

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION**

In re:	§	Chapter 11
	§	
HII TECHNOLOGIES, INC., <i>et al.</i>	§	15-60070-H2-11 (DRJ)
Debtors	§	(Jointly Administered)

DEBTORS' JOINT PLAN OF REORGANIZATION

McKool Smith, P.C.

600 Travis St., Suite 7000
Houston, TX 77002
Telephone: (713) 485-7300
Telecopy: (713) 485-7344

ATTORNEYS FOR DEBTORS

Dated: January 6, 2016

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION**

In re:	§	Chapter 11
	§	
HII TECHNOLOGIES, INC., <i>et al.</i>¹	§	15-60070-H2-11 (DRJ)
Debtors	§	(Jointly Administered)

DEBTORS' JOINT PLAN OF REORGANIZATION

HII Technologies, Inc., Apache Energy Services, LLC, Aqua Handling of Texas, LLC, Sage Power Solutions, Inc., and Hamilton Investment Group Inc., the above captioned debtors, propose the following joint chapter 11 plan pursuant to section 1121(a) of title 11 of the United States Code for the resolution of outstanding Claims against and Equity Interests in each of the Debtors. Reference is made to the Disclosure Statement distributed with this Plan for a discussion of the Debtors' history, businesses, assets, operations, risk factors, a summary and analysis of this Plan, and certain related matters. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code, the Debtors respectfully reserve the right to alter, amend, modify, revoke or withdraw this Plan prior to consummation.

SUBSTANTIVE CONSOLIDATION

The Plan is proposed as a joint chapter 11 plan for all of the Debtors. Claims against, and Equity Interests in, the Debtors (other than Administrative and Priority Unsecured Tax Claims) are classified in Article III and treated in Article IV.

The Plan is also a motion requesting that the Bankruptcy Code substantively consolidate the Debtors' estates solely for the purposes of voting and making distributions, as more fully set forth below. The Plan must meet the requirements of section 1129 of the Bankruptcy Code with respect to the Debtors on a consolidated basis in order to be confirmed.

ARTICLE I

DEFINITIONS

Defined Terms. The following terms shall have the meanings set forth below (such meanings to be equally applicable to both the singular and plural, masculine and feminine forms of the terms defined).

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's tax identification number, are: (i) Apache Energy Services, LLC (4404); (ii) Aqua Handling of Texas, LLC (4480); (iii) HII Technologies, Inc. (3686); (iv) Sage Power Solutions, Inc. fka KMHVC, Inc. (1210); and (v) Hamilton Investment Group, Inc. (0150).

1.1. **Administrative Expense** means costs or expenses of administration of any of the Chapter 11 Cases allowed under section 503(b) and 507(a)(1) of the Bankruptcy Code that have not already been paid by the Debtors, including, without limitation, any actual and necessary costs and expenses of preserving the Debtors' estates, any actual and necessary costs and expenses of operating the Debtors' businesses, and indebtedness or obligations incurred or assumed by the Debtors, as debtors in possession, during the Chapter 11 Cases, any compensation and reimbursement of expenses to the extent allowed by Final Order under sections 330 or 503 of the Bankruptcy Code, and any fees or charges assessed against the estates of the Debtors pursuant to section 1930, chapter 123 of title 28 of the United States Code, but excluding the DIP Lender Claims.

1.2. **Allowed** means with reference to any Claim, (a) any Claim against any Debtor that was listed by such Debtor in its Schedules, as such Schedules may be amended from time to time in accordance with Bankruptcy Rule 1009, as liquidated in amount and not disputed or contingent and for which no contrary proof of claim has been filed, (b) any Claim listed on the Schedules or timely filed proof of Claim, as to which no objection to allowance has been interposed in accordance with Section 7.1 of this Plan or such other applicable period of limitation fixed by the Bankruptcy Code, the Bankruptcy Rules, of the Bankruptcy Court, or as to which any objection has been determined by a Final Order to the extent such objection is determined in favor of the respective holder, or (c) any Claim expressly allowed by a Final Order.

1.3. **Avoidance Action** means any action commenced, or that may be commenced, before or after the Effective Date pursuant to sections 542, 543, 544, 545, 547, 548, 549, 550, 551 or 553 of the Bankruptcy Code.

1.4. **Ballot** means the forms of ballot provided to holders of impaired Claims or Equity Interests pursuant to Bankruptcy Rule 3017(d), by which each holder may indicate acceptance or rejection of the Plan.

1.5. **Bankruptcy Code** means title 11 of the United States Code, as amended, as applicable to these Chapter 11 Cases.

1.6. **Bankruptcy Court** means the United States Bankruptcy Court for the Southern District of Texas, having jurisdiction over these Chapter 11 Cases.

1.7. **Bankruptcy Rules** means the Federal Rules of Bankruptcy Procedure, as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, as amended from time to time, as applicable to these Chapter 11 Cases, including applicable local rules of the Bankruptcy Court.

1.8. **Business Day** means any day other than Saturday, Sunday, a legal holiday, or a day on which national banking institutions in New York, New York are required or authorized to close by law or executive order.

- 1.9. **Cash** means legal tender of the United States of America.
- 1.10. **Causes of Action** means the Avoidance Actions and any and all actions, causes of action, liabilities, obligations, rights, suits, damages, judgments, claims, and demands whatsoever, whether known or unknown, existing or hereafter arising, in law, equity, or otherwise, based in whole or in part on any act or omission or other event occurring prior to the Petition Date or during the course of the Chapter 11 Cases, including through the Effective Date.
- 1.11. **Chapter 11 Cases** means the above captioned reorganization cases of the Debtors under Chapter 11 of the Bankruptcy Code.
- 1.12. **Claim** has the meaning set forth in section 101(5) of the Bankruptcy Code.
- 1.13. **Class** means any group of Claims or Equity Interests classified by the Plan pursuant to section 1123(a)(1) of the Bankruptcy Code.
- 1.14. **Collateral** means any property or interest in property of the estate of any Debtor subject to a lien, charge, or other encumbrance to secure the payment or performance of a Claim, which lien, charge, or other encumbrance is not subject to avoidance under the Bankruptcy Code.
- 1.15. **Committee** means the statutory committee of unsecured creditors appointed by the U.S. Trustee in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code.
- 1.16. **Confirmation Date** means the date of entry of the Confirmation Order.
- 1.17. **Confirmation Hearing** means the hearing to be conducted by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code and Bankruptcy Rule 3020(b) to consider confirmation of the Plan, as the same may be continued from time to time.
- 1.18. **Confirmation Order** means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.
- 1.19. **Debtors** means Apache Energy Services, LLC, Aqua Handling of Texas, LLC, HII Technologies, Inc., Sage Power Solutions, Inc. fka KMHVC, Inc., and Hamilton Investment Group, Inc.
- 1.20. **DIP Credit Agreement** means that certain Credit Agreement, as amended, among the Debtors, as borrower, and the DIP Lenders, as lenders, and any of the documents and instruments relating thereto including, without limitation, the DIP Order.
- 1.21. **DIP Lenders** means Heartland Bank and McLarty Capital Partners SBIC, L.P., as lenders under the DIP Order.
- 1.22. **DIP Lender Claims** means all Claims in favor of the DIP Lenders arising under the DIP Order, including the Super Priority Administrative Expense Claim under 11 U.S.C. §

364(c)(1), consisting of the Rollup Claim and the New Money Claims, as those terms are defined in the DIP Order.

1.23. **DIP Order** means that Final Order of the Bankruptcy Court entered on October 14, 2015 as docket number 149.

1.24. **Disclosure Statement** means the written statement, as amended, supplemented, or modified from time to time, describing the Plan that is approved and distributed in accordance with section 1125 of the Bankruptcy Code.

