

property under the Plan or on account of such Equity Interest. **Therefore, the holders of any Equity Interest are deemed to reject the Plan.**

**ARTICLE V.**  
**MEANS OF IMPLEMENTATION AND EXECUTION OF THE PLAN**

**5.1 Substantive Consolidation.** On the Effective Date, the estates of the Debtors will be treated as if substantively consolidated for all purposes with respect to solicitation, voting, confirmation, implementation and execution of this Plan. On the Effective Date, all assets and liabilities of the Consolidated Debtors shall be treated as merged, all guaranty obligations of any Consolidated Debtor of any obligation of another Consolidated Debtor will be eliminated, and all Claims filed against any Consolidated Debtor shall be deemed filed against the consolidated estate of the Consolidated Debtors for all purposes relating to this Plan and to satisfaction of the Claims of Classes 1 through 8.

**5.2 Settlements and Compromises as the Foundation of the Plan.** The foundation of the Plan is a combination of the Environmental Settlement Agreement and the Committee Settlement Agreement, and the funds that may flow to the bankruptcy estate as a result. These settlements provide the basis for funding of the Plan and allow for the negotiated distributions provided for under the Plan on the Effective Date, or as soon thereafter as practical. Given the interdependence of these settlements, the substance of which is incorporated into and embodied in the Plan, the Plan is much more feasible than if a Plan had been proposed separate and apart from these settlements. In light of these settlements, the feasibility of the Plan is substantially increased and the execution risks associated with the Plan and the inability for the negotiated obligations under the Plan to be funded is substantially decreased.

**5.3 Vesting of Assets.** On the Effective Date, the Debtors, their properties and interests in property, and their operations will be released from the custody and jurisdiction of

the Bankruptcy Court, and all property of the bankruptcy estates of the Debtors will vest in the MPC Plan Trustee free and clear of all Claims, Liens, encumbrances, charges and other interests, but specifically subject to the obligations of the Debtors and the MPC Plan Trustee as provided in the Plan.

**5.4 BP Proceeds - Distribution of BP Proceeds after a Debtor or Trust All-Asset Sale Closing.** As provided in the Environmental Settlement Agreement [Dkt. # 818-1], at Section VII, entitled “BP Proceeds” at Paragraph 16, at 20, the Court approved the distribution and allocation and priority of BP Proceeds after a Debtor or Trust All-Asset Sale Closing. There, the Environmental Settlement Agreement provided as follows:

“16. To the extent that a Debtor All-Asset Sale or a Trust All-Asset Sale is closed prior to the Agent’s receipt of BP Proceeds, then any proceeds of the BP Claim or Protective Claim shall be distributed as follows:

- (a) first, to Motley Rice LLC (“*Motley Rice*”) in the amount of its fees and expenses with respect to the prosecution of the BP Claim and any Protective Claim;
- (b) second, to the Agent in the full amount of the DIP/Exit Obligations;
- (c) third, to the Reimbursement Escrow Account up to the Reimbursement Cap until distributed pursuant to Paragraph 34;
- (d) fourth, to the Environmental Wind-Down Reserve Account if then existing as necessary to pay expenses and wind down the Environmental Trust up to the maximum amount of \$50,000;
- (e) fifth, all remaining proceeds to the Agent until the Agent has received full payment of the Agent Secured Claim;<sup>7[footnote 4 in the Environmental Settlement Agreement]</sup> and
- (f) sixth, all remaining proceeds to the Bankruptcy Estates or any successor entity to be distributed as Excess Proceeds.”

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<sup>7[4]</sup> The Agent’s commitments under the Committee Settlement to fund the Estate Settlement Payment of up to \$7,375,000 shall be exclusively satisfied from the Agent’s payment of BP Proceeds hereunder.

### **5.5 BP Proceeds - Distribution of BP Proceeds Prior to a Debtor or Trust**

**All-Asset Sale Closing.** As provided in the Environmental Settlement Agreement [Dkt. # 818-1], at Section VII, entitled “BP Proceeds,” at Paragraph 17, at 20-21, the Court approved the distribution and allocation and priority of BP Proceeds prior to a Debtor or Trust All-Asset Sale Closing. There, the Environmental Settlement Agreement provided as follows:

“17. To the extent a Debtor All-Asset Sale or a Trust All-Asset Sale does not close prior to the Agent’s receipt of any BP Proceeds, any proceeds realized from the BP Claim or the Protective Claim, including, without limitation, settlement payments, shall be paid to the Agent and shall be distributed as follows:

- (a) first, to Motley Rice in the amount of its fees and expenses with respect to the prosecution of the BP Claim and any Protective Claim;
- (b) second, to the Agent in the full amount of the DIP/Exit Obligations;
- (c) third, to the Reimbursement Escrow Account up to the Reimbursement Cap until distributed pursuant to Paragraph 34;
- (d) fourth, (i) 50% of the remaining proceeds to the Environmental Trust and (ii) the balance of the remaining proceeds to the Agent until the Agent has received \$45,000,000 with respect to the Agent Secured Claim,<sup>8</sup> [footnote 5 in the Environmental Settlement Agreement]
- (e) fifth, 85% of the remaining proceeds to the Environmental Trust until such time as the Environmental Trust Funding Threshold is satisfied, and the balance of the remaining proceeds to the Agent until the Agent Secured Claim has been paid in full; and
- (f) sixth, all remaining proceeds to the Bankruptcy Estates or any successor entity to be distributed as Excess Proceeds.”

