

NOTICE OF LODGING
EXHIBIT 1-B1

ENVIRONMENTAL CUSTODIAL TRUST AGREEMENT

BY AND AMONG

**LYONDELL CHEMICAL COMPANY,
LEMEAN PROPERTY HOLDINGS CORPORATION,
MILLENNIUM HOLDINGS, LLC,
EQUISTAR CHEMICALS, LP,
and
MILLENNIUM SPECIALTY CHEMICALS, INC
as Settlers,**

**LE PETOMANE XXIII, INC.,
not individually but solely in its representative capacity
as Environmental Custodial Trust Trustee,**

AND

**THE UNITED STATES OF AMERICA, THE CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD, CENTRAL VALLEY REGION, THE STATE OF
ILLINOIS, THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, THE
MARYLAND DEPARTMENT OF THE ENVIRONMENT, THE MICHIGAN
DEPARTMENT OF NATURAL RESOURCES AND THE ENVIRONMENT, THE
NORTH CAROLINA DIVISION OF WASTE MANAGEMENT, THE DEPARTMENT
OF ENVIRONMENTAL PROTECTION OF THE COMMONWEALTH OF
PENNSYLVANIA and THE TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY,
as Environmental Trust Beneficiaries**

As of March 30, 2010

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ENVIRONMENTAL CUSTODIAL TRUST AGREEMENT

This Environmental Custodial Trust Agreement (the “Agreement”) is made and entered as of the _____ day of March, 2010, by and among LYONDELL CHEMICAL COMPANY (“Lyondell Chemical”), a Delaware corporation, LEMEAN PROPERTY HOLDINGS CORPORATION, a Delaware corporation, MILLENNIUM HOLDINGS, LLC, a Delaware corporation, EQUISTAR CHEMICALS, LP, a Delaware corporation, and MILLENNIUM SPECIALTY CHEMICALS, INC., a Delaware corporation, as debtors and debtors in possession in the Bankruptcy Case (defined below) (collectively “Settlors”); LE PETOMANE XXIII, INC., not individually but solely in its representative capacity as Environmental Custodial Trust Trustee (defined herein) of the Environmental Custodial Trust established hereby (the “Environmental Custodial Trust”); and the Environmental Trust Beneficiaries (defined herein).

RECITALS:

WHEREAS, on January 6, 2009, the Settlers and certain of their affiliates and subsidiaries (collectively, the “Debtors”) commenced reorganization cases by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.*, as amended (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of New York, (the “Bankruptcy Court”) (collectively, the “Chapter 11 Cases”);

WHEREAS, on December 24, 2009, the Debtors filed the Second Amended Joint Chapter 11 Plan of Reorganization (as amended, modified and supplemented from time to time, the “Plan”) with the Bankruptcy Court;

WHEREAS, the Transferred Real Properties (defined herein and identified in Exhibit “B” attached hereto) have known or suspected environmental contamination and are the subject of current or expected clean-up obligations;

WHEREAS, the Debtors contend that the Transferred Real Properties are no longer beneficial to the ongoing operations of the Debtors;

WHEREAS, the Settlers and the Environmental Trust Beneficiaries have entered into a Settlement Agreement (the “Settlement Agreement”) with respect to the Transferred Real Properties;

WHEREAS, the Plan provides for the creation of the Environmental Custodial Trust and transfer of the Transferred Real Properties to the Environmental Custodial Trust to be administered by the Environmental Custodial Trust Trustee pursuant to this Agreement and the Settlement Agreement;

WHEREAS, in accordance with the Plan, the Settlement Agreement and this Agreement, the Environmental Custodial Trust is established for the purposes of (a) owning the Transferred Real Properties and carrying out administrative and property management functions related to the Transferred Real Properties, (b) managing and/or funding the implementation of Environmental Actions (defined herein) with respect to the Transferred Real Properties, (c)

paying future oversight costs, and (d) ultimately selling, transferring or otherwise disposing of the Transferred Real Properties, if possible;

WHEREAS, pursuant to the Plan and the Settlement Agreement, on the Effective Date (defined herein), Debtors shall transfer the Transferred Real Properties, along with the Funds (defined herein), to the Environmental Custodial Trust;

WHEREAS, this Agreement and the Settlement Agreement govern the Environmental Custodial Trust, which is created pursuant to section 1.468B-1 of the Treasury Regulations promulgated under the Internal Revenue Code (“Treasury Regulations”);

WHEREAS, the Environmental Custodial Trust shall be the exclusive holder of the assets described herein and the Settlement Agreement for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3);

WHEREAS, the Environmental Trust Beneficiaries will hold all of the beneficial trust interests in the Environmental Custodial Trust; and

WHEREAS, the Environmental Custodial 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 Custodial 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.

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

ARTICLE 1
DEFINITIONS AND PRINCIPLES OF CONSTRUCTION

1.1 Definitions

The following terms as used in this Agreement shall have the definitions given below:

- 1.1.1 “Administrative Expenses” means the expenses incurred in administering the Environmental Custodial Trust, including but not limited to real estate taxes, insurance, and maintenance costs.
- 1.1.2 “Agreement” has the meaning set forth in the preamble to this Agreement and the Settlement Agreement.
- 1.1.3 “Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of New York.
- 1.1.4 “Bankruptcy Code” has the meaning set forth in the recitals to this Agreement.

- 1.1.5 “Carved Out Expenses” has the meaning set forth in Section 4.10.2 of this Agreement.
- 1.1.6 “CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 et seq., as amended.
- 1.1.7 “Chapter 11 Cases” has the meaning set forth in the recitals to this Agreement.
- 1.1.8 “Confirmation Order” means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.
- 1.1.9 “Court” means the Bankruptcy Court 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.
- 1.1.10 “Custodial Trust Account” shall have the meaning given in Section 2.5.2. hereof.
- 1.1.11 “Custodial Trust Assets” means (a) those assets and properties, including the Funds, the Transferred Real Properties, the Transferred Contracts, and any documents and/or information concerning the Transferred Real Properties and related Sites in the possession of environmental contractors or consultants previously retained by the Debtors, to be transferred to the Environmental Custodial Trust pursuant to the Plan and the Settlement Agreement; and (b) such other assets acquired or held by the Environmental Custodial Trust from time to time pursuant to this Agreement, the Settlement Agreement and the Plan, or an order of the Court.
- 1.1.12 “Custodial Trust Administrative Expense Account” means the Custodial Trust Account established to hold funds to pay real estate taxes, insurance, and other costs incurred in administering the Environmental Custodial Trust.
- 1.1.13 “Custodial Trust Environmental Cost Account” means each of the Custodial Trust Accounts established pursuant to Section 2.5 to hold funds to pay Environmental Costs for each Transferred Real Property. With respect to the Allied Paper Mill Transferred Real Property, Custodial Trust Environmental Cost Account shall mean (i) the Custodial Trust Response Cost Account, (ii) the Custodial Trust Restoration Cost Account, and (iii) the Custodial Trust MDNRE Cost Account.
- 1.1.14 “Custodial Trust MDNRE Cost Account” means the Custodial Trust Account established pursuant to Section 2.5 to hold funds to pay Environmental Costs for Environmental Actions approved by MDNRE with respect to the Allied Paper Mill Transferred Real Property.

- 1.1.15 “Custodial Trust Response Cost Account” means the Custodial Trust Account established pursuant to Section 2.5 to hold funds to pay Environmental Costs for Environmental Actions approved by USEPA with respect to the Allied Paper Mill Transferred Real Property.
- 1.1.16 “Custodial Trust Restoration Cost Account” means the Custodial Trust Account established pursuant to Section 2.5 to hold funds to pay Restoration Costs for Restoration Actions approved by DOC/NOAA and DOI with respect to the Allied Paper Mill Transferred Real Property.
- 1.1.17 “Custodial Trust Parties” means the Environmental Custodial Trust, the Environmental Custodial Trust Trustee, the Environmental Custodial Trust Trustee’s shareholders, officers, directors, employees, consultants, agents, or other professionals employed by the Environmental Custodial Trust or the Environmental Custodial Trust Trustee. Each of the Custodial Trust Parties is, individually, a Custodial Trust Party.
- 1.1.18 “Custodial Trust Proceeds” means the proceeds of any liquidation, sale, lease, recovery or other disposition of or other proceeds in respect of the Custodial Trust Assets.
- 1.1.19 “Debtors” has the meaning set forth in the recitals to this Agreement.
- 1.1.20 “DOC/NOAA” means the United States Department of Commerce, National Oceanic and Atmospheric Administration and any successor departments or agencies of the United States.
- 1.1.21 “DOI” means the United States Department of the Interior and any successor departments or agencies of the United States.
- 1.1.22 “Effective Date” means the first Business Day on which the conditions specified in Section 10.1 of the Plan have been satisfied or waived and the Plan becomes effective in accordance with its terms and the Confirmation Order.
- 1.1.23 “Environmental Actions” means any response, removal, investigation, remediation, reclamation, closure, post-closure, corrective action, institutional controls, and operation and maintenance activities selected and approved by the Lead Government Agency with respect to a Transferred Real Property. Environmental Actions may also include Restoration Actions.
- 1.1.24 “Environmental Costs” means the costs and expenses of implementing Environmental Actions and the costs of payment of oversight costs of any Environmental Trust Beneficiary with respect to a Transferred Real Property.

