

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

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

**NOTICE OF FILING OF PLAN SUPPLEMENT RELATING TO DEBTORS' SECOND  
AMENDED JOINT PLAN OF REORGANIZATION**

**PLEASE TAKE NOTICE** that HII Technologies, Inc. and its above-captioned affiliates, as debtors and debtors-in-possession (collectively, “Debtors”) are in the process of soliciting votes on a Plan in accordance with the previous order of the Bankruptcy Court.<sup>2</sup> Pursuant to section 12.7 of the Plan, the Debtors are filing the Plan Supplement.

The Plan Supplement includes the following:

1. Exhibit A – The Debtors’ Third Amended Joint Plan of Reorganization (both clean and redlined copies), which amends the previous plan to include the following requested, minor changes:
  - a. The IRS requested language on payment of IRS taxes and default;
  - b. The Texas Comptroller requested language clarifying that 503(b)(1)(D) taxing authorities do not need to file an application; and,

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<sup>1</sup> 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).

<sup>2</sup> *Order (1) Conditionally Approving Disclosure Statement; (2) Fixing Record Date for Voting; (3) Approving Plan Solicitation Package and Voting Procedures; (4) Setting Deadlines to Vote on Plan and Object to Plan and Disclosure Statement; and (5) Setting Hearing on Final Approval of Disclosure Statement and Plan Confirmation* (Dkt. No. 407).

- c. Magna Equities requested that the language paying the Magna Secured Claim expressly include the payment of contract interest.
2. Exhibit B – The offer to deregister HII addressed to the SEC, substantially in the form that will be executed after plan confirmation.
3. Exhibit C – Litigation Trust Agreement, which identifies the Litigation Trustee and amount of funding for the Litigation Trust.

**PLEASE TAKE FURTHER NOTICE** that interested persons may obtain a copy of the Plan Supplement by written request to the Debtors sent to the following address:

HII Technologies, Inc. Case Administration  
c/o GCG  
P.O. Box 10236  
Dublin, OH 43017-5736

Copies of the Plan Supplement may be downloaded free of charge from the HII Case Administration Website maintained by Garden City Group, LLC, located at <http://cases.gcginc.com/hii/index.php>.

Respectfully submitted this 5th day of April, 2016.

**MCKOOL SMITH, P.C.**

By: /s/ Benjamin W. Hugon  
Hugh M. Ray, III  
State Bar No. 24004246  
Christopher D. Johnson  
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***Counsel for the Debtors-in-Possession***

**CERTIFICATE OF SERVICE**

The undersigned certifies that on April 5, 2016, a true and correct copy of this document was served via the ECF system to the parties on the ECF service list, including the United States Trustee, and the pleading is being delivered to the Noticing Agent for service upon the parties on the Master Service List.

*/s/ Benjamin W. Hugon*

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Benjamin W. Hugon

**EXHIBIT A**

Debtors' Third Amended Joint Plan of Reorganization (Clean and Redlined Versions)

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

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

**DEBTORS' THIRD AMENDED JOINT PLAN OF REORGANIZATION**

McKool Smith, P.C.

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Telephone: (713) 485-7300  
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ATTORNEYS FOR DEBTORS

Dated: April 5, 2016

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

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

**DEBTORS' THIRD AMENDED 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 Debtors in the above-captioned jointly administered case, 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 Expenses, DIP Lender Claims, and Priority Tax Claims) are classified in Article III and treated in Article IV.

The Plan is also a motion requesting that the Bankruptcy Court 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).

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<sup>1</sup> 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 evidenced by a 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, or in the event such court ceases to exercise jurisdiction over the Chapter 11 Cases, the United States District Court for the Southern District of Texas or any adjunct thereof which comes to exercise jurisdiction over the 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 **Bar Date** means the applicable deadline for the assertion of a Claim in the Chapter 11 Cases.

1.9 **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.

1.10 **Cash** means legal tender of the United States of America.

1.11 **Causes of Action** means the Avoidance Actions and any and all actions, causes of action, liabilities, obligations, rights, suits, damages, judgments, claims, and demands, all commercial tort claims and causes of actions, all claims and causes of actions against former employees, all claims and causes of actions for collection against customers, all claims and causes of actions against the Hamiltons, One Flow, and Water Transfer, all insurance claims and causes of actions for stolen property, 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. Causes of Action shall expressly include, without limitation, those causes of action described in section 21.12 of the Disclosure Statement.

1.12 **Chapter 11 Cases** means the following cases initiated by the Debtors under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of Texas: Case No. 15-60069, Case No. 15-60070, Case No. 15-60071, Case No. 15-60072, and Case No. 15-60073, jointly-administered under Case No. 15-60070.

1.13 **Claim** has the meaning set forth in section 101(5) of the Bankruptcy Code.

1.14 **Class** means any group of Claims or Equity Interests classified by the Plan pursuant to section 1123(a)(1) of the Bankruptcy Code.

1.15 **Collateral** means all present or future, pre-petition and post-petition, existing and after acquired real and personal, tangible and intangible assets of the Debtors, including without limitation, all cash, cash equivalents, deposit accounts, bank accounts, accounts, other receivables, chattel paper, contract rights, inventory, instruments, documents, licensing agreements, securities (whether or not marketable), equipment, leases, leasehold interests, fixtures, real property interests, franchise rights, patents, trademarks, tradenames, copyrights, intellectual property, general intangibles (including without limitation, all known or unknown claims, Causes of Action, or choses in action under applicable federal and state law), all known or unknown commercial tort claims and Causes of Action and all proceeds thereof, all claims against former employees and all proceeds thereof, all claims for collection against customers and all proceeds thereof, all claims against the Hamiltons, One Flow, and Water Transfer and all proceeds thereof, all insurance claims for stolen property and all proceeds thereof, all Causes of Actions and claims (whether asserted now or after the Petition Date) under the Debtors' existing directors and officers insurance policies and all insurance or other proceeds thereof, all claims and proceeds of actions of the Debtors or their estates under sections 502, 544, 547, 548, 549, 550, 551, 553 and 724(a) of the Bankruptcy Code and all avoidance actions under applicable state law and all proceeds thereof; supporting obligations, letters of credit, letter-of-credit rights, investment property, and all cash or non-cash proceeds, products, offspring, substitutions, and accessions of any of the foregoing, wherever located, whether now or hereafter existing, whether presently owned or hereafter acquired, of every kind and description.

1.16 **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.

1.17 **Confirmation Date** means the date of entry of the Confirmation Order.

1.18 **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.

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

1.20 **Convenience Claim** means a Claim held by a holder of a General Unsecured Claim (i) in the amount of \$1,000, or less, or (ii) who has a Claim in an amount greater than \$1000, but has elected to reduce the amount of their to \$1,000 and to have their Claim treated as a Convenience Claim under Class 3.

1.21 **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.

1.22 **DIP Agent** means McLarty Capital Partners SBIC, L.P., in its capacity as the agent for the DIP Lenders under the DIP Facility.

1.23 **DIP Facility** means the loan facility described in paragraph I of the DIP Order.

1.24 **DIP Lenders** means Heartland Bank and McLarty Capital Partners SBIC, L.P., in their capacity as lenders under the DIP Facility approved pursuant to the DIP Order.

1.25 **DIP Lender Claims** means all Claims in favor of the DIP Lenders arising under the DIP Order, including, without limitation, the Super Priority Administrative Expense granted to the DIP Lenders under 11 U.S.C. § 364(c)(1) pursuant to paragraph 11 of the DIP Order and all out of pocket expenses, including, without limitation, legal fees and expenses, incurred and recoverable by the DIP Lenders in accordance with paragraph 18(e) of the DIP Order. The DIP Lender Claims are comprised of the Postpetition Obligations and the Roll-Up Obligations, treated as described in Section 2.4.

1.26 **DIP Lenders Beneficial Trust Interest** means a fifty-five percent (55%) beneficial interest in the Litigation Trust and Litigation Trust Assets, paid in accordance with the Waterfall.

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

1.28 **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.

1.29 **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: 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 Claim, not a Disputed Claim.

1.30 **Disputed Claims Reserve** means, as applicable, (i) the Cash reserve established by Reorganized HIIT for payment of Disputed Administrative Expenses, Disputed Priority Tax Claims, Disputed Secured Claims and Disputed Priority Non-Tax Claims, and (ii) that portion of the Litigation Trust Assets reserved by the Litigation Trustee for Disputed General Unsecured Claims.

1.31 **Distributable Cash** means any and all Cash held by the Debtors on the Effective Date after reserving for (i) the Initial Litigation Trust Administrative Cash, (ii) the Disputed Claims Reserve, and (iii) the payment of all Administrative Expenses (other the DIP Lender Claims), Secured Claims, Priority Non-Tax Claims and Priority Tax Claims.

1.32 **Distributable Trust Cash** means at any given time after the Postpetition Obligations and the Initial Litigation Trust Administrative Cash have been paid in full in accordance with the Waterfall, Cash in the Litigation Trust net of the Litigation Trust Administrative Cash..

1.33 **Distribution Record Date** means (i) the Effective Date with respect to those Claims for which the Bar Date has passed by the time of the Effective Date, or (ii) the date on which a proof of claim or application for allowance of an Administrative Expense is filed to evidence a Claim with respect to those Claims for which the Bar Date has not passed by the time of the Effective Date.

1.34 **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 9.2 have been satisfied or waived. The Reorganized Debtors shall file a notice of the Effective Date with the Bankruptcy Court and the Securities and Exchange Commission.

1.35 **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.

1.36 **Estates** means the bankruptcy estates of the Debtors.

1.37 **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.

1.38 **General Unsecured Claim** means any Claim against any of the Debtors that is not an Administrative Expense, DIP Lender Claim, Priority Tax Claim, Secured Claim, Priority Non-Tax Claim, the Mulliniks/Cox Priority Claims, a Convenience Claim or a Subordinated Claim.

1.39 **Initial Litigation Trust Administrative Cash** means an amount of Cash not to exceed \$500,000. The actual amount of Initial Litigation Trust Administrative Cash will be set forth in the Litigation Trust Agreement.

1.40 **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.

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

1.42 **Litigation Trustee** 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 Trustee will be disclosed in the Plan Supplement.

1.43 **Litigation Trust Administrative Cash** means the Cash held and maintained by the Litigation Trustee for the purpose of paying the expenses incurred by the Litigation Trustee (including fees and expenses for professionals retained by the Litigation Trust) in connection with the Litigation Trust and any obligations imposed on the Litigation Trustee or the Litigation Trust, including expenses relating to the performance of the Litigation Trustee's obligations under the Litigation Trust Agreement.

1.44 **Litigation Trust Assets** means all Causes of Action transferred by the Debtors and their Estates to the Litigation Trust on the Effective Date, and any proceeds thereof, and the Litigation Trust Administrative Cash.

1.45 **Litigation Trust Agreement** means that certain trust agreement to be executed by the Debtors and the Litigation Trustee, substantially in the form included in the Plan

Supplement, which must be satisfactory to the Committee and the DIP Lenders in form and substance.

1.46 **Litigation Trust Beneficiaries** means the DIP Lenders to the extent provided in section 2.4 of the Plan, the holders of the Allowed Mulliniks/Cox Priority Claims to the extent provided in section 4.3 of the Plan, and the holders of Allowed General Unsecured Claims to the extent provided in section 4.5 of the Plan.

1.47 **Litigation Trust Representatives** means the two representatives, one selected by the Committee and one selected by the DIP Lenders, responsible for assisting the Litigation Trustee in the management of the Litigation Trust pursuant to section 6.3(f).

1.48 **Magna Secured Claims** means, to the extent they are Allowed Secured Claims, all Claims in favor of Magna Equities II, LLC (“Magna”) secured by all of the Debtor’s right, title, and in interest in and to all Accounts (as defined in the DIP Order) arising on or after July 23, 2015 to secure the payment of amounts loaned under the Fourth and Fifth Modifications (as defined in the DIP Order), which as of the Petition Date totaled approximately \$108,329.60.

1.49 **Mediated Settlement Agreement** means the Mediated Settlement Agreement dated February 29, 2016 attached to the Disclosure Statement as Schedule H, which memorializes the compromise and settlement between Brent Mulliniks, Billy Cox, Jr., the Ad Hoc Committee of Unsecured Creditors of Apache Energy Services, the Debtors, the DIP Lenders, and the Committee.

1.50 **Mulliniks/Cox Priority Claims** means the Allowed priority Claims of Brent Mulliniks and Billy Cox, Jr. described in section 4.3 of this Plan.

1.51 **New HIIT Common Stock** means common stock, or the warrants redeemable for common stock, of Reorganized HIIT issued on the Effective Date in accordance with section 6.4 of the Plan.

1.52 **New HIIT Preferred Convertible Stock** means convertible participating and voting preferred stock of Reorganized HIIT with a dividend that will be specified in the Plan Supplement, convertible into 95% of the New HIIT Common Stock, issued on the Effective Date in accordance with section 6.4 of the Plan. An exemplar of the terms of offering is attached as Schedule 1.49, but the actual terms of offering could vary in nonmaterial terms from the Schedule.

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

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

1.55 **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.

1.56 **Plan Supplement** means the forms of documents effectuating the transactions contemplated by this Plan, including the Litigation Trust Agreement, which documents shall be filed with the Bankruptcy Court no later than ten (10) days prior to the Confirmation Hearing.

1.57 **Postpetition Obligations** means the outstanding, unpaid balance of the DIP Lender Claims, excluding only those amounts advanced to or incurred by the Debtors under the Roll-Up Loan (as defined in the DIP Order) and postpetition interest on the Roll-Up Loan.

1.58 **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.

1.59 **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.

1.60 **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.

1.61 **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.

1.62 **Reorganized Debtors** means the Debtors from and after the Effective Date.

1.63 **Reorganized HIIT** means the Debtor HII Technologies, Inc. from and after the Effective Date.

1.64 **Roll-Up Obligations** means that portion of the DIP Lenders Claims arising from advanced to or incurred by the Debtors under the Roll-Up Loan (as defined in the DIP Order) and postpetition interest on the Roll-Up Loan.

1.65 **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.

1.66 **Secured Claim** means any Claim, other than DIP Lender Claims or the Subordinated Secured Seller Note Claims, (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.

1.67 **SEC** means the Securities and Exchange Commission of the United States.

1.68 **Security** has the meaning set forth in section 101(49) of the Bankruptcy Code.

1.69 **Subordinated Secured Seller Note Claim** means any Claim arising from those certain subordinated secured promissory notes described below, which were subordinated (both in order of payment and liens) by agreement between those holders of Claims and the DIP Lenders:

(a) Chris George, as payee, under that certain Subordinated Secured Promissory Note, dated November 12, 2013, in the principal amount of \$245,000.00;

(b) Brent Mulliniks, as payee, under that certain Subordinated Secured Promissory Note, dated September 27, 2012, in the principal amount of \$650,000.00;

(c) Branden Brewer, as payee, under that certain Subordinated Secured Promissory Note, dated November 12, 2013, in the principal amount of \$255,000.00; and

(d) Billy Cox, as payee, under that certain Subordinated Secured Promissory Note, dated September 27, 2012.

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

1.71 **Subordinated Claim** means any Claim that is subject to (i) subordination under section 510(b) of the Bankruptcy Code, including, without limitation, any Claim for or arising from the rescission of a purchase, sale, issuance, or offer of a Security of any Debtor; for damages arising from the purchase or sale of such a Security; or for reimbursement, indemnification, or contribution allowed under section 502 of the Bankruptcy Code on account of such Claim; or (ii) equitable subordination as determined by the Bankruptcy Court in a Final Order.

1.72 **Unsecured Creditor Beneficial Trust Interest** means a forty-five percent (45%) beneficial interest in the Litigation Trust and Litigation Trust Assets, paid in accordance with the Waterfall.

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

1.74 **Waterfall** means the order of priority of payments from the Litigation Trust to the Litigation Trust Beneficiaries under the Plan, described as follows:

(1) the first distributions will be paid to the DIP Lenders to repay the Postpetition Obligations and the Initial Litigation Trust Administrative Cash, in an amount not to cumulatively exceed \$500,000;

(2) then up to \$150,000 is to be paid on account of the Allowed Mulliniks/Cox Priority Claims, in accordance with Section 4.3 of the Plan and the Mediated Settlement Agreement;

(3) then up to \$500,000 to be paid to the DIP Lenders on account of the Initial Litigation Trust Administrative Cash to the extent amounts funded for the Postpetition Obligations and the Initial Litigation Trust Administrative Cash exceed \$500,000 and are unpaid under subsection (1); and

(4) finally a division of all remaining Distributable Trust Cash as follows: (i) fifty-five percent (55%) on account the DIP Lenders Beneficial Trust Interest and (ii) forty-five percent (45%) on account of the Unsecured Creditor Beneficial Trust Interest, as provided in Section 2.4(b) and Section 4.5., respectively.

## MISCELLANEOUS INTERPRETIVE PROVISIONS

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

1.76 **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.

1.77 **Plan Controls.** Except as set forth in Section 6.3, in the event of an inconsistency between the Plan and the Disclosure Statement or the Plan Supplement, the Plan shall control. In the event of any inconsistency between the Plan and the Confirmation Order, the Confirmation Order controls, however, the Plan must incorporate the Mediated Settlement Agreement.

1.78 **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.**

(a) **Administrative Expenses Bar Date.** Except for the DIP Lenders’ administrative expenses granted under the Final DIP Order, the holder of any Administrative Expense other than (i) a Claim for Compensation or Reimbursement set forth in section 2.2 below, (ii) a liability incurred and paid in the ordinary course of business by the Debtor, (iii) an Allowed Administrative Expense; or, (iv) an administrative expense of a governmental unit within the scope of section 503(b)(1)(D), must file with the Bankruptcy Court and serve notice of such Administrative Expense within 30 days after the Confirmation Date. At a minimum, such notice must identify (i) the name of the holder of such Claim, (ii) the amount of such Claim, and (iii)

the basis of such Claim. **FAILURE TO FILE THIS NOTICE TIMELY AND PROPERLY SHALL RESULT IN THE ADMINISTRATIVE EXPENSE BEING FOREVER BARRED AND DISCHARGED.**

(b) Except to the extent a holder of an Allowed Administrative Expense agrees to a different treatment, and subject to the provisions of section 2.2 of the Plan (if applicable), on the Effective Date, or as soon thereafter as is reasonably practicable, the Reorganized 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 Persons seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Effective Date under sections 327, 328, 330, 503(b)(2), 503(b)(3), or 503(b)(4) 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 Effective Date, and (ii) shall be paid in full such amounts as are allowed by the Bankruptcy Court (A) within 7 days of 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 Reorganized Debtors.

2.3 **Priority Tax Claims.** Except to the extent a holder of an Allowed Priority Tax Claim agrees to a different treatment,<sup>2</sup> no later than 30 days after the Confirmation Order is entered, the Reorganized 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.

With respect to the Internal Revenue Service's Priority Tax Claim, the debt owed by the Debtor(s) to the Internal Revenue Service (IRS) is nondischargeable, except as otherwise provided for in the Bankruptcy Code. If the Debtor(s) should default, the IRS is not subject to the provisions of the Bankruptcy Code and may pursue any applicable rights and remedies to collect under State or Federal law. If there is a default to any provisions to the IRS, the IRS will send written notice to the Debtor(s). The Debtor(s) must cure the default within 15 days of the date of the notice. If not cured, the full liability will be due and owing. The Debtor(s) will be issued no more than two (2) notices of default from the IRS; the third (3rd) default cannot be cured. The period of limitations on collection remains suspended under 26 U.S.C. § 6503(h) for tax periods being paid under the Plan and terminates on the earlier of (1) completion of all required payments to the IRS; or (2) 30 days after the date of the demand letter for which the debtor failed to cure the default. Plan payments must be made by check or money order made payable to: U.S. Treasury. Each payment must include the following identifying information: Petition number and Tax ID. Plan payments must be mailed to:

Internal Revenue Service  
Mail Stop #5026AUS  
300 E. 8th Street  
Austin, Texas 78701

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<sup>2</sup> Such as the compromise with the Texas Comptroller regarding sales and franchise taxes, approved by order of the Bankruptcy Court (docket 337).

2.4 **DIP Lender Claims.**

The DIP Lender Claims shall be satisfied in the following manner:

(a) **Satisfaction of Postpetition Obligations.** On the Effective Date, or as soon thereafter as is reasonably practicable, the Reorganized Debtors shall distribute to the DIP Agent for the benefit of the DIP Lenders all Distributable Cash, which shall be applied by the DIP Agent, first, towards the satisfaction of Postpetition Obligations. In the event that the full amount of the Postpetition Obligations is not satisfied from the Distributable Cash, then from and after the Effective Date, and until such time as the Postpetition Obligations have been paid in full, and after the payment of the Initial Litigation Trust Administrative Cash, the Litigation Trustee shall distribute all proceeds of the Causes of Action to pay the Postpetition Obligations, until such time as they are paid in full. After the Postpetition Obligations and the Initial Litigation Trust Administrative Cash have been repaid in full in accordance with the Waterfall, proceeds of Causes of Action shall be paid to the Litigation Trust Beneficiaries in accordance with the Waterfall and as provided in section 2.4, 4.3, 4.4, or 4.5, as the case may be.

(b) **Satisfaction of Roll-Up Obligations.** On the Effective Date, or as soon thereafter as is reasonably practicable, in satisfaction of the DIP Lender Claims (except as provided in sections 2.4(a) above): (i) Reorganized HIIT shall issue the New HIIT Preferred Convertible Stock to the DIP Agent for the benefit of the DIP Lenders; and (ii) the DIP Agent for the benefit of the DIP Lenders shall receive a fifty-five percent (55%) beneficial interest in the Litigation Trust and the Litigation Trust Assets, in accordance with the Waterfall, on account of which the DIP Agent for the benefit of the DIP Lenders shall receive, as soon as is reasonably practicable after the Litigation Trustee, from time to time, determines that there is sufficient Distributable Trust Cash to make a distribution to Litigation Trust Beneficiaries, its share of such Distributable Trust Cash based upon such fifty-five percent (55%) beneficial interest, in accordance with the Waterfall.

(c) **Reduction of DIP Lender Claims.**

(1) **Insurance Proceeds Attributable to Collateral.** From and after the Effective Date, to the extent that any insurance proceeds attributable to Collateral securing the DIP Lender Claims are recovered/recoverable, the DIP Agent for the benefit of the DIP Lenders shall be entitled to receive such insurance proceeds directly from the applicable insurance carrier (and to the extent received by the Reorganized Debtors or the Litigation Trustee shall be immediately paid by the Reorganized Debtors or Litigation Trustee, as applicable, to the Heartland Bank for the benefit of the lenders under the APA), but only to the extent of the value of the DIP Lenders' interest in such Collateral, and in no event shall the DIP Lenders receive more than 100% of the value of their interest in the Collateral from any source or set of sources. The DIP Lender Claims shall be reduced dollar-for-dollar, for insurance proceeds paid to Heartland Bank under this section. In the event of any dispute regarding application of insurance proceeds, the Bankruptcy Court shall be the exclusive forum within which to resolve such dispute.

(2) **APA Receivables.** From and after the Effective Date, to the extent that receivables sold pursuant to the Prepetition A/R Agreement (as defined in the DIP Order) are

collected by Reorganized HIIT or the Litigation Trust, such proceeds shall be immediately paid to Heartland Bank (as agent and designated payee of the DIP Lenders for further credit to the Lenders under the APA), and the DIP Lenders that were APA Lenders shall have their claim reduced dollar-for-dollar, for proceeds paid to Heartland Bank under this section. In the event of any dispute regarding application of proceeds from APA Receivables, the Bankruptcy Court shall be the exclusive forum within which to resolve such dispute.

(3) **Recoveries Under Subordination Agreements.** Any proceeds that the DIP Lenders receive on a final, indefeasible, non-appealable basis from enforcement of the subordination agreements with Holders of the Subordinated Secured Seller Notes reduce the DIP Lender Claims dollar-for-dollar.

(d) **Retention of Liens.** The DIP Lenders shall retain their Liens on Collateral until such time as the Postpetition Obligations and the Initial Litigation Trust Administrative Cash are paid in accordance with the Waterfall, at which time the DIP Lenders Liens shall be released. If requested by the Litigation Trustee, the DIP Lenders shall file all necessary documents to evidence the release of Liens on the Collateral.

### 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 1126 of the Bankruptcy Code, and (iii) deemed to reject the Plan.

