

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

_____)
In re:)
) Chapter 11
HOVENSA L.L.C.,)
) Case No. 1:15-bk-10003-MFW
Debtor.)
_____)

**DISCLOSURE STATEMENT FOR THE DEBTOR’S PLAN OF
LIQUIDATION PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

THIS DISCLOSURE STATEMENT IS A DRAFT THAT REMAINS SUBJECT TO REVISION AND IS NOT A SOLICITATION OF ACCEPTANCES OR REJECTIONS OF THE PLAN. THE BANKRUPTCY COURT WILL CONSIDER APPROVAL OF THIS DISCLOSURE STATEMENT AT A HEARING ON OR ABOUT JANUARY [7], 2016.

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

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

Counsel for Debtor and Debtor-in-Possession

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THIS DISCLOSURE STATEMENT CONTAINS, AMONG OTHER THINGS, SUMMARIES OF THE PLAN, CERTAIN STATUTORY PROVISIONS, CERTAIN EVENTS IN THE DEBTOR'S CHAPTER 11 CASE, AND CERTAIN DOCUMENTS RELATED TO THE PLAN THAT MAY BE ATTACHED HERETO AND ARE INCORPORATED BY REFERENCE HEREIN. ALTHOUGH THE DEBTOR BELIEVES THAT THESE SUMMARIES ARE FAIR AND ACCURATE, THESE SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY TO THE EXTENT THAT THEY DO NOT SET FORTH THE ENTIRE TEXT OF SUCH DOCUMENTS OR STATUTORY PROVISIONS OR EVERY DETAIL OF SUCH EVENTS. IN THE EVENT OF ANY INCONSISTENCY OR DISCREPANCY BETWEEN A DESCRIPTION IN THIS DISCLOSURE STATEMENT AND THE TERMS AND PROVISIONS OF THE PLAN OR ANY OTHER DOCUMENTS INCORPORATED HEREIN BY REFERENCE, THE PLAN OR SUCH OTHER DOCUMENTS WILL GOVERN FOR ALL PURPOSES. THE DEBTOR DOES NOT REPRESENT OR WARRANT THAT THE INFORMATION CONTAINED HEREIN OR ATTACHED HERETO IS WITHOUT ANY MATERIAL INACCURACY OR OMISSION.

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CONFIRMATION AND EFFECTIVENESS OF THE PLAN ARE SUBJECT TO CERTAIN MATERIAL CONDITIONS PRECEDENT DESCRIBED IN ARTICLE XI OF THE PLAN. THERE IS NO ASSURANCE THAT THE PLAN WILL BE CONFIRMED OR, IF CONFIRMED, THAT SUCH MATERIAL CONDITIONS PRECEDENT WILL BE SATISFIED OR WAIVED. YOU ARE ENCOURAGED TO READ THIS DISCLOSURE STATEMENT IN ITS ENTIRETY, INCLUDING, BUT NOT LIMITED TO, THE PLAN AND ARTICLE VII OF THIS DISCLOSURE STATEMENT ENTITLED "CERTAIN RISK FACTORS TO BE CONSIDERED BEFORE VOTING," BEFORE SUBMITTING YOUR BALLOT TO VOTE TO ACCEPT OR REJECT THE PLAN.

THE DEBTOR HAS NOT AUTHORIZED ANY ENTITY TO GIVE ANY INFORMATION ABOUT OR CONCERNING THE PLAN OTHER THAN THAT WHICH IS CONTAINED IN THIS DISCLOSURE STATEMENT. THE DEBTOR HAS NOT AUTHORIZED ANY REPRESENTATIONS CONCERNING THE DEBTOR OR THE VALUE OF ITS PROPERTY OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT.

IF THE PLAN IS CONFIRMED BY THE BANKRUPTCY COURT AND THE EFFECTIVE DATE OCCURS, ALL HOLDERS OF CLAIMS AND INTERESTS (INCLUDING THOSE HOLDERS OF CLAIMS OR INTERESTS WHO ARE NOT ENTITLED TO VOTE ON THE PLAN) WILL BE BOUND BY THE TERMS OF THE PLAN AND ANY TRANSACTIONS CONTEMPLATED THEREBY.

THE DEBTOR SUPPORTS CONFIRMATION OF THE PLAN AND, UPON THE BANKRUPTCY COURT'S APPROVAL OF THE SOLICITATION PROCEDURES, WILL RECOMMEND ALL HOLDERS OF CLAIMS WHOSE VOTES ARE BEING SOLICITED TO ACCEPT THE PLAN.

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EXHIBITS

- EXHIBIT A Debtor's Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code
- EXHIBIT B Solicitation Procedures
- EXHIBIT C Liquidation Analysis

ARTICLE I.

INTRODUCTION AND OVERVIEW OF THE PLAN

This disclosure statement (this “Disclosure Statement”) provides information regarding the *Debtor’s Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code* (as may be amended, supplemented, or otherwise modified from time to time, the “Plan”), which the Debtor is seeking to have confirmed by the Bankruptcy Court.¹ A copy of the Plan is attached hereto as **Exhibit A**. The rules of interpretation set forth in Article I of the Plan shall govern the interpretation of this Disclosure Statement.

The Debtor’s Executive Committee, including the independent member thereof, has approved the Plan and believes the Plan is in the best interests of the Debtor’s Estate. As such, if the Bankruptcy Court approves the Solicitation Procedures (as defined below), the Debtor will recommend that all Holders of Claims entitled to vote accept the Plan by returning their Ballots so as to be actually received by the Claims and Noticing Agent no later than December [31], 2015, at 4:00 p.m. (prevailing Eastern Time). Assuming the requisite acceptances to the Plan are obtained, the Debtor will seek the Bankruptcy Court’s approval of the Plan at the Combined Hearing on January [7], 2016 at [-:-] a.m. (prevailing Eastern Time).

A. *The Plan*

The Debtor filed for chapter 11 bankruptcy protection on September 15, 2015. The purpose of a chapter 11 bankruptcy case is to resolve the affairs of a debtor and distribute the proceeds of the debtor’s estate pursuant to a confirmed chapter 11 plan. To that end, the Debtor filed the Plan, the terms of which are more fully described herein, contemporaneously with the filing of this Disclosure Statement. The Plan contemplates a liquidation of the Debtor and its Estate and is therefore referred to as a “plan of liquidation.” The primary objective of the Plan is to maximize the value of recoveries to all Holders of Allowed Claims and to distribute all property of the Estate that is or becomes available for distribution in accordance with the priorities established by the Bankruptcy Code. The Debtor believes that the Plan accomplishes this objective and is in the best interests of the Estate and therefore seeks to confirm the Plan. The Debtor believes that Confirmation of the Plan will avoid the lengthy delay and significant cost of conversion to and completion of a liquidation under chapter 7 of the Bankruptcy Code.

The Plan classifies Holders of Claims and Interests according to the type of the Holder’s Claim or Interest, as more fully described below. Only those Holders of Claims in Class 3 (GVI Claims), Class 4 (Tort Claims), Class 5 (Other Non-Governmental and Non-Tort General Unsecured Claims), and Class 6 (Other Governmental General Unsecured Claims) are entitled to vote to accept or reject the Plan.

¹ Unless otherwise specified herein, capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Plan.

B. *The Adequacy of this Disclosure Statement*

Before soliciting acceptances of a proposed chapter 11 plan, section 1125 of the Bankruptcy Code requires a plan proponent to prepare a written disclosure statement containing information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment regarding acceptance of the plan. The Debtor submits this Disclosure Statement in accordance with such requirements. This Disclosure Statement includes, without limitation, information about:

- the procedures for voting on the Plan and projected recoveries under the Plan (Article I hereof);
- the Debtor's organizational structure, business operations, and assets and liabilities (Article II hereof);
- the events leading to the Chapter 11 Case (Article III hereof);
- the events during the Chapter 11 Case, including significant pleadings Filed in the Chapter 11 Case and certain relief granted by the Bankruptcy Court in connection therewith (Article IV hereof);
- the classification and treatment of Claims and Interests under the Plan, including identification of the Holders of Claims entitled to vote on the Plan (Article V hereof);
- the means for implementation of the Plan, the provisions governing distributions to certain Holders of Claims pursuant to the Plan, the procedures for resolving Disputed Claims, and other significant aspects of the Plan (Article V hereof);
- the releases contemplated by the Plan that are integral to the overall settlement of Claims pursuant to the Plan (Article V hereof);
- the statutory requirements for confirming the Plan (Article VI hereof);
- certain risk factors that Holders of Claims should consider before voting to accept or reject the Plan and information regarding alternatives to Confirmation of the Plan (Article VII hereof); and
- certain United States federal income tax consequences of the Plan (Article VIII hereof).

In light of the foregoing, the Debtor believes that this Disclosure Statement contains “adequate information” to enable a hypothetical reasonable investor to make an informed judgment about the Plan and complies with all aspects of section 1125 of the Bankruptcy Code.

The Plan and all documents to be executed, delivered, assumed, and/or performed in connection with the Consummation of the Plan, including the documents to be included in the Plan Supplement, are subject to revision and modification from time to time prior to the Effective Date (subject to the terms of the Plan).

C. *Summary of Classes and Treatment of Claims and Interests*

As set forth in Articles II and III of the Plan, and in accordance with sections 1122 and 1123(a)(1) of the Bankruptcy Code, all Claims and Interests (other than Administrative Claims, Priority Tax Claims, Professional Fee Claims, and DIP Facility Claims, which are unclassified Claims under the Plan) are classified into Classes for all purposes, including voting, Confirmation, and distributions pursuant to the Plan. A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class. A Claim or Interest is also classified in a particular Class for the purpose of receiving distributions pursuant to the Plan only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

The table below summarizes the classification and treatment of all classified Claims and Interests under the Plan. The classification, treatment, and projected recoveries of classified Claims are described in summary form below for illustrative purposes only and are subject to material change. *Additionally, recoveries available to Holders of Claims are estimates and actual recoveries may materially differ based on, among other things, the amount of Claims actually Allowed. Depending on the amount of Allowed Claims, the actual recoveries available to Holders of Allowed Claims could be materially lower compared to the estimates provided below. To the extent that any inconsistency exists between the summaries contained in this Disclosure Statement and the Plan, the terms of the Plan shall govern.*

Class	Claim or Interest	Plan Treatment	Voting Rights	Projected Approximate Amount of Allowed Claims or Interests	Projected Plan Recovery
1	Other Priority Claims	Unimpaired	Not Entitled to Vote (Conclusively Presumed to Accept)	\$[__]	[__]%
2	Other Secured Claims	Unimpaired	Not Entitled to Vote (Conclusively Presumed to Accept)	\$[__]	[__]%

Class	Claim or Interest	Plan Treatment	Voting Rights	Projected Approximate Amount of Allowed Claims or Interests	Projected Plan Recovery
3	GVI Claims	Impaired	Entitled to Vote	\$[]	[]%
4	Tort Claims	Impaired	Entitled to Vote	\$[]	[]%
5	Other Non-Governmental and Non-Tort General Unsecured Claims	Impaired	Entitled to Vote	\$[]	[]%
6	Other Governmental General Unsecured Claims	Impaired	Entitled to Vote	\$[]	[]%
7	Interests	Impaired	Not Entitled to Vote (Deemed to Reject)	N/A	0%

Except to the extent that the Debtor or the Liquidating Trustee, as applicable, and a Holder of an Allowed Claim or Interest, as applicable, agree to a less favorable treatment, such Holder shall receive under the Plan the treatment described in Article V below in full settlement and release of and in exchange for such Holder’s Allowed Claim or Interest. Unless otherwise indicated, each Holder of an Allowed Claim or Interest, as applicable, shall receive such treatment on the Effective Date or as soon as reasonably practicable thereafter.

D. Voting on and Confirmation of the Plan

By order of the Bankruptcy Court, entered on [_____, 2015] [Docket No. ___] (the “Solicitation Procedures Order”), voting tabulation procedures have been established, which include certain vote tabulation rules that temporarily allow or disallow Claims for voting purposes (the “Solicitation Procedures”). A copy of the Solicitation Procedures approved by the Bankruptcy Court is attached hereto as **Exhibit B**.

E. Classes Entitled to Vote on the Plan

The following Classes are the only Classes entitled to vote to accept or reject the Plan (the “Voting Classes”):

Class	Claim	Status
3	GVI Claims	Impaired
4	Tort Claims	Impaired
5	Other Non-Governmental and Non-Tort General Unsecured Claims	Impaired
6	Other Governmental General Unsecured Claims	Impaired

If your Claim or Interest is not included in one of the Voting Classes, you are not entitled to vote and you will not receive a Solicitation Package or a Ballot. If your Claim or Interest is included in one of the Voting Classes, you should read your Ballot and carefully follow the instructions set forth therein. Please use only the Ballot that accompanies this Disclosure Statement or the Ballot that the Debtor, or the Claims and Noticing Agent on behalf of the Debtor, otherwise provide to you.

F. *Votes Required for Acceptance by a Class*

Under the Bankruptcy Code, acceptance of a plan by a class of claims or interests is determined by calculating the amount and, if a class of claims, the number, of claims and interests voting to accept, as a percentage of the allowed claims or interests, as applicable, that have voted. Each Class of Claims entitled to vote on the Plan will have accepted the Plan if: (a) the Holders of at least two-thirds in dollar amount of the Claims actually voting in each Class vote to accept the Plan; and (b) the Holders of more than one-half in number of the Claims actually voting in each Class vote to accept the Plan.

G. *Certain Factors to Be Considered Prior to Voting*

There are a variety of factors that all holders of Claims entitled to vote on the Plan should consider prior to voting to accept or reject the Plan. These factors may impact recoveries under the Plan, including:

- the financial information contained in this Disclosure Statement has not been audited and is based on an analysis of data available at the time of the preparation of the Plan and this Disclosure Statement;
- although the Debtor believes that the Plan complies with all applicable provisions of the Bankruptcy Code, the Debtor can neither assure such compliance nor that the Bankruptcy Court will confirm the Plan;
- the Debtor may request Confirmation without the acceptance of all Impaired Classes entitled to vote in accordance with section 1129(b) of the Bankruptcy Code; and

- any delays of either Confirmation or Consummation could result in, among other things, increased Administrative Claims or Professional Fee Claims.

While these factors could affect distributions available to Holders of Allowed Claims under the Plan, the occurrence or impact of such factors will not necessarily affect the validity of the vote of Holders within the Voting Classes or necessarily require a re-solicitation of the votes of Holders of Claims in such Voting Classes.

For a further discussion of risk factors, please refer to Article VII hereof, entitled “Certain Risk Factors to be Considered Before Voting.”

H. *Classes Not Entitled to Vote on the Plan*

Under the Bankruptcy Code, holders of claims and interests are not entitled to vote if their contractual rights are unimpaired by the proposed plan, in which case they are conclusively presumed to accept the proposed plan, or if they will receive no property under the plan, in which case they are deemed to reject the proposed plan. Accordingly, the following Classes of Claims and Interests are not entitled to vote to accept or reject the Plan:

Class	Claim or Interest	Status	Voting Rights
1	Other Priority Claims	Unimpaired	Presumed to Accept
2	Other Secured Claims	Unimpaired	Presumed to Accept
7	Interests	Impaired	Deemed to Reject

I. *Solicitation Procedures*

1. *Solicitation Agent*

The Debtor retained Prime Clerk LLC (“Prime Clerk”) to act, among other things, as the solicitation agent in connection with the solicitation of votes to accept or reject the Plan.

2. *Solicitation Package*

Pursuant to the Solicitation Procedures Order, Holders of Claims who are entitled to vote to accept or reject the Plan as of December 17, 2015 (the “Voting Record Date”) will receive appropriate solicitation materials (the “Solicitation Package”), which will include, in part, the following:

- the appropriate Ballot(s) or Master Ballot(s) (as defined below) and applicable voting instructions, together with a pre-addressed, postage pre-paid return envelope;
- this Disclosure Statement, including the Plan and the Solicitation Procedures as exhibits thereto;

- a cover letter describing the contents of the Solicitation Procedures and urging the Holders of Claims in the Voting Classes to vote to accept the Plan; and
 - any supplemental documents filed with the Bankruptcy Court and any documents that the Bankruptcy Court orders to be included in the Solicitation Package, including any letters in support of the Plan.
3. *Distribution of the Solicitation Package and Plan Supplement*

The Debtor will cause Prime Clerk to begin to distribute the Solicitation Packages to Holders of Claims in the Voting Classes on or before December 18, 2015, which will be at least [13] days before the Voting Deadline (i.e., 4:00 p.m. prevailing Eastern Time, on December [31], 2015) (the “Voting Deadline”).

In addition, for the convenience of Holders of Claims in Class 4 (Tort Claims), the Debtor will cause Prime Clerk to distribute a single Solicitation Package, which includes a master ballot (a “Master Ballot”) and a Ballot in electronic format, to attorneys (the “Tort Claims Attorneys”) (a) that have submitted five (5) or more Proofs of Claim on behalf of multiple Holders of Claims in Class 4, and, (b) where, for each Proof of Claim, such attorney is (i) listed as the Holder’s “authorized agent,” (ii) designated as the “care of,” “c/o” or other party entitled to receive notice on behalf of the Holder, or (iii) the signatory of the Holder’s Proof of Claim.

The Solicitation Package (except for the Ballots or Master Ballots) may also be obtained: (a) from Prime Clerk by (i) visiting, free of charge, <https://cases.primeclerk.com/hovensa>; (ii) writing to HOVENSA LLC Ballot Processing, c/o Prime Clerk, 830 3rd Avenue, 3rd Floor, New York, New York 10022; or (iii) calling (855) 780-5449; or (b) for a fee via PACER at <https://ecf.vib.uscourts.gov>.

At least [3] days prior to the Combined Hearing, the Debtor intends to file the Plan Supplement. If the Plan Supplement is updated or otherwise modified, such modified or updated documents will be made available on the Debtor’s restructuring website. The Debtor will not serve paper or CD-ROM copies of the Plan Supplement; however, parties may obtain a copy of the Plan Supplement (a) from Prime Clerk by (i) visiting, free of charge, <https://cases.primeclerk.com/hovensa>; (ii) writing to HOVENSA LLC Ballot Processing, c/o Prime Clerk, 830 3rd Avenue, 3rd Floor, New York, New York 10022; or (iii) calling (855) 780-5449; or (b) for a fee via PACER at <https://ecf.vib.uscourts.gov>.

As described above, certain Holders of Claims may not be entitled to vote because they are Unimpaired or are otherwise presumed to accept the Plan under section 1126(f) of the Bankruptcy Code. In addition, certain Holders of Claims and Interests may be Impaired but are receiving no distribution under the Plan, and are therefore deemed to reject the Plan and are not entitled to vote. Such Holders will receive only the Combined Hearing Notice (as defined in the Solicitation Procedures Order) and the Notice of Presumed Acceptance (as defined in the Solicitation Procedures Order) or the Notice of Deemed Rejection (as defined in the Solicitation Procedures Order), as applicable. The Debtor is only distributing a Solicitation Package,

including this Disclosure Statement and a Ballot to be used for voting to accept or reject the Plan, to the Holders of Claims or Interests entitled to vote to accept or reject the Plan as of the Voting Record Date.

J. *Voting Procedures*

If, as of the Voting Record Date, you are a Holder of a Claim in Class 3, 4, 5, or 6, you may vote to accept or reject the Plan in accordance with the Solicitation Procedures by either completing the Ballot and returning it in the envelope provided or completing the Ballot on Prime Clerk's E-Ballot platform on the Debtor's restructuring website.

In lieu of submitting individual Ballots for each Holder, the Tort Claims Attorneys may submit a Master Ballot on behalf of any or all of the Holders of Claims in Class 4 (Tort Claims) that they represent.

If your Claim or Interest is not included in one of the Voting Classes, you are not entitled to vote and you will not receive a Solicitation Package. Except as otherwise set forth herein, the Voting Record Date and all of the Debtor's solicitation and voting procedures shall apply to all of the Debtor's creditors and other parties in interest.

1. *Voting Deadline*

The Solicitation Procedures Order established a deadline to vote on the Plan of December [31], 2015, at 4:00 p.m., prevailing Eastern Time. To be counted as a vote to accept or reject the Plan, a Ballot or Master Ballot must be **actually received** by Prime Clerk no later than the Voting Deadline.

2. *Voting Instructions*

As described above, the Debtor has retained Prime Clerk to serve as the solicitation agent for purposes of the Plan. Prime Clerk is available to answer questions, provide additional copies of all materials, oversee the voting process, and process and tabulate Ballots and Master Ballots for each Class entitled to vote to accept or reject the Plan.

BALLOTS

To be counted, all Ballots must be **actually received** by Prime Clerk by the Voting Deadline, which is December [31], 2015, at 4:00 p.m. prevailing Eastern Time, via Prime Clerk's E-Ballot platform **or** at the following address:

HOVENSA LLC
Ballot Processing
c/o Prime Clerk
830 3rd Avenue, 3rd Floor
New York, New York 10022

To be counted, Master Ballots must be **actually received** by Prime Clerk by the Voting Deadline either at the above address or via email at: hovensaballots@primeclerk.com

If you have any questions on the procedure for voting on the Plan, please call the Debtor's restructuring hotline maintained by Prime Clerk at:
(855) 780-5449

More detailed instructions regarding the procedures for voting on the Plan are contained on the Ballots distributed to Holders of Claims that are entitled to vote to accept or reject the Plan. All votes to accept or reject the Plan must be cast by using the appropriate Ballot. All Ballots must be properly executed, completed, and delivered according to their applicable voting instructions. Any Ballot that is properly executed by the Holder of a Claim entitled to vote that does not clearly indicate an acceptance or rejection of the Plan or that indicates both an acceptance and a rejection of the Plan will not be counted. Ballots received by facsimile or electronic means (other than Master Ballots submitted through email or E-Ballots submitted through Prime Clerk's E-Ballot platform) will not be counted.

Each Holder of a Claim entitled to vote to accept or reject the Plan may cast only one Ballot for each Claim held by such Holder. By signing and returning a Ballot, each Holder of a Claim entitled to vote will certify to the Bankruptcy Court and the Debtor that no other Ballots with respect to such Claim have been cast or, if any other Ballots have been cast with respect to such Claim, such earlier Ballots are revoked.

All Ballots will be accompanied by postage prepaid return envelopes. It is important to follow the specific instructions provided on each Ballot, as failing to do so may result in your Ballot not being counted.

Master Ballots may be properly executed, completed and delivered to Prime Clerk by email at hovensaballots@primeclerk.com. Otherwise, Master Ballots may be properly executed, completed and delivered to Prime Clerk by: (a) regular mail; (b) overnight courier; or (c) hand delivery. In all cases, Master Ballots must be received by Prime Clerk no later than the Voting Deadline.

K. *Objection Deadline*

The deadline to file objections to approval of the Disclosure Statement or confirmation of the Plan is December [31], 2015, at 4:00 p.m., prevailing Eastern Time (the "Objection Deadline"). All objections to approval of this Disclosure Statement or confirmation of the Plan

must be in writing and must specify in detail the name and address of the objector, all grounds for the objection, and the amount of the Claim or Interest held by the objector. Any such objection must be Filed with the Bankruptcy Court and served on the Debtor and certain other parties in interest in accordance with the Solicitation Procedures Order so that they are **actually received** on or before the Objection Deadline.

L. *Combined Disclosure Statement Approval and Confirmation Hearing*

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on confirmation of the Plan. Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to confirmation of the Plan. Pursuant to section 105(d)(2)(B)(vi) of the Bankruptcy Code, the hearing on confirmation of the Plan may be combined with the hearing on approval of the Disclosure Statement under section 1125 of the Bankruptcy Code. The Bankruptcy Court has entered the Solicitation Procedures Order that, among other things, granted the Debtor's request to combine the hearings on approval of the Disclosure Statement and confirmation of the Plan as permitted by section 105(d)(2)(B)(vi) of the Bankruptcy Code (the "Combined Hearing").

The Combined Hearing will commence on January [7], 2016, at [--:00 a.m.], prevailing Eastern Time, before the Honorable Mary F. Walrath, United States Bankruptcy Judge, at the [United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 5th Floor, Courtroom 4, Wilmington, Delaware]. The Combined Hearing may be continued from time to time without further notice other than an adjournment announced in open court or a notice of adjournment Filed with the Bankruptcy Court and served on the entities who have Filed objections to the Disclosure Statement and/or the Plan, without further notice to other parties in interest. The Bankruptcy Court, in its discretion and before the Combined Hearing, may put in place additional procedures governing the Combined Hearing. The Disclosure Statement and/or the Plan may be modified, if necessary, before, during, or as a result of the Combined Hearing, without further notice to parties in interest.

ARTICLE II.

DEBTOR'S ORGANIZATIONAL STRUCTURE AND BUSINESS

A. *The Debtor's Formation*

The Debtor is a limited liability company existing under the laws of the U.S. Virgin Islands (the "USVI"). The Debtor was formed in June 1998 and, through a series of agreements dated October 30, 1998, became a joint venture between Hess Oil Virgin Islands Corporation ("HOVIC"), a subsidiary of Hess Corporation (f/k/a Amerada Hess Corporation) ("Hess"), and PDVSA V.I., Inc. ("PDV-VI" and together with HOVIC, the "JV Parties"), a subsidiary of Petróleos de Venezuela, S.A. ("PDVSA"), the national oil company of Venezuela.

The Debtor owns an oil refinery and an oil storage facility business, both located on the island of St. Croix, USVI, and both of which are currently idled. The refinery and storage facilities span approximately 2,000 acres of land located on the south shore of St. Croix, including approximately 300 acres of undeveloped land to the east of the refinery and storage

areas. The Debtor currently maintains its headquarters at 1 Estate Hope, Christiansted, St. Croix, USVI, which historically served as the primary office for the Debtor's officers and management team.

Prior to the Debtor becoming a joint venture in 1998, HOVIC was the sole owner and operator of the businesses, with facilities that constituted one of the ten largest oil refineries in the world. Through a concession agreement (as amended, the "Concession Agreement") between HOVIC and the Government of the Virgin Islands (the "GVI"), which originally was ratified by the Legislature of the USVI (the "Legislature") on September 1, 1965, the GVI authorized HOVIC to construct, operate, and maintain an oil refinery and related facilities, including the storage facilities, on St. Croix. The Concession Agreement provided HOVIC with certain incentives to maintain the operations, such as exemptions from certain taxes, duties, and fees. The GVI, in turn, received certain fixed payments, taxes, educational subsidies, and service benefits, such as a discounted local source of fuel oil for the USVI Water and Power Authority ("WAPA"), as well as business and employment opportunities for the USVI.

In the late 1990s, HOVIC decided that the business would benefit from a relationship with a strategic partner that could provide the refinery with a ready supply of crude oil. This ultimately led to the formation of the Debtor as a 50/50 joint venture between HOVIC and PDV-VI. At the height of its operations from 2005 through 2011, the Debtor employed approximately 2,500 individuals, representing nearly 25% of St. Croix's workforce.

B. *The Debtor's Business Operations*

1. *Oil Refinery Operations*

Historically, the Debtor's refinery operations were the key generator of revenue and cash flow for the Debtor's business. As part of these operations, the Debtor utilized its petroleum refining facility to refine crude oil sourced from Venezuela, West Africa, and other locations into products such as gasoline, diesel, home heating oil, jet fuel, kerosene, and residual fuel oil for sale to the U.S. Gulf and East Coasts, the Caribbean, and other locations. At the height of operations, the Debtor's refinery had a processing capacity of approximately 500,000 barrels of crude oil per day.

Due to an adverse economic climate, intense competition, and other reasons, the Debtor's oil refinery operations suffered approximately \$1.3 billion in financial losses between 2009 and 2011. As a result, the Debtor idled some of its refinery operations in 2011 and its remaining refinery operations in February 2012. Subsequent to the idling of the oil refinery operations, the Debtor continued to operate its facility solely as an oil storage terminal.

The Debtor continues to maintain the refinery facility in an "idled" state, incurring significant inspection, maintenance, and oversight expenses in order to comply with various environmental, operational, and safety regulations and related requirements.

2. *Storage Terminal Business*

The Debtor's second line of business – its oil storage and distribution facilities – continued to operate after the idling of the refinery in February 2012 until February 2015. The

Debtor's oil storage and distribution facilities enabled the Debtor to transfer crude oil and refined products to and from ocean-going tank ships, tank barges, and a truck loading rack. The storage facility consists of approximately 200 storage tanks located in groups (each called a "tank farm") with a total capacity of approximately 32 million barrels of crude oil and refined products, as well as jetties and docks. The Debtor also operated a distribution facility comprised of marine loading and unloading facilities for refined oil products (such as motor fuels, fuel oils, diesel, and propane) and crude oil to be shipped by ship or barge to customers within and outside of the USVI. Additionally, until March 31, 2012, the Debtor maintained a full-service marine agency to provide professional ship services to vessels visiting the Debtor's port. To ensure that its terminal and distribution facilities complied with certain environmental standards, the Debtor also constructed an on-site laboratory to facilitate testing and related quality control measures.

Historically, the Debtor's tank farms primarily supported the refinery operations and were predominantly used to store crude oil and refined inventory for the Debtor's own use. By 2010, in light of continued economic challenges due in part to the 2008 economic downturn and diminishing profit margins at the refinery, the Debtor sought other revenue streams and found a market in providing storage to third parties. The Debtor then began leasing its storage tanks to third parties to generate additional revenue through storage fees and other fees associated with loading and unloading products into and out of vessels and storage tanks. The Debtor charged terminal customers for leasing space in its storage tanks, typically through either short-term contracts or spot market fees.

Effective as of March 20, 2015, the Debtor ceased to engage in significant business activity relating to its terminal storage facilities. As of the Petition Date, the Debtor's activities with respect to the terminal storage business related solely to the maintenance of the facility for operational readiness.

C. *The Debtor's Assets*

The Debtor's assets are comprised primarily of the Debtor's oil refinery, storage and distribution facilities, related equipment, approximately 2,000 acres of enclosed land, housing facilities, and rights to occupy lands owned by the GVI under a lease and other occupancy rights, and certain specialized permits and licenses, each located on the south shore of the island of St. Croix.

1. *The Refinery Assets*

The refinery facilities consist of a network of real property assets and fixtures, including numerous specialized processing units and structures utilized in the oil refining process. Some of these processing units, in addition to being relatively new, are among the largest in the world. All of these units were solely powered by the Debtor's own electrical and steam generating assets and other on-site utilities, such as water desalination and distribution facilities.

2. *The Terminal Assets*

Additionally, the Debtor owns terminal storage and distribution facilities consisting of eleven docks, approximately 100 miles of connecting pipelines, and approximately 200 tanks that can collectively hold up to approximately 32 million barrels of oil.

3. *Equipment*

The Debtor possesses inventories consisting of supplies, tools, and materials in working form, which are currently housed in its warehouses. These inventories also include generators, motors, spare parts, copper, aluminum and steel parts, equipment, and other assets. The Debtor also owns approximately 200 light and heavy duty motor vehicles (including fire trucks) that remain on the Debtor's premises.

4. *Real Property*

The Debtor's real property covers multiple parcels, called "estates," certain of which are subdivisions dedicated to company and contractor housing. So that employees and their families could live on-site, the Debtor constructed 128 concrete, weatherproofed, and air-conditioned residential housing units. Each unit is linked to the Debtor's electrical grid, potable water, and sewer systems. About 152 modular homes were demolished in 2012 and 2013 after the refinery was idled because they had deteriorated and were no longer needed.

The Debtor owns all but 300 acres of the approximately 2,000 acres on which it operates its business. Of the remaining 300 acres, the Debtor leases approximately 63 acres from the GVI for \$1 per month pursuant to a land lease between HOVIC and the GVI, dated October 16, 1976 and subsequently renewed in 1996 (the "Submerged Lands Lease"). The land covered by the Submerged Lands Lease was originally submerged under water and filled, or "reclaimed," by HOVIC. The U.S. Department of the Interior permitted HOVIC (the owner of the refinery at the time) to dredge Limetree Bay and build valuable on-site docking facilities, which generally allow the Debtor to receive and export raw materials and refined products using oil tanker vessels or barges, as well as other facilities to support the refinery, such as tanks, pipelines, and utilities. HOVIC also used this "reclaimed" land to build a container-port to ease St. Croix's port congestion and develop the island's port area, as well as other facilities. The current term of the Submerged Lands Lease expires in 2016, but can be renewed for three more 20-year terms pursuant to the terms of the lease.

In addition to the lands controlled pursuant to the Submerged Lands Lease, the Debtor also occupies a small area in the harbor for its loading dock used to export the Debtor's petroleum coke product pursuant to a usage right granted by the GVI in a coastal zone management permit.

5. *Permits and Licenses*

Additionally, the Debtor holds a significant number of permits and licenses that enable it to operate its business, including a general construction permit, business and terminal licenses, Title V and other air quality-related permits, dredging and land use permits, water appropriation and discharge permits, and waste management permits.

D. *Debtor's Workforce*

As of the Petition Date, the Debtor received services from 158 individuals, consisting of 146 contractors (the "Contractors") provided to the Debtor through agreements with Pinnacle Services, I-Tech Services, and Marine Services T&T (collectively, the "Contracting Agencies").

In addition, the Debtor utilizes 10 consultants (the “Consultants”) and 2 seconded employees from Hess and a PDVSA entity, respectively (the “Seconded Employees,” and together with the Contractors and the Consultants, the “Workforce”). Approximately 99 members of the Workforce were employed previously by the Debtor. The Workforce plays a key role in inspecting and monitoring refinery assets, maintaining the terminal and distribution facilities in operational condition, complying with operational and environmental regulations, running the waste water treatment facility and related clean-up efforts, and assisting with the Chapter 11 Case and related sale efforts in order to maximize the value of the estate. The Workforce is compensated consistent with their respective employment agreements or agreements with the Contracting Agencies.

E. *Collective Bargaining Agreements*

1. *Steelworkers Collective Bargaining Agreement*

The Debtor and the United Steelworkers AFL/CIO-CLC (the “Steelworkers Union”) are parties to a Labor Agreement (the “Steelworkers CBA”) effective for the period from March 1, 2014 to February 29, 2016. Under the Steelworkers CBA, the Steelworkers Union is the exclusive collective bargaining representative for all operating and maintenance employees, including terminal, laboratory, utilities and warehouse employees at the St. Croix refinery (collectively, the “Steelworkers”). The Steelworkers CBA also serves as the sole procedure for settling any grievances between the Debtor and the Steelworkers Union or the Steelworkers. According to the Proof of Claim Filed by the Steelworkers Union, the union asserts that under the terms of the Steelworkers CBA there are approximately 18 grievances pending against the Debtor in the aggregate amount of at least \$2,031,072.52, in addition to certain unliquidated damages for amounts due and owing under the agreement (collectively, the “Steelworkers Grievances”).

The Steelworkers CBA sets forth the various terms and conditions regarding the Debtor’s previous employment of the Steelworkers including, without limitation, wages, paid holidays, vacation, sick leave, layoffs, and severance, and incorporates the Debtor’s benefit plans by reference. Although the Debtor’s benefits plans, including the Retiree Benefit Plan and the Pension Plan (as such terms are defined below), are incorporated in the Steelworkers CBA by reference, the agreement specifically provides that the Debtor retains the right to unilaterally amend the benefit plans after discussing any revisions with the Steelworkers Union.

Pursuant to the memorandum of understanding (the “Steelworkers MOU”) entered into between the Debtor and the Steelworkers Union on February 15, 2015, the Steelworkers CBA remains in full force and effect through February 29, 2016, except as modified therein. The Debtor and the Steelworkers Union entered into the Steelworkers MOU after the Debtor announced its intent to cease operations as an oil storage terminal. The Steelworkers MOU indicates that notice was provided pursuant to the Virgin Islands Plant Closure Act (the “PCA”), the Federal WARN Act, and the Steelworkers CBA. It sets forth the terms and conditions for the termination of employment of the Steelworkers, including the conditions for participation in the Pension Plan, the Debtor’s severance obligations (as required by the PCA, the Federal WARN Act, and the Steelworkers CBA) and “enhanced severance pay and benefits” for Steelworkers that executed a general release of the Debtor. By executing the general release, the Steelworkers

received lump sum cash payments for (a) additional severance, (b) medical and dental coverage for 275 days at the applicable COBRA rate, with an additional amount provided over and above the applicable COBRA rate to satisfy the tax withholdings, and (c) funding of a health savings account up to \$1,500. By entering into the Steelworkers MOU, the Steelworkers Union and the Steelworkers settled any and all claims arising out of the Steelworkers CBA and the termination of employment of the Steelworkers.

By letter dated November 23, 2015, the Steelworkers Union notified the Debtor that the Steelworkers CBA shall terminate on February 28, 2016 (the "Steelworkers Termination Notice"). The Steelworkers Termination Notice also requested that the Debtor meet with the Steelworkers Union to negotiate the terms and conditions of a new collective bargaining agreement. Under the Steelworkers CBA, those negotiations are required to commence at least thirty (30) days prior to the expiration of the agreement.

In connection with the transfer of the Steelworkers CBA to the Liquidation Trust under the Plan, the Liquidation Trustee will be responsible for fulfilling any remaining requirements, if any, related to the termination of the Steelworkers CBA such as meeting with the Steelworkers Union. The Steelworkers Grievances will be addressed as part of the claims reconciliation process.

2. *Seafarers Collective Bargaining Agreement*

On June 15, 2011, the Debtor and the United Industrial Workers of the Seafarers International Union of North America AFL/CIO (the "Seafarers Union") entered into a Labor Agreement (as amended, the "Seafarers CBA") effective for the period of June 15, 2011 through June 14, 2014.

Under the Seafarers CBA, the Seafarers Union is the sole collective bargaining representative of all boat handlers, tankermen, and seamen employed by the Debtor where it furnished the crew at the St. Croix refinery (collectively, the "Seamen"). The Seafarers CBA does not incorporate the Debtor's benefit plans, including the Retiree Benefits (as defined below). The Seafarers CBA does set forth the various terms and conditions regarding the Debtor's employment of the Seamen including, without limitation, wages, paid holidays, vacation, sick leave, crew equipment, layoffs, and grievance procedures.

On August 13, 2014, the Seafarers Union and the Debtor executed a Memorandum of Agreement (the "Seafarers MOA") in connection with the Debtor's April 15, 2014 notification that it was exploring options to outsource work performed by members of the Seafarers Union. The Seafarers MOA provided that the terms and conditions of the Seafarers CBA remained in full force and effect through July 31, 2014. It also acknowledged that on or about May 12, 2014 all employees were provided written notice of the termination of their employment effective as of July 31, 2014. Further, the Seafarers MOA stated that all employees were required to execute a general release in order to obtain the benefits outlined in the notice including payment in lieu of the payments required under the PCA, severance pay, and welfare benefit continuation in a lump sum cash payment to purchase medical and dental coverage at the applicable COBRA rate. The termination involved five (5) members of the Seafarers Union.

F. *The Debtor's Key Liabilities*

1. *The Promissory Notes*

The Debtor issued two separate promissory notes, dated April 1, 2012, to evidence then-outstanding obligations – one to HOVIC and one to PDVSA Petr leo, S.A. (“PPSA”), a subsidiary of PDVSA – each in the principal amount of \$811 million (together, the “2012 Notes”). The amount owed to PPSA was the amount then outstanding and unpaid for delivered crude oil, and the amount owed to HOVIC was for funds loaned to the Debtor to repay its outstanding indebtedness and for other purposes. The Debtor’s obligations under the 2012 Notes are unsecured and bear a fixed interest rate of 200 basis points above the base annual rate published by Citibank, N.A. Monthly interest was accrued and became due at maturity but was never paid. The 2012 Notes each matured on April 1, 2013, but both remain unpaid. As of the Petition Date, approximately \$1.864 billion (inclusive of interest) was outstanding under the 2012 Notes.

The Debtor issued two separate unsecured promissory notes, dated July 8, 2015, each in the principal amount of \$5 million (together, the “2015 Notes,” and collectively with the 2012 Notes, the “Promissory Notes”) to HOVIC and PDV-VI (collectively with PPSA, in their capacity as holders of the Promissory Notes, the “Promissory Note Lenders”). The 2015 Notes bear a fixed interest rate of 600 basis points above the base annual rate published by Citibank, N.A. The purpose of the 2015 Notes was to provide the Debtor with the incremental liquidity necessary to be able to negotiate and execute a sale transaction that would result in significant value for all of the Debtor’s stakeholders, including the USVI, the USVI’s residents, and the Debtor’s other creditors. As of the Petition Date, approximately \$10 million was outstanding under the 2015 Notes.

As described herein, the Promissory Note Lenders have agreed to waive any distribution on account of the Promissory Notes under the Plan in order to help facilitate the consensual resolution of the sale process and to ensure a meaningful distribution for other general unsecured creditors.

2. *The GVI's Secured Claim*

The Debtor is party to a first priority mortgage (the “First Priority Mortgage”), dated May 28, 2014, issued in connection with a settlement agreement related to alleged environmental damages. The First Priority Mortgage secures the GVI’s remaining \$40 million claim under the DPNR Settlement Agreement (defined below) (the “GVI Mortgage Claim”) and grants a first priority lien on: (a) the Debtor’s real property as described on Exhibit A to the First Priority Mortgage (the “Premises”); (b) all appliances, fixtures, equipment, and buildings located on the Premises; (c) the Debtor’s rights, title, and interest in any agreements, leases, and contracts relating to the Premises; (d) the Debtor’s rights, title, and interest in sales contracts, installment sales contracts, and any other agreements relating to the Premises; and (e) all related insurance proceeds.

3. *Retiree Obligations and Other Labor-Related Liabilities*

a. *Retiree Medical Benefits*

Pursuant to the HOVENSA Health and Welfare Plan for Non-Hourly Employees (the “Retiree Benefit Plan”), the Debtor maintains self-insured health and welfare benefits (the “Retiree Benefits”) for 196 retirees and their respective dependents (together, the “Retirees”). The Debtor bears a substantial portion of the costs associated with the Retiree Benefit Plan (approximately 85% of the premium), with the remainder paid by the Retirees. As of December 31, 2014, the Debtor estimates that the present value of its future obligations related to the Retiree Benefits is approximately \$12.8 million through the life of the Retiree Benefit Plan. In addition, the Debtor incurs approximately \$50,000 in Retiree Benefits obligations per week. These amounts are timely paid and withdrawn from the Debtor’s bank accounts by the Retiree Benefit Plan’s administrator, Anthem Blue Cross Blue Shield.

b. *Pension Plan*

The Debtor maintains a defined benefit pension plan, the HOVENSA L.L.C. Employees’ Pension Plan (the “Pension Plan”), which provides retirement benefits to former employees of the Debtor and their beneficiaries. Benefits accrue after one year of employment, and an employee is vested in the Pension Plan, i.e., eligible to receive Pension Plan benefits, after five years of employment or reaching the age of 65, whichever occurs first. Approximately 1,600 participants have earned an accrued benefit in the Pension Plan.

The Pension Plan, which is subject to the provisions of the Employee Retirement Income Security Act of 1974 (“ERISA”), is sponsored by the Debtor and administered by the Debtor’s Employee Benefit Plans Committee. The Debtor’s pension funding policy is to make annual cash contributions to the Pension Plan in an amount at least equal to the minimum amount required by ERISA. Until January 2015, the Debtor made timely Pension Plan contributions on a quarterly basis, as agreed to by the Pension Benefit Guaranty Company (the “PBGC”). On February 2, 2015, the PBGC sent the Debtor a notice of determination to inform the Debtor that the PBGC intended to take action to terminate the Pension Plan effective February 4, 2015, and to replace Northern Trust Company as trustee of the Pension Plan. Since that date, the PBGC has been provided with periodic updates on the status of the Debtor’s efforts to complete a sale transaction. The Pension Plan has not been terminated.

As part of the sale process, described below in Article IV.E, HOVIC (or an affiliate thereof) agreed to assume the Debtor’s ongoing obligations under the Pension Plan. Subject to confirmation of the Plan, Article XI of the Plan provides, as a condition precedent to the Effective Date of the Plan, that “HOVIC (or an affiliate thereof) shall have agreed to assume the Debtor’s pension obligations arising from the HOVENSA, L.L.C. Employees’ Pension Plan, in a form and manner acceptable to HOVIC, the Committee, the Pension Benefit Guaranty Corporation, and the Debtor and in accordance with the requirements of the Internal Revenue Code, ERISA and applicable law.”

c. *PBGC's Claim*

The idling of the refinery in 2012 was viewed by the PBGC as a triggering event under section 4062(e) of ERISA. Due to the PBGC's view that a triggering event occurred, the PBGC proceeded to audit the company to determine what shortfall, if any, existed in funding the Debtor's pension plan. The PBGC determined at that time that the shortfall in funding totaled approximately \$56 million, and the PBGC and the Debtor began negotiations on additional contributions to be made by the Debtor to make the plan current. Ultimately, the Debtor and the PBGC entered into a non-binding term sheet, wherein the Debtor agreed to fund its pension plan with annual cash contributions, comprised of varying amounts over five years, to be paid on a quarterly basis. Although the parties never executed a final agreement, the Debtor made all such payments, which totaled approximately \$30.5 million, through January 2015. The Debtor believed that it would be able to fully cure its outstanding pension funding obligations through its originally contemplated sale of all its assets at the end of 2014. However, as discussed in more detail in Article III hereof, when the former Legislature rejected an operating agreement that was required to complete the proposed sale transaction, the Debtor concluded that it lacked sufficient liquidity to continue making periodic pension contributions.

The PBGC has filed the following Proofs of Claim against the Debtor: (a) an unliquidated Claim for unpaid minimum funding contributions; (b) an unliquidated Claim for insurance premiums, interest, and penalties with respect to the Pension Plan; and (c) an estimated Claim in the amount of \$55,200,000 for unfunded benefit liabilities of the Pension Plan.

As noted above, HOVIC (or an affiliate thereof) agreed to assume the PBGC's guaranteed pension obligations upon the Effective Date of the Plan.

4. *Environmental Liabilities*

As detailed in Article III.A hereof, the Debtor faces other significant liabilities related to environmental compliance matters in connection with its prior operations. These include certain liabilities and obligations owed to the U.S. Environmental Protection Agency (the "EPA") and the GVI.

Additionally, in winding down what remains of its business, the Debtor has taken, and will continue to take, significant measures to do so in an environmentally responsible manner. The Debtor will continue to comply with its obligations under the Resource Conservation Recovery Act ("RCRA") and other laws for any remaining hazardous and non-hazardous materials and waste located in and around the idled refinery. These wind down expenses are discussed in more detail in Article IV.G hereof.

Further, as detailed in Article V hereof, with respect to Environmental Claims and Environmental Matters, the Plan provides for the establishment of an Environmental Response Trust and an Environmental Remediation Program to support the performance of the Debtor's ongoing environmental remedial or corrective action obligations, for the period after the Effective Date of the Plan.

ARTICLE III.