- 1.1.25 “Environmental Custodial Trust” has the meaning set forth in the preamble to this Agreement.
- 1.1.26 “Environmental Custodial Trust Trustee” means the Environmental Custodial Trust by and through its trustee not individually but solely in its representative capacity.
- 1.1.27 “Environmental Trust Beneficiary” means any one of the United States and/or the California Regional Water Quality Control Board, Central Valley Region, the State of Illinois, IEPA, MDE, MDNRE, NCDWM, PADEP, and/or TCEQ, collectively, the “Environmental Trust Beneficiaries.”
- 1.1.28 “Environmental Law” 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 pollutants or Hazardous Substances, including, without limitation, CERCLA; RCRA; the Clean Air Act, 42 U.S.C. Section 7401, et seq.; the Federal Water Pollution Control Act, 33 U.S.C. Section 1251, et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601, et seq.; the Emergency Planning and Community Right to Know Act, 42 U.S.C. Section 11001, et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300f, et seq.; the Oil Pollution Act of 1990, 33 U.S.C. Section 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.
- 1.1.29 “Funds” means those funds contributed by the Debtors to the Environmental Custodial Trust in the amount of \$108,421,850 in order to pay Environmental Costs and Administrative Expenses of the Transferred Real Properties and the Environmental Custodial Trust, and to fulfill the purposes of the Environmental Custodial Trust consistent with this Agreement, the Settlement Agreement and the Plan.
- 1.1.30 “Hazardous Substances” means all materials, substances, or wastes defined, designated, regulated or classified as hazardous, toxic or radioactive, under any Environmental Laws, whether by type or by quantity, and shall include petroleum or any derivative or by-product thereof and asbestos containing materials.
- 1.1.31 “IEPA” means the Illinois Environmental Protection Agency and any successor departments or agencies thereto.

- 1.1.32 Indemnifiable Expenses” has the meaning set forth in Section 4.10.2.
- 1.1.33 “Internal Revenue Code” means the Internal Revenue Code of 1986, as amended.
- 1.1.34 “Lead Government Agency” with respect to a Transferred Real Property means the Environmental Trust Beneficiary with primary oversight authority over particular Environmental Actions with respect to such Transferred Real Property, as identified in the Settlement Agreement. With respect to the Allied Paper Mill Transferred Real Property, Lead Government Agency shall mean (i) USEPA (for Environmental Actions approved by USEPA); (ii) DOC/NOAA and DOI (for Restoration Actions approved by DOC/NOAA and DOI); and (iii) MDNRE (for Environmental Actions approved by MDNRE).
- 1.1.35 “MDE” means the Maryland Department of the Environment and any successor departments or agencies thereto.
- 1.1.36 “MDNRE” means the Michigan Department of Natural Resources and the Environment and any successor departments or agencies thereto.
- 1.1.37 “Natural Resource Damages” means damages for injury to, destruction of, or loss of natural resources as defined in 42 U.S.C. § 101(16) and includes natural resource damages assessment costs and Restoration Actions.
- 1.1.38 “NCDWM” means the North Carolina Division of Waste Management and any successor departments or agencies thereto.
- 1.1.39 “PADEP” means the Department of Environmental Protection of the Commonwealth of Pennsylvania and any successor departments or agencies thereto.
- 1.1.40 “Parties” means the Settlers, the Environmental Custodial Trust Trustee, and the Environmental Trust Beneficiaries.
- 1.1.41 “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.
- 1.1.42 “Plan” has the meaning set forth in the recitals to this Agreement.
- 1.1.43 “RCRA” means the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., as amended.

- 1.1.44 “Reorganized Debtors” has the meaning set forth in the Plan (other than the Schedule III Debtors).
- 1.1.45 “Restoration Actions” means restoration or other actions related to Natural Resource Damages with respect to Transferred Real Properties.
- 1.1.46 “Restoration Costs” means the costs and expenses of implementing Restoration Actions.
- 1.1.47 “Schedule III Debtors” means the Debtors listed on Exhibit C to the Plan.
- 1.1.48 “Settlement Agreement” has the meaning set forth in the recitals to this Agreement.
- 1.1.49 “Settlers” has the meaning set forth in the preamble to this Agreement.
- 1.1.50 “Sites” means all of the sites described in Exhibit “A” to this Agreement.
- 1.1.51 “States” means the California Regional Water Quality Control Board, Central Valley Region, the State of Illinois, IEPA, MDE, MDNRE, NCDWM, PADEP, and TCEQ.
- 1.1.52 “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.
- 1.1.53 “TCEQ” means the Texas Commission on Environmental Quality and any successor departments or agencies thereto.
- 1.1.54 “Transferred Contracts” means those contracts and agreements relating to the Transferred Real Properties listed in Exhibit “D” to this Agreement.
- 1.1.55 “Transferred Real Properties” means the portions of each of the Sites that are owned by Settlers immediately prior to the Effective Date, as set forth and more particularly described in Exhibit “B” to this Agreement including, without limitation, all fixtures, improvements, and equipment located thereon as of the Effective Date and 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 or other interests relating to or benefitting such properties.
- 1.1.56 “Treasury Regulations” has the meaning set forth in the recitals to this Agreement.

1.1.57 “United States” means the United States of America on behalf of its agencies and departments.

1.1.58 “USEPA” means the United States Environmental Protection Agency and any successor departments or agencies of the United States.

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 References in this Agreement to Sections and Exhibits, unless otherwise specified, are to Sections of and Exhibits to this Agreement.

1.2.5 To the extent reasonably possible, the provisions of this Agreement shall be interpreted in a manner consistent with the Plan and the Settlement Agreement. Where the provisions of this Agreement are irreconcilable with the provisions of the Plan, the terms of this Agreement shall govern. Where the provisions of this Agreement are irreconcilable 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.

ARTICLE 2

ESTABLISHMENT OF THE ENVIRONMENTAL CUSTODIAL TRUST

2.1 Name

The name of the Environmental Custodial Trust shall be the “Lyondell Environmental Custodial Trust” or such other name as the Environmental Custodial Trust Trustee, in its discretion, shall determine.

2.2 Establishment of Environmental Custodial Trust

The Parties hereto hereby establish the Environmental Custodial Trust pursuant to this Agreement and the Settlement Agreement and as approved by the Bankruptcy Court for the benefit of the Environmental Trust Beneficiaries to be effective as of the Effective Date. It is the intention of the Parties that this Agreement and the Settlement Agreement constitute the

governing instruments of the Environmental Custodial Trust. Effective as of the date hereof, the Environmental Custodial Trust Trustee shall have all the rights, powers and duties set forth herein with respect to accomplishing the purpose of the Environmental Custodial Trust set forth below. The Bankruptcy Court shall retain continuing jurisdiction over the Environmental Custodial Trust.

2.3 Purpose of the Environmental Custodial Trust

The exclusive purposes and functions of the Environmental Custodial Trust are to: (a) own the Transferred Real Properties; (b) carry out administrative and property management functions related to the Transferred Real Properties; (c) conduct, manage, and/or fund the implementation of Environmental Actions approved by the Lead Government Agencies with respect to the Transferred Real Properties, (d) sell, transfer, or otherwise dispose of the Transferred Real Properties; and (e) make distributions, if any, in accordance with the terms of this Agreement and the Settlement Agreement. The Environmental Custodial Trust shall have no objective or authority to engage in any trade or business. The performance of the Environmental Custodial Trust Trustee of its duties under this Agreement and the Settlement Agreement shall not be considered to be the Environmental Custodial Trust Trustee's engaging in a trade or business. This Environmental Custodial Trust satisfies all of the requirements of, and is intended by the Parties to be classified as, a qualified settlement fund (for which no grantor trust election has been made) pursuant to section 468B of the Internal Revenue Code and related Treasury Regulations.

2.4 Transfer of Ownership

Pursuant to the Plan and the Settlement Agreement, the Parties hereby establish, on behalf of the Environmental Trust Beneficiaries named herein, and Settlers hereby agree to transfer, assign, and deliver to, the Environmental Custodial Trust, or to the Environmental Custodial Trust Trustee, not individually but solely in its representative capacity as Environmental Custodial Trust Trustee, if the law of the state in which the property to be transferred is situated prohibits a trust entity from holding such title, on behalf of the Environmental Trust Beneficiaries, all of Settlers' right, title and interest in and to the Custodial Trust Assets. Settlers shall retain no ownership or other interest whatsoever in the Transferred Real Properties, the Funds or the Transferred Contracts. The transfer of ownership shall be of all of the Settlers' rights, titles and interests, and the transfer of the Transferred Real Properties (i) shall be free and clear of all claims, liens and interests against the Debtors other than any liability to the Governments under the Settlement Agreement, but subject to any existing *in rem* claims other than liens for the payment of monetary claims such as property taxes or other monetary claims asserted or that could have been asserted in the Chapter 11 Cases, and (ii) shall be done by quit claim deed, in a form substantially similar to the quit claim deed attached as Exhibit "C" to this Agreement, and/or personal property bill of sale without warranty, all such conveyance documents to be agreed to in form by Lyondell Chemical and the Environmental Custodial Trust, provided that in no event shall the conveyance include any warranty whatsoever by the grantor by virtue of the grant document or statutory or common law or otherwise. The grantee for each such deed and personal property bill of sale shall be the Environmental Custodial Trust by and through the Environmental Custodial Trust Trustee, not individually but solely in its representative capacity as Environmental Custodial Trust Trustee, or if the law of the state in