<b>Class</b>	<b>Designation</b>	<b>Impairment</b>	<b>Entitled to Vote</b>
Class 1	Secured Claims	Unimpaired	No (deemed to accept)
Class 2	Priority Non-Tax Claims	Unimpaired	No (deemed to accept)
Class 3	Mulliniks/Cox Priority Claims	Unimpaired	No (deemed to accept)
Class 4	Convenience Claims	Impaired	Yes
Class 5	General Unsecured Claims	Impaired	Yes
Class 6	Subordinated Claims	Impaired	No (deemed to reject)
Class 7	Equity Interests	Impaired	No (deemed to reject)

For convenience of identification, Allowed Claims in Class 1 are shown above as a single Class. As set forth in Article IV, below, Class 1 is actually a group of subclasses, depending on the underlying circumstances of 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.**

(a) **Class 1(a) – Magna Secured Claims.** To the extent the Magna Secured Claim has an Allowed Secured Claim, and except to the extent the holder agrees to a different treatment, on the Effective Date or as soon thereafter as is reasonably practicable, the holder of the Magna Secured Claim shall receive in full satisfaction of such Claim, Cash in an amount equal to one hundred percent (100%) of the unpaid amount of such Allowed Secured Claim—including, for the avoidance of doubt, contract interest. The Liens securing such Allowed Magna Secured Claim shall be deemed released upon payment in accordance with such clause. To the extent Magna’s Claims are determined to be unsecured by Final Order, such unsecured Claims will be treated under Class 4.

(b) **Class 1(b) – Subordinated Secured Seller Note Claims.** To the extent (i) each of the Subordinated Secured Seller Notes has an Allowed Secured Claim, and (ii) after payment in full of the DIP Lender Claims, the holders of Subordinated Secured Seller Note Claims shall be treated as follows:

except to the extent a holder of an Allowed Subordinated Secured Seller Note Claim agrees to a different treatment, on the Effective Date or as soon thereafter as is reasonably practicable, each holder of a Subordinated Secured Seller Note Claim shall receive, at the option of the Reorganized 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 Collateral securing such Allowed Subordinated Secured Seller Note Claim, (iii) such treatment that leaves unaltered the legal, equitable, and contractual rights to which the holder of such Claim is entitled, or (iv) such other distribution as necessary to satisfy the requirement of section 1129 of the Bankruptcy Code. In the event a Subordinated Secured Seller Note Claim is treated under clause (i) of this section, the Liens securing such Claim will be released upon payment in accordance with such clause. To the extent a Subordinated Secured Seller Note Claim is determined to be unsecured, such unsecured Claim will be treated under Class 4.

**Notwithstanding the foregoing,** Notwithstanding the foregoing, Brent Mulliniks and Billy Cox will receive no distribution on account of their respective Subordinated Seller Note Claims, which are discharged under this Plan, and the Liens securing such Claims will be released and discharged on the Effective Date. All Claims held by Mr. Mulliniks and Mr. Cox are treated as provided in Section 4.3 of this Plan and the Mediated Settlement Agreement.

(c) **Class 1(c) – Other Secured Claims.** To the extent Allowed as a Secured Claim, and 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 a Secured Claim shall receive, at the option of the Reorganized 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 Collateral securing such Allowed Secured Claim, (iii) the return of the Collateral securing such Allowed Secured Claims (iv) such treatment that leaves unaltered the legal, equitable, and contractual rights to which the holder of such Claim is entitled, or (v) such other distribution as necessary to satisfy the requirement of section 1129 of the Bankruptcy Code. In the event a Secured Claim is treated under clause (i) or (iii) of this section, the Liens securing such Claim will be released upon

payment in accordance with such clause. To the extent an Other Secured Claim is determined to be unsecured, such unsecured Claim will be treated under Class 4.

(d) Notwithstanding the foregoing, to the extent that any insurance proceeds attributable to Collateral securing an Allowed Class 1(a), (b) or (c) Secured Claim are recovered/recoverable, the holder of such Allowed Secured Claim shall be entitled to receive such insurance proceeds directly from the applicable insurance carrier (and to the extent received by the Reorganized Debtors or the Litigation Trustee shall be immediately paid by the Reorganized Debtors or Litigation Trustee, as applicable, to such holder), but only to the extent of the value of the holder's interest in such Collateral, and in no event shall the holder of an Allowed Secured Claim receive more than 100% of the value of its interest in the Collateral from any source or set of sources. In the event of any dispute regarding application of insurance proceeds, the Bankruptcy Court shall be the exclusive forum within which to resolve such 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 treatment, 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 2a: Mulliniks/Cox Priority Claims (based on the Mediated Settlement Agreement)**

All Claims of Billy Cox, Jr. and Brent Mulliniks relating to any of the Debtors (including without limitation the Subordinated Seller Note Claims held by Mr. Cox and Mr. Mulliniks) shall be dealt with only as set forth in the Mediated Settlement Agreement and this Section 4.3. To the extent this Plan conflicts with Mediated Settlement Agreement regarding the treatment of the Claims of Mr. Cox and Mr. Mulliniks, the Mediated Settlement Agreement controls that treatment.

Brent Mulliniks and Billy Cox, Jr. shall be Allowed the Mulliniks/Cox Priority Claims totaling, collectively, \$150,000, with such Mulliniks/Cox Priority Claim of Brent Mulliniks totaling \$75,000.00, individually, and such Mulliniks/Cox Priority Claim of Billy Cox, Jr. totaling \$ 75,000.00.

The Mulliniks/Cox Priority Claims shall be Class 2a under this Plan and shall only be enforceable against the Chapter 11 estates through a confirmed Chapter 11 Plan. On the Effective Date, and in full satisfaction of the Mulliniks/Cox Priority Claims, Billy Cox and Brent Mulliniks shall receive priority beneficial interests in the Litigation Trust; provided, however, that no distribution shall be made on account of such priority beneficial interests until all of the Chapter 11 Estates' claims against Brent Mulliniks and Billy Cox, Jr. have been fully resolved, through judgment, settlement or, or otherwise.

The Litigation Trustee will reserve the first \$150,000 received by the Litigation Trust after payment of all Postpetition Obligations and advances to the Litigation Trust (but in no event to cumulatively exceed \$500,000). Immediately after the final resolution (whether by way

of settlement or entry of a final and non-appealable judgment) of all of the claims of the Chapter 11 Estates asserted against Billy Cox, Jr. and Brent Mulliniks by the Litigation Trust, the Litigation Trustee will distribute to Mr. Cox and Mr. Mulliniks the \$150,000 reserved for distribution on account of such priority beneficial interest of Mr. Cox and Mr. Mulliniks in accordance with their respective Mulliniks/Cox Priority Claims, minus the amount of any final and non-appealable judgment obtained by the Litigation Trust against Mr. Cox and Mr. Mulliniks, respectively, for which there are inadequate or no insurance proceeds available to pay such a judgment.

Billy Cox, Jr. and Brent Mulliniks' right to a distribution on account of their priority beneficial interests in the Litigation Trust is senior to the right of any other holder (but subject to an amount up to \$500,000 as described earlier in this section 4.3) of a beneficial interest in the Litigation Trust to receive distributions from the Litigation Trust in accordance with the Waterfall and is subject only to the offset for judgment(s) obtained against Mr. Cox and Mr. Mulliniks and settlement payments as described in this section 4.3.

The Litigation Trust will be vested with, and pending distribution of the \$150,000.00 (subject to the offset above) will not divest itself of (but, of course, may retain contingency fee counsel on standard terms), all litigation rights and Causes of Action of the Chapter 11 Estates, including without limitation all matters disclosed in the Disclosure Statement. Accordingly, collections from fraudulent conveyances, preferences, breach of fiduciary duty suits and all other matters will be placed into the Litigation Trust for distribution as set forth in this Plan, and the right of Mr. Cox and Mr. Mulliniks to the distribution of the first \$150,000 received by the Litigation Trust may offset, but not otherwise release or discharge, any Causes of Action of the Litigation Trust.

4.4 **Class 3 – Convenience Claims.** On the Effective Date, or as soon thereafter as is reasonably practicable, each holder of an Allowed Convenience Class Claim shall receive, in full satisfaction of such Claim, Cash in an amount equal to fifty percent (50%) of the unpaid amount of such Claim.

4.5 **Class 4 – General Unsecured Claims.** In accordance with sections 6.3(j) and 6.4, below, each holder of an Allowed General Unsecured Claim shall receive, in full satisfaction of such Claim: (i) its Pro Rata Share of 5% of the New HIIT Common Stock; and (ii) its Pro Rata Share of the Unsecured Creditor Beneficial Trust Interest, in accordance with the Waterfall on account of which such holder shall receive, as soon as is reasonably practicable after the Litigation Trustee, from time to time, determines that there is sufficient Distributable Trust Cash to make a distribution to Litigation Trust Beneficiaries, its Pro Rata Share of such Distributable Trust Cash based upon such Pro Rata Share of the Unsecured Creditor Beneficial Trust Interest in accordance with the Waterfall; *provided, however*, that the maximum amount recoverable by holders of Allowed General Unsecured Claims shall be the Allowed amount of such Claims, without interest.

4.6 **Class 5 – Subordinated Claims.** Holders of Subordinated Claims will not receive any property or distribution on account of their Claims; nor will they retain any claim

against the Debtors, their Estates, the Reorganized Debtors, or the Litigation Trust. Each holder of an Allowed Claim in Class 5 shall be deemed to reject the Plan.

4.7 **Class 6 – Equity Interests.** All prepetition Equity Interests in HIIT Technologies, Inc. shall be cancelled on the Effective Date. Each holder of an Equity Interest in HIIT Technologies, Inc. shall neither receive nor retain any property or interest on account of such Equity Interest. Reorganized HIIT shall retain its Equity Interests in the remaining Reorganized Debtors.

## ARTICLE V

### PROVISIONS GOVERNING DISTRIBUTIONS

5.1 **Distribution Record Date.** As of the close of business on the applicable Distribution Record Date, the various transfer registers for each of the Classes of Claims as maintained by the Debtors or Reorganized Debtors, or their agents, shall be deemed closed, and there shall be no further changes in the record holders of any of the Claims. All distributions made on account of Claims pursuant to the terms of this Plan shall be made to the record holders of such Claims as of the applicable Distribution Record Date.

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 Reorganized 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 Allowed Convenience Claims an amount in Cash equal to the Allowed amount of such Claims, (ii) remit all Distributable Cash to the DIP Agent for the benefit of the DIP Lenders, and (iii) transfer 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 and the Litigation Trust Agreement. Beginning ninety days (90) days after the Effective Date, and continuing every ninety (90) days thereafter for each period in which it makes a payment under the Plan, Reorganized HIIT shall provide an accounting to the Litigation Trustee of all payments made under the Plan.

(b) **Distributions of Cash.** At the option of the Reorganized Debtors or the Litigation Trustee, 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 Reorganized Debtors or their agents or in a letter of transmittal unless the Reorganized Debtors or the Litigation Trustee, as applicable, have/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 Reorganized Debtors or the Litigation Trustee, as applicable, are/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 Reorganized 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 Reorganized 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. The aggregate consideration to be distributed to holders of Claims in each Class will be allocated first to the principal amount of such Claim, with any excess allocated to untaxed interest that accrued on such Claim, if any.

5.5 **Time Bar to Cash Payments.** Checks issued by the Reorganized Debtors or the Litigation Trustee, 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 Reorganized Debtors or the Litigation Trustee, 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 Reorganized 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 Reorganized Debtors or the Litigation Trustee, as applicable, to any holder of an Allowed Claim. No fractional shares of New HIIT Common Stock shall be distributed. For purposes of distribution, fractional shares of New HIIT Common Stock shall be rounded down to the next whole number or zero, as applicable; *provided, however*, that if a Person's fractional shares are rounded down to zero, such Person shall receive one share of New HIIT Common Stock. If a Person holds more than one Allowed Claim in a particular Class, such Person's Allowed Claims in such Class shall be aggregated for purposes of rounding down pursuant to this section. After all distributions under the Plan have been made, any New HIIT

Common Stock that is undistributable as a result of the foregoing shall be retained by Reorganized HIIT as treasury stock.

5.7 **Setoffs.** The Reorganized Debtors and/or the Litigation Trustee 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, their Estates, the Reorganized Debtors or the Litigation Trust 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, their Estates, the Reorganized Debtors, the Litigation Trust and/or the Litigation Trustee, as applicable, of any such claim the Debtors, their Estates, the Reorganized Debtors or the Litigation Trust 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 **Limited 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 the Debtors and their respective Estates 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 and their Estates shall be deemed merged into Reorganized HIIT, (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 and 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 effected pursuant to this section shall not affect (other than for purposes related to funding distributions under the Plan), (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 **Business Operations of the Reorganized Debtors.** The Reorganized Debtors shall operate independent from the Litigation Trust. Except as set forth in the Plan, any assets or liabilities of the Reorganized Debtors are not assets or liabilities of the Litigation Trust and assets or liabilities of the Litigation Trust are not assets or liabilities of the Reorganized Debtors.

6.3 **The Litigation Trust.** This section and the Litigation Trust Agreement sets forth certain of the rights, duties, and obligations of the Litigation Trustee. In the event of any conflict between the terms of this section and the terms of the Litigation Trust Agreement, the terms of the Litigation Trust Agreement shall govern, except that the Litigation Trust Agreement may not vary the terms of the Mediated Settlement Agreement and the priority of payments to the Litigation Trust Beneficiaries as set forth under the Waterfall (Section 1.73 of the Plan).

(a) **Execution of Litigation Trust Agreement.** On the Effective Date, the Litigation Trust Agreement, in a form acceptable to the Debtors, the Committee, the DIP Lenders, and the Litigation Trustee, shall be executed, and all other necessary steps shall be taken to establish the Litigation Trust, which shall be for the benefit of the holders of DIP Lender Claims, of the Allowed Mulliniks/Cox Priority Claims, and of Allowed General Unsecured Claims

(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, and shall be treated as “grantor trust” for federal and state income tax purposes. Accordingly, for all purposes of the Tax Code, (i) the Debtors shall be treated as having distributed to the beneficiaries of the Trust such beneficiaries’ respective shares (as determined in accordance with the Plan) of the Litigation Trust Assets, (ii) such beneficiaries shall be treated as having received their respective shares of the such Litigation Trust Assets, (iii) such beneficiaries shall be treated as having contributed the respective shares of such Litigation Trust Assets so deemed to have been received them to the Litigation Trust, and (iv) such beneficiaries shall be treated as the grantors and deemed owners of the Litigation Trust. The Litigation Trustee shall, within a reasonable period of time after the Effective Date, make a good faith determination of the value of the Litigation Trust Assets, which valuation shall be made available to the Debtors, the Litigation Trustee, and the beneficiaries of the Litigation Trust. The Debtors, the Litigation Trustee, and the Litigation Trust Beneficiaries shall use such valuation for all federal income tax purposes.

(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, Litigation Trust Beneficiaries, including, without limitation, holders of Allowed General Unsecured Claims and Allowed Mulliniks/Cox Priority Claims shall look solely to the Litigation Trust Assets for satisfaction of their Claims, and the Litigation Trust Assets shall be available for only Litigation Trust Beneficiaries. For the avoidance of doubt, the Reorganized Debtors are not beneficiaries of the Litigation Trust and are not entitled to receive any distribution of Litigation Trust Assets.

(d) **The Litigation Trustee.** The Litigation Trustee shall be selected by mutual agreement of the Committee and the DIP Lenders, and the identity of the Litigation Trustee and Litigation Trust Representatives shall be disclosed in the Plan Supplement.

(e) **Role of the Litigation Trustee.** Consistent with the purpose of the Litigation Trust, the Plan, and the Litigation Trust Agreement, the Litigation Trustee shall (i) subject to the limitations as set forth in the Litigation Trust Agreement, 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 and as the representative of their respective Estates pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, (iv) have the power to object to, settle, compromise, withdraw or litigate to judgment any objections to Claims, (v) have the power and authority to distribute to the DIP Agent for the benefit of the DIP Lenders Litigation Trust Assets in an amount necessary to satisfy in full the balance of the Postpetition Obligations and the Initial Litigation Trust Administrative Cash in accordance with the Waterfall after distribution of the Distributable Cash to the DIP Agent for the benefit of the DIP Lenders, (vi) have the power and authority to distribute to the holders of Allowed Cox/Mulliniks Priority Claims, (vii) have the power and authority to distribute to other Litigation Trust Beneficiaries any remaining Litigation Trust Assets after payment of the Postpetition Obligations and Initial Litigation Trust Administrative Cash and the Initial Litigation Trust Administrative Cash in accordance with the Waterfall, (viii) have the power and authority to assert, prosecute, settle, and resolve, through judgment, settlement, or otherwise, any Causes of Action against Brent Mulliniks and Bill Cox, Jr. and to offset any settlement(s) or judgment(s) obtained against Brent Mulliniks and Bill Cox, Jr. against the Priority Claims of Brent Mulliniks and Bill Cox, Jr. under the Mediation Settlement Agreement, and (ix) have the power and authority to perform such other functions as are provided in the Plan and the Litigation Trust Agreement. The Litigation Trustee shall be responsible for all decisions and duties with respect to the Litigation Trust and the Litigation Trust Assets. In all circumstances, the Litigation Trustee 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 Trustee.

(f) **Establishment of Cash Reserves.** The Litigation Trustee shall consult with the Litigation Trust Representatives regarding the funding of the Litigation Trust Disputed Claims Reserve. In the event of a disagreement between the Litigation Trust Representatives regarding the funding of the Litigation Trust Disputed Claims Reserve, the Litigation Trustee shall have the deciding vote. The reserve for the Allowed Mulliniks/Cox Priority Claims shall be determined as set forth in section 4.3 and the Mediated Settlement Agreement.

(g) **Cash.** The Litigation Trustee 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 Court, which may include the Confirmation Order.

(h) **Costs and Expenses of the Litigation Trustee.** The costs and expenses of the Litigation Trust, including the fees and expenses of the Litigation Trustee and its retained

professionals, shall be paid out of the Litigation Trust Assets, subject to the provisions of the Litigation Trust Agreement.

(i) **Compensation of the Litigation Trustee.** The Litigation Trustee 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.

(j) **Distribution of Litigation Trust Assets.** After payment in full of the Postpetition Obligations and the Initial Litigation Trust Administrative Cash in accordance with the Waterfall, the Litigation Trustee shall distribute Distributable Trust Cash to Litigation Trust Beneficiaries, in accordance with the Waterfall, on a periodic basis, and at least once per year, except such amounts (i) as have been reserved on account of Disputed Claims or are otherwise part of the Disputed Claims Reserve established by the Litigation Trustee, (ii) as are reasonably necessary to meet contingent liabilities and to maintain the value of the Litigation Trust Assets during their liquidation, (iii) as are necessary to pay reasonable incurred or anticipated expenses (including, but not limited to, any taxes imposed on or payable by the Litigation Trust), or (iv) as are necessary to satisfy other liabilities incurred or anticipated by the Litigation Trust in accordance with the Plan or the Litigation Trust Agreement; provided, however, that the Litigation Trustee shall not be required to make a distribution pursuant to the Plan if the aggregate amount of Distributable Cash (taking into account the above-listed exclusions) is such as would make the distribution impractical as reasonably determined by the Litigation Trustee; and provided further, however, that all distributions to Mr. Brent Mulliniks and Mr. Billy Cox, Jr. on account of their priority beneficial interests in the Litigation Trust shall be made as described in section 4.3 of this Plan and the Mediated Settlement Agreement.

(k) **Retention of Professionals by the Litigation Trustee.** The Litigation Trustee may retain and reasonably compensate counsel and other professionals to assist in his duties as Litigation Trustee on such terms as he deems appropriate without Bankruptcy Court approval, but subject to the provisions of the Litigation Trust Agreement. 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.

(l) **Dissolution.** The Litigation Trustee and the Litigation Trust shall be discharged or dissolved, as applicable, at such time as (i) all Litigation Trust Assets have been liquidated, and (ii) all distributions required to be made by the Litigation Trustee under the Plan and the Litigation Trust Agreement have been made; *provided, however*, that, the Litigation Trust shall be dissolved by no later than five (5) years after the Effective Date unless, prior to such date, the Bankruptcy Court, on motion of the Litigation Trustee or any Litigation Trust Beneficiary, approves an extension of such deadline for a fixed period of time.

(m) **Indemnification of the Litigation Trustee and Litigation Trust Representatives.** The Litigation Trustee (and its agents and professionals), and the Litigation Trust Representatives, shall not be liable for actions taken or omitted in its or their capacity as, or on behalf of, the Litigation Trustee, Litigation Trust Representative 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 Trustee, Litigation Trust Representative 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 Trustee and the other parties entitled to indemnifications under this subsection shall be satisfied from the Litigation Trust Assets. The Litigation Trustee shall be entitled to rely, in good faith, on the advice of its retained professionals.

(n) **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 Trustee shall seek authority from the Bankruptcy Court to close the Chapter 11 Cases in accordance with the Bankruptcy Code and the Bankruptcy Rules.

(o) **Cooperation from Reorganized Debtors.** The Reorganized Debtors shall cooperate with the Litigation Trust and the Litigation Trustee 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 Reorganized 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.

(p) **Litigation Trust Tax Matters**

(i) The Litigation Trustee shall be responsible for filing all federal, state and local tax returns for the Litigation Trust. The Litigation Trustee shall file all federal income tax returns for the Litigation Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4 unless otherwise required by applicable law. The Litigation Trustee also will annually send to each beneficiary a separate statement regarding the receipts and expenditures of the Litigation Trust as relevant for U.S. federal income tax purposes and will instruct all such beneficiaries to use such information in preparing their U.S. federal income tax returns or to forward the appropriate information to such beneficiaries or underlying beneficiaries with instructions to utilize such information in preparing their U.S. federal income tax returns. The Litigation Trustee shall also file (or cause to be filed) any other statement, return, or a disclosure relating to the Litigation Trust that is required by any governmental entity.

(ii) The Litigation Trust Assets (other than any assets allocated to the Disputed Claims Reserve) are treated, for U.S. federal income tax purposes, as having been transferred (subject to any obligations relating to those assets) directly to the Litigation Trust Beneficiaries in full or partial satisfaction of their Claims (with each holder receiving an undivided interest in such assets in accordance with their economic interest in such assets), followed by the transfer by the holders to the Litigation Trust in exchange for their respective beneficial interests in the Litigation Trust.

(iii) Allocations of the taxable income of the Litigation Trust among the beneficiaries shall be determined by reference to the manner in which an amount of Cash representing such taxable income would be distributed (were such cash permitted to be distributed at such time) if, immediately prior to such deemed distribution, the Litigation Trust had distributed all its assets (valued at their book value) to the Litigation Trust beneficiaries adjusted for prior taxable income and loss and taking into account all prior and concurrent distributions from the Litigation Trust. Similarly, taxable loss of the Litigation Trust shall be allocated by referenced to the manner in which an economic loss would be borne immediately after a hypothetical liquidating distribution of the remaining Litigation Trust Assets. The tax book value of the Litigation Trust Assets for purposes of this paragraph shall equal their fair market value on the Effective Date, adjusted in accordance with tax accounting principles prescribed by the Tax Code, the applicable Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements.

(iv) Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including receipt by the Litigation Trustee of a private letter ruling if the Litigation Trustee so requests one, or an adverse determination by the IRS upon audit if not contested by the Litigation Trustee), the Litigation Trustee shall (a) timely elect to treat the Disputed Claims Reserve as a “disputed ownership fund” governed by Treasury Regulation Section 1.468B-9, and (b) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes. All parties (including the Litigation Trustee, the Debtors and the beneficiaries) shall report for United States federal, state and local income tax purposes consistently with the foregoing.

(v) Interests in the Litigation Trust shall be non-transferable and any such transfer shall be disregarded by the Litigation Trustee except with respect to a transfer by will or under the laws of descent and distribution; provided however that such transfer shall not be effective unless and until the Litigation Trustee receives written notice of such transfer.

(vi) The Litigation Trustee shall be further authorized to (i) administer and pay any domestic or foreign taxes imposed on the Litigation Trust or its assets (including the Disputed Claims Reserve) and (ii) file domestic and foreign tax returns for the Litigation Trust and the Disputed Claims Reserve. In the event, and to the extent, any Cash retained on account of Disputed Claims in the Disputed Claims Reserve is insufficient to pay the portion of any taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims, such taxes shall be (a) reimbursed from any subsequent Cash amounts retained on account of Disputed Claims, or (b) to the extent such Disputed Claims have been subsequently resolved, deducted from any amounts otherwise distributable by the Litigation Trustee as a result of the resolution of such Disputed Claims.

#### 6.4 **Securities Law Matters.**

(a) **Issuance of New Stock.** On the Effective Date, Reorganized HIIT shall (i) issue to the Litigation Trustee warrants for 50,000 shares equal to a non-dilutable five percent (5%) of New HIIT Common Stock, which shares shall be distributable to the holders of Allowed Claims in Class 4 in accordance with the terms of Section 4.5 of the Plan; and (ii) issue 950,000 shares of convertible participating and voting preferred stock with a dividend that will be specified in

the Plan Supplement, convertible into ninety-five percent (95%) of the New HIIT Common Stock (the "New HIIT Preferred Convertible Stock"), which shares shall be distributed to the DIP Agent for the benefit of the DIP Lenders in accordance with the terms of section 2.4(b) of this Plan. While the warrants for 5% are non-dilutable, the shares, after issuance, are subject to dilution as stock commonly is.