### **5.6 Distribution of Proceeds of MPC Liquidation Trust Assets Prior to the**

**Closure of Trust All-Asset Sale.** As provided in Environmental Settlement Agreement

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<sup>8</sup>[5] The Agent’s commitments under the Committee Settlement to fund the Estate Settlement Payment of up to \$7,375,000 shall be satisfied from the Agent’s payment hereunder.

[Dkt. # 818-1], Section VIII, entitled “Liquidation Trust,” at Paragraph 25, at 24-25, the Court approved the distribution and allocation and priority of proceeds of the MPC Liquidation Trust Prior to the Closure of a Trust All-Asset Sale. There, the Environmental Settlement Agreement provided as follows:

“25. Upon the sale of any Liquidation Trust Acquired Assets or the receipt of any net income before a Trust All-Asset Sale closes, the Liquidation Trust shall first pay all costs associated with such sale including any broker and legal fees and related closing costs and fully fund the Liquidation Wind-Down Reserve Account (as defined below) and any necessary reserves for administrative costs, as provided in the Liquidation Trust Agreement, and fully fund the Environmental Wind-Down Reserve Account (as defined below). After all of the forgoing has been paid, all remaining proceeds from the sale of property (the “*Net Proceeds*”) shall be distributed as follows:

- (a) first, to the Agent in the full amount of the outstanding DIP/Exit Obligations;
- (b) second, to the Reimbursement Escrow Account up to the Reimbursement Cap until distributed pursuant to Paragraph 34;
- (c) third, with respect to proceeds attributable to the sale of personal property identified by the Lenders on *attachment A* to the Liquidation Trust Agreement and sold apart from the real property, the first \$2,500,000 of such Net Proceeds to the Lender Parties;<sup>9</sup>  
[footnote 6 in the Environmental Settlement Agreement]
- (d) fourth, (i) 40% of the remaining proceeds to the Environmental Trust and, (ii) the balance of the remaining proceeds to the Agent until the Agent has received \$45,000,000 with respect to the Agent Secured Claim;

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<sup>9</sup>[6] Notwithstanding Attachment A, Waste Water Treatment Plant and Gyp Stack Maintenance Equipment shall only be sold in connection with a sale of the Gyp Stacks.

(e) fifth, 85% of the remaining proceeds to the Environmental Trust until such time as the Environmental Trust Funding Threshold is satisfied, and the balance to the Agent until the Agent Secured Claim has been paid in full; and

(f) sixth, all remaining proceeds to the Bankruptcy Estates or any successor entity to be distributed as Excess Proceeds.”

**5.7 Distribution of Proceeds of MPC Liquidation Trust Assets Upon the Closure of a Trust All-Asset Sale.** As provided in Environmental Settlement Agreement [Dkt. # 818-1], Section VIII, entitled “Liquidation Trust,” at Paragraph 26, at 25, the Court approved the distribution and allocation and priority of proceeds in the event of a Trust All-Asset Sale. There, the Environmental Settlement Agreement provided as follows:

“26. In the event the Liquidation Trust and Environmental Trust consummate a Trust All-Asset Sale, the Net Proceeds of such sale, or any subsequent sale, shall be distributed as follows:

(a) first, to the Agent in the full amount of the DIP/Exit Obligations;

(b) second, to the Reimbursement Escrow Account up to the Reimbursement Cap pursuant to Paragraph 34;

(c) third, to the Environmental Wind-Down Reserve Account if then existing as necessary to pay expenses and wind down the Environmental Trust up to the maximum amount of \$50,000;

(d) fourth, all remaining proceeds to the Agent until the Agent has received full payment of the Agent Secured Claim; and

(e) fifth, all remaining proceeds to the Bankruptcy Estates or any successor entity to be distributed as Excess Proceeds.”

**5.8 Modification of Distributions.** As provided in Section VIII, entitled “Liquidation Trust” at Paragraph 27 of the Environmental Settlement Agreement [Dkt. # 818-1, at 27], the Court approved a modification of the distribution and allocation and priority of

proceeds in the event of an All-Asset Sale, including an Alternative Transaction, under certain circumstances. There, the Environmental Settlement Agreement provided as follows:

“27. Notwithstanding anything to the contrary herein, the above distributions shall be deemed amended as follows upon the occurrence of any of the following events:

(a) Upon the Agent’s receipt of the full amount of the Agent Secured Claim (in addition to receipt of the full amount of the DIP/Exit Obligations), all remaining proceeds shall be paid to the Environmental Trust up to the Environmental Trust Funding Threshold.

(b) Upon the Environmental Trust’s receipt of the full amount of the Environmental Trust Funding Threshold, all remaining proceeds shall be paid to the Agent up to the full amount of the Agent Secured Claim (in addition to receipt of the full amount of the DIP/Exit Obligations).

(c) Upon both the Agent’s receipt of the full amount of the Agent Secured Claim (in addition to receipt of the full amount of the DIP/Exit Obligations) and the Environmental Trust’s receipt of the full amount of the Environmental Trust Funding Threshold, pursuant to Paragraphs 27(a) and (b) above, all remaining proceeds (the “*Excess Proceeds*”) shall be distributed to the Bankruptcy Estates or any successor entity and be considered Excess BP Proceeds subject to the procedures for such proceeds set forth in the Committee Settlement.

#### 5.9 Approval of Treatment, Distribution, Amounts, and Priorities of Proceeds.

The Environmental Settlement Order [Dkt. # 950], at pages 6-7, specifically approved the distribution, priorities, and amounts of the BP Proceeds and the proceeds from the sale of the Debtors assets through the Alternative Transaction.

