

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
BANKRUPTCY DIVISION
ST. CROIX, VIRGIN ISLANDS**

In re:)	
)	
HOVENSA L.L.C.,)	Chapter 11
)	
Debtor.)	Case No. 1:15-bk-10003-MFW
)	
)	Re: Docket Nos. 541 and 572

NOTICE OF FILING OF REVISED LIQUIDATING TRUST AGREEMENT

PLEASE TAKE NOTICE that, on January 12, 2016, the above-captioned debtor and debtor-in-possession (the “Debtor”) filed the *Plan Supplement to Debtor’s Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 541] (the “Plan Supplement”) with the United States District Court of the Virgin Islands, Bankruptcy Division, St. Croix, Virgin Islands (the “Bankruptcy Court”).

PLEASE TAKE FURTHER NOTICE that on January 19, 2016, the Debtor filed the *Debtor’s Second Amended Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 563] (the “Second Amended Plan”), which was confirmed by the Bankruptcy Court on January 20, 2016 by the *Order Granting Final Approval of Disclosure Statement and Confirming Chapter 11 Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code*.

PLEASE TAKE FURTHER NOTICE that attached as Exhibit A to the Plan Supplement is the Liquidating Trust Agreement (the “Liquidating Trust Agreement”).

PLEASE TAKE FURTHER NOTICE that attached hereto as **Exhibit A** is a revised Liquidating Trust Agreement (the “Revised Liquidating Trust Agreement”) in substantially final form, which includes changes agreed to by the signatories to the Revised Liquidating Trust Agreement.

PLEASE TAKE FURTHER NOTICE that attached hereto as **Exhibit B** is a redlined copy of the Liquidating Trust Agreement marked against the Revised Liquidating Trust Agreement reflecting the changes. Deletions are signified by a line in the middle of the original text (strikeout) and additions are signified by underlined text.

PLEASE TAKE FURTHER NOTICE that the Debtor reserves all rights to amend, modify or supplement the Liquidating Trust Agreement at any time before the Effective Date of the Second Amended Plan, or any such other date as may be provided for by the Second Amended Plan or by order of the Bankruptcy Court. If the Liquidating Trust Agreement is amended, modified or supplemented in any material respect, the Debtor will file a redline of such document with the Bankruptcy Court.

PLEASE TAKE FURTHER NOTICE that copies of the Second Amended Plan, Plan Supplement, Liquidating Trust Agreement and Revised Liquidating Trust Agreement are available on the Bankruptcy Court's website at <https://ecf.vib.uscourts.gov> in accordance with the procedures and fees set forth therein, as well as free of charge on the website established by the Debtor's claims and noticing agent at <https://cases.primeclerk.com/hovensa>.

[Remainder of page intentionally left blank]

Dated: February 5, 2016
St. Thomas, U.S. Virgin Islands

/s/ Richard H. Dollison

Richard H. Dollison (VI Bar No. 502)
LAW OFFICES OF RICHARD H. DOLLISON, P.C.
48 Dronningens Gade, Suite 2C
St. Thomas, U.S. Virgin Islands 00802
Telephone: (340) 774-7044
Facsimile: (340) 774-7045

-and-

/s/ Lorenzo Marinuzzi

Lorenzo Marinuzzi
Jennifer L. Marines
Samantha Martin
Daniel J. Harris
MORRISON & FOERSTER LLP
250 West 55th Street
New York, New York 10019
Telephone: (212) 468-8000
Facsimile: (212) 468-7900

Counsel for Debtor and Debtor-in-Possession

Exhibit A

Liquidating Trust Agreement

LIQUIDATING TRUST AGREEMENT

by and among HOVENSA, L.L.C.

Jay Borow as Liquidating Trustee

and Wilmington Trust, National Association as Delaware Trustee

Dated as of [_____], 2016

TABLE OF CONTENTS

ARTICLE I AGREEMENT OF TRUST 1

 1.1 Creation and Name 1

 1.1 Name 1

 1.2 Purpose..... 1

 1.3 Transfer of Assets 2

 1.4 Privilege. 2

 1.5 Funding of the Liquidating Trust..... 2

 1.6 Acceptance by the Liquidating Trustee 2

ARTICLE II THE LIQUIDATING TRUSTEE..... 2

 2.1 Appointment 2

 2.2 General Powers 3

 2.3 Valuation..... 5

 2.4 Limitation of Liquidating Trustee’s Authority 6

 2.5 Compensation 6

 2.6 Retention of Professionals 6

 2.7 General Duties, Obligations, Rights, and Benefits of the Liquidating Trustee..... 7

 2.8 Resignation/ Removal/ Replacement of the Liquidating Trustee 7

 2.9 Liquidating Trust Continuance 7

ARTICLE III DELAWARE TRUSTEE..... 7

 3.1 Appointment of Delaware Trustee..... 7

 3.2 Rights of Delaware Trustee..... 8

 3.3 Compensation of Delaware Trustee..... 8

ARTICLE IV OVERSIGHT COMMITTEE 8

 4.1 Oversight Committee Appointment 8

 4.2 Duties of the Oversight Committee. 8

 4.3 Composition of the Oversight Committee and Replacement of Members. 9

 4.4 Voting. 9

 4.5 Compensation; Reimbursement of Expenses..... 9

ARTICLE V LIABILITY OF TRUSTEES 10

 5.1 Standard of Care; Exculpation 10

 5.2 Indemnification 10

 5.3 No Liability for Acts of Successor/Predecessor Trustees 11

 5.4 Reliance by Trustee on Documents or Advice of Counsel 11

 5.5 Insurance..... 12

ARTICLE VI GENERAL PROVISIONS CONCERNING ADMINISTRATION OF THE LIQUIDATING TRUST.....	12
6.1 Reserves and Additional Funds.....	12
6.2 Books and Records	14
6.3 Confidentiality	15
ARTICLE VII BENEFICIAL INTERESTS AND BENEFICIARIES.....	15
7.1 Identification of Beneficiaries.....	15
7.2 Rights of Beneficiaries.....	15
7.3 Interest Beneficial Only	15
7.4 Evidence of Beneficial Interest	15
7.5 Exemption from Registration.....	16
7.6 Transfer of Beneficial Interests.....	16
7.7 Change of Address.....	16
7.8 Effect of Death, Dissolution, Incapacity, or Bankruptcy of Beneficiary	16
7.9 Standing	16
ARTICLE VIII PROCEDURES FOR RESOLVING AND TREATING DISPUTED CLAIMS.....	16
8.1 Prosecution of Objections to Claims.....	16
8.2 Distributions Regarding Disputed Claims	17
8.3 Claims Estimation.....	17
8.4 Expungement or Adjustment to Claims Without Objection	17
8.5 Disputed Claims Reserve.....	18
ARTICLE IX DISTRIBUTIONS	18
9.1 Disbursing Agent	18
9.2 Distributions from Liquidating Trust Assets.....	18
9.3 Calculation of Amounts to Be Distributed.....	18
9.4 Distribution Record Date	18
9.5 Distributions; Withholding	18
9.6 Undeliverable/Unclaimed Distributions	18
9.7 Expenses of Distribution.....	19
9.8 Timing of Distributions Under the Plan.....	19
9.9 Minimum; De Minimis Distributions	19
9.10 Manner of Payment Under the Plan.....	19
9.11 Setoffs	19
9.12 Interest on Claims	20
ARTICLE X TAXES.....	20
10.1 Income Tax Status.....	20
10.2 Tax Returns	20

10.3	Withholding of Taxes and Reporting Related to Liquidating Trust Operations	21
10.4	Tax Identification Numbers	21
ARTICLE XI TERMINATION OF THE LIQUIDATING TRUST		21
11.1	Termination of Liquidating Trust.....	21
11.2	Maximum Term	21
11.3	Events Upon Termination	22
11.4	Winding Up, Discharge, and Release of the Liquidating Trustee.....	22
ARTICLE XII MISCELLANEOUS PROVISIONS		22
12.1	Amendments	22
12.2	Waiver.....	22
12.3	Cumulative Rights and Remedies	22
12.4	No Bond Required	22
12.5	Irrevocability.....	23
12.6	Relationship to the Plan	23
12.7	Applicable Law	23
12.8	Retention of Jurisdiction	23
12.9	Severability	23
12.10	Limitation of Benefits	23
12.11	Notices	23
12.12	Entire Agreement; No Waiver	25
12.13	Headings	25
12.14	Effectiveness	25
12.15	Counterpart Signatures.....	25

This Liquidating Trust Agreement (the “Agreement”), dated as of [____], 2016, is entered into by HOVENSA, L.L.C., a limited liability company organized under the laws of the U.S. Virgin Islands, as debtor and debtor-in-possession in (the “Debtor”) in the chapter 11 case administered under the caption *In re HOVENSA, L.L.C.*, Case No. 1:15-bk-10003-MFW (the “Chapter 11 Case”), and Jay Borow, as liquidating trustee (together with any successor appointed under the terms hereof, the “Liquidating Trustee”) and Wilmington Trust, National Association, as the Delaware trustee (together with any successor appointed under the terms hereof, the “Delaware Trustee”, and together with the Liquidating Trustee, the “Trustees”) for the benefit of the “Beneficiaries” under the terms of the *Second Amended Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code*, dated January 19, 2016, as may be amended, modified or supplemented, the “Plan”), confirmed by the United States District Court of the Virgin Islands, Bankruptcy Division, St. Croix, Virgin Islands (the “Bankruptcy Court”) in the Chapter 11 Case by Order dated January 20, 2016 (Docket No. 572) (the “Confirmation Order”).¹

RECITALS

WHEREAS, on September 15, 2015, the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code with the Bankruptcy Court.

WHEREAS, the Debtor filed the *Disclosure Statement for the Debtor’s Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code* on December 17, 2015 (Docket No. 467);

WHEREAS, the Debtor filed the Plan on January 19, 2016;

WHEREAS, the Bankruptcy Court entered the Confirmation Order on January 20, 2016 and the Plan became effective on [____], 2016 (the “Effective Date”);

WHEREAS, the Liquidating Trust established pursuant to the terms of this Agreement is intended to qualify as a “grantor trust” that is a foreign trust for federal income tax purposes pursuant to the Internal Revenue Code of 1986, as amended (the “Tax Code”) with the Beneficiaries treated as grantors and owners of the Liquidating Trust. For all federal income tax purposes, all parties (including, without limitation, the Debtor, the Liquidating Trustee, and the Beneficiaries) shall treat the transfer of the Liquidating Trust Assets by the Debtor to the Liquidating Trust as a transfer of such assets by the Debtor to the Beneficiaries in proportion to their respective beneficial interest in the Liquidating Trust, followed by a transfer by such Holders to the Liquidating Trust. Thus, the Beneficiaries shall be treated as the grantors and owners of a grantor trust that is a foreign trust for federal income tax purposes.

WHEREAS, the Plan contemplates, among other things, on the Effective Date, (a) the creation of a Liquidating Trust (the “Liquidating Trust”), and (b) the Liquidating Trust will be vested with (i) the Liquidating Trust Cash Distribution; (ii) the Debtor’s rights under section 7.8 of the Purchase Agreement solely to the extent necessary for the Liquidating Trust to resolve

¹ All capitalized terms used but not otherwise defined herein shall have the meaning as set forth in the Plan and such definitions are incorporated herein by reference.

Claims in Classes 4, 5, and 6; (iii) the Debtor's rights with respect to any Executory Contracts or Unexpired Leases identified on the Contract Assumption Schedule as being assigned to the Liquidating Trust; (iv) the Debtor's rights with respect to the Liquidating Trust Insurance Policies and any rights to assert claims with respect to such insurance policies; and (v) the Liquidating Trust Books and Records (collectively, the "Liquidating Trust Assets"); and

WHEREAS, pursuant to the Plan, the Liquidating Trust shall be established to, among other things, administer the Liquidating Trust Assets, resolve Disputed Class 4, 5, and 6 Claims and make distributions to Holders of Allowed Class 4, 5, and 6 Claims, as provided in the Plan and Confirmation Order, 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, the purpose of the Liquidating Trust and the Plan.

NOW, THEREFORE, pursuant to the Plan and the Confirmation Order, in consideration of the promises, the mutual agreements of the parties contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and affirmed, it is hereby agreed as follows:

ARTICLE I AGREEMENT OF TRUST

1.1 Creation and Name. The Debtor, on its own behalf and on behalf of the Beneficiaries, the Liquidating Trustee, and the Delaware Trustee hereby constitute and create the Liquidating Trust, which is the trust provided for and referred to in Article VII of the Plan. The Liquidating Trust shall be organized and established as 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 "Delaware Act"), and this Agreement, together with the Plan, constitute the governing instrument of the Liquidating Trust. Pursuant to section 3810 of the Delaware Act, the Liquidating Trustee and the Delaware Trustee are hereby directed to and shall file a certificate of trust, substantially in the form annexed hereto as Exhibit A (the "Certificate of Trust") with the Delaware Secretary of State as of the date hereof in order to form the Liquidating Trust. Effective as of the date hereof, the Liquidating Trustee shall have all the rights, powers, and duties set forth in this Agreement and the Plan, as applicable, and to the extent not inconsistent with this Agreement and the Plan, in the Delaware Act with respect to accomplishing the purpose of the Liquidating Trust as set forth below.

1.1 Name. The Liquidating Trustee may transact the business and affairs of the Liquidating Trust in the name of the "Hovensa Liquidating Trust."

1.2 Purpose. The purpose of the Liquidating Trust is to implement the provisions of the Plan and the Confirmation Order as specified as being applicable to the Liquidating Trust, and to take such lawful actions incident thereto and not in violation of the Plan, the Confirmation Order, or this Agreement. Accordingly, the primary purpose of the Liquidating Trust is to administer the Liquidating Trust Assets, resolve Disputed Class 4, 5, and 6 Claims and make distributions to Holders of Allowed Class 4, 5, and 6 Claims in accordance with the Plan, Confirmation Order, and the Liquidating Trust Agreement, 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, the liquidating purpose of the Liquidating Trust.

1.3 Transfer of Assets. Pursuant to Article VII.C. of the Plan, upon the Effective Date, the Debtor shall irrevocably transfer, assign, and deliver to the Liquidating Trust, on behalf of the Beneficiaries, all of its rights, title, and interests in the Liquidating Trust Assets notwithstanding any prohibition on assignment under nonbankruptcy law. The Liquidating Trust will accept and hold the Liquidating Trust Assets in the Liquidating Trust for the benefit of the Beneficiaries (and with respect to the Liquidating Trust Insurance Policies, subject to the rights of the third party beneficiaries thereof), subject to the terms of the Plan and this Agreement. On the Effective Date, all Liquidating Trust Assets shall vest and be deemed to vest in the Liquidating Trust in accordance with section 1141 of the Bankruptcy Code; provided, however, that the Liquidating Trustee may abandon or otherwise not accept any Liquidating Trust Assets that the Liquidating Trustee believes, in good faith, have no value to the Liquidating Trust. Any assets the Liquidating Trustee so abandons or otherwise does not accept shall not vest in the Liquidating Trust. As of the Effective Date, all Liquidating Trust Assets vested in the Liquidating Trust shall be free and clear of all Liens, Claims, and Interests, except as otherwise specifically provided in the Plan or in the Confirmation Order. Upon the transfer by the Debtor of the Liquidating Trust Assets to the Liquidating Trust or abandonment of Liquidating Trust Assets by the Liquidating Trustee, the Debtor will have no reversionary or further interest in or with respect to any Liquidating Trust Assets or the Liquidating Trust.

1.4 Privilege. In connection with the Liquidating Trust Assets, any attorney-client privilege, work-product privilege, joint interest privilege or other privilege or immunity (collectively, the "Privileges") attaching to any documents or communications (in any form, including, without limitation, written, electronic or oral) shall be transferred and shall vest in the Liquidating Trustee and his representatives. The Liquidating Trust's receipt of the Privileges associated with the Liquidating Trust Assets shall not operate as a waiver of other privileges possessed or retained by the Debtor, nor shall it operate to eliminate the rights of any co-defendant to any applicable joint privilege.

1.5 Funding of the Liquidating Trust. The Liquidating Trust shall be funded on the Effective Date with the Liquidating Trust Assets, as provided for in the Plan and in the Confirmation Order.

1.6 Acceptance by the Liquidating Trustee. The Liquidating Trustee hereby accepts the trust imposed upon it by this Agreement and agrees to observe and perform that trust on and subject to the terms and conditions set forth in this Agreement, the Plan, and the Confirmation Order. In connection with and in furtherance of the purposes of the Liquidating Trust, the Liquidating Trustee hereby accepts the transfer of the Liquidating Trust Assets.

ARTICLE II THE LIQUIDATING TRUSTEE

2.1 Appointment. The Liquidating Trustee has been selected pursuant to the provisions of the Plan and has been appointed as of the Effective Date. The Liquidating Trustee's appointment shall continue until the earlier of (i) the date that the Liquidating Trust is

dissolved in accordance with this Agreement and (ii) the date of the Liquidating Trustee's resignation, death, dissolution, removal or liquidation.