In reliance upon section 1145(a) of the Bankruptcy Code, the offer and/or issuance of the New HIIT Common Stock and New HIIT Preferred Convertible Stock by Reorganized 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 of beneficial interests in the Litigation Trust in accordance with the Plan.

(b) **Consent to Administrative Proceeding Under Section 12(j) of the Exchange Act to Revoke HII Technologies, Inc.'s Registration and Preservation of SEC Powers.** On the Effective Date (or as soon as practicable thereafter), HII Technologies, Inc. shall consent to an administrative proceeding brought by the SEC under Section 12(j) of the Securities Exchange Act of 1934 (the "Exchange Act") to revoke its section 12 registration. Upon entry of this order of the SEC, HII Technologies, Inc. will have no further obligation to file reports with the SEC, including past due reports and there will be no further trading in the common stock of HII Technologies, Inc. Notwithstanding any provision herein to the contrary, nothing in the Confirmation Order or Plan, including Section 12.5 of the Plan, shall discharge or release any nondebtor person or entity from any claim, right, or cause of action held or assertable by the U.S. Securities and Exchange Commission, or otherwise impair, preclude or enjoin the SEC from commencing or continuing any investigation or taking any action against any person or entity in a nonbankruptcy forum.

(c) **Cancellation of Existing Securities and Agreements.** Except for purposes of evidencing a right to distributions under the Plan of the Litigation Trust Agreement, 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 issued and outstanding shares of stock and other Equity Interests of Debtor HII Technologies, Inc.

6.5 **Equity Interest in HIIT Subsidiaries Held by the Debtors.** On the Effective Date, each respective Equity Interest of HII Technologies, Inc. in Debtors 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 Reorganized HIIT shall continue to hold such Equity Interests.

6.6 **Board of Directors/Officers of the Debtors** Upon entry of the Confirmation Order, in accordance with 1129(a)(5) of Bankruptcy Code and Section 303 of the Delaware Code, the board of directors of HII Technologies, Inc. shall consist solely of Loretta Cross. In

addition, in accordance with Section 1129(a)(5) of the Bankruptcy Code, Loretta Cross will also serve as the sole officer of HII Technologies, Inc. and the other Debtors, as its Chief Executive Officer. Each of the Sage Power Solutions, Inc. and Hamilton Investment Group, Inc. will appoint Ms. Cross as their sole director upon entry of the Confirmation Order.

6.7 **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.

6.8 **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 Reorganized Debtors, the DIP Lenders, the Litigation Trustee, and the United States Trustee shall have the right to the exclusion of all others to object to Administrative Expenses, Compensation and Reimbursement Claims, Priority Tax Claims, Priority Non-Tax Claims, and Secured Claims, but not the Class 2a Mulliniks/Cox Claims Allowed under Section 4.3 of this Plan and the Mediated Settlement Agreement.

(b) On and after the Effective Date, the Litigation Trustee shall have the exclusive right to object, and/or continue prosecution of objections to Convenience Claims, General Unsecured Claims and Subordinated Claims, but not the Class 2a Mulliniks/Cox Priority Claims Allowed under section 4.3 of this Plan and the Mediated Settlement Agreement.

(c) The Reorganized Debtors, Debtors, or the Litigation Trustee, as applicable, shall file with the Bankruptcy Court and 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 the Effective Date. The Bankruptcy Court shall have the authority on request of the Reorganized Debtors or the Litigation Trustee, as applicable, to extend the foregoing dates *ex parte*. On and after the Effective Date, the Reorganized Debtors or the Litigation Trustee shall have the power and authority to prosecute objections to Disputed Claims. All objections shall be litigated to a Final Order except to the extent the Reorganized Debtors or the Litigation Trustee, as applicable, elects to withdraw any such objection or the Reorganized

Debtors or the Litigation Trustee, as applicable, and the holder of such Disputed 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 Trustee 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. To the extent any Disputed General Unsecured Claim is Disallowed, the Litigation Trust Assets reserved on account thereof shall be distributed to the holders of Allowed General Unsecured Claims in accordance with section 4.5 of the Plan based upon their recalculated Pro Rata Share thereof.

7.3 **Estimation.**

The Reorganized Debtors or the Litigation Trustee, 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, Reorganized Debtors, the Litigation Trustee, or any other party in interest previously objected 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 Reorganized Debtors or the Litigation Trustee, 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 (i) without further order of the Bankruptcy Court with the consent of the DIP Lenders, or (ii) with approval of the Bankruptcy Court by Final Order.

7.4 **Allowance of Disputed Claim.**

(a) On the Effective Date, or as soon as reasonably possible thereafter, Reorganized HIIT and the Litigation Trustee shall establish respective Disputed Claims Reserves for the payment of subsequently Allowed Disputed Claims.

(b) If, on or after the Effective Date, any Disputed Claim becomes, in whole or in part, an Allowed Claim, the Reorganized Debtors or the Litigation Trustee, 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 holder 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.** The Plan constitutes and incorporates a motion by the Debtors to reject, as of the Confirmation Date, all prepetition executory contracts and unexpired leases to which any of the Debtors are a party, except for executory contracts or unexpired leases that (a) have been specifically assumed or rejected pursuant to Final Order of the Bankruptcy Court, or (b) are listed on Schedule 8 to this Plan. On the Confirmation Date, Reorganized HIIT will be deemed to have assumed the prepetition executory contracts and unexpired leases listed on Schedule 8, without further motion or order of the Bankruptcy Court. Reorganized HIIT will pay the cure amounts set forth on Schedule 8.

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 Reorganized Debtors, the Litigation Trust, the Litigation Trustee, 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 Reorganized Debtors and the Litigation Trustee on or before the date that is thirty (30) days after the Effective 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 a Final Order approving the Mediated Settlement Agreement;

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

(c) The Bankruptcy Court shall have entered the Confirmation Order by no later than April 30, 2016, unless and except to the extent waived by the DIP Lenders in writing.

9.2 **Conditions Precedent to Effective Date.** The following are conditions precedent to the occurrence of the Effective Date, each of which must be satisfied or waived in accordance with the subsections below:

- (a) The Confirmation Order shall be in full force and effect, and no stay thereof shall be in effect;
- (b) The Confirmation Order shall have become a Final Order by no later than May 15, 2016, unless and except to the extent waived by the DIP Lenders in writing;
- (c) The Litigation Trust Agreement shall have been executed;
- (d) The Litigation Trust Assets shall have been transferred to the Litigation Trust;
- (e) The Debtors shall have sufficient Cash on hand to: (i) pay all Allowed Administrative Expenses (excluding the DIP Lender Claims), Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims, and, if applicable, Allowed Secured Claims, (ii) reserve for the payment 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, and (iii) fund the amount of the Initial Litigation Trust Administrative Cash; and
- (f) The Distributable Cash on the Effective Date shall equal at least \$1.00, unless and except to the extent waived by the DIP Lenders in writing.

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 above cannot be satisfied and the occurrence of such conditions is not waived or cannot be waived, then the Debtors, after written notice to and consultation with the DIP Lenders, shall file a notice of the failure of the Effective Date with the Bankruptcy Court.

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 eighty (180) days after the Confirmation Date, or such later date as shall be agreed by the Debtors, the Committee, and the DIP Lenders, 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 Reorganized Debtors and, in accordance with the Plan 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 Trustee 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 Reorganized Debtors and the Litigation Trust shall be free and clear of all Liens, Claims and encumbrances, except as provided in the Plan or the Confirmation Order.

10.2 **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.

10.3 **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 terminate on the Effective Date.

10.4 **Injunction.** On and after the Effective Date, all Persons 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 or the Estates for which the Reorganized Debtors or the Litigation Trustee retains sole and exclusive authority to pursue in accordance with the Plan.

10.5 **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.

10.6 **Preservation of Insurance Claims.** Nothing in the Plan or the Confirmation Order will impair any rights that a Person might otherwise have to assert a claim for insurance proceeds regarding any property owned by, or now or previously in the possession of, the Debtors. This includes property that is, or is claimed to be, collateral of the DIP Lenders or any other secured party. Likewise, nothing in the Plan or Confirmation order will adversely affect the DIP Lender's rights to insurance proceeds or liens thereon.

## 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, including, without limitation, 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 or disallowance 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, disallowance, 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 order 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 and 503(b) of the Bankruptcy Code for awards of compensation for services rendered and reimbursement of expenses incurred prior to the Effective 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, or any transactions or payments contemplated hereby;

(j) To hear and determine any Causes of Action, adversary proceeding, application, contested matter, and other litigated matter asserted, prosecuted, or resolved by the Litigation Trustee, through judgment, settlement, or otherwise, against Brent Mulliniks and Billy Cox, Jr.;

(k) To hear and determine disputes arising in connection with or related to the interpretation, implementation, or enforcement of the Mediated Settlement Agreement;

(l) 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;

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

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

(o) 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);

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

(q) 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

(r) 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 then-existing members of the Committee, solely in their capacity as Committee members, 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 connection with their service on the Committee in these Debtors' 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 directors of HIIT that were directors during the Bankruptcy Case (with the exception of Brent Mulliniks), the Litigation Trustee, the Committee, the then-existing members of the Committee as of the Effective Date (solely in their capacity as members of the Committee), the DIP Lenders, nor any of their respective professionals, representatives, or agents, shall have liability to any holder of a Claim or Equity Interest for any act or omission in connection with 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. In all respects, the Debtors, the directors of HIIT that were directors during the Bankruptcy Case (with the exception of Brent Mulliniks), the Litigation Trustee, the Committee, the then-existing members of the Committee as of the Effective Date (solely in their capacity as members of the Committee) are released from such Causes of Action unless explicitly disclosed and preserved in Section 21.12 of the Disclosure Statement.

Notwithstanding the foregoing, the Committee will have until April 1, 2016 to notify the Debtors (with a copy to the DIP Lenders) of any Causes of Action that the Committee believes that the Estates may hold against any director of HIIT. Any Cause of Action described in this notice will not be released, and such director will not be exculpated from such Cause of Action, under this section.

12.6 **Payment of Statutory Fees.** On the Effective Date, the Reorganized Debtors, and thereafter as may be required, the Litigation Trustee, 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 operating 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 or Reorganized 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 Trustee) 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.

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. Notwithstanding the foregoing, no such amendment can alter the terms of

the compromise and settlement among Brent Mulliniks, Billy Cox, Jr., the Ad Hoc Committee of Unsecured Creditors of Apache Energy Services, the Debtors, the DIP Lenders, and the Committee, as memorialized in the Mediated Settlement Agreement.

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 an Exhibit or 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 Texas, 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 Reorganized Debtors, the Committee, or the Litigation Trustee 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:**

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

**If to the 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 Trustee:**

[Insert]

**ARTICLE XIII**

**EXCULPATION OF CERTAIN PARTIES WHO  
ACTED DURING THE BANKRUPTCY CASE**

**13.1 Discharge/Release of Debtors, DIP Lenders and Estate Representatives.**

The Reorganized Debtor and Litigation Trust shall have no liability for the Claims against any of the Debtors.

No Holder of a Claim or Interest or other party in interest shall have any Claim against (a) the Debtors; (b) the DIP Lenders and their professionals, representatives, or agents; (c) the Committee; (d) the professionals retained by Court Order in the Bankruptcy Case; and/or (e) with the exception of Brent Mulliniks, any directors of HIIT that were directors during the Bankruptcy Case for any act or omission in connection with, related to or arising out of 1) the Bankruptcy Case, 2) the decision to file bankruptcy, 3) the DIP Order, 4) the Prepetition Secured Claims, 4) the pursuit of confirmation of the Plan, 5) the consummation of the Plan, or 6) the administration of the Plan or the Chapter 11 Cases. Notwithstanding the foregoing and for purposes of clarity, this release will not release any director of HIIT for Avoidance Actions or other Causes of Action to the extent explicitly described in Section 21.12 of the Disclosure Statement.

In all instances, the Debtors' directors (with the exception of Brent Mulliniks) have been entitled to reasonably rely on the advice of counsel retained with Bankruptcy Court approval with respect to their responsibilities relating to the Bankruptcy Case, Prepetition Secured Debt, DIP Loan, and/or Plan.

Notwithstanding the foregoing, the Committee will have until April 1, 2016 to notify the Debtors (with a copy to the DIP Lenders) of any Causes of Action that the Committee believes that the Estates may hold against any director of HIIT. Any Cause of Action described in this notice will not be released, and such director will not be exculpated from such Claim or cause of action under this section.

### 13.2 **Limitation of Releases as to Disclosed Litigation Targets**

Notwithstanding anything in the Plan to the contrary, but subject in all respects to the Mediated Settlement Agreement, 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 Debtors and their Estates reserve all Causes of Action against such individuals and entities, including, without limitation, Causes of Action for breach of duty, negligence, malpractice, negligent misrepresentation, fraudulent transfer, claims against officers and directors not released in section 13.1, Avoidance Actions and any other claim or cause of action of any nature, whatsoever, whether at law or in equity; and from and after the Effective Date, the Litigation Trustee, as the representative of the Debtors and their Estates pursuant to section 1123(b)(3) of the Bankruptcy Code, shall have standing and the authority to pursue such Causes of Action and other claims and causes of action.

### 13.3 **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 alleged claim or cause of action related to the Chapter 11 Cases that exists as of the Effective Date, including suit against any of 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



Texas Bar No. 24078702  
600 Travis, Suite 7000  
Houston, Texas 77002  
Telephone: (713) 485-7300  
Facsimile: (713) 485-7344

***Counsel for the Debtors***

Schedule 8 – Executory Contract Assumption

Ergos

MSA and Cloud service contract beginning 12/23/2014 for two years.  
Cure amount is \$6,992.29

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' ~~SECOND~~THIRD AMENDED 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: ~~March 9~~April 5, 2016

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

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

**DEBTORS' THIRD AMENDED 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 Debtors in the above-captioned jointly administered case, propose the following ~~amended~~-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 Expenses, DIP Lender Claims, and Priority Tax Claims) are classified in Article III and treated in Article IV.

The Plan is also a motion requesting that the Bankruptcy Court 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).

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<sup>1</sup> 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 evidenced by a 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, or in the event such court ceases to exercise jurisdiction over the Chapter 11 Cases, the United States District Court for the Southern District of Texas or any adjunct thereof which comes to exercise jurisdiction over the 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 **Bar Date** means the applicable deadline for the assertion of a Claim in the Chapter 11 Cases.

1.9 **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.

1.10 **Cash** means legal tender of the United States of America.

1.11 **Causes of Action** means the Avoidance Actions and any and all actions, causes of action, liabilities, obligations, rights, suits, damages, judgments, claims, and demands, all commercial tort claims and causes of actions, all claims and causes of actions against former employees, all claims and causes of actions for collection against customers, all claims and causes of actions against the Hamiltons, One Flow, and Water Transfer, all insurance claims and causes of actions for stolen property, 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. Causes of Action shall expressly include, without limitation, those causes of action described in section 21.12 of the Disclosure Statement.

1.12 **Chapter 11 Cases** means the following cases initiated by the Debtors under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of Texas: Case No. 15-60069, Case No. 15-60070, Case No. 15-60071, Case No. 15-60072, and Case No. 15-60073, jointly-administered under Case No. 15-60070.

1.13 **Claim** has the meaning set forth in section 101(5) of the Bankruptcy Code.

1.14 **Class** means any group of Claims or Equity Interests classified by the Plan pursuant to section 1123(a)(1) of the Bankruptcy Code.

1.15 **Collateral** means all present or future, pre-petition and post-petition, existing and after acquired real and personal, tangible and intangible assets of the Debtors, including without limitation, all cash, cash equivalents, deposit accounts, bank accounts, accounts, other receivables, chattel paper, contract rights, inventory, instruments, documents, licensing agreements, securities (whether or not marketable), equipment, leases, leasehold interests, fixtures, real property interests, franchise rights, patents, trademarks, tradenames, copyrights, intellectual property, general intangibles (including without limitation, all known or unknown claims, Causes of Action, or choses in action under applicable federal and state law), all known or unknown commercial tort claims and Causes of Action and all proceeds thereof, all claims against former employees and all proceeds thereof, all claims for collection against customers and all proceeds thereof, all claims against the Hamiltons, One Flow, and Water Transfer and all proceeds thereof, all insurance claims for stolen property and all proceeds thereof, all Causes of Actions and claims (whether asserted now or after the Petition Date) under the Debtors' existing directors and officers insurance policies and all insurance or other proceeds thereof, all claims and proceeds of actions of the Debtors or their estates under sections 502, 544, 547, 548, 549, 550, 551, 553 and 724(a) of the Bankruptcy Code and all avoidance actions under applicable state law and all proceeds thereof; supporting obligations, letters of credit, letter-of-credit rights, investment property, and all cash or non-cash proceeds, products, offspring, substitutions, and accessions of any of the foregoing, wherever located, whether now or hereafter existing, whether presently owned or hereafter acquired, of every kind and description.

1.16 **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.

1.17 **Confirmation Date** means the date of entry of the Confirmation Order.

1.18 **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.

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

1.20 **Convenience Claim** means a Claim held by a holder of a General Unsecured Claim (i) in the amount of \$1,000, or less, or (ii) who has a Claim in an amount greater than \$1000, but has elected to reduce the amount of their to \$1,000 and to have their Claim treated as a Convenience Claim under Class 3.

1.21 **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.

1.22 **DIP Agent** means McLarty Capital Partners SBIC, L.P., in its capacity as the agent for the DIP Lenders under the DIP Facility.

1.23 **DIP Facility** means the loan facility described in paragraph I of the DIP Order.

1.24 **DIP Lenders** means Heartland Bank and McLarty Capital Partners SBIC, L.P., in their capacity as lenders under the DIP Facility approved pursuant to the DIP Order.

1.25 **DIP Lender Claims** means all Claims in favor of the DIP Lenders arising under the DIP Order, including, without limitation, the Super Priority Administrative Expense granted to the DIP Lenders under 11 U.S.C. § 364(c)(1) pursuant to paragraph 11 of the DIP Order and all out of pocket expenses, including, without limitation, legal fees and expenses, incurred and recoverable by the DIP Lenders in accordance with paragraph 18(e) of the DIP Order. The DIP Lender Claims are comprised of the Postpetition Obligations and the Roll-Up Obligations, treated as described in Section 2.4.

1.26 **DIP Lenders Beneficial Trust Interest** means a fifty-five percent (55%) beneficial interest in the Litigation Trust and Litigation Trust Assets, paid in accordance with the Waterfall.

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

1.28 **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.

1.29 **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: 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 Claim, not a Disputed Claim.

1.30 **Disputed Claims Reserve** means, as applicable, (i) the Cash reserve established by Reorganized HIIT for payment of Disputed Administrative Expenses, Disputed Priority Tax Claims, Disputed Secured Claims and Disputed Priority Non-Tax Claims, and (ii) that portion of the Litigation Trust Assets reserved by the Litigation Trustee for Disputed General Unsecured Claims.

1.31 **Distributable Cash** means any and all Cash held by the Debtors on the Effective Date after reserving for (i) the Initial Litigation Trust Administrative Cash, (ii) the Disputed Claims Reserve, and (iii) the payment of all Administrative Expenses (other the DIP Lender Claims), Secured Claims, Priority Non-Tax Claims and Priority Tax Claims.

1.32 **Distributable Trust Cash** means at any given time after the Postpetition Obligations and the Initial Litigation Trust Administrative Cash have been paid in full in accordance with the Waterfall, Cash in the Litigation Trust net of the Litigation Trust Administrative Cash..

1.33 **Distribution Record Date** means (i) the Effective Date with respect to those Claims for which the Bar Date has passed by the time of the Effective Date, or (ii) the date on which a proof of claim or application for allowance of an Administrative Expense is filed to evidence a Claim with respect to those Claims for which the Bar Date has not passed by the time of the Effective Date.

1.34 **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 9.2 have been satisfied or waived. The Reorganized Debtors shall file a notice of the Effective Date with the Bankruptcy Court and the Securities and Exchange Commission.

1.35 **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.

1.36 **Estates** means the bankruptcy estates of the Debtors.

1.37 **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.

1.38 **General Unsecured Claim** means any Claim against any of the Debtors that is not an Administrative Expense, DIP Lender Claim, Priority Tax Claim, Secured Claim, Priority Non-Tax Claim, the Mulliniks/Cox Priority Claims, a Convenience Claim or a Subordinated Claim.

1.39 **Initial Litigation Trust Administrative Cash** means an amount of Cash not to exceed \$500,000. The actual amount of Initial Litigation Trust Administrative Cash will be set forth in the Litigation Trust Agreement.

1.40 **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.

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

1.42 **Litigation Trustee** 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 Trustee will be disclosed in the Plan Supplement.

1.43 **Litigation Trust Administrative Cash** means the Cash held and maintained by the Litigation Trustee for the purpose of paying the expenses incurred by the Litigation Trustee (including fees and expenses for professionals retained by the Litigation Trust) in connection with the Litigation Trust and any obligations imposed on the Litigation Trustee or the Litigation Trust, including expenses relating to the performance of the Litigation Trustee's obligations under the Litigation Trust Agreement.

1.44 **Litigation Trust Assets** means all Causes of Action transferred by the Debtors and their Estates to the Litigation Trust on the Effective Date, and any proceeds thereof, and the Litigation Trust Administrative Cash.

1.45 **Litigation Trust Agreement** means that certain trust agreement to be executed by the Debtors and the Litigation Trustee, substantially in the form included in the Plan

Supplement, which must be satisfactory to the Committee and the DIP Lenders in form and substance.

1.46 **Litigation Trust Beneficiaries** means the DIP Lenders to the extent provided in section 2.4 of the Plan, the holders of the Allowed Mulliniks/Cox Priority Claims to the extent provided in section 4.3 of the Plan, and the holders of Allowed General Unsecured Claims to the extent provided in section 4.5 of the Plan.

1.47 **Litigation Trust Representatives** means the two representatives, one selected by the Committee and one selected by the DIP Lenders, responsible for assisting the Litigation Trustee in the management of the Litigation Trust pursuant to section 6.3(f).

1.48 **Magna Secured Claims** means, to the extent they are Allowed Secured Claims, all Claims in favor of Magna Equities II, LLC (“Magna”) secured by all of the Debtor’s right, title, and in interest in and to all Accounts (as defined in the DIP Order) arising on or after July 23, 2015 to secure the payment of amounts loaned under the Fourth and Fifth Modifications (as defined in the DIP Order), which as of the Petition Date totaled approximately \$108,329.60.

1.49 **Mediated Settlement Agreement** means the Mediated Settlement Agreement dated February 29, 2016 attached to the Disclosure Statement as Schedule H, which memorializes the compromise and settlement between Brent Mulliniks, Billy Cox, Jr., the Ad Hoc Committee of Unsecured Creditors of Apache Energy Services, the Debtors, the DIP Lenders, and the Committee.

1.50 **Mulliniks/Cox Priority Claims** means the Allowed priority Claims of Brent Mulliniks and Billy Cox, Jr. described in section 4.3 of this Plan.

1.51 **New HIIT Common Stock** means common stock, or the warrants redeemable for common stock, of Reorganized HIIT issued on the Effective Date in accordance with section 6.4 of the Plan.

1.52 **New HIIT Preferred Convertible Stock** means convertible participating and voting preferred stock of Reorganized HIIT with a dividend that will be specified in the Plan Supplement, convertible into 95% of the New HIIT Common Stock, issued on the Effective Date in accordance with section 6.4 of the Plan. An exemplar of the terms of offering is attached as Schedule 1.49, but the actual terms of offering could vary in nonmaterial terms from the Schedule.

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

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

1.55 **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.

1.56 **Plan Supplement** means the forms of documents effectuating the transactions contemplated by this Plan, including the Litigation Trust Agreement, which documents shall be filed with the Bankruptcy Court no later than ten (10) days prior to the Confirmation Hearing.

1.57 **Postpetition Obligations** means the outstanding, unpaid balance of the DIP Lender Claims, excluding only those amounts advanced to or incurred by the Debtors under the Roll-Up Loan (as defined in the DIP Order) and postpetition interest on the Roll-Up Loan.

1.58 **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.

1.59 **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.

1.60 **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.

1.61 **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.

1.62 **Reorganized Debtors** means the Debtors from and after the Effective Date.

1.63 **Reorganized HIIT** means the Debtor HII Technologies, Inc. from and after the Effective Date.

1.64 **Roll-Up Obligations** means that portion of the DIP Lenders Claims arising from advanced to or incurred by the Debtors under the Roll-Up Loan (as defined in the DIP Order) and postpetition interest on the Roll-Up Loan.

