

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

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**In re:**

**AGE REFINING, INC.,**

**Debtor.**

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**CHAPTER 11 CASE**

**CASE NO. 10-50501**

**FOURTH AMENDED CHAPTER 11 PLAN OF REORGANIZATION FOR  
AGE REFINING, INC.**

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## INTRODUCTION

Eric J. Moeller, the court-appointed Chapter 11 Trustee in the above-captioned case (the "**Trustee**") hereby proposes this Fourth Amended Plan of Reorganization (as amended, modified or supplemented from time to time, the "**Plan**") for Age Refining, Inc. (the "**Debtor**") for the resolution of the Debtor's outstanding claims and interests. Reference is made to the Third Amended Disclosure Statement Regarding the Trustee's Chapter 11 Plan of Reorganization for AGE Refining, Inc. that the Trustee distributed contemporaneously herewith (as amended, modified or supplemented from time to time, the "**Disclosure Statement**") for a discussion of the Debtor's history, business, assets, results of operations, sale of the Refining Assets, sale of the Redfish Bay Assets, and a summary and analysis of the Plan and certain related matters, including distributions to be made under the Plan. The Trustee is the proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code (as defined in Section 1.2 of the Plan).

All holders of claims who are entitled to vote on the Plan are encouraged to read the Plan and the Disclosure Statement in its entirety before voting to accept or reject the Plan. Subject to certain restrictions and requirements as set forth in section 1127 of the Bankruptcy Code, Rule 3019 of the Bankruptcy Rules (as defined in Section 1.2 of the Plan) and Article 10 of the Plan, the Trustee reserves the right to alter, amend, modify, supplement, revoke, or withdraw the Plan prior to its substantial consummation.

### 1. RULES OF CONSTRUCTION AND DEFINITIONS

#### 1.1 *Rules of Construction*

(a) For purposes of the Plan, except as expressly provided or unless the context otherwise requires, all capitalized terms used in the Plan and not otherwise defined in the Plan shall have the meanings ascribed to them in Section 1.2 of the Plan. Any capitalized term used in the Plan that is not defined in the Plan, but is defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules.

(b) Whenever the context requires, terms shall include the plural as well as the singular number, the masculine gender shall include the feminine, and vice versa.

(c) Any reference in the Plan to (i) a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions, and (ii) an existing document, exhibit, or other agreement means such document, exhibit or other agreement as it may be amended, modified or supplemented from time to time.

(d) Unless otherwise specified, all references in the Plan to sections, articles, schedules and exhibits are referenced to section, articles, schedules and exhibits of or to the Plan.

(e) 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 and sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan.

(g) The rules of construction as set forth in section 102 of the Bankruptcy Code and in the Bankruptcy Rules shall apply.

## 1.2 *Definitions*

“**Administrative Claim**” means a Claim for payment of an administrative expense of a kind specified in sections 503(b) or 1114(e)(2) of the Bankruptcy Code and entitled to priority pursuant to section 507(a)(2) of the Bankruptcy Code, including, but not limited to, (i) the actual, necessary costs and expenses incurred after the Petition Date for preserving the Estate and operating the business of the Debtor, including, without limitation, wages, salaries, or commissions for services rendered after the commencement of the Chapter 11 Case, (ii) Professional Fee Claims, (iii) Substantial Contribution Claims, (iv) all fees and charges assessed against the Estate under section 1930 of Title 28 of the United States Code, (v) and Cure payments for contracts and leases that are assumed under section 365 of the Bankruptcy Code.

“**AGE or AGE Refining**” means AGE Refining, Inc., a Texas corporation.

“**AGE Refining Interests**” means, collectively, all equity interests in Debtor outstanding prior to the Effective Date, including, without limitation, any preferred stock, stock options or other rights to purchase the stock of Debtor, together with any warrants, conversion rights, rights of first refusal, subscriptions, commitments, agreements, or other rights to acquire or receive any stock or other equity ownership interests in Debtor prior to the Effective Date.

“**Allowed**” means a Claim (i) that is a Filed Claim and as to which either (a) no objection to its allowance has been timely filed, or (b) any objection to its allowance has been settled or withdrawn by the Trustee (or, prior to the Trustee’s appointment, the Debtor) or such objection has been denied by a Final Order; (ii) that is not listed in the Schedules as Disputed by the Debtor; (iii) that has been listed in the Schedules as Disputed by the Debtor, but has been settled, determined, resolved or adjudicated, as the case may be, in the procedural manner in which such Claim would have been settled, determined, resolved or adjudicated if the Chapter 11 Case had not been commenced; (iv) that has been expressly allowed in the Plan; or (v) that has been adjudicated before the Bankruptcy Court and is allowed by a Final Order; *provided, however,* that except as set forth in Section 14.7, 14.8 and/or 14.10 of this Plan, all

Allowed Claims shall remain subject to all limitations set forth in the Bankruptcy Code, including, in particular, Sections 502 and 510.

**“Allowed Rejection Damages Claim Amount”** means an amount no greater than the amount calculated in accordance with section 502(b)(6) of the Bankruptcy Code.

**“Asset Based Credit Facility Claim”** means a Claim arising or existing under or related to any of the indebtedness issued pursuant to, or otherwise collateralized pursuant to the Chase Bank Credit Agreement. Solely for purposes of classification and treatment under this Plan, this definition also includes all Claims, Liens, 507(b) Claims (as defined in the DIP Order) and other rights that were created under the DIP Order or TIP Order in favor of Chase Bank. Chase Bank is the only holder of such Claim.

**“Avoidance Actions”** means any and all powers, rights, claims, causes of action and remedies under, relating to, or similar to provisions of chapter 5 of the Bankruptcy Code or any other fraudulent conveyance, fraudulent transfer or preference laws.

**“Bankruptcy Code”** means sections 101 *et seq.*, of title 11 of the United States Code, as now in effect or hereafter amended.

**“Bankruptcy Court”** means the United States Bankruptcy Court for the Western District of Texas or such other court as may have jurisdiction over the Chapter 11 Case or any aspect thereof.

**“Bankruptcy Rules”** means the Federal Rules of Bankruptcy Procedure.

**“Bar Date”** means the last day for holders of Claims to file Claims against the Debtor with the Bankruptcy Court, which date is June 7, 2010 for the filing of general Proofs of Claim and August 7, 2010 for the filing of governmental Proofs of Claim.

**“Business Day”** means any day, excluding Saturdays, Sundays or “legal holidays” (as defined in Rule 9006(a) of the Bankruptcy Rules), on which commercial banks are open for business in New York, New York and San Antonio, Texas.

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

**“Chapter 11 Case”** means Case No. 10-50501-lmc, the Debtor’s case under Chapter 11 of the Bankruptcy Code, pending the Bankruptcy Court.

**“Chase Bank”** means JPMorgan Chase Bank, N.A. or its designee or assignee.

**“Chase Bank Credit Agreement”** means the Amended and Restated Credit Agreement dated as of September 12, 2008, as amended through Eighth Amendment to Amended and Restated Credit Agreement dated as of March 24, 2011,

together with all collateral and other documents, promissory notes, guarantees, instruments and agreements related thereto.

**“Chase Capital”** means Chase Capital Corporation or its designee or assignee.

**“Chase Capital Credit Agreement”** means the Second Amended and Restated Credit and Security Agreement, dated as of September 12, 2008 by and between Debtor and Chase Capital as the same may have been subsequently modified, amended, or supplemented, together with all collateral and other documents, promissory notes, guarantees, instruments and agreements related thereto.

**“Chase Settlement”** shall have the meaning assigned in Section 3.3 (a), below.

**“Claim”** means (i) the right to payment against the Debtor or its Estate, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, mature, unmatured, disputed, undisputed, legal, equitable, secured or unsecured, or (ii) the right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

**“Class”** means a category of holders of Claims or Interests, as described in Article II of the Plan.

**“Code”** means the Internal Revenue Code of 1986, as amended.

**“Confirmation”** means confirmation of the Plan by the Bankruptcy Court pursuant to section 1129 of the Bankruptcy Code.

**“Confirmation Date”** means the date of entry by the clerk of the Bankruptcy Court of the Confirmation Order.

**“Confirmation Hearing”** means the hearing to consider Confirmation of the Plan under Section 1128 of the Bankruptcy Code.

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

**“Convenience Claim”** means an Allowed General Unsecured Claim, that otherwise would be classified in Class 4, but with respect to each such Claim, either (a) the aggregate amount of such Claim is equal to or less than \$2,000, or (b) the aggregate amount of such Claim is reduced to \$2,000, in each case pursuant to an election by the Claim holder made on the ballot provided for voting on the Plan by the Voting Deadline.



**“Convenience Claim Maximum”** means the maximum amount available for each Creditor to receive treatment of its Allowed Claims pursuant to section 3.3(b) of the Plan.

**“Creditor”** means any Person who holds a Claim against the Debtor.

**“Creditors Committee”** means the official committee of unsecured creditors appointed pursuant to section 1102(a) of the Bankruptcy Code in the Chapter 11 Case on or about March 17, 2010, as reconstituted from time to time.

**“Critical Vendor Order”** means that certain *Order Pursuant to 11 U.S.C. §§ 105(a), 363(b) and 503(b)(9) Authorizing the Debtor to Pay Prepetition Claims of Certain Critical Crude Oil Suppliers and Other Critical Vendors* (Docket No. 38) entered by the Bankruptcy Court on February 11, 2010.

**“Cure”** means, with respect to the assumption of an executory contract or unexpired lease pursuant to section 365(b) of the Bankruptcy Code, (i) the distribution of Cash, or the distribution of such other property as may be agreed upon by the parties thereto or ordered by the Bankruptcy Court, in an amount equal to all unpaid monetary obligations, without interest, or such other amount as may be agreed upon by such parties under such contract or lease, to the extent such obligations are enforceable under the Bankruptcy Code and applicable non-bankruptcy law, or (ii) the taking of such other actions as may be agreed upon by such parties or ordered by the Bankruptcy Court.

**“Cure Claim”** means an amount necessary to Cure any default or unpaid monetary obligations under an executory contract or unexpired lease, as such amount is fixed by the Cure Claim Procedures.

**“Cure Claim Procedures”** means the procedures approved by the Bankruptcy Court pursuant to the Refining Bid Procedures Order under which the Cure Claims have been fixed.

**“Debtor”** has the meaning set forth in the introductory paragraph of the Plan, and includes such entity in its capacity as debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code, to the extent applicable.

**“DIP Financing Order”** means, collectively, the interim order and the final order entered by the Bankruptcy Court on February 11, 2010 and February 25, 2010, respectively, as amended or modified, from time to time, through order dated January 28, 2011, authorizing the Debtor (or the Trustee, as the case may be) to borrow money and use the cash collateral of the Lenders and granting adequate protection to the Lenders.

**“Disbursing Agent”** means the Trustee or any other Person designated by the Trustee in his sole discretion on or before the Effective Date to serve as disbursing agent under the Plan. The Disbursing Agent may include a liquidating trustee pursuant to

a liquidating trust agreement, which shall be included in the Plan Supplement, if applicable.

**“Disclosure Statement”** has the meaning set forth in the introductory paragraph of the Plan, as subsequently may be amended, supplemented, or modified from time to time, and that is prepared, approved and distributed in accordance with section 1125 of the Bankruptcy Code and Rule 3018 of the Bankruptcy Rules.

**“Disputed”** means, with respect to a Claim, (i) if a Proof of Claim bar date for such Claim has been established pursuant to a Final Order, (a) a Claim as to which a Proof of Claim is not timely filed, (b) a Filed Claim as to which the time period set for the Trustee to file an objection to such Claim has not expired, or (c) a Filed Claim as which the Debtor or Trustee has timely filed an objection but the Claim has not been settled by the Debtor or Trustee or determined, resolved or adjudicated by Final Order; (ii) if a Proof of Claim bar date has not been established for such Claim, a Claim as to which (a) the Trustee disputes the Estate’s liability in any manner that would have been available had the Chapter 11 Case not been commenced, and (b) the liability of the Estate has not been settled by the Trustee or determined, resolved, or adjudicated by a Final Order; (iii) that has been expressly disputed in the Plan; or (iv) that has been permitted to be adjudicated before the Bankruptcy Court and has not been allowed by a Final Order.

**“Distribution Date”** means, (i) for any Claim that is an Allowed Claim on the Effective Date, (a) for any portion that was due prior to the Effective Date on or as soon as practicable after the Effective Date but not later than the first Business Day that is 20 days after the Effective Date or (b) for any portion that is due after the Effective Date, at such time as such portion becomes due in the ordinary course of business and/or in accordance with its terms; (ii) for any Claim that is not an Allowed claim on the Effective Date, the later of (a) the date on which the Disbursing Agent becomes legally obligated to pay such Claim; and (b) the date on which the Claim becomes an Allowed Claim; *provided, however*, that a later date may be established by order of the Bankruptcy Court upon motion by the Trustee or any other party.