which the property to be transferred is situated prohibits a trust entity from holding such title, the Environmental Custodial Trust Trustee, not individually but solely in its representative capacity as Environmental Custodial Trust Trustee. Settlers shall pay all property taxes relating to the Transferred Real Properties prorated through the Effective Date, and the Debtors shall not further encumber the Transferred Real Properties or their other interests therein and shall, before transfer, maintain such properties, including the improvements thereon and fixtures thereto that are related to ongoing remediation activities in the condition that they exist as of the date of this Agreement's execution, except to the extent that ongoing environmental actions require otherwise. The Environmental Custodial Trust Trustee shall pay premiums for policies of title insurance for any of the Transferred Real Properties. Nothing in this paragraph shall require the Debtors to provide any deed or other documentation other than a quit claim deed and personal property bill of sale without warranty for any Transferred Real Property. The Environmental Custodial Trust hereby accepts and agrees to hold the Custodial Trust Assets in the Environmental Custodial Trust for the benefit of the Environmental Trust Beneficiaries for the purposes described in Section 2.3, subject to the terms of the Plan, the Settlement Agreement and this Agreement, and any applicable orders of the Court.

2.5 Transfer of Funds and Creation of Custodial Trust Accounts

2.5.1 Funding. On the Effective Date, the Settlers shall cause to be transferred to or at the direction of the Environmental Custodial Trust Trustee cash in the amount of \$108,421,850, which constitutes the Funds and represents the aggregate amounts approved by the Court as sufficient to pay the Environmental Costs and the costs of administering the Environmental Custodial Trust. Upon the Settlers' transfer of the Funds pursuant to this Subparagraph, Debtors shall have no further obligation to transfer any additional funds under this Agreement, the Settlement Agreement or otherwise for the purpose of paying Environmental Costs, the costs of administering the Environmental Custodial Trust or for any other purpose relating to the Transferred Real Properties.

2.5.2 Custodial Trust Accounts. Upon receipt of the Transferred Real Properties and the Funds, the Environmental Custodial Trust Trustee shall set aside in separate segregated trust accounts (each a "Custodial Trust Environmental Cost Account"), the Funding for Environmental Costs with respect to each Transferred Real Property. The Environmental Custodial Trust Trustee shall also set aside the Funding provided for general administration in a separate Custodial Trust Administrative Expense Account, which account shall not include any of the Transferred Real Properties. The separate accounts are referred to in this Agreement individually as a "Custodial Trust Account" and collectively as the "Custodial Trust Accounts." The initial Funds for each of the Custodial Trust Accounts shall be as set forth in the Settlement Agreement. Subject to Section 2.7 of this Agreement, the income and gains from any investment of the Custodial Trust Assets shall be allocated, paid and credited to such Custodial Trust Account.

- 2.5.3 Separate Accounts. Without limiting the foregoing, the Environmental Custodial Trust shall at all times maintain at least one Custodial Trust Environmental Cost Account for each of the Transferred Real Properties to fund Environmental Costs with respect to that Transferred Real Property, except with respect to the Bully Hill Transferred Real Property, the Rising Star Transferred Real Property, and the Excelsior Mine Transferred Real Property, for which the Environmental Custodial Trust may maintain one common Custodial Trust Environmental Cost Account. With respect to the Allied Paper Mill Transferred Real Property, the Environmental Custodial Trust shall at all times maintain (i) the Custodial Trust Response Cost Account, (ii) the Custodial Trust Restoration Cost Account, and (iii) the Custodial Trust MDNRE Cost Account. Funds designated for a Transferred Real Property shall be held and distributed from its respective Custodial Trust Account as set forth herein, and Funds from a Custodial Trust Account may not be used for another Transferred Real Property except as otherwise expressly provided by and in accordance with this Section and Section 2.7.3 of this Agreement.
- 2.5.4 Subaccounts. Each Custodial Trust Account may be divided into such number of trust subaccounts dedicated for specific uses as may be deemed necessary in the sole discretion of the Environmental Custodial Trust Trustee to comply with the terms of, and implement, the Plan, the Settlement Agreement and this Agreement.
- 2.5.5 Qualified Settlement Fund. For all federal income tax purposes, the Environmental Custodial Trust Trustee and Settlers shall treat the transfer of the Custodial Trust Assets by Settlers to the Environmental Custodial Trust as a transfer to a qualified settlement fund pursuant to section 468B of the Internal Revenue Code and related Treasury Regulations. The Environmental Custodial Trust Trustee will at all times seek to have the Environmental Custodial Trust treated as a “qualified settlement fund” as that term is defined in Treasury Regulation section 1.468B-1. The Environmental Custodial Trust Trustee will not elect to have the Environmental Custodial Trust treated as a grantor trust. The Environmental Custodial Trust will be treated as a separate taxable entity. The Environmental Custodial Trust Trustee shall cause any taxes imposed on the earnings of the Environmental Custodial Trust to be paid out of such earnings and shall comply with all tax reporting and withholding requirements imposed on the Environmental Custodial Trust under applicable tax laws.

2.6 Holder of Custodial Trust Assets

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

2.7 Management of Custodial Trust Assets

- 2.7.1 Consistent with this Agreement and the Settlement Agreement, the Environmental Custodial Trust shall use the Custodial Trust Environmental Cost Account for each of the Transferred Real Properties to fund Environmental Actions and oversight costs approved by the Lead Government Agency pursuant to CERCLA, RCRA, or similar state or federal statutes applicable to that Transferred Real Property. The Environmental Custodial Trust shall also fund from the Custodial Trust Administrative Expense Account administrative costs of the Environmental Custodial Trust approved by the United States after consultation with States that are Lead Government Agencies.
- 2.7.2 The Environmental Custodial Trust Trustee may enter into a consent decree or consent order or agreement with the United States and/or a State in which a Transferred Real Property is located, and may perform work pursuant to Unilateral Administrative Orders issued by USEPA, to facilitate implementation of Section 2.7 with respect to such Transferred Real Property.
- 2.7.3 Except as provided in Section 2.7.4, upon the completion of all Environmental Actions and disbursement of all Environmental Costs for a Transferred Real Property and related Site, any funds remaining in the Custodial Trust Environmental Cost Account for such Transferred Real Property shall be transferred in the following order: (1) first, in accordance with instructions provided by the United States Department of Justice and the respective State to any of the other Custodial Trust Environmental Cost Accounts established under this Agreement for a Transferred Real Property in that State or USEPA region with remaining actions to be performed and a need for additional trust funding; (2) second, then in accordance with instructions provided by the United States Department of Justice after consultation with the States, to any of the other Custodial Trust Environmental Cost Accounts established under this Agreement, and (3) third, in accordance with instructions provided by the United States Department of Justice after consultation with the States, to the Superfund and/or a state fund. In addition, the United States and the State in which a Transferred Real Property is located may agree in writing at any time after one year from the Effective Date that based on new information about the estimated cost of cleanup or the assumption of liability by a buyer or other party for a Transferred Real Property, the funding in a Custodial Trust Environmental Cost Account is more than is conservatively projected to be needed. Upon such an agreement, the United States Department of Justice, after consultation with the States, may instruct the Environmental Custodial Trust Trustee to transfer any such excess funding to one or more of the other Custodial Trust Environmental Cost Accounts established under this Agreement for a Transferred Real Property with remaining actions to be performed and a

need for additional trust funding (giving priority first to Custodial Trust Environmental Cost Accounts in the same State). During the eighth year after the Effective Date, the Environmental Custodial Trust Trustee shall provide the United States Department of Justice and the States an update of anticipated future administrative costs of the Environmental Custodial Trust. The United States Department of Justice may thereafter instruct in writing after consultation with the States and the Environmental Custodial Trust Trustee that any conservatively projected surplus funding in the Custodial Trust Administrative Expense Account be transferred to one or more of the other Custodial Trust Environmental Cost Accounts established under this Agreement for a Transferred Real Property with remaining actions to be performed and a need for additional funding.

2.7.4 Upon certification of completion of the remedial action by USEPA with respect to the Allied Paper Mill Transferred Real Property, any funds remaining in the Custodial Trust Response Cost Account shall be transferred in accordance with instructions provided by the United States Department of Justice to the USEPA site-wide special account for the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site. Upon the completion of all Restoration Actions approved by DOC/NOAA and DOI with respect to the Allied Paper Mill Transferred Real Property, any funds remaining in the Custodial Trust Restoration Cost Account shall be transferred in accordance with instructions provided by the United States Department of Justice to the Natural Resource Damage Assessment and Restoration Fund for the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site. Upon the completion of all Environmental Actions approved by MDNRE with respect to the Allied Paper Mill Transferred Real Property, any funds remaining in the Custodial Trust MDNRE Cost Account shall be transferred in accordance with instructions provided by the United States Department of Justice, after consultation with MDNRE, to (i) a site account established by MDNRE for the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site; (ii) the USEPA site-wide special account for the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site; and/or (iii) the Natural Resource Damage Assessment and Restoration Fund for the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site.

