holding Allowed Claims in any Class are intended to be and shall be final, and

no Plan distribution to the holder of a Claim in one Class shall be subject to being shared with or reallocated to the holders of any Claim in another Class by virtue of any prepetition collateral trust agreement, shared collateral agreement, subordination agreement, other similar inter-creditor arrangement or deficiency Claim.

CONCLUSIONS OF LAW

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND
DECREED THAT:

1. **Confirmation.** All requirements for confirmation of the Plan have been satisfied. The Plan is CONFIRMED in its entirety pursuant to section 1129 of the Bankruptcy Code. A copy of the confirmed Plan is attached as **Exhibit A** to this Confirmation Order. The terms of the Plan and the Plan Supplement are incorporated by reference into, and are an integral part of, this Confirmation Order.

2. **Objections.** All parties have had a full and fair opportunity to litigate all issues raised by the Objections, or which might have been raised. All other objections, responses, statements, and comments in opposition to the Plan, other than those withdrawn with prejudice in their entirety prior to the Confirmation Hearing or otherwise resolved on the record of the Confirmation Hearing and/or herein are overruled for the reasons stated on the record.

3. **Solicitation and Notice.** Notice of the Confirmation Hearing complied with the terms of the Disclosure Statement Order, was appropriate and satisfactory based on the circumstances of these Chapter 11 Cases, and was in compliance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules. The solicitation of votes on the Plan and the Solicitation Packages complied with the solicitation procedures in the Disclosure Statement Order, were appropriate and satisfactory based upon the circumstances of these

Chapter 11 Cases, and were in compliance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

4. Plan Supplement. The documents contained in the Plan Supplement, and any amendments, modifications, and supplements thereto, and all documents and agreements introduced into evidence by the Debtors at the Confirmation Hearing (including all exhibits and attachments thereto and documents referred to therein or contemplated thereby), as applicable, are authorized and approved when they are finalized, executed and delivered. Without further order or authorization of this Court, the Debtors, the Reorganized Debtors, and their successors are authorized and empowered to make all modifications to all documents included as part of the Plan Supplement that are consistent with the Plan. Execution versions of the documents comprising the Plan Supplement, with such changes therein and modifications thereto as shall be agreed to by the Debtors and the Reorganized Debtors, shall constitute legal, valid, binding, and authorized obligations of the respective parties thereto, enforceable in accordance with their terms.

5. Omission of Reference to Particular Plan Provisions. The failure to specifically describe or include any particular provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the Plan be approved and confirmed in its entirety.

6. Plan Classification Controlling. The classifications of Claims and Existing Equity Interests for purposes of the distributions to be made pursuant to the Plan shall be governed solely by the terms of the Plan. The classification set forth on the Ballots tendered or returned by the Debtors' creditors in connection with voting on the Plan: (i) were set forth on the Ballots solely for purposes of voting to accept or reject the Plan; (ii) do not necessarily represent,

and in no event shall be deemed to modify or otherwise affect, the actual classification of such Claims and Existing Equity Interests under the Plan for distribution purposes; and (iii) shall not be binding on the Debtors, the Reorganized Debtors, creditors, or interest holders for purposes other than voting on the Plan.

7. Binding Effect. Except as otherwise provided in section 1141(d)(3) of the Bankruptcy Code or this Confirmation Order, upon entry of this Confirmation Order and subject to the occurrence of the Effective Date, the provisions of the Plan shall bind (i) any holder of a Claim against or Existing Equity Interest in the Debtors and its respective successors and assigns, whether or not such Claim or Existing Equity Interest of such holder is impaired under the Plan and whether or not such holder has accepted the Plan; (ii) any and all non-debtor parties to assumed executory contracts and unexpired leases with the Debtors; (iii) every other party in interest in these Chapter 11 Cases; and (iv) all parties receiving property under the Plan, and their respective heirs, executors, administrators, successors, or assigns.

8. Merger, Dissolution, or Consolidation of Corporate Entities. Pursuant to Section 5.5 of the Plan, on or as of the Effective Date or as soon as practicable thereafter and without the need for any further corporate, partnership, limited liability company or other action, the Reorganized Debtors may (i) cause any or all of the Reorganized Debtors to be merged into one or more of the Reorganized Debtors, dissolved or otherwise consolidated; (ii) cause the transfer of assets between or among the Reorganized Debtors; or (iii) engage in any other transaction in furtherance of the Plan.