**“Distribution Record Date”** means the record date for determining entitlement to receive distributions under the Plan on account of Allowed Claims, which date shall be the Confirmation Date.

**“Effective Date”** means the Business Day upon which all conditions to the consummation of the Plan as set forth in Section 8.2 of the Plan have been satisfied or waived as provided in Section 8.3 of the Plan, and is the date on which the Plan becomes effective.

**“Employee Programs”** means all of the Debtor’s employee benefit programs, plans, policies and agreements, including, without limitation, (i) all employee welfare benefit plans within the meaning of Section 3(1) of the Employee Retirement Income Security Act of 1974, as amended (**“ERISA”**), (ii) all employee pension benefit plans within the meaning of Section 3(2) of ERISA, (iii) all employment, bonus,

retention, long and short-term incentive, executive transition and other severance, compensation, and other similar agreements, and (iv) all other employee compensation, benefit, and reimbursement programs, plans, policies, and agreements, but excluding any equity incentive plans, equity ownership plans, or any equity-based plans of any kind of the Debtor.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

“**Estate**” means the estate of the Debtor in the Chapter 11 Case created pursuant to Section 541 of the Bankruptcy Code.

“**Exchange Act**” means the Securities and Exchange Act of 1934, as amended.

“**Filed Claim**” means a Claim for which a Proof of Claim has been (i) timely filed with the Court prior to the Bar Date, or (ii) filed with the Court after the Bar Date but deemed to have been filed prior to the Bar Date pursuant to a Final Order of the Bankruptcy Court.

“**Final Order**” means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, as entered on the docket in the Chapter 11 Case, or the docket of any such other court, the operation or effect of which has not been stayed, reversed or amended, and as to which order or judgment (or any revision, modification, or amendment thereof) the time to appeal or seek review or rehearing or leave to appeal has expired and as to which no appeal or petition for review or rehearing was filed or, if filed, remains pending; *provided, however*, the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure or any analogous rule under the Bankruptcy Rules may be filed with respect to such order shall not cause such order not to be a Final Order.

“**Free and Clear**” means free and clear of all Liens, Claims, causes of action, encumbrances, interests, claims, pledges, security interests, rights of setoff, restrictions or limitation on use, successor liabilities, conditions, rights of first refusal, options to purchase, obligations to allow participation, agreements or rights, rights asserted in litigation matters, rights asserted in adversary proceedings in the Chapter 11 Case, competing rights of possession, obligations to lend, matters filed of record that relate to, evidence or secure an obligation of the Debtor or the Estate, and all expenses, and charges, of any type under, among other things, any document, instrument, agreement, affidavit, matter filed of record, cause, or state or federal law, whether known or unknown, legal or equitable, and all liens, rights of offset, replacement liens, adequate protection liens, charges, obligations, or claims granted, allowed or directed in any Order, which are not otherwise released or satisfied under this Plan.

“**General Unsecured Claim**” means an unsecured Claim that is not an Administrative Claim, a Priority Tax Claim, an Other Priority Claim, an Asset Based

Credit Facility Claim, a Secured Term Credit Facility Claim or a Subordinated Claim. This definition specifically includes, without limitation, any Rejection Damages Claim or any Claim for penalties on, with respect to, or arising in connection with, any Priority Tax Claim or Secured Tax Claim.

**“Gonzalez”** means, relating to the Gonzalez Settlement, all members of the Gonzalez Family, Gonzalez Entities or related entities or individuals, including Glen Gonzalez, individually and as Trustee of the Glen Gonzalez Special Trust, the Al Gonzalez Grantor Retained Annuity Trust and the Sharron Gonzalez Grantor Retained Annuity Trust, Al Gonzalez, Sharron Gonzalez, Tierra G Squared Land & Properties, L.P., Tierra Pipeline, L.P., AGE Transportation, Inc. and Ruth Ann Ernst, Trustee of the Gonzalez Irrevocable Insurance Trust and their Representatives.

**“Gonzalez Litigation”** means the adversary proceeding commenced by the Trustee for, *inter alia*, avoidance and recovery of transfers under Chapter 5 of the United States Bankruptcy Code against the Gonzalez Defendants styled and numbered as *Moeller v. Gonzalez, et al. (In re AGE Refining, Inc.)*, Adversary Proceeding Numbered 10-05120-LMC, In the United States Bankruptcy Court for the Western District of Texas-San Antonio Division.

**“Gonzalez-Related Property”** means the Tierra Partnerships, the Tierra G. Squared Land and all improvements thereon, the Tierra Pipeline and all improvements thereon, and all business records and historic records of the Tierra Partnerships.

**“Gonzalez Settlement”** means that certain Settlement Agreement by and between the Trustee and Gonzalez relating to the Gonzalez Litigation, filed on December 7, 2011 [Docket No. 1423]

**“Impaired”** means, with respect to any Claim or Interest, that such Claim or Interest is impaired within the meaning of section 1124 of the Bankruptcy Code.

**“Indemnification Obligation”** means any obligation of the Debtor or its Estate to indemnify, reimburse, or provide contribution pursuant to by-laws, partnership agreements, limited liability company agreements, articles or certificates of incorporation or similar organizational documents or pursuant to contracts or otherwise.

**“Insider”** has the meaning set forth in section 101(31) of the Bankruptcy Code.

**“Insurance Policies”** means the ACE Property and Casualty Insurance Company Commercial Umbrella Liability Policy No. G 24898775; the James River Insurance Company General Liability Policy No. 00038352-0; the James River Insurance Company Employee Benefit Policy No. 00038352-0; Peerless Insurance Company Automobile Liability Policy No. BA8676676; and the Liberty Mutual Insurance Company Marine General Liability Policy No. 3H804893004 and any renewals or extensions of those policies.

**“Insurers”** means ACE American Insurance Company and its affiliated insurance companies that issued the Insurance Policies to AGE Refining.

**“Interest”** means the legal, equitable, contractual or other rights of any Person (i) with respect to AGE Refining Interests or (ii) to acquire or receive any of the foregoing.

**“Lease Rejection Motion”** means any motion filed by the Debtor or the Trustee in the Bankruptcy Court seeking to reject certain of the Debtor’s leases of nonresidential real property.

**“Lenders”** means the holders of the Asset Based Credit Facility Claims or the Secured Term Credit Facility Claims.

**“Lien”** means a charge against or interest in property to secure payment of a debt or performance of an obligation.

**“Liquidating Trust”** means that certain trust created on or before the Effective Date that will hold all remaining assets of the Estate, including but not limited to Cash, chapter 5 claims, the Gonzalez Litigation, the Litigation Rights and any unsold property interests or assets of the Debtor.

**“Liquidating Trust Agreement”** means the Liquidating Trust Agreement to be executed by the Trustee and the Liquidating Trustee, in substantially the same form as attached to the Disclosure Statement as Exhibit “B”.

**“Liquidating Trust Assets”** means the Gonzalez Litigation, the Litigation Rights, Cash and any other assets transferred to the Liquidating Trust on the Effective Date and any proceeds therefrom.

**“Liquidating Trust Beneficiary”** means the holder of a Class 4 Claim.

**“Liquidating Trust Committee”** means the committee established upon the Effective Date, to monitor and supervise the Liquidating Trustee’s administration of the Liquidating Trust and to take such other actions as are set forth in this Plan, the Liquidating Trust Agreement, and the Confirmation Order or as may be approved by the Bankruptcy Court.

**“Liquidating Trust Expense Reserve”** means (i) a segregated account established by the Liquidating Trustee, or (ii) a book entry account, in the sole discretion of the Liquidating Trustee, established in accordance with this Plan.

**“Liquidating Trust Expenses”** means the operating expenses of the Liquidating Trust and the Liquidating Trustee.

**“Liquidating Trustee”** means the Trustee or an independent Person selected by the Trustee with the approval of the Committee to administer the Trust Assets. The Liquidating Trustee will have the authority to liquidate, monetize or dispose of the Liquidating Trust Assets on behalf of Class 4 claim holders under the Liquidating Trust Agreement.

**“Litigation Rights”** means the claims, rights of action, suits or proceedings, whether at law or in equity, whether known or unknown that the Debtor, the Trustee, or the Estate may hold against any Person, including, without limitation, claims or causes of action arising under or pursuant to Chapter 5 of the Bankruptcy Code and any claims for insurance reimbursement.

**“NuStar”** means NuStar Refining, LLC, a Delaware limited liability company, and its affiliates.

**“Old Securities”** means, collectively, the AGE Refining Interests and any other note, bond or indenture evidencing or creating any indebtedness or obligation of the Debtor or the Estate.

**“Other Priority Claim”** means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

**“PBGC”** means the Pension Benefit Guaranty Corporation, a wholly-owned United States government corporation created by ERISA to administer the mandatory pension plan termination insurance program established under Title IV of ERISA.

**“Pension Plans”** has the meaning set forth in Section 6.4 of the Plan.

**“Person”** means any person, individual, firm, partnership, corporation, trust, association, company, limited liability company, joint stock company, joint venture, governmental unit, or other entity or enterprise.

**“Petition Date”** means February 8, 2010, the date on which the Debtor filed its petition for relief commencing the Chapter 11 Case.

**“Plan”** has the meaning set forth in the introductory paragraph of the Plan and includes all exhibits, as the same may be amended, modified or supplemented from time to time.

**“Plan Supplement”** means any, if any, supplement to the Plan.

**“Preliminary Bid Procedures Order”** means that certain *Order (A) Approving the Procedures for Soliciting Offers for Substantially all of the Debtor’s Assets; (B) Approving the Form and Manner of Notice; (C) Authorizing the Debtor to*

*Conduct an Auction to Determine the Highest and Best Offer, (F) [sic] Approving the Procedures for Determining Cure Amounts for Assumed Contracts and Leases; and (E) Granting Related Relief* (Docket No. 119) entered by the Bankruptcy Court on March 8, 2010.

**“Priority Tax Claim”** means a Claim that is entitled to priority pursuant to section 507(a)(8) of the Bankruptcy Code, including a Secured Tax Claim (to the extent such Claim is secured by property of the Estate).

**“Professional”** means any professional employed by the Debtor or the Trustee in the Chapter 11 Case by order of the Bankruptcy Court, excluding any of the Debtor’s or Trustee’s ordinary course professionals.

**“Professional Fee Claim”** means a Claim of a Professional for compensation or reimbursement of costs and expenses relating to services rendered after the Petition and prior to and including the Effective Date.

**“Pro Rata”** means, at any time, the proportion that the amount of a Claim in a particular Class or Classes (or portions, thereof, as applicable) bears to the aggregate amount of all Claims (including Disputed Claims) in such Class or Classes, unless the Plan provides otherwise.

**“Proof of Claim”** means a proof of claim filed with the Bankruptcy Court in the Chapter 11 Case.

**“Redfish Bay Assets”** means all of Debtor’s rights, title and interests in and to the Storage and Service Agreement dated March 1, 2007 by and among Tierra G Squared Land & Properties, L.P. (“TGS”), Bay, Ltd. (“Bay”) and Redfish Bay Terminal, Inc. (“Redfish Bay”) which was assigned by TGS to Debtor on August 5, 2009, as assumed by Debtor pursuant to Order of the Bankruptcy Court dated September 1, 2010, including Debtor’s right, title and interest in any related on-site equipment on Debtor’s books (the “Storage Agreement”)[Bay, Ltd. and Redfish Bay Terminal, Inc. filed a joint “notice of no objection” (Docket No. 534) to Debtor’s Motion to Assume in the Bankruptcy Case], and all of Debtor’s right, title and interest under the STUSCO Operating Agreements. The Redfish Bay Assets also include all liabilities and obligations of Debtor under the Storage Agreement and the STUSCO Operating Agreements to the extent such liabilities and obligations (x) accrue on or after the Closing Date (may 20, 2011), (y) are on-going on or after the Closing Date, or (z) relate to the period of time on or after the Closing Date (below defined) . The STUSCO Operating Agreements are the First Amendment to Product Storage and Handling Agreement, including that certain extension of the 1/2/7 Agreement, entered into between Debtor and Shell Trading (US) Company (“STUSCO”) dated on or about February 1, 2011, as amended by Second Amendment to Product and Storage Handling Agreement between Debtor and STUSCO dated March 31, 2011, including that certain April 29, 2011 (June and July) extension of the 1/2/07 terms under the Second Amendment. The Redfish Bay Assets are in San Patricio County, Texas (Aransas Pass and/or Ingleside).

**“Redfish Bay Bid Procedures Order”** means that certain *Order Approving the Trustee’s Motion to (I) Establish Bidding Procedures in Connection with the Sale of the Redfish Bay Assets; (II) Select a Stalking Horse Bidder or a Designated Purchaser or Hold an Open Auction; and (III) Schedule Bid Deadline, Auction and Approve Notice Thereof* (Docket No. 968), entered by the Bankruptcy Court on May 12, 2011.

