



THE UNITED STATES VIRGIN ISLANDS

OFFICE OF THE GOVERNOR
GOVERNMENT HOUSE

**Charlotte Amalie, V.I. 00802
340-774-0001**

October 30, 2014

VIA MESSENGER

The Honorable Shawn-Michael Malone
President
Thirtieth Legislature of the U.S. Virgin Islands
Capitol Building
St. Thomas, VI 00802

**Re: Operating Agreement by and among the Government of the U.S.
Virgin Islands and Atlantic Basin Refining Holdings, LLC and
Atlantic Basin Refining, Inc. with HOVENSA, LLC;
Special Session on November 12, 2014**

Dear Senator Malone:

I have enclosed for your consideration an Operating Agreement ("Agreement") for the operation of the Oil Refinery and Related Facilities ("Facilities") located at Limetree Bay, St. Croix, U.S. Virgin Islands. The Agreement represents the best use of the facility and the best opportunity to restart refinery operations resulting in hundreds of high-paying jobs on St. Croix, dedicated revenue streams to the Government of the Virgin Islands ("Government"), and—for the first time—provide for the eventual deconstruction of the Refinery and cleanup of the Refinery Site.

As you are aware, the Government is party to a Concession Agreement by and among the Government, Hess Oil Virgin Islands Corp. ("HOVIC"), PDVSA V.I., Inc. ("PDVSA") (HOVIC and PDVSA being, collectively, the "Members"), and HOVENSA, LLC, a limited liability company existing under the laws of the U.S. Virgin Islands ("HOVENSA," and together with the Members, the "Owners"), for the construction, operation, and maintenance of the Oil Refinery and Related Facilities located at Limetree Bay, St. Croix, U.S. Virgin Islands (as amended, the "Concession Agreement"). Under the Concession Agreement, the Owners (and their predecessors in interest) were granted rights to conduct the business of the Oil Refinery and Related Facilities and were exempted from certain taxes, duties, and other fees while the Government was granted economic benefits in the form of annual fixed payments, fuel oil subsidies, corporate taxes, and other benefits. Throughout the years, certain terms of the Concession Agreement were amended by additional amendments and agreements.

subsidies, corporate taxes, and other benefits. Throughout the years, certain terms of the Concession Agreement were amended by additional amendments and agreements.

On January 18, 2012, HOVENSA announced its intention to cease refining operations, and thereafter, ceased such operations on or about February 16, 2012. As you and your colleagues are undoubtedly aware and our community has experienced, we lost over \$500 million in economic activity with the plant's closure and over \$100 million in taxes and fees generated from the Refinery and those that did business at the Refinery. Additionally, since that time we have hovered at an unemployment rate approaching 15% on St. Croix. While other economic development initiatives are having positive results, the loss of the Territory's largest private sector employer and taxpayer has left a gaping hole that is difficult to fill. The overriding position of my Administration is that a restarted Refinery is in our best interest. To achieve this objective, the Government and the Owners entered into the Fourth Amendment to the Concession Agreement (the "Fourth Amendment") as of April 3, 2013, which was approved by the Legislature on November 4, 2013, and signed into law as Act No. 7566 on November 7, 2013. The Fourth Amendment provides, among other things, for the Members to undertake a bona fide process to facilitate the sale, directly or indirectly, of the Oil Refinery and Related Facilities on an arm's length basis (the "Sales Process").

The Sales Process, managed by the investment bank Lazard Ltd., resulted in the Owners having reached an agreement with Atlantic Basin Refining ("ABR") for the sale of the membership interests of HOVENSA to a subsidiary of ABR. Concurrently with the Owners' negotiations to sell HOVENSA to ABR, the Government entered into negotiations with ABR on a new operating agreement to supplant the existing Concession Agreement (the "Operating Agreement"), which would set forth detailed terms on which ABR and its affiliates would reconstruct, restart, and operate the Refinery. On October 29, 2014, the Government and ABR reached agreement on and executed the terms of the new Operating Agreement, which include, among other things, a substantial series of fixed and variable payments to the Government; a commitment to reconfigure, reconstruct and restart the Refinery at a baseline level of operation; a parallel commitment to fund the future deconstruction of the Refinery and restoration of the Refinery Site; and extensive contractual protections to safeguard the Government's interests in the event that ABR fails to live up to its commitments. It is estimated that a total investment of more than \$1 billion is required to restart the refinery to the level of operation projected by the new owners.

The parties intend that the Purchase Agreement and the Operating Agreement will close simultaneously before the end of November 2014, subject to: (i) the execution of both Agreements by the Parties thereto, (ii) the Legislature's approval of the Operating Agreement; and (iii) the closing of the acquisition by ABR and its subsidiaries of all of the membership interests of HOVENSA.

October 30, 2014

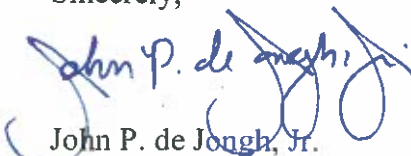
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The Agreement is enclosed for your review, consideration and approval. Accordingly, and pursuant to Section 7 of the Revised Organic Act of 1954, as amended, I hereby call the Thirtieth Legislature of the United States Virgin Islands into a Special Session to be held on **Wednesday November 12, 2014 at 10:00am** for the purpose of considering the enclosed Agreement.

As always members of my Administration remain available to discuss any concerns or questions you may have regarding the Agreement. Please note, as explained during the meeting held on Monday October 27, 2014, Exhibit A (Fuel Price Formula) is being withheld as it contains trade secrets. Similarly, Exhibit C (NRD Settlement Agreement) is being reviewed to ensure against the disclosure of confidential information and will be submitted once such determination is made.

I thank you and members of the Thirtieth Legislation for your prompt consideration of the enclosed.

Sincerely,


John P. de Jongh, Jr.
Governor

Enclosure

BILL NO. 30- _____

THIRTIETH LEGISLATURE OF THE UNITED STATES VIRGIN ISLANDS

REGULAR SESSION

2014

To ratify and approve the *OPERATING AGREEMENT BY AND AMONG THE GOVERNMENT OF THE U.S. VIRGIN ISLANDS AND ATLANTIC BASIN REFINING HOLDINGS, LLC AND ATLANTIC BASIN REFINING, INC. WITH HOVENSA, LLC TO JOIN AND CONSENT TO THIS OPERATING AGREEMENT* dated October 29, 2014.

PROPOSED BY THE GOVERNOR

1 *Now, Therefore, Be It Enacted By The Legislature Of The Virgin Islands:*

2 **SECTION 1.** The Agreement, dated October 29, 2014, entitled *OPERATING*
3 *AGREEMENT BY AND AMONG THE GOVERNMENT OF THE U.S. VIRGIN ISLANDS AND*
4 *ATLANTIC BASIN REFINING HOLDINGS, LLC AND ATLANTIC BASIN REFINING, INC.*
5 *WITH HOVENSA, LLC TO JOIN AND CONSENT TO THIS OPERATING AGREEMENT* having
6 been executed by the Governor of the United States Virgin Islands, the Attorney General of the
7 United States Virgin Islands, the Executive Managing Directors of Atlantic Basin Refining, Inc.,
8 respectively, is hereby ratified and approved, and a copy thereof is appended hereto as Appendix
9 I and made a part hereof.

BILL SUMMARY

Section 1 ratifies and approves the *OPERATING AGREEMENT BY AND AMONG THE GOVERNMENT OF THE U.S. VIRGIN ISLANDS AND ATLANTIC BASIN REFINING HOLDINGS, LLC AND ATLANTIC BASIN REFINING, INC. WITH HOVENSA, LLC TO JOIN AND CONSENT TO THIS OPERATING AGREEMENT* dated October 29, 2014, which will further the sale and purchase of the oil refinery and related facilities located at Limetree Bay on the island of St. Croix, U.S Virgin Islands.

OPERATING AGREEMENT

BY AND AMONG

THE GOVERNMENT OF THE U.S. VIRGIN ISLANDS

AND

ATLANTIC BASIN REFINING HOLDINGS, LLC

AND

ATLANTIC BASIN REFINING, INC.

WITH

HOVENSA, LLC TO JOIN AND CONSENT TO THIS OPERATING AGREEMENT

DATED AS OF

OCTOBER 29, 2014

EXECUTION COPY

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Exhibits

Exhibit A Security Documents

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Exhibit C NRD Settlement Agreement

OPERATING AGREEMENT

THIS OPERATING AGREEMENT (the "**Agreement**") is hereby made as of October 29, 2014 by and among the Government of the U.S. Virgin Islands (the "**Government**"), Atlantic Basin Refining Holdings, LLC, a limited liability company existing under the laws of the U.S. Virgin Islands ("**Holdings**"), Atlantic Basin Refining, Inc., a corporation existing under the laws of the U.S. Virgin Islands ("**ABR Inc.**"), and Hovensa, L.L.C., a limited liability company existing under the laws of the U.S. Virgin Islands, upon its joining in and consenting to this Agreement at time of the Closing (referred to herein as "**ABRVI**" for all periods after the Closing on the purchase of its membership interests by Holdings). The Government, Holdings, ABR, and ABRVI, upon ABRVI joining in and consenting to this Agreement at time of Closing, are hereinafter sometimes individually referred to as a "**Party**" and sometimes hereinafter collectively referred to as "**Parties**".

RECITALS

1. **WHEREAS**, the Government is party to a Concession Agreement by and among the Government, Hess Oil Virgin Islands Corp. ("**Hovic**"), PDVSA V.I., Inc. ("**PDVSA**") (Hovic and PDVSA being, collectively, the "**Members**"), and Hovensa, LLC, a limited liability company existing under the laws of the U.S. Virgin Islands (for all periods prior to the Closing on the sale of its membership interests to Holdings shall be referred to as "**Hovensa**"), for the construction, operation, and maintenance of an oil refinery and related facilities located at Limetree Bay, St. Croix, U.S. Virgin Islands (as amended, the "**Concession Agreement**"); and
2. **WHEREAS**, under the Concession Agreement, Hovic, PDVSA, and Hovensa (and their predecessors in interest), as inducement to construct, operate, and maintain the refinery and related facilities, and in order to promote the public interest in the economic growth and development of the U.S. Virgin Islands, were granted rights to conduct the business of the Oil Refinery and Related Facilities (as defined below) and were exempted from certain taxes, duties, and other fees; and
3. **WHEREAS**, under the Concession Agreement, as inducement for the Government to permit the construction and operation of the Oil Refinery and Related Facilities, Hovic, and Hovensa (and their predecessors in interest) collectively granted the Government economic benefits in the form of annual fixed payments, fuel oil subsidies, corporate taxes, and other benefits; and
4. **WHEREAS**, the Government, the USVI Port Authority (the "**Port Authority**") and Hovic entered into that certain Contract dated as of September 22, 1976 (as amended, supplemented or modified from time to time, the "**1976 Contract**"), which was approved by the Legislature of the U.S. Virgin Islands (the "**Legislature**") on September 29, 1976, which 1976 Contract memorialized the agreements between Hovic and the Government with respect to Hovic's

agreement to construct a container port on the south shore of St. Croix, U.S. Virgin Islands; and

5. **WHEREAS**, among the documents exchanged between the Government and Hovic in connection with the 1976 Contract was that certain Lease entered into by and between the Government and Hovic, dated as of October 16, 1976, the "***Submerged Land Lease***"), pursuant to which the Government leases to Hovic certain reclaimed submerged lands specified therein; and
6. **WHEREAS**, the Concession Agreement was amended pursuant to the Third Amendment Agreement dated April 15, 1998 to provide incremental economic benefits in the form of increased annual fixed payments and fuel oil subsidies to the Government as an inducement to allow construction of a delayed coking unit and to modify the prior Concession Agreement to include PDVSA as a 50% Member in Hovensa;
7. **WHEREAS**, pursuant to that certain Letter Agreement entered into by and between Hovic and the Government, dated October 14, 1998 (the "***1998 Letter Agreement***"), the Government approved: (i) the assignment and delegation to Hovensa of Hovic's rights and obligations under the 1976 Contract, including the right to use the lands filled under the authority of Submerged Land Permit Nos. 3, 23, and 52 (which right shall continue for the term of the Submerged Land Lease, as said term is extended), and (ii) the assignment of the leasehold estate under the Submerged Land Lease to Hovensa, provided that Hovic remains the primary obligor under the Submerged Land Lease, as required in Section 6 of the Submerged Land Lease; and
8. **WHEREAS**, by their terms, the rights and obligations of the parties to the Concession Agreement arising under or related to the Concession Agreement continue until the year 2022; and
9. **WHEREAS**, on January 18, 2012, Hovensa announced its intention to cease refining operations at the Oil Refinery and Related Facilities, and thereafter ceased such operations on or about February 16, 2012; and
10. **WHEREAS**, the Government, Hovensa, Hovic and PDVSA entered into that certain Fourth Amendment Agreement as of April 3, 2013 (the "***Fourth Amendment***"), which was approved by the Legislature on November 4, 2013, which provides, among other things, for Hovic and PDVSA to undertake a bona fide process to facilitate the sale, directly or indirectly, of the Oil Refinery and Related Facilities on an arm's length basis (the "***Sales Process***"); and
11. **WHEREAS**, the Sales Process resulted in Hovic and PDVSA having reached an understanding with Holdings whereby Hovic and PDVSA will transfer the membership interests of Hovensa to Hovensa Holdings, LLC, a US Virgin Islands limited liability company ("***Hovensa Holdings***") and Holdings shall acquire all of the membership interests of Hovensa from Hovensa Holdings, pursuant to that

certain Purchase and Sale Agreement by and among Hovensa, Hovensa Holdings, Holdings and ABR, dated as of the ____ day of _____, 2014 (the "**PurchaseAgreement**"), subject to: (i) the execution of this Agreement by the Parties hereto, (ii) the Legislature approving this Agreement, and (iii) the closing of the acquisition by Holdings of all of the membership interests of Hovensa from Hovensa Holdings (the "**Closing**"); and

12. **WHEREAS**, at time of the Closing, Holdings shall cause ABRVI to enter into a joinder and consent to this Agreement confirming ABRVI's agreement to comply with all of ABRVI's representations and obligations set forth in this Agreement; and
13. **WHEREAS**, the Government and ABRVI shall enter into an agreement at the time of the Closing regarding the 1976 Contract, Submerged Land Lease and related Submerged Lands Permits (the "**SubmergedLandAgreement**") which shall contain the following terms and provisions: (i) the Government will recognize the assignments by Hovic to ABRVI at time of Closing of Hovic's: (x) obligations and rights as the Lessee under the Submerged Land Lease and (y) obligations and rights to use the reclaimed submerged lands under permits referenced in the 1976 Contract, including Submerged Lands Permit Nos. 3, 23, and 52 issued by the United States Department of the Interior, as amended, which rights shall continue for the term of the Submerged Land Lease, as said term is extended, Submerged Lands Permit No. 167 issued by the Department of Conservation and Cultural Affairs of the Government of the Virgin Islands, as amended, which rights shall continue for the term of such Permit No. 167, as the term of such Permit No. 167 is extended, and, subject to review and acceptance by ABRVI, the following Coastal Zone Management permits: CZX-24-93W, CZX-8-06W, and CZX-6-99W, (ii) that the Government will recognize that in connection with the assignment of the Submerged Land Lease by Hovic to ABRVI, that ABRVI shall be substituted for Hovic in connection with Hovic's indemnity under Section 5 of the Submerged Land Lease, and the continuing indemnity upon assignment or subletting under Section 6 of the Submerged Land Lease, and Hovic shall be released by the Government in connection with said indemnity, (iii) that ABRVI shall be substituted for Hovic under the 1976 Contract, and Hovic shall be released under the 1976 Contract; (iv) that ABRVI shall be substituted for Hovic and Hovic shall be released under the 1998 Letter Agreement, (v) ABRVI shall have the right to exercise the third option to extend the term of the Submerged Land Lease for an additional twenty (20) years ending October 16, 2036, for a monthly rental in the amount of \$1.00, payable in advance upon the exercise of said option, which will also allow ABRVI to continue to use Submerged Lands Permit No. 3 (for the rental rate of \$36,600.00 per year), Submerged Lands Permit No. 23 (for a rental rate of \$1,000.00), Submerged Lands Permit No. 52 (for a rental rate of \$46,500.00 per year) and Submerged Lands Permit No. 167 (for a rental rate of \$5,000.00 per year); provided, however, that ABRVI shall reduce the fourth quarter payment in connection with the Fixed Payment to be paid to the Government in each year in the amount of the monthly

rental under the Submerged Land Lease and the rental rate to use Submerged Lands Permit Nos. 3, 23, 52, and 167, pursuant to Section 9.2 hereof, and (vi) ABRVI shall have the right to exercise the fourth option to extend the term of the Submerged Land Lease for an additional twenty (20) years, ending October 16, 2056; provided, however, that ABRVI shall reduce the fourth quarter payment in connection with the Fixed Payment to be paid to the Government in each year in the amount of the monthly rental under the Submerged Land Lease and the rental rate to use Submerged Lands Permit Nos. 3, 23, 52, and 167, pursuant to Section 9.2 hereof; and

14. **WHEREAS**, ABRVI desires to own, refurbish and operate the Oil Refinery and Related Facilities; and
15. **WHEREAS**, upon consummation of the transactions contemplated herein, ABRVI will refurbish and operate the Oil Refinery and Related Facilities in accordance with the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual promises and covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, and intending hereby to be legally bound, the Government, Holdings, ABR and ABRVI upon its joining in and consenting to this Agreement at time of Closing, hereby agree and stipulate as follows:

ARTICLE 1 DEFINITIONS AND CONSTRUCTION

Section 1.1. Definitions. As used in this Agreement, the following terms have the respective meanings set forth below or set forth in the Articles referenced below.

“1976 Contract” shall have the meaning set forth in the fourth WHEREAS clause of the Recitals.

“1998 Letter Agreement” shall have the meaning set forth in the seventh WHEREAS clause of the Recitals.

“AAA” shall mean the American Arbitration Association.

“ABR Inc.” shall have the meaning set forth in the Preamble.

“ABRVT” shall have the meaning set forth in the Preamble.

“Affiliate” or **“Affiliates”** shall mean, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, such Person; provided, that, for the purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of

voting securities, by Contract (including, a shareholders' agreement or a members' agreement between Persons who have an interest in an Affiliate) or otherwise. For all purposes of this Agreement and the transactions contemplated hereby, (a) ABR Inc. and its direct and indirect Equity Holders are Affiliates of Holdings, (b) Holdings and its direct and indirect Equity Holders are Affiliates of ABRVI, and (c) for the avoidance of doubt, upon Holdings acquiring the membership interests of Hovensa from Hovensa Holdings, ABRVI and its direct and indirect Equity Holders will not be Affiliates of Hovensa Holdings or any of its respective direct or indirect Equity Holders.

"Agreement" shall have the meaning set forth in the Preamble.

"AnnualAudit" shall have the meaning set forth in Section 16.2(A).

"AnnualAuditReport" shall have the meaning set forth in Section 16.2(B).

"AnnualPayment" shall have the meaning set forth in Section 9.1.

"ApplicableLaw" shall mean any constitution, law, statute, ordinance, order, injunction, rule, regulation or Authorization of any Governmental Authority (excluding any such legislative, judicial or administrative body or instrumentality acting in any capacity as a lender, guarantor or mortgagee) applicable to a Party or its Affiliate or the subject matter of this Agreement.

"Authorization" shall mean any licenses, certificates, permits, orders, approvals, consents, determinations, variances, franchises, and authorizations from any Governmental Authority.

"Bankrupt" shall mean any Person:

that (i) makes a general assignment for the benefit of creditors; (ii) files a voluntary bankruptcy petition; (iii) becomes the subject of an order for relief or is declared insolvent in any federal, state, or territorial bankruptcy or insolvency proceeding; (iv) files a petition or answer seeking for such Person a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any Applicable Law; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against such Person in a proceeding of the type described in subclauses (i) through (iv) of this definition in which such Person is the debtor; or (vi) seeks, consents, or acquiesces to the appointment of a trustee, receiver, or liquidator of such Person or of all or any substantial part of such Person's properties; or against which a proceeding seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any Applicable Law has been commenced and 120 days have expired without dismissal thereof or with respect to which, without such Person's consent or acquiescence, a trustee, receiver, or liquidator of such Person or of all or any substantial part of such Person's properties has been appointed and 90 days have expired without such appointment having been vacated or stayed, or 90 days have expired after the date of expiration of a stay, if the appointment has not previously been vacated.

"Breach" shall mean a breach of any covenant set forth in Section 4.1(E), Section 4.2(C), Section 6.2(B), Section 6.4(B)(2), and/or Section 10.2.

"Business Day" shall mean Monday through Friday of each week, except that a legal holiday recognized as such by the Government shall not be regarded as a Business Day.

"Claims" shall have the meaning set forth in Section 20.4.

"Clean Air Act Consent Decree" shall mean the Consent Decree entered on June 7, 2011 in *United States of America and The United States Virgin Islands v. Hovensa, L.L.C.* (Civ. No. 1:11-cv-00006) (D.V.I., St. Croix Div.).

"Closing" shall have the meaning set forth in Section 3.1(A).

"Closing Date" shall have the meaning set forth in Section 3.1(B).

"Concession Agreement" shall have the meaning set forth in the Recitals.

"Confidential Information" shall have the meaning set forth in Article 18.

"Consumer Price Index" or "CPI Index" shall mean the Chained Consumer Price Index ("CPI") for All Urban Consumers, 12-month percentage change for September of the prior year as published (revised) in February ("**CPI Adjustment**") by the U.S. Department of Labor, Bureau of Labor Statistics in advance of the first quarterly fixed payment due as of March 31, of the applicable year. If the Chained CPI Index ceases to be published or is otherwise unavailable, the Parties shall choose a substitute index which is closest to the CPI Index.

"Contaminant" shall mean any and all contaminants, solid or hazardous wastes, hazardous materials, infectious wastes, pollutants, radioactive materials, hazardous or toxic substances, crude oil, any fraction thereof, petroleum products, petroleum byproducts, and/or fuel additives defined or regulated as such in or under any Environmental Laws.

"Contract" shall mean any note, bond, mortgage, indenture, guaranty, license, franchise, permit, agreement (including, a shareholders' agreement, a members' agreement, or both), contract, commitment, lease, purchase order, or other instrument or obligation, and any amendments thereto.

"CPI Adjustment" shall have the meaning set forth in the Definition of "**Consumer Price Index**".

"Discharge Date" shall have the meaning set forth in Section 9.6(A)(i).

"Distributions" shall mean any distribution to a member or shareholder in respect to a membership interest or any other ownership interest in ABRVI, Holdings, or ABR Inc., whether in cash or property, or the redemption, purchase or acquisition of any interest of the member or shareholder.

"District Court" shall have the meaning set forth in Section 4.2(A)(3).

"DPNR" shall have the meaning set forth in Section 4.2(A)(3).

“Earn-Out Payments” shall have the meaning set forth in Section 9.4(A).

“EBITDA” shall have the meaning set forth in Section 17.1(B)(1).

“Effective Date” shall have the meaning set forth in Section 2.1.

“Employment Incentive” shall have the meaning set forth in Section 9.3(C).

“Engineering Certification” shall have the meaning set forth in Section 4.1(B).

“Engineering Certification Date” shall have the meaning set forth in Section 4.1(B).

“Engineering Firm” shall have the meaning set forth in Section 4.1(A).

“Environmental Laws” shall mean any and all applicable federal, state, territorial, or local laws, rules, orders, regulations, statutes, ordinances, codes, or requirements of any federal, territorial, or Governmental Authority regulating, relating to, or imposing liability or standards of conduct concerning any solid or hazardous waste, hazardous material, infectious waste, pollutant, radioactive material, hazardous or toxic substance, crude oil, any fraction thereof, any petroleum product, petroleum byproduct, and/or fuel additive, or protection of public health or safety or the environment, or concerning uses, buildings, structures, or activities that constitute or result in blight or blighted and undesirable places or locations or that are otherwise harmful to the public health, safety, or general welfare of persons and property located in the Territory, or that, because of fire, wind, or other natural forces, or physical deterioration, disrepair, disuse, or damage, is not useful for the purpose for which such is customarily and reasonably intended, and permits, registrations, and licenses issued pursuant thereto, and financial responsibility and financial assurance requirements pursuant thereto.

“EPA” shall have the meaning set forth in Section 4.2(A)(3).

“EPC Contract” shall mean a turnkey Engineering, Procurement, and Construction Contract with an Engineering Firm for the reconfiguration and restoration of the Refinery to Operational Condition.

“Equity Holders” shall include the owners of: (i) the stock of a corporation, (ii) the equity of the membership interests of a limited liability company, and (iii) the ownership interest of any other entity.

“Exempted Payments” shall have the meaning set forth in Section 12.2.

“Extended Engineering Certification Date” shall have the meaning set forth in Section 4.1(C)(2).

“Extended Financing Certification Date” shall have the meaning set forth in Section 4.2(B)(2).

“Extended Operations Commencement Deadline” shall have the meaning set forth in Section 6.2(A)(2).

“Extension” shall have the meaning set forth in Section 2.3.

“Financial Assurance” shall have the meaning set forth in Section 10.2.

“Financial Assurance Default” shall have the meaning set forth in Section 17.2(A)(3).

“Financing” shall have the meaning set forth in Section 4.2(A)(1).

“Financing Assurance Date” shall have the meaning set forth in Section 10.2.

“Financing Certification” shall have the meaning set forth in Section 4.2(A)(1).

“Financing Certification Date” shall have the meaning set forth in Section 4.2(A)(1).

“Fixed Payment” shall have the meaning set forth in Section 9.2.

“Fixed Site Restoration Fund Payment” shall have the meaning set forth in Section 9.5(C).