(a) **BP Proceeds.** “**IT IS FURTHER ORDERED** that the treatment of the BP Proceeds as provided in Paragraphs 16 and 17 of the Settlement Agreement is specifically approved.”

(b) **Other Proceeds.** “IT IS FURTHER ORDERED that distribution of proceeds under Paragraphs 25 and 26 of the Settlement Agreement is specifically approved.”

**5.10 Committee - Estate Settlement Payment.** Upon the Effective Date, the Estate Settlement Payment shall be released from escrow to the Liquidating Trustee. If, however, the Estate Settlement Payment has not been received by the Debtor at the time of the Effective Date, the Estate Settlement Payment shall be made by the Agent directly to the Liquidating Trustee for distribution in accordance with the terms of this Plan.

**5.11 Implementation of Order and Judgment.** The Debtors still own the 320-acre parcel adjacent to the MPC facility in Jackson County, Mississippi, which MPC was ordered to deed, unencumbered, in fee simple, to the Mississippi Department of Marine Resources to become part of the Grand Bay National Estuarine Research Reserve pursuant to the Judgment entered on August 18, 2015, in the case styled, “*United States of America v. Mississippi Phosphates Corporation,*” Criminal Action No: 1:15CR58, United States District Court, Southern District of Mississippi. The Debtors, or the MPC Plan Trustee, as appropriate, intend to coordinate with State and Federal agencies with respect to the implementation of the requirements of the *Order Granting Motion of Mississippi Phosphates Corporation for Order Approving Entry Into Settlement with the United States Department of Justice and for Authority to Enter Into and Perform to Proposed Plea Agreement* [Dkt. # 948] and the Judgment with respect to the conveyance of the 320-acre parcel, which action was also authorized by that certain *Order Granting Motion of Mississippi Phosphates Corporation for Order Approving Entry Into Settlement with the United States Department of Justice and for Authority to Enter Into and Perform to Proposed Plea Agreement* [Dkt. # 948].

**5.12 Sources of Payments.** There are four (4) sources of payments by which the Plan will be funded: (1) the Estate Settlement Payment; (2) the Excess BP Proceeds; (3) realization of and recoveries from any unencumbered assets of the Debtors that were not transferred to either the Environmental Trustee or the Liquidation Trustee, including recoveries from Causes of Action not previously conveyed; and (4) recoveries from Avoidance Actions.

**5.13 Preservation of Avoidance Actions and Causes of Action.** The Debtors specifically and unequivocally reserve, for the Governments all rights to insurance coverage for environmental liabilities for amounts spent by the Governments, the Environmental Trust, the Debtors, and the Debtors' predecessors, all of which are preserved to the fullest extent permitted by law, and are assigned to the Environmental Trust, as provided by the terms of the *Order Approving Debtors' Motions for Approval of Sale Motion (Dkt. No. 819)*, *Committee Settlement (Dkt. No. 501)*, *Government Settlement (Dkt. No. 818)*, and *DOJ Settlement (Dkt. No. 870)* [Dkt. # 937] and the *Order pursuant to Bankruptcy Rule 9019 Approving Compromise of Controversy and Settlement Agreement and Authorizing Settlement among the Debtors, the Committee, the Lender Parties and PHI* [Dkt. # 949].

The Debtors specifically and unequivocally reserve, for themselves or for the MPC Plan Trustee (as successor in interest to the Debtors), the right to assert, after the confirmation of the Plan herein, any and all of the Claims, rights, and Causes of Action, and all proceeds of the foregoing, including, but not limited to, those listed below, which is a non-exclusive list of Potential Parties against whom the MPC Plan Trustee may assert Claims and Causes of Action. The failure to include a person or an entity on this list shall not constitute a release of such entity and shall not indicate that Claims and Causes of Action against such entity have not been retained. All possible Claims and Causes of Action, including Claims and Causes of Action not



listed below, are retained against all entities not expressly released pursuant to the Plan or a final order of the Bankruptcy Court. In the event of any inconsistency between the releases pursuant to the Plan or a final order of the Bankruptcy Court and the attached list, such releases granted pursuant to the Plan or final order of the Bankruptcy Court shall govern. The MPC Plan Trustee shall retain all Claims and Causes of Action of any kind whatsoever against all such persons or entities, including without limitation the following categories of Claims and Causes of Action:

- The BP Claim and the BP Protective Claim (the proceeds of which will be administered pursuant to the terms of this Plan and the *Order Approving Debtors' Motions for Approval of Sale Motion (Dkt. No. 819)*, *Committee Settlement (Dkt. No. 501)*, *Government Settlement (Dkt. No. 818)*, and *DOJ Settlement (Dkt. No. 870)* [Dkt. # 937], the *Order pursuant to Bankruptcy Rule 9019 Approving Compromise of Controversy and Settlement Agreement and Authorizing Settlement among the Debtors, the Committee, the Lender Parties and PHI* [Dkt. # 949].
- MPC's Claims against Hydrovac Industrial Services, Inc. ("**Hydrovac**") as more particularly stated in its Counterclaim filed against Hydrovac in that certain lawsuit styled "*Hydrovac Industrial Services, Inc. v. Mississippi Phosphates Corporation*," United States District Court for the Southern District of Mississippi, Civil Action No. 1:14CV00064-LG-JMR, arising out of and related to that certain accident that occurred on or about August 9, 2013, in which Hydrovac's employees, while on MPC's premises, accidentally sprayed certain of MPC's employees and premises with acid, or some other substance, in breach of the Master Services Agreement between MPC and Hydrovac effective March 14, 2012, (the "*MSA*") and of Hydrovac's common-law duties, which accident caused bodily injury, and physical damage to MPC's tangible property, and MPC's loss of use of other property of MPC that was not physically damaged, and damages to MPC arising out of and related thereto.
- Claims and causes of action for Avoidance Actions against the parties and in the approximate amounts as more particularly set forth in Schedule 5.13 to the Plan, but only to the extent that the aggregate value of all property that constitutes or is affected by such transfer to a particular transferee is greater than \$6,425.00.
- Claims and causes of action against insurance carriers or reinsurance carriers relating to coverage, indemnity, contribution, reimbursement or other matters (for the rights under those policies not covered to the MPC Environmental Trust or the MPC Liquidation Trust).
- Claims and causes of action against local, state, and federal taxing authorities for refunds of overpayments or other payments;

