

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA
CIVIL DIVISION

FORTRESS 2020 LANDCO, LLC, a Delaware
limited liability company, as assignee of Regions
Bank, as successor in interest by merger of
AmSouth Bank,

Plaintiff,

vs.

Civil Action No. 2020-CA-004459-AX

HRK HOLDINGS, LLC, a Florida limited liability
company, ARSENAL GROUP, LLC, a Delaware
limited liability company, WILLIAM F. HARLEY
III, FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,
ARDAMAN & ASSOCIATES, INC., a Florida
corporation, INTERNATIONAL SALT
COMPANY, LLC, a Delaware limited liability
company, MC WEIGHING SYSTEMS, LLC, a
Florida limited liability company, 9079-8042
QUEBEC, INC., a foreign corporation,
JOHN DOE1, JANE DOE1, JOHN DOE2 and
JANE DOE2,

Defendants.

**STIPULATION ON FLORIDA DEPARTMENT OF ENVIRONMENTAL
PROTECTION'S MOTION FOR ORDER APPOINTING RECEIVER**

The Florida Department of Environmental Protection's (Department) Fortress 2020 Landco, LLC (Fortress or Plaintiff), and defendants HRK Holdings, LLC (HRK), Arsenal Group LLC (Arsenal), William F. Harley, III (Harley), Ardaman & Associates Inc. (Ardaman) (Fortress, Landco, HRK, Department, Arsenal, Harley, collectively, the Parties), as evidenced by signatures of respective counsel below, hereby enter into this Stipulation on the Department's Motion for

Entry of Order Appointing Receiver and agree to Entry of Agreed Order in accordance with the following agreed terms:

STIPULATION

SECTION 1.

APPOINTMENT OF RECEIVER AND TERM.

Mr. Hebert R. Donica, Esq. is hereby appointed to act as Receiver (hereinafter, Receiver) for the phosphatic fertilizer processing facility located at 13300 U.S. Highway 41 North, Palmetto, Manatee County, Florida, about eight miles north-northeast of Palmetto, Manatee County, Florida (the "Facility"). The Facility is herein defined as the entire phosphogypsum stack system - comprising the phosphogypsum (or pile, or landfill), together with all pumps and the non-exclusive use of all electrical service to such pumps and other electrical machinery or equipment used in the operation of such system, the piping, ditches, drainage conveyances, water control structures, collection pools, cooling ponds, surge ponds and any other collection or conveyance systems associated with the phosphogypsum stack system and the associated stormwater management system. This definition specifically includes ponds, toe drain systems and ditches and other leachate collection systems, and existing areas used in emergency circumstances caused by rainfall events of high volume or duration for the temporary storage of process wastewater to avoid discharges to surface waters of the state, and stormwater management systems from closed portions of the phosphogypsum stack system. The Receiver shall have access to and use of such roadways, conveyances, equipment or property at the site as necessary to accomplish this Order. Receiver shall be assigned all rights conveyed to the Department under the access easement granted to the DEP by HRK recorded on August 21, 2006, in the Manatee County property records at Book 02148/Pages 2930-2936 (attached as Exhibit "A"), to accomplish his duties. For purposes of this Order the Facility shall include all personal property at or related to the Facility, including

but not limited to books and records, equipment, fixtures, furniture, accounts, general intangibles, and causes of action. The Facility shall not include property owned by third parties within the outline of the HRK property described below as of the date of entry of this Order or property later conveyed through foreclosure sale or otherwise. A legal description of the HRK real property is attached hereto as Exhibit “B”.

The Receiver shall have party in interest status in this case and shall be entitled to receive copies of all pleadings, orders or other documents subsequently filed in this matter by any Party. The term of the receivership shall begin on the date of this Order and shall continue until such time as this Court terminates the receivership. Upon termination and expiration of the receivership as provided herein, the Receiver shall be released from all further obligations to maintain and close the Facility. All Parties to this action shall cooperate in good faith with the Receiver in the carrying out of his duties set forth in this Order.

Within 20 days of this Order, the Receiver shall file in this action an Oath of Receiver.

