

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

	)	
In re:	)	Chapter 11
	)	
EDISON MISSION ENERGY, <u>et al.</u> , <sup>1</sup>	)	Case No. 12-49219 (JPC)
	)	
Debtors.	)	(Jointly Administered)
	)	

**NOTICE OF FILING OF CERTAIN  
AMENDED EXHIBITS TO PLAN SUPPLEMENT TO DEBTORS’  
THIRD AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION**

**PLEASE TAKE NOTICE** that, on March 11, 2014, the United States Bankruptcy Court for the Northern District of Illinois (the “Bankruptcy Court”) entered the *Order Confirming Debtors’ Joint Chapter 11 Plan of Reorganization* [Docket No. 2206], pursuant to which the Bankruptcy Court approved and confirmed the *Debtors’ Third Amended Joint Chapter 11 Plan of Reorganization (with Technical Modifications)* [Docket No. 2187] (as amended, supplemented, or modified from time to time, the “Plan”) of the above-captioned debtors and debtors in possession (collectively, the “Debtors”).<sup>2</sup>

**PLEASE TAKE FURTHER NOTICE** that, on April 1, 2014, the Debtors filed amended versions of the the Reorganization Trust Agreement, attached hereto as **Exhibit 1**, the Amount of Disputed Claims Reserve, attached hereto as **Exhibit 2**, and the Summary of Wind Down Budget, attached hereto as **Exhibit 3** (collectively, the “Amended Exhibits”) to supplement the Plan. The Amended Exhibits are integral to and part of the Plan.

**PLEASE TAKE FURTHER NOTICE** that, in accordance with the Plan, the Amended Exhibits replace and supersede earlier versions of such exhibits, including such versions

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: Edison Mission Energy (1807); Camino Energy Company (2601); Chestnut Ridge Energy Company (6590); Edison Mission Finance Co. (9202); Edison Mission Energy Fuel Services, LLC (4630); Edison Mission Fuel Resources, Inc. (3014); Edison Mission Fuel Transportation, Inc. (3012); Edison Mission Holdings Co. (6940); Edison Mission Midwest Holdings Co. (6553); EME Homer City Generation L.P. (6938); Homer City Property Holdings, Inc. (1685); Midwest Finance Corp. (9350); Midwest Generation EME, LLC (1760); Midwest Generation, LLC (8558); Midwest Generation Procurement Services, LLC (2634); Midwest Peaker Holdings, Inc. (5282); Mission Energy Westside, Inc. (0657); San Joaquin Energy Company (1346); Southern Sierra Energy Company (6754); and Western Sierra Energy Company (1447). The location of parent Debtor Edison Mission Energy’s corporate headquarters and the Debtors’ service address is: 3 MacArthur Place, Suite 100, Santa Ana, California 92707.

<sup>2</sup> Unless otherwise noted, capitalized terms used but not defined herein or in any exhibits attached to this notice shall have the meanings ascribed to them in the Plan.

included in the *Plan Supplement to Debtors' Second Amended Joint Chapter 11 Plan of Reorganization* [Docket No. 1851] and *Certain Amended Exhibits to Plan Supplement to Debtors' Third Amended Joint Chapter 11 Plan of Reorganization* [Docket No. 2072].

**PLEASE TAKE FURTHER NOTICE** that, subject to the terms of the Plan, the Debtors reserve the right to alter, amend, modify, or supplement any document in the Plan Supplement, including, without limitation, the Amended Exhibits.

**PLEASE TAKE FURTHER NOTICE** that that the Plan and related disclosure statement, the Plan Supplement and its exhibits, as well as further information regarding these chapter 11 cases, may be obtained free of charge by visiting the case website maintained by GCG, Inc., the Debtors' notice and claims agent for these chapter 11 cases, available at [www.edisonmissionrestructuring.com](http://www.edisonmissionrestructuring.com) or by calling (866) 241-6491. You may also obtain copies of any pleadings by visiting the Court's website at [www.ilnb.uscourts.gov](http://www.ilnb.uscourts.gov) in accordance with the procedures and fees set forth therein.

*[Remainder of page intentionally left blank.]*

Dated: April 1, 2014

*/s/ David R. Seligman, P.C.*

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and Debtors in Possession*

**EXHIBIT 1**

**Reorganization Trust Agreement**

**EXECUTION VERSION**

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**REORGANIZATION TRUST AGREEMENT**

**BY AND AMONG**

**THE MANAGING TRUSTEES LISTED ON THE SIGNATURE PAGES HERETO,**

**AND**

**WILMINGTON TRUST, NATIONAL ASSOCIATION  
(AS DELAWARE TRUSTEE)**

April 1, 2014

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## REORGANIZATION TRUST AGREEMENT

This Reorganization Trust Agreement (this “Reorganization Trust Agreement”) is made this 1st day of April, 2014 (the “Effective Date”), by and among each of the individuals listed on the signature pages hereto as “Managing Trustees” (each, a “Managing Trustee” and collectively, the “Managing Trustees”) and Wilmington Trust, National Association, or its successor, as Delaware Trustee (in such capacity and as appointed in accordance with this Reorganization Trust Agreement, the “Delaware Trustee”), and supersedes and replaces that certain Reorganization Trust Agreement, dated as of March 14, 2014, in its entirety. This Reorganization Trust Agreement is entered into in accordance with the *Debtors’ Third Amended Joint Chapter 11 Plan of Reorganization*, dated as of March 10, 2014 [Docket No. 2201] (as amended, modified, or supplemented from time to time, the “Plan”), which Plan was confirmed on March 11, 2014 [Docket No. 2206], and constitutes the trust agreement for the Reorganization Trust established in accordance with the Plan (the “Reorganization Trust”). Capitalized terms used but not otherwise defined in Appendix A to this Reorganization Trust Agreement shall have the meanings ascribed to them in the Plan.

### RECITALS:

A. The Plan contemplates (1) the creation of the Reorganization Trust and the issuance of the New Interests in the Reorganization Trust (the “Beneficial Interests”) solely for the benefit of certain creditors of Edison Mission Energy (“EME”) entitled to distribution under the Plan (collectively, the “Beneficiaries” and, each individually, a “Beneficiary”) in accordance with this Reorganization Trust Agreement, the Confirmation Order and the Plan, and (2) that, on the Effective Date of the Plan, there shall be granted, assigned, transferred, conveyed, and delivered to the Reorganization Trust (a) all of the right, title, and interest in Excluded Assets other than the Settlement Retained Assets in connection with the consummation of the transactions pursuant to the Purchase Agreement and the EIX Settlement Agreement, (b) all rights, assets, liabilities and obligations of EME pursuant to the Purchase Agreement and the EIX Settlement Agreement (including all right, title, and interest in and to the EIX Notes, all rights against EIX and certain of its affiliates in respect of the Settlement Assumed Liabilities, and the EIX Escrow Account), and (c) the right to prosecute, settle, withdraw, or resolve in any manner approved by the Bankruptcy Court the Causes of Action that are Excluded Assets (collectively, together with all other assets identified in the Plan and/or the Confirmation Order as being or becoming assets of the Reorganization Trust and any proceeds or other property received in respect thereof, the “Trust Assets”);

B. The Plan contemplates that the Reorganization Trust shall be created for the primary purpose of performing all actions related to the Post-Effective-Date Reorganization Trust Matters with no objective to continue or engage in the conduct of a trade or business, except to the reasonably necessary to, and consistent with, its liquidating purpose;

C. The Reorganization Trust is intended to qualify, for United States federal income tax purposes, as a “liquidating trust” within the meaning of Section 301.7701-4(d) of the Treasury Regulations and a “grantor trust”, pursuant to Sections 671–677 of the Internal Revenue Code of 1986, as amended (the “Internal Revenue Code”), with the Beneficiaries to be

treated as the grantors of the Reorganization Trust and deemed to be the owners of the Trust Assets (subject to the rights of creditors of the Reorganization Trust), and consequently, the transfer of the Trust Assets to the Reorganization Trust shall be treated as a deemed transfer of those assets from the Debtors to the Beneficiaries followed by a deemed transfer by such Beneficiaries to the Reorganization Trust for federal income tax purposes;

D. The Reorganization Trust is intended to qualify as a “liquidating trust” for all purposes of the Investment Company Act of 1940, as amended (the “ICA”); and

E. The Managing Trustees shall have all powers necessary to implement the provisions of the Plan and this Reorganization Trust Agreement and administer the Reorganization Trust, including the power to perform all actions related to the Post-Effective-Date Reorganization Trust Matters and to otherwise: (1) preserve and maintain the Trust Assets; (2) object to and reconcile Claims against the Debtors entitled to distribution from the Reorganization Trust; (3) settle or compromise any Claims against the Debtors; (4) distribute to or utilize the Trust Assets for the benefit of the Beneficiaries; and (5) otherwise perform the functions and take the actions provided for or permitted in the Plan, the Confirmation Order, this Reorganization Trust Agreement, the EIX Settlement Agreement, or in any other agreement executed pursuant to the Plan.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein and in the Plan, the Managing Trustees and the Delaware Trustee agree as follows:

## **ARTICLE I FORMATION OF REORGANIZATION TRUST**

### 1.1. Establishment

(a) The Managing Trustees hereby agree to act as Managing Trustees as set forth herein for the Reorganization Trust, which shall constitute a statutory trust pursuant to and in accordance with Chapter 38 of Title 12 of the Delaware Code, Del. C. §§ 3801 et seq. (as the same may be amended from time to time, the “Trust Act”), and hereby ratify the formation of the Reorganization Trust pursuant to the Certificate of Trust (the “Certificate”), filed with the Secretary of State of the State of Delaware on March 14, 2014, pursuant to section 3810 of the Trust Act. The purpose of the Reorganization Trust is to implement the provisions of the Plan and the Confirmation Order specified as being applicable to the Reorganization Trust and the taking of such lawful actions incidental thereto and not in violation of this Reorganization Trust Agreement. The Reorganization Trust will not hold itself out as an investment company and will not conduct a trade or business. The Reorganization Trust will distribute the Trust Assets to the Beneficiaries in accordance with this Reorganization Trust Agreement, the Plan, and the Confirmation Order and will not invest the Trust Assets other than in government securities or other investments that, in accordance with applicable law, would not require the Reorganization Trust to be registered under the ICA. The Reorganization Trust shall take such other actions (including amending this Reorganization Trust Agreement), as the Managing Trustees shall reasonably determine in order to cause the Reorganization Trust to comply with the ICA (including any non-registration requirements thereunder).

(b) The Reorganization Trust shall be known as “EME Reorganization Trust,” in which name the Managing Trustees may, subject to the limitations contained in this Reorganization Trust Agreement, conduct the business of the Reorganization Trust, make and execute contracts, and sue and be sued. In circumstances under which the Managing Trustees determine that the use of such name is not practicable or under circumstances in which the Managing Trustees are contractually bound to change that name, the Managing Trustees may adopt another name under which the Reorganization Trust may hold property or conduct its activities.

(c) In accordance with the Plan and the Confirmation Order, each of the Debtors, the Non-Debtor Subsidiaries, and the Acquired Companies, as applicable, have assigned, transferred, conveyed, and delivered to the Reorganization Trust, for the benefit of the Beneficiaries, all of its right, title, and interest in and to all of the Trust Assets. Notwithstanding any prohibition of assignability under applicable non-bankruptcy law, all Trust Assets shall vest in the Reorganization Trust in accordance with section 1141 of the Bankruptcy Code. Upon the transfer of the Trust Assets to the Reorganization Trust, the Debtors, the Non-Debtor Subsidiaries, and the Acquired Companies, as applicable, shall have no interest in or with respect to such Trust Assets or the Reorganization Trust.