The Committee has required the Debtors to expressly reserve and preserve for the benefit of the MPC Plan Trust and to disclose to all parties in interest the following Causes of Action for prosecution by the MPC Plan Trustee (as successor in interest to the Debtors), including, but not limited to, the following:

- Claim for the Kemper Refunds the rights to which presently is subject to the litigation more particularly described in that certain Adversary Proceeding in the Bankruptcy Case styled "*MPC Liquidation Trust vs. Mississippi Phosphates Corporation and Mississippi Power Company*," Adv. Pro. No. 16-06001-KMS. Although the MPC Liquidation Trust contends that the Kemper Refunds were a "Purchased Asset" which it acquired free and clear of all liens and claims, the Committee disputes that and asserts that it is an asset that belongs to the bankruptcy estate. This litigation is at its early stages, and the total amount of potential recoveries is unknown at this time.
- Potential D&O Claims, including Claims covered by D&O Policies, more particularly described as follows:

Claims against any current or former director, officer or employee of any of the Debtors (including, but not limited to, Stephen Russo, Robert Kerley, Ajay Kumar, J. Kim Colvin, James L. Sherbert, Jr., Timothy R. Cantrell, C.E. McGraw, David Phelps, James G. Perkins, Jesse R. Alford, Richard L. Johnson and Robert Jones) for any tort including, but not limited to, claims for fraud, negligence, breach of fiduciary duty and/or breach of the duty of loyalty including, and further not limited to, (1) claims related to the failure to file timely insurance claims and/or (2) claims that related to or resulted in the deepening insolvency of the Debtors.

The total amount of potential recoveries is unknown at this time.

The MPC Plan Trustee has the sole discretion to pursue or not pursue any Causes of Action and Claims.

***NOTICE: Schedule 5.13 attached to this First Amended Plan is different from the Schedule 5.13 attached to the initial Joint Plan. Additional parties have been added who may be subject to Avoidance Actions, and additional amounts are listed than those listed in the Schedule 5.13 attached to the initial Joint Plan. Please read the attached Schedule 5.13 before voting on the Plan.***

**5.14 Payments to MPC Plan Trustee.** On the Effective Date, the Debtors shall pay all Cash in its possession to the MPC Plan Trustee as designated in the Plan. The transfer of Cash to the MPC Plan Trustee shall be made for the benefit of the holders of Allowed Claims, but only when and to the extent that holders of such Allowed Claims are entitled to distributions under the Plan.

**5.15 Disbursing Account.** Pursuant to the Operating Guidelines of the United States Trustee, the Debtors maintain a Debtors-in-Possession checking account into which receipts are deposited and disbursements are made. At the Effective Date, this account will be transferred to the MPC Plan Trustee and will serve as the Debtors' Disbursement Account. Funds from the sources of payments described in Section 5.12 above, when collected, are to be placed in the Disbursing Account. Payments to Creditors under the Plan will be funded from the Disbursing Account.

**5.16 Ace Insurance Program.** The ACE Insurance Program is not a Liquidation Trust Acquired Asset pursuant to the Sale Order. Nothing in the Disclosure Statement, the Plan, the Confirmation Order, any other document related to any of the foregoing, or any other order of this Court (including, without limitation, any provision that purports to be preemptory or supervening or grants an injunction or release, or requires a party to opt out of any releases): (i) alters the rights and obligations of the Debtors and the ACE Companies under the ACE Insurance Program; or (ii) modifies the coverage provided under the ACE Insurance Program or the terms and conditions thereof except that on and after the Effective Date, the MPC Plan Trustee shall succeed to all of the rights and responsibilities of the Debtors with respect to the ACE Insurance Program regardless of when underlying claims arise.

5.17 **AIG Insurance Policies.** With respect to those certain insurance policies (the “AIG Insurance Policies”) issued by the AIG Insurers that were assumed by Debtors pursuant to that certain Order entered by the Court dated January 23, 2015 [Doc. No. 417] (the “Assumption Order”), and subsequently transferred to either the MPC Environmental Trust or the MPC Liquidation Trust, subject to that certain reservation of rights in favor of AIG and its affiliates set forth in the Sale Order, as more particularly described in that certain *Notice of Closing of Sale of Assets to Environmental Trustee and Liquidation Trustee Under Alternative Transaction* [Dkt. # 1070], the AIG Insurance Policies, and all rights and claims thereunder, shall remain vested in either the Liquidation Trust or the Environmental Trust, respectively, and no AIG Insurance Policies, and all rights and claims thereunder, shall be transferred to the MPC Plan Trust pursuant to the Plan. The respective Environmental Trustee and Liquidation Trustee who have taken assignment of the respective AIG Insurance Policies shall be entitled to exercise rights under the respective AIG Insurance Policies, and neither the Debtor nor the MPC Plan Trustee shall have any rights under the AIG Insurance Policies. The Disclosure Statement and Plan do not, and shall not be construed to, alter, amend or impair the AIG Insurers’ rights under the insurance program and insurance policies, including without limitation the rights granted to the AIG Insurers under the Insurance Order [Dkt. # 259], the Assumption Order and the Sale Order.

