

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

In re:

HOVENSA L.L.C.,

Debtor.

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)

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Chapter 11

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Case No. 1:15-bk-10003-MFW

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

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TABLE OF CONTENTS

ARTICLE I. DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, AND GOVERNING LAW	1
A. Defined Terms	1
B. Rules of Interpretation	22
C. Computation of Time	23
D. Governing Law	23
E. Reference to Monetary Figures	23
F. Controlling Document	23
ARTICLE II. ADMINISTRATIVE CLAIMS, PRIORITY TAX CLAIMS, PROFESSIONAL FEE CLAIMS, DIP FACILITY CLAIMS, AND U.S. TRUSTEE STATUTORY FEES.....	23
A. Administrative Claims	23
B. Priority Tax Claims	24
C. Professional Fee Claims	25
D. DIP Facility Claims	26
E. U.S. Trustee Statutory Fees	26
ARTICLE III. CLASSIFICATION, TREATMENT, AND VOTING OF CLAIMS AND INTERESTS.....	27
A. Summary of Classifications	27
B. Treatment of Classes of Claims and Interests	28
C. Special Provision Governing Unimpaired Claims	31
D. Elimination of Vacant Classes	31
E. Voting Classes; Presumed Acceptance by Non-Voting Classes	31
F. Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code.....	32
ARTICLE IV. MEANS FOR IMPLEMENTATION OF THE PLAN	32
A. Distributions on Account of Allowed Claims and Interests	32
B. Sources of Consideration for Plan Distributions	32
C. General Settlement of Claims	33
D. Reorganized Debtor	33
E. Management of the Reorganized Debtor	35
F. Formation of the Liquidating Trust.....	36
G. Formation of the Environmental Response Trust.....	36
H. Books and Records.....	37
I. Creation of Reserves	37
J. Settlement of Promissory Note Claims	40
K. D&O Policies	40
L. Retiree Benefits.....	40
M. Steelworkers CBA.....	41
N. Pension Plan.....	41
O. EPA Settlement	41
P. VWNA Settlement	41
Q. Sale Order; Purchase Agreement	42
R. Wind Down.....	42
S. Cancellation of Securities and Agreements	43
T. Corporate Action.....	44
U. Effectuating Documents; Further Transactions.....	44
V. Exemption from Certain Taxes and Fees	44
W. Causes of Action.....	45
X. Closing the Chapter 11 Case	45
ARTICLE V. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES	45
A. Assumption, Assumption and Assignment, and Rejection of Executory Contracts and Unexpired Leases.....	45
B. Cure of Defaults for Assumed Executory Contracts and Unexpired Leases.....	46
C. Claims Based on Rejection of Executory Contracts and Unexpired Leases	46
D. Purchase Agreement; Assumed Contracts	47
E. Modifications, Amendments, Supplements, Restatements, or Other Agreements	47
F. Insurance Policies	48

G.	Indemnification Obligations.....	48
H.	Reservation of Rights.....	48
ARTICLE VI. PROVISIONS GOVERNING DISTRIBUTIONS		49
A.	Calculation of Amounts to Be Distributed	49
B.	Disbursing Agents.....	49
C.	Delivery of Distributions and Undeliverable or Unclaimed Distributions.....	49
D.	Compliance with Tax Requirements/Allocations.....	51
E.	Claims Paid or Payable by Third Parties.....	52
ARTICLE VII. THE LIQUIDATING TRUST.....		53
A.	Liquidating Trust Creation	53
B.	Purpose of the Liquidating Trust.....	53
C.	Transfer of Assets to the Liquidating Trust	53
D.	Powers and Duties of the Liquidating Trust and Liquidating Trustee	55
E.	Formation of the Oversight Committee	55
F.	Costs and Expenses Incurred by Liquidating Trustee and Oversight Committee	55
G.	Tax Treatment of the Liquidating Trust.....	56
H.	Distribution; Withholding.....	57
I.	Insurance	57
J.	Exemption.....	57
K.	Termination of the Liquidating Trust.....	57
L.	Transfer of Beneficial Interests	58
ARTICLE VIII. THE ENVIRONMENTAL RESPONSE TRUST.....		58
A.	Environmental Response Trust Creation.....	58
B.	Purpose of the Environmental Response Trust	58
C.	Transfer of Assets to the Environmental Response Trust	59
D.	Powers and Duties of the Environmental Response Trust and Environmental Response Trustee	60
E.	Costs and Expenses Incurred by Environmental Response Trustee	61
F.	Tax Treatment of the Environmental Response Trust.....	62
G.	Insurance	62
H.	Termination of the Environmental Response Trust	62
I.	Transfer of Beneficial Interests	63
ARTICLE IX. PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED, AND DISPUTED CLAIMS AND INTERESTS.....		63
A.	Resolution of Disputed Claims	63
B.	Disallowance of Claims	65
C.	Amendments to Claims	65
D.	No Interest.....	65
E.	Tax Treatment of Reserves for Disputed General Unsecured Claims.....	66
ARTICLE X. SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS.....		66
A.	Compromise and Settlement of Claims, Interests, and Controversies	66
B.	Release of Liens	67
C.	Subordinated Claims	67
D.	Debtor Release	67
E.	Third Party Release	69
F.	Exculpation	70
G.	Injunction	71
H.	Waiver of Statutory Limitations on Releases.....	72
I.	Setoffs	72
ARTICLE XI. CONDITIONS PRECEDENT TO THE EFFECTIVE DATE OF THE PLAN.....		73
A.	Conditions Precedent to the Effective Date of the Plan	73
B.	Waiver of Conditions	74
C.	Effect of Non-Occurrence of Conditions to the Effective Date	74
ARTICLE XII. MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN.....		74
A.	Modification and Amendments.....	74
B.	Effect of Confirmation on Modifications.....	75

C. Revocation or Withdrawal of the Plan 75

ARTICLE XIII. RETENTION OF JURISDICTION 75

ARTICLE XIV. MISCELLANEOUS PROVISIONS 77

A. Immediate Binding Effect 77

B. Additional Documents 78

C. Dissolution of Committee 78

D. Reservation of Rights 78

E. Successors and Assigns 78

F. Service of Documents 78

G. Term of Injunctions or Stays 79

H. Entire Agreement 80

I. Nonseverability of Plan Provisions 80

J. Waiver or Estoppel 80

K. Conflicts 80

INTRODUCTION

The Debtor proposes the following *Debtor's First Amended 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 the Plan, capitalized terms have the meanings set forth below.

1. "1976 Contract" means that certain Contract, dated September 22, 1976, by and among the GVI, the Debtor (as assignee of HOVIC), and the Virgin Islands Port Authority, approved by the Legislature of the USVI on September 29, 1976, and including, for the avoidance of doubt, the 1976 Contract Permits.

2. "1998 Letter Agreement" means that certain letter agreement, dated as of October 14, 1998 (as amended, supplemented, or modified from time to time), pursuant to which the GVI consented to (a) the assignment by HOVIC to the Debtor of the Submerged Land Lease, provided that HOVIC agreed to remain the primary obligor thereunder, and (b) the assignment and delegation by HOVIC to the Debtor of the rights and obligations of HOVIC under the 1976 Contract.

3. "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.

4. "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.

5. "Above-Grade Refinery Assets" means any and all refining process units, buildings, structures, fixtures or other improvements owned by the Debtor that are present on the Option Refinery Property or the Leased Submerged Lands that are exclusively at or above grade, including the power plant located on the Option Refinery Property, and all equipment, personal property and fixtures, including any and all ancillary and non-structural personal property, required to operate such assets (including below-grade pumps, storage tanks, piping, electrical service and distribution system, control systems and any other associated utility infrastructure); provided, that, for the avoidance of doubt, the Above-Grade Refinery Assets shall not include

any Retained Refinery Assets or other Excluded Assets. Notwithstanding the foregoing, the Above-Grade Refinery Assets shall include the above-grade portion of the ground flare present on that certain parcel of real property identified in Exhibit H to the Purchase Agreement as an “Excluded” parcel and located within the submerged land border.

6. “*Accident Trust*” means the June 12, 2012 HOVENSA Standby Trust Agreement - FORM B for bodily injury and property damage to third parties caused by sudden accidental or nonsudden accidental occurrences arising from the operations of a hazardous waste management facility, as required by 40 C.F.R. § 254.157(n).

7. “*Administrative and Priority Claims Reserve*” means the reserve to be established and maintained by the Reorganized Debtor and funded with the Administrative and Priority Claims Reserve Amount pursuant to Article IV.I.1 hereof.

8. “*Administrative and Priority Claims Reserve Amount*” means Cash in an amount to be determined by the Debtor or the Reorganized Debtor on or before the Effective Date, which amount shall be funded by the Debtor and used by the Reorganized Debtor for the payment of accrued but unpaid U.S. Trustee Fees and Administrative, Priority Tax, Other Priority, and Professional Fee Claims that are Allowed after the Effective Date to the extent that such Claims have not been paid in full on or before the Effective Date.

9. “*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 U.S. Trustee Fees; (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.

10. “*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.

11. “*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 December 17, 2015 [Docket No. 461].

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

13. “*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, the Reorganized 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.

14. “*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.

15. “*Ballot*” means a ballot, e-ballot, or master 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.

16. “*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.

17. “*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.

18. “*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.

19. “*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].

20. “*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].

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

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

23. “*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.

24. “*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.

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

26. “*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.

27. “*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.

28. “*Claims Objection Bar Date*” means the first Business Day that is 180 days after the Effective Date, subject to being extended by order of the Bankruptcy Court upon motion of the Liquidating Trustee or the Reorganized Debtor.

29. “*Claims Procedures Motion*” means one or motions which may be filed by the Liquidating Trustee to establish binding procedures for the administration, adjustment and allowance of Claims in Classes 4, 5 or 6, including but not limited to, procedures requiring discovery, mediation, arbitration and/or expedited hearings related to such Claims. Notice of any Claims Procedures Motion shall be served upon all persons who have filed Claims in Classes 4, 5 and 6, as applicable.

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

31. “*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.

32. “*Class 4 Claims Reserve*” 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 Allowed Claims in Class 4, which amount shall be subject only to the GUC Beneficiary Reserve Carve Out as shall be set forth in the Reserve Motion.

33. “*Class 5 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 Allowed Claims in Class 5, as applicable, which amount shall be subject only to the GUC Beneficiary Reserve Carve Out as shall be set forth in the Reserve Motion.

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

35. “*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.

36. “*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].

37. “*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.

38. “*Concession Agreement*” means that certain Concession Agreement by and between the GVI and HOVIC, dated and approved by the Legislature of the USVI on September 1, 1965, and amended, supplemented and clarified at various times by mutual agreement of the parties thereto, including the Debtor and PDV-VI.

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

40. “*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.

41. “*Confirmation Order*” means the order of the Bankruptcy Court approving the adequacy of the Disclosure Statement and confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

42. “*Consent Decree*” means the Consent Decree entered on June 7, 2011 in the United States District Court of the Virgin Islands in the matter of *United States of America, and United States Virgin Islands v. Hovensa L.L.C.* (Civ. No.: 1:11-cv-00006).

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

44. “*Contract Assumption Schedule*” means the list of Executory Contracts and Unexpired Leases to be assumed pursuant to the Plan, which was Filed by the Debtor on December 23, 2015 [Docket No. 493], as supplemented on January 4, 2016 [Docket No. 519] and January 8, 2016 [Docket No. 533] and as may be further amended or supplemented by the Debtor in accordance with the Plan prior to the Effective Date.

45. “*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.

46. “*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.

47. “*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.

48. “*Debtor*” means HOVENSA L.L.C.

49. “*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.

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

51. “*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.