1.65 **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.

1.66 **Secured Claim** means any Claim, other than DIP Lender Claims or the Subordinated Secured Seller Note Claims, (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.

1.67 **SEC** means the Securities and Exchange Commission of the United States.

1.68 **Security** has the meaning set forth in section 101(49) of the Bankruptcy Code.

1.69 **Subordinated Secured Seller Note Claim** means any Claim arising from those certain subordinated secured promissory notes described below, which were subordinated (both in order of payment and liens) by agreement between those holders of Claims and the DIP Lenders:

(a) Chris George, as payee, under that certain Subordinated Secured Promissory Note, dated November 12, 2013, in the principal amount of \$245,000.00;

(b) Brent Mulliniks, as payee, under that certain Subordinated Secured Promissory Note, dated September 27, 2012, in the principal amount of \$650,000.00;

(c) Branden Brewer, as payee, under that certain Subordinated Secured Promissory Note, dated November 12, 2013, in the principal amount of \$255,000.00; and

(d) Billy Cox, as payee, under that certain Subordinated Secured Promissory Note, dated September 27, 2012.

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

1.71 **Subordinated Claim** means any Claim that is subject to (i) subordination under section 510(b) of the Bankruptcy Code, including, without limitation, any Claim for or arising from the rescission of a purchase, sale, issuance, or offer of a Security of any Debtor; for damages arising from the purchase or sale of such a Security; or for reimbursement, indemnification, or contribution allowed under section 502 of the Bankruptcy Code on account of such Claim; or (ii) equitable subordination as determined by the Bankruptcy Court in a Final Order.

1.72 **Unsecured Creditor Beneficial Trust Interest** means a forty-five percent (45%) beneficial interest in the Litigation Trust and Litigation Trust Assets, paid in accordance with the Waterfall.

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

1.74 **Waterfall** means the order of priority of payments from the Litigation Trust to the Litigation Trust Beneficiaries under the Plan, described as follows:

(1) the first distributions will be paid to the DIP Lenders to repay the Postpetition Obligations and the Initial Litigation Trust Administrative Cash, in an amount not to cumulatively exceed \$500,000;

(2) then up to \$150,000 is to be paid on account of the Allowed Mulliniks/Cox Priority Claims, in accordance with Section 4.3 of the Plan and the Mediated Settlement Agreement;

(3) then up to \$500,000 to be paid to the DIP Lenders on account of the Initial Litigation Trust Administrative Cash to the extent amounts funded for the Postpetition Obligations and the Initial Litigation Trust Administrative Cash exceed \$500,000 and are unpaid under subsection (1); and

(4) finally a division of all remaining Distributable Trust Cash as follows: (i) fifty-five percent (55%) on account the DIP Lenders Beneficial Trust Interest and (ii) forty-five percent (45%) on account of the Unsecured Creditor Beneficial Trust Interest, as provided in Section 2.4(b) and Section 4.5., respectively.

## MISCELLANEOUS INTERPRETIVE PROVISIONS

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

1.76 **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.

1.77 **Plan Controls.** Except as set forth in Section 6.3, in the event of an inconsistency between the Plan and the Disclosure Statement or the Plan Supplement, the Plan shall control. In the event of any inconsistency between the Plan and the Confirmation Order, the Confirmation Order controls, however, the Plan must incorporate the Mediated Settlement Agreement.

1.78 **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.**

(a) **Administrative Expenses Bar Date.** Except for the DIP Lenders’ administrative expenses granted under the Final DIP Order, the holder of any Administrative Expense other than (i) a Claim for Compensation or Reimbursement set forth in section 2.2 below, (ii) a liability incurred and paid in the ordinary course of business by the Debtor, ~~or~~ (iii) an Allowed Administrative Expense; or, (iv) an administrative expense of a governmental unit within the scope of section 503(b)(1)(D), must file with the Bankruptcy Court and serve notice of such Administrative Expense within 30 days after the Confirmation Date. At a minimum, such notice must identify (i) the name of the holder of such Claim, (ii) the amount of such Claim, and (iii)

the basis of such Claim. **FAILURE TO FILE THIS NOTICE TIMELY AND PROPERLY SHALL RESULT IN THE ADMINISTRATIVE EXPENSE BEING FOREVER BARRED AND DISCHARGED.**

(b) Except to the extent a holder of an Allowed Administrative Expense agrees to a different treatment, and subject to the provisions of section 2.2 of the Plan (if applicable), on the Effective Date, or as soon thereafter as is reasonably practicable, the Reorganized 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 Persons seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Effective Date under sections 327, 328, 330, 503(b)(2), 503(b)(3), or 503(b)(4) 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 Effective Date, and (ii) shall be paid in full such amounts as are allowed by the Bankruptcy Court (A) within 7 days of 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 Reorganized Debtors.

2.3 **Priority Tax Claims.** Except to the extent a holder of an Allowed Priority Tax Claim agrees to a different treatment,<sup>2</sup> ~~on no later than 30 days after the Effective Date, or as soon thereafter as~~ Confirmation Order is ~~reasonably practicable~~ entered, the Reorganized 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.

With respect to the Internal Revenue Service's Priority Tax Claim, the debt owed by the Debtor(s) to the Internal Revenue Service (IRS) is nondischargeable, except as otherwise provided for in the Bankruptcy Code. If the Debtor(s) should default, the IRS is not subject to the provisions of the Bankruptcy Code and may pursue any applicable rights and remedies to collect under State or Federal law. If there is a default to any provisions to the IRS, the IRS will send written notice to the Debtor(s). The Debtor(s) must cure the default within 15 days of the date of the notice. If not cured, the full liability will be due and owing. The Debtor(s) will be issued no more than two (2) notices of default from the IRS; the third (3rd) default cannot be cured. The period of limitations on collection remains suspended under 26 U.S.C. § 6503(h) for tax periods being paid under the Plan and terminates on the earlier of (1) completion of all required payments to the IRS; or (2) 30 days after the date of the demand letter for which the debtor failed to cure the default. Plan payments must be made by check or money order made payable to: U.S. Treasury. Each payment must include the following identifying information: Petition number and Tax ID. Plan payments must be mailed to:

Internal Revenue Service  
Mail Stop #5026AUS

<sup>2</sup> Such as the compromise with the Texas Comptroller regarding sales and franchise taxes, approved by order of the Bankruptcy Court (docket 337).

[300 E. 8th Street](#)  
[Austin, Texas 78701](#)

2.4 **DIP Lender Claims.**

The DIP Lender Claims shall be satisfied in the following manner:

(a) **Satisfaction of Postpetition Obligations.** On the Effective Date, or as soon thereafter as is reasonably practicable, the Reorganized Debtors shall distribute to the DIP Agent for the benefit of the DIP Lenders all Distributable Cash, which shall be applied by the DIP Agent, first, towards the satisfaction of Postpetition Obligations. In the event that the full amount of the Postpetition Obligations is not satisfied from the Distributable Cash, then from and after the Effective Date, and until such time as the Postpetition Obligations have been paid in full, and after the payment of the Initial Litigation Trust Administrative Cash, the Litigation Trustee shall distribute all proceeds of the Causes of Action to pay the Postpetition Obligations, until such time as they are paid in full. After the Postpetition Obligations and the Initial Litigation Trust Administrative Cash have been repaid in full in accordance with the Waterfall, proceeds of Causes of Action shall be paid to the Litigation Trust Beneficiaries in accordance with the Waterfall and as provided in section 2.4, 4.3, 4.4, or 4.5, as the case may be.

(b) **Satisfaction of Roll-Up Obligations.** On the Effective Date, or as soon thereafter as is reasonably practicable, in satisfaction of the DIP Lender Claims (except as provided in sections 2.4(a) above): (i) Reorganized HIIT shall issue the New HIIT Preferred Convertible Stock to the DIP Agent for the benefit of the DIP Lenders; and (ii) the DIP Agent for the benefit of the DIP Lenders shall receive a fifty-five percent (55%) beneficial interest in the Litigation Trust and the Litigation Trust Assets, in accordance with the Waterfall, on account of which the DIP Agent for the benefit of the DIP Lenders shall receive, as soon as is reasonably practicable after the Litigation Trustee, from time to time, determines that there is sufficient Distributable Trust Cash to make a distribution to Litigation Trust Beneficiaries, its share of such Distributable Trust Cash based upon such fifty-five percent (55%) beneficial interest, in accordance with the Waterfall.

(c) **Reduction of DIP Lender Claims.**

(1) **Insurance Proceeds Attributable to Collateral.** From and after the Effective Date, to the extent that any insurance proceeds attributable to Collateral securing the DIP Lender Claims are recovered/recoverable, the DIP Agent for the benefit of the DIP Lenders shall be entitled to receive such insurance proceeds directly from the applicable insurance carrier (and to the extent received by the Reorganized Debtors or the Litigation Trustee shall be immediately paid by the Reorganized Debtors or Litigation Trustee, as applicable, to the Heartland Bank for the benefit of the lenders under the APA), but only to the extent of the value of the DIP Lenders' interest in such Collateral, and in no event shall the DIP Lenders receive more than 100% of the value of their interest in the Collateral from any source or set of sources. The DIP Lender Claims shall be reduced dollar-for-dollar, for insurance proceeds paid to Heartland Bank under this section. In the event of any dispute regarding application of insurance proceeds, the Bankruptcy Court shall be the exclusive forum within which to resolve such dispute.

(2) **APA Receivables.** From and after the Effective Date, to the extent that receivables sold pursuant to the Prepetition A/R Agreement (as defined in the DIP Order) are collected by Reorganized HIIT or the Litigation Trust, such proceeds shall be immediately paid to Heartland Bank (as agent and designated payee of the DIP Lenders for further credit to the Lenders under the APA), and the DIP Lenders that were APA Lenders shall have their claim reduced dollar-for-dollar, for proceeds paid to Heartland Bank under this section. In the event of any dispute regarding application of proceeds from APA Receivables, the Bankruptcy Court shall be the exclusive forum within which to resolve such dispute.

(3) **Recoveries Under Subordination Agreements.** Any proceeds that the DIP Lenders receive on a final, indefeasible, non-appealable basis from enforcement of the subordination agreements with Holders of the Subordinated Secured Seller Notes reduce the DIP Lender Claims dollar-for-dollar.

(d) **Retention of Liens.** The DIP Lenders shall retain their Liens on Collateral until such time as the Postpetition Obligations and the Initial Litigation Trust Administrative Cash are paid in accordance with the Waterfall, at which time the DIP Lenders Liens shall be released. If requested by the Litigation Trustee, the DIP Lenders shall file all necessary documents to evidence the release of Liens on the Collateral.

### 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 1126 of the Bankruptcy Code, and (iii) deemed to reject the Plan.

<b>Class</b>	<b>Designation</b>	<b>Impairment</b>	<b>Entitled to Vote</b>
Class 1	Secured Claims	Unimpaired	No (deemed to accept)
Class 2	Priority Non-Tax Claims	Unimpaired	No (deemed to accept)
Class	Mulliniks/Cox Priority Claims	Unimpaired	No (deemed to accept)
Class 3	Convenience Claims	Impaired	Yes
Class 4	General Unsecured Claims	Impaired	Yes
Class 5	Subordinated Claims	Impaired	No (deemed to reject)
Class 6	Equity Interests	Impaired	No (deemed to reject)

For convenience of identification, Allowed Claims in Class 1 are shown above as a single Class. As set forth in Article IV, below, Class 1 is actually a group of subclasses, depending on the underlying circumstances of 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.**

(a) **Class 1(a) – Magna Secured Claims.** To the extent the Magna Secured Claim has an Allowed Secured Claim, and except to the extent the holder agrees to a different treatment, on the Effective Date or as soon thereafter as is reasonably practicable, the holder of the Magna Secured Claim shall receive in full satisfaction of such Claim, Cash in an amount equal to one hundred percent (100%) of the unpaid amount of such Allowed Secured Claim, ~~including, for the avoidance of doubt, contract interest.~~ including, for the avoidance of doubt, contract interest. The Liens securing such Allowed Magna Secured Claim shall be deemed released upon payment in accordance with such clause. To the extent Magna's Claims are determined to be unsecured by Final Order, such unsecured Claims will be treated under Class 4.

(b) **Class 1(b) – Subordinated Secured Seller Note Claims.** To the extent (i) each of the Subordinated Secured Seller Notes has an Allowed Secured Claim, and (ii) after payment in full of the DIP Lender Claims, the holders of Subordinated Secured Seller Note Claims shall be treated as follows:

except to the extent a holder of an Allowed Subordinated Secured Seller Note Claim agrees to a different treatment, on the Effective Date or as soon thereafter as is reasonably practicable, each holder of a Subordinated Secured Seller Note Claim shall receive, at the option of the Reorganized 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 Collateral securing such Allowed Subordinated Secured Seller Note Claim, (iii) such treatment that leaves unaltered the legal, equitable, and contractual rights to which the holder of such Claim is entitled, or (iv) such other distribution as necessary to satisfy the requirement of section 1129 of the Bankruptcy Code. In the event a Subordinated Secured Seller Note Claim is treated under clause (i) of this section, the Liens securing such Claim will be released upon payment in accordance with such clause. To the extent a Subordinated Secured Seller Note Claim is determined to be unsecured, such unsecured Claim will be treated under Class 4.

**Notwithstanding the foregoing,** Notwithstanding the foregoing, Brent Mulliniks and Billy Cox will receive no distribution on account of their respective Subordinated Seller Note Claims, which are discharged under this Plan, and the Liens securing such Claims will be released and discharged on the Effective Date. All Claims held by Mr. Mulliniks and Mr. Cox are treated as provided in Section 4.3 of this Plan and the Mediated Settlement Agreement.

(c) **Class 1(c) – Other Secured Claims.** To the extent Allowed as a Secured Claim, and 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 a Secured Claim shall receive, at the option of the Reorganized 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 Collateral securing such Allowed Secured Claim, (iii) the return of the Collateral securing such Allowed Secured Claims (iv) such treatment that leaves unaltered the legal, equitable, and contractual rights to which the holder of such Claim is entitled, or (v) such other distribution as necessary to satisfy

the requirement of section 1129 of the Bankruptcy Code. In the event a Secured Claim is treated under clause (i) or (iii) of this section, the Liens securing such Claim will be released upon payment in accordance with such clause. To the extent an Other Secured Claim is determined to be unsecured, such unsecured Claim will be treated under Class 4.

(d) Notwithstanding the foregoing, to the extent that any insurance proceeds attributable to Collateral securing an Allowed Class 1(a), (b) or (c) Secured Claim are recovered/recoverable, the holder of such Allowed Secured Claim shall be entitled to receive such insurance proceeds directly from the applicable insurance carrier (and to the extent received by the Reorganized Debtors or the Litigation Trustee shall be immediately paid by the Reorganized Debtors or Litigation Trustee, as applicable, to such holder), but only to the extent of the value of the holder's interest in such Collateral, and in no event shall the holder of an Allowed Secured Claim receive more than 100% of the value of its interest in the Collateral from any source or set of sources. In the event of any dispute regarding application of insurance proceeds, the Bankruptcy Court shall be the exclusive forum within which to resolve such 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 treatment, 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 2a: Mulliniks/Cox Priority Claims (based on the Mediated Settlement Agreement)**

All Claims of Billy Cox, Jr. and Brent Mulliniks relating to any of the Debtors (including without limitation the Subordinated Seller Note Claims held by Mr. Cox and Mr. Mulliniks) shall be dealt with only as set forth in the Mediated Settlement Agreement and this Section 4.3. To the extent this Plan conflicts with Mediated Settlement Agreement regarding the treatment of the Claims of Mr. Cox and Mr. Mulliniks, the Mediated Settlement Agreement controls that treatment.

Brent Mulliniks and Billy Cox, Jr. shall be Allowed the Mulliniks/Cox Priority Claims totaling, collectively, \$150,000, with such Mulliniks/Cox Priority Claim of Brent Mulliniks totaling \$75,000.00, individually, and such Mulliniks/Cox Priority Claim of Billy Cox, Jr. totaling \$ 75,000.00.

The Mulliniks/Cox Priority Claims shall be Class 2a under this Plan and shall only be enforceable against the Chapter 11 estates through a confirmed Chapter 11 Plan. On the Effective Date, and in full satisfaction of the Mulliniks/Cox Priority Claims, Billy Cox and Brent Mulliniks shall receive priority beneficial interests in the Litigation Trust; provided, however, that no distribution shall be made on account of such priority beneficial interests until all of the Chapter 11 Estates' claims against Brent Mulliniks and Billy Cox, Jr. have been fully resolved, through judgment, settlement or, or otherwise.

The Litigation Trustee will reserve the first \$150,000 received by the Litigation Trust after payment of all Postpetition Obligations and advances to the Litigation Trust (but in no event to cumulatively exceed \$500,000). Immediately after the final resolution (whether by way of settlement or entry of a final and non-appealable judgment) of all of the claims of the Chapter 11 Estates asserted against Billy Cox, Jr. and Brent Mulliniks by the Litigation Trust, the Litigation Trustee will distribute to Mr. Cox and Mr. Mulliniks the \$150,000 reserved for distribution on account of such priority beneficial interest of Mr. Cox and Mr. Mulliniks in accordance with their respective Mulliniks/Cox Priority Claims, minus the amount of any final and non-appealable judgment obtained by the Litigation Trust against Mr. Cox and Mr. Mulliniks, respectively, for which there are inadequate or no insurance proceeds available to pay such a judgment.

Billy Cox, Jr. and Brent Mulliniks' right to a distribution on account of their priority beneficial interests in the Litigation Trust is senior to the right of any other holder (but subject to an amount up to \$500,000 as described earlier in this section 4.3) of a beneficial interest in the Litigation Trust to receive distributions from the Litigation Trust in accordance with the Waterfall and is subject only to the offset for judgment(s) obtained against Mr. Cox and Mr. Mulliniks and settlement payments as described in this section 4.3.

The Litigation Trust will be vested with, and pending distribution of the \$150,000.00 (subject to the offset above) will not divest itself of (but, of course, may retain contingency fee counsel on standard terms), all litigation rights and Causes of Action of the Chapter 11 Estates, including without limitation all matters disclosed in the Disclosure Statement. Accordingly, collections from fraudulent conveyances, preferences, breach of fiduciary duty suits and all other matters will be placed into the Litigation Trust for distribution as set forth in this Plan, and the right of Mr. Cox and Mr. Mulliniks to the distribution of the first \$150,000 received by the Litigation Trust may offset, but not otherwise release or discharge, any Causes of Action of the Litigation Trust.

4.4 **Class 3 – Convenience Claims.** On the Effective Date, or as soon thereafter as is reasonably practicable, each holder of an Allowed Convenience Class Claim shall receive, in full satisfaction of such Claim, Cash in an amount equal to fifty percent (50%) of the unpaid amount of such Claim.

4.5 **Class 4 – General Unsecured Claims.** In accordance with sections 6.3(j) and 6.4, below, each holder of an Allowed General Unsecured Claim shall receive, in full satisfaction of such Claim: (i) its Pro Rata Share of 5% of the New HIIT Common Stock; and (ii) its Pro Rata Share of the Unsecured Creditor Beneficial Trust Interest, in accordance with the Waterfall on account of which such holder shall receive, as soon as is reasonably practicable after the Litigation Trustee, from time to time, determines that there is sufficient Distributable Trust Cash to make a distribution to Litigation Trust Beneficiaries, its Pro Rata Share of such Distributable Trust Cash based upon such Pro Rata Share of the Unsecured Creditor Beneficial Trust Interest in accordance with the Waterfall; *provided, however*, that the maximum amount recoverable by holders of Allowed General Unsecured Claims shall be the Allowed amount of such Claims, without interest.

4.6 **Class 5 – Subordinated Claims.** Holders of Subordinated Claims will not receive any property or distribution on account of their Claims; nor will they retain any claim against the Debtors, their Estates, the Reorganized Debtors, or the Litigation Trust. Each holder of an Allowed Claim in Class 5 shall be deemed to reject the Plan.

4.7 **Class 6 – Equity Interests.** All prepetition Equity Interests in HIIT Technologies, Inc. shall be cancelled on the Effective Date. Each holder of an Equity Interest in HIIT Technologies, Inc. shall neither receive nor retain any property or interest on account of such Equity Interest. Reorganized HIIT shall retain its Equity Interests in the remaining Reorganized Debtors.

## ARTICLE V

### PROVISIONS GOVERNING DISTRIBUTIONS

5.1 **Distribution Record Date.** As of the close of business on the applicable Distribution Record Date, the various transfer registers for each of the Classes of Claims as maintained by the Debtors or Reorganized Debtors, or their agents, shall be deemed closed, and there shall be no further changes in the record holders of any of the Claims. All distributions made on account of Claims pursuant to the terms of this Plan shall be made to the record holders of such Claims as of the applicable Distribution Record Date.

#### 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 Reorganized 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 Allowed Convenience Claims an amount in Cash equal to the Allowed amount of such Claims, (ii) remit all Distributable Cash to the DIP Agent for the benefit of the DIP Lenders, and (iii) transfer 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 and the Litigation Trust Agreement. Beginning ninety days (90) days after the Effective Date, and continuing every ninety (90) days thereafter for each period in which it makes a payment under the Plan, Reorganized HIIT shall provide an accounting to the Litigation Trustee of all payments made under the Plan.

(b) **Distributions of Cash.** At the option of the Reorganized Debtors or the Litigation Trustee, 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 Reorganized Debtors or their agents or in a letter of transmittal unless the Reorganized Debtors or the Litigation Trustee, as applicable, have/have 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 Reorganized Debtors or the Litigation Trustee, as applicable, are/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 Reorganized 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 Reorganized 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. The aggregate consideration to be distributed to holders of Claims in each Class will be allocated first to the principal amount of such Claim, with any excess allocated to untaxed interest that accrued on such Claim, if any.

5.5 **Time Bar to Cash Payments.** Checks issued by the Reorganized Debtors or the Litigation Trustee, 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 Reorganized Debtors or the Litigation Trustee, 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 Reorganized 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 Reorganized Debtors or the Litigation Trustee, as applicable, to any holder of an Allowed Claim. No fractional shares of New HIIT Common Stock shall be distributed. For purposes of distribution, fractional shares of New HIIT Common Stock shall be rounded down to the next whole number or zero, as applicable; *provided, however*, that if a Person's fractional shares are rounded down to zero, such Person shall receive one share of New HIIT Common Stock. If a Person holds more than one Allowed Claim in a particular Class, such Person's Allowed Claims in such Class shall be aggregated for purposes of rounding down

pursuant to this section. After all distributions under the Plan have been made, any New HIIT Common Stock that is undistributable as a result of the foregoing shall be retained by Reorganized HIIT as treasury stock.

5.7 **Setoffs.** The Reorganized Debtors and/or the Litigation Trustee 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, their Estates, the Reorganized Debtors or the Litigation Trust 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, their Estates, the Reorganized Debtors, the Litigation Trust and/or the Litigation Trustee, as applicable, of any such claim the Debtors, their Estates, the Reorganized Debtors or the Litigation Trust 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 **Limited 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 the Debtors and their respective Estates 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 and their Estates shall be deemed merged into Reorganized HIIT, (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 and 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 effected pursuant to this section shall not affect (other than for purposes related to funding distributions under the Plan), (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 **Business Operations of the Reorganized Debtors.** The Reorganized Debtors shall operate independent from the Litigation Trust. Except as set forth in the Plan, any assets or liabilities of the Reorganized Debtors are not assets or liabilities of the Litigation Trust and assets or liabilities of the Litigation Trust are not assets or liabilities of the Reorganized Debtors.

6.3 **The Litigation Trust.** This section and the Litigation Trust Agreement sets forth certain of the rights, duties, and obligations of the Litigation Trustee. In the event of any conflict between the terms of this section and the terms of the Litigation Trust Agreement, the terms of the Litigation Trust Agreement shall govern, except that the Litigation Trust Agreement may not vary the terms of the Mediated Settlement Agreement and the priority of payments to the Litigation Trust Beneficiaries as set forth under the Waterfall (Section 1.73 of the Plan).