**ARTICLE VI.**  
**ADMINISTRATION AND IMPLEMENTATION OF THE PLAN**

6.1 **Administration by MPC Plan Trustee.** The Plan will be administered and implemented by the MPC Plan Trust who shall be vested with full legal power, capacity and authority, and shall be directed to administer, collect and liquidate the Debtors’ remaining Assets and to administer and implement the Plan.

**6.2 Appointment of the MPC Plan Trustee.** Berkeley Research Group, LLC has been designated as the MPC Plan Trustee by the Creditors' Committee in the Plan Supplement and approved by the Bankruptcy Court, and shall serve without bond, unless otherwise ordered by the Bankruptcy Court. The appointment of the MPC Plan Trustee shall be effective as of the Effective Date.

**6.3 Dissolution of Committee and Appointment of the MPC Oversight Committee.** The Committee shall be dissolved on the Effective Date and a three-person MPC Oversight Committee shall be deemed constituted on the Effective Date. The Creditors' Committee have selected from its members the initial three members of the MPC Oversight Committee, which are: OCP S.A.; Trammo, Inc.; and Premier Chemicals & Services, LLC or their representatives.

**6.4 Duties of the MPC Oversight Committee.** The MPC Oversight Committee shall provide oversight to the MPC Plan Trustee, as provided in this Plan or in the Confirmation Order, with respect to the following: (i) the timing and amount of Distributions under the Plan; (ii) compensation of professionals; and (iii) pursuit and settlement of objections to Claims. The MPC Oversight Committee shall have the authority to consult with the MPC Plan Trustee, to seek removal of the MPC Plan Trustee in the event of incapacity or bad faith, gross negligence, or willful misconduct in the conduct of his duties under this Plan, and to appoint a successor MPC Plan Trustee in the event the MPC Plan Trustee is removed, resigns, or is otherwise unable to serve. The responsibilities of the MPC Oversight Committee set forth herein are the only responsibilities of the MPC Oversight Committee under the Plan, and, unless otherwise set forth in this Plan, the MPC Oversight Committee shall not be entitled to reimbursement of expenses or fees by the applicable post-confirmation Estate or the MPC Plan Trustee absent approval by the

Bankruptcy Court upon application. The bylaws approved by the Committee and in effect as of the Effective Date for the governance of the Committee, including resignation and replacement of members of the Committee, shall constitute the initial bylaws for governance of the MPC Oversight Committee. The MPC Oversight Committee shall be a party in interest pursuant to Section 1109 of the Bankruptcy Code. The United States Trustee is not responsible for the supervision of the MPC Oversight Committee. The MPC Oversight Committee shall be deemed dissolved as of the date of entry of the final decree closing any of these Cases.

**6.5 Powers of the MPC Plan Trustee.** The MPC Plan Trustee shall be deemed to be a judicial substitute for the Debtors as the party-in-interest in the Bankruptcy Cases, under the Plan or in any judicial proceeding or appeal to which a Debtor is a party, and, consistent with Section 1123(b)(3)(B) of the Bankruptcy Code, is appointed as the representative of the bankruptcy estate for the retention and enforcement of any Claim which arose prior to the Confirmation Date. The MPC Plan Trustee shall be subject to the terms and conditions of the Plan and the Confirmation Order. On the Effective Date, the current officers and directors of the Debtors shall be deemed to have resigned and shall be fully discharged from their responsibilities and duties as officers and directors of the Debtors. In general, and subject to the protective provisions in the Plan, the MPC Plan Trustee shall act for the Debtors and the bankruptcy estates in a fiduciary capacity as applicable to a board of directors. The MPC Plan Trustee shall exercise reasonable business judgment in the exercise of his, her, or its duties under the Plan. The MPC Plan Trustee shall be empowered and authorized to, among other things:

- (a) collect and liquidate the Debtors' remaining assets;
- (b) make the distributions required under the Plan;

(c) pursue Avoidance Actions in accordance with his/her reasonable business judgment;

(d) retain and/or employ professionals;

(e) exercise all powers and authority that may be exercised by any officer, director or holder of an Interest in the Debtors with like effect as if authorized, exercised and taken by unanimous consent of such officers, directors or holders of Interests including, without limitation, dissolving the Debtors;

(f) pursue objections to, and estimations and settlements of Claims;

(g) prosecute any Cause of Action of the bankruptcy estates, including Avoidance Actions;

(h) calculate and implement all distributions to be made under this Plan to Creditors holding Allowed Claims;

(i) market, sell, lease or otherwise dispose of or realize the value of all Assets;

(j) invest Cash held by him in accordance with the Plan for the benefit of the holders of Allowed Claims in short term overnight investments or longer term investments as permitted by Section 345 of the Bankruptcy Code;

(k) file all required tax returns and pay taxes and all other obligations on behalf of the Debtors;

(l) file required operating reports; and/or

(m) take all other actions required under the Plan to complete the liquidation, dissolution and wind-up of the Debtors in accordance with applicable non-bankruptcy law and the Plan.