9. Cancellation of Existing Agreements and Existing Equity Interests. Pursuant to Section 5.3 of the Plan, except (i) as otherwise expressly provided in the Plan; (ii) with respect to executory contracts or unexpired leases that have been assumed by the Debtors; (iii) for purposes

of evidencing a right to distributions under the Plan; or (iv) 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.

10. Issuance of New Equity Units. The issuance by Reorganized Express of New Equity Units on the Effective Date is authorized without the need for any further corporate action and without any further action by holders of Claims or Existing Equity Interests. The Debtors and the Senior Secured Lenders (and each of their respective members, Affiliates, agents, directors, officers, employees, advisors, and attorneys) have, and upon confirmation of the Plan (including all documents necessary to effectuate the Plan or otherwise contemplated by the Plan, including those contained in the Plan Supplement) shall be deemed to have participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code with regards to the issuance and distribution of the New Equity Units under the Plan, and therefore are not, and on account of such distribution will not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

11. Exemption from Securities Laws. To the maximum extent provided by section 1145 of the Bankruptcy Code and applicable non-bankruptcy law, the issuance under the Plan of the New Equity Units will be exempt from registration under the Securities Act of 1933, as amended, and all rules and regulations promulgated thereunder and Reorganized Express will not be subject to the reporting requirements of the Securities Exchange Act of 1934. Transfer of the

New Equity Units shall not be registered under applicable securities laws and shall be subject to applicable securities laws regarding transfer.

12. Insurance Policies. Notwithstanding anything contained in the Plan to the contrary, 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 under the Plan and will be assumed pursuant to the Plan effective as of the Effective Date. Nothing contained in Section 8.5 of the Plan 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.

13. Distributions Under the Plan. All distributions pursuant to the Plan shall be made in accordance with Article VI of the Plan; provided, however, that the Debtors shall not make any distributions under \$100.00 unless a written request therefor is made to the Reorganized Debtors.

14. Disputed Claims. The provisions of Article VII of the Plan, including, without limitation, the provisions governing procedures for resolving Disputed Claims, are found to be fair and reasonable and are approved.

15. Assumption or Rejection of Executory Contracts and Unexpired Leases (11 U.S.C. § 1123(b)(2)). Pursuant to Section 8.1 of the Plan, on the Effective Date, the Debtors shall assume all executory contracts and unexpired leases, except for any executory contract or unexpired lease (i) that has been assumed or rejected pursuant to an order of the Bankruptcy Court entered prior to the Effective Date; (ii) that previously expired or terminated on its own terms; (iii) that is subject to a pending motion for approval of the assumption or rejection of such executory contract or unexpired lease; or (iv) that is specifically designated in the Plan

Supplement as a contract or lease to be rejected pursuant to the Plan. Any executory contracts or unexpired leases listed in the Plan Supplement to be rejected shall be deemed rejected by the Debtors on the respective date provided in the Plan Supplement and the entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such rejections pursuant to sections 365(a) and 1123 of the Bankruptcy Code.

16. Approval of Assumption or Rejection of Executory Contracts and Unexpired Leases. Entry of this Confirmation Order shall, subject to and upon the occurrence of the Effective Date, constitute the approval, pursuant to sections 365(a) and 1123 of the Bankruptcy Code, of the assumption, assignment, or rejection, as the case may be, of the executory contracts and unexpired leases assumed, assigned, or rejected pursuant to Section 8.1 of the Plan.

17. Bar Date for Filing Proofs of Claim Relating to Executory Contracts and Unexpired Leases Rejected Pursuant to the Plan. If the rejection of an executory contract or unexpired lease by the Debtors hereunder results in damages to the other party or parties to such contract or lease, any claim for such damages, if not heretofore evidenced by a filed proof of claim, shall be forever barred and shall not be enforceable against the Debtors, or its properties or agents, successors, or assigns, unless a proof of claim is filed with the Bankruptcy Court and served upon attorneys for the Debtors on or before 30 days after the latest to occur of (a) the Confirmation Date, and (b) the date of entry of an order by the Bankruptcy Court authorizing rejection of a particular executory contract or unexpired lease.