1.25. **Disputed** means, with respect to any Claim that has not been Allowed pursuant to the Plan or a Final Order,

- (a) if no proof of Claim has been filed by the applicable deadline: a Claim that has been or hereafter is listed on the Schedules as other than disputed, contingent, or unliquidated, but as to which the Debtors or any other party in interest has interposed an objection or request for estimation which has not been withdrawn or determined by a Final Order; or
- (b) if a proof of Claim or request for payment of an Administrative Expense has been filed by the applicable deadline: (i) a Claim for which a corresponding Claim has been or hereafter is listed on the Schedules as disputed, contingent, or unliquidated, or (ii) a Claim for which a timely objection or request for estimation is interposed by the Debtors or any other party in interest which has not been withdrawn or determined by a Final Order. Any Claim expressly allowed by a Final Order shall be an Allowed, not a Disputed Claim.

1.26. **Disputed Claims Reserve** means the portion of the Litigation Trust Assets that will be reserved for Disputed Claims.

1.27. **Distributable Cash** means any and all Cash held by the Debtors after reserving for (i) the Litigation Trust Administrative Cash, and (ii) the payment of all Administrative Expenses (other the DIP Lender Claims), Secured Claims, Priority Non-Tax Claims and Priority Tax Claims that will be paid on the Effective Date.

1.28. **Distribution Record Date** means five (5) Business Days after the Effective Date.

1.29. **Effective Date** means the first Business Day on or after the Confirmation Date specified by the Debtors on which all conditions to the effectiveness of the Plan in Section 12.1 have been satisfied or waived. The Debtors shall file a notice of the Effective Date with the Bankruptcy Court and the Securities and Exchange Commission.

1.30. **Equity Interest** means the interest of any holder of an equity security of any of the Debtors represented by any issued and outstanding shares of common or preferred stock or other instrument evidencing a present ownership interest in any of the Debtors, whether or not

transferrable, or any option, warrant, or right, contractual or otherwise, to acquire any such interest.

1.31. **Final Order** means an order or judgment of the Bankruptcy Court or any other court or adjudicative body which has not been reversed, vacated, or stayed and as to which (i) the time to appeal, petition for *certiorari*, or move for a new trial, reargument, or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceeding for a new trial, reargument, or rehearing shall then be pending, or (ii) if an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order or judgment of the Bankruptcy Court or other court or adjudicative body shall have been affirmed by the highest court to which such order was appealed, or *certiorari* shall have been denied, or a new trial, reargument, or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument, or rehearing shall have expired. The susceptibility of a Claim to a challenge under section 502(j) of the Bankruptcy Code shall not render a Final Order not a Final Order.

1.32. **General Unsecured Claim** means any Claim against any of the Debtors that is not an Administrative Expense, Priority Tax Claim, Secured Claim, Priority Claim, or a Subordinated Claim.

1.33. **Lien** means any mortgage, lien, charge, security interest, encumbrance, or other security device of any kind affecting any asset or property of the Debtors contemplated by section 101(37) of the Bankruptcy Code.

1.34. **Litigation Trust** means the trust established pursuant to the Plan and the Litigation Trust Agreement.

1.35. **Litigation Trust Administrator** means the entity appointed by the Debtors, with the consent of the DIP Lenders and the Committee to serve as administrator of the Litigation Trust. The identity of the Litigation Trust Administrator will be disclosed in the Plan Supplement.

1.36. **Litigation Trust Administrative Cash** means the Cash held and maintained by the Litigation Trust Administrator for the purpose of paying the expenses incurred by the administrator (including fees and expenses for professionals retained by the Litigation Trust) in connection with the Litigation Trust and any obligations imposed on the Litigation Trust Administrator or the Litigation Trust, including expenses relating to the performance of the Litigation Trust Administrator's obligations under the Litigation Trust Agreement and Section 6.2 of this Plan. The Debtors will receive a commitment from the DIP Lenders (subject to the terms of the Litigation Trust Agreement and Confirmation Order) for up to \$500,000 for the Litigation Trust on the Effective Date.

1.37. **Litigation Trust Assets** means all Causes of Action, including the Avoidance Actions, transferred by the Debtors to the Litigation Trust on the Effective Date, and any proceeds thereof, and the Litigation Trust Administrative Cash.

1.38. **Litigation Trust Agreement** means that certain trust agreement to be executed by the Debtors and the Litigation Trust Administrator, substantially in the form included in the Plan Supplement, which must be satisfactory to the Committee and the DIP Lenders in form and substance.

1.39. **Litigation Trust Beneficiaries** means the DIP Lenders and holders of Allowed General Unsecured Claims. In the event Allowed General Unsecured Claims are paid in full, holders of and Allowed Subordinated Claims shall be Litigation Trust Beneficiaries, entitled to distribution from Litigation Trust Assets pursuant to Section 4.4, below.

1.40. **New HIIT Stock** means the stock of the reorganized Debtor, HII Technologies, Inc.

1.41. **Person** has the meaning set forth in section 101(41) of the Bankruptcy Code.

1.42. **Petition Date** means September 18, 2015.

1.43. **Plan** means this chapter 11 plan, as the same may be amended, supplemented, or modified from time to time in accordance with the provisions of the Bankruptcy Code and the terms hereof.

1.44. **Plan Supplement** means the forms of documents effectuating the transactions contemplated by this Plan, which documents shall be filed with the Bankruptcy Court no later than ten (10) days prior to the Confirmation Hearing. Upon filing with the Bankruptcy Court, the Plan Supplement may be inspected at the Office of the Clerk of the Bankruptcy Court during normal court hours. Holders of Claims and Equity Interests may obtain a copy of the Plan Supplement upon written request to the undersigned counsel.

1.45. **Prepetition Secured Claims** has the meaning set forth in the DIP Order and includes, but is not limited to, claims based on the Prepetition Loan Documents as defined in the DIP Order.

1.46. **Postpetition Obligations** means all amounts advance or incurred under the DIP Facility Postpetition that are in excess of the Roll-Up Loan (as defined in the DIP Order) and the postpetition interest on the Roll-Up Loan but including, without limitation, all fees, costs and expenses (including, without limitation, all attorneys' fees and expenses) incurred by the DIP Lenders.

1.47. **Priority Non-Tax Claim** means any Claim, other than an Administrative Expense or a Priority Tax Claim, entitled to priority in payment under sections 507(a)(3), (4), (5), (6) (7), or (9) of the Bankruptcy Code.

1.48. **Priority Tax Claim** means any Claim of a governmental unit of the kind entitled to priority in payment as specified in section 502(i) and 507(a)(8) of the Bankruptcy Code other than any Priority Tax Claim that New HIIT is liable for under the Plan.

1.49. **Pro Rata Share** means the ratio (expressed as a percentage) of (i) the amount of any Allowed Claim in a particular Class to (ii) the sum of (x) the aggregate amount of all Allowed Claims in such Class and (y) the aggregate amount of Disputed Claims in Such Class.

1.50. **Rejection Claim** means any Claim arising under a lease or executory contract that the Debtors have rejected or will reject pursuant to section 365 of the Bankruptcy Code, including but not limited to any Claim arising under section 502(g) of the Bankruptcy Code as a consequence of such rejection, reduced by the limitations on such Claim provided by section 502(b)(6) of the Bankruptcy Code and any limitations on such Claim provided by applicable non-bankruptcy law.

1.51. **Schedules** means the schedules of assets and liabilities and the statement of financial affairs filed by the Debtors pursuant to section 521 of the Bankruptcy Code, Bankruptcy Rule 1007, and the Official Bankruptcy Forms of the Bankruptcy Rules as such schedules or statements may be amended through the Confirmation Date.

1.52. **Secured Claim** means any Claim (i) secured by Collateral, to the extent of the value of such Collateral (A) as set forth in the Plan, (B) as agreed to by the holder of such Claim and the Debtors, or (C) as determined by a Final Order in accordance with section 506(a) of the Bankruptcy Code, or (ii) secured by the amount of any valid rights of setoff of the holder under section 553 of the Bankruptcy Code.

1.53. **Solicitation Procedures** means the procedures relating to the solicitation and tabulation of votes with respect to the Plan.

1.54. **Tax Code** means title 26 of the United States Code, as amended from time to time.

1.55. **Subordinated Claim** means any Claim that is subordinated by Final Order of the Bankruptcy Court pursuant to section 510 of the Bankruptcy Code.

1.56. **Voting Deadline** means the date set by the Bankruptcy Court by which all completed Ballots must be received.