2.8 Investment and Safekeeping of Custodial Trust Assets

2.8.1 The Custodial Trust Assets, until sold as provided herein and in the Plan, shall be held in trust and segregated. The Environmental Custodial Trust Trustee shall be under no liability for interest or producing income on any moneys received by the Environmental Custodial Trust hereunder and held for distribution or payment as provided in this Agreement, except as such interest is actually received by the Environmental Custodial Trust. Investments of any moneys held by the Environmental Custodial Trust shall be administered in a manner consistent with the standards and

requirements applicable to a trustee in connection with a Chapter 7 liquidation; provided, however, that the right and power of the Environmental Custodial Trust to invest the Custodial Trust Assets, the Custodial Trust Proceeds, or any income earned by the Environmental Custodial Trust, shall be limited to the right and power to invest such assets (pending periodic distributions in accordance with Article 3 hereof) in demand and time deposits, such as certificates of deposit, in banks or other savings institutions whose deposits are federally insured, or other liquid investments, such as Treasury bills; and provided further, that the scope of any such permissible investments shall be limited to include only those investments, or shall be expanded to include any additional investments, as the case may be, that a liquidating trust, within the meaning of Treasury Regulation section 301.7701-4(d), may be permitted to hold, pursuant to Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements or otherwise (although the Parties acknowledge and agree that the Environmental Custodial Trust is properly characterized for federal tax purposes as a qualified settlement fund within the meaning of Section 1.468B-1 of the Treasury Regulations, and not as a liquidating trust under Section 301.7701-4(d) of the Treasury Regulations).

- 2.8.2 The Environmental Custodial Trust Trustee is expressly prohibited from holding any or all of the Funds provided for Environmental Costs in a common, commingled or collective trust fund and from holding any or all of the Funds in a common, commingled or collective trust fund with the assets of any other entity. However, the Funds provided for Administrative Expenses can be held in one account.
- 2.8.3 Nothing in this Section 2.8 shall be construed as authorizing the Environmental Custodial Trust Trustee to cause the Environmental Custodial Trust to carry on any business or to divide the gains therefrom, including without limitation, the business of an investment company, a company “controlled” by an “investment company,” required to register as such under the Investment Company Act of 1940, as amended. The sole purpose of this Section 2.8 is to authorize the investment of the funds in the Custodial Trust Accounts or any portions thereof as may be reasonably prudent pending use of the proceeds for the purposes of the Environmental Custodial Trust.
- 2.8.4 The Custodial Trust Parties shall not incur any liability for following any written direction or order to act (or to refrain to act) from any Environmental Trust Beneficiary so long as such written direction is not inconsistent with this Agreement and the Plan.

2.9 Insurance Policy to Cover Future Response Actions

Only at the direction of the United States and the States in which the relevant Transferred Real Properties are located, shall the Environmental Custodial Trust Trustee investigate the possible purchase of an insurance policy to cover future Environmental Actions and general liability at one or more of the Transferred Real Properties. If, and only if, the United States and the States in which the relevant Transferred Real Properties are located unanimously direct the Environmental Custodial Trust Trustee in writing to purchase such insurance, shall the Environmental Custodial Trust Trustee use Custodial Trust Assets to purchase such insurance.

2.10 Access and Deed Restrictions

The Environmental Custodial Trust shall provide the United States and the respective States and their representatives and contractors with reasonable access at all reasonable times to the Transferred Real Properties for the purposes of conducting Environmental Actions or related activities at or near the Transferred Real Properties. The Environmental Custodial Trust Trustee shall implement any institutional controls or deed restrictions requested by the Governments with respect to any of the Transferred Real Properties. The Environmental Custodial Trust shall execute and record in the appropriate local real estate records any easements or deed restrictions restricting the use of the Transferred Real Properties requested by the Environmental Trust Beneficiaries 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 Plan, the Settlement Agreement or this Agreement is intended to or shall be construed to terminate or otherwise amend any easements or deed restrictions of record as to any Transferred Real Property existing prior to the Effective Date. The Environmental Custodial Trust Trustee shall abide by the terms of any institutional controls or deed restrictions in place or of record as to any Transferred Real Property.

2.11 Accounting

The Environmental Custodial Trust Trustee shall maintain proper books, records, and accounts relating to all transactions pertaining to the Environmental Custodial Trust, and the assets and liabilities of, and claims against or assumed by, the Environmental Custodial Trust in such detail and for such period of time as may be necessary to enable the Environmental Custodial Trust Trustee to make full and proper accounting in respect thereof in accordance with Article 6 below and to comply with applicable provisions of law and good accounting practices. Except as otherwise provided herein or by the Plan or the Settlement Agreement, the Environmental Custodial Trust Trustee shall not be required to file any accounting or seek approval of the Court with respect to the administration of the Environmental Custodial Trust, or as a condition for making any payment or distribution out of the Custodial Trust Assets. Environmental Trust Beneficiaries shall have the right upon fourteen (14) days' prior written notice delivered to the Environmental Custodial Trust Trustee to inspect such books and records.

2.12 Termination

2.12.1 Consistent with the terms of this Agreement, the Settlement Agreement and the Plan, the Environmental Custodial Trust Trustee shall not unduly

prolong the duration of the Environmental Custodial Trust and shall at all times endeavor to resolve, settle, or otherwise dispose of all claims against Custodial Trust Assets and to effect the distribution of Custodial Trust Assets and other receipts relating thereto to the Environmental Trust Beneficiaries and the others who receive distributions hereunder in accordance with the terms hereof, and to terminate the Environmental Custodial Trust as soon as practicable consistent with this Agreement, the Settlement Agreement and the Plan.

2.12.2 The parties agree that the rule against perpetuities does not apply to the Environmental Custodial Trust, but to the extent that any rule against perpetuities shall be deemed applicable, the Environmental Custodial 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. If the Environmental Custodial Trust is terminated pursuant to this Section 2.12.2, title to the Environmental Custodial Trust's assets shall be transferred to or at the direction of the United States in consultation with any of the States in which Transferred Real Properties then remaining in the Environmental Custodial Trust are located.

2.13 Property Disposition

2.13.1 Subject to Section 2.12.2 of this Agreement, the United States, the State in which a Transferred Real Property is located, or a governmental unit that is a designee thereof, may at any time propose in writing to take ownership of any of the Transferred Real Properties or any part thereof. Any such proposed transfer and the terms thereof are subject to approval in writing by USEPA, DOI and DOC/NOAA as applicable, and the State in which the Transferred Real Property is located. The Environmental Custodial Trust Trustee may at any time seek the approval of USEPA, DOI and DOC/NOAA as applicable, and the applicable State for the sale or lease or other disposition of all or part of a Transferred Real Property. In the event of any approved sale or lease or other disposition under this Paragraph, any net proceeds from the sale or lease or other disposition shall be paid to the Custodial Trust Environmental Cost Account for that Transferred Real Property (subject to the provisions of Sections 2.7.3 and 2.7.4) in a proportion approved by USEPA, DOI and DOC/NOAA as applicable, and the State in writing. With the prior written approval of USEPA, DOI and DOC/NOAA as applicable, and the applicable State, the Environmental Custodial Trust may, after the sale or lease of all or part of a Transferred Real Property to a third party pursuant to this Section, continue to conduct, manage, and/or fund Environmental Actions, and pay oversight costs, with respect to that property.

2.13.2 Any actions by the Environmental Custodial Trust Trustee on property administered by any federal agency can only be taken after the written concurrence of the federal agency.

ARTICLE 3 WORK AND DISTRIBUTIONS

3.1 Budgets for and Payments by the Environmental Custodial Trust

On or before the date that is ninety (90) days after the Effective Date, the Environmental Custodial Trust Trustee shall provide the United States and the Lead Government Agency for a Transferred Real Property with a proposed budget for the balance of the calendar year and the next calendar year. On or before January 1 of each calendar year, the Environmental Custodial Trust Trustee shall provide the United States and the Lead Government Agency with balance statements and proposed budgets as described in Sections 3.1.1 and 3.1.3 of this Agreement. The Environmental Custodial Trust Trustee shall not pay any expense that has not been provided for in the applicable budget and approved by the Lead Government Agency.

3.1.1 Administrative Expenses of the Environmental Custodial Trust. On or before January 1 of each year, the Environmental Custodial Trust Trustee shall provide the United States and the States with a balance statement and an annual budget for administration of the Environmental Custodial Trust for that calendar year, which may be approved or disapproved in whole or in part by the United States and States that are Lead Government Agencies. If disapproved, such budget shall be revised and resubmitted as expeditiously as possible. No administrative expenses may be incurred or paid by the Environmental Custodial Trust Trustee that are inconsistent with the approved budget, unless the United States and States that are Lead Government Agencies approve a revised budget. Each annual budget shall include a future year forecast of administrative expenditures, with annual details for at least the next three years (or such longer period as the United States and States that are Lead Government Agencies shall reasonably request). The Environmental Custodial Trust shall regularly, but not less often than annually, and otherwise upon the reasonable request of the United States or the States, provide documentation to the United States and the States to substantiate compliance with the applicable approved budget and application of Custodial Trust Assets consistently with the terms of this Agreement, the Settlement Agreement and the Plan. The approved budget shall be funded by the transfer of the approved amounts from the Custodial Trust Assets.

