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ATTORNEYS FOR DEBTORS

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

In re:	§	Chapter 11
	§	
Vista Proppants and Logistics, LLC, et al.,[1]	§	Case No. 20-42002-ELM-11
	§	
Debtors.	§	Jointly Administered

BRIEF IN SUPPORT OF CONFIRMATION OF THE FOURTH AMENDED JOINT PLAN OF REORGANIZATION OF VISTA PROPPANTS AND LOGISTICS, LLC, *ET AL.*, PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

[1] The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Vista Proppants and Logistics, LLC (7817) ("Vista HoldCo"); VPROP Operating, LLC (0269) ("VPROP"); Lonestar Prospects Management, L.L.C. (8451) ("Lonestar Management"); MAALT Specialized Bulk, LLC (2001) ("Bulk"); Denetz Logistics, LLC (8177) ("Denetz"); Lonestar Prospects, Ltd. (4483) ("Lonestar Ltd."); and MAALT, LP (5198) ("MAALT"). The location of the Debtors' service address is 4413 Carey Street, Fort Worth, TX 76119-4219.

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Vista Proppants and Logistics, LLC ("Vista HoldCo") and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors"), submit this Brief (the "Brief") in support of confirmation of the *Fourth Amended Joint Plan of Reorganization of Vista Proppants and Logistics, LLC, et al., Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 682] (the "Plan" or the "Fourth Amended Plan") pursuant to section 1129 of title 11 of the United States Code (the "Bankruptcy Code"), and respectfully represent as follows:

I. Preliminary Statement

1. Following several months of negotiations with their key constituents, the Debtors seek confirmation of a Plan supported by the Term Loan Secured Parties and the Official Committee of Unsecured Creditors (the "Committee"); sponsored by the Term Loan Lenders; and overwhelmingly accepted by their Creditors based on their votes in favor of the Plan. The Plan will result in a significant deleveraging of the Debtors' balance sheet, enabling the Debtors to emerge from Chapter 11 in a state of minimal operations for a period of up to 18 months after the Effective Date. During this minimal-operation period, the Reorganized Debtors intend to maintain and operate several mines and transload facilities, as well as a corporate office, while monitoring industry conditions and maintaining operational readiness to enable them to recommence their businesses at the appropriate time. The Plan complies with all applicable requirements of section 1129 of the Bankruptcy Code and should be confirmed.

2. Only four parties in interest objected to confirmation of the Plan: the IRS, Sequitur Permian, LLC; the ABL Lender; and certain Insider Parties (defined below). As described below, the Debtors believe that the objections of all parties other than the Insider Parties are largely, if not completely, resolved. The Debtors have negotiated resolutions or

clarifications with the IRS, Sequitur Permian, and the ABL Lender[2] that are reflected in the proposed Confirmation Order, the Fourth Amended Plan, or will be presented to the Court at the Confirmation Hearing. The Debtors have been engaged in ongoing discussions with the Insider Parties to understand the scope of the Insider Parties' unresolved objections. The Debtors submit that any remaining objections of the Insider Parties, to the extent not consensually resolved in advance of the Confirmation Hearing, are without merit and should be overruled.

3. The Debtors also received numerous informal comments from multiple parties in interest, which the Debtors were able to resolve in advance of the confirmation hearing through agreed language contained in the proposed confirmation order and certain agreed limited modifications to the language contained in the Plan. Additionally, nine parties filed objections in connection with the Cure Notice, which the Debtors have resolved with the applicable counterparties by (i) agreeing to the cure amount set forth in the applicable cure objection, (ii) adding agreed language to the proposed Confirmation Order to allow additional time for a post-Confirmation resolution of the cure objection, (iii) entering into amended or restated versions of certain Executory Contracts and Unexpired Leases, or (iv) not seeking to assume certain Executory Contracts and Unexpired Leases.

4. The Debtors submit this Brief to address the plan confirmation standards enumerated in section 1129 of the Bankruptcy Code and respond to the objections to confirmation of the Plan. As demonstrated herein, the Amended Ballot Certification (defined below) filed on October 23, 2020 [Docket No. 672], and the evidence to be presented at the

[2] The Debtors will also state on the record at the Confirmation Hearing that the term "ABL Priority Collateral" in the Plan does not reflect any intention to redefine the collateral coverage under the ABL Loan Documents or the Intercreditor Agreement. Furthermore, the Debtors understand that the ABL Lender may raise certain issues with the Court in connection with the Court's ruling on the Standing Motion.

confirmation hearing, any remaining objections should be overruled, all applicable requirements for confirmation have been satisfied, and the Plan should therefore be confirmed.

II. Jurisdiction and Venue

5. The United States District Court for the Northern District of Texas (the "District Court") has jurisdiction over the subject matter of this Motion pursuant to 28 U.S.C. § 1334. The District Court's jurisdiction has been referred to this Court pursuant to 28 U.S.C. § 157 and the District Court's Miscellaneous Order No. 33, *Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc* dated August 3, 1984. This is a core matter pursuant to 28 U.S.C. § 157(b), which may be heard and finally determined by this Court. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

III. Background

A. The Chapter 11 Cases

6. The Debtors (collectively, "Vista") began business as a trucking entity and expanded over time into a vertically-integrated frac sand supplier whose principal business is producing mine-to-wellhead high-quality, fine-grade frac sand for oil and gas well completion in producing regions in Texas and Oklahoma. As of June 9, 2020 (the "Petition Date"), the Debtors were no longer engaging in trucking operations, had substantially reduced transloading operations, and had temporarily shut down their mining operations, other than the minimal operations necessary to preserve equipment and infrastructure.

7. To facilitate a further restructuring of the Debtors' businesses, on the Petition Date each of the Debtors commenced cases (the "Chapter 11 Cases") under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Chapter 11 Cases are being jointly administered. The Committee was appointed on June 23,

2020. No request for the appointment of a trustee or examiner has been made in the Chapter 11 Cases.

B. The Original Plan and Disclosure Statement

8. On July 3, 2020, the Debtors filed the *Joint Plan of Reorganization of Vista Proppants and Logistics, LLC, et al., Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 158] (the "Original Plan" and as amended, the "Plan").[3] Also on July 3, 2020, the Debtors filed the *Disclosure Statement in Support of the Joint Plan of Reorganization of Vista Proppants and Logistics, LLC, et al., Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 159] (the "Original Disclosure Statement" and as amended, the "Disclosure Statement").

C. The Motion to Convert, Final DIP Order, the Standing Motion, and the Committee's Opposition to the Plan Prior to the Settlement

9. On July 9, 2020, the Committee filed the *Motion of the Official Committee of Unsecured Creditors of Vista Proppants and Logistics, LLC, et al., for Entry of an Order Converting the Debtors' Chapter 11 Cases to Cases Under Chapter 7 of the Bankruptcy Code Pursuant to 11 U.S.C. § 1112(b)* [Docket No. 179] (the "Motion to Convert"). In the Motion to Convert, the Committee asserted that cause for conversion existed based primarily on arguments related to the terms of the DIP Financing Order and the terms of the Debtors' Original Plan that was filed on July 3, 2020, which did not provide any recovery to holders of General Unsecured Claims.

10. On July 16, 2020, the Bankruptcy Court entered the DIP Financing Order. The DIP Financing Order authorized the Debtors to enter into the DIP Facility and enabled the Debtors to fund the Chapter 11 Cases. Specifically, the DIP Facility provided the Debtors with DIP Commitments of $11,000,000.

[3]Capitalized terms used but not defined in this Brief shall have the meanings ascribed to such terms in the Fourth Amended Plan, the Disclosure Statement or the Disclosure Statement Order, as applicable.

11. Under the terms of the DIP Financing Order, the Committee had until August 3, 2020 (the "Investigation Termination Date"), "to investigate the validity, extent, priority, perfection, and enforceability of the Term Loan Facility, and ABL Facility and the respective liens of the lenders thereunder, and to assert any other claims or causes of action against the Prepetition Secured Parties."

12. On August 3, 2020, the Committee filed the Standing Motion with a proposed complaint attached thereto regarding the Alleged Claims (as defined in the Disclosure Statement) against the Term Loan Secured Parties and the ABL Lender.

D. The First Amended and Second Amended Plan and Disclosure Statement, and Solicitation

13. On August 13, 2020, the Debtors filed first amended versions of the Plan and Disclosure Statement [Docket Nos. 381 and 382, respectively], and on August 18, 2020, the Debtors filed second amended versions of the Plan and Disclosure Statement [Docket Nos. 401 and 402, respectively].

14. On August 19, 2020, the Court entered an order approving the Disclosure Statement [Docket No. 405] (the "Disclosure Statement Order"). Pursuant to the Disclosure Statement Order, the Court (a) established certain solicitation and voting procedures (the "Solicitation Procedures"); (b) established notice and objection procedures with respect to the hearing to consider confirmation of the Plan; (c) established certain procedures regarding the assumption of executory contracts and unexpired leases; (d) established September 17, 2020 as the Voting Deadline and the Confirmation Objection Deadline; and (e) scheduled the Confirmation Hearing to commence on September 24, 2020 at 1:30 p.m. prevailing Central Time.

15. Pursuant to the Disclosure Statement Order, Class 3 (Term Loan Secured Claims) and Class 6 (General Unsecured Claims) were the only classes solicited for votes on the Plan. *See* Disclosure Statement Order, ¶ 17. On or before August 20, 2020, in accordance with the Disclosure Statement Order, the Debtors, through their solicitation agent, Kurtzman Carson Consultants LLC ("KCC") commenced solicitation of votes on the Plan. *See* Certificate of Service [Docket No. 439] (the "Original Solicitation Affidavit"). As set forth in the First Solicitation Affidavit, Class 3 creditors and Class 6 creditors were served with the following materials (the "Solicitation Package"): (A) the *Notice of (I) Approval of Disclosure Statement; (II) Establishment of Voting Record Date; (III) Approving Cure Procedures; (IV) Hearing on Confirmation of the Chapter 11 Plan of the Debtors; (V) Procedures for Objecting to the Confirmation of the Plan; and (VI) Procedures and Deadline for Voting on the Plan* [Docket No. 406] (the "Confirmation Hearing Notice"); (B) a customized copy of the appropriate customized Ballot(s) and voting instructions for the voting class in which such creditor was entitled to vote, substantially in the form attached as Exhibit 1 to the Disclosure Statement Order (the "Class 3 Ballot") and Exhibit 2 to the Disclosure Statement Order (the "Class 6 Ballot");[4] (C) a pre-addressed, postage pre-paid return envelope (the "Return Envelope"); (D) a letter from the Committee in opposition to the second amended Plan (the "Committee Opposition Letter"); and (E) a letter from the Debtors in support of the Plan (the "Debtors' Plan Support Letter"). *See* First Solicitation Affidavit; *see also* Disclosure Statement Order, ¶¶ 13-18 (Solicitation Procedures).

16. The Debtors were not required to solicit votes on the Plan from holders of Claims or Interests in Class 1 (Other Secured Claims), Class 2 (Other Priority Claims), Class 4

[4] Both the Class 3 Ballots and the Class 6 Ballots included a form to opt-out of the third-party release set forth in Article VIII.D of the Plan (such form, the "Opt-Out Election Form").

(PlainsCapital ABL Secured Claims), Class 5 (MAALT Secured Claims), Class 7 (Intercompany Claims), Class 8 (Interests in Debtors other than Vista HoldCo), or Class 9 (Interests in Vista HoldCo), as such classes were deemed to accept or reject the Plan under sections 1126(f) and (g) of the Bankruptcy Code. *See* Disclosure Statement Order, ¶ 17. In accordance with the Disclosure Statement Order, the Debtors, through KCC, served holders of Claims and Interests in Classes 1, 2, 4, 5, 7, 8, and 9 with the following (collectively, the "Non-Voting Package" and together with the Solicitation Package, the "Solicitation Materials"): (i) the Confirmation Hearing Notice, and (ii) the Impaired Non-Voting Status Notice (including Opt-Out Election Form) or the Unimpaired Non-Voting Status Notice (including Opt-Out Election Form). Disclosure Statement Order, ¶¶ 13-18; *see also* First Solicitation Affidavit. Therefore, the Solicitation Package or the Non-Voting Package, as applicable, was served on all creditors, all interest holders, and all other parties in interest, as required by the Bankruptcy Rules and the Local Rules.

17. Between August 24 and September 2, 2020, and on September 22, 2020, the Debtors, through KCC, caused supplemental service of the Solicitation Materials on additional creditors and parties in interest. *See* Supplemental Certificate of Service [Docket No. 470] (the "First Supplemental Solicitation Affidavit") and Supplemental Certificate of Service [Docket No. 599] (the "Second Supplemental Solicitation Affidavit").

18. On September 3, 2020, the Debtors published a condensed form of the Confirmation Hearing Notice in the national edition of *USA Today*. *See* Notice of Publication [Docket No. 466].