(d) The Trustees hereby acknowledge receipt of the Trust Assets on behalf of the Reorganization Trust and declare that the Trust Assets will be held in trust for the Beneficiaries in accordance with the terms of this Reorganization Trust Agreement.

(e) It is the intention of the parties hereto that the Reorganization Trust shall be a statutory trust under the Trust Act and that this Reorganization Trust Agreement shall constitute the governing instrument of the Reorganization Trust. It is not the intention of the parties hereto to create a general partnership, limited partnership, joint stock association, corporation, bailment or any form of legal relationship other than a Delaware statutory trust. Nothing in this Reorganization Trust Agreement shall be construed to make the Beneficiaries a partner or member of a joint stock association. Effective as of the date hereof, each Trustee shall have the rights, powers and duties granted to it herein with respect to accomplishing the purposes of the Reorganization Trust.

## 1.2. Place of Business.

(a) The address of the Reorganization Trust is 1100 North Market Street, Wilmington, Delaware, or such other address (in the State of Delaware) as the Managing Trustees may designate in writing to the Beneficiaries. The Delaware Trustee or the Reorganization Trust shall receive service of process on the Reorganization Trust in the State of Delaware at the foregoing address.

(b) The Reorganization Trust shall maintain an office and principal place of business in Santa Ana, California or such other place as the Managing Trustees may designate from time to time; provided that the Managing Trustees shall give prompt written notice (which notice may be effected by a posting on the website maintained by the Reorganization Trust) to the Beneficiaries of any change to the principal place of business of the Reorganization Trust.

1.3. Exchange Act. The Reorganization Trust is not subject to the registration requirements of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) and the Managing Trustees may, at their sole discretion, take all actions necessary or appropriate to prevent the Reorganization Trust from becoming subject to the Exchange Act, including limiting the number of holders of Beneficial Interests to 2,000 holders of record (as calculated in accordance with Rule 12g5-1 for purposes of Section 12(g) of the Exchange Act), including no more than 500 holders that are not accredited investors under the Exchange Act.

## ARTICLE II TRUSTEES

### 2.1. Appointment of Managing Trustees; Number of Managing Trustees.

(a) The number of individuals constituting the entire number of Managing Trustees shall initially be five (5) and thereafter shall be fixed from time to time solely by a resolution passed by a majority of the Managing Trustees; provided that in no event shall there be less than two (2) Managing Trustees or more than five (5) Managing Trustees, and as defined below, there shall be no more than two (2) Independent Trustees.

(b) The Managing Trustees shall appoint the Delaware Trustee to fulfill the Reorganization Trust’s obligation pursuant to section 3807(a) of the Trust Act to have at least one trustee who has its primary residence or principal place of business in the State of Delaware. To the greatest extent permitted by the Trust Act, it is intended that the Delaware Trustee shall have only the powers set forth for a Delaware Trustee set forth herein and references to a Managing Trustee and Independent Trustee specifically do not include references to the Delaware Trustee. References herein to a “Trustee” is a reference to a Managing Trustee (including an Independent Trustee) and the Delaware Trustee and a reference to “Trustees” herein is collectively a reference to the Managing Trustees (including the Independent Trustee) and the Delaware Trustee.

(c) Each of the Managing Trustees who is party hereto on the date hereof (as set indicated on the signature page hereto) hereby accepts his appointment as a Managing Trustee as of the Effective Date. In addition to such appointment as a Managing Trustee, each of Frederic F. Brace and Hugh E. Sawyer accepts his appointment on the date hereof as an “Independent Trustee” and collectively as the “Independent Trustees” for all purposes of this Reorganization Trust Agreement. The signatory hereto as the Delaware Trustee accepts its appointment as the Delaware Trustee for all purposes of this Agreement.

2.2. Resignation, Removal and Incompetency of Trustees. A Trustee may resign at any time by giving not less than 15 days’ prior written notice to the remaining Managing Trustees (in accordance with Section 9.9 hereof).

### 2.3. Removal for Cause.

(a) The other Managing Trustees may remove any Managing Trustee for cause. As used in this Reorganization Trust Agreement, “cause” shall mean:

- (1) such Managing Trustee's conviction of a felony or any other crime involving moral turpitude; or
- (2) any act or failure to act by such Managing Trustee involving actual dishonesty, fraud, misrepresentation, theft or embezzlement; or
- (3) such Managing Trustee's willful and repeated failure to substantially perform his/her duties under this Reorganization Trust Agreement and the Trust Act after written notice and an opportunity to cure; or
- (4) such Managing Trustee's incapacity, such that s/he is unable to substantially perform his/her duties under this Reorganization Trust Agreement and the Trust Act for more than ninety (90) consecutive days.

(b) The Managing Trustees may remove the Delaware Trustee and the Delaware Trustee may resign as Delaware Trustee in accordance with Section 2.2 at any time for any reason; provided that any removal or resignation of the Delaware Trustee shall become effective only once the Managing Trustees have appointed a replacement "Delaware Trustee" meeting the requirements of section 3807(a) of the Trust Act and any person proposing to serve as the "Delaware Trustee" shall provide the Managing Trustees prior written notice for the Managing Trustees to determine if such individual meets the qualifications set forth in section 3807(a) of the Act. If the Managing Trustees fail to appoint a replacement "Delaware Trustee" within 45 days of the resignation of the incumbent Delaware Trustee, then the Delaware Trustee may petition the Bankruptcy Court (or such other court of competent jurisdiction) to appoint a replacement Delaware Trustee and the Reorganization Trust shall cover all reasonable costs associated with such petition. Any replacement Managing Trustee shall be appointed in accordance with Section 2.4 hereof. A Trustee judged incompetent, or for whom a guardian has been appointed, shall be deemed to have resigned as of the date of such adjudication or appointment.

(c) For purposes of these procedures, the "Other Managing Trustees" shall mean all Managing Trustees other than the Managing Trustee whose removal is being sought (such Managing Trustee, the "Specified Trustee").

- (1) The Other Managing Trustees shall give written notice to the Specified Trustee, which notice shall describe in reasonable detail the actions or inactions on the basis of which the Other Managing Trustees have determined that cause exists for the removal of the Managing Trustee.
- (2) The Specified Trustee shall have thirty (30) days from the date of his/her receipt of the notice from the Other Managing Trustees to respond to the determination of the Other Managing Trustees that cause exists for removal and to cure such cause, if a cure is possible. If the Specified Trustee so requests, the Specified

Trustee shall be given the opportunity to appear in person before the Other Managing Trustees to respond to the determination of the Other Managing Trustees.

- (3) Following such thirty (30) day period, whether or not the Specified Trustee has made any response to the notice of the Other Managing Trustees, if the cause forming the basis for removal has not been cured, the Other Managing Trustees may remove the Specified Trustee from office.
- (4) If the Other Managing Trustees does not vote to remove the Specified Trustee within sixty (60) days from the date notice is first given to the Managing Trustee, the Other Managing Trustees shall repeat these procedures if they determine thereafter to remove such Specified Trustee.
- (5) Notice of removal of a Managing Trustee shall promptly be posted to the Reorganization Trust website (if any).

2.4. Vacancies. If any or all of the Trustees cease to be Trustees hereunder, whether by reason of resignation, removal, incapacity, or death, such event shall not dissolve the Reorganization Trust or affect its continuity. Until vacancies are filled, the Managing Trustees may exercise the powers of the Managing Trustees hereunder, provided that only the Independent Trustee(s) may exercise the powers of an Independent Trustee hereunder and only a person meeting the requirements of section 3807(a) of the Trust Act may exercise the power of a Delaware Trustee hereunder. Vacancies with respect to an Independent Trustee shall be filled by the remaining Independent Trustee; vacancies with respect to a Managing Trustee who is not an Independent Trustee shall be filled by the remaining Managing Trustees who are not Independent Trustees; provided that, if there are no Trustees other than Independent Trustees in office, vacancies with respect to one or more Managing Trustees who are not Independent Trustees shall be filled by holders of a majority of the Beneficial Interests. If at any time there shall be no Managing Trustees in office, successor Managing Trustees shall be appointed by holders of a majority of the Beneficial Interests. Any Trustee elected to fill a vacancy created by the resignation, removal, incapacity, or death of a former Trustee shall hold office until the earlier of his resignation, removal, incapacity or death, in accordance with the terms of this Reorganization Trust Agreement. Appropriate written evidence of the election and qualification of successor Trustees shall be filed with the records of the Reorganization Trust, with copies provided to the Managing Trustees and in such other offices or places as the remaining Managing Trustees may deem necessary, appropriate or desirable.

2.5. Actions by Managing Trustees.

(a) Subject to Section 2.5(b), any action to be taken, consent to be provided or determination to be made by the Managing Trustees hereunder shall be taken upon the majority vote of the Managing Trustees then in office, with each Managing Trustee then in office entitled to one vote, in each matter submitted to the Managing Trustees for action, consent or determination. Subject to Section 2.5(b), any action, consent or determination of the Managing

Trustees may be taken at a meeting, at which a quorum of Managing Trustees is present, by vote of a majority of the Managing Trustees present, or without a meeting by written consents of the Applicable Percentage of Managing Trustees, which consents shall be filed with the records of the meetings of the Managing Trustees; provided that no such action, consent or determination, whether taken at a meeting or by written consent shall be effective unless written notice of such action, consent or determination proposed to be taken, provided or made or written consent proposed to be adopted was delivered to all Managing Trustees at least 48 hours' prior to the time such action, consent, determination or written consent becomes effective; provided, further, that 48 hours' prior notice is not required (i) at any meeting at which all Managing Trustees are in attendance, (ii) for unanimous written consents, (iii) at any regularly scheduled meeting, or (iv) if otherwise waived in writing by each Managing Trustee. Subject to Section 2.5(b), a quorum for all meetings of the Managing Trustees shall be the Applicable Percentage of the Managing Trustees then in office. When used herein, "Applicable Percentage" means (i) when there are five (5) Managing Trustees then in office, 60% or more and (ii) when there are less than (5) Managing Trustees then in office, a majority of the Managing Trustees then in office. Any action or actions permitted to be taken by the Managing Trustees hereunder may be taken pursuant to authority granted at a meeting of the Managing Trustees conducted by a telephone conference call or similar communications equipment by means of which all persons participating in such meeting can hear each other at the same time, and participation by such means shall constitute presence in person at such meeting and the transaction of Reorganization Trust business represented thereby shall be of the same authority and validity as if transacted at a meeting of the Managing Trustees held in person or by written consent. Any Managing Trustee may call a meeting of the Managing Trustees on at least 48 hours' prior written notice to all other Managing Trustees and at a time reasonably expected to permit the attendance of all other Managing Trustees; provided that a meeting of the Managing Trustees may be held on less than 48 hours' prior notice if (i) all Managing Trustees are in attendance at such meeting or (ii) such notice is waived in writing by each Managing Trustee; provided, further, that 48 hours' prior notice shall not be required for (i) any regularly scheduled meeting of the Managing Trustees or (ii) any unanimous written consent in lieu of a meeting of the Managing Trustees. The minutes of any meeting of the Managing Trustees held by telephone shall be prepared in the same manner as the minutes of a meeting of the Managing Trustees held in person. A telephonic alternative that permits all persons participating in such meeting to have reasonable telephonic access to the meeting and to hear each other at the same time shall be made available for all Managing Trustees for all meetings of the Managing Trustees.