52. “*Disbursing Agents*” means (a) the Liquidating Trustee, with respect to Allowed Claims in Classes 4, 5, and 6, and (b) the Reorganized Debtor, with respect to Allowed Administrative, Priority Tax, DIP Facility, and Professional Fee Claims, and Allowed Claims in Classes 1 and 2.

53. “*Disclosure Statement*” means the *Disclosure Statement for the Debtor’s Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code*, dated December 17, 2015 [Docket

No. 467], 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.

54. “*Disputed*” means, with respect to any Claim, any Claim that is not yet Allowed.

55. “*Distribution Date*” means a date or dates, as determined by a Disbursing Agent, on which a Disbursing Agent makes a distribution, or causes a distribution to be made, of Cash to the Holders of Allowed Claims.

56. “*Distribution Record Date*” means the date that is two (2) Business Days prior to each Distribution Date.

57. “*DPNR*” means the Virgin Islands Department of Planning and Natural Resources.

58. “*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.

59. “*Effective Date Distributions*” means distributions made to the Holders of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Professional Fee Claims, Allowed DIP Facility Claims, Allowed Class 1 Claims, and Allowed Class 2 Claims on the Effective Date or as soon as practicable thereafter, to the extent not already paid prior to the Effective Date.

60. “*Entity*” shall have the meaning set forth in section 101(15) of the Bankruptcy Code.

61. “*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.

62. “*Environmental Law*” means any Law, Permit, Order or other requirement of Law or voluntary cleanup or “brownfields” program 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, pouring, leaching, dumping, emitting, escaping, or emptying into or upon any air, soil, sediment, subsurface strata, or surface water), generation, recycling, transportation, storage disposal, treatment or remediation of Hazardous Material, or the arrangement for any such activities.

63. “*Environmental Remediation/Compliance Program*” means the program established in accordance with the Environmental Response Trust Agreement whereby the Environmental Response Trust shall conduct the environmental aspects of the winding-up of the Debtor’s affairs as required by any of the non-terminated environmental permits set forth on Exhibit 2 to the Termination and Release Agreement, including the RCRA Permit, by

Environmental Law, and/or as otherwise enumerated as follows: (a) the activities required by the RCRA Permit and associated plans, including the pump and treat program and all other corrective actions required for the solid waste management units and areas of concern; (b) the Product Release Prevention Program required by the RCRA Permit, which includes testing and repair of atmospheric storage tankage, oily water conveyance systems and underground piping in chemical or hydrocarbon service; (c) the obligations associated with regulated units required by the RCRA Permit and/or the RCRA Post-Closure Permit, including with regard to units known as Landfarms I, II and III; (d) the groundwater remediation and monitoring program at the Facility that had been conducted by the Debtor prior to the Closing Date, and reported by the Debtor in the Semiannual Corrective Action Status Reports required by the RCRA Permit; (e) the marine study required by Section 4.7.2 of the Environmental Response Trust Agreement, (f) all of the activities described in, or that are the functional equivalent of, those described in Table 1: Review of Wind Down Cost Estimate December 20, 2015 submitted to the GVI on December 20, 2015, which were estimated by the Debtor to have a total cost of \$66,637,000; (g) implementation of the Debtor's obligations under Section IX (Territorial Supplemental Environmental Project) of the Consent Decree, including the obligation to approve the disbursement of funds from the TSEP Account to fund the Territorial Supplemental Environmental Project, as well as the obligation to provide the VIWAPA Emissions Monitoring Assistance (at a total cost not to exceed \$500,000); and (h) any other environmental obligations of the Debtor related to the Facility that are not being assumed by other parties.

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

65. “*Environmental Response Trust Account(s)*” means any bank accounts maintained by the Environmental Response Trust, which may be funded with the ERT Cash Payment and the ERT Cash Distributions in such amounts as determined by the Environmental Response Trustee.

66. “*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.

67. “*Environmental Response Trust Assets*” means: (a) the ERT Cash Payment; (b) the ERT Cash Distributions; (c) the Remaining Assets; (d) the Debtor's rights with respect to the RCRA Trusts and the TSEP Account; (e) [the Debtor's rights with respect to the Accident Trust;] (f) the Debtor's rights with respect to the Environmental Response Trust Insurance Policies and any rights to assert claims with respect to such insurance policies; (g) the Environmental Response Trust Books and Records; (h) the Debtor's rights with respect to any Executory Contracts or Unexpired Leases identified on the Contract Assumption Schedule as being assigned to the Environmental Response Trust; and (i) 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 nondischargeable environmental claims, including all rights under such agreements (x) with respect to the payment or reimbursement of “Wind-Up Costs” (as such term is defined in the Purchase Agreement); (y) 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; and (z) any other rights of recovery under the Purchase Agreement and any other Transaction Document among the Debtor and the Purchaser (or its Affiliates); in each case in accordance with the terms of the Purchase Agreement, the Shared Services Agreement, and any other Transaction Document, as applicable.

68. “*Environmental Response Trust Beneficiaries*” means those Governmental Units holding nondischargeable environmental claims whose responsibilities include enforcement and oversight of Environmental Law, including the DPNR and the EPA.

69. “*Environmental Response Trust Books and Records*” means any of the Debtor’s books and records that relate to the Environmental Remediation/Compliance Program and the activities of the Environmental Response Trust.

70. “*Environmental Response Trust Effective Date*” means the date upon which the Environmental Response Trust becomes effective, which date may be after the Effective Date if the condition precedent set forth in Article XI.A.4 hereof is waived in accordance with Article XI.B hereof.

71. “*Environmental Response Trust Insurance Policies*” means the insurance policies identified in a schedule in the Plan Supplement (which shall include the ERT Agreed Insurance Policies).

72. “*Environmental Response Trust Proceeds*” means the net proceeds of any liquidation, sale, lease, recovery or other disposition of or other proceeds in respect of the Environmental Response Trust Assets.

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

74. “*Environmental Response Trustee*” means the Person designated as the trustee of the Environmental Response Trust by the Debtor and approved by the EPA and the DPNR before the Combined Hearing.

75. “*ERT Agreed Insurance Policies*” means the insurance policies with insurance carriers with AM Best Ratings of A- or greater and Financial Size Category XV or greater providing coverage, at a minimum, for cleanup and remediation of, and bodily injury or property damage arising from, presently unknown conditions at or emanating or migrating from the Facility, with coverage of no less than \$50,000,000 per occurrence and in the aggregate under commercially reasonable terms (to be raised to \$75,000,000 per occurrence and in the aggregate if such limits are reasonably commercially available), and all on such other terms as are laid out in Exhibit 1 or Exhibit 1-A (as amended) to the Termination and Release Agreement (if more than one policy is used to obtain the required limits, all excess policies shall follow form and provide coverage on the same terms and conditions as the underlying policy).

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

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

78. “*ERT Cash Distribution*” means any transfer of excess Cash in the Administrative and Priority Claims Reserve by the Reorganized Debtor to the Environmental Response Trust (other than the ERT Cash Payment) on any Environmental Response Trust Transfer Date.

79. “*ERT Cash Payment*” means \$5,000,000 to be transferred by the Debtor or the Reorganized Debtor, as applicable, to the Environmental Response Trust on the Environmental Response Trust Effective Date.

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

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

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

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

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

85. “*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.

86. “*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. For the avoidance of doubt, the Option Refinery Property shall be viewed as an Excluded Asset until such time, if ever, that such property or a portion thereof is acquired by the Purchaser pursuant to the Option Agreement.

87. “*Facility*” shall have the meaning ascribed to such term in the RCRA Permit, including without limitation, the Retained Refinery Assets, the Leased Submerged Lands, and real property transferred from the Debtor in connection with the Purchase Agreement

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

89. “*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.

90. “*Final Certification*” means a Filing by the Reorganized Debtor with the Bankruptcy Court (a) certifying that all distributions on Allowed Administrative, Priority Tax,

DIP Facility, Professional Fee, Class 1, and Class 2 Claims have been made, (b) identifying the remaining Reorganized Debtor Assets that shall be transferred to the Environmental Response Trust, and (c) certifying that the Reorganized Debtor's duties have all been completed.

91. “*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].

92. “*Final Environmental Response Trust Transfer Date*” means the final date on which any ERT Cash Distribution is made by the Reorganized Debtor to the Environmental Response Trust, as determined jointly by the Reorganized Debtor and the Environmental Response Trustee.

93. “*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.

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

95. “*Government Parcels*” means each parcel of 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.

96. “*Governmental Bar Date*” means March 14, 2016 at 5:00 p.m. (Eastern).

97. “*Governmental GUC Reserve*” means that certain reserve containing the principal amount of \$500,000 in Cash for the sole benefit of the Holders of Allowed Claims in Class 6.

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

99. “*GUC Beneficiary Reserve*” means that certain reserve containing the principal amount of \$29,500,000 in Cash in accordance with the Sale Order for the sole benefit of the Holders of Allowed Claims in Classes 4 and 5, which amount may be transferred into the Class 4 Claims Reserve and the Class 5 Claims Reserve, and which amount shall be subject only to the GUC Beneficiary Reserve Carve Out.

100. “*GUC Beneficiary Reserve Carve Out*” means any amounts to be used for (a) the payment of fees of the Committee, its members and Committee professionals in excess of the aggregate amount of the then current Budget (as defined in the Final DIP Order), and (b) any

post-Confirmation costs and fees incurred by the Committee and Liquidating Trust, as applicable, in connection with (i) determining the extent and validity of Claims in Classes 4, 5, and 6, subject to the limitations established herein, (ii) making distributions to Holders of Allowed Claims in Classes 4, 5, and 6, subject to the limitations established herein, and (iii) the operations of the Liquidating Trust, including but not limited to the costs associated with preparing and filing quarterly reports required under the U.S. Trustee guidelines (on and after the date of dissolution of the Reorganized Debtor) and preparing tax returns for the Liquidating Trust.

101. “*GVP*” means the Government of the USVI, including any USVI Governmental Unit, Department, Agency, or Affiliate.

102. “*GVI Claims*” means any and all Claims of the GVI against the Debtor (which such Claims shall be deemed Allowed under the Plan), including, but not limited to, (a) the GVI Secured Claims, (b) the GVI’s Claim for a 20% commission on the Sale Transaction, (c) the GVI’s Claims arising from the termination of the Concession Agreement, and (d) any nondischargeable environmental claims of the GVI against the Debtor.

103. “*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.

104. “*Hazardous Material*” means any waste, including any solid or hazardous waste or hazardous constituent, or any other substance that is listed, defined, designated, classified as, or otherwise determined to be, hazardous, extremely hazardous, toxic, radioactive, or a pollutant, contaminant or constituent under or pursuant to any regulation, Law, Order or requirement of Law or voluntary cleanup or brownfields program, including any admixture or solution thereof, and specifically including petroleum and all derivatives thereof or synthetic substitutes therefor and asbestos or asbestos-containing materials, lead and lead-based paint, and polychlorinated biphenyls and compounds containing them.

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

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

107. “*HOVIC*” means Hess Oil Virgin Islands Corporation, a corporation organized under the Laws of the USVI and a subsidiary of Hess.

108. “*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.

109. “*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.

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

111. "*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.

112. "*Judicial Code*" means title 28 of the United States Code, 28 U.S.C. §§ 1–4001.

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

114. "*Law*" means any statute, law, ordinance, ruling, consent decree, permit, policy, rule or regulation of, issued by, or entered into by any Governmental Unit and all judicial or administrative interpretations thereof and any common law doctrine.

115. "*Leased Submerged Lands*" means those portions of real property identified in Exhibit H to the Purchase Agreement as "Terminal" or "Refinery" parcels that have been leased by the Debtor subject to the Submerged Land Lease, the 1976 Contract and the 1998 Letter Agreement.

116. "*Lien*" shall have the meaning set forth in section 101(37) of the Bankruptcy Code.