**“Redfish Bay Sale Order”** means that certain *Order (A) Authorizing and Approving the Sale of Certain of the Debtor’s Assets Free and Clear of Liens, Claims and Encumbrances Outside the Ordinary Course of Business; and (B) Approving the Assignment of Certain Executory Contracts and Unexpired Leases* (Docket No. 978), entered by the Court on May 20, 2011.

**“Redfish Bay Transaction”** means that sale of the Redfish Bay Assets to TexStar as purchaser from the Trustee as seller.

**“Refining Assets”** means the material operating assets of the Debtor, other than the Redfish Bay Assets, including primarily the refinery on Presa Street, and the Elmendorf tank farm, both in Bexar County, Texas.

**Refining Bid Procedures Order”** means that certain *Order (A) Approving the Procedures for Soliciting Offers for Substantially all of the Debtor’s Assets; (B) Approving the Form and Manner of Notice; (C) Authorizing the Debtor to Conduct an Auction to Determine the Highest and Best Offer, (F) [sic] Approving the Procedures for Determining Cure Amounts for Assumed Contracts and Leases; and (E) Granting Related Relief* (Docket No. 119), entered by the Bankruptcy Court on December 21, 2010, as amended by *Amended Order (A) Approving the Procedures for Soliciting Offers for Substantially All of the Debtor’s Assets; (B) Approving the Form and Manner of Notice; (C) Authorizing the Trustee to Conduct an Auction to Determine the Highest and Best Offer; (D) Approving the Procedures for Determining Cure Amounts for Assumed Contracts and Leases; and (E) Granting Related Relief* (Docket No. 870), entered by the Bankruptcy Court on March 15, 2011, as the same may be amended from time to time.

**“Refining Asset Transaction”** means that sale of the Refining Assets to NuStar as purchaser from the Trustee as seller.

**“Refining Sale Order”** means that certain *Order (A) Authorizing and Approving the Sale of Certain of the Debtor’s Assets Free and Clear of Liens, Claims and Encumbrances Outside the Ordinary Course of Business; and (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and Approving Interim Distribution of Certain Sale Proceeds* (Docket No. 913), entered by the Bankruptcy Court on April 14, 2011.



**“Reinstated”** means (i) leaving unaltered the legal, equitable and contractual rights to which the holder of a Claim is entitled so as to leave such Claim unimpaired in accordance with section 1124 of the Bankruptcy Code; or (ii) notwithstanding any contractual provision or applicable law that entitles the holder of such Claim to demand or receive accelerated payment of such Claim after the occurrence of a default, (A) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code, or of a kind that section 365(b)(2) expressly does not require to be cured, (B) reinstating the maturity of such Claim as such maturity existed before such default, (C) compensating the holder of such Claim for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law, (D) if such Claim arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the holder of such Claim (other than the Debtor or an Insider) for any actual pecuniary loss incurred by such holder as a result of such failure and (E) not otherwise altering the legal, equitable or contractual rights to which the holder of such Claim is entitled; *provided, however*, that any Claim that is Reinstated under the Plan shall be subject to all limitations set forth in the Bankruptcy Code, including, in particular, sections 502 and 510.

**“Rejection Damages Claim”** means a Claim arising from the Debtor’s or the Trustee’s rejection of a contract or lease, which Claim shall be treated as a General Unsecured Claim and shall be subject to the terms and conditions set forth in the Plan.

**“Released Party”** means the Trustee, all members of the Gonzalez Family, Gonzalez Entities or related entities or individuals, including Glen Gonzalez, individually and as Trustee of the Glen Gonzalez Special Trust, the Al Gonzalez Grantor Retained Annuity Trust and the Sharron Gonzalez Grantor Retained Annuity Trust, Al Gonzalez, Sharron Gonzalez, Tierra G Squared Land & Properties, L.P., Tierra Pipeline, L.P., AGE Transportation, Inc., and Ruth Ann Ernst, Trustee of the Gonzalez Irrevocable Insurance Trust and their Representatives.

**“Representatives”** means, relating to the Gonzalez Settlement, the heirs, successors and assigns, agents, attorneys, accountants and other professionals of the parties thereto.

**“Reserved Claims”** means those claims and causes of action belonging to the Debtor, the Trustee, and/or the Estate, as specified in Section 14.7 herein or as specifically reserved in the Disclosure Statement, which are not released by this Plan.

**“Schedules”** means, collectively, the schedules of assets and liabilities, the list of equity interests, and the statements of financial affairs filed by the Debtor with the Bankruptcy Court, as required by section 521 of the Bankruptcy Code and in conformity with the Official Bankruptcy Forms of the Bankruptcy Rules, as such have been or may be amended or supplemented by the Debtor or the Trustee from time to time in accordance with Bankruptcy Rule 1009.

**“Second Bid Procedures Order”** means that certain *Order (A) Approving the Procedures for Soliciting Offers for Substantially All of the Estate’s Assets; (B) Approving the Form and Manner of Notice; (C) Authorizing the Trustee to Conduct an Auction to Determine the Highest and Best Offer; (D) Approving the Procedures for Determining Cure Amounts for Assumed Contracts and Leases; and (E) Granting Related Relief* (Docket No. 758), as amended March 15, 2011 (Docket No. 870) originally entered on December 21, 2010.

**“Section 363 Sale”** means a sale of assets of the Estate to a purchaser and assumption and assignment to such purchaser of certain executory contracts, if applicable, and unexpired leases under sections 363 and 365 of the Bankruptcy Code pursuant to an order of the Bankruptcy Court.

**“Secured Claim”** means a Claim (i) that is secured by a Lien on property in which the Estate has an interest, which Lien is not subject to avoidance under the Bankruptcy Code or otherwise invalid under the Bankruptcy Code or applicable State law, or a Claim that is subject to a valid right of setoff; (ii) to the extent of the value of the holder’s interest in the Estate’s interest in such property or to the extent of the amount subject to a valid right of setoff, as applicable; (iii) the amount of which is agreed upon in writing by the Debtor or Trustee and the holder of such Claim or determined, resolved or adjudicated by a Final Order; or (iv) that is otherwise designated as a Secured Claim pursuant to this Plan.

**“Secured Tax Claim”** means a Priority Tax Claim that is also a Secured Claim, but is treated as a Priority Tax Claim pursuant to section 1129(a)(9)(D) of the Bankruptcy Code.

**“Specified Collateral”** means the remaining assets subject to the Liens of Chase Capital, which shall be applied by the Trustee or the Liquidating Trustee to the remaining Administrative Claims, if any, in accordance with the Chase Settlement, and then to Chase Capital’s Allowed Post-Petition Claim, and shall include net proceeds of the settlement of insurance claims, including Reserved Claims, and all other claims against the Insurers, Insurance policies, any third-party defendant or related entity, escrowed funds held by counsel for the Trustee (including the James River Escrow, defined below), and all other monies and properties remaining in the Estate, other than the Gonzalez-Related Property (which are not Specified Collateral).

**“Secured Term Credit Facility Claim”** means the aggregate amount of Claims arising or existing under or related to any of the indebtedness issued pursuant to, or otherwise collateralized pursuant to the Chase Capital Credit Agreement that are Secured Claims. Solely for purposes of classification and treatment under this Plan, this definition also includes all Claims, Liens, 507(b) Claims (as defined in or arising under the DIP Order) and other rights that were created under the DIP Order and/or the TIP Order in favor of Chase Capital.

**“Subordinated Claim”** means any Claim against the Debtor that is subordinated pursuant to either section 510(b) or 510(c) of the Bankruptcy Code, which includes, but is not limited to, any Claim arising from the rescission of a purchase or sale of any Old Security, any Claim for damages arising from the purchase or sale of an Old Security, or any Claim for reimbursement, contribution or indemnification on account of any such Claim.

**“Substantial Contribution Claim”** means a claim for compensation or reimbursement of costs and expenses relating to services rendered in making a substantial contribution in the Chapter 11 Case pursuant to sections 503(b)(3), (4) or (5) of the Bankruptcy Code.

**“Term Credit Facility Claim”** means the aggregate amount of Claims arising or existing under or related to any of the indebtedness issued pursuant to, or otherwise collateralized pursuant to the Chase Capital Credit Agreement.

**“TexStar”** means TexStar Midstream Transport, LP an affiliate of TexStar MidStream Services, LP., or their respective affiliates.

**“Tierra Accounts”** means those two accounts shown on the Trustee’s books of account styled [1] TGS Land Account containing approximately \$39,054.56 and [2] Tierra Pipeline Account, containing approximately \$7,955.97.

**“Tierra G Squared Land”** means Tierra G. Squared Land & Properties, L.P. and all of its assets including without limitation all real property and all improvements thereon.

**“Tierra Partnerships”** means Tierra G Squared Land & Properties, L.P. and Tierra Pipeline, L.P.

**“Tierra Pipeline”** means Tierra Pipeline, L.P. and all of its assets including without limitation the pipeline described as a 138 mile pipeline easement originally constructed by Mobile, running from the Port of Corpus Christi, Texas to San Antonio, Texas and purchased from El Paso Merchant Energy-Petroleum Company and all improvements thereon.

**“Total Consideration”** as relates to the Gonzalez Settlement, the Cash Consideration of \$3,600,000 plus the Tierra Accounts, meaning those two accounts shown on the Trustee’s books of account styled [1] TGS Land Account containing approximately \$39,054.56, and [2] Tierra Pipeline Account, containing approximately \$7,995.97.

**“Trustee”** shall mean Eric J. Moeller, in his capacity as the court-appointed Chapter 11 Trustee in the Chapter 11 Case.

**“TIP Order”** means the DIP Financing Order, with special reference to the time period on and after July 6, 2010.

**“Unimpaired”** means, with respect to any Claim, that such Claim is not impaired within the meaning of section 1124 of the Bankruptcy Code.

**“United States Trustee”** means the United States Trustee appointed pursuant to 28 U.S.C. § 581 or any Assistant United States Trustee appointed pursuant to 28 U.S.C. § 582.

**“Unsecured Term Credit Facility Claim”** means the aggregate amount of Term Credit Facility Claims after deducting the Secured Term Credit Facility Claim.

**“Voting Deadline”** means the deadline established by the Bankruptcy Court by which each holder of a Claim in Classes that are entitled to vote on the Plan must submit the ballot indicating each such holder’s vote on the Plan.

**“Voting Record Date”** means the date established by the Bankruptcy Court for determining the holders of Claims entitled to vote on the Plan.

## **2. CLASSIFICATION OF CLAIMS AND RELEVANT DEADLINES**

### *2.1 Introduction*

A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and such Claim or Interest has not been paid, released, or otherwise settled prior to the Effective Date. A Claim or Interest may be and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes.

### *2.2 Unclassified Claims*

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Priority Tax Claims and Secured Tax Claims are not classified.

### *2.3 Classification of Claims and Interests*

The classification of Claims and Interests against the Debtor pursuant to the Plan is as follows:

<b>Class</b>	<b>Claim</b>	<b>Status</b>	<b>Voting Rights</b>
1	Other Priority Claims	Unimpaired	Not Entitled to Vote – Deemed to Accept
2	Asset Based Credit Facility Claims of Chase Bank under the Chase Bank Credit Agreement (DIP/TIP)	Unimpaired	Not Entitled to Vote – Deemed to Accept
3	Allowed Secured Term Credit Facility of Chase Capital under the Chase Capital Credit Agreement	Impaired	Entitled to Vote
4	General Unsecured Claims	Impaired	Entitled to Vote
5	Subordinated Claims	Impaired	Not Entitled to Vote – Deemed to Reject
6	AGE Refining Interests	Impaired	Not Entitled to Vote – Deemed to Reject

**3. TREATMENT OF CLAIMS AND INTERESTS**

3.1 *Unclassified Claims*

(a) **Administrative Claims**

With respect to each Allowed Administrative Claim, except as otherwise provided for in Section 10.1 of this Plan, on, or as soon as reasonably practicable after, the latest of (i) the Effective Date, (ii) the date such Administrative Claim becomes an Allowed Administrative Claim; or (iii) the date such Administrative Claim becomes payable pursuant to any agreement between the Trustee and the holder of such Administrative Claim, the holder of each such Allowed Administrative Claim shall receive in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Administrative Claim, (A) Cash equal to the unpaid portion of such Allowed Administrative Claim or (B) such different treatment as to which the Trustee and such holder shall have agreed upon in writing; *provided, however*, that Allowed Administrative Claims with respect to liabilities incurred by the Debtor or the Trustee in the ordinary course of business during the Chapter 11 Case shall be paid in the ordinary course of business in accordance with the terms and conditions of any agreements relating thereto.