(b) Notwithstanding the provisions of Section 2.5(a) or any other provision herein to the contrary, in accordance with Article IV.H of the Plan, any action to be taken, consent to be provided, or determination to be made hereunder related to disbursements with respect to the Compensation and Benefits Programs Escrow (as such term is defined in the Plan) and any other payments with respect to any pre-Effective Date compensation, benefit, or incentive programs, including the Exit Plan, the other applicable Compensation and Benefits Plans, and any programs approved pursuant to the Final Wages Order, the Final Non-Insider Incentive Plan Order, and Final Insider Incentive Plan Order in accordance with the Purchase Agreement, other than any compensation, benefit, and incentive obligations assumed by the Purchaser or any Acquired Company pursuant to the Purchase Agreement, as applicable (as such terms are defined in the Plan) (collectively, "Independent Trustee Matters") shall be taken upon (and only upon) the unanimous vote of the Independent Trustees then in office, with each

Independent Trustee then in office entitled to one vote in each matter submitted to the Independent Trustees for such action, consent or determination. Any action, consent or determination of the Independent Trustees with respect to any Independent Trustee Matter may be taken at a meeting at which all, and only all, of the Independent Trustees are present, by unanimous vote of the Independent Trustees present or without a meeting by written consents of all Independent Trustees, which consents shall be filed with the records of the meetings of the Independent Trustees. A quorum for any meeting of the Managing Trustees at which an Independent Trustee Matter is submitted for action, consent or determination shall be constituted if, but only if, all Independent Trustees then in office are present. The minutes of any meeting of the Independent Trustees held by telephone shall be prepared in the same manner as the minutes of a meeting of the Independent Trustees held in person. A telephonic alternative shall be made available for all Independent Trustees for all meetings of the Independent Trustees with respect to the Independent Trustee Matters.

2.6. Generally. Subject to the other provisions hereof, the Managing Trustees shall generally be responsible for liquidating and administering (or abandoning) the Trust Assets and taking actions on behalf of, and being the representative of, the Reorganization Trust. Subject to the remaining provisions hereof, the Managing Trustees shall have the authority to bind the Reorganization Trust with respect to matters for which approval or consent has been obtained in accordance with this Reorganization Trust Agreement but shall for all purposes hereunder be acting as the Managing Trustees and not individually.

2.7. Scope of Authority. Subject to the remaining provisions hereof, the responsibilities and authority of the Managing Trustees shall include (a) calculating and implementing all distributions of Trust Assets in accordance with the Plan, (b) filing all required tax returns and paying taxes and all other obligations on behalf of the Reorganization Trust from funds held by the Reorganization Trust, (c) periodic reporting to the Beneficiaries and parties in interest of the status of distributions from the Trust Assets, and (d) liquidating (or abandoning) the Trust Assets and providing for the distribution of the net proceeds thereof in accordance with the provisions of the Plan.

2.8. Powers of Managing Trustees.

(a) Subject to the remaining provisions of this Section 2.8, the powers of the Managing Trustees shall, without any further Bankruptcy Court approval in each of the following cases, include without limitation (i) the power to invest funds in, and withdraw, make distributions and pay taxes and other obligations owed by the Reorganization Trust from funds held by the Managing Trustees and/or the Reorganization Trust in accordance with the Plan, (ii) the power to engage employees and professional persons to assist the Reorganization Trust and/or the Managing Trustees with respect to their responsibilities, and (iii) the power to prosecute, compromise and settle claims, on behalf of or against the Reorganization Trust. The Managing Trustees may incur any reasonable and necessary expenses in liquidating and converting the Trust Assets to Cash.

(b) In connection with the administration of the Reorganization Trust, except as otherwise set forth in this Reorganization Trust Agreement or the Plan, the Managing Trustees are authorized to perform any and all acts necessary and desirable to accomplish all actions

related to the Post-Effective-Date Reorganization Trust Matters, without further authorization from the Bankruptcy Court or the Beneficiaries. Without limiting the foregoing (but subject to any approval of the Independent Trustees required by Section 2.5(b), the Managing Trustees shall be expressly authorized, but shall not be required, to:

- (1) protect and enforce the rights to the Trust Assets vested in the Reorganization Trust by this Reorganization Trust Agreement by any method deemed appropriate including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;
- (2) determine and satisfy any and all liabilities created, incurred or assumed by the Reorganization Trust;
- (3) file, if necessary, any and all tax and information returns with respect to the Reorganization Trust and pay taxes properly payable by the Reorganization Trust, if any;
- (4) pay all fees and expenses and make all other payments necessary to preserve, liquidate, and enhance the Trust Assets;
- (5) obtain insurance coverage with respect to the liabilities and obligations of the Managing Trustees and the Reorganization Trust (in the form of an errors and omissions policy, fiduciary policy or otherwise);
- (6) to obtain and maintain insurance coverage (including tail insurance) with respect to the Trust Assets and the liabilities and obligations of the Managing Trustees, and, if so determined by the Managing Trustees, such other insurance as the Managing Trustees determine as appropriate for the circumstances from time to time;
- (7) to reconcile, object to, and resolve Claims against the Debtors or the Reorganization Trust, and manage, control, prosecute and/or settle on behalf of the Estates or objections filed by the Reorganization Trust to Claims;
- (8) retain and pay such professional advisors to the Reorganization Trust as the Managing Trustees may select to aid in the prosecution of any claims that constitute, or the disposition of, Trust Assets, and to perform such other functions as the Managing Trustees consider appropriate. The Managing Trustees may commit the Reorganization Trust to, and the Reorganization Trust shall, pay such professionals compensation for services rendered and expenses incurred from the Trust Assets;

- (9) retain and pay a public accounting firm to perform such reviews and/or audits of the financial books and records of the Reorganization Trust as the Managing Trustees consider appropriate and to prepare and file any tax returns or informational returns for the Reorganization Trust as may be required. The Managing Trustees may commit the Reorganization Trust to and the Reorganization Trust shall pay such accounting firm reasonable compensation for services rendered and expenses incurred from the Trust Assets;
- (10) retain and pay such third parties as the Managing Trustees deem necessary or appropriate to assist them in carrying out their powers and duties under this Reorganization Trust Agreement, including with respect to the prosecution or disposition of Trust Assets. The Managing Trustees may commit the Reorganization Trust to and shall pay all such persons or entities compensation for services rendered and expenses incurred, as well as commit the Reorganization Trust to indemnify any such parties in connection with the performance of services from the Trust Assets;
- (11) to hold and dispose of Cash and shares of common stock of the Parent which are not distributed to holders of Allowed Unsecured Claims on the Effective Date, in each case in accordance with the Plan;
- (12) to sell the EIX Notes;
- (13) to perform under the EIX Settlement Agreement and the Purchase Agreement;
- (14) to maintain and dispose of the books and records transferred to the Reorganization Trust;
- (15) to enter into and exercise rights under contracts that are necessary or desirable to the administration of the Reorganization Trust and execute any documents or pleadings related to the liquidation of the Trust Assets or other matters related to the Reorganization Trust;
- (16) to establish and maintain bank accounts and terminate such accounts;
- (17) to set off amounts owed to the Debtors against distributions to the Beneficiaries;
- (18) to bring suits or defend itself against such suits, if any, in connection with any matter arising from or related to the Plan Documents that affects in any way the rights or obligations of the

Reorganization Trust, the Beneficiaries, or in its capacity as a Disbursing Agent, the holders of Allowed Claims, in their capacities as such;

- (19) to invest Trust Assets (including any earnings thereon or proceeds therefrom) in the manner permitted to be made by a Reorganization Trust within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable Internal Revenue Service guidelines, rulings, or other controlling authorities, including Revenue Procedure 94-45, 1994-2 C.B. 684; provided, however, that the Managing Trustees shall only authorize investments that are temporary investments in short-term government securities, time deposits, certificates of deposit, bankers' acceptances, commercial paper and money market funds or similar temporary, liquid, short-term investments;
- (20) to take all actions necessary and appropriate to minimize any adverse tax consequences to the holders of Allowed Unsecured Claims; provided that such actions do not result in an adverse tax consequence to the Reorganization Trust and are consistent with and are not contrary to the treatment of the Reorganization Trust as a "grantor trust" for United States federal income tax purposes;
- (21) to remove and replace the Delaware Trustee;
- (22) to act as a signatory on behalf of the Reorganization Trust and the Homer City Debtors for all purposes, including those associated with the novation of contracts or other obligations arising out of the sale or other disposition of the Debtors' assets;
- (23) to take all necessary actions and file all appropriate motions to obtain an order closing the Chapter 11 Cases;
- (24) to issue, execute, deliver, file, or record such contracts, securities, instruments, releases, and other agreements or documents and take such actions, as determined by the Managing Trustees to be necessary or appropriate to effectuate the terms of the Plan following the Effective Date; and
- (25) to take such other and further actions, including conversions, dissolutions, transfers, liquidations, or other corporate transactions, as determined by the Managing Trustees to be necessary or appropriate, in furtherance of the purposes of the Plan Documents in respect of the Debtors and their Estates as are not inconsistent with this Reorganization Trust Agreement or the other Plan Documents.

2.9. Additional Powers of Managing Trustees. Except as otherwise set forth in this Reorganization Trust Agreement or in the Plan, and subject to the retained jurisdiction of the Bankruptcy Court as provided for in the Plan, but without prior or further authorization, the Managing Trustees may control and exercise authority over the Trust Assets and over the protection, conservation and disposition thereof. No person dealing with the Reorganization Trust shall be obligated to inquire into the authority of the Managing Trustees in connection with the protection, conservation or disposition of Trust Assets.

2.10. Powers of Delaware Trustee.

(a) Notwithstanding any provision hereof to the contrary, the duties and responsibilities of the Delaware Trustee shall be limited solely to (i) accepting legal process served on the Reorganization Trust in the State of Delaware and (ii) the execution of any certificates required to be filed with the office of the Delaware Secretary of State that the Delaware Trustee is required to execute under section 3811 of the Trust Act (including the Certificate of Trust). Except as provided in the foregoing sentence, the Delaware Trustee shall have no management responsibilities or owe any fiduciary duties to the Reorganization Trust, the Managing Trustees, the Reorganization Trust Beneficiaries, or any other distributee of the Reorganization Trust hereunder. The filing of the Certificate of Trust with the Secretary of State of the State of Delaware as provided under the Trust Act is hereby ratified.

(b) By its execution hereof, the Delaware Trustee accepts the trusteeship of the Reorganization Trust on the terms set forth herein. The Delaware Trustee shall not have any duty or liability with respect to the administration of the Reorganization Trust, the investment of the Trust Assets or the distribution of the Trust Assets to the Beneficiaries, and no such duties shall be implied. The Delaware Trustee shall not be liable for the acts or omissions of the Managing Trustees, nor shall the Delaware Trustee be liable for supervising or monitoring the performance of the duties and obligations of the Managing Trustees under this Reorganization Trust Agreement. The Delaware Trustee shall not be obligated to give any bond or other security for the performance of any of its duties hereunder.