“ForceMajeureEvent” shall have the meaning set forth in Section 20.1.

“Fourth Amendment” shall have the meaning set forth in the Recitals.

“Fuel Loading Rack” shall have the meaning set forth in Section 7.1(A)(1).

“Full-Time Employee” shall mean an individual employed by ABRVI for work in the U.S. Virgin Islands on the Oil Refinery and Related Facilities who works an average of not less than 30 hours per week and is covered by employer-provided health insurance. The number of Full-Time Employees on any given date shall be calculated as the three-month trailing average of the number of Full-Time Employees at the Oil Refinery and Related Facilities on such date, and shall exclude contractors.

“Government” shall have the meaning set forth in the Preamble.

“Government Indemnified Party” shall have the meaning set forth in Section 14.3.

“Governmental Authority” shall mean any foreign, federal, territorial, state or local governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof) having jurisdiction as to the matter in question.

“Government Official” shall mean and includes (i) any officer or employee of a federal, territorial, regional or municipal government or any department, agency or instrumentality thereof; (ii) any officer or employee of a state- or territory-owned entity; (iii) any Person acting in an official capacity for or on behalf of a government, any department, agency or instrumentality thereof, or any state- or territory-owned entity; (iv) any officer or employee of a public international organization; (v) any candidate for a political office; or (vi) any political party or official thereof.

“Guaranty” shall have the meaning set forth in Section 10.1(B).

“Holdings” shall have the meaning set forth in the Preamble.

“Hovenssa” shall have the meaning set forth in the first WHEREAS clause of the Recitals.

“Hovenssa Holdings” shall have the meaning set forth the eleventh WHEREAS clause of the Recitals.

“Hovic” shall have the meaning set forth in the first WHEREAS clause of the Recitals.

“InitialTerm” shall have the meaning set forth in Section 2.2.

“International Standards” shall mean with respect to any engineering, construction or operations work conducted by or on behalf of a Party, that such work is performed in accordance with professional practices and standards generally accepted by the international refining community and that such work is provided by an experienced and competent professional organization generally recognized by the refining community as competent in its respective service area.

“Legislature” shall have the meaning set forth in the Recitals.

“Liabilities” shall mean any and all indebtedness, Taxes, liabilities and obligations, whether accrued or fixed, known or unknown, absolute or contingent, matured or unmatured, or determined or determinable.

“Losses” shall mean all suits, actions, Liabilities, legal proceedings, claims, demands, losses, costs, and expenses of whatsoever kind or character, including reasonable attorneys’ fees and expenses and case costs and expenses.

“Members” shall have the meaning set forth in the Recitals.

“Nameplate Capacity” shall mean the specific design distillation capacity of crude per day that can be processed in a crude distillation unit at the maximum utilization of the Refinery.

“NOL” shall have the meaning set forth in Section 9.3(A)(2)(a).

“NonmonetaryDefault” shall have the meaning set forth in Section 17.1.

“Notice” shall have the meaning set forth in Section 21.1.

“Obligations” shall have the meaning set forth in Section 10.1(A).

“Oil Refinery and Related Facilities” shall mean the Refinery, the Terminal, and all other related facilities, equipment, and real and personal property associated with petroleum import, export, processing, storage and related activities at the Refinery, the Terminal, the container port, the dock, and all lands covered by the Submerged Land Lease, and all facilities related thereto on St. Croix, U.S. Virgin Islands. For the avoidance of doubt, **“Oil Refinery and**

Related Facilities” shall include the definition of “***Oil Refinery and Related Facilities***” in the Concession Agreement.

“***OMB***” shall have the meaning set forth in Section 16.1.

“***Operational Baseline***” shall have the meaning set forth in Section 5.2(A).

“***Operational Condition***” shall have the meaning set forth in Section 5.2.

“***Operations Commencement***” shall have the meaning set forth in Section 6.2.

“***Operations Commencement Deadline***” shall have the meaning set forth in Section 6.2.

“***Parties***” and “***Party***” shall have the meaning set forth in the Preamble.

“***Payment Default***” shall have the meaning set forth in Section 17.2(A).

“***PDVSA***” shall have the meaning set forth in the Recitals.

“***Person***” shall mean and include an individual, a partnership, a limited partnership, a limited liability partnership, a joint venture, a joint stock company, a corporation, a limited liability company, an association, a trust, an unincorporated organization, a group, any governmental entity or any other form of entity or organization.

“***Port Authority***” shall have the meaning set forth in the Recitals.

“***Pre-Existing Contamination***” shall have the meaning set forth in the Settlement and Release Agreement.

“***Proceeding***” shall mean a proceeding, arbitration, action, claim, suit, pending settlement, or other legal proceeding of any kind or nature before or by any Governmental Authority, arbitrator or panel.

“***PSD***” shall have the meaning set forth in Section 19.2.

“***Purchase Agreement***” shall have the meaning set forth in the Recitals.

“***Purchase Agreement Closing Date***” shall mean the Closing Date pursuant to the Purchase Agreement.

“***Refinery***” shall mean all petroleum processing equipment and related facilities, equipment, and real property associated with petroleum processing and related activities at the Oil Refinery and Related Facilities, exclusive of the Terminal.

“***Refinery Deconstruction***” shall have the meaning set forth in Section 17.1(A)(1)(c).

“***Refinery Site***” shall mean the real property on which the Refinery is located.

“Refinery Site Remediation Estimate” shall have the meaning set forth in Section 17.1(A)(1)(c).

“Refinery Site Restoration” shall have the meaning set forth in Section 17.1(A)(1)(c).

“Refinery Site Restoration Cost Estimate” shall have the meaning set forth in Section 17.1(A)(1)(c).

“Refinery Idling Event” shall mean intentionally ceasing Refinery Operations for greater than 90 days for reasons other than turnarounds or other maintenance requirements or the occurrence of a Force Majeure Event.

“Refining Operations” shall have the meaning set forth in Section 6.3(A).

“Restart Cost Estimate” shall have the meaning set forth in Section 4.1(A).

“Restart Plan” shall have the meaning set forth in Section 4.1(A).

“Release” shall mean any release, spill, emission, leaking, dumping, injection, pouring, pumping, placing, discarding, abandoning, deposit, disposal, discharge, migrating, or disposal into, on, under, or through the environment (including, but not limited to, ambient air, surface water, groundwater, soil, land surface, or subsurface strata).

“Releases” shall have the meaning set forth in Section 3.2(B)(2).

“Response Action” shall mean all actions, including but not limited to removal actions, remedial actions, corrective actions, and natural resource restorations, mitigations, and replacements, taken or ordered by or on behalf of the U.S. or the Government, ordered by a court of competent jurisdiction, or otherwise required by Applicable Law, pursuant to any Environmental Laws in response to the Release or threatened Release of a Contaminant.

“Restart Date” shall mean the date on which Refining Operations resume.

“Return” shall mean all returns, statements, forms and reports for Taxes.

“Sales Process” shall have the meaning set forth in the Recitals.

“Security Documents” shall have the meaning set forth in Section 9.6(A).

“Security Interest” shall have the meaning set forth in Section 9.6(A).

“Senior Obligations” shall have the meaning set forth in Section 9.6(A)(i).

“Senior Security Documents” shall have the meaning set forth in Section 9.6(A)(i).

“Settlement and Release Agreement” shall mean the Settlement and Release Agreement fully executed on and with an effective date of May 29, 2014, by and among Alicia V. Barnes, Commissioner of the U.S. Virgin Islands Department of Planning and Natural Resources, the

Government of the U.S. Virgin Islands, Hess Oil-Virgin Islands Corp., and Hovensa, LLC, which resolved the litigation among the parties in *Commissioner of the Dep't of Planning and Natural Resources v. Century Alumina Co., et al.*, Civ. No. 2005-0062 (attached hereto as Exhibit C).

"Site" shall mean the real property on which the Oil Refinery and Related Facilities are located, including land, *"submerged and filled lands"* and *"trust lands,"* within the meaning of 12 V.I. C. § 902(cc) and (dd), respectively, waterways, groundwater, and coastal zones.

"Site Restoration" shall have the meaning set forth in Section 17.1(A)(1).

"Site Restoration Cost Estimate" shall have the meaning set forth in Section 17.1(A)(1).

"Site Restoration Fund Account" shall have the meaning set forth in Section 9.5(A).

"Site Restoration Payment Suspension" shall have the meaning set forth in Section 9.5(D).

"Site Restoration Payment Suspension Period" shall have the meaning set forth in Section 9.5(D).

"SNDA" shall have the meaning set forth in Section 9.6(A)(iv).

"Submerged Land Lease" shall have the meaning set forth in the Recitals.

"Submerged Lands" shall have the meaning set forth in Section 14.1(B)(5).

"Subordinate Security Interest" shall have the meaning set forth in Section 9.6(A).

"Subsequent Sale Payments" shall have the meaning set forth in Section 9.4(A).

"Taxes" shall mean all taxes, assessments, charges, duties, fees, levies or other governmental charges imposed by a taxing authority, including all U.S. federal, state, territory, local, foreign, and other income, franchise, profit, gross receipts, capital gains, capital stock, transfer, sales, use, value added, occupation, property, excise, severance, windfall profits, stamp, license, payroll, social security, withholding, and other taxes, assessments, charges, duties, fees, levies, and other governmental charges imposed by a taxing authority of any kind whatsoever (whether payable directly or by withholding and whether or not requiring the filing of a Return) all estimated taxes, deficiency assessments, additions to tax, penalties, and interest.

"Term" shall mean the Initial Term and any Extensions.

"Terminal" shall mean all storage and blending equipment, docks, tanks, and all other related facilities, equipment, and real property associated with petroleum import, export, mixing, storage, and related activities at the Oil Refinery and Related Facilities, exclusive of the Refinery.

"Terminal Deconstruction" shall have the meaning set forth in Section 17.1(A)(1)(b).

“Terminal Deconstruction Estimate” shall have the meaning set forth in Section 17.1(A)(1)(b).

“Terminal Operations” shall mean the trading, blending, storing of crude oil and refined products and other related activities prior to the start of Refining Operations or subsequent to a Refinery Idling Event.

“Terminal Site” shall mean the real property on which the Terminal is located.

“Terminal Site Remediation” shall have the meaning set forth in Section 17.1(A)(1)(d).

“Terminal Site Remediation Estimate” shall have the meaning set forth in Section 17.1(A)(1)(d).

“Terminal Site Restoration” shall have the meaning set forth in Section 17.1(A)(1)(d).

“Terminal Site Restoration Estimate” shall have the meaning set forth in Section 17.1(A)(1)(d).

“Termination Event” shall have the meaning set forth in Section 17.3(A).

“USDOJ” shall have the meaning set forth in Section 4.2(A)(3).

“Variable Payment” shall have the meaning set forth in Section 9.3(A).

“Variable Payment Rate” shall have the meaning set forth in Section 9.3(A).

“Variable Payment Reduction” shall have the meaning set forth in Section 9.3(C).

“Variable Payment Reduction Period” shall have the meaning set forth in Section 9.3(C).

“Variable Payment Suspension” shall have the meaning set forth in Section 9.3(B).

“Variable Payment Suspension Period” shall have the meaning set forth in Section 9.3(B).

“Virgin Islands Resident” shall mean (i) any United States citizen domiciled in the U.S. Virgin Islands for one year or more; (ii) an individual who has attended a school in the U.S. Virgin Islands for at least six years or is a high school or University of the U.S. Virgin Islands graduate and who is registered to vote in the U.S. Virgin Islands; or (iii) the holder of an alien registration card (United States Department of Justice Form No. 1151) domiciled in the U.S. Virgin Islands for one year or more. An individual shall demonstrate that he or she has been a resident for one year or more for the purposes of this definition using the date of issuance of a W-2 form, a voter registration card, a permanent resident card, or a U.S. Virgin Islands driver's license.

Section 1.2. Agreement Components. This Agreement consists of the body of this Agreement and the following attachments:

- (1) Appendix A: Fuel Price Formula
- (2) Exhibit A: Security Documents
- (3) Exhibit B: Releases
- (4) Exhibit C: NRD Settlement Agreement

Each Appendix, Exhibit and Schedule referred to in this Agreement is part of this Agreement and each Appendix, Exhibit and Schedule is hereby incorporated into the body of the Agreement as if set forth in full therein.

Section 1.3. Agreement Interpretation. In construing this Agreement: (a) no consideration shall be given to the captions of the articles, sections, subsections or clauses, which are inserted for convenience in locating the provisions of this Agreement and not as an aid to construction and shall not be interpreted to limit or otherwise affect the provisions of this Agreement or the rights and other legal relations of the Parties; (b) no consideration shall be given to the fact or presumption that either Party had a greater or lesser hand in drafting this Agreement; (c) examples shall not be construed to limit, expressly or by implication, the matter they illustrate; (d) the word “includes” and its syntactic variants mean, unless otherwise specified, “includes, but is not limited to” and corresponding syntactic variant expressions; (e) words such as “herein,” “hereby,” “hereafter,” “hereof,” “hereto” and “hereunder” refer to this Agreement as a whole and not to any particular article, section or provision of this Agreement; (f) whenever the context requires, the plural shall be deemed to include the singular, and vice versa; (g) each gender shall be deemed to include the other gender, when such construction is appropriate; (h) references to a Person are also to its permitted successors and permitted assigns; (i) all references in this Agreement to Appendices, Exhibits, Schedules, Sections and Articles refer to the corresponding Appendices, Exhibits, Schedules, Sections and Articles of this Agreement unless expressly provided otherwise; (j) references to the “U.S.” mean to the United States of America; (k) references to “\$” or “Dollars” mean U.S. Dollars; and (l) unless otherwise expressly provided herein, any agreement, instrument or Applicable Law defined or referred to herein means such agreement, instrument or Applicable Law as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of Applicable Laws) by succession of comparable successor Applicable Laws and reference to all attachments thereto and instruments incorporated therein.

ARTICLE 2

TERM OF AGREEMENT

Section 2.1. Effective Date. This Agreement shall become effective (the “Effective Date”) upon the first day on which (i) this Agreement has been executed by all Parties, (ii) this Agreement has been duly ratified by the Legislature of the U.S. Virgin Islands, and (iii) ABR Inc. places in escrow with Squire Patton Boggs (US) LLP (the “Escrow Agent”) a sum in the amount of One Million (\$1,000,000) Dollars (the “Escrow Funds”) pursuant to an escrow

agreement (the "Escrow Agreement") which will direct the Escrow Agent to: (x) pay the Escrow Funds to the Government in the event that all other requirements to close have been satisfied by the Sellers pursuant to the Purchase and Sale Agreement and the Government pursuant to this Agreement, and ABRVI at time of Closing fails to provide the balance sheet required pursuant to Section 3.2(B)(6), fails to provide the form of Financial Assurance to the Government and the disclosure letter to the Attorney General of the U.S. Virgin Islands as set forth in Section 3.2(B)(9) or fails to provide the Closing Deliveries described in Section 3.3(A)(1), (2), (3), (4) and (6), or (y) pay the Escrow Funds to ABR Inc. in the event that the Closing occurs, or in the event that Closing does not occur and, the failure of the Closing to occur is not because ABRVI has failed to comply with the provisions of subparagraph (x) above.

Section 2.2. Initial Term. The initial term of this Agreement (the "*InitialTerm*") shall commence on the Effective Date and continue in effect through December 31, 2036.

Section 2.3. Extension of Term. The Term may be extended for up to two periods of ten additional years (each, an "*Extension*") upon (a) the delivery of written notice to the Government by ABRVI no later than 18 months prior to the expiration of the Initial Term or the first Extension, if applicable, and (b) certification by ABRVI that as of the date of such notice and as of the expiration of the Initial Term or the first Extension, if applicable, ABRVI has made all payments due and owing to the Government pursuant to Article 4, Article 6, Article 9, and Article 17; provided, however, that in the event that ABRVI failed to close on the Financing, then any Extension shall be at the option of the Government, unless there is insufficient money paid into the Site Restoration Fund sufficient to pay for the decommissioning and dismantling of the Refinery and the Refinery Site Remediation, as well as the decommissioning and dismantling of the Terminal and the Terminal Site Remediation, as provided in Section 17.1.

ARTICLE 3

CLOSING; CLOSING CONDITIONS; TERMINATION BEFORE CLOSING

Section 3.1. Time and Place of Closing.

(A) **Closing.** Unless this Agreement shall have been terminated and the transactions herein contemplated shall have been abandoned pursuant to this Article 3, and subject to the satisfaction or waiver of the conditions set forth in Section 3.2 (other than conditions, the fulfillment of which, by their nature, are to occur at the completion of the transactions contemplated by this Agreement (the "Closing")), the Closing shall take place at the same time and place as the closing under the Purchase Agreement, provided that all conditions precedent to Closing have been satisfied or waived by the appropriate party, but in any event no later than December 1, 2014, unless otherwise extended by mutual agreement of the Government and ABR.

(B) **Closing Date.** The date on which the Closing occurs is herein referred to as the "Closing Date."

Section 3.2. Conditions to Closing.

(A) **Condition Precedent.** This Agreement and all of its terms shall be subject to the ratification and approval of the Legislature.

(B) **Conditions of the government to Closing.** The obligations of the Government to consummate the transactions contemplated by this Agreement are subject, at the option of the Government, to the satisfaction or waiver by the Government, on or prior to Closing, of each of the following conditions:

(1) All conditions precedent and other closing requirements pursuant to the Purchase Agreement have been satisfied or waived, and the parties to the Purchase Agreement are ready, willing and able to close.

(2) The Government, Virgin Islands Port Authority, Hovic, Hovensa, Holdings, and ABR Inc. execute and deliver six (6) originals of the Release Agreement in the form attached hereto as Exhibit B-1, and the Government, Hovic, PDVSA, Hovensa Holdings, Hovensa, Holdings and ABR Inc. execute and deliver six (6) originals of the Termination and Release Agreement in the form attached hereto as Exhibit B-2 (the "**Releases**").

(3) No Proceeding by a third Person (including any Governmental Authority) seeking to restrain, enjoin or otherwise prohibit the consummation of the transactions contemplated by this Agreement shall be pending or threatened before any Governmental Authority; no order, writ, injunction or decree shall have been entered (and be in effect) by any Governmental Authority of competent jurisdiction; and no statute, rule, regulation or other legal requirement shall have been promulgated or enacted (and be in effect) by any Governmental Authority, that, on a temporary or permanent basis, restrains, enjoins or invalidates the transactions contemplated hereby.

(4) Each of the representations and warranties of ABRVI, Holdings, and ABR Inc. contained in this Agreement shall be true and correct in all material respects.

(5) Each of ABRVI, Holdings, and ABR Inc. shall have performed and observed, in all material respects, all covenants and agreements to be performed or observed under this Agreement prior to or on the Closing Date.

(6) Either ABR Inc. or Holdings, or each of them, shall demonstrate that its balance sheet prior to the Closing Date has aggregate common equity of not less than \$5,000,000.

(7) ABRVI, Holdings, and ABR Inc. shall have demonstrated to the satisfaction of the Government their ability, jointly and severally, to fund all costs and expenses associated with performance of this Agreement and the Oil Refinery and Related Facilities through the Financing Certification Date (as it may be extended).

(8) On or before ten (10) days prior to the Closing Date: (i) ABRVI shall provide the form of the Financial Assurance to guarantee timely payment of all Fixed Payments from the Closing Date through the Financing Certification Date, for the Government's review, and (ii) provide to the Attorney General of the U.S. Virgin Islands a letter disclosing the

owners' capitalization of ABR Inc., which letter shall be held in confidence by the Attorney General of the U.S. Virgin Islands and its contents disclosed only to the Governor of the U.S. Virgin Islands.

(C) **Conditions to ABRVI Closing.** The obligations of ABRVI to consummate the transactions contemplated by this Agreement are subject, at the option ABRVI, to the satisfaction or waiver by ABRVI, on or prior to Closing, of each of the following conditions:

(1) The Legislature shall have ratified and approved the transactions contemplated by this Agreement and the terms and conditions of this Agreement.

(2) The transactions contemplated by the Purchase Agreement shall have closed.

(3) No Proceeding by a third Person (including any Governmental Authority) seeking to restrain, enjoin or otherwise prohibit the consummation of the transactions contemplated by this Agreement shall be pending or threatened before any Governmental Authority; no order, writ, injunction or decree shall have been entered (and be in effect) by any Governmental Authority of competent jurisdiction; and no statute, rule, regulation or other legal requirement shall have been promulgated or enacted (and be in effect) by any Governmental Authority, that, on a temporary or permanent basis, restrains, enjoins or invalidates the transactions contemplated hereby.

(4) Each of the representations and warranties of the Government contained in this Agreement shall be true and correct in all material respects.

(5) The Government shall have performed and observed, in all material respects, all covenants and agreements to be performed or observed by the Government under this Agreement prior to or on the Closing Date.

Section 3.3.Closing Deliveries.

(A) **Closing Deliveries of ABRVI.** At the Closing, upon the terms and subject to the conditions of this Agreement, ABRVI shall deliver, or cause to be delivered, to the Government, or perform or cause to be performed, the following:

(1) A certificate duly executed by an authorized officer of ABRVI dated as of Closing, certifying on behalf of ABRVI that the conditions set forth in Sections 3.2(B)(5) and 3.2(B)(6) have been fulfilled.

(2) A certificate duly executed by an authorized officer of ABRVI dated as of the Closing, (i) attaching and certifying on behalf of ABRVI complete and correct copies of (x) the organizational documents of ABRVI, as in effect as of the Closing, and (y) the resolution of the manager of ABRVI authorizing the execution, delivery and performance by ABRVI of this Agreement and the transactions contemplated hereby; and (ii) certifying the

incumbency of each authorized representative of ABRVI executing this Agreement or any document delivered in connection with the Closing;

(3) Payment to the Government a sum of money in order to reimburse the Government for the balance of its costs and expenses, not to exceed Five Million (\$5,000,000) Dollars;

(4) Three (3) fully executed Security Documents;

(5) The fully executed Releases pursuant to Section 3.2(B)(2); and

(6) Certificates of insurance evidencing the insurance ABRVI has obtained, or caused to be obtained, as required pursuant to Article 11.

(B) **Closing Deliveries of the Government.** At the Closing, upon the terms and subject to the conditions of this Agreement, the Government shall deliver, or cause to be delivered to ABRVI the documentation required pursuant to this Agreement, as well as to perform or cause to be performed its obligations under this Agreement, including, the following:

(1) Evidence of the ratification and approval of the Legislature of the transactions contemplated by this Agreement and the terms of this Agreement and the signature of the Governor thereon.

(2) The Submerged Land Agreement executed by the Government.

Section 3.4.Termination Before Closing.

(A) **Termination.** This Agreement may be terminated and the transactions contemplated hereby abandoned at any time prior to the Closing:

(1) By mutual written consent of the Government and ABRVI;

(2) By either the Government or ABRVI, if (i) there shall be any statutes, laws, rules, regulations, ordinances, orders, and codes of or by any Governmental Authority that makes consummation of the transactions contemplated hereby illegal or otherwise prohibited; or (ii) a Governmental Authority shall have issued an order, decree, or ruling or taken any other action permanently restraining, enjoining, or otherwise prohibiting the consummation of the transactions contemplated hereby, and such order, decree, ruling, or other action shall have become final and non-appealable; or (iii) the failure of either party to close pursuant to the terms of Article 3; or

(3) By the Government, if (i) any of the representations and warranties of ABRVI contained in this Agreement shall not be true and correct in all material respects at time of Closing; or (ii) ABRVI shall have failed to fulfill, in any material respect, any of its obligations under this Agreement required to be performed prior to or at Closing.

(B) **Effect of Termination.**

(1) If this Agreement is terminated pursuant to Section 3.4(A), this Agreement shall become void and of no further force or effect.

ARTICLE 4 PLANNING AND FINANCING

Section 4.1.Restart Plan and Costs.

(A) **EngineeringFirm.** As of the Closing Date, ABRVI shall have retained a reputable refinery engineering firm with experience reconfiguring and rehabilitating world-scale oil refineries (the “**EngineeringFirm**”) to perform such inspections of the Refinery, engineering analysis and other procedures deemed necessary by the Engineering Firm to prepare (i) a plan for the reconfiguration and rehabilitation of the Refinery in accordance with the terms provided in Article 4 consistent with International Standards (the “**RestartPlan**”) and (ii) a proposal from the Engineering Firm reflecting the cost of executing the Restart Plan (the “**RestartCostEstimate**”).

(B) **Certification.** Within ten months following the Closing Date, ABRVI shall provide to the Government a copy of (1) the Restart Plan along with the Restart Cost Estimate, and (2) in the event that the Restart Plan, based upon the Restart Cost Estimate, supports the restarting of the Refinery, the EPC Contract, together with (3) a certification by the Engineering Firm that (i) the Restart Plan and the terms of the EPC Contract (subject to the Restart Plan and the Restart Cost Estimate supporting the restart of the Refinery) are reasonable in the good faith opinion of the Engineering Firm, and (ii) the Restart Plan and the EPC Contract (subject to the Restart Plan and the Restart Cost Estimate supporting the restart of the Refinery) will be performed in accordance with International Standards (such certification being the “**Engineering Certification**” and the date for such certification being the “**EngineeringCertificationDate**”). The Restart Plan, Restart Cost Estimate and the EPC Contract constitute trade secrets of the Engineering Firm and ABRVI and shall remain confidential pursuant to Title 3, Chapter 33, Section 881(g)(3) of the U.S. Virgin Islands Code.