2.2 General Powers. Except as otherwise provided in this Agreement, the Plan, or the Confirmation Order, and subject to the oversight rights assigned to the Oversight Committee herein and in the Plan, the Liquidating Trustee may control and exercise authority over the Liquidating Trust Assets, and the acquisition, management, and disposition thereof. Nothing in this Agreement shall be deemed to prevent the Liquidating Trustee from taking, or failing to take, any action that, based upon the advice of counsel, it determines it is obligated to take (or fail to take) in the performance of any fiduciary or similar duty that the Liquidating Trustee owes to the Beneficiaries or any other Person or Entity. Any distributions to be made under the Plan from the Liquidating Trust Assets shall be made by the Liquidating Trust. The Liquidating Trustee shall have the authority to bind the Liquidating Trust within the limitations set forth herein, but shall for all purposes hereunder be acting in the capacity of Liquidating Trustee and not individually. No Person dealing with the Liquidating Trust shall be obligated to inquire into the Liquidating Trustee's authority in connection with the acquisition, management, or disposition of Liquidating Trust Assets. Without limiting the foregoing, but subject to the Plan, the Confirmation Order, and other provisions of this Agreement, the Liquidating Trustee shall be expressly authorized to, with respect to the Liquidating Trust and the Liquidating Trust Assets:

- (a) Act as the liquidating trustee for the Liquidating Trust and administer the Liquidating Trust;
- (b) Take any action necessary to transfer the Liquidating Trust Assets to the Liquidating Trust;
- (c) Retain and compensate attorneys, advisors, and other professionals (including, without limitation, any professionals previously retained in the Chapter 11 Case) as may be necessary and appropriate to perform the duties required of, and the obligations assumed by, the Liquidating Trustee under the Plan and this Agreement without Bankruptcy Court approval;
- (d) Act for the Liquidating Trust with the fiduciary duties imposed under applicable law, subject to and limited by the provisions of the Plan and the Liquidating Trust Agreement (and all certificates of formation, membership agreements, and related documents are deemed amended by the Plan to permit and authorize the same);
- (e) Exercise all power and authority that may be or could have been exercised and take all actions that may be or could have been taken solely with respect to the Liquidating Trust Assets by any officer, director, shareholder or other party acting in the name of the Debtor or its Estate with like effect as if duly authorized, exercised, and taken by action of such officers, directors, shareholders, or other party;
- (f) File the Reserve Motion to establish (i) the Class 4 Claims Reserve for the benefit of Holders of Class 4 Claims, and (ii) the Class 5 Claims Reserve for the benefit of Holders of Class 5 Claims, as appropriate in the Liquidating Trustee's discretion, in each case using funds from the GUC Beneficiary Reserve in an amount to be agreed by the Committee, the

Debtor, and the Liquidating Trustee, as appropriate, which amount shall be subject only to the GUC Beneficiary Reserve Carve Out as shall be set forth in the Reserve Motion;

- (g) File the Claims Procedures Motion;
- (h) Open, maintain, and administer bank accounts on behalf of or in the name of the Liquidating Trust;
- (i) Administer, sell, liquidate, or otherwise dispose of Liquidating Trust Assets in accordance with the Plan;
- (j) Receive, manage, invest, supervise, and protect the Liquidating Trust Assets, subject to the limitations provided herein;
- (k) Establish, re-evaluate, adjust, and maintain appropriate reserves, including the GUC Beneficiary Reserve, the Class 4 Claims Reserve, the Class 5 Claims Reserve, the Governmental GUC Reserve, and any Disputed Claims Reserve, as applicable, in accordance with the terms of the Plan;
- (l) Conduct an analysis of Claims in Classes 4, 5, and 6, and prosecute objections thereto or settle or otherwise compromise Claims in Classes 4, 5, and 6 if necessary and appropriate;
- (m) File and prosecute objections to, and negotiate, settle, compromise, withdraw or otherwise resolve, any and all Disputed Claims in Classes 4, 5, and 6 in any manner approved by the Bankruptcy Court;
- (n) Calculate and make the distributions on behalf of the Debtor, the Estate, and the Liquidating Trust to the Holders of Allowed Claims in Classes 4, 5, and 6 in accordance with this Agreement, the Plan, and the Confirmation Order, and take other actions consistent with the Plan and the implementation thereof;
- (o) To the extent necessary, (i) seek a determination of tax liability of the Liquidating Trust under Section 505 of the Bankruptcy Code; (ii) prepare and file any and all tax and information returns required with respect to the Liquidating Trust; (iii) make any tax elections for and on behalf of the Liquidating Trust; (iv) settle or compromise any tax liability, or consent to any claim or assessment relating to taxes, on behalf of the Liquidating Trust; (v) pay taxes, if any, payable for and on behalf of the Liquidating Trust; (vi) cause the Liquidating Trust to withhold from the amount distributable to any Person or Entity such amount as may be sufficient to pay any tax or other charge that the Liquidating Trustee has determined, based upon the advice of any one or more of its agents and professionals, may be required to be withheld therefrom under the income tax laws of the United States or of any state or political subdivision thereof, and (vii) file and prosecute any tax refund claims of the Liquidating Trust;
- (p) Represent the Debtor's Estate before the Bankruptcy Court and other courts of competent jurisdiction solely with respect to matters concerning the Liquidating Trust;

(q) Pay all lawful expenses, debts, charges, taxes, and liabilities of the Liquidating Trust;

(r) Purchase and carry customary insurance policies, pay all insurance premiums and costs as the Liquidating Trustee deems reasonably necessary or advisable (including insurance for the protection of Entities serving as administrators and overseers of the Liquidating Trust), and request and receive reports from any insurer under the Liquidating Trust Insurance Policies regarding the payment of any proceeds of such policies;

(s) Implement, enforce, or discharge all of the terms, conditions, and all other provisions of, and all duties and obligations under, the Plan, the Confirmation Order, and this Agreement;

(t) Maintain the books and records of the Liquidating Trust, including the Liquidating Trust Books and Records;

(u) Upon the Reorganized Debtor's Filing of the Final Certification, undertake all administrative functions remaining in the Chapter 11 Case, including the preparation and filing of post-Effective Date operating reports required under the U.S. Trustee guidelines and the ultimate closing of the Chapter 11 Case;

(v) Invest the Liquidating Trust Assets transferred to the Liquidating Trust (including any earnings thereon or income therefrom) in United States Treasury bills and notes, institutional money market funds, commercial paper, time deposits and certificates of deposit with commercial banks, in each case, with a maturity of twelve (12) months or less; provided, however, that the scope of any such investments shall be limited to include only those investments permitted to be made by a "liquidating trust" within the meaning of Treas. Reg. section 301.7701-4(d) or under applicable Internal Revenue Service ("IRS") guidelines, whether set forth in IRS rulings, revenue procedures, other IRS pronouncements, or otherwise;

(w) Enter into any agreement or execute any document or instrument required by or consistent with the Plan, the Confirmation Order or this Agreement and perform all obligations thereunder;

(x) Comply with the applicable Orders of the Bankruptcy Court and any other court of competent jurisdiction over the matters set forth in the Plan, and all applicable laws and regulations concerning the matters set forth in the Plan; and

(y) Take all other actions consistent with the provisions of the Plan that the Liquidating Trustee deems reasonably necessary or desirable to administer the Liquidating Trust and the Plan.

2.3 Valuation. As soon as practicable after the Effective Date, the Liquidating Trustee, in reliance upon such professionals as the Liquidating Trustee may retain, shall make a good faith valuation (as of the Effective Date) of the Liquidating Trust Assets. Such valuation shall be made available from time to time, to the extent relevant, and used consistently by all parties (including without limitation, the Debtor, the Liquidating Trustee, the Holders of Allowed Claims in Classes 4, 5, and 6, and the Beneficiaries) for all federal income tax purposes.

2.4 Limitation of Liquidating Trustee's Authority.

(a) All power or authority of the Liquidating Trustee shall be as set forth in this Agreement, the Plan, and the Confirmation Order. Notwithstanding anything herein to the contrary, the Liquidating Trustee shall have no authority to take any action in contravention of this Agreement, the Plan, the Confirmation Order, or applicable law, or any action that would make it impossible to carry on the activities of the Liquidating Trust.

(b) For federal tax purposes, the Liquidating Trustee shall not be authorized to engage in any trade or business with respect to the Liquidating Trust Assets or any proceeds therefrom except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust. The Liquidating Trustee shall take such actions consistent with the prompt orderly liquidation of the Liquidating Trust Assets as required by applicable law and consistent with the treatment of the Liquidating Trust as a liquidating trust under Treas. Reg. section 301.7701-4(d), to the extent such actions are permitted by this Agreement. The Liquidating Trustee shall not take, or fail to take, any action that would jeopardize treatment of the Liquidating Trust as a "liquidating trust" for federal income tax purposes.

2.5 Compensation of Liquidating Trustee. Except as otherwise ordered by the Bankruptcy Court, the fees and expenses incurred by the Liquidating Trustee on or after the Effective Date (including taxes) and any reasonable compensation and expense reimbursement Claims (including attorneys' and advisors' fees and expenses) made by the Liquidating Trustee (the "Fees and Expenses") shall be paid in Cash from the GUC Beneficiary Reserve without any further notice to or action, Order, or approval of the Bankruptcy Court.

2.6 Retention of Professionals.

(a) The Liquidating Trustee, on behalf of the Liquidating Trust, may, but shall not be required to, from time to time enter into contracts with, consult with and retain any professional on such terms as the Liquidating Trustee deems appropriate in accordance with the terms hereof. None of the professionals that represented parties in interest in the Chapter 11 Case shall be precluded from being engaged by the Liquidating Trustee solely on account of their service as a professional for such parties in interest prior to the Effective Date.

(b) Each of the Liquidating Trustee's agents and professionals (unless any such agents or professionals and the Liquidating Trustee agree to different treatment) seeking compensation or reimbursement shall serve a statement on the Liquidating Trustee and shall be paid from GUC Beneficiary Reserve in accordance with Section 2.5 of this Agreement. The Liquidating Trustee will have ten (10) days from the date such statement is received to review the statement and object to such statement by serving an objection on the party seeking compensation setting forth the precise nature of the objection and the amount at issue. At the expiration of the ten (10) day period, and without further Order of the Bankruptcy Court (except as provided herein), the Liquidating Trustee shall pay 100% of the amounts requested, except for the portion of such fees and expenses to which any objection has been made. The parties shall attempt to consensually resolve objections, if any, to any statement. If the parties are unable to reach a consensual resolution of any such objection, the party who received an objection to its

fees and expenses may seek payment of such fees and expenses by filing a motion with and obtaining an Order from the Bankruptcy Court and providing notice to the Liquidating Trustee.

2.7 General Duties, Obligations, Rights, and Benefits of the Liquidating Trustee.

The Liquidating Trustee shall have all duties, obligations, rights, and benefits assumed by, assigned to, or vested in the Liquidating Trust under the Plan, the Confirmation Order, this Agreement and any other agreement entered into pursuant to or in connection with the Plan or this Agreement. Such duties, obligations, rights, and benefits include, without limitation, all duties, obligations, rights, and benefits relating to the administration of the Liquidating Trust Assets, administration and satisfaction of the Claims of Beneficiaries, distributions to Holders of Allowed Claims in Classes 4, 5, and 6, administration of the Liquidating Trust and any other duties, obligations, rights, and benefits reasonably necessary to accomplish the purpose of the Liquidating Trust under the Plan, the Confirmation Order, this Agreement, and any other agreement entered into pursuant to or in connection with the Plan or this Agreement.

2.8 Resignation/ Removal/ Replacement of the Liquidating Trustee. The

Liquidating Trustee may resign at any time upon thirty (30) days' written notice delivered to the Bankruptcy Court, provided that such resignation shall only become effective upon the appointment of a permanent or interim successor Liquidating Trustee. The Liquidating Trustee may also be removed by the Bankruptcy Court upon application and after notice and a hearing. In the event of the resignation or removal of the Liquidating Trustee, or in the event that the Liquidating Trustee dies or becomes incapacitated, a successor Liquidating Trustee shall be appointed by the Oversight Committee. Upon its appointment, the successor Liquidating Trustee, without any further act, shall become fully vested with all of the rights, powers, duties, and obligations of its predecessor, except as provided herein, and all responsibilities of the predecessor Liquidating Trustee relating to the Liquidating Trust shall be terminated. In the event the Liquidating Trustee's appointment terminates by reason of death, dissolution, liquidation, resignation, or removal, such Liquidating Trustee shall be immediately compensated for all reasonable fees and expenses accrued through the effective date of termination, whether or not previously invoiced.

2.9 Liquidating Trust Continuance. The death, dissolution, liquidation, resignation, or removal of the Liquidating Trustee shall not terminate the Liquidating Trust or revoke any existing agency created by the Liquidating Trustee pursuant to this Agreement or invalidate any action theretofore taken by the Liquidating Trustee, and the provisions of this Agreement shall be binding upon and inure to the benefit of the successor Liquidating Trustee and all of its successors or assigns.

**ARTICLE III
DELAWARE TRUSTEE**

3.1 Appointment of Delaware Trustee. The Delaware Trustee is appointed to serve as trustee of the Liquidating Trust in the State of Delaware for the sole purpose of satisfying the requirements of Section 3807(a) of the Delaware Act that the Liquidating Trust have at least one trustee with a principal place of business in the State of Delaware, or if a natural person, who is a resident of the State of Delaware. It is understood and agreed by the parties hereto that the Delaware Trustee shall have none of the duties, obligations or liabilities of any other person,

including, without limitation, the Liquidating Trustee. The Delaware Trustee shall satisfy the requirements of Section 3807(a) of the Delaware Act. The duties of the Delaware Trustee shall be limited to (a) accepting legal process served on the Liquidating Trust in the State of Delaware and (b) the execution of any certificates required to be filed with the Delaware Secretary of State which the Delaware Trustee is required to execute under Section 3811 of the Delaware Act. Except for the purpose of the foregoing sentence, the Delaware Trustee shall not be deemed a trustee, and shall have no management responsibilities or owe any fiduciary duties to the Liquidating Trust or the Beneficiaries and shall not be authorized to retain any attorneys (other than those attorneys retained in connection with its appointment as Delaware Trustee), professionals, or advisors without the express written consent of the Liquidating Trustee.

3.2 Rights of Delaware Trustee. The Delaware Trustee shall be entitled to all of the same rights, protections, indemnities, and immunities under this Agreement and with respect to the Liquidating Trust and the Beneficiaries as the Liquidating Trustee. No amendment or waiver of any provision of this Agreement which adversely affects the Delaware Trustee shall be effective without the prior written consent of the Delaware Trustee.

3.3 Compensation of Delaware Trustee. Except as otherwise ordered by the Bankruptcy Court, the fees and expenses (including the reasonable fees and expenses of counsel) incurred by the Delaware Trustee on or after the Effective Date (including taxes) made by the Delaware Trustee shall be paid in Cash from GUC Beneficiary Reserve without any further notice to or action, Order, or approval of the Bankruptcy Court. Prior to any payment to the Delaware Trustee, the Delaware Trustee shall submit to the Liquidating Trustee and the Oversight Committee periodic statements for all reasonable compensation for services rendered, and reimbursement for actual and necessary expenses incurred by the Delaware Trustee. The Liquidating Trustee will have twenty (20) days from the date such statement is received to review the statement, consult with the Oversight Committee with respect to such statement, and object to such statement by serving an objection on the Delaware Trustee setting forth the precise nature of the objection and the amount at issue. At the expiration of the twenty (20) day period, and without further Order of the Bankruptcy Court (except as provided herein), the Liquidating Trustee shall pay 100% of the amounts requested, except for the portion of such fees and expenses to which any objection has been made. The parties shall attempt to consensually resolve objections, if any, to any statement. If the parties are unable to reach a consensual resolution of any such objection, the Delaware Trustee may seek payment of such fees and expenses by filing a motion with and obtaining an Order from the Bankruptcy Court and providing notice to the Liquidating Trustee.

ARTICLE IV OVERSIGHT COMMITTEE

4.1 Oversight Committee Appointment. On or prior to the Effective Date, the Oversight Committee shall be appointed by the Committee pursuant to the terms of the Plan.

4.2 Duties of the Oversight Committee. The Oversight Committee shall oversee the implementation and administration of the Liquidating Trust and shall operate in accordance with the terms set forth in the Plan and this Agreement. Specifically, the Oversight Committee shall have the following rights, obligations and duties:

- (a) approve the Liquidating Trustee's and Delaware Trustee's compensation terms;
- (b) approve the Liquidating Trustee's retention of counsel and other professionals, as well as the terms governing the engagement of such counsel and professionals, who may have been previously engaged by the Debtor and/or the Committee, and establish retainer terms, conditions and budgets;
- (c) in the event of the resignation, incapacity, or death of the Liquidating Trustee or Delaware Trustee, to appoint a successor Liquidating Trustee or Delaware Trustee;
- (d) review and approve any Claims Procedures Motion prior to the filing of same;
- (e) review and approve any settlements and agreements related to the allowance of Claims; and
- (f) generally oversee, review and guide the Liquidating Trustee on the performance of its duties and its activities proposed and underway, as often as is necessary and appropriate to implement the Plan;

4.3 Composition of the Oversight Committee and Replacement of Members.

- (a) The Oversight Committee shall at all times have one member holding or representing a Tort Claim, one member holding or representing a Trade Claim, and one independent member who may be an existing committee professional.
- (b) A member may resign at any time upon ten (10) days written notice delivered to the Oversight Committee and the Liquidating Trustee and shall, in such notice, designate such member's successor; provided, however, that such successor must hold or represent the same interests or status as the resigning member.
- (c) In the event that a member of the Oversight Committee resigns without appointing a successor or dies or becomes incapacitated, the remaining members of the Oversight Committee shall appoint a successor; provided, however, that such successor must hold or represent the same interests or status as the member being replaced. In the event that the remaining members become deadlocked on the appointment of a replacement member, such deadlock shall be resolved by the Liquidating Trustee.

4.4 Voting. Oversight Committee decisions shall be made with the approval of at least two (2) members.

4.5 Compensation; Reimbursement of Expenses. Each Oversight Committee member shall be entitled to reasonable compensation for services provided and for the reimbursement of reasonable expenses incurred in the exercise of such member's duties as set forth herein. The members shall be authorized to establish the terms on which members shall be compensated as well as procedures for the review and payment of compensation and reimbursement of expenses of members. Any disputes between and among the Oversight

Committee, its Members or the Liquidating Trustee shall be resolved by the Bankruptcy Court, and the Liquidating Trustee shall bring any such dispute to the Bankruptcy Court for resolution if so requested in writing by any of such parties.

ARTICLE V LIABILITY OF TRUSTEES

5.1 Standard of Care; Exculpation. Neither the Liquidating Trustee, the Delaware Trustee, Oversight Committee Member, nor any director, officer, affiliate, employee, employer, professional, successor, assign, agent, or representative of the Trustees or Oversight Committee Members (each, an “Exculpated Party” and collectively, the “Exculpated Parties”) shall be liable for any losses, claims, damages, liabilities, obligations settlements, proceedings, suits, judgments, causes of action, litigation, actions, or investigations (whether civil or administrative and whether sounding in tort, contract, or otherwise), penalties, costs, and expenses, including reasonable fees and disbursements (collectively referred to herein as “Losses”), whether or not in connection with litigation in which any Exculpated Party is a party, or enforcing this Agreement (including these exculpation provisions), as and when imposed on the Exculpated Parties, incurred, caused by, relating to, based upon, or arising out of (directly or indirectly) the Exculpated Parties’ execution, delivery, and acceptance of, or the performance or nonperformance of its powers, duties, and obligations under, this Agreement, the Plan, or the Confirmation Order or as may arise by reason of any action, omission, or error of an Exculpated Party; provided, however, that the foregoing limitation shall not apply to any Losses suffered or incurred by any Beneficiary that are found in a final judgment by a court of competent jurisdiction (not subject to further appeal) to have resulted from the fraud, gross negligence, or willful misconduct of such Exculpated Party. Every act taken or omitted, power exercised, or obligation assumed by the Liquidating Trust or any Exculpated Party pursuant to the provisions of this Agreement shall be held to be taken or omitted, exercised, or assumed, as the case may be, by the Trustees or any Exculpated Party acting for and on behalf of the Liquidating Trust and not otherwise; provided, however, that none of the foregoing Entities or Persons are deemed to be responsible for any other such Entities’ or Persons’ actions or inactions. Except as provided in the first proviso of the first sentence of this Section 5.1, every Person, firm, corporation, or other Entity contracting or otherwise dealing with or having any relationship with the Liquidating Trust or any Exculpated Party shall have recourse only to the Liquidating Trust Assets for payment of any liabilities or other obligations arising in connection with such contracts, dealings, or relationships and the Liquidating Trust and the Exculpated Parties shall not be individually liable therefor. Except as provided in the first proviso of the first sentence of this Section 5.1, in no event shall an Exculpated Party be liable for indirect, punitive, special, incidental, or consequential damage or loss (including but not limited to lost profits) whatsoever, even if the Exculpated Parties have been informed of the likelihood of such loss or damages and regardless of the form of action.

5.2 Indemnification. The Liquidating Trustee, the Delaware Trustee, Oversight Committee Member, and any director, officer, affiliate, employee, employer, professional, successor, assign, agent, or representative of the Trustees or Oversight Committee Members (each, an “Indemnified Party” and collectively, the “Indemnified Parties”) shall be defended, held harmless, and indemnified from time to time by the Liquidating Trust against any and all Losses, including, without limitation, the costs for counsel or others in investigating, preparing,

defending, or settling any action or Claim, whether or not in connection with litigation in which any Indemnified Party is a party, or enforcing this Agreement (including these indemnity provisions), as and when imposed on the Indemnified Parties, incurred, caused by, relating to, based upon or arising out of (directly or indirectly) the Indemnified Parties' execution, delivery, and acceptance of or the performance or nonperformance of its powers, duties, and obligations under this Agreement, the Plan, or the Confirmation Order or as may arise by reason of any action, omission, or error of an Indemnified Party; provided, however, such indemnity shall not apply to any such Losses to the extent it is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) to have resulted from the fraud, gross negligence, or willful misconduct of such Indemnified Party. Notwithstanding anything to the contrary in this Agreement, any Indemnified Party shall be entitled to obtain advances from the GUC Beneficiary Reserve to cover its reasonably anticipated expenses of defending itself in any action threatened against or brought against it as a result of any act or omission, actual or alleged, of the Trustees in their capacities as such. Without limiting the generality or effect of the foregoing, within five (5) Business Days after a written request by an Indemnified Party to the Liquidating Trustee, the Liquidating Trustee shall, in accordance with such request, but without duplication, from the GUC Beneficiary Reserve, (a) pay such expenses on behalf of the Indemnified Party, (b) advance to the Indemnified Party Cash in amount sufficient to pay such expenses, or (c) reimburse the Indemnified Party for such expenses; provided that the Indemnified Party shall provide an undertaking to repay promptly any amounts so paid, advanced, or reimbursed from the GUC Beneficiary Reserve upon the entry of a Final Order finding that such Indemnified Party was not entitled to indemnity under this Section 5.2.