Plaintiff has indicated it may seek a judgment foreclosing only part of the real property identified in the Complaint (Civil Action No. 2020-CA-004459-AX), and Plaintiff is not operating any part of the Facility. As such, Plaintiff consents to the Receiver using all of the real and personal property associated with the stack system for a reasonable time for the Receiver to propose a closure/maintenance plan for the real property of the Facility. The Receiver shall expeditiously determine which portions or parcels of HRK’s real property it deems necessary for the repair, maintenance, closing and long term care of the phosphogypsum stack system. Property determined unnecessary to the repair, maintenance, closure or long-term care shall not constitute part of the Facility. This is an emergency situation, and the ultimate scope of real property necessarily within

the receivership estate will be determined at a later date. The receivership estate shall extend to only the real and personal property necessary to the repair, maintenance, closure or long-term care of the Facility. To avoid unnecessary involvement in the closing of the phosphogypsum stack system, Plaintiff shall confer with Receiver to determine whether such described real property is necessary to the repair, maintenance, closure or long-term care of the Facility. The Receiver shall advise Plaintiff which portion of the real property sought to be foreclosed is not part of the closure plan or of the Facility's anticipated or existing phosphogypsum stack system repair, maintenance, monitoring, or long-term care activities, Plaintiff may release from Plaintiff's mortgage liens on property necessary to the repair, maintenance, closure or long-term care comprising the Facility. Plaintiff, the Department, and HRK, acknowledge all parties' obligations under the Initial Memorandum of Understanding (dated April 25, 2014), as amended and supplemented by Agreement to Amend and Supplement Initial Memorandum of Understanding (dated March 18, 2020) (copies of which are attached hereto as Exhibit "C"), specifically, but not limited to, Plaintiff's obligation to contribute fifty percent of post foreclosure net sale proceeds (subject to the super priority LTC carveout) to the HRK Long Term Care Escrow Account.

This appointment of a Receiver upon the Motion of Department shall not delay the prosecution of Plaintiff's Complaint in this action.

SECTION 2.

SURRENDER OF PROPERTY, ASSETS AND FACILITIES.

Unless specifically authorized by subsequent order of this Court, neither HRK nor any party hereto shall sell, transfer, or dispose of any property comprising the Facility. Neither HRK nor the parties hereto (and their principals, successors, assigns or agents) shall commence a voluntary or involuntary bankruptcy on behalf of or against HRK without prior permission of this Court. HRK shall surrender to the Receiver control of all real and personal property at or related

to the Facility, including but not limited to books and records, equipment, fixtures, furniture, accounts, general intangibles, causes of action (with the exception of those causes of action being adjudicated in Case No. 2013-CA-000098-O in the Ninth Judicial Circuit Court in Orange County, Florida¹. The parties to that litigation shall be bound by the terms of engagement previously approved by the United States Bankruptcy Court in the HRK bankruptcy case² and of the IMOU described in Section 1 above, Ex C.), vehicles, access codes, combination lock codes, keys, login information and passwords for all computers and systems.

SECTION 3.

RECEIVER'S POWERS.

Once the real and personal property associated therewith of the Facility are surrendered to the Receiver in accordance with Section 2. above, the Receiver shall notify this Court, indicate acceptance of appointment as Receiver, and commence managing the Facility until such time as provided for in Section 1. and undertake closure of Facility.

In order to effectively carry out its responsibilities under this Order, the Receiver shall have and is vested with all of the usual powers, rights and duties of a receiver and, without limitation thereof,

1) the Receiver shall have the following specific powers and authority:

(a) to provide and maintain the Facility, including making structural changes, for as long as necessary to complete closure;

(b) to make extensions, expansions, repairs, replacements, and improvements to the Facility as necessary to complete closure;

(c) to borrow or advance money, and to pledge or encumber the facilities, assets for the repayment thereof;

¹ including but not limited to trial, post-trial and appellate proceedings.

² *In re HRK Holdings, LLC*, Case No. 8:12-bk-09868-KRM

(d) to enter into contracts with any public agency or any private entity providing for or relating to the management, maintenance and closure of the Facility;

(e) to accept any gifts, grants, or contributions in kind in connection with the management, operation, and closure of the Facility; to retain and pay the fees, costs, and salaries of accountants, architects, engineers, attorneys, employees, and other professional consultants as necessary or desirable in the management, maintenance, or closure of the Facility and to ensure compliance with all the provisions of the Order;

(f) to pay from the revenues or funds provided to the receivership estate all necessary and reasonable expenses in a manner designed to continue the efficient, effective, and environmentally sound maintenance and closure of the Facility, to include but not be limited to permit fees and user fees;

(g) upon termination of this receivership, as provided in Section 4 of this Order, the Receiver, with written approval from this Court, may discontinue the management, maintenance and closure of the Facility; and in Receiver's sole discretion dispose of any or all lands, personalty, assets, and revenues then remaining in the receivership estate to satisfy all outstanding obligations of the receivership. Receiver shall give due notice to all entities having an interest in assets to be disposed of prior thereto;

(h) to sue, implead, complain in any court, and seek legal or equitable relief in accordance with applicable federal, state and local laws. Receiver shall not be amenable to suit in any court without this Court's prior authorization.