EVENTS LEADING TO THE CHAPTER 11 CASE

A. *Challenges Leading to the 2012 Refinery Idling*

Over the last decade, in addition to suffering from the impact of fluctuating crude oil prices due to the 2008 economic downturn, the Debtor faced significant challenges from competition from other fuel suppliers and other challenges within the oil industry. Specifically, the proliferation of alternative, increasingly low-cost fuel sources – most notably, natural gas – affected the Debtor’s competitiveness. First, depressed natural gas prices and a smaller environmental footprint made natural gas an increasingly attractive fuel option for industrial users, as compared to oil. Second, because of the Debtor’s island location and its current infrastructure’s inability to support the use of natural gas to power its own operations, the Debtor was at a significant operating cost disadvantage as compared to other refineries. Moreover, absent a significant capital investment to reengineer the Debtor’s infrastructure, the Debtor was also unable to utilize its own refined fuel in an energy-efficient manner, further putting it at a cost disadvantage relative to other comparable refineries. Other than its purchases of crude oil, the Debtor’s largest expenditure was the cost of fuel for its own use. Finally, the Debtor faced increased competition from other oil storage and terminal facility operations located in the Caribbean.

In addition to industry competition, the Debtor faced significant environmental obligations inherent in the operation of an older refinery. The oil industry is highly regulated, and the Debtor’s refinery and storage facility business is subject to extensive and increasingly stringent environmental regulations imposed by both the GVI and U.S. Federal Government. The Debtor has invested significantly in its environmental compliance efforts and in technology to ensure environmentally responsible operations as regulatory requirements have become more stringent over time. These costs, along with the environmental risks of the refining business generally, have significantly burdened the Debtor’s operations and its liquidity.

The Debtor became subject to a lawsuit initiated by the Virgin Islands Department of Planning and Natural Resources (the “DPNR”) on May 5, 2005, which alleged that HOVIC’s and the Debtor’s operations at the refinery contaminated and injured the public’s natural resources (including potential drinking water sources), the marine environment, plant life, and wildlife (the “DPNR Litigation”). The DPNR sought damages, the reimbursement of costs associated with the government’s investigation and litigation, and the performance of environmental cleanup and remediation.

Following extensive litigation, in which a number of the DPNR’s claims were dismissed, the Debtor decided that despite its view that the remaining claims were without merit, it needed to settle the DPNR Litigation in order to allow it to pursue a marketing and sale process free from the distraction of litigation. Accordingly, on May 28, 2014, in anticipation of a sale, HOVIC and the Debtor entered into a settlement agreement with the DPNR (the “DPNR Settlement Agreement”), pursuant to which the Debtor agreed to pay the GVI \$43.5 million in settlement of the purported \$800 million in claims raised by the DPNR complaint. The Debtor paid \$3.5 million of the settlement amount immediately upon the execution of the DPNR

Settlement Agreement. The remaining \$40 million obligation remained outstanding as of the Petition Date. Pursuant to the DPNR Settlement Agreement, in consideration for the Debtor's agreement to pay \$43.5 million to the GVI and to grant a first priority lien on certain of its assets, the GVI released HOVIC, the Debtor, and related parties from all claims asserted in the DPNR Litigation and associated litigation costs. As described herein, the \$40 million GVI Mortgage Claim will be satisfied from the proceeds of the Sale Transaction.

The Debtor expected that it would be able to pay the remaining \$40 million payment in respect of the DPNR Settlement Agreement by December 31, 2014, in connection with a contemplated sale transaction with Atlantic Basin Refining ("ABR"). However, when the ABR transaction was rejected by the Legislature, the Debtor was unable to make the additional payment by that date.

On January 26, 2015, the GVI commenced a Superior Court foreclosure action to collect the \$40 million payment under the DPNR Settlement Agreement (the "Foreclosure Action"). On March 17, 2015, the Debtor filed an answer to the GVI's complaint. The Honorable Douglas A. Brady, presiding over the Foreclosure Action, issued, *sua sponte*, an order requiring the Debtor and the GVI to meet and confer on a discovery schedule to be put into place by September 30, 2015. On September 17, 2015, the Debtor filed a notice informing Judge Brady that the Debtor filed a bankruptcy petition, which stayed the Foreclosure Action.

The Debtor is also subject to the petroleum refinery initiative ("PRI"), which is administered by the EPA. The PRI targeted nearly all refineries within the territorial jurisdiction of the United States in an effort to further reduce their emissions of certain air pollutants through the execution of agreements with the EPA in the form of consent decrees. In January of 2011, the United States (acting through the EPA and the United States Department of Justice) and the GVI (acting through the DPNR) addressed the goals of the PRI with respect to the Debtor by concurrently filing a civil complaint and a consent decree (the "Consent Decree") in the U.S. District Court of the Virgin Islands, St. Croix Division.

The Consent Decree, dated January 26, 2011, resolved the EPA's allegations regarding the Debtor's past violations of certain Clean Air Act requirements through, among other things, a payment of \$5.375 million in civil penalties and a deposit of an additional \$4.875 million to an escrow account to be used for funding supplemental environmental projects. The Consent Decree also called for the Debtor to assist WAPA with air emissions monitoring at its generating facilities for up to five years at a cost to the Debtor not to exceed \$500,000 in the aggregate.

Significantly, the Consent Decree also specified further Clean Air Act-related compliance requirements that the Debtor was obligated to meet, including certain capital improvement projects to be made to air pollution controls at the refinery over time. Despite the Debtor idling the refinery subsequent to the entry of the Consent Decree, the EPA has taken the position that the Debtor is still technically obligated to comply with some of its provisions related to the idled units (which are not producing any relevant emissions especially when idled) and implement control systems improvements (even though the refinery operations to be further controlled may not be restarted), or to surrender associated permits (which means that they would no longer be transferable). According to a letter sent by the EPA on October 5, 2012, the Debtor's failure to comply with these provisions has subjected the Debtor to the Consent Decree's stipulated

penalty provisions. Furthermore, in addition to the alleged Consent Decree noncompliance, the EPA has alleged that the Debtor is not in compliance with other provisions and regulations associated with the Clean Air Act.

The Debtor is also subject to requirements arising from RCRA, which is primarily administered by the EPA in the USVI. In connection with its RCRA permits, the Debtor previously agreed to establish two trust accounts to hold funds to provide financial assurance to the EPA related to the Debtor's performance of certain obligations related to (a) certain corrective actions required under the RCRA Part B Corrective Action Program, and (b) the closure and post-closure activities related to Landfarms I, II, and III (together, the "Trust Accounts"). The compliance obligations subject to the Trust Accounts include environmental monitoring programs, among others, and are anticipated to last for up to 30 years.

As of the Petition Date, the Trust Accounts collectively held approximately \$36.6 million. The financial assurance requirements are evaluated yearly. In 2014, with the consent of the EPA Regional Administrator, the Debtor was allowed to reduce the amount in the Trust Accounts by approximately \$1.8 million after it was determined that, due to the incremental progress the Debtor had made in addressing its RCRA-related closure and remediation obligations at the refinery, the Trust Accounts had more funds than necessary to assure the funding of the remaining corrective actions.

Additional financial assurances related to the Debtor's obligations are secured by irrevocable letters of credit issued by the JV Parties. These financial assurances consist of \$1 million for two underground storage tanks, and \$8 million for sudden and non-sudden accidental occurrences.

B. Initial Steps Taken to Minimize Losses and Reduce Risks

The Debtor sustained significant operating losses in 2009 and 2010 in the amounts of approximately \$422 million and \$397 million, respectively. As part of its efforts to minimize losses, in January 2011, the refinery reconfigured its operations by idling a number of older units on the west side of the refinery and reducing crude throughput from 500,000 to 350,000 barrels. These actions were expected to significantly improve the refinery's financial position by reducing overhead and shifting refined oil production to relatively higher-valued gasoline and distillate products. The Debtor also implemented cost-saving mechanisms, such as renegotiating contracts with certain vendors to procure more favorable terms, reducing the number of employees and contractors and reducing their permitted overtime work to lower operating costs, and selling precious metals in its possession. In addition, the Debtor implemented monitoring programs and began discussions with the EPA concerning potential modifications of the Consent Decree in an effort to minimize risks and potential liabilities relating to the risk of non-compliance with certain environmental and operational regulations. Despite these efforts, the Debtor's operating losses continued. The Debtor's oil refinery operations suffered approximately \$1.3 billion in financial losses between 2009 and 2011.

C. *Idling the Refinery*

On January 18, 2012, the Debtor announced that the refinery would suspend operations. Operations were officially suspended on February 16, 2012.

The idling of the refinery was an extensive – and expensive – process. In undertaking this process, the Debtor took measures to maintain the necessary permits and licenses so that the oil refinery operation could be restarted in the future. To accomplish this task, the Debtor continued its environmental monitoring and servicing practices in compliance with various regulatory programs. As part of this effort and to prepare the Debtor’s equipment and operations for sale, the Debtor’s former employees and contractors cleaned and preserved the refinery equipment and tanks and, to address RCRA requirements, undertook the arduous and expensive process of removing and treating residual sludge and oil-bearing secondary materials from the storage tanks, pipelines, process equipment, and waste management units. At the same time, the Debtor also brought in a thermal desorption unit to process oil-bearing secondary materials to recover oil to sell to customers while the residual waste was sent off-site for safe disposal.

Further, because the Debtor was no longer refining crude oil on a large scale, it no longer had access to lower cost fuels produced on-site. The Debtor then began to purchase fuels in the open market at prices higher than it had previously incurred in order to run its remaining operations. In particular, the Debtor has to purchase higher cost commercial propane to replace its own refinery-produced gas.

In addition to the operational costs associated with idling the refinery, certain costs related to the termination of the Debtor’s workforce were expended. The Debtor made severance payments pursuant to the PCA and honored the Debtor’s contractual arrangements with its 1,800 employees and contractors.

D. *Prepetition Marketing and Sale Efforts*

Beginning in 2013, it became evident that a restructuring of the Debtor’s businesses and operations was necessary – namely, a sale of the Debtor’s assets in order to maximize recoveries for all of the Debtor’s stakeholders and, at the same time, promote the best interests (both economic and environmental) of the USVI and its residents. With those objectives in mind, in November 2013, the Debtor and its professional advisors engaged in an extensive marketing and sale process to find a purchaser for all of its assets – that is, the business and assets related to both its oil refinery operations and related oil storage terminal facilities. As noted above, in late 2014, the Debtor negotiated a sale transaction for the entirety of the Debtor’s business and operations with ABR. In December 2014, however, the Legislature voted to reject a proposed operating agreement that was required to complete the proposed sale transaction to ABR, thereby preventing the Debtor from completing the sale, prompting it to restart its marketing and sale process, and eventually precipitating the Debtor’s filing of the Chapter 11 Case.

Immediately following the Legislature’s actions, the Debtor and its advisors worked tirelessly to continue to market the Debtor’s assets. This additional, nearly year-long marketing process led to the negotiation and ultimate entry into a definitive stalking horse asset purchase agreement, dated September 4, 2015 (the “Stalking Horse Agreement”), by and among Limetree

Bay Holdings, LLC (“Limetree Bay” or the “Purchaser”), an affiliate of ArcLight Capital Partners, LLC, the Debtor, and HOVIC. Under the Stalking Horse Agreement, the Debtor agreed to sell, subject to higher and better offers and approval of the Bankruptcy Court, and upon the terms and subject to the conditions set forth in the Stalking Horse Agreement, the Debtor’s crude oil and product storage and terminalling business (the “Terminal Assets”) for a purchase price of \$184 million. As discussed in more detail in Article IV hereof, simultaneously with the commencement of the Chapter 11 Case, the Debtor filed a motion seeking approval of bidding procedures pursuant to which a competitive sale process would take place. By this process, the Debtor would solicit bids for the sale of all of the Debtor’s assets, including, but not limited to, the Terminal Assets.

ARTICLE IV.

EVENTS DURING THE CHAPTER 11 CASE

On the Petition Date, the Debtor filed with the Bankruptcy Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor has continued to operate its business and manage its properties as a debtor in possession in accordance with sections 1107 and 1108 of the Bankruptcy Code.

The filing of the Debtor’s bankruptcy petition on the Petition Date triggered the immediate imposition of the automatic stay under section 362 of the Bankruptcy Code, which, with limited exceptions, enjoined all collection efforts and actions by creditors, the enforcement of liens against property of the Debtor, and both the commencement and the continuation of prepetition litigation against the Debtor.

A. First Day Pleadings and Other Case Matters

1. First Day Pleadings

On the Petition Date, the Debtor filed numerous “first day” motions seeking various relief intended to ensure a seamless transition of the Debtor’s remaining business operations into chapter 11 and facilitate an efficient administration of the Chapter 11 Case. The relief requested in these motions, among other things, allowed the Debtor to continue certain normal business activities that may not be specifically authorized under the Bankruptcy Code or as to which the Bankruptcy Code may have required prior court approval. Substantially all of the relief requested in the first-day motions was granted by the Bankruptcy Court. These motions and orders are available for review on the website maintained by Prime Clerk for the Chapter 11 Case at <https://cases.primeclerk.com/hovensa>.

The final orders entered pursuant to the Debtor’s first day motions authorized the Debtor to, among other things:

- pay prepetition wages, compensation, reimbursable business expenses, and employee benefit obligations, and maintain and continue certain compensation and benefit programs post-petition [Docket Nos. 44 and 189];
- pay prepetition claims of certain critical vendors and suppliers entitled to

administrative priority [Docket Nos. 45 and 206];

- provide adequate assurance of payment to utility companies and establish procedures for resolving requests by utility companies for additional assurance of payment [Docket Nos. 46 and 188];
- continue prepetition insurance coverage and pay prepetition insurance coverage and prepetition obligations relating thereto [Docket Nos. 47 and 186];
- maintain its existing bank accounts and cash management system, and continue use of existing business forms and records [Docket Nos. 48 and 207];
- obtain debtor-in-possession financing [Docket Nos. 49 and 226] (discussed in more detail below); and
- pay certain prepetition taxes and fees [Docket No. 187].

2. *Debtor's Retention of Professionals*

Pursuant to Bankruptcy Court approval, the Debtor (a) retained Alvarez & Marsal North America, LLC to provide a chief restructuring officer and certain additional personnel and (b) designated Thomas E. Hill as Chief Restructuring Officer of the Debtor effective as of the Petition Date [Docket No. 208].

Also pursuant to Bankruptcy Court approval, the Debtor retained (a) Morrison & Foerster LLP as bankruptcy counsel [Docket No. 209], (b) Lazard Frères & Co. LLC as investment banker [Docket No. 210], (c) White & Case LLP as special mergers and acquisitions counsel [Docket No. 211], (d) The Law Offices of Richard H. Dollison as local bankruptcy counsel [Docket No. 212], and (e) Prime Clerk LLC as claims and noticing agent [Docket No. 42] and as administrative agent [Docket No. 330].

3. *Appointment of the Committee*

On September 24, 2015, the Office of the United States Trustee (the "U.S. Trustee") appointed an official committee of unsecured creditors (the "Committee"). The Committee members are the Pension Benefit Guaranty Corporation, National Response Corporation, Atlantic Trading & Marketing, Inc., Turner St. Croix Maintenance, Inc., and United Industrial Workers of the Seafarers International Union, AFL-CIO. On November 3, the U.S. Trustee appointed Terrance Alexis as an additional member of the Committee.

On November 12, 2015, the Committee filed applications to retain Dentons US LLP and Hamm Eckard, LLP as its counsel and local/co-counsel, respectively [Docket Nos. 315-316], and Berkeley Research Group, LLC as its financial advisor [Docket No. 317]. On December 1, 2015, the U.S. Trustee filed objections to each of these applications [Docket Nos. 389-391]. The hearing to consider these applications currently is scheduled for December 17, 2015.

Since the Committee's formation, the Debtor has consulted with the Committee concerning the administration of the Chapter 11 Case and the proposed sale of the Debtor's

assets, and the Committee has remained an active participant in this Chapter 11 Case. The Debtor has kept the Committee informed of matters relating to the Debtor's remaining business operations and has conferred with, and sought the concurrence of, the Committee to the extent proposed actions and transactions outside of the ordinary course of the Debtor's business would affect the Committee's constituency.

B. DIP Facility and Case Milestones

On the Petition Date, the Debtor filed a motion (the "DIP Motion") seeking Bankruptcy Court authority to, among other things: (a) enter into a debtor-in-possession financing agreement (the "DIP Agreement") with the Debtor's owners, HOVIC and PDV-VI (together, in their capacity as debtor-in-possession lenders, the "DIP Lenders"), to obtain cash advances and other extensions of credit in an aggregate amount not to exceed \$40 million (the "DIP Facility") in accordance with the terms of the DIP Agreement; (b) grant to the DIP Lenders a first-priority security interest and lien on all of the Debtor's assets to secure the DIP Obligations (as defined in the Final DIP Order (defined below)), subject only to the GVI Mortgage Claim, the Permitted Encumbrances (as defined in the DIP Agreement), and payment of the Carve-Out (as defined in the DIP Agreement); and (c) grant superpriority administrative expense status to the DIP Lenders, subject only to the GVI Mortgage Claim, the Permitted Encumbrances, and payment of the Carve-Out.

The DIP Facility generally provides for the following:

- a delayed-draw financing facility, which provides for a total funding commitment of \$40 million;
- interest payable at a rate of 9% per annum plus 2% default interest, as applicable;
- borrowings and disbursements made in accordance with the terms of an agreed 13-week budget; and
- an interim financing commitment of up to \$10 million funded after entry of an order approving the DIP Facility on an interim basis (the "Interim DIP Order") and a final financing commitment of \$40 million in the aggregate after entry of an order approving the DIP Facility on a final basis, in accordance with the terms and conditions set forth in the DIP Agreement.

On September 17, 2015, the Bankruptcy Court entered the Interim DIP Order [Docket No. 49], allowing the Debtor to access the \$10 million interim financing commitment under the DIP Facility.

On October 1, 2015, the GVI filed a limited objection to entry of the proposed order approving the DIP Facility on a final basis [Docket No. 124] (the "Proposed Final DIP Order"). On October 6, 2015, the Committee filed an objection to the DIP Motion [Docket No. 154]. Thereafter, the Debtor, the GVI, the DIP Lenders, and the Committee negotiated in good faith to attempt to resolve the parties' objections. At the hearing on October 8, 2015, counsel for Debtor presented testimony and other evidence in support of the DIP Motion, and counsel for the

Committee cross-examined certain of the Debtor's witnesses. Upon conclusion of the evidentiary hearing, respective counsel for the Debtor, the GVI, the Committee, and the DIP Lenders agreed to certain modifications to the Proposed Final DIP Order, which resolved all of the pending objections. On October 9, 2015, the Bankruptcy Court entered an order approving the DIP Facility on a final basis [Docket No. 226] (the "Final DIP Order").

The Final DIP Order, as modified to resolve the objections of the GVI and the Committee, provides the DIP Lenders with, among other things, (a) a first-priority security interest and lien on all of the Debtor's assets to secure the DIP Obligations, subject only to the GVI Mortgage Claim, the Permitted Encumbrances, and payment of the Carve-Out; (b) a superpriority administrative expense claim, subject only to the GVI Mortgage Claim, the Permitted Encumbrances, and payment of the Carve-Out; and (c) subject to the Carve-Out, a waiver of the provisions of section 506(c) of the Bankruptcy Code with respect to the DIP Collateral (as defined in the Final DIP Order).

The Final DIP Order also (a) removed the Debtor's release of the Promissory Note Lenders from claims arising under or related to the Promissory Notes; (b) excludes all avoidance actions under chapter 5 of the Bankruptcy Code from the DIP Liens (as defined in the Final DIP Order) and the DIP Collateral; (c) confirms that nothing in the Final DIP Order or in the DIP Documents (as defined in the Final DIP Order) shall constitute a roll-up or conversion of any asserted prepetition claims held by the DIP Lenders or their affiliates into the DIP Obligations; (d) confirms that the DIP Lenders shall not seek reimbursement from the Debtor for any expenses incurred in connection with the DIP Agreement; (e) clarifies that the Debtor's release of the DIP Lenders is limited solely to claims arising out of or related to the DIP Obligations; and (f) deleted or revised certain provisions of the DIP Agreement (as described in the Final DIP Order).

Moreover, the Final DIP Order allows the Committee to commence a contested matter or adversary proceeding raising an objection, claim, suit or other challenge against the Promissory Note Lenders no later than 60 calendar days from the date on which the Bankruptcy Court commences a hearing on the Debtor's motion to approve the Debtor's entry into a sale agreement with Limetree Bay (defined below) or such other successful bidder (the "Challenge Period"), and the Committee shall be permitted to solely use up to \$400,000 of the Debtor's cash on hand as of the Petition Date to investigate and prosecute a Challenge (as defined in the Final DIP Order) prior to the expiration of the Challenge Period. As described herein, the Committee Challenge Litigation (as defined below) has been stayed pursuant to the Litigation Standstill Stipulation (as defined below).

The DIP Agreement, as modified by the Final DIP Order, requires the Debtor to achieve certain case milestones on or prior to their corresponding deadlines, as set forth below:

<u>Date</u>	<u>Milestone</u>
September 18, 2015	Entry of Interim DIP Order
October 9, 2015	Entry of Bidding Procedures Order (defined below)
October 14, 2015	Entry of Final DIP Order
November 30, 2015	Entry of Sale Order (defined below)
December 31, 2015	All conditions precedent to closing of Sale Transaction (defined below) satisfied or waived and occurrence of effective date of Plan

Failure to achieve any of the above milestones triggers an event of default under the DIP Agreement.

C. *Claims Bar Dates*

On October 9, 2015, the Bankruptcy Court entered an order [Docket No. 219] (the “Bar Date Order”) establishing: (i) December 1, 2015 as the General Bar Date, (ii) March 14, 2016 as the Governmental Bar Date, (iii) the later of the General Bar Date and the date that is thirty (30) days after entry of an order providing for the rejection of an executory contract or unexpired lease as the Rejection Bar Date, and (iv) the later of the General Bar Date and the date that is thirty (30) days after the date that notice of any Amended Schedules is served on the claimant as the Amended Schedules Bar Date.

On November 25, 2015, the Debtor filed a motion to establish January 22, 2016 as the deadline by which Holders of Administrative Claims that first arose on or after the Petition Date through and including January 15, 2016 must file proof of claim forms asserting such claims. The hearing to consider this motion currently is scheduled for December 17, 2015.

D. *Schedules and Statements*

On October 5, 2015, the Debtor filed its Schedules of Assets and Liabilities and Schedules of Executory Contracts and Unexpired Leases [Docket Nos. 142-148] (the “Schedules”). On October 6, 2015, the Debtor filed its Statement of Financial Affairs [Docket No. 153] (the “Statements,” and together with the Schedules, the “Schedules and Statements”). These documents contain basic information including, among other things, schedules of creditors holding unsecured priority and non-priority claims against the Debtor. Copies of the Schedules and Statements are available for inspection on the Bankruptcy Court’s website at <https://ecf.vib.uscourts.gov/> and on the website maintained by Prime Clerk for the Chapter 11 Case at <https://cases.primeclerk.com/hovensa>.

E. *Sale Transaction*

1. *Postpetition Auction and Sale Process*

On the Petition Date, the Debtor filed a motion [Docket No. 15] (the “Bidding Procedures Motion” or “Sale Motion”) seeking, among other things, approval of bidding procedures in connection with the proposed sale of all, substantially all, or any portion of the Debtor’s assets (the “Assets”) through an auction process pursuant to section 363 of the Bankruptcy Code. On October 9, 2015, the Bankruptcy Court entered an order [Docket No. 220] (the “Bidding Procedures Order”) approving the Bidding Procedures Motion and related sale procedures (the “Bidding Procedures”). The Bidding Procedures, among other things, included minimum bid increments to promote ease of bidding and to maximize the total potential value of the Terminal Assets, and established Limetree Bay as the stalking horse bidder for the Terminal Assets. Subsequent to entry of the Bidding Procedures Order, the Debtor continued to field offers for the Debtor’s Assets, including the Terminal Assets and its above-grade refinery assets (the “Refinery Assets”), in order to obtain Qualified Bids (as defined in the Bidding Procedures Order).

On or before the bid deadline on November 5, 2015, the Debtor received two bids on the Terminal Assets: (i) the stalking horse bid previously submitted by Limetree Bay for \$190 million; and (ii) a bid from Buckeye Partners, L.P. (“Buckeye”) for \$198.6 million (which bid satisfied the overbid amount, including the bid protections awarded to Limetree Bay, in the Bidding Procedures). The Debtor also received nine bids from parties interested in purchasing and liquidating the Refinery Assets, as well as proposals from Capswell Energy Co. (“Capswell”) and Monarch Energy Partners, Inc. (“Monarch”). After numerous discussions with the JV Parties, the Committee, and the GVI, and after conducting an analysis of the bids received, the Debtor determined that: (i) the bids submitted by Buckeye and three of the refinery bidders constituted Qualified Bids, and (ii) the bids submitted by the remaining six refinery bidders, Capswell, and Monarch did not constitute Qualified Bids. In the days leading up to the auction, the Debtor, in the exercise of its business judgment, and after consulting with the JV Parties and the Committee, determined that the Limetree Bay bid would serve as the Leading Bid (as defined in the Bidding Procedures) at the auction.

Thereafter, on November 9, 2015, representatives for the Governor of the USVI (the “Governor”) informed the Debtor, the JV Parties, and Buckeye that the Governor had reached an agreement in principle with Limetree Bay on the terms and conditions of a concession agreement, which agreement would be presented to the Legislature for ratification. The Governor’s representatives also informed the Debtor that the Governor would no longer negotiate with Buckeye. Nevertheless, the Debtor held an auction on November 10-11, 16, and 19, 2015, during which time the Debtor, the JV Parties, and the Committee, and their respective professionals, continued to negotiate and engage Qualified Bidders in an effort to increase the offers.

At the outset of the auction on November 10th, Limetree Bay modified its bid on the record and announced that it would be submitting an offer for the purchase of the Debtor’s Refinery Assets and would assume certain liabilities in connection with those assets. Buckeye also amended its bid to match aspects of the bid made by Limetree Bay, including the agreement to purchase the Debtor’s Refinery Assets. In addition, Buckeye’s revised bid added a closing

condition that, to the extent the Federal Trade Commission (“FTC”) opens an investigation into Buckeye’s purchase of the Assets, Buckeye must be satisfied in its reasonable discretion that the FTC has concluded any such investigation into Buckeye’s purchase. The material terms of the final bids made by Limetree Bay and Buckeye are summarized as follows:

- Limetree Bay:
 - i. purchase price of \$220 million consisting of: (a) \$100 million of cash to the GVI in satisfaction of certain of its claims and as a concession fee, (b) \$90 million to the Debtor’s estate, and (c) up to \$30 million of reimbursement of post-closing wind-down costs and expenses;
 - ii. an agreement to provide the Debtor with free power after the closing to the extent that the minimum turndown amount of power exceeds the power generation load used by Limetree Bay to operate its business, and the first \$15 million of additional power for which the Debtor would have otherwise paid free of charge under a power supply services agreement to be entered into at closing; and
 - iii. an agreement with the Governor on a concession agreement to be taken to the Legislature, which agreement contains additional payments and other financial consideration to be paid by Limetree Bay to the GVI, as described below.

- Buckeye:
 - i. purchase price of \$365 million, consisting of: (a) \$345 million in cash consideration; and (b) assumption of \$20 million in post-closing wind-down expenses, with the amount of such proceeds to be paid to the GVI and the Debtor, respectively, unknown;
 - ii. assumption of the Debtor’s pension obligations;
 - iii. an agreement to provide power to the Debtor free of charge to the extent the minimum power generated by the Debtor’s power plant exceeds the power that is necessary for Buckeye to operate the assets and the first \$15 million of additional power for which the Debtor would have otherwise paid free of charge; and
 - iv. no agreement with the Governor on a concession agreement or otherwise.

Based on a holistic view of the bids, which included weighing the economic aspects of the bids described above and the greater conditionality in the Buckeye bid compared to the Limetree Bay bid due to the fact that the Governor and his representatives would not engage in further discussions with Buckeye over the terms of a concession agreement, the Debtor’s Executive Committee, including the independent member thereof, determined that Limetree Bay’s final bid constituted the highest and best offer for the Debtor’s Assets. Therefore, the

Debtor, in consultation with the Consultation Parties, designated Limetree Bay as the Successful Bidder (as defined in the Bidding Procedures Order).

On November 19, 2015, the Bankruptcy Court held a status conference during which the Debtor informed the Bankruptcy Court that it had designated Limetree Bay as the Successful Bidder at the auction and it would be promptly seeking entry of an order approving a sale of the Debtor's Assets to Limetree Bay. At the status conference, the Committee voiced concerns over the auction process and indicated based upon Buckeye's higher headline bid that the Committee believed that Buckeye's bid was highest and best. Buckeye also asserted that the Debtor's auction process was flawed. The Debtor disagreed on both counts and the Bankruptcy Court scheduled a sale hearing for December 17, 2015.

2. *Further Negotiations Regarding Sale Transaction*

Following the November 19, 2015 status conference, the Debtor and the JV Parties continued discussions with the Committee and the Governor's representatives in an effort to obtain the Committee's support for a sale transaction to Limetree Bay (the "Sale Transaction"). As part of these discussions, and subject to consummation of the Plan with estate releases for HOVIC and its Affiliates, HOVIC or one of its affiliates agreed to assume the Debtor's ongoing pension obligations, which will materially reduce the amount of the Debtor's projected unsecured claims pool, in exchange for the Committee's support for estate releases and the support of the Committee for the Sale Transaction. In addition, subject to final internal approvals, HOVIC, PDV-VI, and PPSA agreed to waive any recovery on account of their unsecured promissory note claims against the Debtor. Moreover, the Governor's representatives informed the JV Parties that in order to approve the Sale Transaction, the JV Parties and the USVI would need to grant each other, and their respective Affiliates, mutual releases. The mutual releases included, among other things, the USVI's release of its lawsuit against Hess and HOVIC, and the JV Parties' release of their tax refund claims against the USVI (the "USVI/JV Parties Release"). HOVIC has agreed to pay its share of the DIP Obligations owed by the Debtor to PDV-VI in consideration of PDV-VI agreeing to the USVI/JV Parties Release.

To memorialize this resolution, the Debtor, the JV Parties, and the Committee negotiated modifications to the proposed sale order to include additional conditions that must be satisfied for the sale order to be effective. Such conditions include:

- i. PDV-VI shall have received approvals for the Sale Transaction, including with respect to any waiver of pre-petition claims held by PDV-VI and/or its Affiliates against the GVI, HOVIC, Hess, and/or their respective Affiliates, on or before December 14, 2015 (the "Outer Date"); provided, that such waiver shall not bar PDV-VI, HOVIC, and/or its Affiliates from asserting such claims for purposes of setoff, offset, recoupment or other defensive purposes (which claims, for the avoidance of doubt, shall not be entitled to any affirmative recovery from the Debtor);
- ii. the releases contemplated by section 8.3(f) of the Purchase Agreement shall have been finalized and executed on or before the End Date (as defined in the Purchase Agreement), in form and substance acceptable to each of the parties

thereto in their sole respective capacities, which agreement shall, among other things, provide for the mutual release of claims by and among HOVIC, PDV-VI, the GVI, and/or their respective Affiliates;

- iii. on or before the Outer Date, HOVIC or one of its Affiliates shall have agreed to assume the Debtor's pension obligations arising from the Pension Plan, in a form and manner acceptable to HOVIC, the Committee, the PBGC, and the Debtor and in accordance with the requirements of the Internal Revenue Code, ERISA and applicable law, which assumption shall be subject to and occur upon consummation of a liquidating plan that contains estate releases for HOVIC and its Affiliates;
- iv. the Legislature shall have approved the Sale Transaction by the End Date and such approval shall not limit or affect in any way the releases granted in clause (ii) of this Paragraph;
- v. the Committee shall be satisfied with respect to the scope of the claims that may be asserted against the Debtor by the EPA or shall have waived this condition on or before the Outer Date; and
- vi. on or before the Outer Date: (a) the U.S. Trustee, the Committee, and the Debtor shall be satisfied that the letter agreement, dated November 9, 2015, between the Governor and Limetree Bay regarding the proposed concession agreement has no economic impact on the Debtor or its estate beyond what is already expressly included in the terms and conditions of the Purchase Agreement and (b) Limetree Bay shall have filed the letter agreement with the Bankruptcy Court.

As a result of this resolution, the Debtor asked the Bankruptcy Court to approve the Sale Transaction on an expedited basis on November 30, 2015 (the "Sale Hearing").

3. *Sale Hearing*

In advance of the Sale Hearing, the Debtor, the JV Parties, and the Committee engaged in further negotiations over the form of order approving the sale. Ultimately, the sale order was further revised to include a paragraph that requires \$30 million of the sale proceeds to be placed in a separate interest bearing account for the sole benefit of holders of allowed nonpriority general unsecured claims other than: (1) claims held by HOVIC or PDV-VI; (2) any claims of the GVI; (3) any claim of any governmental entity, unless otherwise agreed in writing by the Committee, the Debtor, and any liquidating trustee, as appropriate; and (4) any claim of any parent, affiliate, assigns, officer, director, employee or agent of (1) through (3).

In advance of the Sale Hearing, the Debtor filed declarations by Timothy R. Pohl of Lazard Frères & Co., the Debtor's investment banker [Docket No. 375] and Matthew Kahn, the independent member of the Debtor's Executive Committee [Docket No. 375], in support of entry of an order approving the sale. Other declarations in support of the sale were filed by Nicholas Brontas, Vice President and General Counsel, Marketing, Refining, and Corporate, for Hess [Docket No. 381] and Joel Holt, co-counsel of record for the GVI [Docket No. 384]. The Debtor

also presented the Bankruptcy Court with a revised form of order that incorporated changes to reflect the resolution with the Committee and addressed the concerns raised by other parties that objected to the sale.

Although resolution had been reached with the Committee, Buckeye continued to press its objection to the sale. At the Sale Hearing, the Bankruptcy Court heard testimony from Msrs. Pohl, Brontas, and Holt regarding, among other things, the sale and auction process, the basis for the Debtor's selection of Limetree Bay as the winning bidder, and the basis for the GVI's determination that Limetree Bay was the better partner for the USVI going forward. The Bankruptcy Court also heard significant legal argument regarding which bid was the highest and best bid for the Debtor's Assets. Ultimately, the Bankruptcy Court concluded that the Limetree Bay bid was highest and best due to, among other things, the additional conditionality associated with the Buckeye bid, and approved the Debtor's selection of Limetree Bay as the Successful Bidder. The Bankruptcy Court also designated Buckeye as the Backup Bidder (as defined in the Bidding Procedures). Accordingly, the Debtor is only authorized to close a transaction with Buckeye as Backup Bidder if: (i) the conditions to closing of the Sale Transaction with the Purchaser are not satisfied or waived, (ii) the conditions to closing of the Sale Transaction with Buckeye are satisfied or waived, and (iii) Buckeye has removed the condition precedent in its bid with respect to any proceeding commenced by the FTC, as described above. On December 1, 2015, the Bankruptcy Court entered the Sale Order [Docket No. 394] (the "Sale Order").

4. *Benefits of the Sale to the Debtor's Estate and the USVI*

The Purchase Agreement provides for the Debtor's estate to receive approximately \$90 million from the sale proceeds. Pursuant to the Sale Order, the Debtor is required to repay in full in cash to the DIP Lenders all accrued but unpaid DIP Obligations upon the Closing (as defined in the Purchase Agreement). In addition, based upon the Debtor's claims estimates, the sale proceeds will permit the Debtor to cover its remaining pre-closing administrative obligations and make the best possible distribution to unsecured creditors under the circumstances.

In addition, the Sale Order and the Purchase Agreement provide that, at the Closing, Limetree Bay will pay the USVI Government the USVI Concession Fee (as such terms are defined in the Purchase Agreement) in the amount of \$100 million. In addition to this fee, the GVI also will receive several monetary and non-monetary benefits directly from Limetree Bay pursuant to a separate agreement reached among the Governor and Limetree Bay dated November 9, 2015 (the "Operating Agreement"). On December 1, 2015, the Governor held a press conference to announce the terms of the Operating Agreement, which includes among other things:

- \$220 million in an upfront payment to the GVI;
- A commitment from Limetree Bay to operate the oil storage facility for at least 25 years and up to 40 years;
- A commitment from Limetree Bay to employ a minimum of 80 full-time workers, at least 80% of whom must be long-term USVI residents;

- An agreement from Limetree Bay to potentially restart the refinery and dismantle any part that is not being used;
- A donation of 330 acres of land and 130 units of housing along with a vocational school and a community center to the GVI; and
- Payment of \$150,000 annually as rent for the submerged lands that are part of the Debtor's property, which is an increase from the current \$1 per year rent.

The Governor also stated that he believes the Operating Agreement represents a total value to the GVI and the people of the USVI of more than \$800 million. The Governor also announced that he called the 31st Legislature of the Virgin Islands of the United States into special session to be held on December 17, 2015 to consider approval of the Operating Agreement.

F. *Sale Motion Litigation, Committee Litigation, and Standstill Agreement*

On November 13, 2015, the Committee filed a motion seeking an order authorizing and directing the examination of the Debtor and certain third parties [Docket No. 323].

Additionally, as noted, the Committee initially objected to the Debtor's selection of Limetree Bay as the winning bidder at the conclusion of the auction and contested the proposed sale and the relief sought by the Debtor in the Sale Motion. In connection with the contemplated hearing on the Sale Motion, (a) the Committee served discovery requests on, among other parties, the Debtor, HOVIC, Hess, PDV-VI, and the GVI, (b) the GVI served discovery requests on the Committee, and (c) each of the parties contemplated taking other actions to prepare for the Sale Hearing including the service of additional discovery requests (the "Sale Motion Litigation"). Moreover, pursuant to the Final DIP Order, the Committee commenced a Challenge investigation and made informal discovery requests upon certain parties, including the Debtor, HOVIC, Hess, and PDV-VI (the "Committee Challenge Litigation"). Finally, the GVI served upon PDV-VI a subpoena captioned "In re Investigation of Violations of the Criminally Influenced and Corrupt Organizations Act" (the "CICO Subpoena").

In the spirit of settlement and compromise, and to avoid the cost, expense and risk of litigation, the parties (a) entered into conditional agreements that would resolve the Committee's objections to the Sale Motion, the Committee Challenge Litigation, and all outstanding litigation between and among the GVI, HOVIC, Hess, and PDV-VI (the "Conditional Settlement Agreements"), and (b) agreed to refrain from discovery and litigation as they attempt to finalize the Conditional Settlement Agreements. The Debtor, HOVIC, Hess, PDV-VI, the GVI, and the Committee thereafter entered into a stipulation (the "Litigation Standstill Stipulation") pursuant to which each of the parties agreed, unless and until a party issues a Standstill Termination Notice (as defined in the Litigation Standstill Stipulation), that it will not pursue or conduct discovery, motion practice or other litigation activities with respect to the Sale Motion Litigation, the CICO Subpoena, and/or the Committee Challenge Litigation. On December 1, 2015, the Bankruptcy Court entered an order approving the Litigation Standstill Stipulation [Docket No. 396].

G. *Environmental Costs and Wind Down Expenses*

In connection with the winding down of the remainder of the Debtor's business, the Debtor anticipates that substantial environmental costs and wind down expenses will be incurred, notwithstanding the anticipated consummation of the Sale Transaction. These expenses include, without limitation, the costs associated with the investigation, abatement, clean up, removal, remediation, and corrective actions with respect to Hazardous Materials remaining on and around the Debtor's property, the dismantling and disposing of certain limited refinery assets that will not be transferred to the Purchaser, continued compliance with various environmental obligations owed to the EPA and DPNR, and various related maintenance and administrative costs. Moreover, electrical power will be required to fulfill certain environmental obligations particularly in connection with remediation and hydrocarbon recovery programs. Some of the RCRA post-closure and monitoring obligations will continue for a period of approximately thirty years after the closing of the Sale Transaction. The Debtor estimates that the wind-down costs and expenses could aggregate as much as \$66 million.

The Plan and the Purchase Agreement provide multiple sources to ensure sufficient funding for the wind down costs and expenses. First, the financial accommodations required under RCRA, including the maintenance of the Trust Accounts and the letters of credit, will continue until such time as an agreement is reached with the EPA to release (or reduce) the collateral. Second, the Purchaser has agreed to reimburse (or pay on the Debtor's behalf) up to \$30 million of certain environmental wind down costs and expenses pursuant to the terms set forth in the Purchase Agreement. Third, the Purchaser, or one of its affiliates, has committed to supply free power after the closing of the Sale Transaction to the Debtor or the Environmental Response Trust, as applicable, to the extent that the minimum turndown power exceeds the power generation load used by Limetree Bay to operate its business, and the first \$15 million of additional power for which the Debtor or Environmental Response Trust would have otherwise paid free of charge pursuant to a power supply services agreement to be executed at the closing on the sale. Separately, the Purchaser has agreed to assume all dismantling costs and expenses relating to the Refinery Assets that it will acquire pursuant to the Purchase Agreement, and such costs and expenses will not count against the Purchaser's commitment to reimburse up to \$30 million of certain environmental wind down costs and expenses.

H. *Scholarship Motion*

Consistent with its commitment to invest a minimum of \$500,000 annually in scholarships and/or career and technical education programs, on October 2, 2015, the Debtor filed a motion seeking authority to pay up to \$38,750 of prepetition amounts owed to 16 students to ensure that such students were permitted to remain in school for the 2015-16 school year [Docket No. 133-2] (the "Scholarship Motion"). On October 8, 2015, the Bankruptcy Court entered an order approving the Scholarship Motion [Docket No. 213].

I. *Removal Deadline*

On November 16, 2015, the Bankruptcy Court entered an order extending the period within which the Debtor may remove actions to the Bankruptcy Court through and including

March 14, 2016, without prejudice to the right to seek further extensions of the removal deadline [Docket No. 329].

J. *Plan Exclusivity*

Pursuant to section 1121 of the Bankruptcy Code, the Debtor's exclusive period to file a chapter 11 plan (the "Exclusive Filing Period") expires on January 13, 2016, and the Debtor's exclusive period to solicit acceptances of a plan (the "Exclusive Solicitation Period" and, together with the Exclusive Filing Period, the "Exclusivity Periods") expires on March 14, 2016. If necessary, the Debtor intends to file a motion to extend the Exclusivity Periods to be heard at the January 7, 2016 omnibus hearing.

K. *Deadline to Assume or Reject Non-Residential Real Property Leases*

The Debtor's deadline to assume or reject non-residential real property leases pursuant to section 365(d)(4) of the Bankruptcy Code expires on January 13, 2016. If necessary, the Debtor intends to file a motion to extend such deadline to be heard at the January 7, 2016 omnibus hearing.

ARTICLE V.

SUMMARY OF THE PLAN

This section provides a summary of the structure and means for implementation of the Plan and the classification and treatment of Claims and Interests under the Plan, and is qualified in its entirety by reference to the Plan (as well as the exhibits thereto and definitions therein).

The statements contained in this Disclosure Statement include summaries of the provisions contained in the Plan and in the documents referred to therein. The statements contained in this Disclosure Statement do not purport to be precise or complete statements of all the terms and provisions of the Plan or documents referred to therein, and reference is made to the Plan and to such documents for the full and complete statement of such terms and provisions of the Plan or documents referred to therein.

The Plan controls the actual treatment of Claims against, and Interests in, the Debtor under the Plan, and will, upon the occurrence of the Effective Date, be binding upon all Holders of Claims against and Interests in the Debtor and the Debtor's Estate, all parties receiving property under the Plan, and other parties in interest. In the event of any conflict between this Disclosure Statement and the Plan or any other operative document, the terms of the Plan and/or such other operative document shall control.

A. *Administrative and Priority Claims*

1. *Administrative Claims*

Subject to the provisions of sections 327, 330(a), and 331 of the Bankruptcy Code, except to the extent that a Holder of an Allowed Administrative Claim and, as applicable, the Debtor, the Liquidating Trustee, or the Environmental Response Trustee agree to less favorable

treatment, or such Holder has been paid by the Debtor prior to the Effective Date, the Debtor, the Liquidating Trustee, or the Environmental Response Trustee, as applicable, shall pay each Holder of an Allowed Administrative Claim the full unpaid amount of such Allowed Administrative Claim in Cash from the Liquidating Trust Assets in full and final satisfaction, settlement, discharge, and release of and in exchange for such Holder's Allowed Administrative Claim: (1) if an Administrative Claim is Allowed on or prior to the Effective Date, on the Effective Date or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter); (2) if an Administrative Claim is Allowed after the Effective Date, on the date such Administrative Claim is Allowed or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter); (3) at such time and upon such terms as may be agreed upon by such Holder and the Debtor or the Liquidating Trustee, as applicable; or (4) at such time and upon such terms as set forth in an Order of the Bankruptcy Court; provided, however, that any Administrative Claim that has been assumed by the Purchaser pursuant to the Purchase Agreement shall not be an obligation of the Debtor, the Liquidating Trust, or the Environmental Response Trust. Any Allowed Administrative Claims that are Environmental Claims shall be addressed through the Environmental Response Trust in full and final satisfaction, settlement, discharge, and release thereof, and in exchange for such Holder's Allowed Administrative Claim.

ADMINISTRATIVE CLAIMS ARE NOT CLASSIFIED AND ARE TREATED AS REQUIRED BY THE BANKRUPTCY CODE. THE HOLDERS OF SUCH CLAIMS ARE NOT ENTITLED TO VOTE ON THE PLAN.

a. *Administrative Claims Bar Date*

Holders of Administrative Claims incurred prior to the Administrative Claims Bar Date that were required to File and serve a request for payment of such Administrative Claims and that do not File and serve such a request by the Administrative Claims Bar Date are forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtor or its Estate, and such Administrative Claims shall be deemed discharged as of the Effective Date, except as provided in the Plan.

b. *Supplemental Administrative Claims Bar Date*

Holders of Administrative Claims based upon liabilities incurred by the Debtor in the ordinary course of its business on or after January 16, 2016 but prior to the Effective Date must File and serve such Claims on the Liquidating Trustee within 45 days after the Effective Date or such claims shall be forever barred against the Debtor or its Estate. Objections to the requests for payment of such Administrative Claims must be Filed and served on the Liquidating Trustee and the requesting party within 20 days after the Filing of the applicable request for payment of such Administrative Claims.

c. *Administrative and Priority Claims Reserve*

On the Effective Date or as soon as practicable thereafter, the Debtor shall fund the Administrative and Priority Claims Reserve in Cash as described in Article IV.F.1 of the Plan.

Any amounts remaining in the Administrative and Priority Claims Reserve after payment of all Allowed Administrative, Priority, and Professional Fee Claims and the U.S. Trustee Fees shall be transferred as determined by the Liquidating Trustee in its reasonable discretion, including to a charitable organization.

2. *Priority Tax Claims*

Except to the extent that a Holder of an Allowed Priority Tax Claim and, as applicable, the Debtor or the Liquidating Trustee agree to a less favorable treatment, or such Holder has been paid by the Debtor prior to the Effective Date, in full and final satisfaction, settlement, discharge, and release of and in exchange for such Holder's Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim shall be treated in accordance with section 1129(a)(9)(C) of the Bankruptcy Code and satisfied with a Cash distribution from the Liquidating Trust Assets on the Effective Date or as soon as reasonably practicable thereafter; provided, however, that any Priority Tax Claim that has been assumed by the Purchaser pursuant to the Purchase Agreement shall not be an obligation of the Debtor, the Liquidating Trust, or the Environmental Response Trust. All Allowed Priority Tax Claims that are not due and payable on or before the Effective Date shall be paid in the ordinary course of business as such obligations become due. Any Claims asserted by a Governmental Unit on account of any penalties and assessments shall not be Priority Tax Claims. On the Effective Date, any Liens securing any Allowed Priority Tax Claims shall be deemed released, terminated, and extinguished, in each case without further notice to or order of the Bankruptcy Court, act, or action under applicable law, regulation, order or rule, or the vote, consent, authorization, or approval of any Person or Governmental Unit.