- 3.1.2 Remuneration for Environmental Custodial Trust Trustee's Start-Up Fees and Expenses. The Environmental Custodial Trust Trustee shall be entitled to remuneration from the Custodial Trust Administrative Expense Account of up to \$90,000 for its fees and expenses incurred prior to the Effective Date in connection with the formation of the Environmental Custodial Trust.
- 3.1.3 Environmental Expenses of the Environmental Custodial Trust. In consultation with the Lead Government Agency, the Environmental Custodial Trust Trustee shall prepare balance statements and annual budgets of projected expenditures for Environmental Costs from each of the Custodial Trust Environmental Cost Accounts. The first budget for the remainder of the current calendar year and the next calendar year shall be prepared within ninety (90) days following the Effective Date and annual budgets shall be prepared thereafter on or before each January 1 during the term of the Environmental Custodial Trust. The Lead Government Agency shall have the authority to approve or disapprove the proposed budget for the relevant Custodial Trust Environmental Cost Account after consultation with the other governmental agency (i.e., the State in which the Transferred Real Property is located for a Site for which USEPA, DOI, and/or DOC/NOAA is the Lead Government Agency and vice versa). If disapproved, a budget shall be revised and resubmitted as expeditiously as possible. No expenses may be incurred or paid by the Environmental Custodial Trust Trustee that are inconsistent with an approved budget, unless the Lead Government Agency after consultation with the other governmental agency approves a revised budget; provided, however, that the Environmental Custodial Trust Trustee may incur or pay ongoing or recurring expenses approved in the prior year's budget that occur between the time a proposed annual budget is submitted and the time it is approved. In addition, the Environmental Custodial Trust Trustee shall pay funds from a Custodial Trust Environmental Cost Account to the Lead Government Agency within 10 days of a written request by the Lead Government Agency for such funds. Such written request shall specify what expenditures by the Lead Government Agency the funds would reimburse and shall certify that such expenditures by the Lead Government Agency were only for Environmental Actions and/or oversight costs with respect to the Transferred Real Property and related Site. The Environmental Custodial Trust Trustee shall also, within 10 days of a written request by the Lead Government Agency, pay annual funds from a Custodial Trust Environmental Cost Account to pay the Lead Government Agency's projected expenditures with respect to the Transferred Real Property and related Site, provided that the Lead Government Agency's written request shall specify what projected expenditures by the Lead Government Agency the funds are for and shall certify that such projected expenditures by the Lead Government Agency are only for Environmental Actions that are expected to occur in the following year with respect to the Transferred Real Property and related Site. The Environmental Custodial

Trust Trustee shall also pay funds from a Custodial Trust Environmental Cost Account to the other governmental agency (as described in the third sentence of this Section) within 10 days of such request, where the Lead Government Agency has requested the assistance of the other governmental agency with respect to the Transferred Real Property and related Site. Any request for payment pursuant to the preceding sentence shall comply with the same requirements set forth in this Section for requests for payment to a Lead Government Agency.

3.1.4 Annual Reports. By January 1 of each year during the term of the Environmental Custodial Trust and within nine (9) months after termination of the Environmental Custodial Trust, the Environmental Custodial Trust Trustee shall prepare and submit to the Environmental Trust Beneficiaries an annual report with respect to each of the Custodial Trust Accounts. The annual report shall pertain to the prior calendar year, or if the report is a final report, such period from the most recent annual report to the termination of the Custodial Trust Accounts.

3.2 Liens

Notwithstanding anything to the contrary in this Article 3, the Environmental Custodial Trust hereby grants to the Environmental Custodial Trust Trustee, the United States and the respective States a first-priority lien on and security interest in the Custodial Trust Assets to secure the payment of all amounts owed to, accrued or reserved on account of the Environmental Custodial Trust or to be retained by the Environmental Custodial Trust Trustee hereunder or otherwise due hereunder. Upon written request by the Environmental Trust Beneficiaries, the Environmental Custodial Trust agrees to take appropriate actions and execute appropriate documents to perfect the Environmental Custodial Trust Trustee's, liens and security interest hereunder. However, only the Environmental Custodial Trust Trustee shall have a first-priority lien and security interest in the Custodial Trust Administrative Expense Account and only the United States and the respective States shall have a first-priority lien on and security interest in the Custodial Trust Environmental Cost Accounts.

3.3 Manner of Payment

Cash payments made by the Environmental Custodial Trust pursuant to this Agreement and the Settlement Agreement shall be in United States dollars by checks drawn on a domestic bank whose deposits are federally insured selected by the Environmental Custodial Trust Trustee, or by wire transfer from such a domestic bank, at the option of the Environmental Custodial Trust Trustee.

3.4 Unclaimed Distributions

Upon the dissolution of the Environmental Custodial Trust, and after the payment or making of reasonable provision for payment of all obligations of the Environmental Custodial Trust in accordance with applicable law, the Environmental Custodial Trust Trustee shall, as expeditiously as is consistent with the conservation and preservation of the Environmental Trust

Assets, distribute any remaining assets in the Environmental Custodial Trust to such federal and state accounts as the Environmental Trust Beneficiaries designate; provided none of such assets shall be distributed to any of the Debtors or Reorganized Debtors.

ARTICLE 4
THE ENVIRONMENTAL CUSTODIAL TRUST TRUSTEE

4.1 Appointment

4.1.1 Debtors, after approval by the United States, hereby appoint Le Petomane XXIII, Inc., not individually but solely in its representative capacity as Environmental Custodial Trust Trustee, by and through Jay A. Steinberg, not individually but solely in his representative capacity as president of the Environmental Custodial Trust Trustee, to serve as the Environmental Custodial Trust Trustee, and the Environmental Custodial Trust Trustee hereby accepts such appointment and agrees to serve in such representative capacity, effective upon the Effective Date of this Agreement. Subject to the provisions of Section 4.11 herein, the term of the Environmental Custodial Trust Trustee shall be for ten years at which time the Environmental Custodial Trust Trustee may be re-appointed or terminated. Any successor Environmental Custodial Trust Trustee shall be appointed in accordance with Section 4.12 of this Agreement. If the Environmental Custodial Trust Trustee is not reappointed and no successor Environmental Custodial Trust Trustee is appointed by the expiration of the Environmental Custodial Trust Trustee's term, the Court may reappoint the Environmental Custodial Trust Trustee or appoint a successor Environmental Custodial Trust Trustee.

4.1.2 After consultation with the United States and the States, the Environmental Custodial Trust is authorized to obtain the services of an environmental consultant to implement the future Environmental Actions (the "Consultant"). The Consultant shall obtain environmental, general and professional liability insurance in the sum of \$25,000,000 or such lesser amount as agreed to by the Environmental Custodial Trust after consultation with the United States and the States. The beneficiary of the insurance policies shall be the Environmental Custodial Trust and 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 Custodial Trust and Environmental Custodial Trust Trustee is that of an independent contractor professional, not that of an entity employed by the Environmental Custodial Trust or the Environmental Custodial Trust Trustee. The Consultant shall not be deemed a Custodial Trust Party.

4.2 General Authority

The Environmental Custodial Trust Trustee's powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purposes of the Environmental Custodial Trust and not otherwise. The Environmental Custodial Trust Trustee shall have the authority to bind the Environmental Custodial Trust, and any successor Environmental Custodial Trust Trustee, or successor or assign of the Environmental Custodial Trust, but shall for all purposes hereunder be acting in its representative capacity as Environmental Custodial Trust Trustee and not individually. Notwithstanding anything to the contrary contained herein, the Environmental Custodial Trust Trustee shall not be required to take action or omit to take any action if, after the advice of counsel, the Environmental Custodial Trust Trustee believes in good faith such action or omission is not consistent with the Environmental Custodial Trust Trustee's fiduciary duties.

4.3 Powers

In connection with the administration of the Environmental Custodial Trust, except as otherwise set forth in this Agreement and the Settlement Agreement, the Environmental Custodial Trust Trustee is authorized to perform any and all acts necessary to accomplish the purposes of the Environmental Custodial Trust. However no such action shall cause the Environmental Custodial 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 Custodial Trust 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 Custodial Trust Assets, withdraw, make distributions and pay taxes and other obligations owed by the Environmental Custodial Trust or the Custodial Trust Accounts from funds held by the Environmental Custodial Trust Trustee and/or the Environmental Custodial Trust (or the Custodial Trust Accounts) 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 Custodial Trust;
- 4.3.2 to invest in, and only in, demand and time deposits such as short term certificates of deposit, in banks or other savings institutions or other temporary, liquid investments, such as a U.S. Treasury bills as permitted by Section 345 of the Bankruptcy Code, but including only those investments, and expanded to include any additional investments, as the case may be, that a liquidating trust, within the meaning of Treasury Regulation section 301.7701-4(d), may be permitted to hold, pursuant to Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements or otherwise;
- 4.3.3 to borrow funds, incur or assume liabilities, and pledge any portion of the Environmental Trust Assets on behalf of the Environmental Custodial

Trust in furtherance of or in connection with the Environmental Custodial Trust Trustee's or the Environmental Custodial 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 Custodial Trust;

