THE ARBITRATION PANEL'S ORDER

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I. INTRODUCTION

We, the two (2) undersigned Arbitrators[1], herein referred to from time to time as the "Panel", having been selected in accordance with §12.2 of the Team Marketing Alliance, L.L.C.'s (TMA) Amended and Restated Operating Agreement[2] to render an arbitration award and having heard the proofs and allegations of the parties, hereby provide this Memorandum of Fact and Law, pursuant to the Parties' request for a reasoned opinion, and Order and state as follows:

A. The Petitioners

The Petitioners, Farmers Cooperative Elevator Company, "Halstead", a Kansas cooperative association with offices in Halstead, Kansas "Halstead"; Cooperative Grain and Supply, a Kansas cooperative association with offices in Hillsboro, Kansas "Hillsboro", and Central Prairie Co-op, a Kansas cooperative association with offices in Sterling, Kansas "Sterling". Halstead, Hillsboro, and Sterling are herein referred to collectively as the "Petitioners" or the "Minority Members". The Petitioners petitioned, the "Petition", for an order dissolving Team Marketing Alliance, L.L.C. "TMA" pursuant to K.S.A. 17-76,117 and for other relief.

B. The Respondents

Respondents, Mid-Kansas Co-operative Association, a Kansas cooperative association

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[1] The Arbitrators are Ted T. Svitavsky, an attorney, Keith W. DeVoe, a Chief Executive Officer of an agricultural grain marketing and supply co-operative, and Todd R. Eskelsen, an attorney. The Panel consists of Ted T. Svitavsky and Keith W. DeVoe. Todd R. Eskelsen has indicated to the Panel agreement with the Order stated herein and that he will provide his own and concurring opinion.

[2] TMA'S Amended And Restated Operating Agreement is dated and has an effective date of March 1, 2021, and is attached to the Petitioners' Complaint Requesting Dissolution and Equitable Relief as Exhibit 2.

"MKC" and Producer Ag, LLC, is a Kansas limited liability company "Producer Ag", jointly owned by MKC and CHS Inc., a Minnesota corporation headquartered in Inver Grove HeIghts, Minnesota. Mid-West Fertilizer, LLC, "Midwest", is a Kansas limited liability company, wholly owned by MKC.

The Respondents responded to the Petition with an Answering Statement and Counterclaims, the "Response", requesting that the Panel deny the Minority Members' claims in total and that an award be entered on the Majority Members' counterclaims. Midwest did not file an answer or otherwise respond and did not participate in this proceeding. MKC and Producer Ag are herein referred to from time to time collectively as the "Respondents" or the "Majority Members".

C. TMA and The Parties

The Minority Members and the Majority Members are members of TMA. The Minority Members and the Majority Members are collectively referred to herein as the "Parties".

D. The Minority Members' Claims for Relief

The Minority Members have made three (3) claims for relief:

1. Failure to Properly Calculate Member Equity Percentages;
2. Failure to Distribute Available Cash; and
3. Irreparable Injury.

The Petitioners also advised the Panel of the status of the District Court case in which the Petitioners, on February 2, 2021, filed a Petition for Dissolution and Interim Equitable Relief in the District Court of Marion County, Kansas.

E. The Minority Members' Demands

The Minority Members in their Petition requested:

A. An order of this Panel ordering the dissolution and liquidation of TMA.

B. An order of this Panel construing the provisions of the Operating Agreement in order to determine the proper ownership percentages of each TMA member.

C. An order of this Panel directing TMA to make cash distributions to each TMA member in such manner and amounts as the Panel may determine to be just and equitable.

D. An order of this Panel directing an independent audit of TMA to determine the outstanding interests of TMA's members in both capital and profits and losses in TMA in accordance with TMA's Operating Agreement retroactive to March 1, 2016, by a certified public accounting firm with experience in the grain industry and auditing farmers' cooperatives other than the firm used by TMA or any firm used by MKC, Producer Ag, Midwest, or CHS, Inc., whether for auditing or consulting services, from and after March 1, 2016.

E. An order of this Panel directing TMA's Chief Operating Officer and all other TMA agents to refrain from entering into any transactions which require the consent of a Super Majority Interest without first obtaining such consent.

