

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	
	)	CHAPTER 11
REICHHOLD HOLDINGS US, INC., et al.,	)	
	)	
Debtors	)	CASE NO. 14-12237-MFW
	)	Jointly Administered
_____	)	

**STIPULATION AND SETTLEMENT AGREEMENT ESTABLISHING AN ENVIRONMENTAL RESPONSE TRUST FOR THE GULFPORT, MISSISSIPPI FACILITY**

WHEREAS, Reichhold Holdings US, Inc. and its affiliated debtors<sup>1</sup> (collectively, the “Debtors”) filed with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court” or “Court”) voluntary petitions for relief under Title 11 of the United States Code (the “Bankruptcy Code”) on September 30, 2014 (the “Petition Date”), which have been consolidated for procedural purposes and are being jointly administered as *In re: Reichhold Holdings US, Inc.*, Case No. 14-12237 (the “Bankruptcy Cases”);

WHEREAS, the United States, on behalf of the United States Environmental Protection Agency (“EPA”), and the Mississippi Department of Environmental Quality (“MDEQ”) contend that Debtor Reichhold, Inc. (“Reichhold”) has compliance and work obligations under the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§ 6901 *et seq.*, and the Mississippi Solid Wastes Disposal Law of 1974 (“MSWDL”), Miss. Code Ann. §§ 17-17-1 *et seq.*, with respect to the Gulfport Facility (as defined herein);

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<sup>1</sup> The affiliated debtors are: Reichhold Liquidation, Inc. (f/k/a Reichhold, Inc.), Canadyne Corporation and Canadyne-Georgia Corporation.

WHEREAS, the Debtors dispute the extent of such obligations and whether such obligations would continue after confirmation of a plan of liquidation;

WHEREAS, on or about March 9, 2015, the United States, on behalf of EPA, filed a protective administrative expense claim (Claim No. 2772) with respect to the Gulfport Facility (the “EPA Admin Claim”);

WHEREAS, on or about March 9, 2015, MDEQ filed a protective administrative expense claim (Claim No. 2764) with respect to the Gulfport Facility (the “MDEQ Admin Claim”);

WHEREAS, on or about March 30, 2015, the United States, on behalf of EPA, and MDEQ filed proofs of claim (Claim Nos. 4807-4816) against Reichhold, Inc. (the “EPA/MDEQ Proofs of Claim”, and collectively with the EPA Admin Claim and the MDEQ Admin Claim, as they relate to the Gulfport Facility, the “Gulfport Claims”);

WHEREAS, the Debtors have been negotiating the possible sale of the Gulfport Adjoining Parcels (as defined herein). If a sale contract is signed, the Debtors will file an appropriate Motion with the Court seeking the approval of such a sale (the “Adjoining Parcels Sale Motion”). Any contract for sale of the Gulfport Adjoining Parcels shall provide that the sale shall close no later than the Gulfport Adjoining Parcels Closing Deadline (as defined herein);

WHEREAS, EPA, MDEQ, and Debtors wish to resolve their differences with respect to the EPA’s and MDEQ’s contentions with respect to the Gulfport Facility and the Gulfport Claims;

WHEREAS, this Settlement Agreement is not conditioned on confirmation of any particular plan of reorganization or liquidation or on the outcome of the Adjoining Parcels Sale Motion;

WHEREAS, this Settlement Agreement is in the public interest and is an appropriate means of resolving these matters,

NOW, THEREFORE, without the admission of liability or the adjudication of any issue of fact or law, and upon the consent and agreement of the parties to this Settlement Agreement by their attorneys, authorized officials and/or signatories, it is hereby agreed as follows:

## I. DEFINITIONS

Terms used in this Settlement Agreement that are defined in RCRA or other environmental laws or the regulations promulgated pursuant thereto, shall have the meaning assigned to them therein. Otherwise undefined terms used in this Settlement Agreement shall have the meanings set forth in this Section I.

***“Adjoining Parcels Sale Motion”*** shall have the meaning set forth above.

***“120 Day Budget”*** has the meaning set forth in Paragraph 20.

***“Debtors”*** shall mean Reichhold Holdings, US, Inc., and its affiliates listed in footnote 1, including Reichhold, Inc., and Liquidating Reichhold as successor to the Debtors under any plan of reorganization or liquidation.

***“Effective Date”*** has the meaning set forth in Paragraph 43.

***“Environmental Action(s)”*** means any and all environmental activities authorized or required under environmental law, or any and all environmental activities as approved by the Lead Agency, that occur after the Effective Date and that are related to the Gulfport Facility, including but not limited to response or remedial actions, removal actions, corrective action and closure or post-closure care (including but not limited to activities performed in accordance with RCRA Subtitle C, 42 U.S.C. §§ 6921-6939f), reclamation, investigations, studies, remediation, interim actions, final actions, emergency actions, water treatment, implementation of engineered

structures and controls, monitoring, repair and replacement of engineered structures, monitoring equipment and controls, operation and maintenance, implementation, operation and maintenance of institutional controls, coordination and integration of reuse and remedial efforts and initiatives, and, if required, long-term stewardship and perpetual custodial care activities. “Environmental Action” also includes the above environmental activities approved by the Lead Agency relating to the migration of hazardous waste, hazardous constituents, hazardous substances or pollutants or contaminants emanating from the Gulfport Facility. “Environmental Action” shall not include natural resource damage assessment or restoration activities.

**“Environmental Agencies”** means EPA and MDEQ and any successor departments or agencies.

**“Environmental Information”** means all environmental reports, audits, analyses, records, studies and other documents containing non-privileged information prepared by or otherwise in the possession, custody or control of Debtors or their technical consultants that are based on or otherwise reflect information related to environmental activities or conditions at the Gulfport Facility. For avoidance of doubt, Environmental Information shall include all technical and/or sampling data, but shall not include analysis of this data prepared in anticipation of litigation or otherwise subject to the attorney-client privilege.

**“Environmental Response Trust”** has the meaning set forth in the Environmental Trust Agreement.

**“Environmental Trust Account”** has the meaning set forth in the Environmental Trust Agreement.

**“Environmental Trust Agreement”** means the Environmental Trust Agreement that is to be executed in accordance with Paragraph 4 of this Settlement Agreement.

***“Environmental Trust Assets”*** has the meaning set forth in the Environmental Trust Agreement.

***“Environmental Trust Protected Parties”*** has the meaning set forth in the Environmental Trust Agreement.

***“Environmental Trustee”*** has the meaning set forth in the Environmental Trust Agreement.

***“Gulfport Adjoining Parcels”*** shall mean the real property and improvements owned by Reichhold, more particularly described as Lots 1, 2, and 3 in the legal description and survey attached as Exhibit A hereto, comprising approximately 16.6, 1.8, and 2.4 acres respectively.

***“Gulfport Adjoining Parcels Closing Deadline”*** shall mean February 11, 2016, which is the deadline for closing on the sale of the Gulfport Adjoining Parcels pursuant to Debtors’ Adjoining Parcels Sales Motion. For the avoidance of doubt, the parties agree that the Gulfport Adjoining Parcels Closing Deadline shall not be extended without the written consent of the Environmental Agencies and shall not be extended more than 30 days after the Effective Date.

***“Gulfport Facility”*** shall mean the real property and improvements comprising approximately 38.473 acres owned by Reichhold at 11015 Reichhold Road in Gulfport, Mississippi, and more particularly described as Lot 4 in the legal description and survey attached as Exhibit A hereto. For purposes of this Settlement Agreement and the Environmental Trust Agreement, the Gulfport Facility shall include releases of hazardous waste, hazardous constituents, hazardous substances or pollutants or contaminants emanating from the Gulfport Facility and all areas affected by the migration of such substances.

***“Lead Agency”*** means the designated Environmental Agency identified in Paragraph 10.

***“Liquidating Trust”*** has the meaning set forth in the Debtors’ Second Amended Plan of Liquidation as same may be amended and modified (the “Plan of Liquidation”).

***“Non-Lead Agency”*** means the designated Environmental Agency identified in Paragraph 10.

***“Real Property Information”*** means all non-privileged documents in Debtors’ possession, custody, or control, or reasonably obtainable by Debtors, related to property ownership, property taxes, leases, contracts, security, insurance, or administration or potential sales of the Gulfport Facility or the Gulfport Adjoining Parcels.

***“Settlement Agreement”*** shall mean this Stipulation and Settlement Agreement.

***“Superfund”*** means the “Hazardous Substance Superfund” established by 26 U.S.C. § 9507 or, in the event such Hazardous Substance Superfund no longer exists, any successor fund or comparable account of the Treasury of the United States to be used for removal or remedial actions to address releases or threats of releases of hazardous substances.

***“United States”*** shall mean the United States of America (on behalf of EPA) and all of its agencies, departments, and instrumentalities.

## **II. JURISDICTION**

1. The Bankruptcy Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§ 157, 1331, and 1334.

## **III. PARTIES BOUND**

2. This Settlement Agreement applies to, is binding upon, and shall inure to the benefit of the parties to this Settlement Agreement, the Environmental Trust Protected Parties, their legal successors and assigns, and any trustee, examiner, or receiver appointed in the Bankruptcy Cases, including the Liquidating Trustee appointed pursuant to the Plan of Liquidation.

## **IV. RESOLUTION OF THE GULFPORT CLAIMS OF THE ENVIRONMENTAL AGENCIES**

3. Upon the occurrence of the Effective Date, the Gulfport Claims of EPA and MDEQ with respect to the Gulfport Facility shall be deemed resolved by this Settlement Agreement and deemed expunged from the claims register on account of and in accordance with this Settlement Agreement. The Environmental Agencies agree not to file any further administrative expense claims or proofs of claim with respect to the Gulfport Facility except as reserved in Paragraphs 35 and 36 of this Settlement Agreement.

**V. THE ENVIRONMENTAL RESPONSE TRUST**

4. The Environmental Agencies, the Environmental Trustee, and the Debtors, shall enter into the Environmental Trust Agreement, in form and substance satisfactory to the parties to this Settlement Agreement, substantially in the form attached hereto as Exhibit B, and submit an executed copy to the Court for approval; its terms shall be deemed incorporated herein as if stated in full.

5. Project Navigator, Ltd., not individually but solely in its representative capacity as Environmental Trustee, is, subject to the approval of the Bankruptcy Court, appointed to serve as the Environmental Trustee to administer and manage the Environmental Response Trust from and after the Effective Date in accordance with this Settlement Agreement and the Environmental Trust Agreement. The Environmental Response Trust shall use its funds to perform or fund Environmental Actions and administer the Environmental Response Trust in accordance with budgets approved by the Lead Agency after consultation with the Non-Lead Agency.

6. The purpose of the Environmental Response Trust shall be to: (i) own the Gulfport Facility (and potentially the Gulfport Adjoining Parcels); (ii) carry out administrative and property management functions related to the Gulfport Facility (and potentially the Gulfport Adjoining Parcels if such parcels are ultimately conveyed to the Environmental Response Trust);

(iii) manage and/or fund implementation of future Environmental Actions approved by the Lead Agency with respect to the Gulfport Facility; (iv) fulfill other obligations as set forth in this Settlement Agreement; (v) engage in trade or business, upon receipt of prior approval of the Lead Agency, but only if such trade or business will be specifically for the purposes of generating additional assets to fund the Environmental Response Trust; and (vi) ultimately sell, transfer, or otherwise dispose or facilitate the reuse of all or part of the Environmental Trust Assets.

7. Within seven (7) business days of the Effective Date, the Debtors shall cause to be transferred to the Environmental Response Trust, at the direction of the Environmental Trustee, cash in the amount of \$725,000. If the sale of the Gulfport Adjoining Parcels has not finally closed by the Gulfport Adjoining Parcels Closing Deadline, then the Gulfport Adjoining Parcels shall be conveyed to the Environmental Response Trust in accordance with Paragraph 9 and the Debtors shall receive a credit of \$225,000 towards their payment obligation under this Paragraph, leaving the amount of cash to be paid to the Environmental Response Trust under this Paragraph at \$500,000. In such event, the Environmental Trustee shall cause the Environmental Response Trust to return to the Debtors \$225,000 from the \$725,000 to the extent it has been previously paid, contemporaneously with the transfer of the Gulfport Adjoining Parcels to the Environmental Response Trust.

8. On or after the Effective Date and upon the full execution and Bankruptcy Court approval of the Environmental Trust Agreement, the Environmental Trustee will provide wire transfer instructions to MDEQ. MDEQ will thereafter direct the Trustee for the Reichhold Chemicals, Inc. Standby Trust (U.S. Bank Global Corporate Trust Services) to transfer the funds in said Standby Trust to the Environmental Response Trust account by wire transfer.



9. Simultaneously with the payments to the Environmental Response Trust under Paragraph 7, Debtors also will transfer all of their right, title, and interest in the Gulfport Facility to the Environmental Response Trust. Debtors will transfer all of their right, title, and interest in the Gulfport Adjoining Parcels to the Environmental Response Trust by the later of: (i) seven (7) business days after the Effective Date; or (ii) five (5) business days of the Gulfport Adjoining Parcels Closing Deadline if the sale of the Gulfport Adjoining Parcels does not finally close by the Gulfport Adjoining Parcels Closing Deadline. All transfers shall include without limitation all of Debtors' right, title, and interest in all appurtenances, rights, easements, rights-of-way, mining rights (including unpatented mining claims, mill site claims, and placer claims), mineral rights, mineral claims, appurtenant groundwater rights, associated surface water rights, claims, and filings, permits, licenses, third-party warranties and guaranties for equipment or services to the extent transferable under bankruptcy law, or other interests (including without limitation all fixtures, improvements, personal property (tangible and intangible) and equipment located thereon as of the Effective Date) all to the maximum extent legally transferrable provided that Debtors shall not be required to pay any costs associated with the transfers set forth in this Paragraph other than (a) cancellation of any valid liens securing monetary claims, (b) all accrued and unpaid real property and personal property taxes together with a proportionate share of taxes accruing during the year of sale, (c) costs of deed preparation, (d) the first \$2,000 of costs of a title commitment, the Environmental Response Trust will pay any such costs in excess of \$2,000, and (e) all Debtors' legal fees. On and after the Effective Date, the Debtors shall have no ownership or other residual interest whatsoever with respect to the Environmental Response Trust. The Debtors shall have no ownership or other residual interest whatsoever with respect to the Gulfport Facility (or, except as expressly provided in Paragraph 29, the Gulfport Adjoining

Parcels if such parcels are ultimately conveyed to the Environmental Response Trust) on and after the date of transfer of same. The transfer of ownership by the Debtors of any such assets or other property shall be a transfer of all of the Debtors' right, title, and interests therein, and the transfer: (i) shall be as is and where is, with no warranties of any nature; (ii) shall be free and clear of all claims, liens, and interests against the Debtors, including liens for the payment of monetary claims, such as property taxes or other monetary claims asserted or that could have been asserted in the bankruptcy proceeding, but shall remain subject to any existing *in rem* claims that do not secure payment of monetary claims (such as easements or deed restrictions, including but not limited to the Environmental Covenant filed on May 26, 2015 with the Harrison County Chancery Court Clerk for the First Judicial District, provided however that upon transfer the Debtors shall have no further obligations with respect to the Environmental Covenant); (iii) shall be subject to any rights of the Environmental Agencies under this Settlement Agreement; and (iv) shall be accomplished by transfer of good title subject to the conditions and limitations set forth in this Paragraph, with all such conveyance documents to be agreed to in form by the Debtors and the Environmental Trustee. Debtors, as applicable, will reasonably cooperate with the Environmental Agencies and the Environmental Trustee to deliver to the title company (which will cause to be recorded in the appropriate real property records) the transfer documents as soon as reasonably practicable, but not to exceed 30 days after the Effective Date (or 30 days after the transfer of the Gulfport Adjoining Parcels if such parcels are ultimately conveyed to the Environmental Response Trust). Real estate taxes shall be adjusted, pro-rata, as of the closing date(s), and typical closing adjustments shall be made. If the actual bills for such real property taxes have not been issued, then such proration shall be based on an amount equal to such real property taxes for the prior year or tax period, which shall constitute a

final proration and not be subject to further adjustment. Upon full payment by the Debtors as set forth in Paragraph 7 and this Paragraph 9, the Environmental Response Trust shall be responsible for paying all real property taxes first coming due following the Effective Date relating to the portions of the Gulfport Facility or Gulfport Adjoining Parcels conveyed to it. Debtors shall execute, or cause to be executed, and record, if necessary, all necessary releases of any liens or security interests held by any Debtor against the portions of the Gulfport Facility or Gulfport Adjoining Parcels conveyed to the Environmental Response Trust. After Debtors execute this Settlement Agreement, Debtors shall not further encumber the Gulfport Facility or Gulfport Adjoining Parcels or their other interests therein and until such time the Gulfport Facility and Gulfport Adjoining Parcels are conveyed pursuant to this Paragraph shall maintain such properties in a commercially reasonable manner in accordance with Debtors' current practices, including the improvements thereon and the fixtures thereto that are related to ongoing remediation activities in the condition that they exist as of the date of such execution, except for ordinary wear and tear, casualty and condemnation, and except to the extent that ongoing environmental activities require otherwise.

10. Environmental Actions and administrative costs implemented or funded by the Environmental Response Trust shall be overseen by a Lead Agency, which shall have the authority to approve or disapprove the proposed budget for the Environmental Response Trust (but only after consultation with the Non-Lead Agency). The initial Lead Agency shall be EPA (the "Lead Agency") and the initial Non-Lead Agency shall be MDEQ (the "Non-Lead Agency"). The Lead Agency may change by agreement of the Environmental Agencies, and the Environmental Agencies will notify the Environmental Trustee of such change in writing. The

Environmental Agencies may notify the Environmental Trustee that they have divided up Lead Agency responsibility for different portions of the Environmental Action or budgets.