(b) **Priority Tax Claims**

Each holder of an Allowed Priority Tax Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Priority Tax Claim as shall have been determined by the Trustee, (i) regular installments payable in Cash, over a period not exceeding five years after the Petition Date, having a total value, as of the Effective Date, equal to the Allowed amount of such Claim; (ii) such different treatment as to which the Trustee and such holder have agreed in writing; *provided* that such treatment is on more favorable terms to the Trustee (or Liquidating

Trustee after the Effective Date), than the treatment set forth in clause (i) above; or (iii) payment in full in Cash on the later of (A) the Distribution Date and (B) the date on which such Claim becomes an Allowed Claim.

Each holder of an Allowed Priority Tax Claim shall not receive any Cash or other distribution on account of a penalty on, with respect to, or arising in connection with, such Allowed Priority Tax Claims. All penalties on, with respect to, or arising in connection with, any Allowed Priority Tax Claim shall be treated as Class 4 General Unsecured Claims.

### 3.2 *Unimpaired Classes of Claims and Interests*

#### (a) **Class 1: Other Priority Claims**

On, or as soon as reasonably practicable after, the latest of (i) the Distribution Date, (ii) the date on which such Other Priority Claim becomes an Allowed Other Priority Claim, or (iii) the date on which such Allowed Other Priority Claim becomes payable pursuant to any agreement between the Trustee and the holder of such Other Priority Claim, each holder of an Allowed Other Priority Claim shall receive, in full satisfaction, settlement, release and discharge of and in exchange for such Allowed Other Priority Claim, either (A) Cash on the Effective Date equal to the unpaid portion of such Allowed Other Priority Claim or (B) such different treatment as to which the Trustee and such holder shall have agreed upon in writing; *provided* that such treatment is on more favorable terms to the Estate (or the Liquidating Trust after the Effective Date), than the treatment set forth in clause (A) above.

#### (b) **Class 2: Asset Based Credit Facility Claim of Chase Bank**

Chase Bank has already been paid in full the amount under the Chase Bank Credit Agreement. Chase Bank received these funds in full satisfaction, settlement, release, discharge of, in exchange for, and on account of such Allowed Asset Based Credit Facility Claim Cash in the full amount of such Claim.

Notwithstanding the foregoing, if any letters of credit issued under the Chase Bank Credit Agreement remain undrawn as of the Effective Date, the Trustee or the Liquidating Trustee, as applicable, will either, with the consent of such issuing bank: (i) cash collateralize such letters of credit in an amount equal to at least 105% of the undrawn amount of any such letters of credit, (ii) return any such letters of credit to the issuing bank undrawn and marked "cancelled," or (iii) provide a "back to back" letter of credit to the issuing bank in a form and issued by an institution reasonably satisfactory to such issuing bank, in an amount equal to at least 105% of the then undrawn amount of such letters of credit. Chase Bank filed an Administrative Claim in the amount of \$253,553.99 related to two outstanding letters of credit and associated fees and interest charges. One of these letters of credit related to the deductible and premiums the Debtor owed to James River Insurance Company ("**James River**"). On September 1, 2011, the

Trustee and James River filed their Joint Application to Approve Compromise and Settlement of Administrative Claim of James River Insurance Company (Docket No. 1215), which was approved by an order dated September 14, 2011 (Docket No. 1259). Pursuant to the terms of the compromise and settlement between the Trustee and James River, James River released its outstanding letter of credit in exchange for an escrow of \$100,000. The second letter of credit was in favor of the Texas Railroad Commission, but was released on or about November 3, 2011. The Committee, Trustee and Equity objected to the Chase Bank Administrative Claim, but the objections were rendered moot by the terms of the James River compromise and settlement and the release by the Railroad Commission. The escrowed funds (the "**James River Escrow**") remain subject to the Lien of Chase Capital, and upon release shall be applied to Chase Capital's Allowed Post-Petition Claim.

Notwithstanding anything to the contrary in the Plan or elsewhere, nothing in this Paragraph 3.2(b) shall diminish the recovery of Chase Bank in respect of its Claim under section 507(b) of the Bankruptcy Code, which shall be paid strictly in accordance with the provisions of such section.

### 3.3 *Impaired Voting Classes of Claims*

#### **(a) Class 3: Allowed Secured Term Credit Facility Claim of Chase Capital<sup>1</sup>**

Chase Capital has been paid \$40,212,084.63 under the Chase Capital Credit Agreement. This is the full amount of its prepetition claim outstanding as of the Petition Date.

Chase Capital sought payment of post-petition interest in an amount greater than \$6 million, reasonable fees and other charges which were claimed under Chase Capital's contracts with AGE Refining and the Bankruptcy Code, including Bankruptcy Code section 506 ("Chase Capital's Post-Petition Claim"). The Trustee, the United States Trustee, and the Committee all objected to Chase Capital's Post-Petition Claim. The Trustee and Chase Capital agreed to a compromise and settlement resolving Chase Capital's Post-Petition Claim, which was approved by the Court by an order entered on November 2, 2011 (the "**Chase Settlement**," as defined below). Under the terms of the Chase Settlement, Chase Capital's Post-Petition Claim is Allowed and capped at \$5,000,000.00; and this cap resolves and satisfies all remaining Claims and Administrative Claims of Chase Capital in this case. Chase Capital was to be paid \$200,000.00 of that \$5,000,000.00 following entry of the order approving the Chase Settlement and prior to confirmation of a plan. Notwithstanding the obligation to make such payment, the Trustee has not made such payment and will not make such payment prior to confirmation. Notwithstanding such modification of Chase Capital's right to

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<sup>1</sup> Pursuant to the Refining Asset Sale Order, Chase Capital Corporation received \$36 million and JP Morgan Chase Bank N.A. approximately \$118,000; however, on closing of the sale of the Redfish Bay Assets, the DIP/TIP Financing was paid in full other than a few days interest (as a result of the timing of the payment wire) and the costs of the letters of credit outstanding).

payment, Chase Capital has voted in favor of the Plan. Chase Capital will receive an additional amount, not to exceed \$3,415,000.00 out of Specified Collateral, as described in the Chase Settlement, including primarily the net proceeds from settlement of insurance claims, but excluding the Gonzalez-Related Property; after recovery of certain expenses incurred by Chase Capital in connection with the Gonzalez Litigation, the unsecured creditors (other than Chase Capital) will recover the next \$450,000.00 out of the Gonzalez-Related Property, with the \$1,385,000.00 balance of Chase Capital's Post-Petition Claim recovered (plus any portion of the secured claim not recovered from the Specified Collateral), if at all, as an Allowed General Unsecured Claim to be paid pari passu with all other Allowed General Unsecured Claims (such General Unsecured Claims are called Class 2 Unsecured Claims in the Chase Settlement, but are Class 4 General Unsecured Claims under this Plan). The terms of the compromise and settlement are set out more fully in Section IV.F.10 of this Disclosure Statement and Exhibit "A" to the Joint Motion of Chapter 11 Trustee and Chase Capital Corporation Under Fed. R. Bankr. P. 9019(A) to Approve Compromise and Settlement for Determination of Oversecured Status of Creditor, Allowance and Payment of Interest Amount of Claim (Docket No. 1251) (the "**Chase Settlement**"), which is incorporated herein by reference, and shall control over the foregoing summary. A settlement of a portion of the insurance claims has been made (other than affirmative claims by the Debtor to recover deductibles), and that settlement has been presented to the Court in a motion under Bankruptcy Rule 9019(a), and approved by Order under Docket No. 1422, signed November 29, 2011, entered November 30, 2011.. The insurance settlement should recover for the Estate approximately \$2,350,000.00, the net amount of which, after payment (or reserving for) of any remaining Administrative Claims, if any, would be paid to Chase Capital on account of its secured claim.

In addition, Chase Capital shall retain any payment received by it pursuant to the DIP Financing Order or TIP Order. Any replacement or other Liens (other than the Liens on the Specified Collateral) created pursuant to the DIP Financing Order shall terminate and shall have no further force and effect as of the date upon the final disbursement of the proceeds generated from the Specified Collateral.

Notwithstanding anything to the contrary in the Plan or elsewhere, nothing in this Paragraph 3.3(a) shall diminish the recovery of any holder of an Allowed Secured Term Credit Facility Claim in respect of any such holder's Claim under section 507(b) of the Bankruptcy Code, which shall be paid strictly in accordance with the provisions of such section.

The Committee has filed a Notice of Appeal of the orders approving the Chase Settlement and denying the Committee's related motion to value Chase Capital's collateral, but has not sought or obtained a stay of such orders.

**(b) Class 4: General Unsecured Claims**

On or as soon as reasonably practicable after the Distribution Date, each holder of an Allowed General Unsecured Claim will receive its Pro Rata share of the



Cash transferred to the Liquidating Trust less the amount set aside as the Liquidating Trust Reserve. In addition, to the extent additional monies are received by the Liquidating Trust or the Liquidating Trust Reserve is not used for expenses, additional monies may be available for distribution on a pro rata basis.

The size of the general unsecured class is estimated at between \$8 million and \$10 million. Aside from the general group of unsecured claims representing approximately \$4,700,000 million, there are also the unsecured claim of Chase Capital of at least \$1,385,000 pursuant to the Chase Settlement, the disputed claim of Pemex which Pemex sets at \$752,333.10, subject to amendment, and the disputed claim of DII which is unknown but listed by the Trustee at \$1,200,000. The Trustee does not intend to take any further action to contest Pemex or DII, but will leave those decisions to the Liquidating Trustee.

### 3.4 *Impaired Nonvoting Classes of Claims and Interests*

#### (a) **Class 5: Subordinated Claims**

Under the Plan, Subordinated Claims will not receive or retain any property on account of such Claims.

#### (b) **Class 6: AGE Refining Interests**

Under the Plan, all AGE Refining Interests of any kind shall be cancelled as of the Effective Date and the holders thereof shall not receive or retain any property under the Plan on account of such Interests.

### 3.5 *Reservation of Rights Regarding Claims*

Except as otherwise explicitly provided in the Plan, including without limitation, Sections 14.7, 14.8 and/or 14.10 hereof, nothing shall affect the Trustee's, the Estate's or the Liquidating Trust's rights and defenses, both legal and equitable, with respect to any Claims, including, but not limited to, all rights with respect to legal and equitable defenses to alleged rights of setoff or recoupment.

This reservation of rights does not extend to any rights determined by virtue of the DIP Financing Order and the TIP Order, as applicable, and the subsequent failure of any party to challenge the claims, liens, adequate protection, and other findings regarding Chase Capital and Chase Bank.

### 3.6 *Impairment Controversies*

If a controversy arises as to whether any Claim, or any class of Claims, is impaired under the Plan, the Bankruptcy Court shall, after notice and a hearing, determine such controversy.

#### 4. ACCEPTANCE OR REJECTION OF THE PLAN

##### 4.1 *Impaired Classes and Interests Entitled to Vote*

Holders of Claims in the Impaired Voting Classes of Claims are entitled to vote as a Class to accept or reject the Plan. Accordingly, unless otherwise provided in a Plan Supplement, the votes of holders of Claims in Class 3 and Class 4 (the "**Voting Classes**") are entitled to vote with respect to the Plan.

##### 4.2 *Acceptance by an Impaired Class*

In accordance with section 1126(c) of the Bankruptcy Code, and except as provided in section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims shall have accepted the Plan if the Plan is accepted by the holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims of such Class that have timely and properly voted to accept or reject the Plan.

##### 4.3 *Presumed Acceptances by Unimpaired Classes*

Unless provided otherwise in a Plan Supplement, Claims in Classes 1 and 2 (together, the "**Unimpaired Classes**") are Unimpaired under the Plan. Under section 1126(f) of the Bankruptcy Code, holders of such Unimpaired Claims are conclusively presumed to have accepted the Plan, and the votes of such Unimpaired Claim holders shall not be solicited.

##### 4.4 *Classes Deemed to Reject the Plan*

Unless provided otherwise in a Plan Supplement, Holders of Claims and Interests in Classes 5 and 6 (together, the "**Deemed Rejecting Classes**") are not entitled to receive or retain any property under the Plan. Under section 1126(g) of the Bankruptcy Code, such holders are deemed to have rejected the Plan, and the votes of such holders shall not be solicited.

##### 4.5 *Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code*

Because of the deemed rejection of the Plan by the Deemed Rejecting Classes, the Trustee seeks confirmation of the Plan, as it may be amended or modified from time to time, under section 1129(b) of the Bankruptcy Code. In addition, the Trustee is prepared to request confirmation of the Plan, as it may be amended and modified from time to time, under section 1129(b) of the Bankruptcy Code with respect to the Voting Classes, if applicable, if a Voting Class rejects the Plan. The Trustee reserves the right to alter, amend, or modify the Plan, the Plan Supplement, or any exhibit, in accordance with the provisions of the Plan, including, without limitation, Section 14.12 of this Plan, as necessary to satisfy the requirements of section 1129(b) of the Bankruptcy Code.