F. An order of this Panel restraining TMA from entering into any unauthorized loan transactions.

G. All such other and further relief as may be just and equitable.

F. The Majority Members' Answering Statement and Counterclaims

The Majority Members responded and stated in their Answering Statement and Counterclaims:

22. The Majority Members deny that Petitioners are entitled to any of the relief

sought in the Prayer for Relief contained paragraphs A-G in the Complaint. To the extent the panel concludes that dissolution is proper, it should consider an alternative plan presented by the Majority Members because the plan submitted by the Minority Members is punitive, contains portions that are contrary to the Kansas Revised Limited Liability Company Act and the Amended Operating Agreement, fails to maximize the value of TMA's assets, and unduly disrupts the business of TMA' s grain purchasers and farmer customers.

G. The Majority Members' Affirmative Defenses

The Majority Members filed the following Affirmative Defenses in their Answering Statement and Counterclaims:

24. The Minority Members fail to state a claim upon which relief may be granted.

25. The Minority Members claims are barred in whole or part by the terms of the Amended Operating Agreement.

26. The Minority Members have waived their claims in whole or part.

27. The Minority Members have failed to meet all the conditions precedent to bringing a claim, namely failing to negotiate in good faith a resolution of their claim.

28. The Minority Members claims are barred by their own prior and ongoing breaches of the Amended Operating Agreement.

29. The Minority Members claims are barred by their breaches of fiduciary duty.

30. The Minority Members claims are barred by payment.

31. The Minority Members claims are barred by their unclean hands.

32. The Minority Members claims are barred by the Kansas Revised Limited Liability Company Act.

33. The Minority Members claims are barred based on the doctrine of unilateral or mutual mistake.

34. The Minority Members claims are barred by equitable estoppel.

35. The Minority Members' claims are barred in whole or part because they ratified the distribution amounts as TMA members.

36. The Minority Members' claims are barred in whole or in part by the applicable statute of limitations.

37. The Majority Members reserve the right to supplement this Answer with additional defenses that may become available or apparent during the course of investigation, preparation, or discovery, and to amend accordingly.

H. The Majority Members' Counterclaims.

The Majority Members filed five (5) counterclaims:

1. Breach of the Duty of Good Faith;
2. Breach of Duty to Manage TMA to the Best Advantage;
3. Breach of Fiduciary Duty;
4. Unjust Enrichment; and
5. Equitable Estoppel.

The Majority Members Requested the Panel to Order the following relief for their counterclaims:

1. Hold that the Majority Members are entitled to recover its reasonable expenses, arbitration costs, other costs, attorneys' fees, and expert witness fees;

2. Order, consistent with the relief granted in Eureka VIII LLC v. Niagara Falls Holdings LLC, 899 A.2d 95, 114 (Del. Ch. 2006), that the Minority Members lose their

governing rights in TMA;

3. Alternatively, order that the Majority Members purchase the Minority Members' interest at dissolution value under terms that minimize the disruption to TMA and reflect any TMA liabilities that the Majority Members assume;

4. Enter a judgment the Majority Members for in excess of $1.5 million dollars against the Minority Members that is assessed proportionally to any individual Minority Member's overpayment as a result of Producer Ag agreeing to a lower lease rate;

5. Alternatively, Order that the Minority Members are estopped from asserting an alternative distribution formula; and

6. Order for any such other and further relief as the Panel deems just and equitable, including interim equitable relief in the event the Minority Members take steps to block actions that are in the best interest of TMA and order that the Amended Operating Agreement be interpreted consistently with the manner that TMA's members have approved and have ratified through their past approval of distributions.

I. The Minority Members' Response to the Majority Members Counterclaims

The Minority Members responded to the Majority Members counterclaims in their Answer To Counterclaims requesting:

A. The counterclaims of the Majority Owners be dismissed; or

B. The Panel find in favor of the Minority Owners and against the Majority Owners with respect to all of their counterclaims; and

C. The Panel award such other and further relief to the Minority Owners as may be just and equitable.

II. THE PANELS' FACTUAL FINDINGS

The Arbitration hearing was conducted in person over two (2) days at the Double Tree by the Hilton Wichita Airport Hotel, 2098 S Airport Rd, Wichita, Kansas, and commenced at 9:00 a.m. CDT on Tuesday, June 8, 2021, and continued thru Wednesday, June 9, 2021.