18. Vesting of Assets. Pursuant to Section 11.1 of the Plan, except as otherwise provided in the Plan or the Plan Documents, on the Effective Date, 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, the Plan Documents and the documents and instruments executed and delivered in connection with the Plan and the Plan Documents.

19. Managers and Officers. Pursuant to Section 9.2 of the Plan, effective as of the Effective Date, the management, control and operation of Reorganized Express shall become the general responsibility of the new board of managers of Reorganized Express. The identity and affiliations of the persons proposed to serve as the initial managers and officers of the Reorganized Debtors after the confirmation of the Plan have been fully disclosed in the Plan and Plan Supplement and the appointment to, or continuance in, such offices of such persons are consistent with the interests of holders of Claims against, and Existing Equity Interests in, the Debtors and with public policy. Each member of the Postconfirmation Board will serve in accordance with the terms and subject to the conditions of the New Organizational Documents. The appointment to, or continuance in, such office of each such individual is consistent with the interests of the holders of Claims against and Existing Equity Interests in the Reorganized Debtors, and public policy.

20. Discharge of Debtors. Pursuant to Sections 11.3 and 11.4 of the Plan, except as otherwise provided in the Plan and the Plan Documents, or this Confirmation Order or such other order of the Bankruptcy Court that may be applicable, on the Effective Date all Claims against and Existing Equity Interests in the Debtors and Debtors in Possession, shall be discharged and released in full. All Persons and Entities shall be precluded from asserting against the Debtors, the Debtors in Possession, their successors or assigns, including, without limitation, the Reorganized Debtors, their agents and employees, or their respective assets, properties or interests in property, any other or further Claims based upon any act or omission, transaction or

other activity of any kind or nature that occurred prior to the Confirmation Date, whether or not the facts or legal bases therefor were known or existed prior to the Confirmation Date regardless of whether a proof of Claim or proof of Existing Equity Interest was filed, whether the holder thereof voted to accept or reject the Plan or whether the Claim is an Allowed Claim.

21. Injunction. Pursuant to Section 11.5 of the Plan, except with respect to enforcement of parties' rights under the Plan and the Plan Documents or any document or instrument executed or delivered in connection with the Plan and the Plan Documents, all Persons or entities who have held, hold or may hold Claims against, or Existing Equity Interests in, the Debtors 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 of the Reorganized Debtors; (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 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 with respect to such Claim or Existing Equity Interest; (iv) asserting any right of setoff, subrogation or recoupment of any kind against any obligation due to any Reorganized Debtor or against the property or interests in property of any Reorganized Debtor with respect to such Claim or Existing Equity Interest; and (v) pursuing any claim released pursuant to Article XI of the Plan.

22. Terms of Injunction. Unless otherwise provided, all injunctions or stays provided for in these Chapter 11 Cases pursuant to sections 105, 362 or 525 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and

effect until entry of an order in accordance with Section 11.5 of the Plan or such other Final Order of the Bankruptcy Court.

23. Exculpation. Except for enforcement of parties' rights under the Plan and the Plan Documents or any document or instrument executed or delivered in connection with the Plan and the Plan Documents, none of the Released Parties 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 Chapter 11 Cases, the formulation, dissemination, confirmation, consummation or administration of the Plan or the Plan Documents, property to be distributed under the Plan or the Plan Documents or any other act or omission in connection with these Chapter 11 Cases, the Plan, the Plan Documents, the Disclosure Statement or any contract, instrument, document or other agreement related thereto; and such claims shall be deemed expressly waived and forever relinquished as of the Effective Date; 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.

24. Releases. Effective as of the Confirmation Date but subject to the occurrence of the Effective Date, to the fullest extent permitted by applicable law, 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 Chapter 11 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 Chapter 11 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.