5.3 No Liability for Acts of Successor/Predecessor Trustees. Upon the appointment of a successor Liquidating Trustee or a successor Delaware Trustee and the delivery of the Liquidating Trust Assets to the successor Liquidating Trustee, the predecessor Liquidating Trustee, the predecessor Delaware Trustee, and any director, officer, affiliate, employee, employer, professional, agent, or representative of the predecessor Trustee shall have no further liability or responsibility with respect thereto. A successor Trustee shall have no duty to examine or inquire into the acts or omissions of its immediate or remote predecessor and no successor Trustee shall be in any way liable for the acts or omissions of any predecessor Trustee unless a successor Trustee expressly assumes such responsibility. A predecessor Trustee shall have no liability for the acts or omissions of any immediate or subsequent successor Trustee for any events or occurrences subsequent to the cessation of its role as Trustee.

5.4 Reliance by Trustee on Documents or Advice of Counsel. Except as otherwise provided in this Agreement, the Liquidating Trustee, the Delaware Trustee, the Oversight Committee, and any director, officer, affiliate, employee, employer, professional, agent, or representative of the Trustees or an Oversight Committee Member may rely, and shall be protected from liability for acting or failing to act, upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document reasonably believed in good faith by such Trustee or Oversight Committee Member to be genuine and to have been presented by an authorized party. None of the Liquidating Trustee, the Delaware Trustee, an Oversight Committee Member, nor any director, officer, affiliate, employee, employer, professional, agent, or representative of the Trustees or Oversight Committee Members shall be liable for any action taken or omitted or suffered by the Trustees or

Oversight Committee Members, in reasonable reliance upon the advice of counsel or other professionals engaged by the Trustees in accordance with this Agreement.

5.5 Insurance. The Liquidating Trustee may purchase (using Cash from the GUC Beneficiary Reserve) and carry customary insurance policies, and pay from the GUC Beneficiary Reserve all insurance premiums and costs the Liquidating Trustee deems reasonably necessary or advisable, including, without limitation, purchasing any errors and omissions insurance with regard to any Losses the Trustees or Oversight Committee Members may incur, arising out of or due to their actions or omissions, or consequences of such actions or omissions, with respect to the implementation and administration of the Plan or this Agreement. The Liquidating Trustee may also carry and pay from the GUC Beneficiary Reserve all insurance premiums and costs the Liquidating Trustee deems reasonably necessary or advisable with respect to the Liquidating Trust Insurance Policies; provided, however, that with respect to the Liquidating Trust Insurance Policies, the Liquidating Trustee shall have the discretion to cease the payment of premiums and to abandon any Liquidating Trustee Insurance Policies the Liquidating Trustee determines to be burdensome or of no value to the Liquidating Trust. For the avoidance of doubt, notwithstanding anything to the contrary herein, nothing shall affect the rights of any party other than the Liquidating Trustee under any of the Liquidating Trust Insurance Policies, including, without limitation, the D&O Policies.

ARTICLE VI GENERAL PROVISIONS CONCERNING ADMINISTRATION OF THE LIQUIDATING TRUST

6.1 Reserves and Additional Funds. The Liquidating Trust shall maintain the GUC Beneficiary Reserve and the Governmental GUC Reserve, and to the extent determined appropriate by the Liquidating Trustee, the Class 4 Claims Reserve, the Class 5 Claims Reserve (each, a “Reserve”), and any disputed claims reserves (each, a “Disputed Claims Reserve”), and shall distribute the funds from such Reserves pursuant to and in accordance with the provisions of the Plan and this Agreement. The Liquidating Trustee shall not be obligated to physically segregate and maintain separate accounts for any Reserve, except, however, that the Governmental GUC Reserve shall be physically segregated and maintained in accounts separate and apart from the GUC Beneficiary Reserve and reserves or allowances established from funds in the GUC Beneficiary Reserve. Separate Reserves and funds may be book-keeping entries or accounting methodologies, which may be revised from time to time, to enable the Liquidating Trustee to determine the amount of distributable Cash, Reserves and amounts to be paid to parties in interest.

(a) GUC Beneficiary Reserve. To the extent not already established prior to the Effective Date, on the Effective Date or as soon as reasonably practicable thereafter, the Liquidating Trustee shall establish and thereafter maintain, the GUC Beneficiary Reserve with the principal amount of \$29,500,000 in Cash in an authorized depository in the state of New York, which funds shall vest in the Liquidating Trust free and clear of all Liens, Claims, encumbrances, charges, and other interests, except as otherwise specifically provided in the Plan or in the Confirmation Order. Funds in the GUC Beneficiary Reserve shall be used by the Liquidating Trustee for the payment of Allowed Claims in Classes 4 and 5, subject only to the GUC Beneficiary Reserve Carve Out. The GUC Beneficiary Reserve shall not be used for the

payment of Allowed Claims in Class 6 or for any fees, expenses or costs associated with the administration, adjustment, dispute or allowance of Claims in Class 6, which such amounts shall be paid solely from the Governmental GUC Reserve. To the extent any funds remain in the GUC Beneficiary Reserve after all Allowed Claims in Classes 4 and 5 have been paid or otherwise satisfied in full, such remaining funds shall be transferred as determined by the Liquidating Trustee in its reasonable discretion, including for use in satisfying Allowed Claims in Class 6.

(b) Reserve Motion. The Liquidating Trustee may file a motion to establish (a) the Class 4 Claims Reserve for the benefit of Holders of Allowed Claims in Class 4, and (b) the Class 5 Claims Reserve for the benefit of Holders of Allowed Claims in Class 5. Each of the Class 4 Claims Reserve and the Class 5 Claims Reserve, if established, shall be funded with Cash from the GUC Beneficiary Reserve in amounts to be agreed by the Committee, the Debtor, and the Liquidating Trustee, as appropriate, which amounts shall be subject only to the GUC Beneficiary Reserve Carve Out as described in the Plan. To the extent any funds remain in the Class 4 Claims Reserve and the Class 5 Claims Reserve after all Allowed Claims in Classes 4 and 5 have been paid or otherwise satisfied in full, such remaining funds shall be transferred to the GUC Beneficiary Reserve or the Governmental GUC Reserve, as determined by the Liquidating Trustee in its reasonable discretion, and, to the extent such Reserves have been terminated, as determined by the Liquidating Trustee in its reasonable discretion, including for use in satisfying Allowed Claims in Class 6.

(c) Governmental GUC Reserve. To the extent not already established prior to the Effective Date, on the Effective Date or as soon as reasonably practicable thereafter, the Liquidating Trustee shall establish and thereafter maintain, the Governmental GUC Reserve with the principal amount of \$500,000 in Cash in an authorized depository in the state of New York, which funds shall vest in the Liquidating Trust free and clear of all Liens, Claims, encumbrances, charges, and other interests, except as otherwise specifically provided in the Plan or in the Confirmation Order. Funds in the Governmental GUC Reserve shall be used by the Liquidating Trustee for the administration, adjustment, dispute, or allowance of Claims in Class 6 and including for the payment of Allowed Claims in Class 6. The Liquidating Trustee shall not have any duty or obligation to use any funds from the GUC Beneficiary Reserve the administration, adjustment, dispute, or allowance of Claims in Class 6 or for the payment of Allowed Claims in Class 6 and shall separately administer the Government GUC Reserve for the benefit of the holders of Allowed Claims in Class 6. To the extent any funds remain in the Governmental GUC Reserve after all Allowed Claims in Class 6 have been paid or otherwise satisfied in full, such remaining funds shall be transferred as determined by the Liquidating Trustee in its reasonable discretion, including for use in satisfying Allowed Claims in Classes 4 and 5.

(d) Separate Administration of Government GUC Reserve. The Liquidating Trustee shall not have any duty or obligation to use any funds contained in the GUC Beneficiary Reserve for the administration, adjustment, dispute, or allowance of Claims in Class 6 or for the payment of Allowed Claims in Class 6, unless all Allowed Claims in Classes 4 and 5 have been paid in full. The Liquidating Trustee shall separately administer Government GUC Reserve for the benefit of the Holders of Claims in Class 6. Further, the Liquidating Trustee shall not have any duty or obligation to use any funds from the Government GUC Reserve for the administration, adjustment, dispute, or allowance of Claims in Classes 4 and 5 or for the payment

of Allowed Claims in Classes 4 and 5, unless all Allowed Claims in Class 6 are paid in full. The Liquidating Trustee shall separately administer the GUC Beneficiary Reserve for the benefit of the Holders of Claims in Classes 4 and 5. Notwithstanding anything herein to the contrary, the Liquidating Trustee may apportion expenses of the Liquidating Trust between the GUC Beneficiary Reserve and Government GUC Reserve to the extent required to ensure that each of GUC Beneficiary Reserve and Government GUC Reserve bear their respective shares of Trust Expenses.

(e) Disputed Claims Reserves. On the Effective Date and periodically thereafter, the Liquidating Trustee shall estimate appropriate reserves of Cash from (i) the GUC Beneficiary Reserve to be set aside in a Disputed Claims Reserve in order to pay or reserve for Disputed Class 4 and 5 Claims, (ii) the Governmental GUC Reserve to be set aside in a Disputed Claims Reserve in order to pay or reserve for Disputed Class 6 Claims, and (iii) to the extent the Reserve Motion is granted, each of the Class 4 Claims Reserve and the Class 5 Claims Reserve to be set aside in the applicable Disputed Claims Reserves in order to pay or reserve for Disputed Class 4 Claims and Disputed Class 5 Claims, respectively. In each case, any amounts set aside to pay or reserve for Disputed Claims shall include the amounts needed to fund the ongoing costs and expenses of such reserve, including, without limitation, taxes in respect of Disputed Claims, if any. Each Disputed Claims Reserve shall be closed and extinguished by the Liquidating Trustee when all distributions required to be made therefrom under the Plan and this Agreement have been made. Upon closure of any Disputed Claims Reserve, all Cash and other property held in that Disputed Claims Reserve shall be returned to the GUC Beneficiary Reserve, the Class 4 Claims Reserve, the Class 5 Claims Reserve, or the Governmental GUC Reserve, as applicable.

6.2 Books and Records.

(a) The Liquidating Trustee or its designated agent shall maintain in respect of the Liquidating Trust and the Beneficiaries the books and records (including the Debtor's books and records) relating to the Claims of the Liquidating Trust Beneficiaries, the Liquidating Trust Assets, the income of the Liquidating Trust and the payment of expenses of, and liabilities of claims against or assumed by, the Liquidating 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. Such books and records shall be maintained on a modified cash or other comprehensive basis of accounting necessary to facilitate compliance with the tax reporting requirements of the Liquidating Trust.

(b) The Reorganized Debtor, the Liquidating Trustee, and the Environmental Response Trustee shall coordinate to develop a document sharing, retention, and maintenance policy with respect to the Reorganized Debtor Books and Records, the Liquidating Trust Books and Records, and the Environmental Response Trust Books and Records, the terms of which shall be agreed upon among the Reorganized Debtor, the Liquidating Trustee, and the Environmental Response Trustee.

(c) The Liquidating Trust shall reasonably cooperate with the Reorganized Debtor and the Environmental Response Trust, and with the JV Parties, their Affiliates, and their respective representatives, and shall provide or grant access to: (a) readily available documents

and information, including privileged documents and information, and (b) such personnel having knowledge of the location or contents of such documents, relating to or concerning, (i) with respect to the Reorganized Debtor, the Administrative, Priority Tax, Professional Fee, Class 1, and Class 2 Claims, (ii) with respect to the Environmental Response Trust, the Environmental Remediation Program and the nondischargeable Environmental Claims, and (iii) with respect to the JV Parties, for legitimate business reasons. The Liquidating Trust shall generally assist (a) the Reorganized Debtor in the adjustment and allowance of Administrative, Priority Tax, Professional Fee, Class 1, and Class 2 Claims, as may be reasonably requested by the Reorganized Debtor, and (b) the Environmental Response Trust in connection with the exercise of its duties under the Plan, as may be reasonably requested by the Environmental Response Trust.

6.3 Confidentiality. The Liquidating Trustee shall, during the period that it serves as Trustee under this Agreement and thereafter, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any entity to which any of the Liquidating Trust Assets relates or of which the Liquidating Trustee has become aware in its capacity as such; provided, however, that this section 6.3 shall not apply to information provided in compliance with an Order of the Bankruptcy Court.

ARTICLE VII BENEFICIAL INTERESTS AND BENEFICIARIES

7.1 Identification of Beneficiaries. The record Beneficiaries shall be recorded and set forth in a register (the “Beneficiary Register”) maintained by the Liquidating Trustee. The Liquidating Trustee shall update the Beneficiary Register periodically as Disputed Claims become Allowed Claims. All references in this Agreement to Beneficiaries shall be read to mean Beneficiaries of record as set forth in the official register maintained by the Liquidating Trustee on such official registry (including any permitted successors or assigns, as applicable). The Liquidating Trustee may deem and treat the Beneficiary reflected as the owner of a beneficial interest on the Register and as the absolute owner thereof for the purposes of receiving distributions and payments on account thereof for federal and state income tax purposes and for all other purposes whatsoever.

7.2 Rights of Beneficiaries. Each Beneficiary shall be entitled to (i) participate in the rights due to such Beneficiary under the Plan and this Agreement, (ii) take and hold its uncertificated beneficial interest subject to all of the terms and provisions of this Agreement, the Confirmation Order, the Plan, and any other Order of the Bankruptcy Court, and (iii) receive distributions as set forth in the Plan.

7.3 Interest Beneficial Only. Ownership of a beneficial interest in the Liquidating Trust shall not entitle any Beneficiary to any title in or to the Liquidating Trust Assets or to any right to call for a partition or division of the Liquidating Trust Assets or to require an accounting.

7.4 Evidence of Beneficial Interest. Ownership of a beneficial interest in the Liquidating Trust shall not be evidenced by any certificate, security, or receipt or in any other form or manner whatsoever, except as maintained on the books and records of the Liquidating Trust by the Liquidating Trustee. In the absence of manifest error, the ownership of beneficial

interests as reflected on the books and records of the Liquidating Trust maintained by the Liquidating Trustee shall be conclusive and binding on all owners of beneficial interests.

7.5 Exemption from Registration. The issuance of beneficial interests in the Liquidating Trust under the Plan are exempt from registration pursuant to section 1145 of the Bankruptcy Code, as amended, and by other applicable state and local laws requiring registration of securities.

7.6 Transfer of Beneficial Interests. Beneficial interests in the Liquidating Trust shall not be transferrable except upon death of the interest holder or by operation of law.

7.7 Change of Address. A Beneficiary may, after the Effective Date, select an alternative distribution address by filing a notice with the Bankruptcy Court (copy served on the Liquidating Trustee and Disbursing Agent) identifying such alternative distribution address. Absent such notice, the Liquidating Trustee shall not recognize any such change of distribution address. Such notification shall be effective only upon receipt by the Liquidating Trustee.

7.8 Effect of Death, Dissolution, Incapacity, or Bankruptcy of Beneficiary. The death, dissolution, incapacity, or bankruptcy of a Beneficiary during the term of the Liquidating Trust shall not (i) operate to terminate the Liquidating Trust during the term of the Liquidating Trust; (ii) entitle any representative or creditors of the deceased, incapacitated, or bankrupt Beneficiary (a) to an accounting, (b) to take any action in any court or elsewhere for the distribution of the Liquidating Trust Assets, or (c) to a partition of the Hovensa Trust Assets; or (iii) otherwise affect the rights and obligations of the Beneficiary under this Agreement or in the Liquidating Trust.

7.9 Standing. Except as expressly provided in this Agreement, the Plan, or the Confirmation Order, a Beneficiary does not have standing to direct the Liquidating Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any party upon or with respect to the Liquidating Trust Assets.

ARTICLE VIII PROCEDURES FOR RESOLVING AND TREATING DISPUTED CLAIMS

8.1 Prosecution of Objections to Claims and Claims Procedures. The Liquidating Trustee shall have and shall retain any and all rights and defenses that the Debtor had with respect to any Claim in Classes 4, 5, and 6 against, or assumed by, the Liquidating Trust, except with respect to any Claim in Classes 4, 5, and 6 deemed Allowed as of the Effective Date. The Liquidating Trustee shall have the exclusive authority to (a) File objections to Claims in Classes 4, 5, and 6; (b) File a Claims Procedures Motion as described in the Plan; and (c) settle, compromise, withdraw, or litigate to judgment objections on behalf of the Debtor's Estate to any and all such Claims. The Liquidating Trustee shall have the authority to administer and adjust the Beneficiary Register and the Claims Register, as applicable, with respect to Claims in Classes 4, 5, and 6 to reflect any such settlements or compromises and no further notice to or action, Order, or approval of the Bankruptcy Court with respect to such settlements or compromises shall be required.

8.2 Distributions Regarding Disputed Claims. Distributions made after the Effective Date to Holders of Disputed Claims that are not Allowed Claims as of the Effective Date but which later become Allowed Claims shall, in the reasonable discretion of the Liquidating Trustee, be deemed to have been made by the Liquidating Trustee on the Effective Date, unless the Liquidating Trustee and the Holder of such Claim agree otherwise. Any distribution that is not made on the Initial Distribution Date or on any other date specified in the Plan because the Claim that would have been entitled to receive that distribution is not an Allowed Claim on such date, shall be held by the Disbursing Agent and distributed on the next Subsequent Distribution Date that occurs after such Claim is Allowed. No interest shall accrue or be paid on the unpaid amount of any distribution paid pursuant to the Plan. Notwithstanding any provision otherwise in the Plan and except as may be agreed to by the Liquidating Trustee, on the one hand, and the Holder of a Disputed Claim, on the other hand, no partial payments and no partial distributions shall be made with respect to any Disputed Claim until all Disputed Claims held by the Holder of such Disputed Claim have become Allowed Claims or have otherwise been resolved by settlement or Final Order.

8.3 Claims Estimation.

(a) On and after the Effective Date, the Liquidating Trustee may, at any time, request that the Bankruptcy Court estimate (i) any Disputed Claim in Class 4, 5, or 6 pursuant to applicable law and (ii) any contingent or unliquidated Claim in Class 4, 5, or 6 pursuant to applicable law, in each case regardless of whether the Debtor or the Liquidating Trustee has previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection.