(C) **Election to Extend Engineering Certification Date.** If ABRVI fails to timely provide the Engineering Certification, it may within one week after the deadline set forth in Section 4.1(B) elect in writing to extend the Engineering Certification Date on the following terms:

(1) Immediately upon making such election, ABRVI shall pay to the Government \$1,000,000 in immediately available funds by wire transfer to an account of the Government’s choosing; and

(2) On the final day of the month after such election is made, and on the final day of each succeeding month following such election, Holdings shall pay to the Government \$1,000,000 in immediately available funds by wire transfer to an account of the Government’s choosing, such monthly payments to continue until the earlier of the first day of the month following: (i) delivery by ABRVI of the Engineering Certification, and (ii) the final day of the 12th month following the Effective Date (such date being the “**ExtendedEngineeringCertificationDate**”).

All amounts payable to the Government under this Section 4.1(C) shall be in addition to the Annual Payment required under Section 9.1 and any other payments owed to the Government under this Agreement.

(D) **Communication.** From the Closing Date until the Engineering Certification Date, representatives of ABRVI shall meet with the Governor of the U.S. Virgin Islands or representatives of the Governor (at the Governor's election) not less than once per calendar quarter to update the Government on the progress towards development of the Restart Plan. At the Governor's election, the Government may also request a status presentation from the Engineering Firm. ABRVI shall provide a copy of the final executed version of the EPC Contract to the Government no later than five Business Days after execution thereof.

(E) **Breach.** If ABRVI fails timely to make the Engineering Certification, and either (i) does not timely make the election described in Section 4.1(B), or (ii) makes such election but fails to make the Engineering Certification by the Extended Engineering Certification Date, such failure shall constitute a Breach of Section 4.1.

Section 4.2.Restart Financing.

(A) Financing Certification.

(1) Subject to Section 4.2(A)(2), not later than 15 months after the Closing Date, ABRVI shall demonstrate to the reasonable satisfaction of the Government, and provide written certification to the Government, that it has obtained binding commitments to provide funding for the aggregate amount of the Restart Cost Estimate (such funding being the "Financing," such certification being the "*Financing Certification*," and the date of such Financing Certification being the "*FinancingCertificationDate*").

(2) ABRVI shall use best efforts to obtain and maintain all necessary federal, territorial, and local Authorizations, and necessary modification(s) thereof, under the Environmental Laws to implement the Restart Plan and restart Refinery Operations as soon as possible and, in any event, on or before the Operations Commencement Deadline. Such best efforts shall include expeditious and good faith: submissions of accurate and complete applications to the relevant Governmental Authorities; responses to requests or demands for information by such Governmental Authorities; cooperation with Governmental Authorities in furtherance of such applications; taking such actions as are necessary to facilitate the issuance of such Authorizations; fully cooperating with and assisting as necessary Governmental Authorities in responding to any public comments; and filing of any papers, provision of testimony, participating in any public meetings or hearings or court proceedings, or taking other actions necessary to support and seek expeditious final effectiveness of such Authorizations. For the avoidance of doubt, to the Government's knowledge the Restart Plan has not been developed, and the Government does not concede that implementation of the Restart Plan or restart of Refinery Operations will require territorial or federal permits, or modification(s) thereof, under the Environmental Laws. The 15-month period referenced in Section 4.2(A)(1) above may be extended for such period that is necessary to obtain all such necessary and material territorial and federal Authorizations and modifications, if ABRVI has fully and timely complied with its obligations in this Section 4.2(A)(2) and, despite ABRVI's best efforts the applicable

Governmental Authority has not issued a material territorial or federal Authorizations or modifications thereof that is necessary to implement the Restart Plan and restart Refinery operations on or before the Operations Commencement Deadline. Notwithstanding the foregoing, any extension provided pursuant to this Section 4.2(A)(2) shall not exceed five (5) months.

(3) ABRVI shall use best efforts to obtain all necessary approvals, if any, from the U.S. Department of Justice ("**USDOJ**"), the U.S. Environmental Protection Agency ("**EPA**"), the U.S. Virgin Islands Department of Planning and Natural Resources ("**DPNR**"), and the District Court for the District of the U.S. Virgin Islands ("**DistrictCourt**") to modify the Clean Air Act Consent Decree in order to implement the Restart Plan and restart Refinery operations as soon as possible and, in any event, on or before the Operations Commencement Deadline. Such best efforts shall include negotiating expeditiously and in good faith with USDOJ, EPA, and DPNR the terms and conditions of one or more filings to so modify the Clean Air Act Consent Decree (and any proposed order(s) modifying the Clean Air Act Consent Decree); cooperating with USDOJ, EPA, and DPNR and taking such actions necessary to finalize and lodge with the District Court such filings and proposed orders; fully cooperating with and assisting as necessary USDOJ, EPA, and DPNR in responding to any public comments; and filing of any papers, provision of testimony, participating in any public meetings or hearings or court proceedings, or taking other actions necessary to support and seek expeditious District Court approval and entry of such modification. For the avoidance of doubt, to the Government's knowledge the Restart Plan has not been developed, and the Government does not concede that implementation of the Restart Plan or restart of Refinery operations will require a modification to the Consent Decree.

(B) **Election to Extend Financing Certification Date.** If ABRVI fails to timely deliver the Financing Certification, it may within one week following the deadline set forth in Section 4.2(A) elect in writing to extend the Financing Certification Date on the following terms:

(1) Upon making such election, ABRVI shall pay the Government \$125,000 in immediately available funds by wire transfer to an account of the Government's choosing; and

(2) On the final day of the month after such election is made, and on the final day of each succeeding month following such election, ABRVI shall pay the Government \$125,000 in immediately available funds by wire transfer to an account of the Government's choosing, such payments to continue until the earlier of the first of the month following:

(a) delivery by ABRVI to the Government of the Financing Certification, and

(b) the final day of the 20th month following the Closing Date (such date being the "**Extended Financing Certification Date**").

All amounts payable to the Government under this Section 4.2(B) shall be in addition to the Annual Payment required under Article 9 and any other payments owed to the Government under this Agreement.

(C) **Breach.** If ABRVI fails timely to make the Financing Certification, and either (i) does not timely make the election described in Section 4.2(B), or (ii) makes such election but fails to make the Financing Certification by the occurrence of the Extended Financing Certification Date, such failure shall constitute a Breach of Section 4.2.

ARTICLE 5 RESTART OF THE REFINERY

Section 5.1. Return to Operational Condition. ABRVI agrees that, upon the occurrence of the Financing Certification Date, ABRVI shall immediately commence, and expeditiously continue until completion, the implementation of the Restart Plan in order to restore the Refinery to Operational Condition so that the Refinery begins commercial operations on or before the Operations Commencement Deadline; provided, however, that if (i) a modification to the Clean Air Act Consent Decree, and District Court approval of such modification, are needed in order for ABRVI to implement the Restart Plan and restart Refinery Operations, (ii) ABRVI has fully and timely complied with its obligations in Section 4.2(A) to obtain expeditious approval of such modification, and (iii) despite ABRVI's best efforts the District Court has not approved and entered such modification as of the Financing Certification Date, then upon the occurrence of the Financing Certification Date the Parties shall discuss possible alternative uses of the Oil Refinery and Related Facilities in accordance with Section 19.1.

Section 5.2. Definition of Operational Condition. For purposes of this Agreement, "Operational Condition" shall be deemed to have been achieved upon receipt by the Government of ABRVI's written certification of the following:

(A) The Refinery is capable of processing not less than 300,000 bpd continuously for a period of not less than six months (such quantity being the "*Operational Baseline*"); and

(B) The Refinery is, and operations of the Refinery are, conducted in compliance with all Applicable Law, including all Environmental Laws and U.S. Virgin Islands zoning laws and regulations, except for any laws and regulations from which ABRVI is expressly made exempt by this Agreement; and

(C) The Refinery is constructed to a Nameplate Capacity of not less than 350,000 bpd.

Section 5.3. Restart Work Standards. ABRVI shall perform the Restart Plan and carry out its responsibilities under this Agreement, and shall ensure that its EPC Contractor performs the Restart Plan and carries out its responsibilities under the EPC Contract, (i) in accordance with International Standards; (ii) as a reasonable and prudent operator, in a sound and workmanlike manner, with due diligence and dispatch; (iii) in accordance with sound, workmanlike and prudent practices of the oil and gas industry; and (iv) in compliance with all Applicable Law.

ARTICLE 6

OPERATION OF THE OIL REFINERY AND RELATED FACILITIES

Section 6.1. Terminal Operations. ABRVI may operate the Terminal prior to the commencement of Refinery Operations. During any period in which ABRVI operates the Terminal but does not operate the Refinery, ABRVI shall nonetheless carry out its responsibilities under this Agreement and ensure that its subcontractors perform all operations of or related to the Terminal, (i) in accordance with International Standards, (ii) as a reasonable and prudent operator, in a sound and workmanlike manner, with due diligence and dispatch; (iii) in accordance with sound, workmanlike and prudent practices of the oil and gas industry; and (iv) in compliance with all Applicable Law.

Section 6.2. Refinery Restart. Within 24 months after the Financial Certification Date, subject to delays due to Force Majeure (the “*Operations Commencement Deadline*”), ABRVI shall commence *Refining Operations* as defined in Section 6.3(A) (“*Operations Commencement*”), except that if ABRVI has made an election under Section 4.1(C) or Section 4.2(B), the deadline for commencing Refining Operations shall be extended by a period commensurate to the extensions obtained by such election. ABRVI shall use its best efforts to ensure that all Authorizations required by Applicable Law for ABRVI to commence Refining Operations and continue to operate the Refinery for the duration of this Agreement are in full force and effect prior to the Operations Commencement Deadline.

(A) **Election to Extend Operations Commencement Deadline.** If ABRVI fails to timely commence Refining Operations by the Operations Commencement Deadline, it may, within one week following the deadline set forth in above, elect in writing to extend the Operations Commencement Deadline on the following terms:

(1) Upon making such election, ABRVI shall pay the Government \$1,000,000 in immediately available funds by wire transfer to an account of the Government’s choosing; and

(2) On the final day of the month after which such election is made, and on the final day of each succeeding month following such election, ABRVI shall pay the Government \$1,000,000 in immediately available funds by wire transfer to an account of the Government’s choosing, such payments to continue until the earlier of the first of the month following:

(a) commencement of Refining Operations, and

(b) the final day of the 48th month following the Closing Date
(such date being the “*Extended Operations Commencement Deadline*”).

All amounts payable to the Government under this Section 6.2(A) shall be in addition to the Annual Payment required under Article 9 and any other payments owed to the Government under this Agreement.

(B) **Breach.** If ABRVI fails timely to meet the Operations Commencement Deadline, and either (i) does not timely make the election described in Section 6.2(A), or (ii) makes such election but fails to commence Refining Operations by the occurrence of the Extended Operations Commencement Deadline, such failure shall be deemed to be a Breach of Section 6.2.

Section 6.3. Refining Operations.

(A) **Definition of Refining Operations.** As used in this Agreement, "Refining Operations" means the processing at the Refinery of crude oil into refined petroleum products at the following minimum levels of production:

(1) For the first six months following the Restart Date, not less than 60% of the Operational Baseline;

(2) For the second six months following the Restart Date, not less than 75% of the Operational Baseline; and

(3) For all subsequent periods, not less than the approximate Operational Baseline.

(B) **Certification of Refining Output.** Immediately following the Restart Date, Holdings shall monthly provide to the Government copies of reports provided to the U.S. Department of Energy which shall inform the Government as to the total number of barrels of crude oil processed into refined petroleum products at the Refinery during the immediately preceding calendar month.

(C) **Continuing Obligation to Conduct Refining Operations.** Following the Restart Date, ABRVI shall continue Refining Operations through the completion of the Term, subject only to Force Majeure Events and necessary maintenance.

Section 6.4. Refinery Idling Events.

(A) **Obligation.** The occurrence of a Refinery Idling Event shall constitute a Breach, except that ABRVI may declare and effect a Refinery Idling Event without committing a Breach if ABRVI meets all the following conditions:

(1) ABRVI shall provide not less than three months written notice to the Government prior to commencing such Refinery Idling Event; and

(2) Upon the occurrence of a Refinery Idling Event, ABRVI shall pay to the Government monthly \$500,000 (in addition to the payments required by Article 9 or elsewhere under this Agreement and prorated for partial months) for up to six months, when the Refinery Idling Event becomes an Extended Refinery Idling Event governed by the provisions of Section 6.4(B); provided, that this payment shall not be required if a Refinery Idling Event occurs as a result of safety requirements, Force Majeure, turnarounds or other major maintenance required by Applicable Law or to sustain Refining Operations, provided further, that ABRVI is conducting such turnaround or other major maintenance or addressing any such Force Majeure in

an expeditious manner using best efforts to safely restart the Refinery at the Operational Baseline as quickly as possible.

(B) **Extended Refinery Idling Event.** A Refinery Idling Event that continues for more than 180 days shall constitute an Extended Refinery Idling Event. In the event of an Extended Refinery Idling Event:

(1) ABRVI shall enter into good faith negotiations with the Government regarding the future operation, sale, or closure of the Refinery; and

(2) In the event that a mutually acceptable agreement cannot be reached pursuant to Section 6.4(B)(1) following 90 days of good faith negotiations, then the Extended Refinery Idling Event shall be a breach of Section 6.4(B); and

(3) During the pendency of any Extended Refinery Idling Event, all covenants made by ABRVI in this Agreement, including all ABRVI covenants in Article 14, shall remain in full force and effect.

Section 6.5.Operation Work Standards.ABRVI shall perform all operations of the Refinery and carry out its responsibilities under this Agreement, and shall ensure that its subcontractors perform all operations of or related to the Refinery, (i) in accordance with International Standards, (ii) as a reasonable and prudent operator, in a sound and workmanlike manner, with due diligence and dispatch; (iii) in accordance with sound, workmanlike and prudent practices of the oil and gas industry; and (iv) in compliance with all Applicable Law.

ARTICLE 7 ADDITIONAL OPERATING OBLIGATIONS OF ABRVI

Section 7.1.Operation of the Fuel Loading Rack.

(A) To ensure a reliable and affordable supply of fuel for the island of St. Croix, for the duration of the Term, including the period between the Effective Date and the Restart Date, ABRVI shall:

(1) maintain and operate (or engage a responsible third Person vendor acceptable to the Government to maintain and operate) the Oil Refinery and Related Facilities' fuel loading rack (the "***Fuel Loading Rack***") on a commercially reasonable schedule; and

(2) make available to the Government and the public at the Oil Refinery and Related Facilities' fuel loading rack supplies of fuel (including aviation fuel, gasoline, and diesel fuel) for purchase in tanker truck quantities, at a discounted price as provided by the formula set forth in Appendix A. Because such formula constitutes a trade secret of ABRVI, Appendix A shall remain confidential pursuant to Title 3, Chapter 33, Section 881(g)(3) of the U.S. Virgin Islands Code.

(B) ABRVI further agrees that its performance of the obligations set forth in Section 7.1(A) is a material condition of this Agreement, and that any failure to perform those

obligations shall be remediable by specific performance at the option of the Government without the requirement of a bond.

Section 7.2. Maintenance of Fuel Supply. ABRVI shall, for the duration of the Agreement, maintain in storage at the Oil Refinery and Related Facilities not less than three times the average monthly fuel needs of the U.S. Virgin Islands (including aviation fuel, gasoline, and diesel fuel).

Section 7.3. Navigational Access. ABRVI shall be required to permit navigational access to the Limetree Bay Channel (but not the Oil Refinery and Related Facilities' loading docks) to commercial vessels en route to and from the Gordon E. Finch Molasses Pier and the Wilfred "Bomba" Allick Port and Transshipment Terminal, subject to:

(A) any necessary Authorizations by the U.S. Coast Guard, U.S. Department of Homeland Security, or other Governmental Authority;

(B) confirmation that vessels in transit to a or from the Oil Refinery and Related Facilities shall have priority over any other vessels wishing to access the Limetree Bay Channel; and

(C) the same channel rules imposed by ABRVI on all commercial ships coming into the channel, as may be amended from time to time.

Section 7.4. Submerged Land Agreement.

(A) At the time of the Closing, the Government and ABRVI shall enter into an agreement regarding the 1976 Contract, Submerged Land Lease, and related Submerged Lands Permits (the "*Submerged Land Agreement*") which shall contain the following terms and provisions: (i) the Government will recognize the assignments by Hovic to ABRVI at time of Closing of Hovic's: (x) obligations and rights as the Lessee under the Submerged Land Lease and (y) obligations and rights to use the submerged lands under permits described in the 1976 Contract, including Submerged Lands Permit Nos. 3, 23, and 52 issued by the United States Department of the Interior, as amended, which rights shall continue for the term of the Submerged Land Lease, as said term is extended, Submerged Lands Permit No. 167 issued by the Department of Conservation and Cultural Affairs of the Government of the Virgin Islands, as amended, which rights shall continue for the term of such Permit No. 167, as the term of such Permit No. 167 is extended, and, subject to review and acceptance by ABRVI, the following Coastal Zone Management permits: CZX-24-93W, CZX-8-06W, and CZX-6-99W, (ii) that the Government will recognize that in connection with the assignment of the Submerged Land Lease by Hovic to ABRVI, that ABRVI shall be substituted for Hovic in connection with Hovic's indemnity under Section 5 of the Submerged Land Lease, and the continuing indemnity upon assignment or subletting under Section 6 of the Submerged Land Lease, and Hovic shall be released by the Government in connection with said indemnity, (iii) that ABRVI shall be substituted for Hovic under the 1976 Contract and Hovic shall be released under the 1976 Contract; (iv) that ABRVI shall be substituted for Hovic and Hovic shall be released under the 1998 Letter Agreement, (v) ABRVI shall have the right to exercise the third option to extend the term of the Submerged Land Lease for an additional twenty (20) years ending October 16, 2036,

for a monthly rental in the amount of \$1.00, payable in advance upon the exercise of said option, which will also allow ABRVI to continue to use Submerged Lands Permit No. 3 (for the rental rate of \$36,600.00 per year), Submerged Lands Permit No. 23 (for a rental rate of \$1,000.00 per year), Submerged Lands Permit No. 52 (for a rental rate of \$46,500.00 per year) and Submerged Lands Permit No. 167 (for a rental rate of \$5,000.00 per year); provided, however, that ABRVI shall reduce the fourth quarter payment in connection with the Fixed Payment to be paid to the Government in each year in the amount of the monthly rental under the Submerged Land Lease and the rental rate to use Submerged Lands Permit Nos. 3, 23, 52, and 167, pursuant to Section 9.2 hereof, and (vi) ABRVI shall have the right to exercise the fourth option to extend the term of the Submerged Land Lease for an additional twenty (20) years, ending October 16, 2056; provided, however, that ABRVI shall reduce the fourth quarter payment in connection with the Fixed Payment to be paid to the Government in each year in the amount of the monthly rental under the Submerged Land Lease and the rental rate to use Submerged Lands Permit Nos. 3, 23, 52, and 167, pursuant to Section 9.2 hereof; and

(B) Notwithstanding the provisions of Section 7.4(A) above, the term of the Submerged Land Lease and the use rights granted to ABRVI, including those granted under Permit No. 3, Permit No. 23, Permit No. 52, and Permit No. 167, to use or occupy any submerged or other lands shall not extend beyond the term of this Agreement.

ARTICLE 8 EMPLOYMENT

Section 8.1. Minimum Commitment. ABRVI acknowledges that the commitment to increased long-term employment at the Refinery is a material goal of the Government's entry into this Agreement, and accordingly for the period from the Restart Date through the remainder of the Term of this Agreement, the Oil Refinery and Related Facilities shall employ not fewer than 600 full-time equivalent employees (including contractors), of whom not fewer than 500 individuals shall be Full-Time Employees.

Section 8.2. Residency Requirement. On or before 12 months after the Restart Date, the Full-Time Employees of ABRVI shall include an average of not less than 75% of employees who are U.S. Virgin Islands Residents. ABRVI shall maintain not less than 75% of employees who are U.S. Virgin Islands Residents, such residency to be confirmed annually by the Commissioner of Labor for the remainder of the Term. For the purposes of this Article 8, individuals formerly employed by Hovensa or Hovic for work at or regarding the Refinery in the U.S. Virgin Islands in the five years preceding the Effective Date shall be considered U.S. Virgin Islands Residents.

Section 8.3. Training and Continuing Education. Throughout the Term of this Agreement, ABRVI shall create and operate at its own cost and expense training programs at the St. Croix Vocational Training Center for the purpose of maximizing employment opportunities at the Oil Refinery and Related Facilities for Virgin Islands Residents. The training programs will (a) teach refinery related trades to qualified U.S. Virgin Islands Residents including: refinery safety, refinery operations, general refinery maintenance, environmental management, welding, instrument fitting, pipe fitting, and electrical maintenance, and (b) be made available to high

school students, students and graduates of the University of the Virgin Islands, and trainees referred by the U.S. Virgin Islands Department of Labor.

ARTICLE 9 FINANCIAL OBLIGATIONS OF ABRVI

Section 9.1. Annual Payment. In exchange for the rights obtained in this Agreement, ABRVI agrees to pay to the Government annually for the duration of the Term the sum of the payments identified in this Article 9 such payments constituting in the aggregate the “Annual Payment.”

Section 9.2. Fixed Payment. Following the Effective Date, ABRVI shall annually make to the Government a fixed payment, which shall be deemed an operating expense by ABRVI (the “*Fixed Payment*”) and is in lieu of the Exempted Payments identified in Article 12, as follows:

(A) **Fixed Payment Amounts – Initial Term.** The Fixed Payment during the Initial Term shall be paid in the following amounts:

(1) In the first six calendar years following the Closing Date, with the first calendar year commencing on January 1, 2015, \$14,000,000, payable in equal quarterly installments of \$3,500,000 on the final day of the first, second, third, and fourth quarters of each calendar year;

(2) In the seventh through tenth calendar years after the Closing Date, \$32,000,000, payable in equal quarterly installments of \$8,000,000 on the final day of the first, second, third, and fourth quarters of each calendar year;

(3) In the eleventh through fifteenth calendar years after the Closing Date, \$36,000,000, payable in equal quarterly installments of \$9,000,000 on the final day of the first, second, third, and fourth quarters of each calendar year; and

(4) In the sixteenth through twenty-second calendar years after the Closing Date, \$40,000,000, payable in equal quarterly installments of \$10,000,000 on the final day of the first, second, third, and fourth quarters of each calendar year;

(B) **Fixed Payment Amounts – Renewal Terms.** The Fixed Payment during the Renewal Terms shall be paid in the following amounts:

(1) **First Renewal Term.** (a) In the first calendar year of the first Renewal Term, \$45,000,000 payable in equal quarterly installments of \$11,250,000 on the final day of the first, second, third, and fourth fiscal quarters of each calendar year. (b) For the balance of the first Renewal Term, such Fixed Payment shall be annually adjusted for inflation on the basis of percentage change in the Consumer Price Index and rounded to the next whole \$50,000 and shall be payable in equal quarterly installments on the final day of the first, second, third, and fourth fiscal quarters of each calendar year.

(2) **Second Renewal Term.** The Fixed Payments in the second Renewal Term shall be established based on (a) or (b) below at the option of ABRVI:

(a) (i) The initial Fixed Payment of the second Renewal Term shall be computed as the final annual Fixed Payment of the first Renewal Term, adjusted for inflation on the basis of the percentage change in the Consumer Price Index and rounded to the next whole \$50,000 and shall be payable in equal quarterly installments on the final day of the first, second, third, and fourth fiscal quarters of each calendar year. (ii) For the balance of the second Renewal Term, such Fixed Payment shall be annually adjusted for inflation on the basis of the percentage change in the Consumer Price Index and rounded to the next whole \$50,000 and shall be payable in equal quarterly installments on the final day of the first, second, third, and fourth fiscal quarters of each calendar year; or

(b) The Fixed Payments for the second Renewal Term shall be established by mutual agreement of ABRVI and the Government. If ABRVI elects this option, it shall provide notice not less than six months in advance of the end of the first Renewal Term. If ABRVI and the Government cannot agree to Fixed Payments for the second Renewal Term within 120 days of written notice by ABRVI of its intention to exercise the second Renewal Term, the Fixed Payments shall be established in accordance with the arbitration dispute resolution procedures set forth in Section 21.4(B).

(C) **Fixed Payments Amounts--Breach.** (1) In the event of a Breach under either Section 4.1(E) or Section 4.2(C), the Fixed Payment shall be \$15,000,000 for the first three years following such Breach and \$30,000,000 for all years thereafter, in each case payable in equal quarterly installments on the final day of the first, second, third, and fourth quarters of each calendar year for the remainder of the Initial Term. (2) In the event that ABRVI closes on the Financing and fails to restart the Refinery or having restarted the Refinery, fails to restart the Refinery after an Extended Refinery Idling Event, the Fixed Payment shall be \$15,000,000 for all years following the occurrence of such Breach until the retirement of any debt incurred in connection with the Senior Obligations, and \$22,000,000 for all years thereafter, in each case payable in equal quarterly installments on the final day of the first, second, third, and fourth quarters of each calendar year for the remainder of the Initial Term. The initial Fixed Payment of the first Renewal Term, if applicable, shall be computed as the final annual Fixed Payment of the Initial Term, adjusted for inflation on the basis of the percentage change in the Consumer Price Index and rounded to the next whole \$50,000 and shall be payable in equal quarterly installments on the final day of the first, second, third, and fourth fiscal quarters of each calendar year. For all additional years of the first and second Renewal Terms, if applicable, the initial Fixed Payment of the first Renewal Term shall be annually adjusted for inflation on the basis of the percentage change in the Consumer Price Index and rounded to the next whole \$50,000 and shall be payable in equal quarterly installments on the final day of the first, second, third, and fourth fiscal quarters of each calendar year. In the case of any payment due for a period of less than one calendar year, such payment shall be prorated to the applicable portion of such year.