E. The Settlement and the Third Amended Plan

19. For the reasons set forth in the Committee Opposition Letter, the Committee opposed confirmation of the second amended Plan. However, following weeks of extensive,

arm's-length, good-faith negotiations among the Debtors, the Committee, and the Term Loan Secured Parties (collectively, the "Settlement Parties"), the Settlement Parties reached an agreement on the material terms of a comprehensive settlement (the "Settlement") with respect to the Plan. The Settlement is reflected in the *Settlement Term Sheet Among the Creditors' Committee, the Debtors, the Term Loan Agent, and the Term Loan Lenders* dated September 10, 2020 (the "Term Sheet"). Significant provisions of the Settlement set forth in the Term Sheet include the following:[5]

- Committee support for the Plan (as amended in accordance with the Term Sheet);
- establishment of the Litigation Trust and transfer of Litigation Trust Causes of Action to the Litigation Trust;
- funding of a $2 million GUC Cash Settlement ($1.75 million in cash; plus $250,000 Litigation Trust Loan, plus GUC Cash Settlement Adjustment) for purposes of funding the Litigation Trust for the benefit of holders of Class 6 General Unsecured Claims, funding a cash distribution to holders of Class 6 General Unsecured Claims, and funding fees and expenses incurred by the Committee's Professionals in excess of $250,000 after the Settlement Date;
- waiver by Term Loan Lender Class 6 Creditors of recovery on account of the Class 6 Term Loan Deficiency Claims with respect to the recovery, if any, achieved by the Litigation Trustee in connection with the Standing Motion Claims against the ABL Lender and waiver of the first $4 million recovered from Litigation Trust Causes of Action and sharing 60/40, respectively, between the Non-Term Loan Lender Class 6 Creditors and the Term Loan Lenders on the basis of their deficiency claims for any recovery in excess of $4 million;
- funding of all administrative expenses, priority claims, fees of the United States Trustee, and fees and expenses associated with claims reconciliation;
- agreement that the Committee and the Term Loan Secured Parties are Released Parties and Exculpated Parties under the Plan;
- release of the Standing Motion Claims against the Term Loan Secured Parties and not including such claims against the Term Loan Secured Parties as Litigation Trust Causes of Action; and

[5] The summary of the Settlement is provided for general background and is not intended to be comprehensive or to alter the terms or conditions of the Settlement or the Plan.

- release of Non-Insider Trade Creditor Avoidance Actions under the Plan.

20. On September 10, 2020, to allow sufficient time to finalize and effectuate the Settlement through a further amended Plan, the Debtors filed the *Debtors' Emergency Motion for Entry of an Order Extending Confirmation and Related Plan Deadlines and Approving Form of Extension Notice* [Docket No. 497].

21. On September 11, 2020, the Bankruptcy Court entered the *Order Approving Debtors' Emergency Motion for Entry of an Order Extending Confirmation and Related Plan Deadlines and Approving form of Extension Notice* [Docket No. 503] (the "Extension Order"). Pursuant to the Extension Order, the Confirmation Hearing was continued from September 24, 2020, to October 1, 2020. Additionally, pursuant to the Extension Order, certain Plan-related deadlines were extended for an additional seven-day period, including the Voting Deadline, the deadline to submit Opt-Out Forms, and the Confirmation Objection Deadline, which were extended to September 24, 2020 (collectively, the "Extended Deadlines").

22. On September 14, 2020, the Debtors filed a third amended Plan [Docket No. 518], which incorporated the terms of the Settlement, and the *Notice of (I) Settlement Term Sheet Among Creditors' Committee, the Debtors, the Term Loan Agent, and the Term Loan Lenders; (II) Third Amended Joint Plan of Reorganization of Vista Proppants and Logistics, LLC, et. al., Pursuant to Chapter 11 of the Bankruptcy Code; and (III) Continued Confirmation Hearing and Extension of Related Deadlines* [Docket 520] (the "Extension Notice"). Among other things, the Extension Notice provided parties in interest with notice of the Settlement, the third amended Plan, the Extended Deadlines, the opportunity for changing votes to accept or reject the Plan in light of the Settlement and corresponding modifications to the Plan, changes to the scope of Released Parties and Exculpated Parties under the Plan, the opportunity to resubmit or modify an

Opt-Out Election Form, and the continuance of the Confirmation Hearing to October 1, 2020. Furthermore, the Debtors made the revised forms of Ballots and Opt-Out Election Forms (reflecting the modifications to scope of Released Parties) publicly available on the Debtors' case website: http:www.kccllc.net/vista.

23. In connection with the Extension Notice, on September 14, 2020, the Committee filed the *Statement of the Official Committee of Unsecured Creditors in Support of Confirmation of the Third Amended Joint Plan of Reorganization of Vista Proppants and Logistics, LLC, et al., Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 521] (the "Committee Plan Support Statement") and prepared a solicitation letter in support of the Plan (the "Committee Solicitation Letter").

24. In order to provide parties in interest with as much notice as possible with respect to the matters related to the Extension Notice and the Committee Plan Support Statement, KCC successfully accomplished a same-day turnaround on September 14, 2020, and served (i) the Extension Notice and Committee Solicitation Letter on Class 6 creditors via overnight mail and (ii) the Extension Notice and the Committee Plan Support Statement on all other creditors, interest holders, and parties in interest via first class mail and/or electronic mail. *See* Certificate of Service [Docket No. 546] (the "Solicitation Extension Affidavit" and together with the Original Solicitation Affidavit, First Supplemental Solicitation Affidavit, and Second Supplemental Solicitation Affidavit, the "Solicitation Affidavits").

25. To allow additional time to finalize various unresolved matters prior to confirmation, the Debtors filed the *Notice of Rescheduled Confirmation Hearing* [Docket No. 568] on September 23, 2020 (the "Second Confirmation Continuance Notice"). Pursuant to the Second Confirmation Continuance Notice, the Confirmation Hearing was continued to October

13, 2020. KCC served the Second Confirmation Continuance Notice on all creditors and parties in interest on September 23, 2020. *See* Certificate of Service [Docket No. 607].

26. On October 7, 2020, the Debtors Filed the *Notice of Further Rescheduled Confirmation Hearing* [Docket No. 636] (the "Third Confirmation Continuance Notice"). Pursuant to the Third Confirmation Continuance Notice, the Confirmation Hearing was continued to October 27, 2020, at 9:30 a.m. KCC served the Third Confirmation Continuance Notice on all creditors and parties in interest on October 7, 2020. *See* Certificate of Service [Docket No. 645].

F. Plan Supplements

27. The Debtors filed a Notice of Filing of Plan Supplements [Docket No. 549] on September 19, 2020; a Notice of Filing of Amended Plan Supplements [Docket No. 612] on October 1, 2020; and a Second Notice of Filing of Amended Plan Supplements [Docket No. 671] on October 23, 2020 (collectively, and as may be further amended or supplemented, the "Plan Supplement"), which included the following documents or information: (i) Updated Governance Documents; (ii) identities of the officers of the Reorganized Debtors; (iii) identities and affiliations of the Members of the New Parent Board; (iv) Exit Facility Documents; (v) Schedule of Assumed Contracts and Leases; (vi) Schedule or Retained Causes of Action; (vii) Schedule of Litigation Trust Causes of Action; (viii) Litigation Trust Agreement; (ix) Litigation Trust Loan Documents; and (x) Identity of Litigation Trustee.

G. No Pending Objections to Claims for Voting Purposes

28. Pursuant to the Disclosure Statement Order, as modified by the Extension Order, unless otherwise agreed by the Debtors, the Voting Deadline was September 24, 2020. Under the Disclosure Statement Order, if a Claim was objected to prior to the Voting Deadline, then such Creditor would not have the right to vote until the objection is resolved, and any vote would not

be counted, unless such Creditor requests and receives, after notice and a hearing, an order of the Court under Bankruptcy Rule 3018(a) temporarily allowing the Claim for voting purposes. Disclosure Statement Order ¶ 19.

29. On September 24, 2020, the Debtors filed the *Debtors' Objection to Sequitur Permian, LLC's Proofs of Claim (Claim Nos. 142 and 143)* [Docket No. 593] (the "Sequitur Claim Objection"). Sequitur Permian, LLC ("Sequitur") did not request or obtain an order of the Court under Bankruptcy Rule 3018 temporarily allowing the Claim for voting purposes. Moreover, based on the Amended Ballot Certification (defined below), the Debtors are not aware of any attempt by Sequitur to submit a Ballot and vote to accept or reject the Plan. Accordingly, the Sequitur Claim Objection is moot as an objection for voting purposes and the matter is not before the Court for purposes of the Confirmation Hearing.

H. The Voting Results

30. Pursuant to the Plan, holders of claims in the following classes (collectively, the "Voting Classes") were entitled to vote to accept or reject the Plan: (i) Class 3 (Term Loan Secured Claims) with respect to Vista Holdco, VPROP, and Lonestar Ltd.; and (ii) Class 6 (General Unsecured Claims) with respect to each of the Debtors.

31. On October 1, 2020, the Debtors filed the *Certification of Angela M. Nguyen of Kurtzman Carson Consultants LLC Regarding Tabulation of Votes in Connection with the Third Amended Joint Plan of Reorganization of Vista Proppants and Logistics, LLC, et al., Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 613] (the "Original Ballot Certification"). At the time the Original Ballot Certification was filed (and as indicated in the Original Ballot Certification), certain parties in interest had obtained consensual extensions of the Voting Deadline and the deadline to submit an Opt-Out Election Form, which had not yet expired.

32. On October 23, 2020, following the expiration of all agreements for an extension of the Voting Deadline and the deadline to submit an Opt-Out Election Form, the Debtors filed the *Amended Certification of Angela M. Nguyen of Kurtzman Carson Consultants LLC Regarding Tabulation of Votes in Connection with the Third Amended Joint Plan of Reorganization of Vista Proppants and Logistics, LLC, et al., Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 672] (the "Amended Ballot Certification").

33. As described in more detail in the Amended Ballot Certification, the Debtors' creditors in the Voting Classes voted overwhelmingly to accept the Plan. Below is a summary of the voting results for Class 3 (Term Loan Secured Claims), in which the Term Loan Lenders voted to unanimously accept the Plan:

Voting Results - Class 3 – Term Loan Secured Claims					
Debtor	**% in Number of Accepting Votes**	**% in Amount of Accepting Votes**	**Number of Accepting Votes**	**$ Amount of Accepting Votes[6]**	**Class Acceptance Under § 1126(c)**
Vista HoldCo	100%	100%	13	$150,000,000	YES
VPROP	100%	100%	13	$150,000,000	YES
Lonestar Ltd.	100%	100%	13	$150,000,000	YES

34. As set forth in more detail in the Amended Ballot Certification, below is a summary of the voting results for Class 6 (General Unsecured Claims), in which Class 6 Creditors holding at least two-thirds in amount and more than one-half in number of the of the amounts of allowed Claims (for voting purposes) that voted to accept or reject the Plan:

[6] Term Loan Claims of $369,512,061.95 *less* Term Loan Deficiency Claims of $219,512,061.96 equals Term Loan Secured Claims of $150,000,000.00.

Voting Results - Class 6 – General Unsecured Claims					
Debtor	**% in Number of Accepting Votes**	**% in Amount of Accepting Votes**	**Number of Accepting Votes**	**$ Amount of Accepting Votes**	**Class Acceptance Under § 1126(c)**
Vista HoldCo	56.52%	97.09%	26	$220,370,645.67	YES
VPROP	100%	100%	13	$219,512,061.95	YES
Lonestar Management	100%	100%	15	$219,522,066.94	YES
Bulk	80.77%	99.46%	21	$219,614,671.42	YES
Denetz	100%	100%	13	$219,512,061.95	YES
Lonestar Ltd.	76.12%	99.17%	51	$254,936,646.00	YES
MAALT	79.41%	79.41%	27	$226,090,820.92	YES

35. Pursuant to the Disclosure Statement Order, Classes 1, 2, 4, 5, 7, 8, and 9 (collectively, the "Non-Voting Classes") were not solicited for votes pursuant to section 1126(f) or (g) of the Bankruptcy Code. The table below summarizes the acceptance status with respect to the Voting Classes and the Non-Voting Classes for each Debtor.