2.11. Other Activities of the Trustees. The Trustees shall be entitled to perform services for and be employed by third parties. The Managing Trustees may delegate the performance of services and the fulfillment of responsibilities to other persons; provided, that only the Independent Trustees may consent to the Independent Trustee Matters. Such persons shall be entitled to be compensated and to be reimbursed for out-of-pocket disbursements in the same manner as the Trustees, in accordance with this Reorganization Trust Agreement.

2.12. Limitation of Managing Trustees' Authority. The Reorganization Trust and the Managing Trustees shall not, and shall not be authorized to, engage in any trade or business with respect to the Trust Assets or any proceeds therefrom except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Reorganization Trust and shall take such actions consistent with the prompt orderly liquidation of the Trust Assets as are required by applicable law and consistent with the treatment of the Reorganization Trust as a liquidating trust under the ICA and Treasury Regulation section 301.7701-4(d), and such actions permitted herein.

2.13. Liability of Trustees.

(a) In no event shall any Trustee, member of the Reorganization Trust Management (as defined herein), or professional retained by the Reorganization Trust be liable to the Reorganization Trust or the Beneficiaries for any of such Trustee's acts or omissions, except for acts or omissions constituting bad faith or willful misconduct.

(b) The Trustees shall not have any duty or obligation to manage or deal with the property of the Reorganization Trust (including the Trust Assets), or to otherwise take or refrain from taking any action under or in connection with any document contemplated herein to which any Trustee is a party or a payee, except as expressly provided by the terms of this Reorganization Trust Agreement. There shall be no implied duties or obligations read herein against any Trustee, including without limitation, that no action requested to be taken by the Trustee shall require the performance of any investigation, analysis or other due diligence activities by the Trustee in respect to such action or the performance of his duties on behalf of the Reorganization Trust generally.

(c) Pursuant to section 3803(b) of the Trust Act, in no event shall any Trustees be liable to any person for any act, omission or obligation of the Reorganization Trust or any Managing Trustee, and all persons having any claim against such Trustee by reason of the transactions contemplated by this Reorganization Trust Agreement or any agreement or instrument related to the Reorganization Trust shall look only to the property of the Reorganization Trust for payment or satisfaction thereof.

(d) Pursuant to section 3806(c) of the Trust Act, to the extent that at law or equity the Trustees are found to have duties (including fiduciary ones) and liabilities relating to the Reorganization Trust or to the Beneficiaries, such Trustee's related duties and liabilities are hereby eliminated and restricted to the fullest extent allowable under applicable law and no Trustee shall be liable to the Reorganization Trust or to the Beneficiaries for any action taken in good faith in accordance with the terms hereof.

(e) No provision of this Reorganization Trust Agreement shall require any Trustee to expend or risk its personal funds or otherwise incur any financial liability in the performance of its rights or powers hereunder if such Trustee has reasonable grounds to believe that the payment of such funds or adequate indemnity against such risk or liability is not reasonably assured or provided to it.

(f) No Trustee shall be personally liable for the validity or sufficiency of this Reorganization Trust Agreement, the value or sufficiency of the Trust Assets, or for the due execution hereof by the other parties hereto.

(g) The Delaware Trustee shall act solely as Delaware Trustee hereunder and not in its individual capacity, and all persons having any claim against the Delaware Trustee by reason of the transactions contemplated by this Reorganization Trust Agreement shall look only to the Trust Assets for payment or satisfaction thereof.

(h) The Delaware Trustee may request the Managing Trustees to provide a certificate with regard to any fact or matter the manner of ascertainment of which is not

specifically prescribed herein, and such certificate shall constitute full protection to the Delaware Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon.

2.14. Reliance by Trustees. Except as otherwise provided herein:

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

(b) each Trustee may consult with legal counsel, financial or accounting representatives and other professionals to be selected by him and such Trustee shall not be liable for any action taken or omitted to be taken by him in accordance with the advice thereof; and

(c) persons dealing with any Trustee shall look only to the Trust Assets to satisfy any liability incurred by such Trustee to such person in carrying out the terms of this Reorganization Trust Agreement, and such Trustee shall have no personal obligation to satisfy any such liability.

2.15. Reorganization Trust Management. The Managing Trustees may appoint the officers, employees, and other personnel of the Reorganization Trust as the Managing Trustees shall deem appropriate (all such officers, employees, and other personnel being collectively referred to as the “Reorganization Trust Management”). The Reorganization Trust Management may have such functions, authority, and duties as may be prescribed by the Managing Trustees. Any member of the Reorganization Trust Management may resign at any time by communicating notice of such resignation to the Managing Trustees. Any member of the Reorganization Trust Management may be removed at any time by the Managing Trustees with or without cause. The compensation of the Reorganization Trust Management shall be as determined by the Managing Trustees. Such compensation shall be paid out of the Reorganization Trust Budget.

2.16. Investment and Safekeeping of Trust Assets. All moneys and other assets received by the Reorganization Trust shall, until distributed or paid over as herein provided, be held in trust for the benefit of the Beneficiaries, but need not be segregated from other Trust Assets, unless and to the extent required by the EIX Settlement Agreement, the Purchase Agreement, the Plan, or by law. The Trustees shall be under no liability for interest or producing income on any moneys received by the Reorganization Trust hereunder and held for distribution or payment to the Beneficiaries, except as such interest shall actually be received by the Reorganization Trust or the Managing Trustees on its behalf. The Managing Trustees shall have the right and power to invest such Trust Assets (pending distributions in accordance with the Plan) in Cash equivalents; provided, however, that the right and power of the Managing Trustees to invest the Trust Assets, the proceeds thereof, or any income earned by the Reorganization Trust, shall be limited to the right and power to invest such assets (pending periodic distributions in accordance with this Reorganization Trust Agreement) in demand and time deposits, such as short-term certificates of deposit, in banks or other savings institutions, or other temporary liquid investments, such as Treasury bills; and, provided, further, that the scope of any such permissible investments shall be limited to include only those investments, or shall be expanded to include

any additional investments, as the case may be, that a liquidating trust, within the meaning of the ICA and Treasury Regulation section 301.7701-4(d), may be permitted to hold, pursuant to the ICA and the Treasury Regulations, or any modification in the SEC guidelines or IRS guidelines, whether set forth in SEC rulings or IRS rulings, other SEC or IRS pronouncements or otherwise.

2.17. Authorization to Expend Trust Assets. Subject to the remaining terms of this Reorganization Trust Agreement, the Managing Trustees may expend the assets of the Reorganization Trust (i) as necessary to meet contingent liabilities and to maintain the value of the assets of the Reorganization Trust during liquidation, (ii) to pay the fees and expenses (including, but not limited to, any taxes imposed on the Reorganization Trust or fees and expenses in connection with litigation), and (iii) to satisfy other liabilities incurred or assumed by the Reorganization Trust (or to which the assets are otherwise subject) in accordance with this Reorganization Trust Agreement or the Plan.

2.18. Reorganization Trust Budget.

(a) Each fiscal year, the Managing Trustees shall approve a reasonably detailed annual plan and budget for the Reorganization Trust in a form consistent with the Wind Down Budget (any such plan and budget, as it may be amended from time to time in accordance with the terms hereof, the "Reorganization Trust Budget"), except that the Reorganization Trust Budget for the first fiscal year, if less than six calendar months, may be combined with the Reorganization Trust Budget for the next succeeding fiscal year, and the Reorganization Trust Budget for the last fiscal year, if less than six calendar months, may be combined with the Reorganization Trust Budget for the immediate prior fiscal year. The Reorganization Trust Budget shall set forth (on an annual basis) in reasonable detail: (1) the assumptions underlying the projected recoveries and expenses associated with the administration of the Reorganization Trust for the annual budget and the funding of the Disputed Claims Reserve in respect thereof, and (2) the anticipated distributions to the Beneficiaries. The Reorganization Trust may disclose (in the discretion of the Managing Trustees) the Reorganization Trust Budget to Beneficiaries or one or more third parties subject to appropriate confidentiality protections. The Reorganization Trust shall, in accordance with Section 9.3(b) of this Reorganization Trust Agreement, post to a public website it maintains the aggregate total amount of remaining expenses set forth in the Reorganization Trust Budget for the expected operation of the Reorganization Trust, as provided in Section 9.3(a) of this Reorganization Trust Agreement.

2.19. Compensation of the Trustees.

(a) The Trustees, Reorganization Trust Management, and the professionals and representatives of the Reorganization Trust and/or the Trustees shall be entitled to receive reasonable compensation for services rendered in an amount and on such terms as may be agreed to by the Managing Trustees from time to time.

(b) All compensation and other amounts payable to the Reorganization Trust Management, Trustees, and the professionals and representatives of the Reorganization Trust and/or the Trustees (including all fees and expenses) shall be paid from the assets of the Reorganization Trust. If the Cash in the Reorganization Trust shall be insufficient to compensate such persons for any fees and expenses to which they are entitled hereunder, then the Managing

Trustees are hereby authorized to reduce to Cash that portion of the Trust Assets necessary so as to effect such compensation and reimbursement. If the assets of the Reorganization Trust are insufficient to fully satisfy the amounts payable to, or other obligations owing hereunder, the Beneficiaries shall be required to disgorge distributions received from the Reorganization Trust until all such amounts have been fully paid and all such obligations have been fully satisfied.

(c) The Reorganization Trust shall reimburse the Trustees, the Reorganization Trust Management, and their respective professionals, representatives, and employees for the actual out-of-pocket fees and expenses incurred by them, including, without limitation, necessary travel, lodging, postage, telephone and facsimile charges upon receipt of periodic billings.

(d) The Trust Assets shall be subject to the claims of the Trustees, the Reorganization Trust Management, and their respective professionals and representatives for any of their fees and expenses, and the Managing Trustees shall be entitled to reimburse such persons out of any available Cash in the Reorganization Trust, for compensation and actual out-of-pocket fees and expenses and against and from any and all loss, liability, expense, or damage which the Trustees, solely in their capacity as such, may sustain in good faith and without willful misconduct in the exercise and performance of any of the powers and duties of the Trustees. If any Trustee is removed pursuant to the provisions of Section 2.2 hereof or any Trustee resigns, dies or becomes disabled, then such former Trustee (or his estate, successor or assigns) and any successor Trustee hereunder shall share any remaining additional compensation pursuant to this Section 2.17 pro rata based on the total time spent by each as a Trustee hereunder.

#### 2.20. Exculpation; Indemnification.

From and after the Effective Date, the Trustees, the Reorganization Trust Management, the Reorganization Trust, and each of their respective employees, professionals, and representatives shall be and hereby are exculpated as set forth in the Plan.

Any act or omission taken with the approval of the Bankruptcy Court or the consent of the Beneficiaries holding a majority of the Beneficial Interests (by amount) or any act or omission taken in order to comply with terms of the Plan or this Reorganization Trust Agreement will be conclusively deemed not to constitute bad faith or willful misconduct.

The Reorganization Trust shall indemnify, defend and hold harmless the Trustees, the Reorganization Trust Management, and each of the employees, professionals, and representatives of the Trustees, the Reorganization Trust Management, and the Reorganization Trust (collectively, the “Indemnitees”) from and against any and all claims, causes of action, liabilities, losses, damages and expenses (including attorneys’ fees and expenses), to the fullest extent permitted by applicable law, other than as a result of the bad faith or willful misconduct of the person seeking indemnification. No Trustee shall be deemed a successor of EME.