11. The Environmental Agencies shall not be deemed to be owners, operators, trustees, partners, agents, shareholders, officers, or directors of the Environmental Response Trust, or to be owners or operators of any of the Gulfport Facility, the Gulfport Adjoining Parcels, or other trust assets on account of this Settlement Agreement or actions contemplated thereby.

12. Within ten (10) days of the Effective Date, the Debtors shall provide the Environmental Trustee with the documents and information necessary to continue without interruption the current ongoing remediation at the Gulfport Facility. The Debtors shall provide the Environmental Trustee with access to all available Environmental Information and Real Property Information where located for a minimum of 60 days following the Effective Date and shall allow the Environmental Trustee to take possession of any original Environmental Information or Real Property Information in the possession of the Debtors or, at the option of the Environmental Trustee copy same, at the Environmental Trustee's expense. The Debtors and/or Liquidating Trustee authorize, request, and consent to any of the Debtors' consultants providing the Environmental Trustee with access to any Environmental Information and Real Property Information in the possession of the consultant, and authorize the consultant to allow the Environmental Trustee to take possession of such information or copies of such information at the expense of the Environmental Trustee. The Liquidating Trustee shall not destroy any Environmental Information or Real Property Information during the first 60 days following the Effective Date and thereafter will not destroy any Environmental Information except upon 30 days' written notice to the Environmental Trustee, the United States, and the Environmental Agencies. The Environmental Trustee and the Environmental Agencies shall be entitled to take

possession of such Environmental Information or Real Property Information by advising the Liquidating Trustee in writing that they will take such Environmental Information and Real Property Information and by taking possession of such Environmental Information and Real Property Information no later than 30 days after providing such notice and at their cost.

13. The Environmental Response Trust by and through the Environmental Trustee not individually but solely in its representative capacity, Debtors, and the Lead Agency shall make reasonable efforts to exchange information and reasonably cooperate to determine the appropriate disposition of any contracts or unexpired leases that relate to the Gulfport Facility (and the Gulfport Adjoining Parcels if conveyed to the Environmental Response Trust).

14. Notwithstanding any other provision of this Settlement Agreement, the Debtors shall continue, at their own expense, the operation of any ongoing environmental activities at the Gulfport Facility until the Gulfport Facility and funds (as provided above) are transferred to the Environmental Response Trust in accordance with this Settlement Agreement and the Environmental Trust Agreement.

15. The Environmental Trustee shall at all times seek to have the Environmental Response Trust treated as a “qualified settlement fund” as that term is defined in Treasury Regulation Section 1.468B-1. For purposes of complying with Section 468B(g)(2) of the Internal Revenue Code, this Settlement Agreement shall constitute a consent decree between the parties. Approval of the Bankruptcy Court, as a unit of the District Court, shall be sought, and the Bankruptcy Court shall retain continuing jurisdiction over the Environmental Response Trust sufficient to satisfy the requirements of Treasury Regulation Section 1.468B-1. The Environmental Trustee shall not elect to have the Environmental Response Trust treated as a grantor trust. The Environmental Response Trust shall be treated as a separate taxable entity. The Environmental Trustee shall cause any taxes imposed on the

earnings of the Environmental Response Trust to be paid out of such earnings and shall comply with all tax reporting and withholding requirements imposed on the Environmental Response Trust under applicable tax laws. The Environmental Trustee shall be the “administrator” of the Environmental Response Trust pursuant to Treasury Regulation Section 1.468B-2(k)(3).

16. Environmental Trust Assets shall be held in trust solely for the purposes provided in this Settlement Agreement. The Environmental Agencies shall be the sole beneficiaries of the Environmental Response Trust and Environmental Response Trust accounts.

17. The Environmental Trustee may create subaccounts within the Environmental Response Trust as appropriate and consistent with this Settlement Agreement and the Environmental Trust Agreement. Funding in the Environmental Response Trust’s accounts may be used for future Environmental Actions or administrative costs of the Environmental Response Trust, within an approved budget as set forth in Paragraphs 20 and 21.

18. All interest, dividends and other revenue earned by the Environmental Response Trust may be used as provided in this Settlement Agreement.

19. Any funds remaining in the Environmental Response Trust after the completion of all Environmental Actions required by the Environmental Agencies and the winding down of the Environmental Response Trust by the Environmental Trustee shall be paid to the Superfund.

#### **Budgets**

20. Prior to the Effective Date, the Environmental Trustee shall submit to the Environmental Agencies for approval a budget for the first 120 days following the Effective Date (a “120 Day Budget”) for the Environmental Response Trust. The Lead Agency shall have the authority to approve or disapprove the proposed 120 Day Budget after consultation with the Non-Lead Agency. If disapproved, such budget shall be revised and resubmitted as

expeditiously as possible. No expenses may be incurred or paid from the Environmental Response Trust that are inconsistent with the approved 120 Day Budget except in the event of the Lead Agency's approval of an amended budget or in the event of an emergency as provided in the Environmental Trust Agreement. The Environmental Trustee shall also have authority to exceed any line item by not more than ten (10) per cent.

21. Within 90 days following the Effective Date in the first year and every year thereafter on the anniversary of the Effective Date (or the next business day thereafter), the Environmental Trustee shall provide to the Environmental Agencies a statement showing the balance of the Environmental Response Trust's accounts and proposed budget for the coming twelve (12) months. Upon request by the Lead Agency, the Environmental Trustee shall submit an updated budget for approval at any time during a given twelve (12) month period. The Lead Agency shall have the authority to approve or disapprove the proposed budget, but only after consultation with the Non-Lead Agency. If disapproved, such budget shall be revised and resubmitted as expeditiously as possible. No expenses may be incurred or paid by the Environmental Response Trust that are inconsistent with the approved budget, except in the event of the Lead Agency's approval of an amended budget or in the event of emergency as provided in the Environmental Trust Agreement. The Environmental Trustee shall also have authority to exceed any line item by not more than ten (10) per cent and the Environmental Trustee may incur or pay ongoing or recurring expenses approved in the prior period's budget that occur between the time a proposed budget is submitted and the time it is approved.

22. The Environmental Response Trust shall regularly, but at least annually, and otherwise upon the reasonable request of the Environmental Agencies, provide documentation to

substantiate compliance with approved budgets and application of Environmental Trust Assets consistent with the terms of this Settlement Agreement and the Environmental Trust Agreement.

**Expenditures by Environmental Response Trust**

23. The Environmental Trustee shall use funds in the Environmental Response Trust to perform Environmental Actions in accordance with the approved budget. The Environmental Trustee shall utilize the funds and interest in the Environmental Response Trust to undertake such work promptly and in accordance with any schedule approved by the Lead Agency. The Environmental Trustee shall require liability insurance as set forth in the Environmental Trust Agreement from each contractor hired to perform work.

24. The Environmental Trustee shall pay funds from the Environmental Response Trust to the Lead Agency making a written request for funds for reimbursement within 30 days following such request. Such written request shall: (a) be in accordance with the approved budget; and (b) shall specify what the funds were used for and shall certify that they were used only for Environmental Actions performed after the Effective Date by the Lead Agency with respect to the Gulfport Facility. In addition, consistent with the Environmental Trust Agreement, the Non-Lead Agency may seek reimbursement from the Environmental Response Trust in the event the Lead Agency seeks the assistance of the Non-Lead Agency.

**Environmental Response Trust - Miscellaneous Provisions**

25. Except as otherwise provided in Paragraph 31, in no event shall any of the Environmental Trust Protected Parties be held liable to any third parties for any liability, action, or inaction of any other party, including Debtors or any other Environmental Trust Protected Party.



26. The Environmental Response Trust is intended to be governed by the terms of this Settlement Agreement and the Environmental Trust Agreement and shall not be subject to any provision of the Uniform Custodial Trust Act as adopted by any state, now or in the future.

27. The Environmental Trustee shall provide the Environmental Agencies and their representatives and contractors access to all portions of the Gulfport Facility (and the Adjoining Parcels if conveyed to the Environmental Response Trust) that the Environmental Response Trust owns at all reasonable times for the purposes of conducting or monitoring Environmental Action.

28. The United States or the State of Mississippi, or an agency that is a designee thereof, may at any time propose in writing to take ownership of any or all assets of the Environmental Response Trust. Any such proposed transfer and the terms thereof are subject to approval in writing by EPA and MDEQ (after consultation with the Environmental Trustee). However, neither the United States nor the State of Mississippi shall be required to accept an ownership interest in the Gulfport Facility or the Gulfport Adjoining Parcels upon termination of the Environmental Response Trust or at any other time.

29. The Environmental Trustee may, at any time, seek the approval of the Environmental Agencies for the sale or lease or other disposition of all or part of the Gulfport Facility (or the Gulfport Adjoining Parcels if conveyed to the Environmental Response Trust). All net proceeds from the sale of the Gulfport Facility shall be used by the Environmental Response Trust for the purposes set forth in and consistent with this Settlement Agreement and the Environmental Trust Agreement. If the Gulfport Adjoining Parcels (if conveyed to the Environmental Response Trust) are sold or leased or otherwise disposed of within three (3) years from the Effective Date, any proceeds from the sale or lease or other disposition of all or part of

the Gulfport Adjoining Parcels shall be paid as follows: (1) first, for payment or reimbursement for any costs of administration relating to the Gulfport Adjoining Parcels including but not limited to any costs of sale, insurance, or property taxes; (2) second, to the Environmental Response Trust as reimbursement for the \$225,000 credit set forth in Paragraph 7; and (3) third, 50% to the Environmental Response Trust and 50% to the Liquidating Trust in equal amounts. If the Gulfport Adjoining Parcels are sold or leased or otherwise disposed of more than three (3) years from the Effective Date, any proceeds from the sale or lease or other disposition of all or part of the Gulfport Adjoining Parcels (if conveyed to the Environmental Response Trust) shall be paid to the Environmental Response Trust. Payments to the Environmental Response Trust shall be used by the Environmental Response Trust for the purposes set forth in and consistent with this Settlement Agreement and the Environmental Trust Agreement.

30. Subject to the approval of the Environmental Agencies, the Environmental Trustee may propose a sale, lease, or disposition of property that includes funding from, or the retention of some portion of liability by the Environmental Response Trust provided that the net effect of any proposed sale, lease or disposition is to lessen the total financial obligations and liabilities as would otherwise be incurred in the absence of any such sale, lease, or disposition.

31. None of the Environmental Trust Protected Parties shall be personally liable unless the Bankruptcy Court, by a final order, determines that it committed fraud or willful misconduct after the Effective Date in relation to the Environmental Trustee's duties. There shall be an irrebuttable presumption that any action taken or not taken with the approval of the Bankruptcy Court does not constitute an act of fraud or willful misconduct, provided that there has been no misrepresentation to the Court. Any judgment against an Environmental Trust Protected Party and any costs of defense relating to any Environmental Trust Protected Party

shall be paid from Environmental Response Trust funds without the Environmental Trust Protected Party having to first pay from its own funds for any personal liability or costs of defense unless a final order of the Bankruptcy Court, that is not reversed on appeal, determines that it committed fraud or willful misconduct in relation to the Environmental Trust Protected Party's duties; in the event the Bankruptcy Court makes such a determination, that Environmental Trust Protected Party shall reimburse the Environmental Response Trust for all expended funds.

32. The Environmental Trust Protected Parties are exculpated by all persons, including without limitation, holders of claims and other parties in interest, of and from any and all claims, causes of action and other assertions of liability arising out of the ownership of Environmental Trust Assets and the discharge of the powers and duties conferred upon the Environmental Response Trust and/or Environmental Trustee by this Settlement Agreement or any order of Court entered pursuant to or in furtherance of this Settlement Agreement, or applicable law or otherwise. No person, including without limitation, holders of claims and other parties in interest, will be allowed to pursue any claims or cause of action against any Environmental Trust Protected Party for any claim against Debtors, for making payments in accordance with this Settlement Agreement or any order of Court, or for implementing the provisions of this Settlement Agreement or any order of Court. Nothing in this Paragraph or the Settlement Agreement shall preclude any of the parties to this Settlement Agreement from enforcing the terms of this Settlement Agreement against the Environmental Trust Protected Parties.

33. Except as may otherwise be provided herein: (a) the Environmental Trust Protected Parties may rely conclusively on, and shall be protected in acting upon, any resolution,

certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by them to be genuine and to have been signed or presented by the proper party or parties; (b) the Environmental Trust Protected Parties may, on behalf of the Environmental Response Trust or on their own behalf in their capacity as Environmental Trust Protected Parties, consult with legal counsel, financial or accounting advisors and other professionals and shall not be personally liable for any action taken or not taken in accordance with the advice thereof; and (c) persons or entities dealing with the Environmental Trust Protected Parties shall look only to the Environmental Response Trust Assets that may be available to them consistent with this Settlement Agreement to satisfy any liability incurred by the Environmental Trust Protected Parties to such person in carrying out the terms of this Settlement Agreement or any order of the Bankruptcy Court, and the Environmental Trust Protected Parties shall have no personal obligations to satisfy any such liability other than as provided in Paragraph 31.

## **VI. COVENANTS AND RESERVATIONS**

### **Environmental Agencies' Covenants Not to Sue**

34. In consideration of the distributions that will be made under the terms of this Settlement Agreement and other provisions of this Settlement Agreement, and except as specifically provided in Paragraphs 35-38 of this Settlement Agreement, the United States, on behalf of EPA, and MDEQ covenant not to sue or assert any civil claims or causes of action or to take administrative action against the Debtors, the Liquidating Trust, and the Liquidating Trustee created pursuant to the Debtors' Plan of Liquidation, or the Environmental Trust Protected Parties pursuant to the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901 *et seq.*, or related state law provisions, or pursuant to any liability or obligation asserted in EPA's

or MDEQ's Gulfport Claims. The above covenant shall extend to each of the Debtors' respective officers, directors, employees, successors and assigns, but only to the extent that the alleged liability of such person or entity is based on his, her, or its acts, omissions or status as such and in his, her, or its capacity as such.

### **Reservations of Rights**

35. The covenants set forth above do not pertain to any matters other than those expressly specified therein and do not extend to any persons other than those specified therein. Notwithstanding the above, the covenants not to sue do not apply for purposes of seeking insurance coverage for environmental liabilities. The Environmental Agencies expressly reserve, and this Settlement Agreement is without prejudice to, all rights against the Debtors and the Environmental Trust Protected Parties with respect to all matters other than those set forth in the covenants. Except as otherwise provided herein and resolved, the parties expressly reserve all other claims, demands, and causes of action, either judicial or administrative, past, present, or future, in law or equity, which they may have against all other persons, firms, corporations, entities, or predecessors of the Debtors for any matter arising at or relating in any manner to the Gulfport Facility.

36. The United States and MDEQ also specifically reserve, and this Settlement Agreement is without prejudice with respect to: (a) criminal liability; and (b) any action based on a failure to meet a requirement of this Settlement Agreement. In addition, the United States and MDEQ reserve, and this Settlement Agreement is without prejudice to, all rights against the Debtors and their respective successors, assigns, officers, directors, and employees, as to liability under federal or state law for their future affirmative actions creating liability that occur after the date this Settlement Agreement is filed with the Bankruptcy Court. As used in the preceding

sentence, the phrase “future affirmative actions creating liability” does not include continuing releases related to debtors’ conduct prior to the date this Settlement Agreement is filed with the Bankruptcy Court.

37. The United States and MDEQ reserve all rights against the Environmental Trust Protected Parties with respect to any action to enforce their rights under this Settlement Agreement, including but not limited to the right to file suit against the Environmental Response Trust or Environmental Trust Protected Parties at any time for fraud or willful misconduct (with all funds recovered in any such action to be restored to the Environmental Response Trust from which they were taken).

38. Nothing in this Settlement Agreement shall be deemed to limit the authority of the United States or MDEQ to take any response action under any applicable statute or regulation, or to alter the applicable legal principles governing judicial review of any action taken by the United States or MDEQ, provided, however, that nothing in this sentence affects the covenants set forth in Paragraph 34. Nothing in this Settlement Agreement shall be deemed to limit the information-gathering authority of the United States or MDEQ under any applicable federal or state statute or regulation, or to excuse the Debtors or the Environmental Response Trust from any disclosure or notification requirements imposed by federal or state law or regulation. The Debtors reserve all rights to make an application to the Bankruptcy Court to destroy records (other than the records required to be provided to the Environmental Response Trust in accordance with Paragraph 12) and the United States and MDEQ reserve all rights to object.

**Covenants Not to Sue by Debtors and Environmental Response Trust**

39. The Debtors, the Environmental Trustee, and the Environmental Response Trust covenant not to sue and agree not to assert or pursue any claims or causes of action against the

United States, including any department, agency, or instrumentality of the United States, or the State of Mississippi, with respect to the Gulfport Facility, including, but not limited to: (i) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established pursuant to 26 U.S.C. § 9507; (ii) any claim under Sections 107 or 113 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9607 or 9613, or Section 7002(a) of RCRA, 42 U.S.C. § 6972(a); or (iii) any claims arising out of response activities at the Gulfport Facility. Nothing in this Settlement Agreement shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

40. Notwithstanding any other provision of this Settlement Agreement, the Debtors and Environmental Response Trust reserve, and this Settlement Agreement is without prejudice to, claims against the United States and the State of Mississippi in the event any claim is asserted by the United States or the State of Mississippi against the Debtors or Environmental Response Trust pursuant to any of the reservations set forth in Paragraphs 35-38, other than for failure to meet a requirement of this Settlement Agreement, but only to the extent that the Debtors’ or Environmental Response Trust’s claim arises from the same claim or cause of action that the United States or the State of Mississippi is seeking pursuant to the applicable reservation.