MISCELLANEOUS INTERPRETIVE PROVISIONS

1.57. **Exhibits**. All exhibits to the Plan are incorporated into and are a part of the Plan as if set forth in full herein.

1.58. **Interpretation**. Unless otherwise specified, all section, article and exhibit references in this Plan are to the respective section in, article of, or exhibit to, the Plan as the

same may be amended, waived, or modified from time to time. The headings in the Plan are for convenience and reference only and shall not limit or otherwise affect the provisions hereof.

1.59. **Plan Controls.** In the event of an inconsistency between the Plan and the Disclosure Statement or the Plan Supplement, the Plan shall control.

1.60. **Other Terms.** The words “herein,” “hereof,” “hereto,” “hereunder,” and others of similar import refer to the Plan as a whole and not to any particular section, subsection, or clause contained in the Plan. A term used herein that is not defined herein shall have the meaning ascribed to that term, if any, in the Bankruptcy Code. The rules of construction contained in section 102 of the Bankruptcy Code shall apply to the Plan.

ARTICLE II

ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS

2.1. **Administrative Expenses.** Except to the extent a holder of an Allowed Administrative Expense agrees to a different treatment, on the Effective Date, or as soon thereafter as is reasonably practicable, the Debtors shall pay to each holder of an Allowed Administrative Expense, in full satisfaction of such Allowed Administrative Expense, an amount of Cash equal to the Allowed amount of such Administrative Expense.

2.2. **Compensation and Reimbursement Claims.** All entities seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Confirmation Date under sections 327, 328, 330, 331 (503(b)(2), 503(b)(3), 503(b)(4), or 503(b)(5) of the Bankruptcy Code (i) shall file their respective final applications for allowance of compensation for service rendered and reimbursement of expenses incurred by the date that is thirty (30) days after the Confirmation Date, and (ii) shall be paid in full such amounts as are allowed by the Bankruptcy Court (A) on the date on which the order relating to any such Administrative Expenses is entered or (B) upon such other terms as may be mutually agreed upon between the holder of such Administrative Expense and the Debtors.

2.3. **Priority Tax Claims.** Except to the extent a holder of an Allowed Priority Tax Claim agrees to a different treatment, on the Effective Date, or as soon thereafter as is reasonably practicable, the Debtors shall pay to each holder of an Allowed Priority Tax Claim, in full satisfaction of such Claim, an amount in Cash equal to the Allowed amount of such Claim.

2.4. **DIP Lender Claims.**

The DIP Lenders shall have an allowed Super Priority Administrative Expense for the total amount due under the DIP Credit Agreement, which is stipulated by the Debtors to be over \$11 Million (more precisely identified in the Plan Supplement) as of the Effective Date,

ratably in accordance with their respective interests in the DIP Credit Agreement Claims, subject to any applicable provisions of the Final Order approving the DIP Credit Agreement.

The DIP Lenders shall receive on account of the DIP Lender Claims (i) repayment of the Postpetition Obligations, (ii) fifty-five percent (55%) of the beneficial interests in the Litigation Trust and the Litigation Trust Assets, (iii) all Distributable Cash, (iv) 95% of the stock of the New HIIT Stock, to be issued as convertible participating and voting preferred stock with a dividend that will be specified in the Plan Supplement, convertible into 95% of the stock of the Reorganized HIIT. The DIP Lenders will also receive 100% of the insurance proceeds attributable to the loss of their collateral directly from the insurer, *provided however*, that the DIP Lenders are not entitled to more than 100% payment on account of their collateral loss from any source or combination of sources.

ARTICLE III CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS

The following table designates the Classes of Claims against and Equity Interests in the Debtors and specifies which of those Classes are (i) impaired or unimpaired by the Plan, (ii) entitled to vote to accept or reject the Plan in accordance with section 11226 of the Bankruptcy Code, and (iii) deemed to reject the Plan.

Class	Designation	Impairment	Entitled to Vote
Class 1	Secured Claims	Unimpaired	No (deemed to accept)
Class 2	Priority Non-Tax Claims	Unimpaired	No (deemed to accept)
Class 3	General Unsecured Claims	Impaired	Yes
Class 4	Subordinated Claims	Impaired	Yes
Class 5	Equity Interests	Impaired	No (deemed to reject)

For convenience of identification, the Plan classifies the Allowed Claims in Class 1 as a single Class. Class 1 is actually a group of subclasses, depending on the underlying property securing such Allowed Claims, and each subclass is treated as a distinct Class for voting and distribution purposes.

ARTICLE IV TREATMENT OF CLAIMS AND EQUITY INTERESTS

4.1. **Class 1 – Secured Claims.** Except to the extent a holder of an Allowed Secured Claim agrees to a different treatment, on the Effective Date or as soon thereafter as is reasonably practicable, each holder of an Allowed Secured Claim shall receive, at the option of the Debtors, and in full satisfaction of such Claim, either (i) Cash in an amount equal to one hundred percent (100%) of the unpaid amount of such Allowed Secured Claim, (ii) the proceeds of the sale or disposition of the Collateral securing such Allowed Secured Claim, net of the costs of disposition of such Collateral, (iii) the Collateral securing such Allowed Secured Claim, (iv) such treatment that leaves unaltered the legal, equitable, and contractual rights to which the holder of such

Allowed Secured Claim is entitled, or (v) such other distribution as necessary to satisfy the requirements of section 1129 of the Bankruptcy Code. In the event a Secured Claim is treated under clause (i) or (ii) of the section, the liens secured such Secured claim shall be deemed released.

- (a) **Insurance Proceeds.** Secured claims will receive the insurance proceeds attributable to their collateral directly from the carrier, but only to the extent of their collateral value and in no event will the secured creditor receive more than 100% of the value of lost collateral from any source or set of sources. If there is any dispute regarding the insurance proceeds or claims to them, the Litigation Trust Administrator must be notified and the Bankruptcy Court will be the exclusive forum to resolve the dispute.

4.2. **Class 2 – Priority Non-Tax Claims.** Except to the extent a holder of an Allowed Priority Non-Tax Claim agrees to a different treatment², on the Effective Date, or as soon thereafter as is reasonably practicable, each such holder shall receive, in full satisfaction of such Claim, an amount in Cash equal to the Allowed amount of such Claim.

4.3. **Class 3 – General Unsecured Claims.**

(a) The Holders of Allowed General Unsecured Claims receive a pro-rata share of 45% of the beneficial interest in the Litigation Trust Assets. As such, (A) As soon as is reasonably practicable after the Effective Date, to the extent it is determined that the holders of Allowed General Unsecured Claims are entitled to any proceeds of the Litigation Trust Assets, each holder of an Allowed General Unsecured Claim as of the Distribution Record Date shall receive from the Litigation Trust, to the extent not already distributed, (i) its Pro Rata Share of such proceeds based on the beneficial interest, and (ii) its Pro Rata Share of the remaining 5% of the New HIIT Stock, and (B) the Litigation Trust shall make subsequent distribution of any proceeds of the Litigation Trust Assets to holders of Allowed General Unsecured Claims as of the Distribution Record Date for Holders whose Claims are subsequently Allowed.

(b) Notwithstanding anything to the contrary in this section 4.3, all proceeds of the Causes of Action shall be applied first to pay the amount of the Postpetition Obligations and Litigation Trust Administrative Cash.

4.4. **Class 4 – Subordinated Claims.** As soon as reasonably practicable after the Effective Date (but no earlier than the first Business Day following the Distribution Record Date), each holder of an Allowed Subordinated Claim on the Distribution Record Date shall receive from the Litigation Trust its Pro Rata Share of such after holders of all Allowed Administrative Expenses, including the DIP Lender Claims, and all Allowed Priority Tax Claims and all Allowed Claims in Classes 1, 2, and 3 are paid in full.

² Such as the compromise with the Texas Comptroller regarding sale and franchise taxes.

4.5. **Class 5 – Equity Interests.** All Equity Interests in the Debtors shall be cancelled on the Effective Date. Each holder of an Equity Interest shall neither receive nor retain any property or interest on account of such Equity Interest.