The Managing Trustees and the Reorganization Trust shall be authorized to obtain (by using Cash in the Reorganization Trust) insurance coverage with respect to the responsibilities, liabilities and obligations of the Trustees, the Reorganization Trust, and those persons hired by the Trustees and the Reorganization Trust to discharge such responsibilities, liabilities and obligations.

The Reorganization Trust hereby acknowledges that one or more Indemnitees may have rights to indemnification, advancement of expenses and/or insurance provided by one or more Persons or Entities (collectively, the "Other Indemnitors"). The Reorganization Trust hereby agrees (i) that it is the indemnitor of first resort (i.e., its obligations to each Indemnitee are primary and any obligation of the Other Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by each Indemnitee are secondary), (ii) that it shall be required to advance the full amount of expenses incurred by each Indemnitee and shall be liable for the full amount of all expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and as required by the terms of this Reorganization Trust Agreement or any other agreement between the Reorganization Trust and such Indemnitee), without regard to any rights any Indemnitee may have against any Other Indemnitors, and (iii) that it irrevocably waives, relinquishes and releases the Other Indemnitors from any and all claims against the Other Indemnitors for contribution, reimbursement, indemnification, subrogation or any other recovery of any kind in respect thereof. The Reorganization Trust further agrees that no advancement or payment by any Other Indemnitors on behalf of a Indemnitee with respect to any claim for which a Indemnitee has sought indemnification from the Reorganization Trust shall affect the foregoing, and the Other Indemnitors shall have a right of contribution, reimbursement, indemnification and/or be subrogation to the extent of any such advancement or payment to all of the rights of recovery of a Indemnitee against the Reorganization Trust. The Reorganization Trust and each Indemnitee agree that the Other Indemnitors are express third party beneficiaries of the terms of this Section 2.20.

2.21. Termination. The duties, responsibilities and powers of the Trustees will terminate on the date the Reorganization Trust is dissolved under applicable law in accordance with the terms of this Reorganization Trust Agreement.

2.22. No Bond. The Trustees shall serve without bond.

### **ARTICLE III THE BENEFICIARIES**

3.1. Distributions to the Beneficiaries. The Beneficiaries' rights to distribution from the Reorganization Trust shall be that accorded to the Beneficiaries under the Plan. Each distribution by the Managing Trustees to the Beneficiaries shall be made in accordance with the terms set forth herein.

3.2. Liability of the Beneficiaries. The Beneficiaries shall be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the Delaware General Corporation Law.

3.3. Number of Beneficial Interests. Subject to increase in order to satisfy any applicable legal or regulatory requirement, the aggregate number of Beneficial Interests that the Reorganization Trust shall be authorized (but not required) to issue is 4,000,000,000.

3.4. Evidence of Beneficial Interests.

(a) Except as otherwise provided in this Reorganization Trust Agreement, Beneficial Interests will be issued in the form of a global unit certificate (the “Global Beneficial Interest Certificate”) only, registered in the name of the Depository Trust Company (the “DTC”) or its nominee (or the successor of either of them) and signed by any member of the Reorganization Trust Management, and interests in the Global Beneficial Interest Certificate will be held only through participants (including securities brokers and dealers, banks, trust companies, clearing corporations and other financial organizations) of DTC, as depository. The Global Beneficial Interest Certificate shall bear such legend as may be required by DTC. The aggregate number of Beneficial Interests issued may from time to time be increased, if required by any legal or regulatory requirements, by adjustments made on the records of the Reorganization Trust and a corresponding increase in the number of Beneficial Interests evidenced by such Global Beneficial Interest Certificate (as shall be specified in the schedule included as part of the Global Beneficial Interest Certificate or the issuance of further Global Beneficial Interest Certificates in respect of such additional Beneficial Interests). Beneficial Interests will not be issued in definitive form, except in the limited circumstances described in Section 3.4(b). For so long as DTC serves as depository for the Beneficial Interests, the Reorganization Trust may rely on the information and records of DTC to make distributions and send communications to the holders of Beneficial Interests and, in so doing, any persons participating in the management of the Reorganization Trust, including the Managing Trustees and Reorganization Trust Management, shall be fully protected and incur no liability to any holder of Beneficial Interests, any transferee (or purported transferee) of Beneficial Interests, or any other person or entity.

(b) If DTC is unwilling or unable to act, or to continue to act, as a depository for the Beneficial Interests, the Reorganization Trust may issue Beneficial Interests in the form of certificates (“Beneficial Interest Certificates”), or, if one or more Global Beneficial Interest Certificates representing the Beneficial Interests has previously been issued, exchange the Beneficial Interests represented by Global Beneficial Interest Certificate(s) for Beneficial Interest Certificates. In such event, the Reorganization Trust shall maintain or cause to be maintained a Beneficial Interest register (the “Beneficial Interest Register”) on which the ownership of each Beneficial Interest Certificate shall be recorded, and on which the transfer of such Beneficial Interest Certificates shall be reflected. The Reorganization Trust shall be entitled to treat the Person in whose name a Beneficial Interest Certificate is registered on such Beneficial Interest Register as the owner of such Beneficial Interest Certificate and the Beneficial Interests represented thereby for all purposes, including the right to receive distributions of Distributable Cash in respect thereof. The Reorganization Trust shall also in such event establish or cause to be established customary procedures for the transfer and exchange of Beneficial Interest Certificates and the replacement of lost, stolen or mutilated Beneficial Interest Certificates.

### 3.5. Issuance and Distribution of Beneficial Interests.

(a) Subject to the terms of the Plan, all Beneficial Interests issued or distributed in accordance with the provisions of Article III hereof to holders of Allowed Unsecured Claims entitled to receive Beneficial Interests hereunder shall be in full and final satisfaction of such Allowed Unsecured Claims.

(b) On the Initial Distribution Date, there shall be issued to each holder of one or more Allowed General Unsecured Claims against EME (Not Assumed Liabilities) as of the Initial Distribution Record Date, a number of Beneficial Interests equal to the aggregate amount of Allowed General Unsecured Claims held by such holder in accordance with the Plan.

(c) Each holder of one or more Disputed Unsecured Claims that were not Allowed, in whole or in part, as of the Initial Distribution Record Date and that are subsequently Allowed, in whole or in part, shall be issued from the Disputed Claims Reserve on the distribution date next following the date that such Claims become Allowed, a number of Beneficial Interests equal the aggregate amount of such Allowed Claims and any distribution to which, under the Plan, such holder is then entitled on account of such Beneficial Interests.

(d) The issuance or distribution of Beneficial Interests in accordance with this Section 4.2 shall be subject to the provisions of Section 3.4(a).

### 3.6. Manner of Distribution of Beneficial Interests.

(a) Except in the circumstances described in Section 3.6(b), in order to receive their Beneficial Interests, holders of Allowed Unsecured Claims entitled to receive such Beneficial Interests must designate a direct or indirect participant in DTC with whom such holder has a securities account and take such other ministerial actions as the Trustees or the Reorganization Trust Management shall from time to time reasonably require by written communication to such holders, in the form of Exhibit A or otherwise. The Reorganization Trust shall communicate with the EME Senior Notes Indenture Trustee to obtain from it account information for the respective DTC participants through which the Beneficial Interests distributed to it will be held.

(b) If and for so long as a holder of an Allowed Unsecured Claim (other than holders of EME Senior Notes Claims, whose Beneficial Interests will be issued to the EME Senior Notes Indenture Trustee) does not designate a direct or indirect participant in DTC and take such other actions required by Section 3.6(a), the Reorganization Trust may hold the Beneficial Interests such holder is otherwise entitled to receive, together with any Cash distributed in respect of such Beneficial Interests until such time as such holder complies with the requirements of Section 3.6(a), or, at the Reorganization Trust's sole discretion, liquidate the Beneficial Interests and/or the Trust Assets (including any common stock of the Parent) held by the Reorganization Trust on account of such Beneficial Interests and deliver the Cash proceeds of such liquidation to such holder. At any time following the date on which the Reorganization Trust determines, in its sole discretion, that a holder of an Allowed Unsecured Claim complies in full with the requirements of Section 3.6(a), but in any event, as soon as practicable following the beginning of the fiscal quarter next following such date, the Reorganization Trust shall distribute to such holder the Beneficial Interests and any distributions thereon to which such holder is entitled. Any Cash held by the Reorganization Trust on account of Beneficial Interests that remain undistributed pending compliance with the provisions of Section 3.6(a) as aforesaid shall be separately recorded by the Reorganization Trust.

(c) The Reorganization Trust shall also be authorized to withhold and retain Beneficial Interests otherwise issuable to holders of Allowed Unsecured Claims that are subject

to tax withholding to the extent required by applicable tax laws, and any Beneficial Interests so withheld shall be deemed issued in satisfaction of such Claims for all purposes of the Plan and this Reorganization Trust Agreement. The Reorganization Trust shall have no obligation to issue or distribute Beneficial Interests or other consideration to the extent any such issuance or distribution would violate existing tax law.

3.7. Transfers of Beneficial Interests; Absence of Market for Beneficial Interests.

(a) Beneficial Interests shall be freely negotiable and transferable to the extent provided herein and the provisions of applicable securities laws. For so long as DTC continues to serve as depositary for the Beneficial Interests, the transferability of the Beneficial Interests shall also be subject to the requirements of DTC's electronic book-entry system.

(b) The Beneficial Interests shall not be listed by the Reorganization Trust on a national securities exchange or interdealer quotation system. Neither the Reorganization Trust nor anyone acting on its behalf shall, directly or indirectly, engage in any activity designed to facilitate or promote trading in the Beneficial Interests, including by placing advertisements, distributing marketing materials, or collecting or publishing information regarding prices at which the interests may be transferred; provided that no activity undertaken by the Reorganization Trust in compliance with the terms of the Plan, the Confirmation Order, and this Reorganization Trust Agreement (collectively, the "Plan Documents") shall be deemed to facilitate or promote trading in the Beneficial Interests for these purposes.

3.8. Rights of Beneficiaries. Each Beneficiary shall be entitled to participate in the rights and benefits due to it hereunder on account of its Beneficial Interests. Each Beneficiary shall take and hold the same, subject to all the terms and conditions of the Plan Documents. The interest of a Beneficiary is hereby declared and shall be, in all respects, personal property.

3.9. Interest Beneficial Only. Except as expressly provided hereunder, a Beneficiary shall have no title to, right to, possession of, management of or control of the Reorganization Trust or the Trust Assets. The ownership of Beneficial Interests in the Reorganization Trust shall not entitle any Beneficiary to any title in or to the Trust Assets or to any right to call for a partition or division of such assets or to require an accounting, except as may be specifically provided herein.

3.10. Conflicting Claims. If any conflicting claims or demands are made or asserted with respect to one or more Beneficial Interests, or a beneficial interest therein, the Reorganization Trust shall be entitled to refuse to comply with any such conflicting claims or demands. In so refusing, the Reorganization Trust may elect to make no payment or distribution with respect to the Beneficial Interests at issue subject to the claims or demands involved, or any part thereof, and the Reorganization Trust shall be entitled to refer such conflicting claims or demands to the Bankruptcy Court, which shall have exclusive and continuing jurisdiction over resolution of such conflicting claims or demands. Neither the Reorganization Trust, the Trustees, the Reorganization Trust Management, nor any Reorganization Trust representatives or agents, shall be or become liable to any party for either (i) the election to continue making

distributions pursuant to its books and records and/or the books and records of DTC, as applicable, without regard to the conflicting claims or demands; or (ii) the election to cease payments or distributions with respect to the subject Beneficial Interest or Beneficial Interests. In the event that the Reorganization Trust elects to cease payments, it shall be entitled to refuse to act until either (x) the rights of the adverse claimants have been adjudicated by a Final Order of the Bankruptcy Court (or such other court of competent jurisdiction) or (y) all differences have been resolved by a written agreement among all of such parties and the Reorganization Trust, which agreement shall include a complete release of the Reorganization Trust and the Trustees in form and substance reasonably satisfactory to the Reorganization Trust.