(a) **Execution of Litigation Trust Agreement.** On the Effective Date, the Litigation Trust Agreement, in a form acceptable to the Debtors, the Committee, the DIP Lenders, and the Litigation Trustee, shall be executed, and all other necessary steps shall be taken to establish the Litigation Trust, which shall be for the benefit of the holders of DIP Lender Claims, of the Allowed Mulliniks/Cox Priority Claims, and of Allowed General Unsecured Claims

(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, and shall be treated as “grantor trust” for federal and state income tax purposes. Accordingly, for all purposes of the Tax Code, (i) the Debtors shall be treated as having distributed to the beneficiaries of the Trust such beneficiaries’ respective shares (as determined in accordance with the Plan) of the Litigation Trust Assets, (ii) such beneficiaries shall be treated as having received their respective shares of the such Litigation Trust Assets, (iii) such beneficiaries shall be treated as having contributed the respective shares of such Litigation Trust Assets so deemed to have been received them to the Litigation Trust, and (iv) such beneficiaries shall be treated as the grantors and deemed owners of the Litigation Trust. The Litigation Trustee shall, within a reasonable period of time after the Effective Date, make a good faith determination of the value of the Litigation Trust Assets, which valuation shall be made available to the Debtors, the Litigation Trustee, and the beneficiaries of the Litigation Trust. The Debtors, the Litigation Trustee, and the Litigation Trust Beneficiaries shall use such valuation for all federal income tax purposes.

(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, Litigation Trust Beneficiaries, including, without limitation, holders of Allowed General Unsecured Claims and Allowed Mulliniks/Cox Priority Claims shall look solely to the Litigation Trust Assets for satisfaction of their Claims, and the Litigation Trust Assets shall be available for only Litigation Trust Beneficiaries. For the avoidance of doubt, the Reorganized Debtors are not beneficiaries of the Litigation Trust and are not entitled to receive any distribution of Litigation Trust Assets.

(d) **The Litigation Trustee.** The Litigation Trustee shall be selected by mutual agreement of the Committee and the DIP Lenders, and the identity of the Litigation Trustee and Litigation Trust Representatives shall be disclosed in the Plan Supplement.

(e) **Role of the Litigation Trustee.** Consistent with the purpose of the Litigation Trust, the Plan, and the Litigation Trust Agreement, the Litigation Trustee shall (i) subject to the limitations as set forth in the Litigation Trust Agreement, 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 and as the representative of their respective Estates pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, (iv) have the power to object to, settle, compromise, withdraw or litigate to judgment any objections to Claims, (v) have the power and authority to distribute to the DIP Agent for the benefit of the DIP Lenders Litigation Trust Assets in an amount necessary to satisfy in full the balance of the Postpetition Obligations and the Initial Litigation Trust Administrative Cash in accordance with the Waterfall after distribution of the Distributable Cash to the DIP Agent for the benefit of the DIP Lenders, (vi) have the power and authority to distribute to the holders of Allowed Cox/Mulliniks Priority Claims, (vii) have the power and authority to distribute to other Litigation Trust Beneficiaries any remaining Litigation Trust Assets after payment of the Postpetition Obligations and Initial Litigation Trust Administrative Cash and the Initial Litigation Trust Administrative Cash in accordance with the Waterfall, (viii) have the power and authority to assert, prosecute, settle, and resolve, through judgment, settlement, or otherwise, any Causes of Action against Brent Mulliniks and Bill Cox, Jr. and to offset any settlement(s) or judgment(s) obtained against Brent Mulliniks and Bill Cox, Jr. against the Priority Claims of Brent Mulliniks and Bill Cox, Jr. under the Mediation Settlement Agreement, and (ix) have the power and authority to perform such other functions as are provided in the Plan and the Litigation Trust Agreement. The Litigation Trustee shall be responsible for all decisions and duties with respect to the Litigation Trust and the Litigation Trust Assets. In all circumstances, the Litigation Trustee 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 Trustee.

(f) **Establishment of Cash Reserves.** The Litigation Trustee shall consult with the Litigation Trust Representatives regarding the funding of the Litigation Trust Disputed Claims Reserve. In the event of a disagreement between the Litigation Trust Representatives regarding the funding of the Litigation Trust Disputed Claims Reserve, the Litigation Trustee shall have the deciding vote. The reserve for the Allowed Mulliniks/Cox Priority Claims shall be determined as set forth in section 4.3 and the Mediated Settlement Agreement.

(g) **Cash.** The Litigation Trustee 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 Court, which may include the Confirmation Order.

(h) **Costs and Expenses of the Litigation Trustee.** The costs and expenses of the Litigation Trust, including the fees and expenses of the Litigation Trustee and its retained

professionals, shall be paid out of the Litigation Trust Assets, subject to the provisions of the Litigation Trust Agreement.

(i) **Compensation of the Litigation Trustee.** The Litigation Trustee 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.

(j) **Distribution of Litigation Trust Assets.** After payment in full of the Postpetition Obligations and the Initial Litigation Trust Administrative Cash in accordance with the Waterfall, the Litigation Trustee shall distribute Distributable Trust Cash to Litigation Trust Beneficiaries, in accordance with the Waterfall, on a periodic basis, and at least once per year, except such amounts (i) as have been reserved on account of Disputed Claims or are otherwise part of the Disputed Claims Reserve established by the Litigation Trustee, (ii) as are reasonably necessary to meet contingent liabilities and to maintain the value of the Litigation Trust Assets during their liquidation, (iii) as are necessary to pay reasonable incurred or anticipated expenses (including, but not limited to, any taxes imposed on or payable by the Litigation Trust), or (iv) as are necessary to satisfy other liabilities incurred or anticipated by the Litigation Trust in accordance with the Plan or the Litigation Trust Agreement; provided, however, that the Litigation Trustee shall not be required to make a distribution pursuant to the Plan if the aggregate amount of Distributable Cash (taking into account the above-listed exclusions) is such as would make the distribution impractical as reasonably determined by the Litigation Trustee; and provided further, however, that all distributions to Mr. Brent Mulliniks and Mr. Billy Cox, Jr. on account of their priority beneficial interests in the Litigation Trust shall be made as described in section 4.3 of this Plan and the Mediated Settlement Agreement.

(k) **Retention of Professionals by the Litigation Trustee.** The Litigation Trustee may retain and reasonably compensate counsel and other professionals to assist in his duties as Litigation Trustee on such terms as he deems appropriate without Bankruptcy Court approval, but subject to the provisions of the Litigation Trust Agreement. 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.

(l) **Dissolution.** The Litigation Trustee and the Litigation Trust shall be discharged or dissolved, as applicable, at such time as (i) all Litigation Trust Assets have been liquidated, and (ii) all distributions required to be made by the Litigation Trustee under the Plan and the Litigation Trust Agreement have been made; *provided, however*, that, the Litigation Trust shall be dissolved by no later than five (5) years after the Effective Date unless, prior to such date, the Bankruptcy Court, on motion of the Litigation Trustee or any Litigation Trust Beneficiary, approves an extension of such deadline for a fixed period of time.

(m) **Indemnification of the Litigation Trustee and Litigation Trust Representatives.** The Litigation Trustee (and its agents and professionals), and the Litigation Trust Representatives, shall not be liable for actions taken or omitted in its or their capacity as, or on behalf of, the Litigation Trustee, Litigation Trust Representative 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 Trustee, Litigation Trust Representative 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 Trustee and the other parties entitled to indemnifications under this subsection shall be satisfied from the Litigation Trust Assets. The Litigation Trustee shall be entitled to rely, in good faith, on the advice of its retained professionals.

(n) **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 Trustee shall seek authority from the Bankruptcy Court to close the Chapter 11 Cases in accordance with the Bankruptcy Code and the Bankruptcy Rules.

(o) **Cooperation from Reorganized Debtors.** The Reorganized Debtors shall cooperate with the Litigation Trust and the Litigation Trustee 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 Reorganized 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.

(p) **Litigation Trust Tax Matters**

(i) The Litigation Trustee shall be responsible for filing all federal, state and local tax returns for the Litigation Trust. The Litigation Trustee shall file all federal income tax returns for the Litigation Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4 unless otherwise required by applicable law. The Litigation Trustee also will annually send to each beneficiary a separate statement regarding the receipts and expenditures of the Litigation Trust as relevant for U.S. federal income tax purposes and will instruct all such beneficiaries to use such information in preparing their U.S. federal income tax returns or to forward the appropriate information to such beneficiaries or underlying beneficiaries with instructions to utilize such information in preparing their U.S. federal income tax returns. The Litigation Trustee shall also file (or cause to be filed) any other statement, return, or a disclosure relating to the Litigation Trust that is required by any governmental entity.

(ii) The Litigation Trust Assets (other than any assets allocated to the Disputed Claims Reserve) are treated, for U.S. federal income tax purposes, as having been transferred (subject to any obligations relating to those assets) directly to the Litigation Trust Beneficiaries in full or partial satisfaction of their Claims (with each holder receiving an undivided interest in such assets in accordance with their economic interest in such assets), followed by the transfer by the holders to the Litigation Trust in exchange for their respective beneficial interests in the Litigation Trust.

(iii) Allocations of the taxable income of the Litigation Trust among the beneficiaries shall be determined by reference to the manner in which an amount of Cash representing such taxable income would be distributed (were such cash permitted to be distributed at such time) if, immediately prior to such deemed distribution, the Litigation Trust had distributed all its assets (valued at their book value) to the Litigation Trust beneficiaries adjusted for prior taxable income and loss and taking into account all prior and concurrent distributions from the Litigation Trust. Similarly, taxable loss of the Litigation Trust shall be allocated by referenced to the manner in which an economic loss would be borne immediately after a hypothetical liquidating distribution of the remaining Litigation Trust Assets. The tax book value of the Litigation Trust Assets for purposes of this paragraph shall equal their fair market value on the Effective Date, adjusted in accordance with tax accounting principles prescribed by the Tax Code, the applicable Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements.

(iv) Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including receipt by the Litigation Trustee of a private letter ruling if the Litigation Trustee so requests one, or an adverse determination by the IRS upon audit if not contested by the Litigation Trustee), the Litigation Trustee shall (a) timely elect to treat the Disputed Claims Reserve as a “disputed ownership fund” governed by Treasury Regulation Section 1.468B-9, and (b) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes. All parties (including the Litigation Trustee, the Debtors and the beneficiaries) shall report for United States federal, state and local income tax purposes consistently with the foregoing.

(v) Interests in the Litigation Trust shall be non-transferable and any such transfer shall be disregarded by the Litigation Trustee except with respect to a transfer by will or under the laws of descent and distribution; provided however that such transfer shall not be effective unless and until the Litigation Trustee receives written notice of such transfer.

(vi) The Litigation Trustee shall be further authorized to (i) administer and pay any domestic or foreign taxes imposed on the Litigation Trust or its assets (including the Disputed Claims Reserve) and (ii) file domestic and foreign tax returns for the Litigation Trust and the Disputed Claims Reserve. In the event, and to the extent, any Cash retained on account of Disputed Claims in the Disputed Claims Reserve is insufficient to pay the portion of any taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims, such taxes shall be (a) reimbursed from any subsequent Cash amounts retained on account of Disputed Claims, or (b) to the extent such Disputed Claims have been subsequently resolved, deducted from any amounts otherwise distributable by the Litigation Trustee as a result of the resolution of such Disputed Claims.

#### 6.4 **Securities Law Matters.**

(a) **Issuance of New Stock.** On the Effective Date, Reorganized HIIT shall (i) issue to the Litigation Trustee warrants for 50,000 shares equal to a non-dilutable five percent (5%) of New HIIT Common Stock, which shares shall be distributable to the holders of Allowed Claims in Class 4 in accordance with the terms of Section 4.5 of the Plan; and (ii) issue 950,000 shares of convertible participating and voting preferred stock with a dividend that will be specified in

the Plan Supplement, convertible into ninety-five percent (95%) of the New HIIT Common Stock (the "New HIIT Preferred Convertible Stock"), which shares shall be distributed to the DIP Agent for the benefit of the DIP Lenders in accordance with the terms of section 2.4(b) of this Plan. While the warrants for 5% are non-dilutable, the shares, after issuance, are subject to dilution as stock commonly is.

In reliance upon section 1145(a) of the Bankruptcy Code, the offer and/or issuance of the New HIIT Common Stock and New HIIT Preferred Convertible Stock by Reorganized 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 of beneficial interests in the Litigation Trust in accordance with the Plan.

(b) **Consent to Administrative Proceeding Under Section 12(j) of the Exchange Act to Revoke HII Technologies, Inc.'s Registration and Preservation of SEC Powers.** On the Effective Date (or as soon as practicable thereafter), HII Technologies, Inc. shall consent to an administrative proceeding brought by the SEC under Section 12(j) of the Securities Exchange Act of 1934 (the "Exchange Act") to revoke its section 12 registration. Upon entry of this order of the SEC, HII Technologies, Inc. will have no further obligation to file reports with the SEC, including past due reports and there will be no further trading in the common stock of HII Technologies, Inc. Notwithstanding any provision herein to the contrary, nothing in the Confirmation Order or Plan, including Section 12.5 of the Plan, shall discharge or release any nondebtor person or entity from any claim, right, or cause of action held or assertable by the U.S. Securities and Exchange Commission, or otherwise impair, preclude or enjoin the SEC from commencing or continuing any investigation or taking any action against any person or entity in a nonbankruptcy forum.

(c) **Cancellation of Existing Securities and Agreements.** Except for purposes of evidencing a right to distributions under the Plan of the Litigation Trust Agreement, 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 issued and outstanding shares of stock and other Equity Interests of Debtor HII Technologies, Inc.

6.5 **Equity Interest in HIIT Subsidiaries Held by the Debtors.** On the Effective Date, each respective Equity Interest of HII Technologies, Inc. in Debtors 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 Reorganized HIIT shall continue to hold such Equity Interests.

6.6 **Board of Directors/Officers of the Debtors** Upon entry of the Confirmation Order, in accordance with 1129(a)(5) of Bankruptcy Code and Section 303 of the Delaware Code, the board of directors of HII Technologies, Inc. shall consist solely of Loretta Cross. In

addition, in accordance with Section 1129(a)(5) of the Bankruptcy Code, Loretta Cross will also serve as the sole officer of HII Technologies, Inc. and the other Debtors, as its Chief Executive Officer. Each of the Sage Power Solutions, Inc. and Hamilton Investment Group, Inc. will appoint Ms. Cross as their sole director upon entry of the Confirmation Order.

6.7 **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.

6.8 **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 Reorganized Debtors, the DIP Lenders, the Litigation Trustee, and the United States Trustee shall have the right to the exclusion of all others to object to Administrative Expenses, Compensation and Reimbursement Claims, Priority Tax Claims, Priority Non-Tax Claims, and Secured Claims, but not the Class 2a Mulliniks/Cox Claims Allowed under Section 4.3 of this Plan and the Mediated Settlement Agreement.

(b) On and after the Effective Date, the Litigation Trustee shall have the exclusive right to object, and/or continue prosecution of objections to Convenience Claims, General Unsecured Claims and Subordinated Claims, but not the Class 2a Mulliniks/Cox Priority Claims Allowed under section 4.3 of this Plan and the Mediated Settlement Agreement.

(c) The Reorganized Debtors, Debtors, or the Litigation Trustee, as applicable, shall file with the Bankruptcy Court and 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 the Effective Date. The Bankruptcy Court shall have the authority on request of the Reorganized Debtors or the Litigation Trustee, as applicable, to extend the foregoing dates *ex parte*. On and after the Effective Date, the Reorganized Debtors or the Litigation Trustee shall have the power and authority to prosecute objections to Disputed Claims. All objections shall be litigated to a Final Order except to the extent the Reorganized Debtors or the Litigation Trustee, as applicable, elects to withdraw any such objection or the Reorganized

Debtors or the Litigation Trustee, as applicable, and the holder of such Disputed 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 Trustee 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. To the extent any Disputed General Unsecured Claim is Disallowed, the Litigation Trust Assets reserved on account thereof shall be distributed to the holders of Allowed General Unsecured Claims in accordance with section 4.5 of the Plan based upon their recalculated Pro Rata Share thereof.

7.3 **Estimation.**

The Reorganized Debtors or the Litigation Trustee, 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, Reorganized Debtors, the Litigation Trustee, or any other party in interest previously objected 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 Reorganized Debtors or the Litigation Trustee, 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 (i) without further order of the Bankruptcy Court with the consent of the DIP Lenders, or (ii) with approval of the Bankruptcy Court by Final Order.

7.4 **Allowance of Disputed Claim.**

(a) On the Effective Date, or as soon as reasonably possible thereafter, Reorganized HIIT and the Litigation Trustee shall establish respective Disputed Claims Reserves for the payment of subsequently Allowed Disputed Claims.

(b) If, on or after the Effective Date, any Disputed Claim becomes, in whole or in part, an Allowed Claim, the Reorganized Debtors or the Litigation Trustee, 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 holder 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.** The Plan constitutes and incorporates a motion by the Debtors to reject, as of the Confirmation Date, all prepetition executory contracts and unexpired leases to which any of the Debtors are a party, except for executory contracts or unexpired leases that (a) have been specifically assumed or rejected pursuant to Final Order of the Bankruptcy Court, or (b) are listed on Schedule 8 to this Plan. On the Confirmation Date, Reorganized HIIT will be deemed to have assumed the prepetition executory contracts and unexpired leases listed on Schedule 8, without further motion or order of the Bankruptcy Court. Reorganized HIIT will pay the cure amounts set forth on Schedule 8.

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 Reorganized Debtors, the Litigation Trust, the Litigation Trustee, 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 Reorganized Debtors and the Litigation Trustee on or before the date that is thirty (30) days after the Effective 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 a Final Order approving the Mediated Settlement Agreement;

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

(c) The Bankruptcy Court shall have entered the Confirmation Order by no later than April 30, 2016, unless and except to the extent waived by the DIP Lenders in writing.

9.2 **Conditions Precedent to Effective Date.** The following are conditions precedent to the occurrence of the Effective Date, each of which must be satisfied or waived in accordance with the subsections below:

- (a) The Confirmation Order shall be in full force and effect, and no stay thereof shall be in effect;
- (b) The Confirmation Order shall have become a Final Order by no later than May 15, 2016, unless and except to the extent waived by the DIP Lenders in writing;
- (c) The Litigation Trust Agreement shall have been executed;
- (d) The Litigation Trust Assets shall have been transferred to the Litigation Trust;
- (e) The Debtors shall have sufficient Cash on hand to: (i) pay all Allowed Administrative Expenses (excluding the DIP Lender Claims), Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims, and, if applicable, Allowed Secured Claims, (ii) reserve for the payment 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, and (iii) fund the amount of the Initial Litigation Trust Administrative Cash; and
- (f) The Distributable Cash on the Effective Date shall equal at least \$1.00, unless and except to the extent waived by the DIP Lenders in writing.

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 above cannot be satisfied and the occurrence of such conditions is not waived or cannot be waived, then the Debtors, after written notice to and consultation with the DIP Lenders, shall file a notice of the failure of the Effective Date with the Bankruptcy Court.

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 eighty (180) days after the Confirmation Date, or such later date as shall be agreed by the Debtors, the Committee, and the DIP Lenders, 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 Reorganized Debtors and, in accordance with the Plan 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 Trustee 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 Reorganized Debtors and the Litigation Trust shall be free and clear of all Liens, Claims and encumbrances, except as provided in the Plan or the Confirmation Order.

10.2 **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.

10.3 **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 terminate on the Effective Date.

10.4 **Injunction.** On and after the Effective Date, all Persons 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 or the Estates for which the Reorganized Debtors or the Litigation Trustee retains sole and exclusive authority to pursue in accordance with the Plan.

10.5 **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.

10.6 **Preservation of Insurance Claims.** Nothing in the Plan or the Confirmation Order will impair any rights that a Person might otherwise have to assert a claim for insurance proceeds regarding any property owned by, or now or previously in the possession of, the Debtors. This includes property that is, or is claimed to be, collateral of the DIP Lenders or any other secured party. Likewise, nothing in the Plan or Confirmation order will adversely affect the DIP Lender's rights to insurance proceeds or liens thereon.

## 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, including, without limitation, 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 or disallowance 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, disallowance, 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 order 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 and 503(b) of the Bankruptcy Code for awards of compensation for services rendered and reimbursement of expenses incurred prior to the Effective 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, or any transactions or payments contemplated hereby;

(j) To hear and determine any Causes of Action, adversary proceeding, application, contested matter, and other litigated matter asserted, prosecuted, or resolved by the Litigation Trustee, through judgment, settlement, or otherwise, against Brent Mulliniks and Billy Cox, Jr.;

(k) To hear and determine disputes arising in connection with or related to the interpretation, implementation, or enforcement of the Mediated Settlement Agreement;

(l) 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;

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

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

(o) 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);

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

(q) 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

(r) 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 then-existing members of the Committee, solely in their capacity as Committee members, 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 connection with their service on the Committee in these Debtors' 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 directors of HIIT that were directors during the Bankruptcy Case (with the exception of Brent Mulliniks), the Litigation Trustee, the Committee, the then-existing members of the Committee as of the Effective Date (solely in their capacity as members of the Committee), the DIP Lenders, nor any of their respective professionals, representatives, or agents, shall have liability to any holder of a Claim or Equity Interest for any act or omission in connection with 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. In all respects, the Debtors, the directors of HIIT that were directors during the Bankruptcy Case (with the exception of Brent Mulliniks), the Litigation Trustee, the Committee, the then-existing members of the Committee as of the Effective Date (solely in their capacity as members of the Committee) are released from such Causes of Action unless explicitly disclosed and preserved in Section 21.12 of the Disclosure Statement.

Notwithstanding the foregoing, the Committee will have until April 1, 2016 to notify the Debtors (with a copy to the DIP Lenders) of any Causes of Action that the Committee believes that the Estates may hold against any director of HIIT. Any Cause of Action described in this notice will not be released, and such director will not be exculpated from such Cause of Action, under this section.

12.6 **Payment of Statutory Fees.** On the Effective Date, the Reorganized Debtors, and thereafter as may be required, the Litigation Trustee, 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 operating 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 or Reorganized 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 Trustee) 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.

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. Notwithstanding the foregoing, no such amendment can alter the terms of

the compromise and settlement among Brent Mulliniks, Billy Cox, Jr., the Ad Hoc Committee of Unsecured Creditors of Apache Energy Services, the Debtors, the DIP Lenders, and the Committee, as memorialized in the Mediated Settlement Agreement.

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 an Exhibit or 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 Texas, 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 Reorganized Debtors, the Committee, or the Litigation Trustee 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:**

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

**If to the 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 Trustee:**

[Insert]

**ARTICLE XIII**

**EXCULPATION OF CERTAIN PARTIES WHO  
ACTED DURING THE BANKRUPTCY CASE**

**13.1 Discharge/Release of Debtors, DIP Lenders and Estate Representatives.**

The Reorganized Debtor and Litigation Trust shall have no liability for the Claims against any of the Debtors.

No Holder of a Claim or Interest or other party in interest shall have any Claim against (a) the Debtors; (b) the DIP Lenders and their professionals, representatives, or agents; (c) the Committee; (d) the professionals retained by Court Order in the Bankruptcy Case; and/or (e) with the exception of Brent Mulliniks, any directors of HIIT that were directors during the Bankruptcy Case for any act or omission in connection with, related to or arising out of 1) the Bankruptcy Case, 2) the decision to file bankruptcy, 3) the DIP Order, 4) the Prepetition Secured Claims, 4) the pursuit of confirmation of the Plan, 5) the consummation of the Plan, or 6) the administration of the Plan or the Chapter 11 Cases. Notwithstanding the foregoing and for purposes of clarity, this release will not release any director of HIIT for Avoidance Actions or other Causes of Action to the extent explicitly described in Section 21.12 of the Disclosure Statement.

In all instances, the Debtors' directors (with the exception of Brent Mulliniks) have been entitled to reasonably rely on the advice of counsel retained with Bankruptcy Court approval with respect to their responsibilities relating to the Bankruptcy Case, Prepetition Secured Debt, DIP Loan, and/or Plan.

Notwithstanding the foregoing, the Committee will have until April 1, 2016 to notify the Debtors (with a copy to the DIP Lenders) of any Causes of Action that the Committee believes that the Estates may hold against any director of HIIT. Any Cause of Action described in this notice will not be released, and such director will not be exculpated from such Claim or cause of action under this section.

### 13.2 **Limitation of Releases as to Disclosed Litigation Targets**

Notwithstanding anything in the Plan to the contrary, but subject in all respects to the Mediated Settlement Agreement, 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 Debtors and their Estates reserve all Causes of Action against such individuals and entities, including, without limitation, Causes of Action for breach of duty, negligence, malpractice, negligent misrepresentation, fraudulent transfer, claims against officers and directors not released in section 13.1, Avoidance Actions and any other claim or cause of action of any nature, whatsoever, whether at law or in equity; and from and after the Effective Date, the Litigation Trustee, as the representative of the Debtors and their Estates pursuant to section 1123(b)(3) of the Bankruptcy Code, shall have standing and the authority to pursue such Causes of Action and other claims and causes of action.