(D) **Fourth Quarter Payments.** The Fixed Payment due in the fourth quarter of each calendar year shall be reduced by payments made pursuant to the Submerged Land Lease, Submerged Land Permits and Coastal Zone Management permits.

Section 9.3.Variable Payment.

(A) **Variable Payment.** Following the Effective Date, and so long as ABRVI has not committed a Breach, ABRVI shall annually make to the Government a variable payment (the “*Variable Payment*”) in lieu of payment of corporate income taxes to the Government, as follows (as appropriate, the “*Variable Payment Rate*”):

(1) In the first six calendar years following the Closing Date, with the first calendar year commencing on January 1, 2015, ABRVI shall be exempt from the obligation to make a Variable Payment (such exemption being the “*Variable Payment Suspension*,” and such period being the “*Variable Payment Suspension Period*”);;

(2) The Variable Payment in the seventh year shall be calculated as 10% of ABRVI’s U.S. Virgin Islands taxable income in excess of \$200,000,000 up to \$500,000,000; and 12.5% of ABRVI’s U.S. Virgin Islands taxable income in excess of \$500,000,000, in each case subject to adjustment for the *Employment Incentive* in Section 9.3(C);

(3) The Variable Payment in the eighth through the tenth year shall be calculated as 7.5% of ABRVI’s U.S. Virgin Islands taxable income up to \$100,000,000 for the calendar year in question; 10% of ABRVI’s U.S. Virgin Islands taxable income in excess of \$100,000,000 up to \$500,000,000 for the calendar year in question; and 12.5% of ABRVI’s U.S. Virgin Islands taxable income in excess of \$500,000,000 for the calendar year in question, in each case subject to adjustment for the *Employment Incentive* in Section 9.3(C); and

(4) The Variable Payment in all years of the Initial Term beyond the tenth year and of any Renewal Term, if applicable, shall be calculated as 10% of ABRVI’s U.S. Virgin Islands taxable income up to \$100,000,000 for the calendar year in question; 13% of ABRVI’s U.S. Virgin Islands taxable income in excess of \$100,000,000 up to \$250,000,000 for the calendar year in question; 20% of ABRVI’s U.S. Virgin Islands taxable income in excess of \$250,000,000 up to \$500,000,000 for the calendar year in question and 25% of ABRVI’s U.S. Virgin Islands taxable income in excess of \$500,000,000 for the calendar year in question, in each case subject to adjustment for the *Employment Incentive* in Section 9.3(C).

(B) **Variable Payment - Breach.** In the event of a Breach by ABRVI, the Variable Payment shall be calculated as 5% of ABRVI’s U.S. Virgin Islands taxable income up to \$50,000,000 for the calendar year in question; 15% of ABRVI’s U.S. Virgin Islands taxable income in excess of \$50,000,000 up to \$100,000,000 for the calendar year in question; 20% of ABRVI’s U.S. Virgin Islands taxable income in excess of \$100,000,000 up to \$500,000,000 for the calendar year in question and 25% of ABRVI’s U.S. Virgin Islands taxable income in excess of \$500,000,000.

(C) **Reduction for Meeting Employment Minimum Commitment.** For each calendar year beyond the sixth year following the Effective Date, if the Oil Refinery and Related Facilities’ employment in the preceding calendar year meets the conditions set forth in Article 8, the applicable rates in Section 9.3(A) shall be reduced by five (5) percentage points (by way of example, if the applicable rate was twenty-five (25%) percent, and the residency requirements pursuant to Section 8.2 have been satisfied, then the applicable rate of twenty-five (25%) percent would be reduced to twenty (20%) percent) (the “*Employment Incentive*”).

(D) Net Operating Loss. In calculating the Variable Payment:

(1) net operating loss ("**NOL**") carry-forwards shall be included in the determination of ABRVI's VI Taxable Income for a period of up to three years, but NOL carryback provisions shall be excluded from that determination, such that in no event shall the Variable Payment be less than \$0; and

(2) NOLs incurred during the *Variable Payment Suspension* described in Section 9.3(A)(1) shall be excluded from the calculation of any Variable Payment.

(E) Calculation of the Variable Payment. The calculation of the Variable Payment would be based upon ABRVI's VI Taxable Income calculated in accordance with the Internal Revenue Code of 1986 as administered by the Virgin Islands Bureau of Internal Revenue.

(F) Payment of Variable Payment. The Variable Payment is to be made on or before one-hundred fifty (150) days after the end of each calendar year; provided, however, that no Variable Payment shall be due and owing during the first (1st) six (6) calendar years except as otherwise provided in Section 9.3(A)(1).

Section 9.4.Sale Proceeds Payments. ABRVI hereby acknowledges and agrees that:

(A) Any payments made to the Members or their Affiliates pursuant to Sections 3.4 and 3.5 of the Purchase Agreement (or any amended versions of or successor provisions to such Sections) (such payments being "*SubsequentSalePayments*" and "*Earn-OutPayments*," respectively) shall constitute "gross sale proceeds" for purposes of Section 4(b)(i) of the Fourth Amendment Agreement by and among the Government, Hovensa, and the Members.

(B) Simultaneously with the payment by ABRVI to Hovensa Holdings of any Subsequent Sale Payments or Earn-Out Payments, ABRVI shall pay to the Government a sum equal to twenty (20%) percent of the value of such payments to Hovensa Holdings; provided, however, that the sum of said payments shall not exceed Fifty Million (\$50,000,000) Dollars.

Section 9.5.Fixed Site Restoration Fund Payment.

(A) **Site Restoration Fund Account.** Following the Closing Date, ABRVI shall establish at a reputable financial institution acceptable to the Government an interest-bearing trust account (the "*SiteRestorationFundAccount*") to be managed by a qualified third-Person trustee approved by the Government for the purpose of funding the future deconstruction and rehabilitation of the Oil Refinery and Related Facilities and the Site, as described in Article 17. The trustee shall provide financial statements for the account to the Government quarterly and on demand.

(B) **Initial Payment.** On the Closing Date, ABRVI shall deposit in the Site Restoration Fund Account a payment of \$500,000.

(C) **Fixed Site Restoration Payments.** Following the Closing Date, ABRVI shall annually deposit in the Site Restoration Fund Account \$5,000,000 payable in equal quarterly installments of \$1,250,000 (the ***“FixedSiteRestorationFundPayment”***) on the final day of the first, second, third, and fourth fiscal quarters of each year (prorated to the applicable portion of any partial years).

(D) **Fixed Site Restoration Payment Suspension.** For the first through tenth years following the Closing Date, ABRVI shall be exempt from the obligation to make the Site Restoration Fund Payment (such exemption being the ***“Site Restoration Payment Suspension,”*** and such period being the ***“Site Restoration Payment Suspension Period”***), except that if during the Site Restoration Payment Suspension Period ABRVI is in Nonmonetary Default or Payment Default, then the Site Restoration Payment Suspension Period shall terminate and ABRVI shall be liable for the full amount of the Site Restoration Payment for that and all subsequent years.

Section 9.6. Security Interest.

(A) **Payments Secured By Lien.** ABRVI shall secure all of its payment obligations under Article 9 and Article 17 (the ***“Payment Obligations”***), by granting to the Government, on the Closing Date, a mortgage lien on the Oil Refinery and Related Facilities, and the improvements constructed thereon, including the fixtures attached thereto, as well as the personal property required to operate the Oil Refinery and Related Facilities (specifically excluding the crude oil and other petroleum products and excluding all of ABRVI's accounts and receivables of any kind) pursuant to a Mortgage and Security Agreement, and the notice of such lien on said personal property shall be reflected in a UCC-1 Financing Statement, fixture filing, or other similar document reasonably necessary to give notice (collectively, the ***“Security Documents”***) and such security interest is hereinafter referred to as the ***“Subordinate Security Interest,”*** provided that the Subordinate Security Interest shall only be enforceable on the terms and conditions provided herein and in the Security Documents and only to the extent there are any payment obligations under Section 9 or 17 which are due and payable at the time of any such enforcement, and provided that:

(i) the lien of the Security Documents, and the payment and enforcement thereof, shall be subordinate and junior in all respects to, in each case whether presently existing or from time to time hereafter created or incurred:

(w) any and all Financing described in Section 4.2(A);

(x) any and all financing as is required in order to make the required balloon payment under the Purchase Agreement;

(y) any and all financing of the expansion of the Oil Refinery and Related Facilities and/or any all financing in connection with securing the Financial Assurance

(the foregoing financings are collectively referred to as the ***“Senior Obligations”***); and

(z) the right of ABRVI to lease or re-lease the storage tanks located on the Oil Refinery or Related Facilities to third Persons for the purpose of providing storage services at the Oil Refinery and Related Facilities, provided that any such lease of storage tanks shall be on usual and customary terms (and all documents and instruments given to secure all or any portion of the Senior Obligations and/or the rights referred to in this subclause (z), being referred to herein as the “*Senior Security Documents*”), and

the Government expressly undertakes and agrees that, until such time as the Senior Obligations, together with all accrued and unpaid interest thereon and all other sums due and owing in respect thereof, shall have been indefeasibly paid in full (such date being referred to herein as the “*Discharge Date*”), it shall not bring any legal action to enforce the Security Documents, or exercise any of its remedies, under the Agreement, except as provided in Section 10.2.

(ii) prior to the Discharge Date, the Government may not exercise any of its remedies under the Security Documents or under this Agreement, except as provided in Section 10.2,

(iii) in the event that any lender granting any Senior Obligations requires an intercreditor agreement to confirm the subordination of the Security Documents and the agreement of the parties that the Government shall not enforce any of the remedies allowed pursuant the Security Documents or to this Agreement, prior to the Discharge Date, except as provided in Section 10.2, and the Government shall execute and deliver to such lender such intercreditor agreement,

(iv) in the event that any tenant under an oil tank lease requires a subordination and non-disturbance agreement (“*SNDA*”) to confirm the subordination of the Security Documents to such lease, the Government shall enter into such SNDA and deliver such SNDA to said tenant, and

(v) in the event of the refinancing of any of the Senior Obligations described above, the Subordinate Security Interest shall be subordinate to such refinancing provided that the amount of each refinancing shall not exceed the current unpaid principal balance of such refinancing, and the Government shall enter into such intercreditor agreement to confirm the subordination of the refinancing and the agreement of the parties that the Government shall not enforce any of its remedies allowed pursuant to the Security Documents or this Agreement prior to the Discharge Date, except as provided in Section 10.2.

(B) **All Necessary Actions.** ABRVI shall take all actions, and execute all documents necessary, to grant, perfect, validate and provide notice of the Security Interest, subject to those matters set forth on the Title Commitment underwritten by First American Title Insurance Company. A copy of the form of the Mortgage and Security Agreement and the form of the UCC-1 Financing Statement are attached hereto as Exhibit A, and made a part hereof. To the extent permitted by Applicable Law, ABRVI authorizes the Government to file financing statements naming the Government as a subordinated secured party, and describing the Oil Refinery and Related Facilities, in any appropriate filing office.

(C) **No Encumbrances.** In providing these liens and entering into this Agreement, ABRVI hereby represents and warrants that as of the Closing Date, the Oil Refinery and Related Facilities are owned by ABRVI free and clear and that there are no liens, charges, encumbrances, or defects of any kind on the Oil Refinery and Related Facilities, including charges, claims, deeds of trust, community property interests, pledges, equitable interests, liens (statutory or other), options, security interests, mortgages, or rights of first refusal, except as otherwise disclosed in the Title Commitment.

Section 9.7. Restrictions on Distributions. ABRVI, Holdings and ABR Inc. shall not make any Distributions to any member or shareholder at such time that a payment(s) is due and owing the Government pursuant to Article 4, Article 6, Article 9 or Article 17.

ARTICLE 10` FINANCIAL ASSURANCE

Section 10.1. Parent Guaranty.

(A) **Guaranty as Surety.** Holdings and ABR Inc. hereby unconditionally, absolutely and irrevocably guarantee, undertake, and promise jointly and severally, to cause, as herein provided, the due and punctual payment and the full and prompt performance by ABRVI of all of the amounts to be paid, if any, and all of the terms and provisions to be performed or observed by or on the part of ABRVI under this Agreement, in each case in accordance with the terms hereof (all such terms and provisions as now or hereafter in existence being collectively called the "**Obligations**"). In the event that ABRVI shall fail in any manner whatsoever to pay, perform or observe any of its Obligations, when and as the same shall be required to be paid, performed or observed under the terms of this Agreement, and subject to Section 10.1(B), Holdings and ABR Inc. shall duly and punctually pay, or fully and promptly perform or observe, as the case may be, such Obligations, or cause the same to be duly and punctually paid, or fully and promptly performed or observed, in each case as if Holdings and ABR Inc. (or either of them) were themselves the obligor with respect to such Obligations under this Agreement.

(B) **Demand or Notice Required.** It shall be a condition to the guarantees and agreements set forth in Section 10.1(A) (the "**Guaranty**") that the Government shall have first made a request of, or demand upon, or given a notice of the occurrence of a default under this Agreement, to the extent and in a manner required under this Agreement, to ABRVI. The Government, in asserting the benefit of the Guaranty, shall give prompt notice to Holdings and ABR Inc. of any failure by ABRVI to pay, perform, or observe any Obligation; provided, however, that any failure, delay or defect in the giving of such notice shall not alter or affect the Guaranty.

(C) **Waiver of Resort to Security.** Holdings and ABR Inc. further agree that the Guaranty, insofar as it constitutes a guarantee of monetary Obligations, constitutes a guarantee of payment when due and not merely of collection, and waive any right to require as a condition to the Guaranty that any resort be had by the Government to any security held for the payment of any Obligation.

(D) **No Discharge.** The Guaranty is and shall remain absolute and unconditional irrespective of any circumstance that might otherwise constitute a legal or equitable discharge of a surety or guarantor, as the case may be, with respect to its Guaranty.

(E) **No Reduction.** The Guaranty shall not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense or set-off, counterclaim, recoupment or termination whatsoever, except as provided in Section 10.1(G).

(F) **Continued Effectiveness.** The Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any Obligation of ABRVI is rescinded or must otherwise be restored or returned by the Person receiving such payment upon the Bankruptcy or reorganization of ABRVI, all as though such payment or part thereof had not been made.

(G) **Certain Defenses.** Holdings and ABR Inc. shall not have the right to assert, any defenses, set-offs, counterclaims and other rights with regard to any Obligation that ABRVI may possess.

Section 10.2. Third Person Assurance. ABRVI shall provide to the Government third-person financial assurance acceptable to the Government; provided, however, that such financial assurance shall be deemed acceptable in the event that it is a letter of credit which addresses the payments in question, issued by a bank authorized to conduct business in the United States, and such bank is acceptable to the Government (said acceptance by the Government not to be unreasonably withheld) (the “*Financial Assurance*”), as follows:

(A) **Project Financing Assurance.** On the Closing Date, ABRVI shall provide proof of Financial Assurance sufficient to guarantee timely payment of all Fixed Payments from the Closing Date through the closing date of the Financing.

(B) **Restart Assurance.** On the closing date of the Financing, ABRVI shall provide proof of Financial Assurance sufficient to guarantee timely payment of all Fixed Payments from the closing date of the Financing through the Operations Commencement Deadline.

(C) **Extensions.** In the event that ABRVI elects to extend the Financing Certification Date or the Operations Commencement Deadline pursuant to Sections 4.2(B) or 6.2(A), respectively, on the date of such initial Extension election, ABRVI shall provide proof of Financial Assurance sufficient to guarantee timely payment of all Fixed Payments from the date of such election through the final Extended Financing Certification Date or the final Extended Operations Commencement Deadline, respectively.

(D) **Default Financial Assurance.** Upon the occurrence of any Payment Default or Nonmonetary Default which has not been timely cured and annually thereafter during the pendency of any such Payment Default or Nonmonetary Default, ABRVI shall provide proof of Financial Assurance sufficient to guarantee timely payment of all Fixed Payments and Site Restoration Payments for the 12 months following such Payment Default or Nonmonetary

Default. ABRVI shall maintain such Financial Assurance for the remainder of the Term or until any such Payment Default and Nonmonetary Default have been cured.

ARTICLE 11 INSURANCE

Section 11.1. General Insurance. ABRVI shall maintain or cause to be maintained at its own cost and expense, in full force and effect commencing on the Effective Date and throughout the Term, with responsible insurance companies authorized to do business in the U.S. Virgin Islands, the types and limits of insurance as set forth in this Article 11. Such companies shall have an A.M. Best Insurance Reports rating of A- or better or otherwise be reasonably acceptable to the Government. Such insurance required to be maintained by ABRVI hereunder shall be primary without, in the case of Commercial General Liability, the right of contribution of any other insurance carried by or on behalf of the Government and any additional insured. The Government shall be named as an additional insured on all policies.

Section 11.2. Additional Insurance. In addition to any insurance or demonstration of financial assurance or financial responsibility required under Applicable Law, ABRVI shall maintain in effect insurance of the following types and amounts of insurance coverage set forth below:

(A) **Property Insurance.** Property Insurance, including physical damage and business interruption on the terms set forth below. The Property Insurance policy shall contain the following terms: an amount equal to the full replacement value of all property on Site, for physical loss or damage except as hereinafter provided, including coverage for earth movement, flood, boiler and machinery (electrical and mechanical breakdown), transit, and off- site storage exposure. Such policy shall include provisions for first-party and third-party pollution legal liability coverage for owned and non-owned premises in an amount not less than \$20,000,000, and first party and third-party cleanup coverage for any Response Action in an amount not less than \$25,000,000, in excess of any financial assurance demonstration pursuant to the federal Resource Conservation and Recovery Act, 42 U.S.C. §§ 6091, et seq., and any financial responsibility demonstration pursuant to the federal Oil Pollution Act of 1990, as amended, 33 U.S.C. §§ 2701, et seq., and the U.S. Virgin Islands Oil Spill Prevention and Pollution Control Act, 12 V.I.C. §§ 701, et seq., in effect or required for the Oil Refinery and Related Facilities. In the event a loss is sustained under the Risk Policy, such loss will be adjusted by Insurance Company. Any required payment of the deductible shall be the responsibility of ABRVI unless indemnified pursuant to this Agreement. ABRVI and its insurer shall waive all rights of subrogation against the Government and its Affiliates. ABRVI's Property Insurance policy shall be endorsed to provide for such waiver of the underwriters' right to subrogation against the Government and its Affiliates.

(B) **Workers' Compensation Insurance.** Workers' compensation insurance to comply with statutory limits of the Workers' Compensation laws of the U.S. Virgin Islands, including coverage under the U.S. Longshore and Harbor Workers Compensation Act, where applicable, and Employer's Liability (including Occupational Disease) coverage with limits of not less than \$2,000,000 each accident, \$2,000,000 disease limit per employee and \$2,000,000 disease policy limit. Workers' compensation insurance shall cover all of ABRVI's employees,

contractors and subcontractors providing services to the Oil Refinery and Related Facilities or related assets.

(C) **Commercial General Liability Insurance.** Commercial General Liability Insurance on an "occurrence" basis with a combined single limit of liability not less than \$5,000,000 per occurrence, \$5,000,000 general aggregate limit and \$5,000,000 products completed operations aggregate limit (which includes pollution liability coverage for products). Subject to the terms of the policy, coverage shall include premises, operations, blanket contractual liability, independent contractors, products and completed operations and personal injury coverages. The policy shall contain no exclusion for punitive or exemplary damages.

(D) **Automobile Liability Insurance.** Automobile liability insurance covering any automobiles used in connection with the Oil Refinery and Related Facilities in an amount not less than \$1,000,000 per accident for combined bodily injury, property damage or death.

(E) **Umbrella or Excess Liability Insurance.** Umbrella/Excess Insurance covering claims in excess of the underlying insurance described in this Article 11, with a \$20,000,000 minimum per occurrence and \$20,000,000 annual aggregate, in excess of liability insurance set forth in this Article 11.

(F) **Endorsements.** All policies of liability insurance to be maintained by ABRVI shall be written or endorsed to include the following:

(1) With respect to Worker's Compensation/Employer's Liability Insurance, unless prohibited by Applicable Law, to provide that the insurer shall waive for the benefit of the Government all rights of subrogation against the Government and its representatives for payment under such policies;

(2) With respect to General Liability, Automobile Liability and Excess/Umbrella Insurance, to provide that the insurer shall waive (i) any right of recovery which the insurer may have or acquire against the Government or its representatives for payment under such policies, and (ii) any right of subrogation which the insurer may have or acquire for payments to any person who asserts a claim against the Government or its representatives by any Person to or from whom the insurer pays monies or other benefits;

(3) To provide a severability of interest and cross liability clause (Commercial General Liability, Automobile Liability and Umbrella or Excess Liability only).

(4) **ABRVI Certificates.** ABRVI shall furnish to the Government certificates of insurance from each insurance carrier showing that the insurance required from ABRVI under this Agreement is in full force and effect. ABRVI or its insurer will provide the Government 30 calendar days advance written notice (or 10 calendar days' notice in the case of cancellation due to non-payment of premiums) in the event of any material change to, non-renewal of or cancellation of the required insurance. Certificates of insurance submitted under this Article 11 shall be in form and content reasonably acceptable to the Government. Certificates of each renewal of the insurance shall also be delivered to the Government promptly

after received. Should any of the policies required to be maintained become unavailable or be canceled for any reason during the period of this Agreement, ABRVI shall immediately procure replacement coverage. In the event that ABRVI shall fail to provide proof of insurance as provided in this Section 11.2(F)(4) within thirty (30) days' receipt of written notice from the Government, advising of such failure to provide proof of insurance, ABRVI shall promptly provide such proof of insurance to the Government. In the event that ABRVI fails to provide such proof of insurance then the Government may elect to file an action in specific performance to compel ABRVI to demonstrate proof of insurance, and to recover its reasonable attorneys' fees and costs in connection with such action.

(5) **Descriptions Not Limitations.** The coverages referred to above are set forth in full in the respective policy forms, and the foregoing descriptions of such policies are not intended to be complete, nor to alter or amend any provision of the actual policies and in matters, if any, in which the said description may be conflicting with such instruments, the provisions of the policies of the insurance shall govern; provided, however, that neither the content of any insurance policy or certificate nor approval thereof shall relieve Parties of any of their obligations under this Agreement.

(6) **Contractors.** ABRVI shall require all of its contractors and subcontractors (of any tier) to maintain insurance in the form and amount commensurate with the nature of the work or services that such contractor is providing on behalf of ABRVI.

(G) **Modification of Coverage Limits.** The coverage limits recited in this Article shall be subject to reasonable revision by the Government every five years, if necessary, to reflect changes in conditions or circumstances.

ARTICLE 12

TAX AND FEE EXEMPTIONS

Section 12.1. Scope of Exemption. Following the Effective Date, ABRVI, Holdings, ABR and each of their Affiliates or Equity Holders that are engaged in owning or operating, in whole or in material part, the Oil Refinery and Related Facilities, shall be exempt from payment of Exempted Payments, as defined below

Section 12.2. Exempted Payments. For purposes of this Agreement, "Exempted Payments" shall include all taxes, fees, excises, duties, imposts and exactions imposed by or with the consent of the Government, or any subdivision, agency or instrumentality thereof, on rehabilitation, ownership, operation, maintenance, expansion or other activity in respect of the Oil Refinery and Related Facilities or any portion thereof and materials, work in process and products thereof (including importing, exporting, loading, unloading, storing, processing, blending, manufacturing, producing and sale of oil, oil products or by-products including petrochemicals, or any other raw material or products of, or any equipment or machinery imported for use at, the Oil Refinery and Related Facilities or any portion thereof). The foregoing exemption shall include specifically exemption from all (i) corporate income taxes, (ii) excise taxes, (iii) customs duties, (iv) fuel taxes, (v) gross receipts taxes, (vi) highway users' taxes, (vii) production taxes, (viii) property taxes, (ix) franchise taxes, (x) license fees and (xi)

withholding taxes on any distributions to preferred or common Equity Holders made by ABRVI or any of its Affiliates.

Section 12.3. Limitations on Exemption. For the avoidance of doubt, Exempted Payments do not include any (i) income withholding taxes; (ii) taxes owed under the Federal Insurance Contributions Act, (iii) lease and permit payments relating to Submerged Lands, (iv) any user fees of general application, (v) any tax or fee imposed by the United States, (vi) and withholding taxes of general application imposed under Workmen's Compensation, unemployment insurance and other similar employee-benefit legislation.

ARTICLE 13 REPRESENTATIONS AND WARRANTIES

Section 13.1. Government Representations. The Government hereby represents and warrants to ABRVI as of the date hereof and as of the Effective Date that:

(A) Assuming ratification and approval of this Agreement by the Legislature, the Government is not prohibited from consummating the transactions contemplated in this Agreement by any law, regulation, agreement, instrument, restriction, order, or judgment;

(B) The Government has, assuming ratification and approval of this Agreement by the Legislature: (i) the legal power, due authority and necessary and adequate funding ability to make the representations and perform its obligations set forth in this Agreement, or shall take all legally permitted and feasible actions necessary to obtain such legal power, due authority and necessary funding; and (ii) duly obtained such approvals, Authorizations, or consents in accordance with Applicable Law and procedures to the extent that the approval, Authorization, or consent of the federal or any other territorial or local government or agency or any third Person to make the representations and perform its obligations contained herein is required;

(C) The Government knows of no material impediment which would prevent, impede, diminish or delay its timely performance of its obligations hereunder;

(D) There are no actions, suits or proceedings pending or, to the best of the Government's knowledge, threatened against or affecting the Government before any court or administrative body or arbitral panel that could reasonably be expected to have a material adverse effect on the ability of the Government to meet and carry out the obligations of this Agreement.