- 4.3.4 to make distributions of the Custodial Trust Assets from the Custodial Trust Accounts for the purposes contemplated in this Agreement and the Plan;
- 4.3.5 to engage and retain employees, counsel and other professionals, including any professional who represented parties in interest in the Chapter 11 Cases, to assist the Environmental Custodial Trust Trustee with respect to the responsibilities described herein, on such terms as the Environmental Custodial Trust Trustee deems appropriate, without Bankruptcy Court approval;
- 4.3.6 to perform duties, exercise the powers, and assert the rights of a trustee under Section 704 and 1106 of the Bankruptcy Code;
- 4.3.7 to obtain general liability insurance and other reasonable insurance coverage with respect to the Environmental Custodial Trust Trustee's liabilities and obligations as Environmental Custodial Trust Trustee under this Agreement and the Settlement Agreement (in the form of an errors and omissions policy or otherwise) and indemnification for the Environmental Custodial Trust Trustee and others to the extent provided for in the Plan and this Agreement;
- 4.3.8 to request any appropriate tax determination with respect to the Environmental Custodial 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;
- 4.3.9 to establish and maintain a website for the purpose of providing notice of Trust activities in lieu of sending written notice to the Environmental Trust Beneficiaries, and for any other purpose identified by the Environmental Custodial Trust Trustee in the reasonable exercise of its discretion, subject to providing notice of such website to the Environmental Trust Beneficiaries;
- 4.3.10 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 Custodial Trust and/or the Environmental Custodial Trust 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 Custodial Trust

shall be obligated to inquire into the authority of the Environmental Custodial Trust Trustee in connection with the protection, conservation or disposition of Custodial Trust Assets. The Environmental Custodial Trust Trustee is authorized to execute and deliver all documents on behalf of the Environmental Custodial Trust to accomplish the purposes of this Agreement and the Settlement Agreement; and

4.3.11 to take all other appropriate action with respect to the Environmental Trust Assets to the extent consistent with the purpose of the Environmental Custodial Trust.

4.4 Other Professionals

After consultation with the United States and the States, the Environmental Custodial Trust is authorized to retain on behalf of the Environmental Custodial Trust and pay such third parties as the Environmental Custodial Trust Trustee (in accordance with a budget approved pursuant to Section 3.1 above) may deem necessary or appropriate to assist the Environmental Custodial Trust Trustee in carrying out its powers and duties under this Agreement, the Settlement Agreement and the Plan, including, without limitation, (i) counsel to the Environmental Custodial Trust and/or Environmental Custodial Trust Trustee, (ii) a public accounting firm to perform such reviews and/or audits of the financial books and records of the Environmental Custodial Trust as may be appropriate in the Environmental Custodial Trust Trustee's reasonable discretion and to prepare and file any tax returns or informational returns for the Environmental Custodial Trust or the Custodial Trust Accounts as may be required, and (iii) environmental consultants, custodians, security personnel, engineers, surveyors, brokers, contractors, and clerks. The Environmental Custodial Trust Trustee may pay all such Persons compensation for services rendered and expenses incurred in accordance with a budget approved as provided in Section 3.1.

4.5 Books and Records

The Environmental Custodial Trust Trustee shall maintain, or cause to be maintained, in respect of the Environmental Custodial Trust and the Environmental Trust Beneficiaries, books and records relating to the Environmental Trust Assets and income of the Environmental Custodial Trust and the payment or assumption by the Environmental Custodial Trust of liabilities, expenses or obligations in such detail and for such period of time as may be necessary to enable the Environmental Custodial 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 United States and the States shall have the right to examine all such books and records and all other books and records of the Environmental Custodial Trust. Except as otherwise may be expressly provided herein, nothing in this Agreement requires the Environmental Custodial Trust Trustee to file any accounting, or seek approval of any court, with respect to the administration of the Environmental Custodial Trust, or as a condition for managing any payment or distribution out of the Environmental Trust Assets.

4.6 Limitation of the Environmental Custodial Trust Trustee's Authority

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

- 4.6.1 to engage in any trade or business with respect to the Custodial Trust Assets or collect any proceeds therefrom except as, and to the extent the same is deemed in good faith by the Environmental Custodial Trust Trustee, to be reasonably necessary or proper for the conservation or protection of the Custodial Trust Assets, or the fulfillment of the purposes of the Environmental Custodial Trust;
- 4.6.2 take any action that would cause the Environmental Custodial 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;
- 4.6.3 take any action in contravention of this Agreement, the Plan, the Confirmation Order or applicable law, or any action that would make it impossible to carry on the activities of the Environmental Custodial Trust; or
- 4.6.4 possess property of the Environmental Custodial Trust or assign the Environmental Custodial Trust's rights in specific property for other than purposes of the Environmental Custodial Trust.

4.7 Reliance by the Custodial Trust Parties

Except as may otherwise be provided herein: (a) the Custodial Trust 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) the Custodial Trust Parties may consult with legal counsel, financial or accounting advisors and other professionals or environmental consultants to be selected by them, and the Custodial Trust 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 Custodial Trust Parties shall look only to the Custodial Trust Assets to satisfy any liability incurred by the Custodial Trust Parties to such Person in carrying out the terms of this Agreement, the Settlement Agreement and the Plan, or any order of the Court and the Custodial Trust Parties shall have no personal obligation to satisfy any such liability.

4.8 Compensation of the Environmental Custodial Trust Trustee

The Environmental Custodial Trust shall pay its own reasonable and necessary costs and expenses, and shall reimburse the Environmental Custodial Trust Trustee for the actual reasonable out-of-pocket fees and expenses to the extent incurred by the Environmental Custodial Trust Trustee in connection with the Environmental Custodial Trust Trustee's duties hereunder, including, without limitation, necessary travel, lodging, office rent (to be paid directly

by the Environmental Custodial Trust), postage, photocopying, telephone and facsimile charges upon receipt of periodic billings, all in accordance with an annual budget or fee schedule approved by the Environmental Trust Beneficiaries. The Environmental Custodial Trust Trustee and employees of the Environmental Custodial Trust and the Environmental Custodial Trust Trustee who perform services for the Environmental Custodial Trust shall be entitled to receive reasonable compensation for services rendered on behalf of the Environmental Custodial Trust in accordance with an annual budget or fee schedule approved by the Environmental Trust Beneficiaries.

The Custodial Trust Assets shall be subject to the claims of the Lyondell Environmental Custodial Trust Trustee, and the Lyondell Environmental Custodial Trust Trustee shall be entitled to compensate itself for administrative work performed consistent with the annual budget approved by the Environmental Trust Beneficiaries out of any available cash in the Custodial Trust Administrative Expense Account, and compensate itself for environmental work performed consistent with the annual budget from the Custodial Trust Environmental Cost Account for the Transferred Real Property that the environmental services related to. The Lyondell Environmental Custodial Trust shall be obligated to pay for actual out-of-pocket expenses and for actual hours worked. All compensation payable to the Lyondell Environmental Custodial Trust Trustee shall be paid from the appropriate Custodial Trust Account based on the nature of the work being either administrative or environmental.

4.9 Liability of Custodial Trust Parties

In no event shall the Custodial Trust Parties be held liable to any third parties for any liability, action, or inaction of any other party including each other and the Settlers. The Custodial Trust Parties shall, further, be indemnified and exculpated in accordance with Section 4.10 of this Agreement.

As provided in the Settlement Agreement, the Custodial Trust Parties are deemed to have resolved their civil liability under CERCLA and State environmental statutes to the United States and States, and have protection from contribution actions or claims as provided by Sections 113(f)(2) of CERCLA, 42 U.S.C. Section 9613(f)(2) or similar state law for matters addressed in the Settlement Agreement. The Custodial Trust Parties shall have the benefits of the covenants not to sue, contribution protections, and the other protection provisions as specified for the Debtors as set forth in the Settlement Agreement.

4.10 Exculpation and Indemnification

The Custodial Trust 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:

- (a) the ownership of Custodial Trust Assets;
- (b) the discharge of duties and powers conferred upon the Environmental Custodial Trust and/or Environmental Custodial Trust Trustee by this Agreement, the Settlement Agreement and the Plan, any order of the Court, or applicable law or

otherwise, including the making of payments in accordance with this Agreement, the Settlement Agreement and the Plan, or any order of court, and the implementing of the provisions of this Agreement, the Settlement Agreement and the Plan or any order of court; or

(c) any claim against Settlers.

4.10.1 Exculpation. No Custodial Trust Party shall be personally liable unless the Court finds, by a final order, that the Custodial Trust Party committed fraud or willful misconduct after the Effective Date in relation to the Environmental Custodial Trust Trustee's duties that are alleged to be the basis for liability. Each Custodial Trust 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 Section 4.10 (a), (b) and (c). 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 Custodial Trust Party for the matters contained in the provisions of Section 4.10 (a), (b), and (c). However, nothing in this paragraph or this Agreement shall preclude the Governments (as defined in the Settlement Agreement) from enforcing the terms of the Settlement Agreement against the Parties.