**VII. JUDICIAL APPROVAL AND OPPORTUNITY FOR PUBLIC COMMENT**

41. This Settlement Agreement shall be filed with the Bankruptcy Court and shall thereafter be subject to a period of public comment following publication of notice of the Settlement Agreement in the Federal Register.

42. After the conclusion of the public comment period, the United States will file with the Bankruptcy Court any comments received, as well as the United States' responses to the comments, and at that time, if appropriate, the United States will request approval of the Settlement Agreement under applicable environmental laws. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Settlement Agreement disclose facts or considerations which indicate that the Settlement Agreement is not in the public interest. If for any reason (i) the Settlement Agreement is withdrawn by the United States as provided in this Paragraph 42; (ii) the Settlement Agreement is not approved; (iii) the Environmental Trust Agreement is not approved; or (iv) the Bankruptcy Cases are dismissed or converted to cases under Chapter 7 of the Bankruptcy Code prior to approval of this Settlement Agreement: (a) this Settlement Agreement shall be null and void and the parties shall not be bound hereunder or under any documents executed in connection herewith; (b) the parties shall have no liability to one another arising out of or in connection with this Settlement Agreement or under any documents executed in connection herewith; and (c) this Settlement Agreement and any documents prepared in connection herewith shall have no residual or probative effect or value.

#### **VIII. EFFECTIVE DATE**

43. Following the public comment process set forth in Section VII above, the date this Settlement Agreement is approved by order of the Bankruptcy Court shall be the "Effective Date."

#### **IX. AMENDMENTS/INTEGRATION AND COUNTERPARTS**

44. This Settlement Agreement and any other documents to be executed in connection herewith or referred to herein shall constitute the sole and complete agreement of the parties hereto with respect to the matters addressed herein. This Settlement Agreement may not be amended except by a



writing signed by all parties including the Environmental Trustee, provided, however, that if the Debtors no longer exist, the Court may approve an amendment signed in writing by the other parties.

45. Each undersigned representative of a party certifies that he or she is fully authorized to execute this Settlement Agreement on behalf of such party and bind it legally to the terms and provisions herein.

46. This Settlement Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same agreement.

#### **X. RETENTION OF JURISDICTION**

47. The Bankruptcy Court (or, upon withdrawal of the Bankruptcy Court's reference, the United States District Court for the District of Delaware) shall retain jurisdiction over the subject matter of this Settlement Agreement and the parties including the Environmental Trustee for the duration of the performance of the terms and provisions of this Settlement Agreement for the purpose of enabling any of the parties including the Environmental Trustee to apply to the Bankruptcy Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or interpretation of this Settlement Agreement or to effectuate or enforce compliance with its terms.

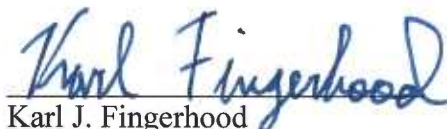
The undersigned party hereby enters into this Settlement Agreement in the chapter 11 cases of  
*In re Reichhold Holdings US, INC., et al., Bankr. No. 14-12237-MFW (USBC D. Del.)*.

FOR THE UNITED STATES OF AMERICA:

W. Benjamin Fisherow  
Deputy Chief  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice



Alan S. Tenenbaum  
National Bankruptcy Coordinator  
U.S. Department of Justice



Karl J. Fingerhood  
Senior Counsel  
Environment and Natural Resources Division  
Environmental Enforcement Section

Date: 1/12/16

REICHHOLD LIQUIDATION, INC.  
and its AFFILIATED DEBTORS

\_\_\_\_\_  
Roger L. Willis  
President and Treasurer

Date: \_\_\_\_\_

The undersigned party hereby enters into this Settlement Agreement in the chapter 11 cases of  
*In re Reichhold Holdings US, INC., et al., Bankr. No. 14-12237-MFW (USBC D. Del.)*.

FOR THE UNITED STATES OF AMERICA:


W. Benjamin Fisherow  
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U.S. Department of Justice

\_\_\_\_\_  
Alan S. Tenenbaum  
National Bankruptcy Coordinator  
U.S. Department of Justice

\_\_\_\_\_  
Karl J. Fingerhood  
Senior Counsel  
Environment and Natural Resources Division  
Environmental Enforcement Section


Date: \_\_\_\_\_

REICHHOLD LIQUIDATION, INC.  
and its AFFILIATED DEBTORS

  
\_\_\_\_\_  
Roger L. Willis  
President and Treasurer

Date: 1/12/2016

FOR THE MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY

BY:   
Gary C. Rikard  
Executive Director  
Mississippi Department of Environmental Quality

Date: 1/12/16

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

\_\_\_\_\_  
Mary J. Wilkes, Regional Counsel and Director  
Office of Regional Counsel

\_\_\_\_\_  
Colleen E. Michuda  
Senior Attorney  
Office of RCRA/CERCLA Legal Support  
U.S. Environmental Protection Agency  
61 Forsyth Street, SW  
Atlanta, Georgia 30303  
404-562-9685

Date: \_\_\_\_\_

FOR THE ENVIRONMENTAL TRUSTEE  
PROJECT NAVIGATOR LTD.

\_\_\_\_\_  
By: Roberto Puga, Principal

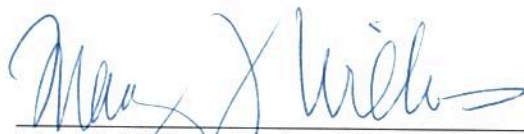
Date: \_\_\_\_\_


FOR THE MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY

BY: \_\_\_\_\_  
Gary C. Rikard  
Executive Director  
Mississippi Department of Environmental Quality

Date: \_\_\_\_\_

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

  
\_\_\_\_\_  
Mary J. Wilkes, Regional Counsel and Director  
Office of Regional Counsel

  
\_\_\_\_\_  
Colleen E. Michuda  
Senior Attorney  
Office of RCRA/CERCLA Legal Support  
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Date: 1/12/16

FOR THE ENVIRONMENTAL TRUSTEE  
PROJECT NAVIGATOR LTD.

\_\_\_\_\_  
By: Roberto Puga, Principal

Date: \_\_\_\_\_


FOR THE MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY

BY: \_\_\_\_\_  
Gary C. Rikard  
Executive Director  
Mississippi Department of Environmental Quality

Date: \_\_\_\_\_


FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

  
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Office of RCRA/CERCLA Legal Support  
U.S. Environmental Protection Agency  
61 Forsyth Street, SW  
Atlanta, Georgia 30303  
404-562-9685

Date: 1/12/16

FOR THE ENVIRONMENTAL TRUSTEE  
PROJECT NAVIGATOR LTD.

  
\_\_\_\_\_  
By: Roberto Puga, Principal  
Date: 1/12/16

**Exhibit A**

**Legal Description and Survey of  
the Gulfport Facility and the Gulfport Adjoining Parcels**

CERTIFICATE OF RESUBDIVISION

In accordance with Section 9-48 of the Code of Ordinance (Subdivision Regulations) of the City of Gulfport as amended, it is hereby certified that the Gulfport City Planning Commission Chairman and Gulfport City Council have reviewed and approved this Final Plat for the Resubdivision of the property located in Section 19 & 20 Township 7 South, Range 10 West and described in Deed Book 1356, Page 83, City of Gulfport, First Judicial District of Harrison County, Mississippi, into Lot 1, Lot 2, Lot 3 and Lot 4, located in the Northeast 1/4 of the Northeast 1/4 of said Section 19 and the Northwest 1/4 of the Northeast 1/4 of said Section 20. The subject property is generally described as being located south of Reichold Road. The original volume tax parcel number of the subject property is 1009K-02-00100 1009K-02-001002 and 1009J-01-001.001. The Case File Number is 0508CC135.

BOUNDARY DESCRIPTION OF LAND PRIOR TO THIS RESUBDIVISION:

(DESCRIPTION PER DEED BOOK 1356 PAGES 85 AND 86)

PARCEL 1 The West 200 feet of Tract Number 2 as shown on a survey recorded in Deed Book 541, at Page 507 in the office of the Chancery Clerk of Harrison County, Mississippi, First Judicial District, LESS AND EXCEPT, said tract being situated in the NW 1/4 and SE 1/4 of Section 19, Township 7 South, Range 10 West, and containing 6.77 acres;

PARCEL 2

Tract Number 4 shown on a survey recorded in Deed Book 541, at Page 507 in the office of the Chancery Clerk of Harrison County, Mississippi, First Judicial District, LESS AND EXCEPT, however, a parcel of land described as follows: Beginning at point on the south margin of Reichold Road (also known as Boyou View Road) at the NW corner of "Tract 4" as shown on a survey recorded in Deed Book 541, at Page 507 of the aforesaid records; thence South 72° 59' 23" East along said south margin 650 feet; thence South 17° 00' 37" West 506.94 feet; thence North 72° 59' 23" West 502.69 feet to said West line of Tract 4; thence North 0° 13' 45" West along said line 530.79 feet to the Point of Beginning. Said tract being situated in the NE 1/4 and the SE 1/4 of Section 19, Township 7 South, Range 10 West, Harrison County, Mississippi, such land being excepted herefrom is fully described as Parcel "A" in a survey prepared by A. Garner Russel dated August 22, 1974, attached to and made a part of a Special Warranty Deed recorded in Deed Book 737 of Pages 410-413 and re-recorded in Deed Book 738 at Pages 31-34 of the aforesaid records;

PARCEL 3

Beginning at the NW corner of Section 19, Township 7 South, Range 10 West; thence North 89° 36' 47" East 1400.34 feet to a point on the centerline of Lorde and Boyou View Road; thence North 89° 39' 01" East 175 feet; thence South 00° 13' 45" East 1003.57 feet; thence South 72° 59' 23" East 2794.6 feet for POINT OF BEGINNING; From said POINT OF BEGINNING thence North 17° 00' 37" East 1475 feet; thence North 72° 59' 23" East 1000 feet; thence South 17° 00' 37" West 1475 feet; thence North 72° 59' 23" West 1000 feet to the POINT OF BEGINNING. Being located in Section 19 and 20, Township 7 South, Range 10 West, Harrison County, Mississippi, containing 33.86 acres, more or less, being designated as Tract Number 1 in a survey by H. A. Campbell, R.S. dated May 16, 1964, a copy of which is attached to and made a part of a Special Warranty Deed recorded in Deed Book 1083 of Pages 322-325 in the office of the Chancery Clerk of Harrison County, Mississippi, First Judicial District.

PAGE 1 OF 3

BOUNDARY DESCRIPTIONS OF THE 4 LOTS CREATED BY THIS RESUBDIVISION:

LOT 1

A parcel of land located in the Northeast 1/4 of the Northeast 1/4 of Section 19, Township 7 South, Range 10 West, City of Gulfport, First Judicial District, Harrison County, Mississippi, being more particularly described as follows:

COMMENCE at northwest corner of said Section 19; thence North 89 degrees 36 minutes 47 seconds East 1,400.34 feet; thence North 89 degrees 39 minutes 01 seconds East 175 feet; thence South 00 degrees 13 minutes 45 seconds East 1,003.57 feet; thence South 72 degrees 59 minutes 23 seconds East 2,270.5 feet to an iron pipe found on the eastern margin of a Mississippi Power Company right-of-way and the POINT OF BEGINNING; thence North 00 degrees 06 minutes 35 seconds West along said eastern margin 1014.07 feet to a concrete monument found; thence South 72 degrees 50 minutes 12 seconds East 503.00 feet to a concrete monument found; thence North 17 degrees 08 minutes 32 seconds East 506.90 feet to an iron rod found on the southern margin of Reichold Road; thence South 72 degrees 59 minutes 33 seconds East along said southern margin 259.50 feet to an iron rod set; thence South 17 degrees 08 minutes 32 seconds West 1474.71 feet to an iron rod set; thence North 72 degrees 59 minutes 23 seconds West 461.75 feet to the POINT OF BEGINNING.

Contains 16.623 acres, more or less.

LOT 2

A parcel of land located in the Northeast 1/4 of the Northeast 1/4 of Section 19, Township 7 South, Range 10 West, City of Gulfport, First Judicial District, Harrison County, Mississippi, being more particularly described as follows:

COMMENCE at northwest corner of said Section 19; thence North 89 degrees 36 minutes 47 seconds East 1,400.34 feet; thence North 89 degrees 39 minutes 01 seconds East 175 feet; thence South 00 degrees 13 minutes 45 seconds East 1,003.57 feet; thence South 72 degrees 59 minutes 23 seconds East 2,270.5 feet to an iron pipe found on the eastern margin of a Mississippi Power Company right-of-way; thence South 72 degrees 59 minutes 23 seconds East 461.75 feet to an iron rod set; thence North 17 degrees 08 minutes 32 seconds East 1324.71 feet to an iron rod set and the POINT OF BEGINNING; thence continue North 17 degrees 08 minutes 32 seconds East 150.00 feet to an iron rod set on the southern margin of Reichold Road; thence South 72 degrees 59 minutes 33 seconds East along said southern margin 511.81 feet to an iron rod set; thence South 16 degrees 58 minutes 58 seconds West 150.00 feet to an iron rod set; thence North 72 degrees 59 minutes 33 seconds West 512.23 feet to the POINT OF BEGINNING.

Contains 1.763 acres, more or less.



1st Judicial District  
Instrument: 2005 18631 D -J1  
Filed/Recorded 8/18/2005 11:44 A  
Total Fees: 13.00  
3 Pages Recorded

KREMER ENGINEERING  
14321 Greenleaf Rd., Gulfport, MS 39503  
PH: (228)867-8100, FAX: (228)865-0943  
DWG. NO.: 2044-PLAN

0508CC135



# CERTIFICATE OF RESUBDIVISION

## BOUNDARY DESCRIPTIONS OF THE 4 LOTS CREATED BY THIS RESUBDIVISION:

### LOT 3

A parcel of land located in the Northeast 1/4 of the Northeast 1/4 of Section 19 and the Northwest 1/4 of the Northwest 1/4 of Section 20, Township 7 South, Range 10 West, City of Gulfport, First Judicial District, Harrison County, Mississippi; being more particularly described as follows:

COMMENCE at northwest corner of said Section 19; thence North 89 degrees 36 minutes 47 seconds East 1,400.34 feet; thence North 89 degrees 39 minutes 01 seconds East 175 feet; thence South 00 degrees 13 minutes 45 seconds East 1,003.57 feet; thence South 72 degrees 59 minutes 23 seconds East 2,270.5 feet to an iron pipe found on the eastern margin of a Mississippi Power Company right-of-way; thence continue South 72 degrees 59 minutes 23 seconds East 461.75 feet to an iron rod set on the southern margin of Reichhold Road; thence South 72 degrees 59 minutes 33 seconds East along said southern margin 546.81 feet to an iron rod set and the POINT OF BEGINNING; thence continue South 72 degrees 59 minutes 33 seconds East 712.84 feet to an iron rod found; thence South 17 degrees 01 minutes 31 seconds West 150.00 feet to an iron rod set; thence North 72 degrees 59 minutes 33 seconds West 712.53 feet to an iron rod set; thence North 16 degrees 58 minutes 58 seconds East 150.00 feet to the POINT OF BEGINNING.

Contains 2.454 acres, more or less.

### LOT 4

A parcel of land located in the Northeast 1/4 of the Northeast 1/4 of Section 19 and the Northwest 1/4 of the Northwest 1/4 of Section 20, Township 7 South, Range 10 West, City of Gulfport, First Judicial District, Harrison County, Mississippi; being more particularly described as follows:

COMMENCE at northwest corner of said Section 19; thence North 89 degrees 36 minutes 47 seconds East 1,400.34 feet; thence North 89 degrees 39 minutes 01 seconds East 175 feet; thence South 00 degrees 13 minutes 45 seconds East 1,003.57 feet; thence South 72 degrees 59 minutes 23 seconds East 2,270.5 feet to an iron pipe found on the eastern margin of a Mississippi Power Company right-of-way; thence continue South 72 degrees 59 minutes 23 seconds East 461.75 feet to an iron rod set and the POINT OF BEGINNING; thence continue South 72 degrees 59 minutes 33 seconds East 1,262.46 feet to an iron pipe found; thence North 17 degrees 01 minutes 31 seconds East 1,324.77 feet to an iron rod set; thence North 72 degrees 59 minutes 33 seconds East 150.00 feet to an iron rod set; thence North 16 degrees 58 minutes 58 seconds East 150.00 feet to an iron rod set; thence North 72 degrees 59 minutes 33 seconds West 712.53 feet to an iron rod set; thence North 17 degrees 08 minutes 32 seconds West 1,324.71 feet to the POINT OF BEGINNING.

Contains 38.473 acres, more or less.

The applicant hereby covenants and agrees to indemnify and hold harmless the City of Gulfport, its agents, servants, and/or employees against any and all claims, demands, or causes of action of whatever nature which may arise as a result of the action of the Planning Commission, its agents, and/or employees concerning the petition for resubdivision of the real property described herein.

Ratified and Approved by:

*[Signature]*  
(Owner's Signature)

BETHU KANSVILLE  
(Print Owner's Name)

This 2 day of JUNE, 2005.

### ACKNOWLEDGE:

Before me, the undersigned, authorized in and for the State of MISSISSIPPI County of LATAPE, personally appeared the aforementioned BETHU KANSVILLE who acknowledged that they accepted this plat and executed the foregoing certificate and dedication for the purpose therein set forth.