ARTICLE V PROVISIONS GOVERNING DISTRIBUTIONS

5.1. **Distribution Record Date.** As of the close of business on the Distribution Record Date, the various transfer registers for each of the Classes of Claims or Equity Interests as maintained by the Debtors, or their agents, shall be deemed closed, and there shall be no further changes in the record holders of any of the Claims or Equity Interests.

5.2. **Method of Distributions Under the Plan.**

(a) **Payments and Transfers on the Effective Date.** On the Effective Date, or as soon thereafter as is reasonably practicable, the Debtors shall (i) remit to holders of Allowed Administrative Expenses, Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims, and, if applicable, Allowed Secured Claims and amount in Cash equal to the Allowed amount of such Claims, (ii) remit all Distributable Cash to the DIP Lenders, and (iii) transfer to the Litigation Trust Assets to the Litigation Trust free and clear of all liens, claims and encumbrances, but subject to any obligations imposed by this Plan.

(b) **Distributions of Cash.** At the option of the Debtors or the Litigation Trust Administrator, as applicable, any Cash payment to be made under the Plan or the Litigation Trust, as applicable, may be made by check or wire transfer or as otherwise required or provided in applicable agreements.

5.3. **Delivery of Distributions and Undeliverable Distributions.** Subject to Bankruptcy Rule 9010, all distributions to any holder of an Allowed Claim shall be made at the address of such holder as set forth on the Schedules filed with the Bankruptcy Court or on the books and records of the Debtors or their agents or in a letter of transmittal unless the Debtors or the Litigation Trust Administrator has been notified in writing of a change of address, including, without limitation, by the filing of a proof of Claim by such holder that contains an address for such holder different from the address reflected on such Schedules for such holder. In the event that any distribution to any holder is returned as undeliverable, no further distributions to such holder shall be made unless and until the Debtors or the Litigation Trust Administrator is notified of such holder's then-current address, at which time all missed distributions shall be made to such holder, without interest. All demands for undeliverable distributions shall be made on or before ninety (90) days after the date such undeliverable distribution was initially made. Thereafter, the amount represented by such undeliverable distribution shall irrevocably revert to the Debtors or the Litigation Trust, as applicable, and any Claim in respect of such undeliverable distribution shall be discharged and forever barred from assertion against the Debtors or the Litigation Trust, and their respective property.

5.4. **Withholding and Reporting Requirements.** In connection with the Plan and all instruments issued in connection therewith and distributed thereon, any party issuing any

instrument or making any distribution under the Plan shall comply with all applicable withholding and reporting requirements imposed by any federal, state, or local taxing authority, and all distributions under the Plan and all related agreements shall be subject to any such withholding or reporting requirements. In the case of a non-Cash distribution under the Plan and all related agreements shall be subject to any such holding or reporting requirements. In the case of a non-Cash distribution that is subject to withholding, the distributing party may withhold an appropriate portion of such distributed property and sell such withheld property to generate Cash necessary to pay over the withholding tax. Notwithstanding the foregoing, each holder of an Allowed Claim or Equity Interest that receives a distribution under the Plan shall have responsibility for any taxes imposed by any governmental unit, including income, withholding, and other taxes, on account of such distribution.

5.5. **The Bar to Cash Payments.** Checks issued by the Debtors or the Litigation Trust Administrator, as applicable, in respect of Allowed Claims shall be null and void if not negotiated within one hundred eighty (180) days after the date of issuance thereof. Requests for re-issuance of any check shall be made to the Debtors or the Litigation Trust Administrator, as applicable, by the holder of the Allowed Claim to whom such check originally was issued. Any Claim in respect of such a voided check shall be made on or before thirty (30) days after the expiration of the one hundred eighty (180) day period following the date of issuance of such check. Thereafter, the amount represented by such voided check shall irrevocably revert to the Debtors or the Litigation Trust, as applicable, and any Claim in respect of such voided check shall be discharged and forever barred.

5.6. **Minimum Distributions and Fractional Shares or Units.** No payment of Cash less than \$25 shall be made by the Debtors or the Litigation Trust Administrator, as applicable, to any holder of an Allowed Claim. No fractional shares of New HIIT Stock shall be distributed. For purposes of distribution, fractional shares of New HIIT Stock shall be rounded down to the next whole number or zero, as applicable; *provided, however*, that if an Entity's fractional shares are rounded down to zero, such Entity shall receive one share of New HIIT Stock. If an Entity holds more than one Allowed Claim, such Entity's Allowed Claims shall be aggregated for purposes of rounding down pursuant to this Section 5.6. After all distributions under the Plan have been made, any New HIIT Stock that are undistributable as a result of the foregoing shall be sold by the Litigation Trust Administrator, and the Litigation Trust Administrator shall distribute the Cash proceeds to holders of Allowed General Unsecured Claims; *provided, however*, that if the Cash proceeds from the sale of the New HIIT Stock is less than a dollar figure to be designated in the Plan Supplement, such Cash shall be distributed to a charitable organization exempt from U.S. federal income tax under section 501(c)(3) of the Tax Code to be selected by, and unrelated to, the Litigation Trust Administrator.

5.7. **Setoffs.** The Debtors and/or the Litigation Trust Administrator may, but shall not be required to, set off against any Claim (for purposes of determining the Allowed amount of such Claim on which distribution shall be made), any claims of any nature whatsoever that the Debtors may have against the holder of such Claim, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors and/or the

Litigation Trust Administrator, as applicable, of any such claim the Debtors may have against the holder of such Claim.

5.8. **Transactions on Business Days.** If the Effective Date or any other date on which a transaction may occur under the Plan shall occur on a day that is not a Business Day, the transactions contemplated by the Plan to occur on such day shall instead occur on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

ARTICLE VI

MEANS FOR IMPLEMENTATION AND EXECUTION OF THE PLAN

6.1. **Substantive Consolidation of the Debtors.**

(a) Entry of the Confirmation Order shall constitute the approval, pursuant to section 105(a) of the Bankruptcy Code, effective as of the Effective Date, of the substantive consolidation of HII Technologies, Inc., Apache Energy Services, LLC, Aqua Handling of Texas, LLC, Sage Power Solutions, Inc., and Hamilton Investment Group Inc., and their respective estates, into HII Technologies for voting, confirmation, and distribution purposes under the Plan. Solely for such purposes, on and after the Effective Date, (i) all assets and all liabilities of the Debtors shall be deemed merged into HII Technologies, (ii) all guaranties of any Debtor of the payment, performance, or collection of obligations of another Debtor shall be eliminated and cancelled, (iii) any obligation of any Debtor and all guaranties thereof executed by one or more of the other Debtors shall be treated as a single obligation, and such guaranties shall be deemed a single Claim against the consolidated Debtors, (iv) all joint obligations of two or more Debtors and all multiple Claims against such entities on account of such joint obligations shall be treated and allowed only as a single Claim against the consolidated Debtors, (v) shall be treated and allowed only as a single Claim against the consolidated Debtors, (v) all Claims between or among the Debtors shall be cancelled, and (vi) each Claim filed in the Chapter 11 Case of any Debtor shall be deemed filed against the consolidated Debtors and a single obligation of the consolidated Debtors on and after the Effective Date.

(b) The substantive consolidation and deemed merger effected pursuant to Section 6.1(a) hereof shall not affect (other than for purposes related to funding distributions under the Plan and as set forth in Section 6.1(a) hereof), (i) the legal and organizational structure of the Debtors, (ii) defenses to any Causes of Action or requirements for any third party to establish mutuality to assert a right of setoff, and (iii) distributions out of any insurance policies or proceeds of such policies.

6.2. **The Litigation Trust.**

(a) **Execution of Litigation Trust Agreement.** On or before the Effective Date, the Litigation Trust Agreement, in a form acceptable to the Debtors, the Creditors' Committee, the DIP Lenders under the DIP Credit Agreement, and the Litigation Trust Administrator, shall be executed, and all other necessary steps shall be taken to establish the Litigation Trust and the beneficial interests therein, which shall be for the benefit of the holders

of Allowed General Unsecured Claims, and to the extent applicable, holders of Subordinated Claims. This Section 6.2 sets forth certain of the rights, duties, and obligations of the Litigation Trust Administrator. In the event of any conflict between the terms of this Section 6.2 and the terms of the Litigation Trust Agreement, the terms of the Litigation Trust Agreement shall govern.