3.11. Beneficiary Liability to Third Persons. No Beneficiary shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the Trust Assets or the affairs of the Reorganization Trust, to the fullest extent provided by section 3803 (a) of the Trust Act.

3.12. Actions in the Right of the Reorganization Trust. No Beneficiary and no Beneficiaries shall have the right to bring an action in the right of the Reorganization Trust to recover a judgment pursuant to section 3816 of the Trust Act unless such Beneficiary or Beneficiaries individually or collectively own 75 percent or more of the outstanding Beneficial Interests.

#### **ARTICLE IV PURPOSE, AUTHORITY, LIMITATIONS, AND DISTRIBUTIONS**

4.1. Purpose of the Reorganization Trust. The Reorganization Trust shall be established for the primary purpose of liquidating the Trust Assets, in accordance with the ICA and Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business except to the extent reasonably necessary to, and consistent with, its liquidating purpose. The liquidation of the Trust Assets may be accomplished through the sale, transfer or conveyance of the Trust Assets and through the prosecution, compromise and settlement, abandonment or dismissal of any or all claims, rights or causes of action related thereto.

4.2. Resolution of Trust Assets by the Managing Trustees. The Managing Trustees shall be empowered to and may take all appropriate action with respect to the prosecution, settlement or other resolution of the Trust Assets except as provided in the Plan.

4.3. Books and Records. The Managing Trustees shall maintain, with respect to the Reorganization Trust and the Beneficiaries, books and records relating to the assets and income of the Reorganization Trust and the payment of expenses of, and liabilities of, claims against or assumed by, the Reorganization Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof in accordance with any reporting requirements herein and to comply with applicable provisions of law (including the Trust Act). Except as otherwise expressly provided herein, nothing in this Reorganization Trust Agreement requires the Reorganization Trust to file any accounting or seek approval of any court with respect to the administration of the Reorganization Trust, or as a condition for making any payment or distribution out of the Trust Assets.

4.4. Application of Trust Assets. The Reorganization Trust shall apply all Trust Assets, and any proceeds therefrom, in accordance with the Plan, as follows:

(a) Plan Administrator. Notwithstanding anything to the contrary herein, the Reorganization Trust shall act as Plan Administrator under the Plan and shall make distributions to Holders of Allowed Claims in accordance with the Plan, irrespective of whether such Holders hold Beneficial Interests, in each case in accordance with the Plan.

(b) Distribution; Withholding. The Managing Trustees shall, based on available assets, distribute to the Beneficiaries all net Cash income, plus the common stock of the Parent, plus all net Cash proceeds from the liquidation of the Trust Assets (including as Cash for this purpose, all Cash equivalents) pursuant to the Plan; provided, however, that the Reorganization Trust may retain such amounts (i) as are necessary to meet contingent liabilities and to maintain the value of the Trust Assets during liquidation, (ii) to pay fees and expenses (including any taxes) of the Reorganization Trust or the Trustees (with respect to the Trust Assets), and (iii) to satisfy other liabilities incurred or assumed by the Reorganization Trust (or to which the Trust Assets are otherwise subject) in accordance with the Plan and the Reorganization Trust Agreement, including making distributions on account of Claims entitled to payment under the Plan (including Claims that become Allowed in accordance with the Plan after the date hereof), even if such Claims do not entitle the holders thereof to the receipt of Beneficial Interests. All such distributions shall be subject to the terms of the Plan and as set forth therein. For the avoidance of doubt, other than as expressly set forth in the Plan with respect to the Disputed Claims Reserve, the Managing Trustees may adjust the amounts retained to maintain the Trust Assets or to satisfy the liabilities of the Reorganization Trust in their sole discretion. The Managing Trustees may withhold from amounts distributable to any Entity any and all amounts, determined by the Managing Trustees to be required by any law, regulation, rule, ruling, directive or other governmental requirement of the United States or of any political subdivision thereof. Notwithstanding anything to the contrary in this Section 4.4(b), the Managing Trustees shall not be required to obtain the employer identification numbers or tax identification numbers of any subsequent transferee of any Beneficial Interests distributed by the Reorganization Trust if (i) the DTC is the record owner of such Beneficial Interests or (ii) the Managing Trustees determine that failure to obtain such information will not result in a violation of applicable law by the Trustees or the Reorganization Trust.

(c) Tax Identification Numbers. The Managing Trustees shall require the Beneficiaries and any other beneficiary or other distributee of the Reorganization Trust to furnish to the Managing Trustees its Employer or Taxpayer Identification Number as assigned by the Internal Revenue Service and the Managing Trustees may condition any distribution to any such beneficiary or distributee upon receipt of such identification number.

4.5. Compliance with Laws. Any and all distributions of Trust Assets shall be made in compliance with applicable laws, including, but not limited to, applicable federal and state securities laws and the Trust Act.

**ARTICLE V  
TAX MATTERS**

5.1. Tax Treatment.

(a) For all United States federal income tax purposes, all parties (including, without limitation, the Debtors, the Trustees, and the Beneficiaries) shall treat the transfer of the Trust Assets to the Reorganization Trust as a transfer of the Trust Assets (subject to any obligations relating to those assets) directly to Beneficiaries, followed by the transfer by such Beneficiaries to the Reorganization Trust of such Trust Assets in exchange for the Beneficial Interests.

(b) Accordingly, those holders of Allowed Unsecured Claims receiving Beneficial Interests shall be treated for federal income tax purposes as the grantors and owners of their respective shares of the Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

5.2. Tax Reporting.

(a) The Reorganization Trust shall file tax returns treating the Reorganization Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a) and in accordance with the Plan. The Reorganization Trust also shall annually send (or otherwise make available) to each holder of a beneficial interest in the Reorganization Trust a separate statement setting forth the holder's share of items of income, gain, loss, deduction, or credit and will instruct all such holders to report such items on their United States federal income tax returns or to forward the appropriate information to their respective beneficial holders with instructions to report such items on their United States federal income tax returns. The Reorganization Trust also shall file (or cause to be filed) any other statements, returns, or disclosures relating to the Reorganization Trust that are required by any Governmental Unit or tax authority.

(b) Allocation of Reorganization Trust taxable income and loss among the Beneficiaries shall be made Pro Rata (including Beneficial Interests held in the Disputed Claims Reserve, if any).

(c) The Reorganization Trust shall (i) treat the Disputed Claims Reserve, the EIX Escrow Account, and the Trust Assets allocable thereto, as "disputed ownership funds" governed by Treasury Regulation section 1.468B-9 by timely making an election, (ii) file such tax returns and pay such taxes as may be required consistent with such treatment, and (iii) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes.

(d) The Reorganization Trust may request an expedited determination of taxes of the Reorganization Trust, including the Disputed Claims Reserve and the EIX Escrow Account, under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Reorganization Trust for all taxable periods through the dissolution of the Reorganization Trust.

(e) As soon as practicable after the Effective Date, the Managing Trustees shall conduct a good faith valuation of the Trust Assets and report such valuation to the Beneficiaries (which report may be subject to appropriate confidentiality protections). The valuation report of the Managing Trustees shall be used by the Trustees and may be used by the Beneficiaries for all federal income tax purposes. Any dispute regarding the valuation of the Trust Assets shall be resolved by the Bankruptcy Court.

5.3. Tax Payment. The Reorganization Trust shall be responsible for the payment, out of the Wind Down Budget, of any taxes imposed on the Reorganization Trust or the Trust Assets, including the Disputed Claims Reserve and the EIX Escrow Account. In the event, and to the extent, that any Cash retained on account of Disputed Unsecured Claims and the EIX Escrow Account in the Disputed Claims Reserve is insufficient to pay any portion of such taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, such respective classes of Disputed Unsecured Claims, such taxes shall be (x) reimbursed from any subsequent Cash amounts retained on account of the respective classes of Disputed Unsecured Claims or (y) to the extent such Disputed Unsecured Claims subsequently have been resolved, deducted from any amounts distributable by the Reorganization Trust as a result of the resolutions of such Disputed Unsecured Claims.

## **ARTICLE VI TERMINATION OF REORGANIZATION TRUST**

6.1. Dissolution of Reorganization Trust. The Reorganization Trust will dissolve upon the earlier of (i) the unanimous determination of the Managing Trustees and (ii) the third (3rd) anniversary of the Effective Date (the “Third Anniversary Date”); provided, however, that on or after the date that is six (6) months prior to the Third Anniversary Date (unless the Reorganization Trust has been dissolved prior to such date in accordance with this Reorganization Trust Agreement), the Managing Trustees may extend the term of the Reorganization Trust for a finite period if it is necessary to the liquidating purpose thereof; provided, however, that no extension shall be effective unless the Reorganization Trust receives advice of counsel or a favorable ruling from the SEC and the IRS, as applicable, that any further extension would not adversely affect the status of the trust as a grantor trust for federal income tax purposes or require registration as an investment company. Upon dissolution of the Reorganization Trust in accordance with this Section 6.1, the Managing Trustees shall file a Certificate of Dissolution with the Secretary of State of the State of Delaware. The Managing Trustees shall not unduly prolong the duration of the Reorganization Trust and shall at all times endeavor to resolve, settle or otherwise dispose of all claims that constitute Trust Assets and to effect the distribution of the Trust Assets to the Beneficiaries in accordance with the terms hereof and terminate the Reorganization Trust as soon as practicable in light of the terms of the Trust Assets. Prior to and upon termination of the Reorganization Trust, the remaining Trust Assets will be distributed to the Beneficiaries, subject to the provisions set forth herein. If any distributions of the Reorganization Trust are not duly claimed, such distributions will be disposed of in accordance with the Plan.

## **ARTICLE VII AMENDMENT AND WAIVER**

7.1. Amendment; Waiver. Any Change to this Reorganization Trust Agreement may be made only with the prior written approval of the Managing Trustees; provided, however, that (a) any Change to this Reorganization Trust Agreement that would adversely affect the federal income tax status of the Reorganization Trust as a “grantor trust” (in accordance with Section 5.2) or to permit an action that would require registration of the Reorganization Trust as an investment company, if applicable, shall be made only with the unanimous prior approval or consent of the Managing Trustees, (b) any Change to Section 2.1 or any other Change to this Reorganization Trust Agreement that would adversely affect any right of any Independent Trustee shall require the prior written consent of all Independent Trustees, (c) any Change that adversely affects any right of the Delaware Trustee shall require the prior written consent of the Delaware Trustee; and (d) any Change that would be materially inconsistent with the Plan or the Confirmation Order shall require prior Bankruptcy Court approval. When used herein, a “Change” means an amendment or waiver, including any amendment or waiver effected in connection with or through a merger or consolidation to which this Reorganization Trust is party.