PRIORITY TAX CLAIMS ARE NOT CLASSIFIED AND ARE TREATED AS REQUIRED BY THE BANKRUPTCY CODE. THE HOLDERS OF SUCH CLAIMS ARE NOT ENTITLED TO VOTE ON THE PLAN.

3. *Professional Fee Claims*

a. *Final Fee Applications*

All final requests for payment of Professional Fee Claims shall be Filed and served on the Liquidating Trust no later than the first Business Day that is forty-five (45) days after the Effective Date. After notice provided in accordance with the procedures established by the Bankruptcy Code and prior Bankruptcy Court Orders, the Allowed amounts of such Professional Fee Claims shall be determined by the Bankruptcy Court.

b. *Professional Fee Claims*

The amount of Professional Fee Claims owing to the Professionals shall be paid in Cash to such Professionals from Liquidating Trust Assets, without interest or other earnings therefrom, as soon as reasonably practicable after such Claims are Allowed by an Order of the Bankruptcy Court, which Order is not subject to a stay; provided, however, that any amounts in excess of the aggregate amount budgeted for the Committee in the Final DIP Order, its members and Committee professionals, as well as amounts to be used for (a) the payment of fees of the Committee, its members and Committee professionals, and (b) any post-Plan confirmation costs

and fees incurred in connection with (i) determining the extent and validity of Class 4, 5, and 6 Claims and (ii) making distributions to Holders of Allowed Class 4, 5, and 6 Claims, shall be paid in Cash from the GUC Beneficiary Reserve Carve Out and shall not be paid from the Liquidating Trust Assets.

c. *Post-Effective Date Fees and Expenses*

Except as otherwise specifically provided in the Plan, from and after the Effective Date, the Liquidating Trust shall, in the ordinary course of business and without any further notice or application to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable legal, professional, or other fees and expenses related to implementation of the Plan and Consummation incurred on or after the Effective Date by (i) the Debtor, (ii) the Committee, and (iii) the Liquidating Trust. Upon the Effective Date, any requirement that Professionals comply with sections 327 through 331, 363, and 1103 of the Bankruptcy Code and Local Bankruptcy Rules, or the Professional Fee Order in seeking retention or compensation for services rendered after such date shall terminate, and the Liquidating Trust may employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

PROFESSIONAL FEE CLAIMS ARE NOT CLASSIFIED AND ARE TREATED AS REQUIRED BY THE BANKRUPTCY CODE. THE HOLDERS OF SUCH CLAIMS ARE NOT ENTITLED TO VOTE ON THE PLAN.

d. *DIP Facility Claims*

The DIP Facility Claims include all Claims of the DIP Lenders arising under or relating to the DIP Agreement or the Final DIP Order. On the Effective Date, or as soon as practicable thereafter, each holder of an Allowed DIP Facility Claim, in full, final, and complete settlement, release, and discharge of such Claim, will be paid in full in Cash all outstanding principal and accrued but unpaid interest, costs, fees, and expenses owing as of the Effective Date, and any other amounts due and owing under the DIP Documents from the Liquidating Trust Assets, solely to the extent such amounts were not already paid in full in Cash to the DIP Lenders by the Purchaser or the Debtor prior to the Effective Date.

DIP FACILITY CLAIMS ARE NOT CLASSIFIED AND ARE TREATED AS REQUIRED BY THE BANKRUPTCY CODE. THE HOLDERS OF SUCH CLAIMS ARE NOT ENTITLED TO VOTE ON THE PLAN.

e. *U.S. Trustee Statutory Fees*

On the Effective Date, or as soon as practicable thereafter, the Debtor or the Liquidating Trustee, as applicable, shall pay all U.S. Trustee Fees in Cash for each quarter (including any fraction thereof) from the Liquidating Trust Assets until the Chapter 11 Case is converted, dismissed, or closed, whichever occurs first.

B. *Classification, Treatment, and Voting of Claims and Interests*

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Priority Tax Claims, Professional Fee Claims, and DIP Facility Claims have not been classified and thus are excluded from the Classes of Claims and Interests set forth in Article III of the Plan.

1. *Summary of Classifications*

All Claims and Interests, other than Administrative Claims, Priority Tax Claims, Professional Fee Claims, and DIP Facility Claims are classified in the Classes set forth in Article III of the Plan for all purposes, including voting, Confirmation, and distributions under the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim or Interest is also classified in a particular Class for the purpose of receiving distributions under the Plan only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

2. *Class Identification*

The classification of Claims against and Interests in the Debtor pursuant to the Plan is as set forth below. To the extent there are no Holders of Claims or Interests in a particular Class or Classes, such Claims or Interests shall be treated as set forth in Article III.D of the Plan.

Class	Claims and Interests	Status	Voting Rights
1	Other Priority Claims	Unimpaired	Not Entitled to Vote (Conclusively Presumed to Accept)
2	Other Secured Claims	Unimpaired	Not Entitled to Vote (Conclusively Presumed to Accept)
3	GVI Claims	Impaired	Entitled to Vote
4	Tort Claims	Impaired	Entitled to Vote
5	Other Non-Governmental and Non-Tort General Unsecured Claims	Impaired	Entitled to Vote
6	Other Governmental General Unsecured Claims	Impaired	Entitled to Vote
7	Interests	Impaired	Not Entitled to Vote (Deemed to Reject)

3. *Treatment of Classes of Claims and Interests*

Except to the extent that the Debtor or the Liquidating Trustee, as applicable, and a Holder of an Allowed Claim or Interest, as applicable, agree to a less favorable treatment, such

Holder shall receive under the Plan the treatment described below in full and final satisfaction, settlement, discharge, and release of and in exchange for such Holder's Allowed Claim or Interest.

- a. *Class 1—Other Priority Claims*
 - (a) *Classification:* Class 1 consists of any Other Priority Claims against the Debtor.
 - (b) *Treatment:* Except to the extent that a Holder of an Allowed Claim in Class 1 agrees to a less favorable treatment of its Allowed Claim, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Claim in Class 1, each such Holder shall receive on the Effective Date or as soon as reasonably practicable thereafter, to the extent not already paid by the Debtor prior to the Effective Date, Cash in an amount equal to such Allowed Class 1 Claim.
 - (c) *Voting:* Class 1 is Unimpaired. Holders of Allowed Class 1 Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Holders of Allowed Class 1 Claims are not entitled to vote to accept or reject the Plan with respect to Class 1 Claims.
- b. *Class 2—Other Secured Claims*
 - (a) *Classification:* Class 2 consists of all Other Secured Claims, including all Secured Tax Claims, against the Debtor.
 - (b) *Treatment:* Except to the extent that a Holder of an Allowed Claim in Class 2 agrees to a less favorable treatment of its Allowed Claim, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Claim in Class 2, each such Holder shall receive, on the Effective Date or as soon as reasonably practicable thereafter, as the Debtor or the Liquidating Trustee, as applicable, determines:
 - (i) payment in full in Cash of such Holder's Allowed Class 2 Claim;
 - (ii) the Collateral securing such Holder's Allowed Class 2 Claim; or
 - (iii) such other treatment rendering such Holder's Allowed Class 2 Claim Unimpaired in accordance with section 1124(1) or (2) of the Bankruptcy Code.
 - (c) *Voting:* Class 2 is Unimpaired. Holders of Allowed Class 2 Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Holders of Allowed Class 2 Claims are not entitled to vote to accept or reject the Plan with respect to Class 2 Claims.

c. *Class 3—GVI Claims*

(a) *Classification:* Class 3 consists of the GVI Claims against the Debtor.

(b) *Treatment:* Except to the extent that the GVI and, as applicable, the Debtor or the Liquidating Trustee agree to less favorable treatment, or the GVI has been paid by the Purchaser prior to the Effective Date, the GVI shall receive, in full and final satisfaction, settlement, discharge, and release of and in exchange for the Allowed Class 3 Claims:

(i) the full unpaid amount, if any, of the USVI Concession Fee in Cash in accordance with the Purchase Agreement on the Closing Date of the Sale Transaction or as soon as reasonably practicable thereafter;

(ii) transfer of the Government Parcels to the GVI at the closing of the Sale Transaction in accordance with section 7.32 of the Purchase Agreement and the Sale Order; and

(iii) performance of the Debtor's obligations relating to or arising under RCRA or other Environmental Law giving rise to claims that are not dischargeable under current bankruptcy law, including the Debtor's compliance with the Environmental Remediation Program, or such other treatment as agreed by the Debtor or the Liquidating Trustee, as applicable, and the GVI.

(c) *Voting:* Class 3 is Impaired. Therefore, Holders of Class 3 Claims are entitled to vote to accept or reject the Plan with respect to Class 3 Claims.

d. *Class 4—Tort Claims*

(a) *Classification:* Class 4 consists of all Tort Claims against the Debtor.

(b) *Treatment:* In full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Claim in Class 4, on the Effective Date or as soon as reasonably practicable thereafter, each Holder of an Allowed Class 4 Claim shall receive a beneficial interest in its Pro Rata share of the GUC Beneficiary Reserve or the Tort Claims Reserve, as determined by the Liquidating Trustee, based on the total aggregate amount of Allowed Claims in Classes 4, 5, and 6 on or after the Effective Date.

(c) *Voting:* Class 4 is Impaired. Therefore, Holders of Class 4 Claims are entitled to vote to accept or reject the Plan with respect to Class 4 Claims.

- e. *Class 5—Other Non-Governmental and Non-Tort General Unsecured Claims*
- (a) *Classification:* Class 5 consists of all Other Non-Governmental and Non-Tort General Unsecured Claims against the Debtor.
- (b) *Treatment:* In full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Claim in Class 5, on the Effective Date or as soon as reasonably practicable thereafter, each Holder of an Allowed Class 5 Claim shall receive a beneficial interest in its Pro Rata share of the GUC Beneficiary Reserve or the Other General Unsecured Claims Reserve, as determined by the Liquidating Trustee, based on the total aggregate amount of Allowed Claims in Classes 4, 5, and 6 on or after the Effective Date.
- (c) *Voting:* Class 5 is Impaired. Therefore, Holders of Class 5 Claims are entitled to vote to accept or reject the Plan with respect to Class 5 Claims.
- f. *Class 6—Other Governmental General Unsecured Claims*
- (a) *Classification:* Class 6 consists of all Other Governmental General Unsecured Claims against the Debtor.
- (b) *Treatment:* In full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Claim in Class 6, on the Effective Date or as soon as reasonably practicable thereafter, each Holder of an Allowed Class 6 Claim shall receive a beneficial interest in its Pro Rata share of the GUC Beneficiary Reserve, or the Other General Unsecured Claims Reserve, as determined by the Liquidating Trustee, based on the total aggregate amount of Allowed Claims in Classes 4, 5, and 6 on or after the Effective Date, or such other treatment as agreed by the Committee, the Debtor, or the Liquidating Trustee, as appropriate.
- (c) *Voting:* Class 6 is Impaired. Therefore, Holders of Class 6 Claims are entitled to vote to accept or reject the Plan with respect to Class 6 Claims.
- g. *Class 7—Interests*
- (a) *Classification:* Class 7 consists of all Interests.
- (b) *Treatment:* Class 7 Interests shall be canceled, released, discharged, and extinguished as of the Effective Date, and shall be of no further force or effect, and Holders of Class 7 Interests shall not receive any distribution on account of such Class 7 Interests.
- (c) *Voting:* Class 7 is Impaired. Holders of Interests in Class 7 are deemed to have rejected the Plan with respect to Class 7 Interests pursuant to section

1126(g) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject the Plan with respect to Class 7 Interests.

4. *Special Provision Governing Unimpaired Claims*

Except as otherwise provided in the Plan, nothing under the Plan shall affect the rights of the Liquidating Trustee, the Debtor, or the Debtor's Estate with respect to any Unimpaired Claims, including all rights with respect to legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

5. *Elimination of Vacant Classes*

Any Class of Claims or Interests that does not have a Holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court as of the date of the Combined Hearing shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

6. *Voting Classes; Presumed Acceptance by Non-Voting Classes*

If a Class contains Claims or Interests eligible to vote and no Holders of Claims or Interests eligible to vote in such Class vote to accept or reject the Plan, the Debtor shall request that the Bankruptcy Court to deem the Plan accepted by the Holders of such Claims or Interests in such Class.

7. *Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code*

The Debtor shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests. The Debtor reserves the right to modify the Plan in accordance with Article XII of the Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, including by modifying the treatment applicable to a Class of Claims or Interests to render such Class of Claims or Interests Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules.

C. *Means for Implementation of the Plan*

1. *Distributions on Account of Allowed Claims and Interests*

Except as otherwise provided in the Plan, on the Effective Date or as soon as practicable thereafter (or if a Claim is not an Allowed Claim on the Effective Date, on the date that such Claim becomes an Allowed Claim, or as soon as reasonably practicable thereafter), each holder of an Allowed Administrative Claim, Allowed Priority Tax Claim, Allowed Professional Fee Claim, Allowed DIP Facility Claim, Allowed GVI Claim, Allowed Other Secured Claim, and Allowed Other Priority Claim shall receive distributions under the Plan in full in Cash from the Liquidating Trust Assets. Holders of General Unsecured Claims shall receive distributions under the Plan from the Liquidating Trust Assets in accordance with Article VI.A of the Plan. Except

as otherwise provided in the Plan, Holders of Claims shall not be entitled to interest, dividends, or accruals on the distributions regardless of whether such distributions are delivered on or at any time after the Effective Date.

2. *Sources of Consideration for Plan Distributions*

The Plan provides for the distribution of (a) all Cash held by or for the benefit of the Debtor on the Effective Date, including the net proceeds from the Sale Transaction Proceeds that inure to the benefit of the Estate plus (b) all Cash realized after the Effective Date from the sale, collection or other disposition of property of the Estate to Holders of Allowed Claims in Classes 4, 5, and 6 against the Debtor in accordance with the treatment of such Claims provided in the Plan. In addition to Cash on hand, the Debtor's property of the Estate consists primarily of the Debtor's rights under the Purchase Agreement, the Debtor's rights with respect to the RCRA Trusts and the SEP Account, the Remaining Assets, and all Causes of Action not previously settled, released, or exculpated under the Plan.

3. *General Settlement of Claims*

Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims, Interests, and controversies resolved pursuant to the Plan.

4. *Formation of the Liquidating Trust*

On or prior to the Effective Date, the Debtor will execute the Liquidating Trust Agreement and will take all other steps necessary to establish the Liquidating Trust pursuant to the Liquidating Trust Agreement as further described in Article VII of the Plan.

Before the Combined Hearing, the Debtor will appoint the Liquidating Trustee, who shall act in accordance with the Liquidating Trust Agreement.

On the Effective Date, and in accordance with and pursuant to the terms of the Plan, the Debtor will transfer to the Liquidating Trust all of its rights, title, and interests in all of the Liquidating Trust Assets. The powers, authority, responsibilities, and duties of the Liquidating Trust and the Liquidating Trustee are set forth in and will be governed by the Liquidating Trust Agreement, the Plan, and the Confirmation Order.

5. *Formation of the Environmental Response Trust*

On or prior to the Effective Date, the Debtor will execute the Environmental Response Trust Agreement and will take all other steps necessary to establish the Environmental Response Trust pursuant to the Environmental Response Trust Agreement as further described in Article VIII of the Plan.

Before the Combined Hearing, the Debtor, in consultation with the EPA and the DPNR, will appoint the Environmental Response Trustee, who shall act in accordance with the Environmental Response Trust Agreement.

On the Effective Date, and in accordance with and pursuant to the terms of the Plan, the Debtor will transfer to the Environmental Response Trust all of its rights, title, and interests in all of the Environmental Response Trust Assets other than the Environmental Response Trust Cash Distribution. On each Environmental Response Trust Cash Transfer Date, and in accordance with and pursuant to the terms of the Plan, the Debtor shall transfer the Environmental Response Trust Cash Distribution to the Environmental Response Trust. The powers, authority, responsibilities, and duties of the Environmental Response Trust and the Environmental Response Trustee are set forth in and will be governed by the Environmental Response Trust Agreement, the Plan, and the Confirmation Order.

6. *Creation of Reserves*

a. *Administrative and Priority Claims Reserve*

On the Effective Date or as soon as reasonably practicable thereafter, the Debtor shall fund, and the Liquidating Trustee shall establish and thereafter maintain, the Administrative and Priority Claims Reserve with the Administrative and Priority Claims Reserve Amount 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 Administrative and Priority Claims Reserve shall be used by the Liquidating Trustee only for the payment of U.S. Trustee Fees and Administrative, Priority, and Professional Fee Claims Allowed after the Effective Date to the extent that such Claims have not been paid in full on or prior to the Effective Date. Any amounts remaining in the Administrative and Priority Claims Reserve after payment of all Allowed Administrative, Priority, and Professional Fee Claims and the U.S. Trustee Fees shall be transferred as determined by the Liquidating Trustee in its reasonable discretion, including to a charitable organization.

b. *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 Debtor shall fund, and the Liquidating Trustee shall establish and thereafter maintain, the GUC Beneficiary Reserve with the initial principal amount of \$30 million 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 General Unsecured Claims, subject only to the GUC Beneficiary Reserve Carve Out. To the extent not otherwise provided in the Plan or ordered by the Bankruptcy Court, the Liquidating Trustee shall estimate appropriate reserves of Cash to be set aside in order to pay or reserve for Disputed General Unsecured Claims. Any amounts set aside to pay or reserve for Disputed General Unsecured Claims shall include the amounts needed to fund the ongoing costs and expenses of such reserve, including, without limitation, taxes in respect of Disputed General Unsecured Claims, if any. To the extent any funds remain in the GUC Beneficiary Reserve after all General Unsecured Claims 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 to a charitable organization.

The Debtor or the Liquidating Trustee, as applicable, may file the Reserve Motion to establish (a) the Tort Claims Reserve for the benefit of Holders of Class 4 Claims, and (b) the Other General Unsecured Claims Reserve for the benefit of Holders of Class 5 and 6 Claims. Each of the Tort Claims Reserve and the Other General Unsecured 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 an allocated percentage of the GUC Beneficiary Reserve Carve Out as described in the Reserve Motion. To the extent not otherwise provided in the Plan or ordered by the Bankruptcy Court, the Liquidating Trustee shall estimate appropriate reserves of Cash to be set aside in each of the Tort Claims Reserve and the Other General Unsecured Claims Reserve in order to pay or reserve for Disputed Class 4 Claims and Disputed Class 5 and 6 Claims, respectively. Any amounts set aside to pay or reserve for Disputed General Unsecured Claims shall include the amounts needed to fund the ongoing costs and expenses of such reserve, including, without limitation, taxes in respect of Disputed General Unsecured Claims, if any. To the extent any funds remain in the Tort Claims Reserve and the Other General Unsecured Claims Reserve after all of Class 4, 5, and 6 Claims have been paid or otherwise satisfied in full, such remaining funds shall be transferred to the GUC Beneficiary Reserve or, to the extent the GUC Beneficiary Reserve has been terminated, as determined by the Liquidating Trustee in its reasonable discretion, including to a charitable organization.

c. *Environmental Response Trust Account*

On each Environmental Response Trust Cash Transfer Date, and in accordance with and pursuant to the terms of the Plan, the Debtor shall transfer the Environmental Response Trust Cash Distribution to the Environmental Response Trust Account, which funds shall vest in the Environmental Response Trust free and clear of all liens, Claims, encumbrances, charges, and other Interests, other than any liability to the Governmental Units expressly provided for in the Environmental Response Trust Agreement. The Environmental Response Trustee shall use the funds in the Environmental Response Trust Account to pay for any post-Effective Date costs and expenses associated with Environmental Matters, including Remediation Costs and associated costs and fees incurred by the Environmental Response Trust.

The Environmental Response Trustee may require reimbursement from the Purchaser for (or request that the Purchaser pay on the Environmental Response Trust's behalf) the Remediation Costs and other costs incurred by the Environmental Response Trust in an aggregate amount not to exceed \$30 million on the terms set forth in the Environmental Response Trust Agreement. Additionally, the Purchaser shall supply, or cause one of its affiliates to supply, power after the closing of the Sale Transaction to the Debtor or the Environmental Response Trust, as applicable, as set forth in Section 7.24 of the Purchase Agreement; in each case in accordance with the terms of the Purchase Agreement, the Shared Services Agreement, and any other Transaction Document, as applicable.

To the extent any funds remain in the Environmental Response Trust after all Remediation Costs have been paid or otherwise satisfied in full, such remaining funds shall be transferred (a) first, to the Purchaser, solely to the extent the Purchaser previously provided such funds to the Environmental Response Trust; and (b) then, to the EPA for use in environmental remediation projects at other, unrelated sites; provided, however, that any funds remaining in the

SEP Account shall be released to the Environmental Response Trust once all the conditions of the Consent Decree have been satisfied.

d. *Settlement of Promissory Note Claims*

In connection with the Plan, the JV Parties, in their capacity as lenders under the Promissory Notes, have agreed to waive and release their respective Promissory Note Claims.

The JV Parties shall not receive any distribution on account of their Promissory Note Claims, and the JV Parties have agreed to and shall not take any action to interfere or that is inconsistent with the waiver of, any recovery or distribution on account of such Promissory Note Claims; provided, that notwithstanding anything contained in the Plan, such waiver and release shall not bar PDV-VI, HOVIC, and/or their Affiliates from asserting their respective Promissory Note Claims for purposes of setoff, offset, recoupment or other defensive purposes (which Promissory Note Claims, for the avoidance of doubt, shall not be entitled to any affirmative recovery from the Debtor).

e. *D&O Policies*

Notwithstanding anything to the contrary contained in the Plan or in the Confirmation Order, Confirmation of the Plan shall not impair or otherwise modify any obligations arising under the D&O Policies. In addition, after the Effective Date, the Liquidating Trustee shall not terminate or otherwise reduce coverage under any D&O Policy, including, without limitation, any "tail policy," in effect as of the Effective Date, and all Executive Committee Members and officers of the Debtor who served in such capacity as of the Petition Date or at any time prior to the Effective Date shall be entitled to the full benefits of any such policy for the full term of such policy regardless of whether such Executive Committee Members and/or officers remain in such positions after the Effective Date.

f. *Retiree Benefits*

From and after the Effective Date, the Debtor or Liquidating Trust shall continue to honor the Debtor's retiree benefits (as defined in section 1114(a) of the Bankruptcy Code) and any similar health, disability or death benefits in accordance with the terms of the Retiree Benefit Plan or other agreements governing the payment of such benefits, subject to any rights to amend, modify or terminate such benefits under the terms of the Retiree Benefit Plan, other agreements or applicable non-bankruptcy law (to the extent not otherwise assumed by HOVIC or its designee).

g. *Wind Down*

On and after the Effective Date, the Liquidating Trustee and the Environmental Response Trustee shall be authorized to implement the Plan and any applicable Orders of the Bankruptcy Court. On and after the Final Environmental Response Trust Cash Transfer Date, the Liquidating Trustee shall have the power and authority to take any action necessary to wind down and dissolve the Debtor's Estate, other than with respect to the Environmental Matters.

As soon as reasonably practicable after the Effective Date, the Liquidating Trustee and the Environmental Response Trustee, as applicable, shall: (1) cause the Debtor to comply with, and abide by, the terms of the Sale Order and Purchase Agreement; (2) take such other actions as the Liquidating Trustee and the Environmental Response Trustee, as applicable, may determine to be necessary or desirable to carry out the purposes of the Plan.

In addition, as soon as reasonably practicable after the Final Environmental Response Trust Cash Transfer Date, the Liquidating Trustee shall file for the Debtor a certificate of dissolution or equivalent document, together with all other necessary corporate and company documents, to effect the dissolution of the Debtor under the applicable laws of the USVI. The certificate of dissolution or equivalent document may be executed by the Liquidating Trustee without need for any action or approval by the equity holders or the Executive Committee of the Debtor. From and after the Final Environmental Response Trust Cash Transfer Date, the Debtor (1) for all purposes shall be deemed to have withdrawn its business operations from any state or territory in which the Debtor was previously conducting, or is registered or licensed to conduct, its business operations, and shall not be required to file any document, pay any sum, or take any other action in order to effectuate such withdrawal, (2) shall be deemed to have cancelled pursuant to the Plan all Interests, and (3) shall not be liable in any manner to any taxing authority for franchise, business, license, or similar taxes accruing on or after the Effective Date. For the avoidance of doubt, from and after the Final Environmental Response Trust Cash Transfer Date, notwithstanding the Debtor's dissolution, the Debtor shall be deemed to remain intact solely with respect to the preparation, filing, review, and resolution of applications for Professional Fee Claims.

The filing of the final monthly report (for the month in which the Effective Date occurs) and any subsequent quarterly reports required under the U.S. Trustee guidelines shall be the responsibility of the Liquidating Trustee, as described in the Liquidating Trust Agreement.

h. *Cancellation of Securities and Agreements*

On the Effective Date, except as otherwise specifically provided for in the Plan: (1) the obligations of the Debtor under any certificate, share, note, bond, indenture, purchase right, or other instrument or document, including, without limitation, the DIP Agreement, the Promissory Notes, and the LLC Agreement, directly or indirectly evidencing or creating any indebtedness or obligation of or ownership interest, equity, or portfolio interest in the Debtor or any warrants, options, or other securities exercisable or exchangeable for, or convertible into, debt, equity, ownership, or profits interests in the Debtor giving rise to any Claim or Interest shall be cancelled as to the Debtor; and (2) the obligations of the Debtor pursuant, relating, or pertaining to any agreements, indentures, certificates of designation, bylaws, or certificates or articles of incorporation or similar documents governing the shares, certificates, notes, bonds, indenture, purchase rights, options, warrants, or other instruments or documents evidencing or creating any indebtedness or obligation of the Debtor shall be fully released, settled, and compromised; provided, that, notwithstanding Confirmation or the occurrence of the Effective Date, any such agreement that governs the rights of the Holder of a Claim shall continue in effect solely for purposes of allowing such Holders to receive distributions under the Plan as provided in the Plan.

i. *Corporate Action*

Upon the Effective Date, by virtue of the solicitation of votes in favor of the Plan and entry of the Confirmation Order, all actions contemplated by the Plan (including any action to be undertaken by the Liquidating Trustee and the Environmental Response Trustee) shall be deemed authorized, approved, and, to the extent taken prior to the Effective Date, ratified without any requirement for further action by Holders of Claims or Interests, the Debtor, or any other Entity or Person. All matters provided for in the Plan involving the corporate structure of the Debtor, and any corporate action required by the Debtor in connection therewith, shall be deemed to have occurred and shall be in effect, without any requirement of further action by the Debtor or the Debtor's Estate.

Upon the Effective Date or as soon as reasonably practicable thereafter, the existing Executive Committee of the Debtor shall be dissolved without any further action required on the part of the Debtor or the Debtor's officers, Executive Committee Members, managers, or members, and officers of the Debtor shall be dismissed without any further action required on the part of any the Debtor, or the officers, managers, members, or Executive Committee Members of the Debtor. The Executive Committee Members, managers, and officers of the Debtor, the Liquidating Trustee, and the Environmental Response Trustee, as applicable, shall be authorized to execute, deliver, File, or record such contracts, instruments, and other agreements or documents and take such other actions as they may deem necessary or appropriate in their reasonable discretion to implement the provisions of Article IV.L of the Plan.

The authorizations and approvals contemplated by Article IV.L of the Plan shall be effective notwithstanding any requirements under applicable nonbankruptcy law.

j. *Effectuating Documents; Further Transactions*

Prior to the Effective Date, the Debtor is, and on and after the Effective Date, the Liquidating Trustee and the Environmental Response Trustee are, authorized to and may issue, execute, deliver, file, or record such contracts, securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan, without the need for any approvals, authorization, or consents except for those expressly required pursuant to the Plan.

7. *Exemption from Certain Taxes and Fees*

To the maximum extent provided by section 1146(a) of the Bankruptcy Code, any post-Confirmation transfer from any Entity pursuant to, in contemplation of, or in connection with the Plan or pursuant to: (1) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtor; or (2) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instruments of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, or other similar tax or governmental assessment, in each case to the extent

permitted by applicable bankruptcy law, and the appropriate state or local government officials or agents shall forego collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

8. *Causes of Action*

The Debtor waives and releases all Causes of Action under the Plan, other than the Causes of Action that are expressly transferred to the Purchaser in connection with the Sale Transaction and the Sale Order; provided, that such waiver and release shall not bar the Debtor from asserting claims for purposes of setoff, offset, recoupment or other defensive purposes.

9. *Closing the Chapter 11 Case*

When all Disputed Claims have become Allowed or disallowed, the Liquidating Trust has terminated in accordance with Article VII and Article VIII of the Plan, all remaining Cash in the Liquidating Trust has been distributed in accordance with the Plan, and the business and affairs of the Debtor have been otherwise wound down, 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. For the avoidance of doubt, the Chapter 11 Case may be closed prior to termination of the Environmental Response Trust.

D. *Treatment of Executory Contracts and Unexpired Leases*

1. *Assumption and Assignment of Executory Contracts and Unexpired Leases*

On the Effective Date, except as otherwise provided in the Plan, each Executory Contract and Unexpired Lease not previously rejected, assumed, or assumed and assigned shall be deemed automatically rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such Executory Contract or Unexpired Lease: (1) is specifically described in the Plan as to be assumed in connection with Confirmation of the Plan, or is specifically scheduled to be assumed or assumed and assigned pursuant to the Plan and the Contract Assumption Schedule; (2) is subject to a pending motion to assume or assume and assign such Unexpired Lease or Executory Contract as of the Effective Date; (3) is to be, or has been, assumed or assumed and assigned to the Purchaser or another third party, as applicable, in connection with the Sale Transaction; (4) is a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan or with the Purchaser; or (5) is a D&O Policy or an insurance policy to be transferred to the Liquidating Trust or the Environmental Response Trust. Entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such assumptions, assignments, and rejections, including the assumption of the Executory Contracts or Unexpired Leases as provided in the Contract Assumption Schedule, pursuant to sections 365(a) and 1123 of the Bankruptcy Code.

2. *Cure of Defaults for Assumed Executory Contracts and Unexpired Leases*

Any Cure Obligations under each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the Cure Obligation in Cash on the Effective Date or as soon as reasonably

practicable thereafter, subject to the limitations described below, by the Debtor, Liquidating Trustee, or the Environmental Response Trustee, as applicable, as an Administrative Claim or by the Purchaser in accordance with the Purchase Agreement, as applicable, or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree. In the event of a dispute regarding (1) the amount of the Cure Obligation, (2) the ability of the Debtor's Estate or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed, or (3) any other matter pertaining to assumption, the Cure Obligations shall be satisfied following the later to occur of the Effective Date or entry of a Final Order or Orders resolving the dispute and approving the assumption; provided, that prior to the Effective Date, the Debtor, and on and after the Effective Date, the Liquidating Trustee or the Environmental Response Trustee, as applicable, may settle any dispute regarding the amount of any Cure Obligation without any further notice to any party or any action, order, or approval of the Bankruptcy Court.

As soon as reasonably practicable after the Solicitation Date, the Debtor shall cause notice of the proposed assumption and proposed Cure Obligations (solely to the extent such Cure Obligations were not already established in connection with the Sale Transaction and Sale Order) to be sent to applicable counterparties. Any objection by such counterparty must be Filed, served, and actually received by the Debtor not later than five (5) Business Days after service of notice of the Debtor's proposed assumption and associated Cure Obligations. Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the proposed assumption or Cure Obligation will be deemed to have assented to such assumption or Cure Obligation. For the avoidance of doubt, in accordance with the Bid Procedures Order and the Sale Order, the Cure Obligations relating to the Selected Contracts shall be binding on the parties thereto for all purposes in this Chapter 11 Case and otherwise, and will constitute a final determination of the total Cure Obligations required to be paid in connection with the assumption and assignment of such Executory Contracts and Unexpired Leases.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan, or otherwise, shall result in the full release and satisfaction of any Claims or defaults, subject to satisfaction of the Cure Obligations, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time before the effective date of assumption and/or assignment. **Anything in the Schedules and any Proofs of Claim Filed with respect to an Executory Contract or Unexpired Lease that has been assumed or assumed and assigned shall be deemed disallowed and expunged, without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.**

3. Claims Based on Rejection of Executory Contracts and Unexpired Leases

Unless otherwise provided by an order of the Bankruptcy Court, any Proofs of Claim based on the rejection of the Debtor's Executory Contracts or Unexpired Leases pursuant to the Plan or otherwise, must be Filed with the Claims and Noticing Agent and served on the Debtor or, after the Effective Date, the Liquidating Trustee or the Environmental Response Trustee, as applicable, no later than thirty (30) days after the earlier of the Effective Date or the effective

date of the rejection of the applicable Executory Contract or Unexpired Lease. In addition, any objection to the rejection of an Executory Contract or Unexpired Lease must be Filed with the Bankruptcy Court and served on the Debtor or, after the Effective Date, the Liquidating Trustee or the Environmental Response Trustee, as applicable, no later than fourteen (14) days after service of the Debtor's proposed rejection of such Executory Contract or Unexpired Lease or the Confirmation Order if deemed rejected under the Plan.

Any Holders of Claims arising from the rejection of an Executory Contract or Unexpired Lease for which Proofs of Claims were not timely Filed as set forth in the paragraph above shall not (1) be treated as a creditor with respect to such Claim, (2) be permitted to vote to accept or reject the Plan on account of any Claim arising from such rejection, or (3) participate in any distribution in the Chapter 11 Case on account of such Claim, and any Claims arising from the rejection of an Executory Contract or Unexpired Lease not Filed with the Bankruptcy Court within such time will be automatically disallowed, forever barred from assertion, and shall not be enforceable against the Debtor, the Liquidating Trust, the Environmental Response Trust, the Debtor's Estate, or the property of any of the foregoing without the need for any objection by the Debtor, the Liquidating Trustee, or the Environmental Response Trustee, as applicable, or further notice to, or action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully compromised, settled, and released, notwithstanding anything in the Schedules or a Proof of Claim to the contrary. All Allowed Claims arising from the rejection of the Debtor's prepetition Executory Contracts or prepetition Unexpired Leases shall be classified as General Unsecured Claims in Class 5 or 6, as applicable, against the Debtor, except as otherwise provided by order of the Bankruptcy Court.

4. *Purchase Agreement; Assumed Contracts*

The Debtor's assumption or rejection of any Executory Contract or Unexpired Lease pursuant to the Plan shall be subject in all respects to the Purchaser's rights and obligations, including any Cure Obligations assumed by the Purchaser in accordance with the Purchase Agreement, with respect to any such Executory Contracts or Unexpired Leases that constitute Assumed Contracts (as defined in the Purchase Agreement) as set forth in the Purchase Agreement, including Article II thereof.

5. *Modifications, Amendments, Supplements, Restatements, or Other Agreements*

Unless otherwise provided in the Plan, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and all Executory Contracts and Unexpired Leases related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated under the Plan.

Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor or on behalf of the

Debtor's Estate during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith.

6. *Insurance Policies*

Each insurance policy, including the D&O Policies, shall be assumed by the Debtor and assigned to the Liquidating Trust or the Environmental Response Trust, as applicable, effective as of the Effective Date, pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such insurance policy previously was rejected by the Debtor or the Debtor's Estate pursuant to a Bankruptcy Court order or is the subject of a motion to reject pending on the Effective Date, and coverage for defense and indemnity under any such insurance policy, including the D&O Policies, shall remain available to all individuals within the definition of "Insured" in any such insurance policy, including the D&O Policies.

7. *Indemnification Obligations*

Subject to the occurrence of the Effective Date, the obligations of the Debtor as of the Effective Date to indemnify, defend, reimburse, or limit the liability of the current and former Executive Committee Members, officers, employees, attorneys, other professionals and agents of the Debtor, and such current and former Executive Committee Members', officers', employees', attorneys', other professionals' and agents' of the Debtor, and such current respective Affiliates, respectively, against any Claims or Causes of Action under the Indemnification Provisions or applicable law, shall survive Confirmation, shall be assumed by the Debtor and assigned to the Liquidating Trust or the Environmental Response Trust, as applicable, and will remain in effect after the Effective Date if such indemnification, defense, reimbursement, or limitation is owed in connection with an event occurring before the Effective Date; provided, however, that, notwithstanding anything in the Plan to the contrary, the obligation of the Liquidating Trust or the Environmental Response Trust, as applicable, to fund such Indemnification Provisions shall be limited to the extent of coverage available under any Liquidating Trust Insurance Policies or Environmental Response Trust Insurance Policies, as applicable, including the D&O Policies.

8. *Reservation of Rights*

Neither the exclusion nor inclusion of any contract or lease in the Plan Supplement, nor anything contained in the Plan, shall constitute an admission by the Debtor that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that the Debtor's Estate has any liability thereunder. In the event of a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtor, the Liquidating Trustee, or the Environmental Response Trustee, as applicable, shall have 90 days following entry of a Final Order resolving such dispute to alter the treatment of such contract or lease as otherwise provided in the Plan.

E. *Provisions Governing Distributions*

1. *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 from the Debtor, the Liquidating Trustee on behalf of the Debtor, or the Liquidating Trust, as applicable. 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. If and to the extent that there are Disputed Claims, distributions on account of any such Disputed Claims shall be made pursuant to the provisions set forth in Article IX of the Plan. Notwithstanding anything to the contrary in the Plan, no Holder of an Allowed Claim 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.

2. *Disbursing Agent*

The Liquidating Trustee shall be the Disbursing Agent under the Plan. The Disbursing Agent shall make all distributions under the Plan.

3. *Delivery of Distributions and Undeliverable or Unclaimed Distributions*

a. *Record Date for Distribution*

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.

b. *Delivery of Distributions in General*

i. *Payments and Distributions on 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.

ii. *Special Rules for Distributions to Holders of Disputed Claims*

Notwithstanding any provision otherwise in the Plan and except as may be agreed to by, as applicable, the Debtor or 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, other than with respect to Professional Claims, 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.

iii. Distributions

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.

Prior to making any distributions on Allowed General Unsecured Claims, the Liquidating Trustee shall estimate appropriate reserves of Cash to be set aside in order to pay or reserve for Disputed General Unsecured Claims. Any amounts set aside to pay or reserve for Disputed General Unsecured Claims shall include the amounts needed to fund the ongoing costs and expenses of such reserve, including, without limitation, taxes in respect of Disputed General Unsecured Claims, if any.

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 applicable Disbursing Agent and distributed on the next Subsequent Distribution Date that occurs after such Claim is Allowed. In accordance with Article IX.D of the Plan, no interest shall accrue or be paid on the unpaid amount of any distribution paid pursuant to the Plan.

c. *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.

d. *Undeliverable Distributions and Unclaimed Property*

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 applicable Disbursing Agent has determined the then current address of such Holder, at which time such distribution shall be made to such Holder without interest; provided, however, that such 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.

e. *Manner of Payment Pursuant to the Plan*

Any payment in Cash to be made pursuant to the Plan shall be made at the election of the Debtor, the Liquidating Trustee and the Environmental Response Trustee, as applicable, by check or by wire transfer.

4. *Compliance with Tax Requirements/Allocations*

In connection with the Plan, to the extent applicable, the Debtor, the Liquidating Trustee, and the Environmental Response Trustee shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant hereto shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Debtor, the Liquidating Trustee, and the Environmental Response Trustee shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms they believe are reasonable and appropriate. Amounts properly withheld from distributions to a Holder and paid over to any Governmental Unit will be treated as amounts distributed to the Holder. The Liquidating Trustee or the Environmental Response Trustee, as applicable, may request that any Holder of an Allowed Claim provide it with all forms and information required to comply with all tax withholding and reporting requirements imposed on it by any Governmental Unit (the “Required Tax Documents”). Notwithstanding any other provision of the Plan, Holders that receive a distribution pursuant to the Plan are responsible for the payment and satisfaction of all tax obligations, including income, withholding, and other tax obligations imposed with respect to the distribution. In the event that a Holder fails to return Required Tax Documents within six (6) months after a written request by the Liquidating Trustee or the Environmental Response Trustee, such Holder, its Claim, and all distributions on account of such Holder’s Claim shall be treated as undeliverable distributions and unclaimed property in accordance with Article VI.C.4 of the Plan.

Distributions in respect of Allowed Claims shall be allocated first to the principal amount of such Claims (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claims, to any portion of such Claims for accrued but unpaid interest. It is uncertain whether this allocation will be respected by the tax authorities of a Governmental Unit, which may instead take the position that payments should be allocated first to interest or should be pro-rated between principal and interest. If the tax authorities prevail in this assertion, Holders may be required to recognize ordinary interest income even though they have an overall loss (and possibly a capital loss, the deductibility of which may be limited) with respect to their Claims. Each Holder is urged to consult its own tax advisor regarding the amount of its Claim allocable to accrued but unpaid interest and the character of any loss with respect to accrued but unpaid interest that the Holder previously included in income.

5. *Claims Paid or Payable by Third Parties*

a. *Claims Paid by Third Parties; Recourse to Collateral*

The Debtor or the Liquidating Trustee, as applicable, shall be authorized to reduce in full a Claim, and such Claim shall be disallowed without a Claims objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment in full on account of such Claim from a party that is not the Debtor or the Liquidating Trust, as applicable, including on account of recourse to collateral held by third parties that secure such Claim. To the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not the Debtor on account of such Claim, such Holder shall, within 14 days of receipt thereof, repay or return the distribution to the Debtor, to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan. The failure of such Holder to timely repay or return such distribution shall result in the Holder owing the Debtor annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the 14-day grace period specified above until the amount is repaid.

b. *Claims Payable by Insurance, Third Parties; Recourse to Collateral*

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to the Debtor's insurance policies, surety agreements, other non-Debtor payment agreements, or collateral held by a third party, until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy, surety agreement, other non-Debtor payment agreement, or collateral, as applicable. To the extent that one or more of the Debtor's insurers, sureties, or non-Debtor payors pays or satisfies in full or in part a Claim (if and to the extent adjudicated by a court of competent jurisdiction), or such collateral or proceeds from such collateral is used to satisfy such Claim, then immediately upon such payment, the applicable portion of such Claim shall be expunged without a Claim objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

c. *Applicability of Insurance Policies*

Notwithstanding anything to the contrary in the Plan or Confirmation Order, Confirmation and Consummation of the Plan shall not limit or affect the rights of any third-party beneficiary or other covered party of any of the Debtor's insurance policies with respect to such policies, including, without limitation, the D&O Policies.

F. *The Liquidating Trust*

1. *Liquidating Trust Creation*

On the Effective Date, the Liquidating Trust will be established as a Delaware statutory trust and become effective for the benefit of the Liquidating Trust Beneficiaries. The Liquidating Trust Agreement shall (1) be in form and substance consistent in all respects with the Plan and acceptable to the Debtor, and (2) contain customary provisions for trust agreements utilized in comparable circumstances, including any and all provisions necessary to ensure continued treatment of the Liquidating Trust as a grantor trust and the Liquidating Trust Beneficiaries as the grantors and owners thereof for federal income tax purposes. All relevant parties (including the Debtor, the Liquidating Trustee, and the Liquidating Trust Beneficiaries) will take all actions necessary to cause the Liquidating Trust Assets to be transferred to the Liquidating Trust. The powers, authority, responsibilities, and duties of the Liquidating Trust and the Liquidating Trustee are set forth in and will be governed by the Liquidating Trust Agreement, the Plan, and the Confirmation Order.

2. *Purpose of the Liquidating Trust*

The Liquidating Trust will be established for the primary purpose of liquidating the Liquidating Trust Assets and making distributions to Holders of Allowed Administrative, Priority, and Professional Fee 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.

3. *Transfer of Assets to the Liquidating Trust*

The Debtor and the Liquidating Trustee will establish the Liquidating Trust on behalf of the Liquidating Trust Beneficiaries pursuant to the Liquidating Trust Agreement, with the Liquidating Trust Beneficiaries to be treated as the grantors and deemed owners of the Liquidating Trust Assets. The Debtor will irrevocably transfer, assign, and deliver to the Liquidating Trust, on behalf of the Liquidating Trust 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 Liquidating Trust Beneficiaries (and with respect to the Liquidating Trust Insurance Policies, for the benefit of the beneficiaries thereof), subject to the Plan and the Liquidating Trust Agreement.

On the Effective Date, all Liquidating Trust Assets will 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. Notwithstanding anything in the Plan to the contrary, the Liquidating Trust and the Liquidating Trustee shall be deemed to be fully bound by the terms of the Plan and the Confirmation Order.

For the avoidance of doubt, and notwithstanding anything in the Plan to the contrary, the Debtor shall not transfer or be deemed to have transferred to the Liquidating Trust any claims or Causes of Action (1) released pursuant to Article X.D of the Plan, or (2) exculpated pursuant to Article X.F of the Plan.

4. *Powers and Duties of the Liquidating Trust and Liquidating Trustee*

The Liquidating Trust shall act for the Debtor in the same fiduciary capacity as applicable to a board of managers and officers, subject to the provisions of the Plan (and all certificates of formation, membership agreements, and related documents are deemed amended by the Plan to permit and authorize the same). On the Effective Date, the persons acting as managers and officers of the Debtor shall be deemed to have resigned, and the Liquidating Trust and the Environmental Response Trust shall be appointed as the sole managers and sole officers of the Debtor and shall succeed to the powers of the Debtor's managers and officers. From and after the Effective Date, the Liquidating Trust, acting through the Liquidating Trustee, and the Environmental Response Trust, acting through the Environmental Response Trustee, shall be the sole representatives of, and shall act for the Debtor in the capacities set forth in the applicable formation documents for each trust. Any distributions to be made under the Plan from the Liquidating Trust Assets shall be made by the Liquidating Trust. Notwithstanding anything in the Plan to the contrary, the Debtor, the Liquidating Trust, and the Environmental Response Trust shall be deemed to be fully bound by the terms of the Plan and the Confirmation Order.

The powers and duties of the Liquidating Trustee shall be set forth in the Liquidating Trust Agreement and shall include the authority to hire employees and retain professionals.

5. *Costs and Expenses Incurred by 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' fees and expenses) made by the Liquidating Trustee shall be paid in Cash from the Liquidating Trust Assets without any further notice to or action, order, or approval of the Bankruptcy Court; provided, however, that any fees and expenses incurred by the Liquidating Trustee in connection with determining the extent and validity of Class 4, 5, and 6 Claims and making distributions to Holders of Class 4, 5, and 6 Claims shall be paid in Cash from the GUC Beneficiary Reserve.

The Liquidating Trustee shall not be required to give any bond or surety or other security for the performance of their duties unless otherwise ordered by the Bankruptcy Court. Additionally, in the event that the Liquidating Trustee is so otherwise ordered, all costs and expenses of the Liquidating Trustee in procuring any such bond or surety shall be paid for with Cash derived from the Liquidating Trust Assets.