(i) to apply for and obtain all necessary federal, state, and local governmental permits, certificates, licenses, or other approvals in order to manage, maintain, or close the Facility;

(j) to perform generally any other lawful acts necessary or desirable to the express powers and authority granted and imposed herein;

(k) to compromise, arbitrate or otherwise adjust claims in favor of or against the

Receiver and to agree to any rescission or modification of any contract or agreement to which Receiver or HRK is a party;

(l) to buy, sell, exchange or lease any personal or real property, publicly or privately, for cash or credit, upon the terms and conditions that Receiver deems advisable and subject to approval of the Court after the notice to the Parties and any lienholder on personal or real property and the opportunity to be heard. Any lease so made will be valid and binding for its full term - even though such lease extends beyond the full duration of the receivership;

(m) to recover reasonable attorneys' fees and costs in actions brought by or against the Receiver;

(n) to establish and maintain bank accounts in the name of the Receiver and negotiate checks, bills, notes or other instruments in payment of obligations for services rendered to the Receiver.

2) Except where contrary to law, and in addition to all other powers and rights granted herein or by applicable law, the Receiver is empowered to take any action deemed necessary to fully and properly carry out the duties of the Receiver;

3) Receiver shall provide written notice of any of his actions materially affecting the Facility to and upon request of the Parties. The Parties, upon reasonable advance notice, may review the books and records kept by the Receiver or its agents.

4) HRK and its agents and employees are ordered to deliver to the Receiver all keys and combinations to any locks required to open or gain access to any part of the Facility. Except as otherwise requested or authorized by the Receiver, the Parties, their agents, employees, representatives, and attorneys are hereby enjoined from interfering in any manner with the lawful preservation, maintenance, management or closure of the Facility by the Receiver until further order of this Court. Nothing herein shall imply any exemption of the Facility from applicable environmental laws and regulations or deprive any governmental entity of jurisdiction to enforce

such entity's police and regulatory laws, rules or ordinances administratively or judicially.

5) The Receiver is authorized and directed to preserve or obtain whatever licenses, permits or authorizations as are necessary in the preservation, maintenance, management or closure of the Facility. The Receiver is also authorized to take any action necessary to comply with any environmental or other law governing the facility. All Parties shall cooperate with the Receiver to provide any necessary information or other assistance in connection with the Receiver's efforts to obtain any necessary licenses, permits or authorizations, and to otherwise comply with any requirement of law.

6) The Receiver is hereby empowered to employ independent legal counsel to furnish legal advice to the Receiver for purposes as may be necessary during the period of Receivership. Counsel shall be paid a reasonable fee as approved by the Court;

7) Without further order of this Court, the Receiver may borrow up to \$250,000 for the performance of his duties hereunder and may issue his Certificates of Indebtedness to evidence the borrowings. The principal and interest evidenced by each certificate shall be a first lien and security interest only upon the assets of the Facility, the precise legal description of which has not yet been determined. The liens granted for any Certificate are valid and perfected by operation of this Order, and the lender is not required to file any financing statements or other notice in any public records to perfect its security interest. However, the Receiver shall, at the request of the entity lending money to the receivership, execute any document to evidence and perfect the security interest granted by this order.

8) The Receiver shall receive reasonable compensation for his services in the preservation and maintenance of the Facility from time to time in amounts to be approved by the Court.

9) Any entity furnishing water, electric, sewage, garbage, or trash removal services to HRK as to the Facility shall maintain such service and transfer any such accounts to the Receiver

unless instructed to the contrary by the Receiver. The Receiver shall pay the invoices from the utilities for services provided in the ordinary course of their business.

SECTION 4.

CONTINUING JURISDICTION

This Court shall retain jurisdiction in this cause to enter such orders or take any such action as it deems appropriate. On the date this Court enters an Order terminating this receivership, Receiver shall file notification of his discharge from his duties and termination of his authorities with this Court no later than ten (10) business days following the date of this Court's Order. Receiver may file a Motion to Withdraw and Notice of Intent to Resign on not less than sixty (60) day notice with this Court.

SECTION 5.

IMMUNITY FROM LIABILITY AND VIOLATIONS

As consideration for Receiver assuming the responsibility for the continued management, maintenance and closure of the Facility, the Receiver and his agents, employees and contractors, acting within the course and scope of receivership duties, are hereby vested with judicial immunity as an officer of the court.. This immunity shall include but not be limited to immunity from injury to persons, damage to property or property rights, or violation of any governmental law, rule, regulation, or requirement that may arise from the design, construction, operation, maintenance or closure of the Facility or extension thereof.