	Vista HoldCo	**VPROP**	**Lonestar Management**	**Bulk**	**Denetz**	**Lonestar Ltd.**	**MAALT**
Class 1 Other Secured Claims	Accept §1126(f)	Accept §1126(f)	Accept §1126(f)	Accept §1126(f)	Accept §1126(f)	Accept §1126(f)	Accept §1126(f)
Class 2 Other Priority Claims	Accept §1126(f)	Accept §1126(f)	Accept §1126(f)	Accept §1126(f)	Accept §1126(f)	Accept §1126(f)	Accept §1126(f)
Class 3 Term Loan Secured Claims	Accept §1126(c)	Accept §1126(c)	N/A	N/A	N/A	Accept §1126(c)	N/A
Class 4 PlainsCapital ABL Secured Claims	Accept §1126(f)	Accept §1126(f)	Accept §1126(f)	Accept §1126(f)	Accept §1126(f)	Accept §1126(f)	Accept §1126(f)
Class 5 MAALT Secured Claims	Accept §1126(f)	Accept §1126(f)	Accept §1126(f)	Accept §1126(f)	Accept §1126(f)	Accept §1126(f)	Accept §1126(f)
Class 6 General Unsecured Claims	Accept §1126(c)	Accept §1126(c)	Accept §1126(c)	Accept §1126(c)	Accept §1126(c)	Accept §1126(c)	Accept §1126(c)

	Vista HoldCo	VPROP	Lonestar Management	Bulk	Denetz	Lonestar Ltd.	MAALT
Class 7 Intercompany Claims	Accept or Reject §1126(f) or (g)	Accept or Reject §1126(f) or (g)	Accept or Reject §1126(f) or (g)	Accept or Reject §1126(f) or (g)	Accept or Reject §1126(f) or (g)	Accept or Reject §1126(f) or (g)	Accept or Reject §1126(f) or (g)
Class 8 Interests in Debtors other than Vista HoldCo	Accept or Reject §1126(f) or (g)	Accept or Reject §1126(f) or (g)	Accept or Reject §1126(f) or (g)	Accept or Reject §1126(f) or (g)	Accept or Reject §1126(f) or (g)	Accept or Reject §1126(f) or (g)	Accept or Reject §1126(f) or (g)
Class 9 Interests in Vista HoldCo	Reject §1126(g)	Reject §1126(g)	Reject §1126(g)	Reject §1126(g)	Reject §1126(g)	Reject §1126(g)	Reject §1126(g)

I. Formal and Informal Confirmation Objections

36. The Debtors have been involved in extensive discussions with numerous parties in interest in an effort to consensually resolve various formal and informal objections that have been raised in connection with confirmation of the Plan. Through such discussions, the Debtors and numerous parties in interest successfully negotiated resolutions for the substantial majority of issues that were raised by parties in interest, thereby significantly reducing the amount of unresolved issues that may be brought before the Court at the Confirmation Hearing. On October 26, 2020, the Debtors filed (i) the *Notice of Filing of Proposed Order Confirming the Fourth Amended Joint Plan of Reorganization of Vista Proppants and Logistics, et al., Pursuant to Chapter 11 of the Bankruptcy Code* [Docket 680], which included the Debtors' proposed form of Confirmation Order; (ii) the Fourth Amended Plan; and (iii) a notice of filing of redline version of the Fourth Amended Plan [Docket No. 683] (the "Plan Redline"). The proposed Confirmation Order, the Fourth Amended Plan, and the Plan Redline reflect, among other things, the consensual resolutions described in part below.[7]

[7] The Debtors are engaged in ongoing discussions with certain parties in interest. Further proposed revisions to the form of Confirmation Order not described herein or in the modifications to the proposed resolutions described herein will be presented to the Court at the Confirmation Hearing.

(a) Resolution of Informal Plan or Confirmation Objections, Comments, or Requested Clarifications Raised by Non-Objecting Parties

37. The majority of the modifications to the Fourth Amended Plan and the proposed form of Confirmation Order were negotiated without the need for the filing of a formal objection. Parties that raised such informal objections, comments, or requested clarifications without ultimately filing an objection (as of the time of the filing of this Brief) include the Committee, the Term Loan Secured Parties, the Office of the United States Trustee (the "U.S. Trustee"), Caterpillar Financial Services Corporation ("CAT"), the Texas Commission on Environmental Quality ("TCEQ"); Kermit ISD, Hood CAD, Dilley ISD, Pecos County, Regan County, Reeves County, Tarrant County, Tom Greed CAD, Ward County, Winkler County, the Frio Hospital District, Harris County (such taxing authorities, the "Texas Tax Authorities"), and First Western Bank & Trust (collectively, the "Non-Objecting Parties"). Certain of the agreed modifications made to the Fourth Amended Plan and the proposed Confirmation Order to address issues or comments raised by the Non-Objecting Parties are briefly summarized, identified, or noted below and include:[8]

(a.) CAT – The Debtors added clarifying language to paragraph 11 of the confirmation order regarding the retention of Liens securing an Allowed Other Secured Claim that is reinstated pursuant to the Plan.

(b.) U.S. Trustee – To address certain comments raised by the U.S. Trustee, the Debtors agreed to add the language contained in paragraph 42 of the Confirmation Order regarding the scope of exculpation under the plan: "The exculpation provided in Article VIII.E of the Plan is approved but should be construed, and will only be effective, to the extent that it is consistent with the applicable provisions of the Bankruptcy Code and case law in the Fifth Circuit. Any claims made against Exculpated Parties for acts described in Article VIII.E of the Plan shall be filed in the United

[8] Nothing in this section of the Brief is intended to modify the language of any negotiated and agreed modifications to the Plan or the Confirmation Order unless explicitly stated otherwise. Any lack of reference in this Brief to any agreed language contained in the Plan or the Confirmation Order filed on the docket does not indicate a lack of continued agreement with respect to such language. The Plan and Confirmation Order contain numerous revisions that are not described herein based on materiality, timing of the modification, or other considerations.

States Bankruptcy Court for the Northern District of Texas, and this Bankruptcy Court retains exclusive jurisdiction to consider same."

(c.) TCEQ – To address certain comments raised by the TCEQ regarding the police and regulatory powers of Governmental Units, the Debtors agreed to add the language contained in paragraph 41 of the Confirmation Order.

(d.) Texas Tax Authorities – To address certain comments raised by the Texas Tax Authorities and clarify the treatment of Allowed Secured Tax Claims and the rights of the Taxing Authorities under the Plan, the Debtors agreed to add the language contained in paragraphs 61 and 62 of the Confirmation Order.

(e.) First Western Bank & Trust ("First Western") – To address certain comments raised by First Western, the Debtors have agreed to add the language contained in paragraph 69 of the Confirmation Order regarding the application of the automatic stay following the Effective Date.

(f.) Committee – The Debtors have agreed to add certain language throughout the Confirmation Order regarding preservation of the Committee's and the Litigation Trust's rights with respect to Litigation Trust Causes of Action, among other matters and considerations. The Debtors, the Committee, and the Term Loan Secured Parties have collaboratively worked together on finalizing the Plan Supplement Documents, the Third Amended Plan, Fourth Amended Plan, and the Confirmation Order.

(g.) Term Loan Secured Parties/DIP Secured Parties/Exit Lenders – In conformity with the Exit Facility Documents, the Debtors revised Article II.D. of the Fourth Amended Plan to provide that the amount of Tranche B Exit Facility Notes would be issued in an amount equal to the outstanding amount of principal due under the DIP Facility on the Effective Date, as opposed to twice the outstanding amount of principal due under the DIP Facility on the Effective Date. The Debtors have also made certain other changes to the Fourth Amended Plan at the request of the Term Loan Secured Parties and have conferred with counsel for the Term Loan Agent regarding the form of all Plan Documents and related matters.

38. Based on the foregoing and the revisions made to the Fourth Amended Plan and the Confirmation Order prior to filing, and except for any opposition by the Committee or the Term Loan Secured Parties to the unresolved objections of the ABL Lender and the Insider

Parties described in the section below, the Debtors believe all matters and comments raised by the Non-Objecting Parties have been resolved.

(b) Resolutions of Certain Filed Confirmation Objections and Supplemental Issues Raised by Objecting Parties; Description of Unresolved Issues

39. Pursuant to the Confirmation Extension Order, the Court established the extended Confirmation Objection Deadline of September 24, 2020. In an effort to reach consensual resolutions and attempt to avoid the need for the filing of formal objections, the Debtors agreed to multiple, further extensions of the Confirmation Objection Deadline for certain parties in interest, including Martin Robertson; Gary Humphreys; GHMR Operations, LLC; GBH Properties, LLC; GHMR II, LLC; and M&J Partnership, Ltd. (collectively, the "Insider Parties"), PlainsCapital Bank (the "ABL Lender"), and certain of the Non-Objecting Parties.

40. Four objections were filed in relation to confirmation of the Plan: (i) the *Objection of IRS to Confirmation of Debtors' Third Amended Joint Plan of Reorganization* [Docket No. 563] (the "IRS Confirmation Objection"); (ii) *Sequitur Permian, LLC's Corrected Limited Objection to Debtors' Third Amended Joint Plan of Reorganization* [Docket No. 577] (correcting the objection originally filed at Docket No. 571 and 564) (the "Sequitur Confirmation Objection"); (iii) the *Limited Objection and Reservation of Rights of PlainsCapital Bank Regarding the Debtors' Third Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 660] (the "ABL Lender Confirmation Objection"); and (iv) the *Objection of Martin Robertson, Gary Humphreys, GHMR Operations, LLC, GBH Properties, LLC, GHMR II, LLC, M&J Partnership, Ltd. and Lonestar Prospects Holding Company, LLC, Future New Deal, Ltd. to the Confirmation of the Third Amended Joint Plan of Reorganization of Vista Proppants and Logistics, LLT, et al., Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 661] (the "Insider Confirmation Objection" and together with the IRS Confirmation

Objection, the Sequitur Confirmation Objection, and the ABL Lender Confirmation Objection, the "Confirmation Objections").

41. As set forth below, the Debtors have resolved the IRS Confirmation Objection pursuant to agreed language in the proposed Confirmation Order. Additionally, the Debtors have added language to the Confirmation Order that resolves the Sequitur Confirmation Objection. Finally, while the Debtors have reached consensual resolutions for certain of the issues raised in the ABL Lender Confirmation Objection and the Insider Confirmation Objection, as well as certain other issues that have been raised by counsel for the ABL Lender and counsel for the Insider Parties, the parties have not reached a consensual resolution of all open issues.

42. IRS Confirmation Objection. In the IRS Confirmation Objection, the Internal Revenue Service (the "IRS") objected to confirmation of the Plan under sections 1129(a)(2), (3), and (11) based on the Debtors' alleged failure to file certain tax returns. In response to the IRS Confirmation Objection, counsel for the Debtors engaged in discussions with counsel for the IRS and provided filed copies and other support evidencing the filing of certain of the allegedly unfiled tax returns, including the timely filed 2019 partnership tax return. However, the Debtors are engaged in ongoing review of the allegedly unfiled Heavy Vehicle Use Tax Returns. The Debtors previously leased certain vehicles that may have been subject to a heavy vehicle use tax and believe that such returns were filed by the lessor but are working to confirm and to provide additional support to the IRS. To resolve the IRS Confirmation Objection and to allow additional time to resolve the allegedly unfiled Heavy Vehicle Use Tax Returns, the Debtors and the IRS agreed to the language in paragraph 59 of the Confirmation Order, which provides for a 60-day period for the Reorganized Debtors to provide additional information to the IRS regarding the status of the Heavy Vehicle Use Tax Returns.

43. Sequitur Confirmation Objection. In the Sequitur Confirmation Objection, Sequitur objected to confirmation of the Plan on the grounds that the injunction provision in Article VIII.F of the Plan allegedly impermissibly extinguished any defenses and rights of setoff and/or recoupment that Sequitur may have against Vista HoldCo and MAALT, respectively. In response to the Sequitur Confirmation Objection, the Debtors have included the following proposed language in paragraph 57 of the Confirmation Order:

> Except as may be otherwise agreed in writing, none of the provisions of the Plan and this Order shall be deemed to release, enjoin, impair, prejudice, have any preclusive effect upon, or otherwise affect the rights of any holder of any Claim or Interest to assert (a) a right or defense of recoupment under applicable non-bankruptcy law, or (b) a right or defense of setoff pursuant to applicable non-bankruptcy law or otherwise in accordance with section 553 of the Bankruptcy Code, against the Debtors, the Reorganized Debtors, or the Litigation Trust, as applicable (subject in each case to the Debtors', the Reorganized Debtors', or the Litigation Trust's, as applicable, right to contest the validity of such asserted right of setoff or recoupment under applicable law); provided, however, such preserved rights of recoupment and setoff may be asserted only in connection with any Retained Causes of Action asserted by the Debtors or the Reorganized Debtors and any Litigation Trust Causes of Action asserted by the Litigation Trust.

44. Prior to filing the proposed Confirmation Order, counsel for the Debtors discussed proposed language in paragraph 57 of the Confirmation Order with counsel for Sequitur, who has approved the proposed language.

45. Additionally, the Debtors agreed to add the following language in paragraph 68 of the Confirmation Order:

> Nothing in the Plan or this Order shall prejudice or operate as a bar or adjudication of any rights, claims, defenses, objections or other interests that the Debtors or Sequitur Permian, LLC have asserted or may assert in relation to Adversary Proceeding No. 20-04064 pending in the Bankruptcy Court.

46. The Debtors believe the proposed language in the Confirmation Order should fully resolve the Sequitur Confirmation Objection.

47. ABL Lender Confirmation Objection. Counsel for the Debtors and Counsel for the ABL Lender have been engaged in extensive negotiations in the weeks (and months) leading up to the Confirmation Hearing. As a result of such negotiations, the parties were able to resolve numerous issues through agreed language in the Confirmation Order, including the provisions regarding PlainsCapital Bank in paragraphs 63-67 of the Confirmation Order.

48. Upon the expiration of the agreed extension of the Confirmation Objection Deadline on October 21, 2020, the ABL Lender timely filed the ABL Lender Confirmation Objection. In the ABL Lender Confirmation Objection, the ABL Lender indicated that it was reserving its rights to assert objections to the Plan and any future modifications, including any rights it may have to object to any releases, exculpations, or injunctions provided under the Plan.

49. After the ABL Lender Confirmation Objection was filed, the Debtors and the ABL Lender continued to engage in communications regarding the ABL Lender's remaining open issues. The parties have exchanged multiple drafts of proposed language, and the Debtors have made certain modifications to the Confirmation Order and the Fourth Amended Plan in an effort to resolve the concerns raised by the ABL Lender, including certain modifications regarding setoff/recoupment, release, and injunction provisions (such modifications are described in more detail below in response to the Insider Confirmation Objection). The Debtors believe the modifications to the Plan and the Confirmation Order have resolved the objections of the ABL Lender.