6. *Tax Treatment of the Liquidating Trust*

The Liquidating Trust is intended to qualify as a “grantor trust” for federal income tax purposes with the Liquidating Trust Beneficiaries treated as grantors and owners of the trust. For all federal income tax purposes, it is intended that the Liquidating Trust Beneficiaries of the Liquidating Trust be treated as grantors and owners thereof, that the Liquidating Trust be classified as a Liquidating Trust under 26 C.F.R. § 301.7701–4, and that the Liquidating Trust is owned by the Liquidating Trust Beneficiaries. Accordingly, for federal income tax purposes, it is intended that the Liquidating Trust Beneficiaries be treated as if they had received a distribution of undivided interests in the Liquidating Trust Assets and then contributed such interests to the Liquidating Trust. Accordingly, the Liquidating Trust will, in an expeditious but orderly manner, liquidate and convert to Cash the Liquidating Trust Assets, make timely distributions to the Liquidating Trust Beneficiaries pursuant to the Plan, and not unduly prolong the Liquidating Trust’s duration. The Liquidating Trust will not be deemed a successor in interest of the Debtor for any purpose other than as specifically set forth in the Plan or in the Liquidating Trust Agreement.

The Liquidating Trustee shall file returns for the Liquidating Trust as a grantor trust pursuant to 26 C.F.R. § 1.671-4(a) and in accordance with the Plan. The Liquidating Trust’s taxable income, gain, loss, deduction or credit will be allocated to each Holder in accordance with their relative beneficial interests in the Liquidating Trust.

As soon as possible after the Effective Date, the Liquidating Trust shall make a good faith valuation of the Liquidating Trust Assets, and such valuation shall be used consistently by all parties for all federal income tax purposes. The Liquidating Trust also shall file (or cause to be filed) any other statements, returns, or disclosures relating to the Liquidating Trust that are required by any Governmental Unit for taxing purposes.

The Liquidating Trust may request an expedited determination of taxes of the Liquidating Trust under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Liquidating Trust for all taxable periods through the dissolution of the Liquidating Trust.

The Liquidating Trustee shall be responsible for filing all federal, state, local and non-U.S. tax returns for the Liquidating Trust. The Liquidating Trust shall comply with all withholding and reporting requirements imposed by any federal, state, local, or non-U.S. taxing authority, and all distributions made by the Liquidating Trust shall be subject to any such withholding and reporting requirements.

7. *Distribution; Withholding*

The Liquidating Trustee shall make, or cause to be made, all distributions under the Plan and the Liquidating Trust Agreement to Holders of Allowed Claims not paid prior to the Effective Date.

The Liquidating Trust, in its reasonable discretion, may withhold from amounts distributable to any Entity any and all amounts as required by the Plan, or applicable law, regulation, rule, ruling, directive, or other governmental requirement.

8. *Insurance*

The Liquidating Trust may maintain customary insurance coverage for the protection of Entities serving as administrators and overseers of the Liquidating Trust on and after the Effective Date.

9. *Termination of the Liquidating Trust*

The Liquidating Trustee shall be discharged and the Liquidating Trust shall be terminated, at such time as (1) all Disputed Claims 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, but 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.

10. *Transfer of Beneficial Interests*

Notwithstanding anything to the contrary in the Plan, beneficial interests in the Liquidating Trust shall not be transferrable except upon death of the interest holder or by operation of law.

11. *Exculpation; Indemnification*

The Liquidating Trustee, the Liquidating Trust, professionals retained by the Liquidating Trust, and representatives of each of the foregoing will be exculpated and indemnified pursuant to the terms of the Liquidating Trust Agreement. The Liquidating Trustee may use Liquidating Trust Assets to obtain commercially reasonable liability or other appropriate insurance with respect to the indemnification obligations of the Liquidating Trustee. The Liquidating Trustee may rely upon written information previously generated by the Debtor.

G. *The Environmental Response Trust*

1. *Environmental Response Trust Creation*

On the Effective Date, the Environmental Response Trust will be established as a Delaware statutory trust and become effective for the benefit of the Environmental Response Trust Beneficiaries. The Environmental Response Trust Agreement shall (1) be in form and substance consistent in all respects with the Plan and acceptable to the Debtor, and (2) contain customary provisions for trust agreements utilized in comparable circumstances, including any

and all provisions necessary to ensure continued treatment of the Environmental Response Trust as a grantor trust and the Environmental Response Trust Beneficiaries as the grantors and owners thereof for federal income tax purposes. All relevant parties (including the Debtor, the Environmental Response Trustee, and the Environmental Response Trust Beneficiaries) will take all actions necessary to cause the Environmental Response Trust Assets to be transferred to the Environmental Response Trust. The powers, authority, responsibilities, and duties of the Environmental Response Trust and the Environmental Response Trustee are set forth in and will be governed by the Environmental Response Trust Agreement, the Plan, and the Confirmation Order.

2. *Purpose of the Environmental Response Trust*

The Environmental Response Trust will be established for the primary purpose of paying for any post-Effective Date costs and expenses associated with Environmental Matters, including Remediation Costs and associated costs and fees incurred by the Environmental Response Trust in accordance with the Plan, Confirmation Order, and the Environmental Response 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 purpose of the Environmental Response Trust.

The Environmental Response Trustee may require reimbursement from the Purchaser for (or request that the Purchaser pay on the Environmental Response Trust's behalf) the Remediation Costs and other costs incurred by the Environmental Response Trust in an aggregate amount not to exceed \$30 million on the terms set forth in the Environmental Response Trust Agreement. Additionally, the Purchaser shall supply, or cause one of its affiliates to supply, power after the closing of the Sale Transaction to the Debtor or the Environmental Response Trust, as applicable, as set forth in Section 7.24 of the Purchase Agreement; in each case in accordance with the terms of the Purchase Agreement, the Shared Services Agreement, and any other Transaction Document, as applicable.

3. *Transfer of Assets to the Environmental Response Trust*

The Debtor and the Environmental Response Trustee will establish the Environmental Response Trust on behalf of the Environmental Response Trust Beneficiaries pursuant to the Environmental Response Trust Agreement. The Debtor will irrevocably transfer, assign, and deliver to the Environmental Response Trust, on behalf of the Environmental Response Trust Beneficiaries, all of its rights, title, and interests in the Environmental Response Trust Assets notwithstanding any prohibition on assignment under nonbankruptcy law. The Environmental Response Trust will accept and hold the Environmental Response Trust Assets in the Environmental Response Trust for the benefit of the Environmental Response Trust Beneficiaries, subject to the Plan and the Environmental Response Trust Agreement.

On the Effective Date, all Environmental Response Trust Assets, other than the Environmental Response Trust Cash Distribution, will vest and be deemed to vest in the Environmental Response Trust in accordance with section 1141 of the Bankruptcy Code. As of the Effective Date, all Environmental Response Trust Assets vested in the Environmental Response Trust shall be free and clear of all Liens, Claims, and Interests, other than any liability

to the Environmental Response Trust Beneficiaries as expressly provided for in the Environmental Response Trust Agreement.

On each Environmental Response Trust Cash Transfer Date, the applicable Environmental Response Trust Cash Distribution will vest and be deemed to vest in the Environmental Response Trust in accordance with section 1141 of the Bankruptcy Code. As of each Environmental Response Trust Cash Transfer Date, the applicable Environmental Response Trust Cash Distribution vested in the Environmental Response Trust shall be free and clear of all Liens, Claims, and Interests, other than any liability to the Environmental Response Trust Beneficiaries as expressly provided for in the Environmental Response Trust Agreement.

Upon the transfer by the Debtor of the Environmental Response Trust Assets and each Environmental Response Trust Cash Distribution to the Environmental Response Trust, the Debtor will have no reversionary or further interest in or with respect to any Environmental Response Trust Assets or the applicable Environmental Response Trust Cash Distribution. Notwithstanding anything in the Plan to the contrary, the Environmental Response Trust and the Environmental Response Trustee shall be deemed to be fully bound by the terms of the Plan and the Confirmation Order.

For the avoidance of doubt, and notwithstanding anything in the Plan to the contrary, the Debtor shall not transfer or be deemed to have transferred to the Environmental Response Trust any claims or Causes of Action (1) released pursuant to Article X.D of the Plan, or (2) exculpated pursuant to Article X.F of the Plan.

4. *Funding of the Environmental Response Trust*

On the Effective Date, and in accordance with and pursuant to the terms of the Plan, the Debtor will transfer to the Environmental Response Trust all of its rights, title, and interests in all of the Environmental Response Trust Assets other than the Environmental Response Trust Cash Distribution.

On each Environmental Response Trust Cash Transfer Date, and in accordance with and pursuant to the terms of the Plan, the Debtor shall transfer the Environmental Response Trust Cash Distribution to the Environmental Response Trust.

5. *Powers and Duties of the Environmental Response Trust and Environmental Response Trustee*

The Environmental Response Trust will be administered by the Environmental Response Trustee. The powers and duties of the Environmental Response Trustee shall be set forth in the Environmental Response Trust Agreement, and shall include, among other things, the duty to conduct the Environmental Remediation Program, including any Remedial Actions. As set forth in the Environmental Response Trust, any property placed into the Environmental Response Trust may be sold or transferred with the approval of the EPA and the applicable Environmental Response Trust Beneficiary, and the proceeds of any such sale or transfer shall be retained by the Environmental Response Trust to be used as provided in the Environmental Response Trust Agreement; provided, however, that the funds in the SEP Account shall be used only for the purposes set forth in the Consent Decree.

The Environmental Response Trust shall act for the Debtor in the same fiduciary capacity as applicable to a board of managers and officers, subject to the provisions of the Plan (and all certificates of formation, membership agreements, and related documents are deemed amended by the Plan to permit and authorize the same). On the Effective Date, the persons acting as managers and officers of the Debtor shall be deemed to have resigned, and the Environmental Response Trust and the Liquidating Trust shall be appointed as the sole managers and sole officers of, and shall succeed to the powers of the Debtor's managers and officers. From and after the Effective Date, the Liquidating Trust, acting through the Liquidating Trustee, and the Environmental Response Trust, acting through the Environmental Response Trustee, shall be the sole representatives of, and shall act for, the Debtor. Notwithstanding anything in the Plan to the contrary, the Debtor, the Liquidating Trust, and the Environmental Response Trust shall be deemed to be fully bound by the terms of the Plan and the Confirmation Order.

Upon the request of the DPNR or the EPA, the Environmental Response Trustee shall cooperate with the Environmental Response Trust Beneficiaries to secure brownfield or similar status to facilitate the re-use of any portions of the Remaining Assets.

6. *Costs and Expenses Incurred by Environmental Response Trustee*

Except as otherwise ordered by the Bankruptcy Court, the fees and expenses incurred by the Environmental Response Trustee on or after the Effective Date (including taxes) and any reasonable compensation and expense reimbursement Claims (including attorneys' fees and expenses) made by the Environmental Response Trustee shall be paid in Cash from the Environmental Response Trust Assets, without any further notice to or action, order, or approval of the Bankruptcy Court.

The Environmental Response Trustee shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court. Additionally, in the event that the Environmental Response Trustee is so otherwise ordered, all costs and expenses of procuring any such bond or surety shall be paid for with Cash derived from the Environmental Response Trust Assets.

7. *Tax Treatment of the Environmental Response Trust*

The Environmental Response Trust is intended to qualify as a "grantor trust" for federal income tax purposes with the Environmental Response Trust Beneficiaries treated as grantors and owners of the trust. For all federal income tax purposes, it is intended that the Environmental Response Trust Beneficiaries of the Environmental Response Trust be treated as grantors and owners thereof, that the Environmental Response Trust be classified as an Environmental Remediation Trust under 26 C.F.R. § 301.7701-4, and that the Environmental Response Trust is owned by the Environmental Response Trust Beneficiaries. Accordingly, for federal income tax purposes, it is intended that the Environmental Response Trust Beneficiaries be treated as if they had received a distribution of undivided interests in the Environmental Response Trust Assets and then contributed such interests to the Environmental Response Trust. Accordingly, the Environmental Response Trust will, in an expeditious but orderly manner, liquidate and convert to Cash the Environmental Response Trust Assets, make timely distributions to the Environmental Response Trust Beneficiaries pursuant to the Plan, and not unduly prolong the

Environmental Response Trust's duration. The Environmental Response Trust will not be deemed a successor in interest of the Debtor for any purpose other than as specifically set forth in the Plan or in the Environmental Response Trust Agreement.

The Environmental Response Trustee shall file returns for the Environmental Response Trust as a grantor trust pursuant to 26 C.F.R. § 1.671-4(a) and in accordance with the Plan. The Environmental Response Trust's taxable income, gain, loss, deduction or credit will be allocated to each Holder in accordance with their relative beneficial interests in the Environmental Response Trust.

As soon as possible after the Effective Date, the Environmental Response Trust shall make a good faith valuation of the Environmental Response Trust Assets, and such valuation shall be used consistently by all parties for all federal income tax purposes. The Environmental Response Trust also shall file (or cause to be filed) any other statements, returns, or disclosures relating to the Environmental Response Trust that are required by any Governmental Unit for taxing purposes.

The Environmental Response Trust may request an expedited determination of taxes of the Environmental Response Trust under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Environmental Response Trust for all taxable periods through the dissolution of the Environmental Response Trust.

The Environmental Response Trustee shall be responsible for filing all federal, state, local and non-U.S. tax returns for the Environmental Response Trust. The Environmental Response Trust shall comply with all withholding and reporting requirements imposed by any federal, state, local, or non-U.S. taxing authority, and all distributions made by the Environmental Response Trust shall be subject to any such withholding and reporting requirements.

8. *Insurance*

The Environmental Response Trust may maintain customary insurance coverage for the protection of Entities serving as administrators and overseers of the Environmental Response Trust on and after the Effective Date.

9. *Termination of the Environmental Response Trust*

Consistent with the Environmental Response Trust Agreement, the Environmental Response Trustee shall not unduly prolong the duration of the Environmental Response Trust and shall at all times endeavor to resolve, settle, or otherwise satisfy all claims of the Environmental Response Trust Beneficiaries, and to terminate the Environmental Response Trust as soon as practicable consistent with the Environmental Response Trust Agreement.

10. *Transfer of Beneficial Interests*

Notwithstanding anything to the contrary in the Plan, beneficial interests in the Environmental Response Trust shall not be transferrable.

11. *Exculpation; Indemnification*

The Environmental Response Trustee, the Environmental Response Trust, professionals retained by the Environmental Response Trust, and representatives of each of the foregoing will be exculpated and indemnified pursuant to the terms of the Environmental Response Trust Agreement. The Environmental Response Trustee may use Environmental Response Trust Assets to obtain commercially reasonable liability or other appropriate insurance with respect to the indemnification obligations of the Environmental Response Trustee.

H. *Procedures For Resolving Contingent, Unliquidated, and Disputed Claims and Interests*

1. *Resolution of Disputed Claims*

a. *Allowance of Claims and Interests*

Prior to the Effective Date, the Debtor, and on and after the Effective Date, the Liquidating Trustee shall have and shall retain any and all rights and defenses that the Debtor had with respect to any Claim or Interest, except with respect to any Claim or Interest deemed Allowed as of the Effective Date. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including the Confirmation Order), no Claim or Interest shall become an Allowed Claim or Interest unless and until such Claim or Interest is deemed Allowed under the Plan or the Bankruptcy Code or the Bankruptcy Court has entered a Final Order, including the Confirmation Order, in the Chapter 11 Case allowing such Claim.

b. *Prosecution of Objections to Claims*

Other than with respect to Professional Fee Claims, prior to the Effective Date, the Debtor, and on or after the Effective Date, the Liquidating Trustee shall have the authority to File objections to such Claims, and the exclusive authority to settle, compromise, withdraw, or litigate to judgment objections on behalf of the Debtor's Estate to any and all such Claims, regardless of whether such Claims are in a Class or otherwise. From and after the Effective Date, the Liquidating Trustee shall have the sole authority to administer and adjust the Claims Register 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.

c. *Claims Estimation*

On and after the Effective Date, the Liquidating Trustee may, at any time, request that the Bankruptcy Court estimate (i) any Disputed Claim pursuant to applicable law and (ii) any contingent or unliquidated Claim 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, and the Bankruptcy Court shall retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to the maximum extent permitted by law as determined by the Bankruptcy Court to estimate any such Disputed Claim, contingent Claim, or unliquidated Claim, including during the litigation concerning any objection to any Claim or during the pendency of any appeal relating to any such objection.

Notwithstanding any provision otherwise in the Plan to the contrary, a Claim 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, 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 Debtor or the Liquidating Trustee, as applicable, 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 Debtor or the Liquidating Trustee, as applicable, 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 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 may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

d. *Expungement or Adjustment to Claims Without Objection*

Any Claim that has been paid, satisfied, or superseded may be expunged on the Claims Register by, as applicable, the Debtor or the Liquidating Trustee (or the Claims and Noticing Agent at, as applicable, the Debtor's or the Liquidating Trustee's direction), and any Claim that has been amended may be adjusted thereon by, as applicable, the Debtor or 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.

e. *Deadline to File Objections to Claims or Interests*

Any objections to Claims or Interests shall be Filed no later than the Claims Objection Bar Date.

f. *Disallowance of Claims*

To the maximum extent provided by section 502(d) of the Bankruptcy Code, all Claims of any Entity from which property is recoverable by the Debtor or the Liquidating Trustee, as applicable, under section 542, 543, 550, or 553 of the Bankruptcy Code or that the Debtor or the Liquidating Trustee, as applicable, alleges is a transferee of a transfer that is avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code shall be disallowed if (1) the Entity, on the one hand, and the Debtor or the Liquidating Trustee, as

applicable, on the other hand, agree or it has been determined by Final Order that such Entity or transferee is liable to turnover any property or monies under any of the aforementioned sections of the Bankruptcy Code, and (2) such Entity or transferee has failed to turnover such property by the date set forth in such agreement or Final Order.

g. *Amendments to Claims*

After the Confirmation Date, a Claim or Interest may not be filed or amended without the authorization of the Bankruptcy Court and any such new or amended Claim or Interest Filed shall be deemed disallowed and expunged without any further notice to or action, order, or approval of the Bankruptcy Court; provided, that such Holder may amend the Claim or Interest Filed solely to decrease, but not to increase, the amount, number, or priority of such Claim or Interest, unless otherwise provided by the Bankruptcy Court.

h. *No Interest*

Unless otherwise specifically provided for in the Plan (including Article III of the Plan), by applicable law (including, without limitation, section 506(b) of the Bankruptcy Code), or agreed-to by, as applicable, the Debtor or the Liquidating Trustee, interest shall not accrue or be paid on any Claim, and no Holder of any Claim shall be entitled to interest accruing on and after the Petition Date on account of any Claim. Without limiting the foregoing, interest shall not accrue or be paid on any Claim after the Effective Date to the extent the final distribution paid on account of such Claim occurs after the Effective Date.

I. *Settlement, Release, Injunction, and Related Provisions*

1. *Compromise and Settlement of Claims, Interests, and Controversies*

Pursuant to Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, and except as otherwise specifically provided in the Plan or in any contract, instrument, or other agreement or document created pursuant to the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete settlement, compromise, and release, effective as of the Effective Date, of Claims, Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, including, but not limited to, all known or unknown liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtor or any of its assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability to the extent such Claims or Interests relate to services performed by employees of the Debtor before the Effective Date and that arise from a termination of employment, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (1) a Proof of Claim or proof of Interest based upon such debt, right, or Interest is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code; (2) a Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (3) the Holder of such a Claim or Interest has accepted the Plan. Any default by the Debtor or its

Affiliates with respect to any Claim or Interest that existed immediately before or on account of the filing of the Chapter 11 Case shall be deemed cured on the Effective Date. The Confirmation Order shall be a judicial determination of the settlement, compromise, and release of all Claims and Interests, subject to the Effective Date occurring.

2. *Release of Liens*

Except as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estate shall be fully released, settled, and compromised and all rights, titles, and interests of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estate shall revert to the Debtor.

3. *Subordinated Claims*

The allowance, classification, and treatment of all Allowed Claims and Interests and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtor reserves the right for the Debtor or the Liquidating Trustee, as applicable, to re-classify any Allowed Claim or Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

4. *Debtor Release*

ON THE EFFECTIVE DATE OF THE PLAN AND TO THE FULLEST EXTENT AUTHORIZED BY APPLICABLE LAW, THE RELEASED PARTIES AND THEIR RESPECTIVE PROPERTY WILL BE EXPRESSLY, UNCONDITIONALLY, GENERALLY AND INDIVIDUALLY AND COLLECTIVELY RELEASED, ACQUITTED AND DISCHARGED BY THE DEBTOR ON BEHALF OF ITSELF, ITS ESTATE, AND THE LIQUIDATING TRUST AND THE ENVIRONMENTAL RESPONSE TRUST (SUCH THAT THE LIQUIDATING TRUST AND THE ENVIRONMENTAL RESPONSE TRUST WILL NOT HOLD ANY CLAIMS OR CAUSES OF ACTION RELEASED PURSUANT TO ARTICLE X.D OF THE PLAN), FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY EACH OF THE RELEASED PARTIES, FROM ANY AND ALL ACTIONS, CLAIMS, DEBTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, CAUSES OF ACTION, REMEDIES AND LIABILITIES WHATSOEVER, INCLUDING ANY DERIVATIVE CLAIMS ASSERTED ON BEHALF OF THE DEBTOR, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, MATURED OR UNMATURED, EXISTING OR HEREINAFTER ARISING, IN LAW, EQUITY, CONTRACT, TORT OR OTHERWISE, BY STATUTE, VIOLATIONS OF FEDERAL OR STATE SECURITIES LAWS OR OTHERWISE, BASED IN WHOLE OR IN PART UPON ANY ACT OR OMISSION, TRANSACTION, OR OTHER OCCURRENCE OR CIRCUMSTANCES EXISTING OR

TAKING PLACE PRIOR TO OR ON THE EFFECTIVE DATE ARISING FROM OR RELATED IN ANY WAY TO THE DEBTOR, ANY OF THE DEBTOR'S PRESENT OR FORMER ASSETS, THE RELEASED PARTIES' INTERESTS IN OR MANAGEMENT OF THE DEBTOR, THE PLAN, THE DISCLOSURE STATEMENT, THE SALE TRANSACTION, THE BIDDING AND SALE PROCESS FOR ANY ASSETS OF THE DEBTOR, THIS CHAPTER 11 CASE, OR ANY RESTRUCTURING OF CLAIMS OR INTERESTS UNDERTAKEN PRIOR TO THE EFFECTIVE DATE, INCLUDING THOSE THAT THE DEBTOR OR THE LIQUIDATING TRUST OR THE ENVIRONMENTAL RESPONSE TRUST WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT OR THAT ANY HOLDER OF A CLAIM AGAINST OR INTEREST IN THE DEBTOR OR ANY OTHER ENTITY COULD HAVE BEEN LEGALLY ENTITLED TO ASSERT DERIVATIVELY OR ON BEHALF OF THE DEBTOR OR ITS ESTATE; PROVIDED, HOWEVER, THAT THE FOREGOING "DEBTOR RELEASE" SHALL NOT OPERATE TO WAIVE OR RELEASE ANY CLAIMS OR CAUSES OF ACTION OF THE DEBTOR OR ITS CHAPTER 11 ESTATE AGAINST A RELEASED PARTY ARISING UNDER (1) ANY CONTRACTUAL OBLIGATION OWED TO THE DEBTOR THAT IS ENTERED INTO OR ASSUMED PURSUANT TO THE PLAN, OR (2) THE PURCHASE AGREEMENT.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE DEBTOR RELEASE, WHICH INCLUDES BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS CONTAINED IN THE PLAN, AND, *FURTHER*, SHALL CONSTITUTE THE BANKRUPTCY COURT'S FINDING THAT THE DEBTOR RELEASE IS: (1) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE RELEASED PARTIES; (2) A GOOD-FAITH SETTLEMENT AND COMPROMISE OF THE CLAIMS RELEASED BY THE DEBTOR RELEASE; (3) IN THE BEST INTERESTS OF THE DEBTOR'S ESTATE AND ALL HOLDERS OF CLAIMS AND INTERESTS; (4) FAIR, EQUITABLE, AND REASONABLE; (5) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; AND (6) A BAR AGAINST ANY OF THE DEBTOR'S ESTATE, THE LIQUIDATING TRUST, OR THE ENVIRONMENTAL RESPONSE TRUST, ASSERTING ANY CLAIM OR CAUSE OF ACTION RELEASED PURSUANT TO THE DEBTOR RELEASE.

5. *Third Party Release*

ON THE EFFECTIVE DATE OF THE PLAN AND TO THE FULLEST EXTENT AUTHORIZED BY APPLICABLE LAW, THE RELEASING PARTIES SHALL BE DEEMED TO HAVE EXPRESSLY, UNCONDITIONALLY, GENERALLY AND INDIVIDUALLY AND COLLECTIVELY, RELEASED AND ACQUITTED THE RELEASED PARTIES AND THEIR RESPECTIVE PROPERTY (INCLUDING THE RELEASED PARTIES' PREDECESSORS, SUCCESSORS AND ASSIGNS, SUBSIDIARIES, AFFILIATES, MANAGED ACCOUNTS OR FUNDS, CURRENT AND FORMER OFFICERS, DIRECTORS, PRINCIPALS, SHAREHOLDERS, DIRECT AND INDIRECT EQUITY HOLDERS, MEMBERS, PARTNERS (GENERAL AND LIMITED), EMPLOYEES, AGENTS, ADVISORY BOARD MEMBERS, FINANCIAL ADVISORS, ATTORNEYS, ACCOUNTANTS, INVESTMENT BANKERS, CONSULTANTS, REPRESENTATIVES, MANAGEMENT COMPANIES, FUND ADVISORS AND OTHER PROFESSIONALS) AND

THE RELEASED PARTIES FROM ANY AND ALL ACTIONS, CLAIMS, INTERESTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, CAUSES OF ACTION, REMEDIES AND LIABILITIES WHATSOEVER, INCLUDING ANY DERIVATIVE CLAIMS ASSERTED ON BEHALF OF THE DEBTOR, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, MATURED OR UNMATURED, EXISTING OR HEREAFTER ARISING, IN LAW, EQUITY, CONTRACT, TORT OR OTHERWISE, THAT SUCH HOLDER (WHETHER INDIVIDUALLY OR COLLECTIVELY) EVER HAD, NOW HAS OR HEREAFTER CAN, SHALL OR MAY HAVE, BASED ON OR RELATING TO, OR IN ANY MANNER ARISING FROM OR RELATED IN ANY WAY TO THE DEBTOR, ANY OF THE DEBTOR'S PRESENT OR FORMER ASSETS, THE RELEASED PARTIES' INTERESTS IN OR MANAGEMENT OF THE DEBTOR, THE BUSINESS OR CONTRACTUAL ARRANGEMENTS BETWEEN THE DEBTOR AND ANY RELEASED PARTY, THE PLAN, THE DISCLOSURE STATEMENT, THE SALE TRANSACTION, THE BIDDING AND SALE PROCESS FOR ANY ASSETS OF THE DEBTOR, THIS CHAPTER 11 CASE, OR ANY RESTRUCTURING OF CLAIMS OR INTERESTS UNDERTAKEN PRIOR TO THE EFFECTIVE DATE, INCLUDING THOSE THAT THE DEBTOR OR THE LIQUIDATING TRUST OR THE ENVIRONMENTAL RESPONSE TRUST WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT OR THAT ANY HOLDER OF A CLAIM AGAINST OR INTEREST IN THE DEBTOR OR ANY OTHER ENTITY COULD HAVE BEEN LEGALLY ENTITLED TO ASSERT DERIVATIVELY OR ON BEHALF OF THE DEBTOR OR ITS ESTATE, EXCEPT FOR (I) ANY CLAIMS AND CAUSES OF ACTION FOR ACTUAL FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AND (II) THE RIGHT TO RECEIVE DISTRIBUTIONS FROM THE DEBTOR, THE LIQUIDATING TRUST, OR THE ENVIRONMENTAL RESPONSE TRUST ON ACCOUNT OF AN ALLOWED CLAIM AGAINST THE DEBTOR PURSUANT TO THE PLAN.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE THIRD PARTY RELEASE, WHICH INCLUDES BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS CONTAINED IN THE PLAN, AND, *FURTHER*, SHALL CONSTITUTE THE BANKRUPTCY COURT'S FINDING THAT THE THIRD PARTY RELEASE IS: (1) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE RELEASED PARTIES; (2) A GOOD-FAITH SETTLEMENT AND COMPROMISE OF THE CLAIMS RELEASED BY THE THIRD PARTY RELEASE; (3) IN THE BEST INTERESTS OF THE DEBTOR AND ALL HOLDERS OF CLAIMS AND INTERESTS; (4) FAIR, EQUITABLE, AND REASONABLE; (5) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; AND (6) A BAR TO ANY OF THE RELEASING PARTIES ASSERTING ANY CLAIM RELEASED PURSUANT TO THE THIRD PARTY RELEASE.

6. *Exculpation*

The Exculpated Parties shall neither have, nor incur any liability to any Entity for any prepetition or postpetition act taken or omitted to be taken in connection with the Chapter 11 Case, or related to formulating, negotiating, soliciting, preparing, disseminating, confirming, or implementing the Plan or consummating the Plan, the Disclosure Statement, or any contract, instrument, release, or other agreement or document created or entered into in connection with

the Plan or any other prepetition or postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring or liquidation of the Debtor, including the bidding and sale process for any assets of the Debtor. Without limiting the foregoing “Exculpation” provided under Article X.F. of the Plan, the rights of any Holder of a Claim or Interest to enforce rights arising under the Plan shall be preserved, including the right to compel payment of distributions in accordance with the Plan; provided, that the foregoing “Exculpation” shall have no effect on the liability of any Entity solely to the extent resulting from any such act or omission that is determined in a final order to have constituted gross negligence or willful misconduct; provided, further, that each Exculpated Party shall be entitled to rely upon the advice of counsel concerning his, her, or its duties pursuant to, or in connection with, the Plan or any other related document, instrument, or agreement

7. *Injunction*

EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR THE CONFIRMATION ORDER, ALL ENTITIES WHO HAVE HELD, HOLD, OR MAY HOLD CLAIMS, INTERESTS, CAUSES OF ACTION, OR LIABILITIES THAT: (1) ARE SUBJECT TO COMPROMISE AND SETTLEMENT PURSUANT TO THE TERMS OF THE PLAN; (2) HAVE BEEN RELEASED PURSUANT TO ARTICLE X.D OF THE PLAN; (3) HAVE BEEN RELEASED PURSUANT TO ARTICLE X.E OF THE PLAN; (4) ARE SUBJECT TO EXCULPATION PURSUANT TO ARTICLE X.F OF THE PLAN; OR (5) ARE OTHERWISE STAYED OR TERMINATED PURSUANT TO THE TERMS OF THE PLAN, ARE PERMANENTLY ENJOINED AND PRECLUDED, FROM AND AFTER THE EFFECTIVE DATE, FROM: (A) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND, INCLUDING ON ACCOUNT OF ANY CLAIMS, INTERESTS, CAUSES OF ACTIONS, OR LIABILITIES THAT HAVE BEEN COMPROMISED OR SETTLED AGAINST THE DEBTOR, THE LIQUIDATING TRUST, THE ENVIRONMENTAL RESPONSE TRUST, OR ANY ENTITY SO RELEASED OR EXCULPATED (OR THE PROPERTY OR ESTATE OF ANY ENTITY, DIRECTLY OR INDIRECTLY, SO RELEASED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION, OR LIABILITIES; (B) ENFORCING, ATTACHING, COLLECTING, OR RECOVERING BY ANY MANNER OR MEANS ANY JUDGMENT, AWARD, DECREE, OR ORDER AGAINST THE DEBTOR, THE LIQUIDATING TRUST, THE ENVIRONMENTAL RESPONSE TRUST, OR ANY ENTITY SO RELEASED OR EXCULPATED (OR THE PROPERTY OR ESTATE OF THE DEBTOR OR ANY ENTITY SO RELEASED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION, OR LIABILITIES; (C) CREATING, PERFECTING, OR ENFORCING ANY LIEN, CLAIM, OR ENCUMBRANCE OF ANY KIND AGAINST THE DEBTOR, THE LIQUIDATING TRUST, THE ENVIRONMENTAL RESPONSE TRUST, OR ANY ENTITY SO RELEASED OR EXCULPATED (OR THE PROPERTY OR ESTATE OF THE DEBTOR OR ANY ENTITY SO RELEASED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION, OR LIABILITIES;

(D) ASSERTING ANY RIGHT OF SETOFF OR SUBROGATION OF ANY KIND AGAINST ANY OBLIGATION DUE FROM THE DEBTOR OR ANY ENTITY SO RELEASED OR EXCULPATED (OR THE PROPERTY OR ESTATE OF THE DEBTOR OR ANY ENTITY SO RELEASED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION, OR LIABILITIES UNLESS SUCH ENTITY HAS TIMELY ASSERTED SUCH SETOFF OR SUBROGATION RIGHT PRIOR TO CONFIRMATION IN A DOCUMENT FILED WITH THE BANKRUPTCY COURT EXPLICITLY PRESERVING SUCH SETOFF OR SUBROGATION; AND (E) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND AGAINST THE DEBTOR, THE LIQUIDATING TRUST, THE ENVIRONMENTAL RESPONSE TRUST, OR ANY ENTITY SO RELEASED OR EXCULPATED (OR THE PROPERTY OR ESTATE OF THE DEBTOR OR ANY ENTITY SO RELEASED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION, OR LIABILITIES RELEASED, SETTLED, OR COMPROMISED PURSUANT TO THE PLAN; *PROVIDED THAT* NOTHING CONTAINED IN THE PLAN SHALL PRECLUDE AN ENTITY FROM OBTAINING BENEFITS DIRECTLY AND EXPRESSLY PROVIDED TO SUCH ENTITY PURSUANT TO THE TERMS OF THE PLAN OR THE SALE ORDER; *PROVIDED, FURTHER, THAT* NOTHING CONTAINED IN THE PLAN SHALL BE CONSTRUED TO PREVENT ANY ENTITY FROM DEFENDING AGAINST CLAIMS OBJECTIONS OR COLLECTION ACTIONS WHETHER BY ASSERTING A RIGHT OF SETOFF OR OTHERWISE TO THE EXTENT PERMITTED BY LAW.

8. *Waiver of Statutory Limitations on Releases*

EACH RELEASING PARTY IN EACH OF THE RELEASES CONTAINED IN THE PLAN (INCLUDING UNDER ARTICLE X OF THE PLAN) EXPRESSLY ACKNOWLEDGES THAT ALTHOUGH ORDINARILY A GENERAL RELEASE MAY NOT EXTEND TO CLAIMS WHICH THE RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR, WHICH IF KNOWN BY IT MAY HAVE MATERIALLY AFFECTED ITS SETTLEMENT WITH THE PARTY RELEASED, THEY HAVE CAREFULLY CONSIDERED AND TAKEN INTO ACCOUNT IN DETERMINING TO ENTER INTO THE ABOVE RELEASES THE POSSIBLE EXISTENCE OF SUCH UNKNOWN LOSSES OR CLAIMS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EACH RELEASING PARTY EXPRESSLY WAIVES ANY AND ALL RIGHTS CONFERRED UPON IT BY ANY STATUTE OR RULE OF LAW WHICH PROVIDES THAT A RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CLAIMANT DOES NOT KNOW OR SUSPECT TO EXIST IN ITS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY IT MAY HAVE MATERIALLY AFFECTED ITS SETTLEMENT WITH THE RELEASED PARTY. THE RELEASES CONTAINED IN ARTICLE X OF THE PLAN ARE EFFECTIVE REGARDLESS OF WHETHER THOSE RELEASED MATTERS ARE PRESENTLY KNOWN, UNKNOWN, SUSPECTED OR UNSUSPECTED, FORESEEN OR UNFORESEEN.

9. *Setoffs*

Except as otherwise provided in the Plan, prior to the Effective Date, the Debtor, and on and after the Effective Date, 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 or Interest, may set off against any Allowed Claim or Interest on account of any Proof of Claim or proof of Interest 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 or Interest (before any distribution is made on account of such Allowed Claim or Interest), any claims, rights, and Causes of Action of any nature that the Debtor's Estate may hold against the Holder of such Allowed Claim or Interest, 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 or Interest pursuant to the Plan shall constitute a waiver or release by the Debtor or the Liquidating Trustee, as applicable, 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 Claims or Interests be entitled to set off any Claim or Interest 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.

J. *Conditions Precedent to the Effective Date of the Plan*

1. *Conditions Precedent to the Effective Date of the Plan*

The Plan shall not become effective unless and until each of the following conditions shall have been satisfied or waived pursuant to the provisions of Article XI.B of the Plan:

- a. the Bankruptcy Court shall have entered the Confirmation Order in form and substance materially consistent with the Plan in all respects;
- b. the Liquidating Trustee and the Environmental Response Trustee shall have been appointed;
- c. the Liquidating Trust Agreement shall have been executed and become effective;
- d. the Environmental Response Trust Agreement shall have been executed and become effective;
- e. the Sale Transaction shall have closed;
- f. the Administrative and Priority Claims Reserve shall have been established;
- g. the GUC Beneficiary Reserve shall have been established and funded;

- h. the Environmental Response Trust Account shall have been established;
- i. HOVIC (or an affiliate thereof) shall have assumed the Debtor's pension obligations arising from the Pension Plan, in a form and manner acceptable to HOVIC, the Committee, the Pension Benefit Guaranty Corporation, and the Debtor and in accordance with the requirements of the Internal Revenue Code, ERISA and applicable law; and
- j. all documents and agreements necessary to implement the Plan and the consummation of the Sale Transaction shall have (a) been tendered for delivery and (b) been effected or executed by all Entities party thereto, and all conditions precedent to the effectiveness of such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

2. *Waiver of Conditions*

The conditions precedent to the Effective Date of the Plan set forth in Article XI of the Plan other than the closing of the Sale Transaction may be waived by the Debtor in its reasonable discretion without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or consummate the Plan; provided, however, that the Debtor shall consult with the EPA and the DPNR prior to waiving any conditions relating to the Environmental Response Trust. The failure of the Debtor, the Liquidating Trustee or the Environmental Response Trustee, as applicable, to exercise any of the foregoing rights shall not be deemed a waiver of any other rights, and each right shall be deemed an ongoing right that may be asserted at any time.

3. *Effect of Non-Occurrence of Conditions to the Effective Date*

If the Effective Date does not occur, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any claims by or Claims against or Interests in the Debtor, including, without limitation, the Promissory Note Claims and other Claims of the JV Parties in the event the Sale Transaction is not consummated; (2) prejudice in any manner the rights of the Debtor, the Debtor's Estate, any Holders, or any other Entity; or (3) constitute an admission, acknowledgment, offer, or undertaking by the Debtor, the Debtor's Estate, any Holders, or any other Entity in any respect.

K. *Modification, Revocation, or Withdrawal of the Plan*

1. *Modification and Amendments*

Subject to the limitations contained in the Plan, the Debtor reserves the right to modify the Plan as to material terms and seek Confirmation consistent with the Bankruptcy Code and, as appropriate, not resolicit votes on such modified Plan. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in the Plan, the Debtor expressly reserves its rights to alter, amend, or modify materially the Plan with respect to the Debtor, one or more times, after

Confirmation, and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with Article XII of the Plan.

2. *Effect of Confirmation on Modifications*

Entry of a Confirmation Order shall mean that all modifications or amendments to the Plan occurring after the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

3. *Revocation or Withdrawal of the Plan*

The Debtor reserves the right to revoke or withdraw the Plan prior to the Effective Date. If the Debtor revokes or withdraws the Plan, or if Confirmation or Consummation does not occur, then: (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of any Claim or Interest or Class of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (3) nothing contained in the Plan shall: (a) constitute a waiver or release of any Claims or Interests, including, without limitation, the Promissory Note Claims and other Claims of the JV Parties in the event the Sale Transaction is not consummated; (b) prejudice in any manner the rights of the Debtor, the Debtor's Estate, or any other Entity; or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtor, the Debtor's Estate, or any other Entity.

L. *Retention of Jurisdiction*

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain jurisdiction over the Chapter 11 Case and all matters, arising out of, or related to, the Chapter 11 Case and the Plan, including jurisdiction to:

1. allow, disallow, determine, liquidate, classify, estimate, or establish the priority, Secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the Secured or unsecured status, priority, amount, or allowance of Claims or Interests;
2. decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;

3. resolve any matters related to: (a) the assumption and assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor may be liable in any manner and to hear, determine, and, if necessary, liquidate, any Claims arising therefrom, including Claims related to the rejection of an Executory Contract or Unexpired Lease, Cure Obligations pursuant to section 365 of the Bankruptcy Code, or any other matter related to such Executory Contract or Unexpired Lease; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; (c) the Debtor, the Liquidating Trustee, or the Environmental Response Trustee amending, modifying, or supplementing, after the Effective Date, pursuant to Article V of the Plan, any Executory Contracts or Unexpired Leases set forth on the list of Executory Contracts and Unexpired Leases to be assumed and assigned or rejected or otherwise; and (d) any dispute regarding whether a contract or lease is or was executory or expired;
4. ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;
5. adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving the Debtor that may be pending on the Effective Date;
6. enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan or the Disclosure Statement;
7. enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;
8. resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the Consummation, interpretation, or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;
9. issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan;
10. resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the settlements, compromises, releases, injunctions, exculpations, and other provisions contained in Article X of the Plan and enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions;
11. resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by the Holder of a Claim or Interest for amounts not timely repaid pursuant to Article VI.E.1 of the Plan;

12. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;
13. determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document created in connection with the Plan or the Disclosure Statement;
14. adjudicate any and all disputes arising from or relating to distributions under the Plan or any transactions contemplated by the Plan;
15. consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;
16. determine requests for the payment of Claims and Interests entitled to priority pursuant to section 507 of the Bankruptcy Code;
17. hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan, or the Confirmation Order, including disputes arising under agreements, documents, or instruments executed in connection with the Plan;
18. hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;
19. hear and determine all disputes involving the existence, nature, or scope of the Debtor's release, including any dispute relating to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred prior to or after the Effective Date;
20. enforce all orders previously entered by the Bankruptcy Court;
21. hear any other matter not inconsistent with the Bankruptcy Code;
22. enter an order concluding or closing the Chapter 11 Case; and
23. enforce the injunction, release, and exculpation provisions set forth in Article X of the Plan.

M. *Miscellaneous Provisions*

1. *Immediate Binding Effect*

Subject to the terms hereof and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan, the Plan

Supplement, and the Confirmation Order shall be immediately effective and enforceable and deemed binding upon the Debtor, the Debtor's Estate, the Liquidating Trustee, the Environmental Response Trustee, and any and all Holders of Claims or Interests (regardless of whether such Claims or Interests are deemed to have accepted or rejected the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions described in the Plan, each Entity acquiring property under the Plan or the Confirmation Order, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtor. All Claims and debts shall be as fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or debt has voted on the Plan.

2. *Additional Documents*

On or before the Effective Date, the Debtor may File with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtor and all Holders of Claims or Interests receiving distributions pursuant to the Plan and all other parties in interest shall, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

3. *Dissolution of Committee*

On the Effective Date, the Committee shall dissolve and members thereof shall be compromised, settled, and released from all rights and duties from or related to the Chapter 11 Case, except the Committee will remain intact solely with respect to the preparation, filing, review, and resolution of applications for Professional Fee Claims. The Debtor, the Liquidating Trustee, and the Environmental Response Trustee shall have no obligation to pay any fees or expenses incurred after the Effective Date by the Committee Members, other than as provided by the GUC Beneficiary Reserve Carve Out.

4. *Reservation of Rights*

Except as expressly set forth in the Plan, the Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. Neither the Plan, any statement or provision contained in the Plan, nor any action taken or not taken by the Debtor with respect to the Plan, the Disclosure Statement, the Confirmation Order, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of the Debtor with respect to the Holders of Claims or Interests prior to the Effective Date, including, without limitation, the Promissory Note Claims and other Claims of the JV Parties in the event the Sale Transaction is not consummated.

5. *Successors and Assigns*

The rights, benefits, and obligations of any Entity named or referred to in the Plan or the Confirmation Order shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, Affiliate, officer, director, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

6. *Service of Documents*

Any pleading, notice, or other document required by the Plan to be served on or delivered to the following entities and shall be served via first class mail, overnight delivery, or messenger on:

If to the Debtor, to:

HOVENSA L.L.C.
1 Estate Hope
Christiansted, St. Croix, U.S.V.I. 00820
Attn: Thomas E. Hill, Chief Restructuring Officer

with copies to:

Morrison & Foerster LLP
250 West 55th Street
New York, New York 10019
Attn: Lorenzo Marinuzzi, Esq. and Jennifer L. Marines, Esq.

If to the Liquidating Trustee, to:

[_____]

with copies to:

[_____]

If to the Environmental Response Trustee, to:

[_____]

with copies to:

[_____]

7. *Term of Injunctions or Stays*

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Case pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect to the maximum extent permitted by law. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

8. *Entire Agreement*

Except as otherwise indicated, the Plan, the Confirmation Order, and the Plan Supplement supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

9. *Nonseverability of Plan Provisions*

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the consent of the Debtor; and (3) nonseverable and mutually dependent.

10. *Waiver or Estoppel*

Each Holder of a Claim or an Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, Secured or not subordinated by virtue of an agreement made with the Debtor or its counsel, or any other Entity, if such agreement was not disclosed in the Plan, the Disclosure Statement, or papers Filed with the Bankruptcy Court before the Confirmation Date.

ARTICLE VI.

STATUTORY REQUIREMENTS FOR CONFIRMATION OF THE PLAN

The following is a brief summary of the confirmation process. Holders of Claims and Interests are encouraged to review the relevant provisions of the Bankruptcy Code and to consult their own advisors with respect to the summary provided in this Disclosure Statement.

A. *Combined Hearing*

The Bankruptcy Court has scheduled the Combined Hearing for January [7], at ___:00 a.m., prevailing Eastern Time. The Combined Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement of the adjourned date made at the Combined Hearing or the Filing of a notice of such adjournment served in accordance with the Solicitation Procedures Order. Any objection to the Plan must: (1) be in writing; (2) conform to the Bankruptcy Rules and the Local Bankruptcy Rules of the District Court for the Virgin Islands, Bankruptcy Division; (3) state the name, address, phone

number, and email address of the objecting party and the amount and nature of the Claim or Interest of such entity, if any; (4) state with particularity the basis and nature of any objection to the Plan and, if practicable, a proposed modification to the Plan that would resolve such objection; and (5) be Filed, contemporaneously with a proof of service, with the Bankruptcy Court and served so that it is **actually received** by the following notice parties set forth below no later than the Objection Deadline. **Unless an objection to the Plan is timely served and Filed, it may not be considered by the Bankruptcy Court.**

<i>Counsel to the Debtor</i>	
Morrison & Foerster LLP Lorenzo Marinuzzi, Esq. Jennifer L. Marines, Esq. 250 West 55th Street New York, New York 10019	Law Offices of Richard H. Dollison, P.C. Richard H. Dollison, Esq. 48 Dronningens Gade, Suite 2C St. Thomas, U.S. Virgin Islands 00802
<i>Counsel to the Committee</i>	
Dentons US LLP Sam J. Alberts, Esq. Henry W. Sewell, Jr., Esq. 1301 K Street, NW, Suite 600, East Tower Washington, D.C. 20005-3364	Hamm Eckard, LLP Mark W. Eckard, Esq. 5030 Anchor Way Christiansted, U.S. Virgin Islands 00824
<i>Counsel to Hess Oil Virgin Islands Corporation</i>	
Kirkland & Ellis LLP Christopher Greco, Esq. 601 Lexington Avenue New York, New York 10022	
<i>Counsel to PDV-VI</i>	
Curtis Mallet-Prevost, Colt & Mosle LLP Steven J. Reisman, Esq. 101 Park Avenue New York, New York 10178	
<i>U.S. Trustee</i>	
United States Department of Justice Office of the United States Trustee 362 Richard B. Russell Building 75 Ted Turner Drive, SW Atlanta, Georgia 30303 Attn: Martin P. Ochs, Esq.	