SECTION 6.

OWNER/OPERATOR LIABILITY

HRK as current owner and operator of the Facility shall remain liable to the extent provided by applicable law for any claims, violations, demands, penalties, suits, proceedings, actions or fees occurring prior to the appointment and acceptance by the Receiver.

SECTION 7.

RECEIVER'S SEPARATION OF FUNDS

Effective immediately upon entry of this Order, Receiver is hereby directed by this Court to establish and maintain at a bank whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC) a new separate Receiver's expense account or accounts (the "Expense Account(s)") in the name of the Receiver into which the Receiver shall deposit all receipts, and from which the Receiver shall disburse regularly and punctually (to the extent available), all amounts due and payable as reasonable, necessary and proper expenses of the Receivership subject to the terms of this Order.

To the extent the Receiver expects significant funds to remain on hand for some period of time, such funds shall be placed in an insured, interest-bearing account for the benefit of the entity providing such funds to the Receiver.

Additionally, this Court hereby directs that revenues received by the Receiver from the DEP under any grant, loan or other deposit agreement, are not to be considered "revenues" of the Receiver or the receivership. Any revenues of the Receivership not expended during the term of the Receivership shall be first applied to unpaid costs and expenses of the receivership and any surplus returned to the lender/provider thereof.

Receiver may borrow funds for the duties hereunder and to pay compensation and professional fees reasonable and necessary to the receivership. Such borrowings shall be subject to Court approval and evidenced by Receiver Certificates. Receiver shall file a budget of anticipated receivership expenses, and shall apply to this Court not more frequently than monthly for payment or reimbursement of such expenses. Application for payment shall be noticed to all parties in interest not less than one week prior to any hearing thereon.

SECTION 8.

RECEIVER'S OBLIGATIONS

1) The Receiver in this cause is hereby directed to maintain, manage and close as efficiently and expeditiously as possible the Facility in accordance with all applicable State and Federal laws and rules as provided in this Order;

2) The Facility shall be operated, maintained and closed by the Receiver in such a manner to minimize disruption of the business operations of businesses within the perimeter of the Facility and Plaintiff's prosecution of its Complaint in this action during the term of the Receivership. In carrying out its responsibilities under this Order, the Receiver is not obligated to expend funds other than revenues of the Receivership and other funds received by the Receiver.

3) The Receiver is not required to post a bond but shall file with the Clerk of the Court within twenty days of the date of appointment as Receiver, an inventory of equipment and personalty coming into his possession at the Facility. Every three months thereafter, Receiver shall render an accounting of the amount of any funds spent, on hands or invested by the Receiver, and the manner in which the same is secured or invested, stating the balance due from or to the Receiver at the time of rendering the last account, receipts and expenditures since that time, and any additional property which shall have come into its possession since Receiver's appointment.

4) The Receiver is authorized to employ any financial institution, accounting firm or similar organization to prepare such accounting or advise the Receiver as to the preparation of the accounting.

5) The Receiver shall not permit the use of the facility for any purpose which will or might void any required policy of insurance or which would be in violation of any law or government restriction;

6) Receiver shall insure that all aspects of the Facility comply with any and all laws, regulations, orders or requirements of any Federal, State, County or Municipal Authority having appropriate jurisdiction. Receiver shall effectuate the abatement of any ongoing or imminent violations and expeditious closure of the Facility, and shall develop a closure plan (consistent with all applicable laws and rules), which plan shall be submitted to the Florida Department of Environmental Regulation pursuant to all applicable rules for review and permitting.

7) The Receiver shall, if necessary, to obtain financing and upon proper and sufficient notice to appropriate parties, seek an Order of this Court authorizing the borrowing of funds secured by a lien on the assets of the Facility. The extent and priority of such lien, if any, shall be determined by this Court at the time such debt is incurred.

8) During the pendency of this receivership, Receiver shall maintain appropriate insurance for the Receivership including any necessary public liability insurance, flood insurance, worker's compensation insurance, fire and extended coverage insurance, and burglary and theft insurance. The Receiver shall not be required to insure the Facility to the extent that it is presently insured by HRK. The Receiver is under no obligation to duplicate, maintain, replace or subsidize insurance of HRK, and HRK is required to provide information to the Receiver regarding all existing or previously maintained insurance covering the Property, the company or the company's officers and directors;

9) Loss Reports. The Receiver shall promptly file a full, written report in the next regular Receiver's report and shall list and describe any serious and material accidents, claims for damage relating to the maintenance of the Property, and any material damage or destruction to the Facility. HRK shall prepare and file any and all reports required by any insurance company in connection therewith.