(b) Notwithstanding any provision otherwise in the Plan to the contrary, a Claim in Class 4, 5, or 6 that has been expunged from the Claims Register but that is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any Disputed, contingent, or unliquidated Claim in Class 4, 5, or 6, that estimated amount shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim for all purposes under the Plan, including for purposes of distributions, and the Liquidating Trustee may elect to pursue additional objections to the ultimate distribution on such Claim. If the estimated amount constitutes a maximum limitation on such Claim, the Liquidating Trustee may elect to pursue any supplemental proceedings to object to any ultimate distribution on account of such Claim. Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any Holder of a Claim in Class 4, 5, or 6 that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation unless such Holder has Filed a motion requesting the right to seek such reconsideration on or before 21 days after the date on which such Claim is estimated. All of the aforementioned Claims and objection, estimation, and resolution procedures are cumulative and not exclusive of one another. Claims in Classes 4, 5, and 6 may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

8.4 Expungement or Adjustment to Claims Without Objection. Any Claim in Class 4, 5, or 6 that has been paid, satisfied, or superseded may be expunged on the Claims

Register by the Liquidating Trustee or the Claims and Noticing Agent, as applicable, and any Claim in Class 4, 5, or 6 that has been amended may be adjusted thereon by the Liquidating Trustee without a Claims objection having to be Filed and without any further notice to or action, Order, or approval of the Bankruptcy Court.

8.5 Disputed Claims Reserve. The Liquidating Trustee shall create Disputed Claims Reserves in accordance with Section 6.1(e) of this Agreement.

ARTICLE IX DISTRIBUTIONS

9.1 Disbursing Agent. The Liquidating Trustee shall be the Disbursing Agent with respect to Allowed Claims in Classes 4, 5, and 6 and shall make all distributions on Allowed Claims in Classes 4, 5, and 6.

9.2 Distributions from Liquidating Trust Assets. All payments to be made by the Liquidating Trust to any Beneficiary shall be made only in accordance with the Plan, the Confirmation Order, and this Agreement and out of the Liquidating Trust Assets (or from the income and proceeds realized from the Liquidating Trust Assets), subject to any amounts set aside in the Disputed Claims Reserves.

9.3 Calculation of Amounts to Be Distributed. Each Holder of an Allowed Claim against the Debtor shall receive the full amount of the distributions that the Plan provides for Allowed Claims in the applicable Class.

9.4 Distribution Record Date. On the Distribution Record Date, the Claims Register shall be closed and the Disbursing Agent shall be authorized and entitled to recognize only those record Holders listed on the Claims Register as of the close of business on the Distribution Record Date.

9.5 Distributions; Withholding. The Liquidating Trustee shall make distributions to Holders of Allowed Claims in Classes 4, 5, and 6 as provided in the Plan. All such distributions shall be made as provided, and subject to any withholding or reserve, in this Agreement, the Plan or the Confirmation Order. Additionally, the Liquidating Trustee may withhold from amounts distributable to any Beneficiary any and all amounts, determined in the Liquidating Trustee's sole discretion, to be required by any law, regulation, rule, ruling, directive, or other governmental requirement. In addition, all distributions under this Agreement shall be net of the actual and reasonable costs of making such distributions. The net income of the Liquidating Trust and all net proceeds from the sale of Liquidating Trust Assets shall be distributed at least annually (except that the Liquidating Trustee may retain an amount of cash or other Liquidating Trust Assets or net income of the Liquidating Trust reasonably necessary to maintain the value of the Liquidating Trust Assets and to meet claims and contingent liabilities (including Disputed Claims)).

9.6 Undeliverable/Unclaimed Distributions. In the event that any distribution to any Holder is returned as undeliverable, no distribution to such Holder shall be made unless and until the Liquidating Trustee and the Disbursing Agent are notified of the then current address of such Holder, at which time such distribution shall be made to such Holder without interest.

Amounts in respect of undeliverable distributions shall be returned to the Liquidating Trust until such distributions are claimed. All undeliverable distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of six months from the date the initial distribution is made. After such date, all unclaimed property or interests in property shall revert (notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary) to the Liquidating Trust automatically and without need for a further Order by the Bankruptcy Court for distribution in accordance with the Plan, and the Claim of any Holder to such property or interest in property shall be released, settled, compromised, and forever barred.

9.7 Expenses of Distribution. All distributions to be made by the Liquidating Trust under the Plan shall be net of the actual and reasonable costs of making such distributions, as set forth in section 2.5 of this Agreement.

9.8 Timing of Distributions Under the Plan. On and after the Effective Date, the Disbursing Agent shall make the distributions required to be made on account of Allowed Claims under the Plan. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, in which case such payment shall be deemed to have occurred when due.

9.9 Minimum; De Minimis Distributions. No Cash payment of less than \$50.00, in the reasonable discretion of the Liquidating Trustee shall be made to a Holder of an Allowed Claim on account of such Allowed Claim. If a Holder of an Allowed Claim would be entitled to receive less than \$50.00 as of the time of a particular distribution, but would be entitled to receive more than \$50.00 in combination with later distributions, the Liquidating Trustee will combine such distributions with later distributions to such Holder of an Allowed Claim so that such Holder may eventually be entitled to a distribution of at least \$50.00 in value. To the extent that the aggregate of such distributions never exceeds \$50.00, such funds shall remain with and vest in the Liquidating Trust for distribution to other Holders of Allowed Claims.

9.10 Manner of Payment Under the Plan. Unless the Liquidating Trustee and the Entity receiving a payment agrees otherwise, any payment in Cash to be made under the Plan shall be made at the election of the Liquidating Trustee by check or by wire transfer.

9.11 Setoffs. Except as otherwise provided in the Plan, the Liquidating Trustee pursuant to the Bankruptcy Code (including sections 553 and 558 of the Bankruptcy Code), applicable nonbankruptcy law, or as may be agreed to by the Holder of a Claim in Class 4, 5, or 6, may set off against any Allowed Claim in Class 4, 5, or 6 on account of any Proof of Claim or other pleading Filed with respect thereto prior to the Combined Hearing and the distributions to be made pursuant to the Plan on account of such Allowed Claim in Class 4, 5, or 6 (before any distribution is made on account of such Allowed Claim), any claims, rights, and Causes of Action of any nature that the Debtor's Estate may hold against the Holder of such Allowed Claim, to the extent such claims, rights, or Causes of Action against such Holder have not been otherwise compromised or settled on or prior to the Effective Date (whether pursuant to the Plan or otherwise); provided that neither the failure to effect such a setoff nor the allowance of any Claim in Classes 4, 5, or 6 pursuant to the Plan shall constitute a waiver or release by the

Liquidating Trustee of any such claims, rights, and Causes of Action that the Debtor's Estate may possess against such Holder. In no event shall any Holder of a Claim in Class 4, 5, or 6 be entitled to set off any Claim against any claim, right, or Cause of Action of the Debtor's Estate unless such Holder has timely Filed a Proof of Claim with the Bankruptcy Court expressly preserving such setoff; provided that nothing in the Plan shall prejudice or be deemed to have prejudiced the Debtor's or the Liquidating Trustee's right to assert that any Holder's setoff rights were required to have been asserted by motion or pleading filed with the Bankruptcy Court prior to the Effective Date.

9.12 Interest on Claims. Notwithstanding anything to the contrary in the Plan, no Holder of an Allowed Claim in Class 4, 5, or 6 shall, on account of such Allowed Claim, receive a distribution in excess of the Allowed amount of such Claim plus any interest accruing on such Claim that is actually payable in accordance with the Plan.

9.13 Charitable Distributions. The Liquidating Trustee shall have the discretion to cease distributions when the corpus of the Liquidating Trust is reduced to \$10,000 or less and to transfer any remaining funds to a charitable organization that qualifies as an exempt organization under Section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code and is benefitting the USVI as determined in the Liquidating Trustee's reasonable discretion.

ARTICLE X TAXES

10.1 Income Tax Status. Consistent with Revenue Procedure 94-45, 1994-28 I.R.B. 124, the Liquidating Trust shall be treated as a liquidating trust pursuant to Treas. Reg. section 301.7701-4(d) and as a grantor trust that is a foreign trust pursuant to the Tax Code. As such, the Beneficiaries will be treated as both the grantors and the deemed owners of the Liquidating Trust. Any items of income, deduction, credit, and loss of the Liquidating Trust shall be allocated for federal income tax purposes to the Beneficiaries. The Liquidating Trust shall (a) treat each Disputed Claims Reserve, and the Liquidating Trust Assets allocable thereto, as a "disputed ownership fund" governed by Treasury Regulation section 1.468B-9 by timely making an election, (b) file such tax returns and pay such taxes as may be required consistent with such treatment, and (c) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes.

10.2 Tax Returns. The Liquidating Trust shall annually file Form 3520-A in a timely manner with the IRS and furnish the information provided on Form 3520-A to Liquidating Trust Beneficiaries that are "United States persons" as defined in the Tax Code. In addition, the Liquidating Trust shall file in a timely manner such other tax returns, including any federal, state, local or non-U.S. (including the U.S. Virgin Islands) tax returns, as are required by applicable law (including for the avoidance of doubt, Treasury Regulation 1.671-4(a)) and pay any taxes shown as due thereon including with respect to any Disputed Claims Reserve treated as a disputed ownership fund out of the GUC Beneficiary Reserve (or the income or proceeds thereof). Within a reasonable time following the end of the taxable year, the Liquidating Trust shall send to each Beneficiary a separate statement setting forth the Beneficiary's share of items of income, gain, loss, deduction or credit and informing each such Beneficiary that such items

should be reported on such Beneficiary's federal, state, local, non-U.S. (including the U.S. Virgin Islands) and other income tax returns, as applicable. The Liquidating Trustee shall allocate the taxable income, gain, loss, deduction, or credit of the Liquidating Trust with respect to each Beneficiary.

10.3 Withholding of Taxes and Reporting Related to Liquidating Trust Operations. The Liquidating Trust shall comply with all withholding and reporting requirements imposed by any federal, state, local, or non-U.S. (including the U.S. Virgin Islands) taxing authority, and all distributions made by the Liquidating Trust shall be subject to any such withholding and reporting requirements including with respect to any Disputed Claims Reserve treated as a disputed ownership fund. To the extent that the operation of the Liquidating Trust or the liquidation of the Liquidating Trust Assets creates a tax liability, the Liquidating Trust shall promptly pay such tax liability out of the GUC Beneficiary Reserve and any such payment shall be considered a cost and expense of the operation of the Liquidating Trust payable without Order of the Bankruptcy Court. The Liquidating Trust may reserve a sum, the amount of which shall be determined by the Liquidating Trustee, from the GUC Beneficiary Reserve sufficient to pay the accrued or potential tax liability arising out of the operations of the Liquidating Trust or the administration of the Liquidating Trust Assets. The Liquidating Trustee, on behalf of the Liquidating Trust, may enter into agreements with taxing authorities or other governmental units for the payment of such amounts as may be withheld. Any federal, state, local or non-U.S. (including the U.S. Virgin Islands) withholding taxes or other amounts required to be withheld under applicable law shall be deducted from distributions hereunder.

10.4 Tax Identification Numbers. The Liquidating Trustee may require any Beneficiary to furnish to the Liquidating Trustee its social security number or employer or taxpayer identification number as assigned by the IRS and the Liquidating Trustee may condition any distribution to any Beneficiary upon the receipt of such identification number.

ARTICLE XI TERMINATION OF THE LIQUIDATING TRUST

11.1 Termination of Liquidating Trust. The Liquidating Trustee and the Delaware Trustee shall be discharged and the Liquidating Trust shall be dissolved, wound up, and terminated in accordance with section 3808 of the Delaware Act, at such time as (1) all Disputed Claims in Classes 4, 5, and 6 have been resolved, (2) all of the Liquidating Trust Assets have been liquidated, (3) all duties and obligations of the Liquidating Trustee hereunder have been fulfilled, and (4) all distributions required to be made by the Liquidating Trust under the Plan and the Liquidating Trust Agreement have been made.

11.2 Maximum Term. In no event shall the Liquidating Trust be dissolved later than five (5) years from the Effective Date unless the Bankruptcy Court, upon motion by the Liquidating Trustee within the six-month period prior to the third anniversary (or the end of any extension period approved by the Bankruptcy Court), determines that a fixed period extension (not to exceed five (5) years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the Liquidating Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the liquidation, recovery and distribution of the Liquidating Trust

Assets. The duties, responsibilities, and powers of the Liquidating Trustee will terminate in accordance with the terms of the Liquidating Trust Agreement.

11.3 Events Upon Termination. At the conclusion of the term of the Liquidating Trust, the Liquidating Trustee shall distribute the remaining Liquidating Trust Assets, if any, in its reasonable discretion, including to a charitable organization, in accordance with the Plan, the Confirmation Order, and this Agreement.

11.4 Winding Up, Discharge, and Release of the Liquidating Trustee. The Liquidating Trustee shall seek authority from the Bankruptcy Court to close the Chapter 11 Case in accordance with the Bankruptcy Code and the Bankruptcy Rules once (i) all Disputed Claims have become Allowed or disallowed, (ii) the Reorganized Debtor has terminated in accordance with the Plan, (iii) the Liquidating Trust has terminated in accordance with the Plan, (iv) all remaining Liquidating Trust Assets have been distributed in accordance with the Plan, and (v) the business and affairs of the Debtor have been otherwise wound down. For the purposes of winding up the affairs of the Liquidating Trust at the conclusion of its term, the Liquidating Trustee shall continue to act as Liquidating Trustee until its duties under this Agreement have been fully discharged or its role as Liquidating Trustee is otherwise terminated under this Agreement and the Plan. Upon a motion by the Liquidating Trustee, the Bankruptcy Court may enter an Order relieving the Liquidating Trustee, its agents and employees of any further duties, discharging, and releasing the Liquidating Trustee and releasing its bond, if any.

ARTICLE XII MISCELLANEOUS PROVISIONS

12.1 Amendments. The Liquidating Trustee may modify, supplement, or amend this Agreement in any way that is not inconsistent with the Plan or the Confirmation Order. The Liquidating Trustee shall seek Bankruptcy Court approval of any material modification, supplement, or amendment. Any amendment which adversely affects the Delaware Trustee shall require the Delaware Trustee's written consent.

12.2 Waiver. No failure by the Liquidating Trust, the Liquidating Trustee, or its agents, professionals and employees to exercise or delay in exercising any right, power, or privilege hereunder shall operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any further exercise thereof, or of any other right, power, or privilege.

12.3 Cumulative Rights and Remedies. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights under law or in equity.

12.4 No Bond Required. Notwithstanding any state law to the contrary, each of the Liquidating Trustee (including any successor Liquidating Trustee) and the Delaware Trustee shall be exempt from giving any bond or other security in any jurisdiction. In the event that the Liquidating Trustee is otherwise ordered by the Bankruptcy Court, all costs and expenses of the Liquidating Trustee in procuring any such bond or surety shall be paid for with Cash derived from the GUC Beneficiary Reserve.

12.5 Irrevocability. This Agreement and the Liquidating Trust created hereunder shall be irrevocable, except as otherwise expressly provided in this Agreement.

12.6 Relationship to the Plan. The principal purpose of this Agreement is to aid in the implementation of the Plan and, therefore, this Agreement incorporates and is subject to the provisions of the Plan and the Confirmation Order. In the event that any provision of this Agreement is found to be inconsistent with a provision of the Plan or the Confirmation Order, the provisions of the Plan or the Confirmation Order, as applicable, shall control. In the event that any provision of the Plan is found to be inconsistent with a provision of the Confirmation Order, the Confirmation Order shall control.

12.7 Applicable Law. This Liquidating Trust shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to rules governing the conflict of laws.

12.8 Retention of Jurisdiction. Notwithstanding the Effective Date, and to the fullest extent permitted by law, the Bankruptcy Court shall retain exclusive jurisdiction over the Liquidating Trust after the Effective Date, including, without limitation, jurisdiction to resolve any and all controversies, suits and issues that may arise in connection therewith, including, without limitation, this Agreement, or any Entity's obligations incurred in connection herewith, including without limitation, any action against the Liquidating Trustee or any professional retained by the Liquidating Trustee, in each case in its capacity as such. Each party to this Agreement hereby irrevocably consents to the exclusive jurisdiction of the Bankruptcy Court in any action to enforce, interpret or construe any provision of this Agreement or of any other agreement or document delivered in connection with this Agreement, and also hereby irrevocably waives any defense of improper venue, forum *non conveniens* or lack of personal jurisdiction to any such action brought in the Bankruptcy Court. Each party further irrevocably agrees that any action to enforce, interpret, or construe any provision of this Agreement will be brought only in the Bankruptcy Court. Each party hereby irrevocably consents to the service by certified or registered mail, return receipt requested, of any process in any action to enforce, interpret or construe any provision of this Agreement.

12.9 Severability. In the event that any provision of this Agreement or the application thereof to any person or circumstance shall be determined by the Bankruptcy Court to be invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such provision to persons or circumstance, other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

12.10 Limitation of Benefits. Except as otherwise specifically provided in this Agreement, the Plan or the Confirmation Order, nothing herein is intended or shall be construed to confer upon or to give any person other than the parties hereto and the Beneficiaries any rights or remedies under or by reason of this Agreement.

12.11 Notices. Notices to Beneficiaries shall be given by first class mail, postage prepaid, at the address of such person in each case as provided on such person's Proof of Claim. Any notices or other communications required or permitted hereunder to the following parties

shall be in writing and delivered at the addresses designated below, or sent by e-mail or facsimile pursuant to the instructions listed below, or mailed by registered or certified mail, return receipt requested, postage prepaid, addressed as follows, or to such other address or addresses as may hereafter be furnished in writing to each of the other parties listed below in compliance with the terms hereof.

To the Liquidating Trust: Jay Borow, Trustee
BRG Capstone
Berkeley Research Group, LLC
104 West 40th Street, 16th Floor
New York, NY 10018
Telephone: 212.782.1411
Fax: 212.782.1479
Email: jborow@thinkbrg.com

with a copy to:

Sam J. Alberts, Esq.
Dentons US LLP
1301 K Street, NW
Suite 600, East Tower
Washington, DC 20005-3364
Telephone: 202.408.7004
Email: sam.alberts@dentons.com

To the Liquidating Trustee: Jay Borow, Trustee
BRG Capstone
Berkeley Research Group, LLC
104 West 40th Street, 16th Floor
New York, NY 10018
Telephone: 212.782.1411
Fax: 212.782.1479
Email: jborow@thinkbrg.com

with a copy to:

Sam J. Alberts, Esq.
Dentons US LLP
1301 K Street, NW
Suite 600, East Tower
Washington, DC 20005-3364
Telephone: 202.408.7004
Email: sam.alberts@dentons.com

All such notices and communications if mailed shall be effective when physically delivered at the designated addresses or, if electronically transmitted, when the communication is received at the designated addresses and confirmed by the recipient by return transmission.

12.12 Entire Agreement; No Waiver. The entire agreement of the parties relating to the subject matter of this Agreement is contained herein and in the Plan and Confirmation Order referred to herein, and this Agreement and such documents supersede any prior oral or written agreements concerning the subject matter hereof. No failure to exercise or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any further exercise thereof or of any other right, power or privilege. The rights and remedies herein provided are cumulative and are not exclusive of rights under law or in equity.

12.13 Headings. The headings used in this Agreement are inserted for convenience only and do not constitute a portion of this Agreement, nor in any manner affect the construction of the provisions of this Agreement.

12.14 Effectiveness. This Agreement shall not become effective until it has been executed and delivered by all the parties hereto.

12.15 Counterpart Signatures. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but such counterparts shall together constitute but one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement this [____] day of
February, 2016.

HOVENSA, L.L.C.

By: _____
Name: _____
Title: _____

LIQUIDATING TRUSTEE

JAY BOROW

By: _____
Name: _____
Title: _____

DELAWARE TRUSTEE

WILMINGTON TRUST,
NATIONAL ASSOCIATION

By: _____
Name: _____
Title: _____

Expiration Date of Initial Term: Fifth
Anniversary of the date of this Agreement

Exhibit A

**CERTIFICATE OF TRUST OF
HOVENSА LIQUIDATING TRUST**

This Certificate of Trust of the Hovensa Liquidating Trust (the “Trust”) is being duly executed and filed on behalf of the Trust by the undersigned, as trustees, to form a statutory trust under the Delaware Statutory Trust Act (12 Del. C. § 3801 *et seq.*, as amended from time to time) (the “Act”).