*[Signature]*  
NOTARY PUBLIC  
My Commission Expires: 11-21-09

### PLANNING COMMISSION:

Submitted for and approved by the Gulfport City Planning Commission on the 23rd day of June, 2005.

*[Signature]*  
Steve Allen, Chairman  
Gulfport City Planning Commission

*[Signature]*  
Raymond Eaten  
Planning Division Administrator

### APPROVAL:

Submitted to and approved by the City of Gulfport City Council, at the regular meeting of said Council held on the 9th day of August, 2005.

ATTEST:

ADOPT

*[Signature]*  
CLERK OF COUNCIL

*[Signature]*  
PRESIDENT

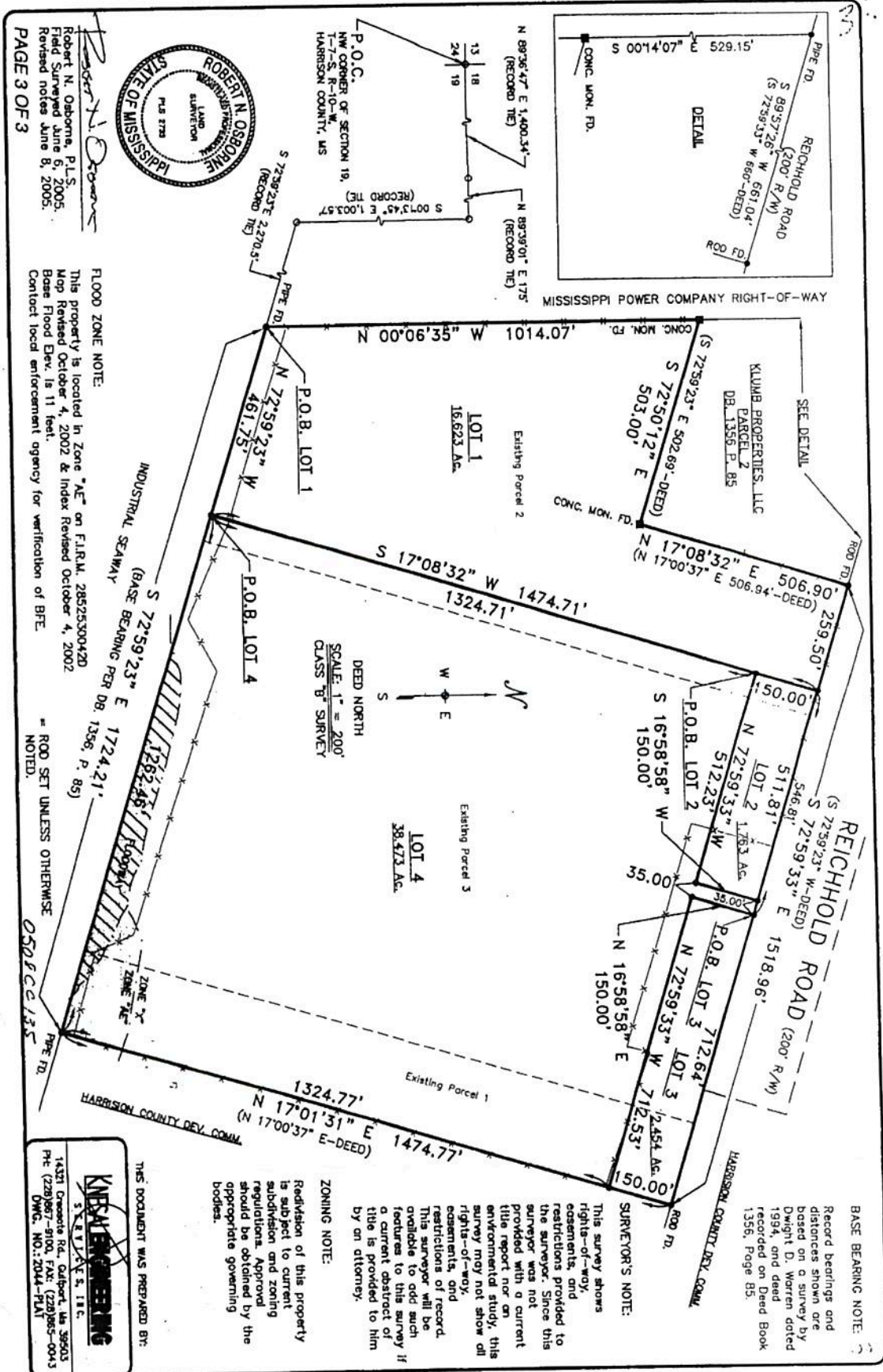
This resubdivision plat and Certificate of Resubdivision, having been submitted and approved by the Mayor, this 31st day of August, 2005.

*[Signature]*  
MAYOR

0528FC/C/35

**KNSM ENGINEERING**  
SURVEYORS, INC.

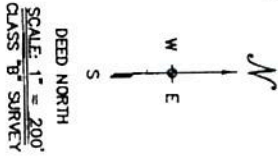
14321 Geneva Rd., Gulfport, MS 39503  
Ph: (228)987-9100, Fax: (228)985-0043  
MNG. NO.: 2044-FLM



Robert N. Osborn, P.L.S.  
 Field Surveyed June 6, 2005.  
 Revised notes June 8, 2005.  
 PAGE 3 OF 3

**FLOOD ZONE NOTE:**  
 This property is located in Zone "AE" on F.I.R.M. 28525300420  
 Map Revised October 4, 2002 & Index Revised October 4, 2002  
 Base Flood Elev. is 11 feet.  
 Contact local enforcement agency for verification of BFE.

ROD SET UNLESS OTHERWISE NOTED.



**BASE BEARING NOTE:**  
 Record bearings and distances shown are based on a survey by Dwight D. Warren dated 1994, and deed recorded on Deed Book 1356, Page 85.

**SURVEYOR'S NOTE:**  
 This survey shows rights-of-way, easements, and restrictions provided to the surveyor. Since this survey was not provided with a current title report nor an environmental study, this survey may not show all rights-of-way, easements, and restrictions of record. This surveyor will be available to add such features to this survey if a current abstract of title is provided to him by an attorney.

**ZONING NOTE:**  
 Redivision of this property is subject to current subdivision and zoning regulations. Approval should be obtained by the appropriate governing bodies.

THIS DOCUMENT WAS PREPARED BY:

**KREMER ENGINEERING**  
 S.E. 1st St., 118C  
 14321 Concrete Rd., Gulfport, Ms 39503  
 Ph: (228)987-9100, Fax: (228)985-0943  
 OMC, NO.: 2044-PLAN

**Exhibit B**

**Environmental Trust Agreement**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

REICHHOLD HOLDINGS US, INC.,  
*et al.*,

Debtors.

Chapter 11

Case No. 14-12237 (MFW)

Jointly Administered

**ENVIRONMENTAL TRUST AGREEMENT BETWEEN THE UNITED STATES, THE  
MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY, PROJECT  
NAVIGATOR, LTD., AND THE DEBTORS FOR THE REICHHOLD GULFPORT,  
MISSISSIPPI FACILITY**

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## ENVIRONMENTAL TRUST AGREEMENT

This Environmental Trust Agreement (the “Agreement”) is made and entered as of the \_\_\_\_\_ day of January, 2016, by and among Reichhold Holdings US, Inc. and certain of its affiliates (collectively, the “Debtors”)<sup>1</sup>; Project Navigator, Ltd., a California corporation, not individually but solely in its representative capacity as Environmental Trustee (defined herein) of the Environmental Response Trust established hereby (the “Environmental Response Trust”); and the United States of America (the “United States”), on behalf of the United States Environmental Protection Agency (“EPA”), and the Mississippi Department of Environmental Quality (“MDEQ”), as Environmental Trust Beneficiaries (defined herein).

### RECITALS:

WHEREAS, the Debtors filed with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court” or “Court”) voluntary petitions for relief under Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”) on September 30, 2014 (the “Petition Date”), which have been consolidated for procedural purposes and are being jointly administered as *In re: Reichhold Holdings US, Inc.*, Case No. 14-12237 (the “Bankruptcy Cases”);

WHEREAS, the Debtors own certain property known as the Gulfport Facility (defined herein) and the Gulfport Adjoining Parcels (defined herein) located in Gulfport, Mississippi, (collectively, the “Gulfport Property”), identified in Exhibit A attached hereto;

WHEREAS, the United States, on behalf of EPA, and MDEQ contend that Debtor Reichhold, Inc. (“Reichhold”) has compliance and work requirements arising under the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.* (“RCRA”), and the Mississippi Solid Waste Disposal Law of 1974 (“MSWDL”), Miss. Code Ann. §§ 17-17-1 *et seq.*, and the regulations promulgated pursuant thereto, with respect to the Gulfport Facility;

WHEREAS, on March 9, 2015, the United States, on behalf of EPA, filed a protective administrative expense claim (Claim No. 2772) with respect to the Gulfport Facility;

WHEREAS, on March 9, 2015, MDEQ filed a protective administrative expense claim (Claim No. 2764) with respect to the Gulfport Facility;

WHEREAS, on March 30, 2015, the United States, on behalf of EPA, and MDEQ filed proofs of claim (Claim Nos. 4807-4816) against Debtor Reichhold, Inc.;

WHEREAS, the Debtors, the Environmental Trustee, and the Environmental Trust Beneficiaries have entered into a Stipulation and Settlement Agreement (the “Settlement

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<sup>1</sup> The Debtors are Reichhold Holdings US, Inc., Reichhold Liquidation, Inc. (f/k/a Reichhold, Inc.), Canadyne Corporation, and Canadyne-Georgia Corporation.

Agreement”) with respect to the Gulfport Property that provides for the creation of the Environmental Response Trust;

WHEREAS, in accordance with the Settlement Agreement and this Agreement, the Environmental Response Trust is established for the purposes of: (a) owning the Gulfport Facility (and potentially the Gulfport Adjoining Parcels); (b) carrying out administrative and property management functions related to the Gulfport Facility (and potentially the Gulfport Adjoining Parcels); (c) managing and/or funding the implementation of future Environmental Actions (defined herein) with respect to the Gulfport Facility; and (d) ultimately selling, transferring or otherwise disposing of or facilitating the reuse of the Environmental Trust Assets (defined herein), if possible;

WHEREAS, the Settlement Agreement provides for the transfer of Gulfport Facility (and Gulfport Adjoining Parcels, if certain conditions are met) into the Environmental Response Trust;

WHEREAS, the Environmental Response Trust is to be funded by the means set forth in the Settlement Agreement;

WHEREAS, this Agreement governs the Environmental Response Trust, which is created pursuant to Section 1.468B-1 of the regulations promulgated under Section 468B of the Internal Revenue Code (“Treasury Regulations”);

WHEREAS, the Environmental Response Trust is intended to qualify as a qualified settlement fund (for which no grantor trust election has been made) pursuant to Section 468B of the Internal Revenue Code and the Treasury Regulations promulgated thereunder, and as a tax-exempt settlement fund (to the extent that interests in the Environmental Response Trust are owned by “government entities” within the meaning of Section 468B(g)(2) of the Internal Revenue Code) pursuant to Section 468B(g)(2) of the Internal Revenue Code;

WHEREAS, the Environmental Response Trust shall be the exclusive holder of the Environmental Trust Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3); and

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements contained herein, the Parties (defined herein) hereby agree as follows:

ARTICLE 1  
DEFINITIONS AND PRINCIPLES OF CONSTRUCTION

1.1 Definitions

Terms used in this Agreement that are defined in RCRA or other environmental laws or the regulations promulgated pursuant thereto, shall have the meaning assigned to them therein. Otherwise, undefined terms used in this Agreement shall have the meanings set forth in this Section 1.



- 1.1.1 “Administrative Costs” means the fees, costs, and expenses incurred in connection with the administration of the Environmental Response Trust, including but not limited to real estate management, taxes, insurance, property marketing costs, maintenance costs and expenses of the Environmental Response Trust and its third-party professionals, but excluding expenses incurred in overseeing, managing, and performing Environmental Actions.
- 1.1.2 “Agreement” has the meaning set forth in the preamble to this Agreement.
- 1.1.3 “Bankruptcy Cases” has the meaning set forth in the recitals to this Agreement.
- 1.1.4 “Bankruptcy Code” has the meaning set forth in the recitals to this Agreement.
- 1.1.5 “Bankruptcy Court” or “Court” means the United States Bankruptcy Court for the District of Delaware, or, if the Bankruptcy Court abstains from exercising jurisdiction or is otherwise without jurisdiction over any matter arising out of this Agreement, a United States District Court having competent jurisdiction with respect to such matters.
- 1.1.6 “Debtors” has the meaning set forth in the preamble to this Agreement and shall include Liquidating Reichhold as successor in interest to the Debtors under any plan of reorganization or liquidation.
- 1.1.7 “Effective Date” has the meaning set forth in the Settlement Agreement.
- 1.1.8 “Emergency Environmental Actions” has the meaning set forth in Section 3.3 herein.
- 1.1.9 “Environmental Action(s)” means any and all environmental activities authorized or required under Environmental Law, or any and all environmental activities as approved by the Environmental Agencies, that occur after the Effective Date and that are related to the Gulfport Facility, including but not limited to response or remedial actions, removal actions, corrective action and closure or post-closure care (including but not limited to activities performed in accordance with RCRA Subtitle C, 42 U.S.C. §§ 6921-6939f), reclamation, investigations, studies, remediation, interim actions, final actions, emergency actions, water treatment, implementation of engineered structures and controls, monitoring equipment and controls, operation and maintenance, implementation, operation and maintenance of institutional controls, coordination and integration of reuse and remedial efforts and initiatives, and, if required, long-term stewardship and perpetual custodial care activities. “Environmental Action” also includes the above environmental activities approved by the Lead Agency relating to the migration of hazardous waste, hazardous constituents, hazardous substances or pollutants or

contaminants emanating from the Gulfport Facility. “Environmental Action” shall not include natural resource damage assessment or restoration activities.

- 1.1.10 “Environmental Agencies” means EPA and MDEQ and any successor departments or agencies.
- 1.1.11 “Environmental Costs” means the costs and expenses of implementing Environmental Actions, including any expenses of environmental contractors or consultants incurred in overseeing, managing and performing Environmental Actions.
- 1.1.12 “Environmental Law(s)” means any applicable federal, tribal, state or local law, statute, ordinance, rule, regulation or code, any license, permit, authorization, administrative or court order, judgment, decree or injunction, including all common law, related to pollution, protection or restoration of health, safety or the environment, or the use, storage, recycling, treatment, generation, transportation, processing, handling, labeling, production, release or disposal of hazardous waste, hazardous constituents, hazardous substances, or pollutants or contaminants, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601 *et seq.*; RCRA; the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 *et seq.*; the Emergency Planning and Community Right to Know Act, 42 U.S.C. §§ 11001 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq.*; the Oil Pollution Act of 1990, 33 U.S.C. §§ 2701 *et seq.*; and the Occupational Safety and Health Act, 29 U.S.C. §§ 651 *et seq.*, and any applicable tribal, state, or local law counterparts, as the same may be reauthorized or amended from time to time.
- 1.1.13 “Environmental Response Trust” has the meaning set forth in the preamble to this Agreement.
- 1.1.14 “Environmental Trust Account” has the meaning set forth in Section 2.7 herein.
- 1.1.15 “Environmental Trust Assets” means: (a) the Gulfport Facility and any portion of the Gulfport Adjoining Parcels that are ultimately transferred to the Environmental Response Trust; (b) the Funds (defined herein), and any documents and/or information (including Environmental Information or Real Property Information, as defined in the Settlement Agreement) concerning the Gulfport Property in the possession of Debtors or environmental contractors or consultants previously retained by the Debtors, to be transferred to the Environmental Response Trust; (c) the funds currently held in the Reichhold Chemicals, Inc. Standby Trust to be

transferred into the Environmental Response Trust; and (d) such other assets acquired or held by the Environmental Response Trust from time to time pursuant to the Settlement Agreement, this Agreement, or an order of the Court.

- 1.1.16 “Environmental Trust Beneficiary” means the United States, on behalf of EPA, and MDEQ; collectively, the “Environmental Trust Beneficiaries.”
- 1.1.17 “Environmental Trust Protected Parties” means, collectively, the Environmental Response Trust, the Environmental Trustee and its affiliates, and their respective shareholders, officers, directors, employees, members, managers, partners, affiliated entities, consultants, agents, accountants, attorneys or other professionals or representatives engaged or employed by the Environmental Response Trust or the Environmental Trustee; provided, however, that any contractors or consultants retained to perform or oversee Environmental Actions of the Environmental Response Trust (for avoidance of doubt, other than the Environmental Response Trust, the Environmental Trustee and affiliated entities, and their respective shareholders, officers, directors, and employees) shall not be Environmental Trust Protected Parties.
- 1.1.18 “Environmental Trustee” means the trustee of the Environmental Response Trust, not individually but solely in its representative capacity.
- 1.1.19 “EPA” mean the United States Environmental Protection Agency and all of its agencies, departments, and instrumentalities.
- 1.1.20 “EPA HSWA Permit” means the Hazardous and Solid Waste Amendments Permit, EPA I.D. Number MSD001661719, issued by the EPA to Reichhold on August 13, 2012.
- 1.1.21 “Funds” means those funds contributed by the Debtors to the Environmental Response Trust in the amount of \$725,000 as set forth in the Settlement Agreement (less any credit that Debtors may receive if the Gulfport Adjoining Parcels are ultimately transferred to the Environmental Response Trust).
- 1.1.22 “Gulfport Adjoining Parcels” means the real property and improvements owned by Reichhold, more particularly described as Lots 1, 2, and 3 in the legal description and survey attached as Exhibit A hereto, comprising approximately 16.6, 1.8, and 2.4 acres respectively.
- 1.1.23 “Gulfport Adjoining Parcels Closing Deadline” means February 11, 2016, which is the deadline for closing on the sale of the Gulfport Adjoining Parcels pursuant to Debtors’ Adjoining Parcels Sales Motion. For the avoidance of doubt, the Parties agree that the Gulfport Adjoining Parcels Closing Deadline shall not be extended without the written consent of the

Environmental Agencies and shall not be extended more than 30 days after the Effective Date.