### 13.3 **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 alleged claim or cause of action related to the Chapter 11 Cases that exists as of the Effective Date, including suit against any of 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



Texas Bar No. 24078702  
600 Travis, Suite 7000  
Houston, Texas 77002  
Telephone: (713) 485-7300  
Facsimile: (713) 485-7344

*Counsel for the Debtors*

Schedule 8 – Executory Contract Assumption

Ergos

MSA and Cloud service contract beginning 12/23/2014 for two years.  
Cure amount is \$6,992.29

# Summary Report

April 05, 2016 12:36 PM

	Document	Location
Original	Second Amended Plan_1163930_1	10.51.210.169:McKool (1163930,1:)
Revised	Third Amended Plan_1171978_2	MCKOOLDMS:McKool (1171978,2:)

## ARTICLE I

	Number of Changes	Markup
Insertions	10	<a href="#">Sample Text</a>
Deletions	10	<del>Sample Text</del>
Moved from	0	<del>Sample Text</del>
Moved to	0	<a href="#">Sample Text</a>
<b>Total</b>	<b>20</b>	

**EXHIBIT B**

SEC Offer

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING**  
**File No.**

<p><b>In the Matter of</b></p> <p><b>HII Technologies, Inc.,</b></p> <p><b>Respondent.</b></p>
--

**OFFER OF SETTLEMENT**  
**OF HII TECHNOLOGIES, INC.**

**I.**

HII Technologies, Inc. (“HII Technologies” or “Respondent”), pursuant to Rule 240(a) of the Rules of Practice of the Securities and Exchange Commission (“Commission”) [17 C.F.R. § 201.240(a)] submits this Offer of Settlement (“Offer”) in anticipation of proceedings to be instituted against it by the Commission, pursuant to Section 12(j) of the Securities Exchange Act of 1934 (“Exchange Act”).

**II.**

This Offer is submitted solely for the purpose of settling these proceedings, with the express understanding that it will not be used in any way in these or any other proceedings, unless the Offer is accepted by the Commission. If the Offer is not accepted by the Commission, the Offer is withdrawn without prejudice to Respondent and shall not become a part of the record in these or any other proceedings, except for the waiver expressed in Section V. with respect to Rule 240(c)(5) of the Commission’s Rules of Practice [17 C.F.R. § 201.240(c)(5)].

**III.**

On the basis of the foregoing, the Respondent hereby:

A. Admits the jurisdiction of the Commission over it and over the matters set forth in the Order Instituting Proceedings, Making Findings, and Revoking Registration of Securities Pursuant to Section 12(j) of the Securities Exchange Act of 1934 (“Order”);

B. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission or in which the Commission is a party prior to a hearing pursuant to the Commission’s Rules of Practice, 17 C.F.R. § 201.100 *et seq.*, and without admitting or denying the findings contained in the Order, except as to the Commission’s jurisdiction over it and the

subject matter of these proceedings, which are admitted, Respondent consents to the entry of an Order by the Commission containing the following findings and order set forth below:

1. HII Technologies (CIK No. 1085254) is a delinquent Delaware corporation located in Houston, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). On September 18, 2015, HII Technologies filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Southern District of Texas, and the case is still pending.

2. HII Technologies has failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder because it has not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2015.

#### IV.

Section 12(j) of the Exchange Act provides as follows:

The Commission is authorized, by order, as it deems necessary or appropriate for the protection of investors to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to revoke the registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this title or the rules and regulations thereunder. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security the registration of which has been and is suspended or revoked pursuant to the preceding sentence.

On the basis of the foregoing, Respondent hereby consents to the entry of an Order by the Commission that:

Pursuant to Section 12(j) of the Exchange Act, registration of each class of Respondent's securities registered pursuant to Section 12 of the Exchange Act be, and hereby is, revoked.

#### V.

By submitting this Offer, Respondent hereby acknowledges its waiver of those rights specified in Rules 240(c)(4) and (5) [17 C.F.R. §201.240(c)(4) and (5)] of the Commission's Rules of Practice. Respondent also hereby waives service of the Order.

## **VI.**

Respondent understands and agrees to comply with the terms of 17 C.F.R. § 202.5(e), which provides in part that it is the Commission's policy “not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings,” and “a refusal to admit the allegations is equivalent to a denial, unless the defendant or respondent states that he neither admits nor denies the allegations.” As part of Respondent’s agreement to comply with the terms of Section 202.5(e), Respondent: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any finding in the Order or creating the impression that the Order is without factual basis; and (ii) will not make or permit to be made any public statement to the effect that Respondent does not admit the findings of the Order, or that the Offer contains no admission of the findings, without also stating that the Respondent does not deny the findings; and (iii) upon the filing of this Offer of Settlement, Respondent hereby withdraws any papers previously filed in this proceeding to the extent that they deny, directly or indirectly, any finding in the Order. If Respondent breaches this agreement, the Division of Enforcement may petition the Commission to vacate the Order and restore this proceeding to its active docket. Nothing in this provision affects Respondent's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

## **VII.**

Consistent with the provisions of 17 C.F.R. § 202.5(f), Respondent waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein.

## **VIII.**

Respondent hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996 or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney’s fees or other fees, expenses or costs expended by Respondent to defend against this action. For these purposes, Respondent agrees that Respondent is not the prevailing party in this action since the parties have reached a good faith settlement.

**IX.**

Respondent states that it has read and understands the foregoing Offer, that this Offer is made voluntarily, and that no promises, offers, threats, or inducements of any kind or nature whatsoever have been made by the Commission or any member, officer, employee, agent, or representative of the Commission in consideration of this Offer or otherwise to induce it to submit to this Offer.

HII Technologies, Inc.

By: \_\_\_\_\_  
Loretta R. Cross  
Chief Restructuring Officer

I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_, 2016

\_\_\_\_\_  
Loretta R. Cross

**EXHIBIT C**

Litigation Trust Agreement

**LITIGATION TRUST AGREEMENT  
FOR THE HII TECHNOLOGIES LITIGATION TRUST**

DATED: \_\_\_\_\_, 2016

**LITIGATION TRUST AGREEMENT  
FOR THE HII TECHNOLOGIES LITIGATION TRUST**

THIS LITIGATION TRUST AGREEMENT (the "Litigation Trust Agreement") is made as of \_\_\_\_, 2016, by and among Apache Energy Services, LLC ("AES"), Aqua Handling of Texas, LLC ("Aqua"), HII Technologies, Inc. ("HIIT"), Sage Power Solutions, Inc. f/k/a KMHVC, Inc. ("Sage"), Hamilton Investment Group, Inc. ("HIG") (each a "Debtor" and, collectively, the "Debtors"), Elizabeth M. Guffy as Litigation Trustee (in such capacity as Litigation Trustee of the Litigation Trust, the "Litigation Trustee"), for the benefit of the Litigation Trust Beneficiaries entitled to proceeds of the Litigation Trust Assets (as defined in the Debtors' Second Amended Joint Plan of Reorganization, dated \_\_\_\_\_, 2016 (the "Plan")), and Heartland Bank and McLarty Capital Partners SBIC, L.P., in their capacity as lenders under the DIP Facility approved pursuant to the DIP Order (collectively, the "DIP Lenders").

**RECITALS**

WHEREAS on September 18, 2015, the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code with the Bankruptcy Court. On March 9, 2016, the Debtors filed the Plan. This Litigation Trust Agreement is executed to facilitate implementation of the Plan. Under the terms of the Plan, the Litigation Trust Assets will be transferred to the Litigation Trust created and evidenced hereby so that (1) the Litigation Trust Assets can be held in trust for the benefit of the Litigation Trust Beneficiaries entitled thereto for the objectives and purposes set forth herein and in the Plan, (2) certain Claims can be resolved, (3) distributions may be made in accordance with the Plan, (4) the Litigation Trust Assets can be liquidated, and (5) administrative services relating to the activities of the Litigation Trust and the implementation of the Plan can be performed and facilitated by the Litigation Trustee. The Litigation Trustee will make continuing efforts to liquidate the Litigation Trust Assets, make timely distributions, and not unduly prolong the duration of the Litigation Trust.

**DECLARATION OF TRUST**

NOW, THEREFORE, to declare the terms and conditions hereof, and in consideration of the confirmation of the Plan pursuant to the Bankruptcy Code and other good and valuable consideration, the receipt of which is hereby acknowledged, the Debtors, the Litigation Trustee, and the DIP Lenders have executed this Litigation Trust Agreement for the benefit of the Litigation Trust Beneficiaries entitled to the Litigation Trust Assets, and, at the direction of such Litigation Trust Beneficiaries (because the transfer of title to undivided interests in each of the Litigation Trust Assets to such Litigation Trust Beneficiaries, and the transfer of such interests by such Litigation Trust Beneficiaries to the Litigation Trust, would be impractical), absolutely and irrevocably assign to the Litigation Trust and to its successors or assigns, all right, title, and interest of the Debtors in and to the Litigation Trust Assets in the form and manner provided for in the Plan;

TO HAVE AND TO HOLD unto the Litigation Trust and its successors in trust and its successors and assigns;

IN TRUST NEVERTHELESS, under and subject to the terms and conditions of the Plan and this Litigation Trust Agreement for the benefit of the Litigation Trust Beneficiaries (as their respective interests may appear in accordance with the Plan and this Litigation Trust Agreement);

PROVIDED, HOWEVER, that upon termination of the Litigation Trust in accordance with Article 9 hereof, this Litigation Trust Agreement shall cease, terminate, and be of no further force and effect.

IT IS HEREBY FURTHER COVENANTED AND DECLARED, that the Litigation Trust Assets are to be held and applied by the Litigation Trustee subject to the further covenants, conditions, and terms set forth below.

## **ARTICLE 1 DEFINITIONS**

**1.1 Terms Used in the Plan.** If not defined in this Litigation Trust Agreement, capitalized terms have the meanings assigned to them in the Plan.

**1.2 General Construction.** As used in this Litigation Trust Agreement, the masculine, feminine and neuter genders, and the plural and singular numbers shall be deemed to include the others in all cases where they would apply. “Includes” and “including” are not limiting, and “or” is not exclusive. References to “Articles,” “Sections” and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code, the Bankruptcy Rules, or other law, statute or regulation, refer to the corresponding Articles, Sections, and other subdivisions of this Litigation Trust Agreement, and the words “herein,” “hereafter,” and words of similar import refer to this Litigation Trust Agreement as a whole and not to any particular Article, Section, or subdivision of this Litigation Trust Agreement.

## **ARTICLE 2 THE LITIGATION TRUST**

**2.1 Creation and Name.** There is hereby created the HII Technologies Litigation Trust, which shall be known as the “**HII Technologies Litigation Trust**” or “**Litigation Trust.**”

**2.2 Objectives, Purposes and Structure of the Litigation Trust.** The Litigation Trust is created on behalf of, and for the sole benefit of, the Litigation Trust Beneficiaries. The purpose of the Litigation Trust is to provide a mechanism for the liquidation of the Litigation Trust Assets and to distribute the proceeds of the liquidation, net of all claims, expenses, charges, liabilities, and obligations of the Litigation Trust, to the Litigation Trust Beneficiaries in accordance with the terms of the Plan. No business activities will be conducted by the Litigation Trust other than those associated with or related to the liquidation and distribution of the Litigation Trust Assets as provided for in the Plan and this Litigation Trust Agreement, and such assets are being transferred to the Litigation Trust with no objective or intent to engage in such activities. The Litigation Trust is intended to be treated and maintained for federal income tax purposes, in part, as a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d) (pursuant to the guidance set forth in IRS Revenue Procedure 94-45, 1994-2 CB 684) for the benefit of the Litigation Trust Beneficiaries, and this Litigation Trust is authorized to establish one or more disputed ownership funds within the meaning of Treasury Regulation Section 1.468B-9(b)(1). In furtherance of this objective, the Litigation Trustee shall make continuing good faith efforts to (1) dispose of the Litigation Trust Assets, (2) make timely distributions, and (3) not unduly prolong the duration of the Litigation Trust, in accordance with this Litigation Trust Agreement. The purposes of the Litigation Trust are as follows, and the Litigation Trust shall have no other purpose or activities:

- (a) to marshal, liquidate, and distribute the Litigation Trust Assets in an expeditious but orderly manner;
- (b) to perform the functions and take the actions provided for or permitted by the Plan, this Litigation Trust Agreement, and in any other agreement executed by the Litigation Trustee for the Litigation Trust pursuant to the Plan;

(c) to investigate, prosecute, settle, or abandon the Causes of Action (including, without limitation, the Avoidance Actions) assigned to the Litigation Trust as Litigation Trust Assets and to distribute the proceeds of any recoveries therefrom in accordance with the terms of the Plan and this Litigation Trust Agreement;

(d) to object to, prosecute, resolve, and/or settle the Disputed Claims in accordance with the procedures set forth in Article VII of the Plan; and

(e) to make distributions to the holders of Allowed Claims in accordance with the Plan.

### **2.3 Grant and Acceptance.**

**2.3.1 Grant of the Litigation Trust Assets.** Under the terms of the Plan and the Confirmation Order, effective as of the Effective Date of the Plan, the Litigation Trust Assets shall be deemed to have been irrevocably granted, transferred, conveyed, and delivered to the Litigation Trust, on behalf of, and for the benefit of, the Litigation Trust Beneficiaries, control of, and all the rights, title and interests in and to, the Litigation Trust Assets, with no reversionary interest therein in favor of the Reorganized Debtors or their Estates.

**2.3.2 Acceptance by Litigation Trustee.** The Litigation Trustee accepts the trust terms imposed under this Litigation Trust Agreement and agrees to manage the Litigation Trust in accordance with this Litigation Trust Agreement and subject to the terms and conditions of the Plan.

**2.4 Further Assurances.** The Reorganized Debtors (and any successors thereto) will, upon reasonable request of the Litigation Trustee, execute, acknowledge, and deliver such further instruments and do such further acts as may be necessary or proper to transfer to the Litigation Trustee any portion of the Litigation Trust Assets intended to be conveyed hereby in the form and manner provided for in the Plan and to vest in the Litigation Trustee the powers, instruments, or funds in trust hereunder.

**2.5 Nature of Litigation Trust Assets.** The Litigation Trust shall not receive transfers of any listed stock or securities or any readily marketable assets, any operating assets of a going business or fifty percent (50%) or more of the stock of a corporation with operating assets. Furthermore, the Litigation Trust shall not receive transfers of any unlisted stock of a single issuer that represents eighty percent (80%) or more of the stock of such issuer, and shall not receive transfers of any general or limited partnership interests.

**2.6 Ownership by the Litigation Trust.** The Litigation Trustee shall promptly record or register in the name of the Litigation Trust, or in the name or names of any nominee or Person in accordance with Section 4.1 hereof, ownership of and title to all Litigation Trust Assets received by it as Litigation Trust and comply with all provisions of law that may bear on the evidencing of ownership of and title to any portion of the Litigation Trust Assets as are necessary and appropriate and that the Litigation Trustee determines are in the best interests of the Litigation Trust.

**2.7 Incidents of Ownership.** The Litigation Trust Beneficiaries shall be the sole Litigation Trust Beneficiaries of the Litigation Trust and the Litigation Trust shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein.

**2.8 Payment of Litigation Trust Operating Expenses.** To the extent the Litigation Trustee deems reasonably appropriate, the costs and expenses of the Litigation Trust, including the fees and

expenses of the Litigation Trustee and its retained professionals, shall be paid from the Litigation Trust Operating Account (as defined below).

**ARTICLE 3**  
**THE LITIGATION TRUSTEE**

**3.1 Appointment of the Litigation Trustee.** As of the date hereof, the Litigation Trustee shall be **Elizabeth M. Guffy**. The Litigation Trustee accepts the trust imposed on him by this Litigation Trust Agreement and agrees to observe and perform that trust on and subject to the terms and conditions set forth in this Litigation Trust Agreement. The Litigation Trustee is the duly appointed and acting representative of the Litigation Trust Beneficiaries with respect to the Litigation Trust Assets, and, as such, the Litigation Trustee succeeds to all of the rights and powers of the Debtors and the Litigation Trust Beneficiaries with respect to the prosecution of Causes of Action. To the extent that any Causes of Action cannot be transferred to the Litigation Trust because of a restriction on transferability under applicable law, such Litigation Trust Asset shall be deemed to have been retained by the Reorganized Debtors [and Litigation Trust Beneficiaries], and the Litigation Trustee shall be deemed to have been designated as a representative of the Reorganized Debtors, their Estates and the Litigation Trust Beneficiaries pursuant to § 1123(b)(3)(B) of the Bankruptcy Code to enforce and prosecute such Causes of Action on behalf of the Reorganized Debtors, their Estates and the Litigation Trust Beneficiaries. Notwithstanding the foregoing, all net proceeds shall be paid to the Litigation Trust and distributed in accordance with the Plan and this Litigation Trust Agreement. Confirmation of the Plan shall constitute the Bankruptcy Court's approval of **Elizabeth M. Guffy** as Litigation Trustee.

**3.2 Number and Qualifications.** Except as otherwise provided herein, there shall be one Litigation Trustee of the Litigation Trust, who will be selected by mutual agreement of the Committee and the DIP Lenders, and approved by the Bankruptcy Court as provided in the Plan. The Litigation Trustee shall be entitled to engage in such other activities as the Litigation Trustee deems appropriate, so long as such activities are not in conflict with the interests of the Litigation Trust and the Litigation Trustee devotes such time as is necessary to fulfill the Litigation Trustee's duties as Litigation Trustee. No bond or surety shall be required of the Litigation Trustee.

**3.3 Action by the Litigation Trustee.** The Litigation Trust shall be managed by the Litigation Trustee as set forth in this Litigation Trust Agreement.

**3.4 Binding Nature of the Litigation Trustee's Action.** All actions taken and determinations made by the Litigation Trustee in accordance with the provisions of the Plan or this Litigation Trust Agreement shall be final and binding upon any and all Persons constituting Litigation Trust Beneficiaries.

**3.5 Term of Service.** The Litigation Trustee shall serve as the Litigation Trustee for the duration of the Litigation Trust, subject to earlier death, resignation, or removal.

**3.6 Resignation.** The Litigation Trustee may resign as Litigation Trustee of the Litigation Trust by an instrument in writing delivered to the Litigation Trust Representatives at least sixty (60) days before the proposed effective date of resignation. The Litigation Trustee shall continue to serve as Litigation Trustee after the delivery of the Litigation Trustee's resignation until the proposed effective date of the Litigation Trustee's resignation, but nothing in this Section 3.5 shall restrict the right to remove the Litigation Trustee as provided in Section 3.6 hereof.

**3.7 Removal.** Upon an Order of the Bankruptcy Court, the Litigation Trustee may be removed from office only for: (1) willful misconduct, gross negligence, bad faith, self-dealing, breach of

fiduciary duty or *ultra vires* acts in connection with the affairs of the Litigation Trust or (2) such physical or mental disability as substantially prevents the Litigation Trustee from performing the duties of Litigation Trustee hereunder. Only a Litigation Representative may file, and has standing to file, a motion in the Chapter 11 Cases requesting an Order of the Bankruptcy Court removing the Litigation Trustee for the reasons identified in this Section 3.7.

### **3.8 Appointment of Successor Litigation Trustee.**

**3.8.1 Appointment of Successor Litigation Trustee.** In the event of a vacancy by reason of the death or removal of the Litigation Trustee or prospective vacancy by reason of resignation, a successor Litigation Trustee shall be appointed by the Litigation Trust Representatives. The Litigation Trust Representatives may appoint a successor Litigation Trustee as soon as practicable, but in any event within thirty (30) days after the occurrence of the vacancy or, in the case of resignation, at least thirty (30) days before the proposed resignation. If the Litigation Trust Representatives fail to agree on, and appoint, a successor Litigation Trustee within the prescribed period for any reason, then either Litigation Trust Representative may nominate a successor Litigation Trustee and seek Bankruptcy Court approval of the proposed successor Litigation Trustee.

**3.8.2 Vesting of Rights in Successor Litigation Trustee.** Every successor Litigation Trustee shall execute, acknowledge, and deliver to the Litigation Trust, the Litigation Trust Representatives, and the retiring Litigation Trustee, if any, an instrument accepting such appointment subject to the terms and provisions hereof. The successor Litigation Trustee need not post a bond or surety. The successor Litigation Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Litigation Trustee, except that the successor Litigation Trustee shall not be liable for the acts or omissions of the retiring Litigation Trustee.

**3.9 Continuance of Litigation Trust.** The death, resignation, or removal of the Litigation Trustee shall not operate to terminate the Litigation Trust or to revoke any existing agency (other than any agency of the Litigation Trustee as the Litigation Trustee) created pursuant to the terms of this Litigation Trust Agreement or invalidate any action taken by the Litigation Trustee, and the Litigation Trustee agrees that the provisions of this Litigation Trust Agreement shall be binding upon and inure to the benefit of the Litigation Trustee and the Litigation Trustee's heirs, legal and personal representatives, successors or assigns, as the case may be. In the event of the resignation or removal of the Litigation Trustee, the Litigation Trustee shall promptly (1) execute and deliver by the effective date of resignation or removal such documents, instruments, and other writings as may be reasonably requested by the successor Litigation Trustee to effect the termination of the resigning or removed Litigation Trustee's capacity under this Litigation Trust Agreement and the conveyance of the Litigation Trust Assets then held by the resigning or removed Litigation Trustee to the successor Litigation Trustee; (2) deliver to the successor Litigation Trustee all documents, instruments, records, and other writings relating to the Litigation Trust as may be in the possession or under the control of the resigning or removed Litigation Trustee; and (3) otherwise assist and cooperate in effecting the assumption of the resigning or removed Litigation Trustee's obligations and functions by the successor Litigation Trustee. The resigning or removed Litigation Trustee hereby irrevocably appoints the successor Litigation Trustee as its attorney-in-fact and agent with full power of substitution for it and its name, place and stead to do any and all acts that such resigning or removed Litigation Trustee is obligated to perform under this Section 3.9. Such appointment shall not be affected by the subsequent disability or incompetence of the Litigation Trustee making such appointment.

**3.10 Compensation.** As compensation for its services as Litigation Trustee, and under any other agreements to which the Litigation Trustee is a party as contemplated by the Plan, the Litigation Trustee shall receive as compensation for its services the statutory fee payable to trustees appointed in

cases under Chapter 7 or Chapter 11 of the Bankruptcy Code, in accordance with Bankruptcy Code § 326 and subject to Bankruptcy Court approval as provided in that section (the “Litigation Trustee Fee”). In addition, the Litigation Trustee shall be reimbursed for the ordinary and necessary expenses it incurs in fulfilling its duties with respect to the Litigation Trust as a Litigation Trust Operating Expense.

**3.11 Standard of Care; Indemnification; Exculpation.** The Litigation Trustee, acting in the capacity as the Litigation Trustee or in any other capacity contemplated by this Litigation Trust Agreement or the Plan, shall not be personally liable in connection with the affairs of the Litigation Trust to the Litigation Trust or to any Person except for its acts or omissions that constitute willful misconduct, gross negligence, bad faith, self-dealing, breach of fiduciary duty or *ultra vires* acts. The Litigation Trustee shall not be personally liable to the Litigation Trust or to any Person for the acts or omissions of any officer, employee, or agent of the Trust unless the Litigation Trustee acted with willful misconduct, gross negligence, bad faith, self-dealing, or breach of fiduciary duty in the selection, retention, or supervision of such officer, employee, or agent of the Litigation Trust. Except in those situations in which the Litigation Trustee is not exonerated of personal liability in accordance with the foregoing, the Litigation Trustee (including each former Litigation Trustee) shall be indemnified by the Litigation Trust against and held harmless by the Litigation Trust from any losses, claims, damages, liabilities or expenses (including, without limitation, attorney fees, disbursements, and related expenses) to which the Litigation Trustee may become subject in connection with any action, suit, proceeding, or investigation brought or threatened against the Litigation Trustee in the Litigation Trustee’s capacity as Litigation Trustee, or in any other capacity contemplated by this Litigation Trust Agreement or the Plan or in connection with any matter arising out of or related to the Plan, this Litigation Trust Agreement, or the affairs of the Litigation Trust. If the Litigation Trustee becomes involved in any action, proceeding, or investigation in connection with any matter arising out of or in connection with the Plan, this Litigation Trust Agreement or the affairs of the Litigation Trust, the Litigation Trust shall periodically advance or otherwise reimburse on demand the Litigation Trustee’s reasonable legal and other expenses (including, without limitation, attorneys’ fees, disbursements, and related expenses) incurred in connection therewith, but the Litigation Trustee shall be required to repay promptly to the Litigation Trust the amount of any such advanced or reimbursed expenses paid to the Litigation Trustee to the extent that it shall be ultimately determined by Final Order that the Litigation Trustee engaged in willful misconduct, gross negligence, bad faith, self-dealing, breach of fiduciary duty or *ultra vires* acts in connection with the affairs of the Litigation Trust with respect to which such expenses were paid. The Litigation Trust may indemnify and hold harmless the employees and agents of the Litigation Trust, including the Litigation Trust Representatives, to the same extent as provided in this Section 3.11 for the Litigation Trustee. The provisions of this Section 3.11 shall remain available to and be binding on any former Litigation Trustee or the estate of any decedent Litigation Trustee.