117. "*Liquidating Trust*" means the trust to be established on the Effective Date in accordance with Article VII hereof.

118. "*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.

119. "*Liquidating Trust Assets*" means: (a) the Liquidating Trust Cash Distribution; (b) the Debtor's rights under section 7.8 of the Purchase Agreement solely to the extent necessary for the Liquidating Trust to resolve Claims in Classes 4, 5, and 6; (c) the Debtor's rights with respect to any Executory Contracts or Unexpired Leases identified on the Contract Assumption Schedule as being assigned to the Liquidating Trust; (d) the Debtor's rights with respect to the Liquidating Trust Insurance Policies and any rights to assert claims with respect to such insurance policies; and (e) the Liquidating Trust Books and Records.

120. “*Liquidating Trust Beneficiaries*” means Holders of Allowed Claims in Classes 4, 5, and 6 that are to be satisfied with post-Effective Date distributions from the Liquidating Trust Assets, each in its capacity as such and subject to the limitations established herein.

121. “*Liquidating Trust Books and Records*” means those books and records (including the Debtor’s books and records) relating solely to Claims in Classes 4, 5, and 6. For the avoidance of doubt, the Liquidating Trust Books and Records shall exclude the Environmental Response Trust Books and Records and the Reorganized Debtor Books and Records.

122. “*Liquidating Trust Cash Distribution*” means Cash transferred to the Liquidating Trust on the Effective Date in an amount equal to (a) \$29,500,000 to fund the GUC Beneficiary Reserve, plus (b) \$500,000 to fund the Governmental GUC Reserve.

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

124. “*Liquidating Trustee*” means the Person designated as the trustee of the Liquidating Trust by the Debtor, in consultation with the Committee, before the Combined Hearing.

125. “*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).

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

127. “*JV Parties Termination and Release Agreement*” means that certain Termination and Release Agreement by and among HOVIC, Hess, PDV-VI, the Debtor, the GVI, and the Virgin Islands Bureau of Internal Revenue, dated as of January 4, 2016.

128. “*Manager*” means the Person designated as the manager of the Reorganized Debtor by the Debtor before the Combined Hearing.

129. “*Option Agreement*” means an option agreement by and among the Purchaser and the Debtor, pursuant to which the Purchaser will have the right to acquire some or all of the Option Refinery Property from the Debtor or the Environmental Response Trust, as applicable, for a purchase price of \$1 per acre.

130. “*Option Refinery Parcels*” means those parcels of property identified as “Refinery” parcels in Exhibit H to the Purchase Agreement.

131. “*Option Refinery Property*” means the real property owned by the Debtor and described in Section 1.1(e) of the Seller Disclosure Letter attached to the Purchase Agreement (and including, for the avoidance of doubt, the Option Refinery Parcels), together with all easements, appurtenances, rights and other hereditaments appurtenant to such real property, which shall be transferred to the Environmental Response Trust on the Environmental Response Trust Effective Date pursuant to the terms of the Plan.

132. “*Order*” means any judgment, order, injunction, decree, writ 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.

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

134. “*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.

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

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

137. “*Oversight Committee*” means the committee of three (3) members selected by the Committee, which shall contain at least one member holding or representing a Trade Claim, one member holding or representing a Tort Claim, and one independent member who may be an existing Committee professional, which committee shall oversee the implementation and administration of the Liquidating Trust.

138. “*Oversight Committee Members*” means the members of the Oversight Committee.

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

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

141. “*PBGC*” means the Pension Benefit Guaranty Company.

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

143. “*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.

144. “*Permit*” means all permits, approvals, licenses, authorizations, certificates, rights, exemptions, and Orders from Governmental Units.

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

146. “*Plan*” means this *Debtor’s First Amended Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code*, as further 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 the Plan as if set forth in the Plan.

147. “*Plan Supplement*” means the compilation of documents and forms of documents, schedules, and exhibits to the Plan, Filed on January 11, 2016, 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; (d) a schedule identifying the Environmental Response Trust Insurance Policies; and (e) the form of Termination and Release Agreement, by and among the Debtor, the GVI, and the Virgin Islands Bureau of Internal Revenue, which shall be annexed to the Purchase Agreement as Exhibit I.

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

149. “*Prepetition VWNA Agreement*” means that certain Term Services Agreement (Agreement No. HVS-1288), by and among the Debtor and VWNA, dated August 1, 2012 (together with all amendments, supplements, purchase orders, riders, change orders and other documents related thereto).

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

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

152. “*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.

153. “*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.

154. “*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.

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

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

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

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

159. “*Purchase Agreement*” means that certain Amended and Restated Asset Purchase Agreement, by and among Limetree Bay Terminals, LLC, Limetree Bay Holdings, LLC, HOVENSA L.L.C., and Hess Oil Virgin Islands Corp., dated as of January 4, 2016, as amended, supplemented, or modified from time to time.

160. “*Purchaser*” means Limetree Bay Terminals, LLC, a limited liability company organized under the laws of the USVI, together with its successors and permitted assigns.

161. “*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.

162. “*RCRA Permit*” means the Resource Conservation and Recovery Act Part B Permit No. VID980536080, any amendments thereto, and any document that replaces such permit.

163. “*RCRA Post-Closure Permit*” means the Post-Closure Permit No. PRD980536080 for Landfarm I.

164. “*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 obligations related to (a) closure of a hazardous waste management unit at the refinery, and (b) the remediation and monitoring of soil and groundwater contamination and solid waste management units and areas of concern associated with its historic operations.

165. “*Related Parties*” means, with respect to any person or entity, any past or present 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, executor, predecessor in interest, successor or assign of any such person or entity.

166. “*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 appropriately marks a 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, except that a member of the Committee who either holds a Claim that has opted out of the Third Party Release or represents a Claim that has opted out of the Third Party Release shall be a Released Party only in his or her capacity as a member of the Committee.

167. “*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 (x) does not vote to accept or reject the Plan, (y) votes to reject the Plan, or (z) appropriately marks 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.

168. “*Remaining Assets*” means the Excluded Assets under the Purchase Agreement, other than the Government Parcels; provided, however, that the Remaining Assets shall exclude the Reorganized Debtor Assets and the Liquidating Trust Assets.

169. “*Remedial Action*” means those activities associated with or relating to investigating, sampling, monitoring, preventing, minimizing, abating, cleaning up, removing, remediating, or mitigating with respect to Hazardous Materials in the environment.

170. “*Remediation/Compliance Costs*” means the costs and expenses incurred in connection with implementing the Environmental Remediation/Compliance Program.

171. “*Reorganized Debtor*” means the Debtor, on and after the Effective Date.

172. “*Reorganized Debtor Assets*” means (a) the Debtor’s rights with respect to the Reorganized Debtor Insurance Policies and any rights to assert claims with respect to such insurance policies; (b) the Debtor’s rights under the Purchase Agreement and any other Transaction Document (other than rights granted to the Environmental Response Trust relating to nondischargeable environmental claims); (c) the Debtor’s rights with respect to any Executory Contracts or Unexpired Leases identified on the Contract Assumption Schedule as being assigned to the Reorganized Debtor; and (d) the Cash remaining in the Debtor’s Estate on the Effective Date after (i) the transfer of the Liquidating Trust Cash Distribution to the Liquidating Trust on the Effective Date, (ii) the transfer of the ERT Cash Payment to the Environmental Response Trust on the Environmental Response Trust Effective Date, and (iii) the payment of the DIP Facility Claims, the USVI Concession Fee, and such other fees and expenditures required to be paid on or before the Effective Date pursuant to the Sale Order or the Plan.

173. “*Reorganized Debtor Books and Records*” means those books and records (including the Debtor’s books and records) relating solely to Administrative, Priority Tax, DIP Facility, Professional Fee, Class 1, and Class 2 Claims, as well as any of the Debtor’s books and

records other than (a) the Environmental Response Trust Books and Records, and (b) the Liquidating Trust Books and Records.

174. “*Reorganized Debtor Completion Date*” means a date, as determined by the Reorganized Debtor in its sole discretion, after which (a) the Final Environmental Response Trust Transfer Date has occurred, (b) all Administrative, Priority Tax, DIP Facility, Professional Fee, Class 1, and Class 2 Claims have been resolved, and (c) all distributions on Allowed Administrative, Priority Tax, DIP Facility, Professional Fee, Class 1, and Class 2 Claims have been made in accordance with the Plan; provided, however, that prior to any such determination by the Reorganized Debtor, the Reorganized Debtor shall notify the Liquidating Trustee and provide the Liquidating Trustee with information regarding this determination.

175. “*Reorganized Debtor Insurance Policies*” means any insurance policies of the Debtor (including, without limitation, the D&O Policies), other than the Liquidating Trust Insurance Policies and the Environmental Response Trust Insurance Policies.

176. “*Reserve Motion*” means a motion to be filed by the Debtor or the Liquidating Trustee, as applicable, to establish (a) the Class 4 Claims Reserve for the benefit of Holders of Allowed Claims in Class 4, and (b) the Class 5 Claims Reserve for the benefit of Holders of Allowed Claims in Class 5, 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.

177. “*Retained Refinery Assets*” means the Option Refinery Property, to the extent such Option Refinery Property has not been conveyed pursuant to the Option Agreement (and excluding, for the avoidance of doubt, the Above-Grade Refinery Assets).

178. “*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.

179. “*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].

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

181. “*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.

182. “*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.

183. “*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.

184. “*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.

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

186. “*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.

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

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

189. “*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 December 17, 2015 [Docket No. 462].

190. “*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.

191. “*Submerged Land Lease*” means that certain Lease, dated as of October 16, 1976 (as amended, supplemented, or modified from time to time), by and between the GVI and the Debtor (as an assignee of HOVIC pursuant to the 1998 Letter Agreement).

192. “*Subsequent Distribution Date*” means any date following the Initial Distribution Date on which the Liquidating Trustee or the Reorganized Debtor, as applicable, each in its

reasonable discretion, elects to make a distribution to Holders of Allowed Claims pursuant to the Plan.

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

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

195. “*Termination and Release Agreement*” means that certain Termination and Release Agreement by and among the Debtor, the GVI, and the Virgin Islands Bureau of Internal Revenue, dated as of January 4, 2016.

196. “*Territorial Supplemental Environmental Projects*” means, collectively, any territorial supplemental environmental projects as described in Section IX of the Consent Decree.

197. “*Trade Claims*” means any General Unsecured Claim for amounts owed to customers or suppliers on account of goods or services provided to the Debtor.

198. “*TSEP Account*” means that certain escrow account in which the Debtor deposited \$4.875 million in Cash to be used for funding Territorial Supplemental Environmental Projects, in accordance with the Consent Decree.

199. “*TSEP Escrow Agreement*” means that certain TSEP Account Escrow Agreement, dated October 13, 2011, by and among the Debtor, the GVI, and JPMorgan Chase Bank, National Association.

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

201. “*Tort Claims*” means any claim for civil liability that does not arise from a contractual dispute and is not held or asserted by any Governmental Unit.

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

203. “*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.

204. “*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.

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

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

207. “*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.

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

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

210. “*USW*” means the United Steelworkers AFL/CIO-CLC.

211. “*VWNA*” means VWNA Caribbean LLC.

212. “*Wind Down*” means the wind down and dissolution of the Debtor following the Effective Date as set forth in Article IV.M.