Section 13.2. ABRVI and Parent Representations. ABRVI, Holdings, and ABR Inc. each hereby represents and warrant to the Government as of the date hereof and as of the Closing that:

(A) **Organization and Authority.** It has been duly organized and is validly existing and in good standing under the laws of the U.S. Virgin Islands, with all necessary power and authority to enter into, deliver and perform all its obligations under this Agreement

(including a valid license to do business in the U.S. Virgin Islands). ABRVI shall be a wholly owned subsidiary of Holdings. Holdings shall be a wholly owned subsidiary of ABR Inc.

(B) Capitalization.

(1) The authorized membership interest of ABRVI is duly authorized for issuance and is validly issued, fully paid and non-assessable, and is owned of record and beneficially by Holdings.

(2) The authorized membership interest of Holdings consists of one (1) membership interest that is duly authorized for issuance and is validly issued, fully paid and non-assessable, and owned by ABR Inc.

(3) The authorized capital stock of ABR Inc. consists of shares that were duly authorized for issuance and are validly issued, fully paid and non-assessable, which are owned in the amounts and by the persons identified in the confidential letter provided to the Government at Closing pursuant to Section 3.2(B)(8)(ii).

(C) Due Authorization; Enforceability. This Agreement has been duly authorized and constitutes the legal, valid and binding obligations of it, and assuming the due authorization, execution and delivery of this Agreement by the Government, is enforceable against it in accordance with its terms. It has the absolute and unrestricted right, power, authority and capacity to execute and deliver this Agreement and to perform its obligations under this Agreement.

(D) No Conflict. Neither the execution and delivery of this Agreement nor the consummation or performance of any of the transactions contemplated by this Agreement will, directly or indirectly (with or without notice or lapse of time) (1) contravene, conflict with or result in a violation of (i) any provision of its organizational documents, (ii) and Contract or other agreement by which it is bound, or (iii) any resolutions adopted by its board of directors, members or its stockholders or (2) contravene, conflict with, or result in a violation of, or give any Governmental Authority or other Person the right to challenge any of the transactions contemplated by this Agreement or to exercise any remedy or obtain any relief under any Applicable Law to which it or its Affiliates may be subject. There are no actions, suits or Proceedings pending or, to the best of its knowledge, threatened against or affecting it or its Affiliates before any court or administrative body or arbitral panel that could reasonably be expected to have a material adverse effect on its ability to meet and carry out the obligations of this Agreement.

(E) Consents and Notices. It is not required to give any notice to or obtain any approval, consent, ratification, waiver or other authorization of any person (including any Authorization of any Governmental Authority) in connection with the execution and delivery of this Agreement or the consummation or performance of any of the transactions contemplated by this Agreement.

(F) **No Litigation.** Neither ABRVI nor Holdings nor ABR nor any of their Affiliates are involved in in any litigation, arbitration, or claim against the Government, except for claims arising in the ordinary course of ABRVI's business.

(G) **Solvency.** There are no bankruptcy, reorganization or receivership proceedings pending against, being contemplated by, or, to its actual knowledge, threatened against, ABRVI, Holdings, or ABR Inc., or any of the members, shareholders or principals of any of them. ABRVI, Holdings, and ABR Inc. are solvent.

ARTICLE 14 COVENANTS OF ABRVI

Section 14.1. Environmental.

(A) **Compliance.** ABRVI shall, and shall cause the Oil Refinery and Related Facilities and all operations and conditions relating thereto, to comply with all applicable Environmental Laws. ABRVI shall not take, allow, or suffer any action, inaction, or condition at the Oil Refinery and Related Facilities that causes or results in a Release or threatened Release that requires a Response Action or restoration of any and/or natural resource restoration at or in connection with the Oil Refinery and Related Facilities, or constitutes a violation of any Environmental Laws. In the event of a Release or threatened Release at, from, or in connection with the Oil Refinery and Related Facilities, ABRVI at its own cost shall promptly take all appropriate Response Actions and other actions to investigate, contain, clean up, remediate, and otherwise respond to such Release or threatened Release, restore, replace, or mitigate natural resources, and otherwise protect human health and the environment, and shall promptly reimburse the Government for its reasonable costs and expenses in overseeing such actions and/or, if ABRVI fails to promptly conduct such actions and the Government elects in its absolute discretion to conduct such actions, to reimburse the Government for the costs thereof, plus interest. Nothing in this Agreement limits or precludes the Government from exercising its authorities under Environmental Laws or other Applicable Law in connection with any such Release or threatened Release.

(B) **Appropriate Care/Cooperation.**

(1) ABRVI shall exercise appropriate care with respect to the Pre-Existing Contamination and shall comply with all Environmental Laws applicable thereto.

(2) ABRVI shall provide full cooperation, assistance, and access to persons authorized by the Government to conduct Response Actions and/or natural resource restoration at the Oil Refinery and Related Facilities (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial Response Actions or natural resource restoration at the Oil Refinery and Related Facilities).

(3) ABRVI shall (i) comply with any and all land use restrictions established or relied on in connection with Response Actions at the Oil Refinery and Related Facilities; (ii) not interfere with or impede the effectiveness or integrity of any institutional or engineering control employed at the Oil Refinery and Related Facilities in connection with a

Response Action; and (iii) comply with all requests for information or administrative subpoenas issued by the Government pursuant to Environmental Laws.

(4) ABRVI shall take reasonable steps to (1) stop Releases at the Oil Refinery and Related Facilities; (2) prevent threatened or future Releases at the Oil Refinery and Related Facilities; (3) prevent or limit human, environmental, or natural resource exposure to Pre-Existing Contamination or other contamination at or from the Oil Refinery and Related Facilities; and (4) fund (through insurance, financial assurances, and all other financial resources available to ABRVI) clean-up of all Releases and restoration of affected third Person property and the environment.

(5) ABRVI, and not the Government, shall have responsibility to comply with Environmental Laws regarding the Oil Refinery and Related Facilities, including but not limited to the Refinery, the Terminal, and all "submerged and filled lands" and "trust lands" within the meaning of 12 V.I.C. § 902(cc) and (dd), respectively, that have been used or occupied by Hovensa, Hovic, its Affiliate(s), or its designee(s), are now or hereafter used or occupied by ABRVI, its Affiliate(s), or its designee(s), or are now or hereafter subject to a submerged or filled land lease or permit or Coastal Zone Management permit (*collectively, "Submerged Lands"*). ABRVI hereby releases, holds harmless, and covenants not to sue, and shall defend and indemnify, the Government with respect to any Release or threatened Release of a Contaminant, Response Action, violation of Environmental Laws, or obligation under any Environmental Laws at, under, on, from, or with respect to the Oil Refinery and Related Facilities, including but not limited to the Refinery, the Terminal, and Submerged Lands now and in the future; provided, however, that ABRVI shall not be required to indemnify any Government Indemnified Party for Losses to the extent that such Losses suffered by the Government Indemnified Party arose out of any grossly negligent act or willful misconduct of any Government Indemnified Party.

(6) ABRVI shall comply with all Applicable Laws, including but not limited to Environmental Laws, with respect to the loading, unloading, and berthing of vessels at the Oil Refinery and Related Facilities, and shall ensure that all vessels loading or unloading at, or otherwise located at or using the Oil Refinery and Related Facilities comply with all Applicable Laws, including but not limited to Environmental Laws.

(C) **Notification.** In the event that ABRVI becomes aware of any action or occurrence which causes or threatens a Release of a Contaminant at or from the Oil Refinery and Related Facilities that constitutes an emergency situation or may present an immediate threat to human health or welfare or the environment, ABRVI shall immediately take all appropriate action to prevent, abate, or minimize such Release or threat of Release, and shall, in addition to complying with any applicable notification requirements under 42 U.S.C. § 9603 and any other Environmental Laws, immediately notify the Government of such Release or threatened Release.

(D) **Permits.** Throughout the Term, ABRVI shall do all things and take such actions necessary, to the fullest extent permitted by Applicable Law, to expeditiously file all applications for and obtaining, maintaining, modifying, and renewing all permits required for ABRVI compliance with this Agreement.

Section 14.2. Consents and Approvals. ABRVI shall do all things and take such actions necessary, to the fullest extent permitted by law, to obtain promptly any Authorizations or other actions on the part of Government Authorities or of any officials, departments, agencies, or other instrumentalities thereof that may be necessary or appropriate in connection with rehabilitating and operating the Oil Refinery and Related Facilities.

Section 14.3. Indemnification. ABRVI shall defend, indemnify, and hold harmless and pay on a current basis the Government and its agents, officers, directors and employees and other representatives (each, a “*Government Indemnified Party*”) from and against any and all Losses incurred by a Government Indemnified Party arising out of or relating to ABRVI’s obligations under this Article 14:

(A) to the extent caused by any negligent act or omission (including strict liability), gross negligence or willful misconduct of ABRVI, its subcontractors or any of their respective agents or employees (but only with respect to Losses for injury, illness or death to any individual or damage to any property of any Person); or

(B) to the extent caused by breach of Applicable Law by ABRVI, its contractors, or any of their respective agents or employees; or

(C) to the extent caused by or arising out of a Release or threatened Release of a Contaminant, a Response Action, or obligation under any Environmental Laws at, under, on, or with respect to the Oil Refinery and Related Facilities, including but not limited to the Refinery, the Terminal, and Submerged Lands now and in the future;

provided, however, that ABRVI shall not be required to indemnify any Government Indemnified Party for Losses to the extent that such Losses suffered by the Government Indemnified Party arose out of any grossly negligent act or omission (including strict liability) or willful misconduct of any Government Indemnified Party.

ARTICLE 15 GOVERNMENT COVENANTS

Section 15.1. Assistance with Permits. Throughout the Term, the Government shall do all things and take such actions reasonably necessary, to the fullest extent permitted by Applicable Law, to assist ABRVI (and, where applicable, its contractors and subcontractors), in ABRVI’s expeditious filing of all applications for and obtaining, maintaining, and renewing all Government Authorizations required for ABRVI’s compliance with this Agreement. The Government shall take all feasible and lawful measures necessary to have all such Authorizations issued as soon as is practicable, and otherwise shall not delay or frustrate the application process.

Section 15.2. Consents and Approvals. The Government undertakes to use its commercially reasonable efforts in good faith to assist ABRVI to obtain promptly any consents, approvals, clearances, determinations, or other actions on the part of the U.S. Government or of any officials, departments, agencies, or other instrumentalities thereof that may be necessary or appropriate in connection with the Restart Plan and operating the Oil Refinery and Related Facilities.

Section 15.3. Beneficial Use. Without the prior written consent of ABRVI, which consent may not be unreasonably withheld, conditioned or delayed, the Government, except to the extent required by Applicable Law, shall not take, approve, assist or allow any action, or fail to take, approve, assist or allow any action, if such action or failure to act, as the case may be, is reasonably likely to materially adversely affect, diminish or impair the beneficial use, operation, utility or occupancy of the Oil Refinery and Related Facilities in compliance with this Agreement or the ability of ABRVI in compliance with this Agreement to beneficially use, occupy, obtain, receive or otherwise enjoy any of: (i) the physical sites, facilities, improvements, programs, financial incentives or other benefits existing as of the Effective Date and contemplated by any portion of this Agreement, or (ii) the obligations or other commitments of the Government contemplated by, or set forth in, this Agreement; provided, however, that nothing in this Section 15.3 shall impair the Government's right to enact laws, regulations, or policies of general application for the preservation of public health and safety.

Section 15.4. Other Legislation. The Government agrees to use reasonable efforts to oppose any proposed legislation, initiative, act, event, plan, or proposal which would otherwise have the effect of avoiding or materially reducing any of the obligations or commitments as set forth in this Agreement. To the extent an initiative would negatively impact the full performance after the Effective Date of any or all of the obligations or commitments made by the Government, the Government shall take all legally and commercially appropriate steps to defend the obligations and commitments contained herein. For the avoidance of doubt, any new taxes (but not generally applicable user fees) adopted by the Government shall be treated as Exempt Payments under Section 12.2.

Section 15.5. Other Benefits. ABRVI and its Affiliates shall not be precluded by reason of this Agreement from applying for benefits under legislation hereafter enacted for which it or they would otherwise qualify, but to the extent such benefits are inconsistent with its or their obligations and commitments under this Agreement, the terms of this Agreement shall govern.

ARTICLE 16

REPORTING, AUDIT AND INSPECTION

Section 16.1. Reporting. Each of ABRVI, Holdings, and ABR Inc. shall provide to the Government (i) not later than 90 days following the close of its fiscal year, annual financial statements audited by a reputable audit firm acceptable to the Government, and (ii) not later than 45 days following the close of each fiscal quarter, unaudited quarterly financial statements. Each of ABRVI, Holdings, and ABR Inc. shall be required to make all tax and other annual filings whether or not payment is due. A duplicate of annual tax returns shall be provided to the U.S. Virgin Islands Office of Management and Budget ("**OMB**") within 15 days of filing with the U.S. Virgin Islands Bureau of Internal Revenue for purposes of confirming the magnitude of the Variable Payment under Section 9.3 and verifying compliance with the Agreement. ABRVI shall provide quarterly employment information to the U.S. Virgin Islands OMB and U.S. Virgin Islands Department of Labor for purposes of confirming compliance with Article 8.

Section 16.2. Annual Audit.

(A) For the purpose of determining compliance with this Agreement and with Applicable Law, on or about March 31st of each calendar year following the Effective Date, the Government may initiate and conduct an audit of the books, accounts, and records of (a) the Oil Refinery and Related Facilities, and (b) ABRVI, to the extent such books, accounts, and records relate to the Oil Refinery and Related Facilities or their operations (such audit being an “*Annual Audit*”).

(B) Upon completion of any Annual Audit, the Government may prepare a report describing the results of such Annual Audit (an “*Annual Audit Report*”) and shall make any such report available to ABRVI upon request.

(C) Following receipt of any Annual Audit Report, ABRVI shall have not more than 60 days in which to review such Report and identify in writing any material errors or omissions therein. Any alleged material errors or omissions not so identified within the 60-day period are waived, and may not be asserted by ABRVI in any subsequent administrative, judicial, or quasi-judicial proceeding.

(D) Nothing in this Section 16.2 shall constitute a waiver or limitation on the Government’s tax assessment, audit, investigation, enforcement, and collection authorities.

Section 16.3. Inspection.

(A) Upon 14 days’ advance written notice to ABRVI, the Government may initiate an inspection of the Oil Refinery and Related Facilities for the purpose of determining compliance with this Agreement and with Applicable Law.

(B) ABRVI hereby consents to such inspections and agrees to provide reasonable access and assistance to the personnel conducting such inspections.

(C) To the extent any inspection conducted under this Section 16.3 reveals violations of this Agreement or Applicable Law, the Government hereby agrees to provide notice in writing of such violations within 10 days of the Government’s determination of such violation.

(D) Upon receipt of notice of violation, ABRVI has 15 days to submit either (i) proof that ABRVI has remedied the violation and has restored compliance with this Agreement or Applicable Law or (ii) provided a plan and time acceptable to the Government to remedy such violations.

(E) Nothing in this Section 16.3 shall constitute a waiver or limitation on the Government or other Governmental Agency’s tax assessment, audit, investigation, enforcement, and collection authorities or the ability to levy fines, penalties or other remedies in connection with violation of Applicable Law.

ARTICLE 17 DEFAULT AND TERMINATION

Section 17.1. Nonmonetary Default. If ABRVI breaches the provisions of Section 4.1(E) by failing to deliver timely the Engineering Certification, Section 4.2(C) by failing to

deliver timely the Financing Certification, Section 6.2(B) by failing to commence timely the Refining Operations, Section 6.4(B)(2) by failing to reach an agreement with the Government following ninety (90) days of good-faith negotiations after a Extending Refinery Idling Event, or Section 10.2 by failing to deliver timely any of the Third Person Assurances, and ABRVI fails to cure such Breach within thirty (30) days of receiving written notice from the Government of such Breach, then such breach shall be a “**Nonmonetary Default**”; provided, however, that such Breach shall not be a Nonmonetary Default if ABR certifies in good faith that such Breach is not capable of being cured within said thirty (30) day period, and promptly advises the Government of a commercially reasonable plan (such plan to be approved by an independent and reputable third-party consultant acceptable to the Government) to cure such Breach and continuously prosecutes such curative efforts to completion.

(A) **Terminal Operation to Fund Cleanup.** From and after the occurrence of: (i) ABRVI’s failure to timely cure any Nonmonetary Default under Section 17.1, and (ii) the Refining Operations have not been timely commenced, or having been commenced, ABRVI failed to restart the Refinery after an Extended Refinery Idling Event, then the Government and ABRVI shall enter into a good-faith negotiation regarding the future operation, sale or closure of the Refinery, and failing to reach such agreement following ninety (90) days of good-faith negotiations, then the Government may give written notice to ABRVI to undertake the deconstruction of the Oil Refinery and Related Facilities and the restoration of the Site, on the terms set forth below in this Section 17.1(A). In order to generate the funds necessary to effect such deconstruction and restoration, the Government shall permit ABRVI to continue to operate the Terminal, as provided in Section 6.1 until the occurrence of the events described in Section 17.1(E) below.

(1) ABRVI shall immediately at its sole cost and expense commission a study by a reputable third-party firm acceptable to the government to determine the estimated cost of:

(a) decommissioning and dismantling the Refinery (excluding the Terminal), including all structures, fixtures, equipment, and machinery comprised by the Refinery, and removing said structures, fixtures, equipment, and machinery from the Site, except for (i) any portions of the Refinery necessary to meet the fuel storage and access needs of St. Croix, and (ii) any portions of the Oil Refinery and Related Facilities identified in writing by the Government on a schedule to be included in the study (such measures being the “**Refinery Deconstruction**,” and such estimate being the “**Refinery Deconstruction Estimate**”); and

(b) decommissioning and dismantling the Terminal, including all structures, fixtures, equipment, and machinery comprised by the Terminal, and removing said structures, fixtures, equipment, and machinery from the Site, except for (i) those portions of the Terminal necessary to meet the fuel storage and access needs of St. Croix (such portions to include the port facilities, the docks, the Fuel Loading Rack, and storage tankage sufficient to supply St. Croix’s fuel needs for not less than three months), (ii) any portions of the Terminal identified in writing by the Government on a schedule to be included in the study, and (iii) such structures as are permitted for other uses (such

measures being the ***“Terminal Deconstruction,”*** and such estimate being the ***“Terminal Deconstruction Estimate”***); and

(c) restoring the Refinery Site to a condition that (i) achieves and maintains compliance with Environmental Laws and remediation standards that are no less stringent than applicable, or appropriate and relevant, federal and Territorial standards for soil, groundwater, surface water, and sediments, are protective of human health and the environment, and are consistent with and allow for industrial, commercial, residential, recreational and/or agricultural or other uses permitted on the Refinery Site, and (ii) enhances aesthetic values in the area by creating and maintaining a natural setting through landscaping, planting, while providing sufficient remaining storage capacity to meet U.S. Virgin Islands local requirements and continue operations of the Fuel Loading Rack (such measures being the ***“Refinery Site Remediation”*** and such estimate being the ***“Refinery Site Remediation Estimate”***); and

(d) restoring the Terminal Site to a condition that (i) achieves and maintains compliance with Environmental Laws and remediation standards, consistent with the current industrial zoning designation for the subject property, and that are no less stringent than applicable, or appropriate and relevant, federal and Territorial standards for soil, groundwater, surface water, and sediments, and protective of human health and the environment, and are consistent with and allow for industrial, commercial, residential, recreational and/or agricultural or other uses permitted on the Terminal Site, and (ii) enhances aesthetic values in the area by creating and maintaining a diverse, natural setting through landscaping, planting and other measures, while providing sufficient remaining storage capacity to meet U.S. Virgin Islands local requirements and continue operations of the Fuel Loading Rack (such measures being the ***“Terminal Site Remediation”*** and such estimate being the ***“Terminal Site Remediation Estimate”***).

The Refinery Deconstruction and Refinery Site Remediation being the ***“Refinery Site Restoration,”*** and the related estimate being the ***“Refinery Site Restoration Cost Estimate”***; and the Terminal Deconstruction and Terminal Site Remediation being the ***“Terminal Site Restoration,”*** and the related estimate being the ***“Terminal Site Restoration Estimate”***; and the Refinery Site Restoration and the Terminal Site Restoration together being the ***“Site Restoration,”*** and the related estimate being the ***“Site Restoration Cost Estimate.”***

Upon receipt of any Site Restoration Cost Estimate (or portion thereof), the Government may within 90 days notify ABRVI of its intention to obtain an independent review of such Estimate. Within 30 days of receiving such notification, ABRVI shall select a reputable independent firm acceptable to the Government to conduct a review of such Estimate. Within 90 days of such selection, such independent firm shall provide the Government with a letter stating its opinion that such Estimate does or does not represent a reasonable estimate of the cost of the Site Restoration (or portion thereof). If the independent firm opines that the Estimate at issue is materially inadequate to fully fund the Site Restoration, then shall be resolved in accordance with the arbitration dispute resolution procedures set forth in Section 21.4(B). The cost of conducting this review shall be paid using funds from the Site Restoration Fund Account.

(2) ABRVI shall contribute the amount of the Site Restoration Cost Estimate to the Site Restoration Account as provided in Section 17.2(B), and

(3) ABRVI shall commence the Refinery Deconstruction as provided in Section 17.1(C), and upon completion of the Refinery Deconstruction, commence the Refinery Site Remediation as provided in Section 17.1(D); and

(4) ABRVI shall commence Terminal Deconstruction and Terminal Site Restoration as provided in to Section 17.1(E).

(B) **Site Restoration Fund Payment.** From and after the Government having given the written notice of Breach described in Section 17.1:

(1) ABRVI shall no longer have any obligation to make payments under Section 9.5(B), and the payment due pursuant to Section 17.1(B)(2) below (the “*17.1 Payment*”) for the calendar year when the written notice of breach described in Section 17.1 is given by the Government shall be prorated for said calendar year, as of the date that said written notice is given by the Government (by way of example, in the event that said written notice was given as of October 1st for the calendar year in question, ABRVI would only owe the prorata share of the 17.1 Payment for that calendar year in connection with the last quarter), and

(2) (a) In the event of a Breach resulting from ABRVI’s failure to timely make the Engineering Certification or the Financing Certification pursuant to Section 4.1(E) or 4.2(C), respectively, ABRVI shall pay into the Site Restoration Fund Account the greater of (i) \$10,000,000, payable in equal quarterly installments of \$2,500,000 on the final day of the first, second, third, and fourth fiscal quarters of the calendar year in which the notice of breach is given and of each subsequent calendar year, and (ii) Seventeen and a Half (17.5%) Percent of ABRVI’s net income after all taxes, plus depreciation and amortization, less debt repayments, preferred stock payments and redemptions, Earn-Out Payments pursuant to the Purchase Agreement, Fixed Payments to the Government pursuant to Article 9, and maintenance capital expenditures, attributable to the prior calendar year, less any payment already made pursuant to Section 17.1(B)(2)(a), payable on or before One Hundred Fifty (150) Days after the end of the calendar year in which the notice of breach is given, and each calendar year thereafter; and (b) in the event of any other Breach, ABRVI shall pay into the Site Restoration Fund Account the greater of (i) \$7,500,000, payable in equal quarterly installments of \$1,875,000 on the final day of the first, second, third, and fourth fiscal quarters of the calendar year in which the notice of breach is given and of each subsequent calendar year, and (ii) Seventeen and a Half (17.5%) Percent of ABRVI’s net income after all taxes, plus depreciation and amortization, less debt repayments, preferred stock payments and redemptions, Earn-Out Payments pursuant to the Purchase Agreement, Fixed Payments to the Government pursuant to Article 9, and maintenance capital expenditures, attributable to the prior calendar year, less any payment already made pursuant to Section 17.1(B)(2)(a), payable on or before One Hundred Fifty (150) Days after the end of the calendar year in which the notice of breach is given, and each calendar year thereafter.

(3) For the avoidance of doubt, (i) all payments due under Section 17.1(B) shall be in addition to payments otherwise owed to the Government under this Agreement, except for the payments that were due under Section 9.5(B), which are no longer due

and payable; (ii) ABRV's obligation to pay in to the Site Restoration Fund Account shall cease at such time as the funds in said account exceed the most recently prepared Terminal Deconstruction Estimate and Terminal Site Restoration Estimate, exceptthat (x) if a subsequent Terminal Deconstruction Estimate or Terminal Site Restoration Estimate exceeds the funds in the Site Restoration Fund Account, ABRVI shall restart the payments referenced in Section 17.1(B) until such time as said deficiency has been remedied, and (y) if during Site Restoration it is determined by ABRVI or the firm engaged to conduct the Site Restoration that the funds in the Site Restoration Fund Account are not sufficient to complete the Site Restoration, ABRVI shall restart the payments referenced in Section 17.1(B).

(C) **Refinery Deconstruction.** At such time as the funds in the Fund Account exceed the most recently prepared Refinery Deconstruction Estimate, ABRVI shall engage a qualified firm acceptable to the Government to conduct the Refinery Deconstruction. Such Refinery Deconstruction shall commence within 120 days of ABRVI receiving notification from the Government that it agrees that funds in the Site Restoration Account exceed the amount of the most recently prepared Refinery Deconstruction Estimate.

(D) **Refinery Site Remediation.** At such time as the funds in the Fund Account exceed the amount of the most recently prepared Refinery Site Remediation Estimate, ABRVI shall engage a qualified firm acceptable to the Government to conduct the Refinery Site Remediation. Such Refinery Site Remediation shall commence within 120 days of ABRVI receiving notification from the Government that it agrees that the funds in the Site Restoration Account exceed the amount of the most recently prepared Refinery Site Remediation Estimate.