(b) **Purpose of Litigation Trust.** The Litigation Trust shall be established for the sole purpose of liquidating and distributing its assets, in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

(c) **Litigation Trust Assets.** The Litigation Trust shall consist of the Litigation Trust Assets. On the Effective Date, the Debtors shall transfer all of the Litigation Trust Assets to the Litigation Trust free and clear of all liens, claims, interests and encumbrances. Except as specifically set forth herein, holders of Allowed Claims or Equity Interests shall look solely to the Litigation Trust Assets for satisfaction of their Claims or Equity Interests, and the Litigation Trust Assets shall be available for only the holders of such Allowed Claims or Equity Interests. Upon delivery, the Debtors and their successors and assigns shall be released from all liability with respect to the delivery of such assets.

(d) **The Litigation Trust Administrator.** The Litigation Trust Administrator shall be designated by the Debtors with the consent of the Committee and the DIP Lenders, and the identity of the Litigation Trust Administrator shall be disclosed in the Plan Supplement.

(e) **Role of the Litigation Trust Administrator.** In furtherance of and consistent with the purpose of the Litigation Trust and the Plan, the Litigation Trust Administrator shall (i) have the power and authority to hold, invest, borrow against, pledge and/or manage the Litigation Trust Assets, (ii) hold the Litigation Trust Assets for the benefit of the Litigation Trust Beneficiaries, (iii) have the power and authority to prosecute and resolve Causes of Action, in the name of the Debtors, (iv) have the power to object to, settle, compromise, withdraw or litigate to judgment any objections to Claim or Interests, (v) have the power and authority distribute to the Litigation Trust Beneficiaries any Litigation Trust Assets after payment of the Postpetition Obligations, and (vi) have the power and authority to perform such other functions as are provided in the Plan and the Litigation Trust Agreement. The Litigation Trust Administrator shall be responsible for all decisions and duties with respect to the Litigation Trust and the Litigation Trust Assets. In all circumstances, the Litigation Trust Administrator shall act in the best interests of the Litigation Trust Beneficiaries and in furtherance of the purpose of the Litigation Trust. No bond shall be required of the Litigation Trust Administrator.

(f) **Cash.** The Litigation Trust Administrator may invest Cash (including any earnings thereon or proceeds therefrom) as would be permitted by section 345 of the Bankruptcy Code were the Litigation Trust a debtor under the Bankruptcy Code, or as otherwise permitted by an order of the Bankruptcy Code, which may include the Confirmation Order.

(g) **Costs and Expenses of the Litigation Trust Administrator.** The costs and expenses of the Litigation Trust, including the fees and expenses of the Litigation Trust Administrator and its retained professionals, shall be paid out of the Litigation Trust Assets, subject to the provisions of the Litigation Trust Agreement.

(h) **Compensation of the Litigation Trust Administrator.** The Litigation Trust Administrator shall be entitled to reasonable compensation, subject to the provisions of the Litigation Trust Agreement, in an amount consistent with that of similar functionaries in similar types of bankruptcy cases. Such compensation shall be payable solely from the Litigation Trust Assets.

(i) **Distribution of Litigation Trust Assets.** After payment in full of the Postpetition Obligations, the Litigation Trust Administrator shall distribute to Litigation Trust Beneficiaries at least quarterly and in accordance with the Litigation Trust Agreement, beginning on the first Business Day following the Distribution Record Date, or as soon thereafter as is practicable, (i) the appropriate amount of New HIIT Stock (and other distributions of Cash, if any), and (ii) Cash from the Litigation Trust Assets (a) in amounts as reasonably necessary to meet contingent liabilities and otherwise address the expenses of the Litigation Trust, (b) to pay reasonable expenses (including, but not limited to, any taxes imposed on the Litigation Trust or in respect of the Litigation Trust Assets), and (c) to satisfy other liabilities incurred by the Litigation Trust in accordance with the Plan or the Litigation Trust Agreement.

(j) **Retention of Professionals by the Litigation Trust Administrator.** The Litigation Trust Administrator may retain and reasonably compensate counsel and other professionals to assist in their duties as Litigation Trust Administrator on such terms as they deem appropriate without Bankruptcy Court approval, but subject to the provisions of the Litigation Trust Agreement. The Litigation Trust Administrator may retain any professional who represented parties in interest, including the Debtors or the Committee, in the Chapter 11 Cases. All fees and expenses incurred in connection with the foregoing shall be payable solely from the Litigation Trust Assets and shall be subject to the provisions of the Litigation Trust Agreement.

(k) **Dissolution.** The Litigation Trust Administrator and the Litigation Trust shall be discharged or dissolved, as applicable, at such time as (i) all Disputed General Unsecured Claims have been resolved, (ii) all Litigation Trust Assets have been liquidated, and (iii) all distributions required to be made by the Litigation Trust Administrator under the Plan and the Litigation Trust Agreement have been made, but in no event shall the Litigation Trust be dissolved later than five (5) years from the Effective Date or such shorter or longer period authorized by the Bankruptcy Court in order to resolve all Disputed Claims.

(l) **Indemnification of the Litigation Trust Administrator.** The Litigation Trust Administrator (and its agents and professionals) shall not be liable for actions taken or omitted in its or their capacity as, or on behalf of, the Litigation Trust Administrator, or the Litigation Trust, except those acts 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 or their capacity as, or on behalf of, the Litigation Trust Administrator or the Litigation Trust, except for any actions or inactions involving willful misconduct, gross negligence, bad faith, self-dealing, or *ultra vires* acts. Any indemnification claim of the Litigation Trust Administrator and the other parties entitled to indemnifications under this subsection shall be satisfied from the Litigation Trust Assets. The Litigation Trust Administrator shall be entitled to rely, in good faith, on the advice of its retained professionals.

(m) **Closing of Chapter 11 Cases.** When all Disputed Claims filed against the Debtors have become Allowed Claims or have been disallowed by Final Order, and all of the Litigation Trust Assets have been distributed in accordance with the Plan, the Litigation Trust Administrator shall seek authority from the Bankruptcy Court to close the Chapter 11 Cases in accordance with the Bankruptcy Code and the Bankruptcy Rules.

(n) **Cooperation Regarding Insurance Matters.** The Debtors shall cooperate with the Litigation Trust and the Litigation Trust Administrator and use commercially reasonable efforts to take or cause to be taken all appropriate actions and do or cause to be done all things necessary or appropriate to effectuate the transfer of the Litigation Trust Assets to the Litigation Trust. By way of enumeration and not of limitation, the Debtors shall be obligated, to the extent practicable, to (i) provide the Litigation Trust with copies of insurance policies and settlement agreements included within or relating to the Litigation Trust Assets and (ii) execute further assignments or allow the Litigation Trust to pursue claims relating to the Litigation Trust Assets in its name, including by means of arbitration, alternative dispute resolution proceedings, or litigation, to the extent necessary or helpful to the efforts of the Litigation Trust to obtain insurance coverage under the Litigation Trust Assets.

6.3. Securities Law Matters. In reliance upon section 1145(a) of the Bankruptcy Code, the offer and/or issuance of the New HIIT Stock by HIIT, is exempt from registration under the Securities Act of 1933, as amended (the “Securities Act”), and any equivalent securities law provisions under state law. The exemption from Securities Act registration provided by section 1145(a) of the Bankruptcy Code (as well as any equivalent securities law provisions under state law) also is available for the offer and/or issuance by the Litigation Trust of (i) beneficial interests in the Litigation Trust and (ii) New HIIT Stock in exchange for such beneficial interests as outstanding Disputed General Unsecured Claims are resolved in accordance with the Plan. The Debtors will not be required to file any reports, notices, or other documents with the SEC, and any filings that were past-due or that would require supplementation are will not be required and will be excused by the Plan and Confirmation Order. The discharges in the Confirmation Order and Plan will act as a bar to the SEC on taking any civil action by virtue of the Debtors’ former status as a trading entity. The Debtors are determined to owe nothing further to the SEC or any exchange upon which the shares may have previously traded. The Confirmation Order and Plan will act to delist, without further requirement, the HIIT Stock and abrogate any requirements for filing any past or future documents with the SEC or other exchange.