B. Rules of Interpretation

For purposes herein: (a) 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; (b) 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; (c) 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; (d) unless otherwise specified, all references in the Plan to “Articles” are references to Articles hereof or hereto; (e) 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; (f) 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; (g) unless otherwise specified, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (h) 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; (i) 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; (j) 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; (k) 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 (l) any immaterial effectuating provisions may be interpreted by the Debtor, the Reorganized Debtor, the Liquidating Trustee, or the Environmental Response 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 Reorganized Debtor, 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 or the Reorganized Debtor, as applicable, shall pay each Holder of an Allowed Administrative Claim the full unpaid amount of such Allowed Administrative Claim in Cash from the Debtor's Estate or the Reorganized Debtor Assets, as applicable, in full and final satisfaction, settlement, discharge, and release of and in exchange for such Holder's Allowed Administrative Claim: (a) 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); (b) 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); (c) at such time and upon such terms as may be agreed upon by such Holder and the Debtor or the Reorganized Debtor, as applicable; or (d) 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 Reorganized 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 the 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 1, 2016 but prior to the Effective Date must File and serve such Claims on the Reorganized Debtor within thirty (30) 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 Reorganized Debtor and the requesting party within twenty (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 or the Reorganized Debtor, as applicable, shall fund the Administrative and Priority Claims Reserve in Cash as described in Article IV.I.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 by the Reorganized Debtor to the Environmental Response Trust.

B. Priority Tax Claims

Except to the extent that a Holder of an Allowed Priority Tax Claim and, as applicable, the Debtor or the Reorganized Debtor 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 Reorganized Debtor 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 Reorganized 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 Reorganized Debtor 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 Allowed Professional Fee Claims owing to the Professionals shall be paid in Cash by the Reorganized Debtor from the Reorganized Debtor Assets, as applicable, to such Professionals, 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.

3. Post-Effective Date Fees and Expenses

Except as otherwise specifically provided in the Plan, from and after the Effective Date, (a) the Reorganized Debtor 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 the Reorganized Debtor, (b) 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 the Liquidating Trust, and (c) the Environmental Response 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 Environmental Response Trust Effective Date by the

Environmental Response Trust; provided, however, that any amounts to be used for (x) the payment of fees of the Committee, its members and Committee professionals incurred in excess of the aggregate amount budgeted therefor in the Final DIP Order, and (y) any post-Confirmation costs and fees incurred by the Committee or Liquidating Trust, as applicable, in connection with (i) determining the extent and validity of Claims in Classes 4, 5, and 6, (ii) making distributions to Holders of Allowed Claims in Classes 4, 5, and 6, and (iii) the operations of the Liquidating Trust, including but not limited to the costs associated with preparing and filing quarterly reports required under the U.S. Trustee guidelines (on and after the date of dissolution of the Reorganized Debtor) and preparing tax returns for the Liquidating Trust, shall be paid in Cash from the GUC Beneficiary Reserve.

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 each of the Reorganized Debtor, the Liquidating Trust, and the Environmental Response 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 Reorganized Debtor 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

All U.S. Trustee Fees that are due prior to the Effective Date shall be paid in full by the Debtor or the Reorganized Debtor, as applicable, on the Effective Date or as soon as reasonably practicable thereafter. In accordance with Article IV.Q of the Plan, from and after the Effective Date, the Reorganized Debtor, the Liquidating Trust, or the Environmental Response Trust, respectively and as applicable, shall pay all U.S. Trustee Fees in Cash for each quarter (including any fraction thereof) from the Administrative and Priority Claims Reserve, the Liquidating Trust Assets, and the Environmental Response Trust Assets, respectively and as applicable, 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, the Reorganized 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 Reorganized Debtor, 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 Reorganized Debtor 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, free and clear of all liens, Claims, encumbrances, charges, and other interests in such property;
 - (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 Environmental Response Trust's compliance with the Environmental Remediation/Compliance Program, or such other treatment as agreed by the Debtor or the Reorganized Debtor, as applicable, and the GVI; and

(iv) performance of the obligations set forth in Article VIII of the Plan.

(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 Claim in Class 4 shall receive a beneficial interest in its Pro Rata share of the GUC Beneficiary Reserve or the Class 4 Claims Reserve, as determined by the Liquidating Trustee, based on the total aggregate amount of Allowed Claims in Classes 4 and 5 on or after the Effective Date, or such other treatment as agreed by the Holder and the Liquidating Trustee.

(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 Claim in Class 5 shall receive a beneficial interest in its Pro Rata share of the GUC Beneficiary Reserve or the Class 5 Claims Reserve, as determined by the Liquidating Trustee, based on the total aggregate amount of Allowed Claims in Classes 4 and 5 on or after the Effective Date, or such other treatment as agreed by the Holder and the Liquidating Trustee.

(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 Governmental GUC Reserve based on the total aggregate amount of Allowed Claims in Class 6 on or after the Effective Date, or such other treatment as agreed by the Holder and the Liquidating Trustee.
- (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, the Reorganized 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 Section 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 hereof to the extent 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 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 Reorganized Debtor Assets to the extent not already paid prior to the Effective Date.

Holders of Allowed 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 Allowed 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

The Plan provides for the distribution of all Cash held by or for the benefit of the Debtor on the Effective Date. In addition to Cash on hand, the Debtor's property of the Estate consists primarily of (a) the Debtor's rights under the Purchase Agreement, the Shared Services Agreement, and any other Transaction Document, in each case in accordance with the terms of the Purchase Agreement, the Shared Services Agreement, and any other Transaction Document, as applicable, (b) the Debtor's rights with respect to any Executory Contracts or Unexpired Leases identified on the Contract Assumption Schedule, (c) the Debtor's rights with respect to the Liquidating Trust Insurance Policies, the Environmental Response Trust Insurance Policies, and the Reorganized Debtor Insurance Policies, including the D&O Policies, (d) the Reorganized Debtor Books and Records, the Liquidating Trust Books and Records, and the Environmental Response Trust Books and Records, (e) the Remaining Assets, (f) the Debtor's rights with

respect to the RCRA Trusts and the TSEP Account, and [(g) the Debtor's rights with respect to the Accident Trust.]

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. Reorganized Debtor

From and after the Effective Date, the Reorganized Debtor shall continue in existence for purposes of (a) winding down the Debtor's businesses and affairs as expeditiously and efficaciously as reasonably possible, (b) resolving Administrative, Priority Tax, Professional Fee, Class 1, and Class 2 Claims, (c) making distributions on Allowed Administrative, Priority Tax, DIP Facility, Professional Fee, Class 1, and Class 2 Claims in accordance with the Plan, (d) administering the Reorganized Debtor Assets, (e) filing appropriate tax returns for the Debtor and the Reorganized Debtor, as necessary, (f) transferring any Government Parcels to the GVI to the extent not already transferred in accordance with Article III.B.3 hereof; (g) transferring the Environmental Response Trust Assets, including the ERT Cash Distributions, to the Environmental Response Trust, (h) succeeding to the Debtor's rights, responsibilities, and obligations with respect to 401(k) plans, retiree benefit plans, collective bargaining agreements, or other employee-related plans of the Debtor, to the extent not terminated by the Debtor or assumed by Hess prior to the Effective Date, including the Debtor's and the Reorganized Debtor's rights to amend, modify or terminate such benefits at any time under the terms of such agreements or applicable non-bankruptcy law, (i) coordinating with the Liquidating Trustee and the Environmental Response Trustee to develop a document sharing, retention, and maintenance policy with respect to the Reorganized Debtor Books and Records, the Liquidating Trust Books and Records, and the Environmental Response Trust Books and Records, (j) dissolving the Debtor and the Reorganized Debtor in accordance with the Plan, and (k) administering the Plan in an efficacious manner, with no objective to continue or engage in the conduct of a trade or business.

In addition, from and after the Effective Date through and including the date of Filing of the Final Certification, the Reorganized Debtor shall continue in existence for purposes of (a) filing 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, and paying all U.S. Trustee Fees from the Effective Date through the date of Filing of the Final Certification, (b) maintaining the D&O Policies, (c) maintaining, transferring, or terminating any other insurance policies, as deemed necessary by the Reorganized Debtor in accordance with the terms of the Plan, and (d) maintaining the Reorganized Debtor Books and Records. Upon the date of Filing of the Final Certification, the Reorganized Debtor shall transfer these responsibilities to the Liquidating Trustee and the Environmental Response Trustee, as applicable, in accordance with the terms of the Plan and the Confirmation Order.

On the Effective Date, and in accordance with and pursuant to the terms of the Plan, the Debtor will irrevocably transfer, assign, and deliver to the Reorganized Debtor all of its rights, title, and interests in the Reorganized Debtor Assets notwithstanding any prohibition on assignment under nonbankruptcy law. The Reorganized Debtor will accept and hold the Reorganized Debtor Assets for the benefit of the Holders of Allowed Administrative, Priority Tax, DIP Facility, Professional Fee, Class 1, and Class 2 Claims. The Debtor also shall transfer and the Reorganized Debtor shall accept any of the Debtor's rights, responsibilities, and obligations with respect to 401(k) plans, retiree benefit plans, collective bargaining agreements, or other employee-related plans of the Debtor to the extent not terminated by the Debtor or assumed by Hess prior to the Effective Date; provided, however, that any Claims arising from plan terminations shall be subject to resolution and distribution (a) by (i) the Reorganized Debtor, solely to the extent such Claims are Administrative Claims, Priority Claims, or Secured Claims, or (ii) the Liquidating Trust, solely to the extent such Claims are General Unsecured Claims, and (b) solely to the extent that any beneficiary with respect to the foregoing plans and agreements has timely filed a Proof of Claim or request for payment of an Administrative Claim in accordance with the Plan and prior Orders of the Court.

On the Effective Date, all Reorganized Debtor Assets shall vest and be deemed to vest in the Reorganized Debtor in accordance with section 1141 of the Bankruptcy Code. As of the Effective Date, all Reorganized Debtor Assets vested in the Reorganized Debtor 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 Reorganized Debtor Assets to the Reorganized Debtor, the Debtor will have no reversionary or further interest in or with respect to any Reorganized Debtor Assets or the Reorganized Debtor. Any distributions to be made under the Plan from the Reorganized Debtor Assets shall be made by the Reorganized Debtor.

The Debtor, the Reorganized Debtor, and the JV Parties shall have no tax obligations to the USVI arising from or relating to the Reorganized Debtor, including any obligation to pay any taxes or file any tax returns, at any time and relating to any tax year or period up to and including the date of the Reorganized Debtor's Filing of the Final Certification. The Reorganized Debtor shall be responsible for filing all non-USVI tax returns and paying all non-USVI taxes (including any withholding taxes) that it may be required to file and/or pay, arising from or relating to the Reorganized Debtor from the Reorganized Debtor Assets.

In connection with the Reorganized Debtor Assets, any attorney-client privilege, work-product privilege, joint interest privilege or other privilege or immunity attaching to any documents or communications (in any form, including, without limitation, written, electronic or oral) shall be transferred and shall vest in the Reorganized Debtor and its representatives. The Reorganized Debtor's receipt of such privileges associated with the Reorganized Debtor Assets shall not operate as a waiver of other privileges possessed or retained by the Debtor.

The Reorganized Debtor shall reasonably cooperate with the Liquidating Trustee and the Environmental Response Trustee and shall provide or grant access to readily available documents and information, including privileged documents and information, relating to or concerning, (a) with respect to the Liquidating Trustee, the Claims in Classes 4, 5, and 6, and (b) with respect to the Environmental Response Trustee, the Environmental

Remediation/Compliance Program and the nondischargeable Environmental Claims. The Reorganized Debtor shall generally assist (a) the Liquidating Trustee in the adjustment and allowance of Claims in Classes 4, 5, and 6, as may be reasonably requested by the Liquidating Trustee, and (b) the Environmental Response Trustee in connection with the exercise of its duties under the Plan, as may be reasonably requested by the Environmental Response Trustee.

E. Management of the Reorganized Debtor

From and after the Effective Date, the Manager shall have the same fiduciary duties to the Reorganized Debtor as the Executive Committee had to the Debtor, 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).