- 1.1.24 “Gulfport Facility” means the real property and improvements comprising approximately 38.473 acres owned by Reichhold at 11015 Reichhold Road in Gulfport, Mississippi, and more particularly described as Lot 4 in the legal description and survey attached as Exhibit A hereto. For purposes of the Settlement Agreement and this Agreement, the Gulfport Facility shall include releases of hazardous waste, hazardous constituents, hazardous substances or pollutants or contaminants emanating from the Gulfport Facility and all areas affected by the migration of such substances.
- 1.1.25 “Internal Revenue Code” means the Internal Revenue Code of 1986, as amended.
- 1.1.26 “Lead Agency” means the designated Environmental Agency identified in Section 3.2.
- 1.1.27 “MDEQ” means the Mississippi Department of Environmental Quality, and any successor departments or agencies of the State of Mississippi.
- 1.1.28 “MDEQ Post-Closure Permit” means the State of Mississippi Hazardous Waste Management Permit, Permit No. HW-001-661-719, issued to Reichhold on August 13, 2012.
- 1.1.29 “Non-Lead Agency” means the designated Environmental Agency identified in Section 3.2.
- 1.1.30 “120-Day Budget” has the meaning set forth in Section 3.2.1 herein.
- 1.1.31 “Parties” means the Debtors, the Environmental Trustee, and the Environmental Trust Beneficiaries.
- 1.1.32 “Person” means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, charitable foundation, unincorporated organization, government or any agency or political subdivision thereof or any other entity.
- 1.1.33 “RCRA” means the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.*, as amended.
- 1.1.34 “Settlement Agreement” has the meaning set forth in the preamble to this Agreement.
- 1.1.35 “Treasury Regulations” has the meaning set forth in the recitals to this Agreement.

1.1.36 “United States” means the United States of America (of behalf of EPA) and all of its agencies, departments, and instrumentalities.

## 1.2 Principles of Construction

- 1.2.1 The meanings set forth for defined terms in Section 1.1 or elsewhere in this Agreement shall be equally applicable to both the singular and plural forms of the terms defined.
- 1.2.2 All references to “this Agreement” or “hereof” and other like terms mean, unless the context requires otherwise, this Agreement, including the Exhibits hereto, as the same may be amended, modified or supplemented from time to time in accordance with the terms of this Agreement.
- 1.2.3 The section headings contained in this Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Agreement or of any term or provision hereof.
- 1.2.4 To the extent reasonably possible, the provisions of this Agreement shall be interpreted in a manner consistent with the Settlement Agreement. Where the provisions of this Agreement are inconsistent with the provisions of the Settlement Agreement, the terms of the Settlement Agreement shall govern with the exception of Article 4, in which case this Agreement shall govern. Except that the Debtors agree to be the settlors of this Environmental Response Trust, this Agreement is not intended to impose duties, liabilities, or obligations on the Debtors that are inconsistent with the duties, liabilities, or obligations set forth in the Settlement Agreement.

## ARTICLE 2

### ESTABLISHMENT OF THE ENVIRONMENTAL RESPONSE TRUST

#### 2.1 Establishment of Environmental Response Trust

Pursuant to the Settlement Agreement, the Parties hereby establish, on behalf of the Environmental Trust Beneficiaries, the Environmental Response Trust. It is the intention of the Parties that this Agreement constitutes the governing instrument of the Environmental Response Trust.

#### 2.2 Transfer of Ownership of Gulfport Property

- 2.2.1 Within seven (7) business days of the Effective Date, Debtors shall transfer all of their right, title, and interest in the Gulfport Facility, including all of Debtors’ fee ownership in all appurtenances, rights, fixtures, improvements, personal property and equipment located thereon (all to the maximum extent legally transferrable as of the Effective Date), to the Environmental Response Trust as set forth in Paragraph 9 of the Settlement Agreement. Debtors shall retain no ownership or other interest

whatsoever in the Gulfport Facility after the date of transfer. The grantee for each such deed and personal property bill of sale shall be the Environmental Response Trust by and through Project Navigator Ltd., Trustee of the Environmental Response Trust, not individually, but solely in its representative capacity as the Environmental Trustee. Real estate taxes shall be adjusted, pro-rata, as of the closing date, and typical closing adjustments shall be made. The transfer of the Gulfport Facility shall be recorded in appropriate deed records indicating the ownership of the Gulfport Facility by the Environmental Response Trust.

2.2.2 Within the later of: (i) seven (7) business days after the Effective Date; or (ii) five (5) business days after the Gulfport Adjoining Parcels Closing Deadline if the sale of the Gulfport Adjoining Parcels does not finally close by the Gulfport Adjoining Parcels Closing Deadline, Debtors shall transfer all of their right, title, and interest in the Gulfport Adjoining Parcels, including all of Debtors' fee ownership in all appurtenances, rights, fixtures, improvements, personal property and equipment located thereon (all to the maximum extent legally transferrable as of the Effective Date) to the Environmental Response Trust, as set forth in Paragraph 9 of the Settlement Agreement. Debtors shall retain no ownership or other interest whatsoever in the Gulfport Adjoining Parcels, except as provided in Section 2.3 below and Paragraph 29 of the Settlement Agreement, after the date of transfer. The grantee for any deed or bill of sale shall be the Environmental Response Trust, by and through Project Navigator, Ltd. as Environmental Trustee, not individually, but solely in its representative capacity as Environmental Trustee. The transfer of the Gulfport Adjoining Parcels shall be recorded in appropriate deed records indicating the ownership of the Gulfport Adjoining Parcels by the Environmental Response Trust.

### 2.3 Transfer of Funds

Within seven (7) business days of the Effective Date, Debtors shall transfer cash in the amount of \$725,000 to the Environmental Response Trust in accordance with Paragraph 7 of the Settlement Agreement; provided, however, that if the sale of the Gulfport Adjoining Parcels does not finally close by the Gulfport Adjoining Parcels Closing Deadline and such parcels are transferred to the Environmental Response Trust, Debtors shall receive a credit of \$225,000 towards their payment obligations under this Section as set forth in Paragraphs 7 and 29 of the Settlement Agreement.

### 2.4 Transfer of Standby Trust Proceeds

Upon full execution and Bankruptcy Court approval of this Agreement, the Environmental Trustee shall provide wire transfer instructions to MDEQ pursuant to which MDEQ will direct the trustee for the Reichhold Chemicals, Inc. Standby Trust (U.S. Bank Global Corporate Trust Services) to transfer the funds in said Standby Trust to the Environmental Response Trust by wire transfer.

## 2.5 Objectives and Purposes

- 2.5.1 The purpose of the Environmental Response Trust shall be to: (i) own the Gulfport Facility (and potentially the Gulfport Adjoining Parcels); (ii) carry out administrative and property management functions related to the Gulfport Facility (and potentially the Gulfport Adjoining Parcels if such parcels are ultimately conveyed to the Environmental Response Trust); (iii) manage and/or fund implementation of future Environmental Actions approved by the Lead Agency with respect to the Gulfport Facility; (iv) fulfill other obligations as set forth in the Settlement Agreement; (v) engage in trade or business, upon receipt of prior approval of the Lead Agency, if such trade or business will be specifically for the purposes of generating additional assets to fund the Environmental Response Trust; and (vi) ultimately sell, transfer, or otherwise dispose or facilitate the reuse of all or part of the Environmental Trust Assets.
- 2.5.2 The Bankruptcy Court shall retain continuing jurisdiction over the Environmental Response Trust. The Environmental Response Trust satisfies all the requirements of, and is intended by the Parties to be classified as, a qualified settlement fund pursuant to the Treasury Regulations.

## 2.6 Holder of Environmental Trust Assets

Upon transfer of the Environmental Trust Assets to the Environmental Response Trust, the Environmental Response Trust shall be the exclusive owner and holder of the Environmental Trust Assets described herein for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3).

## 2.7 Environmental Trust Account

The Environmental Trustee shall establish an Environmental Trust Account to provide funding for both Administrative Costs of the Environmental Response Trust and Environmental Costs, all in accordance with an approved budget. The Environmental Trustee may create subaccounts within the Environmental Response Trust as appropriate and consistent with this Agreement and the Settlement Agreement. The Environmental Trustee shall establish, maintain and hold the Environmental Trust Account consistent with the Settlement Agreement and this Agreement, to administer the Environmental Trust Assets and distributions therefrom.

## 2.8 Management of Environmental Trust Assets

- 2.8.1 Consistent with this Agreement and the Settlement Agreement, the Environmental Trustee shall use the Environmental Trust Assets to fund Environmental Actions approved by the Lead Agency pursuant to applicable Environmental Laws with respect to the Gulfport Facility, and to fund Administrative Costs of the Environmental Response Trust that have been approved by the Lead Agency.
- 2.8.2 After the Lead Agency, in consultation with the Non-Lead Agency, has confirmed to the Environmental Trustee that all final actions have been

completed, and all final costs have been disbursed for Environmental Actions, any remaining Environmental Trust Assets shall be transferred in accordance with Paragraph 19 of the Settlement Agreement and Section 4.13.7 below.

2.9 Investment and Safekeeping of Environmental Trust Assets

2.9.1 The Environmental Trust Assets, until sold, transferred, or otherwise disposed as provided herein and in the Settlement Agreement, shall be held in trust. All interest, dividends, and other revenue earned in the Environmental Trust Account shall be retained in the Environmental Trust Account and used for the same purposes as the principal in the account as provided in this Agreement and the Settlement Agreement. The Environmental Response Trust shall be under no liability for interest or producing income on any monies received by the Environmental Response Trust hereunder and held for distribution or payment as provided in this Agreement, except as such interest or other income, including but not limited to dividends or distributions or realized investment gains or losses, shall actually be received by the Environmental Response Trust. The right and power of the Environmental Response Trust to invest the Environmental Trust Assets shall be to invest such assets as follows (the “Permissible Investments”):

2.9.2 The Environmental Response Trust may purchase and hold as investments: (a) demand and time deposits, such as certificates of deposit, in banks or other savings institutions whose deposits are federally insured; (b) U.S. Treasury bills and notes, including, but not limited to, long-term U.S. Treasury bills and notes; (c) repurchase agreements for U.S. Treasury bills and notes; (d) AA or AAA corporate bonds (with the rating awarded by at least two of the three major rating agencies (Standard & Poor’s, Moody’s, or Fitch)); (e) debt issued by agencies of the United States Government, the Federal National Mortgage Association (Fannie Mae), or the Federal Home Loan Mortgage Corporation (Freddie Mac); or (f) open-ended mutual funds owning only assets described in subparts (a) through (e) of this subsection; *provided*, however, that the value of bonds of any single company and its affiliates owned by the Environmental Response Trust directly rather than through a mutual fund shall not exceed \$500,000 when purchased, but may be held, despite increase in value, so long as such amount does not exceed \$750,000; and

2.9.3 The Environmental Response Trust may purchase publicly traded common stocks listed as components of the S&P 500 index or Russell 1000 index, or their successors, at time of purchase, or open-ended mutual funds owning publicly traded common stocks, or exchange-traded funds representing ownership interests in a set of publicly traded common stocks or stock indices, in an amount no more than 20% of the then current total of Environmental Trust Assets, and may hold and reallocate such



investments so long as the total percentage of such investments does not exceed 35% of the then current total of Environmental Trust Assets; provided, however, that the value of the publicly traded common stock (listed as components of the S&P 500 index or Russell 1000 index, or their successors, at time of purchase) of any single publicly traded company and its affiliates owned by the Environmental Response Trust directly rather than through a mutual fund shall not exceed \$500,000 when purchased, but may be held, despite increase in value, so long as such amount does not exceed \$750,000.

2.9.4 Any such investments described in this Section 2.9 shall be made consistently with the prudent investor standard established by the Uniform Prudent Investor Act.

#### 2.10 Insurance Policy to Cover Future Environmental Actions

Only at the direction of the Environmental Agencies shall the Environmental Trustee investigate the possible purchase of an insurance policy to cover future Environmental Actions and general liability at the portions of the Gulfport Property conveyed to it. If, and only if, the Environmental Agencies unanimously direct the Environmental Trustee in writing to purchase such insurance, shall the Environmental Trustee use Environmental Trust Assets to purchase such insurance.

#### 2.11 Access and Deed Restrictions

The Environmental Trustee shall provide the Environmental Agencies and their representatives and contractors with access at all reasonable times to the Gulfport Facility (and Gulfport Adjoining Parcels if such parcels are conveyed to the Environmental Response Trust) for the purposes of conducting, monitoring, or overseeing Environmental Actions or related activities at or near the Gulfport Facility. The Environmental Trustee shall implement any institutional controls or deed restrictions requested by the Environmental Agencies with respect to the portions of the Gulfport Property conveyed to it. The Environmental Response Trustee shall execute and record in the appropriate local real estate records any easements, deed restrictions, or environmental covenants restricting the use of the Gulfport Facility (or Gulfport Adjoining Parcels, if conveyed to the Environmental Response Trust) requested by the Environmental Agencies in order to protect public health, welfare or safety or the environment or ensure non-interference with or protectiveness of any action. Nothing in the Settlement Agreement or this Agreement is intended to or shall be construed to terminate or otherwise amend any easements, deed restrictions, or environmental covenants of record as to the Gulfport Facility or Gulfport Adjoining Parcels existing prior to the Effective Date. The Environmental Trustee shall abide by the terms of any institutional controls or deed restrictions in place or of record, including the Environmental Covenant filed on May 26, 2015 with the Harrison County Chancery Court Clerk for the First Judicial District, as to the Gulfport Facility.

2.12 Duration of the Trust

2.12.1 Consistent with the terms of this Agreement and the Settlement Agreement, the Environmental Trustee shall not unduly prolong the duration of the Environmental Response Trust and shall at all times endeavor to resolve, settle, or otherwise dispose of all claims against Environmental Trust Assets and to effect the distribution of any remaining Environmental Trust Assets in accordance with the terms hereof and the Settlement Agreement, and to terminate the Environmental Response Trust as soon as practicable consistent with this Agreement and the Settlement Agreement.

2.12.2 The Parties agree that the rule against perpetuities does not apply to the Environmental Response Trust, but to the extent that any rule against perpetuities shall be deemed applicable, the Environmental Response Trust shall automatically dissolve on the date 90 days after the date on which 21 years less 91 days pass after the death of the last survivor of all of the descendants of the late Joseph P. Kennedy, Sr., father of the late President John F. Kennedy, living on the date hereof.

2.13 Property Disposition

The Environmental Trustee may, at any time, seek approval of the Environmental Agencies for the sale, lease, or other disposition of all or part of the Gulfport Facility and/or Gulfport Adjoining Parcels (if such parcels are ultimately conveyed to the Environmental Response Trust). Subject to the approval of the Lead Agency, in consultation with the Non-Lead Agency, and to the terms of the Settlement Agreement, the Environmental Trustee may propose a sale, lease or disposition of the Gulfport Facility and/or Gulfport Adjoining Parcels that includes funding from the Environmental Trust Account, provided that the net effect of any proposed sale, lease or disposition is to lessen the total financial obligations and liabilities that would otherwise be incurred in the absence of any such sale, lease, or disposition. Any proposed transfer of the Gulfport Facility and/or Gulfport Adjoining Parcels must be approved by the United States and MDEQ. In the event of any approved sale or lease or other disposition, any net proceeds from the sale or lease or other disposition shall be paid to the Environmental Response Trust, except with respect to the Gulfport Adjoining Parcels, which net proceeds shall be subject to distribution with Paragraph 29 of the Settlement Agreement.

ARTICLE 3  
WORK AND DISTRIBUTIONS

3.1 Implementation of Environmental Actions

Within 15 days after the Effective Date, the Environmental Trustee shall submit permit modification requests to the Environmental Agencies to transfer the EPA HSWA Permit and the MDEQ Post-Closure Permit to the Environmental Trustee as owner and operator, not individually, but solely in its representative capacity as Environmental Trustee. The Environmental Trustee shall comply with all applicable permit transfer requirements and shall

implement the terms of the HSWA and Post-Closure Permits upon such transfer. Financial assurance obligations under the Permits will be deemed satisfied through the Environmental Trustee's compliance with the terms of this Agreement and the Settlement Agreement.

### 3.2 Budgets

The Environmental Trustee shall provide the Environmental Agencies with balance statements and proposed budgets as described in Sections 3.2.1 and 3.2.2 of this Agreement. No expenses may be incurred or paid from the Environmental Response Trust that are inconsistent with any approved budget, except in the event of the Lead Agency's approval of an amended budget or in the event of an Emergency Environmental Action as set forth below in Section 3.3. The Lead Agency shall have the authority to approve or disapprove any proposed budget for the Environmental Response Trust (but only after consultation with the Non-Lead Agency). The initial Lead Agency shall be EPA (the "Lead Agency") and the initial Non-Lead Agency shall be MDEQ (the "Non-Lead Agency"). The Lead Agency may change by agreement of the Environmental Agencies, and the Environmental Agencies will notify the Environmental Trustee of such change in writing.