50. Insider Confirmation Objection. The Debtors have made numerous revisions to the Plan and the Confirmation Order that they believe fully resolve the objections raised by the Insider Parties. However, counsel for the Insider Parties does not believe the Debtors' proposed language sufficiently resolves the Insider Confirmation Objection and objects to certain language

that has been added to the Confirmation Order and the Plan. The Debtors' believe that the Insider Parties' unresolved objections include the following:

- Article V.B – Following the circulation of additional revisions to the form of the Fourth Amended Plan and the proposed Confirmation Order, counsel for the Insider Parties objected to the Debtors' modifications to Article V.B. of the Plan regarding termination and discharge of any of the Debtors' indemnification obligations to Former Directors and Officers. The Debtors were alerted to the need to modify Article V.B. only as a result of requested modifications to paragraph 37 of the Confirmation Order from counsel for the Insider Parties on the grounds that the language in the Confirmation Order impermissibly modified the indemnification obligations of Article V.B of the Plan. The Debtors initially questioned why the requested modification was relevant to the Insider Parties given that indemnity obligations to Former Directors and Officers were being terminated. On closer inspection, however, the Debtors discovered that the defined term Former Directors and Officers did not capture all of the Insider Parties given that the applicable Insider Parties did not resign from the board at the time of the filing of the Chapter 11 Cases as had been contemplated. Regardless, the modification of Article V.B does not give rise to a legitimate objection. As a practical matter, an indemnification obligation of a defunct or dissolved Debtor with no assets is not likely to result in any benefit to the applicable Insider Parties. Further, D&O insurance exists for this purpose.
- Article VIII.A – In the Insider Confirmation Objection, the Insider Parties object on the grounds that the release of the Debtors contained in Article VIII.A of the Plan is allegedly overly broad and could be interpreted to eliminate setoff or recoupment rights or other defenses that might be available to a potential defendant if an action is filed asserting a

Retained Cause of Action or a Litigation Trust Cause of Action. In response, the Debtors have added additional language in paragraph 40(a) of the Confirmation Order and Article VIII.A of the Plan further clarifying that Article VIII.A does not discharge or release any Claim or Cause of Action that any Entity that is not a Releasing Party may have or assert against any non-Debtor entity.

- Article VIII.F – The Insider Parties assert that the injunction in Article VIII.F of the Plan is overly broad, operates as a non-consensual release, and impermissibly eliminates setoff and recoupment rights. In response, the Debtors have revised paragraph 40(f) of the Confirmation Order and Article VIII.F of the Plan to clarify the scope of the injunction and delete the prior language regarding setoff and recoupment. Furthermore, the Debtors have included language in paragraph 57 of the Confirmation Order providing for the preservation of setoff and recoupment rights.
- Article VI.L – The Insider Parties assert that Article VI.L of the Plan impermissibly affects the setoff or recoupment rights of non-Debtors. In response, the Debtors added additional language to Article VI.L further reiterating other language in Article VI.L that such Article only addressed the setoff and recoupment rights of the Reorganized Debtors.
- Article IV.O – The Insider Parties assert that Article IV.O of the Plan restricts certain defenses if the Debtors assert a claim related to a Rejected Contract. The Debtors dispute such interpretation but nonetheless revised paragraph IV.O to resolve the alleged ambiguity.
- Article IV.C – The Insider Parties object to dissolution of Vista HoldCo pursuant to Article IV.C of the Plan upon the Effective Date. In response, the Debtors discussed the matter with the Term Loan Secured Parties, who questioned why the issue was being

raised for the first time at this stage of the Chapter 11 Cases. The issue is currently being reviewed by the Term Loan Secured Parties.

- Article IV.E – The Insider Parties object to Article IV.E of the Plan based on the assertion that the language in Article IV.E of the Plan regarding vesting of Retained Causes of Action in the Reorganized Debtors or the transfer of Litigation Trust Causes of Action to the Litigation Trust could be construed to strip away rights and defenses of the Insider Parties. In response, the Debtors assert that the Insider Parties' interpretation of Article IV.E is not supported by the plain language of Article IV.E. The Debtors believe that the existing language is clear and further modification is unwarranted.
- Definitions of Released Parties. The Insider Parties object to the Plan on the grounds that the defined terms of Released Parties and Releasing Parties should be consistent. In response, the Debtors revised such definitions for consistency.
- Objection to Assumption and Rejection of Executory Contracts. In the Insider Confirmation Objection, the Insider Parties assert that one of the Leases listed in the Schedule of Assumed Contracts and Leases was a Lease that had previously been rejected. In the Schedule of Assumed Leases filed on October 23, 2020, there are not any Leases with the Insider Parties that were previously rejected.

J. The Cure Procedures and Cure Objections

51. Pursuant to the Disclosure Statement Order, the Court approved certain procedures (the "Cure Procedures") governing the assumption of Executory Contracts and Unexpired Leases under the Plan. In accordance with the Cure Procedures, on August 19, 2020, the Debtors filed the Notice of Cure Procedures [Docket No. 407] (the "Cure Notice"). The Cure Notice identified the Executory Contracts and Unexpired Leases that may be assumed under the

Plan and the proposed amounts to be paid, if any, to cure defaults under the Executory Contracts and Unexpired Leases as required by Section 365 of the Bankruptcy Code (the "Cure Amounts"). On August 19, 2020, the Debtors, through KCC, served the Cure Notice on counterparties to the Executory Contracts and Unexpired Leases (the "Contract Counterparties") listed in the Cure Notice. *See* Certificate of Service [Docket No. 433].

52. On September 19, 2020, the Debtors filed with the Bankruptcy Court the Schedule of Assumed Contracts and Leases [Docket No. 549] identifying Executory Contracts and Unexpired Leases that the Debtors intend to assume pursuant to Article V of the Plan. On October 1, 2020, the Debtors filed with the Bankruptcy Court an amended Schedule of Assumed Contracts and Leases [Docket No. 612]. On October 23, 2020, the Debtors filed a further amended Schedule of Assumed Contracts and Leases [Docket No. 671].

53. Pursuant to the cure procedures provided by the Disclosure Statement Order, any and all objections to the assumption of any Executory Contract or Unexpired Lease, including, without limitation, any objection to the Debtors' proposed cure amount or the provision of adequate assurance of future performance pursuant to section 365 of the Bankruptcy Code, were required to be filed with the Bankruptcy Court on or before September 10, 2020 at 4:00 p.m. Central Time (the "Cure Objection Bar Date").

54. Nine objections to the proposed Cure Amounts or the proposed assumption of the Executory Contracts and Unexpired Leases were filed prior to the Cure Objection Deadline:[9] (i) *Lonestar Prop 50, LLC's Objection to Notice of Cure Procedures* [Docket No. 416] (the "LP50 Cure Objection"); (ii) *Hogg Ranch, LLC's and DDC Ranch Consulting, LLC's Objection to Notice of Cure Procedures* [Docket Nos. 427-28] (the "Hogg Ranch Cure Objection"); (iii) *Sequitur Permian, LLC's Limited Objection to the Assumption of Contracts Listed as Executory*

[9] The Debtors agreed to extend the Cure Objection Bar Date for certain Parties.

in Debtors' Notice of Cure Procedures [Docket No. 474, as amended by Docket No. 491) (the "Sequitur Cure Objection"); (iv) *EOG Resources, Inc.'s Objection to Notice of Cure Procedures* [Docket No. 487] (the "EOG Cure Objection"); (v) the *Objection of United Electric Cooperative Services, Inc. to Notice of Cure Procedures* [Docket No. 490] (the "United Electric Cure Objection"); (vi) *John Goodlett's Objection to Notice of Cure Procedures* [Docket No. 493] (the "Goodlett Cure Objection"); (vii) the *Objection of GBH Properties LLC, GHMR II, LLC, and GHMR Operations, LLC to the Debtors' Notice of Cure Procedures* [Docket No. 494] (the "GHMR Cure Objection"); (viii) the *Objection of Forth Worth & Western Railroad Company to Notice of Cure Procedures* [Docket No. 495] (the "FW&W Cure Objection"); (ix) the *Objection to Assumption of Executory Contract and to Proposed Cure Amount* filed by Texas, Gonzales & Northern Railway Company [Docket No. 533] (the "TXGN Cure Objection" and collectively with the LP50 Objection, the Hogg Ranch Objection, the Sequitur Objection, the EOG Objection, the United Electric Objection, the Goodlett Objection, the GHMR Objection, and the FW&W Objection, the "Cure Objections"). The Debtors also received certain informal cure objections from various counterparties to Executory Contracts and Unexpired Leases.

55. The Debtors have resolved all Cure Objections by: (i) agreeing with the cure amounts asserted in the applicable Cure Objection, (ii) removing the underlying Executory Contracts or Unexpired Leases addressed in the Cure Objection from the Schedule of Assumed Contracts and Leases, (iii) agreeing to consensual extensions for additional time to resolve certain Cure Objections post-Confirmation; or (iv) otherwise addressing the applicable Cure Objection through language in the proposed Confirmation Order, as follows:

(a.) LP50 Cure Objection. The LP50 Cure Objection was withdrawn on September 18, 2020 pursuant to the Withdrawal of Lonestar Prop 50, LLC's Objection to Notice of Cure Procedures [Docket No. 545]. Additionally, any other term of the Plan or this Order notwithstanding, Lonestar Prop 50, LLC ("Lonestar Prop 50"),

and the Debtors and Reorganized Debtors stipulate and agree that the Debtors' or the Reorganized Debtors', as applicable, deadline to assume or reject the Mining Agreement (as defined in the LP50 Cure Objection) shall be extended through and including the date that is sixty (60) days after the Effective Date, but not later than January 4, 2021 ("Assumption Deadline"). If the Reorganized Debtors desire to assume the Mining Agreement, they shall consult with Lonestar Prop 50's counsel. If Lonestar Prop 50 does not oppose the assumption, then Debtors may file a notice of assumption and the Mining Agreement shall be deemed as assumed without further order of the Court. If Lonestar Prop 50 opposes assumption, the Debtors shall file a motion to assume the Mining Agreement. If a notice of assumption or a motion to assume the Mining Agreement is not filed by the Assumption Deadline, the Mining Agreement shall be deemed as rejected without further order of the Court. Until the Mining Agreement is either assumed or rejected, the Debtors and the Reorganized Debtors, as applicable, shall continue to perform their obligations under the Mining Agreement pending the assumption or rejection of the Mining Agreement, and shall continue to make royalty payments to Lonestar Prop 50 as set forth in the Agreed Order Regarding Lonestar Prop 50 LLC's Motion for Payment of Lonestar Prospects, Ltd. d/b/a Vista Sand Ltd.'s Obligations under the Mining Agreement Pursuant to 11 U.S.C. Section 365(d)(3) [Docket No. 291].

(b.) Hogg Ranch Cure Objection. Hogg Ranch, LLC and DDC Ranch Consulting, LLC stipulate and agree that the Debtors' or the Reorganized Debtors', as applicable, deadline to assume or reject the Lease Agreement (as defined in the Hogg Ranch Cure Objection) and related contracts shall be extended to November 30, 2020; *provided*, that the Debtors and the Reorganized Debtors, as applicable, shall continue to perform their obligations under the Lease Agreement pending the Filing by the Debtors or the Reorganized Debtors, as applicable, with the Bankruptcy Court of a notice of assumption or rejection of the Lease Agreement; *provided further* that Hogg Ranch, LLC and DDC Ranch Consulting, LLC shall retain any setoff and recoupment rights pending further order of the Bankruptcy Court.

(c.) Sequitur Cure Objection. The Debtors have resolved the Sequitur Cure Objection by not including any agreements with Sequitur in the Schedule of Assumed Contracts and Leases.

(d.) EOG Cure Objection. EOG Resources, Inc. ("EOG") stipulates and agrees that the Debtors' or the Reorganized Debtors', as applicable, deadline to assume or reject the agreements with identified as numbers 21-24 in the Schedule of Assumed Contracts and Leases at Docket No. 671 shall be extended to November 30, 2020, and the parties reserve all rights with respect thereto; provided, that the Debtors and the Reorganized Debtors, as applicable, shall continue to perform their obligations under the Sand Supply Agreement pending the Filing by the Debtors or the Reorganized Debtors, as applicable, with the Bankruptcy Court of a notice of assumption or rejection of the Sand Supply Agreement; provided further, that if

the Debtors or the Reorganized Debtors seek to assume the Sand Supply Agreement and a consensual resolution of the EOG Cure Objection has not been reached by November 30, 2020, then the Reorganized Debtors or EOG shall request that the Bankruptcy Court schedule the EOG Cure Objection for hearing, and the parties reserve all rights with respect thereto.

(e.) United Electric Cure Objection. The Debtors have resolved the United Electric Cure Objection by agreeing to the following cure amounts for Contracts with United Electric Cooperative Services, Inc.:

i. Agreement for Electric Service dated June 13, 2011, with an effective date of April 8, 2011 (Cresson Service Contract): **$110,194.73**.

ii. Electric Service Agreement dated August 10, 2017, with an effective date of August 10, 2017 (Tolar Service Contract): **$30,969.22**.