## **ARTICLE VIII PROVISIONS REGARDING DISTRIBUTIONS**

8.1. Manner of Payment under the Plan. Any payment in Cash to be made by the Managing Trustees shall be made, at the election of the Managing Trustees, by check drawn on a domestic bank or by wire transfer from a domestic bank. Any payment in the common stock of the Parent shall be made in accordance with Section 3.6 of this Reorganization Trust Agreement.

8.2. Compliance with Tax Requirements/Allocation. To the extent applicable, the Reorganization Trust shall comply with all tax withholding and reporting requirements imposed on it by any law or governmental authority, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding anything herein to the contrary, the Managing Trustees may condition delivery of any distributions of Trust Assets to any Beneficiary on the receipt of such signed documentation or information as may be reasonably requested in order for the Reorganization Trust to comply with law or to determine any withholding requirements of the Reorganization Trust in connection with such distribution.

## **ARTICLE IX MISCELLANEOUS PROVISIONS**

9.1. Intention of Managing Trustees to Establish Grantor Reorganization Trust. This Reorganization Trust Agreement is intended to create a grantor trust for United States federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as a grantor trust.

9.2. Preservation of Privilege. In connection with the rights, claims, and Causes of Action that constitute the Trust Assets, any attorney-client privilege, work-product privilege, or other privilege or immunity attaching to any documents or communications (whether written or oral) transferred to the Reorganization Trust shall vest in the Reorganization

Trust and its representatives, and the Managing Trustees are authorized to take all necessary actions to effectuate the transfer of such privileges. For the avoidance of doubt, neither the Managing Trustees nor the Reorganization Trust shall be treated as a successor for any purpose to EME or any other Debtor or their respective estates, except as expressly provided in the Plan or the Confirmation Order.

9.3. Reporting.

(a) The Reorganization Trust shall cause to be prepared, and shall post to a public website it maintains, financial reports on a quarterly and annual basis as provided in this Section 9.3(a). Unless otherwise required by applicable law, such reports need not be prepared in accordance with Generally Accepted Accounting Principles (and need not be prepared using the liquidation basis of accounting), but in any event shall fairly present the assets, liabilities, income, and expenses of the Reorganization Trust for and as of the end of each reporting period. The financial reports shall be prepared on a consistent basis, except as may be disclosed in the notes to the financial statements. To the extent reasonably practicable, the financial reports shall include:

- (1) Quarterly financial statements, which shall be prepared and posted no later than sixty (60) days after the end of each of the first three (3) quarters of the fiscal year; and
- (2) Annual financial statements, which shall be prepared and posted no later than one hundred twenty (120) days after the end of each fiscal year.

(b) The Reorganization Trust shall cause to be prepared and shall post to its website, no later than sixty (60) days after the end of each quarter of the fiscal year, reports containing the following information regarding the activity of the Reorganization Trust during (i) the most recently completed fiscal quarter and (ii) in the report prepared after the end of each fiscal year, (A) the most recently completed fiscal year and (B) the time period since the Effective Date:

- (1) the material Trust Assets disposed of during the relevant period and the material Trust Assets remaining as of the end of such period;
- (2) the distributable Cash and common stock of the Parent distributed during the relevant period, in the aggregate and on a per Beneficial Interest basis;
- (3) the aggregate total amount of remaining expenses set forth in the Reorganization Trust Budget for the expected operation of the Reorganization Trust; and
- (4) such other information as the Managing Trustees may determine to include from time to time;

provided that the Reorganization Trust shall not disclose confidential information in such reports; provided, further, that the Reorganization Trust may disclose confidential information (including the Reorganization Trust Budget) to Beneficiaries or one or more third parties subject to appropriate confidentiality protections.

(c) The Managing Trustees shall disclose any increase in compensation (as determined in accordance with Section 2.19) after the initial determination of such compensation.

(d) The Managing Trustees shall also cause to be timely prepared, filed and distributed such additional statements, reports and submissions (x) as may be necessary to cause the Reorganization Trust to be in compliance with applicable law or to the extent otherwise necessary to allow the Beneficial Interests to be transferrable and tradable in accordance with applicable law or (y) as may be otherwise required from time to time by the Bankruptcy Court.

9.4. Named Party. In pursuing any Avoidance Actions, and/or other Reorganization Trust Causes of Action, or in disposing of any Trust Assets, or otherwise administering the Reorganization Trust or any Trust Assets, including, without limitation, the execution of documents, such as bills of sale, releases, and agreements, the Trustees may authorize the pursuit of such matters and/or execution of any such documents in the name of “EME Reorganization Trust” or in such other names or such representative capacities as necessary or appropriate.

9.5. Cooperation. The Reorganization Trust shall provide the Managing Trustees with copies of such of its books and records as the Managing Trustees shall reasonably require for the purpose of performing their duties and exercising their powers hereunder.

9.6. Prevailing Managing Trustee. If any Trustee is the prevailing party in a dispute regarding the provisions of this Reorganization Trust Agreement or the enforcement thereof, such Trustee shall be entitled to collect any and all costs, expenses and fees, including attorneys’ fees, from the Reorganization Trust incurred in connection with such dispute or enforcement action.

9.7. Laws as to Construction. This Reorganization Trust Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to rules governing the conflicts of law. If it is determined by a court of competent jurisdiction that any provision of this Reorganization Trust Agreement is invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Reorganization Trust Agreement. Whenever used herein, “including” or “includes” means “including, without limitation” or “includes, without limitation.”

9.8. Severability. If any provision of this Reorganization Trust Agreement or the application thereof to any person or circumstance shall be finally determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Reorganization Trust Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be

affected thereby, and such provision of this Reorganization Trust Agreement shall be valid and enforced to the fullest extent permitted by law.

9.9. Notices. Any notice or other communication hereunder shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if deposited, postage prepaid, in a post office or letter box addressed to the person (or their successors or replacements) for whom such notice is intended at such address as set forth below, or such other addresses as provided to the other Trustees hereto:

If to the Reorganization Trust, to the following address:

3 MacArthur Place  
Suite 100  
Santa Ana, California 92707

with a copy, which shall not constitute notice, to:

Kirkland & Ellis LLP  
300 North LaSalle  
Chicago, Illinois 60654  
Attn.: David R. Seligman, P.C. and Brad Weiland  
Facsimile: (312) 862-2200

-and-

Kirkland & Ellis LLP  
601 Lexington Avenue  
New York, New York 10022  
Attn.: Joshua A. Sussberg  
Facsimile: (212) 446-4900

If to the Delaware Trustee, to the following address:

Wilmington Trust, National Association  
Rodney Square North  
1100 North Market Street  
Wilmington, Delaware 19890  
Attn.: Corporate Trust Administration

If to the Managing Trustees, to the following addresses:

Timothy J. Bernlohr  
TJB Management Consulting, LLC  
4 Aldan's Way  
Newtown, Pennsylvania 18940

- and -

Frederic F. Brace  
221 Essex Road  
Winnetka, Illinois 60093-4261

- and -

Kurt M. Cellar  
15 Sunwich Road  
Rowayton, Connecticut 06853

- and -

Eugene Davis  
PIRINATE Consulting Group, LLC  
5 Canoe Brook Drive  
Livingston, New Jersey 07039

- and -

Hugh E. Sawyer  
c/o Huron Consulting Group  
Six Concourse Parkway  
Suite 2050  
Atlanta, Georgia 30328

with a copy, which shall not constitute notice, to:

Kirkland & Ellis LLP  
300 North LaSalle  
Chicago, Illinois 60654  
Attn.: David R. Seligman, P.C. and Brad Weiland  
Facsimile: (312) 862-2200

-and-

Kirkland & Ellis LLP  
601 Lexington Avenue  
New York, New York 10022  
Attn.: Joshua A. Sussberg  
Facsimile: (212) 446-4900

-and-

Ropes & Gray LLP  
1211 Avenue of the Americas  
New York, New York 10036-8704  
Attn.: Keith H. Wofford  
Facsimile: (212) 596-9090

-and-

Ropes & Gray LLP  
Prudential Tower  
800 Boylston Street  
Boston, Massachusetts 02199-3600  
Attn.: Stephen Moeller-Sally  
Facsimile: (617) 951-7050

9.10. Headings. The section headings contained in this Reorganization Trust Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of the Plan, the EIX Settlement Agreement, or this Reorganization Trust Agreement or of any term or provision such documents.

9.11. Survival. The obligations of the Reorganization Trust set forth in this Agreement shall terminate upon termination of the Reorganization Trust in accordance with Article VI hereof; provided that any obligations set of the Reorganization Trust forth in Section 2.13(d), Section 2.20, and Article IX hereof shall survive termination of the Reorganization Trust in accordance with the respective terms thereof.

9.12. Entire Reorganization Trust Agreement. This Reorganization Trust Agreement, including the Exhibits attached hereto, the Plan (including the Purchase Agreement, the EIX Settlement Agreement, and all other documents contained in the Plan Supplement) and the Confirmation Order contain the entire agreement between the parties and supersede all prior and contemporaneous agreements or understandings between the parties with respect to the subject matter hereof. For the avoidance of doubt, to the extent holders of Allowed Claims that would otherwise be entitled to receive Beneficial Interests have established or in the future establish trusts or other entities or vehicles to facilitate the implementation of the Plan with respect to their Beneficial Interests or for other purposes, the agreements governing such trusts or other entities or vehicles shall not limit or impose requirements in any way on the Reorganization Trust, the Reorganization Trust Management, the Trustees, or any other agent or representative of the Reorganization Trust, and to the extent there is any conflict between the provisions of such agreements and this Reorganization Trust Agreement, this Reorganization Trust Agreement shall have controlling effect

9.13. Counterparts. This Reorganization Trust Agreement may be executed in two or more counterparts, each of which shall be an original, but all such counterparts shall together constitute one and the same agreement.

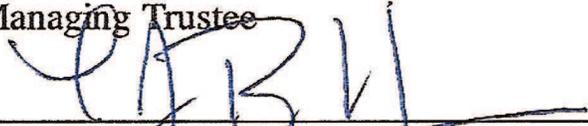
9.14. Bankruptcy Court Jurisdiction. The Bankruptcy Court shall have exclusive jurisdiction over the Reorganization Trust and the Trustees, including the administration and activities of the Reorganization Trust and the Trustees, and the terms of this Reorganization Trust Agreement and any dispute related to the terms hereof.

**(THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK)**

IN WITNESS WHEREOF, the parties hereto have executed and acknowledged  
this Reorganization Trust Agreement.

TRUSTEES

**TIMOTHY J. BERNLOHR,**  
not individually but solely in his capacity as a  
Managing Trustee



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Date: April, 2014

**FREDERIC F. BRACE,**  
not individually but solely in his capacity as a  
Managing Trustee and Independent Trustee

---

Date: \_\_\_\_\_, 2014

**KURT M. CELLAR,**  
not individually but solely in his capacity as a  
Managing Trustee

---

Date: \_\_\_\_\_, 2014

**EUGENE DAVIS,**  
not individually but solely in his capacity as a  
Managing Trustee

---

Date: \_\_\_\_\_, 2014

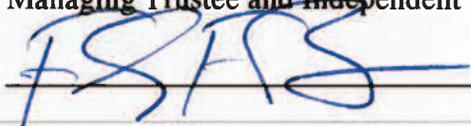
IN WITNESS WHEREOF, the parties hereto have either executed and  
acknowledged this Reorganization Trust Agreement.