## 5. MEANS FOR IMPLEMENTING THE PLAN

### 5.1 *Means of Implementation*

The Trustee proposes to pay holders of Allowed Administrative Claims, Priority Claims, and Chase Capital in accordance with the Chase Settlement, except for the agreed payment to Chase of \$200,000 following entry of the order approving the Chase Settlement, which payment will be made, if at all, post-confirmation, and to the maximum extent possible, all unsecured claims, through the disbursement of available Cash and to the extent not already paid, the Trustee will distribute Cash to creditors in accordance with the priority of their liens and claims and in accordance with the Bankruptcy Code. Allowed claims of creditors holding valid, perfected liens shall be paid first (unless such creditor agrees to alternative treatment), then any remaining proceeds shall be applied to administrative claimants in order of their priority, then priority creditors, followed by unsecured creditors. This provision is affected by Chase Capital's agreement in the Chase Settlement and the impairment of Chase Capital's claim thereunder.

To the extent Cash is insufficient to pay all liens and claims, the Trustee will transfer the Liquidating Trust Assets to the Liquidating Trust on the Effective Date for monetization and distribution in accordance with those same priorities.

### 5.2 *Summary of the Reorganization of the Debtor*

Pursuant to the Refining Asset Sale Order entered on April 14, 2011, NuStar acquired the Refining Assets on April 19, 2011. The purchase price was \$41,000,000 for the fixed assets, \$2,220,292 for platinum, and approximately \$4,800,000 for working capital. As a part of the purchase, the Trustee assumed and assigned a number of executory contracts and unexpired leases based on NuStar's operational plans to continue running the refinery. NuStar cured all defaults on executory contracts and unexpired leases that were assumed and assigned and rejected all other executory contracts and unexpired leases.

The NuStar Transaction excluded the Redfish Bay Assets, the Trustee sold the Redfish Bay Assets to TexStar for \$6,500,000.00. The Court approved the sale of the Redfish Bay Assets on May 20, 2011 and the sale closed that same day.

There is a tentative settlement of the Debtor's claims against its Insurers related to the May 5, 2010 truck rack fire; that settlement will be filed and the Trustee will seek approval prior to or contemporaneously with approval of this Plan; the current settlement amount, subject to approval, is \$2.35 million. If, on or prior to the Effective Date, the Trustee has not already resolved the Gonzalez Litigation, the Trustee shall transfer, except as otherwise provided herein, the Gonzalez Litigation and any other remaining assets of the Estate to a Liquidating Trust specifically for the purpose of

holding all remaining assets of the Estate. The Trustee or an independent Person selected by the Trustee, in consultation with Chase Capital and the Committee, shall act as the Liquidating Trustee. The Liquidating Trustee shall have the right to use its business judgment to determine how to administer the remaining Estate assets for the benefit of holders of Allowed Class 4 claims (other than the Specified Collateral, which shall be liquidated only with the consent of Chase Capital and the proceeds from which shall be applied without deduction or surcharge to the remaining Administrative Claims, if any, and then to Chase Capital's Allowed Post-Petition Claim).

Attached as Exhibit "B" to the Refining Asset Sale Order is Schedule 1.1(a)(viii) to the Asset Purchase Agreement between the Trustee and NuStar which lists the executory contracts and unexpired leases that were assumed and assigned under section 365 of the Bankruptcy Code to NuStar as part of the Transaction. All other executory contracts and unexpired leases, with the exception of Redfish Bay Assets, are rejected. The Redfish Bay Assets, consisting primarily of the Storage Agreement and all rights and obligations existing thereunder, was assumed by the Trustee prior to the sale of the Refining Assets and was assigned to TexStar under the Redfish Bay Sale Order. To the extent there are any remaining executory contracts, on or prior to the Effective Date, the Trustee shall reject all remaining executory contracts and unexpired leases.

### 5.3 *Continued Corporate Existence*

By virtue of the fact that the Trustee sold substantially all of the Debtor's assets to NuStar and TexStar, AGE Refining, Inc. will no longer continue as a corporate entity. The Old Securities and AGE Interests will be cancelled and shall retain no value. The Trustee shall be authorized to take all actions necessary and file all appropriate documents to effectuate the winding up of AGE Refining and create the Liquidating Trust.

### 5.4 *Certificate of Incorporation and By-laws*

The certificate or articles of incorporation, by-laws, articles of organization or operating agreement, as applicable, of the Debtor shall cease to be binding, controlling documents. The Trustee or Liquidating Trustee shall be authorized to take the necessary actions and file the appropriate documents to wind up AGE Refining.

### 5.5 *Cancellation of Old Securities and Agreements*

On the Effective Date, except as otherwise provided for herein, (i) the Old Securities shall be deemed extinguished, cancelled and of no further force or effect, and (ii) the obligations of the Debtor or the Trustee, if any, under any agreement, indentures, or certificates of designations governing the Old Securities and any other note, bond, or indenture evidencing or creating any indebtedness or obligation of the Debtor with respect to the Old Securities shall be discharged in each case without further act or action under any applicable agreement, law, regulation, order, or rule and without further act or

action on the part of the Bankruptcy Court or any Person; *provided, however*, that the Chase Bank Credit Agreement and the Chase Capital Credit Agreement shall continue in effect solely for the purposes of (A) allowing the holders thereof to receive the distributions provided for such Claims hereunder, (B) allowing the Disbursing Agent to make distributions on account of such Claims, (C) preserving the rights of Chase Bank and Chase Capital under the Chase Bank Credit Agreement and the Chase Capital Credit Agreement, respectively, including without limitation, rights with respect to compensation, reimbursement of expense (including attorney's fees, if allowed) and rights to indemnification from the Estate in respect of any claim or cause of action asserted by a Person that is not party to such credit agreements; *provided, however*, that any claim or right to payment on account of any such indemnification shall be an unsecured claim and shall not be secured by any of the remaining assets of the Estate.

#### 5.6 *Transfer of Assets*

Except as otherwise provided herein, the property of the Estate, including Reserved Claims, shall be transferred to the Liquidating Trust on the Effective Date. The Liquidating Trust shall consist of all assets, claims, rights, causes of action and any and all other property that was not sold pursuant to the sale to NuStar and TexStar. Thereafter, the assets transferred to the Liquidating Trust will be under the control of the Liquidating Trustee to administer, acquire and dispose of such property free of any restrictions of the Bankruptcy Code, the Bankruptcy Rules and the Bankruptcy Court, but in the case of the Specified Collateral, subject to the Liens of Chase Capital. Except as specifically provided in the Plan or the Confirmation Order, as of the Effective Date, all property of the Liquidating Trust shall be Free and Clear of all Claims and Interests, other than the Specified Collateral, which shall be subject to the Liens of Chase Capital.

#### 5.7 *Restructuring Transactions*

After the Effective Date, the Trustee or Liquidating Trustee may enter into such transactions and may take such actions as may be necessary or appropriate, in accordance with any applicable state law, to effect a corporate or operational termination or winding up of AGE Refining; *provided, however*, that such transactions or actions are not otherwise inconsistent with the Plan or the distributions to be made under the Plan. Such transactions or actions may include such liquidations, closures, or dissolutions, as may be determined by the Trustee or Liquidating Trustee to be necessary or appropriate.

#### 5.8 *Preservation of Rights of Action*

Except as otherwise provided in the Plan, the Confirmation Order, or the Plan Supplement, and in accordance with section 1123(b) of the Bankruptcy Code, on the Effective Date, the Liquidating Trust shall hold all Litigation Rights including the Gonzalez Litigation that the Estate or Trustee may hold against any Person. The Liquidating Trustee shall retain and may enforce, sue on, settle or compromise (or decline to do any of the foregoing) all such Litigation Rights. This paragraph will not be

applicable as to Gonzalez or the Gonzalez Litigation if the Gonzalez Settlement is approved by this Court.

The Litigation Rights specifically include causes of action to be brought on behalf of the Trustee and/or AGE Refining against Glen Gonzalez, Al Gonzalez, Sharron Gonzalez, Tierra G Squared Land & Properties, L.P., Tierra Pipeline, L.P., Ruth Ann Ernst, the Glen Gonzalez Special Trust, the Al Gonzalez Grantor Retained Annuity Trust and the Sharron Gonzalez Grantor Retained Annuity Trust under 11 U.S.C. §§ 542, 547, 548, 549, 550; Texas Uniform Fraudulent Transfer Act §§ 24.005, 24.006, 24.008, common law actions for breach of fiduciary duty. This paragraph will not be applicable as to Gonzalez or the Gonzalez Litigation if the Gonzalez Settlement is approved by this Court.

The Trustee hereby also preserves any rights to assert actions on behalf of the Trustee and/or AGE Refining for insurance reimbursement related to the July 2009 Steam Turbine Generator explosion/fire and related damages, economic losses due to delay of operations, lost profits and loss of customer retention against the Insurers, Insurance policies, any third party defendant or related entity.

The Trustee hereby preserves any rights to assert causes of action on behalf of the Trustee and/or AGE Refining for insurance reimbursement related to the May 2010 truck rack fire that occurred at the refinery located at 7811 S. Presa St., San Antonio, TX 78223, subject to the Liens of Chase Capital. The Trustee hereby preserves all causes of action for insurance reimbursement related to the truck rack fire against the Insurers, Insurance policies, any third party defendant or related entity, subject to the Liens of Chase Capital.

Furthermore, the Trustee hereby preserves any and all rights to assert causes of action for insurance reimbursement related to the fire that occurred at the Elmendorf tank farm against the Insurers, Insurance policies, any third party defendant or related entity, subject to the Liens of Chase Capital.

Finally, the Trustee hereby preserves any and all rights to assert claims for insurance reimbursement, if any, related to the casualty that occurred at the refinery on or about April 2, 2011 against the Insurers, Insurance policies, any third party defendant or related entity, subject to the Liens of Chase Capital.

#### 5.9 *Exemption from Certain Transfer Taxes*

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers from the Debtor or the Estate to the Liquidating Trust or any other Person pursuant to the Plan in the United States, including any Liens granted by the Debtor, the Estate or the Trustee shall not be taxed under any law imposing a stamp tax, real estate transfer tax, sales or use tax, or other similar tax. Such exemption specifically applies, without limitation, to all documents necessary to evidence and implement distributions under the Plan, including the documents contained in the Plan Supplement. To the extent that any tax

laws or provisions apply to the sale of the Refining Assets or the Redfish Bay Assets, the language regarding tax treatment contained in the asset purchase agreements and sale orders for each transaction shall control.

#### 5.10 *Corporate Action*

On the Effective Date, all actions contemplated by the Plan shall be authorized and approved in all respects pursuant to the Plan. All matters provided for herein involving the corporate structure of the Debtor, and any corporate action required by the Trustee on behalf of the Debtor in connection with the Plan, shall be deemed to have occurred and shall be in effect, without any requirement of further action by the stockholders of the Debtor or the Trustee.

#### 5.11 *Plan Supplement*

The Trustee shall file a Plan Supplement with the Clerk of the Bankruptcy Court at least ten (10) Business Days prior to the Voting Deadline; except that any Plan Supplement relating to a resolution of the Gonzalez Litigation will be filed after said resolution. Upon such filing, all documents included in the Plan Supplement may be inspected via the Bankruptcy Court's electronic filing system at <https://ecf.txwb.uscourts.gov>. Holders of Claims or Interests may obtain a copy of any document included in the Plan Supplement upon written request to the Trustee's counsel in accordance with Section 14.15 of the Plan. The Trustee reserves the right to alter, amend or modify the Plan Supplement at any time prior to the Effective Date.

### **6. TREATMENT OF CONTRACTS AND LEASES**

#### 6.1 *Assumed Contracts and Leases*

(a) On the Effective Date, and to the extent permitted by applicable law, all of the Estate's remaining executory contracts and unexpired leases (those not assumed or rejected under the sale of the Refining Assets of Redfish Bay Assets) will be rejected by the Trustee unless such executory contract or unexpired lease: (i) is being assumed pursuant to the Plan or is identified as an executory contract or unexpired lease being assumed pursuant to NuStar Transaction, the Redfish Bay Transaction and the Plan; (ii) is the subject of a motion to assume filed on or before the Confirmation Hearing; or (iii) has previously been rejected or assumed.

(b) Each contract and lease that is assumed shall include (i) all modifications, amendments, supplements, restatements or other agreements made directly or indirectly by any agreement, instrument or other documents that in any manner affects such contract or lease and (ii) all contracts or leases appurtenant to the premises, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, powers, uses, reciprocal easement agreements, vaults, tunnel or bridge agreements or franchises and any other interests in real estate or rights *in rem* related to

such premises, unless any of the foregoing agreements has been rejected pursuant to an order of the Bankruptcy Court.

#### 6.2 *Compensation and Benefit Programs*

Through the Asset Purchase Agreement for the Refining Assets at Section 3.10, the Trustee provided NuStar with all material documents, contracts, reports, and notices related to any and all employee plans and other benefit obligations. The Trustee warrants that he performed, on behalf of the Debtor, all of the Debtor's material obligations thereunder and each employee plan and employee benefit obligation is in compliance with applicable laws at the time of the sale to NuStar.