The Arbitrators, in their Arbitrators' Preliminary Hearing Order of May 28, 2021, required that, "On or before June 4, 2021, each of the Parties shall produce to the Arbitrators and the other Party the following with respect to the Party's presentation during the Arbitration hearing: ... (ii) the list and copies of all Exhibits." Some Exhibits were received late by the Arbitrators and others were not produced until the date of the Arbitration Hearing. Notably, the last annual audit of TMA was produced by counsel for the Majority Members on the first day of the hearing.

Upon the commencement of the Arbitration Hearing the Parties stipulated to admission of all of their Exhibits that were previously exchanged by the parties and provided to the Panel.[3]

The Parties presented their cases and rebuttal positions. Direct and cross examination of witnesses by the Parties was taken and Exhibits reviewed by witnesses. The Panel also asked questions of witnesses and reviewed the Exhibits used by the parties during witness testimony.

In addition to other testimony considered by the Panel, the Panel noted:

1. Danny Posch testified that he was the Chief Financial Officer and Vice President employed by MKC for 17 years, that he is a Director and Secretary for Producer Ag, that he is a Representative for Producer Ag in TMA and plays the role of Chief Financial officer for TMA. He also claimed that he is not conflicted in his various roles. Testimony was given by Danny Posch where he stated,"if its good for MKC we believe it is good for all parties...".[4] This

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[3] See June 8, page 60 of the Transcript of Hearing.

[4] See June 9, page 373 of the Hearing Transcript.

testimony was given in front of the Board of Directors of Minority Members sitting in the Hearing Room as well as the Panel and indicates Danny Posch's obvious superior attitude and arrogance toward the Minority Members. Danny Pousch testified that he had assisted in the drafting, read the minutes, and now states that he made errors.[5] Danny Posch did not review the operating agreement. [6] Danny Posch confirmed that CHS found the inconsistency between the Operating Agreement and the three year average.[7] Danny Posch did not timely give the auditors the Amended and Restated Operating Agreement[8].

2. Mike Johnston testified that he is the senior vice-president of the Country Ops Division of CHS and that his staff had found inconsistencies between the Amended and Restated Operating Agreement and the three year average. He also confirmed a discussion with Danny Pousch about the inconsistencies at that time.[9]

The Panel notes that CHS is amongst the largest cooperatives in the world and for its representatives not to understand the terms of the Amended and Restated Operating Agreement signed, impacting thousands of farmers and ranchers and involving millions of dollars, is inexcusable.

The Panel agrees with the Minority Members that it is not the Minority Members' duty to ensure that MKC's and Producer Ag's officers and agents know the terms of the Operating Agreement. Moreover, the Majority Members cannot change the terms of an Operating

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[5]See Hearing Transcript, June 8, page 247 line 9 thru page 248, discussion about the board meeting minutes.

[6] See hearing Transcript, June 8, page 261, Line 12.

[7] See Hearing Transcript, June 8, page 250 Lines 4 thru 14.

[8] See hearing Transcript, June 8th, page 274, Lines 7 thru 25 and page 275 Lines 1 thru 7.

[9] See Hearing Transcript, June 9th Pages 87, line 20 through page 91.

Agreement on the grounds that its own agent made an "error" or "dropped the ball"; otherwise, any contract would be voidable by the principal when its agent makes an error.

Following the Hearing and after the Panel reviewed the Transcript from the Hearing and all of the Parties' Exhibits, the Panel prepared a time line using the transcript of the hearing and the Parties' Exhibits. The Exhibits ultimately used to prepare the time line were:

1. 1/14/16, Respondent's Exhibit 24, page 17 thru 22, wherein Revenue Models are forth.

2. 1/19/2016, Respondent's Exhibit 25, page 3, wherein MKC's Board of Directors in their Board Meeting Minutes approved the Amended Operating Agreement which included Option 27.

3. 1/19/2016, Respondent's Exhibit 44, page 1, wherein Sterling's Board of Directors, in their minutes, approved Option 27.

4. 1/20/2016, Respondent's Exhibit 95, page 1, wherein the Halstead Board of Directors in a Special Meeting Board Meeting approved Option 27.