The powers of the Manager shall include any and all powers and authority to implement the Plan and to administer and distribute the Reorganized Debtor Assets and wind down the business and affairs of the Debtor and the Reorganized Debtor, including (a) liquidating, receiving, holding, and investing, supervising, and protecting the Reorganized Debtor Assets, (b) taking all steps to execute all instruments and documents necessary to effectuate the distributions to be made under the Plan from the Reorganized Debtor Assets, (c) resolving Administrative, Priority Tax, Professional Fee, Class 1, and Class 2 Claims, (d) making distributions from the Reorganized Debtor Assets as contemplated under the Plan, (e) establishing and maintaining bank accounts in the name of the Reorganized Debtor, including the Administrative and Priority Claims Reserve, (f) transferring any Government Parcels to the GVI to the extent not already transferred in accordance with Article III.B.3 hereof, (g) transferring the ERT Cash Distributions to the Environmental Response Trust, in such amounts as determined by the Reorganized Debtor, (h) employing, retaining, terminating, or replacing professionals to represent it with respect to its responsibilities or otherwise effectuating the Plan to the extent necessary, (i) paying all reasonable fees, expenses, debts, charges, and liabilities of the Reorganized Debtor, (j) maintaining, transferring, or terminating the Reorganized Debtor Insurance Policies, as deemed necessary by the Reorganized Debtor, in accordance with the terms of the Plan, (k) administering and paying taxes of the Reorganized Debtor, including filing tax returns, (l) representing the interests of the Reorganized Debtor or the Estate before any taxing authority in all matters, including any action, suit, proceeding or audit, and (m) exercising such other powers as may be vested in it pursuant to order of the Bankruptcy Court or pursuant to the Plan, or as it reasonably deems to be necessary and proper to carry out the provisions of the Plan. The powers, authority, responsibilities, and duties of the Reorganized Debtor will be governed by the Plan and the Confirmation Order.

The Manager may resign at any time upon thirty (30) days' written notice delivered to the Bankruptcy Court and the Reorganized Debtor; provided that such resignation shall only become effective upon the Manager's appointment of a permanent or interim successor Manager. Upon its appointment, the successor Manager, without any further act, shall become fully vested with all of the rights, powers, duties, and obligations of its predecessor, and all responsibilities of the predecessor Manager relating to the Reorganized Debtor shall be terminated.

Except as otherwise ordered by the Bankruptcy Court, the fees and expenses incurred by the Manager on or after the Effective Date (including taxes) and any reasonable compensation

and expense reimbursement Claims (including attorneys' fees and expenses) made by the Manager shall be paid in Cash from the Reorganized Debtor Assets without any further notice to or action, order, or approval of the Bankruptcy Court.

The Manager 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 Manager is so otherwise ordered, all costs and expenses of the Manager in procuring any such bond or surety shall be paid for with Cash derived from the Reorganized Debtor Assets.

F. 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, in consultation with the Committee, will select the Liquidating Trustee, whose appointment shall be confirmed by the Court in the Confirmation Order, and who shall act in accordance with the Liquidating Trust Agreement.

Before the Combined Hearing, the Committee shall select the members of the Oversight Committee, whose appointment shall be confirmed by the Court in the Confirmation Order. The powers, authority, responsibilities and duties of the Oversight Committee are set forth in, and will be governed by, the Liquidating Trust Agreement, the Plan, and the Confirmation Order.

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.

G. Formation of the Environmental Response Trust

On or prior to the Environmental Response Trust Effective Date, the Debtor or the Reorganized Debtor, as applicable, 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, together with the EPA and the DPNR, will select the Environmental Response Trustee, whose appointment shall be confirmed by the Court in the Confirmation Order, and who shall act in accordance with the Environmental Response Trust Agreement.

On the Environmental Response Trust Effective Date, and in accordance with and pursuant to the terms of the Plan, the Debtor or the Reorganized Debtor, as applicable, will transfer to the Environmental Response Trust all of its rights, title, and interests in all of the Environmental Response Trust Assets; provided, that the ERT Cash Distributions shall be transferred in accordance with Article VIII hereof. 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.

H. Books and Records

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

I. 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 Reorganized Debtor 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 Reorganized Debtor 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. The Reorganized Debtor shall notify the Liquidating Trust of the amount of the Administrative and Priority Claims Reserve as soon as reasonably practicable after the establishment thereof. Funds in the Administrative and Priority Claims Reserve shall be used by the Reorganized Debtor 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 Allowed Claims have not been paid in full on or prior to the Effective Date. To the extent not otherwise provided herein or ordered by the Bankruptcy Court, the Reorganized Debtor shall estimate appropriate reserves of Cash to be set aside in order to pay or reserve for Disputed Administrative, Priority, and Professional Fee Claims. Any amounts set aside to pay or reserve for Disputed Administrative, Priority, and Professional Fee Claims shall include the amounts needed to fund the ongoing costs and expenses of such reserve, including, without limitation, taxes in respect of Disputed Administrative, Priority, and Professional Fee Claims, if any. 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 by the Reorganized Debtor to the Environmental Response Trust.

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 \$29,500,000 in Cash in an authorized depository in the state of New York, which funds shall vest in the Liquidating Trust free and clear of all liens, Claims, encumbrances, charges, and other interests, except as otherwise specifically provided in the Plan or in the

Confirmation Order. Funds in the GUC Beneficiary Reserve shall be used by the Liquidating Trustee solely for the payment of Allowed Claims in Classes 4 and 5, subject only to the GUC Beneficiary Reserve Carve Out. The GUC Beneficiary Reserve shall not be used for the payment of Allowed Class 6 Claims or for any fees, expenses, or costs associated with the administration, adjustment, dispute, or allowance of Class 6 Claims, which amounts shall be paid solely from the Governmental GUC Reserve. 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 Claims in Classes 4 and 5. Any amounts set aside to pay or reserve for Disputed Claims in Classes 4 and 5 shall include the amounts needed to fund the ongoing costs and expenses of such reserve, including, without limitation, taxes in respect of Disputed Claims in Classes 4 and 5, if any. To the extent any funds remain in the GUC Beneficiary Reserve after all Allowed Claims in Classes 4 and 5 have been paid or otherwise satisfied in full, such remaining funds shall be transferred as determined by the Liquidating Trustee in its reasonable discretion, including for use in satisfying Allowed Claims in Class 6.

The Liquidating Trustee may file the Reserve Motion to establish (a) the Class 4 Claims Reserve for the benefit of Holders of Allowed Claims in Class 4, and (b) the Class 5 Claims Reserve for the benefit of Holders of Allowed Claims in Class 5; provided that the Liquidating Trust shall notify the Reorganized Debtor of the proposed amounts of each such Reserve prior to filing the Reserve Motion. Each of the Class 4 Claims Reserve and the Class 5 Claims Reserve, if established, shall be funded with Cash from the GUC Beneficiary Reserve in amounts to be determined by the Liquidating Trustee, which amounts shall be subject only to 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 Class 4 Claims Reserve and the Class 5 Claims Reserve in order to pay or reserve for Disputed Class 4 Claims and Disputed Class 5 Claims, respectively. Any amounts set aside to pay or reserve for Disputed Claims in Classes 4 and 5 shall include the amounts needed to fund the ongoing costs and expenses of such reserve, including, without limitation, taxes in respect of Disputed Claims in Classes 4 and 5, if any. To the extent any funds remain in the Class 4 Claims Reserve and the Class 5 Claims Reserve after all of the Allowed Claims in Classes 4 and 5 have been paid or otherwise satisfied in full, such remaining funds shall be transferred to the GUC Beneficiary Reserve or the Governmental GUC Reserve, as determined by the Liquidating Trustee in its reasonable discretion, and, to the extent such Reserves have been terminated, as determined by the Liquidating Trustee in its reasonable discretion, including for use in satisfying Allowed Claims in Class 6

3. Governmental GUC Reserve

To the extent not already established prior to the Effective Date, on the Effective Date or as soon as reasonably practicable thereafter, the Debtor or the Reorganized Debtor, as applicable, shall fund, and the Liquidating Trustee shall establish and thereafter maintain, the Governmental GUC Reserve with the initial principal amount of \$500,000 in Cash in an authorized depository in the state of New York, which funds shall vest in the Liquidating Trust free and clear of all liens, Claims, encumbrances, charges, and other interests, except as otherwise specifically provided in the Plan or in the Confirmation Order. Funds in the Governmental GUC Reserve shall be used by the Liquidating Trustee for the administration, adjustment, dispute, or allowance

of Claims in Class 6, and including for the payment of Allowed Claims in Class 6. The Liquidating Trustee shall not have any duty or obligation to use any funds from the GUC Beneficiary Reserve for the administration, adjustment, dispute, or allowance of Claims in Class 6 and shall separately administer the Governmental GUC Reserve for the benefit of the Holders of Allowed Claims in Class 6. 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 Claims in Class 6. Any amounts set aside to pay or reserve for Disputed Claims in Class 6 shall include the amounts needed to fund the ongoing costs and expenses of such reserve, including, without limitation, taxes in respect of Disputed Claims in Class 6, if any. To the extent any funds remain in the Governmental GUC Reserve after all Allowed Claims in Class 6 have been paid or otherwise satisfied in full, such remaining funds shall be transferred as determined by the Liquidating Trustee in its reasonable discretion, including for use in satisfying Allowed Claims in Classes 4 and 5.

4. Environmental Response Trust Account(s)

On the Environmental Response Trust Effective Date, the Debtor shall transfer the ERT Cash Payment to the Environmental Response Trust Account(s), 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 Environmental Response Trust Beneficiaries expressly provided for in the Environmental Response Trust Agreement.

On each Environmental Response Trust Transfer Date, and in accordance with and pursuant to the terms of the Plan, the Debtor shall transfer an ERT Cash Distribution to the Environmental Response Trust Account(s), 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 Environmental Response Trust Beneficiaries expressly provided for in the Environmental Response Trust Agreement.

The Environmental Response Trustee shall use the funds in the Environmental Response Trust Account(s) to pay for any post-Environmental Response Trust Effective Date Remediation/Compliance Costs and associated costs and fees incurred by the Environmental Response Trust in accordance with the Plan, the Confirmation Order, and the Environmental Response Trust Agreement.

The Environmental Response Trustee shall (i) seek reimbursement from Purchaser for (or request that the Purchaser pay on the Environmental Response Trust's behalf) reasonable and documented out-of-pocket costs and expenses incurred in connection with the winding up of the Debtor's affairs and the performance of its obligations under the Transaction Documents, if any, and (ii) make any required payments to the Purchaser from reimbursements from the RCRA Trusts, in each case subject to the terms and conditions set forth in Section 7.33 of the Purchase Agreement and section 2.1.6 of the Environmental Response Trust Agreement. The Purchaser shall provide such reimbursement, or pay on the Environmental Response Trust's behalf, within [15] calendar days of receipt of a request by the Trustee.

To the extent any funds remain in the Environmental Response Trust Account(s) after all Remediation/Compliance Costs have been paid or otherwise satisfied in full, and any liabilities

have been resolved and settled, as determined by the Environmental Response Trustee in consultation with the Environmental Response Trust Beneficiaries, 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, split evenly between the EPA and the DPNR for use in environmental remediation projects at other, unrelated sites; provided, however, that any funds remaining in the TSEP Account shall be released to the Environmental Response Trust if so required by the terms of the Consent Decree.

J. 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 and have further agreed that they are not entitled to any distributions or payments from the Liquidating Trust for or on account of any Claim they may have against the Debtor whether expressly waived herein or not.

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).

K. D&O Policies

Notwithstanding anything to the contrary contained herein or in the Confirmation Order, Confirmation of the Plan and the transfer of the D&O Policies to the Reorganized Debtor and/or the Liquidating Trust in connection with the Plan shall not impair or otherwise modify (a) any obligations arising under the D&O Policies, or (b) any Executive Committee Member's rights to receive any benefits under such D&O Policies. In addition, after the Effective Date, the Reorganized Debtor 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.