1. Name. The name of the statutory trust formed by this Certificate of Trust is Hovensa Liquidating Trust.
2. Delaware Trustee. The name and address of the trustee of the Trust with a principal place of business in the State of Delaware is Wilmington Trust, National Association, Rodney Square North, 1100 North Market Street, Wilmington, DE 19890, Attention: Corporate Trust Administration.
3. Effective Date. This Certificate of Trust shall be effective upon filing.

IN WITNESS WHEREOF, the undersigned have duly executed this Certificate of Trust in accordance with Section 3811(a)(1) of the Act .

Wilmington Trust, National Association, not in its individual capacity but solely as Delaware Trustee

By: _____

Name: _____

Title: _____

Jay Borow, not in his individual capacity but solely as Liquidating Trustee

By: _____

Name: Jay Borow_____

Title: Liquidating Trustee_____

Exhibit B

Redline

LIQUIDATING TRUST AGREEMENT

by and among HOVENSA, L.L.C.

| [Jay Borow](#) as Liquidating Trustee

| and [Wilmington Trust, National Association](#) as Delaware Trustee

Dated as of [____], 2016

TABLE OF CONTENTS

ARTICLE I AGREEMENT OF TRUST.....	1
1.1 Creation and Name.....	1
1.1 Name.....	1
1.2 Purpose.....	1
1.3 Transfer of Assets.....	2
1.4 Privilege.....	2
1.5 Funding of the Liquidating Trust.....	2
1.6 Acceptance by the Liquidating Trustee.....	2
ARTICLE II THE LIQUIDATING TRUSTEE.....	2
2.1 Appointment.....	2
2.2 General Powers.....	3
2.3 Valuation.....	5
2.4 Limitation of Liquidating Trustee’s Authority.....	5 56
2.5 Compensation.....	6
2.6 Retention of Professionals.....	6
2.7 General Duties, Obligations, Rights, and Benefits of the Liquidating Trustee.....	7
2.8 Resignation/ Removal/ Replacement of the Liquidating Trustee.....	7
2.9 Liquidating Trust Continuance.....	7
ARTICLE III DELAWARE TRUSTEE.....	7
3.1 Appointment of Delaware Trustee.....	7
3.2 Rights of Delaware Trustee.....	8
3.3 Compensation of Delaware Trustee.....	8
ARTICLE IV OVERSIGHT COMMITTEE.....	8
4.1 Oversight Committee Appointment.....	8
4.2 Duties of the Oversight Committee.....	8
4.3 Voting 9 <u>Composition of the Oversight Committee and Replacement of Members</u>	9 9
4.4 <u>Voting</u>	9
4.5 <u>Compensation</u> ; Reimbursement of Expenses.....	9
ARTICLE V LIABILITY OF TRUSTEES.....	9 <u>10</u>
5.1 Standard of Care; Exculpation.....	9 <u>10</u>
5.2 Indemnification.....	10
5.3 No Liability for Acts of Successor/Predecessor Trustees.....	11
5.4 Reliance by Trustee on Documents or Advice of Counsel.....	11

5.5	Insurance.....	11 <u>12</u>
ARTICLE VI GENERAL PROVISIONS CONCERNING ADMINISTRATION OF THE LIQUIDATING TRUST.....		
		12
6.1	Reserves and Additional Funds.....	12
6.2	Books and Records.....	14
6.3	Confidentiality.....	14 <u>15</u>
ARTICLE VII BENEFICIAL INTERESTS AND BENEFICIARIES.....		
		14 <u>15</u>
7.1	Identification of Beneficiaries.....	14 <u>15</u>
7.2	Rights of Beneficiaries.....	15
7.3	Interest Beneficial Only.....	15
7.4	Evidence of Beneficial Interest.....	15
7.5	Exemption from Registration.....	15 <u>16</u>
7.6	Transfer of Beneficial Interests.....	15 <u>16</u>
7.7	Change of Address.....	15 <u>16</u>
7.8	Effect of Death, Dissolution, Incapacity, or Bankruptcy of Beneficiary.....	15 <u>16</u>
7.9	Standing.....	15 <u>16</u>
ARTICLE VIII PROCEDURES FOR RESOLVING AND TREATING DISPUTED CLAIMS.....		
		16
8.1	Prosecution of Objections to Claims.....	16
8.2	Distributions Regarding Disputed Claims.....	16 <u>17</u>
8.3	Claims Estimation.....	16 <u>17</u>
8.4	Expungement or Adjustment to Claims Without Objection.....	17
8.5	Disputed Claims Reserve.....	17 <u>18</u>
ARTICLE IX DISTRIBUTIONS.....		
		17 <u>18</u>
9.1	Disbursing Agent.....	17 <u>18</u>
9.2	Distributions from Liquidating Trust Assets.....	17 <u>18</u>
9.3	Calculation of Amounts to Be Distributed.....	17 <u>18</u>
9.4	Distribution Record Date.....	17 <u>18</u>
9.5	Distributions; Withholding.....	17 <u>18</u>
9.6	Undeliverable/Unclaimed Distributions.....	18
9.7	Expenses of Distribution.....	18 <u>19</u>
9.8	Timing of Distributions Under the Plan.....	18 <u>19</u>
9.9	Minimum; De Minimis Distributions.....	18 <u>19</u>
9.10	Manner of Payment Under the Plan.....	19
9.11	Setoffs.....	19
9.12	Interest on Claims.....	19 <u>20</u>

ARTICLE X TAXES.....	19 <u>20</u>
10.1 Income Tax Status.....	19 <u>20</u>
10.2 Tax Returns.....	20
10.3 Withholding of Taxes and Reporting Related to Liquidating Trust Operations.....	20 <u>21</u>
10.4 Tax Identification Numbers.....	20 <u>21</u>
ARTICLE XI TERMINATION OF THE LIQUIDATING TRUST.....	20 <u>21</u>
11.1 Termination of Liquidating Trust.....	20 <u>21</u>
11.2 Maximum Term.....	21
11.3 Events Upon Termination.....	21 <u>22</u>
11.4 Winding Up, Discharge, and Release of the Liquidating Trustee.....	21 <u>22</u>
ARTICLE XII MISCELLANEOUS PROVISIONS.....	21 <u>22</u>
12.1 Amendments.....	21 <u>22</u>
12.2 Waiver.....	21 <u>22</u>
12.3 Cumulative Rights and Remedies.....	22
12.4 No Bond Required.....	22
12.5 Irrevocability.....	22 <u>23</u>
12.6 Relationship to the Plan.....	22 <u>23</u>
12.7 Applicable Law.....	22 <u>23</u>
12.8 Retention of Jurisdiction.....	22 <u>23</u>
12.9 Severability.....	22 <u>23</u>
12.10 Limitation of Benefits.....	23
12.11 Notices.....	23
12.12 Entire Agreement; No Waiver.....	23 <u>25</u>
12.13 Headings.....	23 <u>25</u>
12.14 Effectiveness.....	23 <u>25</u>
12.15 Counterpart Signatures.....	23 <u>25</u>

This Liquidating Trust Agreement (the “Agreement”), dated as of [____], 2016, is entered into by HOVENSA, L.L.C., a limited liability company organized under the laws of the U.S. Virgin Islands, as debtor and debtor-in-possession in (the “Debtor”) in the chapter 11 case administered under the caption *In re HOVENSA, L.L.C.*, Case No. 1:15-bk-10003-MFW (the “Chapter 11 Case”), and [____] Jay Borow, as liquidating trustee (together with any successor appointed under the terms hereof, the “Liquidating Trustee”) and [____] Wilmington Trust, National Association, as the Delaware trustee (together with any successor appointed under the terms hereof, the “Delaware Trustee”, and together with the Liquidating Trustee, the “Trustees”) for the benefit of the “Beneficiaries” under the terms of the [____] Second Amended Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code, dated January [____], 2016, as may be amended, modified or supplemented, the “Plan”), confirmed by the United States District Court of the Virgin Islands, Bankruptcy Division, St. Croix, Virgin Islands (the “Bankruptcy Court”) in the Chapter 11 Case by Order dated January [____], 2016 (Docket No. [____] 572) (the “Confirmation Order”).¹

RECITALS

WHEREAS, on September 15, 2015, the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code with the Bankruptcy Court.

WHEREAS, the Debtor filed the *Disclosure Statement for the Debtor’s Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code* on December 17, 2015 ([____] Docket No. 467[____]);

WHEREAS, the Debtor filed the Plan on January [____], 2016;

WHEREAS, the Bankruptcy Court entered the Confirmation Order on January [____], 2016 and the Plan became effective on [____], 2016 (the “Effective Date”);

WHEREAS, the Liquidating Trust established pursuant to the terms of this Agreement is intended to qualify as a “grantor trust” that is a foreign trust for federal income tax purposes pursuant to the Internal Revenue Code of 1986, as amended (the “Tax Code”) with the Beneficiaries treated as grantors and owners of the Liquidating Trust. For all federal income tax purposes, all parties (including, without limitation, the Debtor, the Liquidating Trustee, and the Beneficiaries) shall treat the transfer of the Liquidating Trust Assets by the Debtor to the Liquidating Trust as a transfer of such assets by the Debtor to the Beneficiaries in proportion to their respective beneficial interest in the Liquidating Trust, followed by a transfer by such Holders to the Liquidating Trust. Thus, the Beneficiaries shall be treated as the grantors and owners of a grantor trust that is a foreign trust for federal income tax purposes.

WHEREAS, the Plan contemplates, among other things, on the Effective Date, (a) the creation of a Liquidating Trust (the “Liquidating Trust”), and (b) the Liquidating Trust will be vested with (i) the Liquidating Trust Cash Distribution; (ii) the Debtor’s rights under section 7.8 of the Purchase Agreement solely to the extent necessary for the Liquidating Trust to resolve

¹ All capitalized terms used but not otherwise defined herein shall have the meaning as set forth in the Plan and such definitions are incorporated herein by reference.

Claims in Classes 4, 5, and 6; (iii) the Debtor's rights with respect to any Executory Contracts or Unexpired Leases identified on the Contract Assumption Schedule as being assigned to the Liquidating Trust; (iv) the Debtor's rights with respect to the Liquidating Trust Insurance Policies [and any rights to assert claims with respect to such insurance policies](#); and (v) the Liquidating Trust Books and Records (collectively, the "Liquidating Trust Assets"); and

WHEREAS, pursuant to the Plan, the Liquidating Trust shall be established to, among other things, administer the Liquidating Trust Assets, resolve Disputed Class 4, 5, and 6 Claims and make distributions to Holders of Allowed Class 4, 5, and 6 Claims, as provided in the Plan and Confirmation Order, 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, the purpose of the Liquidating Trust and the Plan.

NOW, THEREFORE, pursuant to the Plan and the Confirmation Order, in consideration of the promises, the mutual agreements of the parties contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and affirmed, it is hereby agreed as follows:

ARTICLE I AGREEMENT OF TRUST

1.1 Creation and Name. The Debtor, on its own behalf and on behalf of the Beneficiaries, the Liquidating Trustee, and the Delaware Trustee hereby constitute and create the Liquidating Trust, which is the trust provided for and referred to in Article VII of the Plan. The Liquidating Trust shall be organized and established as 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 "[Delaware Act](#)"), and this Agreement, together with the Plan, constitute the governing instrument of the Liquidating Trust. Pursuant to section 3810 of the Delaware Act, [the Liquidating Trustee and the Delaware Trustee are hereby directed to and](#) shall file a certificate of trust, substantially in the form annexed hereto as [Exhibit A](#) (the "[Certificate of Trust](#)") with the Delaware Secretary of State as of the date hereof in order to form the Liquidating Trust. Effective as of the date hereof, the Liquidating Trustee shall have all the rights, powers, and duties set forth in this Agreement and the Plan, as applicable, and to the extent not inconsistent with this Agreement and the Plan, in the Delaware Act with respect to accomplishing the purpose of the Liquidating Trust as set forth below.

1.1 Name. The Liquidating Trustee may transact the business and affairs of the Liquidating Trust in the name of the "Hovensa Liquidating Trust."

1.2 Purpose. The purpose of the Liquidating Trust is to implement the provisions of the Plan and the Confirmation Order as specified as being applicable to the Liquidating Trust, and to take such lawful actions incident thereto and not in violation of the Plan, the Confirmation Order, or this Agreement. Accordingly, the primary purpose of the Liquidating Trust is to administer the Liquidating Trust Assets, resolve Disputed Class 4, 5, and 6 Claims and make distributions to Holders of Allowed Class 4, 5, and 6 Claims in accordance with the Plan, Confirmation Order, and the Liquidating Trust Agreement, 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, the liquidating purpose of the Liquidating Trust.

1.3 Transfer of Assets. Pursuant to Article VII.C. of the Plan, upon the Effective Date, the Debtor shall irrevocably transfer, assign, and deliver to the Liquidating Trust, on behalf of the Beneficiaries, all of its rights, title, and interests in the Liquidating Trust Assets notwithstanding any prohibition on assignment under nonbankruptcy law. The Liquidating Trust will accept and hold the Liquidating Trust Assets in the Liquidating Trust for the benefit of the Beneficiaries (and with respect to the Liquidating Trust Insurance Policies, subject to the rights of the third party beneficiaries thereof), subject to the terms of the Plan and this Agreement. On the Effective Date, all Liquidating Trust Assets ~~will~~shall vest and be deemed to vest in the Liquidating Trust in accordance with section 1141 of the Bankruptcy Code; provided, however, that the Liquidating Trustee may abandon or otherwise not accept any Liquidating Trust Assets that the Liquidating Trustee believes, in good faith, have no value to the Liquidating Trust. Any assets the Liquidating Trustee so abandons or otherwise does not accept shall not vest in the Liquidating Trust. As of the Effective Date, all Liquidating Trust Assets vested in the Liquidating Trust shall be free and clear of all Liens, Claims, and Interests, except as otherwise specifically provided in the Plan or in the Confirmation Order. Upon the transfer by the Debtor of the Liquidating Trust Assets to the Liquidating Trust or abandonment of Liquidating Trust Assets by the Liquidating Trustee, the Debtor will have no reversionary or further interest in or with respect to any Liquidating Trust Assets or the Liquidating Trust.

1.4 Privilege. In connection with the Liquidating Trust Assets, any attorney-client privilege, work-product privilege, joint interest privilege or other privilege or immunity (collectively, the "Privileges") attaching to any documents or communications (in any form, including, without limitation, written, electronic or oral) shall be transferred and shall vest in the Liquidating Trustee and his representatives. The Liquidating Trust's receipt of the Privileges associated with the Liquidating Trust Assets shall not operate as a waiver of other privileges possessed or retained by the Debtor, nor shall it operate to eliminate the rights of any co-defendant to any applicable joint privilege.

1.5 Funding of the Liquidating Trust. The Liquidating Trust shall be funded on the Effective Date with the Liquidating Trust Assets, as provided for in the Plan and in the Confirmation Order.

1.6 Acceptance by the Liquidating Trustee. The Liquidating Trustee hereby accepts the trust imposed upon it by this Agreement and agrees to observe and perform that trust on and subject to the terms and conditions set forth in this Agreement, the Plan, and the Confirmation Order. In connection with and in furtherance of the purposes of the Liquidating Trust, the Liquidating Trustee hereby accepts the transfer of the Liquidating Trust Assets.

ARTICLE II THE LIQUIDATING TRUSTEE

2.1 Appointment. The Liquidating Trustee has been selected pursuant to the provisions of the Plan and has been appointed as of the Effective Date. The Liquidating Trustee's appointment shall continue until the earlier of (i) the date that the Liquidating Trust is

dissolved in accordance with this Agreement and (ii) the date of the Liquidating Trustee's resignation, death, dissolution, removal or liquidation.

2.2 General Powers. Except as otherwise provided in this Agreement, the Plan, or the Confirmation Order, and subject to the oversight rights assigned to the Oversight Committee herein and in the Plan, the Liquidating Trustee may control and exercise authority over the Liquidating Trust Assets, and the acquisition, management, and disposition thereof. Nothing in this Agreement shall be deemed to prevent the Liquidating Trustee from taking, or failing to take, any action that, based upon the advice of counsel, it determines it is obligated to take (or fail to take) in the performance of any fiduciary or similar duty that the Liquidating Trustee owes to the Beneficiaries or any other Person or Entity. Any distributions to be made under the Plan from the Liquidating Trust Assets shall be made by the Liquidating Trust. The Liquidating Trustee shall have the authority to bind the Liquidating Trust within the limitations set forth herein, but shall for all purposes hereunder be acting in the capacity of Liquidating Trustee and not individually. No Person dealing with the Liquidating Trust shall be obligated to inquire into the Liquidating Trustee's authority in connection with the acquisition, management, or disposition of Liquidating Trust Assets. Without limiting the foregoing, but subject to the Plan, the Confirmation Order, and other provisions of this Agreement, the Liquidating Trustee shall be expressly authorized to, with respect to the Liquidating Trust and the Liquidating Trust Assets:

- (a) Act as the liquidating trustee for the Liquidating Trust and administer the Liquidating Trust;
- (b) Take any action necessary to transfer the Liquidating Trust Assets to the Liquidating Trust;
- (c) Retain and compensate attorneys, advisors, and other professionals (including, without limitation, any professionals previously retained in the Chapter 11 Case) as may be necessary and appropriate to perform the duties required of, and the obligations assumed by, the Liquidating Trustee under the Plan and this Agreement without Bankruptcy Court approval;
- (d) Act for the Liquidating Trust ~~in with the same fiduciary capacity as the Executive Committee had to the Debtor~~ duties imposed under applicable law, subject to and limited by the provisions of the Plan and the Liquidating Trust Agreement (and all certificates of formation, membership agreements, and related documents are deemed amended by the Plan to permit and authorize the same);
- (e) Exercise all power and authority that may be or could have been exercised and take all actions that may be or could have been taken solely with respect to the Liquidating Trust Assets by any officer, director, shareholder or other party acting in the name of the Debtor or its Estate with like effect as if duly authorized, exercised, and taken by action of such officers, directors, shareholders, or other party;
- (f) File the Reserve Motion to establish (i) the Class 4 Claims Reserve for the benefit of Holders of Class 4 Claims, and (ii) the Class 5 Claims Reserve for the benefit of Holders of Class 5 Claims, as appropriate in the Liquidating Trustee's discretion, in each case

using funds from the GUC Beneficiary Reserve in an amount to be agreed by the Committee, the Debtor, and the Liquidating Trustee, as appropriate, which amount shall be subject only to the GUC Beneficiary Reserve Carve Out as shall be set forth in the Reserve Motion;