5. 2/10/2016, ***Petitioner's*** Exhibit 21, page 1, which includes an e-mail from Danny Posch to Jack Queen, Joe Schauf, Lyman Adams, Dave Christian, Ted Schultz. and Tricia Jantz. This Exhibit references a footnote by Danny Posch wherein he states the footnote, "could be used for Board Meeting Minutes.".

NOTE: This e-mail references and ***does*** contain the footnote describing the three (3) year average of storage capacity at issue that "could be used in the Board Minutes of TMA." and that which was to be adjusted yearly to reflect the relative average of "Approved Storage Capacity" of each TMA Member for the preceding three fiscal years.

6. 2/10/2016, ***Respondent's*** Exhibit 27, pages 1 and 2, which includes an e-mail

from Danny Posch to Jack Queen, Joe Schauf, Lyman Adams, Dave Christian, Ted Schultz. and Tricia Jantz. This Exhibit references a footnote by Danny Posch wherein he states the footnote, "could be used for Board Meeting Minutes.".

NOTE: This e-mail references and ***does not*** contain the footnote describing the three (3) year average of storage capacity at issue that "could be used in the Board Minutes of TMA." and that which was to be adjusted yearly to reflect the relative average of "Approved Storage Capacity" of each TMA Member for the preceding three fiscal years.

This e-mail was entered into evidence by the Respondent and is a duplicate of the e-mail set forth above in Paragraph 5, except for the important footnote referenced in that e-mail that was subsequently adopted and reflected in TMA's Board Minutes and then unanimously approved in TMA's Amended and Restated Operating Agreement by TMA's Membership.

7. 2/17/2016, Respondent's Exhibit 28, pages 1 thru 3 wherein TMA's Board of Directors in their Board Minutes approved the amended Operating Agreement which included the three year storage average.

8. 3/20/2017, Respondent's Exhibit 63, Page 1, wherein Tricia Jantz Emailed the TMA Board of Directors a financial report after one (1) year of the amended Operating Agreement.

9. 2/22/2019, Respondent's Exhibit 70, pages 2 thru 4, wherein TMA Member Meeting Minutes indicated the beginning ownership % based on approved storage.

10. 4/29/2020, Respondent's Exhibit 6, page 2, wherein TMA Board Minutes indicate issues with the amended Operating Agreement were presented to all of the

member representatives.

11. 5/15/2020, Respondent's Exhibit 85, pages 2 thru 6, Eric Stieinle communication concerning the Amended and Restated Operating Agreement and what he drafted which included the three year average.

12. 9/9/2021, Petitioner's Exhibit 13, page 1, which is an affidavit from Lyman Adams, Jr., a prior General Manager of Hillsboro, in which he states that the Amended and Restated Operating Agreement was unanimously adopted by the Membership of TMA, which was to be adjusted yearly to reflect, " the relative average of "Approved Storage Capacity" of each TMA for the preceding three fiscal years...".

Despite Danny Posch's protestations to the contrary, the Hearing testimony and the Parties' Exhibits show that Danny Posch agreed with and knew that the minutes of TMA, which were approved by TMA's Membership, included amendments to TMA's Operating Agreement providing for a yearly adjustment to reflect the relative average of Approved Storage Capacity of each TMA Member for the preceding three fiscal years. Danny Posch advocated the Amended and Restated Operating Agreement which was then signed by the Membership.

Contrary to the Amended and Restated Operating Agreement, an improper methodology was used since 2016 to calculate earnings and distributions. The Panel estimates that the incorrect methodology resulted in the Minority Members not receiving several million dollars in distributions and that the Majority Members received monies that they were not entitled to.

Testimony during the Hearing coupled with the Exhibits indicate the Parties have not been able resolve the improper distribution of earnings. Testimony during the Hearing also indicated that the Parties are not able to make business decisions for TMA including deciding upon lease rates of facilities. The Parties are also unable to determine a quorum for Member

Meetings to address business issues and the Parties are unable to call or participate in Member Meetings. The Parties are reduced to communicating through their respective attorneys with each other. The Panel finds that the Parties are deadlocked.

The Panel finds that the Minority Members in the aggregate own at least 25% of the outstanding interests in either capital or profits and losses in TMA.