(f.) Goodlett Cure Objection. John Goodlett stipulates and agrees that the Debtors' or the Reorganized Debtors', as applicable, deadline to assume or reject the Royalty Agreement (as defined in the Goodlett Cure Objection) and related contracts shall be extended through and including the date that is sixty (60) days after the Effective Date; *provided*, that the Debtors and the Reorganized Debtors, as applicable, shall continue to perform their obligations under the Royalty Agreement pending the Filing by the Debtors or the Reorganized Debtors, as applicable, with the Bankruptcy Court of a notice of assumption or rejection of the Royalty Agreement.

(g.) GHMR Cure Objection. The Debtors reached agreements in principle to resolve the GHMR Cure Objection by entering into modified agreements in form and substance acceptable to the parties with respect to (i) the Lease Agreement dated April 1, 2019, between GHMR II, LLC ("GHMR II"), as Lessor, and Maalt, LP, as Lessee, covering residential property in Monahans, Texas ("Monahans Lease"); (ii) Lease Agreement dated December 1, 2014, between GHMR Operations, LLC ("GHMR") and Lonestar Prospects, Ltd., as Lessee, covering approximately 869 acres in Hood County, Texas (the "Tolar Lease"); and (iii) First Amendment to Loan Agreement dated March 1, 2017, between GHMR, as Lessor, and Lonestar Prospects, Ltd., as Lessee, which amends the Tolar Lease ("Tolar Amendment"). The Debtors are not seeking to assume the remaining Lease covered by the GHMR Cure Objection, which is the Lease Agreement dated May 1, 2016, between GHMR, as Landlord and Maalt, LP, as Tenant, covering a transloading and storage facility in Dilley, Texas (the "Dilley Lease"). Accordingly, the GHMR Cure Objection is moot with respect to the Dilley Lease.

(h.) FW&W Cure Objection. The Debtors have resolved the FW&W Cure Objection by agreeing to an aggregate cure amount of **$2,981.43** with respect to the following Contracts with Fort Worth & Western Railroad Company:

i. Confidential Demurrage Agreement dated September 1, 2012; and

ii. Amendment 1 to Confidential Demurrage Agreement dated February 1, 2017.

(i.) TXGN Objection. The Debtors have resolved the TXGN Objection by agreeing to a cure amount of **$46,480.00** with respect to the Unloading Track License Agreement dated August 25, 2017.

(j.) Caterpillar Financial Services Corporation. CAT stipulates and agrees that the Reorganized Debtors' deadline to assume or reject the Contracts with CAT in the Schedule of Assumed Contracts and Leases (collectively, the "CAT Contracts") shall be extended to November 30, 2020; provided, that the Debtors and the Reorganized Debtors, as applicable, shall continue to perform their obligations under the CAT Contracts pending the Filing by the Reorganized Debtors with the Bankruptcy Court of a notice of assumption or rejection of the CAT Contracts; provided further, that if the Reorganized Debtors seek to assume the CAT Contracts and a consensual resolution of the cure amounts for the CAT Contracts has not been reached by November 30, 2020, then, unless otherwise agreed by the Reorganized Debtors, CAT shall file an objection to the Reorganized Debtors' proposed cure amounts and the matter shall be scheduled for hearing with the Bankruptcy Court.[10]

(k.) El Paso Natural Gas Company, L.L.C. ("ENGC"). The Debtors have resolved the informal cure objection of ENGC by agreeing to a cure amount of **$0.00** as of the Petition Date with respect to the Transportation Agreement dated November 16, 2017. Further, ENGC consents to the Debtors' assumption of such agreement.

56. Based on the resolutions discussed above, and except for the LP50 Cure Objection, Hogg Ranch Cure Objection, EOG Cure Objection, Goodlett Cure Objection, and CAT's informal objection, which are reserved for the time period set forth in the applicable subsection of Confirmation Order, the Debtors Submit that the remaining Cure Objections should be overruled.

[10] The Debtors received supplemental comments and questions from CAT shortly before filing this Brief, which the Debtors are reviewing.

IV. Law and Argument

A. The Plan Satisfies the Confirmation Requirements of 11 U.S.C. § 1129(a) and Should Therefore Be Confirmed

57. Under the Bankruptcy Code, the proponent of a chapter 11 plan must demonstrate, by a preponderance of the evidence, that the plan meets the requirements of each subsection of 1129(a) of the Bankruptcy Code. *See In re Briscoe Enters*., 994 F.2d 1160, 1165 (5th Cir. 1993). As demonstrated below and by the Amended Ballot Certification and evidence that will be presented at the Confirmation Hearing, the Plan meets each of the confirmation requirements.

(a) The Plan Complies with Title 11 as Required by 11 U.S.C. § 1129(a)(1)

58. Section 1129(a)(1) of the Bankruptcy Code requires that a chapter 11 plan comply with the applicable provisions of the Bankruptcy Code. Although that section appears broad, it is principally aimed at compelling compliance with sections 1122 and 1123 of the Bankruptcy Code, which govern the classification of claims and the contents of plans. *See* H.R. Rep. No. 595, 95th Cong., 1st Sess. 412 (1977); Sen. Rep. No. 95a-989, 95th Cong., 2d Sess. 126 (1978) ("paragraph (1) requires that the plan comply with the applicable provisions of chapter 11, such as sections 1122 and 1123, governing classification and content of a plan.") The Plan properly classifies claims pursuant to section 1122 of the Bankruptcy Code and complies with the provisions of section 1123 of the Bankruptcy Code.

1. The Plan Properly Classifies Claims and Interests as Required by 11 U.S.C. § 1122

59. Section 1122(a) of the Bankruptcy Code governs the classification of claims and interests in chapter 11 plans. The Bankruptcy Code dictates that a plan may place a claim or interest in a particular class "only if such claim or interest is substantially similar to the other claims or interests of such class." 11 U.S.C. § 1122(a).

60. In general, claims that are substantially similar (that is, claims that share common priority and rights against the bankruptcy estate) should be placed in the same class. *Phoenix Mut. Life Ins. Co. v. Greystone III Joint Venture (In re Greystone III Joint Venture)*, 995 F.2d 1274, 1278-79 (5th Cir. 1991), *cert. denied*, 506 U.S. 821 (1992) *and* 506 U.S. 822 (1992) ("A fair reading of both subsections [of 1122] suggests that ordinarily 'substantially similar claims,' those which share common priority and rights against the debtor's estate, should be placed in the same class … one clear rule [ ] emerges …: thou shalt not classify similar claims differently in order to gerrymander an affirmative vote on a reorganization plan.").

61. The following are the designations for the Classes of Claims against and Interests in the Debtors under the Plan: Class 1 – Other Secured Claims; Class 2 – Other Priority Claims; Class 3 – Term Loan Secured Claims; Class 4 – PlainsCapital ABL Secured Claims; Class 5 – MAALT Secured Claims; Class 6 –General Unsecured Claims; Class 7 – Intercompany Claims; Class 8 – Interests in Debtors other than Vista HoldCo; and Class 9 – Interests in Vista HoldCo.

62. The classification scheme in the Plan is proper because it classifies Claims with common priority and rights against the bankruptcy estate together. Additionally, the Plan does not classify similar Claims separately. Therefore, the Plan complies with section 1122 of the Bankruptcy Code.

2. <u>The Plan Comports with the Requirements of 11 U.S.C. § 1123</u>

63. Section 1123 of the Bankruptcy Code enumerates the mandatory and permissive contents of a chapter 11 plan. The Plan contains each mandatory provision and several of the permissive provisions listed in section 1123 of the Bankruptcy Code.

64. The Plan contains the following mandatory provisions required by section 1123(a) of the Bankruptcy Code:

a. The Plan designates Classes of Claims and Interests, other than Claims of a kind specified in sections 507(a)(2), 507(a)(3), and 507(a)(8) of the Bankruptcy Code. *See* 11 U.S.C. § 1123(a)(1). The treatment of such unclassified Claims is contained in Article II of the Plan.

b. The Plan identifies all Impaired Classes. *See* 11 U.S.C. § 1123(a)(2). Impaired Classes include Class 3, Class 6, and Class 9. Class 7 and Class 8 may be either Impaired or Unimpaired depending on whether such Claims and Interests are reinstated or cancelled. *See* Plan, Article III.C.

c. The Plan provides the treatment for each of the Classes of Claims that are Impaired under the Plan. *See* 11 U.S.C. § 1123(a)(3). The treatment of such Claims is contained in Article III of the Plan.

d. The Plan provides the same treatment for each Creditor in each Class of Claims that are Impaired under the Plan. *See* 11 U.S.C. § 1123(a)(4).

e. The Plan details the adequate means for implementation of the Plan. *See* 11 U.S.C. § 1123(a)(5). The Plan describes in detail, among other things, the Restructuring Transactions, the Sources of Plan Distributions, and the formation of the Litigation Trust. *See* Article IV of the Plan.

f. Article IV.H of the Plan includes a restriction on non-voting equity securities in the Debtors' articles of incorporation and by-laws (or analogous corporate governance documents). *See* 11 U.S.C. § 1123(a)(6).

g. Article IV.P of the Plan describes the process for selection and appointment of the Litigation Trustee. *See* 11 U.S.C. § 1123(a)(7).

65. Section 1123(b) of the Bankruptcy Code describes the permissive provisions a plan may contain. The Plan contains some of these permissive plan provisions as well as a number of additional appropriate provisions that are not inconsistent with the applicable provisions of the Bankruptcy Code:

a. The Plan provides for the impairment of certain Classes. *See* 11 U.S.C. § 1123(b)(1).

b. Article V of the Plan provides for the assumption and rejection of all Executory Contracts and Unexpired Leases in conformity with sections 1123(b)(2), 1129(a)(1), and 365(a) and (d)(2) of the Bankruptcy Code. *See* 11 U.S.C. § 1123(b)(2).

c. Article IV.O of the Plan provides that the Reorganized Debtors shall retain Retained Causes of Action. In addition, Article IV.P of the Plan provides that the Litigation Trust Causes of Action shall be transferred to the

Litigation Trust on the Effective Date of the Plan. *See* 11 U.S.C. § 1123(b)(3).

d. The Plan provides for the modification of the rights of the holders of Secured Claims and Unsecured Claims against the Debtors. *See* 11 U.S.C. § 1123(b)(5).

66. The Plan complies with both section 1122 of the Bankruptcy Code and with the mandatory and permissive provisions of section 1123 of the Bankruptcy Code. Accordingly, the Plan satisfies the requirements of section 1129(a)(1) of the Bankruptcy Code.

(b) The Debtors Have Complied with Title 11 as Required by 11 U.S.C. § 1129(a)(2)

67. Section 1129(a)(2) of the Bankruptcy Code provides that a court may confirm a plan of reorganization if "the proponent of the plan complies with applicable provisions of this title." The principal purpose of section 1129(a)(2) of the Bankruptcy Code is to ensure that the plan proponent has complied with the disclosure and solicitation requirements of section 1125 of the Bankruptcy Code in soliciting acceptances of the plan. *See In re Cypresswood Land Partners, I*, 409 B.R. 396, 424 (Bankr. S.D. Tex. 2009) ("Bankruptcy courts limit their inquiry under § 1129(a)(2) to ensuring that the plan proponent has complied with the solicitation and disclosure requirements of § 1125."); *In re Landing Assocs., Ltd.*, 157 B.R. 791, 811 (Bankr. W.D. Tex. 1993) ("In fact, the legislative history mentions the provision only in passing, offering as an example of compliance that the debtor meet the disclosure requirements of § 1125 to satisfy § 1129(a)(2).").

68. Section 1125(b) of the Bankruptcy Code provides:

> An acceptance or rejection of a plan may not be solicited after the commencement of the case under this title from a holder of a claim or interest with respect to such claim or interest, unless at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan and a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information.

11 U.S.C. § 1125(b).

69. The Debtors obtained the Court's approval of the Disclosure Statement before soliciting acceptances or rejections of the Plan. In accordance with the Solicitation Procedures approved by the Court in the Disclosure Statement Order, the Debtors, through KCC, served copies of the Confirmation Hearing Notice (which contained a link to the Plan, the Disclosure Statement, and the Disclosure Statement Order, and any amendments, attachments, exhibits, or supplements related thereto), and if applicable, Ballots, Committee Letter, Debtors' Plan Support Letter, an Impaired Non-Voting Status Notice, or an Unimpaired Non-Voting Status Notice to (a) all Creditors, (b) all holders of Interests, and (c) all other parties in interest, as required by the Bankruptcy Rules (including those entities as described in Bankruptcy Rule 3017(f)) and the Local Rules. *See* First Solicitation Affidavit, at 4-5. Additionally, the Debtors have made the Plan, Disclosure Statement, and Disclosure Statement Order available on their case website at http://www.kccllc.net/vista.