- (g) File the Claims Procedures Motion;
- (h) Open, maintain, and administer bank accounts on behalf of or in the name of the Liquidating Trust;
- (i) Administer, sell, liquidate, or otherwise dispose of Liquidating Trust Assets in accordance with the Plan;
- (j) Receive, manage, invest, supervise, and protect the Liquidating Trust Assets, subject to the limitations provided herein;
- (k) Establish, re-evaluate, adjust, and maintain appropriate reserves, including the GUC Beneficiary Reserve, the Class 4 Claims Reserve, the Class 5 Claims Reserve, the Governmental GUC Reserve, and any Disputed Claims Reserve, as applicable, in accordance with the terms of the Plan;
- (l) Conduct an analysis of Claims in Classes 4, 5, and 6, and prosecute objections thereto or settle or otherwise compromise Claims in Classes 4, 5, and 6 if necessary and appropriate;
- (m) File and prosecute objections to, and negotiate, settle, compromise, withdraw or otherwise resolve, any and all Disputed Claims in Classes 4, 5, and 6 in any manner approved by the Bankruptcy Court;
- (n) Calculate and make the distributions on behalf of the Debtor, the Estate, and the Liquidating Trust to the Holders of Allowed Claims in Classes 4, 5, and 6 in accordance with this Agreement, the Plan, and the Confirmation Order, and take other actions consistent with the Plan and the implementation thereof;
- (o) To the extent necessary, (i) seek a determination of tax liability of the Liquidating Trust under Section 505 of the Bankruptcy Code; (ii) prepare and file any and all tax and information returns required with respect to the Liquidating Trust; (iii) make any tax elections for and on behalf of the Liquidating Trust; (iv) settle or compromise any tax liability, or consent to any claim or assessment relating to taxes, on behalf of the Liquidating Trust; (v) pay taxes, if any, payable for and on behalf of the Liquidating Trust; (vi) cause the Liquidating Trust to withhold from the amount distributable to any Person or Entity such amount as may be sufficient to pay any tax or other charge that the Liquidating Trustee has determined, based upon the advice of any one or more of its agents and professionals, may be required to be withheld therefrom under the income tax laws of the United States or of any state or political subdivision thereof, and (vii) file and prosecute any tax refund claims of the Liquidating Trust;
- (p) Represent the Debtor's Estate before the Bankruptcy Court and other courts of competent jurisdiction solely with respect to matters concerning the Liquidating Trust;

(q) Pay all lawful expenses, debts, charges, taxes, and liabilities of the Liquidating Trust;

(r) Purchase and carry customary insurance policies, pay all insurance premiums and costs as the Liquidating Trustee deems reasonably necessary or advisable (including insurance for the protection of Entities serving as administrators and overseers of the Liquidating Trust), and request and receive reports from any insurer under the Liquidating Trust Insurance Policies regarding the payment of any proceeds of such policies;

(s) Implement, enforce, or discharge all of the terms, conditions, and all other provisions of, and all duties and obligations under, the Plan, the Confirmation Order, and this Agreement;

(t) Maintain the books and records of the Liquidating Trust, including the Liquidating Trust Books and Records;

(u) Upon the Reorganized Debtor's Filing of the Final Certification, undertake all administrative functions remaining in the Chapter 11 Case, including the preparation and filing of post-Effective Date operating reports required under the U.S. Trustee guidelines and the ultimate closing of the Chapter 11 Case;

(v) Invest the Liquidating Trust Assets transferred to the Liquidating Trust (including any earnings thereon or income therefrom) in United States Treasury bills and notes, institutional money market funds, commercial paper, time deposits and certificates of deposit with commercial banks, in each case, with a maturity of twelve (12) months or less; provided, however, that the scope of any such investments shall be limited to include only those investments permitted to be made by a "liquidating trust" within the meaning of Treas. Reg. section 301.7701-4(d) or under applicable Internal Revenue Service ("IRS") guidelines, whether set forth in IRS rulings, revenue procedures, other IRS pronouncements, or otherwise;

(w) Enter into any agreement or execute any document or instrument required by or consistent with the Plan, the Confirmation Order or this Agreement and perform all obligations thereunder;

(x) Comply with the applicable Orders of the Bankruptcy Court and any other court of competent jurisdiction over the matters set forth in the Plan, and all applicable laws and regulations concerning the matters set forth in the Plan; and

(y) Take all other actions consistent with the provisions of the Plan that the Liquidating Trustee deems reasonably necessary or desirable to administer the Liquidating Trust and the Plan.

2.3 Valuation. As soon as practicable after the Effective Date, the Liquidating Trustee, in reliance upon such professionals as the Liquidating Trustee may retain, shall make a good faith valuation (as of the Effective Date) of the Liquidating Trust Assets. Such valuation shall be made available from time to time, to the extent relevant, and used consistently by all parties (including without limitation, the Debtor, the Liquidating Trustee, the Holders of Allowed Claims in Classes 4, 5, and 6, and the Beneficiaries) for all federal income tax purposes.

2.4 Limitation of Liquidating Trustee's Authority.

(a) All power or authority of the Liquidating Trustee shall be as set forth in this Agreement, the Plan, and the Confirmation Order. Notwithstanding anything herein to the contrary, the Liquidating Trustee shall have no authority to take any action in contravention of this Agreement, the Plan, the Confirmation Order, or applicable law, or any action that would make it impossible to carry on the activities of the Liquidating Trust.

(b) For federal tax purposes, the Liquidating Trustee shall not be authorized to engage in any trade or business with respect to the Liquidating Trust Assets or any proceeds therefrom except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust. The Liquidating Trustee shall take such actions consistent with the prompt orderly liquidation of the Liquidating Trust Assets as required by applicable law and consistent with the treatment of the Liquidating Trust as a liquidating trust under Treas. Reg. section 301.7701-4(d), to the extent such actions are permitted by this Agreement. The Liquidating Trustee shall not take, or fail to take, any action that would jeopardize treatment of the Liquidating Trust as a "liquidating trust" for federal income tax purposes.

2.5 Compensation of Liquidating Trustee. Except as otherwise ordered by the Bankruptcy Court, the fees and expenses incurred by the Liquidating Trustee on or after the Effective Date (including taxes) and any reasonable compensation and expense reimbursement Claims (including attorneys' and advisors' fees and expenses) made by the Liquidating Trustee (the "Fees and Expenses") shall be paid in Cash from the GUC Beneficiary Reserve without any further notice to or action, ~~order~~Order, or approval of the Bankruptcy Court.

2.6 Retention of Professionals.

(a) The Liquidating Trustee, on behalf of the Liquidating Trust, may, but shall not be required to, from time to time enter into contracts with, consult with and retain any professional on such terms as the Liquidating Trustee deems appropriate in accordance with the terms hereof. None of the professionals that represented parties in interest in the Chapter 11 Case shall be precluded from being engaged by the Liquidating Trustee solely on account of their service as a professional for such parties in interest prior to the Effective Date.

(b) Each of the Liquidating Trustee's agents and professionals (unless any such agents or professionals and the Liquidating Trustee agree to different treatment) seeking compensation or reimbursement shall serve a statement on the Liquidating Trustee and shall be paid from GUC Beneficiary Reserve in accordance with Section 2.5 of this Agreement. The Liquidating Trustee will have ten (10) days from the date such statement is received to review the statement and object to such statement by serving an objection on the party seeking compensation setting forth the precise nature of the objection and the amount at issue. At the expiration of the ten (10) day period, and without further ~~order~~Order of the Bankruptcy Court (except as provided herein), the Liquidating Trustee shall pay 100% of the amounts requested, except for the portion of such fees and expenses to which any objection has been made. The parties shall attempt to consensually resolve objections, if any, to any statement. If the parties are unable to reach a consensual resolution of any such objection, the party who received an objection to its fees and expenses may seek payment of such fees and expenses by filing a motion

with and obtaining an ~~order~~[Order](#) from the Bankruptcy Court and providing notice to the Liquidating Trustee.

2.7 General Duties, Obligations, Rights, and Benefits of the Liquidating Trustee.

The Liquidating Trustee shall have all duties, obligations, rights, and benefits assumed by, assigned to, or vested in the Liquidating Trust under the Plan, the Confirmation Order, this Agreement and any other agreement entered into pursuant to or in connection with the Plan or this Agreement. Such duties, obligations, rights, and benefits include, without limitation, all duties, obligations, rights, and benefits relating to the administration of the Liquidating Trust Assets, administration and satisfaction of the Claims of Beneficiaries, distributions to Holders of Allowed Claims in Classes 4, 5, and 6, administration of the Liquidating Trust and any other duties, obligations, rights, and benefits reasonably necessary to accomplish the purpose of the Liquidating Trust under the Plan, the Confirmation Order, this Agreement, and any other agreement entered into pursuant to or in connection with the Plan or this Agreement.

2.8 Resignation/ Removal/ Replacement of the Liquidating Trustee. The

Liquidating Trustee may resign at any time upon thirty (30) days' written notice delivered to the Bankruptcy Court, provided that such resignation shall only become effective upon the appointment of a permanent or interim successor Liquidating Trustee. The Liquidating Trustee may also be removed by the Bankruptcy Court upon application and after notice and a hearing. In the event of the resignation or removal of the Liquidating Trustee, or in the event that the Liquidating Trustee dies or becomes incapacitated, a successor Liquidating Trustee shall be appointed by the Oversight Committee. Upon its appointment, the successor Liquidating Trustee, without any further act, shall become fully vested with all of the rights, powers, duties, and obligations of its predecessor, except as provided herein, and all responsibilities of the predecessor Liquidating Trustee relating to the Liquidating Trust shall be terminated. In the event the Liquidating Trustee's appointment terminates by reason of death, dissolution, liquidation, resignation, or removal, such Liquidating Trustee shall be immediately compensated for all reasonable fees and expenses accrued through the effective date of termination, whether or not previously invoiced.

2.9 Liquidating Trust Continuance. The death, dissolution, liquidation, resignation, or removal of the Liquidating Trustee shall not terminate the Liquidating Trust or revoke any existing agency created by the Liquidating Trustee pursuant to this Agreement or invalidate any action theretofore taken by the Liquidating Trustee, and the provisions of this Agreement shall be binding upon and inure to the benefit of the successor Liquidating Trustee and all of its successors or assigns.

**ARTICLE III
DELAWARE TRUSTEE**

3.1 Appointment of Delaware Trustee. The Delaware Trustee is appointed to serve as trustee of the Liquidating Trust in the State of Delaware for the sole purpose of satisfying the requirements of Section 3807(a) of the Delaware Act that the Liquidating Trust have at least one trustee with a principal place of business in the State of Delaware, or if a natural person, who is a resident of the State of Delaware. It is understood and agreed by the parties hereto that the Delaware Trustee shall have none of the duties, obligations or liabilities of any other person,

including, without limitation, the Liquidating Trustee. The Delaware Trustee shall satisfy the requirements of Section 3807(a) of the Delaware Act. The duties of the Delaware Trustee shall be limited to (a) accepting legal process served on the Liquidating Trust in the State of Delaware and (b) the execution of any certificates required to be filed with the Delaware Secretary of State which the Delaware Trustee is required to execute under Section 3811 of the Delaware Act. Except for the purpose of the foregoing sentence, the Delaware Trustee shall not be deemed a trustee, and shall have no management responsibilities or owe any fiduciary duties to the Liquidating Trust or the Beneficiaries and shall not be authorized to retain any attorneys (other than those attorneys retained in connection with its appointment as Delaware Trustee), professionals, or advisors without the express written consent of the Liquidating Trustee.

3.2 Rights of Delaware Trustee. The Delaware Trustee shall be entitled to all of the same rights, protections, indemnities, and immunities under this Agreement and with respect to the Liquidating Trust and the Beneficiaries as the Liquidating Trustee. No amendment or waiver of any provision of this Agreement which adversely affects the Delaware Trustee shall be effective without the prior written consent of the Delaware Trustee.

3.3 Compensation of Delaware Trustee. Except as otherwise ordered by the Bankruptcy Court, the fees and expenses (including the reasonable fees and expenses of counsel) incurred by the Delaware Trustee on or after the Effective Date (including taxes) made by the Delaware Trustee shall be paid in Cash from GUC Beneficiary Reserve without any further notice to or action, ~~order~~Order, or approval of the Bankruptcy Court. Prior to any payment to the Delaware Trustee, the Delaware Trustee shall submit to the Liquidating Trustee and the Oversight Committee periodic statements for all reasonable compensation for services rendered, and reimbursement for actual and necessary expenses incurred by the Delaware Trustee. The Liquidating Trustee will have twenty (20) days from the date such statement is received to review the statement, consult with the Oversight Committee with respect to such statement, and object to such statement by serving an objection on the Delaware Trustee setting forth the precise nature of the objection and the amount at issue. At the expiration of the twenty (20) day period, and without further ~~order~~Order of the Bankruptcy Court (except as provided herein), the Liquidating Trustee shall pay 100% of the amounts requested, except for the portion of such fees and expenses to which any objection has been made. The parties shall attempt to consensually resolve objections, if any, to any statement. If the parties are unable to reach a consensual resolution of any such objection, the Delaware Trustee may seek payment of such fees and expenses by filing a motion with and obtaining an ~~order~~Order from the Bankruptcy Court and providing notice to the Liquidating Trustee.

ARTICLE IV OVERSIGHT COMMITTEE

4.1 Oversight Committee Appointment. On or prior to the Effective Date, the Oversight Committee shall be appointed by the Committee pursuant to the terms of the Plan. ~~The Oversight Committee Members shall include at least one member holding or representing a Trade Claim, one member holding or representing a Tort Claim, and one independent member who may be an existing Committee professional.~~

4.2 Duties of the Oversight Committee. The Oversight Committee shall oversee the implementation and administration of the Liquidating Trust and shall operate in accordance with the terms set forth in the Plan and this Agreement. Specifically, the Oversight Committee shall have the following rights, obligations and duties:

(a) approve the Liquidating Trustee's and Delaware Trustee's compensation terms;

(b) approve the Liquidating Trustee's retention of counsel and other professionals, as well as the terms governing the engagement of such counsel and professionals, who may have been previously engaged by the Debtor and/or the Committee, and establish retainer terms, conditions and budgets;

(c) in the event of the resignation, incapacity, or death of the Liquidating Trustee or Delaware Trustee, to appoint a successor Liquidating Trustee or Delaware Trustee;

~~(d) in the event of the resignation, incapacity, or death of an Oversight Committee Member, to appoint a successor Oversight Committee Member; provided, however, that the Oversight Committee shall at all times have one member holding or representing a Tort Claim, one member holding or representing a Trade Claim, and one independent member who may be an existing committee professional;~~

~~(d)~~ (e) review and approve any Claims Procedures Motion prior to the filing of same;

~~(e)~~ (f) review and approve any settlements and agreements related to the allowance of Claims; and

~~(f)~~ (g) ~~Generally~~ generally oversee, review and guide the Liquidating Trustee on the performance of its duties and its activities proposed and underway, as often as is necessary and appropriate to implement the Plan;

4.3 Composition of the Oversight Committee and Replacement of Members.

~~(a) The Oversight Committee shall at all times have one member holding or representing a Tort Claim, one member holding or representing a Trade Claim, and one independent member who may be an existing committee professional.~~

~~(b) A member may resign at any time upon ten (10) days written notice delivered to the Oversight Committee and the Liquidating Trustee and shall, in such notice, designate such member's successor; provided, however, that such successor must hold or represent the same interests or status as the resigning member.~~

~~(c) In the event that a member of the Oversight Committee resigns without appointing a successor or dies or becomes incapacitated, the remaining members of the Oversight Committee shall appoint a successor; provided, however, that such successor must hold or represent the same interests or status as the member being replaced. In the event that the~~

remaining members become deadlocked on the appointment of a replacement member, such deadlock shall be resolved by the Liquidating Trustee.

4.4 ~~4.3~~ **Voting.** Oversight Committee decisions shall be made with the approval of at least two (2) members.

4.5 ~~4.4~~ **Compensation; Reimbursement of Expenses.** Each Oversight Committee ~~Member~~ member shall be entitled to reasonable compensation for services provided and for the reimbursement of reasonable expenses incurred in the exercise of such Oversight Committee Member's duties as set forth herein. The members shall be authorized to establish the terms on which members shall be compensated as well as procedures for the review and payment of compensation and reimbursement of expenses of members. Any disputes between and among the Oversight Committee, its Members or the Liquidating Trustee shall be resolved by the Bankruptcy Court, and the Liquidating Trustee shall bring any such dispute to the Bankruptcy Court for resolution if so requested in writing by any of such parties.

ARTICLE V LIABILITY OF TRUSTEES

5.1 **Standard of Care; Exculpation.** Neither the Liquidating Trustee, the Delaware Trustee, Oversight Committee Member, nor any director, officer, affiliate, employee, employer, professional, successor, assign, agent, or representative of the Trustees or Oversight Committee Members (each, an "Exculpated Party" and collectively, the "Exculpated Parties") shall be liable for any losses, claims, damages, liabilities, obligations settlements, proceedings, suits, judgments, causes of action, litigation, actions, or investigations (whether civil or administrative and whether sounding in tort, contract, or otherwise), penalties, costs, and expenses, including reasonable fees and disbursements (collectively referred to herein as "Losses"), whether or not in connection with litigation in which any Exculpated Party is a party, or enforcing this Agreement (including these exculpation provisions), as and when imposed on the Exculpated Parties, incurred, caused by, relating to, based upon, or arising out of (directly or indirectly) the Exculpated Parties' execution, delivery, and acceptance of, or the performance or nonperformance of its powers, duties, and obligations under, this Agreement, the Plan, or the Confirmation Order or as may arise by reason of any action, omission, or error of an Exculpated Party; provided, however, that the foregoing limitation shall not apply to any Losses suffered or incurred by any Beneficiary that are found in a final judgment by a court of competent jurisdiction (not subject to further appeal) to have resulted from the fraud, gross negligence, or willful misconduct of such Exculpated Party. Every act taken or omitted, power exercised, or obligation assumed by the Liquidating Trust or any Exculpated Party pursuant to the provisions of this Agreement shall be held to be taken or omitted, exercised, or assumed, as the case may be, by the Trustees or any Exculpated Party acting for and on behalf of the Liquidating Trust and not otherwise; provided, however, that none of the foregoing Entities or Persons are deemed to be responsible for any other such Entities' or Persons' actions or inactions. Except as provided in the first proviso of the first sentence of this Section ~~4.4.5.1~~, every Person, firm, corporation, or other Entity contracting or otherwise dealing with or having any relationship with the Liquidating Trust or any Exculpated Party shall have recourse only to the Liquidating Trust Assets for payment of any liabilities or other obligations arising in connection with such contracts, dealings, or relationships and the Liquidating Trust and the Exculpated Parties shall not be individually

liable therefor. Except as provided in the first proviso of the first sentence of this Section ~~4.1,5.1~~, in no event shall ~~the~~ an Exculpated Party be liable for indirect, punitive, special, incidental, or consequential damage or loss (including but not limited to lost profits) whatsoever, even if the Exculpated Parties have been informed of the likelihood of such loss or damages and regardless of the form of action.

5.2 Indemnification. The Liquidating Trustee, the Delaware Trustee, Oversight Committee Member, and any director, officer, affiliate, employee, employer, professional, successor, assign, agent, or representative of the Trustees or Oversight Committee Members (each, an “Indemnified Party” and collectively, the “Indemnified Parties”) shall be defended, held harmless, and indemnified from time to time by the Liquidating Trust against any and all Losses, including, without limitation, the costs for counsel or others in investigating, preparing, defending, or settling any action or Claim, whether or not in connection with litigation in which any Indemnified Party is a party, or enforcing this Agreement (including these indemnity provisions), as and when imposed on the Indemnified Parties, incurred, caused by, relating to, based upon or arising out of (directly or indirectly) the Indemnified Parties’ execution, delivery, and acceptance of or the performance or nonperformance of its powers, duties, and obligations under this Agreement, the Plan, or the Confirmation Order or as may arise by reason of any action, omission, or error of an Indemnified Party; provided, however, such indemnity shall not apply to any such Losses to the extent it is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) to have resulted from the fraud, gross negligence, or willful misconduct of such Indemnified Party. Notwithstanding anything to the contrary in this Agreement, any Indemnified Party shall be entitled to obtain advances from the GUC Beneficiary Reserve to cover its reasonably anticipated expenses of defending itself in any action threatened against or brought against it as a result of any act or omission, actual or alleged, of the Trustees in their capacities as such. Without limiting the generality or effect of the foregoing, within five (5) Business Days after a written request by an Indemnified Party to the Liquidating Trustee, the Liquidating Trustee shall, in accordance with such request, but without duplication, from the GUC Beneficiary Reserve, (a) pay such expenses on behalf of the Indemnified Party, (b) advance to the Indemnified Party Cash in amount sufficient to pay such expenses, or (c) reimburse the Indemnified Party for such expenses; provided that the Indemnified Party shall provide an undertaking to repay promptly any amounts so paid, advanced, or reimbursed from the GUC Beneficiary Reserve upon the entry of a Final Order finding that such Indemnified Party was not entitled to indemnity under this Section ~~4.25.2~~.