B. Confirmation Standards

At the Combined Hearing, the Bankruptcy Court will determine whether the Plan satisfies the requirements of section 1129 of the Bankruptcy Code. The Debtor believes that the

Plan satisfies or will satisfy all of the statutory requirements of chapter 11 of the Bankruptcy Code and that it has complied or will have complied with all of the requirements of chapter 11 of the Bankruptcy Code. Specifically, the Debtor believes that the Plan satisfies or will satisfy the applicable confirmation requirements of section 1129 of the Bankruptcy Code, including those set forth below.

1. *Feasibility*

The Bankruptcy Code requires that to confirm a chapter 11 plan, the Bankruptcy Court must find that confirmation of such plan is not likely to be followed by the liquidation or the need for further financial reorganization of the debtor unless contemplated by the plan.

The Plan provides for the liquidation and distribution of the Debtor's assets. Accordingly, the Debtor believes that all Plan obligations will be satisfied without the need for further reorganization of the Debtor.

2. *Best Interests of Creditors*

Notwithstanding acceptance of the Plan by a voting Impaired Class, to confirm the Plan, the Bankruptcy Court must still independently determine that the Plan is in the best interests of each Holder of a Claim or Interest in any such Impaired Class that has not voted to accept the Plan, meaning that the Plan provides each such Holder with a recovery that has a value at least equal to the value of the recovery that each such Holder would receive if the debtor was liquidated under chapter 7 of the Bankruptcy Code on the Effective Date. Accordingly, if an Impaired Class does not unanimously vote to accept the Plan, the best interests test requires the Bankruptcy Court to find that the Plan provides to each member of such Impaired Class a recovery on account of the Class member's Claim or Interest that has a value, as of the Effective Date, at least equal to the value of the recovery that each such Class member would receive if the Debtor were liquidated under chapter 7.

The Debtor believes that the Plan satisfies the best interests test because, among other things, the recoveries expected to be available to Holders of Allowed Claims under the Plan will be greater than the recoveries expected to be available in a chapter 7 liquidation, as discussed more fully below.

In a typical chapter 7 case, a trustee is elected or appointed to liquidate a debtor's assets and to make distributions to creditors in accordance with the priorities established in the Bankruptcy Code. Generally, secured creditors are paid first from the proceeds of sales of their collateral. If any assets remain in the bankruptcy estate after satisfaction of secured creditors' claims from their collateral, administrative expenses are next to be paid. Unsecured creditors are paid from any remaining liquidation proceeds, according to their respective priorities. Unsecured creditors with the same priority share in proportion to the amount of their allowed claims in relationship to the total amount of allowed claims held by all unsecured creditors with the same priority. Finally, interest holders receive the balance that remains, if any, after all creditors are paid.

Substantially all of the assets of the Debtor were liquidated through the Sale Transaction in accordance with the Purchase Agreement. Although the Plan effects a liquidation of the

Debtor's remaining assets and a chapter 7 liquidation would achieve the same goal, the Debtor believes that the Plan provides a greater recovery to Holders of Allowed General Unsecured Claims than would a chapter 7 liquidation. Liquidating the Debtor's Estate under the Plan likely provides Holders of Allowed General Unsecured Claims with a larger, more timely recovery in part because of the expenses that would be incurred in a chapter 7 liquidation, including the potential added time (thereby reducing the present value of any recovery for Holders) and expense incurred by the chapter 7 trustee and any retained professionals in familiarizing themselves with the Chapter 11 Case. The Debtor believes that such accommodations would not be available in a chapter 7 liquidation. Finally, the conversion to chapter 7 would require entry of a new bar date. *See* Fed. R. Bankr. P. 1019(2); 3002(c). Thus, the amount of Claims ultimately Filed and Allowed against the Debtor could materially increase, thereby reducing creditor recoveries versus those available under the Plan.

The information contained in Exhibit C hereto provides a summary of the recoveries under the Plan and in a chapter 7 liquidation. In sum, the Debtor believes that a chapter 7 liquidation would result in diminution in recoveries to be realized by holders of Claims, as compared to the proposed distributions under the Plan. Consequently, the Debtor believes that the Plan will provide a greater ultimate return to holders of Claims than would a chapter 7 liquidation of the Debtor.

C. *Alternative Plans*

The Debtor does not believe that there are any alternative plans for the reorganization or liquidation of the Debtor's Estate. The Debtor believes that the Plan, as described therein, enables Holders of Claims and Interests to realize the greatest possible value under the circumstances and that, compared to any alternative plan, the Plan has the greatest chance to be confirmed and consummated.

D. *Acceptance by Impaired Classes*

The Bankruptcy Code requires, as a condition to Confirmation, that except as described in the following section, each class of claims or equity interests that is impaired under a plan accept the plan. A class that is not "impaired" under a plan is presumed to have accepted the plan and, therefore, solicitation of acceptances with respect to such class is not required. Pursuant to section 1124 of the Bankruptcy Code, a class is "impaired" unless the plan: (1) leaves unaltered the legal, equitable, and contractual rights to which the claim or the equity interest entitles the holder of such claim or equity interest; (2) cures any default, reinstates the original terms of such obligation, and compensates the applicable party in question; or (3) provides that, on the consummation date, the holder of such claim or equity interest receives cash equal to the allowed amount of that claim or, with respect to any equity interest, any fixed liquidation preference to which the holder of such equity interest is entitled to any fixed price at which the debtor may redeem the security.

Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of impaired creditors as acceptance by holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of claims in that class, but for that purpose counts only those who actually vote to accept or to reject a plan. Thus, a Class of creditor Claims will have voted

to accept the Plan only if two-thirds (2/3) in amount and a majority in number actually voting cast their Ballots in favor of acceptance, subject to Article III of the Plan. Only Holders of Claims in the Voting Classes will be entitled to vote on the Plan.

Section 1126(d) of the Bankruptcy Code defines acceptance of a plan by a class of interests as acceptance by holders of at least two-thirds (2/3) in dollar amount of those interests who actually vote to accept or reject a plan. Votes that have been “designated” under section 1126(e) of the Bankruptcy Code are not included in the calculation of acceptance by a class of interests. Thus, a Class of Interests will have voted to accept the Plan only if two-thirds (2/3) in amount actually voting cast their Ballots in favor of acceptance, not counting designated votes, subject to Article III of the Plan. No Class including Holders of Interests is entitled to vote on the Plan.

Article III.E of the Plan provides in full: “If a Class contains Claims or Interests eligible to vote and no Holders of Claims or Interests eligible to vote in such Class vote to accept or reject the Plan, the Debtor shall request the Bankruptcy Court to deem the Plan accepted by the Holders of such Claims or Interests in such Class.” Such “deemed acceptance” by an impaired class in which no class members submit ballots satisfies section 1129(a)(10) of the Bankruptcy Code. *See In re Tribune Co.*, 464 B.R. 126, 183 (Bankr. D. Del. 2011) (“Would ‘deemed acceptance’ by a non-voting impaired class, in the absence of objection, constitute the necessary ‘consent’ to a proposed ‘per plan’ scheme? I conclude that it may.” (footnote omitted)); *see In re Adelpia Commc’ns Corp.*, 368 B.R. 14, 259–63 (Bankr. S.D.N.Y. 2007).

E. *Confirmation Without Acceptance by All Impaired Classes*

Section 1129(b) of the Bankruptcy Code allows a bankruptcy court to confirm a plan even if Impaired Classes entitled to vote on the plan have not accepted it or if an Impaired Class is deemed to reject the Plan, provided, that the plan is accepted by at least one Impaired Class. Pursuant to section 1129(b) of the Bankruptcy Code, notwithstanding an impaired class’s rejection or deemed rejection of the plan, such plan will be confirmed, at the plan proponent’s request, in a procedure commonly known as “cram down,” so long as the plan does not “discriminate unfairly” and is “fair and equitable” with respect to each class of claims or equity interests that is impaired under, and has not accepted, the plan.

1. *No Unfair Discrimination*

This test applies to Classes of Claims or Interests that are of equal priority and are receiving different treatment under the Plan. The test does not require that the treatment be the same or equivalent, but that such treatment be “fair.” In general, bankruptcy courts consider whether a plan discriminates unfairly in its treatment of Classes of Claims of equal rank (*e.g.*, classes of the same legal character). The Debtor does not believe the Plan discriminates unfairly against any Impaired Class of Claims or Interests. The Debtor believes that the Plan and the treatment of all Classes of Claims and Interests satisfy the foregoing requirements for nonconsensual Confirmation.

2. *Fair and Equitable Test*

This test applies to classes of different priority and status (*e.g.*, secured versus unsecured) and includes the general requirement that no class of claims receive more than 100% of the amount of the allowed claims in such class. As to the non-accepting class, the test sets different standards depending on the type of claims or interests in such class. As set forth below, the Debtor believes that the Plan satisfies the “fair and equitable” requirement because there is no Class of equal priority receiving more favorable treatment and no Class that is junior to such dissenting Class that will receive or retain any property on account of the Claims or Interests in such Class.

a. *Secured Claims*

The condition that a plan be “fair and equitable” to a non-accepting class of secured claims includes the requirements that: (i) the holders of such secured claims retain the liens securing such claims to the extent of the allowed amount of the claims, whether the property subject to the liens is retained by the debtor or transferred to another entity under the plan; and (ii) each holder of a secured claim in the class receives deferred cash payments totaling at least the allowed amount of such claim with a present value, as of the effective date of the plan, at least equivalent to the value of the secured claimant’s interest in the debtor’s property subject to the liens.

b. *Unsecured Claims*

The condition that a plan be “fair and equitable” to a non-accepting class of unsecured claims includes the following requirement that either: (i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or (ii) the holder of any claim or any equity interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or junior equity interest any property.

c. *Equity Interests*

The condition that a plan be “fair and equitable” to a non-accepting class of equity interests includes the requirements that either: (i) the plan provides that each holder of an equity interest in that class receives or retains under the plan on account of that equity interest property of a value, as of the effective date of the plan, equal to the greater of: (A) the allowed amount of any fixed liquidation preference to which such holder is entitled; (B) any fixed redemption price to which such holder is entitled; or (C) the value of such interest; or (ii) if the class does not receive the amount as required under (i) hereof, no class of equity interests junior to the non-accepting class may receive a distribution under the plan.

ARTICLE VII.

CERTAIN RISK FACTORS TO BE CONSIDERED BEFORE VOTING

Holders of Claims should read and carefully consider the risk factors set forth below, as well as the other information set forth in this Disclosure Statement and the documents delivered

together with this Disclosure Statement, referred to or incorporated by reference in this Disclosure Statement, before voting to accept or reject the Plan. These factors should not be regarded as constituting the only risks present in connection with the Debtor's business or the Plan and its implementation.

A. *Risk Factors that May Affect Recoveries Available to Holders of Allowed Claims Under the Plan*

1. *The Amount of Allowed Claims May Adversely Affect the Recovery of Some Holders of Allowed Claims*

The Debtor cannot determine with any certainty at this time the number or amount of Claims that will ultimately be Allowed, and thus the projected recoveries disclosed in this Disclosure Statement are highly speculative. A large amount of Allowed Claims may materially and adversely affect, among other things, the recoveries to Holders of Allowed Claims and Allowed Interests under the Plan. Some Holders are not entitled to any recovery pursuant to the terms of the Plan, and, depending on the accuracy of the Debtor's various assumptions, even those Holders entitled to a recovery under the terms of the Plan may ultimately receive no recovery.

2. *The Debtor Cannot State with Certainty What Recovery Will Be Available to Holders of Allowed Claims in the Voting Classes*

The Debtor cannot know with certainty, at this time, the number or amount of Claims in Voting Classes that will ultimately be Allowed. Accordingly, because certain Claims under the Plan will be paid on a Pro Rata basis, the Debtor cannot state with certainty what recoveries will be available to Holders of Allowed Claims in the Voting Classes. In addition, certain parties have disputed what property should be available to fund distributions to certain Holders of Allowed Claims, the ultimate resolution of which, whether by settlement or final judgment, could materially affect the amount of distributions to Holders of Allowed Claims in the Voting Classes.

3. *Any Valuation of Any Assets to be Distributed Under the Plan Is Speculative and Could Potentially be Zero*

Any valuation of any of the assets to be distributed under the Plan is necessarily speculative, and the value of such assets could potentially be zero. Accordingly, the ultimate value, if any, of these assets could materially affect, among other things, recoveries to the Debtor's creditors, including Holders of Claims in the Voting Classes.

4. *The Debtor Cannot Guarantee Recoveries or the Timing of Such Recoveries*

Although the Debtor has made commercially reasonable efforts to disclose projected recoveries in this Disclosure Statement, it is possible that the amount of Allowed Claims will be materially higher than any range of possible Allowed Claims the Debtor has considered to date, and thus creditor recoveries could be materially reduced or eliminated. In addition, the timing of actual distributions to Holders of Allowed Claims may be affected by many factors that cannot

be predicted. Therefore, the Debtor cannot guarantee the timing of any recovery on an Allowed Claim.

5. *Certain Tax Implications of the Debtor's Bankruptcy*

Holders of Allowed Claims should carefully review Article VIII of this Disclosure Statement, "Certain United States Federal Income Tax Consequences," for a description of certain tax implications of the Plan and the Chapter 11 Case.

B. *Certain Bankruptcy Law Considerations*

The occurrence or nonoccurrence of any or all of the following contingencies, and any others, may affect distributions available to Holders of Allowed Claims and Allowed Interests under the Plan but will not necessarily affect the validity of the vote of the Impaired Classes to accept or reject the Plan or necessarily require a re-solicitation of the votes of Holders of Claims in such Impaired Classes.

1. *Parties in Interest May Object to the Plan's Classification of Claims and Interests or the Amount of Such Claims or Interests*

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests in such class. The Debtor believes that the classification of the Claims and Interests under the Plan complies with the requirements set forth in the Bankruptcy Code because the Debtor created Classes of Claims and Interests, each encompassing Claims or Interests, as applicable, that are substantially similar to the other Claims and Interests in each such Class. Nevertheless, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

Furthermore, certain parties in interest, including the Debtor, reserve the right, under the Plan, to object to the amount or classification of any Claim. The estimates set forth in this Disclosure Statement cannot be relied upon by any Holder of a Claim where such Claim is or may be subject to an objection or is not yet Allowed. Any Holder of a Claim that is or may be subject to an objection thus may not receive its expected share of the estimated distributions described in this Disclosure Statement.

2. *Failure to Satisfy Vote Requirements*

In the event that votes are received in number and amount sufficient to enable the Bankruptcy Court to confirm the Plan, the Debtor intends to seek, as promptly as practicable thereafter, Confirmation of the Plan. In the event that sufficient votes are not received, the Debtor may seek to pursue another strategy to wind down the Estate, such as an alternative chapter 11 plan, a dismissal of the Chapter 11 Case and an out-of-court dissolution, an assignment for the benefit of creditors, a conversion to a chapter 7 case, or other strategies. There can be no assurance that the terms of any such alternative strategies would be similar or as favorable to the Holders of Allowed Claims and Allowed Interests as those proposed in the Plan.

3. *The Debtor May Not Be Able to Secure Confirmation of the Plan*

The Debtor will need to satisfy section 1129 of the Bankruptcy Code, which sets forth the requirements for confirmation of a chapter 11 plan and requires, among other things, a finding by a bankruptcy court that: (a) such plan “does not unfairly discriminate” and is “fair and equitable” with respect to any non-accepting classes; (b) confirmation of such plan is not likely to be followed by a liquidation or a need for further financial reorganization unless such liquidation or reorganization is contemplated by the plan; and (c) the value of distributions to non-accepting holders of claims and interests within a particular class under such plan will not be less than the value of distributions such holders would receive if the debtor were liquidated under chapter 7 of the Bankruptcy Code.

There can be no assurance that the requisite acceptances to confirm the Plan will be received. Even if the requisite acceptances are received, there can be no assurance that the Bankruptcy Court will confirm the Plan. A non-accepting Holder of an Allowed Claim or an Allowed Interest might challenge either the adequacy of this Disclosure Statement or whether the balloting procedures and voting results satisfy the requirements of the Bankruptcy Code or Bankruptcy Rules. Even if the Bankruptcy Court determines that this Disclosure Statement, the Solicitation Procedures, and the voting results are appropriate, the Bankruptcy Court can still decline to confirm the Plan if it finds that any of the statutory requirements for Confirmation have not been met, including the requirement that the terms of the Plan do not “unfairly discriminate” and are “fair and equitable” to non-accepting Classes. If the Plan is not confirmed, it is unclear what distributions, if any, Holders of Allowed Claims and Allowed Interests will receive with respect to their Allowed Claims and Allowed Interests. The Bankruptcy Court, as a court of equity, may exercise substantial discretion.

The Debtor, subject to the terms and conditions of the Plan, reserves the right to modify the terms and conditions of the Plan as necessary for Confirmation. Any such modifications may result in a less favorable treatment of any Class than the treatment currently provided in the Plan. Such a less favorable treatment may include a distribution of property to the Class affected by the modification of a lesser value than currently provided in the Plan or no distribution of property whatsoever under the Plan.

4. *Nonconsensual Confirmation*

In the event that any impaired class of claims or interests does not accept a chapter 11 plan, a bankruptcy court may nevertheless confirm a plan at the proponents’ request if at least one impaired class has accepted the plan (with such acceptance being determined without including the vote of any “insider” in such class), and, as to each impaired class that has not accepted the plan, the Bankruptcy Court determines that the plan “does not discriminate unfairly” and is “fair and equitable” with respect to the dissenting classes. The Debtor believes that the Plan satisfies these requirements and the Debtor may request such nonconsensual Confirmation in accordance with section 1129(b) of the Bankruptcy Code. Nevertheless, there can be no assurance that the Bankruptcy Court will reach this conclusion. In addition, the pursuit of nonconsensual Confirmation of the Plan may result in, among other things, increased expenses and the expiration of any commitment to provide support for the Plan, financially or otherwise.

5. *Risk of Nonoccurrence of the Effective Date*

Although the Debtor believes that the Effective Date may occur quickly after the Confirmation Date, there can be no assurance as to such timing or as to whether such an Effective Date will, in fact, occur.

6. *Contingencies May Affect Votes of Impaired Classes to Accept or Reject the Plan*

The distributions available to Holders of Allowed Claims under the Plan can be affected by a variety of contingencies, including, without limitation, whether the Bankruptcy Court orders certain Claims to be Allowed. The occurrence of any and all such contingencies, which may affect distributions available to Holders of Allowed Claims and Allowed Interests under the Plan, will not affect the validity of the vote taken by the Impaired Classes to accept or reject the Plan or require any sort of revote by the Impaired Classes.

C. *Disclosure Statement Disclaimer*

1. *The Financial Information Contained in this Disclosure Statement Has Not Been Audited*

In preparing this Disclosure Statement, the Debtor and its advisors relied on financial data derived from its books and records that was available at the time of such preparation. Although the Debtor has used its reasonable business judgment to ensure the accuracy of the financial information, and any conclusions or estimates drawn from such financial information, provided in this Disclosure Statement, and while the Debtor believes that such financial information fairly reflects the financial condition of the Debtor, the Debtor is unable to warrant that the financial information contained herein, or any such conclusions or estimates drawn therefrom, is without inaccuracies.

2. *Information Contained in this Disclosure Statement Is for Soliciting Votes*

The information contained in this Disclosure Statement is for the purposes of soliciting acceptances of the Plan and may not be relied upon for any other purpose.

3. *This Disclosure Statement Was Not Reviewed or Approved by the United States Securities and Exchange Commission*

This Disclosure Statement was not Filed with the United States Securities and Exchange Commission under the Securities Act or applicable state securities laws. Neither the United States Securities and Exchange Commission nor any state regulatory authority has passed upon the accuracy or adequacy of this Disclosure Statement or the exhibits or the statements contained in this Disclosure Statement.

4. *This Disclosure Statement May Contain Forward Looking Statements*

This Disclosure Statement may contain “forward looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements consist of any statement other than a recitation of historical fact and can be identified by the use of forward

looking terminology such as “may,” “will,” “might,” “expect,” “believe,” “anticipate,” “could,” “would,” “estimate,” “continue,” “pursue,” or the negative thereof or comparable terminology. All forward looking statements are necessarily speculative, and there are certain risks and uncertainties that could cause actual events or results to differ materially from those referred to in such forward looking statements. The information contained herein is an estimate only, based upon information currently available to the Debtor.

5. *No Legal or Tax Advice Is Provided to You by this Disclosure Statement*

This Disclosure Statement is not legal advice to you. The contents of this Disclosure Statement should not be construed as legal, business, or tax advice. Each Holder of a Claim or an Interest should consult his or her own legal counsel, accountant, or other applicable advisor with regard to any legal, tax, and other matters concerning his or her Claim or Interest. This Disclosure Statement may not be relied upon for any purpose other than to determine how to vote on the Plan or object to Confirmation of the Plan.

6. *No Admissions Made*

The information and statements contained in this Disclosure Statement will neither (a) constitute an admission of any fact or liability by any entity (including, without limitation, the Debtor) nor (b) be deemed evidence of the tax or other legal effects of the Plan on the Debtor, Holders of Allowed Claims or Allowed Interests, or any other parties in interest.

7. *Failure to Identify Projected Objections*

No reliance should be placed on the fact that a particular litigation claim or projected objection to a particular Claim or Interest is, or is not, identified in this Disclosure Statement. The Debtor or the Liquidating Trustee may object to Claims or Interests after the Confirmation or Effective Date of the Plan irrespective of whether this Disclosure Statement identifies objections to such Claims or Interests.

8. *No Waiver of Right to Object or Right to Recover Transfers and Assets*

The vote by a Holder of a Claim or Interest for or against the Plan does not constitute a waiver or release of any claims, causes of action, or rights of the Debtor (or any entity, as the case may be) to object to that Holder’s Claim or Interest, or recover any preferential, fraudulent, or other voidable transfer of assets, regardless of whether any claims or causes of action of the Debtor or its Estate are specifically or generally identified in this Disclosure Statement.

9. *Information Was Provided by the Debtor and Was Relied Upon by the Debtor’s Advisors*

The Debtor’s advisors have relied upon information provided by the Debtor in connection with the preparation of this Disclosure Statement. Although the Debtor’s advisors have performed certain limited due diligence in connection with the preparation of this Disclosure Statement, they have not independently verified the information contained in this Disclosure Statement.

10. *Potential Exists for Inaccuracies, and the Debtor Has No Duty to Update*

The statements contained in this Disclosure Statement are made by the Debtor as of the date of this Disclosure Statement, unless otherwise specified in this Disclosure Statement, and the delivery of this Disclosure Statement after the date of this Disclosure Statement does not imply that there has not been a change in the information set forth in this Disclosure Statement since that date. While the Debtor has used its reasonable business judgment to ensure the accuracy of all of the information provided in this Disclosure Statement and in the Plan, the Debtor nonetheless cannot, and does not, confirm the current accuracy of all statements appearing in this Disclosure Statement. Further, although the Debtor may subsequently update the information in this Disclosure Statement, the Debtor has no affirmative duty to do so unless ordered to do so by the Bankruptcy Court.

11. *No Representations Outside this Disclosure Statement Are Authorized*

No representations concerning or relating to the Debtor, the Chapter 11 Case, or the Plan are authorized by the Bankruptcy Court or the Bankruptcy Code, other than as set forth in this Disclosure Statement. Any representations or inducements made to secure your acceptance or rejection of the Plan that are other than as contained in, or included with, this Disclosure Statement should not be relied upon by you in arriving at your decision. You should promptly report unauthorized representations or inducements to the counsel to the Debtor and the U.S. Trustee.

D. *Liquidation Under Chapter 7*

If no plan can be confirmed, the Chapter 11 Case may be converted to a case under chapter 7 of the Bankruptcy Code, pursuant to which a chapter 7 trustee would be elected or appointed to liquidate the assets of the Debtor for distribution in accordance with the priorities established by the Bankruptcy Code.

ARTICLE VIII.

CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES

The following discussion summarizes certain U.S. federal income tax consequences of implementation of the Plan to the Debtor and certain Holders of Claims. This discussion is intended for general information purposes only, and is not a complete analysis of all potential U.S. federal income tax consequences that may be relevant to any particular Holder.

This discussion is based on the Internal Revenue Code of 1986, as amended (the “IRC”) and the Treasury Regulations promulgated thereunder, judicial decisions and published administrative rulings, and pronouncements of the Internal Revenue Service (the “IRS”), each as in effect on the date hereof. Legislative, judicial, or administrative changes or interpretations enacted or promulgated after the date hereof could alter or modify the discussion set forth below with respect to the U.S. federal income tax consequences of the Plan. Any such changes or interpretations may be retroactive and could significantly affect the U.S. federal income tax consequences described herein.

Except as otherwise set forth herein, this discussion does not address the U.S. federal income tax consequences to Holders of Claims that (a) are Unimpaired or otherwise entitled to payment in full in Cash on the Effective Date under the Plan, or (b) are otherwise not entitled to vote under the Plan. Furthermore, this discussion does not address the U.S. federal income tax consequences with respect to the Environmental Response Trust. The discussion assumes that each Holder of a Claim holds only Claims in a single class, each Holder of a Claim holds such Claims only as “capital assets” within the meaning of the IRC, none of the Claims have “original issue discount” (“OID”) within the meaning of the IRC, and the various debt and other arrangements to which the Debtor is a party will be respected for U.S. federal income tax purposes in accordance with their form.

The U.S. federal income tax consequences of the Plan are complex and are subject to substantial uncertainties. The discussion set forth below of certain U.S. federal income tax consequences of the Plan is not binding upon the IRS. Thus, no assurance can be given that the IRS would not assert, or that a court would not sustain, a position different from any discussed herein, resulting in U.S. federal income tax consequences to the Debtor and/or Holders of Claims that are substantially different from those discussed herein. The Debtor has not requested an opinion of counsel with respect to any of the tax aspects of the Plan, and no opinion is given by this Disclosure Statement.

This discussion does not apply to a Holder of a Claim that is not a “United States person,” as such term is defined in the IRC. Moreover, this discussion does not address U.S. federal taxes other than income taxes nor any state, local, U.S. possession, or non-U.S. tax consequences of the Plan, nor does it purport to address all aspects of U.S. federal income taxation that may be relevant to United States persons in light of their individual circumstances or to United States persons that may be subject to special tax rules, such as persons who are related to the Debtor within the meaning of the IRC, governments or governmental entities, broker-dealers, banks, mutual funds, insurance companies, financial institutions, small business investment companies, regulated investment companies, real estate mortgage investment conduits, tax-exempt organizations, pass-through entities, beneficial owners of pass-through entities, Subchapter S corporations, employees of the Debtor, persons who received their Claims as compensation, persons that hold Claims as part of a straddle, hedge, conversion transaction, or other integrated investment, persons using a mark to market method of accounting, and Holders of Claims that are themselves in bankruptcy. If a partnership or entity treated as a partnership for U.S. federal income tax purposes holds Claims, the tax treatment of a partner generally will depend on the status of the partner and the activities of the partnership.

THE FOLLOWING SUMMARY OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES PERTAINING TO A HOLDER OF A CLAIM. THIS SUMMARY IS LIMITED TO THE U.S. FEDERAL INCOME TAX ISSUES ADDRESSED IN THIS DISCLOSURE STATEMENT. ADDITIONAL ISSUES MAY EXIST THAT ARE NOT ADDRESSED IN THIS SUMMARY AND THAT COULD AFFECT THE U.S. FEDERAL TAX TREATMENT OF CONSUMMATION OF THE PLAN. ALL HOLDERS OF CLAIMS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS AS TO THE FEDERAL,

STATE, LOCAL, U.S. POSSESSION INCOME, NON-U.S. INCOME, ESTATE, GIFT, AND
OTHER TAX CONSEQUENCES OF THE PLAN.

A. *Certain United States Federal Income Tax Consequences to the Debtor*

1. *Tax Filing Status and Tax Impact of the Plan on the Debtor*

For U.S. federal income tax purposes, the Debtor is classified as a foreign corporation. As such, the Debtor is generally required to pay U.S. federal income tax on all of its U.S. source income. It is not expected that the Debtor will have U.S. Source income; therefore, the Debtor should have no U.S. federal income tax liability as a result of consummation of the Plan.

B. *Certain United States Federal Income Tax Consequences to Holders of Allowed Claims*

1. *General*

The U.S. federal income tax consequences to a Holder receiving, or entitled to receive, a payment in partial or total satisfaction of a Claim will depend on a number of factors, including the nature of the Claim, the Holder's method of tax accounting, and its own particular tax situation.

Because the Holders' Claims and tax situations differ, Holders should consult their own tax advisors to determine how the Plan affects them for U.S. federal, state, local, and non-U.S. tax purposes, based on their particular tax situations. Among other things, the U.S. federal income tax consequences of a payment to a Holder may depend initially on the nature of the original transaction pursuant to which the Claim arose. For example, a payment in repayment of the principal amount of a loan is generally not included in the gross income of an original lender.

The U.S. federal income tax consequences of a transfer to a Holder may also depend on whether the item to which the payment relates has previously been included in the Holder's gross income or has previously been subject to a loss or a worthless security or bad debt deduction. For example, if a payment is made in satisfaction of a receivable acquired in the ordinary course of a Holder's trade or business, the Holder had previously included the amount of such receivable payment in its gross income under its method of tax accounting, and had not previously claimed a loss or a worthless security or bad debt deduction for that amount, the receipt of the payment should not result in additional income to the Holder but may result in a loss. Conversely, if the Holder had previously claimed a loss or worthless security or bad debt deduction with respect to the item previously included in income, the Holder generally would be required to include the amount of the payment in income.

A Holder receiving a payment pursuant to the Plan in satisfaction of its Claim generally may recognize taxable income or loss measured by the difference between (a) the amount of cash and the fair market value (if any) of any property received by the Holder (other than any consideration attributable to a Claim for accrued but unpaid interest), including, as discussed below, any beneficial interests in the Liquidating Trust or the Environmental Response Trust, and (b) its adjusted tax basis in the Claim (other than basis attributable to accrued but unpaid interest previously included in the Holder's taxable income). For this purpose, the adjusted tax basis may include amounts previously included in income (less any bad debt or loss deduction)

with respect to that item. The character of any income or loss that is recognized will depend upon a number of factors, including the status of the creditor, the nature of the Claim in its hands, whether the Claim was purchased at a discount, whether and to what extent the creditor has previously claimed a bad debt deduction with respect to the Claim, and the creditor's holding period of the Claim. Generally, the income or loss will be capital gain or loss if the Claim is a capital asset in the Holder's hands.

When gain or loss is recognized, as discussed below (see sections B.2 and B.3 – “Consequences to Holders of Tort Claims” and “Consequences to Holders of Non-Governmental General Unsecured Claims”), such gain or loss may be long-term capital gain or loss if the Claim has been held for more than one year. Each Holder of the Claim should consult its own tax advisor to determine whether gain or loss recognized by such Holder will be long-term capital gain or loss and the specific tax effect thereof on such Holder.

As discussed below (see section C —“Tax Treatment of the Liquidating Trust and Holders of Beneficial Interests”), each Holder of a Claim that receives a beneficial interest in the Liquidating Trust will be treated for U.S. federal income tax purposes as directly receiving, and as a direct owner of, its respective share of the Liquidating Trust Assets, consistent with its economic rights in the trust. Pursuant to the Plan, the Liquidating Trustee will value the assets transferred to the Liquidating Trust in good faith, and all parties to the Liquidating Trust (including Holders of Claims receiving beneficial interests in the Liquidating Trust) must consistently use such valuation for all U.S. federal income tax purposes.

2. *Consequences to Holders of Tort Claims (Class 4)*

Pursuant to the Plan, a Holder of a Tort Claim will receive its pro rata share of the beneficial interests in the Liquidating Trust, respectively (not to exceed the amount of its Allowed Claim). Whether the Holder of any such Allowed Claim, will realize taxable gain or loss on this transaction depends on a number of factors, including the nature of the Claim, the Holder's method of tax accounting, and its own particular tax situation. Each holder of a Tort Claim should consult its own tax advisor regarding its particular U.S. federal income tax consequences.

To the extent that payments of beneficial interests in the Liquidating Trust constitute damages received by a Holder of a Tort Claim on account of personal injuries, such payments should generally not constitute gross income to such Holder, except to the extent that such payments are attributable to medical expense deductions allowed under IRC section 213 for a prior taxable year. To the extent that payments of beneficial interests in the Liquidating Trust constitute damages received by a Holder of a Tort Claim on account of claims other than personal injuries (e.g., lost wages), such payments should generally be included in the gross income of such Holder.

To the extent that payments of beneficial interests in the Liquidating Trust constitute compensatory damages for destruction or damage to property, and the fair market value of such payments do not exceed the Holder's adjusted tax basis in its property, such payments should generally not be included in taxable income. Instead, such payments should be treated as a return of capital to such Holder, reducing the Holder's adjusted tax basis in the property by the

fair market value of such payments. Any amounts received in excess of the Holder's adjusted tax basis should generally be treated as gain from the disposition of the property, and should therefore give rise to capital gain assuming that the Holder held such property as a capital asset.

3. *Consequences to Holders of Non-Governmental and Non-Tort General Unsecured Claims (Class 5)*

Pursuant to the Plan, a Holder of a Non-Governmental and Non-Tort General Unsecured Claim will receive its pro rata share of the beneficial interests in the Liquidating Trust, respectively (not to exceed the amount of its Allowed Claim). The Holder of any such Allowed Claim generally will realize gain or loss in an amount equal to the difference, if any, between (a) the amount of Cash and the fair market value (if any) of any property received by the Holder (other than any consideration attributable to a Claim for accrued but unpaid interest) including the fair market value of beneficial interests in the Liquidating Trust received in exchange for such Claim, and (b) the Holder's adjusted tax basis in the Claim (other than in respect of accrued but unpaid interest). It is possible that any loss, or a portion of any gain, realized by a Holder of a Claim may have to be deferred until all of the distributions to such Holder are received. To the extent that consideration is attributable to a Claim for accrued but unpaid interest, a Holder may recognize ordinary income.

4. *Information Reporting and Backup Withholding*

In general, information reporting requirements may apply to distributions or payments under the Plan. Additionally, under the backup withholding rules, a Holder of a Claim may be subject to backup withholding (currently at a rate of 28%) with respect to distributions or payments made pursuant to the Plan unless that Holder: (a) comes within certain exempt categories (which generally include corporations) and, when required, demonstrates that fact; or (b) timely provides a correct taxpayer identification number and certifies under penalty of perjury that the taxpayer identification number is correct and that the Holder is not subject to backup withholding. Backup withholding is not an additional tax but is, instead, an advance payment that may be refunded or credited against the Holder's U.S. federal income tax liability to the extent it results in an overpayment of tax, provided that the required information is timely provided to the Internal Revenue Service.

The Debtor, or the Liquidating Trustee, or the applicable withholding agent, will withhold all amounts required by law to be withheld from payments of interest. The Debtor will comply with all applicable reporting requirements of the Internal Revenue Service.

THE UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. THE FOREGOING SUMMARY DOES NOT DISCUSS ALL ASPECTS OF UNITED STATES FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO A PARTICULAR HOLDER OF A CLAIM IN LIGHT OF SUCH HOLDER'S CIRCUMSTANCES AND INCOME TAX SITUATION. ALL HOLDERS OF CLAIMS AGAINST THE DEBTOR SHOULD CONSULT WITH THEIR TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF THE TRANSACTION CONTEMPLATED BY THE RESTRUCTURING, INCLUDING THE

**APPLICABILITY AND EFFECT OF ANY STATE, LOCAL, U.S. POSSESSION, OR
NON-U.S. TAX LAWS, AND OF ANY CHANGE IN APPLICABLE TAX LAWS.**

C. Tax Treatment of the Liquidating Trust and Holders of Beneficial Interests

1. Classification of the Liquidating Trust

The Liquidating Trust, created pursuant to the Plan, is intended to qualify as a “liquidating trust” for U.S. federal income tax purposes. In general, a liquidating trust is not a separate taxable entity, but rather is treated for U.S. federal income tax purposes as a “grantor trust” (i.e., all income and loss is taxed directly to the liquidating trust beneficiaries). However, merely establishing a trust as a liquidating trust does not ensure that it will be treated as a grantor trust for U.S. federal income tax purposes. The IRS, in Revenue Procedure 94-45, 1994-2 C.B. 684, set forth the general criteria for obtaining an IRS ruling as to the grantor trust status of a liquidating trust under a chapter 11 plan. Pursuant to the Plan, and in conformity with Revenue Procedure 94-45, all parties (including, without limitation, the Debtor, the Liquidating Trustee, and Holders) will be required to treat, for U.S. federal income tax purposes, the Liquidating Trust as a grantor trust. The Holders of beneficial interests in the Liquidating Trust are the owners and grantors of the Liquidating Trust. The following discussion assumes that the Liquidating Trust will be so respected for U.S. federal income tax purposes.

2. General Tax Reporting by the Liquidating Trust and Holders of Beneficial Interests

For all U.S. federal income tax purposes, all parties (including, without limitation, the Debtor, the Liquidating Trustee, and Holders) must treat the transfer of the Liquidating Trust Assets to the Liquidating Trust in accordance with the terms of the Plan. Pursuant to the Plan, the Liquidating Trust Assets (other than assets allocable to Disputed Claims) are treated, for U.S. federal income tax purposes, as having been transferred, subject to any obligations relating to those assets, directly to the Holders of the respective Claims receiving beneficial interests in the Liquidating Trust (with each Holder receiving an undivided interest in such assets in accordance with their economic interests in such assets), followed by the transfer by the Holders of such assets to the Liquidating Trust in exchange for a beneficial interest in the Liquidating Trust. Accordingly, all parties must treat the Liquidating Trust as a grantor trust of which the Holders of beneficial interests in the Liquidating Trust are the owners and grantors, and treat the Holders of beneficial interests in the Liquidating Trust as the direct owners of an undivided interest in the Liquidating Trust Assets (other than any assets allocable to Disputed Claims), consistent with their economic interests therein, for all U.S. federal income tax purposes.

Each Holder of a beneficial interest in the Liquidating Trust must report on its U.S. federal income tax return its pro rata allocable share of income, gain, loss, deduction and credit recognized or incurred by the Liquidating Trust. Moreover, upon the sale or other disposition (or deemed disposition) of any Liquidating Trust Asset, each Holder of a beneficial interest in the Liquidating Trust must report on its U.S. federal income tax return its share of any gain or loss measured by the difference between (a) its share of the amount of Cash and/or the fair market value of any property received by the Liquidating Trust in exchange for the Liquidating Trust Asset so sold or otherwise disposed of and (b) such Holder’s adjusted tax basis in its pro rata

share of such Liquidating Trust Asset. The character of any such gain or loss to the Holder will be determined as if such Holder itself had directly sold or otherwise disposed of the Liquidating Trust Asset. The character of items of income, gain, loss, deduction and credit to any Holder of a beneficial interest in the Liquidating Trust, and the ability of the Holder to benefit from any deductions or losses, depends on the particular circumstances or status of the Holder.

As soon as reasonably practicable after the transfer of the Liquidating Trust Assets to the Liquidating Trust, the Liquidating Trustee shall make a good faith valuation of the Liquidating Trust Assets. All parties to the Liquidating Trust (including, without limitation, the Debtor and Holders of beneficial interests) must consistently use such valuation for all U.S. federal income tax purposes. The valuation will be made available, from time to time, as relevant for tax reporting purposes.

Taxable income or loss allocated to a Holder of a beneficial interest in the Liquidating Trust will be treated as income or loss with respect to a Holder's undivided interest in the Liquidating Trust Assets, and not as income or loss with respect to its prior Allowed Claim. The character of any income and the character and ability to use any loss will depend on the particular situation of the Holder of a beneficial interest in the Liquidating Trust.

The U.S. federal income tax obligations of a Holder with respect to its beneficial interest in the Liquidating Trust are not dependent on the Liquidating Trust distributing any cash or other proceeds. Thus, a Holder may incur a U.S. federal income tax liability with respect to its allocable share of Liquidating Trust income even if the Liquidating Trust does not make a concurrent distribution to the Holder. In general, other than in respect of cash retained on account of Disputed Claims and distributions resulting from undeliverable distributions (the subsequent distribution of which still relates to a Holder's Allowed Claim), a distribution of cash by the Liquidating Trust will not be separately taxable to a Holder of a beneficial interest in the Liquidating Trust since the beneficiary is already regarded for U.S. federal income tax purposes as owning the underlying assets (and was taxed at the time the cash was earned or received by the Liquidating Trust). Holders are urged to consult their tax advisors regarding the appropriate U.S. federal income tax treatment of any subsequent distributions of cash originally retained by the Liquidating Trust on account of Disputed Claims.

The U.S. federal income tax obligations of a Holder with respect to its beneficial interest in the Liquidating Trust are not dependent on the Liquidating Trust distributing any Cash or other proceeds. Thus, a Holder may incur a U.S. federal income tax liability with respect to its allocable share of Liquidating Trust income even if the Liquidating Trust does not make a concurrent distribution to the Holder. In general, other than distributions resulting from undeliverable distributions (the subsequent distribution of which still relates to a Holder's Allowed Claim), a distribution of Cash by the Liquidating Trust will not be separately taxable to a Holder of a beneficial interest in the Liquidating Trust since the beneficiary is already regarded for U.S. federal income tax purposes as owning the underlying assets (and was taxed at the time the cash was earned or received by the Liquidating Trust). Holders are urged to consult their tax advisors regarding the appropriate U.S. federal income tax treatment of any subsequent distributions of Cash originally retained by the Liquidating Trust on account of undeliverable distributions.

The Liquidating Trustee will comply with all applicable governmental withholding requirements (see section VI.D of the Plan). Thus, in the case of any Holders of beneficial interests in the Liquidating Trust that are not U.S. persons, the Liquidating Trustee may be required to withhold up to 30% of the income or proceeds allocable to such persons, depending on the circumstances (including whether the type of income is subject to a lower treaty rate).

The Liquidating Trustee will file with the IRS tax returns for the Liquidating Trust consistent with its classification as a grantor Trust pursuant to Treasury Regulation Section 1.671-4(a). Except as discussed below with respect to any reserve for Disputed Claims, the Liquidating Trustee also will send annually to each Holder of a beneficial interest in the Liquidating Trust a separate statement regarding the receipts and expenditures of the Liquidating Trust as relevant for U.S. federal income tax purposes and will instruct all such Holders to use such information in preparing their U.S. federal income tax returns or to forward the appropriate information to such Holder's underlying beneficial Holders with instructions to utilize such information in preparing their U.S. federal income tax returns.

D. Treatment of the Reserve for Disputed General Unsecured Claims

The reserve for Disputed General Unsecured Claims is intended to be treated, for U.S. federal income tax purposes, as a disputed ownership fund within the meaning of Treasury Regulation Section 1.468B-9(b)(1). If so treated, any payment of Cash or distribution of a beneficial interest in the Liquidating Trust made out of the reserve should not be deemed to have been made to any recipient until, and to the extent that, the amount to which the recipient is entitled has been determined and distributed. At such time, the recipient (including the holders of any beneficial interests in the Liquidating Trust upon the disallowance of a Disputed Claim) will take such amount into account for U.S. federal income tax purposes as an amount received in respect of its Claim. Upon the disallowance of a Disputed Claim, the reserve for Disputed General Unsecured Claims will be treated as having distributed to holders of any beneficial interests in the Liquidating Trust the portion of the Liquidating Trust Assets allocable to such Disputed Claim. Recipients of amounts from the reserve for Disputed General Unsecured Claims should report these amounts consistently with the foregoing and should consult their tax advisors concerning the federal, state, local, and non-U.S. tax consequences of the receipt of amounts from the reserve for Disputed General Unsecured Claims.

Upon the allowance or disallowance of a Disputed Claim, the reserve for Disputed General Unsecured Claims generally will be treated as having sold or exchanged the portion of the Liquidating Trust Assets allocable to such Claim for purposes of IRC section 1001(a). Amounts earned by the reserve for Disputed General Unsecured Claims will generally be subject to an entity level tax on amounts earned on a current basis. The reserve for Disputed General Unsecured Claims will be taxed in a manner similar to either a corporation or a qualified settlement fund, depending on the type of assets transferred to it. In general, in determining the reserve for Disputed General Unsecured Claims' taxable income, (1) any amounts transferred to the reserve for Disputed General Unsecured Claims would be excluded from its income, (2) any sale or exchange of property (including recoveries with respect to the Causes of Action) by the reserve for Disputed General Unsecured Claims would result in the recognition of gain or loss equal to the difference between the amount received on such disposition and the reserve for Disputed General Unsecured Claims' adjusted basis in such property and (3) any interest income

or other earnings with respect to the reserve for Disputed General Unsecured Claims' assets would be included in income.

THE FOREGOING SUMMARY IS PROVIDED FOR GENERAL INFORMATIONAL PURPOSES ONLY. HOLDERS OF CLAIMS ARE STRONGLY URGED TO CONSULT THEIR OWN TAX ADVISORS REGARDING FEDERAL, STATE, LOCAL, U.S. POSSESSION, AND NON-U.S. TAX CONSEQUENCES OF THE PLAN TO THEM.

ARTICLE IX.

RECOMMENDATION OF THE DEBTOR

The Debtor believes that the Plan is in the best interests of all Holders of Claims against and Interests in the Debtor, and urges all Holders of Claims against and Interests in the Debtor entitled to vote to accept the Plan and to evidence such acceptance by returning their Ballots so they will be received by the Claims and Noticing Agent by the Voting Deadline.

Dated: December 9, 2015

HOVENSA L.L.C.

By: _____
Name: Thomas E. Hill
Title: Chief Restructuring Officer

Prepared by:

LAW OFFICES OF RICHARD H. DOLLISON, P.C.