4.10.2 Indemnification. The Environmental Custodial Trust shall indemnify, defend and hold harmless (without the Custodial Trust Parties having to first pay from their personal funds) the Custodial Trust 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 Section 4.10 (a), (b) and (c) (collectively, the "Indemnifiable Expenses"), to the fullest extent permitted by applicable law. The Indemnifiable Expenses shall be limited to and satisfied from funds in the Custodial Trust Environmental Cost Account for the relevant property and the Custodial Trust Administrative Expense Account. Without limiting the foregoing, any such judgment against a Custodial Trust Party and any such costs of defense relating to any Custodial Trust Party shall be paid by the Environmental Cost Custodial Trust consistent with the terms and conditions of this Section 4.10.2. Notwithstanding the foregoing, to the extent fraud or willful misconduct of any Custodial Trust Party is alleged and the Court finds, by a final order, that such Custodial Trust Party committed fraud or willful misconduct after the Effective Date in relation to the Environmental Custodial Trust Trustee's duties that are alleged to be the basis for liability, there shall be no indemnification, of that Custodial Trust Party, for any judgments arising from such allegations of 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 Custodial Trust shall advance to any Custodial Trust Party incurring any Indemnifiable Expenses such amounts, on a monthly basis, if the Custodial Trust Party provides the Environmental Custodial Trust with an undertaking reasonably satisfactory to the Environmental Custodial Trust Trustee that such Custodial Trust Party will repay any amounts finally determined to be Carved Out Expenses.

4.11 Termination of the Environmental Custodial Trust, Replacement or Removal of the Environmental Trust and Transfer of Remaining Funds to the United States or State.

4.11.1 Termination. The duties, responsibilities and powers of the Environmental Custodial Trust Trustee will terminate on the date the Environmental Custodial 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 4.7, 4.9 and 4.10 above shall survive such termination, dissolution and entry.

4.11.2. Resignation. The Environmental Custodial Trust Trustee may resign by giving not less than thirty (30) days prior written notice thereof to the Court, the United States, and the States.

4.11.3 Replacement. The Environmental Custodial Trust Trustee may be replaced upon completion of any ten (10) year term, however, this Section and Sections 4.7, 4.9 and 4.10 above shall survive such replacement.

4.11.4 Removal. The Environmental Custodial Trust Trustee may be removed or the Custodial Trust Assets may be transferred to the United States and/or the States by:

(1) The entry of an order by the Bankruptcy Court, immediately upon notice of appointment of a temporary or permanent successor, finding that the Environmental Custodial Trust Trustee committed fraud or willful misconduct after the Effective Date in relation to the Environmental Custodial Trust Trustee’s duties under the Environmental Custodial Trust; or

(2) The entry of an order by the Bankruptcy Court, immediately upon notice of appointment of a temporary or permanent successor, finding that, (i) the Environmental Custodial Trust Trustee has in any material respect, as a result of negligence, exacerbated conditions at any of the Transferred Real Properties, 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

this Agreement or other related implementation agreements. In the event of a finding of the occurrence of the events set forth in the foregoing clauses (i), (ii) or (iii), the United States and the State in which the relevant Transferred Real Property is located may jointly direct that the Environmental Custodial Trust Trustee be replaced in accordance with this Agreement or may retain the Environmental Custodial Trust Trustee and direct that all remaining funds and future proceeds or income, if any, attributable to the Custodial Trust Assets in the Environmental Custodial Trust be paid to the United States and/or to the State to be used in accordance with the terms of this Agreement, the Settlement Agreement or the Plan. In the event the funds are so paid, so long as title to any Transferred Real Property remains in the name of the Environmental Custodial Trust or Environmental Custodial Trust Trustee, funds deemed reasonably sufficient by the applicable beneficiaries to cover property taxes and other property management costs to be paid by the Environmental Custodial Trust for any Transferred Real Property shall be left in the Custodial Trust Administrative Expense Account.

- (3) The provisions of this Section and Section 4.7, 4.9 and 4.10 above shall survive the removal of the Environmental Custodial Trust Trustee or transfer of funds.

4.12 Appointment of Successor Environmental Custodial Trust Trustees

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

4.13 No Bond

Notwithstanding any state law to the contrary, the Environmental Custodial Trust Trustee, including any successor Environmental Custodial Trust 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 Custodial 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 Custodial Trust and the Environmental Custodial Trust 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 Custodial Trust Trustee in the future by an authorized representative of such Environmental Trust Beneficiary.

5.2.2 The Environmental Custodial Trust Trustee shall send copies of all reports, budgets, annual balance statements, and other documents that the Environmental Custodial Trust Trustee is required to submit to an Environmental Trust Beneficiary under this Agreement and the Settlement Agreement, and related implementation documents including any 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:

Authorized representative and party to receive all notices under Section 5.2.2:

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. 90-5-2-1-2132/3

Pierre G. Armand
Assistant United States Attorney
Office of the United States Attorney
for the Southern District of New York
86 Chambers Street, Third Floor
New York, NY 10007

EPA:

David Smith-Watts
Attorney-Advisor
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

DOI:

Amy Horner
Attorney Advisor
U.S. Department of the Interior
Office of the Solicitor
1849 C Street, NW
Washington, DC 20240

NOAA:

M.E. Rolle
National Oceanic and Atmospheric Administration
263 13th Avenue South
Saint Petersburg, FL 33701

As to each of the following state Environmental Trust Beneficiaries:

California Regional Water Quality Control Board, Central Valley Region

Marilyn H. Levin
Noah Golden-Krasner
Deputy Attorneys General
300 South Spring Street, 11th Floor
Los Angeles, CA 90013

Pamela Creedon
Executive Officer
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

Patrick Pulupa
Staff Counsel
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812

The State of Illinois and IEPA:

Chief, Environmental Bureau South
Office of the Attorney General
500 South Second Street
Springfield, IL 62706

James Kropid
Illinois Environmental Protection Agency
Division of Legal Counsel
P.O. Box 19726
1021 North Grand Avenue East
Springfield, IL 62796

MDE

Horacio Tablada, Director
Land Management Administration
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, MD 21230

MDNRE

Polly Synk
Assistant Attorney General
Michigan Department of Attorney General
Environment, Natural Resources, and Agriculture Division
P.O. Box 30755
Lansing, MI 48909

Brian Monroe
Chief, Redevelopment and Enforcement Support Unit
Compliance and Enforcement Section
Remediation and Redevelopment Division
Michigan Department of Natural Resources and the Environment
P.O. Box 30426
Lansing, MI 48909-7926

NCDWM:

Bruce Parris
Western Regional Supervisor
Inactive Hazardous Sites Branch
N.C. Department of Environment and Natural Resources
610 East Center Ave., Suite 301
Mooresville, North Carolina 28118

PADEP:

Manager
Waste Management
400 Waterfront Drive
Pittsburgh, PA 15222

Regional Counsel
Office of Chief Counsel
400 Waterfront Drive
Pittsburgh, PA 15222

TCEQ:

Robert Mosley
Staff Attorney
Litigation Division, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

5.3 Non-Beneficiaries

Upon the Effective Date of this Agreement, the Settlor shall have no interests including, without limitation, any reversionary interest, in the Environmental Custodial Trust or any Custodial Trust Assets.

5.4 Transfer of Beneficial Interests

The interest of the Environmental Trust Beneficiaries in the Environmental Custodial Trust, which are reflected only on the records of the Environmental Custodial Trust maintained by the Environmental Custodial Trust, are not negotiable and may be transferred only after written notice to the Environmental Custodial Trust, by order of the Court or by operation of law. The Environmental Custodial Trust shall not be required to record any transfer in favor of any transferee who, in the sole discretion of the Environmental Custodial Trust Trustee, is or might be construed to be ambiguous or to create uncertainty as to the holder of the interest in the Environmental Custodial Trust. Until a transfer is in fact recorded on the books and records maintained by the Environmental Custodial Trust for the purpose of identifying Environmental Trust Beneficiaries, the Environmental Custodial 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 Environmental Trust Beneficiaries, as though it has no notice of any such transfer, and in so doing the Environmental Custodial Trust and Environmental Custodial Trust Trustee shall be fully protected and incur no liability to any purported transferee or any other Person. Interests in the Environmental Custodial Trust may not be transferred to the Settlers, Lyondell Chemical Company, its successors, its 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 Custodial Trust and ending as soon as practicable upon termination of the Environmental Custodial Trust, the Environmental Custodial Trust shall submit to the Environmental Trust Beneficiaries a written report, including: (a) financial statements of the Environmental Custodial Trust at the end of such calendar quarter; and (b) a description of any action taken by the Environmental Custodial Trust in the performance of its duties which, as determined by outside counsel, accountants or other professional advisors, materially and adversely affects the Environmental Custodial Trust and of which notice has not previously been given to the Environmental Trust Beneficiaries. The Environmental Custodial 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 Custodial Trust or the rights of the Persons receiving distributions (including, without limitation, the Environmental Trust Beneficiaries) hereunder. The Environmental Custodial Trust shall also provide the reports or information required by Section 3.1 of this Agreement.

6.2 Other

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

6.3 Reports in Support of Insurance Claims

The Environmental Custodial 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 United States and the States and shall provide the United States and the States a copy of any such reports and cost analyses.

6.4 Tax Treatment of the Environmental Custodial Trust

For U.S. federal income tax purposes, the Environmental Custodial 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 Custodial 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 Custodial Trust will be treated as a separate taxable entity. The Environmental Custodial Trust Trustee shall cause any property taxes imposed on property owned by the Environmental Custodial Trust, and all other taxes imposed on the Environmental Custodial 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 Custodial Trust under applicable law.