6.4. Cancellation of Existing Securities and Agreements. Except for purposes of evidencing a right to distributions under the Plan or otherwise provided hereunder, on the Effective Date all the agreements and other documents evidencing the Claims or rights of any

holder of a Claim against the Debtors, including all Indentures and bonds, debentures, and notes issued thereunder evidencing such Claims, all Note Claims, and any options or warrants to purchase Equity Interests, or obligating the Debtors to issue, transfer, or sell Equity Interests or any other capital stock of the Debtors, shall be cancelled and discharged. The Plan and Confirmation Order will extinguish all shares of public HIIT stock and no new HIIT Shares will be listed for public sale on an exchange.

6.5. Equity Interest in HIIT Subsidiaries Held by the Debtors. On the Effective Date, at the option of the Debtors, each respective Equity Interest in Apache Energy Services, LLC, Aqua Handling of Texas, LLC, Sage Power Solutions, Inc., and Hamilton Investment Group Inc. shall be unaffected by the Plan, in which case HIIT shall continue to hold such Equity Interests.

6.6. Corporate Action. Upon the Effective Date, the Debtors shall perform each of the actions and effect each of the transfers required by the terms of the Plan, in the time period allocated therefor, and all matters provided for under the Plan that would otherwise require approval of the stockholders, partners, members, directors, or comparable governing bodies of the Debtors shall be deemed to have occurred and shall be in effect from and after the Effective Date pursuant to the applicable general corporation law (or other applicable governing law) of the states in which the Debtors are incorporated or organized, without any requirement of further action by the stockholders, members, or directors (or other governing body) of the Debtors.

6.7. Effectuating Documents and Further Transactions. Each of the officers of each of the Debtors 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

PROCEDURES FOR DISPUTED CLAIMS

7.1. Objections to Claims and Resolution of Disputed Claims.

(a) Unless otherwise ordered by the Bankruptcy Court after notice and a hearing, on and after the Effective Date, the Debtors shall have the right to the exclusion of all others (except as to applications for allowances of compensation and reimbursement of expenses under sections 330 and 503 of the Bankruptcy Code) to object to Administrative Expenses, Priority Tax Claims, Priority Non-Tax Claims, and Secured Claims.

(b) On and after the Effective Date, the Litigation Trust Administrator shall have the exclusive right to object, and/or continue prosecution of objections to General Unsecured Claims and Subordinated Claims.

(c) The Reorganized Debtors, Debtors, or the Litigation Trust Administrator, as applicable, shall serve a copy of each objection upon the holder of the Claim to which the objection is made as soon as practicable, but in no event later than one hundred eighty (180) days

after (i) the Effective Date for all Claims, and (ii) such date as may be fixed by the Bankruptcy Court, whether fixed before or after the dates specified in clause (i) above. The Bankruptcy Court shall have the authority on request of the Debtors or the Litigation Trust Administrator, as applicable, to extend the foregoing dates *ex parte*. On and after the Effective Date, the Debtors shall continue to have the power and authority to prosecute and resolve objections to Disputed Administrative Expenses, Disputed Priority Tax Claims, Disputed Priority Non-Tax Claims, and Disputed Secured Claims. All objections shall be litigated to a Final Order except to the extent the Debtors or the Litigation Trust Administrator, as applicable, elects to withdraw any such objection or the Debtors or the Litigation Trust Administrator, as applicable, and the holder of a Claim elect to compromise, settle, or otherwise resolve any such objection, in which event they may compromise, settle, or otherwise resolve any Disputed Claim without approval of the Bankruptcy Court.

7.2. No Distribution Pending Allowance. Notwithstanding any other provision hereof, if any portion of a Claim is a Disputed Claim, no payment or distribution provided hereunder to the holder thereof shall be made on account of such Claim unless and until such Disputed Claim becomes an Allowed Claim. Until such time, with respect to General Unsecured Claims, the Litigation Trust Administrator shall withhold from the property to be distributed to holders of beneficial interests in the Litigation Trust the portion of such property allocable to such Disputed General Unsecured Claims. If any Disputed General Unsecured Claims are disallowed, the Litigation Trust Assets held in the Litigation Trust shall be released as and to the extent the Litigation Trust Administrator determines such property is no longer necessary to fund unresolved Disputed General Unsecured Claims, and such Litigation Trust Assets shall be distributed in accordance with Section 6.2 hereof.

7.3. Estimation. The Debtors or the Litigation Trust Administrator, as applicable, may at any time request that the Bankruptcy Court estimate any contingent, unliquidated, or Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether the Debtors or the Litigation Trust Administrator previously object to such Claim, and the Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including, without limitation, during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any contingent, unliquidated, or Disputed Claim, the amount so estimated shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Debtors or the Litigation Trust Administrator, as applicable, may pursue supplementary proceedings to object to the allowance of such Claim. All the aforementioned objection, estimation, and resolution procedures are intended to be cumulative and not exclusive of one another. On and after the Confirmation Date, Claims that have been estimated may be compromised, settled, withdrawn, or otherwise resolved subsequently, without further order of the Bankruptcy Court.

7.4. Allowance of Disputed Claim. If, on or after the Effective Date, any Disputed Claim becomes, in whole or in part, an Allowed Claim, the Debtors or the Litigation Trust Administrator, shall, on the next applicable distribution date following when the Disputed Claim becomes an Allowed Claim, distribute to the holder thereof the distributions, if any, that such

older would have received had its Claim been Allowed on the Effective Date, except as otherwise provided herein.

ARTICLE VIII

EXECUTORY CONTRACTS AND UNEXPIRED LEASES

8.1. Executory Contracts and Unexpired Leases. On the Effective Date, all executory contracts and unexpired leases to which any of the Debtors are parties shall be deemed rejected as of the Effective Date, except for an executory contract or unexpired lease that (i) has been assumed or rejected pursuant to Final Order of the Bankruptcy Court entered prior to the Effective Date, or (ii) is the subject of a separate motion to assume or reject filed under section 365 of the Bankruptcy Code by the Debtors prior to the Effective Date.

8.2. Approval of Rejection of Executory Contracts and Unexpired Leases. Entry of the Confirmation Order shall constitute the approval, pursuant to section 365(a) of the Bankruptcy Code, of the rejection of the executory contracts and unexpired leases rejected as of the Effective Date pursuant to the Plan.

8.3. Rejection Claims. In the event that the rejection of an executory contract or unexpired lease by any of the Debtors pursuant to the Plan results in damages to the other party or parties to such contract or lease, a Claim for such damages, if not heretofore evidenced by a filed proof of Claim, shall be forever barred and shall not be enforceable against the Debtors, the Litigation Trust Administrator, or any property to be distributed under the Plan or the Litigation Trust, unless a proof of Claim is filed with the Bankruptcy Court and served upon the Debtors and the Litigation Trust Administrator on or before the date that is thirty (30) days after the Confirmation Date.

ARTICLE IX

EFFECTIVENESS OF THE PLAN

9.1. Condition Precedent to Confirmation of Plan. The following is a condition precedent to the confirmation of the Plan:

(a) The Bankruptcy Court shall have entered the Confirmation Order in form and substance satisfactory to the Debtors and the DIP Lenders.

9.2. Conditions Precedent to Effective Date. The following are conditions precedent to the Effective Date of the Plan:

(a) The Confirmation Order shall be in full force and effect, and no stay thereof shall be in effect;

(b) The Litigation Trust Agreement shall have been executed;

(c) The Litigation Trust Assets shall have been transferred to the Litigation Trust; and

(d) The Debtors shall have sufficient Cash to pay the sum of (i) Allowed Administrative Expenses, Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims, and, if applicable, Allowed Secured Claims, and the professional fees of the Debtors and the Committee that have not been paid unless otherwise agreed, (ii) an amount that would be required to distribute to the holders of Disputed Administrative Expenses, Disputed Priority Tax Claims, Disputed Priority Non-Tax Claims, and, if applicable, Disputed Secured Claims if all such Claims are subsequently Allowed, as set forth more fully in Article VII hereof, (iii) the amount required to fund the Litigation Trust, and (iv) the Distributable Cash.