70. Consistent with the Disclosure Statement Order, the Debtors did not send Ballots to holders of Claims or Interests in Classes 1, 2, 4, 5, 7, 8, or 9 because such Classes are deemed to accept or reject the Plan pursuant to sections 1126(f) and (g) of the Bankruptcy Code. The Debtors served holders of Claims or Interests in Classes 1, 2, 4, 5, 7, 8, and 9 with copies of (i) the Confirmation Hearing Notice and (ii) the Impaired Non-Voting Status Notice or the Unimpaired Non-Voting Status Notice, as applicable. *Id.*

71. The Debtors have solicited acceptances of the Plan in good faith, in conformity with the orders of the Court, and in accordance with applicable law. The burden of proof is on the party seeking to designate the votes as having been cast or solicited in bad faith. *In re United Marine, Inc.*, 197 B.R. 942, 947 (Bankr. S.D. Fla. 1996); *In re Kovalchick*, 175 B.R. 863, 875 (Bankr. E.D. Pa. 1994) (noting that the party seeking to have a vote disallowed carries a heavy

burden). The Debtors have fully complied with the applicable provisions of section 1125 of the Bankruptcy Code and with the applicable provisions of chapter 11, and, therefore, the requirements of section 1129(a)(2) of the Bankruptcy Code are met.

(c) The Debtors Have Proposed the Plan in Good Faith and Not by Any Means Forbidden by Law in Accordance with 11 U.S.C. § 1129(a)(3)

72. The Debtors have proposed the Plan in good faith and not by any means forbidden by law in accordance with section 1129(a)(3) of the Bankruptcy Code. Courts have found that section 1129(a)(3) requires that good faith be viewed in light of the totality of the circumstances surrounding the establishment of a chapter 11 plan. *See Western Real Estate Equities v. Village at Camp Bowie I, L.P. (In re Village at Camp Bowie I, L.P.)*, 710 F.3d 239, 247 (5th Cir. 2013); *Fin. Sec. Assurance Inc. v. T-H New Orleans L.P. (In re T-H New Orleans L.P.)*, 116 F.3d 790, 803 (5th Cir. 1997). "'Where [a] plan is proposed with the legitimate and honest purpose to reorganize and has a reasonable hope of success, the good-faith requirement of Section 1129(a)(3) is satisfied.'" *Village at Camp Bowie I, L.P.*, 710 F.3d at 247 (quoting *T-H New Orleans L.P.*, 116 F.3d at 802).

73. The Debtors have proposed the Plan in good faith and with the legitimate and honest purposes of reorganizing their business to maintain their operations as a going concern and provide recoveries for Creditors. The Plan, coupled with the liquidity infusion from the Exit Facility, enables the Debtors to eliminate a significant portion of their debt and obtain the necessary capital to sustain their ongoing operations upon emergence from Chapter 11. Because the Plan provides for the reorganization of the Debtors as a going concern while providing recoveries for Creditors, the Plan has been proposed in good faith and therefore satisfies the requirements of section 1129(a)(3) of the Bankruptcy Code.

(d) All Payments Have Been Properly Disclosed as Required by 11 U.S.C. § 1129(a)(4)

74. Section 1129(a)(4) of the Bankruptcy Code requires that "[a]ny payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable." 11 U.S.C. § 1129(a)(4). In other words, the Bankruptcy Code requires debtors to disclose to the court all professional fees and expenses, and such fees and expenses must be subject to court approval. *Texaco, Inc*., 84 B.R. at 907.

75. Any compensation paid by the Debtors pursuant to the Court's order approving interim fee disbursements, together with all fees and expenses incurred by professionals in these Chapter 11 Cases prior to the Confirmation Date, will be subject to the final approval of the Court on review of the applications for fees and expenses that all professionals are required to file under section 330 of the Bankruptcy Code. Pursuant to Article II.B.1 of the Plan, requests for payment of Professional Compensation Claims must be filed with the Court on or before forty-five (45) days after the Effective Date of the Plan. Article II.B.1 of the Plan further provides that only the amount of the Professional Compensation Claims allowed by the Court will be paid. With respect to fees and expenses incurred after the Confirmation Date, Article II.B.4 of the Plan provides that the Debtors shall pay the "reasonable and documented legal, professional, or other fees and expenses related to implementation of the Plan and Consummation incurred by the Debtors" from and after the Confirmation Date in the ordinary course without any further notice or approval of the Court. The procedures outlined in the Plan for the payment of fees and expenses of professionals to be paid by the Debtors satisfy the requirements of section 1129(a)(4) of the Bankruptcy Code.

(e) The Debtors Have Properly Disclosed the Identity of Individuals Who Will Hold Positions with the Debtors after Confirmation of the Plan as Required by 11 U.S.C. § 1129(a)(5)

76. Section 1129(a)(5)(A)(ii) of the Bankruptcy Code requires that a plan proponent disclose the identity and affiliations of individuals proposed to serve as directors, officers, or voting trustees of the debtor after confirmation of the plan. Article IV.I of the Plan provides that the terms of the current members of the board of directors of the Debtors shall expire, and the initial boards of directors, including the New Parent Board, and the officers of each of the Reorganized Debtors shall be appointed in accordance with the respective governance documents for the New Parent Company and the Updated Governance Documents, as applicable.

77. On October 23, 2020, the Debtors filed the Second Notice of Filing of Amended Plan Supplements [Docket No. 671], which contained the identities and affiliations of the officers and directors of V SandCo, LLC. Accordingly, the Debtors have complied with the requirements of section 1129(a)(5).

(f) 11 U.S.C. § 1129(a)(6) is Not Applicable in These Chapter 11 Cases

78. Section 1129(a)(6) of the Bankruptcy Code generally mandates that any regulatory commission with jurisdiction over the rates of a debtor after plan confirmation approve any rate changes contained in the plan. That statute is not applicable because the Debtors are not subject to the review of any regulatory commission with jurisdiction over the Debtors' rates.

(g) The Plan Meets the "Best Interest of Creditors" Test of 11 U.S.C. § 1129(a)(7)

79. Section 1129(a)(7) of the Bankruptcy Code requires that a plan of reorganization meet the "best interest of creditors" test. Under that test, each holder of a claim or interest must either accept the plan or receive in terms of present value no less under the plan than what such person would have received in a chapter 7 liquidation. *Kane v. Johns-Manville Corp.*, 843 F.2d

636, 649 (2d Cir. 1988). Such an analysis requires a determination of the value of the plan distributions in order to analyze whether creditors are receiving at least the equivalent of what they would receive in a chapter 7 case. *In re Mortgage Inv. Co. of El Paso*, 111 B.R. 604, 615 (Bankr. W.D. Tex. 1990) (citing *In re Neff*, 60 B.R. 448, 452 (Bankr. N.D. Tex. 1985), *aff'd*, 785 F.2d 1033 (5th Cir. 1986)).

80. As set forth in the Liquidation Analysis attached to the Disclosure Statement as Exhibit 3 and as described in more detail therein, the Debtors have determined that on the Effective Date, the Plan will provide all holders of Allowed Claims or Interests with a recovery that is not less than what they would otherwise receive pursuant to a liquidation of the Debtors' assets under chapter 7 of the Bankruptcy Code. Accordingly, the Plan satisfies the requirement of section 1129(a)(7) of the Bankruptcy Code.

(h) The Plan Has Been Accepted by All Required Creditor Constituencies in Accordance with 11 U.S.C. § 1129(a)(8)

81. Section 1129(a)(8) of the Bankruptcy Code requires that, with respect to each class of claims or interests, such class has either accepted the plan or is not impaired under the plan. As depicted in the Ballot Certification, all Classes of Claims that were entitled to vote on the Plan voted to accept the Plan, and therefore, the requirements of section 1129(a)(8) of the Bankruptcy Code are satisfied. Alternatively, to the extent the requirements of section 1129(a)(8) of the Bankruptcy Code have not been satisfied with respect to Class 7, Class 8, or Class 9, the Plan meets the cramdown requirements of section 1129(b) of the Bankruptcy Code as set forth below.

(i) The Plan Treats the Holders of Priority and Tax Claims in Accordance with 11 U.S.C. § 1129(a)(9)

82. Section 1129(a)(9) of the Bankruptcy Code provides guidelines for the treatment of claims entitled to priority under sections 507(a)(l)–(8) of the Bankruptcy Code. Under

section 1129(a)(9)(A) of the Bankruptcy Code, holders of section 507(a)(2) and (a)(3) claims must receive cash equal to the allowed amount of such claim. Section 1129(a)(9)(B) provides that, except to the extent the holder of a claim has otherwise agreed to a different treatment, holders of section 507(a)(1) and (a)(4)–(a)(7) claims must receive deferred cash payments of a value equal to the allowed amount of such claims if the class has accepted the Plan or, if not, cash equal to the allowed amount of such claim.

83. Article II of the Plan provides that Allowed Priority Tax Claims shall be treated in a manner consistent with section 1129(a)(9)(C) of the Bankruptcy Code. Accordingly, the Plan meets the requirements of sections 1129(a)(9)(A) and 1129(a)(9)(B) of the Bankruptcy Code.

(j) At Least One Impaired Class Has Accepted the Plan as Required by 11 U.S.C. § 1129(a)(10)

84. Section 1129(a)(10) of the Bankruptcy Code provides that if one or more classes of claims is impaired under a plan, at least one class must have accepted the plan, without including any votes of insiders. Class 3 is comprised of Term Loan Secured Claims and is impaired under the Plan. Without including any acceptance of the Plan by any insider, Class 3 voted to accept the Plan. In addition, Class 6 (General Unsecured Claims) is impaired under the Plan and voted to accept the Plan. The Plan therefore satisfies the requirements of section 1129(a)(10) of the Bankruptcy Code.

(k) The Plan is Feasible as Required by 11 U.S.C. § 1129(a)(11)

85. Section 1129(a)(11) of the Bankruptcy Code provides that the court must determine that confirmation of the plan is "not likely to be followed by the liquidation, or the need for further financial reorganization of the debtor." 11 U.S.C. §1129(a)(11). In order to establish feasibility, a debtor's plan does not have to be a guarantee of success but only provide a reasonable assurance of success. *Heartland Federal Savings & Loan Assoc. v. Briscoe*

Enterprises, Ltd., II, (*Matter of Briscoe Enterprises, Ltd., II*), 994 F.2d 1160, 1165-66 (5th Cir. 1993) ("As numerous courts have explained, the court need not require a guarantee of success, which of course would be difficult to predict for any venture much less one emerging from chapter 11. Only a reasonable assurance of commercial viability is required."). When the evidence shows that the debtor's "financial projections are reasonable, take current market conditions into account, and that the debtor will be able to perform the plan in accordance with its terms," the plan meets feasibility requirements. *See In re Seatco, Inc.*, 259 B.R. 279, 288 (Bankr. N.D. Tex. 2001).

86. For purposes of determining whether the Plan meets this requirement, the Debtors have analyzed their ability to meet their obligations under the Plan. Distributions to Creditors under the Plan do not depend upon the Reorganized Debtors' future business operations. Rather, such distributions are based upon (1) Cash on hand; (2) the ABL Priority Collateral; (3) the MAALT Priority Collateral; (4) the issuance and distribution of the New Equity Interests; (5) the Exit Facility; (6) the GUC Cash Pool; and (7) interests in the Litigation Trust, as applicable.

87. The Financial Projections attached as Exhibit 4 to the Disclosure Statement show that the Reorganized Debtors will have adequate liquidity and funding to meet their obligations. Further, the Financial Projections evidence that the Reorganized Debtors are not likely to need financial reorganization or liquidation. Accordingly, the Plan satisfies the feasibility requirements of section 1129(a)(11) of the Bankruptcy Code.

(l) The Plan Provides for Payment of all Bankruptcy Fees in Accordance with 11 U.S.C. § 1129(a)(12)

88. Section 1129(a)(12) of the Bankruptcy Code requires that all fees payable under 28 U.S.C. § 1930, as determined by the court at the hearing on confirmation of the plan, have been paid, or the plan provides for the payment of all such fees on the effective date of the plan.

Article XII.C of the Plan provides that all fees payable pursuant to section 1930(a) of the Judicial Code, as determined by the Bankruptcy Court at a hearing pursuant to section 1128 of the Bankruptcy Code, shall be paid by each of the Reorganized Debtors, the DIP Lenders, or the Term Loan Lenders to the extent required by applicable law. Accordingly, the Plan complies with the requirements of section 1129(a)(12) of the Bankruptcy Code.

(m) The Plan Complies with 11 U.S.C. § 1129(a)(13) Governing Retiree Benefits

89. Article IV.N of the Plan provides that all retiree benefits (as such term is defined in section 1114 of the Bankruptcy Code), if any, shall continue to be paid in accordance with applicable law. Accordingly, the Plan complies with the requirements of section 1129(a)(13) of the Bankruptcy Code.

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

90. Section 1129(a)(14) of the Bankruptcy Code imposes certain requirements on debtors who have domestic support obligations mandated by judicial or administrative order or by statute. The Debtors are not required to pay a domestic support obligation, either under a judicial or administrative order or by statute, and therefore section 1129(a)(14) of the Bankruptcy Code is inapplicable.

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

91. Section 1129(a)(15) of the Bankruptcy Code dictates certain requirements that must be met when the holder of an allowed unsecured claim objects to confirmation of a chapter 11 plan filed by an individual debtor. The Debtors are not individuals, and therefore section 1129(a)(15) of the Bankruptcy Code is inapplicable.