5.3 No Liability for Acts of Successor/Predecessor Trustees. Upon the appointment of a successor Liquidating Trustee or a successor Delaware Trustee and the delivery of the Liquidating Trust Assets to the successor Liquidating Trustee, the predecessor Liquidating Trustee, the predecessor Delaware Trustee, and any director, officer, affiliate, employee, employer, professional, agent, or representative of the predecessor Trustee shall have no further liability or responsibility with respect thereto. A successor Trustee shall have no duty to examine or inquire into the acts or omissions of its immediate or remote predecessor and no successor Trustee shall be in any way liable for the acts or omissions of any predecessor Trustee unless a successor Trustee expressly assumes such responsibility. A predecessor Trustee shall have no liability for the acts or omissions of any immediate or subsequent successor Trustee for any events or occurrences subsequent to the cessation of its role as Trustee.

5.4 Reliance by Trustee on Documents or Advice of Counsel. Except as otherwise provided in this Agreement, the Liquidating Trustee, the Delaware Trustee, the Oversight Committee, and any director, officer, affiliate, employee, employer, professional, agent, or representative of the Trustees or an Oversight Committee Member may rely, and shall be protected from liability for acting or failing to act, upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document reasonably believed in good faith by such Trustee or Oversight Committee Member to be genuine and to have been presented by an authorized party. None of the Liquidating Trustee, the Delaware Trustee, an Oversight Committee Member, nor any director, officer, affiliate, employee, employer, professional, agent, or representative of the Trustees or Oversight Committee Members shall be liable for any action taken or omitted or suffered by the Trustees or Oversight Committee Members, in reasonable reliance upon the advice of counsel or other professionals engaged by the Trustees in accordance with this Agreement.

5.5 Insurance. The Liquidating Trustee may purchase (using Cash from the GUC Beneficiary Reserve) and carry customary insurance policies, and pay from the GUC Beneficiary Reserve all insurance premiums and costs the Liquidating Trustee deems reasonably necessary or advisable, including, without limitation, purchasing any errors and omissions insurance with regard to any Losses the Trustees or Oversight Committee Members may incur, arising out of or due to their actions or omissions, or consequences of such actions or omissions, with respect to the implementation and administration of the Plan or this Agreement. The Liquidating Trustee may also carry and pay from the GUC Beneficiary Reserve all insurance premiums and costs the Liquidating Trustee deems reasonably necessary or advisable with respect to the Liquidating Trust Insurance Policies; provided, however, that with respect to the Liquidating Trust Insurance Policies, the Liquidating Trustee shall have the discretion to cease the payment of premiums and to abandon any Liquidating Trustee Insurance Policies the Liquidating Trustee determines to be burdensome or of no value to the Liquidating Trust. For the avoidance of doubt, notwithstanding anything to the contrary herein, nothing shall affect the rights of any party other than the Liquidating Trustee under any of the Liquidating Trust Insurance Policies, including, without limitation, the D&O Policies.

ARTICLE VI GENERAL PROVISIONS CONCERNING ADMINISTRATION OF THE LIQUIDATING TRUST

6.1 Reserves and Additional Funds. The Liquidating Trust shall maintain the GUC Beneficiary Reserve and the Governmental GUC Reserve, and to the extent determined appropriate by the Liquidating Trustee, the Class 4 Claims Reserve, the Class 5 Claims Reserve (each, a “Reserve”), and any disputed claims reserves (each, a “Disputed Claims Reserve”), and shall distribute the funds from such Reserves pursuant to and in accordance with the provisions of the Plan and this Agreement. The Liquidating Trustee shall not be obligated to physically segregate and maintain separate accounts for any Reserve, except, however, that the Governmental GUC Reserve shall be physically segregated and maintained in accounts separate and apart from the GUC Beneficiary Reserve and reserves or allowances established from funds in the GUC Beneficiary Reserve. Separate Reserves and funds may be book-keeping entries or accounting methodologies, which may be revised from time to time, to enable the Liquidating

Trustee to determine the amount of distributable Cash, Reserves and amounts to be paid to parties in interest.

(a) GUC Beneficiary Reserve. To the extent not already established prior to the Effective Date, on the Effective Date or as soon as reasonably practicable thereafter, the Liquidating Trustee shall establish and thereafter maintain, the GUC Beneficiary Reserve with the ~~initial~~ principal amount of \$29,500,000 in Cash in an authorized depository in the state of New York, which funds shall vest in the Liquidating Trust free and clear of all ~~Liens~~ Liens, Claims, encumbrances, charges, and other interests, except as otherwise specifically provided in the Plan or in the Confirmation Order. Funds in the GUC Beneficiary Reserve shall be used by the Liquidating Trustee for the payment of Allowed Claims in Classes 4 and 5, subject only to the GUC Beneficiary Reserve Carve Out. The GUC Beneficiary Reserve shall not be used for the payment of Allowed Claims in Class 6 or for any fees, expenses or costs associated with the administration, adjustment, dispute or allowance of Claims in Class 6, which such amounts shall be paid solely from the Governmental GUC Reserve. To the extent any funds remain in the GUC Beneficiary Reserve after all Allowed Claims in Classes 4 and 5 have been paid or otherwise satisfied in full, such remaining funds shall be transferred as determined by the Liquidating Trustee in its reasonable discretion, including for use in satisfying Allowed Claims in Class 6.

(b) Reserve Motion. The Liquidating Trustee may file a motion to establish (a) the Class 4 Claims Reserve for the benefit of Holders of Allowed Claims in Class 4, and (b) the Class 5 Claims Reserve for the benefit of Holders of Allowed Claims in Class 5. Each of the Class 4 Claims Reserve and the Class 5 Claims Reserve, if established, shall be funded with Cash from the GUC Beneficiary Reserve in amounts to be agreed by the Committee, the Debtor, and the Liquidating Trustee, as appropriate, which amounts shall be subject only to the GUC Beneficiary Reserve Carve Out as described in the ~~Reserve Motion~~ Plan. To the extent any funds remain in the Class 4 Claims Reserve and the Class 5 Claims Reserve after all Allowed Claims in Classes 4 and 5 have been paid or otherwise satisfied in full, such remaining funds shall be transferred to the GUC Beneficiary Reserve or the Governmental GUC Reserve, as determined by the Liquidating Trustee in its reasonable discretion, and, to the extent such Reserves have been terminated, as determined by the Liquidating Trustee in its reasonable discretion, including for use in satisfying Allowed Claims in Class 6.

(c) Governmental GUC Reserve. To the extent not already established prior to the Effective Date, on the Effective Date or as soon as reasonably practicable thereafter, the Liquidating Trustee shall establish and thereafter maintain, the Governmental GUC Reserve with the ~~initial~~ principal amount of \$500,000 in Cash in an authorized depository in the state of New York, which funds shall vest in the Liquidating Trust free and clear of all ~~Liens~~ Liens, Claims, encumbrances, charges, and other interests, except as otherwise specifically provided in the Plan or in the Confirmation Order. Funds in the Governmental GUC Reserve shall be used by the Liquidating Trustee for the administration, adjustment, dispute, or allowance of Claims in Class 6 and including for the payment of Allowed Claims in Class 6. The Liquidating Trustee shall not have any duty or obligation to use any funds from the GUC Beneficiary Reserve the administration, adjustment, dispute, or allowance of Claims in Class 6 or for the payment of Allowed Claims in Class 6 and shall separately administer the Government GUC Reserve for the benefit of the holders of Allowed Claims in Class 6. To the extent any funds remain in the Governmental GUC Reserve after all Allowed Claims in Class 6 have been paid or otherwise

satisfied in full, such remaining funds shall be transferred as determined by the Liquidating Trustee in its reasonable discretion, including for use in satisfying Allowed Claims in Classes 4 and 5.

(d) Separate Administration of Government GUC Reserve. The Liquidating Trustee shall not have any duty or obligation to use any funds contained in the GUC Beneficiary Reserve for the administration, adjustment, dispute, or allowance of Claims in Class 6 or for the payment of Allowed Claims in Class 6, unless all Allowed Claims in Classes 4 and 5 have been paid in full. The Liquidating Trustee shall separately administer Government GUC Reserve for the benefit of the Holders of Claims in Class 6. Further, the Liquidating Trustee shall not have any duty or obligation to use any funds from the Government GUC Reserve for the administration, adjustment, dispute, or allowance of Claims in Classes 4 and 5 or for the payment of Allowed Claims in Classes 4 and 5, unless all Allowed Claims in Class 6 are paid in full. The Liquidating Trustee shall separately administer the GUC Beneficiary Reserve for the benefit of the Holders of Claims in Classes 4 and 5. Notwithstanding anything herein to the contrary, the Liquidating Trustee may apportion expenses of the Liquidating Trust between the GUC Beneficiary Reserve and Government GUC Reserve to the extent required to ensure that each of GUC Beneficiary Reserve and Government GUC Reserve bear their respective shares of Trust Expenses.

(e) Disputed Claims Reserves. On the Effective Date and periodically thereafter, the Liquidating Trustee shall estimate appropriate reserves of Cash from (i) the GUC Beneficiary Reserve to be set aside in a Disputed Claims Reserve in order to pay or reserve for Disputed Class 4 and 5 Claims, (ii) the Governmental GUC Reserve to be set aside in a Disputed Claims Reserve in order to pay or reserve for Disputed Class 6 Claims, and (iii) to the extent the Reserve Motion is granted, each of the Class 4 Claims Reserve and the Class 5 Claims Reserve to be set aside in the applicable Disputed Claims Reserves in order to pay or reserve for Disputed Class 4 Claims and Disputed Class 5 Claims, respectively. In each case, any amounts set aside to pay or reserve for Disputed Claims shall include the amounts needed to fund the ongoing costs and expenses of such reserve, including, without limitation, taxes in respect of Disputed Claims, if any. Each Disputed Claims Reserve shall be closed and extinguished by the Liquidating Trustee when all distributions required to be made therefrom under the Plan and this Agreement have been made. Upon closure of any Disputed Claims Reserve, all Cash and other property held in that Disputed Claims Reserve shall be returned to the GUC Beneficiary Reserve, the Class 4 Claims Reserve, the Class 5 Claims Reserve, or the Governmental GUC Reserve, as applicable.

6.2 Books and Records.

(a) The Liquidating Trustee or its designated agent shall maintain in respect of the Liquidating Trust and the Beneficiaries the books and records (including the Debtor's books and records) relating to the Claims of the Liquidating Trust Beneficiaries, the Liquidating Trust Assets, the income of the Liquidating Trust and the payment of expenses of, and liabilities of claims against or assumed by, the Liquidating 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. Such books and records shall be maintained on a modified cash or other comprehensive basis of

accounting necessary to facilitate compliance with the tax reporting requirements of the Liquidating Trust.

(b) The Reorganized Debtor, the Liquidating Trustee, and the Environmental Response Trustee shall coordinate to develop a document sharing, retention, and maintenance policy with respect to the Reorganized Debtor Books and Records, the Liquidating Trust Books and Records, and the Environmental Response Trust Books and Records, the terms of which shall be agreed upon among the Reorganized Debtor, the Liquidating Trustee, and the Environmental Response Trustee.

(c) The Liquidating Trust shall reasonably cooperate with the Reorganized Debtor and the Environmental Response Trust, and with the JV Parties, their Affiliates, and their respective representatives, and shall provide or grant access to: (a) readily available documents and information, including privileged documents and information, and (b) such personnel having knowledge of the location or contents of such documents, relating to or concerning, (i) with respect to the Reorganized Debtor, the Administrative, Priority Tax, Professional Fee, Class 1, and Class 2 Claims, (ii) with respect to the Environmental Response Trust, the Environmental Remediation Program and the nondischargeable Environmental Claims, and (iii) with respect to the JV Parties, for legitimate business reasons. The Liquidating Trust shall generally assist (a) the Reorganized Debtor in the adjustment and allowance of Administrative, Priority Tax, Professional Fee, Class 1, and Class 2 Claims, as may be reasonably requested by the Reorganized Debtor, and (b) the Environmental Response Trust in connection with the exercise of its duties under the Plan, as may be reasonably requested by the Environmental Response Trust.

6.3 Confidentiality. The Liquidating Trustee shall, during the period that it serves as Trustee under this Agreement and thereafter, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any entity to which any of the Liquidating Trust Assets relates or of which the Liquidating Trustee has become aware in its capacity as such; provided, however, that this section ~~5.36.3~~ shall not apply to information provided in compliance with an Order of the Bankruptcy Court.

ARTICLE VII BENEFICIAL INTERESTS AND BENEFICIARIES

7.1 Identification of Beneficiaries. The record Beneficiaries shall be recorded and set forth in a register (the “Beneficiary Register”) maintained by the Liquidating Trustee. The Liquidating Trustee shall update the Beneficiary Register periodically as Disputed Claims become Allowed Claims. All references in this Agreement to Beneficiaries shall be read to mean Beneficiaries of record as set forth in the official register maintained by the Liquidating Trustee on such official registry (including any permitted successors or assigns, as applicable). The Liquidating Trustee may deem and treat the Beneficiary reflected as the owner of a beneficial interest on the Register and as the absolute owner thereof for the purposes of receiving distributions and payments on account thereof for federal and state income tax purposes and for all other purposes whatsoever.

7.2 Rights of Beneficiaries. Each Beneficiary shall be entitled to (i) participate in the rights due to such Beneficiary under the Plan and this Agreement, (ii) take and hold its uncertificated beneficial interest subject to all of the terms and provisions of this Agreement, the Confirmation Order, the Plan, and any other Order of the Bankruptcy Court, and (iii) receive distributions as set forth in the Plan.

7.3 Interest Beneficial Only. Ownership of a beneficial interest in the Liquidating Trust shall not entitle any Beneficiary to any title in or to the Liquidating Trust Assets or to any right to call for a partition or division of the Liquidating Trust Assets or to require an accounting.

7.4 Evidence of Beneficial Interest. Ownership of a beneficial interest in the Liquidating Trust shall not be evidenced by any certificate, security, or receipt or in any other form or manner whatsoever, except as maintained on the books and records of the Liquidating Trust by the Liquidating Trustee. In the absence of manifest error, the ownership of beneficial interests as reflected on the books and records of the Liquidating Trust maintained by the Liquidating Trustee shall be conclusive and binding on all owners of beneficial interests.

7.5 Exemption from Registration. ~~The parties hereto intend that the rights of the holders of the beneficial interests arising under this Agreement shall not be "securities" under applicable laws, but none of the parties hereto represents or warrants that such rights shall not be securities or shall be entitled to exemption from registration under applicable securities laws. If such rights constitute securities, the parties hereto intend for the exemption from registration provided by Section~~ issuance of beneficial interests in the Liquidating Trust under the Plan are exempt from registration pursuant to section 1145 of the Bankruptcy Code, as amended, and by other applicable law to apply to their issuance under the Plan. state and local laws requiring registration of securities.

7.6 Transfer of Beneficial Interests. Beneficial interests in the Liquidating Trust shall not be transferrable except upon death of the interest holder or by operation of law.

7.7 Change of Address. A Beneficiary may, after the Effective Date, select an alternative distribution address by filing a notice with the Bankruptcy Court (copy served on the Liquidating Trustee and Disbursing Agent) identifying such alternative distribution address. Absent such notice, the Liquidating Trustee shall not recognize any such change of distribution address. Such notification shall be effective only upon receipt by the Liquidating Trustee.

7.8 Effect of Death, Dissolution, Incapacity, or Bankruptcy of Beneficiary. The death, dissolution, incapacity, or bankruptcy of a Beneficiary during the term of the Liquidating Trust shall not (i) operate to terminate the Liquidating Trust during the term of the Liquidating Trust; (ii) entitle any representative or creditors of the deceased, incapacitated, or bankrupt Beneficiary (a) to an accounting, (b) to take any action in any court or elsewhere for the distribution of the Liquidating Trust Assets, or (c) to a partition of the Hovensa Trust Assets; or (iii) otherwise affect the rights and obligations of the Beneficiary under this Agreement or in the Liquidating Trust.

7.9 Standing. Except as expressly provided in this Agreement, the Plan, or the Confirmation Order, a Beneficiary does not have standing to direct the Liquidating Trustee to do

or not to do any act or to institute any action or proceeding at law or in equity against any party upon or with respect to the Liquidating Trust Assets.

ARTICLE VIII PROCEDURES FOR RESOLVING AND TREATING DISPUTED CLAIMS

8.1 Prosecution of Objections to Claims and Claims Procedures. The Liquidating Trustee shall have and shall retain any and all rights and defenses that the Debtor had with respect to any Claim in Classes 4, 5, and 6 against, or assumed by, the Liquidating Trust, except with respect to any Claim in Classes 4, 5, and 6 deemed Allowed as of the Effective Date. The Liquidating Trustee shall have the exclusive authority to (a) File objections to Claims in Classes 4, 5, and 6; (b) File a Claims Procedures Motion as described in the Plan; and (c) settle, compromise, withdraw, or litigate to judgment objections on behalf of the Debtor's Estate to any and all such Claims. The Liquidating Trustee shall have the authority to administer and adjust the Beneficiary Register and the Claims Register, as applicable, with respect to Claims in Classes 4, 5, and 6 to reflect any such settlements or compromises and no further notice to or action, ~~order~~Order, or approval of the Bankruptcy Court with respect to such settlements or compromises shall be required.

8.2 Distributions Regarding Disputed Claims. Distributions made after the Effective Date to Holders of Disputed Claims that are not Allowed Claims as of the Effective Date but which later become Allowed Claims shall, in the reasonable discretion of the Liquidating Trustee, be deemed to have been made by the Liquidating Trustee on the Effective Date, unless the Liquidating Trustee and the Holder of such Claim agree otherwise. Any distribution that is not made on the Initial Distribution Date or on any other date specified in the Plan because the Claim that would have been entitled to receive that distribution is not an Allowed Claim on such date, shall be held by the Disbursing Agent and distributed on the next Subsequent Distribution Date that occurs after such Claim is Allowed. No interest shall accrue or be paid on the unpaid amount of any distribution paid pursuant to the Plan. Notwithstanding any provision otherwise in the Plan and except as may be agreed to by the Liquidating Trustee, on the one hand, and the Holder of a Disputed Claim, on the other hand, no partial payments and no partial distributions shall be made with respect to any Disputed Claim until all Disputed Claims held by the Holder of such Disputed Claim have become Allowed Claims or have otherwise been resolved by settlement or Final Order.

8.3 Claims Estimation.

(a) On and after the Effective Date, the Liquidating Trustee may, at any time, request that the Bankruptcy Court estimate (i) any Disputed Claim in Class 4, 5, or 6 pursuant to applicable law and (ii) any contingent or unliquidated Claim in Class 4, 5, or 6 pursuant to applicable law, in each case regardless of whether the Debtor or the Liquidating Trustee has previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection.