**6.6 Authority of Plan Trustee to Settle and Grant Releases.** Without limiting the generality of this Section, in connection with the compromise and settlement of any Causes of Action preserved and retained under the Plan, the MPC Plan Trustee is authorized to settle Causes of Action of the Debtors and the Estates, and release and discharge, to the fullest extent permitted by applicable Law, non-Debtor parties to Causes of Action of the Debtors and the Estates from all Causes of Action to which the MPC Plan Trustee is a party in accordance with the Plan, subject to approval by the Bankruptcy Court. Any settlement effectuated prior to the Confirmation Date, upon approval thereof by the Bankruptcy Court or other court of competent jurisdiction, shall be deemed incorporated into the Plan by reference, and entry of the Confirmation Order, including provisions of such settlement, shall be deemed a settlement pursuant to Section 1123(b)(3)(A) of the Bankruptcy Code and Bankruptcy Rule 9019. The MPC Plan Trustee shall have the authority to settle or otherwise dispose of any Disputed Claim or Cause of Action of the Debtors and the Estates subject to approval of the Bankruptcy Court.

**6.7 Plan Trustee as Disbursing Agent.** The MPC Plan Trustee shall serve as the Disbursing Agent under the Plan. The MPC Plan Trustee may also be authorized and directed to review, object to, prosecute, negotiate, settle or otherwise compromise any Claims, pending causes of action, or other Avoidance Actions, in each case in accordance with Bankruptcy Rule 9019. The powers granted to the MPC Plan Trustee shall be exercisable without further approval of the Court.

**6.8 Liquidation of Assets.** The MPC Plan Trustee shall pursue recovery of Assets under the Plan in a commercially reasonable manner.

**6.9 Compensation of the MPC Plan Trustee and the MPC Plan Trustee's Professionals.** The MPC Plan Trustee shall be compensated for the services rendered in



accordance with a rate schedule submitted to and approved by the Creditors' Committee prior to confirmation and approved by the Court as a part of the confirmation of the Plan. The costs and expenses of the fulfillment of duties of the MPC Plan Trustee under the Plan, including the fees and expenses of the MPC Plan Trustee and his respective retained professionals, shall be paid by the MPC Plan Trustee from the Cash received under the Plan. Such costs and expenses shall be treated with a first priority right of distribution, and without prior approval by the Bankruptcy Court. The MPC Plan Trustee shall retain such amounts as are reasonably necessary (at the discretion of the MPC Plan Trustee) to meet the future fees and expenses expected to be incurred in administering obligations of MPC Plan Trustee under the Plan. Similarly, any professionals retained by the MPC Plan Trustee shall be compensated for the services rendered in accordance with appropriate review and approval procedures for the periodic payment of fees for services rendered by the MPC Plan Trustee and his professionals without the necessity of Court approval.

**6.10 Maintenance of Reserves.** The MPC Plan Trustee shall maintain appropriate reserves to fund confirmation administrative expenses, postconfirmation administrative expenses, and operating expenses during the implementation of the Plan. The MPC Plan Trustee shall establish the level of such reserves in consultation with the MPC Plan Trustee's professionals.

**6.11 Execution of Documents.** The Debtors (or the MPC Plan Trustee on behalf of the Debtors) may execute any and all documents and instruments necessary to effectuate the provisions of the Plan.

**6.12 Replacement of MPC Plan Trustee.** The United States Trustee may replace the MPC Plan Trustee, after notice and a hearing, for any grounds provided in Section 1104(a) of the

Bankruptcy Code. In the event of the death, resignation, or removal of the MPC Plan Trustee, the MPC Oversight Committee shall appoint a successor MPC Plan Trustee.

**6.13 Privileges of MPC Plan Trustee.** On the Effective Date, all of the Debtors' privileges, including, but not limited to, corporate privileges, confidential information, work product protections, attorney-client privileges, and other immunities or protections (the "***Privileges***") shall be transferred, assigned and delivered to the MPC Plan Trustee, without waiver, limitation or release, and shall vest with the MPC Plan Trustee for the benefit of the holders of Allowed Claims under the Plan. The MPC Plan Trustee shall hold, and be the beneficiary of, all Privileges and shall be entitled to assert all Privileges on and after the Effective Date, and the MPC Plan Trustee shall be entitled to assert such privilege and immunity to the same extent that the Debtors or the Estates were entitled to do so prior to the Effective Date. For purposes of clarity, this Section is not intended to expand or restrict the rights, if any, of third parties to their own privileges or any common interest or joint privileges. Such privileges, if any, are not waived or transferred by this provision.

**6.14 Indemnification of MPC Plan Trustee.** The MPC Plan Trustee and his respective agents and professionals shall not be liable for actions taken or omitted in their capacity as, or on behalf of, the holders of Claims for whose benefit the MPC Plan Trustee is appointed, except those acts, or omissions as determined by Final Order of a court of competent jurisdiction, arising out of its or their own willful misconduct, gross negligence, bad faith, self-dealing, breach of fiduciary duty or ultra vires acts, and each shall be entitled to indemnification and reimbursement for fees and expenses in defending any and all of its actions or inactions in its capacity as, or on behalf of, the MPC Plan Trustee, except for any actions or

inactions involving willful misconduct, gross negligence, bad faith, self-dealing, breach of fiduciary duty; or *ultra vires* acts.