#### 6.3 *Certain Indemnification Obligations*

Indemnification Obligations owed to those of the Debtor's directors, officers and employees serving on the Effective Date shall be deemed to be, and shall be treated as though they are, contracts that are rejected pursuant to section 365 of the Bankruptcy Code under the Plan, and such Indemnification Obligations (subject to any defenses thereto) shall not survive the Effective Date of the Plan, irrespective of whether obligations are owed in connection with an occurrence prior to or after the Petition Date.

Indemnification Obligations owed to those of the Debtor's directors, officers and employees who had served prior to, on or after the Petition Date, but who are not serving on the Effective Date shall be deemed to be, and shall be treated as though they are, contracts that are rejected pursuant to section 365 of the Bankruptcy Code under the Plan pursuant to the Confirmation Order. Any Claims resulting from such rejection shall constitute Subordinated Claims and shall be treated in accordance with Section 3.4(a) of the Plan.

#### 6.4 *Extension of Time to Assume or Reject*

Notwithstanding anything set forth in Article 6 of the Plan, in the event of a dispute as to whether a contract is executory or a lease is unexpired, the right of the Trustee to move to assume or reject such contract or lease shall be extended until the date that is thirty (30) days after entry of a Final Order by the Bankruptcy Court determining that the contract is executory or the lease is unexpired. The deemed rejection provided for in Section 6.1(a) of the Plan shall not apply to any such contract or lease, and any such contract or lease shall be assumed or rejected only upon motion of the Trustee following the Bankruptcy Court's determination that the contract is executory or the lease is unexpired.

#### 6.5 *Claims Arising from Assumption or Rejection*

(a) Except as otherwise provided in the Plan or by Final Order of the Bankruptcy Court, all (i) Allowed Claims arising from the assumption of any contract or lease shall be treated as Administrative Claims pursuant to Section 3.1(a) of the Plan; and



(ii) Allowed Rejection Damages Claims shall be treated as General Unsecured Claims pursuant to and in accordance with the terms of Section 3.3(b) of the Plan.

(b) If the rejection by the Debtor or Trustee, pursuant to the Plan or otherwise, of a contract or lease results in a Rejection Damages Claim, then such Rejection Damages Claim shall be forever barred and shall not be enforceable against the Debtor or the Estate unless a Proof of Claim is filed and served upon counsel to the Trustee or the Liquidating Trustee, as appropriate, on or prior to the later of (i) thirty (30) days after entry of the order authorizing the rejection of such contract or lease and (ii) fifteen (15) days after the date designated as the rejection date in the order authorizing the rejection of such contract or lease. The Trustee and the Liquidating Trustee reserve their rights to object to any Rejection Damages Claim.

## **7. PROVISIONS GOVERNING DISTRIBUTIONS**

### *7.1 Distributions for Claims Allowed as of the Effective Date*

Except as otherwise provided herein or as ordered by the Bankruptcy Court, all distributions to holders of Allowed Claims as of the applicable Distribution Date shall be made on or as soon as practicable after the applicable Distribution Date. The Trustee or the Liquidating Trustee shall have the right, in his discretion, to accelerate any Distribution Date occurring after the Effective Date if the facts and circumstances so warrant.

### *7.2 Distribution to Holders of Allowed Claims*

The Estate shall make distributions under this Plan through the Disbursing Agent, pursuant to the following terms:

(a) Unless otherwise agreed to between the Trustee or the Liquidating Trustee and the holder of an Allowed Claim, the Estate shall make distributions to the holders of Allowed Claims in the same manner and to the same addresses as such payments are made in the ordinary course of the Debtor's business.

No distributions shall be made on Disputed Claims until and unless such Disputed Claim becomes an Allowed Claim.

(b) No reserve shall be required with respect to any Disputed Claim.

(c) On or before the Effective Date, the Trustee shall establish the Liquidating Trust and transfer all remaining assets to the Liquidating Trust. The Liquidating Trust is governed by Section 10 of the Plan and the Liquidating Trust Agreement.

### 7.3 *Application of Distribution Record Date*

At the close of business on the Distribution Record Date, there shall be no further changes in the record holders of any Claim. The Trustee and the Liquidating Trustee, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claim occurring after the Distribution Record Date.

### 7.4 *Setoffs*

Except for any Claim that is expressly Allowed under the Plan, the Trustee or the Liquidating Trustee may, but shall not be required to, set off against any Allowed Claim, and the payments or other distributions to be made pursuant to the Plan in respect of such Claim, claims of any nature whatsoever that the Estate or the Trustee or the Liquidating Trustee may have against the holder of such Claim; *provided, however*, that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Trustee or the Liquidating Trustee of any such claim that the Estate or the Trustee or the Liquidating Trustee may have against such holder.

### 7.5 *Allocation of Distributions*

All distributions received under the Plan by holders of Claims shall be deemed to be allocated first to the principal amount of such Claim as determined for United States federal income tax purposes and then to accrued but unpaid interest, if any, with respect to such Claim.

## **8. CONDITIONS PRECEDENT TO CONFIRMATION AND CONSUMMATION OF THE PLAN**

### 8.1 *Conditions to Confirmation*

The following are conditions precedent to the occurrence of the Confirmation Date, each of which must be satisfied or waived in accordance with Section 8.3 of the Plan:

(a) an order finding that the Disclosure Statement contains adequate information pursuant to section 1125 of the Bankruptcy Code shall have been entered; and

(b) the proposed Confirmation Order shall be in form and substance reasonably satisfactory to the Trustee and to Chase Capital.

## 8.2 *Conditions to Effective Date*

The following conditions precedent must be satisfied or waived on or prior to the Effective Date in accordance with Section 8.3 of the Plan:

(a) the Confirmation Order shall have been entered in form and substance reasonably satisfactory to the Trustee and Chase Capital, and shall, among other things:

(i) provide that the Trustee or Liquidating Trustee, if applicable, is authorized and directed to take all actions necessary or appropriate to consummate the Plan, including, without limitation, to enter into, implement, and perform under the contracts, instruments, and other agreements or documents created in connection with the Plan;

(ii) provide that, notwithstanding Rule 3020(e) of the Bankruptcy Rules, the Confirmation Order shall be immediately effective, subject to the terms and conditions of the Plan;

(b) the Confirmation Order shall not then be stayed, vacated or reversed;

(c) all material authorizations, consents and regulatory approvals required, if any, in connection with consummation of the Plan shall have been obtained; and

(d) all material actions, documents and agreements necessary to implement the Plan shall have been effected or executed.

(e) the Liquidating Trust shall be established pursuant to the Liquidating Trust Agreement and conditions of the Plan.

(f) all proceeds from the Gonzalez Settlement and from the settlement of certain insurance claims approved by Order under Docket No. 1422 have been received (but if the Gonzalez Litigation is not settled, then it will be moved to the Liquidating Trust under this Plan), but this condition shall expire, unless earlier waived, February 1, 2012.

## 8.3 *Waiver of Conditions*

Each of the Conditions set forth in Sections 8.1 and 8.2 of the Plan, with the exception of the conditions contained in Section 8.1(a) and Sections 8.2(a)(i), (ii), (iii) and (b), may be waived in whole or in part by the Trustee without any notice to parties in

interest or the Bankruptcy Court and without a hearing; *provided, however*, that such waiver will not be effective without the consent of Chase Capital, which consent shall not be unreasonably withheld or delayed.

## **9. RETENTION OF JURISDICTION**

### **9.1 *Scope of Retention of Jurisdiction***

Under sections 105(a) and 1142 of the Bankruptcy Code, and notwithstanding entry of the Confirmation Order and occurrence of the Effective Date, and except as otherwise ordered by the Bankruptcy Court, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Case and the Plan to the fullest extent permitted by law, including, without limitation, jurisdiction to:

(a) with respect to Filed Claims or to the extent necessary with respect to other Claims, allow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Interest not otherwise Allowed under the Plan (other than personal injury or wrongful death Claims, unless agreed by the holder), including, without limitation, the resolution of any request for payment of any Administrative Claim and the resolution of any objections to the allowance or priority of Claims or Interests;

(b) hear and determine all applications for Professional Fee Claims and Substantial Contribution Claims; *provided, however*, that from and after the Effective Date, the payment of the fees and expenses of the retained Professionals of the Trustee shall be made in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court;

(c) hear and determine all matters with respect to contracts or leases or the assumption or rejection of any contracts or leases to which the Debtor is a party or with respect to which the estate may be liable, including, if necessary and without limitation, the nature or amount of any required Cure or the liquidation or allowance of any Claims arising therefrom;

(d) effectuate performance of and payments under the provisions of the Plan;

(e) hear and determine any and all adversary proceedings, motions, applications, and contested or litigated matters arising out of, under, or related to, the Chapter 11 Case or the Litigation Rights;

(f) enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and execute and implement all contracts,

instruments and other agreements or documents created in connection with the Plan or the Confirmation Order;

(g) hear and determine any disputes arising in connection with the interpretation, implementation, consummation, or enforcement of the Plan, including, without limitation, disputes arising under agreements, documents, or instruments executed in connection with the Plan including the Liquidating Trust Agreement;

(h) consider any modifications of the Plan, cure any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

(i) issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Person with the implementation, consummation or enforcement of the Plan or the Confirmation Order;

(j) enter and implement such orders as may be necessary or appropriate if the Confirmation Order is for any reason reversed, stayed, revoked, modified, or vacated;

(k) hear and determine any matters arising in connection with or relating to the Plan, the Plan Supplement, the Disclosure Statement, the Confirmation Order, or any contract, instrument or other agreement or document created in connection with the Plan, the Plan Supplement, the Disclosure Statement, or the Confirmation Order;

(l) enforce all orders, judgment, injunctions, releases, exculpations, indemnifications and ruling entered in connection with the Chapter 11 Case;

(m) except as otherwise limited herein, recover all assets of the Debtor and property of the Estate, wherever located;

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

(o) hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under, or not inconsistent with, provisions of the Bankruptcy Code; and

(p) enter a final decree closing the Chapter 11 Case.

## 9.2 *Failure of the Bankruptcy Court to Exercise Jurisdiction*

If the Bankruptcy Court abstains from exercising or declines to exercise jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under, or related to the Chapter 11 Case, including the matters set forth in Section 9.1 of the

Plan, the provisions of this Article 9 shall have no effect upon and shall not control, prohibit or limit the exercise of jurisdiction by any other court having jurisdiction with respect to such matter.

## **10. LIQUIDATING TRUST**

### *10.1 The Liquidating Trust*

The Liquidating Trust, duly organized under the laws of the State of Texas, shall be established for the purpose of investigating, prosecuting, liquidating and collecting on the Gonzalez Litigation and liquidating or abandoning the Liquidating Trust Assets including the Litigation Rights; making all payments and distributions to holders of allowed Class 4 claims in accordance with the terms of this Plan; closing the Chapter 11 Case; and otherwise implementing the Plan and finally administering the Estate. The Liquidating Trust is not otherwise authorized to engage in any trade or business. The beneficiaries of the Liquidating Trust, who will be treated as the grantors and deemed owners for federal income tax purposes, are the holders of Allowed Class 4 claims. The Liquidating Trustee shall file federal income tax returns for the Liquidating Trust as a grantor trust pursuant to § 671 of the Internal Revenue Code of 1986, as amended, and the Treasury Tax Regulations promulgated thereunder. The parties shall not take any position on their respective tax returns or with respect to any other matter related to taxes that is inconsistent with treating the Liquidating Trust as a "liquidating trust" within the meaning of Treasury Regulation Section 301.7701-4(d), unless any party receives definitive guidance to the contrary from the Internal Revenue Service.

### *10.2 Funding of Res of Trust*

To fund the Liquidating Trust, Liquidating Trust Assets shall be transferred and assigned to the Liquidating Trust, and the Liquidating Trust shall be in possession of, and have title to, all the Liquidating Trust Assets, as of the Effective Date. The Liquidating Trustee, as trustee of the Liquidating Trust shall be substituted as the plaintiff, defendant, or other party in all lawsuits regarding causes of action pending in which the Trustee or the Committee is the plaintiff as of the Effective Date. The conveyances of all Liquidating Trust Assets shall be accomplished pursuant to this Plan and the Confirmation Order and shall be effective upon the Effective Date. The Trustee shall convey, transfer, assign and deliver the Liquidating Trust Assets Free and Clear of all Liens. Upon the Effective Date, the Liquidating Trust shall be deemed to have taken an assignment of the Liquidating Trust Assets including all Litigation Rights against third parties for obligations or claims existing on or created by virtue of the Effective Date, unless expressly released in this Plan. The Liquidating Trustee may present such Orders to the Bankruptcy Court as may be necessary to require third parties to accept and acknowledge such conveyance to the Liquidating Trust. Such Orders may be presented without further notice other than as has been given in this Plan.