L. Retiree Benefits

The Debtor or the Reorganized Debtor, as applicable, may 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 the Debtor's and the Reorganized Debtor's rights to amend, modify or terminate such benefits at any time under the terms of the Retiree Benefit Plan, other agreements or applicable non-bankruptcy law (to the extent not

otherwise assumed by Hess). The Debtor believes that any such amendment, modification, or termination will not result in any damage claims for rejection of the Retiree Benefit Plan because such plan, by its terms, may be terminated in the Debtor's sole discretion.

M. Steelworkers CBA

The Steelworkers CBA shall terminate upon the Effective Date. In full and final satisfaction of all Claims of the USW and any member of the USW against the Debtor, including without limitation all Claims identified in Proof of Claim number 1132 and/or all Claims related to grievances, the Liquidating Trust shall pay, on the Effective Date or as soon as practicable thereafter, the aggregate amount of \$100,000 to such individuals as designated by the USW from the GUC Beneficiary Reserve or the Class 5 Claims Reserve, as applicable. Upon the Effective Date, any Claims of the USW and any member of the USW against the Debtor shall be deemed satisfied and/or withdrawn with prejudice. For the avoidance of doubt, the termination of the Steelworkers CBA on the Effective Date shall not result in any Claims against the Debtor.

N. Pension Plan

Nothing in the Chapter 11 Case, the Confirmation Order, the Plan, the Bankruptcy Code (and section 1141 thereof), or any other document filed in the Chapter 11 Case shall in any way be construed to discharge, release, limit, or relieve the Debtor or any other party, in any capacity, from any liability or responsibility to the Pension Plan or the PBGC with respect to the Pension Plan or any other defined benefit pension plan under any law, governmental policy, or regulatory provision. The PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility by any of the provisions of the Plan, the Confirmation Order, the Bankruptcy Code, or any other document filed in the Chapter 11 Case. Notwithstanding the foregoing, upon Hess's assumption of the Pension Plan, any and all Claims of the Pension Plan and the PBGC against the Debtor will be deemed resolved and/or withdrawn with prejudice.

O. EPA Settlement

In connection with the Plan, the Debtor and the EPA have agreed that the EPA will have an Allowed Claim in Class 6 in the aggregate amount of \$115,000 in full and final satisfaction of its Claims arising under section 112(r) of the Clean Air Act; provided, however, that such settlement excludes (a) any other Claims of the EPA against the Debtor, and (b) any nondischargeable Environmental Claims of the EPA, which nondischargeable Environmental Claims shall be satisfied by the Environmental Remediation/Compliance Program and the Environmental Response Trust.

P. VWNA Settlement

In consideration for the extension of the Prepetition VWNA Agreement, the Debtor agreed to accept and assume the Prepetition VWNA Agreement and pay to VWNA \$438,944.57 for services rendered by VWNA to the Debtor under the Prepetition VWNA Agreement prior to the Petition Date in full and final satisfaction of all of VWNA's Claims. VWNA has agreed to waive, release, and discharge the Debtor from any and all prepetition Claims under the Prepetition VWNA Agreement.

Q. Sale Order; Purchase Agreement

Notwithstanding anything in the Plan or the Confirmation Order to the contrary, nothing in the Plan or the Confirmation Order shall, or shall be deemed to, amend, modify, or waive any term or condition of the Sale Order, the Purchase Agreement, or any other Transaction Document or limit, alter, or impair any of the rights or remedies of the Purchaser under any of the foregoing.

R. Wind Down

On the Effective Date, the persons acting as Executive Committee Members, managers, and officers of the Debtor shall be deemed to have resigned. From and after the Effective Date, the Manager, the Liquidating Trustee, and the Environmental Response Trustee, shall have the same fiduciary duties to the Reorganized Debtor, the Liquidating Trust, and the Environmental Response Trust, in each case, solely with respect to the matters described in, and pursuant to the terms of, the Plan, the Liquidating Trust Agreement, and the Environmental Response Trust Agreement.

On and after the Effective Date, the Reorganized Debtor, the Liquidating Trustee, and the Environmental Response Trustee shall be authorized to implement the Plan and any applicable Orders of the Bankruptcy Court. As soon as reasonably practicable after the Effective Date, the Reorganized Debtor, the Liquidating Trustee, and the Environmental Response Trustee, as applicable, shall: (a) cause the Debtor to comply with, and abide by, the terms of the Sale Order and Purchase Agreement; (b) take such other actions as the Reorganized Debtor, 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.

From the Effective Date through the date of the Filing of the Final Certification, 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 Reorganized Debtor. Upon the Reorganized Debtor's Filing of the Final Certification, the filing of any quarterly reports required under the U.S. Trustee guidelines shall be the responsibility of the Liquidating Trustee, as described in the Liquidating Trust Agreement.

On and after the Reorganized Debtor Completion Date, the Reorganized Debtor shall have the power and authority to take any action necessary to wind down and dissolve the Debtor, other than with respect to the matters to be addressed by the Liquidating Trust and the Environmental Response Trust. Any expenses and costs incurred by the Reorganized Debtor in connection with the wind down and dissolution activities described in the preceding sentence shall be paid solely from the Reorganized Debtor Assets, and the Liquidating Trust shall have no obligation to fund such expenses. On and after the Reorganized Debtor Completion Date, the Reorganized Debtor shall transfer (a) the D&O Policies to the Liquidating Trust, and (b) any remaining Reorganized Debtor Assets to the Environmental Response Trust.

In addition, as soon as reasonably practicable after the Reorganized Debtor Completion Date, the Reorganized Debtor shall execute and 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. From and after the Reorganized Debtor Completion Date, the Debtor (a) 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, (b) shall be deemed to have cancelled pursuant to the Plan all Interests, (c) shall be deemed to have terminated the LLC Agreement, and (d) 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.

The Reorganized Debtor shall file the Final Certification by December 31, 2016, and shall provide notice to the Liquidating Trustee and the Environmental Response Trustee prior to such Filing. Upon the Reorganized Debtor's Filing of the Final Certification, (a) the Reorganized Debtor shall be deemed to be dissolved without any further action by the Reorganized Debtor, and (b) the remaining Reorganized Debtor Assets, as identified in the Final Certification, shall vest and be deemed to vest in the Liquidating Trust and the Environmental Response Trust, as applicable, in accordance with section 1141 of the Bankruptcy Code, 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 Reorganized Debtor of the Reorganized Debtor Assets to the Liquidating Trust and the Environmental Response Trust, as applicable, the Reorganized Debtor will have no reversionary or further interest in or with respect to any Reorganized Debtor Assets.

S. Cancellation of Securities and Agreements

On the Effective Date, except as otherwise specifically provided for in the Plan: (a) 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 (b) 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; provided further, that notwithstanding anything to the contrary herein, any right of the Debtor to, or any benefit to the Debtor with respect to, any escrowed funds, letters of credit, financial assurances, trust accounts, or other accounts, shall not be cancelled, released, settled, or compromised.

T. 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 Reorganized Debtor, 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.

The Manager, 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.S

The authorizations and approvals contemplated by this Article IV.S shall be effective notwithstanding any requirements under applicable nonbankruptcy law.

U. Effectuating Documents; Further Transactions

Prior to the Effective Date, the Debtor is, and on and after the Effective Date, the Reorganized Debtor, 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.

V. 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: (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtor; or (b) 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.

W. 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, the Reorganized Debtor, the Liquidating Trust, or the Environmental Response Trust, as applicable, from asserting claims for purposes of setoff, offset, recoupment or other defensive purposes consistent with the terms of the applicable trust agreements.

X. Closing the Chapter 11 Case

When all Disputed Claims have become Allowed or disallowed, the Reorganized Debtor has terminated in accordance with Article IV hereof, the Liquidating Trust has terminated in accordance with Article VII hereof, all remaining Reorganized Debtor Assets and Liquidating Trust Assets have 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, Assumption and Assignment, and Rejection 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: (a) 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; (b) is subject to a pending motion to assume or assume and assign such Unexpired Lease or Executory Contract as of the Effective Date; (c) 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; (d) is a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan or with the Purchaser; (e) is a D&O Policy or an insurance policy to be transferred to the Reorganized Debtor, the Liquidating Trust, or the Environmental Response Trust; or (f) is a Retiree Benefit Plan, which such plan may be dealt with in accordance with Article IV.L hereof. 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, the Reorganized Debtor, or the Environmental Response Trust, as applicable, as an Allowed 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 (a) the amount of the Cure Obligation, (b) 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 (c) 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 Reorganized Debtor 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.

The Debtor caused 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 had to be Filed and served by January 8, 2016 at 4:00 p.m. (Eastern). Any counterparty to an Executory Contract or Unexpired Lease that failed 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 the 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 Reorganized Debtor, 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 Reorganized Debtor, 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 Reorganized 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 Reorganized 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

Pursuant to sections 365 and 1123 of the Bankruptcy Code and in accordance with the terms of the Plan, (a) the Reorganized Debtor Insurance Policies shall be assumed by the Debtor and assigned to the Reorganized Debtor on the Effective Date, (b) the Liquidating Trust Insurance Policies shall be assumed by the Debtor and assigned to the Liquidating Trust on the Effective Date, and (c) the Environmental Response Trust Insurance Policies shall be assumed by the Debtor on the Effective Date and assigned to the Environmental Response Trust on the Environmental Response Trust Effective Date, in each case, unless any 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.

Notwithstanding anything to the contrary herein, nothing in the Plan, the Liquidating Trust Agreement, or the Environmental Response Trust Agreement shall affect any party's rights under any of the Reorganized Debtor Insurance Policies, the Liquidating Trust Insurance Policies, or the Environmental Response Trust Insurance 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 Reorganized Debtor or the Liquidating 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 Reorganized Debtor or the Liquidating Trust, as applicable, to fund such Indemnification Provisions shall be limited to the extent of coverage available under any Reorganized Debtor Insurance Policies or Liquidating 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 Reorganized Debtor, the Liquidating Trustee, or the Environmental Response Trustee, as applicable, shall have ninety (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 Reorganized 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 Agents

Under the Plan, the Disbursing Agents shall be (a) the Liquidating Trustee, with respect to Allowed Claims in Classes 4, 5, and 6, and (b) the Reorganized Debtor, with respect to Allowed Administrative, Priority Tax, DIP Facility, and Professional Fee Claims, and Allowed Claims in Classes 1 and 2. The Disbursing Agents shall make all distributions under the 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 Agents 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 applicable Disbursing Agent, be deemed to have been made by the

applicable Disbursing Agent on the Effective Date, unless the applicable Disbursing Agent 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 the applicable Disbursing Agent, 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 Fee 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 Agents shall make the distributions required to be made on account of Allowed Claims under the Plan.

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

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 applicable Disbursing Agent, 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 applicable Disbursing Agent shall 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 Reorganized Debtor or the Liquidating Trust, as applicable, 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 Reorganized Debtor or the Liquidating Trust, as applicable, 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 Reorganized 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 Reorganized 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 (including distributions made from any reserve for Disputed Claims) pursuant hereto shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Debtor, the Reorganized 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 Debtor, the Reorganized Debtor, 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 Reorganized Debtor, the Liquidating Trustee, or the Environmental Response Trustee, such Holder, its Allowed Claim, and all distributions on account of such Holder’s Allowed Claim shall be treated as undeliverable distributions and unclaimed property in accordance with Article VI.C.4 hereof. The Reorganized Debtor, the Liquidating Trust, and the Environmental Response Trust shall be responsible for paying only taxes chargeable to their respective estates and shall not be responsible for paying the tax obligations of each other.