6.6 Trustee as Administrator

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

6.7 Fiscal Year

The Environmental Custodial Trust’s fiscal year shall be the calendar year or such other period as may be fixed by the Environmental Custodial Trust 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 Custodial Trust, the United States, and the States; provided, however, that no change shall be made to this Agreement that would alter the provisions of Section 7.4 hereof or adversely affect the federal income tax status of the Environmental Custodial Trust as a “qualified settlement fund” for which no grantor trust election has been made (in accordance with Section 2.5.5 hereof), or, unless agreed to in writing by the affected Environmental Custodial Trust Trustee, the rights of the Environmental Custodial Trust Trustee. Technical amendments to this Agreement may be made as necessary, to clarify this Agreement or enable the Environmental Custodial Trust Trustee to effectuate the terms of this Agreement in a manner consistent with the Settlement Agreement with the mutual consent of the Environmental Custodial Trust, the United States, and the States.

7.2 Cooperation

Debtors agree to cooperate with the Environmental Custodial Trust 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 Transferred Real Properties for the purpose of performing the Environmental Custodial Trust Trustee’s duties and exercising its powers hereunder, including all environmental information and/or data in the state and condition in which such records are found regarding the Transferred Real Properties in possession of Debtors or any environmental consultants or contractors previously retained by Debtors. Within ninety (90) days after the Effective Date, the Debtors or Reorganized Debtors shall deliver or cause to be delivered to the Environmental Custodial Trust copies or originals, as appropriate in the judgment of Debtors of all material and known non-privileged documents in the Debtors’ or Reorganized Debtors’ possession that relate to the Environmental Trust Assets (including documents held by the Debtors, their agents, advisors and attorneys). Prior to the Effective Date and for a period of thirty (30) days after the Effective Date, Debtors and Reorganized Debtors shall provide reasonable access to such employees of Debtors, Reorganized Debtors, their agents, advisors, attorneys, accountants or any other professionals hired by the Debtors with knowledge of matters relevant to the Environmental Trust Assets. The Environmental Custodial Trust and Environmental Custodial Trust Trustee shall take such actions and execute such documents as are reasonably requested by Debtors with respect to effectuating this Agreement, the Settlement Agreement and the transactions contemplated thereby, provided that such actions are not inconsistent with this Agreement, the Settlement Agreement or the Plan, and provided that such actions shall be at the sole expense of the Debtors. The Environmental Custodial Trust Trustee, Debtor, and the Lead Government Agency for each of the Transferred Real Properties will exchange information and reasonably cooperate to determine the appropriate disposition of executor contracts or unexpired leases, if any, that relate to the relevant Transferred Real Property.

7.3 Situs of the Environmental Custodial Trust

The situs of the Environmental Custodial Trust herein established is New York, and the laws of New York shall control with respect to the construction, administration, and validity of the Environmental Custodial Trust, without giving effect to rules governing the conflict of law that otherwise would apply the law of another jurisdiction.

7.4 Intention of the Parties to Establish Qualified Settlement Fund

This Agreement is intended to create a qualified settlement fund for United States federal income tax purposes and shall be governed and construed in all respects consistently with such intent. Notwithstanding anything to the contrary contained herein, any ambiguity in this Agreement shall be construed consistently with the immediately preceding sentence, and, if necessary, this Agreement may be amended to comply with such United States federal income tax laws, which amendments may apply retroactively.

7.5 Headings

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 any term or provision hereof.

7.6 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.

7.7 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 a Environmental Trust Beneficiary in Section 5.2 of this Agreement or such other address provided in writing to the Environmental Custodial Trust by an authorized representative of the respective Environmental Trust Beneficiary.

If notice to the Environmental Custodial Trust Trustee, to:

The Lyondell Environmental Custodial Trust
Le Petomane XXIII, Inc., not individually but
solely as Custodial Trust Trustee
35 E. Wacker Drive – Suite 1550
Chicago, IL 60601

7.8 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.

7.9 Relationship to the Plan

The principal purpose of this Agreement is to aid in the implementation of the Plan and therefore this Agreement incorporates the provisions of the Plan. To that end, subject to the terms and conditions of this Agreement, the Environmental Custodial Trust Trustee shall have full power and authority to take any action consistent with the purpose and provisions of the Plan, and to seek any orders from the Bankruptcy Court in furtherance of implementation of this Agreement and the Plan.

7.10 Actions Taken on Other Than Business Day

If any payment or act under the Plan, 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.

7.11 Compliance with Laws

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

7.12 Preservation of Privilege

In connection with the rights, claims, and causes of action that constitute the Custodial Trust Assets, any attorney-client privilege, work-product privilege, or other privilege or immunity attaching to any documents or communications (whether written or oral) transferred to the Environmental Custodial Trust shall vest in the Environmental Custodial Trust and its representatives, and the Parties are authorized to take all necessary actions to effectuate the transfer of such privileges.

7.13 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 Custodial 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 Custodial Trust 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 Custodial Trust 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.

7.14 Confidentiality

The Environmental Custodial Trust 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 Custodial Trust 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 Environment Trust Trustee. Notwithstanding anything else in the Plan, this Agreement or any other agreements implementing the Plan, 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.

7.15 Uniform Custodial Trust Act

The Environmental Custodial 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.

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IN WITNESS WHEREOF, THE UNDERSIGNED PARTIES ENTER INTO THIS AGREEMENT

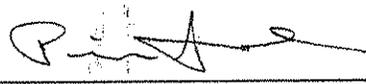
FOR THE UNITED STATES

FOR THE UNITED STATES OF AMERICA:

Date: 3/26/10

By: 
ROBERT DREHER,
Principal Deputy Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date: 3/29/10

By: 
PIERRE G. ARMAND
JEANNETTE A. VARGAS
ALICIA SIMMONS
BRANDON COWART
Assistant United States Attorneys
Office of the United States Attorney for the
Southern District of New York
86 Chambers Street, Third Floor
New York, NY 10007

Date: 3/29/10

By: 
KEVIN LYSKOWSKI
Senior Bankruptcy Counsel
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044

**FOR THE UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY**

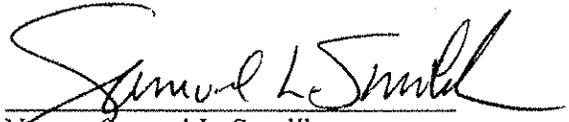
Date: 3/28/10



CYNTHIA GILES
Assistant Administrator
Office of Enforcement and Compliance
Assurance
U.S. Environmental Protection Agency

FOR THE SETTLORS

Date: March 19, 2010



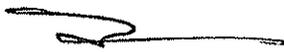
Name: Samuel L. Smolik
Title: Vice President Health Safety
& Environment

FOR THE STATE OF ILLINOIS AND THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

FOR THE STATE OF ILLINOIS
LISA MADIGAN, Attorney General of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos Litigation Division

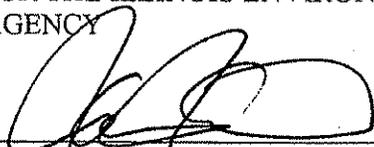
Date: 3/24/10



THOMAS E. DAVIS, Chief
Environmental Bureau
Assistant Attorney General
500 South Second Street
Springfield, IL 62706

FOR THE ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

Date: 3/19/10

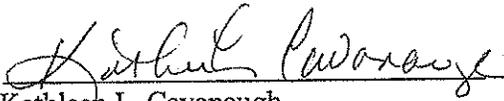


JOHN J. KIM
Chief Legal Counsel

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FOR THE MICHIGAN NATURAL RESOURCE TRUSTEES:

Date: 3-25-10

By: 
Kathleen L. Cavanaugh
Assistant Attorney General
Michigan Department of Attorney General
ENRA Division
P.O. Box 30755
Lansing, MI 48909

**FOR THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,
CENTRAL VALLEY REGION**

Date: 24 March 2010

Kenneth D. Lundsten, Assistant Executive Officer

By: Pamela Creedon
for Executive Officer
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

FOR THE NORTH CAROLINA DIVISION OF WASTE MANAGEMENT:

Date: March 30, 2010 By: W. Wallace Finkler, Jr.

FOR THE MARYLAND DEPARTMENT OF THE ENVIRONMENT

Date: 3/25/10


By: Steven R. Johnson
Assistant Attorney General

FOR THE DEPARTMENT OF ENVIRONMENTAL PROTECTION OF THE
COMMONWEALTH OF PENNSYLVANIA

Date: 7/22/10


By: Susan Shinkman
Chief Counsel
Office of Chief Counsel

FOR THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Date: 3/24/10



By: Hal F. Morris
Assistant Attorney General
Bankruptcy & Collections Division
Office of the Texas Attorney General

FOR THE ENVIRONMENTAL CUSTODIAL TRUST TRUSTEE

Date: _____

Le Petomane XXIII, Inc., not individually but
Solely in its representative capacity as the
Environmental Custodial Trust Trustee

By:

Not individually but
Jay A. Steinberg, solely as Pres; Sent
Jay A. Steinberg, not individually but solely in his
representative capacity as President of the
Environmental Custodial Trust Trustee