III. THE PANEL'S LEGAL CONCLUSIONS

Minority Members' Board of Directors voted for Option 27 to amend TMA's Operating Agreement as discussed above and as set forth in their Board Minutes. Their representatives adopted minutes for TMA which included a yearly adjustment to reflect the relative average of Approved Storage Capacity of each TMA Member for the preceding three fiscal years and signed the Amended and Restated Operating Agreement which also included a yearly adjustment to reflect the relative average of Approved Storage Capacity of each TMA Member for the preceding three fiscal years.

However, no evidence was presented at the Hearing that the representatives of the Minority Members did not have the authority to approve TMA's minutes and sign TMA's Amended and Restated Operating Agreement. Further, no evidence was presented at the Hearing that the Minority Members or the Majority Members ever timely repudiated the approval of the minutes and signature of the Amended and Restated Operating Agreement.

The Minority Members ratified their representatives' acts. Ratification is the adoption or confirmation by a principal of an act performed on his behalf by an agent which act was performed without authority. The doctrine of ratification is based upon the assumption there has been no prior authority, and ratification by the principal of the agent's unauthorized act is equivalent to an original grant of authority. Upon acquiring knowledge of his agent's

unauthorized act, the principal should promptly repudiate the act, otherwise it will be presumed he has ratified and affirmed the act.[10]

The Minority Members never had the knowledge nor the intent to waive their claims to the money owed to them under the Amended and Restated Operating Agreement. K.S.A. 17-7697 is titled "Reliance on reports and information by member or manager" and provides that a LLC member:

> "... shall be fully protected in relying in good faith upon the records of the limited liability company and upon information, opinions, reports or statements presented by another manager, member or liquidating trustee, an officer or employee of the limited liability company, or committees of the limited liability company, members or managers, or by any other person as to matters the member, manager or liquidating trustee reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the limited liability company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the limited liability company, or the value and amount of assets or reserves or contracts, agreements or other undertakings that would be sufficient to pay claims and obligations of the limited liability company or to make reasonable provision to pay such claims and obligations, or any other facts pertinent to the existence and amount of assets from which distributions to members or creditors might properly be paid."

It is clear that the Kansas legislature believes reliance, as in this case, is appropriate. The Minority Members relied on the records of TMA, they relied on information and reports

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[10] Theis v. duPont, Glore Forgan Inc., 510 P.2d 1212, 212 Kan. 301 (Kan. 1973)

presented by officers of TMA, and they relied on audit reports prepared by certified public accountants with significant experience in auditing grain companies and joint ventures.

The Minority Members did not make a mistake, their professionals did. The Kansas legislature sent a clear message that experts and professional could be relied upon when Members make their decisions. Here, the Panel believes that the experts and professionals that were doing the accounting made the mistake, not the Members. The payments made were due to information that was not accurate. Equity and justice demand that these payments need to be accurately reconciled pursuant to the provisions of the Operating Agreement.

The Majority Members have failed to prove that the Minority Members had the requisite knowledge and intent to establish waiver. The Panel agrees with the Minority Members that waiver in contract law implies that a party has voluntarily and intentionally renounced or given up a known right, or has caused or done some positive act or positive inaction which is inconsistent with the contractual right.[11]

The Panel also agrees with the Minority Members legal arguments and analysis involving the statute of limitations. The issue surrounding the application of the statute of limitations is to determine if any of the prior distributions are time barred. Regardless of when the claim began to accrue, the earliest any one party could have been unjustly enriched would have been the July 7, 2016, distribution. Although the July 7, 2016, September 27, 2016, January 18, 2017, and April 12, 2017, distribution would generally be past the three-year statute of limitations, the Chief Justice of the Kansas Supreme Court suspended all statutes of limitations and statutory time standards or deadlines beginning on March 19, 2020 – prior to the April 12, 2017 distribution being time barred. See 2020-PR-016; 2020-PR-032; 2020-PR-047; 2020-PR-058; 2020-PR-101;

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[11] Stratmann v. Stratmann, 6 Kan. App. 2d 403, 410-11, 628 P.2d 1080 (1981).