Richard H. Dollison (VI Bar No. 502)
48 Dronningens Gade, Suite 2C
St. Thomas, U.S. Virgin Islands 00802
Telephone: (340) 774-7044
Facsimile: (340) 774-7045
rhd@rdollisonlaw.com

-and-

MORRISON & FOERSTER LLP

Lorenzo Marinuzzi
Jennifer L. Marines
Samantha Martin
Daniel J. Harris
250 West 55th Street
New York, New York 10019
Telephone: (212) 468-8000
Facsimile: (212) 468-7900
lmarinuzzi@mofocom
jmarines@mofocom
smartin@mofocom
dharris@mofocom

*Counsel for Debtor
and Debtor-in-Possession*

EXHIBIT A

Debtor's Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code

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

In re:)	
)	
)	Chapter 11
HOVENSA L.L.C.,)	
)	Case No. 1:15-bk-10003-MFW
Debtor.)	
)	

**DEBTOR'S PLAN OF LIQUIDATION
PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

THIS DRAFT CHAPTER 11 PLAN IS NOT AN OFFER WITH RESPECT TO ANY SECURITIES OR SOLICITATION OF ACCEPTANCES OF A CHAPTER 11 PLAN PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE. ANY SUCH OFFER OR SOLICITATION WILL BE MADE ONLY IN COMPLIANCE WITH ALL APPLICABLE SECURITIES LAWS AND/OR PROVISIONS OF THE BANKRUPTCY CODE.

MORRISON & FOERSTER LLP

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

**LAW OFFICES OF RICHARD H.
DOLLISON, P.C.**

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

Counsel for Debtor and Debtor-in-Possession

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INTRODUCTION

The Debtor proposes the following *Debtor's Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code*. Capitalized terms used in the Plan and not otherwise defined have the meanings ascribed to such terms in Article I hereof. Reference is made to the Disclosure Statement, filed in connection herewith, for a discussion of the Debtor's history, as well as a summary and analysis of the Plan and certain related matters. The Debtor is a proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code.

ARTICLE I.

DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, AND GOVERNING LAW

A. *Defined Terms*

As used in this Plan, capitalized terms have the meanings set forth below.

1. "2012 Notes" means (a) that certain promissory note issued as of April 1, 2012 by the Debtor in favor of HOVIC in the aggregate original principal amount of \$811,000,000; and (b) that certain promissory note issued as of April 1, 2012 by the Debtor in favor of PPSA in the aggregate original principal amount of \$811,000,000.

2. "2015 Notes" means (a) that certain promissory note issued as of July 8, 2015 by the Debtor in favor of HOVIC in the aggregate original principal amount of \$5,000,000; and (b) that certain promissory note issued as of July 8, 2015 by the Debtor in favor of PDV-VI in the aggregate original principal amount of \$5,000,000.

3. "Administrative and Priority Claims Reserve" means the reserve to be established and maintained by the Liquidating Trustee and funded with the Administrative and Priority Claims Reserve Amount pursuant to Article IV.F.1 hereof.

4. "Administrative and Priority Claims Reserve Amount" means Cash in an amount to be determined by the Debtor and the Liquidating Trustee on or before the Effective Date, which amount shall be funded by the Debtor and used by the Liquidating Trustee for the payment of U.S. Trustee Fees and Allowed Administrative, Priority, and Professional Fee Claims Allowed after the Effective Date to the extent that such Claims have not been paid in full on or before the Effective Date.

5. "Administrative Claim" means any Claim for the costs and expenses of the administration of the Estate pursuant to sections 503(b) or 507(b) of the Bankruptcy Code to the extent not previously paid, including (a) the actual and necessary costs and expenses incurred after the Petition Date through the Effective Date of preserving the Estate; (b) Professional Fee Claims; (c) all fees and charges assessed against the Estate pursuant to section 1930 of chapter 123 of title 28 of the United States Code; (d) any indebtedness or obligations assumed by the Debtor in connection with the conduct of its business; (e) any Claim for goods delivered to the Debtor within twenty (20) days of the Petition Date and entitled to administrative priority

pursuant to section 503(b)(9) of the Bankruptcy Code; and (f) any Environmental Claim that is nondischargeable under current bankruptcy law.

6. “*Administrative Claims Bar Date*” means the date established by the Administrative Claims Bar Date Order by which requests for payment of Administrative Claims must be Filed, subject to any exceptions specifically set forth therein.

7. “*Administrative Claims Bar Date Order*” means the *Order (I) Establishing Bar Date for Filing Administrative Expense Claims and (II) Approving the Form and Manner of Notice Thereof*, entered on [____] [Docket No. [____]].

8. “*Affiliate*” shall have the meaning set forth in section 101(2) of the Bankruptcy Code.

9. “*Allowed*” means with respect to Claims: (a) any Claim, proof of which is timely Filed by the applicable Claims Bar Date (or a Claim for which a Proof of Claim is not required to be Filed under the Plan, the Bankruptcy Code, or a Final Order of the Bankruptcy Court); (b) any Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed, and for which no Proof of Claim has been timely Filed; or (c) any Claim allowed pursuant to the Plan or a Final Order of the Bankruptcy Court; provided, that with respect to any Claim described in clause (a) above, such Claim shall be considered Allowed only if and to the extent that no objection to the allowance of such Claim has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or if such an objection is so interposed and the Claim shall have been Allowed by a Final Order; provided, further, that the Debtor or the Liquidating Trustee, as applicable, may affirmatively determine to allow any Claim described in clause (a) notwithstanding the fact that the period within which an objection may be interposed has not yet expired. Any Claim that has been or is hereafter listed in the Schedules as contingent, unliquidated, or disputed, and for which no Proof of Claim is or has been timely Filed, is not considered Allowed and shall be expunged without further action by the Debtor and without further notice to any party or action, approval, or order of the Bankruptcy Court. “Allow” and “Allowing” shall have correlative meanings.

10. “*Avoidance Actions*” means any and all actual or potential claims and causes of action to avoid a transfer of property or an obligation incurred by the Debtor pursuant to any applicable section of the Bankruptcy Code, including sections 502, 510, 542, 544, 545, 547–553, and 724(a) of the Bankruptcy Code or under similar or related state or federal statutes and common law, including fraudulent transfer laws. Avoidance Actions shall not include any such claims or Causes of Action that were conveyed to the Purchaser in connection with the Sale Transaction.

11. “*Ballot*” means a ballot or e-ballot, as applicable, authorized by the Bankruptcy Court pursuant to the Solicitation Procedures Order to indicate acceptance or rejection of the Plan and to opt out of the release provided by Article X hereof.

12. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as the same may be amended from time to time.

13. “*Bankruptcy Court*” means the United States District Court of the Virgin Islands, Bankruptcy Division, St. Croix, Virgin Islands, having jurisdiction over the Chapter 11 Case, or any other court of the United States exercising competent jurisdiction over the Chapter 11 Case or any proceeding therein.

14. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure, as applicable to the Chapter 11 Case, promulgated under section 2075 of the Judicial Code and the general rules, Local Bankruptcy Rules and chambers rules of the Bankruptcy Court.

15. “*Bar Date Order*” means that certain *Order (I) Establishing Bar Dates for Filing Claims and (II) Approving the Form and Manner of Notice Thereof*, entered on October 9, 2015 [Docket No. 219].

16. “*Bid Procedures Order*” means the *Order (I) Establishing Bidding Procedures Relating to the Sale of the Debtor’s Assets, Including Approving Break-Up Fee and Expense Reimbursement, (II) Establishing Procedures Relating to the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, Including Notice of Proposed Cure Amounts, (III) Approving Form and Manner of Notice Relating Thereto, and (IV) Scheduling a Hearing to Consider the Proposed Sale*, entered on October 9, 2015 [Docket No. 220].

17. “*Business Day*” means any day, other than a Saturday, Sunday, or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

18. “*Cash*” means the legal tender of the United States or the equivalent thereof.

19. “*Causes of Action*” means, subject to the releases, exculpations, and injunctions set forth in the Plan, any claim, cause of action, controversy, right of setoff, cross claim, counterclaim, or recoupment and any claim on contracts or for breaches of duties imposed by law or in equity, demand, right, action, Lien, indemnity, guaranty, suit, obligation, liability, damage, judgment, account, defense, power, privilege, license, and franchise of any kind or character whatsoever, known, unknown, fixed or contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity, or pursuant to any other theory of law, including Avoidance Actions, that were property of the Debtor or in which the Debtor held rights as of the Effective Date.

20. “*Chapter 11 Case*” means the chapter 11 case commenced by the Debtor on the Petition Date and styled In re HOVENSA L.L.C., Case No. 15-bk-10003-MFW, which is currently pending before the Bankruptcy Court.

21. “*Claim*” means a “claim” (as defined in section 101(a)(5) of the Bankruptcy Code) against the Debtor.

22. “*Claims and Noticing Agent*” means Prime Clerk LLC, in its capacity as claims and noticing agent for the Debtor pursuant to 28 U.S.C. § 156(c), and any successor thereto after the Effective Date.

23. “*Claims Bar Date*” means the bar date by which a Proof of Claim must be or must have been Filed, as established by (a) a Final Order of the Bankruptcy Court, including, without limitation, the Bar Date Order and the Administrative Claims Bar Date Order, or (b) pursuant to the Plan.

24. “*Claims Objection Bar Date*” means the first Business Day that is 120 days after the Effective Date or such later date as may be determined by the Bankruptcy Court.

25. “*Claims Register*” means the official register of Claims maintained by the Claims and Noticing Agent.

26. “*Class*” means a category of Holders of Claims or Interests pursuant to section 1122(a) of the Bankruptcy Code, as set forth in Article III hereof.

27. “*Closing Date*” means the Closing Date as defined in section 3.5(a) of the Purchase Agreement.

28. “*Combined Hearing*” means the hearing held by the Bankruptcy Court to consider approval of the Disclosure Statement and Confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code.

29. “*Committee*” means the official committee of unsecured creditors appointed in the Chapter 11 Case pursuant to section 1102(a) of the Bankruptcy Code pursuant to that certain *Appointment and Notice of Appointment of Committee of Creditors Holding Unsecured Claims* filed by the U.S. Trustee on September 24, 2015 [Docket No. 85], as amended by the *Amended Appointment and Notice of Appointment of Committee of Creditors Holding Unsecured Claims* filed by the U.S. Trustee on September 25, 2015 [Docket No. 99], and as further amended by the *Second Amended Appointment and Notice of Appointment of Committee of Creditors Holdings Unsecured Claims* filed by the U.S. Trustee on November 3, 2015 [Docket No. 283].

30. “*Committee Members*” means all current and former members of the Committee, including each of the following, in each case solely in their capacity as such: (a) Pension Benefit Guaranty Corporation; (b) National Response Corporation; (c) Atlantic Trading & Marketing, Inc.; (d) Turner St. Croix Maintenance, Inc.; (e) United Industrial Workers of the Seafarers International Union, AFL-CIO; and (f) Terrence Alexis.

31. “*Concession Agreement*” means that certain agreement by and between the GVI and HOVIC, dated and approved by the Legislature of the Virgin Islands September 1, 1965, and amended, supplemented and clarified at various times by mutual agreement of the parties, as amended and extended by the Extension and Amendment Agreement, dated April 24, 1981 and approved by the Legislature of the Virgin Islands on May 7, 1981, as further amended and extended by the Restated Second Extension and Amendment Agreement, dated July 27, 1990 and approved by the Legislature of the Virgin Islands on August 22, 1990, as further amended by the Technical Clarifying Amendment to Restated Second Extension and Amendment Agreement, dated November 17, 1993 and approved by the Governor and the Legislature of the Virgin Islands, as further amended and extended by the Third Extension and Amendment Agreement, to which PDV-VI is added as a party, dated April 15, 1998 and approved by the Legislature of the Virgin Islands on May 18, 1998, as further amended by the Fourth Amendment Agreement.

32. “*Confirmation*” means the entry of the Confirmation Order on the docket of the Chapter 11 Case.

33. “*Confirmation Date*” means the date upon which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Case within the meaning of Bankruptcy Rules 5003 and 9021.

34. “*Confirmation Order*” means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

35. “*Consent Decree*” means the civil complaint and consent decree filed by the United States (acting through the EPA and the United States Department of Justice) and the GVI (acting through the DPNR) in the U.S. District Court of the Virgin Islands, St. Croix Division, dated as of January 26, 2011, which resolved the EPA’s allegations of the Debtor’s past violations of the Clean Air Act.

36. “*Consummation*” means the occurrence of the Effective Date.

37. “*Contract Assumption Schedule*” means the list of Executory Contracts and Unexpired Leases to be assumed pursuant to the Plan, which shall be filed by the Debtor on or before December 24, 2015 at 4:00 p.m. (prevailing Eastern time), and as may be amended by the Debtor in accordance with the Plan prior to the Effective Date.

38. “*Cure Obligations*” means: (a) all amounts (or such other amount as may be agreed upon by the parties under an Executory Contract or Unexpired Lease) required to cure any monetary defaults, and (b) any other obligations required to cure any nonmonetary defaults under any Executory Contract or Unexpired Lease that is to be assumed by the Debtor pursuant to sections 365 or 1123 of the Bankruptcy Code.

39. “*D&O Policies*” means all insurance policies for liability of Executive Committee Members, and members, managers, trustees, directors, and officers of the Debtor maintained by the Debtor as of the Effective Date.

40. “*Debtor Release*” means the release given on behalf of the Debtor and its Estate to the Released Parties as set forth in Article X.D hereof.

41. “*Debtor*” means HOVENSA L.L.C.

42. “*DIP Agreement*” means that certain Debtor-in-Possession Credit and Security Agreement, dated as of September 15, 2015, by and among the Debtor, as borrower, and HOVIC and PDV-VI, as lenders.

43. “*DIP Facility Claims*” means the Secured Claims of the DIP Lenders arising from the DIP Agreement.

44. “*DIP Lenders*” means HOVIC and PDV-VI, each in its capacity as lender under the DIP Agreement, and their successors and assigns as permitted by the DIP Agreement.

45. “*Disbursing Agent*” means the Liquidating Trustee.
46. “*Disclosure Statement*” means the *Disclosure Statement for the Debtor’s Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code*, dated [____], 2015 [Docket No. [____]], as amended, supplemented, or otherwise modified from time to time, including all exhibits and schedules thereto, as approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code.
47. “*Disputed*” means, with respect to any Claim, any Claim that is not yet Allowed.
48. “*Distribution Date*” means a date or dates, as determined by the Liquidating Trustee in accordance with the Liquidating Trust Agreement on which the Liquidating Trust makes a distribution, or causes a distribution to be made, of Cash to the Holders of Allowed Claims.
49. “*Distribution Record Date*” means the date that is two (2) Business Days prior to each Distribution Date.
50. “*DPNR*” means the Virgin Islands Department of Planning and Natural Resources.
51. “*Effective Date*” means a Business Day as determined by the Debtor on which: (a) the Confirmation Date has occurred; (b) no stay of the Confirmation Order is in effect; and (c) all conditions precedent specified in Article XI hereof have been satisfied or waived.
52. “*Effective Date Distributions*” means distributions made to the Holders of Allowed Administrative Claims, Priority Tax Claims, Professional Fee Claims, and DIP Facility Claims on the Effective Date or as soon as practicable thereafter.
53. “*Entity*” shall have the meaning set forth in section 101(15) of the Bankruptcy Code.
54. “*Environmental Claim*” means all liability claims asserted by any Governmental Unit, including the GVI, against, and other responsibilities, obligations or liabilities of, the Debtor relating to or arising under RCRA or any other Environmental Law.
55. “*Environmental Law*” means any Law, Order or other requirement of Law that relates to (a) the protection of the environment (including natural resource restoration and natural resource damages) or of human health or safety (to the extent human health or safety relates to exposure to Hazardous Materials), or (b) the presence, release or threatened release (including the disposing, discharging, injecting, spilling, leaking, pumping, leaching, dumping, emitting, escaping, or emptying into or upon any air, soil, sediment, subsurface strata, surface water, or groundwater), generation, recycling, disposal or treatment of Hazardous Materials, or the arrangement for any such activities.
56. “*Environmental Matters*” means any environmental matter relating to the Environmental Remediation Program and the Environmental Response Trust Assets.

57. “*Environmental Remediation Program*” means the program established in accordance with the Environmental Response Trust Agreement whereby the Environmental Response Trust shall perform the Debtor’s obligations with respect to the winding-up of its affairs (including conducting any Remedial Actions related to the Excluded Liabilities and dismantling and disposing of any Retained Refinery Assets or other Excluded Assets) and the performance of its obligations under the Transaction Documents, if any.

58. “*Environmental Response Trust*” means the trust to be established on the Effective Date in accordance with Article VIII hereof.

59. “*Environmental Response Trust Account*” means that certain account funded with the Environmental Response Trust Cash Distributions.

60. “*Environmental Response Trust Agreement*” means the agreement governing, among other things, the retention and duties of the Environmental Response Trustee as described in Article VIII hereof, which shall be in form and substance materially consistent with the Plan and included as an exhibit to the Plan Supplement.

61. “*Environmental Response Trust Assets*” means: (a) the Environmental Response Trust Cash Distributions; (b) the Remaining Assets; (c) the Debtor’s rights with respect to the RCRA Trusts and the SEP Account; (d) the Debtor’s rights to receive all insurance recoveries under the Environmental Response Trust Insurance Policies and any rights to assert claims with respect to any such insurance recoveries; and (e) the Debtor’s rights under the Purchase Agreement, the Shared Services Agreement, and any other Transaction Documents among the Debtor and the Purchaser (or its Affiliates) relating to Environmental Matters, including all rights under such agreements (i) with respect to the payment or reimbursement of “Wind-Up Costs” (as such term is defined in the Purchase Agreement); and (ii) to require the Purchaser to supply, or cause one of its affiliates to supply, power after the closing of the Sale Transaction to the Debtor or the Environmental Response Trust, as applicable, as set forth in Section 7.24 of the Purchase Agreement; in each case in accordance with the terms of the Purchase Agreement, the Shared Services Agreement, and any other Transaction Document, as applicable.

62. “*Environmental Response Trust Beneficiaries*” means those Governmental Units holding nondischargeable environmental claims whose responsibilities include enforcement and oversight of Environmental Law.

63. “*Environmental Response Trust Cash Distribution*” means the transfer of any portion of the Environmental Response Trust Cash Payment from the Debtor to the Environmental Response Trust on any Environmental Response Trust Cash Transfer Date.

64. “*Environmental Response Trust Cash Payment*” means all the Debtor’s Cash to be transferred to the Environmental Response Trust less the amounts needed to make the Effective Date Distributions and for the Administrative and Priority Claims Reserve.

65. “*Environmental Response Trust Cash Transfer Date*” means each date on which any Environmental Response Trust Cash Distribution shall be made.

66. “*Environmental Response Trust Insurance Policies*” means the insurance policies identified in a schedule in the Plan Supplement.

67. “*Environmental Response Trustee*” means the Person designated as such by the Debtor in consultation with the EPA and the DPNR before the Combined Hearing.

68. “*EPA*” means the United States Environmental Protection Agency.

69. “*ERISA*” means the Employee Retirement Income Security Act of 1974 as set forth in 29 United States Code Chapter 18.

70. “*Estate*” means the estate created for the Debtor on the Petition Date pursuant to sections 301 and 541 of the Bankruptcy Code.

71. “*Exculpated Parties*” means, solely to the extent of the Exculpation, each of (i) the Debtor, and any of its respective Related Parties; and (ii) the Committee, and any of its respective Related Parties.

72. “*Exculpation*” means the exculpation provision set forth in Article X.F hereof.

73. “*Executive Committee*” means the Debtor’s governing body appointed pursuant to the LLC Agreement.

74. “*Executive Committee Members*” means any individual that previously served or currently serves as a member of the Executive Committee.

75. “*Executory Contract*” means a contract or lease to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

76. “*Excluded Assets*” means those assets, rights, or privileges of the Debtor not acquired by the Purchaser in the Sale Transaction, as more fully described in section 2.2 of the Purchase Agreement.

77. “*Excluded Liabilities*” means those liabilities not assumed by the Purchaser in the Sale Transaction, as more fully described in section 2.4 of the Purchase Agreement.

78. “*Federal Judgment Rate*” means the federal judgment rate in effect as of the Effective Date.

79. “*File,*” “*Filed,*” or “*Filing*” means file, filed, or filing in the Chapter 11 Case with the Bankruptcy Court or, with respect to the filing of a Proof of Claim, the Claims and Noticing Agent.

80. “*Final DIP Order*” means the *Final Order (A) Approving Postpetition Financing, (B) Granting Liens and Providing Superpriority Administrative Expense Claims, and (C) Modifying the Automatic Stay*, entered on October 9, 2015 [Docket No. 226].

81. “*Final Environmental Response Trust Cash Transfer Date*” means the final date on which any Environmental Response Trust Cash Distribution is made by the Debtor to the Environmental Response Trust, as determined jointly by the Liquidating Trustee and the Environmental Response Trustee, which date shall be no later than the 180th day following the Effective Date.

82. “*Final Order*” means, as applicable, an order or judgment of the Bankruptcy Court or other court of competent jurisdiction with respect to the relevant subject matter, which has not been reversed, stayed, modified, or amended from time to time, and as to which the time to appeal or seek certiorari has expired and no appeal or petition for certiorari has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been or may be Filed has been resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought; provided, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or the Local Bankruptcy Rules, may be filed relating to such order shall not prevent such order from being a Final Order.

83. “*Fourth Amendment Agreement*” means that certain Fourth Amendment Agreement, by and among the GVI, the Debtor, HOVIC and PDV-VI, dated April 3, 2013, as ratified by the Legislature of the Virgin Islands on November 4, 2013 and approved by the Governor of the Virgin Islands on November 4, 2013, as Act No. 7566 (such ratification including that certain letter, dated October 16, 2013, from George H.T. Dudley to the Governor of the Virgin Islands incorporated as part of Act No. 7566).

84. “*General Unsecured Claim*” means any unsecured Claim that is not a Priority Claim or a GVI Claim.

85. “*Government Parcels*” means the real property identified on Exhibit H to the Purchase Agreement, which real property shall be transferred from the Debtor to the GVI in connection with the Sale Transaction.

86. “*Governmental Unit*” has the meaning set forth in section 101(27) of the Bankruptcy Code.

87. “*GUC Beneficiary Reserve*” means that certain reserve containing the initial principal amount of \$30 million in Cash in accordance with the Sale Order for the sole benefit of the Holders of Class 4, 5, and 6 Claims, which amount may be transferred into the Tort Claims Reserve and the Other General Unsecured Claims Reserve, and which amount shall be subject only to the GUC Beneficiary Reserve Carve Out.

88. “*GUC Beneficiary Reserve Carve Out*” means any amount in excess of the aggregate amount of the then current Budget (as defined in the Final DIP Order) for the Committee, its members and Committee professionals, to be used for (a) the payment of fees of the Committee, its members and Committee professionals, and (b) any post-Plan confirmation costs and fees incurred in connection with (i) determining the extent and validity of Class 4, 5, and 6 Claims and (ii) making distributions to Holders of Class 4, 5, and 6 Claims, in each case

under the terms acceptable to the Committee, the Debtor, and the Liquidating Trustee, as appropriate.

89. “*GVI*” means the Government of the USVI, including any USVI Governmental Unit.

90. “*GVI Claims*” means any and all Claims of the GVI against the Debtor, including, but not limited to, the (a) GVI Secured Claims, (b) GVI’s Claim for a 20% commission on the proposed Sale Transaction, (c) GVI’s Claims arising from the termination of the Concession Agreement, *but excluding* any Claims relating directly to Environmental Matters.

91. “*GVI Secured Claims*” means the GVI’s (a) Claim in the aggregate original principal amount of \$40 million plus any accrued but unpaid interest, secured pursuant to (i) the First Priority Mortgage, dated May 28, 2014, granted by the Debtor in favor of the GVI, and (ii) the Security Agreement, dated as of May 28, 2014, granted by the Debtor in favor of the GVI; and (b) Claim in the amount of \$14 million plus interest for outstanding real estate taxes.

92. “*Hazardous Material*” means any waste, material, or other substance that is listed, defined, designated, classified as, or otherwise determined to be, hazardous, extremely hazardous, toxic, radioactive, or a pollutant or a contaminant under or pursuant to any Law, Order or requirement of Law, including any admixture or solution thereof, and specifically including petroleum and all derivatives thereof or synthetic substitutes therefor and asbestos or asbestos-containing materials.

93. “*Hess*” means Hess Corporation (f/k/a Amerada Hess Corporation).

94. “*Holder*” means any Entity holding a Claim or an Interest.

95. “*HOVIC*” means Hess Oil Virgin Islands Corporation, a corporation organized under the Laws of the USVI and a subsidiary of Hess Corporation (f/k/a Amerada Hess Corporation).

96. “*Impaired*” means, with respect to a Claim or an Interest, or a Class of Claims or Interests, “impaired” within the meaning of section 1124 of the Bankruptcy Code.

97. “*Indemnification Provisions*” means each of the Debtor’s indemnification provisions currently in place whether in the Debtor’s bylaws, the LLC Agreement, other formation documents, Executive Committee resolutions, or employment contracts for current and former directors, managers, officers, Executive Committee Members, employees, attorneys, individual consultants, other professionals and agents of the Debtor, and such current and former directors’, managers’, and officers’, Executive Committee Members’, employees’, attorneys’, other professionals’ and agents’ respective Affiliates.

98. “*Initial Distribution Date*” means the date on which the Debtor or the Liquidating Trustee, as applicable, makes initial distributions to Holders of Allowed Claims pursuant to the Plan.

99. “*Interest*” means any interest, equity, or share in the Debtor, including all options, warrants, or other rights to obtain such an interest or share in the Debtor, whether or not certificated, transferable, preferred, common, voting, or denominated “stock” or membership interests or a similar security, including any Claim subject to subordination under section 510(b) of the Bankruptcy Code arising therefrom.

100. “*Judicial Code*” means title 28 of the United States Code, 28 U.S.C. §§ 1–4001.

101. “*JV Parties*” means HOVIC and PDV-VI, each in its capacity as a member of the Debtor pursuant to the LLC Agreement.

102. “*Law*” means any statute, law, ordinance, ruling, policy, rule or regulation of any Governmental Unit and all judicial or administrative interpretations thereof and any common law doctrine.

103. “*Lien*” shall have the meaning set forth in section 101(37) of the Bankruptcy Code.

104. “*Liquidating Trust*” means the trust to be established on the Effective Date in accordance with Article VII hereof.

105. “*Liquidating Trust Agreement*” means the agreement governing, among other things, the retention and duties of the Liquidating Trustee as described in Article VII hereof, which shall be in form and substance materially consistent with the Plan and included as an exhibit to the Plan Supplement.

106. “*Liquidating Trust Assets*” means: (a) the Liquidating Trust Cash Distribution; (b) the Debtor’s rights under the D&O Policies; (c) the LLC Agreement; (d) the Debtor’s rights under the Purchase Agreement and any other Transaction Document (other than rights relating to Environmental Matters), including all rights of recovery under the Purchase Agreement and any other Transaction Document among the Debtor and the Purchaser (or its Affiliates); (e) the Debtor’s right to receive all insurance recoveries under Liquidating Trust Insurance Policies and any rights to assert claims with respect to any such insurance recoveries; (f) the Retiree Benefit Plan; and (g) the Steelworkers CBA.

107. “*Liquidating Trust Beneficiaries*” means Holders of Allowed Claims that are to be satisfied with post-Effective Date distributions from the Liquidating Trust Assets, each in its capacity as such.

108. “*Liquidating Trust Cash Distribution*” means Cash transferred to the Liquidating Trust on the Effective Date in an amount equal to (a) the Cash portion of the Sale Transaction Proceeds, after taking into account payment of the DIP Facility Claims, USVI Concession Fee, and such other fees and expenditures required by the Sale Order, and (b) any other Cash held by the Debtor on the Effective Date.

109. “*Liquidating Trust Insurance Policies*” means the insurance policies identified in a schedule in the Plan Supplement.

110. “*Liquidating Trustee*” means the Person designated as such by the Debtor before the Combined Hearing.

111. “*LLC Agreement*” means the Amended and Restated Limited Liability Company Agreement of HOVENSA, L.L.C. dated as of October 30, 1998 (as amended, supplemented, and/or amended and restated from time to time).

112. “*Local Bankruptcy Rules*” means the Local Bankruptcy Rules of the District Court of the Virgin Islands, Bankruptcy Division.

113. “*Order*” means any judgment, order, injunction, decree, writ, permit or license issued or entered by or with any Governmental Unit or any arbitrator, whether preliminary, interlocutory or final, including any order entered by the Bankruptcy Court in the Chapter 11 Case.

114. “*Other Governmental General Unsecured Claims*” means any and all General Unsecured Claims of any Governmental Unit (other than the GVI) against the Debtor.

115. “*Other Non-Governmental and Non-Tort General Unsecured Claims*” means any and all General Unsecured Claims against the Debtor other than Priority Claims, Tort Claims, GVI Claims, and Other Governmental General Unsecured Claims.

116. “*Other General Unsecured Claims Reserve*” means that certain reserve that may be created by the Debtor or the Liquidating Trustee, as applicable, upon entry of an Order of the Bankruptcy Court using funds from the GUC Beneficiary Reserve in an amount to be agreed by the Committee, the Debtor, and the Liquidating Trustee, as appropriate, for the sole benefit of the Holders of Class 5 and 6 Claims, as applicable, which amount shall be subject only to the GUC Beneficiary Reserve Carve Out as shall be set forth in the Reserve Motion.

117. “*Other Priority Claim*” means a Claim asserting a priority described in section 507(a) of the Bankruptcy Code, other than an Administrative Claim and a Priority Tax Claim.

118. “*Other Secured Claim*” means a Secured Claim, including a Secured Tax Claim, other than the GVI Claims and the DIP Facility Claims.

119. “*PDVSA*” means Petróleos de Venezuela, S.A., the national oil company of Venezuela.

120. “*PDV-VI*” means PDVSA V.I., Inc., a corporation organized under the Laws of the USVI and a subsidiary of PDVSA.

121. “*Person*” shall have the meaning set forth in section 101(41) of the Bankruptcy Code.

122. “*Pension Plan*” means the HOVENSA, L.L.C. Employees’ Pension Plan, which is subject to ERISA, sponsored by the Debtor, and administered by the Debtor’s Employee Benefit Plans Committee.

123. “*Petition Date*” means September 15, 2015, the date on which the Debtor commenced the Chapter 11 Case.

124. “*Plan*” means this *Debtor’s Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code*, as amended, supplemented, or otherwise modified from time to time, including the Plan Supplement, which is incorporated in the Plan by reference and made part of this Plan as if set forth in the Plan.

125. “*Plan Supplement*” means the compilation of documents and forms of documents, schedules, and exhibits to the Plan, to be Filed at least seven (7) days prior to the deadline to object to Confirmation of the Plan, as amended, supplemented, or otherwise modified from time to time in accordance with the terms hereof, the Bankruptcy Code, and the Bankruptcy Rules, including: (a) the Liquidating Trust Agreement; (b) the Environmental Response Trust Agreement; (c) a schedule identifying the Liquidating Trust Insurance Policies; and (d) a schedule identifying the Environmental Response Trust Insurance Policies.

126. “*PPSA*” means PDVSA Petróleo, S.A., a corporation organized under the Laws of Venezuela and a subsidiary of PDVSA.

127. “*Priority Claims*” means, collectively: (a) Administrative Claims; (b) Priority Tax Claims; and (c) Other Priority Claims.

128. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

129. “*Pro Rata*” means the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed Claims in that Class, or the proportion that Allowed Claims in a particular Class bear to the aggregate amount of Allowed Claims in a particular Class and other Classes entitled to share in the same recovery as such Allowed Claims under the Plan.

130. “*Professional*” means any Entity retained in the Chapter 11 Case in accordance with sections 327, 328, 363, or 1103 of the Bankruptcy Code and to be compensated for services rendered and expenses incurred pursuant to sections 326, 327, 328, 329, 330, 331, or 363 of the Bankruptcy Code.

131. “*Professional Fee Claims*” means all Claims for accrued fees and expenses (including success fees) for services rendered and expenses incurred by a Professional from the Petition Date through and including the Effective Date to the extent such fees and expenses have not been paid or are not disallowed pursuant to an order of the Bankruptcy Court and regardless of whether a fee application has been filed for such fees and expenses.

132. “*Professional Fee Order*” means the *Order Granting Motion Establishing Procedures for Interim Compensation*, entered on November 16, 2015 [Docket No. 328].

133. “*Promissory Note Claims*” means the Claims of the JV Parties arising under or relating to the Promissory Notes.

134. “*Promissory Notes*” means the 2012 Notes and the 2015 Notes.

135. “*Proof of Claim*” means a proof of Claim Filed against the Debtor in the Chapter 11 Case.

136. “*Purchase Agreement*” means that certain Amended and Restated Asset Purchase Agreement, by and among Limetree Bay Holdings, LLC, HOVENSA L.L.C., and Hess Oil Virgin Islands Corp., dated as of December [___], 2015, as amended, supplemented, or modified from time to time.

137. “*Purchaser*” means Limetree Bay Holdings, LLC, together with its successors and permitted assigns.

138. “*RCRA*” means the Resource Conservation Recovery Act, as set forth in 42 U.S.C. §6901 et seq. and any regulation or rule related thereto.

139. “*RCRA Trusts*” means the two trust accounts that hold approximately \$36.6 million in Cash to provide financial assurance to the EPA related to the Debtor’s performance of certain environmental obligations: (1) the Hovensa Trust Agreement – Form A, dated as of March 22, 2013 by and between Hovensa, L.L.C., as grantor, and Citibank, N.A., as Trustee; and (2) the Hovensa Trust Agreement – Form C, dated as of March 22, 2013, by and between Hovensa, L.L.C., as grantor, and Citibank, N.A., as Trustee.

140. “*Related Parties*” means, with respect to any person or entity, any past, present or future representative, controlling person, officer, director, agent, attorney, advisor, employee, subsidiary or affiliate, shareholder, partner (general or limited), Executive Committee Member, member, manager, equity holder, trustee, executory, predecessor in interest, successor or assign of any such person or entity.

141. “*Released Parties*” means: (a) the Debtor; (b) the Debtor’s current and former officers, directors, managers and the Executive Committee Members; (c) the DIP Lenders; (d) the JV Parties; (e) the Committee and the Committee Members; (f) Hess; (g) PDVSA; and (h) each of the foregoing Entities’ respective predecessors, successors and assigns, subsidiaries, Affiliates and their subsidiaries, beneficial owners, managed accounts or funds, current and former officers, directors, principals, shareholders, direct and indirect equity holders, members, partners (general and limited), employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, management companies, fund advisors and other professionals; provided, that as a condition to receiving or enforcing any release granted pursuant to Article X.E hereof, each Released Party and its Affiliates shall be deemed to have released the Releasing Parties, the Estate, and the Debtor from any and all Claims or Causes of Action arising from or related to their relationship with the Debtor, but not, for the avoidance of doubt, Professional Fee Claims. For the avoidance of doubt, and notwithstanding anything herein to the contrary, in no event shall an Entity that checks the box on the Ballot to opt out of the third party release provided in Article X.E hereof and returns such Ballot in accordance with the Solicitation Procedures Order be a Released Party.

142. “*Releasing Parties*” means: (a) the Released Parties; and (b) all Holders of Claims that (i) vote to accept the Plan, and (ii) do not affirmatively opt out of the third party

release provided by Article X.E hereof pursuant to a duly executed Ballot; provided, that, notwithstanding anything contained herein to the contrary, in no event shall an Entity that checks the box on the Ballot to opt out of the third party release provided in Article X.E hereof and returns such Ballot in accordance with the Solicitation Procedures Order be a Releasing Party.

143. “*Remaining Assets*” means any of the Debtor’s assets that are Excluded Assets under the Purchase Agreement, other than the Government Parcels. For the avoidance of doubt, the Remaining Assets shall include the Retained Refinery Assets, subject to the Debtor’s obligations to transfer all or any portion of the Retained Refinery Assets to Purchaser pursuant to the Retained Refinery Assets Option Agreement.

144. “*Remedial Action*” means any action to investigate, address, abate, clean up, remove or remediate (or words of similar import), or conduct remedial or corrective actions, including sampling and/or monitoring activities, with respect to Hazardous Materials in the environment, including, without limitation, any such action relating to Excluded Liabilities, Retained Refinery Assets, or other Excluded Assets.

145. “*Remediation Costs*” means the reasonable and documented out-of-pocket costs and expenses incurred in connection with the Environmental Remediation Program.

146. “*Reserve Motion*” means a motion to be filed by the Debtor or the Liquidating Trustee, as applicable, to establish (a) the Tort Claims Reserve for the benefit of Holders of Class 4 Claims, and (b) the Other General Unsecured Claims Reserve for the benefit of Holders of Class 5 and 6 Claims, 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.

147. “*Retained Refinery Assets*” means the real property described in Section 1.1(e) of the Seller Disclosure Letter made and delivered pursuant to the Purchase Agreement, to the extent not acquired by Purchaser in connection with the Sale Transaction pursuant to the Option Agreement (as defined in the Purchase Agreement).

148. “*Retained Refinery Assets Option Agreement*” means an option agreement entered into by and among Purchaser and the Debtor in connection with the Sale Transaction, pursuant to which Purchaser will have the right to acquire some or all of the Retained Refinery Assets pursuant to and in accordance with the terms thereof and otherwise in form and substance reasonably satisfactory to the Purchaser and Debtor.

149. “*Retiree Benefit Plan*” means the HOVENSA Health and Welfare Plan for Non-Hourly Employees, which is the Debtor’s self-insured health and welfare benefits for 196 retirees and their respective dependents.

150. “*Sale Order*” means the *Order (A)(I) Approving the Sale of the Debtor’s Assets, Free and Clear of All Liens, Claims, Encumbrances, and Interests; and (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (B) Granting Related Relief*, entered on December 1, 2015 [Docket No. 394].

151. “*Sale Transaction*” means that certain sale transaction between the Debtor and the Purchaser as set forth in the Purchase Agreement and the Sale Order.

152. “*Sale Transaction Proceeds*” means (a) \$90,000,000.00 in Cash, plus (b) the rights of the Debtor or the Environmental Response Trustee with respect to the payment or reimbursement of “Wind-Up Costs” (as defined in the Purchase Agreement), plus (c) the right of the Debtor or the Environmental Response Trustee to require the Purchaser to supply, or cause one of its affiliates to supply, power after the closing of the Sale Transaction to the Debtor or the Environmental Response Trust, as applicable, as set forth in Section 7.24 of the Purchase Agreement; in each case in accordance with the terms of the Purchase Agreement, the Shared Services Agreement, and any other Transaction Document, as applicable.

153. “*Schedules*” means, collectively, the schedules of assets and liabilities, schedules of Executory Contracts and Unexpired Leases, and statements of financial affairs Filed by the Debtor pursuant to section 521 of the Bankruptcy Code, as the same may have been or may be amended, modified, or supplemented from time to time.

154. “*Secured Claim*” means a Claim: (a) secured by a Lien on property in which the Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code; or (b) otherwise Allowed pursuant to the Plan or a Final Order as a Secured Claim.

155. “*Secured Tax Claim*” means any Secured Claim that, absent its secured status, would be entitled to priority in right of payment under section 507(a)(8) of the Bankruptcy Code (determined irrespective of time limitations), including any related Secured Claim for penalties.

156. “*Selected Contracts*” means the Executory Contracts and Unexpired Leases assumed and assigned to the Purchaser.

157. “*SEP Account*” means that certain escrow account in which the Debtor deposited \$5.375 million in Cash in civil penalties and additionally deposited \$4.875 million in Cash to be used for funding supplemental environmental projects, in accordance with the Consent Decree.

158. “*Shared Services Agreement*” means a shared services agreement entered into by and among Purchaser and the Debtor in connection with the Sale Transaction, in form and substance reasonably satisfactory to the Purchaser and Debtor in their sole discretion.

159. “*Solicitation Date*” means the date upon which the Debtor commences the solicitation process in accordance with the Solicitation Procedures Order.

160. “*Solicitation Procedures*” means the form of solicitation procedures approved by, and attached as an exhibit to, the Solicitation Procedures Order.

161. “*Solicitation Procedures Order*” means the *Order (I) Conditionally Approving the Disclosure Statement, (II) Scheduling Combined Hearing on Approval of Disclosure Statement*

and Confirmation of Plan, (III) Establishing Procedures for Solicitation and Tabulation of Votes on Plan and (IV) Approving Related Matters, entered on [___] [Docket No. [___]].

162. “*Steelworkers CBA*” means that certain labor agreement entered into on or about February 28, 2014 between the Debtor and the United Steelworkers AFL/CIO-CLC, effective for the period from March 1, 2014 to February 29, 2016, as amended by the Memorandum of Understanding Between Hovensa L.L.C. and United Steelworkers, AFL/CIO-CLC on behalf of Local Union 8526 executed on February 16, 2015.

163. “*Subsequent Distribution Date*” means the date following the Initial Distribution Date on which the Liquidating Trustee, in its reasonable discretion, may elect to make distributions to Holders of Allowed Claims pursuant to the Plan.

164. “*Supplemental Administrative Claims Bar Date*” means the date to be established pursuant to Article II.A hereof.

165. “*Supplemental Administrative Claims Objection Bar Date*” means the date to be established pursuant to Article II.A hereof.

166. “*Transaction Documents*” shall have the meaning ascribed to such term in the Purchase Agreement.

167. “*Tort Claims*” means any claim for civil liability that does not arise from a contractual dispute.

168. “*Tort Claims Reserve*” that certain reserve that may be created upon entry of an Order of the Bankruptcy Court by the Debtor or the Liquidating Trustee, as applicable, using funds from the GUC Beneficiary Reserve in an amount to be agreed by the Committee, the Debtor, and the Liquidating Trustee, as appropriate, for the sole benefit of the Holders of Class 4 Claims, which amount shall be subject only to the GUC Beneficiary Reserve Carve Out as shall be set forth in the Reserve Motion.

169. “*Trustee*” means the Environmental Response Trustee or the Liquidating Trustee, as applicable.

170. “*Unexpired Lease*” means a lease of nonresidential real property to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

171. “*Unimpaired*” means, with respect to a Claim or an Interest, or a Class of Claims or Interests, “unimpaired” within the meaning of section 1124 of the Bankruptcy Code.

172. “*United States*” means the United States of America and its agencies.

173. “*U.S. Trustee*” means the Office of the United States Trustee, Region 21, serving the federal judicial district established for the USVI.

174. “*U.S. Trustee Fees*” means fees arising under 28 U.S.C. § 1930(a)(6) and, to the extent applicable, accrued interest thereon arising under 31 U.S.C. § 3717.

175. “*USVI*” means the U.S. Virgin Islands.

176. “*USVI Concession Fee*” means \$100,000,000.00.

177. “*Wind Down*” means the wind down and dissolution of the Debtor’s Estate following the Effective Date as set forth in Article IV.J.

B. Rules of Interpretation

For purposes herein: (1) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (2) unless otherwise specified, any reference in the Plan to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (3) unless otherwise specified, any reference in the Plan to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified, or supplemented from time to time; (4) unless otherwise specified, all references in the Plan to “Articles” are references to Articles hereof or hereto; (5) unless otherwise stated, the words “herein,” “hereof,” and “hereto” refer to the Plan in its entirety rather than to a particular portion of the Plan; (6) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (7) unless otherwise specified, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (8) any term used in capitalized form in the Plan that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable; (9) references to docket numbers of documents Filed in the Chapter 11 Case are references to the docket numbers under the Bankruptcy Court’s CM/ECF system; (10) references to “Proofs of Claim,” “Holders of Claims,” “Disputed Claims,” and the like shall include “Proofs of Interest,” “Holders of Interests,” “Disputed Interests,” and the like, as applicable; (11) references to “shareholders,” “directors,” and/or “officers” shall also include “members” and/or “managers”; as applicable, and vice versa, as such terms are defined under the applicable state limited liability company laws and vice versa; and (12) any immaterial effectuating provisions may be interpreted by the Debtor or the Liquidating Trustee in such a manner that is consistent with the overall purpose and intent of the Plan all without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

C. Computation of Time

The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed in the Plan.

D. Governing Law

Except to the extent the Bankruptcy Code or Bankruptcy Rules apply, and subject to the provisions of any contract, lease, instrument, release, indenture, or other agreement or document entered into expressly in connection herewith, the rights and obligations arising hereunder shall be governed by, and construed and enforced in accordance with, the laws of Delaware, without giving effect to conflict of laws principles.

E. Reference to Monetary Figures

All references in the Plan to monetary figures shall refer to currency of the United States, unless otherwise expressly provided in the Plan.

F. Controlling Document

In the event of an inconsistency between the Plan and the Disclosure Statement, the terms of the Plan shall control in all respects. In the event of an inconsistency between the Plan and the Plan Supplement, the Plan shall control. In the event of any inconsistency between the Plan and the Confirmation Order, the Confirmation Order shall control.

ARTICLE II.

ADMINISTRATIVE CLAIMS, PRIORITY TAX CLAIMS, PROFESSIONAL FEE CLAIMS, DIP FACILITY CLAIMS, AND U.S. TRUSTEE STATUTORY FEES

A. Administrative Claims

Subject to the provisions of sections 327, 330(a), and 331 of the Bankruptcy Code, except to the extent that a Holder of an Allowed Administrative Claim and, as applicable, the Debtor, the Liquidating Trustee, or the Environmental Response Trustee agree to less favorable treatment, or such Holder has been paid by the Debtor prior to the Effective Date, the Debtor, the Liquidating Trustee, or the Environmental Response Trustee, as applicable, shall pay each Holder of an Allowed Administrative Claim the full unpaid amount of such Allowed Administrative Claim in Cash from the Liquidating Trust Assets in full and final satisfaction, settlement, discharge, and release of and in exchange for such Holder's Allowed Administrative Claim: (1) if an Administrative Claim is Allowed on or prior to the Effective Date, on the Effective Date or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter); (2) if an Administrative Claim is Allowed after the Effective Date, on the date such Administrative Claim is Allowed or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter); (3) at such time and upon such terms as may be agreed upon by such Holder and the Debtor or the Liquidating Trustee, as applicable; or (4) at such time and upon such terms as set forth in an Order of the Bankruptcy Court; provided, however, that any Administrative Claim that has been assumed by the Purchaser pursuant to the Purchase Agreement shall not be an obligation of the Debtor, the Liquidating Trust, or the Environmental Response Trust. Any Allowed Administrative Claims that are Environmental Claims shall be addressed through the

Environmental Response Trust in full and final satisfaction, settlement, discharge, and release thereof, and in exchange for such Holder's Allowed Administrative Claim.

ADMINISTRATIVE CLAIMS ARE NOT CLASSIFIED AND ARE TREATED AS REQUIRED BY THE BANKRUPTCY CODE. THE HOLDERS OF SUCH CLAIMS ARE NOT ENTITLED TO VOTE ON THE PLAN.

1. Administrative Claims Bar Date

Holders of Administrative Claims incurred prior to the Administrative Claims Bar Date that were required to File and serve a request for payment of such Administrative Claims and that do not File and serve such a request by the Administrative Claims Bar Date are forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtor or its Estate, and such Administrative Claims shall be deemed discharged as of the Effective Date, except as provided in this Plan.