25. Releases By the Holders of Claims and Interests. Effective as of the Confirmation Date, but subject to the occurrence of the Effective Date, to the extent permitted by applicable law, for good and valuable consideration, 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 Chapter 11 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 Chapter 11 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; provided, further, that nothing in this Confirmation Order or the Plan discharges, releases, precludes, or enjoins: (i) any environmental liability to any governmental unit that is not a Claim, as such term is defined in section 101 of the Bankruptcy Code; or (ii) any environmental Claim of any governmental unit arising on or after the Effective Date. The Debtors and Reorganized Debtors reserve the right to assert that any environmental liability is a Claim that arose on or prior to the Confirmation Date and that such Claim has been discharged and/or released under sections 524 and 1141 of the Bankruptcy Code. In addition, nothing in this Confirmation Order or the Plan discharges, releases, precludes, or enjoins: (a) any environmental liability to any governmental unit that any entity would be subject to as the owner or operator of property after the Effective Date; or (b) any liability to the United States on the part of any Person other than the Debtor or Reorganized Debtor.

26. Tax Returns. The indebtedness under the Senior Secured Credit Agreement and Senior Secured Guarantee and Security Agreement shall be treated as nonrecourse indebtedness by Express, Express 2008, the Agent and the Senior Secured Lenders for purposes of Sections 108 and 1001 of the Internal Revenue Code of 1986, as amended, and all tax returns and reports filed by such parties shall be prepared in a manner consistent with such treatment.

27. Conditions to Effective Date. The Plan shall not become effective unless and until the conditions set forth in Section 10.1 of the Plan are satisfied or waived pursuant to Section 10.2 of the Plan.

28. Retention of Jurisdiction. Pursuant to Article XII of the Plan, the Bankruptcy Court shall retain and have exclusive jurisdiction over any matter arising under the Bankruptcy

Code and arising in or related to these Chapter 11 Cases or the Plan, to the fullest extent as is legally permissible.

29. Effectuating Documents and Further Transactions. The 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, implement, and further evidence the terms and conditions of the Plan.

30. 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, including but not limited to, (i) the adoption of the Certificate of Conversion of Express Energy Services Holding, LP; (ii) the issuance of the New Equity Units; (iii) the execution of the Limited Liability Company Agreement of Express Energy Services, LLC; (iv) delivery and performance of documents relating to the Exit Facility; and (v) the adoption of the Postconfirmation Incentive Plan.

31. Withholding and Reporting Requirements. Pursuant to Section 13.2 of the Plan, the Reorganized Debtors shall comply with all applicable tax withholding and reporting requirements imposed on it by any governmental unit, and all distributions pursuant to the Plan shall be subject to such withholding and 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 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.

32. Modification. Pursuant to Section 13.4 of the Plan, the Plan may be altered, amended or modified at any time after the Confirmation Date and before substantial consummation, provided that (x) the Plan, as altered, amended or modified, satisfies the requirements of sections 1122 and 1123 of the Bankruptcy Code; and (y) 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 at any time after the Confirmation Date and before substantial consummation, 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. For the avoidance of doubt, the foregoing shall not effect a waiver of any rights that any party may have with respect to modification of the Plan under section 1127 of the Bankruptcy Code.

33. Payment of Statutory Fees. The Debtors shall timely pay on the Effective Date all pre-confirmation quarterly fees owed to the U.S. Trustee. The Reorganized Debtors also shall timely pay post-confirmation quarterly fees assessed under 28 U.S.C. § 1930(a)(6) until such time as the Bankruptcy Court enters a final decree closing these Chapter 11 Cases, or enters an order either converting these Chapter 11 Cases to cases under chapter 7 or dismissing these Chapter 11 Cases. After confirmation, the Reorganized Debtors shall timely file with the Bankruptcy Court and shall transmit to the U.S. Trustee a true and correct statement of all

disbursements for each quarter, or portion thereof, that these Chapter 11 Cases, remain open in a format prescribed by the U.S. Trustee.

34. Post-Effective Date Fees and Expenses. From and after the Effective Date, the Reorganized Debtors shall, in the ordinary course of business and without the necessity for any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the professionals retained by the Reorganized Debtors related to implementation and consummation of the Plan.

35. Exemption from Transfer Taxes. Pursuant to section 1146(a) of the Bankruptcy Code, 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, shall not be subject to any stamp, real estate transfer, mortgage recording or other similar tax. All sale transactions consummated by the Debtors and approved by the Bankruptcy Court on and after the Commencement Date through and including the Effective Date, including, without limitation, the issuance of the New Equity Units and the loans under the Exit Facility, shall be deemed to have been made under, in furtherance of, or in connection with the Plan and, thus, shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax.