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, the Reorganized 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, the Reorganized Debtor, or the Liquidating Trust, as applicable, including on account of recourse to collateral held by third parties that secure such Claim. Unless otherwise provided in any Order granting a Claims Procedures Motion, 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, the Reorganized Debtor, or the Liquidating Trustee, on account of such Claim, such Holder shall, within 14 days of receipt thereof, repay or return the distribution to the Debtor, the Reorganized Debtor, or the Liquidating Trustee, as applicable, 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, the Reorganized Debtor, or the Liquidating Trustee, as applicable, 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 (a) be in form and substance consistent in all respects with the Plan and acceptable to the Debtor and the Committee, and (b) 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 administering the Liquidating Trust Assets, resolving Disputed Class 4, 5, and 6 Claims and making distributions to Holders of Allowed Class 4, 5, and 6 Claims in accordance with the Plan, the 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. On the Effective Date, and in accordance with and pursuant to the terms of the Plan, 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, subject to the rights of the third party 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 for such Claims and Interests 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.

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

The Liquidating Trust shall reasonably cooperate with the Manager and the Environmental Response Trustee and shall provide or grant access to readily available documents and information, including privileged documents and information, relating to or concerning, (a) with respect to the Reorganized Debtor, the Administrative, Priority Tax, Professional Fee, Class 1, and Class 2 Claims, and (b) with respect to the Environmental Response Trustee, the Environmental Remediation/Compliance Program and the nondischargeable Environmental Claims. The Liquidating Trust shall generally assist (a) the Reorganized Debtor in the adjustment and allowance of Administrative, Priority Tax, Professional Fee, Class 1, and Class 2 Claims, as may be reasonably requested by the Manager, and (b) the Environmental Response Trustee in connection with the exercise of its duties under the Plan, as may be reasonably requested by the Environmental Response Trustee.

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.

The Liquidating Trustee shall have the discretion to cease distributions when the corpus of the Liquidating Trust is reduced to \$10,000 and to transfer any remaining funds to a charitable organization as determined in the Liquidating Trustee's reasonable discretion.

D. Powers and Duties of the Liquidating Trust and Liquidating Trustee

From and after the Effective Date, the Liquidating Trustee shall have the same fiduciary duties to the Liquidating Trust as the Executive Committee had to the Debtor, solely with respect to the matters described in the Liquidating Trust Agreement and 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). Any distributions to be made under the Plan from the Liquidating Trust Assets shall be made by the Liquidating Trust.

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

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. Formation of the Oversight Committee

On or prior to the Effective Date, the Committee shall select three (3) persons to serve on the Oversight Committee. The Oversight Committee Members shall include at least one member holding or representing a Trade Claim, one member holding or representing a Tort Claim, and one independent member who may be an existing Committee professional.

On the Effective Date, the Oversight Committee shall be formed to oversee the implementation and administration of the Liquidation Trust and shall operate in accordance with the terms set forth in the Liquidating Trust Agreement.

The duties and powers of the Oversight Committee shall terminate upon the later to occur of (a) entry of the final decree in the Chapter 11 Case, or (b) dissolution of the Liquidating Trust.

F. Costs and Expenses Incurred by Liquidating Trustee and Oversight Committee

Except as otherwise ordered by the Bankruptcy Court, (a) the fees and expenses incurred by the Liquidating Trustee on or after the Effective Date (including taxes), (b) any reasonable compensation and expense reimbursement Claims (including attorneys' fees and expenses) made by the Liquidating Trustee (subject to review and approval by the Oversight Committee), and (c) any reasonable expense reimbursement Claims made by the Oversight Committee Members (subject to review and approval by the Liquidating Trustee), shall be paid in Cash from the GUC Beneficiary Reserve without any further notice to or action, order, or approval of the Bankruptcy Court.

The Liquidating 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 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 GUC Beneficiary Reserve.

G. 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. The Liquidating Trust is treated as a “foreign trust” for federal income tax purposes. 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.

A Liquidating Trust Beneficiary that is a “United States person” as defined in the Internal Revenue Code should file Form 3520 with the Internal Revenue Service within 90 days of such United States person’s deemed contribution to the Liquidating Trust. Additionally, the Liquidating Trustee shall annually file Form 3520-A in a timely manner with the Internal Revenue Service in accordance with this section of the Plan and furnish the information provided on Form 3520-A to Liquidating Trust Beneficiaries that are United States persons and shall file any other tax returns, including any federal, state, local or non-U.S. (including the U.S. Virgin Islands) tax returns, as are required by applicable law (including for the avoidance of doubt 26 C.F.R. § 1.671-4(a)). A Liquidating Trust Beneficiary that fails to timely file Form 3520 may be subject to penalties. In addition, a Liquidating Trust Beneficiary that is a United States person may be subject to an individual penalty if the Liquidating Trust fails to timely file Form 3520-A.

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.

The above described tax treatment of the Liquidating Trust and the Liquidating Trust Beneficiaries as well as the filing requirements may similarly apply for U.S. Virgin Island tax purposes.

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 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 (including distributions made from any reserve for Disputed Claims) made by the Liquidating Trust shall be subject to any such withholding and reporting requirements.

H. 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 in Classes 4, 5, and 6 not paid prior to the Effective Date.

The Liquidating Trustee, 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.

I. Insurance

The Liquidating Trust may maintain customary insurance coverage for the protection of Entities serving as administrators and overseers of the Liquidating Trust (including but not limited to Oversight Committee Members) on and after the Effective Date.

J. Exemption

To the extent the beneficial interests in the Liquidating Trust are deemed to be “securities” under applicable laws, the issuance of beneficial interests in the Liquidating Trust under the Plan are exempt from registration pursuant to section 1145 of the Bankruptcy Code, as amended, and by other applicable state and local laws requiring registration of securities.

K. Termination of the Liquidating Trust

The Liquidating Trustee shall be discharged and the Liquidating Trust shall be terminated, at such time as (a) all Disputed Claims in Classes 4, 5, and 6 have been resolved, (b) all of the Liquidating Trust Assets have been liquidated, (c) all duties and obligations of the Liquidating Trustee hereunder have been fulfilled, and (d) 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.

L. Transfer of Beneficial Interests

Notwithstanding anything to the contrary in the Plan, beneficial interests in the Liquidating Trust shall not be transferrable except in accordance with the terms of the Liquidating Trust Agreement.

ARTICLE VIII.

THE ENVIRONMENTAL RESPONSE TRUST

A. Environmental Response Trust Creation

On the Environmental Response Trust Effective Date, the Environmental Response Trust will be established and become effective for the benefit of the Environmental Response Trust Beneficiaries. The Environmental Response Trust Agreement shall (a) be in form and substance consistent in all respects with the Plan, acceptable to the Debtor, and reasonably acceptable to the Environmental Response Trust Beneficiaries, and (b) 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 Reorganized 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 exclusive purpose and function of the Environmental Response Trust is to carry out the Environmental Remediation/Compliance Program and, thereby, to ensure appropriate clean-up of the Facility, as required by the RCRA Permit, RCRA Post-Closure Permit and Environmental Law. In carrying out this purpose and function, the Environmental Response Trust shall: (a) act as successor to the Debtor solely for the purpose of paying for any post-Environmental Response Trust Effective Date costs and expenses associated with the Environmental Remediation/Compliance Program or the Environmental Response Trust Assets, and associated costs and fees incurred by the Environmental Response Trust in accordance with this Article VIII, the Confirmation Order, the Termination and Release Agreement, and the Environmental Response Trust Agreement; (b) own the Remaining Assets; (c) implement the

Environmental Remediation/Compliance Program; (d) pay certain regulatory fees and oversight costs related to compliance with the Environmental Remediation/Compliance Program or the Environmental Response Agreement; and (e) sell, transfer or otherwise dispose or facilitate the reuse of all or part of the Environmental Response Trust Assets, if possible, all as provided in the Environmental Response Trust Agreement, with no objective or authority to engage in any trade or business unless such trade or business is approved by the Beneficiaries.

The Environmental Response Trustee shall (i) seek reimbursement from Purchaser for (or request that the Purchaser pay on the Environmental Response Trust's behalf) reasonable and documented out-of-pocket costs and expenses incurred in connection with the winding up of the Debtor's affairs and the performance of its obligations under the Transaction Documents, if any, and (ii) make any required payments to the Purchaser from reimbursements from the RCRA Trusts, in each case subject to the terms and conditions set forth in Section 7.33 of the Purchase Agreement and section 2.1.6 of the Environmental Response Trust Agreement. The Purchaser shall provide such reimbursement, or pay on the Environmental Response Trust's behalf, within [15] calendar days of receipt of a request by the Trustee.

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 and the Reorganized Debtor will irrevocably transfer, assign, and deliver to the Environmental Response Trust, on behalf of the Environmental Response Trust Beneficiaries, all of their 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 Environmental Response Trust Effective Date, in accordance with and pursuant to the terms of the Plan, the Debtor and the Reorganized Debtor, as applicable, will transfer to the Environmental Response Trust all of their rights, title, and interests in all Environmental Response Trust Assets (including the ERT Cash Payment), other than the ERT Cash Distributions, and such assets will vest and be deemed to vest in the Environmental Response Trust in accordance with section 1141 of the Bankruptcy Code, 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 Transfer Date, in accordance with and pursuant to the terms of the Plan, the Reorganized Debtor will transfer each ERT Cash Distribution to the Environmental Response Trust, and each such ERT Cash Distribution will vest and be deemed to vest in the Environmental Response Trust in accordance with section 1141 of the Bankruptcy Code, 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. The Final Environmental Response Trust Transfer Date shall occur prior to the Reorganized Debtor Completion Date.

The Debtor and the Reorganized Debtor shall have no reversionary or further interest in or with respect to any Environmental Response Trust Assets and any ERT Cash Distributions, in each case, effective upon the transfer thereof to the Environmental Response Trust. 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.

In connection with the Environmental Response Trust Assets, any attorney-client privilege, work-product privilege, joint interest privilege or other privilege or immunity attaching to any documents or communications (in any form, including, without limitation, written, electronic or oral) shall be transferred and shall vest in the Environmental Response Trust and its representatives. The Environmental Response Trust's receipt of such privileges associated with the Environmental Response Trust Assets shall not operate as a waiver of other privileges possessed or retained by the Debtor.

The Environmental Response Trust shall reasonably cooperate with the Liquidating Trustee and the Manager and shall provide or grant access to readily available documents and information, including privileged documents and information, relating to or concerning, (a) with respect to the Liquidating Trustee, the Claims in Classes 4, 5, and 6, and (b) with respect to the Manager, the Administrative, Priority Tax, Professional Fee, Class 1, and Class 2 Claims. The Environmental Response Trust shall generally assist (a) the Liquidating Trustee in the adjustment and allowance of Claims in Classes 4, 5, and 6, as may be reasonably requested by the Liquidating Trustee, and (b) the Reorganized Debtor, in connection with the adjustment and allowance of the Administrative, Priority Tax, Professional Fee, Class 1, and Class 2 Claims, as may be reasonably requested by the Manager.

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

D. 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/Compliance Program, including any Remedial Actions. As set forth in the Environmental Response Trust Agreement, any property placed into the Environmental Response Trust may be sold or transferred with the approval of the EPA and the DPNR, 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.

From and after the Environmental Response Trust Effective Date, the Environmental Response Trustee shall have the same fiduciary duties to the Environmental Response Trust as the Executive Committee had to the Debtor solely with respect to the matters described in the Environmental Response Trust Agreement and 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).

The Environmental Response Trust Agreement shall provide that, upon the written request of the GVI or the EPA, the Environmental Response Trustee shall reasonably cooperate with the Environmental Response Trust Beneficiaries to (a) facilitate the re-use of any portions of the Remaining Assets to the extent permitted by Law, and (b) provide all documents or information that are reasonably requested by the GVI or the EPA (except for documents and information that are subject to a legal privilege).