9.3. Satisfaction and Waiver of Conditions. Any actions required to be taken on the Effective Date shall take place and shall be deemed to have occurred simultaneously, and no such action shall be deemed to have occurred prior to the taking of any other such action. If the Debtors decide that any of the conditions precedent set forth in Section 9.2 hereof cannot be satisfied and the occurrence of such conditions is not waived or cannot be waived, then the Debtors shall file a notice of the failure of the Effective Date with the Bankruptcy Court. Notwithstanding the foregoing, the Debtors reserve, in their sole discretion, the right, with the written consent of the Committee, to waive the occurrence of any of the conditions precedent set forth in Section 9.2(b) or (c) hereof or to modify any of such conditions precedent. Any such written waiver of such condition precedents may be effected at any time, without notice or leave or order of the Bankruptcy Court, and without any formal action other than proceeding to consummate the Plan.

9.4. Effect of Nonoccurrence of Conditions to Consummation. If each of the conditions to the occurrence of the Effective Date has not been satisfied or duly waived on or before the first Business Day that is one hundred eight (180) days after the Confirmation Date, or such later date as shall be agreed by the Debtors and the Committee, the Confirmation Order may be vacated by the Bankruptcy Court. If the Confirmation Order is vacated pursuant to this section, the Plan shall be null and void in all respects, and nothing contained in the Plan shall constitute a waiver or release of any Claims against any of the Debtors.

ARTICLE X

EFFECT OF CONFIRMATION

10.1. Vesting of Assets. As of the Effective Date, the property of the Debtors' estates shall vest in the Debtors and, in accordance with Article VI hereof and subject to the exceptions contained therein, the Litigation Trust Assets shall be transferred to the Litigation Trust. From and after the Effective Date, the Litigation Trust Administrator may dispose of the Litigation Trust Assets free of any restrictions of the Bankruptcy Code, but in accordance with the provisions of the Plan and the Litigation Trust Agreement. As of the Effective Date, all assets of the Debtors and the Litigation Trust shall be free and clear of all Claims and Encumbrances, except as provided in the Plan or the Confirmation Order.

10.2. Release of Assets. Until the Effective Date, the Bankruptcy Court shall retain jurisdiction of the Debtors and their assets and properties. Thereafter, jurisdiction of the Bankruptcy Court shall be limited to the subject matters set forth in Article XI hereof.

10.3. Binding Effect. Except as otherwise provided in section 1141(d)(3) of the Bankruptcy Code, on and after the Confirmation Date, the provisions of the Plan shall bind any holder of a Claim against, or Equity Interest in, the Debtors and their respective successors and assigns, whether or not the Claim or Equity Interest of such holder is impaired under the Plan and whether or not such holder has accepted the Plan.

10.4. Term of Injunctions or Stays. Unless otherwise expressly provided herein, all injunctions or stays arising under or entered during the Chapter 11 Cases under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the closing of the Chapter 11 Cases.

10.5. Injunction. On and after the Confirmation Date, all person are permanently enjoined from commencing or continuing in any manner any action or proceeding (whether directly, indirectly, derivatively, or otherwise) on account of or respecting any claim, debt, right, or cause of action of the Debtors for which the Debtors or the Litigation Trust Administrator retains sole and exclusive authority to pursue in accordance with the Plan.

10.6. Injunction Against Interference with Plan. Upon the entry of the Confirmation Order, all holders of Claims and Equity Interests and other parties in interest, along with their respective present or former employees, agents, officers, directors, or principals, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

ARTICLE XI

RETENTION OF JURISDICTION

11.1. Jurisdiction of Bankruptcy Court. The Bankruptcy Court shall retain jurisdiction of all matters arising under, arising out of, or related to the Chapter 11 Cases and the Plan pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code and for, among other things, the following purposes;

(a) To hear and determine motions for the assumption, assumption and assignment, or rejection of executory contracts or unexpired leases and the allowance of Claims resulting therefrom;

(b) To determine any motion, adversary proceeding, application, contested matter, and other litigated matter pending on or commenced after the Confirmation Date, including, without limitation, any proceeding with respect to a Cause of Action or Avoidance Action;

(c) To ensure that distributions to holders of Allowed Claims are accomplished as provided herein;

(d) To consider Claims or the allowance, classification, priority, compromise, estimation, or payment of any Claim;

(e) To enter, implement, or enforce such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked, modified, or vacated;

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

(g) To hear and determine any application to modify the Plan in accordance with section 1127 of the Bankruptcy Code, to remedy any defect or omission or reconcile any inconsistency in the Plan, the Disclosure Statement, or any other of the Bankruptcy Court, including the Confirmation Order, in such a manner as may be necessary to carry out the purpose and effects thereof;

(h) To hear and determine all applications under sections 330, 331, and 503(b) of the Bankruptcy Code for awards of compensation for services rendered and reimbursement of expenses incurred prior to the Confirmation Date;

(i) To hear and determine disputes arising in connection with or related to the interpretation, implementation, or enforcement of the Plan, the Confirmation Order, the Litigation Trust Agreement, any transactions or payments contemplated hereby;

(j) To take any action and issue such orders as may be necessary to construe, enforce, implement, execute, and consummate the Plan or to maintain the integrity of the Plan following consummation;

(k) To recover all assets of the Debtors, property of the Debtors' estates, and the Litigation Trust Assets, wherever located;

(l) To determine such other matters and for such other purposes as may be provided in the Confirmation Order;

(m) To hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code (including, without limitation, matters with respect to any taxes payable by a trust or reserve established in furtherance of the Plan);

(n) To enforce all orders previously entered by the Bankruptcy Court;

(o) To hear and determine any other matters related hereto and not inconsistent with the Bankruptcy Code and title 28 of the United States Code; and

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

ARTICLE XII

MISCELLANEOUS PROVISIONS

12.1. Dissolution of the Committee. On the Effective Date, the Committee shall dissolve; *provided, however*, that, following the Effective Date, the Committee shall continue to have standing and a right to be heard with respect to (i) Claims and/or applications for compensation by professionals and requests for allowance of Administrative Expenses for substantial contribution pursuant to section 503(b)(3)(D) of the Bankruptcy Code, and (ii) any appeals of the Confirmation Order that remain pending as of the Effective Date to which the Committee is a party. Upon the dissolution of the Committee, the current and former members of the Committee, and their respective officers, employees, counsel, advisors, and agents, shall be released and discharged of and from all further authority, duties, responsibilities, and obligations related to and arising from and in connect with the Chapter 11 Cases, and the retention or employment of the Committee's attorneys, accountants, and other agents shall terminate.

12.2. Substantial Consummation. On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

12.3. Effectuating Documents and Further Transactions. An officer of each of the Debtors 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 reasonably necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan and any securities issued pursuant to the Plan.

12.4. Exemption from Transfer Taxes. Pursuant to section 1146(a) of the Bankruptcy Code, the assignment or surrender of any lease or sublease, or the delivery of any deed or other instrument of transfer under, in furtherance of , or in connection with the Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition of assets contemplated by the Plan (including transfers of assets to and by the Litigation Trust) shall not be subject to any stamp, real estate transfer, mortgage recording, sales, use, or other similar tax.

12.5. Exculpation. Neither the Debtors, the Litigation Trust Administrator, the Committee, the DIP Lenders, nor any of their respective members (current and former), officers, directors, employees, counsel, advisors, professionals, or agents, shall have or incur any liability to any holder of a Claim or Equity Interest for any act or omission in connection with, related to, or arising out of the Chapter 11 Cases, negotiations regarding or concerning the Plan, the pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for willful misconduct or gross negligence, and, in all respects, the Debtors, the Litigation Trust Administrator, the Committee, the DIP Lenders and each of their Respective members (current or former), officers, directors, employees, counsel, advisors, professionals, and agents shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

12.6. Payment of Statutory Fees. On the Effective Date, and thereafter as may be required, the Debtors, and after the Effective Date, the Litigation Trust Administrator, shall (i) pay all the respective fees payable pursuant to section 1930 of chapter 123 of title 28 of the United States Code and (ii) be responsible for the filing of post confirmation quarterly status reports with the Bankruptcy Court.