**3.12 Reliance by the Litigation Trustee.** The Litigation Trustee may rely, and shall be fully protected in acting or refraining from acting, on any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order, or other instrument or document that the Litigation Trustee has no reason to believe to be other than genuine and to have been signed or presented by the proper party or parties or, in the case of facsimiles, to have been sent by the proper party or parties, and the Litigation Trustee may conclusively rely as to the truth of the statements and correctness of the opinions expressed therein, but the Litigation Trustee shall be under a duty to have examined, or caused to be examined, the same to determine whether or not such writings conform to the requirements of this Litigation Trust Agreement. The Litigation Trustee may consult with counsel, and any opinion of counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Litigation Trustee in accordance therewith. The Litigation Trustee shall have the right at any time to seek instructions from the Bankruptcy Court (or any other court of competent jurisdiction after the Chapter 11 Cases are closed) concerning the Litigation Trust Assets, this Litigation Trust Agreement, the Plan, or any other document executed in connection therewith, and any such instructions given shall be full and

complete authorization in respect of any action taken or suffered by the Litigation Trustee in accordance therewith.

**3.13 Reliance by Persons Dealing With the Litigation Trust.** In the absence of actual knowledge to the contrary, any person dealing with the Litigation Trust shall be entitled to rely on the authority of the Litigation Trustee to act in connection with the acquisition, management, or disposition of Litigation Trust Assets and shall have no obligation to inquire into the existence of such authority.

**3.14 Discharge of the Litigation Trustee.**

**3.14.1 Final Report.** The Litigation Trustee shall upon termination of the Litigation Trust or upon the Litigation Trustee's resignation, removal, or death (in which latter case the Litigation Trustee's estate shall) render a report and account (the "Final Report") containing the following information: (1) all assets and funds of the Litigation Trust originally charged under the Litigation Trustee's control, (2) a summarized accounting, in sufficient detail, of all purchases, sales, gains, losses, and income in connection with the Litigation Trust during the Litigation Trustee's term of service, and (3) the ending balance of all assets and funds of the Litigation Trust as of the date of discharge.

**3.14.2 Approval of Final Report.** The Final Report required by Section 3.14.1 shall be filed with the Bankruptcy Court, and any Litigation Trust Beneficiary may object to such Final Report as appropriate. Unless the Bankruptcy Court, after notice and a hearing, enters a Final Order to the contrary within sixty (60) days of the filing, the withdrawing Litigation Trustee shall be discharged from all liability to the Litigation Trust or any Person who has had or may then or thereafter have an interest in the Litigation Trust for acts or omissions in the Litigation Trustee's capacity as the Litigation Trustee or in any other capacity contemplated by this Litigation Trust Agreement or the Plan.

**3.14.3 Costs Relating to Statement of Discharge.** The expenses of any accounting, including, but not limited to any statement of charge or discharge, shall be paid by the Litigation Trust as Litigation Trust Operating Expenses.

**3.14.4 Confidentiality.** The Litigation Trustee shall, during the period that it serves as Litigation Trustee under this Litigation Trust Agreement and for a period of twelve (12) months following the termination of this Litigation Trust Agreement or following its removal or resignation hereunder, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any entity to which any of the Litigation Trust Assets relates or of which it has become aware in its capacity as Litigation Trustee.

**ARTICLE 4**  
**LITIGATION TRUST REPRESENTATIVES**

**4.1 Appointment of the Litigation Trust Representatives.** On the Effective Date, the Litigation Trust Representatives shall be appointed, and they shall be as follows: **Tedmond Y. Wong** and \_\_\_\_\_ . The Litigation Trust Representatives shall serve without compensation.

**4.1.1 Term of the Litigation Trust Representatives.** The Litigation Trust Representatives shall serve until the earlier of (1) the effective date of the resignation of such Litigation Trust Representatives; or (2) the termination of the Litigation Trust pursuant to the terms of this Litigation Trust Agreement.

**4.2 Powers and Duties of the Litigation Trust Representatives.** The Litigation Trustee shall consult with the Litigation Trust Representatives regarding the funding of the Litigation Trust

Disputed Claims Reserve . In the event of a disagreement between the Litigation Trust Representatives regarding the funding of the Litigation Trust Disputed Claims Reserve, the Litigation Trustee shall have the deciding vote. In addition, the Litigation Trust Representatives shall have the right to appoint a successor Litigation Trustee as provided in Section 3.8.1 in the event of a vacancy by reason of the death or removal of the Litigation Trustee or prospective vacancy by reason of resignation. The Litigation Trust Representatives shall not exercise any control or authority over the Litigation Trust or the Litigation Trust Assets that is inconsistent with the powers and duties of the Litigation Trustee as set forth in this Litigation Trust Agreement. The Litigation Trust Representatives shall not assume any other duty (fiduciary or otherwise) to Creditors or any other parties in interest in the Chapter 11 Cases.

**4.2.1 Reliance by Litigation Trust Representatives; Exculpation.** The Litigation Trust Representatives may rely, and shall be fully protected in acting or refraining from acting, on any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order, or other instrument or document that the Litigation Trust Representative has no reason to believe to be other than genuine and to have been signed or presented by the proper party or parties or, in the case of facsimiles, to have been sent by the proper party or parties, and the Litigation Trust Representatives may conclusively rely as to the truth of the statements and correctness of the opinions expressed therein. Neither a Litigation Trust Representative nor any of its members, designees, counsel, financial advisors or any duly designated agent or representatives of any such party shall be liable for the act, default or misconduct of the other Litigation Trust Representative, nor shall any Litigation Trust Representative be liable for anything other than its own willful misconduct, gross negligence, bad faith, self-dealing, breach of fiduciary duty or *ultra vires* acts. The Litigation Trust Representatives may, in connection with the performance of their duties, and in their sole and absolute discretion, consult with the Litigation Trustee's counsel and any other of the Litigation Trustee's professionals and/or with counsel and other professional advisors directly retained by the Litigation Trust Representatives, and the Litigation Trust Representatives shall not be liable for anything done or omitted or suffered to be done in accordance with the advice or opinions of such professionals. If a Litigation Trust Representative determines not to consult with counsel, accountants or other professionals, it shall not be deemed to impose any liability on such Litigation Trust Representative and/or designees.

**4.3 Resignation or Inability to Serve of Litigation Trust Representative.** A Litigation Trust Representative may resign at any time and for any reason provided that such Litigation Trust Representative designate a replacement Litigation Trust Representative to succeed it upon its resignation. Except as provided in Section 4.4, the Litigation Trust Representative has sole discretion to appoint its successor.

## **ARTICLE 5**

### **POWERS OF THE LITIGATION TRUSTEE**

**5.1 Title.** Legal title to all Litigation Trust Assets shall be vested in the Litigation Trust, except that the Litigation Trustee shall have the power to cause legal title (or evidence of title) to any of the Litigation Trust Assets to be held by any nominee or Person, on such terms, in such manner, and with such powers as the Litigation Trustee hereunder may determine.

**5.2 Management Power.** Except as otherwise expressly limited in this Litigation Trust Agreement or the Plan, the Litigation Trustee shall have control and authority over the Litigation Trust Assets assigned to the Litigation Trust under the Plan, over the management and disposition thereof (including any transfer of Litigation Trust Assets that does not constitute a disposition), and over the management of the Litigation Trust to the same extent as if the Litigation Trustee were the sole owner thereof in its own right. Except as provided in the Plan, or otherwise specified in the Litigation Trust Agreement, the Litigation Trustee need not obtain the order or approval of any court in the exercise of

any power or discretion conferred hereunder, or account to any court in the absence of a breach of trust. The Litigation Trustee shall exercise its judgment for the benefit of the Litigation Trust Beneficiaries in order to maximize the value of distributions, giving due regard to the cost, risk, and delay of any course of action. In connection with the management and use of the Litigation Trust Assets, the Litigation Trustee's powers, except as otherwise expressly limited in this Litigation Trust Agreement, or the Plan, shall include, but shall not be limited to, the following:

- (a) subject to the limitations as set forth in the Litigation Trust Agreement, hold, invest, borrow against, pledge and/or manage the Litigation Trust Assets,
- (b) establish the Litigation Trust Disputed Claims Reserve in consultation with the Litigation Trust Representatives,
- (c) hold the Litigation Trust Assets for the benefit of the Litigation Trust Beneficiaries,
- (d) prosecute and resolve Causes of Action, in the name of the Debtors and as the representative of their respective Estates pursuant to section 1123(b)(3)(B) of the Bankruptcy Code,
- (e) object to, settle, compromise, withdraw or litigate to judgment any objections to Claims in accordance with the provisions of Section 7.1 of the Plan,
- (f) distribute to the DIP Agent for the benefit of the DIP Lenders, such Litigation Trust Assets in an amount necessary to satisfy in full the balance of the Postpetition Obligations and the Initial Litigation Trust Administrative Cash in accordance with the Waterfall after distribution of the Distributable Cash to the DIP Agent for the benefit of the DIP Lenders,
- (g) distribute to the holders of Allowed Cox/Mulliniks Priority Claims in accordance with the Waterfall,
- (h) request any appropriate tax determination, make any tax election, settle or compromise any tax liability, consent to any Claim or assessment relating to taxes or take any action consistent with the treatment of the Litigation Trust as a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d) and the guidance provided in IRS Revenue Procedure 94-45 and with any election it may make to treat the Disputed Claims Reserve as a "disputed ownership fund" governed by Treasury regulation Section 1.4688-9,
- (i) distribute to other Litigation Trust Beneficiaries any remaining Litigation Trust Assets after payment of the Postpetition Obligations and Initial Litigation Trust Administrative Cash in accordance with the Waterfall,
- (j) assert, prosecute, settle, and resolve, through judgment, settlement, or otherwise, any Causes of Action against Brent Mulliniks and Billy Cox, Jr. and to offset any settlement(s) or judgment(s) obtained against Brent Mulliniks and Billy Cox, Jr. against the Mulliniks/Cox Priority Claims Allowed pursuant to the Plan and the Mediation Settlement Agreement,
- (k) perform such other functions as are provided in the Plan and the Litigation Trust Agreement, and

- (l) take or refrain from taking any and all actions the Litigation Trustee reasonably deems necessary for the continuation, protection and maximization of the Litigation Trust Assets or to carry out the purposes of this Litigation Trust Agreement.

The Litigation Trustee shall be responsible for all decisions and duties with respect to the Litigation Trust and the Litigation Trust Assets. In all circumstances, the Litigation Trustee shall act in the best interests of the Litigation Trust Beneficiaries and in furtherance of the purpose of the Litigation Trust.

**5.2.1 Additional Powers.** Except as otherwise set forth in this Litigation Trust Agreement or in the Plan, and subject to the Treasury Regulations governing trusts and the retained jurisdiction of the Bankruptcy Court as provided for in the Plan, but without prior or further authorization, the Litigation Trustee may control and exercise authority over the Litigation Trust Assets and over the protection, conservation and disposition thereof. No Person dealing with the Litigation Trust shall be obligated to inquire into the authority of the Litigation Trustee in connection with the protection, conservation or disposition of the Litigation Trust Assets.

**5.2.2 Limitations on Litigation Trustee's Authority.** The Litigation Trustee shall not at any time, on behalf of the Litigation Trust Beneficiaries: (i) enter into or engage in any trade or business (except as provided herein or under the Plan), and no part of the Litigation Trust Assets or the proceeds, revenue, or income therefrom shall be used or disposed of by the Litigation Trust in furtherance of any trade or business (except as provided herein or under the Plan); (ii) engage in any investments or activities inconsistent with the treatment of the Litigation Trust as a liquidating trust within the meaning of Treasury Regulations Section 301.7701-4(d) within the guidance provided in IRS Revenue Procedure 94-45, provided that the Litigation Trustee may invest the Litigation Trust Assets consistent with any order of the Bankruptcy Court modifying such requirements. Furthermore, the Litigation Trustee shall be entitled to compromise any objections to Claims, Disputed Claims, or any controversies related to Causes of Action, including, without limitation, Avoidance Actions, where the amount in controversy is One Hundred Thousand Dollars (\$100,000) or less without further Bankruptcy Court approval. For disputes where the amount in controversy exceeds One Hundred Thousand Dollars (\$100,000), the Litigation Trustee shall file a "Notice of Settlement" in the Chapter 11 Cases on twenty-one (21) days' negative notice setting forth the material terms of the proposed settlement sought by the Litigation Trustee. The Notice of Settlement shall be served on the Litigation Trust Representatives and all parties required to be served under Local Rule 9013-1(d) of the Bankruptcy Court. If no party-in-interest with standing to object to the Notice of Settlement objects by timely filing an objection in the Chapter 11 Cases within the requisite twenty-one day period, then the Litigation Trustee may consummate and effect the settlement without further Bankruptcy Court approval. If a timely objection is filed, then the Bankruptcy Court shall hold a hearing on such objection, and the Litigation Trustee may only consummate and effect the settlement after the entry of a Final Order by the Bankruptcy Court approving the Notice of Settlement and the proposed settlement set forth therein.

**5.3 Commingling of Litigation Trust Assets.** The Litigation Trustee shall not commingle any of the Litigation Trust Assets with its own property or the property of any other Person.

**5.4 Employment and Compensation of Professionals.** The Litigation Trustee shall have the authority to employ and compensate attorneys, accountants, investment advisors and other professionals, including a registrar and a disbursing agent to make distributions (collectively, the "Litigation Trustee Professionals"). The Litigation Trustee may pay the reasonable fees and expenses of such professionals as a contingency fee or a Litigation Trust Operating Expense as applicable without application to the Bankruptcy Court. The Litigation Trustee will provide copies of any invoices or billing summaries relating to professional fees incurred by the Litigation Trust to any Litigation Trust Representative upon its request.

**5.5 Action Under Instructions.** If in performing the Litigation Trustee's duties under this Litigation Trust Agreement, the Litigation Trustee is required to decide between alternative courses of action, or the Litigation Trustee is unsure of the application of any provision of this Litigation Trust Agreement or the Plan, then the Litigation Trustee may apply to the Bankruptcy Court for a determination as to the course of action to be taken by the Litigation Trustee and may comply with any action approved by the Bankruptcy Court.

## **ARTICLE 6**

### **OBLIGATIONS OF THE LITIGATION TRUSTEE**

**6.1 Reports and Records.** The Litigation Trustee shall maintain records and books of account relating to the Litigation Trust Assets, the management thereof and all transactions undertaken by the Litigation Trustee, which records and books of account shall be maintained in accordance with generally accepted accounting principles consistently applied, except to the extent that any change is approved by the Litigation Trust's independent public accountants. The Litigation Trustee shall also maintain records and books of account relating to all distributions contemplated under the Plan. In addition, on January 15 and July 15 of each year, the Litigation Trustee shall provide a written report to the Litigation Trust Representatives summarizing the transactions undertaken by the Litigation Trustee in the preceding six-month period, including all payments received, and distributions made, by the Litigation Trust. Upon distribution of the entire Litigation Trust Assets and after termination of the Litigation Trust, the Litigation Trustee shall retain for a period of two (2) years the books of account, beneficiary lists and certificates, and other material documents and files which shall have been delivered to or created by the Litigation Trustee.

**6.2 Eligible Investments.** Cash held pending distribution, including Litigation Trust Administrative Cash, shall, to the extent permitted by applicable law, and within the guidance provided in IRS Revenue Procedure 94-45, be invested by the Litigation Trustee in (1) direct obligations of, or obligations guaranteed by, or obligations secured by, the United States of America (including without limitation United States Treasury Bills); (2) obligations of any agency or corporation that is or may hereafter be created by or pursuant to an Act of the Congress of the United States as an agency or instrumentality thereof, or (3) demand deposits or short-term certificates of deposit at any bank or trust company that has, at the time of the acquisition by the Litigation Trustee of such investments, capital stock and surplus aggregating at least \$100 million and whose short-term debt obligations are rated by at least two nationally recognized statistical rating organizations in one of the two highest categories therefor; provided, however, that the scope of any such permissible investments shall be limited to include only those investments, or shall be expanded to include any additional investments, as the case may be, that a liquidating trust, within the meaning of Treasury Regulation Section 301.7701-4(d), may be permitted to hold, pursuant to any amendment or addition to the Internal Revenue Code of 1986, as amended (the "Code") or to the Treasury Regulations, or any modification in IRS guidelines whether set forth in IRS rulings, other IRS pronouncements, or otherwise. Such investments shall mature in such amounts and at such times as, in the judgment of the Litigation Trustee at the times such investments are made, are necessary, or are desirable with a view to providing funds when needed to make payments from the Litigation Trust Assets. Any investment purchased with the Litigation Trust Assets shall be deemed a part of the Litigation Trust Assets. All interest, distributions, dividends and proceeds received by the Litigation Trustee in respect of such investments shall be a part of the Litigation Trust Assets.

**6.3 Access to Information by Litigation Trust Beneficiaries.** Each Litigation Trust Beneficiary shall have access to the business records of the Litigation Trust for the purpose of obtaining information relating to the management of Litigation Trust Assets for any purpose reasonably related to the interests generally of the Litigation Trust Beneficiaries, so long as access is reasonably exercised during normal business hours (after at least five business days' notice to the Litigation Trustee), does not

constitute an undue burden on the Litigation Trustee, and is not detrimental to the Litigation Trust. Nothing herein contained is intended to restrict any Litigation Trust Beneficiary from access to the business records of the Litigation Trustee, which the Litigation Trustee, in its discretion elects to provide; however, the Litigation Trustee shall have the right to restrict the dissemination of any information provided to a Litigation Trust Beneficiary as may be necessary to protect the interests of the Litigation Trust.

**6.4 United States Trustee Fees and Reports.** After the Effective Date and until the Chapter 11 Cases are closed, all fees incurred under 28 U.S.C. § 1930(a)(6) by reason of disbursements made by the Litigation Trust shall be paid by the Litigation Trustee as a Litigation Trust Operating Expense. Likewise, all fees incurred under 28 U.S.C. § 1930(a)(6) by reason of disbursements made by the Reorganized Debtors shall be paid by the Reorganized Debtors. To the extent that such United States Trustee fees are based on disbursements made by both the Litigation Trust and the Reorganized Debtors, then the Litigation Trust and the Reorganized Debtors shall pay a Pro Rata Share of such fees based on their respective proportion of the disbursements made. After the Confirmation Date, the Litigation Trustee shall prepare, file, and serve on the Office of the United States Trustee such quarterly disbursement reports for the Litigation Trust as required by the Office of the United States Trustee for as long as the Chapter 11 Cases remain open.

## **ARTICLE 7** **BENEFICIAL INTERESTS**

**7.1 Allocation of Beneficial Interests in the Litigation Trust.** As of the Effective Date: (i) the DIP Lenders shall be allocated the DIP Lenders Beneficial Trust Interest as provided in section 2.4 of the Plan, (ii) Brent Mulliniks and Billy Cox, Jr., respectively, shall be allocated the priority beneficial interest in the Litigation Trust in accordance with their respective Allowed Mulliniks/Cox Priority Claims, as provided in Section 4.3 of the Plan, and (iii) each holder of an Allowed General Unsecured Claim shall receive its Pro Rata Share of the Unsecured Creditor Beneficial Trust Interest, as provided in Section 4.5 of the Plan.

**7.2 Allocation of a Pro Rata Share of the Unsecured Creditors Beneficial Trust Interest to Holders of Disputed Claims.** The allocation of a Pro Rata Share of the Unsecured Creditors Beneficial Interest on account of a Disputed General Unsecured Claim pursuant to Section 7.1 may be reserved by the Litigation Trustee. Any General Unsecured Claim filed, in whole or in part, in an unknown or undetermined amount may be estimated by the Litigation Trustee, subject to approval by the Bankruptcy Court, and such Claim as estimated shall be deemed a Disputed Claim until otherwise Allowed. For the avoidance of any doubt, any reserve for a Disputed General Unsecured Claim shall be made solely with regard to the distribution of the forty-five percent (45%) of the Distributable Trust Cash allocated to the Unsecured Creditors Beneficial Trust Interest and shall not affect the rights of the DIP Lenders Beneficial Trust Interest to receive distribution of fifty-five percent (55%) of the Distributable Trust Cash.

**7.2.1 Recalculation of Pro Rata Share of the Unsecured Creditors Beneficial Interest.** To the extent all or a portion of a Disputed General Unsecured Claim is ultimately disallowed, the Litigation Trust shall recalculate the Pro Rata Share of the Unsecured Creditors Beneficial Interest allocated to the holders of Allowed General Unsecured Claims by accounting for the portion of the Disputed General Unsecured Claim that was disallowed. To the extent all or a portion of a Disputed General Unsecured Claim ultimately becomes an Allowed Claim, the portion of the Pro Rata Share that relates to the Disputed Claim that was Allowed, shall be removed from the reserve.

**7.3 Representation of Beneficial Interests.** The respective beneficial interests in the Litigation Trust shall be uncertificated.

**7.3.1 Absolute Owners.** The Litigation Trustee may deem and treat the Litigation Trust Beneficiaries of record as determined pursuant to Section 7.1 of this Litigation Trust Agreement as the absolute owners of such beneficial interests for the purpose of receiving distributions and payment thereon or on account thereof and for all other purposes whatsoever.

**7.3.2 References to Litigation Trust Beneficiaries.** Any reference herein to a Litigation Trust Beneficiary or to the holder of a beneficial interest in the Litigation Trust means the (i) the DIP Lenders to the extent provided in Section 2.4 of the Plan, (ii) the holders of the Allowed Mulliniks/Cox Priority Claims to the extent provided in Section 4.3 of the Plan, and (iii) the holders of Allowed General Unsecured Claims to the extent provided in Section 4.5 of the Plan, whether individually or as agent on behalf of other entities.

**7.4 Beneficial Interests Non-Transferable.** Beneficial interests shall not be transferred other than by operation of law.

## **ARTICLE 8**

### **ADMINISTRATION OF THE TRUST ESTATE**

**8.1 The Initial Litigation Trust Administrative Cash.** On or after the Effective Date, the DIP Lenders shall advance and transfer the sum of \$100,000, which shall constitute the Initial Litigation Trust Administrative Cash, to the Litigation Trust for use by the Litigation Trustee as provided in the Plan and this Litigation Trust Agreement. Thereafter, the Litigation Trustee may, at its discretion, request in writing advances of additional amounts from the DIP Lenders, which shall also constitute Initial Litigation Trust Administrative Cash. Such advances shall be requested in increments of \$20,000 or more, but only up to the maximum total of \$500,000 (inclusive of the \$100,000 transferred on the Effective Date). The Litigation Trustee's request for funding shall be made on five (5) business day notice to the DIP Lenders and shall contain an explanation for the proposed use of the requested advance (for example, retaining a professional, paying expenses in connection with pending or upcoming litigation) and be consistent with the Litigation Trust's purpose and the terms of the Plan and this Litigation Trust Agreement. The Litigation Trustee shall provide the DIP Lenders with any information they may reasonably request in connection with a request for an advance under this paragraph. The DIP Lenders may, at their discretion (which may not be unreasonably withheld) (a) refuse to advance the additional Initial Litigation Trust Administrative Cash if the DIP Lenders conclude that such advance is not necessary or prudent, or (b) upon satisfaction or waiver of the conditions as stated herein, advance the additional Initial Litigation Trust Administrative Cash as requested. Under no circumstances shall the total amount of the Initial Litigation Trust Administrative Cash advanced by the DIP Lenders exceed the maximum amount of \$500,000.

**8.2 Establishment of Litigation Trust Account and Disputed Claims Reserve.** On the Effective Date of the Plan, the Litigation Trustee shall establish an account (the "Litigation Trust Account") for the deposit of the proceeds from the liquidation of Litigation Trust Assets (other than the Litigation Trust Administrative Cash, which shall be paid into the Litigation Trust Operating Account), and Distributable Cash. In addition, the Litigation Trustee shall, in consultation with the Litigation Trust Representatives, also establish the Disputed Claims Reserve consisting of that portion of the Litigation Trust Assets reserved by the Litigation Trustee for Disputed General Unsecured Claims.

**8.3 Establishment of Litigation Trust Operating Account.** Upon the Effective Date of the Plan, the Litigation Trustee shall establish an account (the "Litigation Trust Operating Account") using

the Initial Litigation Trust Administrative Cash, for the payment of the following: (1) the unpaid liabilities, debts or obligations of the Litigation Trust; (2) the expenses of the Litigation Trustee incurred in the administration of the Litigation Trust, and any Litigation Trustee Fee payable from the Litigation Trust Operating Account; (3) all fees and expenses of professionals retained by the Litigation Trust (other than a contingency fee); (4) any and all costs associated with analyzing, prosecuting and/or settling objections to Claims; and (5) any and all other costs associated with the liquidation or preservation of the Litigation Trust Assets (collectively, the “Litigation Trust Operating Expenses”). Litigation Trust Operating Expenses shall be paid solely from the Litigation Trust Administrative Cash.