For all federal and applicable state and local income tax purposes, all Persons (including, without limitation, the Trustee, the Debtor, the Liquidating Trustee and the Liquidating Trust Beneficiaries) will treat the transfer and assignment of the Liquidating Trust Assets to the Liquidating Trust for the benefit of the Liquidating Trust Beneficiaries as (a) a transfer of the Liquidating Trust Assets directly to the Liquidating Trust Beneficiaries followed by (b) the transfer of the Liquidating Trust Assets by the Liquidating Trust Beneficiaries to the Liquidating Trust. The Liquidating Trust will be treated as a grantor trust for federal tax purposes and, to the extent permitted under applicable law, for state and local income tax purposes. The Liquidating Trust Beneficiaries will be treated as the grantors and deemed owners of their allocable portion of the Liquidating Trust Assets for federal income tax purposes.

The fair market value of the portion of the Liquidating Trust Assets that is treated for U.S. federal income tax purposes as having been transferred to each Liquidating Trust Beneficiary will be determined by the Liquidating Trustee, and all parties (including, without limitation, the Liquidating Trustee and the Liquidating Trust Beneficiaries) must utilize such fair market values determined by the Liquidating Trustee for federal and applicable state and local income tax purposes.

The Liquidating Trust's taxable income, gain, loss, deduction or credit will be allocated to the Liquidating Trust Beneficiaries in accordance with their relative beneficial interests in the Liquidating Trust during the applicable taxable period. Such allocation will be binding on all parties for federal and applicable state and local income tax purposes, and the parties will be responsible for the payment of any federal, state and local income tax due on the income and gain so allocated to them.

### 10.3 *The Liquidating Trustee*

The Liquidating Trustee shall be appointed by the Trustee, in consultation with the Committee and Chase. The Liquidating Trustee shall have all the rights, powers and duties set forth in the Liquidating Trust Agreement, and as otherwise provided in the Confirmation Order. The Liquidating Trustee shall be the exclusive trustee of the Liquidating Trust Assets for the purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to Bankruptcy Code § 1123(b)(3)(B). The Trustee reserves his right to be considered for the position of Liquidating Trustee, however, at this time, does not accept the Liquidating Trustee position.

Subject to the Bankruptcy Court's approval and appointment of the selection of the Liquidating Trustee at the Confirmation Hearing, a Person to be designated by the Trustee shall initially serve as the Liquidating Trustee. Matters relating to the appointment, removal and resignation of the Liquidating Trustee and the appointment of any successor Liquidating Trustee shall be set forth in the Liquidating Trust Agreement, provided that the Liquidating Trust Agreement shall authorize the Liquidating Trust Committee, in its sole discretion, to remove the Liquidating Trustee at any time. The Liquidating Trustee will provide a bond in an amount to be determined by

the Court at the Confirmation Hearing, the amount of which can be adjusted from time to time based on review and approval of the United States Trustee. The Liquidating Trustee shall be required to perform his or her duties as set forth in this Plan and the Liquidating Trust Agreement.

#### 10.4 *Retention of Professionals*

The Liquidating Trustee shall have the right to retain the services of attorneys, accountants, and other professionals that, in the discretion of the Liquidating Trustee, are necessary to assist the Liquidating Trustee in the performance of his or her duties. The reasonable fees and expenses of such professionals shall be paid by the Liquidating Trust. The payment of the reasonable fees and expenses of the Liquidating Trustee's retained professionals shall be made in the ordinary course of business from the Liquidating Trust Assets, if any exist, and shall not be subject to the approval of the Bankruptcy Court. Professionals of, among others, the Trustee, the Debtor and the Committee, shall be eligible for retention by the Liquidating Trustee, and former employees of the Trustee or the Debtor shall be eligible for retention by the Liquidating Trust and Liquidating Trustee.

#### 10.5 *Compensation of the Liquidating Trustee*

The Liquidating Trustee's compensation, on a post-Effective Date basis, shall be determined by the Trustee in conjunction with the Committee and disclosed in the Plan Supplement. The payment of the fees of the Liquidating Trustee and any professionals retained by the Liquidating Trustee shall be made by the Liquidating Trust from the Liquidating Trust Expense Reserve in accordance with this Plan and the Liquidating Trust Agreement.

#### 10.6 *Liquidating Trust Expenses*

Subject to the provisions of the Liquidating Trust Agreement, all costs, expenses and obligations incurred by the Liquidating Trustee in administering this Plan, the Liquidating Trust, or in any manner connected, incidental or related thereto, in effecting distributions from the Liquidating Trust thereunder (including the reimbursement of reasonable expenses) shall be a charge against the Liquidating Trust Assets, other than the Specified Collateral, remaining from time to time in the hands of the Liquidating Trustee. Such expenses shall be paid as they are incurred without the need for Bankruptcy Court approval.

#### 10.7 *Liability; Indemnification*

The Liquidating Trustee shall not be liable for any act or omission taken or omitted to be taken in his or her capacity as the Liquidating Trustee, other than acts or omissions resulting from such Person's willful misconduct, gross negligence or fraud. The Liquidating Trustee may, in connection with the performance of his or her functions, and in his or her sole absolute discretion, consult with attorneys, accountants and agents,



and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such professionals. Notwithstanding such authority, the Liquidating Trustee shall be under no obligation to consult with attorneys, accountants or his or her agents, and his or her determination to not do so should not result in imposition of liability on the Liquidating Trustee unless such determination is based on willful misconduct, gross negligence or fraud. The Liquidating Trust shall indemnify and hold harmless the Liquidating Trustee and his or her agents, representatives, professionals, and employees from and against and in respect to any and all liabilities, losses, damages, claims, costs and expenses, including, but not limited to attorneys' fees and costs arising out of or due to their actions or omissions, or consequences of such actions or omissions, with respect to the Liquidating Trust or the implementation or administration of this Plan; provided, however, that no such indemnification will be made to such Persons for such actions or omissions as a result of willful misconduct, gross negligence or fraud.

#### 10.8 *Termination*

The duties, responsibilities and powers of the Liquidating Trustee shall terminate after all Liquidating Trust Assets are fully resolved, abandoned or liquidated and the Available Cash and other amounts held in the Reserve Account have been distributed in accordance with this Plan and the Liquidating Trust Agreement. Except in the circumstances set forth below, the Liquidating Trust shall terminate no later than three years after the Effective Date. However, if warranted by the facts and circumstances provided for in this Plan, and subject to the approval of the Bankruptcy Court upon a finding that an extension is necessary for the purpose of the Liquidating Trust, the term of the Liquidating Trust may be extended one or more times (not to exceed a total of four extensions, unless the Liquidating Trustee receives a favorable ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the Liquidating Trust as a grantor trust for federal income tax purposes) for a finite period, not to exceed six months, based on the particular circumstances at issue. Each such extension must be approved by the Bankruptcy Court within two months prior to the beginning of the extended term with notice thereof to all of the unpaid beneficiaries of the Liquidating Trust. Upon the occurrence of the termination of the Liquidating Trust, the Liquidating Trustee shall file with the Bankruptcy Court a report thereof, seeking an order discharging the Liquidating Trustee.

#### 10.9 *Treatment of Specified Collateral Held by the Liquidating Trust*

To the extent that Specified Collateral, if any, is held by the Liquidating Trust, it shall be held subject to the Lien of Chase Capital and shall not be surcharged, taxed or otherwise be subjected to the expenses of the Liquidating Trust, except however, any remaining Administrative Claims. Notwithstanding anything to the contrary, Chase Capital may cause any or all of the Specified Collateral held by the Liquidating Trust to be transferred to Chase Capital or to such other party as Chase Capital may direct and the Liquidating Trustee shall promptly effect such transfer, reserving however for any remaining Administrative Claims, if any.

## 11. CREDITORS COMMITTEE AND LIQUIDATING TRUST COMMITTEE

### 11.1 *Dissolution of Committee*

The Committee shall continue in existence through the Effective Date to exercise those powers and perform those duties specified in Bankruptcy Code § 1103. Unless otherwise ordered by the Bankruptcy Court, on the Effective Date, (a) the Committee shall be dissolved and their members shall be released of all their duties, responsibilities and obligations in connection with the Cases, this Plan and the implementation of the same and (b) the retention or employment of the Committee's Professionals and other agents shall terminate.

### 11.2 *Creation of Liquidating Trust Committee.*

(a) One member of the Liquidating Trust Committee shall be selected by the Committee; **one member of the Liquidating Trust Committee shall be selected by Chase Capital, provided however, that should Chase Capital decide that it will not make a selection, such member shall be selected by the holder of the largest Class 4 claim (other than Chase Capital); and one member of the Liquidating Trust Committee shall be selected jointly by the individuals selected by the Committee and Chase Capital or the holder of the largest Class 4 claim, as the case may be.** If the individuals selected by the largest Class 4 claim holder and the Committee are unable to agree upon the third member of the Liquidating Trust Committee, then such selection shall be made by the Trustee.

(b) If a member of the Liquidating Trust Committee resigns or is otherwise removed, a replacement Liquidating Trust Committee member, as identified in the Plan Supplement, will be appointed.

### 11.3 *Procedures*

The Liquidating Trust Committee may adopt bylaws to provide for the governance of the Liquidating Trust Committee.

### 11.4 *Function, Duties, and Responsibilities*

The function, duties, and responsibilities of the Liquidating Trust Committee shall be set forth in the Liquidating Trust Agreement.

### 11.5 *Duration*

The Liquidating Trust Committee shall remain in existence until the Liquidating Trust is terminated in accordance with Section 10.8 of this Plan.

### 11.6 *Liability; Indemnification*

Neither the Liquidating Trust Committee, nor any of its members, or designees, nor any duly designated agent or representative of the Liquidating Trust Committee, or their respective employees, shall be liable for the act or omission of any other member, designee, agent or representative of the Liquidating Trust Committee, nor shall any member of the Liquidating Trust Committee be liable for any act or omission taken or omitted to be taken in its capacity as a member of the Liquidating Trust Committee, other than acts or omissions resulting from such member's willful misconduct, gross negligence or fraud. The Liquidating Trust Committee may, in connection with the performance of its functions, and in its sole and absolute discretion, consult with attorneys, accountants, and its agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such professionals. Notwithstanding such authority, the Liquidating Trust Committee shall be under no obligation to consult with attorneys, accountants or its agents, and its determination to not do so shall not result in the imposition of liability on the Liquidating Trust Committee, or its members and/or designees, unless such determination is based on willful misconduct, gross negligence or fraud. The Liquidating Trust shall indemnify and hold harmless the Liquidating Trust Committee and its members, designees, and Professionals, and any duly designated agent or representative thereof (in their capacity as such), from and against and in respect to any and all liabilities, losses, damages, claims, costs and expenses, including, but not limited to attorneys' fees and costs arising out of or due to their actions or omissions, or consequences of such actions or omissions with respect to the Liquidating Trust or the implementation or administration of this Plan; provided, however, that no such indemnification will be made to such Persons for such actions or omissions as a result of willful misconduct, gross negligence or fraud.

## **12. DISTRIBUTIONS TO HOLDERS OF CLASS 4 CLAIMS**

### 12.1 *Initial Cash Distribution to Holders of Class 4 Claims*

On or before the first semi-annual anniversary of (*i.e.*, upon the conclusion of the six month period following) the Effective Date, an initial Cash Distribution will be made Pro Rata from the Distribution Reserve to holders of Class 4 Claims from the remaining Cash after secured claims, administrative claims and priority claims are paid in full.

### 12.2 *Subsequent Cash Distributions to Holders of Class 4 Claims*

After the initial Cash Distribution under Section 10.1 of this Plan, the Liquidating Trustee shall make Cash Distributions Pro Rata from the Distribution Reserve to holders of Class 4 Claims within (60) days following liquidation or monetization of any of the Liquidating Trust Assets.

### 13. RESERVES ADMINISTERED BY THE LIQUIDATING TRUST

#### 13.1 *Establishment of Distribution Reserve Account*

The Liquidating Trustee shall establish the Distribution Reserve Account (which, notwithstanding anything to the contrary contained in this Plan, may be effected by either establishing a segregated account or establishing book entry accounts, in the sole discretion of the Liquidating Trustee).

#### 13.2 *Undeliverable Distribution Reserve*

(a) **Deposits.** If a Payment or Distribution to any holder of a Class 4 Claim is returned to the Liquidating Trustee as undeliverable or is otherwise unclaimed, such Payment or Distribution shall be deposited in a segregated, interest-bearing account, designated as an "Undeliverable Distribution Reserve," for the benefit of such holder until such time as such Payment or Distribution becomes deliverable, is claimed or is deemed to have been forfeited in accordance with Section 11.2(b) of this Plan.