12.7. Modification of Plan. With the prior written consent of the Committee and the DIP Lenders, the Plan may be amended, modified, or supplemented by the Debtors in the manner provided for by section 1127 of the Bankruptcy Code or as otherwise permitted by law without additional disclosure pursuant to section 1125 of the Bankruptcy Code, except as the Bankruptcy Court may otherwise direct. In addition, after the Confirmation Date, so long as such action does not materially adversely affect the treatment of the DIP Lenders, holders of Claims or Equity Interests under the Plan, the Debtors (and as of the Effective Date, the Litigation Trust Administrator) may institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan or the Confirmation Order, with respect to such matters as may be necessary to carry out the purposes and effects of the Plan. Prior to the Effective Date, the Debtors may make appropriate technical adjustments and modifications to the Plan without further order or approval of the Bankruptcy Court; *provided, however*, that such technical adjustments and modifications do not adversely affect in a material way the treatment of holders of Claims or Equity Interests.

12.8. Revocation or Withdrawal of Plan. The Debtors reserve the right to revoke or withdraw the Plan at any time prior to the Confirmation Date. If the Debtors take such action, the Plan shall be deemed null and void. In such event, nothing contained herein shall be deemed to constitute a waiver or release of any Claim by or against the Debtors or any other person or to prejudice in any manner the rights of the Debtors or any other person in any further proceedings involving the Debtors.

12.9. Court of Competent Jurisdiction. If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising out of the Plan, such abstention, refusal, or failure of jurisdiction shall have no effect upon and shall not control, prohibit, or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter.

12.10. Severability. If, prior to the entry of the Confirmation Order, 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 Debtors, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

12.11. Governing Law. Except to the extent the Bankruptcy Code or other U.S. federal law is applicable, or to the extent an Exhibit to the Plan or a schedule in the Plan Supplement provides otherwise, the rights, duties, and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without giving effect to the principles of conflicts of law thereof.

12.12. Exhibits. The Exhibits to the Plan and the Plan Supplement are incorporated into and as part of the Plan as if set forth herein.

12.13. Successors and Assigns. All 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, the heirs, executors, administrators, successors, and/or assigns of such person.

12.14. Time. In computing any period of time prescribed or allowed by the Plan, unless otherwise set forth herein or determined by the Bankruptcy Court, the provisions of Bankruptcy Rule 9006 shall apply.

12.15. Notices. To be effective, all notices, requests, and demands to or upon the Debtors, the Committee, or the Litigation Trust Administrator shall be in writing (including by facsimile or electronic transmission) and, unless otherwise expressly provided herein, shall be 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, addressed as follows:

If to the Debtors or Reorganized Debtors:

Mark Joachim
Arent Fox LLP
1717 K Street NW
Washington, DC 20006
USA

AND

Hugh M. Ray, III
McKool Smith, P.C.
600 Travis, Suite 7000
Houston, Texas 77002
USA

If to the Committee:

Elizabeth Guffy
Locke Lord, LLP
600 Travis, Suite 2800
Houston, Texas, 77002

USA

If to the Litigation Trust Administrator:

[Insert]

Article XIII

Exculpation of Certain Parties who Acted During the Bankruptcy Case

13.01 Discharge/Release of Debtors, DIP Lenders and Estate Representatives

Except as otherwise provided in this Plan, no Holder of a Claim or Interest or other party in interest, none of their respective agents, employees, representatives, financial advisors, attorneys or affiliates, and no successors or assigns of the foregoing, shall have any Rights of Action, claim, cause of action, or other legal or equitable right against the following parties for any act or omission in connection with, relating to, or arising out of the Bankruptcy Case, the decision to file Bankruptcy, the DIP Order, the Prepetition Secured Claims, the pursuit of confirmation of the Plan, the consummation of the Plan, the administration of the Plan or the Case against (a) the Debtors; (b) the DIP Lenders; (c) The Official Committee of Unsecured Creditors; and (d) the Professionals retained by Court Order in the Bankruptcy Case and those acting in reliance upon them.

The foregoing exculpation bars and discharges any and all Rights of Action, claims, and/or causes of action against the Debtors arising at any time pre-or postpetition. With respect to the Professionals retained in the Bankruptcy Case and any of such parties' agents, successors, and assigns, the foregoing exculpation bars rights of action, claims, or causes of action against such parties for acts that might be the subject of post-confirmation causes of action by parties in interest. In all instances, the Debtors' agents have been entitled to reasonably rely on the advice of counsel with respect to their duties and responsibilities relating to the actions regarding the Bankruptcy Case, Prepetition Secured Debt, DIP Loan, and/or Plan.

13.02 Limitation

Notwithstanding anything in the Plan to the contrary, the exculpations and releases herein shall not apply to Brent Mulliniks, Billy Cox, Calen Baucom, William Mark Hamilton, Craig Hamilton, Sharon Hamilton, the entities they control or those in active concert with them, the auditors for the Debtors pre-petition, or any entity holding funds for the benefit of the Debtors. The Litigation Trust Administrator or Reorganized Debtors may bring whatever claims deemed prudent to pursue them and reserves all Rights of Action against them, including (but not limited to) Rights of Action for breach of duty, negligence, malpractice, negligent misrepresentation, fraudulent transfer, Avoidance Action and any other Right of Action.

13.03 Sole Venue for Disputes

The Confirmation Order will provide that the United States Bankruptcy Court for the Southern District of Texas shall retain jurisdiction over any suit brought on any claim or cause of action related to the Bankruptcy Case that exists as of the Effective Date, including suit against the following parties: (i) the Debtor; (ii) members of the Debtor's Board of Directors in their representative capacity; (iii) any of the DIP Lenders; (iv) the Professionals retained in the Bankruptcy Case; and (v) any of such parties' agents, successors and assigns. Any person wishing to bring such a suit shall do so in the United States Bankruptcy Court (or, if necessary for the constitutional exercise of jurisdiction, the United States District Court) for the Southern District of Texas, if said court has jurisdiction. Any disputes over insurance proceeds relating to collateral or assets held by the Debtor will be determined by the Bankruptcy Court alone.

Article XIV – Debtors Discharged

14.01 Injunction Enjoining Claimholders and Interestholders against Debtors

Except as otherwise expressly provided elsewhere in the Plan, after the Effective Date, all Persons who have been, are, or may be holders of Claims against, or Equity Interests in, the Debtors arising before the Effective Date shall be enjoined from taking any of the following actions against or affecting the Debtors or their Estates, regarding such Claims or Equity Interests (other than actions brought to enforce any rights or obligations under the Plan):

- (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind against the Debtors or the Estates, which shall be deemed to be withdrawn or dismissed with prejudice) regarding any claim, debt, liability, or other cause of action;**
- (ii) enforcing, levying, attaching, collecting, or otherwise recovering by any manner or means, directly or indirectly, any judgment, award, decree, or order against the Litigation Trust, Reorganized Debtors, Debtors or their Estates;**
- (iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any lien against the Litigation Trust, Reorganized Debtors, Debtors or their Estates;**
- (iv) asserting any right of subrogation or recoupment of any kind, directly or indirectly, against any obligation due the Debtors; and**

(v) proceeding in any manner and in any place whatsoever that does not conform to or comply with the provisions of the Plan.

Respectfully submitted,

MCKOOL SMITH P.C.

By: /s/ Hugh M. Ray, III
HUGH M. RAY, III
Texas Bar No. 24004246
CHRISTOPHER D. JOHNSON
Texas Bar No. 24012913
600 Travis, Suite 7000
Houston, Texas 77002
Telephone: (713) 485-7300
Facsimile: (713) 485-7344

Counsel for the Debtors