**8.4 Payment of Litigation Trustee Fee.** Upon the collection and liquidation into Cash of Litigation Trust Assets, any Litigation Trustee Fee determined to arise from the disbursement (or expected disbursement) of the Litigation Trust Assets shall be reserved from such Cash as necessary and constitute a Litigation Trust Operating Expense. Any Litigation Trustee Fee reserved from such Cash shall be paid when distributions are made to Litigation Trust Beneficiaries.

**8.5 Repayment of the Post-Petition Obligations and Initial Litigation Trust Administrative Cash.** From and after the Effective Date, the Litigation Trustee shall distribute all proceeds of the Causes of Action (net of the Litigation Trust Administrative Cash) to repay the Postpetition Obligations and the Initial Litigation Trust Administrative Cash in full in accordance with the Waterfall and as provided in Sections 2.4, 4.3, 4.4 and 4.5 of the Plan. As provided in Sections 2.4 and 4.5 of the Plan and in accordance with the Waterfall, the Litigation Trustee shall make no distributions on account of the DIP Lenders Beneficial Trust Interest or the Unsecured Creditor Beneficial Trust Interest until after the Postpetition Obligations and the Initial Litigation Trust Administrative Cash have been repaid in full.

**8.6 Distributions to Litigation Trust Beneficiaries.**

**8.6.1 Distributions to Brent Mulliniks and Billy Cox, Jr. on Account of Their Priority Beneficial Interests.** Distributions to Brent Mulliniks and Billy Cox, Jr. on account of their priority beneficial interests in the Litigation Trust shall be made according to the provisions of the Mediated Settlement Agreement and Section 4.3 of the Plan. The Litigation Trustee will reserve in the Litigation Trust Account the first \$150,000 of proceeds of the Causes of Action received by the Litigation Trust after the Postpetition Obligations and Initial Litigation Trust Administrative Cash are paid to the DIP Lenders (in accordance with the Waterfall). Immediately after the final resolution (whether by way of settlement or entry of a final and non-appealable judgment) of all the Causes of Action asserted by the Litigation Trust against Billy Cox, Jr. and Brent Mulliniks, the Litigation Trustee will distribute to Mr. Cox and Mr. Mulliniks the \$150,000 reserved by the Litigation Trustee for distribution on account of their priority beneficial interests in the Litigation Trust in accordance with their respective Mulliniks/Cox Priority Claims, minus the amount of any final and non-appealable judgment obtained by the Litigation Trust against Mr. Cox and Mr. Mulliniks, respectively, for which there are inadequate or no insurance proceeds available to pay such a judgment. The right of Mr. Cox and Mr. Mulliniks to a distribution on account of their priority beneficial interests in the Litigation Trust is senior to the right of any other holder (but subject to the payment of all Postpetition Obligations and the Initial Litigation Trust Administrative Cash in an amount up to \$500,000 as described in the Waterfall) of a beneficial interest in the Litigation Trust to receive distributions from the Litigation Trust in accordance with the Waterfall and is subject only to the offset for judgment(s) obtained against Mr. Cox and Mr. Mulliniks and settlement payments as described in Section 4.3 of the Plan.

**8.6.2 Distributions on Account of the DIP Lenders Beneficial Interest.** Upon the Litigation Trustee’s determination that sufficient Distributable Trust Cash exists to make a distribution to the holders of the DIP Lenders Beneficial Trust Interest and the Unsecured Creditors Beneficial Trust

Interest, the Litigation Trustee, in accordance with the Waterfall and Sections 2.4 and 4.5 of the Plan, shall as soon as reasonably practicable after making such determination distribute to the DIP Lenders their fifty-five percent (55%) share of such Distributable Trust Cash based upon their DIP Lenders Beneficial Trust Interest. Such distribution(s) shall continue until the earlier of: (i) the DIP Lender Claims are paid in full (including by reduction of such DIP Lender Claims by other recoveries as provided in Section 2.4(c) of the Plan) or (ii) all Cash proceeds from the Litigation Trust Assets allocable to the DIP Lenders Beneficial Trust Interest have been distributed. For the avoidance of doubt, no amount shall be reserved or withheld from any distribution of Distributable Trust Cash to which the holders of the DIP Lenders Beneficial Trust Interest are entitled.

**8.6.3 Distributions to Holders of Allowed Class 4 General Unsecured Claims.** (i) On the first business day that is at least sixty (60) days after the Effective Date, or as soon as reasonably practicable thereafter, the Litigation Trustee shall distribute to the holders of Allowed General Unsecured Claims their Pro Rata Share of five percent (5%) of the New HIIT Common Stock, in accordance with Section 4.5 of the Plan (ii) Upon the Litigation Trustee's determination that sufficient Distributable Trust Cash exists to make a distribution to the holders of the DIP Lenders Beneficial Trust Interest and the Unsecured Creditors Beneficial Trust Interest, the Litigation Trustee, in accordance with the Waterfall and Sections 2.4 and 4.5 of the Plan, shall as soon as reasonably practicable after making such determination distribute to each holder of an Allowed Class 4 General Unsecured Claim its share of such Distributable Trust Cash based upon its respective Pro Rata Share of the Unsecured Creditors Beneficial Trust Interest, with such Unsecured Creditors Beneficial Trust Interest entitled to a forty-five percent (45%) share of such Distributable Trust Cash. Such distribution(s) shall continue until the earlier of: (i) such holder's Class 4 General Unsecured Claim is paid in full or (ii) all Cash proceeds from the Litigation Trust Assets allocable to the Unsecured Creditors Beneficial Trust Interest have been distributed.

**8.6.4 Distributions to Holders of Disputed General Unsecured Claims.** No distributions shall be made to holders of Disputed General Unsecured Claims, and the Litigation Trustee shall reserve the portion of the Litigation Trust Assets attributable to such Disputed General Unsecured Claims in the Disputed Claims Reserve (a "Reserved Claim"), as provided in Section 8.2 of this Litigation Trust Agreement. To the extent that all or a portion of such Reserved Claim is Allowed, any Distributable Trust Cash relating to such holder's Pro Rata Share of the Unsecured Creditors Beneficial Trust Interest shall be released and distributed to such holder on the next distribution date in accordance with the Plan and this Litigation Trust Agreement. To the extent that all or a portion of such Reserved Claim is disallowed and the Pro Rata Shares of the Unsecured Creditors Beneficial Interest are reallocated among the remaining holders of the Unsecured Creditors Beneficial Trust Interest, then any Distributable Trust Cash relating to such disallowed Reserved Claim shall be released and distributed on the next distribution date to the remaining holders of Pro Rata Shares in the Unsecured Creditors Beneficial Trust Interest.

**8.6.5 Right to Setoff.** The Litigation Trustee may (but shall not be required to), pursuant to Bankruptcy Code sections 553 and 558 or applicable non-bankruptcy law, setoff against or recoup from any distribution to a beneficiary to be made under the Plan or this Litigation Trust Agreement any claims or causes of action of any nature whatsoever the Litigation Trustee may have against such beneficiary; provided, however, that neither the failure to effect such offset or recoupment nor the allowance of any Claim shall constitute a waiver or release by the Litigation Trustee of any setoff or recoupment the Litigation Trustee may have against such beneficiary, nor of any other claim or cause of action.

**8.7 Place and Manner of Payments or Distributions.** The Litigation Trustee shall make distributions to the Litigation Trust Beneficiaries of record as of the Distribution Record Date by mailing such distribution to such beneficiary at the address of such beneficiary as listed in the Schedules of Assets

and Liabilities, or any proof of claim filed by the beneficiary, or at such other address as such beneficiary shall have specified for payment purposes in a written notice to the Litigation Trustee at least twenty (20) days before such Distribution Record Date. The Litigation Trustee shall distribute any Distributable Trust Cash by wire, check, or such other method as the Litigation Trustee deems appropriate under the circumstances. Prior to receiving any distributions, all Litigation Trust Beneficiaries, at the Litigation Trustee's request, must provide to the Litigation Trustee written notification of their respective Federal Tax Identification Numbers or Social Security Numbers, and to provide such other tax information and forms as the Litigation Trustee may request. Upon receiving such information and forms from a Litigation Trust Beneficiary, the Litigation Trustee shall make such distributions to such beneficiary to which such beneficiary is then entitled, without interest.

**8.8 Fractional Dollars.** Notwithstanding any other provisions of this Litigation Trust Agreement to the contrary, no payment of fractional cents will be made under this Litigation Trust Agreement. Cash will be issued to Litigation Trust Beneficiaries entitled to receive a distribution of Cash in whole cents (rounded to the nearest whole cent when and as necessary).

**8.9 Unclaimed or Undeliverable Distributions.** In the event (1) a beneficiary or other claimant entitled to payments from the Litigation Trust under the Plan fails to provide to the Litigation Trustee its Federal Tax Identification Number or Social Security Number within forty-five (45) days after the date of the Litigation Trustee's written request, (2) a check issued to a beneficiary or claimant remains uncashed for sixty (60) days after its issuance date, or (3) a distribution or other payment is returned as undeliverable, then the distribution or payment and any related Claim or obligation shall be deemed waived, such beneficiary or claimant shall no longer be entitled to receive distributions or payments, and such unclaimed or undeliverable distribution or payment shall be distributed on the next distribution date to the Litigation Trust Beneficiaries in accordance with the Plan and this Litigation Trust Agreement. Without further Bankruptcy Court order, unclaimed funds in an amount of \$500 or less payable to a holder of an Allowed Class 4 General Unsecured Claim on account of its Pro Rata Share of the Unsecured Creditors Beneficial Trust Interest and held by the Litigation Trust at the time the Litigation Trust is to be terminated may be donated to a charity selected by the Litigation Trustee.

**8.10 Tax Matters.**

**8.10.1 Certain Tax Matters.** The Litigation Trust is established for the purpose of satisfying claims by liquidating the Litigation Trust Assets transferred to it, and the Litigation Trust shall have no objective of continuing or engaging in any trade or business except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Litigation Trust. The purpose of the Litigation Trust is to provide a mechanism for the liquidation of the Litigation Trust Assets and to distribute the proceeds of the liquidation, net of all claims, expenses, charges, liabilities, and obligations of the Litigation Trust, to the Litigation Trust Beneficiaries in accordance with the terms of the Plan. No business activities will be conducted by the Litigation Trust other than those associated with or related to the liquidation of the Litigation Trust Assets. It is intended that the Litigation Trust be classified for federal income tax purposes as a "liquidating trust" within the meaning of section 301.7701-4(d) of the Treasury Regulations. The Litigation Trustee shall be responsible for filing all federal, state and local tax returns for the Litigation Trust. The Litigation Trustee shall file all federal income tax returns for the Litigation Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4 unless otherwise required by applicable law. The Litigation Trustee also will annually send to each beneficiary a separate statement regarding the receipts and expenditures of the Litigation Trust as relevant for U.S. federal income tax purposes and will instruct all such beneficiaries to use such information in preparing their U.S. federal income tax returns or to forward the appropriate information to such beneficiaries or underlying beneficiaries with instructions to utilize such information in preparing their U.S. federal income tax returns. The Litigation Trustee shall also file (or cause to be filed) any other statement, return, or a

disclosure relating to the Litigation Trust that is required by any governmental entity. The Litigation Trust Assets (other than any assets allocated to the Disputed Claims Reserve) are treated, for U.S. federal income tax purposes, as having been transferred (subject to any obligations relating to those assets) directly to the Litigation Trust Beneficiaries in full or partial satisfaction of their Claims (with each holder receiving an undivided interest in such assets in accordance with their economic interest in such assets), followed by the transfer thereof by the holders to the Litigation Trust in exchange for their respective beneficial interests in the Litigation Trust. Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including receipt by the Litigation Trustee of a private letter ruling if the Litigation Trustee so requests one, or an adverse determination by the IRS upon audit if not contested by the Litigation Trustee), the Litigation Trustee shall (a) timely elect to treat the Disputed Claims Reserve as a “disputed ownership fund” governed by Treasury Regulation Section 1.468B-9, and (b) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes. All parties (including the Litigation Trustee, the Debtors and the beneficiaries) shall report for United States federal, state and local income tax purposes consistently with the foregoing. Interests in the Litigation Trust shall be non-transferable and any such transfer shall be disregarded by the Litigation Trustee except with respect to a transfer by will or under the laws of descent and distribution; provided however that such transfer shall not be effective unless and until the Litigation Trustee receives written notice of such transfer. The Litigation Trustee shall be further authorized to (i) administer and pay any domestic or foreign taxes imposed on the Litigation Trust or its assets (including the Disputed Claims Reserve) and (ii) file domestic and foreign tax returns for the Litigation Trust and the Disputed Claims Reserve. In the event, and to the extent, any Cash retained on account of Disputed Claims in the Disputed Claims Reserve is insufficient to pay the portion of any taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims, such taxes shall be (a) reimbursed from any subsequent Cash amounts retained on account of Disputed Claims, or (b) to the extent such Disputed Claims have been subsequently resolved, deducted from any amounts otherwise distributable by the Litigation Trustee as a result of the resolution of such Disputed Claims.

#### **8.10.2 Litigation Trust Assets Treated as Owned by Litigation Trust Beneficiaries.**

For all United States federal income tax purposes, all parties (including, without limitation, the Debtors, the Reorganized Debtors, the Litigation Trustee, and the Litigation Trust Beneficiaries) shall treat the transfer of the Litigation Trust Assets to the Litigation Trust as (1) a transfer of the Litigation Trust Assets (subject to any obligations relating to those assets) directly to the Litigation Trust Beneficiaries and, to the extent Litigation Trust Assets are allocable to Disputed Claims, to the Disputed Claims Reserve) in exchange for an interest in the Litigation Trust. Accordingly, the Litigation Trust Beneficiaries shall be treated for United States federal tax purposes as the grantors and owners of their respective shares of the Litigation Trust Assets (other than such Litigation Trust Assets as are allocable to the Disputed Claims Reserve, discussed below). The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

**8.10.3 Consistent Valuation of Litigation Trust Assets for Tax Purposes.** As soon as possible after the Effective Date, the Litigation Trustee shall apprise the Litigation Trust Beneficiaries in writing of a good-faith valuation of the Litigation Trust Assets (and indicate in such writing of its good faith valuation of the Litigation Trust Assets, such holders’ percentage ownership interest in the Litigation Trust based on such holders’ beneficial interest in the Litigation Trust as of the Effective Date in accordance with the Waterfall). The valuation shall be used consistently by all parties (including, without limitation, the Reorganized Debtors, the Litigation Trustee, the Litigation Trust Beneficiaries and any disbursing agent) for all purposes, including federal income tax purposes.

**8.10.4 Employment Taxes.** The Litigation Trustee may withhold from the amount distributable from the Litigation Trust at any time to any Person (except with respect to the Internal Revenue Service) such sum or sums as may be sufficient to pay any tax or taxes or other charge or

charges that have been or may be imposed on such Person or upon the Litigation Trust with respect to the amount distributable or to be distributed under the income tax laws of the United States or of any state or political subdivision or entity by reason of any distribution provided for in this Article 8, whenever such withholding is determined by the Litigation Trustee in its discretion to be required by any law, regulation, rule, ruling, directive or other governmental requirement, and the Litigation Trustee, in the exercise of its discretion and judgment, may enter into agreements with taxing or other authorities for the payment of such amounts as may be withheld in accordance with the provisions of this Section 8.10.3. Notwithstanding the foregoing but without prejudice to the Litigation Trustee's rights hereunder, such Person shall have the right with respect to the United States, or any state, or any political subdivision of either, to contest the imposition of any tax or other charge by reason of any Distribution hereunder.

**8.10.5 Tax Withholdings by Litigation Trustee.** The Litigation Trustee may withhold and pay to the appropriate taxing authority all amounts required to be withheld pursuant to the United States Internal Revenue Code or any provision of any foreign, state or local tax law with respect to any payment or distribution to the Litigation Trust Beneficiaries. All such amounts withheld and paid to be appropriate taxing authority shall be treated as amounts distributed to such Litigation Trust Beneficiaries for all purposes of this Agreement, the Plan, and the Confirmation Order. The Litigation Trustee shall be authorized to collect such tax information from the Litigation Trust Beneficiaries (including, without limitation, social security numbers or other tax identification numbers) as in its sole discretion the Litigation Trustee deems necessary to effectuate the Plan, the Confirmation Order, and this Litigation Trust Agreement. In order to receive distributions under the Plan, all Litigation Trust Beneficiaries will need to identify themselves to the Litigation Trustee and provide tax information and the specifics of their beneficial interests, to the extent the Litigation Trustee deems appropriate. The Litigation Trustee may refuse to make a distribution to any Litigation Trust Beneficiary that fails to furnish such information in a timely fashion, until such information is delivered; provided, however, that, upon the delivery of such information by the Litigation Trust Beneficiary, the Litigation Trustee shall make such distribution to which the Litigation Trust Beneficiary is entitled; and, provided further that, if the Litigation Trustee fails to withhold in respect of amounts received or distributable with respect to any such Litigation Trust Beneficiary and the Litigation Trustee is later held liable for the amount of such withholding, such Litigation Trust Beneficiary shall reimburse the Litigation Trustee for such liability.

**8.10.6 Tax Reporting.** To the extent that any Litigation Trust Beneficiary may be able to use the installment method of reporting income with respect to a distribution, the Litigation Trustee will annually compile and disseminate to Litigation Trust Beneficiaries who request such information all available tax return information with respect to interest (stated or unstated) and otherwise necessary or useful in reporting under the installment method.

**8.10.7 Interest.** In the Litigation Trustee's discretion, interest received with respect to principal distributed pursuant to this Litigation Trust Agreement shall be distributed along with the underlying principal.

**8.10.8 Allocation of Income and Losses.** Allocations among Litigation Trust Beneficiaries of taxable income of the Litigation Trust for each of its tax years shall be determined by reference to the manner in which an amount of Cash in the Litigation Trust equal to the amount of such taxable income of the Litigation Trust would be distributed (without regard to any restrictions on Distributions described in the Plan) if, immediately before such deemed distribution, the Litigation Trust had distributed all its other assets (valued for this purpose at their tax book value) to the Litigation Trust Beneficiaries, taking into account all prior and concurrent distributions from the Litigation Trust made in accordance with the Plan. Similarly, taxable loss generally will be allocated by reference to the manner in which an economic loss would be borne immediately after a hypothetical liquidating distribution of the remaining Litigation Trust Assets. The tax book value of the Litigation Trust Assets for purposes of this

Litigation Trust Agreement means their fair-market value on the Effective Date or, if later, the date on which such assets were acquired by the Litigation Trust, adjusted in either case in accordance with applicable tax accounting principles prescribed by the Code, the applicable Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements.

## **ARTICLE 9** **TERMINATION**

The Litigation Trust shall terminate upon the earlier of (1) the date which is five (5) years after the date this Litigation Trust is created, (2) payment of all Claims in accordance with the Plan, or (3) the distribution of all Litigation Trust Assets. Notwithstanding the foregoing, subject to the Bankruptcy Court's approval, the Litigation Trustee may extend the term of the Litigation Trust for one or more finite terms based upon the particular facts and circumstances at that time, if it is in the best interest of the Litigation Trust Beneficiaries and an extension is necessary to the liquidating purpose of the Litigation Trust. Litigation Trust Assets to be distributed in kind shall be valued by the Litigation Trustee in its reasonable discretion at their tax book value. After all liabilities of the Litigation Trust have been satisfied or duly provided for, such remaining Litigation Trust Assets shall be distributed to Litigation Trust Beneficiaries as a final Distribution. The Litigation Trust may not be terminated at any time by the Litigation Trust Beneficiaries.

## **ARTICLE 10** **MISCELLANEOUS**

**10.1 Notices.** Any notice required to be given by this Litigation Trust Agreement to all Litigation Trust Beneficiaries shall be in writing and shall be sent by first class mail, or in the case of mailing to a non-United States address, air mail, postage prepaid. All other notices, requests or other communications required or permitted to be made in accordance with this Litigation Trust Agreement shall be in writing and shall be delivered by U.S. certified mail, return receipt requested, to:

(a) If to the Litigation Trustee:

Elizabeth M. Guffy, Esq.  
Locke Lord LLP  
600 Travis Street, Ste. 2800  
Houston, Texas 77002

(b) if to any Litigation Trust Beneficiary in such beneficiary's capacity as a beneficiary, at such beneficiary's address as listed in the beneficiary's proof of claim, the Debtors' schedules, or as identified in a written request for notice delivered to the Litigation Trustee.

Notice mailed shall be effective on the date mailed. All other notices shall be effective on the date of delivery. Any Person may change the address at which it is to receive notices under this Litigation Trust Agreement by furnishing written notice pursuant to the provisions of this Section 10.1 to the entity to be charged with knowledge of such change.

**10.2 Amendment.** Material amendments to this Litigation Trust Agreement require Bankruptcy Court approval. This Litigation Trust Agreement may be amended by the Litigation Trustee without Bankruptcy Court approval to correct typographical errors or if such amendment is not material and does not adversely affect the interests of any beneficiary.

**10.3 Counterparts.** This Litigation Trust Agreement may be executed in one or more Counterparts, all of which shall be taken together to constitute one and the same instrument.

**10.4 Governing Law; Severability.** This Litigation Trust Agreement shall be governed by construed under and interpreted in accordance with the laws of the State of Texas. If a court of competent jurisdiction determines that any provision of this Litigation Trust Agreement is invalid or unenforceable under such applicable law, such invalidity or unenforceability shall not invalidate the entire Litigation Trust Agreement. In that case, this Litigation Trust Agreement shall be construed so as to limit any term or provision so as to make it enforceable or valid within the requirements of applicable law, and, if such term or provision cannot be so limited, this Litigation Trust Agreement shall be construed to omit such invalid or unenforceable provisions, provided that such construction, to the maximum extent possible, shall give effect to the purposes of the Plan.

**10.5 Headings.** Sections, subheadings and other headings used in this Litigation Trust Agreement are for convenience only and shall not affect the construction of this Litigation Trust Agreement.

**10.6 Relationship to Plan.** The Litigation Trustee shall have full power and authority to take any action consistent with the purpose and provisions of the Plan and shall be bound by the terms of the Plan. In the event of a conflict between the Plan (excluding this Litigation Trust Agreement) and this Litigation Trust Agreement, the Plan shall govern.

**10.7 Consent to Jurisdiction.** Each of the parties hereto (and each beneficiary by virtue of the benefits provided pursuant to the Plan and the Litigation Trust created hereunder) consents and submits to the jurisdiction of and venue in the United States Bankruptcy Court for the Southern District of Texas, Victoria Division, for all purposes of this Litigation Trust Agreement, including, without limitation, any action or proceeding instituted for the enforcement of any right, remedy, obligation, or liability arising under or by reason hereof.

**10.8 No Suits by Claimholders.** No holder of a Claim shall have any right by virtue of any provision of this Litigation Trust Agreement to institute any action or proceeding in law or in equity against any party other than the Litigation Trustee on or under or with respect to the Litigation Trust Assets.

**10.9 Irrevocability.** The Litigation Trust is irrevocable, but is subject to amendment as provided for herein.

**10.10 Enforcement and Administration.** The Bankruptcy Court shall enforce and administer the provisions of this Litigation Trust Agreement, as set forth in the Plan and herein.

**10.11 No Association, Partnership or Joint Venture.** This Litigation Trust Agreement is not intended to create and shall not be interpreted as creating an association, partnership or joint venture of any kind.

**10.12 Confidentiality.** The Litigation Trustee shall, during the period that it serves in such capacity under this Litigation Trust Agreement and following either the termination of the Litigation Trust or such Litigation Trustee's removal, incapacity, or resignation hereunder, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any entity to which any of the Litigation Trust Assets relates or of which it has become aware in its capacity as the Litigation Trustee.

*Signatures on Next Page*

IN WITNESS WHEREOF, the parties hereto have executed this Litigation Trust Agreement or have caused this Litigation Trust Agreement to be duly executed by duly authorized officers as of the day and year first above written.

**LITIGATION TRUSTEE**

By: \_\_\_\_\_

Print: \_\_\_\_\_

Title: Litigation Trustee

**APACHE ENERGY SERVICES, LLC**

By: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

**AQUA HANDLING OF TEXAS, LLC**

By: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

**HII TECHNOLOGIES, INC.**

By: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

**SAGE POWER SOLUTIONS, INC.**

By: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

**HAMILTON INVESTMENT GROUP, INC.**

By: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

**HEARTLAND BANK**

By: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

**MCLARTY CAPITAL PARTNERS SBIC, L.P.**

By: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_