2. Supplemental Administrative Claims Bar Date

Holders of Administrative Claims based upon liabilities incurred by the Debtor in the ordinary course of its business on or after January 16, 2016 but prior to the Effective Date must File and serve such Claims on the Liquidating Trustee within 45 days after the Effective Date or such claims shall be forever barred against the Debtor or its Estate. Objections to the requests for payment of such Administrative Claims must be Filed and served on the Liquidating Trustee and the requesting party within 20 days after the Filing of the applicable request for payment of such Administrative Claims.

3. Administrative and Priority Claims Reserve

On the Effective Date or as soon as practicable thereafter, the Debtor shall fund the Administrative and Priority Claims Reserve in Cash as described in Article IV.F.1 hereof. Any amounts remaining in the Administrative and Priority Claims Reserve after payment of all Allowed Administrative, Priority, and Professional Fee Claims and the U.S. Trustee Fees shall be transferred as determined by the Liquidating Trustee in its reasonable discretion, including to a charitable organization.

B. Priority Tax Claims

Except to the extent that a Holder of an Allowed Priority Tax Claim and, as applicable, the Debtor or the Liquidating Trustee agree to a less favorable treatment, or such Holder has been paid by the Debtor prior to the Effective Date, in full and final satisfaction, settlement, discharge, and release of and in exchange for such Holder's Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim shall be treated in accordance with section 1129(a)(9)(C) of the Bankruptcy Code and satisfied with a Cash distribution from the Liquidating Trust Assets on the Effective Date or as soon as reasonably practicable thereafter; provided, however, that any Priority Tax Claim that has been assumed by the Purchaser pursuant to the Purchase Agreement shall not be an obligation of the Debtor, the Liquidating Trust, or the Environmental Response Trust. All Allowed Priority Tax Claims that are not due and payable on or before the Effective Date shall be paid in the ordinary course of business as such

obligations become due. Any Claims asserted by a Governmental Unit on account of any penalties and assessments shall not be Priority Tax Claims. On the Effective Date, any Liens securing any Allowed Priority Tax Claims shall be deemed released, terminated, and extinguished, in each case without further notice to or order of the Bankruptcy Court, act, or action under applicable law, regulation, order or rule, or the vote, consent, authorization, or approval of any Person or Governmental Unit.

PRIORITY TAX CLAIMS ARE NOT CLASSIFIED AND ARE TREATED AS REQUIRED BY THE BANKRUPTCY CODE. THE HOLDERS OF SUCH CLAIMS ARE NOT ENTITLED TO VOTE ON THE PLAN.

C. *Professional Fee Claims*

1. Final Fee Applications

All final requests for payment of Professional Fee Claims shall be Filed and served on the Liquidating Trust no later than the first Business Day that is forty-five (45) days after the Effective Date. After notice provided in accordance with the procedures established by the Bankruptcy Code and prior Bankruptcy Court Orders, the Allowed amounts of such Professional Fee Claims shall be determined by the Bankruptcy Court.

2. Professional Fee Claims

The amount of Professional Fee Claims owing to the Professionals shall be paid in Cash to such Professionals from Liquidating Trust Assets, without interest or other earnings therefrom, as soon as reasonably practicable after such Claims are Allowed by an Order of the Bankruptcy Court, which Order is not subject to a stay; provided, however, that any amounts in excess of the aggregate amount budgeted for the Committee in the Final DIP Order, its members and Committee professionals, as well as amounts to be used for (a) the payment of fees of the Committee, its members and Committee professionals, and (b) any post-Plan confirmation costs and fees incurred in connection with (i) determining the extent and validity of Class 4, 5, and 6 Claims and (ii) making distributions to Holders of Allowed Class 4, 5, and 6 Claims, shall be paid in Cash from the GUC Beneficiary Reserve Carve Out and shall not be paid from the Liquidating Trust Assets.

3. Post-Effective Date Fees and Expenses

Except as otherwise specifically provided in the Plan, from and after the Effective Date, the Liquidating Trust shall, in the ordinary course of business and without any further notice or application to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable legal, professional, or other fees and expenses related to implementation of the Plan and Consummation incurred on or after the Effective Date by (i) the Debtor, (ii) the Committee, and (iii) the Liquidating Trust. Upon the Effective Date, any requirement that Professionals comply with sections 327 through 331, 363, and 1103 of the Bankruptcy Code and Local Bankruptcy Rules, or the Professional Fee Order in seeking retention or compensation for services rendered after such date shall terminate, and the Liquidating Trust may employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

PROFESSIONAL FEE CLAIMS ARE NOT CLASSIFIED AND ARE TREATED AS REQUIRED BY THE BANKRUPTCY CODE. THE HOLDERS OF SUCH CLAIMS ARE NOT ENTITLED TO VOTE ON THE PLAN.

D. DIP Facility Claims

The DIP Facility Claims include all Claims of the DIP Lenders arising under or relating to the DIP Agreement or the Final DIP Order. On the Effective Date, or as soon as practicable thereafter, each holder of an Allowed DIP Facility Claim, in full, final, and complete settlement, release, and discharge of such Claim, will be paid in full in Cash all outstanding principal and accrued but unpaid interest, costs, fees, and expenses owing as of the Effective Date, and any other amounts due and owing under the DIP Documents from the Liquidating Trust Assets, solely to the extent such amounts were not already paid in full in Cash to the DIP Lenders by the Purchaser or the Debtor prior to the Effective Date.

DIP FACILITY CLAIMS ARE NOT CLASSIFIED AND ARE TREATED AS REQUIRED BY THE BANKRUPTCY CODE. THE HOLDERS OF SUCH CLAIMS ARE NOT ENTITLED TO VOTE ON THE PLAN.

E. U.S. Trustee Statutory Fees

On the Effective Date, or as soon as practicable thereafter, the Debtor or the Liquidating Trustee, as applicable, shall pay all U.S. Trustee Fees in Cash for each quarter (including any fraction thereof) from the Liquidating Trust Assets until the Chapter 11 Case is converted, dismissed, or closed, whichever occurs first.

ARTICLE III.

CLASSIFICATION, TREATMENT, AND VOTING OF CLAIMS AND INTERESTS

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Priority Tax Claims, Professional Fee Claims, and DIP Facility Claims have not been classified and thus are excluded from the Classes of Claims and Interests set forth in this Article III.

A. Summary of Classifications

All Claims and Interests, other than Administrative Claims, Priority Tax Claims, Professional Fee Claims, and DIP Facility Claims are classified in the Classes set forth in this Article III for all purposes, including voting, Confirmation, and distributions under the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim or Interest is also classified in a particular Class for the purpose of receiving distributions under the Plan only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

1. Class Identification

The classification of Claims against and Interests in the Debtor pursuant to the Plan is as set forth below. To the extent there are no Holders of Claims or Interests in a particular Class or Classes, such Claims or Interests shall be treated as set forth in Article III.D hereof.

Class	Claims and Interests	Status	Voting Rights
1	Other Priority Claims	Unimpaired	Not Entitled to Vote (Conclusively Presumed to Accept)
2	Other Secured Claims	Unimpaired	Not Entitled to Vote (Conclusively Presumed to Accept)
3	GVI Claims	Impaired	Entitled to Vote
4	Tort Claims	Impaired	Entitled to Vote
5	Other Non-Governmental and Non-Tort General Unsecured Claims	Impaired	Entitled to Vote
6	Other Governmental General Unsecured Claims	Impaired	Entitled to Vote
7	Interests	Impaired	Not Entitled to Vote (Deemed to Reject)

B. Treatment of Classes of Claims and Interests

Except to the extent that the Debtor or the Liquidating Trustee, as applicable, and a Holder of an Allowed Claim or Interest, as applicable, agree to a less favorable treatment, such Holder shall receive under the Plan the treatment described below in full and final satisfaction, settlement, discharge, and release of and in exchange for such Holder's Allowed Claim or Interest.

1. Class 1—Other Priority Claims

- (a) *Classification:* Class 1 consists of any Other Priority Claims against the Debtor.
- (b) *Treatment:* Except to the extent that a Holder of an Allowed Claim in Class 1 agrees to a less favorable treatment of its Allowed Claim, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Claim in Class 1, each such Holder shall receive on the Effective Date or as soon as reasonably practicable thereafter, to the extent not already paid by the Debtor prior to the Effective Date, Cash in an amount equal to such Allowed Class 1 Claim.

- (c) *Voting:* Class 1 is Unimpaired. Holders of Allowed Class 1 Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Holders of Allowed Class 1 Claims are not entitled to vote to accept or reject the Plan with respect to Class 1 Claims.

2. Class 2—Other Secured Claims

- (a) *Classification:* Class 2 consists of all Other Secured Claims, including all Secured Tax Claims, against the Debtor.
- (b) *Treatment:* Except to the extent that a Holder of an Allowed Claim in Class 2 agrees to a less favorable treatment of its Allowed Claim, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Claim in Class 2, each such Holder shall receive, on the Effective Date or as soon as reasonably practicable thereafter, as the Debtor or the Liquidating Trustee, as applicable, determines:
 - (i) payment in full in Cash of such Holder's Allowed Class 2 Claim;
 - (ii) the Collateral securing such Holder's Allowed Class 2 Claim; or
 - (iii) such other treatment rendering such Holder's Allowed Class 2 Claim Unimpaired in accordance with section 1124(1) or (2) of the Bankruptcy Code.
- (c) *Voting:* Class 2 is Unimpaired. Holders of Allowed Class 2 Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Holders of Allowed Class 2 Claims are not entitled to vote to accept or reject the Plan with respect to Class 2 Claims.

3. Class 3—GVI Claims

- (a) *Classification:* Class 3 consists of the GVI Claims against the Debtor.
- (b) *Treatment:* Except to the extent that the GVI and, as applicable, the Debtor or the Liquidating Trustee agree to less favorable treatment, or the GVI has been paid by the Purchaser prior to the Effective Date, the GVI shall receive, in full and final satisfaction, settlement, discharge, and release of and in exchange for the Allowed Class 3 Claims:
 - (i) the full unpaid amount, if any, of the USVI Concession Fee in Cash in accordance with the Purchase Agreement on the Closing Date of the Sale Transaction or as soon as reasonably practicable thereafter;

(ii) transfer of the Government Parcels to the GVI at the closing of the Sale Transaction in accordance with section 7.32 of the Purchase Agreement and the Sale Order; and

(iii) performance of the Debtor's obligations relating to or arising under RCRA or other Environmental Law giving rise to claims that are not dischargeable under current bankruptcy law, including the Debtor's compliance with the Environmental Remediation Program, or such other treatment as agreed by the Debtor or the Liquidating Trustee, as applicable, and the GVI.

(c) *Voting:* Class 3 is Impaired. Therefore, Holders of Class 3 Claims are entitled to vote to accept or reject the Plan with respect to Class 3 Claims.

4. Class 4—Tort Claims

(a) *Classification:* Class 4 consists of all Tort Claims against the Debtor.

(b) *Treatment:* In full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Claim in Class 4, on the Effective Date or as soon as reasonably practicable thereafter, each Holder of an Allowed Class 4 Claim shall receive a beneficial interest in its Pro Rata share of the GUC Beneficiary Reserve or the Tort Claims Reserve, as determined by the Liquidating Trustee, based on the total aggregate amount of Allowed Claims in Classes 4, 5, and 6 on or after the Effective Date.

(c) *Voting:* Class 4 is Impaired. Therefore, Holders of Class 4 Claims are entitled to vote to accept or reject the Plan with respect to Class 4 Claims.

5. Class 5—Other Non-Governmental and Non-Tort General Unsecured Claims

(a) *Classification:* Class 5 consists of all Other Non-Governmental and Non-Tort General Unsecured Claims against the Debtor.

(b) *Treatment:* In full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Claim in Class 5, on the Effective Date or as soon as reasonably practicable thereafter, each Holder of an Allowed Class 5 Claim shall receive a beneficial interest in its Pro Rata share of the GUC Beneficiary Reserve or the Other General Unsecured Claims Reserve, as determined by the Liquidating Trustee, based on the total aggregate amount of Allowed Claims in Classes 4, 5, and 6 on or after the Effective Date.

(c) *Voting:* Class 5 is Impaired. Therefore, Holders of Class 5 Claims are entitled to vote to accept or reject the Plan with respect to Class 5 Claims.

6. Class 6—Other Governmental General Unsecured Claims

- (a) *Classification:* Class 6 consists of all Other Governmental General Unsecured Claims against the Debtor.
- (b) *Treatment:* In full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Claim in Class 6, on the Effective Date or as soon as reasonably practicable thereafter, each Holder of an Allowed Class 6 Claim shall receive a beneficial interest in its Pro Rata share of the GUC Beneficiary Reserve, or the Other General Unsecured Claims Reserve, as determined by the Liquidating Trustee, based on the total aggregate amount of Allowed Claims in Classes 4, 5, and 6 on or after the Effective Date, or such other treatment as agreed by the Committee, the Debtor, or the Liquidating Trustee, as appropriate.
- (c) *Voting:* Class 6 is Impaired. Therefore, Holders of Class 6 Claims are entitled to vote to accept or reject the Plan with respect to Class 6 Claims.

7. Class 7—Interests

- (a) *Classification:* Class 7 consists of all Interests.
- (b) *Treatment:* Class 7 Interests shall be canceled, released, discharged, and extinguished as of the Effective Date, and shall be of no further force or effect, and Holders of Class 7 Interests shall not receive any distribution on account of such Class 7 Interests.
- (c) *Voting:* Class 7 is Impaired. Holders of Interests in Class 7 are deemed to have rejected the Plan with respect to Class 7 Interests pursuant to section 1126(g) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject the Plan with respect to Class 7 Interests.

C. *Special Provision Governing Unimpaired Claims*

Except as otherwise provided in the Plan, nothing under the Plan shall affect the rights of the Liquidating Trustee, the Debtor, or the Debtor's Estate with respect to any Unimpaired Claims, including all rights with respect to legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

D. *Elimination of Vacant Classes*

Any Class of Claims or Interests that does not have a Holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court as of the date of the Combined Hearing shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

E. Voting Classes; Presumed Acceptance by Non-Voting Classes

If a Class contains Claims or Interests eligible to vote and no Holders of Claims or Interests eligible to vote in such Class vote to accept or reject the Plan, the Debtor shall request that the Bankruptcy Court to deem the Plan accepted by the Holders of such Claims or Interests in such Class.

F. Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code

The Debtor shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests. The Debtor reserves the right to modify the Plan in accordance with Article XII to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, including by modifying the treatment applicable to a Class of Claims or Interests to render such Class of Claims or Interests Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules.

ARTICLE IV.

MEANS FOR IMPLEMENTATION OF THE PLAN

A. Distributions on Account of Allowed Claims and Interests

Except as otherwise provided in this Plan, on the Effective Date or as soon as practicable thereafter (or if a Claim is not an Allowed Claim on the Effective Date, on the date that such Claim becomes an Allowed Claim, or as soon as reasonably practicable thereafter), each holder of an Allowed Administrative Claim, Allowed Priority Tax Claim, Allowed Professional Fee Claim, Allowed DIP Facility Claim, Allowed GVI Claim, Allowed Other Secured Claim, and Allowed Other Priority Claim shall receive distributions under the Plan in full in Cash from the Liquidating Trust Assets. Holders of General Unsecured Claims shall receive distributions under the Plan from the Liquidating Trust Assets in accordance with Article VI.A. Except as otherwise provided herein, Holders of Claims shall not be entitled to interest, dividends, or accruals on the distributions regardless of whether such distributions are delivered on or at any time after the Effective Date.

B. Sources of Consideration for Plan Distributions

This Plan provides for the distribution of (a) all Cash held by or for the benefit of the Debtor on the Effective Date, including the net proceeds from the Sale Transaction Proceeds that inure to the benefit of the Estate, plus (b) all Cash realized after the Effective Date from the sale, collection or other disposition of property of the Estate to Holders of Allowed Claims in Classes 4, 5, and 6 against the Debtor in accordance with the treatment of such Claims provided herein. In addition to Cash on hand, the Debtor's property of the Estate consists primarily of the Debtor's rights under the Purchase Agreement, the Debtor's rights with respect to the RCRA Trusts and the SEP Account, the Remaining Assets, and all Causes of Action not previously settled, released, or exculpated under the Plan.

C. General Settlement of Claims

Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims, Interests, and controversies resolved pursuant to the Plan.

D. Formation of the Liquidating Trust

On or prior to the Effective Date, the Debtor will execute the Liquidating Trust Agreement and will take all other steps necessary to establish the Liquidating Trust pursuant to the Liquidating Trust Agreement as further described in Article VII hereof.

Before the Combined Hearing, the Debtor will appoint the Liquidating Trustee, who shall act in accordance with the Liquidating Trust Agreement.

On the Effective Date, and in accordance with and pursuant to the terms of the Plan, the Debtor will transfer to the Liquidating Trust all of its rights, title, and interests in all of the Liquidating Trust Assets. The powers, authority, responsibilities, and duties of the Liquidating Trust and the Liquidating Trustee are set forth in and will be governed by the Liquidating Trust Agreement, the Plan, and the Confirmation Order.

E. Formation of the Environmental Response Trust

On or prior to the Effective Date, the Debtor will execute the Environmental Response Trust Agreement and will take all other steps necessary to establish the Environmental Response Trust pursuant to the Environmental Response Trust Agreement as further described in Article VIII hereof.

Before the Combined Hearing, the Debtor, in consultation with the EPA and the DPNR, will appoint the Environmental Response Trustee, who shall act in accordance with the Environmental Response Trust Agreement.

On the Effective Date, and in accordance with and pursuant to the terms of the Plan, the Debtor will transfer to the Environmental Response Trust all of its rights, title, and interests in all of the Environmental Response Trust Assets other than the Environmental Response Trust Cash Distribution. On each Environmental Response Trust Cash Transfer Date, and in accordance with and pursuant to the terms of the Plan, the Debtor shall transfer the Environmental Response Trust Cash Distribution to the Environmental Response Trust. The powers, authority, responsibilities, and duties of the Environmental Response Trust and the Environmental Response Trustee are set forth in and will be governed by the Environmental Response Trust Agreement, the Plan, and the Confirmation Order.

F. Creation of Reserves

1. Administrative and Priority Claims Reserve

On the Effective Date or as soon as reasonably practicable thereafter, the Debtor shall fund, and the Liquidating Trustee shall establish and thereafter maintain, the Administrative and Priority Claims Reserve with the Administrative and Priority Claims Reserve Amount 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 Administrative and Priority Claims Reserve shall be used by the Liquidating Trustee only for the payment of U.S. Trustee Fees and Administrative, Priority, and Professional Fee Claims Allowed after the Effective Date to the extent that such Claims have not been paid in full on or prior to the Effective Date. Any amounts remaining in the Administrative and Priority Claims Reserve after payment of all Allowed Administrative, Priority, and Professional Fee Claims and the U.S. Trustee Fees shall be transferred as determined by the Liquidating Trustee in its reasonable discretion, including to a charitable organization.

2. 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 Debtor shall fund, and the Liquidating Trustee shall establish and thereafter maintain, the GUC Beneficiary Reserve with the initial principal amount of \$30 million 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 General Unsecured Claims, subject only to the GUC Beneficiary Reserve Carve Out. To the extent not otherwise provided herein or ordered by the Bankruptcy Court, the Liquidating Trustee shall estimate appropriate reserves of Cash to be set aside in order to pay or reserve for Disputed General Unsecured Claims. Any amounts set aside to pay or reserve for Disputed General Unsecured Claims shall include the amounts needed to fund the ongoing costs and expenses of such reserve, including, without limitation, taxes in respect of Disputed General Unsecured Claims, if any. To the extent any funds remain in the GUC Beneficiary Reserve after all General Unsecured Claims 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 to a charitable organization.

The Debtor or the Liquidating Trustee, as applicable, may file the Reserve Motion to establish (a) the Tort Claims Reserve for the benefit of Holders of Class 4 Claims, and (b) the Other General Unsecured Claims Reserve for the benefit of Holders of Class 5 and 6 Claims. Each of the Tort Claims Reserve and the Other General Unsecured 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 an allocated percentage of the GUC Beneficiary Reserve Carve Out as described in the Reserve Motion. To the extent not otherwise provided herein or ordered by the Bankruptcy Court, the Liquidating Trustee shall estimate appropriate reserves of Cash to

be set aside in each of the Tort Claims Reserve and the Other General Unsecured Claims Reserve in order to pay or reserve for Disputed Class 4 Claims and Disputed Class 5 and 6 Claims, respectively. Any amounts set aside to pay or reserve for Disputed General Unsecured Claims shall include the amounts needed to fund the ongoing costs and expenses of such reserve, including, without limitation, taxes in respect of Disputed General Unsecured Claims, if any. To the extent any funds remain in the Tort Claims Reserve and the Other General Unsecured Claims Reserve after all of Class 4, 5, and 6 Claims have been paid or otherwise satisfied in full, such remaining funds shall be transferred to the GUC Beneficiary Reserve or, to the extent the GUC Beneficiary Reserve has been terminated, as determined by the Liquidating Trustee in its reasonable discretion, including to a charitable organization.

3. Environmental Response Trust Account

On each Environmental Response Trust Cash Transfer Date, and in accordance with and pursuant to the terms of the Plan, the Debtor shall transfer the Environmental Response Trust Cash Distribution to the Environmental Response Trust Account, which funds shall vest in the Environmental Response Trust free and clear of all liens, Claims, encumbrances, charges, and other Interests, other than any liability to the Governmental Units expressly provided for in the Environmental Response Trust Agreement. The Environmental Response Trustee shall use the funds in the Environmental Response Trust Account to pay for any post-Effective Date costs and expenses associated with Environmental Matters, including Remediation Costs and associated costs and fees incurred by the Environmental Response Trust.

The Environmental Response Trustee may require reimbursement from the Purchaser for (or request that the Purchaser pay on the Environmental Response Trust's behalf) the Remediation Costs and other costs incurred by the Environmental Response Trust in an aggregate amount not to exceed \$30 million on the terms set forth in the Environmental Response Trust Agreement. Additionally, the Purchaser shall supply, or cause one of its affiliates to supply, power after the closing of the Sale Transaction to the Debtor or the Environmental Response Trust, as applicable, as set forth in Section 7.24 of the Purchase Agreement; in each case in accordance with the terms of the Purchase Agreement, the Shared Services Agreement, and any other Transaction Document, as applicable.

To the extent any funds remain in the Environmental Response Trust after all Remediation Costs have been paid or otherwise satisfied in full, such remaining funds shall be transferred (a) first, to the Purchaser, solely to the extent the Purchaser previously provided such funds to the Environmental Response Trust; and (b) then, to the EPA for use in environmental remediation projects at other, unrelated sites; provided, however, that any funds remaining in the SEP Account shall be released to the Environmental Response Trust once all the conditions of the Consent Decree have been satisfied.

G. Settlement of Promissory Note Claims

In connection with the Plan, the JV Parties, in their capacity as lenders under the Promissory Notes, have agreed to waive and release their respective Promissory Note Claims.

The JV Parties shall not receive any distribution on account of their Promissory Note Claims, and the JV Parties have agreed to and shall not take any action to interfere or that is inconsistent with the waiver of, any recovery or distribution on account of such Promissory Note Claims; provided, that notwithstanding anything contained herein, such waiver and release shall not bar PDV-VI, HOVIC, and/or their Affiliates from asserting their respective Promissory Note Claims for purposes of setoff, offset, recoupment or other defensive purposes (which Promissory Note Claims, for the avoidance of doubt, shall not be entitled to any affirmative recovery from the Debtor).

H. D&O Policies

Notwithstanding anything to the contrary contained herein or in the Confirmation Order, Confirmation of the Plan shall not impair or otherwise modify any obligations arising under the D&O Policies. In addition, after the Effective Date, the Liquidating Trustee shall not terminate or otherwise reduce coverage under any D&O Policy, including, without limitation, any “tail policy,” in effect as of the Effective Date, and all Executive Committee Members and officers of the Debtor who served in such capacity as of the Petition Date or at any time prior to the Effective Date shall be entitled to the full benefits of any such policy for the full term of such policy regardless of whether such Executive Committee Members and/or officers remain in such positions after the Effective Date.

I. Retiree Benefits

From and after the Effective Date, the Debtor or Liquidating Trust shall continue to honor the Debtor’s retiree benefits (as defined in section 1114(a) of the Bankruptcy Code) and any similar health, disability or death benefits in accordance with the terms of the Retiree Benefit Plan or other agreements governing the payment of such benefits, subject to any rights to amend, modify or terminate such benefits under the terms of the Retiree Benefit Plan, other agreements or applicable non-bankruptcy law (to the extent not otherwise assumed by HOVIC or its designee).

J. Wind Down

On and after the Effective Date, the Liquidating Trustee and the Environmental Response Trustee shall be authorized to implement the Plan and any applicable Orders of the Bankruptcy Court. On and after the Final Environmental Response Trust Cash Transfer Date, the Liquidating Trustee shall have the power and authority to take any action necessary to wind down and dissolve the Debtor’s Estate, other than with respect to the Environmental Matters.

As soon as reasonably practicable after the Effective Date, the Liquidating Trustee and the Environmental Response Trustee, as applicable, shall: (1) cause the Debtor to comply with, and abide by, the terms of the Sale Order and Purchase Agreement; (2) take such other actions as the Liquidating Trustee and the Environmental Response Trustee, as applicable, may determine to be necessary or desirable to carry out the purposes of the Plan.

In addition, as soon as reasonably practicable after the Final Environmental Response Trust Cash Transfer Date, the Liquidating Trustee shall file for the Debtor a certificate of dissolution or equivalent document, together with all other necessary corporate and company

documents, to effect the dissolution of the Debtor under the applicable laws of the USVI. The certificate of dissolution or equivalent document may be executed by the Liquidating Trustee without need for any action or approval by the equity holders or the Executive Committee of the Debtor. From and after the Final Environmental Response Trust Cash Transfer Date, the Debtor (1) for all purposes shall be deemed to have withdrawn its business operations from any state or territory in which the Debtor was previously conducting, or is registered or licensed to conduct, its business operations, and shall not be required to file any document, pay any sum, or take any other action in order to effectuate such withdrawal, (2) shall be deemed to have cancelled pursuant to the Plan all Interests, and (3) shall not be liable in any manner to any taxing authority for franchise, business, license, or similar taxes accruing on or after the Effective Date. For the avoidance of doubt, from and after the Final Environmental Response Trust Cash Transfer Date, notwithstanding the Debtor's dissolution, the Debtor shall be deemed to remain intact solely with respect to the preparation, filing, review, and resolution of applications for Professional Fee Claims.

The filing of the final monthly report (for the month in which the Effective Date occurs) and any subsequent quarterly reports required under the U.S. Trustee guidelines shall be the responsibility of the Liquidating Trustee, as described in the Liquidating Trust Agreement.

K. Cancellation of Securities and Agreements

On the Effective Date, except as otherwise specifically provided for in the Plan: (1) the obligations of the Debtor under any certificate, share, note, bond, indenture, purchase right, or other instrument or document, including, without limitation, the DIP Agreement, the Promissory Notes, and the LLC Agreement, directly or indirectly evidencing or creating any indebtedness or obligation of or ownership interest, equity, or portfolio interest in the Debtor or any warrants, options, or other securities exercisable or exchangeable for, or convertible into, debt, equity, ownership, or profits interests in the Debtor giving rise to any Claim or Interest shall be cancelled as to the Debtor; and (2) the obligations of the Debtor pursuant, relating, or pertaining to any agreements, indentures, certificates of designation, bylaws, or certificates or articles of incorporation or similar documents governing the shares, certificates, notes, bonds, indenture, purchase rights, options, warrants, or other instruments or documents evidencing or creating any indebtedness or obligation of the Debtor shall be fully released, settled, and compromised; provided, that, notwithstanding Confirmation or the occurrence of the Effective Date, any such agreement that governs the rights of the Holder of a Claim shall continue in effect solely for purposes of allowing such Holders to receive distributions under the Plan as provided herein.

L. Corporate Action

Upon the Effective Date, by virtue of the solicitation of votes in favor of the Plan and entry of the Confirmation Order, all actions contemplated by the Plan (including any action to be undertaken by the Liquidating Trustee and the Environmental Response Trustee) shall be deemed authorized, approved, and, to the extent taken prior to the Effective Date, ratified without any requirement for further action by Holders of Claims or Interests, the Debtor, or any other Entity or Person. All matters provided for in the Plan involving the corporate structure of the Debtor, and any corporate action required by the Debtor in connection therewith, shall be

deemed to have occurred and shall be in effect, without any requirement of further action by the Debtor or the Debtor's Estate.

Upon the Effective Date or as soon as reasonably practicable thereafter, the existing Executive Committee of the Debtor shall be dissolved without any further action required on the part of the Debtor or the Debtor's officers, Executive Committee Members, managers, or members, and officers of the Debtor shall be dismissed without any further action required on the part of any the Debtor, or the officers, managers, members, or Executive Committee Members of the Debtor. The Executive Committee Members, managers, and officers of the Debtor, the Liquidating Trustee, and the Environmental Response Trustee, as applicable, shall be authorized to execute, deliver, File, or record such contracts, instruments, and other agreements or documents and take such other actions as they may deem necessary or appropriate in their reasonable discretion to implement the provisions of this Article IV.L.

The authorizations and approvals contemplated by this Article IV.L shall be effective notwithstanding any requirements under applicable nonbankruptcy law.

M. Effectuating Documents; Further Transactions

Prior to the Effective Date, the Debtor is, and on and after the Effective Date, the Liquidating Trustee and the Environmental Response Trustee are, authorized to and may issue, execute, deliver, file, or record such contracts, securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan, without the need for any approvals, authorization, or consents except for those expressly required pursuant to the Plan.

N. Exemption from Certain Taxes and Fees

To the maximum extent provided by section 1146(a) of the Bankruptcy Code, any post-Confirmation transfer from any Entity pursuant to, in contemplation of, or in connection with the Plan or pursuant to: (1) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtor; or (2) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instruments of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, or other similar tax or governmental assessment, in each case to the extent permitted by applicable bankruptcy law, and the appropriate state or local government officials or agents shall forego collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

O. Causes of Action

The Debtor waives and releases all Causes of Action under this Plan, other than the Causes of Action that are expressly transferred to the Purchaser in connection with the Sale

Transaction and the Sale Order; provided, that such waiver and release shall not bar the Debtor from asserting claims for purposes of setoff, offset, recoupment or other defensive purposes.

P. Closing the Chapter 11 Case

When all Disputed Claims have become Allowed or disallowed, the Liquidating Trust has terminated in accordance with Article VII and Article VIII hereof, all remaining Cash in the Liquidating Trust has been distributed in accordance with the Plan, and the business and affairs of the Debtor have been otherwise wound down, 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. For the avoidance of doubt, the Chapter 11 Case may be closed prior to termination of the Environmental Response Trust.

ARTICLE V.

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption and Assignment of Executory Contracts and Unexpired Leases

On the Effective Date, except as otherwise provided herein, each Executory Contract and Unexpired Lease not previously rejected, assumed, or assumed and assigned shall be deemed automatically rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such Executory Contract or Unexpired Lease: (1) is specifically described in the Plan as to be assumed in connection with Confirmation of the Plan, or is specifically scheduled to be assumed or assumed and assigned pursuant to the Plan and the Contract Assumption Schedule; (2) is subject to a pending motion to assume or assume and assign such Unexpired Lease or Executory Contract as of the Effective Date; (3) is to be, or has been, assumed or assumed and assigned to the Purchaser or another third party, as applicable, in connection with the Sale Transaction; (4) is a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan or with the Purchaser; or (5) is a D&O Policy or an insurance policy to be transferred to the Liquidating Trust or the Environmental Response Trust. Entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such assumptions, assignments, and rejections, including the assumption of the Executory Contracts or Unexpired Leases as provided in the Contract Assumption Schedule, pursuant to sections 365(a) and 1123 of the Bankruptcy Code.

B. Cure of Defaults for Assumed Executory Contracts and Unexpired Leases

Any Cure Obligations under each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the Cure Obligation in Cash on the Effective Date or as soon as reasonably practicable thereafter, subject to the limitations described below, by the Debtor, Liquidating Trustee, or the Environmental Response Trustee, as applicable, as an Administrative Claim or by the Purchaser in accordance with the Purchase Agreement, as applicable, or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree. In the event of a dispute regarding (1) the amount of the Cure Obligation, (2) the ability of the Debtor's Estate or any assignee to provide "adequate assurance of future performance" (within the

meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed, or (3) any other matter pertaining to assumption, the Cure Obligations shall be satisfied following the later to occur of the Effective Date or entry of a Final Order or Orders resolving the dispute and approving the assumption; provided, that prior to the Effective Date, the Debtor, and on and after the Effective Date, the Liquidating Trustee or the Environmental Response Trustee, as applicable, may settle any dispute regarding the amount of any Cure Obligation without any further notice to any party or any action, order, or approval of the Bankruptcy Court.

As soon as reasonably practicable after the Solicitation Date, the Debtor shall cause notice of the proposed assumption and proposed Cure Obligations (solely to the extent such Cure Obligations were not already established in connection with the Sale Transaction and Sale Order) to be sent to applicable counterparties. Any objection by such counterparty must be Filed, served, and actually received by the Debtor not later than five (5) Business Days after service of notice of the Debtor's proposed assumption and associated Cure Obligations. Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the proposed assumption or Cure Obligation will be deemed to have assented to such assumption or Cure Obligation. For the avoidance of doubt, in accordance with the Bid Procedures Order and the Sale Order, the Cure Obligations relating to the Selected Contracts shall be binding on the parties thereto for all purposes in this Chapter 11 Case and otherwise, and will constitute a final determination of the total Cure Obligations required to be paid in connection with the assumption and assignment of such Executory Contracts and Unexpired Leases.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan, or otherwise, shall result in the full release and satisfaction of any Claims or defaults, subject to satisfaction of the Cure Obligations, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time before the effective date of assumption and/or assignment. **Anything in the Schedules and any Proofs of Claim Filed with respect to an Executory Contract or Unexpired Lease that has been assumed or assumed and assigned shall be deemed disallowed and expunged, without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.**

C. Claims Based on Rejection of Executory Contracts and Unexpired Leases

Unless otherwise provided by an order of the Bankruptcy Court, any Proofs of Claim based on the rejection of the Debtor's Executory Contracts or Unexpired Leases pursuant to the Plan or otherwise, must be Filed with the Claims and Noticing Agent and served on the Debtor or, after the Effective Date, the Liquidating Trustee or the Environmental Response Trustee, as applicable, no later than thirty (30) days after the earlier of the Effective Date or the effective date of the rejection of the applicable Executory Contract or Unexpired Lease. In addition, any objection to the rejection of an Executory Contract or Unexpired Lease must be Filed with the Bankruptcy Court and served on the Debtor or, after the Effective Date, the Liquidating Trustee or the Environmental Response Trustee, as applicable, no later than fourteen (14) days after service of the Debtor's proposed rejection of such Executory Contract or Unexpired Lease or the Confirmation Order if deemed rejected under the Plan.

Any Holders of Claims arising from the rejection of an Executory Contract or Unexpired Lease for which Proofs of Claims were not timely Filed as set forth in the paragraph above shall not (1) be treated as a creditor with respect to such Claim, (2) be permitted to vote to accept or reject the Plan on account of any Claim arising from such rejection, or (3) participate in any distribution in the Chapter 11 Case on account of such Claim, and any Claims arising from the rejection of an Executory Contract or Unexpired Lease not Filed with the Bankruptcy Court within such time will be automatically disallowed, forever barred from assertion, and shall not be enforceable against the Debtor, the Liquidating Trust, the Environmental Response Trust, the Debtor's Estate, or the property of any of the foregoing without the need for any objection by the Debtor, the Liquidating Trustee, or the Environmental Response Trustee, as applicable, or further notice to, or action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully compromised, settled, and released, notwithstanding anything in the Schedules or a Proof of Claim to the contrary. All Allowed Claims arising from the rejection of the Debtor's prepetition Executory Contracts or prepetition Unexpired Leases shall be classified as General Unsecured Claims in Class 5 or 6, as applicable, against the Debtor, except as otherwise provided by order of the Bankruptcy Court.

D. Purchase Agreement; Assumed Contracts

The Debtor's assumption or rejection of any Executory Contract or Unexpired Lease pursuant to the Plan shall be subject in all respects to the Purchaser's rights and obligations, including any Cure Obligations assumed by the Purchaser in accordance with the Purchase Agreement, with respect to any such Executory Contracts or Unexpired Leases that constitute Assumed Contracts (as defined in the Purchase Agreement) as set forth in the Purchase Agreement, including Article II thereof.

E. Modifications, Amendments, Supplements, Restatements, or Other Agreements

Unless otherwise provided in the Plan, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and all Executory Contracts and Unexpired Leases related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated under the Plan.

Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor or on behalf of the Debtor's Estate during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith.

F. Insurance Policies

Each insurance policy, including the D&O Policies, shall be assumed by the Debtor and assigned to the Liquidating Trust or the Environmental Response Trust, as applicable, effective as of the Effective Date, pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such insurance policy previously was rejected by the Debtor or the Debtor's Estate pursuant to a Bankruptcy Court order or is the subject of a motion to reject pending on the Effective Date, and coverage for defense and indemnity under any such insurance policy, including the D&O Policies, shall remain available to all individuals within the definition of "Insured" in any such insurance policy, including the D&O Policies.

G. Indemnification Obligations

Subject to the occurrence of the Effective Date, the obligations of the Debtor as of the Effective Date to indemnify, defend, reimburse, or limit the liability of the current and former Executive Committee Members, officers, employees, attorneys, other professionals and agents of the Debtor, and such current and former Executive Committee Members', officers', employees', attorneys', other professionals' and agents' of the Debtor, and such current respective Affiliates, respectively, against any Claims or Causes of Action under the Indemnification Provisions or applicable law, shall survive Confirmation, shall be assumed by the Debtor and assigned to the Liquidating Trust or the Environmental Response Trust, as applicable, and will remain in effect after the Effective Date if such indemnification, defense, reimbursement, or limitation is owed in connection with an event occurring before the Effective Date; provided, however, that, notwithstanding anything herein to the contrary, the obligation of the Liquidating Trust or the Environmental Response Trust, as applicable, to fund such Indemnification Provisions shall be limited to the extent of coverage available under any Liquidating Trust Insurance Policies or Environmental Response Trust Insurance Policies, as applicable, including the D&O Policies.

H. Reservation of Rights

Neither the exclusion nor inclusion of any contract or lease in the Plan Supplement, nor anything contained in the Plan, shall constitute an admission by the Debtor that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that the Debtor's Estate has any liability thereunder. In the event of a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtor, the Liquidating Trustee, or the Environmental Response Trustee, as applicable, shall have 90 days following entry of a Final Order resolving such dispute to alter the treatment of such contract or lease as otherwise provided in the Plan.

ARTICLE VI.

PROVISIONS GOVERNING DISTRIBUTIONS

A. 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 from the Debtor, the Liquidating Trustee on behalf of the Debtor, or the Liquidating Trust, as applicable. 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. If and to the extent that there are Disputed Claims, distributions on account of any such Disputed Claims shall be made pursuant to the provisions set forth in Article IX hereof. Notwithstanding anything to the contrary in the Plan, no Holder of an Allowed Claim 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.

B. Disbursing Agent

The Liquidating Trustee shall be the Disbursing Agent under this Plan. The Disbursing Agent shall make all distributions under this Plan.

C. Delivery of Distributions and Undeliverable or Unclaimed Distributions

1. Record Date for Distribution

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.

2. Delivery of Distributions in General

(a) Payments and Distributions on 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.

(b) Special Rules for Distributions to Holders of Disputed Claims

Notwithstanding any provision otherwise in the Plan and except as may be agreed to by, as applicable, the Debtor or 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, other than with respect to Professional Claims, 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.

(c) Distributions

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.

Prior to making any distributions on Allowed General Unsecured Claims, the Liquidating Trustee shall estimate appropriate reserves of Cash to be set aside in order to pay or reserve for Disputed General Unsecured Claims. Any amounts set aside to pay or reserve for Disputed General Unsecured Claims shall include the amounts needed to fund the ongoing costs and expenses of such reserve, including, without limitation, taxes in respect of Disputed General Unsecured Claims, if any.

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 applicable Disbursing Agent and distributed on the next Subsequent Distribution Date that occurs after such Claim is Allowed. In accordance with Article IX.D hereof, no interest shall accrue or be paid on the unpaid amount of any distribution paid pursuant to the Plan.

3. 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.

4. Undeliverable Distributions and Unclaimed Property

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 applicable Disbursing Agent has determined the then current address of such Holder, at which time such distribution shall be made to such Holder without interest; provided, however, that such 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.

5. Manner of Payment Pursuant to the Plan

Any payment in Cash to be made pursuant to the Plan shall be made at the election of the Debtor, the Liquidating Trustee and the Environmental Response Trustee, as applicable, by check or by wire transfer.

D. Compliance with Tax Requirements/Allocations

In connection with the Plan, to the extent applicable, the Debtor, the Liquidating Trustee, and the Environmental Response Trustee shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant hereto shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Debtor, the Liquidating Trustee, and the Environmental Response Trustee shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms they believe are reasonable and appropriate. Amounts properly withheld from distributions to a Holder and paid over to any Governmental Unit will be treated as amounts distributed to the Holder. The Liquidating Trustee or the Environmental Response Trustee, as applicable, may request that any Holder of an Allowed Claim provide it with all forms and information required to comply with all tax withholding and reporting requirements imposed on it by any Governmental Unit (the “Required Tax Documents”). Notwithstanding any other provision of the Plan, Holders that receive a distribution pursuant to the Plan are responsible for the payment and satisfaction of all tax obligations, including income, withholding, and other tax obligations imposed with respect to the distribution. In the event that a Holder fails to return Required Tax Documents within six (6) months after a written request by the Liquidating Trustee or the Environmental Response Trustee, such Holder, its Claim, and all distributions on account of such Holder’s Claim shall be treated as undeliverable distributions and unclaimed property in accordance with Article VI.C.4 hereof.

Distributions in respect of Allowed Claims shall be allocated first to the principal amount of such Claims (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claims, to any portion of such Claims for accrued but unpaid interest. It is uncertain whether this allocation will be respected by the tax authorities of a Governmental Unit, which may instead take the position that payments should be allocated first to interest or should be pro-rated between principal and interest. If the tax authorities prevail in this assertion, Holders may be required to recognize ordinary interest income even though they have an overall loss (and possibly a capital loss, the deductibility of which may be limited) with respect to their Claims. Each Holder is urged to consult its own tax advisor regarding the amount of its Claim allocable to accrued but unpaid interest and the character of any loss with respect to accrued but unpaid interest that the Holder previously included in income.

E. Claims Paid or Payable by Third Parties

1. Claims Paid by Third Parties; Recourse to Collateral

The Debtor or the Liquidating Trustee, as applicable, shall be authorized to reduce in full a Claim, and such Claim shall be disallowed without a Claims objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment in full on account of such Claim from a party

that is not the Debtor or the Liquidating Trust, as applicable, including on account of recourse to collateral held by third parties that secure such Claim. To the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not the Debtor on account of such Claim, such Holder shall, within 14 days of receipt thereof, repay or return the distribution to the Debtor, to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan. The failure of such Holder to timely repay or return such distribution shall result in the Holder owing the Debtor annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the 14-day grace period specified above until the amount is repaid.

2. Claims Payable by Insurance, Third Parties; Recourse to Collateral

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to the Debtor's insurance policies, surety agreements, other non-Debtor payment agreements, or collateral held by a third party, until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy, surety agreement, other non-Debtor payment agreement, or collateral, as applicable. To the extent that one or more of the Debtor's insurers, sureties, or non-Debtor payors pays or satisfies in full or in part a Claim (if and to the extent adjudicated by a court of competent jurisdiction), or such collateral or proceeds from such collateral is used to satisfy such Claim, then immediately upon such payment, the applicable portion of such Claim shall be expunged without a Claim objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

3. Applicability of Insurance Policies

Notwithstanding anything to the contrary in the Plan or Confirmation Order, Confirmation and Consummation of the Plan shall not limit or affect the rights of any third-party beneficiary or other covered party of any of the Debtor's insurance policies with respect to such policies, including, without limitation, the D&O Policies.

ARTICLE VII.

THE LIQUIDATING TRUST

A. *Liquidating Trust Creation*

On the Effective Date, the Liquidating Trust will be established as a Delaware statutory trust and become effective for the benefit of the Liquidating Trust Beneficiaries. The Liquidating Trust Agreement shall (1) be in form and substance consistent in all respects with the Plan and acceptable to the Debtor, and (2) contain customary provisions for trust agreements utilized in comparable circumstances, including any and all provisions necessary to ensure continued treatment of the Liquidating Trust as a grantor trust and the Liquidating Trust Beneficiaries as the grantors and owners thereof for federal income tax purposes. All relevant parties (including the Debtor, the Liquidating Trustee, and the Liquidating Trust Beneficiaries) will take all actions necessary to cause the Liquidating Trust Assets to be transferred to the Liquidating Trust. The powers, authority, responsibilities, and duties of the Liquidating Trust

and the Liquidating Trustee are set forth in and will be governed by the Liquidating Trust Agreement, the Plan, and the Confirmation Order.

B. Purpose of the Liquidating Trust

The Liquidating Trust will be established for the primary purpose of liquidating the Liquidating Trust Assets and making distributions to Holders of Allowed Administrative, Priority, and Professional Fee 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.

C. Transfer of Assets to the Liquidating Trust

The Debtor and the Liquidating Trustee will establish the Liquidating Trust on behalf of the Liquidating Trust Beneficiaries pursuant to the Liquidating Trust Agreement, with the Liquidating Trust Beneficiaries to be treated as the grantors and deemed owners of the Liquidating Trust Assets. The Debtor will irrevocably transfer, assign, and deliver to the Liquidating Trust, on behalf of the Liquidating Trust 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 Liquidating Trust Beneficiaries (and with respect to the Liquidating Trust Insurance Policies, for the benefit of the beneficiaries thereof), subject to the Plan and the Liquidating Trust Agreement.

On the Effective Date, all Liquidating Trust Assets will 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. Notwithstanding anything herein to the contrary, the Liquidating Trust and the Liquidating Trustee shall be deemed to be fully bound by the terms of the Plan and the Confirmation Order.

For the avoidance of doubt, and notwithstanding anything herein to the contrary, the Debtor shall not transfer or be deemed to have transferred to the Liquidating Trust any claims or Causes of Action (1) released pursuant to Article X.D hereof, or (2) exculpated pursuant to Article X.F hereof.

D. Powers and Duties of the Liquidating Trust and Liquidating Trustee

The Liquidating Trust shall act for the Debtor in the same fiduciary capacity as applicable to a board of managers and officers, subject to the provisions of the Plan (and all certificates of

formation, membership agreements, and related documents are deemed amended by the Plan to permit and authorize the same). On the Effective Date, the persons acting as managers and officers of the Debtor shall be deemed to have resigned, and the Liquidating Trust and the Environmental Response Trust shall be appointed as the sole managers and sole officers of the Debtor and shall succeed to the powers of the Debtor's managers and officers. From and after the Effective Date, the Liquidating Trust, acting through the Liquidating Trustee, and the Environmental Response Trust, acting through the Environmental Response Trustee, shall be the sole representatives of, and shall act for, the Debtor in the capacities set forth in the applicable formation documents for each trust. Any distributions to be made under the Plan from the Liquidating Trust Assets shall be made by the Liquidating Trust. Notwithstanding anything herein to the contrary, the Debtor, the Liquidating Trust, and the Environmental Response Trust shall be deemed to be fully bound by the terms of the Plan and the Confirmation Order.