(E) **Terminal Deconstruction and Terminal Site Restoration.** At such time as the funds in the Fund Account exceed the most recently prepared Terminal Deconstruction Estimate and Terminal Site Restoration Estimate, the Government, at its option, may provide 36 months' advance written notice to ABRVI that ABRVI must cease Terminal Operations and engage a qualified firm acceptable to the Government to conduct the Terminal Deconstruction and the Terminal Site Restoration. For avoidance of doubt, ABRVI shall continue to perform its obligations under Article 7. Such Terminal Deconstruction shall commence within 120 days of ABRVI receiving notification from the Government that it agrees that funds in the Fund Account exceed the amount of the most recently prepared Terminal Deconstruction Estimate.

(F) **Periodic Updates.** ABRVI shall update the Site Restoration Cost Estimate (1) no less frequently than every second year following the completion of the initial Site Restoration Cost Estimate, except that (2) following the commencement of any of the Refinery Deconstruction, the Refinery Site Remediation, the Terminal Deconstruction, or the Terminal Site Remediation, ABRVI shall update the Site Restoration Cost Estimate annually on the anniversary of the commencement of the applicable Deconstruction or Remediation. Following any update of the Site Restoration Cost Estimate pursuant to Section 17.1(F)(2) in which it is determined that such Estimate exceeds the amount in Site Restoration Fund Account, ABRVI shall continue to make Site Restoration Payments pursuant to Section 17.1(B)(2).

Section 17.2.Payment Default/Financial Assurance Default.

(A) In the event that ABRVI fails to make any payments due and owing to the Government under Article 4, Article 6, Article 9, or this Article 17, then the Government shall have the right to give written notice to ABRVI of such failure, and in the event that such payment is not cured within 90 days of such written notice (such failure being a ***“PaymentDefault”***):

(1) The Government shall have the right to obtain any outstanding payments from the issuer of the Financial Assurance.

(2) The Government shall not have the right to enforce the Security Interest until after the Discharge Date, provided, however, that the Government shall have the right to enforce the Security Interest in the event that no Senior Obligation loans have been made within two (2) years after the Closing Date.

(3) In the event ABRVI fails to deliver the Financial Assurance described in Section 10.2(D) for more than 180 days after said Financial Assurance is due (such failure being a ***“Financial Assurance Default”***), such failure shall allow the Government to give notice to ABRVI of its election to terminate this Agreement pursuant to Section 17.3(A).

(B) In the event that any of the holders of the Senior Obligations exercise their rights pursuant to the assignment provisions of Section 21.2, then such purchaser or transferee shall be bound by the terms of this Agreement as fully as if such purchaser or transferee alone had executed this Agreement in place of ABRVI; provided, however, that such purchaser or transferee shall be obligated to pay any outstanding Fixed Payments and Variable Payments due and owing as of the date of such purchase or transfer.

Section 17.3.Termination.

(A) **Termination Events.** Notwithstanding anything herein to the contrary, upon the occurrence of any of the following events (each a ***“Termination Event”***), the Government may terminate this Agreement upon 30 days prior written notice of such termination to ABRVI, Holdings, and ABR Inc. if:

(1) ABRVI, Holdings, or ABR Inc. becomes Bankrupt, and in the case of any filing by ABRVI, such filing is not withdrawn within ninety (90) days of the initial filing;

(2) ABRVI, Holdings, or ABR Inc. dissolves and commences liquidation or winding-up activities;

(3) There has been an Financial Assurance Default that has not been timely cured; or

(4) The Initial Term of the Agreement expires without exercise of an Extension or the first Extension expires without exercise or a second Extension, in each case without mutual acceptance of a successor Operating Agreement.

(B) **Effect of Termination.** If this Agreement is terminated in accordance with Section 17.3(A), then this Agreement shall be of no further force and effect, except that

Articles 1, 10, 14, 17, 18, and 21, and Sections 7.1(A), 7.2, and 7.3 shall survive termination of this Agreement indefinitely.

Section 17.4. Rights and Remedies Cumulative. Except as expressly provided in this Agreement, all rights and remedies of any Party against any other Party and any permitted assignee of such other Party provided in this Agreement shall be deemed cumulative and not in lieu of, or exclusive of, each other or of any other right or remedy available to any Party at law or in equity, and the exercise of any right or remedy, or the existence herein of other rights or remedies, shall not prevent the exercise of any other right or remedy.

ARTICLE 18 CONFIDENTIALITY

The terms of this Agreement and any information received by ABRVI or Holdings regarding or from the Government (before, on or after the date hereof) constitute Confidential Information under the Mutual Non-Disclosure Agreement executed by the Parties as of August 14, 2014, except that the Agreement itself and its express terms shall cease to be Confidential Information upon the Government's submission of the Agreement to the Legislature of the U.S. Virgin Islands for ratification.

ARTICLE 19 ALTERNATIVE USE(S)

Section 19.1. Good Faith Discussions. If the Authorizations, if any, required to commence Refining Operations are not issued by the applicable Governmental Authorities following ABRVI's use of best efforts in accordance with Section 5.1, the Parties shall meet to discuss in good faith possible alternative uses for all or part of the Oil Refinery and Related Facilities, including continued operation of the Oil Refinery and Related Facilities as a Terminal.

Section 19.2. Authorizations. Subject to Section 17.1, if at any time the Oil Refinery and Related Facilities will be operated other than for Refinery Operations in accordance with this Agreement, ABRVI shall use its best efforts to obtain necessary modifications, if any, of the Prevention of Significant Deterioration ("**PSD**") permit and Title V operating permit and all other necessary modifications or issuances of required Authorizations to allow for such anticipated alternative operation.

Section 19.3. Operation Work Standards. ABRVI shall perform all modifications to the Oil Refinery and Related Facilities made in accordance with this Article 19, operate the Oil Refinery and Related Facilities and carry out its responsibilities under this Agreement, and shall ensure that its subcontractors perform all operations of or related to the Oil Refinery and Related Facilities, (a) in accordance with International Standards, (ii) as a reasonable and prudent operator, in a sound and workmanlike manner, with due diligence and dispatch; (iii) in accordance with sound, workmanlike and prudent practices of the oil and gas industry; and (iv) in compliance with all Applicable Law.

ARTICLE 20 FORCEMAJEURE

Section 20.1. Force Majeure Events. For the purposes of this Agreement the term “Force Majeure Event” shall mean any cause that is reasonably unforeseeable as of the date of this Agreement and that is beyond the reasonable control, directly or indirectly, of the Party affected and with the exercise of due diligence, could not be prevented avoided or removed by such Party, and does not result from such Party’s negligence or fault and that wholly or partly delays or prevents such Party’s performance of its obligations under this Agreement, including (to the extent meeting the foregoing requirements): war (whether declared or not) or other armed conflict terrorism; civil insurrection; declaration of martial law; piracy; nuclear accidents; widespread electrical outages; lightning strikes; earthquakes; fires; tornadoes; hurricanes; volcanic activity; accidents; strikes; lockouts or other labor actions (however, specifically excluding the labor force under the control of the Party experiencing such labor actions). The Parties expressly agree and acknowledge that the list of Force Majeure Events in the foregoing sentence is intended as an inclusive list rather than an exhaustive list. Notwithstanding anything to the contrary, the term Force Majeure Event shall be deem not to include (a) lack of funds or the availability of financing; (b) equipment failure, unless the claiming Party can point to an independent, identifiable Force Majeure Event that caused such failure; (c) acts or omissions of subcontractors (of any tier) except to the extent such subcontractors if they were a party hereto, would be able to claim a Force Majeure Event for the same or (d) changes in law other than changes in the Applicable Laws of the Government of the U.S. Virgin Islands. Upon the occurrence of a Force Majeure Event the Party claiming or experiencing such event shall promptly notify the other Parties and shall comply with the remaining provisions of this Article 20.

Section 20.2. Burden of Proof. In the event that the Parties are unable in good faith to agree that a Force Majeure Event has occurred or whether a Party’s performance is excused, such dispute shall be resolved in accordance with the arbitration dispute resolution procedures set forth in Section 21.4 and, in any proceeding to resolve the dispute, the burden of proof as to whether a Force Majeure Event has occurred and whether performance is excused shall be upon the Party claiming a Force Majeure Event.

Section 20.3. Excused Performance. If a Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, that Party shall be excused from whatever performance is affected by the Force Majeure Event to the extent so affected, subject to and conditioned upon the following:

(A) the non-performing Party, by exercise of due foresight could not reasonably have been expected to avoid, or by the exercise of due diligence could not have been able to overcome, such Force Majeure Event;

(B) the non-performing Party gives the other Party Notice describing the nature, scope and expected duration of the Force Majeure Event, and the steps the affected Party expects to take to both mitigate the Force Majeure Event itself and the effect of such Force Majeure Event on its obligations under this Agreement. Such Notice shall be given promptly

after the occurrence of the Force Majeure Event, and in no event more than seven days after the original notification of the Force Majeure Event given pursuant to Section 20.1;

(C) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;

(D) the non-performing Party shall exercise all reasonable efforts to mitigate or limit damages to itself and to the other Party;

(E) the non-performing Party shall exercise all reasonable efforts to continue to perform its obligations hereunder and to correct or cure the event or condition excusing performance; and

(F) when the non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written Notice to that effect and shall promptly resume performance hereunder.

Section 20.4. Applicability. For the avoidance of doubt and not as a limitation on the foregoing terms and conditions of this Article 20, (i) during the occurrence of a Force Majeure Event, neither Party shall be excused from any performance or payment obligation hereunder to the extent such obligation is not affected by such occurrence and is otherwise due in accordance with the terms and conditions hereof, and (ii) except as provided in (i), the terms and conditions of this Article 21 shall limit or condition all provisions of this Agreement whether or not so expressly stated in this Agreement.

ARTICLE 21 MISCELLANEOUS

Section 21.1. Notices, Requests and Communications. Wherever provision is made for the giving or issuance of any notice, instruction, consent, approval, certificate or determination by any Person (each, a “*Notice*”), unless otherwise specified, such communication shall be in writing and shall not be unreasonably withheld or delayed. All Notices shall be given to a signatory at the physical address or facsimile number specified below or as such signatory hereto shall at any time otherwise specify by like notice to the other signatories hereto. Each such Notice shall be effective (a) if given by facsimile, at the time such appropriate confirmation of receipt is received by the sender (or, if such time is not during regular business hours of a Business Day, at the beginning of the next such Business Day), and (b) if given by mail or courier, upon receipt or refusal of service at the address specified for each signatory below. Notices shall be addressed as follows:

*For the Government:
The Government of the U.S. Virgin Islands
Government House
Charlotte Amalie
St. Thomas, U.S. Virgin Islands
Attention: Office of the Governor*

With a copy to:

*Office of the Attorney General
U.S. Virgin Islands Department of Justice
34-38 Kronprindsens Gade
GERS Building, 2d Floor
St. Thomas, U.S. Virgin Islands 00802*

For ABRVI, Holdings and ABR:

*Atlantic Basin Refining, Inc.
c/o Eckard, P.C.
#1 Company Street
P.O. Box 2484
Christiansted, VI, 00824*

and

*Squire Patton Boggs (US) LLP
200 South Biscayne Boulevard
Suite 4100
Miami, Florida 33131
Attention: Thomas V. Eagan, Esq.*

Section 21.2. Assignment.

21.2 Assignment.

(A) This Agreement shall inure to the benefit of and be binding upon the successors in interest and assigns of the Government and of substantially all of the business of ABRVI but shall not otherwise be assignable except by ABRVI (i) in whole to an Affiliate, and (ii) as provided below. No such assignment by either the Government or ABRVI shall relieve the assignor from any of its obligations hereunder.

(B) Financing Liens.

(1) ABRVI, without approval of the Government, may, by security, charge or otherwise encumber its interest under this Agreement for the purposes of financing the development, construction and/or operation of the Oil Refinery and Related Facilities.

(2) Promptly after making such encumbrance, ABRVI shall notify the Government in writing of the name, address, and telephone and facsimile numbers of each Lender(s) to which ABRVI's interest under this Agreement has been encumbered. Such notice shall include the names of the account managers or other representatives of the Lender(s) to whom all written and telephonic communications may be addressed.

(3) After giving the Government such initial notice, ABRVI shall promptly give the Government notice of any change in the information provided in the initial notice or any revised notice.

(4) If ABRVI encumbers its interest under this Agreement as permitted by this Section 21.1(B), the following provisions shall apply:

(i) The Parties, except as provided by the terms of this Agreement, shall not modify or cancel this Agreement without the prior written consent of the Lender(s);

(ii) the Lender(s) or their designees shall have the right, but not the obligation, to perform any act required to be performed by ABRVI under this Agreement to prevent or cure any Payment Default by ABRVI and such act performed by the Lender(s) or their designees shall be as effective to prevent or cure a Payment Default as if done by ABRVI, provided that, if any such Lender or its designee elects to perform any act required to be performed by ABRVI under this Agreement to prevent or cure a Payment Default by ABRVI, the Government will not be deemed to have waived or relinquished its rights and remedies as provided in this Agreement;

(iii) the Government shall upon written request by ABRVI execute statements certifying that this Agreement is unmodified (or, modified and stating the nature of the modification), in full force and effect and the absence or existence (and the nature thereof) of the Payment Default hereunder by ABRVI known to the Government and documents of consent to such assignment to the encumbrance and any assignment to such Lender(s), in each case as reasonably requested by ABRVI; and

(iv) Upon the receipt of a written request from ABRVI or any Lender, the Government shall execute, or arrange for the delivery of, such certificates, opinions and other documents as may be reasonably necessary in order for ABRVI to consummate any financing or refinancing of the Oil Refinery and Related Facilities or any part thereof and will enter into reasonable agreements with such Lender, which agreements will grant certain rights to the Lender(s) as more fully developed and described in such documents, including (a) this Agreement shall not be terminated (except for termination pursuant to the terms of this Agreement) without the consent of Lender, which consent is not to be unreasonably withheld or delayed, (b) Lender(s) shall be given notice of, and the opportunity to cure as provided in Article 17, any breach or default of this Agreement by ABRVI, (c) if the Lender(s) forecloses, takes a deed in lieu of foreclosure or otherwise exercise its remedies pursuant to any security documents, that the Government shall, at Lender's request, continue to perform all of its obligations hereunder, and Lender(s) or its nominee may perform in the place of ABRVI, and may assign this Agreement to another Person in place of ABRVI, (d) in the event this Agreement is rejected or otherwise terminated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting ABRVI, the Government will enter into a new agreement with the Lender or Lender's designee for the remainder of the term with the same covenants, terms, provisions and limitations as are contained in this

Agreement, (e) that Lender(s) shall have no liability under this Agreement except during the period of such Lender's ownership or operation of the Oil Refinery and Related Facilities, (f) that the Government shall accept performance in accordance with this Agreement by Lender or its nominee, and (g) that the Government shall make representations and warranties to Lender as Lender may reasonably request with regard to (1) the Government's existence, (2) the Government's authority to execute, deliver and perform this Agreement, (3) the binding nature of the document evidencing the Government's consent to assignment to Lender and this Agreement on the Government and (4) receipt of regulatory approvals by the Government with respect to its execution and performance under this Agreement, provided that none of the actions required by the Government in this Section 21.2(B) will be deemed to waive, vary or increase any of the Government's rights and obligations as provided elsewhere in this Agreement.

Section 21.3. Governing Law. This Agreement and the rights and duties of the Parties arising out of this Agreement shall be governed by, and construed in accordance with, the applicable laws of the U.S. Virgin Islands without reference to the conflict of laws rules thereof that would direct the application of the laws of another jurisdiction.

Section 21.4 Dispute Resolution. Any dispute between the Parties as to the interpretation or effect of this Agreement (which shall include for the purposes of this Agreement any subsequent modification thereof unless otherwise expressly provided by such modification) and any controversy between them or claim by either of them, whether sounding in tort or contract, arising out of or relating to this Agreement or the conduct of the Parties, their agents and/ or representatives, may during the Term and within one year thereafter, notwithstanding the Government's status as such and in the same manner as similar actions, suits or proceedings to which the Government is not a Party, be the subject of either or both of the following:

(A) An action, suit or proceeding pursuant to section 2(b) of the Revised Organic Act of the Virgin Islands, brought by a Party, including a proceeding under Chapter 89 of Title 5 of the Virgin Islands Code, in the District Court of the Virgin Islands, or any other court of the U.S. Virgin Islands having original or appellate jurisdiction thereof (or of such portion thereof as may be involved in such action or proceeding), or

(B) If ABRVI and the Government in the person of the Governor of the Virgin Islands or his delegate, so agree in writing, an arbitration proceeding brought by a Party either in accord with the Rules of the American Arbitration Association or as otherwise agreed by the Parties. Judgment upon any award rendered by the arbitrator(s) in any such proceeding may be entered in any court having jurisdiction.

Section 21.5. Entire Agreement; Subsequent Amendments. This Agreement constitutes the entire agreement of the Parties and the provisions herein shall supersede any and all prior agreements or understandings relating to the same subject matter. It is intended that no Party shall have or be deemed to have any obligation under this Agreement except as the same shall be explicitly stated herein. This Agreement may not be amended, modified, or altered except by an instrument in writing signed on behalf of each Party.

Section 21.6. Severability of Provisions. If any clause, sentence, section, or part of this Agreement or the application thereof to anyone in any circumstances, is declared invalid, the application thereof to others, or in other circumstances, and the remainder of this Agreement, shall not be affected thereby. In the event of any such holding and to the extent of any such invalidity, the Government undertakes, insofar as it may lawfully do so, to take such alternative steps (including the consent to or enactment of legislation and the consent to or promulgation of rules and regulations) as may reasonably and in good faith be required to confer upon the Parties benefits comparable in character and substantially equivalent in amount to those intended to be conferred by this Agreement, on terms and conditions not materially more burdensome to either party than those herein provided and without prejudice to any other remedies that may be available to either of them.

Section 21.7. Payment Terms and Interest Calculation. Except as otherwise expressly provided in this Agreement, payment terms and interest calculations shall be as follows:

(A) All payments will be made in US\$ by wire transfer of immediately available funds to an account or accounts designated in writing by the Party entitled to receive payment.

(B) Late payments shall bear interest at a rate of the greater of the U.S. Prime Rate or 8%, compounded daily until paid in full, and shall be increased by a payment penalty of 10% of the original amount owed.

(C) If the payment due date for any payment hereunder (including Losses) falls on a day that is not a Business Day, the payment shall be due on the immediately following Business Day.

(D) A wire transfer or delivery of a check shall not operate to discharge any payment under this Agreement and shall be accepted subject to collection.

Section 21.8. Public Announcements. No Party shall, except as required by Applicable Law or the rules of any recognized national stock exchange, cause any public announcement to be made regarding this Agreement. In the event that a Party shall be required to cause such a public announcement to be made pursuant to any Applicable Law or the rules of any recognized national stock exchange, it shall use commercially reasonable efforts to provide the other Party at least two Business Days prior written notice of such announcement.

Section 21.9. Parties in Interest. Unless specified in this Agreement, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of each Party and its respective legal representatives, successors and assigns. No other Person shall have any right, benefit, priority or interest hereunder or as a result hereof or have standing to require satisfaction of the provisions hereof in accordance with its terms.

Section 21.10. Waiver. By an instrument in writing, any Party may waive compliance by any other Party with respect to any term or provision of this Agreement that such other Party was or is obligated to comply with or perform or any breach hereof. The failure of a Party at any time to strictly enforce any provision of this Agreement shall in no way affect its right thereafter

to require performance thereof, nor shall the waiver of any breach of any provision of this Agreement be taken or held to be a waiver of any succeeding breach of any such provision or as a waiver of the provision itself. Unless otherwise specified herein, the rights and remedies provided in this Agreement are cumulative and the exercise of any one right or remedy by any Party shall not preclude or waive its right to exercise any or all other rights or remedies.

Section 21.11. Performance Extended to Next Business Day. Notwithstanding any deadline for payment, performance, notice, or election under this Agreement, if such deadline falls on a date that is not a Business Day, then the deadline for such payment, performance, notice, or election will be extended to the next succeeding Business Day.

Section 21.12. Negotiation and Preparation Costs. Except as provided in Article 3, each Party shall bear the costs and expenses incurred by it in connection with the negotiation, preparation, and execution of this Agreement and other documents referred to herein.

Section 21.13. Further Assurances. From time to time, each Party agrees to promptly execute and deliver such additional documents, and will provide such additional information and assistance, as any Party may reasonably require to effect the terms of this Agreement.

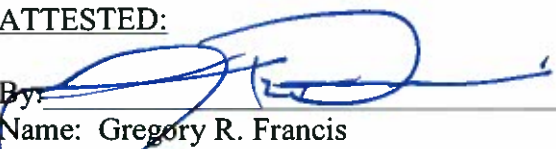
Section 21.14. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute a single agreement to which no signatory hereto shall be bound until all signatories hereto have executed a counterpart. Signatures transmitted by facsimile or as emailed PDF copies shall be binding as originals so long as the Agreement is transmitted in its entirety, and each signatory hereto hereby waives any defenses to the enforcement of the terms of this Agreement sent by facsimile or emailed PDF based upon the manner of transmission or form of signature (electronic, facsimile or "ink original").

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

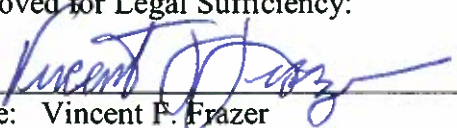
GOVERNMENT OF THE U.S. VIRGIN ISLANDS

By: 
Name: John P. De Jongh, Jr.
Title: Governor of the U.S. Virgin Islands

ATTESTED:

By: 
Name: Gregory R. Francis
Title: Lieutenant Governor of the U.S. Virgin Islands


Approved for Legal Sufficiency:

By: 
Name: Vincent P. Frazer
Title: Attorney General of the U.S. Virgin Islands

ATLANTIC BASIN REFINING HOLDINGS, LLC, a U.S. Virgin Islands limited liability company



Witnesses:





By: 
Name: Robert B. Moore, Jr.
Title: Executive Managing Director

ATLANTIC BASIN REFINING, INC., a U.S. Virgin Islands corporation

Witnesses:

By: 
Name: John A. Thompson
Title: Executive Managing Director

The undersigned does hereby join in and consent to the foregoing Operating Agreement and agrees to be bound by and to comply with all of its obligations set forth therein.

Accepted and agreed this ____ day of _____, 2014.

HOVENSA L.L.C., a U.S. Virgin Islands
limited liability company

Witnesses:

By: _____
Name: _____
Title: _____



MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (the "Mortgage") is made as of this ____ day of _____, 2014, by HOVENSA, L.L.C., a U.S. Virgin Islands limited liability company, (hereinafter referred to as either "Hovensa" or the "Mortgagor") with mailing address at #1 Company Street, P.O. Box 2484, Christiansted, Virgin Islands 00824, with a copy to Squire Patton Boggs (US) LLP, 200 South Biscayne Boulevard, Suite 4100, Miami, Florida 33131, Attention: Thomas V. Eagan, Esq. to THE GOVERNMENT OF THE VIRGIN ISLANDS, (hereinafter referred to as either the "Government" or the "Mortgagee") with a mailing address at The Government of the U.S. Virgin Islands, Government House, Charlotte Amalie, St. Thomas, U.S. Virgin Islands, Attention: Office of the Governor with a copy to Office of the Attorney General, U.S. Virgin Islands Department of Justice, 34-38 Kronprindsens Gade, GERS Building, 2d Floor, St. Thomas, U.S. Virgin Islands 00802.