**6.15 Distributions to Holders as of the Confirmation Date.** As of the close of business on the Confirmation Date, the Claims Register and other registers as maintained by the Clerk of the Bankruptcy Court will be closed and there will be no further changes in the record holder of any Claim. The MPC Plan Trustee will have no obligation to recognize any transfer of any Claim occurring after the Confirmation Date. The MPC Plan Trustee instead will be authorized and entitled to recognize and deal for all purposes under the Plan only with those record holders stated on the Schedules and/or Claims Register, as the case may be, and other registers as of the close of business on the Confirmation Date.

**6.16 Conversion of Case to Chapter 7.** If at any time the MPC Plan Trustee determines that the expense of administering matters for which a MPC Plan Trustee is responsible under the Plan is likely to exceed the value of the Cash remaining in the possession of a MPC Plan Trustee, the MPC Plan Trustee may apply to the Bankruptcy Court for authority to convert the Case to a Chapter 7 case. Notice of such application shall be given electronically, to the extent practicable, to those parties who have filed requests for notices and whose electronic addresses remain current and operating.

**6.17 MPC Plan Trustee's Post-Confirmation Role as of the Effective Date.** All rights and obligations of the Debtors under this Plan that exist or continue after the Effective Date other than the role of the CRO in administering the Professional Fee Escrow Account shall vest in the MPC Plan Trustee pursuant to the terms of the Plan and shall be rights and obligations exercisable exclusively by the MPC Plan Trustee after the Effective Date. Other than the

foregoing roles, the CRO shall be released of all duties and obligations to the Debtors, the Estates and the creditors after the Effective Date.

6.17.1 **Effectuating Documents and Further Transactions.** The MPC Plan Trustee is authorized and directed to execute, deliver, file or record such contracts, instruments, releases, indentures, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

**ARTICLE VII.**  
**FEASIBILITY**

7.1 **Feasibility.** Because the Debtors do not know how much money the MPC Plan Trustee will have in the Disbursing Account at the Effective Date, the holders of Allowed Administrative Claims that otherwise would be entitled to be paid in full in Cash on the Effective Date may need to wait to be paid until the MPC Plan Trustee has sufficient money to pay those Claims. Because each holder of an Allowed Administrative Claim either will be paid in Cash in full on the Effective Date, or will wait to be paid as soon thereafter as practicable, or will agree to alternative treatment with the Debtors prior to the Effective Date, and because the MPC Plan Trustee is required only to pay the Claims according to the priorities established by the Plan and in each of the various Classes Pro Rata to the extent of remaining funds in the Disbursing Account, and because all existing Equity Interests in the Debtors (Class 8) will be extinguished and retired and the Debtors shall be dissolved, the Plan is feasible if it is accepted by each holder of an Impaired Allowed Administrative Claim and each by Voting Class. If so, there is no feasibility issue.

**ARTICLE VIII.**  
**FEDERAL INCOME TAX TREATMENT OF PLAN TRUSTEE**

**8.1 Federal Income Tax Treatment of MPC Plan Trustee.** The Plan provides for the appointment of the MPC Plan Trustee on the Effective Date to address claims and distributions.

**8.2 Liquidating Trust.** Subject to appropriate documentation, on the Effective Date, distributions payable to the MPC Plan Trustee in accordance with the Plan may be paid to a liquidating trust. Although the assets are actually transferred to the Liquidating Trust, the liquidating trust approach treats the Debtors' assets as if the assets were first distributed to the holders of Allowed Claims and such holders of Allowed Claims then contributed the assets to the liquidating trust. This constitutes a completed transfer of the assets by the Debtors. At the time of the deemed distribution to the creditors, the creditors determine the tax consequence of the deemed distribution – usually a business bad debt deduction for the creditors. Because the creditors are treated as having contributed the assets to the liquidating trust, each of them is a grantor to the extent of the assets it contributed. The mechanics of the tax filings for the liquidating trust likely would require the filing of an IRS Form 1041 and provide a statement to each grantor of its portion of the trust's income and expenses.

**ARTICLE IX.**  
**PROVISIONS GOVERNING VOTING AND DISTRIBUTIONS**

**9.1 Voting of Claims.** Each holder of an Allowed Claim in an impaired Class of Claims that is entitled to vote on the Plan pursuant to Article III and Article IV of the Plan (i.e., Classes 1, 4, 6, and 7) shall be entitled to vote to accept or reject the Plan.

**9.2 Nonconsensual Confirmation.** If any impaired class of Claims entitled to vote shall not accept the Plan by the requisite statutory majority provided in Section 1126(c) of the Bankruptcy Code, the Debtors reserve the right to amend the Plan or to undertake to have the

Bankruptcy Court confirm the Plan under Section 1129(b) of the Bankruptcy Code or both. Section 1129(b) of the Bankruptcy Code provides that the Plan may be confirmed by the Court despite not being accepted by every Impaired Class if (i) at least one Impaired Class of Claims, excluding the claims of insiders, has accepted the Plan; and (ii) the Court finds that the Plan does not discriminate unfairly and is fair and equitable to the rejected Classes. Among other things, such a finding would require a determination by the Court that the Plan provides that no holder of an Allowed Claim or Interest junior to the rejecting Class will receive or retain property or payment under the Plan until or unless such rejecting Class is paid in full. The Debtors reserve the right pursuant to Section 1129(b) of the Bankruptcy Code to request the Court to confirm the Plan if all of the applicable requirements of Section 1129(a) of the Bankruptcy Code have been met. In addition, the Debtors reserve the right pursuant to Section 1126(e) of the Bankruptcy Code to request the Court to strike any Ballot rejecting the Plan cast by any holder of a Claim or interest which was not cast in good faith.