The powers and duties of the Liquidating Trustee shall be set forth in the Liquidating Trust Agreement and shall include the authority to hire employees and retain professionals.

E. Costs and Expenses Incurred by 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' fees and expenses) made by the Liquidating Trustee shall be paid in Cash from the Liquidating Trust Assets without any further notice to or action, order, or approval of the Bankruptcy Court; provided, however, that any fees and expenses incurred by the Liquidating Trustee in connection with determining the extent and validity of Class 4, 5, and 6 Claims and making distributions to Holders of Class 4, 5, and 6 Claims shall be paid in Cash from the GUC Beneficiary Reserve.

The Liquidating Trustee shall not be required to give any bond or surety or other security for the performance of their duties unless otherwise ordered by the Bankruptcy Court. Additionally, in the event that the Liquidating Trustee is so otherwise ordered, all costs and expenses of the Liquidating Trustee in procuring any such bond or surety shall be paid for with Cash derived from the Liquidating Trust Assets.

F. Tax Treatment of the Liquidating Trust

The Liquidating Trust is intended to qualify as a "grantor trust" for federal income tax purposes with the Liquidating Trust Beneficiaries treated as grantors and owners of the trust. For all federal income tax purposes, it is intended that the Liquidating Trust Beneficiaries of the Liquidating Trust be treated as grantors and owners thereof, that the Liquidating Trust be classified as a Liquidating Trust under 26 C.F.R. § 301.7701-4, and that the Liquidating Trust is owned by the Liquidating Trust Beneficiaries. Accordingly, for federal income tax purposes, it is intended that the Liquidating Trust Beneficiaries be treated as if they had received a distribution of undivided interests in the Liquidating Trust Assets and then contributed such interests to the Liquidating Trust. Accordingly, the Liquidating Trust will, in an expeditious but orderly manner, liquidate and convert to Cash the Liquidating Trust Assets, make timely distributions to the Liquidating Trust Beneficiaries pursuant to the Plan, and not unduly prolong the Liquidating Trust's duration. The Liquidating Trust will not be deemed a successor in

interest of the Debtor for any purpose other than as specifically set forth herein or in the Liquidating Trust Agreement.

The Liquidating Trustee shall file returns for the Liquidating Trust as a grantor trust pursuant to 26 C.F.R. § 1.671-4(a) and in accordance with this section of the Plan. The Liquidating Trust's taxable income, gain, loss, deduction or credit will be allocated to each Holder in accordance with their relative beneficial interests in the Liquidating Trust.

As soon as possible after the Effective Date, the Liquidating Trust shall make a good faith valuation of the Liquidating Trust Assets, and such valuation shall be used consistently by all parties for all federal income tax purposes. The Liquidating Trust also shall file (or cause to be filed) any other statements, returns, or disclosures relating to the Liquidating Trust that are required by any Governmental Unit for taxing purposes.

The Liquidating Trust may request an expedited determination of taxes of the Liquidating Trust under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Liquidating Trust for all taxable periods through the dissolution of the Liquidating Trust.

The Liquidating Trustee shall be responsible for filing all federal, state, local and non-U.S. tax returns for the Liquidating Trust. The Liquidating Trust shall comply with all withholding and reporting requirements imposed by any federal, state, local, or non-U.S. taxing authority, and all distributions made by the Liquidating Trust shall be subject to any such withholding and reporting requirements.

G. Distribution; Withholding

The Liquidating Trustee shall make, or cause to be made, all distributions under the Plan and the Liquidating Trust Agreement to Holders of Allowed Claims not paid prior to the Effective Date.

The Liquidating Trust, in its reasonable discretion, may withhold from amounts distributable to any Entity any and all amounts as required by the Plan, or applicable law, regulation, rule, ruling, directive, or other governmental requirement.

H. Insurance

The Liquidating Trust may maintain customary insurance coverage for the protection of Entities serving as administrators and overseers of the Liquidating Trust on and after the Effective Date.

I. Termination of the Liquidating Trust

The Liquidating Trustee shall be discharged and the Liquidating Trust shall be terminated, at such time as (1) all Disputed Claims 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, but 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.

J. Transfer of Beneficial Interests

Notwithstanding anything to the contrary in the Plan, beneficial interests in the Liquidating Trust shall not be transferrable except upon death of the interest holder or by operation of law.

K. Exculpation; Indemnification

The Liquidating Trustee, the Liquidating Trust, professionals retained by the Liquidating Trust, and representatives of each of the foregoing will be exculpated and indemnified pursuant to the terms of the Liquidating Trust Agreement. The Liquidating Trustee may use Liquidating Trust Assets to obtain commercially reasonable liability or other appropriate insurance with respect to the indemnification obligations of the Liquidating Trustee. The Liquidating Trustee may rely upon written information previously generated by the Debtor.

ARTICLE VIII.

THE ENVIRONMENTAL RESPONSE TRUST

A. Environmental Response Trust Creation

On the Effective Date, the Environmental Response Trust will be established as a Delaware statutory trust and become effective for the benefit of the Environmental Response Trust Beneficiaries. The Environmental Response Trust Agreement shall (1) be in form and substance consistent in all respects with the Plan and acceptable to the Debtor, and (2) contain customary provisions for trust agreements utilized in comparable circumstances, including any and all provisions necessary to ensure continued treatment of the Environmental Response Trust as a grantor trust and the Environmental Response Trust Beneficiaries as the grantors and owners thereof for federal income tax purposes. All relevant parties (including the Debtor, the Environmental Response Trustee, and the Environmental Response Trust Beneficiaries) will take all actions necessary to cause the Environmental Response Trust Assets to be transferred to the Environmental Response Trust. The powers, authority, responsibilities, and duties of the Environmental Response Trust and the Environmental Response Trustee are set forth in and will be governed by the Environmental Response Trust Agreement, the Plan, and the Confirmation Order.

B. Purpose of the Environmental Response Trust

The Environmental Response Trust will be established for the primary purpose of paying for any post-Effective Date costs and expenses associated with Environmental Matters, including Remediation Costs and associated costs and fees incurred by the Environmental Response Trust in accordance with the Plan, Confirmation Order, and the Environmental Response 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 purpose of the Environmental Response Trust.

The Environmental Response Trustee may require reimbursement from the Purchaser for (or request that the Purchaser pay on the Environmental Response Trust's behalf) the Remediation Costs and other costs incurred by the Environmental Response Trust in an aggregate amount not to exceed \$30 million on the terms set forth in the Environmental Response Trust Agreement. Additionally, the Purchaser shall supply, or cause one of its affiliates to supply, power after the closing of the Sale Transaction to the Debtor or the Environmental Response Trust, as applicable, as set forth in Section 7.24 of the Purchase Agreement; in each case in accordance with the terms of the Purchase Agreement, the Shared Services Agreement, and any other Transaction Document, as applicable.

C. Transfer of Assets to the Environmental Response Trust

The Debtor and the Environmental Response Trustee will establish the Environmental Response Trust on behalf of the Environmental Response Trust Beneficiaries pursuant to the Environmental Response Trust Agreement. The Debtor will irrevocably transfer, assign, and deliver to the Environmental Response Trust, on behalf of the Environmental Response Trust Beneficiaries, all of its rights, title, and interests in the Environmental Response Trust Assets notwithstanding any prohibition on assignment under nonbankruptcy law. The Environmental Response Trust will accept and hold the Environmental Response Trust Assets in the Environmental Response Trust for the benefit of the Environmental Response Trust Beneficiaries, subject to the Plan and the Environmental Response Trust Agreement.

On the Effective Date, all Environmental Response Trust Assets, other than the Environmental Response Trust Cash Distribution, will vest and be deemed to vest in the Environmental Response Trust in accordance with section 1141 of the Bankruptcy Code. As of the Effective Date, all Environmental Response Trust Assets vested in the Environmental Response Trust shall be free and clear of all Liens, Claims, and Interests, other than any liability to the Environmental Response Trust Beneficiaries as expressly provided for in the Environmental Response Trust Agreement.

On each Environmental Response Trust Cash Transfer Date, the applicable Environmental Response Trust Cash Distribution will vest and be deemed to vest in the Environmental Response Trust in accordance with section 1141 of the Bankruptcy Code. As of each Environmental Response Trust Cash Transfer Date, the applicable Environmental Response Trust Cash Distribution vested in the Environmental Response Trust shall be free and clear of all Liens, Claims, and Interests, other than any liability to the Environmental Response Trust Beneficiaries as expressly provided for in the Environmental Response Trust Agreement.

Upon the transfer by the Debtor of the Environmental Response Trust Assets and each Environmental Response Trust Cash Distribution to the Environmental Response Trust, the Debtor will have no reversionary or further interest in or with respect to any Environmental Response Trust Assets or the applicable Environmental Response Trust Cash Distribution. Notwithstanding anything herein to the contrary, the Environmental Response Trust and the Environmental Response Trustee shall be deemed to be fully bound by the terms of the Plan and the Confirmation Order.

For the avoidance of doubt, and notwithstanding anything herein to the contrary, the Debtor shall not transfer or be deemed to have transferred to the Environmental Response Trust any claims or Causes of Action (1) released pursuant to Article X.D hereof, or (2) exculpated pursuant to Article X.F hereof.

D. Funding of the Environmental Response Trust

On the Effective Date, and in accordance with and pursuant to the terms of the Plan, the Debtor will transfer to the Environmental Response Trust all of its rights, title, and interests in all of the Environmental Response Trust Assets other than the Environmental Response Trust Cash Distribution.

On each Environmental Response Trust Cash Transfer Date, and in accordance with and pursuant to the terms of the Plan, the Debtor shall transfer the Environmental Response Trust Cash Distribution to the Environmental Response Trust.

E. Powers and Duties of the Environmental Response Trust and Environmental Response Trustee

The Environmental Response Trust will be administered by the Environmental Response Trustee. The powers and duties of the Environmental Response Trustee shall be set forth in the Environmental Response Trust Agreement, and shall include, among other things, the duty to conduct the Environmental Remediation Program, including any Remedial Actions. As set forth in the Environmental Response Trust, any property placed into the Environmental Response Trust may be sold or transferred with the approval of the EPA and the applicable Environmental Response Trust Beneficiary, and the proceeds of any such sale or transfer shall be retained by the Environmental Response Trust to be used as provided in the Environmental Response Trust Agreement; provided, however, that the funds in the SEP Account shall be used only for the purposes set forth in the Consent Decree.

The Environmental Response Trust shall act for the Debtor in the same fiduciary capacity as applicable to a board of managers and officers, subject to the provisions of the Plan (and all certificates of formation, membership agreements, and related documents are deemed amended by the Plan to permit and authorize the same). On the Effective Date, the persons acting as managers and officers of the Debtor shall be deemed to have resigned, and the Environmental Response Trust and the Liquidating Trust shall be appointed as the sole managers and sole officers of, and shall succeed to the powers of the Debtor's managers and officers. From and after the Effective Date, the Liquidating Trust, acting through the Liquidating Trustee, and the Environmental Response Trust, acting through the Environmental Response Trustee, shall be the

sole representatives of, and shall act for, the Debtor. Notwithstanding anything herein to the contrary, the Debtor, the Liquidating Trust, and the Environmental Response Trust shall be deemed to be fully bound by the terms of the Plan and the Confirmation Order.

Upon the request of the DPNR or the EPA, the Environmental Response Trustee shall cooperate with the Environmental Response Trust Beneficiaries to secure brownfield or similar status to facilitate the re-use of any portions of the Remaining Assets.

F. Costs and Expenses Incurred by Environmental Response Trustee

Except as otherwise ordered by the Bankruptcy Court, the fees and expenses incurred by the Environmental Response Trustee on or after the Effective Date (including taxes) and any reasonable compensation and expense reimbursement Claims (including attorneys' fees and expenses) made by the Environmental Response Trustee shall be paid in Cash from the Environmental Response Trust Assets, without any further notice to or action, order, or approval of the Bankruptcy Court.

The Environmental Response Trustee shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court. Additionally, in the event that the Environmental Response Trustee is so otherwise ordered, all costs and expenses of procuring any such bond or surety shall be paid for with Cash derived from the Environmental Response Trust Assets.

G. Tax Treatment of the Environmental Response Trust

The Environmental Response Trust is intended to qualify as a "grantor trust" for federal income tax purposes with the Environmental Response Trust Beneficiaries treated as grantors and owners of the trust. For all federal income tax purposes, it is intended that the Environmental Response Trust Beneficiaries of the Environmental Response Trust be treated as grantors and owners thereof, that the Environmental Response Trust be classified as an Environmental Remediation Trust under 26 C.F.R. § 301.7701-4, and that the Environmental Response Trust is owned by the Environmental Response Trust Beneficiaries. Accordingly, for federal income tax purposes, it is intended that the Environmental Response Trust Beneficiaries be treated as if they had received a distribution of undivided interests in the Environmental Response Trust Assets and then contributed such interests to the Environmental Response Trust. Accordingly, the Environmental Response Trust will, in an expeditious but orderly manner, liquidate and convert to Cash the Environmental Response Trust Assets, make timely distributions to the Environmental Response Trust Beneficiaries pursuant to the Plan, and not unduly prolong the Environmental Response Trust's duration. The Environmental Response Trust will not be deemed a successor in interest of the Debtor for any purpose other than as specifically set forth herein or in the Environmental Response Trust Agreement.

The Environmental Response Trustee shall file returns for the Environmental Response Trust as a grantor trust pursuant to 26 C.F.R. § 1.671-4(a) and in accordance with this section of the Plan. The Environmental Response Trust's taxable income, gain, loss, deduction or credit will be allocated to each Holder in accordance with their relative beneficial interests in the Environmental Response Trust.

As soon as possible after the Effective Date, the Environmental Response Trust shall make a good faith valuation of the Environmental Response Trust Assets, and such valuation shall be used consistently by all parties for all federal income tax purposes. The Environmental Response Trust also shall file (or cause to be filed) any other statements, returns, or disclosures relating to the Environmental Response Trust that are required by any Governmental Unit for taxing purposes.

The Environmental Response Trust may request an expedited determination of taxes of the Environmental Response Trust under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Environmental Response Trust for all taxable periods through the dissolution of the Environmental Response Trust.

The Environmental Response Trustee shall be responsible for filing all federal, state, local and non-U.S. tax returns for the Environmental Response Trust. The Environmental Response Trust shall comply with all withholding and reporting requirements imposed by any federal, state, local, or non-U.S. taxing authority, and all distributions made by the Environmental Response Trust shall be subject to any such withholding and reporting requirements.

H. Insurance

The Environmental Response Trust may maintain customary insurance coverage for the protection of Entities serving as administrators and overseers of the Environmental Response Trust on and after the Effective Date.

I. Termination of the Environmental Response Trust

Consistent with the Environmental Response Trust Agreement, the Environmental Response Trustee shall not unduly prolong the duration of the Environmental Response Trust and shall at all times endeavor to resolve, settle, or otherwise satisfy all claims of the Environmental Response Trust Beneficiaries, and to terminate the Environmental Response Trust as soon as practicable consistent with the Environmental Response Trust Agreement.

J. Transfer of Beneficial Interests

Notwithstanding anything to the contrary in the Plan, beneficial interests in the Environmental Response Trust shall not be transferrable.

K. Exculpation; Indemnification

The Environmental Response Trustee, the Environmental Response Trust, professionals retained by the Environmental Response Trust, and representatives of each of the foregoing will be exculpated and indemnified pursuant to the terms of the Environmental Response Trust Agreement. The Environmental Response Trustee may use Environmental Response Trust Assets to obtain commercially reasonable liability or other appropriate insurance with respect to the indemnification obligations of the Environmental Response Trustee.

ARTICLE IX.

PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED, AND DISPUTED CLAIMS AND INTERESTS

A. *Resolution of Disputed Claims*

1. Allowance of Claims and Interests

Prior to the Effective Date, the Debtor, and on and after the Effective Date, the Liquidating Trustee shall have and shall retain any and all rights and defenses that the Debtor had with respect to any Claim or Interest, except with respect to any Claim or Interest deemed Allowed as of the Effective Date. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including the Confirmation Order), no Claim or Interest shall become an Allowed Claim or Interest unless and until such Claim or Interest is deemed Allowed under the Plan or the Bankruptcy Code or the Bankruptcy Court has entered a Final Order, including the Confirmation Order, in the Chapter 11 Case allowing such Claim.

2. Prosecution of Objections to Claims

Other than with respect to Professional Fee Claims, prior to the Effective Date, the Debtor, and on or after the Effective Date, the Liquidating Trustee shall have the authority to File objections to such Claims, and the exclusive authority to settle, compromise, withdraw, or litigate to judgment objections on behalf of the Debtor's Estate to any and all such Claims, regardless of whether such Claims are in a Class or otherwise. From and after the Effective Date, the Liquidating Trustee shall have the sole authority to administer and adjust the Claims Register 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.

3. Claims Estimation

On and after the Effective Date, the Liquidating Trustee may, at any time, request that the Bankruptcy Court estimate (i) any Disputed Claim pursuant to applicable law and (ii) any contingent or unliquidated Claim 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, and the Bankruptcy Court shall retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to the maximum extent permitted by law as determined by the Bankruptcy Court to estimate any such Disputed Claim, contingent Claim, or unliquidated Claim, including during the litigation concerning any objection to any Claim or during the pendency of any appeal relating to any such objection.

Notwithstanding any provision otherwise in the Plan to the contrary, a Claim 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, 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 Debtor or the Liquidating Trustee, as applicable, 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 Debtor or the Liquidating Trustee, as applicable, 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 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 may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

4. Expungement or Adjustment to Claims Without Objection

Any Claim that has been paid, satisfied, or superseded may be expunged on the Claims Register by, as applicable, the Debtor or the Liquidating Trustee (or the Claims and Noticing Agent at, as applicable, the Debtor's or the Liquidating Trustee's direction), and any Claim that has been amended may be adjusted thereon by, as applicable, the Debtor or 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.

5. Deadline to File Objections to Claims or Interests

Any objections to Claims or Interests shall be Filed no later than the Claims Objection Bar Date.

B. Disallowance of Claims

To the maximum extent provided by section 502(d) of the Bankruptcy Code, all Claims of any Entity from which property is recoverable by the Debtor or the Liquidating Trustee, as applicable, under section 542, 543, 550, or 553 of the Bankruptcy Code or that the Debtor or the Liquidating Trustee, as applicable, alleges is a transferee of a transfer that is avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code shall be disallowed if (1) the Entity, on the one hand, and the Debtor or the Liquidating Trustee, as applicable, on the other hand, agree or it has been determined by Final Order that such Entity or transferee is liable to turnover any property or monies under any of the aforementioned sections of the Bankruptcy Code, and (2) such Entity or transferee has failed to turnover such property by the date set forth in such agreement or Final Order.

C. Amendments to Claims

After the Confirmation Date, a Claim or Interest may not be filed or amended without the authorization of the Bankruptcy Court and any such new or amended Claim or Interest Filed shall be deemed disallowed and expunged without any further notice to or action, order, or approval of the Bankruptcy Court; provided, that such Holder may amend the Claim or Interest

Filed solely to decrease, but not to increase, the amount, number, or priority of such Claim or Interest, unless otherwise provided by the Bankruptcy Court.

D. No Interest

Unless otherwise specifically provided for in the Plan (including Article III hereof), by applicable law (including, without limitation, section 506(b) of the Bankruptcy Code), or agreed-to by, as applicable, the Debtor or the Liquidating Trustee, interest shall not accrue or be paid on any Claim, and no Holder of any Claim shall be entitled to interest accruing on and after the Petition Date on account of any Claim. Without limiting the foregoing, interest shall not accrue or be paid on any Claim after the Effective Date to the extent the final distribution paid on account of such Claim occurs after the Effective Date.

ARTICLE X.

SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS

A. Compromise and Settlement of Claims, Interests, and Controversies

Pursuant to Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, and except as otherwise specifically provided in the Plan or in any contract, instrument, or other agreement or document created pursuant to the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete settlement, compromise, and release, effective as of the Effective Date, of Claims, Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, including, but not limited to, all known or unknown liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtor or any of its assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability to the extent such Claims or Interests relate to services performed by employees of the Debtor before the Effective Date and that arise from a termination of employment, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (1) a Proof of Claim or proof of Interest based upon such debt, right, or Interest is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code; (2) a Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (3) the Holder of such a Claim or Interest has accepted the Plan. Any default by the Debtor or its Affiliates with respect to any Claim or Interest that existed immediately before or on account of the filing of the Chapter 11 Case shall be deemed cured on the Effective Date. The Confirmation Order shall be a judicial determination of the settlement, compromise, and release of all Claims and Interests, subject to the Effective Date occurring.

B. Release of Liens

Except as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with

the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estate shall be fully released, settled, and compromised and all rights, titles, and interests of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estate shall revert to the Debtor.

C. Subordinated Claims

The allowance, classification, and treatment of all Allowed Claims and Interests and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtor reserves the right for the Debtor or the Liquidating Trustee, as applicable, to re-classify any Allowed Claim or Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

D. Debtor Release

ON THE EFFECTIVE DATE OF THIS PLAN AND TO THE FULLEST EXTENT AUTHORIZED BY APPLICABLE LAW, THE RELEASED PARTIES AND THEIR RESPECTIVE PROPERTY WILL BE EXPRESSLY, UNCONDITIONALLY, GENERALLY AND INDIVIDUALLY AND COLLECTIVELY RELEASED, ACQUITTED AND DISCHARGED BY THE DEBTOR ON BEHALF OF ITSELF, ITS ESTATE, AND THE LIQUIDATING TRUST AND THE ENVIRONMENTAL RESPONSE TRUST (SUCH THAT THE LIQUIDATING TRUST AND THE ENVIRONMENTAL RESPONSE TRUST WILL NOT HOLD ANY CLAIMS OR CAUSES OF ACTION RELEASED PURSUANT TO THIS ARTICLE X.D), FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY EACH OF THE RELEASED PARTIES, FROM ANY AND ALL ACTIONS, CLAIMS, DEBTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, CAUSES OF ACTION, REMEDIES AND LIABILITIES WHATSOEVER, INCLUDING ANY DERIVATIVE CLAIMS ASSERTED ON BEHALF OF THE DEBTOR, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, MATURED OR UNMATURED, EXISTING OR HEREINAFTER ARISING, IN LAW, EQUITY, CONTRACT, TORT OR OTHERWISE, BY STATUTE, VIOLATIONS OF FEDERAL OR STATE SECURITIES LAWS OR OTHERWISE, BASED IN WHOLE OR IN PART UPON ANY ACT OR OMISSION, TRANSACTION, OR OTHER OCCURRENCE OR CIRCUMSTANCES EXISTING OR TAKING PLACE PRIOR TO OR ON THE EFFECTIVE DATE ARISING FROM OR RELATED IN ANY WAY TO THE DEBTOR, ANY OF THE DEBTOR'S PRESENT OR FORMER ASSETS, THE RELEASED PARTIES' INTERESTS IN OR MANAGEMENT OF THE DEBTOR, THIS PLAN, THE DISCLOSURE STATEMENT, THE SALE TRANSACTION, THE BIDDING AND SALE PROCESS FOR ANY ASSETS OF THE DEBTOR, THIS CHAPTER 11 CASE, OR ANY RESTRUCTURING OF CLAIMS OR INTERESTS UNDERTAKEN PRIOR TO THE EFFECTIVE DATE, INCLUDING THOSE THAT THE DEBTOR OR THE LIQUIDATING TRUST OR THE ENVIRONMENTAL RESPONSE TRUST WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT OR THAT

ANY HOLDER OF A CLAIM AGAINST OR INTEREST IN THE DEBTOR OR ANY OTHER ENTITY COULD HAVE BEEN LEGALLY ENTITLED TO ASSERT DERIVATIVELY OR ON BEHALF OF THE DEBTOR OR ITS ESTATE; PROVIDED, HOWEVER, THAT THE FOREGOING "DEBTOR RELEASE" SHALL NOT OPERATE TO WAIVE OR RELEASE ANY CLAIMS OR CAUSES OF ACTION OF THE DEBTOR OR ITS CHAPTER 11 ESTATE AGAINST A RELEASED PARTY ARISING UNDER (1) ANY CONTRACTUAL OBLIGATION OWED TO THE DEBTOR THAT IS ENTERED INTO OR ASSUMED PURSUANT TO THE PLAN, OR (2) THE PURCHASE AGREEMENT.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE DEBTOR RELEASE, WHICH INCLUDES BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS CONTAINED IN THE PLAN, AND, FURTHER, SHALL CONSTITUTE THE BANKRUPTCY COURT'S FINDING THAT THE DEBTOR RELEASE IS: (1) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE RELEASED PARTIES; (2) A GOOD-FAITH SETTLEMENT AND COMPROMISE OF THE CLAIMS RELEASED BY THE DEBTOR RELEASE; (3) IN THE BEST INTERESTS OF THE DEBTOR'S ESTATE AND ALL HOLDERS OF CLAIMS AND INTERESTS; (4) FAIR, EQUITABLE, AND REASONABLE; (5) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; AND (6) A BAR AGAINST ANY OF THE DEBTOR'S ESTATE, THE LIQUIDATING TRUST, OR THE ENVIRONMENTAL RESPONSE TRUST, ASSERTING ANY CLAIM OR CAUSE OF ACTION RELEASED PURSUANT TO THE DEBTOR RELEASE.

E. Third Party Release

ON THE EFFECTIVE DATE OF THIS PLAN AND TO THE FULLEST EXTENT AUTHORIZED BY APPLICABLE LAW, THE RELEASING PARTIES SHALL BE DEEMED TO HAVE EXPRESSLY, UNCONDITIONALLY, GENERALLY AND INDIVIDUALLY AND COLLECTIVELY, RELEASED AND ACQUITTED THE RELEASED PARTIES AND THEIR RESPECTIVE PROPERTY (INCLUDING THE RELEASED PARTIES' PREDECESSORS, SUCCESSORS AND ASSIGNS, SUBSIDIARIES, AFFILIATES, MANAGED ACCOUNTS OR FUNDS, CURRENT AND FORMER OFFICERS, DIRECTORS, PRINCIPALS, SHAREHOLDERS, DIRECT AND INDIRECT EQUITY HOLDERS, MEMBERS, PARTNERS (GENERAL AND LIMITED), EMPLOYEES, AGENTS, ADVISORY BOARD MEMBERS, FINANCIAL ADVISORS, ATTORNEYS, ACCOUNTANTS, INVESTMENT BANKERS, CONSULTANTS, REPRESENTATIVES, MANAGEMENT COMPANIES, FUND ADVISORS AND OTHER PROFESSIONALS) AND THE RELEASED PARTIES FROM ANY AND ALL ACTIONS, CLAIMS, INTERESTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, CAUSES OF ACTION, REMEDIES AND LIABILITIES WHATSOEVER, INCLUDING ANY DERIVATIVE CLAIMS ASSERTED ON BEHALF OF THE DEBTOR, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, MATURED OR UNMATURED, EXISTING OR HEREAFTER ARISING, IN LAW, EQUITY, CONTRACT, TORT OR OTHERWISE, THAT SUCH HOLDER (WHETHER INDIVIDUALLY OR COLLECTIVELY) EVER HAD, NOW HAS OR HEREAFTER CAN, SHALL OR MAY HAVE, BASED ON OR RELATING TO, OR IN ANY MANNER ARISING FROM OR RELATED IN ANY WAY TO THE DEBTOR, ANY OF THE

DEBTOR'S PRESENT OR FORMER ASSETS, THE RELEASED PARTIES' INTERESTS IN OR MANAGEMENT OF THE DEBTOR, THE BUSINESS OR CONTRACTUAL ARRANGEMENTS BETWEEN THE DEBTOR AND ANY RELEASED PARTY, THIS PLAN, THE DISCLOSURE STATEMENT, THE SALE TRANSACTION, THE BIDDING AND SALE PROCESS FOR ANY ASSETS OF THE DEBTOR, THIS CHAPTER 11 CASE, OR ANY RESTRUCTURING OF CLAIMS OR INTERESTS UNDERTAKEN PRIOR TO THE EFFECTIVE DATE, INCLUDING THOSE THAT THE DEBTOR OR THE LIQUIDATING TRUST OR THE ENVIRONMENTAL RESPONSE TRUST WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT OR THAT ANY HOLDER OF A CLAIM AGAINST OR INTEREST IN THE DEBTOR OR ANY OTHER ENTITY COULD HAVE BEEN LEGALLY ENTITLED TO ASSERT DERIVATIVELY OR ON BEHALF OF THE DEBTOR OR ITS ESTATE, EXCEPT FOR (I) ANY CLAIMS AND CAUSES OF ACTION FOR ACTUAL FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AND (II) THE RIGHT TO RECEIVE DISTRIBUTIONS FROM THE DEBTOR, THE LIQUIDATING TRUST, OR THE ENVIRONMENTAL RESPONSE TRUST ON ACCOUNT OF AN ALLOWED CLAIM AGAINST THE DEBTOR PURSUANT TO THIS PLAN.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE THIRD PARTY RELEASE, WHICH INCLUDES BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS CONTAINED IN THE PLAN, AND, *FURTHER*, SHALL CONSTITUTE THE BANKRUPTCY COURT'S FINDING THAT THE THIRD PARTY RELEASE IS: (1) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE RELEASED PARTIES; (2) A GOOD-FAITH SETTLEMENT AND COMPROMISE OF THE CLAIMS RELEASED BY THE THIRD PARTY RELEASE; (3) IN THE BEST INTERESTS OF THE DEBTOR AND ALL HOLDERS OF CLAIMS AND INTERESTS; (4) FAIR, EQUITABLE, AND REASONABLE; (5) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; AND (6) A BAR TO ANY OF THE RELEASING PARTIES ASSERTING ANY CLAIM RELEASED PURSUANT TO THE THIRD PARTY RELEASE.

F. Exculpation

The Exculpated Parties shall neither have, nor incur any liability to any Entity for any prepetition or postpetition act taken or omitted to be taken in connection with the Chapter 11 Case, or related to formulating, negotiating, soliciting, preparing, disseminating, confirming, or implementing the Plan or consummating the Plan, the Disclosure Statement, or any contract, instrument, release, or other agreement or document created or entered into in connection with the Plan or any other prepetition or postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring or liquidation of the Debtor, including the bidding and sale process for any assets of the Debtor. Without limiting the foregoing "Exculpation" provided under this Article X.F, the rights of any Holder of a Claim or Interest to enforce rights arising under the Plan shall be preserved, including the right to compel payment of distributions in accordance with the Plan; provided, that the foregoing "Exculpation" shall have no effect on the liability of any Entity solely to the extent resulting from any such act or omission that is determined in a final order to have constituted gross negligence or willful misconduct; provided, further, that each Exculpated Party shall be entitled to rely upon the advice of counsel concerning

his, her, or its duties pursuant to, or in connection with, the Plan or any other related document, instrument, or agreement

G. Injunction

EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR THE CONFIRMATION ORDER, ALL ENTITIES WHO HAVE HELD, HOLD, OR MAY HOLD CLAIMS, INTERESTS, CAUSES OF ACTION, OR LIABILITIES THAT: (1) ARE SUBJECT TO COMPROMISE AND SETTLEMENT PURSUANT TO THE TERMS OF THE PLAN; (2) HAVE BEEN RELEASED PURSUANT TO ARTICLE X.D HEREOF; (3) HAVE BEEN RELEASED PURSUANT TO ARTICLE X.E HEREOF; (4) ARE SUBJECT TO EXCULPATION PURSUANT TO ARTICLE X.F HEREOF; OR (5) ARE OTHERWISE STAYED OR TERMINATED PURSUANT TO THE TERMS OF THE PLAN, ARE PERMANENTLY ENJOINED AND PRECLUDED, FROM AND AFTER THE EFFECTIVE DATE, FROM: (A) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND, INCLUDING ON ACCOUNT OF ANY CLAIMS, INTERESTS, CAUSES OF ACTIONS, OR LIABILITIES THAT HAVE BEEN COMPROMISED OR SETTLED AGAINST THE DEBTOR, THE LIQUIDATING TRUST, THE ENVIRONMENTAL RESPONSE TRUST, OR ANY ENTITY SO RELEASED OR EXCULPATED (OR THE PROPERTY OR ESTATE OF ANY ENTITY, DIRECTLY OR INDIRECTLY, SO RELEASED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION, OR LIABILITIES; (B) ENFORCING, ATTACHING, COLLECTING, OR RECOVERING BY ANY MANNER OR MEANS ANY JUDGMENT, AWARD, DECREE, OR ORDER AGAINST THE DEBTOR, THE LIQUIDATING TRUST, THE ENVIRONMENTAL RESPONSE TRUST, OR ANY ENTITY SO RELEASED OR EXCULPATED (OR THE PROPERTY OR ESTATE OF THE DEBTOR OR ANY ENTITY SO RELEASED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION, OR LIABILITIES; (C) CREATING, PERFECTING, OR ENFORCING ANY LIEN, CLAIM, OR ENCUMBRANCE OF ANY KIND AGAINST THE DEBTOR, THE LIQUIDATING TRUST, THE ENVIRONMENTAL RESPONSE TRUST, OR ANY ENTITY SO RELEASED OR EXCULPATED (OR THE PROPERTY OR ESTATE OF THE DEBTOR OR ANY ENTITY SO RELEASED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION, OR LIABILITIES; (D) ASSERTING ANY RIGHT OF SETOFF OR SUBROGATION OF ANY KIND AGAINST ANY OBLIGATION DUE FROM THE DEBTOR OR ANY ENTITY SO RELEASED OR EXCULPATED (OR THE PROPERTY OR ESTATE OF THE DEBTOR OR ANY ENTITY SO RELEASED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION, OR LIABILITIES UNLESS SUCH ENTITY HAS TIMELY ASSERTED SUCH SETOFF OR SUBROGATION RIGHT PRIOR TO CONFIRMATION IN A DOCUMENT FILED WITH THE BANKRUPTCY COURT EXPLICITLY PRESERVING SUCH SETOFF OR SUBROGATION;

AND (E) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND AGAINST THE DEBTOR, THE LIQUIDATING TRUST, THE ENVIRONMENTAL RESPONSE TRUST, OR ANY ENTITY SO RELEASED OR EXCULPATED (OR THE PROPERTY OR ESTATE OF THE DEBTOR OR ANY ENTITY SO RELEASED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION, OR LIABILITIES RELEASED, SETTLED, OR COMPROMISED PURSUANT TO THE PLAN; *PROVIDED THAT* NOTHING CONTAINED IN THE PLAN SHALL PRECLUDE AN ENTITY FROM OBTAINING BENEFITS DIRECTLY AND EXPRESSLY PROVIDED TO SUCH ENTITY PURSUANT TO THE TERMS OF THE PLAN OR THE SALE ORDER; *PROVIDED, FURTHER, THAT* NOTHING CONTAINED IN THE PLAN SHALL BE CONSTRUED TO PREVENT ANY ENTITY FROM DEFENDING AGAINST CLAIMS OBJECTIONS OR COLLECTION ACTIONS WHETHER BY ASSERTING A RIGHT OF SETOFF OR OTHERWISE TO THE EXTENT PERMITTED BY LAW.

H. Waiver of Statutory Limitations on Releases

EACH RELEASING PARTY IN EACH OF THE RELEASES CONTAINED IN THE PLAN (INCLUDING UNDER THIS ARTICLE X) EXPRESSLY ACKNOWLEDGES THAT ALTHOUGH ORDINARILY A GENERAL RELEASE MAY NOT EXTEND TO CLAIMS WHICH THE RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR, WHICH IF KNOWN BY IT MAY HAVE MATERIALLY AFFECTED ITS SETTLEMENT WITH THE PARTY RELEASED, THEY HAVE CAREFULLY CONSIDERED AND TAKEN INTO ACCOUNT IN DETERMINING TO ENTER INTO THE ABOVE RELEASES THE POSSIBLE EXISTENCE OF SUCH UNKNOWN LOSSES OR CLAIMS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EACH RELEASING PARTY EXPRESSLY WAIVES ANY AND ALL RIGHTS CONFERRED UPON IT BY ANY STATUTE OR RULE OF LAW WHICH PROVIDES THAT A RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CLAIMANT DOES NOT KNOW OR SUSPECT TO EXIST IN ITS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY IT MAY HAVE MATERIALLY AFFECTED ITS SETTLEMENT WITH THE RELEASED PARTY. THE RELEASES CONTAINED IN THIS ARTICLE X ARE EFFECTIVE REGARDLESS OF WHETHER THOSE RELEASED MATTERS ARE PRESENTLY KNOWN, UNKNOWN, SUSPECTED OR UNSUSPECTED, FORESEEN OR UNFORESEEN.

I. Setoffs

Except as otherwise provided in the Plan, prior to the Effective Date, the Debtor, and on and after the Effective Date, 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 or Interest, may set off against any Allowed Claim or Interest on account of any Proof of Claim or proof of Interest 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 or Interest (before any distribution is made on account of such Allowed Claim or Interest), any claims, rights, and Causes of Action of any nature that the Debtor's Estate

may hold against the Holder of such Allowed Claim or Interest, 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 or Interest pursuant to the Plan shall constitute a waiver or release by the Debtor or the Liquidating Trustee, as applicable, 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 Claims or Interests be entitled to set off any Claim or Interest 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.

ARTICLE XI.

CONDITIONS PRECEDENT TO THE EFFECTIVE DATE OF THE PLAN

A. *Conditions Precedent to the Effective Date of the Plan*

This Plan shall not become effective unless and until each of the following conditions shall have been satisfied or waived pursuant to the provisions of Article XI.B hereof:

1. the Bankruptcy Court shall have entered the Confirmation Order in form and substance materially consistent with the Plan in all respects;
2. the Liquidating Trustee and the Environmental Response Trustee shall have been appointed;
3. the Liquidating Trust Agreement shall have been executed and become effective;
4. the Environmental Response Trust Agreement shall have been executed and become effective;
5. the Sale Transaction shall have closed;
6. the Administrative and Priority Claims Reserve shall have been established;
7. the GUC Beneficiary Reserve shall have been established and funded;
8. the Environmental Response Trust Account shall have been established;
9. HOVIC (or an affiliate thereof) shall have assumed the Debtor's pension obligations arising from the Pension Plan, in a form and manner acceptable to HOVIC, the Committee, the Pension Benefit Guaranty Corporation, and the Debtor and in accordance with the requirements of the Internal Revenue Code, ERISA and applicable law; and
10. all documents and agreements necessary to implement the Plan and the consummation of the Sale Transaction shall have (a) been tendered for delivery and (b) been

effected or executed by all Entities party thereto, and all conditions precedent to the effectiveness of such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

B. Waiver of Conditions

The conditions precedent to the Effective Date of the Plan set forth in this Article XI other than the closing of the Sale Transaction may be waived by the Debtor in its reasonable discretion without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or consummate the Plan; provided, however, that the Debtor shall consult with the EPA and the DPNR prior to waiving any conditions relating to the Environmental Response Trust. The failure of the Debtor, the Liquidating Trustee or the Environmental Response Trustee, as applicable, to exercise any of the foregoing rights shall not be deemed a waiver of any other rights, and each right shall be deemed an ongoing right that may be asserted at any time.

C. Effect of Non-Occurrence of Conditions to the Effective Date

If the Effective Date does not occur, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any claims by or Claims against or Interests in the Debtor, including, without limitation, the Promissory Note Claims and other Claims of the JV Parties in the event the Sale Transaction is not consummated; (2) prejudice in any manner the rights of the Debtor, the Debtor's Estate, any Holders, or any other Entity; or (3) constitute an admission, acknowledgment, offer, or undertaking by the Debtor, the Debtor's Estate, any Holders, or any other Entity in any respect.

ARTICLE XII.

MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN

A. Modification and Amendments

Subject to the limitations contained in the Plan, the Debtor reserves the right to modify the Plan as to material terms and seek Confirmation consistent with the Bankruptcy Code and, as appropriate, not resolicit votes on such modified Plan. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in the Plan, the Debtor expressly reserves its rights to alter, amend, or modify materially the Plan with respect to the Debtor, one or more times, after Confirmation, and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with Article XII hereof.

B. Effect of Confirmation on Modifications

Entry of a Confirmation Order shall mean that all modifications or amendments to the Plan occurring after the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

C. Revocation or Withdrawal of the Plan

The Debtor reserves the right to revoke or withdraw the Plan prior to the Effective Date. If the Debtor revokes or withdraws the Plan, or if Confirmation or Consummation does not occur, then: (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of any Claim or Interest or Class of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (3) nothing contained in the Plan shall: (a) constitute a waiver or release of any Claims or Interests, including, without limitation, the Promissory Note Claims and other Claims of the JV Parties in the event the Sale Transaction is not consummated; (b) prejudice in any manner the rights of the Debtor, the Debtor's Estate, or any other Entity; or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtor, the Debtor's Estate, or any other Entity.

ARTICLE XIII.

RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain jurisdiction over the Chapter 11 Case and all matters, arising out of, or related to, the Chapter 11 Case and the Plan, including jurisdiction to:

1. allow, disallow, determine, liquidate, classify, estimate, or establish the priority, Secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the Secured or unsecured status, priority, amount, or allowance of Claims or Interests;

2. decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;

3. resolve any matters related to: (a) the assumption and assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor may be liable in any manner and to hear, determine, and, if necessary, liquidate, any Claims arising therefrom, including Claims related to the rejection of an Executory Contract or Unexpired Lease, Cure Obligations pursuant to section 365 of the Bankruptcy Code, or any other matter related to such Executory Contract or Unexpired Lease; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; (c) the Debtor, the Liquidating Trustee, or the Environmental Response Trustee amending, modifying, or

supplementing, after the Effective Date, pursuant to Article V hereof, any Executory Contracts or Unexpired Leases set forth on the list of Executory Contracts and Unexpired Leases to be assumed and assigned or rejected or otherwise; and (d) any dispute regarding whether a contract or lease is or was executory or expired;

4. ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;

5. adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving the Debtor that may be pending on the Effective Date;

6. enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan or the Disclosure Statement;

7. enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

8. resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the Consummation, interpretation, or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;

9. issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan;

10. resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the settlements, compromises, releases, injunctions, exculpations, and other provisions contained in Article X hereof and enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions;

11. resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by the Holder of a Claim or Interest for amounts not timely repaid pursuant to Article VI.E.1 hereof;

12. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

13. determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document created in connection with the Plan or the Disclosure Statement;

14. adjudicate any and all disputes arising from or relating to distributions under the Plan or any transactions contemplated therein;

15. consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;
16. determine requests for the payment of Claims and Interests entitled to priority pursuant to section 507 of the Bankruptcy Code;
17. hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan, or the Confirmation Order, including disputes arising under agreements, documents, or instruments executed in connection with the Plan;
18. hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;
19. hear and determine all disputes involving the existence, nature, or scope of the Debtor's release, including any dispute relating to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred prior to or after the Effective Date;
20. enforce all orders previously entered by the Bankruptcy Court;
21. hear any other matter not inconsistent with the Bankruptcy Code;
22. enter an order concluding or closing the Chapter 11 Case; and
23. enforce the injunction, release, and exculpation provisions set forth in Article X hereof.

ARTICLE XIV.

MISCELLANEOUS PROVISIONS

A. *Immediate Binding Effect*

Subject to the terms hereof and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan, the Plan Supplement, and the Confirmation Order shall be immediately effective and enforceable and deemed binding upon the Debtor, the Debtor's Estate, the Liquidating Trustee, the Environmental Response Trustee, and any and all Holders of Claims or Interests (regardless of whether such Claims or Interests are deemed to have accepted or rejected the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions described in the Plan, each Entity acquiring property under the Plan or the Confirmation Order, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtor. All Claims and debts shall be as fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or debt has voted on the Plan.

B. Additional Documents

On or before the Effective Date, the Debtor may File with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtor and all Holders of Claims or Interests receiving distributions pursuant to the Plan and all other parties in interest shall, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

C. Dissolution of Committee

On the Effective Date, the Committee shall dissolve and members thereof shall be compromised, settled, and released from all rights and duties from or related to the Chapter 11 Case, except the Committee will remain intact solely with respect to the preparation, filing, review, and resolution of applications for Professional Fee Claims. The Debtor, the Liquidating Trustee, and the Environmental Response Trustee shall have no obligation to pay any fees or expenses incurred after the Effective Date by the Committee Members, other than as provided by the GUC Beneficiary Reserve Carve Out.

D. Reservation of Rights

Except as expressly set forth in the Plan, the Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. Neither the Plan, any statement or provision contained in the Plan, nor any action taken or not taken by the Debtor with respect to the Plan, the Disclosure Statement, the Confirmation Order, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of the Debtor with respect to the Holders of Claims or Interests prior to the Effective Date, including, without limitation, the Promissory Note Claims and other Claims of the JV Parties in the event the Sale Transaction is not consummated.

E. Successors and Assigns

The rights, benefits, and obligations of any Entity named or referred to in the Plan or the Confirmation Order shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, Affiliate, officer, director, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

F. Service of Documents

Any pleading, notice, or other document required by the Plan to be served on or delivered to the following entities and shall be served via first class mail, overnight delivery, or messenger on:

If to the Debtor, to:

HOVENSA L.L.C.
1 Estate Hope
Christiansted, St. Croix, U.S.V.I. 00820

Attn: Thomas E. Hill, Chief Restructuring Officer

with copies to:

Morrison & Foerster LLP
250 West 55th Street
New York, New York 10019
Attn: Lorenzo Marinuzzi, Esq. and Jennifer L. Marines, Esq.

If to the Liquidating Trustee, to:

[_____]

with copies to:

[_____]

If to the Environmental Response Trustee, to:

[_____]

with copies to:

[_____]

G. Term of Injunctions or Stays

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Case pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect to the maximum extent permitted by law. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

H. Entire Agreement

Except as otherwise indicated, the Plan, the Confirmation Order, and the Plan Supplement supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

I. Nonseverability of Plan Provisions

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void,

or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the consent of the Debtor; and (3) nonseverable and mutually dependent.

J. Waiver or Estoppel

Each Holder of a Claim or an Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, Secured or not subordinated by virtue of an agreement made with the Debtor or its counsel, or any other Entity, if such agreement was not disclosed in the Plan, the Disclosure Statement, or papers Filed with the Bankruptcy Court before the Confirmation Date.

K. Conflicts

Except as set forth in the Plan or unless otherwise ordered by the Bankruptcy Court, to the extent that the Disclosure Statement, any order of the Bankruptcy Court (other than the Confirmation Order), or any exhibit to the Plan or document executed or delivered in connection with the Plan is inconsistent with the terms of the Plan, the terms of the Plan shall control.

[Signature Page Follows]

Dated: December 9, 2015

Respectfully submitted, as of the date first set forth
above,

HOVENSA L.L.C.

By: _____
Name: Thomas E. Hill
Title: Chief Restructuring Officer

EXHIBIT B

Solicitation Procedures

[TO COME]

EXHIBIT C

Liquidation Analysis

[TO COME]