WITNESSETH

1. WHEREAS, the Government is party to a Concession Agreement by and among the Government, Hess Oil Virgin Islands Corp. ("Hovic"), PDVSA V.L. Inc. ("PDVSA"), and Hovensa, for the construction, operation, and maintenance of an oil refinery and related facilities located at Limetree Bay, St. Croix, U.S. Virgin Islands (as amended, the "Concession Agreement"); and

2. WHEREAS, under the Concession Agreement, Hovic, PDVSA, and Hovensa (and their predecessors in interest), as inducement to construct, operate, and maintain the refinery and related facilities, and in order to promote the public interest in the economic growth and development of the U.S. Virgin Islands, were granted rights to conduct the business of the Oil Refinery and Related Facilities as more particularly described in Exhibit A attached hereto and made a part hereto, and were exempted from certain taxes, duties, and other fees; and

3. WHEREAS, under the Concession Agreement, as inducement for the Government to permit the construction and operation of the Oil Refinery and Related Facilities, Hovic, and Hovensa (and their predecessors in interest) collectively granted the Government economic benefits in the form of annual fixed payments, fuel oil subsidies, corporate taxes, and other benefits; and

4. WHEREAS, on January 18, 2012, Hovensa announced its intention to cease refining operations at the Oil Refinery and Related Facilities, and thereafter ceased such operations on or about February 16, 2012; and

5. WHEREAS, the Government, Hovensa, Hovic and PDVSA entered into that certain Fourth Amendment Agreement as of April 3, 2013 (the "Fourth Amendment"), which was approved by the Legislature on November 4, 2013, which provides, among other things, for Hovic and PDVSA to undertake a bona fide process to facilitate the sale, directly or indirectly, of the Oil Refinery and Related Facilities on an arm's length basis (the "Sales Process"); and

6. WHEREAS, the Sales Process resulted in Hovic and PDVSA having reached an understanding with Atlantic Basin Refining Holdings, LLC, a limited liability company existing under the laws of the U.S. Virgin Islands ("Holdings") whereby Hovic and PDVSA agree to

transfer the membership interests of Hovensa to Holdings, whereby Holdings acquired all of the membership interests of Hovensa from Hovensa Holdings, pursuant to that certain Purchase and Sale Agreement by and among Atlantic Basing Refining, Inc., a US Virgin Islands corporation ("ABR"), Holdings, Hovensa, Hovensa Holdings, LLC, a U.S. Virgin Islands limited liability company ("Hovensa Holdings"), and Hovic, dated as of the ____ day of _____, 2014 (the "Purchase Agreement"), subject to the Legislature approving that certain Operating Agreement entered into by and among the Government, Holdings, ABR, and Hovensa, dated as of the ____ day of _____, 2014 (the "Operating Agreement"); and

7. WHEREAS, the Operating Agreement provides that Hovensa will refurbish and operate the Oil Refinery and Related Facilities in accordance with the terms and conditions set forth in the Operating Agreement, and that Hovensa is to make certain payments to the Government pursuant to Article 9 and Article 17 of the Operating Agreement (the "Payment Obligations") and Hovensa shall secure the Payment Obligations by granting to the Government this Mortgage on the Oil Refinery and Related Facilities, and the improvements constructed thereon, including the fixtures attached thereto, as well as the personal property required to operate the Oil Refinery and Related Facilities (specifically excluding the crude oil and other petroleum products and excluding all of Hovensa's accounts and receivables of any kind), and the notice of such lien on said personal property shall be reflected in a UCC-1 Financing Statement, fixture filing, or other similar document reasonably necessary to give notice (collectively, the "Security Documents") and such security interest is hereinafter referred to as the "Subordinate Security Interest", provided that the Subordinate Security Interest shall only be enforceable on the terms and conditions provided in the Security Documents and only to the extent there are any Payment Obligations which are due and payable at the time of any such enforcement, and provided that:

(i) the lien of the Security Documents, and the payment and enforcement thereof, shall be subordinate and junior in all respects to, in each case whether presently existing or from time to time hereafter created or incurred:

(w) any and all financing in order to provide funding for the aggregate amount of the Restart Cost Estimate, as more particularly described in Section 4.2(A) of the Operating Agreement (the "Financing");

(x) any and all financing as is required in order to make the required balloon payment under the Purchase Agreement;

(y) any and all financing of the expansion of the Oil Refinery and Related Facilities and/or any all financing in connection with securing the Financial Assurance;

(the foregoing financings are collectively referred to as the "Senior Obligations"); and

(z) the right of Hovensa to lease or re-lease the storage tanks located on the Oil Refinery or Related Facilities to third Persons for the purpose of providing storage services at the Oil Refinery and Related Facilities, provided that any

such lease of storage tanks shall be on usual and customary terms (and all documents and instruments given to secure all or any portion of the Senior Obligations and/or the rights referred to in this subclause (z), being referred to herein as the “Senior Security Documents”), and

the Government expressly undertakes and agrees that, until such time as the Senior Obligations, together with all accrued and unpaid interest thereon and all other sums due and owing in respect thereof, shall have been indefeasibly paid in full (such date being referred to herein as the “Discharge Date”), the Government shall not bring any legal action to enforce the Security Documents,

(i) prior to the Discharge Date, the Government shall not exercise any of its remedies under the Security Documents,

(ii) in the event that any lender granting any Senior Obligations requires an intercreditor agreement to confirm the subordination of the Security Documents and the agreement of the parties that the Government shall not enforce any of the remedies allowed pursuant the Security Documents or the Operating Agreement, prior to the Discharge Date, and the Government shall execute and deliver to such lender such intercreditor agreement,

(iii) in the event that any tenant under an oil tank lease requires a subordination and non-disturbance agreement (“SNDA”) to confirm the subordination of the Security Documents to such lease, the Government shall enter into such SNDA and deliver such SNDA to said tenant; and

(iv) in the event of the refinancing of any of the Senior Obligations described above, the Subordinate Security Interest shall be subordinate to such refinancing provided that the amount of each refinancing shall not exceed the current unpaid principal balance of such refinancing, and the Government shall enter into such intercreditor agreement to confirm the subordination of the refinancing and the agreement of the parties that the Government shall not enforce any of its remedies allowed pursuant to the Security Documents prior to the Discharge Date,

8. WHEREAS, notwithstanding the foregoing restrictions on the Government bringing any legal action to enforce the Security Documents, in the event that two (2) years after the Closing Date no Senior Obligations have been recorded with the Recorder of Deeds, St. Croix, U.S. Virgin Islands, then the Government may thereafter bring legal action to enforce the Security Documents; and

9. WHEREAS, if the Mortgagor shall pay in full the Payment Obligations and shall comply with all of the terms hereof, then the Security Documents shall be null and void and of no further force and effect and shall be released by the Mortgagee upon five business days of the Mortgagor’s written request, with the Mortgagee to provide a release of the Oil Refinery and Related Facilities from the lien of the Security Documents, and the Mortgagor to be responsible for the recordation of such release and the payment of any recording and filing costs with respect

thereto; and all money at the time held by the Mortgagee as part of the Oil Refinery and Related Facilities which is in excess of any amounts owed with respect to the Payment Obligations or the Security Documents shall be paid over to the Mortgagor or as the Mortgagor may direct; and

10. WHEREAS, notwithstanding any agreement or declaration that certain articles of personal property form a part of the real property covered by the Security Documents and are appropriated to its use, to the extent that such agreement or declaration may be ineffective and that any of said articles may constitute goods or other items of personal property, the Security Documents shall constitute a security agreement and the Mortgagor shall grant to the Mortgagee a security interest in such goods or other items of personal property required to operate the Oil Refinery and Related Facilities (specifically excluding the crude oil and other petroleum products and excluding all of Hovensa's accounts and receivables of any kind) as collateral for the benefit of the Mortgagee, all in accordance with the provisions of Article 9 of the Uniform Commercial Code of the U.S. Virgin Islands, 11A V.I.C. §§ 9-101 et seq.

NOW, THEREFORE, in consideration of Ten (\$10.00) Dollars and other good and valuable consideration, the receipt and adequacy is hereby acknowledges, the Mortgagor, for the Mortgagor and Mortgagor's successors and assigns, hereby covenants and agrees with the Mortgagee, and the Mortgagee, upon accepting the Security Documents and recording it with the Recorder of Deeds, St. Croix, U.S. Virgin Islands, agrees as follows:

1. GRANT OF SECURITY INTERESTS AND LIENS. In order to secure the payment and performance of the Payment Obligations, the Mortgagor does hereby grant, convey and give to the Mortgagee a mortgage in and to the Oil Refinery and Related Facilities, and the improvements constructed thereon, including the fixtures attached thereto, as well as the personal property required to operate the Oil Refinery and Related Facilities (specifically excluding the crude oil and other petroleum products and excluding all of Hovensa's accounts and receivables of any kind), described as follows:

(a) Personal Property Collateral. All of Mortgagor's right, title and interest in, to and under all personal property of Mortgagor required to operate the Oil Refinery and Related Facilities, including but not limited to the following:

(i) all the appliances, fixtures, equipment, building and refinery parts and materials, if any, now or hereafter owned by the Mortgagor and located on the premises described in Section 1(B)(i) below, whether or not incorporated in the improvements constructed thereon, and necessary to the use and occupancy thereof, in each case whether now owned or existing or hereafter acquired or arising and wherever located; provided that, the personal property collateral granted hereby shall exclude (x) all crude oil and other petroleum products and (y) all of Mortgagor's Accounts.

(b) Real Property Collateral.

(i) Mortgagor's fee simple title to the real property described on **Exhibit A** attached hereto and made a part hereof, together with all improvements, estates, title interests, title

reversion rights, remainders, profits, rights of way or uses, additions, accretions, servitudes, privileges, water rights, water courses, alleys, passages, ways, licenses, tenements, franchises, hereditaments, appurtenances, easements, rights-of-way, rights of ingress or egress, parking rights, mineral interests and other rights, now or hereafter owned by Mortgagor and belonging or appertaining to the said land or improvements together with all estate, right, title and interest of the Mortgagor in and to all streets, roads and public places, opened or proposed, now or hereafter adjoining or appertaining to the said land or improvements, along with all options to purchase the said land or improvements, or any portion thereof or interest therein, and any greater estate in the said land or improvements, all modifications, additions, restorations and replacements of such improvements:

(ii) To the extent not included in the collateral described in Section 1(a)(i) above, all the appliances, fixtures, equipment, building and refinery parts and materials, if any, now or hereafter owned by the Mortgagor and located on the premises described above, whether or not incorporated in the improvements constructed thereon, and necessary to the use and occupancy thereof; provided that, no lien is granted in crude oil and other petroleum products:

(iii) all awards and other payments in respect of any taking; and

(iv) all insurance proceeds (as described in Section 6 herein below).

Notwithstanding anything in this Mortgage to the contrary, the Mortgagor may conduct the business of operating and maintaining the Oil Refinery and Related Facilities, the deconstruction and remediation of the Refinery or the deconstruction and remediation of the Terminal (individually or collectively, the "Business Activity"), and in the course of conducting the Business Activity, may, until such time as the Mortgagee commences a foreclosure action, and/or enforces any of its rights to enforce the lien or security interest granted, under this Mortgage or otherwise under any of the other Security Documents, and only so long as any such action may be pending, sell and/or replace any of the personal property described above as collateral, free and clear of the lien or security interest of this Mortgage, and Mortgagor shall not be obligated to account to the Mortgagee for the proceeds of any such sale prior to the time that the Mortgagee commences a foreclosure action to foreclose the Security Documents. Upon request of the Mortgagor, the Mortgagee shall within a reasonable period of time execute such documents as the Mortgagor may reasonably request evidencing the release of the lien created hereby upon the property of the Mortgagor which is sold, transferred or otherwise disposed of as permitted by, and in accordance with, the foregoing provisions (as referred to herein, a "Permitted Release"). As a condition to a Permitted Release, the Mortgagor shall deliver to the Mortgagee a certificate executed by an Authorized Officer of the Mortgagor stating that the sale, transfer or other disposition of the applicable personal property, and the related release of such personal property from the lien created hereunder is permitted pursuant to the terms and conditions hereof. Upon receipt by the Mortgagee of such officer's certificate, the Mortgagee shall, at the reasonable expense of the Mortgagor, promptly execute and deliver to the Mortgagor (without recourse and without representation or warranty) a proper instrument or instruments evidencing the Permitted Release; provided that for the avoidance of doubt, upon satisfaction of the foregoing conditions precedent to effect a Permitted Release, the lien on such property created hereunder and under any of the other Security Documents shall thereupon be released

whether or not the Mortgagee executes and delivers to the Mortgagor any instrument or instruments evidencing such Permitted Release.

2. WHEREAS CLAUSES: AUTHORITY: TITLE. The above-referenced WHEREAS clauses are true and correct and are hereby incorporated by reference and made a part hereof. The Mortgagor represents and warrants that it has good and lawful right and authority to execute the Security Documents and to mortgage the Oil Refinery and Related Facilities, and that the Mortgagor is well seized and possessed of fee simple title to the Oil Refinery and Related Facilities, which the Mortgagor represents and warrants is subject to no encumbrances other than (a) any matters set forth in that certain Title Commitment underwritten by First American Title Insurance Company regarding the Oil Refinery and Related Facilities, which title matters are acceptable to Mortgagee as of the date hereof, (b) the liens and interests of the Security Documents, or (c) any other encumbrance that the Mortgagee shall expressly approve in its sole and absolute discretion (the "Permitted Encumbrances").

3. RECORDATION: PRESERVATION OF LIEN. The Mortgagor will at all times cause the Security Documents and any supplements hereto, and such other instruments as may be required by applicable law, to be recorded, registered and filed and to be kept recorded, registered and filed in such manner and in such places as may be required or warranted under applicable law as reasonably determined by the Mortgagee. The parties acknowledge that because the Security Documents is in favor of the Government of the Virgin Islands, it is exempt from recording fees pursuant to the provisions of 28 V.I.C. § 134(a)(3) and that the release of mortgage will also be exempt from recording fees.

4. PAYMENT OF TAXES, ETC. Subject to the exemptions and other provisions set forth in the Operating Agreement and to Section 5 relating to contests, the Mortgagor will pay or cause to be paid all taxes, assessments (including, without limitation, all assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof), water, sewer or other rents, rates and charges, excises, levies, license fees, permit fees, inspection fees and other authorization fees and other charges, in each case whether general or special, ordinary or extraordinary, foreseen or unforeseen, of every character (including all interest and penalties thereon), which at any time may be assessed, levied, confirmed or imposed on or in respect of or be a lien upon (a) the Oil Refinery and Related Facilities or any part thereof or any rent therefrom or any estate, right or interest therein, or (b) any occupancy, use or possession of or activity conducted on the Oil Refinery and Related Facilities or any part thereof. Such payments will be made before any fine, penalty, interest or cost may be added for nonpayment, and the Mortgagor will furnish to the Mortgagee, upon request, official receipts or other satisfactory proof evidencing such payments.

5. PERMITTED CONTESTS. The Mortgagor or a tenant under any lease, at its expense, may contest (after prior written notice to the Mortgagee) by appropriate legal proceedings conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any mechanics' lien, construction lien, or federal taxes or other charges enumerated in Section 3 or lien therefor; provided, that (a) in the case of unpaid mechanics' liens, construction liens, or federal taxes or other charges enumerated in Section 3 or liens therefor for which a contest is permitted hereunder, such proceedings shall suspend the collection thereof from the Mortgagor, the Mortgagee and the Oil Refinery and Related Facilities; (b) neither the Oil Refinery and

Related Facilities nor any material part thereof or interest therein would be in any danger of being sold, forfeited or lost; and (c) neither the Mortgagor nor the Mortgagee would be in any danger of any additional civil or any criminal liability for failure to comply therewith (except interest, or penalties in the nature of interest, and attorney's fees or court costs) and the Oil Refinery and Related Facilities would not be subject to the imposition of any additional lien as a result of such failure; and (d) Mortgagor provides assurances satisfactory to Mortgagee (including the establishment of an appropriate reserve account at the depository institution of Mortgagee's choosing and subject to a control agreement in Mortgagee's favor) of its ability to pay such amounts or comply with such payment in the event Mortgagor is unsuccessful in its contest. Each such contest shall be promptly prosecuted to final conclusion or settlement, and Mortgagor shall indemnify and save Mortgagee harmless against all claims in connection therewith. Promptly after the settlement or conclusion of such contest or action, Mortgagor shall comply and/or pay and discharge the amounts which shall be levied, assessed or imposed or determined to be payable, together with all penalties, fines, interests, costs and expenses in connection therewith.

6. INSURANCE.

6.1 Risks to be Insured. The Mortgagor, at the Mortgagor's expense, shall obtain and maintain the insurance coverages described in the Operating Agreement.

6.2 Policy Provisions. Mortgagor shall cause the Mortgagee to be named as a Mortgagee on the property insurance and as an Additional Insured on the liability insurance. All insurance maintained by or caused to be maintained by the Mortgagor pursuant to Subsection 5.1 hereof shall provide that the underwriter provide notice of cancellation least thirty (30) days prior to such cancellation.

6.3 Delivery of Policies. Upon the execution of the Security Documents and, thereafter, not less than fifteen (15) days prior to the expiration date of any policy delivered pursuant to this Subsection 5.3, the Mortgagor will deliver or cause to be delivered to the Mortgagee the certificates of insurance as set forth above, along with a duplicate of any policy or renewal policy, as the case may be.

7. EVENTS OF DEFAULT: DECLARATION OF PAYMENT OBLIGATIONS. If one or more of the following events (each, an "Event of Default") shall occur:

(a) if the Mortgagor shall fail to pay outstanding Payment Obligations when due, and the Mortgagee is unable to secure such payment after exercising its rights under the Financial Assurance documentation described in the Operating Agreement, then the Mortgagee shall have the right to give written notice to Mortgagor of such failure to pay, and Mortgagor shall be in default hereunder in the event that such payment is not cured by the Mortgagor within 90 days of such written notice; or

(b) if the Mortgagor shall make an assignment for the benefit of creditors, or if the Mortgagor shall admit in writing its inability to pay its debts as they become due, or shall file a petition in bankruptcy, or shall be adjudicated a bankrupt or insolvent, or shall

file a petition seeking any arrangement, composition, readjustment or similar relief under any present or future statute, law or regulation, or shall file an answer admitting or not contesting the material allegations of a petition filed against them in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee or receiver; or

(c) if, within sixty (60) days after the commencement of any proceeding against the Mortgagor which seeks any arrangement, composition or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed, or if, within sixty (60) days after the appointment of any trustee or receiver of the Mortgagor, without the consent or acquiescence of the Mortgagor, such appointment shall not have been vacated.

THEN and in any such event (regardless of the pendency of any proceeding which has or might have the effect of preventing the Mortgagor from complying with the terms of the Mortgage), the Mortgagee may at any time, by written notice to the Mortgagor, declare the outstanding Payment Obligations to be due and payable, pursuant to the provisions of the Operating Agreement.

8. FORECLOSURE.

8.1 Legal Proceedings. If an Event of Default shall have occurred and be continuing, the Mortgagee may proceed to foreclose the Security Documents; provided, however, the Government shall not bring any legal action to enforce the Security Documents, as provided in WHEREAS clause 7 above, except as otherwise provided in WHEREAS clause 8 above, and pursuant to the provisions of the Operating Agreement.

8.2 Cost of Enforcement. The Mortgagor shall pay on demand all costs and expenses (including, without limitation, attorneys' fees and expenses) incurred by or on behalf of the Mortgagee in enforcing the Security Documents or any of the other documents executed in connection herewith, or occasioned by any default hereunder or thereunder. Such costs and expenses shall constitute indebtedness secured by this Mortgage.

8.3 No Waiver. Neither failure nor any delay on the part of the Mortgagee to exercise any right, remedy, power or privilege provided for herein or by statute or at law or in equity or otherwise shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

9. PURCHASE OF PROPERTY BY THE MORTGAGEE. The Mortgagee may be a purchaser of the Oil Refinery and Related Facilities or of any part thereof or of any interest therein at any foreclosure sale thereof and may apply against the bid price, the outstanding Payment Obligations owing to the Mortgagee. The Mortgagee shall, upon any such purchase, acquire good title to the properties so purchased, free of the lien of the Security Documents and free of all liens and encumbrances subordinate to the Mortgage.

10. RECEIPT A SUFFICIENT DISCHARGE TO PURCHASER. Upon any sale of the Oil Refinery and Related Facilities or any part thereof or any interest therein pursuant to foreclosure, the receipt of the officer making the sale under judicial proceedings shall be sufficient discharge to the purchaser for the purchase money, and such purchaser shall not be obliged to see to the application thereof.

11. NO WAIVER, ETC. No failure by the Mortgagee to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a breach thereof, shall constitute a waiver of any such term or any such breach. No waiver of any breach shall affect or alter this Mortgage, which shall continue in full force and effect with respect to any other then existing or subsequent breach.

12. PROVISIONS SUBJECT TO APPLICABLE LAW. All rights, power and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render the Security Documents invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any term of the Security Documents shall be held to be invalid, illegal or unenforceable, the validity of other terms of the Security Documents shall in no way be affected thereby.

13. NOTICES. All notices and other communications hereunder shall be in writing and shall be deemed to have been given when delivered or mailed by first class registered or certified mail, postage prepaid, to the addresses set forth above in the opening paragraph.

14. SUBORDINATION; ENFORCEMENT.

14.1 The lien of the Security Documents, and the payment and enforcement thereof, shall be subordinate and junior in all respects to, in each case whether presently existing or from time to time hereafter created or incurred:

(i) any and all financing in order to provide funding for the aggregate amount of the Restart Cost Estimate, as more particularly described in Section 4.2(A) of the Operating Agreement (the "Financing");

(ii) any and all financing as is required in order to make the required balloon payment under the Purchase Agreement;

(iii) any and all financing of the expansion of the Oil Refinery and Related Facilities and/or any all financing in connection with securing the Financial Assurance;

(the foregoing financings are collectively referred to as the "Senior Obligations"); and

(iv) the right of Mortgagor to lease or re-lease the storage tanks located on the Oil Refinery or Related Facilities to third Persons for the purpose of providing storage services at the Oil Refinery and Related Facilities, provided that any such lease of storage tanks

shall be on usual and customary terms (all documents and instruments given to secure all or any portion of the Senior Obligations and/or the rights referred to in this subclause (iv), being referred to herein as the “Senior Security Documents”).

14.2 The Mortgagee expressly undertakes and agrees that, until such time as the Senior Obligations, together with all accrued and unpaid interest thereon and all other sums due and owing in respect thereof, shall have been indefeasibly paid in full (such date being referred to herein as the “Discharge Date”), the Mortgagee shall not bring any legal action to enforce the Security Documents. Notwithstanding the foregoing restrictions on the Government bringing any legal action to enforce the Security Documents, in the event that two (2) years after the Closing Date no Senior Obligations have been recorded with the Recorder of Deeds, St. Croix, U.S. Virgin Islands, then the Government may thereafter bring legal action to enforce the Security Documents.

14.3 In the event that any lender granting any Senior Obligations requires an intercreditor agreement to confirm the subordination of the Security Documents and the agreement of the parties that the Mortgagee shall not enforce any of the remedies allowed pursuant the Security Documents or the Operating Agreement, prior to the Discharge Date, and the Mortgagee shall execute and deliver to such lender such intercreditor agreement.

14.4 In the event that any tenant under an oil tank lease requires a subordination and non-disturbance agreement (“SNDA”) to confirm the subordination of the Security Documents to such lease, the Mortgagee shall enter into such SNDA and deliver such SNDA to said tenant.

14.5 In the event of the refinancing of any of the Senior Obligations described above, the Subordinate Security Interest shall be subordinate to such refinancing provided that the amount of each refinancing shall not exceed the current unpaid principal balance of such refinancing, and the Mortgagee shall enter into such intercreditor agreement to confirm the subordination of the refinancing and the agreement of the parties that the Mortgagee shall not enforce any of its remedies allowed pursuant to the Security Documents prior to the Discharge Date.

15. MISCELLANEOUS. The Security Documents may be changed, waived, discharged, or terminated only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge, or termination is sought. The headings in the Security Documents are for convenience of reference only and shall not limit or otherwise affect the meaning hereof. The Security Documents shall be governed by and construed in accordance with the laws of the United States Virgin Islands and the Mortgagor consents to venue and jurisdiction in the Virgin Islands.

The Mortgagor has caused the Security Documents to be executed by its duly authorized officer effective on the date first above written.

Witnesses:

HOVENSA, L.L.C., a U.S. Virgin Islands
limited liability company

By: _____

_____)
_____)
_____)

The foregoing instrument was acknowledged before me this ____ day of _____ 2014 by _____ as _____ of Hovensa, LLC on behalf of said limited liability company.

NOTARY PUBLIC

EXHIBIT B-1

RELEASE AGREEMENT

This RELEASE AGREEMENT, dated as of _____, 2014 (this "**Agreement**"), by and among Hess Oil Virgin Islands Corp., a corporation organized under the Laws of the U.S. Virgin Islands ("**HOVIC**"), the Government of the U.S. Virgin Islands (the "**USVI Government**"), the Virgin Islands Port Authority (the "**USVI Port Authority**"), HOVENSA, L.L.C., a limited liability company organized under the Laws of the U.S. Virgin Islands ("**Hovensa**"), ATLANTIC BASIN REFINING, INC., a corporation organized under the Laws of the U.S. Virgin Islands ("**Parent**"), and ATLANTIC BASIN REFINING HOLDINGS, LLC, a limited liability company under the Laws of the U.S. Virgin Islands ("**Purchaser**"). The capitalized terms used in this Agreement and not otherwise defined herein shall have the respective meanings given to such terms in the Purchase and Sale Agreement (as such term is defined below).

WHEREAS, the USVI Government, the USVI Port Authority and Hovensa (as assignee of HOVIC pursuant to the 1998 Letter Agreement (as defined below)) are parties to that certain Contract, dated as of September 22, 1976 (as amended, supplemented or modified from time to time, the "**1976 Contract**"), which was approved by the Legislature of the Virgin Islands on September 29, 1976, which 1976 Contract memorialized the agreements between HOVIC and the USVI Government with respect to HOVIC's agreement to construct a container port on the south shore of St. Croix, U.S. Virgin Islands;

WHEREAS, among the documents exchanged between the USVI Government and HOVIC in connection with the 1976 Contract was that certain Lease, dated as of October 16, 1976 (as amended, supplemented or modified from time to time, the "**Submerged Land Lease**"), by and between the USVI Government and Hovensa (as assignee of HOVIC pursuant to the 1998 Letter Agreement), pursuant to which the USVI Government leases certain reclaimed submerged lands specified therein to Hovensa;

WHEREAS, HOVIC and the USVI Government are parties to that certain letter agreement, dated as of October 14, 1998 (as amended, supplemented or modified from time to time, the "**1998 Letter Agreement**"), pursuant to which the USVI Government consented to (a) the assignment by HOVIC to Hovensa of the Submerged Land Lease, provided that HOVIC agreed to remain the primary obligor thereunder and (b) the assignment and delegation by HOVIC to Hovensa of the rights and obligations of HOVIC under the 1976 Contract;

WHEREAS, Parent, Purchaser, Hovensa Holdings, L.L.C. ("**Seller**"), Hovensa and HOVIC have entered into that certain Purchase and Sale Agreement, dated as of _____, 2014 (as it may be amended, supplemented or modified from time to time, the "**Purchase and Sale Agreement**"), pursuant to which Purchaser has agreed to purchase from Seller, and Seller has agreed to sell to Purchaser, all of the issued and outstanding limited liability company interests in Hovensa on the date hereof, subject to the terms and conditions set forth therein;

WHEREAS, pursuant to Section 8.3(e) of the Purchase and Sale Agreement, the delivery of this Agreement is a condition precedent to the Closing and is an inducement to HOVIC entering into the Purchase and Sale Agreement; and

WHEREAS, effective upon the Closing, each of the USVI Government, the USVI Port Authority (with respect to the 1976 Contract only) and Hovensa desire to fully release HOVIC and its Affiliates from all rights, liabilities and obligations under the 1976 Contract, the Submerged Land Lease and the 1998 Letter Agreement, subject to the terms and provisions of this Agreement.