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

92. Section 1129(a)(16) of the Bankruptcy Code conditions plan confirmation on the fact that all transfers under the plan will be made in accordance with applicable provisions of "nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a money, business, or commercial corporation or trust." Because the Debtors are a for-profit business, section 1129(a)(16) of the Bankruptcy Code is inapplicable.

B. The Plan Meets the Standards of 11 U.S.C. § 1129(b) as it Relates to the Holders of Class 7 Intercompany Claims, Class 8 Interests in Debtors other than Vista Holdco, and Class 9 Interests in Vista HoldCo

93. Under section 1129(b) of the Bankruptcy Code, the court "shall confirm the plan…if the plan does not discriminate unfairly, and it is fair and equitable, with respect to each class of claims or interest that is impaired under, and has not accepted, the plan." For purposes of section 1129(b) of the Bankruptcy Code, the Plan is fair and equitable to the extent that the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property. *See* 11 U.S.C. § 1129(b)(2)(B)(ii) and (C)(ii).

94. All Classes that were entitled to vote on the Plan voted in favor of the Plan. To the extent Class 7 Intercompany Claims and Class 8 Interests in Debtors Other than Vista HoldCo are cancelled and deemed to reject the Plan, the Plan does not discriminate unfairly against holders of Class 7 Intercompany Claims and Class 8 Interests in Debtors Other than Vista HoldCo because there is a reasonable basis for any disparate treatment with respect to similarly situated classes. Class 7 Intercompany Claims merely represent offsetting accounting entries among the Debtors. Further, to the extent Class 7 Intercompany Claims and Class 8 Interests in Debtors Other than Vista HoldCo are cancelled and deemed to reject the Plan, the Plan is fair and

equitable with respect to the holders of Class 7 Intercompany Claims and Class 8 Interests in Debtors Other than Vista HoldCo because there are no Classes of Claims junior to Class 7 or Class 8 that are receiving a Distribution or retaining any property under the Plan.

95. Class 9 is deemed to have rejected the Plan; however, the Plan is fair and equitable with respect to the holder of Class 9 Interests in Vista HoldCo because the Plan does not provide a Distribution to holders of Interests in that Class, and there are no Classes junior to Class 9 that are receiving a Distribution or retaining any property under the Plan. Therefore, the Plan meets the cramdown requirements under Section 1129(b) of the Bankruptcy Code regarding the treatment of the Class 9 Interests in Vista HoldCo.

C. Section 1129(c) of the Bankruptcy Code is Inapplicable

96. Section 1129(c) of the Bankruptcy Code provides that the Court may only confirm one Plan, and if the requirements of section 1129(a) and (b) are met with respect to more than one Plan, the Court shall consider the preferences of creditors and equity security holders in determining which plan to confirm. The Plan is the only plan filed in these Chapter 11 Cases. Accordingly, section 1129(c) of the Bankruptcy Code is inapplicable.

D. The Plan Meets the Standards of 11 U.S.C. § 1129(d) inasmuch as the Principal Purpose of the Plan is Not the Avoidance of Taxes or Section 5 of the Securities Act of 1933

97. Section 1129(d) of the Bankruptcy Code states that on the request of a governmental unit, "the court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or the avoidance of the application of Section 5 of the Securities Act of 1933." The principal purpose of the Plan is not the avoidance of taxes or the avoidance of Section 5 of the Securities Act of 1933. Accordingly, the Plan should be confirmed.

E. Section 1129(e) of the Bankruptcy Code is Inapplicable

98. Section 1129(e) of the Bankruptcy Code contains an additional provision of section 1129 that applies in a small business case. The Chapter 11 Cases are not "small business cases" within the meaning of the Bankruptcy Code. Accordingly, section 1129(e) of the Bankruptcy Code is inapplicable in the Chapter 11 Cases.

F. The Assumption and Rejection of the Executory Contracts and Unexpired Leases Under the Plan Should Be Approved

99. Article V of the Plan generally provides that all Executory Contracts and Unexpired Leases not previously assumed or rejected pursuant to an order of the Bankruptcy Court will be deemed rejected by the applicable Reorganized Debtor on the Effective Date. Section 365(a) provides that a debtor, subject to court approval, may assume or reject an executory contract or unexpired lease. 11 U.S.C. § 365(a). Under section 365(b) of the Bankruptcy Code, if there has been a default in an executory contract or unexpired lease, the debtor may not assume the contract or lease unless the debtor cures such default and provides adequate assurance of future performance under the contract or lease. 11 U.S.C. § 365(b).

100. A debtor's assumption or rejection of an executory contract or unexpired lease is subject to review under the business judgment standard. *Richmond Leasing Co. v. Capital Bank, NA*, 762 F.2d 1303, 1309 (5th Cir. 1985) ("It is well established that the question whether a lease should be rejected…is one of business judgment.") (citation and quotation omitted). The business judgment test is not a strict standard and merely requires a showing that either assumption or rejection of the contract at issue will benefit the debtor's estate. *See In re Bildisco*, 682 F.2d 72, 79 (3d Cir. 1982), *aff'd sub nom., NLRB v. Bildisco & Bildisco*, 465 U.S. 513 (1984). Upon a finding that a debtor has exercised its sound business judgment in determining that assumption or rejection of an agreement is in the best interests of its estate, the

court should approve the proposed assumption or rejection under Section 365(a) of the Bankruptcy Code. *See, e.g., In re Child World, Inc.*, 142 B.R. 87, 89 (Bankr. S.D.N.Y. 1992).

(a) Assumption and Rejection of the Executory Contracts and Unexpired Leases is a Sound Exercise of the Debtors' Business Judgment

101. Prior to the Petition Date, the Debtors carefully reviewed their Executory Contracts and Unexpired Leases to determine whether any Executory Contracts or Unexpired Leases provided little benefit to their operations or were otherwise burdensome to their estates. On the Petition Date, the Debtors filed nine omnibus motions to reject the burdensome Executory Contracts and Unexpired Leases (collectively, the "Omnibus Lease Rejection Motions"). *See* Docket Nos. 12-20. The Debtors submit that it was a sound exercise of their business judgment to reject the Executory Contracts and Unexpired Leases included in the Omnibus Lease Rejection Motions because such Executory Contracts and Unexpired Leases were burdensome to their estates or otherwise would provide little or no benefit to their ongoing operations.

102. The Debtors prepared the Schedule of Assumed Contracts and Leases after carefully considering the needs of the Reorganized Debtors and the costs and benefits of assuming particular Executory Contracts or Unexpired Leases. Further, certain Executory Contracts and Unexpired Leases are being assumed as a result of beneficial negotiations with the applicable counterparties. The assumption and rejection of the Debtors' Executory Contracts and Unexpired Leases as set forth in the Plan is a sound exercise of the Debtors' business judgment.

(b) The Assumption of Certain Executory Contracts and Unexpired Leases Should Be Approved Because (1) the Cure Objections Have Been Resolved or Should Be Overruled, and (2) the Debtors Will Provide Adequate Assurance of Future Performance

103. Pursuant to the Cure Procedures, the Debtors will pay any Cure Amounts necessary to assume the Executory Contracts and Unexpired Leases. The Debtors request that the

Cure Objections be resolved in accordance with the proposed resolutions described above and included in the Proposed Confirmation Order.

104. The Debtors' financial projections demonstrate that they will be able to continue to perform under the terms of the Executory Contracts and Unexpired Leases that will be assumed pursuant to the Plan. Accordingly, the Debtors request that the Court find that the Debtors have provided adequate assurance of future performance under the Executory Contracts and Unexpired Leases that will be assumed pursuant to the Plan, and such assumption should be approved.

G. The Settlement, as Reflected in the Fourth Amended Plan, Should Be Approved

105. Pursuant to section 1123 of the Bankruptcy Code, the Plan incorporates settlements and adjustments of certain Claims, the treatment of certain Claims under the Plan, resolution of possible Causes of Action and the grant of consensual releases to implement the settlements contained within the Plan in accordance with the Term Sheet attached to the Plan as Exhibit B.

106. The Term Loan Secured Parties provided the DIP financing necessary to fund these Chapter 11 Cases and will advance additional funds to the Debtors through the Exit Facility. Additionally, the Term Loan Secured Parties are effectively subordinating their Term Loan Deficiency Claims voluntarily in order to allow for the possibility of a meaningful distribution to the holders of Allowed General Unsecured Claims. The Debtors have acted in the best interests of the Estates in proposing a Plan that provides a recovery to unsecured creditors that would not be available outside of the Plan and without the contributions of the Term Loan Secured Parties, the DIP Secured Parties, and the Exit Lenders (who are the same group of entities acting in such different capacities).

107. Additionally, the Committee has benefitted the Estates by negotiating the GUC Cash Settlement, the creation of the Litigation Trust, and enhanced recoveries for Class 6 General Unsecured Creditors.

108. It is well settled that "compromises are favored in bankruptcy." *John S. Marandas, P.C. v. Bishop (In re Sassalos)*, 160 B.R. 646, 653 (D. Or. 1993). The decision whether to approve a compromise under Rule 9019 is committed to the sound discretion of the court, which must determine if the compromise is fair, reasonable, and in the interest of the estate. *See In re Aweco, Inc.*, 725 F.2d 293 (5th Cir. 1984). The "best interest" test requires a debtor to show that the settlement is "fair and equitable." *Aweco*, 725 F.2d at 298; *see also Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968).

109. In determining whether a proposed compromise is fair and equitable, the Fifth Circuit considers the following factors: (a) the probability of success in the litigation, with due consideration for the uncertainty in fact and law; (b) the complexity and likely duration of the litigation and any attendant expense, inconvenience and delay; (c) the paramount interest of the creditors and a proper deference to their respective views; (d) the extent to which the settlement is truly the product of arm's-length bargaining and not fraud or collusion; and (e) all other factors bearing on the wisdom of the compromise. *See Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 263 (5th Cir. 2010).

110. The Settlement is the result of extensive, good-faith and arm's-length negotiations among the Debtors, the Term Loan Secured Parties, and the Committee. Based on the facts and circumstances of the Chapter 11 Cases, the Debtors believe the Settlement embedded in the Plan

is fair, equitable, reasonable, within the range of litigation possibilities, and is in the best interests of the Debtors, their Estates, their creditors, and other parties in interest.

111. The implementation of the Settlement is a critical component of the Plan. To implement the Settlement, Article VIII of the Plan contains certain release, injunction, and exculpation provisions, which are required as part of the Settlement. Generally (and subject to the specific language in the Plan), (a) Article VIII.C of the Plan provides for releases by the Debtors, the Reorganized Debtors, and their Estates, of any and all Causes of Action, that the Debtors, the Reorganized Debtors, or their Estates could assert against the Released Parties[11] (the "Debtor Release"); (b) Article VIII.D of the Plan provides for releases by certain holders of Claims and Interests of any and all Causes of Action that they may have against the Released Parties (the "Third-Party Release" and, together with the Debtor Release, the "Releases"); (c) Article VIII.E provides for exculpation of the Debtors and the Released Parties in connection with the Plan (the "Exculpation Provision"); and (d) Article VIII.F of the Plan provides for an injunction to effectuate the Releases (the "Injunction Provision").

[11] Pursuant to the Fourth Amended Plan, the term **"**Released Parties" means, collectively, and in each case solely in their capacities as such: (a) the Debtors; (b) the Reorganized Debtors; (c) the Term Loan Lenders; (d) the Term Loan Agent; (e) the DIP Lenders; (f) the DIP Agent; (g) the Exit Lenders; (h) the Exit Agent; (i) the Committee, each member of the Committee and the Committee's Professionals; (j) each of Ares Credit Strategies, Ares ND Credit Strategies Fund LLC, Ares Jasper Fund, L.P., and ARCC VS CORP in their capacities as holders of Existing Common Units of Vista HoldCo; and (k) with respect to each of the foregoing entities in clauses (a) through (h), such Entity's current and former affiliates and subsidiaries, and such Entities' and their current and former affiliates' and subsidiaries' directors, managers, officers, equity holders (regardless of whether such interests are held directly or indirectly), predecessors, successors, and assigns, subsidiaries, and each of their respective current and former equity holders (regardless of whether such interests are held directly or indirectly), officers, directors, managers, principals, members, employees, agents, advisors, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, in each case acting in such capacity at any time on or after the Petition Date; *provided*, *however*, that notwithstanding the foregoing, the Debtors' officers and directors that were no longer acting in such capacities as of the Petition Date, the ABL Lender, R.J. Sikes, Lisa Sikes, Gary Humphreys, Marty Robertson, GHMR Operations, LLC, RJS Holdings, LLC, KCM Enterprises, LP, the Debtors' equity holders as of the Petition Date, and any entity related to R.J. Sikes, Lisa Sikes, Gary Humphreys, or Marty Robertson, other than the Debtors or the Reorganized Debtors, shall not be "Released Parties" under the Plan.