#### 3.2.1 120-Day Budget

Prior to the Effective Date, the Environmental Trustee shall submit to the Environmental Agencies for approval a budget for the first 120 days following the Effective Date (a "120-Day Budget") for the Environmental Response Trust. The 120-Day Budget shall be deemed approved upon approval by the Lead Agency after consultation with the Non-Lead Agency. If disapproved, such budget shall be revised and resubmitted as expeditiously as possible. The Environmental Trustee shall have authority to deviate by no more than ten (10) percent (%) from any line item unless the Lead Agency, in consultation with the Non-Lead Agency, approves such expenses in writing or unless an amended 120-Day Budget is approved consistent with this Section.

#### 3.2.2 Biannual Budgets

Within 90 days following the Effective Date in the first year, and every year thereafter on the anniversary of the Effective Date, the Environmental Trustee shall provide to the Environmental Agencies a statement showing the balance of the Environmental Trust Account and a proposed budget for the coming twelve (12) months. The Lead Agency shall have the authority to approve or disapprove the proposed budget after consultation with the Non-Lead Agency. If disapproved, such budget shall be revised and resubmitted as expeditiously as possible. The Environmental Trustee shall have authority to deviate by no more than ten (10) percent (%) from any line item, unless the Lead Agency, in consultation with the Non-Lead Agency, approves an amended budget or a revised line item for an approved budget, provided, however, that the Environmental Trustee may incur or pay ongoing or recurring expenses approved in the prior period's budget that occur between the time a proposed budget is submitted and the time it is approved. Each budget shall include a future forecast

of administrative expenditures, with annual details for at least the next three (3) years (or such longer period as the Environmental Agencies shall reasonably request). Upon request by the Lead Agency, the Environmental Trustee shall submit an updated budget for approval at any time during a given twelve (12) month period. The Environmental Trust shall regularly, but at least annually, and otherwise upon the reasonable request of the Environmental Agencies, provide documentation to substantiate compliance with the applicable approved budget and application of Environmental Trust Assets consistent with the terms of this Agreement and the Settlement Agreement.

### 3.3 Emergency Funding

In the event of an emergency with respect to the Gulfport Facility requiring the performance of an Environmental Action within hours or days of the Environmental Trustee first receiving notice of the emergency, if the emergency does not permit sufficient time to amend the approved budget in accordance with Section 3.2 above, the Environmental Trustee may utilize funding from the Environmental Trust Account to undertake Environmental Actions necessary to respond to the emergency (the “Emergency Environmental Action”). If an Emergency Environmental Action is performed by the Lead Agency or Non-Lead Agency, the Environmental Trustee may reimburse the Lead Agency (or the Non-Lead Agency, if the Lead Agency concurs in writing) for such Emergency Environmental Action from the Environmental Trust Account. Nothing in this Section shall preclude the payment or reimbursement of the Emergency Environmental Action through the regular budget or budget revision process.

### 3.4 Remuneration for Environmental Trustee’s Start-Up Fees and Expenses

The Environmental Trustee shall be entitled to remuneration from the Environmental Trust Account of up to \$20,000.00 for its reasonable fees and expenses and Administrative Costs after December 27, 2015 in connection with the formation of the Environmental Response Trust, preparation for taking Environmental Actions, and preparation of the first 120-Day Budget, prior to the Effective Date of this Agreement. Within 60 days of the Effective Date, the Environmental Trustee will submit detailed invoices reflecting its pre-Effective Date fees and expenses for approval by the Lead Agency, in consultation with the Non-Lead Agency.

### 3.5 Expenditures and Performance of Environmental Actions by Environmental Response Trust

- 3.5.1 The Environmental Trustee shall use funds in the Environmental Response Trust to perform Environmental Actions in accordance with the approved budget, the EPA HSWA Permit, and the MDEQ Post-Closure Permit. The Environmental Trustee shall use funds and interest in the Environmental Response Trust to undertake such work promptly and in accordance with any schedule approved by the Lead Agency.
- 3.5.2 The Environmental Trustee shall pay funds from the Environmental Response Trust to the applicable Lead Agency making a written request for funds for reimbursement within 30 days following such request. Such

written request shall: (i) be in accordance with the approved budget; and (ii) specify what the funds were used for and shall certify that they were used only for Environmental Actions performed after the Effective Date by the Lead Agency with respect to the Gulfport Facility. The Environmental Trustee shall also pay funds from the Environmental Response Trust to the Non-Lead Agency making a written request for funds within 30 days following such request in the event the Lead Agency has requested the assistance of the Non-Lead Agency. Such written request shall: (i) be in accordance with the approved budget; and (ii) specify what the funds were used for and shall certify that they were used only for Environmental Actions performed by the Non-Lead Agency with respect to the Gulfport Facility pursuant to a request for assistance by the Lead Agency.

### 3.6 Liens

Notwithstanding anything to the contrary in this Article 3, the Environmental Response Trust hereby grants to the Environmental Agencies a first-priority lien on and security interest in the Environmental Trust Assets to secure the payment of all amounts owed to, accrued or reserved on account of the Environmental Response Trust or to be retained by the Environmental Trustee hereunder or otherwise due hereunder. Such lien shall be subject to the rights of the Debtors to receive a credit and share in sale proceeds as provided in Paragraphs 7 and 29 of the Settlement Agreement and Section 2.3 of this Agreement. Upon written request by the Environmental Agencies, the Environmental Response Trust agrees to take appropriate actions and execute appropriate documents to perfect the liens and security interest hereunder.

## ARTICLE 4 THE ENVIRONMENTAL TRUSTEE

### 4.1 Appointment

4.1.1 Project Navigator, Ltd., not individually but solely in its representative capacity, is appointed to serve as the Environmental Trustee, and the Environmental Trustee hereby accepts such appointment and agrees to serve in such representative capacity, effective upon the Effective Date, subject to the approval of the Bankruptcy Court, and to take such actions as are necessary, prior to the Effective Date, to establish the Environmental Response Trust, Environmental Trust Account, the 120-Day Budget, and any actions necessary to prepare for undertaking the Environmental Actions under the EPA HSWA Permit and MDEQ Post-Closure Permit. Subject to the provisions of Section 4.13 herein, the term of the Environmental Trustee shall be for five (5) years at which time the Environmental Trustee may be re-appointed or terminated. Any successor Environmental Trustee shall be appointed in accordance with Section 4.14 of this Agreement. If the Environmental Trustee is not reappointed and no successor Environmental Trustee is appointed by the expiration of the

Environmental Trustee's term, the Court may reappoint the Environmental Trustee or appoint a successor Environmental Trustee.

- 4.1.2 After approval by the Environmental Agencies, the Environmental Response Trust is authorized to obtain the services of an environmental consultant to implement the future Environmental Actions required by the EPA HSWA Permit, the MDEQ Post-Closure Permit, or as otherwise directed by the Lead Agency, in consultation with the Non-Lead Agency (the "Consultant"). The Consultant shall obtain environmental, general and professional liability insurance in the sum of \$5,000,000 or such lesser amount as agreed to by the Environmental Trustee after consultation with the Environmental Agencies. The Environmental Response Trust shall be an additional insured of the insurance and the policies shall cover negligence committed by the Consultant in implementing the future Environmental Actions or any other negligence committed by the Consultant. The legal relationship of the Consultant to the Environmental Response Trust and Environmental Trustee is that of an independent contractor professional, not that of an entity employed by the Environmental Response Trust or the Environmental Trustee. The Consultant shall not be deemed an Environmental Trust Protected Party.

#### 4.2 General Authority

The Environmental Trustee's powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purposes of the Environmental Response Trust and not otherwise. The Environmental Trustee shall have the authority to bind the Environmental Response Trust, and any successor Environmental Trustee, or successor or assign of the Environmental Response Trust, but shall for all purposes hereunder be acting in its representative capacity as Environmental Trustee and not individually. Notwithstanding anything to the contrary contained herein, the Environmental Trustee shall not be required to take action or omit to take any action if, after the advice of counsel, the Environmental Trustee believes in good faith such action or omission is not consistent with the Environmental Trustee's fiduciary duties. The Environmental Trustee shall have no obligations or liability to perform any activities for which the Environmental Trust Account lacks sufficient funds.

#### 4.3 Powers

In connection with the administration of the Environmental Response Trust, except as otherwise set forth in this Agreement and the Settlement Agreement, the Environmental Trustee is authorized to perform any and all acts necessary to accomplish the purposes of the Environmental Response Trust as set forth in Section 2.5; however no such action shall cause the Environmental Response Trust to fail to qualify as a qualified settlement fund (for which no grantor trust election has been made) under Section 468B of the Internal Revenue Code and the Treasury Regulations thereunder. The powers of the Environmental Trustee shall, without any further Court approval or order, include, without limitation, each of the following:

- 4.3.1 to receive, manage, invest, supervise and protect the Environmental Trust Assets, withdraw, make distributions and pay taxes and other obligations owed by the Environmental Response Trust from funds held by the Environmental Response Trust in accordance with this Agreement and the Settlement Agreement, and withhold and pay to the appropriate taxing authority any withholding taxes on distributions from the Environmental Response Trust;
- 4.3.2 to make investments in accordance with Section 2.9;
- 4.3.3 to borrow funds, incur or assume liabilities, and pledge any portion of the Environmental Trust Assets on behalf of the Environmental Response Trust in furtherance of or in connection with the Environmental Trustee's or the Environmental Response Trust's duties, powers, authority, and obligations under this Agreement and determine and satisfy any and all liabilities created, incurred or assumed by the Environmental Response Trust;
- 4.3.4 to make distributions of the Environmental Trust Assets for the purposes contemplated in this Agreement, including, but not limited to, undertaking Environmental Actions as defined herein;
- 4.3.5 subject to the limitations in Section 2.10, to obtain general liability insurance and other reasonable insurance coverage with respect to the Environmental Trustee's liabilities and obligations as Environmental Trustee under this Agreement and the Settlement Agreement (in the form of an errors and omissions policy or otherwise) and indemnification for the Environmental Trustee and others to the extent provided for in this Agreement and the Settlement Agreement;
- 4.3.6 to seek a reduction in real property (ad valorem) taxes with respect to any real property transferred to the Environmental Response Trust;
- 4.3.7 to request any appropriate tax determination with respect to the Environmental Response Trust, protest, contest or otherwise object to any such tax determination, and make any tax election, settle or compromise any tax liability, or consent to any claim or assessment relating to taxes;
- 4.3.8 to effect all actions and execute all agreements, instruments and other documents necessary to implement this Agreement and the Settlement Agreement, including to exercise such other powers as may be vested in or assumed by the Environmental Response Trust and/or the Environmental Trustee pursuant to this Agreement and any order of the Court or as may be necessary and proper to carry out the provisions of this Agreement. No Person dealing with the Environmental Response Trust shall be obligated to inquire into the authority of the Environmental Trustee in connection with the protection, conservation or disposition of Environmental Trust

Assets. The Environmental Trustee is authorized to execute and deliver all documents on behalf of the Environmental Response Trust to accomplish the purposes of this Agreement and the Settlement Agreement;

4.3.9 to lease, sell, or dispose of property; and

4.3.10 to take all other appropriate action with respect to the Environmental Trust Assets to the extent consistent with the purpose of the Environmental Response Trust, the Settlement Agreement and this Agreement.

#### 4.4 Other Professionals

The Environmental Trustee is authorized to retain on behalf of the Environmental Response Trust and pay such third parties as the Environmental Trustee (in accordance with a budget approved pursuant to Section 3.2 above) may deem necessary or appropriate to assist the Environmental Trustee in carrying out its powers and duties under this Agreement and the Settlement Agreement, including, without limitation: (i) counsel to the Environmental Response Trust and/or Environmental Trustee; (ii) a public accounting firm to perform such reviews and/or audits of the financial books and records of the Environmental Response Trust as may be appropriate in the Environmental Trustee's reasonable discretion and to prepare and file any tax returns or informational returns for the Environmental Response Trust as may be required; and (iii) environmental consultants (upon consultation with the Environmental Agencies), custodians, security personnel, engineers, surveyors, brokers, contractors, and clerks. The Environmental Trustee may pay all such Persons compensation for services rendered and expenses incurred in accordance with a budget approved as provided in Section 3.2.

#### 4.5 Books and Records

The Environmental Trustee shall maintain, or cause to be maintained books, records, and accounts relating to the Environmental Trust Assets and income of the Environmental Response Trust and the payment or assumption by the Environmental Response Trust of liabilities, expenses or obligations in such detail and for such period of time as may be necessary to enable the Environmental Response Trust to make full and proper accounting in respect thereof. Such books and records shall be maintained on a modified cash or other comprehensive basis of accounting. The Environmental Agencies shall have the right to examine all such books and records and all other books and records of the Environmental Response Trust. Except as otherwise may be expressly provided herein, nothing in this Agreement requires the Environmental Trustee to file any accounting, or seek approval of any court, with respect to the administration of the Environmental Response Trust, or as a condition for managing any payment or distribution out of the Environmental Trust Assets.

#### 4.6 Limitation of the Environmental Trustee's Authority

The Environmental Response Trust and the Environmental Trustee shall have no authority to do any of the following:

4.6.1 Except as described in Paragraph 2.5.1 above, to engage in any trade or business with respect to the Environmental Trust Assets;



- 4.6.2 take any action that would cause the Environmental Response Trust to fail to qualify as a qualified settlement fund (for which no grantor trust election has been made) under Section 468B of the Internal Revenue Code and the related Treasury Regulations; or
- 4.6.3 take any action in contravention of this Agreement or the Settlement Agreement, or applicable law, or any action that would make it impossible to carry on the activities of the Environmental Response Trust.

4.7 Reliance by the Environmental Trust Protected Parties

Except as may otherwise be provided herein: (a) the Environmental Trust Protected Parties may rely, and shall be protected from liability in acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by them to be genuine and to have been signed or presented by the proper party or parties; (b) consistent with Section 4.4, the Environmental Trust Protected Parties may consult with legal counsel, financial or accounting advisors and other professionals or environmental consultants to be selected by them, and the Environmental Trust Protected Parties shall not be personally liable for any action taken or omitted to be taken by them in accordance with the advice thereof; and (c) Persons dealing with the Environmental Trust Protected Parties shall look only to the Environmental Trust Assets to satisfy any liability incurred by the Environmental Trust Protected Parties to such Person in carrying out the terms of this Agreement, the Settlement Agreement, or any order of the Court and the Environmental Trust Protected Parties shall have no personal obligation to satisfy any such liability.

4.8 Compensation of the Environmental Trustee

- 4.8.1 The Environmental Response Trust shall pay its own reasonable and necessary costs and expenses, and shall reimburse the Environmental Trustee for the actual reasonable out-of-pocket fees and expenses to the extent incurred by the Environmental Trustee in connection with the Environmental Trustee's duties hereunder, including, without limitation, necessary travel, lodging, office rent (to be paid directly by the Environmental Response Trust), postage, photocopying, telephone and facsimile charges upon receipt of periodic billings, all in accordance with a budget or fee schedule approved by the Lead Agency. The Environmental Trustee and employees of the Environmental Response Trust and the Environmental Trustee who perform services for the Environmental Response Trust shall be entitled to receive reasonable compensation for services rendered on behalf of the Environmental Response Trust in accordance with a budget or fee schedule approved by the Lead Agency.
- 4.8.2 The Environmental Trust Assets shall be subject to the claims of the Environmental Trustee, and the Environmental Trustee shall be entitled to compensate itself and the Environmental Trust Protected Parties, for administrative and environmental work performed consistent with the

budget approved by the Lead Agency out of any available cash in the Environmental Trust Account. The Environmental Response Trust shall be obligated to pay for actual out-of-pocket expenses and for actual hours worked. The Environmental Trustee shall be entitled to compensation on a “Time and Materials” basis, provided that in no event, unless approved in writing by the Lead Agency, shall such compensation exceed \$10,500.00 for any month.

4.9 Liability of Environmental Trust Protected Parties

In no event shall the Environmental Trust Protected Parties be held liable to any third parties for any liability, action, or inaction of any other party including each other and the Debtors. Such obligations shall inure only to the benefit of the Environmental Trust Beneficiaries. The Environmental Response Trust Protected Parties shall, further, be indemnified and exculpated in accordance with Section 4.10 of this Agreement.

4.10 Exculpation and Indemnification

The Environmental Response Trust Protected Parties shall be exculpated and indemnified, consistent with the provisions of this Section 4.10, for any claims, causes of action, or other assertions of liability arising out of or in connection with:

- 4.10.1 the ownership or environmental condition of Environmental Trust Assets;
- 4.10.2 the discharge of duties and powers conferred upon the Environmental Response Trust and/or Environmental Trustee by this Agreement and the Settlement Agreement, any order of the Court, or applicable law or otherwise, including the making of payments in accordance with this Agreement and the Settlement Agreement, or any order of the Court, and the implementing of the provisions of this Agreement and the Settlement Agreement, or any order of the Court; or
- 4.10.3 any claim against the Debtors.

4.11 Personal Liability

No Environmental Trust Protected Party shall be personally liable, including but not limited to under RCRA and Sections 106 or 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9671, unless the Court finds, by a final order, that the Environmental Response Trust Protected Party committed fraud or willful misconduct after the Effective Date in relation to the Environmental Trustee’s duties that are alleged to be the basis for liability. Each Environmental Response Trust Protected Party shall be and hereby is exculpated by all Persons, including, without limitation, holders of claims and other parties in interest, of and from any and all claims, causes of action, and other assertions of liability arising out of or in connection with the matters contained in the provisions of Sections 4.10.1, 4.10.2, and 4.10.3. No Person, including without limitation, holders of claims and other parties in interest, will be allowed to pursue any claims or cause of action against any

Environmental Response Trust Protected Party for the matters contained in the provisions of Sections 4.10.1, 4.10.2, and 4.10.3. However, nothing in this Section 4.11 or this Agreement shall preclude the Environmental Agencies from enforcing the terms of the Settlement Agreement and this Agreement against the Environmental Response Trust Protected Parties.