(b) Notwithstanding any provision otherwise in the Plan to the contrary, a Claim in Class 4, 5, or 6 that has been expunged from the Claims Register but that is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero

dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any Disputed-~~Claim~~, contingent-~~Claim~~, or unliquidated Claim, in Class 4, 5, or 6, that estimated amount shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim for all purposes under the Plan, including for purposes of distributions, and the Liquidating Trustee may elect to pursue additional objections to the ultimate distribution on such Claim. If the estimated amount constitutes a maximum limitation on such Claim, the Liquidating Trustee may elect to pursue any supplemental proceedings to object to any ultimate distribution on account of such Claim. Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any Holder of a Claim in Class 4, 5, or 6 that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation unless such Holder has Filed a motion requesting the right to seek such reconsideration on or before 21 days after the date on which such Claim is estimated. All of the aforementioned Claims and objection, estimation, and resolution procedures are cumulative and not exclusive of one another. Claims in Classes 4, 5, and 6 may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

8.4 Expungement or Adjustment to Claims Without Objection. Any Claim in Class 4, 5, or 6 that has been paid, satisfied, or superseded may be expunged on the Claims Register by the Liquidating Trustee or the Claims and Noticing Agent, as applicable, and any Claim in Class 4, 5, or 6 that has been amended may be adjusted thereon by the Liquidating Trustee without a Claims objection having to be Filed and without any further notice to or action, ~~order~~Order, or approval of the Bankruptcy Court.

8.5 Disputed Claims Reserve. The Liquidating Trustee shall create Disputed Claims Reserves in accordance with Section ~~5.16.1~~(de) of this Agreement.

ARTICLE IX DISTRIBUTIONS

9.1 Disbursing Agent. The Liquidating Trustee shall be the Disbursing Agent with respect to Allowed Claims in Classes 4, 5, and 6 and shall make all distributions on Allowed Claims in Classes 4, 5, and 6.

9.2 Distributions from Liquidating Trust Assets. All payments to be made by the Liquidating Trust to any Beneficiary shall be made only in accordance with the Plan, the Confirmation Order, and this Agreement and out of the Liquidating Trust Assets (or from the income and proceeds realized from the Liquidating Trust Assets), subject to any amounts set aside in the Disputed Claims Reserves.

9.3 Calculation of Amounts to Be Distributed. Each Holder of an Allowed Claim against the Debtor shall receive the full amount of the distributions that the Plan provides for Allowed Claims in the applicable Class.

9.4 Distribution Record Date. On the Distribution Record Date, the Claims Register shall be closed and the Disbursing Agent shall be authorized and entitled to recognize only those

record Holders listed on the Claims Register as of the close of business on the Distribution Record Date.

9.5 Distributions; Withholding. The Liquidating Trustee shall make distributions to Holders of Allowed Claims in Classes 4, 5, and 6 as provided in the Plan. All such distributions shall be made as provided, and subject to any withholding or reserve, in this Agreement, the Plan or the Confirmation Order. Additionally, the Liquidating Trustee may withhold from amounts distributable to any Beneficiary any and all amounts, determined in the Liquidating Trustee's sole discretion, to be required by any law, regulation, rule, ruling, directive, or other governmental requirement. In addition, all distributions under this Agreement shall be net of the actual and reasonable costs of making such distributions. The net income of the Liquidating Trust and all net proceeds from the sale of Liquidating Trust Assets shall be distributed at least annually (except that the Liquidating Trustee may retain an amount of cash or other Liquidating Trust Assets or net income of the Liquidating Trust reasonably necessary to maintain the value of the Liquidating Trust Assets and to meet claims and contingent liabilities (including Disputed Claims)).

9.6 Undeliverable/Unclaimed Distributions. In the event that any distribution to any Holder is returned as undeliverable, no distribution to such Holder shall be made unless and until the Liquidating Trustee and the Disbursing Agent are notified of the then current address of such Holder, at which time such distribution shall be made to such Holder without interest. Amounts in respect of undeliverable distributions shall be returned to the Liquidating Trust until such distributions are claimed. All undeliverable distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of six months from the date the initial distribution is made. After such date, all unclaimed property or interests in property shall revert (notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary) to the Liquidating Trust automatically and without need for a further ~~order~~ Order by the Bankruptcy Court for distribution in accordance with the Plan, and the Claim of any Holder to such property or interest in property shall be released, settled, compromised, and forever barred.

9.7 Expenses of Distribution. All distributions to be made by the Liquidating Trust under the Plan shall be net of the actual and reasonable costs of making such distributions, as set forth in section 2.5 of this Agreement.

9.8 Timing of Distributions Under the Plan. On and after the Effective Date, the Disbursing Agent shall make the distributions required to be made on account of Allowed Claims under the Plan. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, in which case such payment shall be deemed to have occurred when due.

9.9 Minimum; De Minimis Distributions. No Cash payment of less than \$50.00, in the reasonable discretion of the Liquidating Trustee shall be made to a Holder of an Allowed Claim on account of such Allowed Claim. If a Holder of an Allowed Claim would be entitled to receive less than \$50.00 as of the time of a particular distribution, but would be entitled to receive more than \$50.00 in combination with later distributions, the Liquidating Trustee will

combine such distributions with later distributions to such Holder of an Allowed Claim so that such Holder may eventually be entitled to a distribution of at least \$50.00 in value. To the extent that the aggregate of such distributions never exceeds \$50.00, such funds shall remain with and vest in the Liquidating Trust for distribution to other Holders of Allowed Claims.

9.10 Manner of Payment Under the Plan. Unless the Liquidating Trustee and the Entity receiving a payment agrees otherwise, any payment in Cash to be made under the Plan shall be made at the election of the Liquidating Trustee by check or by wire transfer.

9.11 Setoffs. Except as otherwise provided in the Plan, the Liquidating Trustee pursuant to the Bankruptcy Code (including sections 553 and 558 of the Bankruptcy Code), applicable nonbankruptcy law, or as may be agreed to by the Holder of a Claim in Class 4, 5, or 6, may set off against any Allowed Claim in Class 4, 5, or 6 on account of any Proof of Claim or other pleading Filed with respect thereto prior to the Combined Hearing and the distributions to be made pursuant to the Plan on account of such Allowed Claim in Class 4, 5, or 6 (before any distribution is made on account of such Allowed Claim), any claims, rights, and Causes of Action of any nature that the Debtor's Estate may hold against the Holder of such Allowed Claim, to the extent such claims, rights, or Causes of Action against such Holder have not been otherwise compromised or settled on or prior to the Effective Date (whether pursuant to the Plan or otherwise); provided that neither the failure to effect such a setoff nor the allowance of any Claim in Classes 4, 5, or 6 pursuant to the Plan shall constitute a waiver or release by the Liquidating Trustee of any such claims, rights, and Causes of Action that the Debtor's Estate may possess against such Holder. In no event shall any Holder of a Claim in Class 4, 5, or 6 be entitled to set off any Claim against any claim, right, or Cause of Action of the Debtor's Estate unless such Holder has timely Filed a Proof of Claim with the Bankruptcy Court expressly preserving such setoff; provided that nothing in the Plan shall prejudice or be deemed to have prejudiced the Debtor's or the Liquidating Trustee's right to assert that any Holder's setoff rights were required to have been asserted by motion or pleading filed with the Bankruptcy Court prior to the Effective Date.

9.12 Interest on Claims. Notwithstanding anything to the contrary in the Plan, no Holder of an Allowed Claim in Class 4, 5, or 6 shall, on account of such Allowed Claim, receive a distribution in excess of the Allowed amount of such Claim plus any interest accruing on such Claim that is actually payable in accordance with the Plan.

9.13 Charitable Distributions. The Liquidating Trustee shall have the discretion to cease distributions when the corpus of the Liquidating Trust is reduced to \$10,000 or less and to transfer any remaining funds to a charitable organization that qualifies as an exempt organization under Section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code and is benefitting the USVI as determined in the Liquidating Trustee's reasonable discretion.

ARTICLE X TAXES

10.1 Income Tax Status. Consistent with Revenue Procedure 94-45, 1994-28 I.R.B. 124, the Liquidating Trust shall be treated as a liquidating trust pursuant to Treas. Reg. section

301.7701-4(d) and as a grantor trust that is a foreign trust pursuant to the Tax Code. As such, the Beneficiaries will be treated as both the grantors and the deemed owners of the Liquidating Trust. Any items of income, deduction, credit, and loss of the Liquidating Trust shall be allocated for federal income tax purposes to the Beneficiaries. The Liquidating Trust shall (a) treat each Disputed Claims Reserve, and the Liquidating Trust Assets allocable thereto, as a “disputed ownership fund” governed by Treasury Regulation section 1.468B-9 by timely making an election, (b) file such tax returns and pay such taxes as may be required consistent with such treatment, and (c) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes.

10.2 Tax Returns. The Liquidating Trust shall annually file Form 3520-A in a timely manner with the IRS and furnish the information provided on Form 3520-A to Liquidating Trust Beneficiaries that are “United States persons” as defined in the Tax Code. In addition, the Liquidating Trust shall file in a timely manner such other tax returns, including any federal, state, local or non-U.S. (including the U.S. Virgin Islands) tax returns, as are required by applicable law (including for the avoidance of doubt, Treasury Regulation 1.671-4(a)) and pay any taxes shown as due thereon including with respect to any Disputed Claims Reserve treated as a disputed ownership fund out of the GUC Beneficiary Reserve (or the income or proceeds thereof). Within a reasonable time following the end of the taxable year, the Liquidating Trust shall send to each Beneficiary a separate statement setting forth the Beneficiary’s share of items of income, gain, loss, deduction or credit and informing each such Beneficiary that such items should be reported on such Beneficiary’s federal, state, local, non-U.S. (including the U.S. Virgin Islands) and other income tax returns, as applicable. The Liquidating Trustee shall allocate the taxable income, gain, loss, deduction, or credit of the Liquidating Trust with respect to each Beneficiary.

10.3 Withholding of Taxes and Reporting Related to Liquidating Trust Operations. The Liquidating Trust shall comply with all withholding and reporting requirements imposed by any federal, state, local, or non-U.S. (including the U.S. Virgin Islands) taxing authority, and all distributions made by the Liquidating Trust shall be subject to any such withholding and reporting requirements including with respect to any Disputed Claims Reserve treated as a disputed ownership fund. To the extent that the operation of the Liquidating Trust or the liquidation of the Liquidating Trust Assets creates a tax liability, the Liquidating Trust shall promptly pay such tax liability out of the GUC Beneficiary Reserve and any such payment shall be considered a cost and expense of the operation of the Liquidating Trust payable without [Order of the Bankruptcy Court](#) ~~order~~. The Liquidating Trust may reserve a sum, the amount of which shall be determined by the Liquidating Trustee, from the GUC Beneficiary Reserve sufficient to pay the accrued or potential tax liability arising out of the operations of the Liquidating Trust or the administration of the Liquidating Trust Assets. The Liquidating Trustee, on behalf of the Liquidating Trust, may enter into agreements with taxing authorities or other governmental units for the payment of such amounts as may be withheld. Any federal, state, local or non-U.S. (including the U.S. Virgin Islands) withholding taxes or other amounts required to be withheld under applicable law shall be deducted from distributions hereunder.

10.4 Tax Identification Numbers. The Liquidating Trustee may require any Beneficiary to furnish to the Liquidating Trustee its social security number or employer or

taxpayer identification number as assigned by the IRS and the Liquidating Trustee may condition any distribution to any Beneficiary upon the receipt of such identification number.

ARTICLE XI TERMINATION OF THE LIQUIDATING TRUST

11.1 Termination of Liquidating Trust. The Liquidating Trustee and the Delaware Trustee shall be discharged and the Liquidating Trust shall be dissolved, wound up, and terminated in accordance with section 3808 of the Delaware Act, at such time as (1) all Disputed Claims in Classes 4, 5, and 6 have been resolved, (2) all of the Liquidating Trust Assets have been liquidated, (3) all duties and obligations of the Liquidating Trustee hereunder have been fulfilled, and (4) all distributions required to be made by the Liquidating Trust under the Plan and the Liquidating Trust Agreement have been made.

11.2 Maximum Term. In no event shall the Liquidating Trust be dissolved later than five (5) years from the Effective Date unless the Bankruptcy Court, upon motion by the Liquidating Trustee within the six-month period prior to the third anniversary (or the end of any extension period approved by the Bankruptcy Court), determines that a fixed period extension (not to exceed five (5) years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the Liquidating Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the liquidation, recovery and distribution of the Liquidating Trust Assets. The duties, responsibilities, and powers of the Liquidating Trustee will terminate in accordance with the terms of the Liquidating Trust Agreement.

11.3 Events Upon Termination. At the conclusion of the term of the Liquidating Trust, the Liquidating Trustee shall distribute the remaining Liquidating Trust Assets, if any, in its reasonable discretion, including to a charitable organization, in accordance with the Plan, the Confirmation Order, and this Agreement.

11.4 Winding Up, Discharge, and Release of the Liquidating Trustee. The Liquidating Trustee shall seek authority from the Bankruptcy Court to close the Chapter 11 Case in accordance with the Bankruptcy Code and the Bankruptcy Rules once (i) all Disputed Claims have become Allowed or disallowed, (ii) the Reorganized Debtor has terminated in accordance with the Plan, (iii) the Liquidating Trust has terminated in accordance with the Plan, (iv) all remaining Liquidating Trust Assets have been distributed in accordance with the Plan, and (v) the business and affairs of the Debtor have been otherwise wound down. For the purposes of winding up the affairs of the Liquidating Trust at the conclusion of its term, the Liquidating Trustee shall continue to act as Liquidating Trustee until its duties under this Agreement have been fully discharged or its role as Liquidating Trustee is otherwise terminated under this Agreement and the Plan. Upon a motion by the Liquidating Trustee, the Bankruptcy Court may enter an ~~order~~Order relieving the Liquidating Trustee, its agents and employees of any further duties, discharging, and releasing the Liquidating Trustee and releasing its bond, if any.

ARTICLE XII
MISCELLANEOUS PROVISIONS

12.1 Amendments. The Liquidating Trustee may modify, supplement, or amend this Agreement in any way that is not inconsistent with the Plan or the Confirmation Order. The Liquidating Trustee shall seek Bankruptcy Court approval of any material modification, supplement, or amendment. Any amendment which adversely affects the Delaware Trustee shall require the Delaware Trustee's written consent.

12.2 Waiver. No failure by the Liquidating Trust, the Liquidating Trustee, or its agents, professionals and employees to exercise or delay in exercising any right, power, or privilege hereunder shall operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any further exercise thereof, or of any other right, power, or privilege.

12.3 Cumulative Rights and Remedies. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights under law or in equity.

12.4 No Bond Required. Notwithstanding any state law to the contrary, each of the Liquidating Trustee (including any successor Liquidating Trustee) and the Delaware Trustee shall be exempt from giving any bond or other security in any jurisdiction. In the event that the Liquidating Trustee is otherwise ordered by the Bankruptcy Court, all costs and expenses of the Liquidating Trustee in procuring any such bond or surety shall be paid for with Cash derived from the GUC Beneficiary Reserve.

12.5 Irrevocability. This Agreement and the Liquidating Trust created hereunder shall be irrevocable, except as otherwise expressly provided in this Agreement.

12.6 Relationship to the Plan. The principal purpose of this Agreement is to aid in the implementation of the Plan and, therefore, this Agreement incorporates and is subject to the provisions of the Plan and the Confirmation Order. In the event that any provision of this Agreement is found to be inconsistent with a provision of the Plan or the Confirmation Order, the provisions of the Plan or the Confirmation Order, as applicable, shall control. In the event that any provision of the Plan is found to be inconsistent with a provision of the Confirmation Order, the Confirmation Order shall control.

12.7 Applicable Law. This Liquidating Trust shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to rules governing the conflict of laws.

12.8 Retention of Jurisdiction. Notwithstanding the Effective Date, and to the fullest extent permitted by law, the Bankruptcy Court shall retain exclusive jurisdiction over the Liquidating Trust after the Effective Date, including, without limitation, jurisdiction to resolve any and all controversies, suits and issues that may arise in connection therewith, including, without limitation, this Agreement, or any Entity's obligations incurred in connection herewith, including without limitation, any action against the Liquidating Trustee or any professional retained by the Liquidating Trustee, in each case in its capacity as such. Each party to this

[Telephone: 202.408.7004](tel:202.408.7004)
[Email: sam.alberts@dentons.com](mailto:sam.alberts@dentons.com)

To the Liquidating Trustee: [\[REDACTED\]](#) [Jay Borow, Trustee](#)
[BRG Capstone](#)
[Berkeley Research Group, LLC](#)
[104 West 40th Street, 16th Floor](#)
[New York, NY 10018](#)
[Telephone: 212.782.1411](tel:212.782.1411)
[Fax: 212.782.1479](tel:212.782.1479)
[Email: jborow@thinkbrg.com](mailto:jborow@thinkbrg.com)

[with a copy to:](#)

[Sam J. Alberts, Esq.](#)
[Dentons US LLP](#)
[1301 K Street, NW](#)
[Suite 600, East Tower](#)
[Washington, DC 20005-3364](#)
[Telephone: 202.408.7004](tel:202.408.7004)
[Email: sam.alberts@dentons.com](mailto:sam.alberts@dentons.com)

All such notices and communications if mailed shall be effective when physically delivered at the designated addresses or, if electronically transmitted, when the communication is received at the designated addresses and confirmed by the recipient by return transmission.

12.12 Entire Agreement; No Waiver. The entire agreement of the parties relating to the subject matter of this Agreement is contained herein and in the Plan and Confirmation Order referred to herein, and this Agreement and such documents supersede any prior oral or written agreements concerning the subject matter hereof. No failure to exercise or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any further exercise thereof or of any other right, power or privilege. The rights and remedies herein provided are cumulative and are not exclusive of rights under law or in equity.

12.13 Headings. The headings used in this Agreement are inserted for convenience only and do not constitute a portion of this Agreement, nor in any manner affect the construction of the provisions of this Agreement.

12.14 Effectiveness. This Agreement shall not become effective until it has been executed and delivered by all the parties hereto.

12.15 Counterpart Signatures. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but such counterparts shall together constitute but one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement this [] day of
~~January~~February, 2016.

HOVENSA, L.L.C.

By: _____
Name: _____
Title: _____

LIQUIDATING TRUSTEE

_____ JAY BOROW

By: _____
Name: _____
Title: _____

DELAWARE TRUSTEE

_____ WILMINGTON
TRUST
NATIONAL ASSOCIATION

By: _____
Name: _____
Title: _____

Expiration Date of Initial Term: Fifth
Anniversary of the date of this Agreement

Exhibit A

**CERTIFICATE OF TRUST OF
HOVENSA LIQUIDATING TRUST**

This Certificate of Trust of the Hovensa Liquidating Trust (the “Trust”) is being duly executed and filed on behalf of the Trust by the undersigned, as trustees, to form a statutory trust under the Delaware Statutory Trust Act (12 Del. C. § 3801 *et seq.*, as amended from time to time) (the “Act”).

1. Name. The name of the statutory trust formed by this Certificate of Trust is Hovensa Liquidating Trust.
2. Delaware Trustee. The name and address of the trustee of the Trust with a principal place of business in the State of Delaware is [redacted] [Wilmington Trust, National Association, Rodney Square North, 1100 North Market Street, Wilmington, DE 19890, Attention: Corporate Trust Administration](#).
3. Effective Date. This Certificate of Trust shall be effective upon filing.

IN WITNESS WHEREOF, the undersigned have duly executed this Certificate of Trust in accordance with Section 3811(a)(1) of the Act .

[redacted] [Wilmington Trust, National Association](#), not in its individual capacity but solely as Delaware Trustee

By: _____

Name: _____

Title: _____

[redacted] [Jay Borow](#), not in ~~its~~his individual capacity but solely as Liquidating Trustee

By: _____

Name: [redacted] [Jay Borow](#) _____

Title: [redacted] [Liquidating Trustee](#) _____