NOW, THEREFORE, for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and intending to be legally bound hereby, the parties hereto agree as follows:

1. Effective upon the Closing, each of the USVI Government, the USVI Port Authority (with respect to the 1976 Contract only) and Hovensa, on behalf of itself and its respective managers, directors, officers, equity holders, Representatives, direct and indirect parent companies, Subsidiaries and Affiliates, and each of their respective successors and assigns, hereby forever waives, releases and discharges, to the fullest extent permitted by Law, Hovensa's Affiliates (including without limitation HOVIC) other than Hovensa and its Subsidiaries, and their respective past, present or future managers, directors, officers, equity holders, Representatives, direct and indirect parent companies, Subsidiaries and Affiliates (other than Hovensa and its Subsidiaries), from and against any and all actions, causes of action, claims, demands, damages, judgments, Liabilities, debts, dues and suits of every kind, nature and description whatsoever, whether now known or unknown, vested or contingent, suspected or unsuspected, concealed or hidden, now existing or hereafter arising directly or indirectly under each of (a) the 1976 Contract, (b) the Submerged Land Lease, (c) the 1998 Letter Agreement and (d) Permits Nos. 3, 23 and 52 issued by the United States Department of the Interior, as amended, and Submerged Lands Permit No. 167 issued by the Department of Conservation and Cultural Affairs of the Government of the Virgin Islands, as amended.
2. Effective upon the Closing, the parties hereto acknowledge and agree that HOVIC has no obligations under, and shall not be a primary obligor under, any of (a) the 1976 Contract, (b) the Submerged Land Lease, (c) the 1998 Letter Agreement or (d) Permits Nos. 3, 23 and 52 issued by the United States Department of the Interior, as amended, and Submerged Lands Permit No. 167 issued by the Department of Conservation and Cultural Affairs of the Government of the Virgin Islands, as amended, notwithstanding HOVIC's agreement in the 1998 Letter Agreement to remain the primary obligor under the Submerged Land Lease as a condition to assignment and notwithstanding Section 6 of the Submerged Land Lease.
3. Each of Purchaser and Parent hereby expressly acknowledges, accepts and agrees on its own behalf and on behalf of Hovensa to the releases which are being granted pursuant to Section 1 of this Agreement.

4. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.
5. This Agreement and the Purchase and Sale Agreement contain the entire understanding between the parties hereto with respect to the subject matter hereof and supersedes any and all prior agreements, representations, understandings and arrangements, whether written or oral.
6. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed an original, but all of the counterparts together constitute the same instrument. This Agreement may be executed by facsimile or scanned signature.
7. Except as otherwise provided herein, all notices, requests, claims, demands, waivers and other communications hereunder shall be in writing and shall be delivered by hand or overnight courier service or sent by email transmission (in the case of email transmission, with copies by overnight courier service) to the respective parties as follows (or, in each case, as otherwise notified by any of the parties hereto) and shall be effective and deemed to have been given (a) immediately when sent by email between 9:00 A.M. and 6:00 P.M. (New York City time) on any Business Day (and when sent outside of such hours, at 9:00 A.M. (New York City time) on the next Business Day) and (b) when received if delivered by hand or overnight courier service or certified or registered mail on any Business Day:

If to HOVIC, to:

c/o Hess Corporation
1185 Avenue of the Americas, Floor 40
New York, New York 10024
Attention: Timothy B. Goodell, Senior Vice President and General Counsel
Fax: (212) 536-8241
email: tgoodell@hess.com

with a copy (which shall not constitute notice or service of process) to:

White & Case LLP
1155 Avenue of the Americas
New York, New York 10036
Attention: John M. Reiss
Gregory Pryor
Fax: (212) 354-8113
email: jreiss@whitecase.com
gpryor@whitecase.com;

If to Hovenssa, to:

If prior to the Closing, c/o Hovic at the address set forth above

If after the Closing, c/o Purchaser and Parent at the addresses set forth below:

If to Purchaser or to Parent, to:

c/o Eckard, P.C.
Atlantic Basin Refining, Inc.
#1 Company Street
P.O. Box 2484
Christiansted, USVI 00824
Attention: Mark Eckard:

with a copy (which shall not constitute notice or service of process) to:

Squire Patton Boggs (US) LLP
200 South Biscayne Boulevard
Suite 4100
Miami, Florida 33131
Attention: Thomas V. Eagan:

If to the USVI Government or USVI Port Authority, to:

c/o The Government of the U.S. Virgin Islands
Government House
Charlotte Amalie
St. Thomas, U.S. Virgin Islands
Attention: Office of the Governor;

with a copy (which shall not constitute notice or service of process) to:

Office of the Attorney General
U.S. Virgin Islands Department of Justice
34-38 Kronprindsens Gade
GERS Building, 2d Floor
St. Thomas, U.S. Virgin Islands 00802:

Notices sent by multiple means, each of which is in compliance with the provisions of this Agreement will be deemed to have been received at the earliest time provided for by this Agreement.

8. This Agreement may not be amended except by a written instrument executed by all parties to this Agreement.
9. THIS AGREEMENT AND THE LEGAL RELATIONS BETWEEN THE PARTIES HERETO SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE

WITH THE LAWS OF THE TERRITORY OF THE U.S. VIRGIN ISLANDS, WITHOUT REGARD TO THE CONFLICT OF LAWS RULES THEREOF. ALL DISPUTES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL BE FINALLY SETTLED UNDER THE RULES OF ARBITRATION OF THE INTERNATIONAL CHAMBER OF COMMERCE BY THREE ARBITRATORS APPOINTED IN ACCORDANCE WITH THE SAID RULES. THE PLACE OF ARBITRATION SHALL BE LOCATED IN THE U.S. VIRGIN ISLANDS. THE LANGUAGE OF THE ARBITRATION SHALL BE ENGLISH.

10. ANY AWARD OF THE ARBITRAL TRIBUNAL SHALL BE FINAL AND BINDING ON THE PARTIES HERETO. THE PARTIES HERETO UNDERTAKE TO COMPLY FULLY AND PROMPTLY WITH ANY SUCH AWARD WITHOUT DELAY AND SHALL BE DEEMED TO HAVE WAIVED THEIR RIGHT TO ANY FORM OF RECOURSE INsofar AS SUCH WAIVER CAN VALIDLY BE MADE. FOR THE PURPOSE OF RECOGNITION OR ENFORCEMENT OF ANY SUCH AWARD, THE PARTIES HERETO CONSENT AND AGREE TO SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF THE TERRITORIAL AND FEDERAL COURTS LOCATED IN THE U.S. VIRGIN ISLANDS. EACH OF THE PARTIES HERETO HEREBY WAIVES AND AGREES NOT TO ASSERT IN ANY RECOGNITION OR ENFORCEMENT PROCEEDING, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY DEFENSE THAT (A) SUCH PARTY IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF SUCH COURTS, (B) SUCH PARTY AND SUCH PARTY'S PROPERTY IS IMMUNE FROM ANY LEGAL PROCESS ISSUED BY SUCH COURTS OR (C) ANY ACTION OR PROCEEDING COMMENCED IN SUCH COURTS IS BROUGHT IN AN INCONVENIENT FORUM.
11. EACH PARTY HERETO HEREBY AGREES THAT THE ACTIVITIES CONTEMPLATED HEREBY ARE COMMERCIAL IN NATURE. TO THE EXTENT THAT ANY PARTY HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR ARBITRAL TRIBUNAL, OR FROM ATTACHMENT IN AID OF EXECUTION OR ANY OTHER LEGAL PROCESS (INCLUDING PREJUDGMENT ATTACHMENT) IN ANY ACTION OR PROCEEDING IN ANY MANNER ARISING OUT OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE RELEASES SET FORTH IN SECTION 1 HEREOF, WITH RESPECT TO ITSELF OR ITS ASSETS, SUCH PARTY HEREBY IRREVOCABLY AGREES NOT TO INVOKE SUCH IMMUNITY AS A DEFENSE AND IRREVOCABLY WAIVES SUCH IMMUNITY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EACH PARTY HERETO AGREES THAT SUCH WAIVER SHALL HAVE THE FULLEST SCOPE PERMITTED UNDER THE FOREIGN SOVEREIGN IMMUNITIES ACT 1976 OF THE UNITED STATES AND ARE INTENDED TO BE IRREVOCABLE FOR THE PURPOSES OF SUCH ACT.
12. THE PARTIES HEREBY AGREE THAT, IN CONNECTION WITH ANY ARBITRATION, ACTION OR PROCEEDING BROUGHT IN CONNECTION WITH THIS AGREEMENT, MAILING OF PROCESS OR OTHER PAPERS IN THE MANNER PROVIDED IN SECTION 7, OR IN SUCH OTHER MANNER AS MAY BE PERMITTED BY LAW, SHALL BE VALID AND SUFFICIENT SERVICE

THEREOF AND HEREBY WAIVE ANY OBJECTIONS TO SERVICE ACCOMPLISHED IN THE MANNER HEREIN PROVIDED.

13. If any term, provision, agreement, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, agreements, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic and legal substance of the transactions contemplated hereby are not affected in any manner adverse to any party hereto. Upon such a determination, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties hereto as closely as possible in a reasonably acceptable manner in order that the transactions contemplated hereby may be consummated as originally contemplated to the fullest extent possible.
14. The parties agree that irreparable damage would occur if any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached or threatened to be breached and that an award of money damages would be inadequate in such event. Accordingly, it is acknowledged that the parties shall be entitled to equitable relief, without proof of actual damages, including an Order for specific performance to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, in addition to any other remedy to which they are entitled at law or in equity as a remedy for any such breach or threatened breach. Each party further agrees that neither the other party nor any other Person shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 14, and each party hereto irrevocably waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument. Each party further agrees that the only permitted objection that it may raise in response to any action for equitable relief is that it contests the existence of a breach or threatened breach of this Agreement.
15. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES, AND SHALL CAUSE ITS SUBSIDIARIES AND AFFILIATES TO WAIVE, ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.
16. The parties hereto agree that they have been represented by counsel during the negotiation and execution of this Agreement and have participated jointly in the drafting of this Agreement and, therefore, waive the application of any Law, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

* * * * *

[Rest of Page Left Intentionally Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Release Agreement to be signed by their duly authorized representatives as of the date first above written.

GOVERNMENT OF THE U.S. VIRGIN ISLANDS

By: _____
Name:
Title:

APPROVED FOR LEGAL SUFFICIENCY

By: _____
Name: Vincent F. Frazer, Esq.
Title: Attorney General

VIRGIN ISLANDS PORT AUTHORITY

By: _____
Name:
Title:

HESS OIL VIRGIN ISLANDS CORP.

By: _____
Name:
Title:

HOVENSA, L.L.C.

By: _____
Name:
Title:

ATLANTIC BASIN REFINING, INC.

By: _____
Name:
Title:

**ATLANTIC BASIN REFINING
HOLDINGS, LLC**

By: _____
Name:
Title:

EXHIBIT B-2

TERMINATION AND RELEASE AGREEMENT

This TERMINATION AND RELEASE AGREEMENT, dated as of October 29, 2014 (this "**Agreement**"), by and among Hess Oil Virgin Islands Corp., a corporation organized under the Laws of the U.S. Virgin Islands ("**HOVIC**"), PDVSA V.I., Inc., a corporation organized under the Laws of the U.S. Virgin Islands ("**PDVSA VI**"), Hovensa Holdings L.L.C., a limited liability company organized under the Laws of the U.S. Virgin Islands ("**Seller**"), the Government of the U.S. Virgin Islands (the "**USVI Government**"), HOVENSA, L.L.C., a limited liability company organized under the Laws of the U.S. Virgin Islands ("**Hovensa**"), Atlantic Basin Refining, Inc., a corporation organized under the Laws of the U.S. Virgin Islands ("**Parent**"), and Atlantic Basin Holdings, LLC, a limited liability company organized under the Laws of the U.S. Virgin Islands ("**Purchaser**"). The capitalized terms used in this Agreement and not otherwise defined herein shall have the respective meanings given to such terms in the Purchase and Sale Agreement (as such term is defined below).

WHEREAS, HOVIC and PDVSA VI each own fifty percent (50%) of the issued and outstanding limited liability company interests in Seller;

WHEREAS, Hovensa is a wholly-owned Subsidiary of Seller;

WHEREAS, the USVI Government and HOVIC have entered into that certain Concession Agreement, dated and approved by the Legislature of the Virgin Islands September 1, 1965, and amended, supplemented and clarified at various times by mutual agreement of the parties, as amended and extended by the Extension and Amendment Agreement, dated April 24, 1981 and approved by the Legislature of the Virgin Islands May 7, 1981, as further amended and extended by the Restated Second Extension and Amendment Agreement, dated July 27, 1990 and approved by the Legislature of the Virgin Islands on August 22, 1990, as further amended by the Technical Clarifying Amendment to Restated Second Extension and Amendment Agreement, dated November 17, 1993 and approved by the Governor and the Legislature of the Virgin Islands, as further amended and extended by the Third Extension and Amendment Agreement, to which PDVSA VI is added as a party, dated April 15, 1998 and approved by the Legislature of the Virgin Islands on May 18, 1998, and as further amended by the Fourth Amendment Agreement, to which Hovensa is added as a party, dated April 3, 2013, as ratified by the Legislature of the Virgin Islands on November 4, 2013 and approved by the Governor of the Virgin Islands on November 4, 2013, as Act No. 7566 (such ratification including that certain letter, dated October 16, 2013, from George H.T. Dudley to the Governor of the Virgin Islands incorporated as part of Act No. 7566) (all of the foregoing, collectively, the "**Concession Agreement**");

WHEREAS, Parent, Purchaser, Seller, Hovensa and HOVIC have entered into that certain Purchase and Sale Agreement, dated as of _____, 2014 (as it may be amended, supplemented or modified from time to time, the "**Purchase and Sale Agreement**"), pursuant to which Purchaser has agreed to purchase from Seller, and Seller has

agreed to sell to Purchaser, all of the issued and outstanding limited liability company interests in Hovensa on the date hereof, subject to the terms and conditions set forth therein;

WHEREAS, pursuant to Section 8.3(d) of the Purchase and Sale Agreement, the termination of the Concession Agreement and delivery of this Agreement are conditions precedent to the Closing and are inducements to Seller and HOVIC entering into the Purchase and Sale Agreement;

WHEREAS, pursuant to Section 5 of the Fourth Amendment Agreement referred to above, upon completion of a Sales Process (as such term is defined therein), the rights and obligations of the parties under the Concession Agreement shall be terminated and discharged and each of said parties released and discharged of such rights and obligations thereunder; and

WHEREAS, effective upon the Closing, each of the parties hereto desires to terminate the Concession Agreement and fully release each other party hereto and their respective Affiliates from all rights, liabilities and obligations under the Concession Agreement, subject to the terms and provisions of this Agreement.

NOW, THEREFORE, for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and intending to be legally bound hereby, the parties hereto agree as follows:

1. Effective upon the Closing, (a) the Concession Agreement shall be terminated and canceled in its entirety and shall be null and void and of no further force and effect automatically and without further action by any of the parties to the Concession Agreement, (b) each of the parties to the Concession Agreement on behalf of itself and its respective managers, directors, officers, equity holders, Representatives, direct and indirect parent companies, Subsidiaries and Affiliates, and each of their respective successors and assigns, hereby forever waives, releases and discharges, to the fullest extent permitted by Law, each other party to the Concession Agreement and its respective past, present or future managers, directors, officers, equity holders, Representatives, direct and indirect parent companies, Subsidiaries and Affiliates, from and against any and all actions, causes of action, claims, demands, damages, judgments, Liabilities, debts, dues and suits of every kind, nature and description whatsoever, whether now known or unknown, vested or contingent, suspected or unsuspected, concealed or hidden, now existing or hereafter arising directly or indirectly under the Concession Agreement and (c) the parties to the Concession Agreement shall have no further rights, obligations or liabilities thereunder or relating thereto.
2. Each of Purchaser and Parent hereby expressly acknowledges, accepts and agrees on its own behalf and on behalf of Hovensa to the releases which are being granted pursuant to Section 1 of this Agreement.
3. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

4. This Agreement and the Purchase and Sale Agreement contain the entire understanding between the parties hereto with respect to the subject matter hereof and supersedes any and all prior agreements, representations, understandings and arrangements, whether written or oral.
5. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed an original, but all of the counterparts together constitute the same instrument. This Agreement may be executed by facsimile or scanned signature.
6. Except as otherwise provided herein, all notices, requests, claims, demands, waivers and other communications hereunder shall be in writing and shall be delivered by hand or overnight courier service or sent by email transmission (in the case of email transmission, with copies by overnight courier service) to the respective parties as follows (or, in each case, as otherwise notified by any of the parties hereto) and shall be effective and deemed to have been given (a) immediately when sent by email between 9:00 A.M. and 6:00 P.M. (New York City time) on any Business Day (and when sent outside of such hours, at 9:00 A.M. (New York City time) on the next Business Day) and (b) when received if delivered by hand or overnight courier service or certified or registered mail on any Business Day:

If to HOVIC, to:

c/o Hess Corporation
1185 Avenue of the Americas, Floor 40
New York, New York 10024
Attention: Timothy B. Goodell, Senior Vice President and General Counsel
Fax: (212) 536-8241
email: tgoodell@hess.com

with a copy (which shall not constitute notice or service of process) to:

White & Case LLP
1155 Avenue of the Americas
New York, New York 10036
Attention: John M. Reiss
Gregory Pryor
Fax: (212) 354-8113
email: jreiss@whitecase.com
gpryor@whitecase.com;

If to PDVSA VI, to:

c/o Curtis, Mallet-Prevost, Colt & Mosle LLP
101 Park Avenue
New York, New York 10178-0061



Attention: David Bayrock
Fax: (917) 368-8950
email: dbayrock@curtis.com;

If to Hovensa, to:

If prior to the Closing, c/o Hovic and/or PDVSA, Inc., at the addresses set forth above

If after the Closing, c/o Purchaser and Parent at the addresses set forth below;

If to Purchaser or to Parent, to:

c/o Eckard, P.C.
Atlantic Basin Refining, Inc.
#1 Company Street
P.O. Box 2484
Christiansted, USVI 00824
Attention: Mark Eckard;

with a copy (which shall not constitute notice or service of process) to:

Squire Patton Boggs (US) LLP
200 South Biscayne Boulevard
Suite 4100
Miami, Florida 33131
Attention: Thomas V. Eagan;

If to the USVI Government to:

c/o The Government of the U.S. Virgin Islands
Government House
Charlotte Amalie
St. Thomas, U.S. Virgin Islands
Attention: Office of the Governor;

with a copy (which shall not constitute notice or service of process) to:

Office of the Attorney General
U.S. Virgin Islands Department of Justice
34-38 Kronprindsens Gade
GERS Building, 2d Floor
St. Thomas, U.S. Virgin Islands 00802



If to Seller, to each of HOVIC and PDVSA VI at the addresses set forth above.

Notices sent by multiple means, each of which is in compliance with the provisions of this Agreement will be deemed to have been received at the earliest time provided for by this Agreement.

7. This Agreement may not be amended except by a written instrument executed by all parties to this Agreement.
8. THIS AGREEMENT AND THE LEGAL RELATIONS BETWEEN THE PARTIES HERETO SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE TERRITORY OF THE U.S. VIRGIN ISLANDS, WITHOUT REGARD TO THE CONFLICT OF LAWS RULES THEREOF. ALL DISPUTES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL BE FINALLY SETTLED UNDER THE RULES OF ARBITRATION OF THE INTERNATIONAL CHAMBER OF COMMERCE BY THREE ARBITRATORS APPOINTED IN ACCORDANCE WITH THE SAID RULES. THE PLACE OF ARBITRATION SHALL BE LOCATED IN THE U.S. VIRGIN ISLANDS. THE LANGUAGE OF THE ARBITRATION SHALL BE ENGLISH.
9. ANY AWARD OF THE ARBITRAL TRIBUNAL SHALL BE FINAL AND BINDING ON THE PARTIES HERETO. THE PARTIES HERETO UNDERTAKE TO COMPLY FULLY AND PROMPTLY WITH ANY SUCH AWARD WITHOUT DELAY AND SHALL BE DEEMED TO HAVE WAIVED THEIR RIGHT TO ANY FORM OF RECOURSE INsofar AS SUCH WAIVER CAN VALIDLY BE MADE. FOR THE PURPOSE OF RECOGNITION OR ENFORCEMENT OF ANY SUCH AWARD, THE PARTIES HERETO CONSENT AND AGREE TO SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF THE TERRITORIAL AND FEDERAL COURTS LOCATED IN THE U.S. VIRGIN ISLANDS. EACH OF THE PARTIES HERETO HEREBY WAIVES AND AGREES NOT TO ASSERT IN ANY RECOGNITION OR ENFORCEMENT PROCEEDING, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY DEFENSE THAT (A) SUCH PARTY IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF SUCH COURTS, (B) SUCH PARTY AND SUCH PARTY'S PROPERTY IS IMMUNE FROM ANY LEGAL PROCESS ISSUED BY SUCH COURTS OR (C) ANY ACTION OR PROCEEDING COMMENCED IN SUCH COURTS IS BROUGHT IN AN INCONVENIENT FORUM.
10. EACH PARTY HERETO HEREBY AGREES THAT THE ACTIVITIES CONTEMPLATED HEREBY ARE COMMERCIAL IN NATURE. TO THE EXTENT THAT ANY PARTY HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR ARBITRAL TRIBUNAL, OR FROM ATTACHMENT IN AID OF EXECUTION OR ANY OTHER LEGAL PROCESS (INCLUDING PREJUDGMENT ATTACHMENT) IN ANY ACTION OR PROCEEDING IN ANY MANNER ARISING OUT OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE RELEASES SET FORTH IN SECTION 1 HEREOF, WITH RESPECT TO ITSELF OR ITS ASSETS, SUCH PARTY HEREBY IRREVOCABLY AGREES NOT TO INVOKE SUCH IMMUNITY AS A DEFENSE

AND IRREVOCABLY WAIVES SUCH IMMUNITY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EACH PARTY HERETO AGREES THAT SUCH WAIVER SHALL HAVE THE FULLEST SCOPE PERMITTED UNDER THE FOREIGN SOVEREIGN IMMUNITIES ACT 1976 OF THE UNITED STATES AND ARE INTENDED TO BE IRREVOCABLE FOR THE PURPOSES OF SUCH ACT.

11. THE PARTIES HEREBY AGREE THAT, IN CONNECTION WITH ANY ARBITRATION, ACTION OR PROCEEDING BROUGHT IN CONNECTION WITH THIS AGREEMENT, MAILING OF PROCESS OR OTHER PAPERS IN THE MANNER PROVIDED IN SECTION 6, OR IN SUCH OTHER MANNER AS MAY BE PERMITTED BY LAW, SHALL BE VALID AND SUFFICIENT SERVICE THEREOF AND HEREBY WAIVE ANY OBJECTIONS TO SERVICE ACCOMPLISHED IN THE MANNER HEREIN PROVIDED.
12. If any term, provision, agreement, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, agreements, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic and legal substance of the transactions contemplated hereby are not affected in any manner adverse to any party hereto. Upon such a determination, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties hereto as closely as possible in a reasonably acceptable manner in order that the transactions contemplated hereby may be consummated as originally contemplated to the fullest extent possible.
13. The parties agree that irreparable damage would occur if any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached or threatened to be breached and that an award of money damages would be inadequate in such event. Accordingly, it is acknowledged that the parties shall be entitled to equitable relief, without proof of actual damages, including an Order for specific performance to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, in addition to any other remedy to which they are entitled at law or in equity as a remedy for any such breach or threatened breach. Each party further agrees that neither the other party nor any other Person shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 13, and each party hereto irrevocably waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument. Each party further agrees that the only permitted objection that it may raise in response to any action for equitable relief is that it contests the existence of a breach or threatened breach of this Agreement.
14. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES, AND SHALL CAUSE ITS SUBSIDIARIES AND AFFILIATES TO WAIVE, ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

15. The parties hereto agree that they have been represented by counsel during the negotiation and execution of this Agreement and have participated jointly in the drafting of this Agreement and, therefore, waive the application of any Law, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

* * * * *

[Rest of Page Left Intentionally Blank]

A handwritten signature in blue ink, located in the bottom right corner of the page. The signature is stylized and appears to be a combination of initials and a surname.

IN WITNESS WHEREOF, the parties hereto have caused this Termination and Release Agreement to be signed by their duly authorized representatives as of the date first above written.

GOVERNMENT OF THE U.S. VIRGIN ISLANDS

By: 
Name: _____
Title: _____

APPROVED FOR LEGAL SUFFICIENCY

By: 
Name: Vincent F. Frazer, Esq.
Title: Attorney General

HESS OIL VIRGIN ISLANDS CORP.

By: _____
Name: _____
Title: _____

PDVSA V.I., INC.

By: _____
Name: _____
Title: _____

HOVENSA HOLDINGS L.L.C.


By: _____
Name: _____
Title: _____

HOVENSA, L.L.C.


By: _____
Name: _____
Title: _____



ATLANTIC BASIN REFINING, INC.

By: 
Name: Robert B. Brown
Title: Executive Managing Director

**ATLANTIC BASIN REFINING
HOLDINGS, LLC**

By: 
Name: Robert A. Thomas
Title: Executive Managing Director