36. Professional Compensation and Reimbursement. 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 (i) file, on or before the date that is 45 days after the Effective Date their respective applications for final allowances of compensation for professional services rendered and reimbursement of expenses incurred and (ii)

be paid in full without interest, 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 or upon such other terms as may be mutually agreed upon between the holder of such Administrative Expense Claim and the Debtors. The Reorganized Debtors are authorized to pay compensation for services rendered or reimbursement of expenses incurred after the Confirmation Date in the ordinary course of business and without the need for Bankruptcy Court approval.

37. Specific Reservation of Rights. Nothing in the Plan or the Confirmation Order shall release, alter, or create any rights, claims, causes of action, or defenses that Brewer or any entity associated or affiliated with Brewer (collectively with Brewer, the “**Brewer Parties**”), or that the Reorganized Debtors may have under any contract or lease assumed under the Plan, and the Brewer Parties and the Reorganized Debtors expressly preserve and may assert any such rights, claims, causes of action, or defenses against each other.

38. Taxing Authorities. Notwithstanding anything to the contrary in the Plan or in this Confirmation Order, any Allowed Secured Claims held by claimants in the First Taxing Authority Objection and the Third Taxing Authority Objection (each a “**Taxing Authority**”) arising from property taxes due for the 2009 tax year, shall be paid by the Reorganized Debtors in the ordinary course in accordance with applicable non-bankruptcy law. Should the Reorganized Debtors fail to make such payments timely, the Taxing Authorities shall provide notice of default to counsel to the Reorganized Debtors, upon which the Reorganized Debtors shall have 30 days to cure such default. If a default is not cured within this period, or if the Reorganized Debtors should default on more than one occasion, the Taxing Authorities shall be at liberty to exercise all remedies they would otherwise be entitled to under state law to collect

all taxes, penalties and interest otherwise due without further recourse to the Bankruptcy Court. The Taxing Authorities shall retain any liens securing any Allowed Secured Claim due for any year until such Allowed Secured Claim is paid in full and the liens of the Taxing Authorities shall not be subordinated or primed by any Exit Facility. Taxes for the 2008 and prior tax years shall be entitled to interim interest under applicable bankruptcy and non-bankruptcy law.

39. Notwithstanding anything to the contrary in the Plan or in this Confirmation Order, any Allowed Secured Claims held by Fort Worth ISD, Johnson County, Hill County Junior College, City of Keene, Keene ISD, City of Cleburne, Cleburne ISD, and Joshua ISD arising from property taxes due for the 2009 tax year, shall be paid by the Reorganized Debtors in the ordinary course and such claimant(s) shall retain any lien securing such claim until such claim is paid in full.

40. Notwithstanding anything to the contrary in the Plan or in this Confirmation Order, the Reorganized Debtors shall satisfy all Allowed Claims held by the Texas Workforce Commission within 30 days of the Effective Date. To the extent the Texas Workforce Commission has valid, enforceable setoff rights under applicable law, such setoff rights are expressly preserved.

41. Notice of Entry of Confirmation Order. Pursuant to Bankruptcy Rules 2002(f)(7), 2002(k), and 3020(c), the Debtors or the Reorganized Debtors, as the case may be, shall file and serve notice of entry of this Confirmation Order in substantially the form annexed hereto as **Exhibit B** (the “**Notice of Confirmation Order**”) on all creditors and interest holders, the U.S. Trustee, and other parties in interest, by causing the Notice of Confirmation Order to be delivered to such parties by first-Class mail, postage prepaid, within 10 business days after entry

of this Confirmation Order. The Notice of Confirmation Order shall also be posted on the website of the Debtors' Court-appointed voting and tabulation agent, GCG, at: www.expressenergyinfo.com. Such notice is adequate under the particular circumstances and no other or further notice is necessary. The form of Notice of Confirmation Order substantially in the form annexed hereto as **Exhibit B** is approved.

42. Notice of the Effective Date. As soon as practicable after the occurrence of the Effective Date, the Reorganized Debtors shall file notice of the occurrence of the Effective Date and shall serve a copy of same on all parties entitled to receive notice pursuant to these Chapter 11 Cases.