2020-PR-107; 2020-PR-113; 2020-PR-130; 2021-PR-001; 2021-PR-009; and 2021-PR-020, https://www.kscourts.org/Rules-Orders/Orders. Pursuant to the Administrative Orders, all statues of limitations and time standards were suspended on March 19, 2020, and were not reinstated until April 15, 2021 – after the Minority Members had already asserted their cause of action. As a result of the Chief Justice suspending all statute of limitations, any and all distributions after March 19, 2017, would not be time barred.

Therefore, the Panel agrees with the Minority Members that it is authorized to take into account all distributions to members of TMA under the five-year statute of limitations.

The Panel finds that it has authority to Order the Involuntary Dissolution under K.S.A. 17-76,117(b) and that the elements for Involuntary Dissolution required and set forth in said statute have been proved by the Minority Members.

Due to the Panel's Factual Findings and Conclusions of Law the Panel finds that it is unnecessary to further address the Majority Members' Answering Statement, Counterclaims, and Affirmative Defenses. Equity and justice demand that the Minority Members receive the benefit of what they agreed to as set forth in TMA's minutes and Amended and Restated Operating Agreement and the payments need to be accurately reconciled pursuant to the provisions of the Operating Agreement.

IV. THE PANEL'S ORDER

A. Ted Schultz is appointed as the receiver for the involuntary dissolution of TMA. Such designated individual shall be the "Receiver".

B. The panel also appoints Jerry Osborne to serve as an adviser to both the Panel and the receiver, Ted Schultz. Jerry Osborne in his advisor role is to assure the dissolution of TMA is completed equitably between the TMA members in terms of fairness and timeliness of

completion. Jerry Osborne will be given full access to all TMA company records, personnel, and member partners, and other information he may request. Jerry Osborne's compensation will be from the assets of TMA for time served and all travel expenses and other reasonable expenses through an engagement letter with the Panel. The engagement agreement and the engagement period, compensation, indemnification, and other necessary arrangements for the engagement of the Receiver and advisor shall be signed by the Panel and the Receiver on or before August 27, 2021. All compensation, costs and expenses of the Receiver's and the advisor's in connection with the duties hereunder, including payment for any and all experts engaged by the Receiver and advisor (such as the accountant described herein) shall be paid from the assets of TMA as an administrative expense with priority on a schedule set out in the engagement agreements, as determined by the Panel;

C. The Receiver is directed to promptly identify an auditing firm of the Receiver's choice to advise the Receiver on all accounting and auditing matters in connection with the duties assigned to the Receiver hereunder and to present such auditing firm to the Panel for review and approval prior to engagement. The Parties, receiver, and advisor shall have the opportunity, to provide reasonable input with respect to the choice of such auditing firm, but the Panel shall have the final decision with respect to the engagement, scope of duties and terms of engagement, including compensation of the auditing firm. TMA's present auditing firm may be considered. In implementing their duties hereunder, the Receiver and the auditing firm should utilize the services of the internal accounting personnel of TMA and its members as much as reasonably possible, but in all events, the Receiver and the auditing firm may undertake such additional actions as are necessary to calculate, verify and audit the information provided by such internal accounting personnel;

accounting personnel;

D. The Receiver is directed to work diligently with the auditing firm to review and verify all of the distributions by TMA since May 1, 2016, to determine the amount of such distributions paid and implement a true-up, which may require the repayment and redistribution, of such distributions so as to ensure that such distributions are consistent with the language of the Operating Agreement as revised as of May 1, 2016 and adopted by the TMA members, as determined by the findings of the Panel hereunder;

E. The Receiver is directed to promptly develop a plan for the liquidation and winding-up of TMA and its business operations in a reasonably expeditious manner, consistent with good business practice and to present such plan to the Panel when ready for review and approval;

F. Following approval of such liquidation and winding-up plan by the Panel, the Receiver shall implement such plan for the TMA dissolution and winding-up in a reasonably expeditious manner consistent with good business practice;

G. The Panel shall remain involved with the Receiver as necessary to resolve any and all issues that arise with respect to the Receiver and the liquidation and winding-up plan, as necessary; and

H. All other claims, motions and requests for relief of the Parties in this proceeding are deemed resolved and the Panel finds it is unnecessary to further address or decide any of the claims, counterclaims, defenses or other requests for relief by either the Majority Members or the Minority Members.

IT IS SO ORDERED THIS 20th DAY OF AUGUST, 2021.

Keith W. Devoe

Ted T. Svitavsky