**ARTICLE X.**  
**PROCEDURES GOVERNING DISTRIBUTIONS**

**10.1 Distributions.** The MPC Plan Trustee shall make distributions in accordance with the Plan, beginning as soon after the Effective Date as is deemed practicable by the MPC Plan Trustee in its reasoned judgment, from Cash received under the Plan, including (1) the Estate Settlement Payment; (2) realization of and recoveries from any unencumbered assets of the Debtors that were not transferred to the Environmental Trustee or the Liquidation Trustee; (3) recoveries from Avoidance Actions; and (4) recoveries from Causes of Action, except with respect to such amounts (i) as would be distributable to a holder of a Disputed Claim if such Disputed Claim had been Allowed prior to the time of such distribution (but only until such Claim is resolved); (ii) as are reasonably necessary to meet contingent liabilities; (iii) to pay

reasonable expenses; and (iv) to satisfy other liabilities incurred by the MPC Plan Trustee in accordance with this Plan.

**10.2 Distributions on Account of Allowed Claims.** Distributions with respect to Allowed Claims shall be as soon as reasonably possible, given the responsibilities of liquidating the assets of the bankruptcy estates, pursuing Avoidance Actions and Causes of Action where appropriate, examining Claims, and the time and expense of making partial or interim distributions. All Allowed Claims in a particular class held by a Creditor shall be aggregated and treated as a single Claim. Any Creditor holding multiple Allowed Claims shall provide to the Debtors a single address to which any distribution shall be sent. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

**10.3 Disallowed Claims.** In the event the Debtors or the MPC Plan Trustee have asserted a Cause of Action under Chapter 5 of the Bankruptcy Code against the holder of a Claim, then such Claim shall be deemed disallowed pursuant to Section 502(d) of the Bankruptcy Code. Consequently, the holders of such Claims may not vote to accept or reject the Plan until the Cause of Action against such Claimant has been settled or adjudicated by the Bankruptcy Court and any amounts due the Debtors have been received.

**10.4 Estimated Claims.** To the extent that any Claim is estimated for any purposes other than for voting, then in no event will such Claim be Allowed in an amount greater than the estimated amount.

**10.5 No Interest.** Except as expressly stated in the Plan or otherwise allowed by Final Order of the Bankruptcy Court, no holder of an Allowed Claim will be entitled to the accrual of

Post-Petition Date interest or the payment of Post-Petition Date interest penalties, or late charges on account of such claim for any purpose.

**10.6 Modification of Payment Terms.** With the consent of the holder of any such Allowed Claim, to the extent provided in Section 1123(a)(4) of the Bankruptcy Code, the MPC Plan Trustee may modify the treatment of any Allowed Claim at any time after the Effective Date.

**10.7 Security Deposits.** To the extent the Debtors have posted security deposits (with landlords, utilities or otherwise) which are less than the indebtedness secured thereby, those amounts may be set off against Allowed Secured Claims upon the written consent of the MPC Plan Trustee or upon entry of a Final Order authorizing such offset as Class 4 Claims. To the extent the Debtors have posted security deposits (with landlords, utilities or otherwise) which are greater than the indebtedness secured thereby, all amounts in excess of the indebtedness shall be remitted to the MPC Plan Trustee promptly after the Effective Date and shall not be offset against any Claim.

**10.8 Delivery of Distributions.** Except as otherwise provided herein, all distributions under the Plan shall be made by the MPC Plan Trustee. Subject to Bankruptcy Rule 9010, unless otherwise provided in the Plan, all distributions to any holder of an Allowed Claim by the MPC Plan Trustee will be made to the holder of each Allowed Claim at the address of such holder as listed in the Schedules, or on the books and records of the Debtors unless the MPC Plan Trustee has been notified in advance in writing of a change of address, including, without limitation, by the timely filing of a proof of claim or interest by such holder that provides an address for such holder different from the address reflected in the Schedules or in the Debtors' books and records. In the event that any distribution to any holder is returned as undeliverable, no distribution to



such holder will be made unless and until the MPC Plan Trustee has been notified of the then-current address of such holder, at which time or as soon as reasonably practicable thereafter, such distribution will be made to such holder without interest; provided, however, that, such undeliverable distributions will be deemed unclaimed property under Section 347(b) of the Bankruptcy Code at the expiration of ninety (90) days after the date of distribution, and any Claim of any Holder in or to such property shall be discharged and forever barred. Nothing herein shall require or be construed to require the Debtor or its designee to locate any Holder of any Allowed Claim. Rather, it is the duty of each Holder of any Allowed Claim to keep the MPC Plan Trustee apprised of its current mailing address. The MPC Plan Trustee will have no obligation to attempt to locate any holder of an Allowed Claim other than by reviewing the Schedules and the books and records maintained by Debtors (including any proofs of claim filed against the Debtors).

**10.9 Manner of Payment.** At the option of the MPC Plan Trustee, any Cash payment to be made hereunder may be made by a check or, at the option of the MPC Plan Trustee, by wire transfer.

**10.10 Withholding and Reporting Requirements.** In connection with the Plan and all instruments issued in connection therewith and distributed thereunder, the MPC Plan Trustee shall comply with all applicable withholding and reporting requirements imposed by any federal, state or local taxing authority, and all distributions under the Plan shall be subject to any such withholding or reporting requirements.

**10.11 Time Bar to Cash Payments.** Checks issued by the MPC Plan Trustee in accordance with the Plan in respect of Allowed Claims shall be null and void if not negotiated within sixty (60) days after the date of issuance thereof. Requests for reissuance of any check