112. Section 1123(b)(3)(A) of the Bankruptcy Code allows a plan to provide for "the settlement or adjustment of any claim or interest belonging to the debtor or the estate." 11 U.S.C. §1123(b)(3)(A). Accordingly, pursuant to section 1123(b)(3)(A), the Debtors may release estate causes of action as consideration for concessions made by their various stakeholders pursuant to the Plan. *See, e.g., In re Bigler LP, 442 BR 537, 547* (Bankr. S.D. Tex. 2010) (finding that plan release provision "constitutes an acceptable settlement under § 1123(b)(3) because the Debtors and the Estate are releasing claims that are property of the Estate in consideration for funding of the Plan"); *In re Heritage Org., LLC*, 375 B.R. 230, 259 (Bankr. N.D. Tex. 2007); *In re Mirant Corp.*, 348 B.R. 725, 737-39 (Bankr. N.D. Tex. 2006); *Gen. Homes*, 134 B.R. at 861. The Debtor Release in Article VIII.C of the Plan meets the Fifth Circuit standard for inclusion of such releases as part of a settlement in a plan: the Debtors' releases are voluntary, fair and equitable and are in the best interests of the Estates. *See Mirant*, 348 B.R. at 738; *Heritage Org.*, 375 B.R. at 259.

113. As discussed above, the Debtors' releases are the product of good-faith, arm's-length negotiations. The Debtors are receiving significant value in return for the release. The Plan and the Debtors' emergence from chapter 11 would not be possible without the Released Parties' having made – and continuing to make post-Effective Date – substantial and valuable contributions to facilitate confirmation and consummation of the Plan. By contrast, the Debtors are giving up very little by way of the Debtor Release – the Debtors, under the Final DIP Order, have already provided releases to the DIP Secured Parties. In light of the foregoing, the Debtors submit that the Debtor Release in Article VIII.C of the Plan is fair, equitable, and in the best interest of the Debtors and their Estates, reflects the sound exercise of the Debtors' business

judgment, is consistent with section 1123(b)(3)(A) of the Bankruptcy Code and applicable authority, and should be approved.

H. The Third Party Release Should be Approved

114. Pursuant to the Solicitation Procedures, all parties in interest had the option of submitting an Opt-Out Election Form to opt-out of the Third Party Release in Article VIII.D of the Plan. Although this provision involves a release by parties other than the Debtors, the release is *completely consensual* and, therefore, permissible under Fifth Circuit law.

115. Under Fifth Circuit law, "[c]onsensual nondebtor releases that are specific in language, integral to the plan, a condition of the settlement, and given for consideration do not violate" the Bankruptcy Code. *In re Wool Growers Cent. Storage Co.*, 371 B.R. 768, 776 (Bankr. N.D. Tex. 2007), *aff'd*, 255 F. App'x. 909, 911-12 (5th Cir. 2007); *Republic Supply Co. v. Shoaf*, 815 F.2d 1046, 1050 (5th Cir. 1987).

116. While the Fifth Circuit has not directly addressed the parameters of what constitutes a consensual third-party release, both the Fifth Circuit and numerous courts within the Fifth Circuit have indirectly addressed the issue in addressing the effect of third-party release provisions contained in a confirmed chapter 11 plan.[12] The critical issue in determining whether a release is consensual is whether, after the Debtors' due process obligations have been satisfied, including the provision of appropriate notice, "the affected creditor ***timely objects*** to the provision. *See Wool Growers*, 371 B.R. at 776 (emphasis added); *In re CJ Holding Co.*, No. 18-3250 (LHR), 2019 WL 497728, at *8 (S.D. Tex. Feb. 8, 2019) (affirming bankruptcy court order enforcing plan's third-party release provisions and finding that bankruptcy court was entitled to

[12] Although Court opinions were not issued in connection with this issue, the Debtors note for the Court that in *In re Mac Churchill, Inc., Case No. 18-41988*-mxm11 (Bankr. N.D. Tex.) and *In re PHI, Inc.*, Case No. 19-30923-hdh-11 (Bankr. N.D. Tex.), the Debtors understand that the court sustained objections to certain opt-out releases based on a determination that silence did not constitute consent under the specific facts of the applicable solicitation procedures and the forms of such ballots. Similar objections have not been raised to the Court for the Confirmation Hearing in these Chapter 11 Cases.

rely on creditor's silence to infer consent) (citation omitted); *In re Camp Arrowhead, Ltd.*, 451 B.R. 678, 701-02 (Bankr. W.D. Tex. 2011) ("the Fifth Circuit does allow permanent injunctions so long as there is consent," and "***[w]ithout an objection, [the bankruptcy court] was entitled to rely on [the creditor's] silence to infer consent at the confirmation hearing***") (emphasis added).

117. The Third-Party Release in Article VIII.D of the Plan meets the standard set forth in *Republic Supply* and its progeny. First, the release is consensual. As set forth above, parties in interest were provided extensive notice of these Chapter 11 Cases, the Plan, and the deadline to object to confirmation of the Plan. Voting and non-voting Classes were provided with the Opt-Out Election Form, which expressly apprised such parties of the existence of the release and their ability to opt out of the release.

118. Second, the release is sufficiently specific—listing potential Causes of Action to be released—so as to put the Releasing Parties on notice of the released claims. *See, e.g., FOM Puerto Rico, S.E. v. Dr. Barnes Eyecenter, Inc.*, 255 Fed. Appx. 909, 910, 912 (5th Cir. 2007) (finding that release language that provided for release of any and all claims "based in whole or in part on any act or omission, transaction, or occurrence from the beginning of time through the Effective Date in any way related to [the debtor], its Bankruptcy Case, or the Plan" was sufficiently specific). Third, the release is integral to the Plan and a condition of the Settlement incorporated therein. Fourth, as discussed above, the release is given for consideration. Accordingly, the Third-Party Release in Article VIII.D of the Plan is justified under the principles set forth in *Republic Supply* and its progeny.

119. Bankruptcy Courts in the Fifth Circuit regularly approve "opt-out" release provisions similar to the Third-Party Release in Article VIII.D, when the release is the product of a full and fair disclosure process that affords the creditor the opportunity and ability to make an

informed decision regarding the release. *See, e.g.*, Findings of Fact, Conclusions of Law and Order Confirming Debtors' First Amended Joint Chapter 11 Plan of Liquidation Dated as of August 8, 2017, *In re Foundation Healthcare, Inc.*, No. 17-42571 (RFN) (Bankr. N.D. Tex. Sep. 11, 2017) [ECF No. 143] at ¶ 23 (confirming, over objection by the United States Trustee, a chapter 11 plan of liquidation including third-party release provision substantially similar to the one contained in the Plan, including definition of "Releasing Parties" to mean (i) the holders of all Claims or Interests who vote to accept the Plan; (ii) the holders of Claims or Interests that are Unimpaired under the Plan; (iii) the holders of Claims or Interest whose vote to accept or reject the Plan is solicited but who do not vote either to accept or to reject the Plan; and (iv) the holders of Claims or Interests who vote to reject the Plan but do not opt out of granting the releases set forth herein."); Order Confirming the Second Amended Joint Plan of Reorganization of Erickson Incorporated, Et Al., Pursuant to Chapter 11 of the Bankruptcy Code, *In re Erickson Incorporated*, No. 16-34393 (HDH) (Bankr. N.D. Tex. Mar. 22, 2017) [ECF No. 581] at ¶ 42 (same or substantially similar); Findings of Fact, Conclusions of Law and Order Confirming the Debtors' Fourth Amended Joint Chapter 11 Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code, *In re CHC Group Ltd.*, No. 16-31854 (BJH) (Bankr. N.D. Tex. Mar. 3, 2017) [ECF No. 1794] at pp. 41–44 (same or substantially similar).[13]

120. Here, the relevant factors weigh in favor of approving the Third-Party Release, which is an appropriate *quid pro quo* for the contributions, concessions, and support offered by the Released Parties. As no creditor has objected to the release provision, the release is fully consensual and otherwise complies with the controlling Fifth Circuit standards. Accordingly, the Third-Party Release in Article VIII.D of the Plan is justified under the circumstances and should be approved.

[13] *But see* footnote 11 above.

I. The Exculpation Provision Should Be Approved

121. The Exculpation Provision in Article VIII.E of the Plan provides for the exculpation of the Exculpated Parties.[14] As is typical, acts of willful misconduct or fraud are excluded from the exculpation. The Exculpation Provision in Article VIII.E of the Plan is substantially similar to exculpation provisions in chapter 11 plans confirmed recently in similarly complex bankruptcy cases within the Fifth Circuit. *See*, *e.g.*, Findings of Fact, Conclusions of Law and Order Confirming Debtors' First Amended Joint Chapter 11 Plan of Liquidation Dated as of August 8, 2017, *In re Foundation Healthcare, Inc.*, No. 17-42571 (RFN) (Bankr. N.D. Tex. Sep. 11, 2017) [ECF No. 143] at ¶ 27; Order Confirming First Amended Joint Chapter 11 Plan of Liquidation, *In re Geokinetics Inc.*, No. 18-33410 (DRJ) (Bankr. S.D. Tex. Oct. 19, 2018) [ECF No. 454] at ¶ 71. The Exculpation Provision represents an integral piece of the Settlement and is the product of good-faith, arm's-length negotiations. The Exculpation Provision is narrowly tailored. Moreover, as a result of discussions with the U.S. Trustee, the Debtors have added the following language to paragraph 42 of the Confirmation Order:

> The exculpation provided in Article VIII.E of the Plan is approved but should be construed, and will only be effective, to the extent that it is consistent with the applicable provisions of the Bankruptcy Code and case law in the Fifth Circuit. Any claims made against Exculpated Parties for acts described in Article VIII.E of the Plan shall be filed in the United States Bankruptcy Court for the Northern District of Texas, and this Bankruptcy Court retains exclusive jurisdiction to consider same.

122. For the foregoing reasons, the Debtors respectfully request that the Bankruptcy Court approve the release Exculpation Provision of the Plan.

[14] Under the Fourth Amended Plan, "Exculpated Parties" means, collectively, and in each case, in its capacity as such: (a) the Debtors, (b) Reorganized Debtors; (c) the Committee, each member of the Committee and the Committee's Professionals; (d) such Released Parties that are fiduciaries to the Debtors' Estates; and (e) with respect to each of the foregoing, such Entity and its current and former affiliates, and such Entity's and its current and former affiliates' equity holders, subsidiaries, officers, directors, managers, principals, members, employees, agents, advisors, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, in each case acting in such capacity at any time on or after the Petition Date."

J. The Plan's Injunction Provision is Necessary and Should Be Approved

123. Article VIII.F of the Fourth Amended Plan provides:

> Except as otherwise expressly provided in the Plan or for obligations issued or required to be paid pursuant to the Plan or the Confirmation Order, all Entities who have held, hold, or may hold Claims or Interests that have been released, discharged, or are subject to exculpation are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, the Exculpated Parties (to the extent of the exculpation provided pursuant to the Plan and the Confirmation Order with respect to the Exculpated Parties), or the Released Parties: (a) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (b) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims or Interests; and (c) creating, perfecting, or enforcing any encumbrance of any kind against such Entities or the property or the estates of such Entities on account of or in connection with or with respect to any such Claims or Interests. Nothing in this Article VIII.F shall enjoin any Entity that is not a Releasing Party from asserting any claim or Cause of Action that such Entity may have against any other Entity other than the Debtors, the Reorganized Debtors, or the Exculpated Parties (to the extent of the exculpation provided pursuant to the Plan and this Order with respect to the Exculpated Parties).

124. As shown in the redline version of the Fourth Amended Plan, the Debtors made numerous revisions to further clarify the scope of the Injunction Provision, including specific language regarding Entities that are not a Releasing Party. Furthermore, the Debtors deleted portions of the prior language in the Injunction Provision regarding setoff and recoupment.

125. The injunction is necessary to effectuate and implement the Release provisions of the Plan. Moreover, the injunction is essential to protect the Debtors, the Reorganized Debtors, the Released Parties, and the Exculpated Parties from any applicable potential litigation that should otherwise be enjoined under the Third Party Release or the Exculpation Provision, as applicable. Any such litigation would hinder the efforts of the Debtors to consummate the plan and maximize value for stakeholders. *See, e.g., Abel v. Shugrue (In re Ionosphere Clubs, Inc.),* 184 B.R. 648, 655 (S.D.N.Y. 1995) ("[C]ourts may issue injunctions enjoining creditors from

suing third parties … in order to resolve finally all claims in connection with the estate and to give finality to a reorganization plan.") (citation omitted). The Injunction Provision is narrowly tailored to achieve the critical objective of finality under the Plan, and Article VIII.F and the retention of jurisdiction provisions of the Plan provide that the Bankruptcy Court shall retain exclusive jurisdiction to hear and determine whether any claim or cause of action is or should remain subject to the injunction.

126. Article VIII.F of the Plan complies with the requirements of Bankruptcy Rule 3016(c) that "the plan and disclosure statement shall describe in specific and conspicuous language (bold, italic, or underlined text) all acts to be enjoined and entities that would be subject to the injunction." The Injunction Provision is clearly identified in the Plan, is displayed in bold font, and specifically identifies all acts to be enjoined and all entities that would be subject to the injunction. Ample notice was provided of the Injunction Provision (including by publication). For all of the foregoing reasons, the Debtors submit that the Injunction Provision in Article VIII.F of the Plan should be approved.

V. Conclusion

127. Based on the foregoing, the Debtors submit that the Plan fully complies with and satisfies all applicable requirements of the Bankruptcy Code necessary for the Plan to be confirmed. The Debtors, therefore, request that the Court overrule all objections and confirm the Plan.

RESPECTFULLY SUBMITTED this 26th day of October, 2020.

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