43. Substantial Consummation. On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127 of the Bankruptcy Code.

44. Governing Law. Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent that an exhibit to the Plan or a schedule or document in the Plan Supplement provides otherwise, the rights, duties and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the Bankruptcy Code and, to the extent not inconsistent therewith, the laws of the State of Texas, without giving effect to principles of conflicts of laws.

45. Conflicts Between Confirmation Order and Plan. The provisions of the Plan and this Confirmation Order shall be construed in a manner consistent with each other so as to effect the purpose of each; provided, however, that if there is determined to be any inconsistency between any Plan provision and any provision of this Confirmation Order that cannot be so reconciled, then solely to the extent of such inconsistency, the provisions of this Confirmation Order shall govern and any provision of this Confirmation Order shall be deemed a modification

of the Plan and shall control and take precedence. The provisions of this Confirmation Order are integrated with each other and are non-severable and mutually dependent.

46. Transfers by Debtors. The issuance of the New Equity Units shall be free and clear of all Liens, charges, Claims, encumbrances, and other interests, except as otherwise expressly provided in the Plan, the Plan Documents, or this Confirmation Order.

47. Cash Collateral Order. That certain Agreed Final Order Granting Debtors' Emergency Motion for an Order (I) Authorizing the Debtors' Interim and Final Use of Cash Collateral; (II) Granting Adequate Protection; and (III) Scheduling a Final Hearing Regarding Use of Cash Collateral [Docket No. 120] will remain in effect and continue to govern the Debtors' use of Cash Collateral (as that term is defined in the Bankruptcy Code and therein) through and including the Effective Date .

48. Final Order. This Confirmation Order is a final order and the period in which an appeal must be filed shall commence upon the entry hereof.

Dated: Houston, Texas
_____, 2009

HONORABLE JEFF BOHM
UNITED STATES BANKRUPTCY JUDGE

Exhibit A

Debtors' Joint Plan of Reorganization

**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

Notice of Confirmation

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

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

NOTICE OF ENTRY OF ORDER CONFIRMING JOINT PLAN OF
REORGANIZATION OF EXPRESS ENERGY SERVICES OPERATING,
LP AND ITS AFFILIATED DEBTORS UNDER CHAPTER 11 OF THE
UNITED STATES BANKRUPTCY CODE

TO ALL CREDITORS, EQUITY INTEREST
HOLDERS, AND PARTIES IN INTEREST:

PLEASE TAKE NOTICE that an order (the "Confirmation Order") confirming the Joint Plan of Reorganization of Express Energy Services Operating, LP and Its Affiliated Debtors Under Chapter 11 of the United States Bankruptcy Code (the "Plan"), of Express Energy Services Operating, LP and its affiliated debtors in the above-referenced Chapter 11 Cases, as debtors and debtors in possession (the "Debtors"), was entered by the Honorable Jeff Bohm, United States Bankruptcy Judge for the Southern District of Texas (the "Bankruptcy Court"), and docketed by the Clerk of the United States Bankruptcy Court for the Southern District of Texas on December __, 2009. Unless otherwise defined in this notice, capitalized terms used in this notice shall have the meanings ascribed to them in the Plan and the Confirmation Order.

PLEASE TAKE FURTHER NOTICE that the Confirmation Order is available for inspection in the office of the Clerk of the Bankruptcy Court at the United States Bankruptcy Court, 515 Rusk Street, Houston, Texas 77002. The Confirmation Order is also available for free online at: www.expressenergyinfo.com.

PLEASE TAKE FURTHER NOTICE that the Plan and its provisions are binding on the Debtors, any entity acquiring or receiving property or a distribution under the Plan, and any holder of a Claim against or Existing Equity Interest in the Debtors, including all governmental entities, whether or not the Claim or Existing Equity Interest of such holder is impaired under the Plan and whether or not such holder or entity has accepted the Plan.

Dated: Houston, Texas

_____, 2009

WEIL GOTSHAL & MANGES LLP

700 Louisiana Street, Suite 1600

Houston, Texas 77002

Telephone: (713) 546-5000

Facsimile: (713) 224-9511

Attorneys for the Debtors
and Debtors in Possession