#### 4.12 Indemnification

The Environmental Response Trust shall indemnify, defend and hold harmless (without the Environmental Trust Protected Parties having to first pay from their personal funds) the Environmental Trust Protected Parties from and against any and all claims, causes of action, liabilities, obligations, losses, costs, judgments, damages or expenses (including attorneys' fees) and any other assertion of liability arising out of or in connection with the matters contained in the provisions of Sections 4.10.1, 4.10.2, and 4.10.3 (collectively, the "Indemnifiable Expenses"), to the fullest extent permitted by applicable law, provided that such indemnification shall be limited to the funds in the Environmental Trust Account. Notwithstanding the foregoing, to the extent fraud or willful misconduct of any Environmental Trust Protected Party is alleged and the Court finds, by a final order, that such Environmental Trust Protected Party committed fraud or willful misconduct after the Effective Date in relation to the Environmental Trustee's duties that are alleged to be the basis for liability, there shall be no indemnification of that Environmental Trust Protected Party for any judgments arising from such fraud or willful misconduct (the "Carved Out Expenses"). It shall be an irrebuttable presumption that any action taken, or inaction, consistent with Court approval, shall not constitute willful misconduct or fraud. The Environmental Response Trust shall advance to any Environmental Trust Protected Party incurring any Indemnifiable Expenses such amounts, on a monthly basis, if the Environmental Trust Protected Party provides the Environmental Response Trust with an undertaking reasonably satisfactory to the Environmental Trustee. Such Environmental Trust Protected Party will repay any amounts finally determined to be Carved Out Expenses.

#### 4.13 Termination of the Environmental Response Trust, Replacement or Removal of the Environmental Trust and Transfer of Remaining Funds to the Superfund

4.13.1 Termination. The duties, responsibilities and powers of the Environmental Trustee will terminate on the date the Environmental Response Trust is dissolved under applicable law in accordance with this Agreement and the Settlement Agreement, or by an order of the Court; provided that this Section and Sections 4.9, 4.10, 4.11, and 4.12 above shall survive such termination, dissolution and entry.

4.13.2 Resignation. The Environmental Trustee may resign by giving not less than 30 days prior written notice thereof to the Court and the Environmental Trust Beneficiaries. The Environmental Trustee, including his professionals, attorneys, and advisors, shall be entitled to all accrued but unpaid fees, expenses, and other compensation to the extent incurred, arising or relating to events occurring before such resignation, and any out-of-pocket expenses reasonably incurred in connection with the transfer of all powers and duties to the successor Environmental Trustee.

- 4.13.3 Replacement. The Environmental Trustee may be replaced upon completion of any five (5) year term, however, this Section and Sections 4.9, 4.10, 4.11, and 4.12 above shall survive such replacement.
- 4.13.4 Removal. The Environmental Trustee may be removed or funds in the Environmental Trust may be transferred to the Environmental Trust Beneficiaries by:
- 4.13.5 The entry of an order by the Court, immediately upon notice of appointment of a temporary or permanent successor, finding that the Environmental Trustee committed fraud or willful misconduct after the Effective Date in relation to the Environmental Trustee's duties under the Environmental Response Trust; or
- 4.13.6 The entry of an order by the Court, immediately upon notice of appointment of a temporary or permanent successor, finding that: (i) the Environmental Trustee has in any material respect, as a result of negligence, exacerbated conditions at any of the Gulfport Facility; or (ii) has been seriously or repeatedly deficient or seriously or repeatedly late in the performance of its duties; or (iii) has violated the provisions of the Settlement Agreement or this Agreement or other related implementation agreements. In the event of a finding of the occurrence of any of the events set forth in the foregoing clauses (i), (ii) or (iii), the United States and MDEQ may jointly direct that the Environmental Trustee be replaced in accordance with this Agreement or may retain the Environmental Trustee and direct that all remaining funds and future proceeds or income, if any, attributable to the Environmental Trust Assets in the Environmental Response Trust be paid to the United States and/or to MDEQ to be used in accordance with the terms of this Agreement and the Settlement Agreement. In the event the funds are so paid, so long as title to any Gulfport Property remains in the name of the Environmental Response Trust or Environmental Trustee, funds deemed reasonably sufficient by the Environmental Trust Beneficiaries to cover property taxes and other property management costs to be paid by the Environmental Response Trust for any real property shall be left in the Environmental Response Trust Account.
- 4.13.7 Consistent with Paragraph 19 of the Settlement Agreement and Section 2.8.2 of this Agreement, any funds remaining in the Environmental Response Trust after the termination of the Environmental Response Trust shall be paid to the Superfund.
- 4.13.8 The provisions of this Section and Sections 4.9, 4.10, 4.11, and 4.12 above shall survive the removal of the Environmental Trustee or transfer of funds.

4.14 Appointment of Successor Environmental Trustees

Any successor Environmental Trustee shall be proposed by the Environmental Agencies and appointed by the Court. Any successor Environmental Trustee appointed hereunder shall execute an instrument accepting such appointment hereunder and shall file such acceptance with the Environmental Response Trust records. Thereupon, such successor Environmental Trustee shall, without any further act, become vested with all the estates, properties, rights, powers, trusts and duties of its predecessor in the Environmental Response Trust with like effect as if originally named herein; provided, however, that a removed, incapacitated or resigning Environmental Trustee shall, nevertheless, when requested in writing by the successor Environmental Trustee, execute and deliver an instrument or instruments conveying and transferring to such successor Environmental Trustee under the Environmental Response Trust all the estates, properties, rights, powers, and trusts of such predecessor Environmental Trustee.

4.15 No Bond

Notwithstanding any state law to the contrary, the Environmental Trustee, including any successor Environmental Trustee, shall be exempt from giving any bond or other security in any jurisdiction.

ARTICLE 5  
ENVIRONMENTAL TRUST BENEFICIARIES

5.1 Environmental Trust Beneficiaries

Beneficial interests in the Environmental Response Trust shall be held by each of the Environmental Trust Beneficiaries.

5.2 Identification of Environmental Trust Beneficiaries

5.2.1 In order to determine the actual names and addresses of the authorized representatives of an Environmental Trust Beneficiary, the Environmental Response Trust and the Environmental Trustee shall be entitled to rely conclusively on the name and address of the authorized representative for such Environmental Trust Beneficiary listed below in Section 5.2.2, who may from time to time provide additional or replacement names and addresses of authorized representatives, or listed in any written notice provided to the Environmental Trustee in the future by an authorized representative of such Environmental Trust Beneficiary.

5.2.2 The Environmental Trustee shall send copies of all reports, budgets, annual balance statements, and other documents that the Environmental Trustee is required to submit to an Environmental Trust Beneficiary under this Agreement and the Settlement Agreement, and related implementation documents including any permits, unilateral administrative orders, consent decrees, or administrative orders on consent to the following person(s), as applicable:

As to the United States of America as an Environmental Trust Beneficiary:

The United States:  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044  
Ref. DOJ File No. 90-11-2-11196

EPA:  
Chief, Corrective Action Section  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth St., SW  
Atlanta, GA 30053

Mississippi Department of Environmental Quality:

MDEQ, EPD  
P.O. Box 2261  
Jackson, MS 39225

MDEQ, Legal  
P.O. Box 2261  
Jackson, MS 39225

5.3 Non-Beneficiaries

Upon the transfer of the Assets pursuant to Sections 2.2 and 2.3 of this Agreement, the Debtors shall have no interests including, without limitation, any reversionary interest, in the Environmental Response Trust or any Environmental Trust Assets, except as provided in the Settlement Agreement regarding the Gulfport Adjoining Parcels, and shall have no rights, claims or causes of action for any interest in the Environmental Trust Assets or against any Environmental Trust Protected Party for undertaking any action or obligation under the Settlement Agreement or this Agreement.

5.4 Transfer of Beneficial Interests

The interests of the Environmental Trust Beneficiaries in the Environmental Response Trust, which are reflected only on the records of the Environmental Response Trust maintained by the Environmental Response Trust, are not negotiable and may be transferred only after

written notice to the Environmental Response Trust, by order of the Court, or by operation of law. The Environmental Response Trust shall not be required to record any transfer in favor of any transferee who, in the sole discretion of the Environmental Trustee, is or might be construed to be ambiguous or to create uncertainty as to the holder of the interest in the Environmental Response Trust. Until a transfer is in fact recorded on the books and records maintained by the Environmental Response Trust for the purpose of identifying Environmental Trust Beneficiaries, the Environmental Response Trust, whether or not in receipt of documents of transfer or other documents relating to the transfer, may nevertheless make distributions and send communications to the Environmental Trust Beneficiaries, as though it has no notice of any such transfer, and in so doing the Environmental Response Trust and Environmental Trustee shall be fully protected and incur no liability to any purported transferee or any other Person. Interests in the Environmental Response Trust may not be transferred to the Debtors, their successors, their affiliates, or any Persons related to any of the preceding (within the meaning of Section 468B(d)(3) of the Internal Revenue Code).

## ARTICLE 6 REPORTING AND TAXES

### 6.1 Reports

As soon as practicable after the end of the second and fourth quarters of each calendar year, beginning with the first such quarter ended after assets are first received by the Environmental Response Trust and ending as soon as practicable upon termination of the Environmental Response Trust, the Environmental Response Trustee shall submit to the Environmental Trust Beneficiaries a written report, including: (a) financial statements of the Environmental Response Trust at the end of such calendar quarter; and (b) a description of any action taken by the Environmental Response Trust in the performance of its duties which, as determined by outside counsel, accountants or other professional advisors, materially and adversely affects the Environmental Response Trust and of which notice has not previously been given to the Environmental Trust Beneficiaries. The Environmental Response Trust shall promptly submit additional reports to the Environmental Trust Beneficiaries whenever, as determined by outside counsel, accountants or other professional advisors, an adverse material event or change occurs which affects either the Environmental Response Trust or the rights of the Persons receiving distributions (including, without limitation, the Environmental Trust Beneficiaries) hereunder.

### 6.2 Other

The Environmental Response Trust shall also file (or cause to be filed) any other statements, returns or disclosures relating to the Environmental Response Trust, that are required by any applicable governmental unit.

### 6.3 Reports in Support of Insurance Claims

The Environmental Response Trust shall also file (or cause to be filed) reports and cost analyses in support of claims against insurance carriers at the request of the Environmental Trust

Beneficiaries and shall provide the Environmental Trust Beneficiaries a copy of any such reports and cost analyses.

#### 6.4 Tax Treatment of the Environmental Response Trust

For U.S. federal income tax purposes, the Environmental Response Trust is intended to be treated as a qualified settlement fund (for which no grantor trust election has been made) pursuant to Section 468B of the Internal Revenue Code and the Treasury Regulations promulgated thereunder, and as a tax-exempt settlement fund (to the extent that the interests in the Environmental Response Trust are owned by “government entities” within the meaning of Section 468B(g)(2) of the Internal Revenue Code) pursuant to Section 468B(g)(2) of the Internal Revenue Code, and, to the extent provided by law, this Agreement shall be governed and construed in all respects consistently with such intent.

#### 6.5 Taxable Entity

In connection with the foregoing, the Environmental Response Trust will be treated as a separate taxable entity. The Environmental Trustee shall cause any property taxes imposed on property owned by the Environmental Response Trust, and all other taxes imposed on the Environmental Response Trust or its earnings, to be timely paid out of the Environmental Trust Assets, and shall timely comply with all tax reporting and withholding requirements imposed on the Environmental Response Trust under applicable law.

#### 6.6 Environmental Trustee as Administrator

The Environmental Trustee shall be the “administrator,” within the meaning of Treasury Regulation Section 1.468B-2(k)(3), of the Environmental Response Trust. Subject to definitive guidance from the Internal Revenue Service or a judicial decision to the contrary, the Environmental Trustee shall file tax returns and pay applicable taxes with respect to the Environmental Response Trust in a manner consistent with the provisions of Treasury Regulation Section 1.468B-2. All such taxes shall be paid from the Environmental Trust Assets.

#### 6.7 Fiscal Year

The Environmental Response Trust’s fiscal year shall be the calendar year or such other period as may be fixed by the Environmental Trustee or as otherwise required by applicable law.

### ARTICLE 7 MISCELLANEOUS PROVISIONS

#### 7.1 Amendments and Waivers

Any provision of this Agreement may be amended or waived by mutual written consent of the Environmental Response Trust, the United States, and MDEQ; provided, however, that no change shall be made to this Agreement that would affect the federal income tax status of the Environmental Response Trust as a “qualified settlement fund” for which no grantor trust election has been made (in accordance with Section 6.4 hereof). Technical amendments to this Agreement may be made as necessary, to clarify this Agreement or enable the Environmental



Trustee to effectuate the terms of this Agreement in a manner consistent with the Settlement Agreement with the mutual consent of the Environmental Trustee, the United States, and MDEQ.

7.2 Cooperation

Debtors agree to cooperate with the Environmental Trustee prior to the Effective Date by providing reasonable access to and/or copies of such of their non-privileged books and records relating to the Gulfport Facility or Gulfport Adjoining Parcels (if such parcels are transferred to the Environmental Response Trust) as provided in Paragraph 12 of the Settlement Agreement.

7.3 Situs of the Environmental Response Trust

The situs of the Environmental Response Trust herein established is Mississippi, and the laws of Mississippi shall control with respect to the construction, administration, and validity of the Environmental Response Trust, without giving effect to rules governing the conflict of law that otherwise would apply the law of another jurisdiction, except to the extent federal law applies.

7.4 Severability

If any provision of this Agreement or application thereof to any Person or circumstance shall be finally determined by the Court to be invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

7.5 Sufficient Notice

Any notice or other communication hereunder shall be in writing (including facsimile transmission or by e-mail) and shall be deemed to have been sufficiently given, for all purposes, if deposited, postage prepaid, in a post office or letter box addressed to the Person for whom such notice is intended (or in the case of notice by facsimile or e-mail, when received and telephonically or electronically confirmed), to the name and address set forth in the case of an Environmental Trust Beneficiary in Section 5.2 of this Agreement or such other address provided in writing to the Environmental Response Trust by an authorized representative of the respective Environmental Trust Beneficiary.

If notice to the Environmental Trustee, to:  
Roberto Puga, Principal of  
Project Navigator, Ltd., Trustee of the Reichhold Environmental Trust  
One Pointe Dr., Ste. 320  
Brea, CA 92821

7.6 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original instrument, but all together shall constitute one agreement.

7.7 Actions Taken on other than Business Day

If any payment or act under this Agreement or the Settlement Agreement is required to be made or performed on a date that is not a business day, then the making of such payment or the performance of such act may be completed on the next succeeding business day, but shall be deemed to have been completed as of the required date. For the purposes of this Agreement, a business day shall be any of the days Monday through Friday, excluding national holidays.

7.8 Compliance with Laws

Any and all distributions of Environmental Trust Assets shall be in compliance with applicable laws, including, but not limited to, applicable federal and state securities laws.

7.9 No Partnership

This Agreement is intended to create a trust and a trust relationship and to be governed and construed in all respects as a trust. The Environmental Response Trust is not intended to be, and shall not be deemed to be or treated as, a general partnership, limited partnership, joint venture, corporation, joint stock company or association, nor shall the Environmental Trustee or the Environmental Trust Beneficiaries, or any of them, for any purpose be, or be deemed to be or be treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The relationship of the Environmental Trust Beneficiaries to the Environmental Trustee shall be solely that of Environmental Trust Beneficiaries of a trust and shall not be deemed to be a principal or agency relationship, and the rights of the Environmental Trust Beneficiaries shall be limited to those conferred upon them by this Agreement and the Settlement Agreement.

7.10 Confidentiality

The Environmental Trustee shall, during the period that it serves in such capacity under this Agreement and following either the termination of this Agreement or such Environmental 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 Environmental Trust Assets relates or of which it has become aware in its capacity as Environmental Trustee. Notwithstanding anything else in this Agreement, each of the parties hereto (and each employee, representative, or other agent of such Person) may disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses) that are provided to such Person relating to such tax treatment and tax structure.

7.11 Uniform Custodial Trust Act

The Environmental Trust Agreement shall not be subject to any provision of the Uniform Custodial Trust Act as adopted by any state, now or in the future.

IN WITNESS WHEREOF, THE UNDERSIGNED PARTIES ENTER INTO THIS AGREEMENT

**FOR THE DEBTORS**

Date: \_\_\_\_\_

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

ROGER L. WILLIS  
President and Treasurer of Reichhold Liquidation, Inc.  
And Affiliates  
1035 Swabia Court  
Durham, NC 27703

**FOR THE UNITED STATES OF AMERICA**

Date: \_\_\_\_\_

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

ELLEN M. MAHAN  
Deputy Section Chief  
Environment and Natural Resources Division  
U.S. Department of Justice

ALAN S. TENENBAUM  
National Bankruptcy Counsel  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044

Date: \_\_\_\_\_

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

KARL FINGERHOOD  
Senior Counsel  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044

**FOR THE UNITED STATES ENVIRONMENTAL PROTECTION  
AGENCY**

Date: \_\_\_\_\_

\_\_\_\_\_  
MARY J. WILKES  
Regional Counsel and Director  
Office of Regional Counsel

Date: \_\_\_\_\_

\_\_\_\_\_  
COLLEEN E. MICHUDA  
Senior Attorney  
Office of RCRA/CERCLA Legal Support

**FOR THE MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY**

Date: \_\_\_\_\_

\_\_\_\_\_  
GARY C. RIKARD  
Executive Director  
Mississippi Department of Environmental Quality

**FOR THE ENVIRONMENTAL TRUST TRUSTEE**

Date: \_\_\_\_\_

Project Navigator, Ltd.