(b) **Forfeiture.** Any holder of a Class 4 Claim that does not assert a claim pursuant to this Plan for an Undeliverable or Unclaimed Payment or Distribution within one year after the first Payment or Distribution is made to such holder shall be deemed to have forfeited its claim for such Undeliverable or Unclaimed Payment or Distribution and shall be forever barred and enjoined from asserting any such claim for the Undeliverable or Unclaimed Payment or Distribution against Debtor, any Estate, the Liquidating Trustee, the Liquidating Trust, or their respective properties or assets. In such cases, any Cash or other property held by the Liquidating Trust in the Undeliverable Distribution Reserve for distribution on account of such claims for Undeliverable or Unclaimed Payments or Distributions, including the interest that has accrued on such Undeliverable or Unclaimed Payments or Distribution while in the Undeliverable Distribution Reserve, shall become the property of the Liquidating Trust, notwithstanding any federal or state escheat laws to the contrary, and shall be available for immediate distribution by the Liquidating Trust as Unrestricted Liquidating Trust Cash Proceeds according to the terms of this Plan and the Liquidating Trust Agreement.

(c) **Disclaimer.** The Liquidating Trustee and his or her respective agents and attorneys are under no duty to take any action to either (i) attempt to locate any Claim holder, or (ii) obtain an executed Internal Revenue Service Form W-9 from any Claim holder

(d) **Payment or Distribution from Reserve.** Within fifteen Business Days after the holder of a Class 4 Claim satisfies the requirements of this Plan such that the Payment(s) or Distribution(s) attributable to its Claim or Liquidating Trust Interest (as applicable) is no longer an Undeliverable or Unclaimed Payment or Distribution (provided that satisfaction occurs within the time limits set forth in Section 13.2(b) of this Plan), the Liquidating Trustee shall pay out of the Undeliverable Distribution Reserve to

such holder the amount of the Undeliverable or Unclaimed Payment or Distribution attributable to such Claim or Liquidating Trust Interest (as applicable), including the interest that has accrued on such Undeliverable or Unclaimed Payment or Distribution while in the Undeliverable Distribution Reserve.

### 13.3 *Liquidating Trust Expense Reserve*

(a) On the Effective Date, the Liquidating Trustee shall deposit the Cash and other Liquidating Assets into the Liquidating Trust Expense Reserve. The funds constituting the Liquidating Trust Expense Reserve are to be used by the Liquidating Trustee solely to satisfy the expenses of the Liquidating Trust and the Liquidating Trustee as set forth in the Plan; *provided, however*, that all costs and expenses associated with the winding up of the Liquidating Trust and the storage of records and documents shall constitute expenses of the Liquidating Trust and shall be paid from the funds held in the Liquidating Trust Expense Reserve. In no event shall the Liquidating Trustee be required or permitted to use his or her personal funds or assets for such purposes.

(b) Beginning on the first semi-annual anniversary of the Effective Date and each semi-annual anniversary thereafter, the Liquidating Trustee shall evaluate and remove from The Unrestricted Liquidating Trust Cash Proceeds, as applicable, the amount that he or she estimates will be sufficient to pay the Liquidating Trust Expenses incurred during each six (6) month period following such semi-annual anniversary, as well as the costs and expenses associated with the winding up of the Liquidating Trust and the storage of records and documents, and such other amounts that the Liquidating Trustee deems necessary or appropriate in accordance with the procedures set forth in the Liquidating Trust Agreement; *provided, that*, until such time as the Allowed Deferred Professional Fees are paid in full, the Unrestricted Liquidating Trust Cash Proceeds may not be used to pay (or used to reserve for payment of) any Liquidating Trust Expenses other than Direct Expenses already accrued or incurred (which Direct Expenses shall be paid on a *pari passu* and pro rata basis with the Allowed Deferred Professional Fees).

### 13.4 *Unrestricted Liquidating Trust Cash Proceeds*

To the extent Unrestricted Liquidating Trust Cash Proceeds become available on or after the Effective Date, they shall be placed into the Liquidating Trust Expense Reserve for the Liquidating Trustee's administration of his or duties subject to the terms of this Plan and the Liquidating Trust Agreement. In the event that Unrestricted Liquidating Trust Cash Proceeds still exist when the Liquidating Trustee has completely wound up the Trust, such funds shall be disbursed on a pro rata basis to holders of Class 4 Claims.

## 14. MISCELLANEOUS PROVISIONS

### 14.1 *Professional Fee Claims and Substantial Contribution Claims*

All final requests for payment of Professional Fee Claims and any Substantial Contribution Claims must be filed and served on the Trustee or the Liquidating Trustee, as appropriate, his counsel, the United States Trustee, counsel to the Creditors Committee and other necessary parties in interest no later than sixty (60) days after the Effective Date, unless otherwise ordered by the Bankruptcy Court. Objections to such requests for payment must be filed and served on the Trustee or the Liquidating Trustee, as appropriate, his counsel, the United States Trustee, Counsel to the Creditors Committee and other necessary parties in interests as well as the requesting Professional or other Person no later than twenty-one (21) days (or such longer period as may be allowed by order of the Bankruptcy Court) after the date on which the applicable request for payment was served.

### 14.2 *Dissolution of the Creditors Committee*

The Creditors Committee shall continue in existence until the Effective Date to exercise those powers and perform those duties specified in section 1103 of the Bankruptcy Code. On the Effective Date, the Creditors Committee shall be dissolved, the members thereof shall be deemed released of all their duties, responsibilities and obligations in connection with the Chapter 11 Case or the Plan and its implementation, and the retention or employment of the Creditors Committee's attorneys, accountants, professionals and other agents shall terminate, except with respect to (a) all Professional Fee Claims, (b) any Substantial Contribution Claims, and (c) any appeals of the Confirmation Order.

### 14.3 *Payment of Statutory Fees*

All fees payable pursuant to section 1930 of Title 28 of the United States Code, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid on or before the Effective Date. All such fees that arise after the Effective Date shall be paid by the Liquidating Trust and shall remain the obligation of the Liquidating Trust until the Chapter 11 Case is closed, dismissed or converted.

### 14.4 *Successors and Assigns and Binding Effect*

The rights, benefits and obligations of any Person named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, personal representative, successor or assign of such Person, including, but not limited to, the Liquidating Trust and all other parties in interest in the Chapter 11 Case.

#### 14.5 *Compromises and Settlements*

From and after the Effective Date, the Trustee or the Liquidating Trustee may compromise and settle Claims against it and other Claims that it may have against other Persons without any further approval by the Bankruptcy Court. Until the Effective Date, the Trustee expressly reserves the right to compromise and settle Claims against it or other claims that it may have against other Persons, subject to the approval of the Bankruptcy Court if, and to the extent, required.

#### 14.6 *Releases and Satisfaction of Subordination Rights*

All Claims against the Debtor and all rights and claims between or among the holders of Claims relating in any manner whatsoever to any claimed subordination rights shall be deemed satisfied by the treatment under, described in, contemplated by, and/or implemented in Article 3 of the Plan. Distributions under, described in, contemplated by, and/or implemented by the Plan to the various Classes of Claims hereunder shall not be subject to levy, garnishment, attachment, or like legal process by any holder of a Claim by reason of any claimed subordination rights or otherwise, so that each holder of a Claim shall have and receive the benefit of the distributions in the manner set forth in the Plan.

Pursuant to the Chase Settlement, the Trustee waives, on behalf of the Estate, all post-petition claims and causes of action against and defenses to payment of the claims of Chase Capital and Chase Bank.

In accordance with the Gonzalez Settlement, subject to payment of the Total Consideration to the Trustee (or the Liquidating Trustee under the Plan), all claims and causes of action, known or unknown, whether asserted or unasserted, of the Trustee or Debtor or the Chase entities or the Estate against Gonzalez, their Representatives and Zurich American Insurance Company shall be released, including but not limited to (i) all causes of action under Chapter 5 of the Bankruptcy Code, (ii) any accounts receivable owed or allegedly owed by Gonzalez to the Debtor (including without limitation, ATI, Tierra Transportation, Tierra G Squared, Tierra Pipeline, or Al Gonzalez, all as shown on the Trustee's books of account for approximately \$1,714,537), (iii) any Operational Issues and/or (iv) any claims or causes of action in any way related, directly or indirectly, to the Bankruptcy, AGE Refining or the Gonzalez Litigation.

In accordance with the Gonzalez Settlement, subject to payment of the Total Consideration to the Trustee (or the Liquidating Trustee under the Plan), all claims and causes of action, known or unknown, of Gonzalez against the Debtor or the Trustee or the Estate or the Chase entities and their Representatives will be released, including without limitation, the ATI disputed payable as shown on the Trustee's books of account for approximately \$4,158,765, and any Operational Issues.

The foregoing releases are self-effectuating without need of any further order from the Bankruptcy Court.

14.7 *Channeling Injunction*

All Claims shall be bound by the following Injunction and Channeling  
Order:

(A) All parties in interest are enjoined on and after the Confirmation  
Date from:

(i) commencing or continuing in any manner any action or other proceeding of any kind with respect to Claims which are the subject of the release provided for in Section 14.6, against any Released Party;

(ii) directly or indirectly, filing, commencing, continuing, prosecuting, maintaining, intervening in or participating in (as class members or otherwise) any lawsuit, claim, demand, or proceeding in any jurisdiction against any Released Party that is based on or relates to the claims that are the subject of the release provided for in Section 14.6, or the facts and circumstances related thereto, or

(iii) organizing or soliciting the participation of class members into a separate class for purposes of filing, commencing, or prosecuting a lawsuit as a class action in any jurisdiction against any Released Party (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action) that is based on or relates to the claims which are the subject of the release provided for in Section 14.6, or the facts and circumstances related thereto.

(B) Any liabilities of the Released Parties to claim holders which are the subject of the release provided for in Section 14.6 shall be channeled and limited to the Liquidating Trust and the assets of the Liquidating Trust and the distributions contemplated under the Plan.

14.8 *Term of Injunctions or Stays*

Unless otherwise provided herein or in the Confirmation Order, all injunctions or stays provided for in the Chapter 11 Case under sections 105 or 362 of the Bankruptcy Code or otherwise, and existing on the Confirmation Date (excluding any injunctions or stay contained in the Plan or the Confirmation Order), shall remain in full force and effect until the Effective Date.



#### 14.9 *Modifications and Amendments*

The Trustee may, with the consent of Chase Capital, which consent shall not be unreasonably withheld or delayed, alter, amend or modify the Plan under section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date. After the Confirmation Date and prior to substantial consummation of the Plan, as defined in section 1101(2) of the Bankruptcy Code, the Trustee may, with the consent of Chase Capital, which consent shall not be unreasonably withheld or delayed, institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan or the Confirmation Order under section 1127(b) of the Bankruptcy Code, *provided, however*, that prior notice such proceedings shall be served in accordance with the Bankruptcy Rules or order of the Bankruptcy Court.

#### 14.10 *Severability 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, at the request of the Trustee, 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 shall remain in full force and effect and shall 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 valid and enforceable pursuant to its terms.

#### 14.11 *Revocation, Withdrawal or Non-Consummation*

The Trustee reserves the right, with the consent of Chase Capital, which consent shall not be unreasonably withheld or delayed, to revoke or withdraw the Plan at any time prior to the Confirmation Date and to file subsequent plans of reorganization. If the Trustee revokes or withdraws the Plan, or if the Confirmation or the Effective Date 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 any Claim or Class of Claims), assumption or rejection of contracts or 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, and no acts taken in preparation for consummation of the Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims by or against, or any Interests in, the Debtor or any other Person, (ii) prejudice in any manner the rights of the Debtor or any Person in any further proceedings involving the Debtor, or (iii) constitute an admission of any sort by the Debtor or any other Person.

14.12 *Notices*

Any notice, request or demand required or permitted to be made or provided to or upon the Trustee under the Plan shall be (a) in writing, (b) served by (i) certified mail, return receipt requested, (ii) hand delivery, (iii) overnight delivery service, (iv) first class mail, or (v) facsimile transmission, (c) deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed and (d) addressed as follows:

For the Trustee:

Eric J. Moeller  
c/o LANGLEY & BANACK, INC.  
745 E. Mulberry, Suite 900  
San Antonio, Texas 78212  
Facsimile: (210) 735-6889

With copies to:

LANGLEY & BANACK, INC.  
Attn: David Gragg, Esq.  
745 E. Mulberry, Suite 900  
San Antonio, Texas 78212  
Facsimile: (210) 735-6889

14.13 *Computation of Time*

In computing any period of time prescribed or allowed by the Plan, the provisions of Rule 9006(a) of the Bankruptcy Rules shall apply.

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Dated this 14th day of December, 2011.

/s/ Eric J. Moeller  
Eric J. Moeller  
Chapter 11 Trustee

**LANGLEY & BANACK, INC.**  
745 E. Mulberry, Suite 900  
San Antonio, Texas 78212  
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/s/ David S. Gragg  
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TO THE CHAPTER 11 TRUSTEE**