TRUSTEES

**TIMOTHY J. BERNLOHR,**  
not individually but solely in his capacity as a  
Managing Trustee

\_\_\_\_\_  
Date: \_\_\_\_\_, 2014

**FREDERIC F. BRACE,**  
not individually but solely in his capacity as a  
Managing Trustee and Independent Trustee

  
\_\_\_\_\_  
Date: \_\_\_\_\_, 2014

**KURT M. CELLAR,**  
not individually but solely in his capacity as a  
Managing Trustee

\_\_\_\_\_  
Date: \_\_\_\_\_, 2014

**EUGENE DAVIS,**  
not individually but solely in his capacity as a  
Managing Trustee

\_\_\_\_\_  
Date: \_\_\_\_\_, 2014

IN WITNESS WHEREOF, the parties hereto have executed and acknowledged  
this Reorganization Trust Agreement.

TRUSTEES

**TIMOTHY J. BERNLOHR,**  
not individually but solely in his capacity as a  
Managing Trustee

\_\_\_\_\_  
Date: \_\_\_\_\_, 2014

**FREDERIC F. BRACE,**  
not individually but solely in his capacity as a  
Managing Trustee and Independent Trustee

\_\_\_\_\_  
Date: \_\_\_\_\_, 2014

**KURT M. CELLAR,**  
not individually but solely in his capacity as a  
Managing Trustee

  
\_\_\_\_\_

Date: April 1, 2014

**EUGENE DAVIS,**  
not individually but solely in his capacity as a  
Managing Trustee

\_\_\_\_\_  
Date: \_\_\_\_\_, 2014

IN WITNESS WHEREOF, the parties hereto have executed and acknowledged  
this Reorganization Trust Agreement.

TRUSTEES

**TIMOTHY J. BERNLOHR,**  
not individually but solely in his capacity as a  
Managing Trustee

\_\_\_\_\_  
Date: \_\_\_\_\_, 2014

**FREDERIC F. BRACE,**  
not individually but solely in his capacity as a  
Managing Trustee and Independent Trustee

\_\_\_\_\_  
Date: \_\_\_\_\_, 2014

**KURT M. CELLAR,**  
not individually but solely in his capacity as a  
Managing Trustee

\_\_\_\_\_  
Date: \_\_\_\_\_, 2014

**EUGENE DAVIS,**  
not individually but solely in his capacity as a  
Managing Trustee

  
\_\_\_\_\_  
Date: April, 2014

**HUGH E. SAWYER,**  
not individually but solely in his capacity as a  
Managing Trustee and Independent Trustee



Date: March 29, 2014

**WILMINGTON TRUST COMPANY,  
NATIONAL ASSOCIATION,**  
not individually but solely in its capacity as an  
Delaware Trustee

By: \_\_\_\_\_

Date: \_\_\_\_\_, 2014

**HUGH E. SAWYER,**  
not individually but solely in his capacity as a  
Managing Trustee and Independent Trustee

\_\_\_\_\_  
Date: \_\_\_\_\_, 2014

**WILMINGTON TRUST, NATIONAL  
ASSOCIATION,**  
not individually but solely in its capacity as  
Delaware Trustee

By:  \_\_\_\_\_

Date: April 1, 2014

**Appendix A - Key Defined Terms**

“Applicable Percentage” shall have the meaning ascribed to it in Section 2.5(a) of the Reorganization Trust Agreement.

“Beneficial Interest Certificates” shall have the meaning ascribed to it in Section 3.4(b) of the Reorganization Trust Agreement.

“Beneficial Interest Register” shall have the meaning ascribed to it in Section 3.4(b) of the Reorganization Trust Agreement.

“Beneficial Interests” shall have the meaning ascribed to it in the recitals to the Reorganization Trust Agreement.

“Beneficiaries” shall have the meaning ascribed to it in the recitals to the Reorganization Trust Agreement.

“Beneficiary” shall have the meaning ascribed to it in the recitals to the Reorganization Trust Agreement.

“Certificate” shall have the meaning ascribed to it in Section 1.1(a) of the Reorganization Trust Agreement.

“Delaware Trustee” shall have the meaning ascribed to it in the preamble to the Reorganization Trust Agreement.

“Effective Date” shall have the meaning ascribed to it in the preamble to the Reorganization Trust Agreement.

“EME” shall have the meaning ascribed to it in the recitals to the Reorganization Trust Agreement.

“Exchange Act” shall have the meaning ascribed to it in Section 1.3 of the Reorganization Trust Agreement.

“Global Beneficial Interest Certificate” shall have the meaning ascribed to it in Section 3.4(a) of the Reorganization Trust Agreement.

“ICA” shall have the meaning ascribed to it in the recitals to the Reorganization Trust Agreement.

“Indemnitees” shall have the meaning ascribed to it in Section 2.20 of the Reorganization Trust Agreement.

“Independent Trustee Matters” shall have the meaning ascribed to it in Section 2.5(b) of the Reorganization Trust Agreement.

“Internal Revenue Code” shall have the meaning ascribed to it in the recitals to the Reorganization Trust Agreement.

“Managing Trustee” shall have the meaning ascribed to it in the preamble to the Reorganization Trust Agreement.

“Managing Trustees” shall have the meaning ascribed to it in the preamble to the Reorganization Trust Agreement.

“Other Indemnitors” shall have the meaning ascribed to it in Section 2.21 of the Reorganization Trust Agreement.

“Other Managing Trustees” shall have the meaning ascribed to it in Section 2.3(c) of the Reorganization Trust Agreement.

“Plan” shall have the meaning ascribed to it in the preamble to the Reorganization Trust Agreement.

“Plan Documents” shall have the meaning ascribed to it in Section 3.7(b) of the Reorganization Trust Agreement.

“Reorganization Trust” shall have the meaning ascribed to it in the preamble to the Reorganization Trust Agreement.

“Reorganization Trust Agreement” shall have the meaning ascribed to it in the preamble to the Reorganization Trust Agreement.

“Reorganization Trust Budget” shall have the meaning ascribed to it in Section 2.19(a) of the Reorganization Trust Agreement.

“Reorganization Trust Management” shall have the meaning ascribed to it in Section 2.15 of the Reorganization Trust Agreement.

“Specified Trustee” shall have the meaning ascribed to it in Section 2.3(c) of the Reorganization Trust Agreement.

“Third Anniversary Date” shall have the meaning ascribed to it in Section 6.1 of the Reorganization Trust Agreement.

“Trust Act” shall have the meaning ascribed to it in Section 1.1(a) of the Reorganization Trust Agreement.

“Trust Assets” shall have the meaning ascribed to it in the recitals to the Reorganization Trust Agreement.

“Trustee” shall have the meaning ascribed to it in Section 2.1(b) of the Reorganization Trust Agreement.

“Trustees” shall have the meaning ascribed to it in Section 2.1(b) of the Reorganization Trust Agreement.

**EXHIBIT 2**

**Amount of Disputed Claims Reserve**

**PLAN SUPPLEMENT  
EXHIBIT I**

**AMOUNT OF DISPUTED CLAIMS RESERVE<sup>1</sup>**

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The aggregate amount of reserves for claims against and liabilities of the Reorganization Trust, including the Disputed Claims Reserve Amount, is \$255,747,515.<sup>2</sup>

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<sup>1</sup> Capitalized terms used but not defined in this Exhibit I shall have the meanings ascribed to them in the *Debtors' Third Amended Joint Chapter 11 Plan of Reorganization* (as amended from time to time, the "Plan").

<sup>2</sup> The determination of the Disputed Claims Reserve Amount as contained in the Plan Supplement is based on a number of assumptions. Among other things, the Disputed Claims Reserve Amount assumes that the Bankruptcy Court grants the relief requested in all of the Debtors' pending pleadings and motions, including claims objections, estimation motions, and motions for authority to terminate retiree medical benefits. The Disputed Claims Reserve Amount also assumes that all duplicate Claims, Claims filed in the wrong Chapter 11 Case, Claims amended by subsequently filed Claims, Claims not timely filed, Claims satisfied or released during the Chapter 11 Cases, and Claims that do not comply with applicable rules and procedures are ultimately disallowed as non-substantive matters. Consistent with the Plan, the Disputed Claims Reserve Amount includes no reserve amount for Claims against the Debtors, to the extent such Claims are Assumed Liabilities, Settlement Assumed Liabilities, or are released, discharged, or otherwise extinguished pursuant to the Plan.

In accordance with Article XIII.I of the Plan, the Disputed Claims Reserve shall include Cash in an amount of approximately \$80,000,000 on account of certain retiree benefits. The Debtors, the Retiree Group (as defined in the *Reply Brief in Further Support of Debtors' Motion to Terminate Retiree Benefits* [Docket No. 2229], and certain other parties in interest are engaged in ongoing discussions to resolve matters related to the termination of such retiree benefits.

Except as expressly set forth in the Plan, the Managing Trustees may adjust reserves retained for claims against and liabilities of the Reorganization Trust.

**EXHIBIT 3**

**Summary of Wind Down Budget**

**PLAN SUPPLEMENT  
 EXHIBIT K**

**SUMMARY OF WIND DOWN BUDGET<sup>1</sup>**

The Wind Down Budget will include budgeted amounts related to or on account of, among other things, professional fees and expenses, costs and expenses related to employee obligations or other staffing expenses, and other operating costs and expenses incurred in connection with the process to (a) liquidate, settle, compromise, resolve, or otherwise maximize the value of all Excluded Assets, each of which shall vest in the Reorganization Trust on the Effective Date unless otherwise provided by the Plan, the Purchase Agreement, or the EIX Settlement Agreement; (b) liquidate, compromise, settle, or resolve Excluded Liabilities of the Debtors or Settlement Retained Liabilities of the Debtors that are not compromised, settled, resolved, released, discharged, or enjoined pursuant to the Plan (and are not otherwise Assumed Liabilities or Settlement Assumed Liabilities); (c) liquidate, settle, compromise, or resolve any Claims against or assets held by the Homer City Debtors; (d) assume and perform the obligations of the Debtors and the Non-Debtor Subsidiaries under the Plan or the EIX Settlement Agreement on and after the Effective Date; (e) conduct the EIX Note Sale as set forth in the Plan; (f) take any action, as determined by the Reorganization Trust Oversight Board to be necessary or appropriate, to conduct the EIX Note Sale; and (g) take any other or further action, as determined by the Reorganization Trust Oversight Board to be necessary or appropriate. Certain items not otherwise fixed or mandated by the Plan will ultimately be subject to approval by the Reorganization Trust Oversight Board.

The aggregate amount of the Wind Down Budget for the 30-month period following the Effective Date is \$67,034,611, as set forth in greater detail in the following chart.

Period	Amount of Wind Down Budget
April 1, 2014, through October 1, 2014	\$37,418,329
October 2, 2014, through April 1, 2015	\$11,748,362
April 2, 2015, through October 1, 2015	\$7,166,076
October 2, 2015, through October 1, 2016	\$10,701,844
<b>Aggregate Wind Down Budget for 30-Month Period Following the Effective Date</b>	<b>\$67,034,611</b>

The Managing Trustees may adjust the amounts retained for the Wind Down Budget pursuant to the Plan.

<sup>1</sup> Capitalized terms used but not defined in this Exhibit K shall have the meanings ascribed to them in the *Debtors' Third Amended Joint Chapter 11 Plan of Reorganization* (as amended from time to time, the "Plan").