The Environmental Response Trust will obtain and maintain in full force and effect the ERT Agreed Insurance Policies under commercially reasonable terms with insurance carriers with AM Best Ratings of A- or greater and Financial Size Category XV or greater providing coverage, at a minimum, for cleanup and remediation of, and bodily injury or property damage arising from, presently unknown conditions at or emanating or migrating from the Facility, with coverage of no less than \$50,000,000 per occurrence and in the aggregate (to be raised to \$75,000,000 if such limits are reasonably commercially available), and all on such other terms as laid out in Exhibit 1 or Exhibit 1-A (as amended) to the Termination and Release Agreement. The Environmental Response Trust will take commercially reasonable efforts to obtain such policies by January 29, 2016.

The Environmental Response Trustee shall retain Industrial Economics Consultants in Cambridge, Massachusetts to study the Facility's impacts on the Facility's marine environment at a cost not to exceed \$320,000. This study will be carried out in accordance with specifications approved by, and subject to the oversight of, the GVI[, after consultation with the EPA,] and after consultation with the Environmental Response Trust to satisfy any of the Environmental Response Trustee's fiduciary responsibilities, in accordance with this Article VIII and the Environmental Response Trust Agreement.

The Environmental Response Trust Agreement will provide that the Environmental Response Trustee will (a) assume the Debtor's obligations to disburse funds to the GVI for approved supplemental environmental projects pursuant to the Consent Decree, and (b) amend the TSEP Escrow Agreement to have a five-year term, such term to be automatically renewed so long as money remains in the account.

E. 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.

F. Tax Treatment of the Environmental Response Trust

The Environmental Response Trust is intended to qualify as a non-grantor trust for federal income tax purposes with the Environmental Response Trust Beneficiaries treated as beneficiaries of the trust. Accordingly, for federal income tax purposes, it is intended that the Environmental Response Trust be treated as a taxable entity, on whose behalf the Environmental Response Trustee will file tax returns and pay taxes. The taxable income of a trust is generally computed in the same manner as for an individual with certain exceptions and special rules. However, a trust is allowed certain deductions not available to individuals, including a deduction for its distributions for any year, but not in excess of the trust's "distributable net income" ("DNI") and subject to various limitations. In general, a trust's DNI is equal to its taxable income computed with certain modifications. Distributions are generally taxed to the recipient beneficiaries to the extent such distributions are treated as carrying out taxable items of DNI. Distributions in excess of DNI are usually not taxed.

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 and paying taxes 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. Amounts properly withheld from distributions to recipient beneficiaries and paid over to any Governmental Unit will be treated as amounts distributed to the recipient beneficiary.

G. 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 Environmental Response Trust Effective Date.

H. Termination of the Environmental Response Trust

Consistent with the terms of this Article VIII and subject to the fulfillment of all of its legal responsibilities, the Environmental Response Trustee (a) shall not unduly prolong the duration of the Environmental Response Trust past the time reasonably necessary to fulfill the purposes of the Environmental Response Trust, and (b) shall at all times endeavor to resolve, settle, or otherwise satisfy all claims of the Environmental Response Trust Beneficiaries, and to effect the distribution of Environmental Response Trust Assets and Environmental Response Trust Proceeds and other receipts relating thereto to the Environmental Response Trust Beneficiaries and creditors of the Environmental Response Trust in accordance with the terms of the Plan and the Environmental Response Trust Agreement, and to terminate the Environmental

Response Trust as soon as practicable consistent with the Environmental Response Trust Agreement and this Article VIII, but in no event prior to the completion of corrective action or other work required under the RCRA Permit and RCRA Post-Closure Permit.

I. Transfer of Beneficial Interests

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

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 Reorganized Debtor and the Liquidating Trustee, as applicable, 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

Prior to the Effective Date, the Debtor, and on or after the Effective Date, the Reorganized Debtor shall have the authority to File objections to Administrative, Priority Tax, Professional Fee, Class 1 and Class 2 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 Reorganized Debtor 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.

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 Claims in Classes 4, 5, and 6, 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. 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 Reorganized Debtor or the Liquidating Trustee, as applicable, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim pursuant to applicable law and (b) any contingent or unliquidated Claim pursuant to applicable law, in each case regardless of whether the Debtor, the Reorganized 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; provided, however, that (a) only the Liquidating Trustee may seek estimations of Claims in Classes 4, 5, and 6, and (b) only the Reorganized Debtor may seek estimations of Administrative, Priority Tax, Professional Fee, Class 1, and Class 2 Claims.

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 Reorganized 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 Reorganized 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 Reorganized Debtor or the Liquidating Trustee (or the Claims and Noticing Agent at, as applicable, the Reorganized Debtor's or the Liquidating Trustee's direction), and any Claim that has been amended may be adjusted thereon by, as applicable, the Reorganized 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. Claims Procedure Motion

The procedures for the determination and allowance of Claims in Classes 4, 5 and 6 may be established pursuant to a Claims Procedures Motion, which shall be filed by the Liquidating Trustee subject to approval from the Oversight Committee. Upon approval by the Bankruptcy Court, after notice to Holders of Claims in Classes 4, 5 and 6, the procedures set forth in any Claims Procedures Motion shall be binding upon the Holders of Claims in Classes 4, 5 and 6, as applicable.

6. 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 Reorganized Debtor or the Liquidating Trustee, as applicable, under section 542, 543, 550, or 553 of the Bankruptcy Code or that the Reorganized 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 (a) the Entity, on the one hand, and the Reorganized 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 (b) 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, the Reorganized 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.

E. Tax Treatment of Reserves for Disputed General Unsecured Claims

Any reserve for Disputed General Unsecured Claims is intended to be treated, for 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, it is intended that the recipient (including the holders of any beneficial interests in the Liquidating Trust upon the disallowance of a Disputed Claim) take such amount into account for federal income tax purposes as an amount received in respect of its Claim. Upon the disallowance of a Disputed Claim, it is intended that the reserve for Disputed General Unsecured Claims 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.

Upon the allowance or disallowance of a Disputed Claim, it is intended that the reserve for Disputed General Unsecured Claims be treated as having sold or exchanged the portion of the Liquidating Trust Assets allocable to such Claim for purposes of Internal Revenue Code section 1001(a). Accordingly, it is intended that amounts earned by the reserve for Disputed General Unsecured Claims be subject to an entity level tax on amounts earned on a current basis. If so treated, the reserve for Disputed General Unsecured Claims should be taxed in a manner similar to either a corporation or a qualified settlement fund, depending on the type of assets transferred to it.

The above described tax treatment of any reserve for Disputed General Unsecured Claims may similarly apply for U.S. Virgin Islands tax purposes.

The Liquidating Trustee shall be responsible for filing all federal, state, local and non-U.S. tax returns for the reserve for Disputed General Unsecured Claims. The reserve for Disputed General Unsecured Claims shall comply with all withholding and reporting requirements imposed by any federal, state, local, or non-U.S. taxing authority, and all distributions made from the reserve for Disputed General Unsecured Claims shall be subject to any such withholding and reporting requirements. Amounts properly withheld from distributions to recipient beneficiaries and paid over to any Governmental Unit will be treated as amounts distributed to the recipient beneficiary.

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: (a) 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; (b) a Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (c) 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, the Reorganized Debtor, the Liquidating Trust, or the Environmental Response Trust, as applicable, and their successors and assigns.

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, the Reorganized Debtor, or the Liquidating Trustee, as applicable, to re-classify any Claim or Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

D. 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, THE REORGANIZED DEBTOR, THE LIQUIDATING TRUST, AND THE ENVIRONMENTAL RESPONSE TRUST (SUCH THAT THE REORGANIZED DEBTOR, 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, 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, THE REORGANIZED DEBTOR, 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 REORGANIZED

DEBTOR, 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 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, THE REORGANIZED DEBTOR, 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 REORGANIZED DEBTOR, THE LIQUIDATING TRUST, OR THE ENVIRONMENTAL RESPONSE TRUST ON ACCOUNT OF AN ALLOWED CLAIM AGAINST THE DEBTOR PURSUANT TO THE PLAN. FOR THE AVOIDANCE OF DOUBT, THE RELEASING PARTIES SHALL INCLUDE (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 THIS ARTICLE X.E

PURSUANT TO A DULY EXECUTED BALLOT. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IN NO EVENT SHALL AN ENTITY THAT (X) DOES NOT VOTE TO ACCEPT OR REJECT THE PLAN, (Y) VOTES TO REJECT THE PLAN, OR (Z) APPROPRIATELY MARKS THE BALLOT TO OPT OUT OF THE THIRD PARTY RELEASE PROVIDED IN THIS ARTICLE X.E AND RETURNS SUCH BALLOT IN ACCORDANCE WITH THE SOLICITATION PROCEDURES ORDER, BE A RELEASING PARTY.

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.

NOTWITHSTANDING ANY PROVISION HEREIN, THERE SHALL BE NO RELEASE OR EXCULPATION BY OR INJUNCTION AGAINST ANY COMMITTEE MEMBER HOLDING A CLAIM OR REPRESENTING A CLAIMANT THAT HAS OPTED OUT OF THE THIRD PARTY RELEASE OR HAS NOT VOTED ON THE PLAN, EXCEPT SOLELY IN SUCH COMMITTEE MEMBER'S CAPACITY AS SUCH.

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 REORGANIZED 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 REORGANIZED 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 REORGANIZED 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 REORGANIZED 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 Reorganized Debtor or the Liquidating Trustee, as applicable, 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, the Reorganized 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 (including any Proof of Claim timely Filed by the Governmental Bar Date) 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, the Reorganized 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

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 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 Governmental GUC Reserve shall have been established;
9. the Environmental Response Trust Account(s) shall have been established;
10. 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

11. 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 (a) consult with the EPA and the DPNR prior to waiving any conditions relating to the Environmental Response Trust; (b) consult with the Committee prior to waiving any of conditions set forth in Article XI.A.(2), (3), (7), (8), (10), and (11), provided however, that with respect to Article XI.A.(2), solely as it relates to the Liquidating Trustee; and (c) consult with the PBGC and the Committee prior to waiving the condition in Article XI.A.(10). The failure of the Debtor, the Reorganized 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: (a) constitute a waiver or release of any claims by or Claims against or Interests in the Debtor; (b) prejudice in any manner the rights of the Debtor, the Debtor's Estate, any Holders, or any other Entity; or (c) 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: (a) the Plan shall be null and void in all respects; (b) 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 (c) nothing contained in the Plan shall: (i) 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; (ii) prejudice in any manner the rights of the Debtor, the Debtor's Estate, or any other Entity; or (iii) 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 Reorganized 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. administration and governance of the Liquidating Trust;
5. ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;
6. 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;
7. 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;
8. enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;
9. 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;
10. 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;
11. 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;
12. 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;
13. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;
14. 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;

15. adjudicate any and all disputes arising from or relating to distributions under the Plan or any transactions contemplated therein;

16. 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;

17. determine requests for the payment of Claims and Interests entitled to priority pursuant to section 507 of the Bankruptcy Code;

18. 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;

19. hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

20. 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;

21. enforce all orders previously entered by the Bankruptcy Court;

22. hear any other matter not inconsistent with the Bankruptcy Code;

23. enter an order concluding or closing the Chapter 11 Case; and

24. 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 Reorganized Debtor, 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 or Committee Member expense claims. The Debtor, the Reorganized 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 Reorganized 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: (a) valid and enforceable pursuant to its terms; (b) integral to the Plan and may not be deleted or modified without the consent of the Debtor; and (c) 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.

Dated: January 12, 2016

Respectfully submitted, as of the date first set forth
above,

HOVENSA L.L.C.

By: /s/ Thomas E. Hill
Name: Thomas E. Hill
Title: Chief Restructuring Officer