By: \_\_\_\_\_  
Roberto Puga, Principal

**Index of Exhibits**

**Exhibit**

A

**Description**

Description of the Gulfport Facility



**Exhibit A**

**Description of the Gulfport Facility**

CERTIFICATE OF RESUBDIVISION

In accordance with Section 9-48 of the Code of Ordinance (Subdivision Regulations) of the City of Gulfport as amended, it is hereby certified that the Gulfport City Planning Commission Chairman and Gulfport City Council have reviewed and approved this Final Plat for the Resubdivision of the property located in Section 19 & 20 Township 7 South, Range 10 West and described in Deed Book 1356, Page 83, City of Gulfport, First Judicial District of Harrison County, Mississippi, into Lot 1, Lot 2, Lot 3 and Lot 4, located in the Northeast 1/4 of the Northeast 1/4 of said Section 19 and the Northwest 1/4 of the Northeast 1/4 of said Section 20. The subject property is generally described as being located south of Reichold Road. The original parcel number of the subject property is 1009K-02-001001009K-02-001002 and 1009J-01-001001. The Case File Number is 030806135.

BOUNDARY DESCRIPTION OF LAND PRIOR TO THIS RESUBDIVISION:

(DESCRIPTION PER DEED BOOK 1356 PAGES 85 AND 86)

PARCEL 1
The West 200 feet of Tract Number 2 as shown on a survey recorded in Deed Book 541, at Page 507 in the office of the Chancery Clerk of Harrison County, Mississippi, First Judicial District, LESS AND EXCEPT, said tract being situated in the NW 1/4 and SE 1/4 of Section 19, Township 7 South, Range 10 West, and containing 6.77 acres;

PARCEL 2

Tract Number 4 shown on a survey recorded in Deed Book 541, at Page 507 in the office of the Chancery Clerk of Harrison County, Mississippi, First Judicial District, LESS AND EXCEPT, however, a parcel of land described as follows: Beginning at point on the south margin of Reichold Road (also known as Boyou View Road) at the NW corner of "Tract 4" as shown on a survey recorded in Deed Book 541, at Page 507 of the aforesaid records; thence South 72° 59' 23" East along said south margin 650 feet; thence South 17° 00' 37" West 506.94 feet; thence North 72° 59' 23" West 502.69 feet to said West line of Tract 4; thence North 0° 13' 45" West along said line 530.79 feet to the Point of Beginning. Said tract being situated in the NE 1/4 and the SE 1/4 of Section 19, Township 7 South, Range 10 West, Harrison County, Mississippi, such land being excepted herefrom is fully described as Parcel "A" in a survey prepared by A. Garner Russel dated August 22, 1974, attached to and made a part of a Special Warranty Deed recorded in Deed Book 737 of Pages 410-413 and re-recorded in Deed Book 738 of Pages 31-34 of the aforesaid records;

PARCEL 3

Beginning at the NW corner of Section 19, Township 7 South, Range 10 West; thence North 89° 36' 47" East 1400.34 feet to a point on the centerline of Landine and Boyou View Road; thence North 89° 39' 01" East 175 feet; thence South 00° 13' 45" East 1003.57 feet; thence South 72° 59' 23" East 2794.6 feet for POINT OF BEGINNING; From said POINT OF BEGINNING thence North 17° 00' 37" East 1475 feet; thence South 72° 59' 23" East 1000 feet; thence South 17° 00' 37" West 1475 feet; thence North 72° 59' 23" West 1000 feet to the POINT OF BEGINNING. Being located in Section 19 and 20, Township 7 South, Range 10 West, Harrison County, Mississippi, containing 33.86 acres, more or less, being designated as Tract Number 1 in a survey by H. A. Campbell, R.S. dated May 16, 1964, a copy of which is attached to and made a part of a Special Warranty Deed recorded in Deed Book 1083 of Pages 322-325 in the office of the Chancery Clerk of Harrison County, Mississippi, First Judicial District.

PAGE 1 OF 3

BOUNDARY DESCRIPTIONS OF THE 4 LOTS CREATED BY THIS RESUBDIVISION:

LOT 1

A parcel of land located in the Northeast 1/4 of the Northeast 1/4 of Section 19, Township 7 South, Range 10 West, City of Gulfport, First Judicial District, Harrison County, Mississippi, being more particularly described as follows:

COMMENCE at northwest corner of said Section 19; thence North 89 degrees 36 minutes 47 seconds East 1,400.34 feet; thence North 89 degrees 39 minutes 01 seconds East 175 feet; thence South 00 degrees 13 minutes 45 seconds East 1,003.57 feet; thence South 72 degrees 59 minutes 23 seconds East 2,270.5 feet to an iron pipe found on the eastern margin of a Mississippi Power Company right-of-way and the POINT OF BEGINNING; thence North 00 degrees 06 minutes 35 seconds West along said eastern margin 1014.07 feet to a concrete monument found; thence South 72 degrees 50 minutes 12 seconds East 503.00 feet to a concrete monument found; thence North 17 degrees 08 minutes 32 seconds East 506.90 feet to an iron rod found on the southern margin of Reichold Road; thence South 72 degrees 59 minutes 33 seconds East along said southern margin 259.50 feet to an iron rod set; thence South 17 degrees 08 minutes 32 seconds West 1474.71 feet to an iron rod set; thence North 72 degrees 59 minutes 23 seconds West 461.75 feet to the POINT OF BEGINNING.

Contains 16.623 acres, more or less.

LOT 2

A parcel of land located in the Northeast 1/4 of the Northeast 1/4 of Section 19, Township 7 South, Range 10 West, City of Gulfport, First Judicial District, Harrison County, Mississippi, being more particularly described as follows:

COMMENCE at northwest corner of said Section 19; thence North 89 degrees 36 minutes 47 seconds East 1,400.34 feet; thence North 89 degrees 39 minutes 01 seconds East 175 feet; thence South 00 degrees 13 minutes 45 seconds East 1,003.57 feet; thence South 72 degrees 59 minutes 23 seconds East 2,270.5 feet to an iron pipe found on the eastern margin of a Mississippi Power Company right-of-way; thence South 72 degrees 59 minutes 23 seconds East 461.75 feet to an iron rod set; thence North 17 degrees 08 minutes 32 seconds East 1324.71 feet to an iron rod set and the POINT OF BEGINNING; thence continue North 17 degrees 08 minutes 32 seconds East 150.00 feet to an iron rod set on the southern margin of Reichold Road; thence South 72 degrees 59 minutes 33 seconds East along said southern margin 511.81 feet to an iron rod set; thence South 16 degrees 58 minutes 58 seconds West 150.00 feet to an iron rod set; thence North 72 degrees 59 minutes 33 seconds West 512.23 feet to the POINT OF BEGINNING.

Contains 1.763 acres, more or less.



1st Judicial District
Instrument: 2005 18631 D -J1
Filed/Recorded 8/18/2005 11:44 A
Total Fees 13.00
3 Pages Recorded

KREMER ENGINEERING
14321 Greenleaf Rd., Gulfport, MS 39503
PH (228)987-8100, FAX: (228)985-0943
DWG. NO.: 2044-PLAN

0508CC135

# CERTIFICATE OF RESUBDIVISION

## BOUNDARY DESCRIPTIONS OF THE 4 LOTS CREATED BY THIS RESUBDIVISION:

### LOT 3

A parcel of land located in the Northeast 1/4 of the Northeast 1/4 of Section 19 and the Northwest 1/4 of the Northwest 1/4 of Section 20, Township 7 South, Range 10 West, City of Gulfport, First Judicial District, Harrison County, Mississippi; being more particularly described as follows:

COMMENCE at northwest corner of said Section 19; thence North 89 degrees 36 minutes 47 seconds East 1,400.34 feet; thence North 89 degrees 39 minutes 01 seconds East 175 feet; thence South 00 degrees 13 minutes 45 seconds East 1,003.57 feet; thence South 72 degrees 59 minutes 23 seconds East 2,270.5 feet to an iron pipe found on the eastern margin of a Mississippi Power Company right-of-way; thence continue South 72 degrees 59 minutes 23 seconds East 461.75 feet to an iron rod set; thence North 17 degrees 08 minutes 32 seconds East 1,474.71 feet to an iron rod set on the southern margin of Reichhold Road; thence South 72 degrees 59 minutes 33 seconds East along said southern margin 546.81 feet to an iron rod set and the POINT OF BEGINNING; thence continue South 72 degrees 59 minutes 33 seconds East 712.84 feet to an iron rod found; thence South 17 degrees 01 minutes 31 seconds West 150.00 feet to an iron rod set; thence North 72 degrees 59 minutes 33 seconds West 712.53 feet to an iron rod set; thence North 16 degrees 58 minutes 58 seconds East 150.00 feet to the POINT OF BEGINNING.

Contains 2.454 acres, more or less.

### LOT 4

A parcel of land located in the Northeast 1/4 of the Northeast 1/4 of Section 19 and the Northwest 1/4 of the Northwest 1/4 of Section 20, Township 7 South, Range 10 West, City of Gulfport, First Judicial District, Harrison County, Mississippi; being more particularly described as follows:

COMMENCE at northwest corner of said Section 19; thence North 89 degrees 36 minutes 47 seconds East 1,400.34 feet; thence North 89 degrees 39 minutes 01 seconds East 175 feet; thence South 00 degrees 13 minutes 45 seconds East 1,003.57 feet; thence South 72 degrees 59 minutes 23 seconds East 2,270.5 feet to an iron pipe found on the eastern margin of a Mississippi Power Company right-of-way; thence continue South 72 degrees 59 minutes 23 seconds East 461.75 feet to an iron rod set and the POINT OF BEGINNING; thence continue South 72 degrees 59 minutes 23 seconds East 1,262.46 feet to an iron pipe found; thence North 17 degrees 01 minutes 31 seconds East 1,324.77 feet to an iron rod set; thence North 72 degrees 59 minutes 33 seconds East 150.00 feet to an iron rod set; thence North 16 degrees 58 minutes 58 seconds East 150.00 feet to an iron rod set; thence North 72 degrees 59 minutes 33 seconds West 712.53 feet to an iron rod set; thence North 17 degrees 08 minutes 32 seconds West 1,324.71 feet to the POINT OF BEGINNING.

Contains 38.473 acres, more or less.

PAGE 2 OF 3

The applicant hereby covenants and agrees to indemnify and hold harmless the City of Gulfport, its agents, servants, and/or employees against any and all claims, demands, or causes of action of whatever nature which may arise as a result of the action of the Planning Commission, its agents, and/or employees concerning the petition for resubdivision of the real property described herein.

Ratified and Approved by:

*[Signature]*  
(Owner's Signature)

BETHU KANSVILLE  
(Print Owner's Name)

This 2 day of JUNE, 2005.

### ACKNOWLEDGE:

Before me, the undersigned, authorized in and for the State of MISSISSIPPI County of LATAPE, personally appeared the aforementioned BETHU KANSVILLE who acknowledged that they accepted this plat and executed the foregoing certificate and dedication for the purpose therein set forth.

*[Signature]*  
NOTARY PUBLIC  
My Commission Expires: 11-21-09

### PLANNING COMMISSION:

Submitted for and approved by the Gulfport City Planning Commission on the 23rd day of June, 2005.

*[Signature]*  
Steve Allen, Chairman  
Gulfport City Planning Commission

*[Signature]*  
Raymond Eaten  
Planning Division Administrator

### APPROVAL:

Submitted to and approved by the City of Gulfport City Council, at the regular meeting of said Council held on the 9th day of August, 2005.

ATTEST:

ADOPT

*[Signature]*  
CLERK OF COUNCIL

*[Signature]*  
PRESIDENT

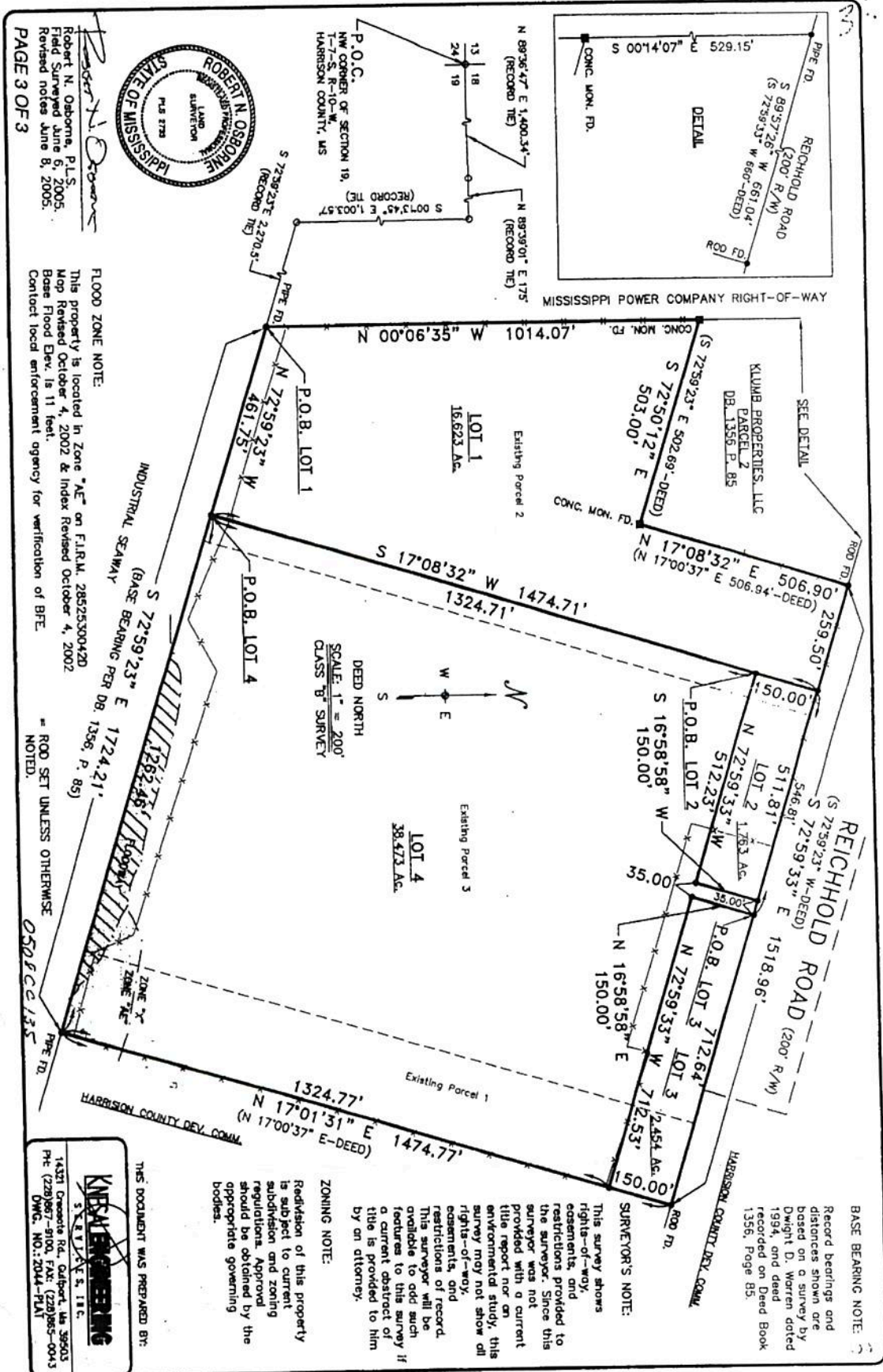
This resubdivision plat and Certificate of Resubdivision, having been submitted and approved by the Mayor, this 31st day of August, 2005.

*[Signature]*  
MAYOR

0528FC/C/35

**KNSM ENGINEERING**  
SURVEYORS, INC.

14321 Geneva Rd., Gulfport, MS 39503  
Ph: (228)987-9100, Fax: (228)985-0043  
ONG, NO.: 2044-FLM



Robert N. Osborn, P.L.S.  
 Field Surveyed June 6, 2005.  
 Revised notes June 8, 2005.  
 PAGE 3 OF 3



**FLOOD ZONE NOTE:**  
 This property is located in Zone "AE" on F.I.R.M. 28525300420  
 Map Revised October 4, 2002 & Index Revised October 4, 2002  
 Base Flood Elev. is 11 feet.  
 Contact local enforcement agency for verification of BFE.

ROD SET UNLESS OTHERWISE NOTED.

**KREMER ENGINEERING**  
 S.E. 1st St., I.R.C.  
 14321 Concrete Rd., Gulfport, Ms 39503  
 P# (228)957-5100, FAX: (228)955-0943  
 OMC, NO.: 2044-PLAN

**ZONING NOTE:**  
 Redivision of this property is subject to current subdivision and zoning regulations. Approval should be obtained by the appropriate governing bodies.

**SURVEYOR'S NOTE:**  
 This survey shows rights-of-way, easements, and restrictions provided to the surveyor. Since this surveyor was not provided with a current title report nor an environmental study, this survey may not show all rights-of-way, easements, and restrictions of record. This surveyor will be available to add such features to this survey if a current abstract of title is provided to him by an attorney.

**BASE BEARING NOTE:**  
 Record bearings and distances shown are based on a survey by Dwight D. Warren dated 1994, and deed recorded on Deed Book 1356, Page 85.