This Stipulation may be signed in counterparts, and upon execution by all parties, each executed counterpart in whatever form shall be considered an original.

For FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION:

Jonathan H. Alden, Esq. Digitally signed by
Jonathan H. Alden, Esq.
Date: 2021.08.24
15:17:18 -04'00'

Jonathan Alden
Florida Bar No.: 366692

For FORTRESS 2020 LANDCO, LLC

Darrin Jay Quam
Florida Bar No.: 995551

For HRK HOLDINGS, LLC,

Jesse Lee Ray
Florida Bar No.:919101

For ARSENAL GROUP, LLC

Jesse Lee Ray
Florida Bar No.:919101

For WILLIAM F. HARLEY III,

Jesse Lee Ray
Florida Bar No.:919101

For ARDAMAN & ASSOCIATES, INC.

Curtis Lee Brown
Florida Bar No.: 856312

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For FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

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Florida Bar No.: 366692

For FIVE S LANDCO, LLC


Darrin
Florida 995551

For HRK HOLDINGS, LLC,

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Florida Bar No.:919101

For ARSENAL GROUP, LLC

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/s/ Jesse Lee Ray

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Florida Bar No.:919101

For ARSENAL GROUP, LLC

/s/ Jesse Lee Ray

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For WILLIAM F. HARLEY III,

/s/ Jesse Lee Ray

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Jesse Lee Ray
Florida Bar No.: 919101

For ARSENAL GROUP, LLC

Jesse Lee Ray
Florida Bar No.: 919101

For WILLIAM F. HARLEY III,

Jesse Lee Ray
Florida Bar No.: 919101

For ARDAMAN & ASSOCIATES, INC.


Curtis L. Brown
Florida Bar No.: 856312

EXHIBIT "A"

PARCEL 1 (FEE SIMPLE):

IN TOWNSHIP 33 SOUTH, RANGE 18 EAST, MANATEE COUNTY, FLORIDA:

SECTION 5: THE SW 1/4 OF SE 1/4, AND THE S 1/2 OF SW 1/4.

SECTION 6: ALL THAT PART OF SECTION 6 LYING SOUTH AND EAST OF U.S. HIGHWAY 41 LESS A TRIANGULAR PARCEL QUIT-CLAIMED BY R. B. WHISENANT, AND WIFE, AND THE BORDEN COMPANY TO HARRY E. HENDERSON, AND WIFE, UNDER DEED DATED FEBRUARY 18, 1966, FILED APRIL 8, 1966, IN OFFICIAL RECORDS BOOK 279, PAGE 270, DESCRIBED AS: BEGIN ON THE SOUTH BOUNDARY OF THE SE 1/4 OF SAID SECTION 6 AT THE NORTHWEST CORNER OF LOT 1 OF JOHN PIPLACK'S SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 2, PAGE 145, MANATEE COUNTY, FLORIDA, AND RUN SOUTH 89°14'54" EAST ALONG SAID SOUTH BOUNDARY 1334.54 FEET, THENCE NORTH 1°52'15" WEST 33 FEET, THENCE SOUTH 89°20'35" WEST 1333.43 FEET TO THE POINT OF BEGINNING.

SECTION 7:

(A) THE NE 1/4 OF NE 1/4.

(B) PART OF THEN 1/2 OF LOT 1 OF JOHN PIPLACK'S SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 2, PAGE 145, MANATEE COUNTY, FLORIDA, DESCRIBED AS: FROM THE NORTHWEST CORNER OF SAID LOT 1 RUN THENCE SOUTH 89°14'54" EAST ALONG THE NORTH BOUNDARY OF SAID LOT 1 A DISTANCE OF 1334.54 FEET TO THE POINT OF BEGINNING, FROM THE POINT OF BEGINNING CONTINUE SOUTH 89°14'54" EAST 8.59 FEET TO THE NORTHEAST CORNER OF SAID LOT 1, THENCE SOUTH 0°14'14" EAST ALONG THE EAST BOUNDARY OF SAID LOT 1 A DISTANCE OF 301.09 FEET TO A POINT 33 FEET NORTH OF THE SOUTHEAST CORNER OF SAID N 1/2 OF LOT 1, THENCE NORTH 1°52'15" WEST 301.17 FEET TO THE POINT OF BEGINNING.

(C) PART OF THEN 1/2 OF LOT 1 OF JOHN PIPLACK'S SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 2, PAGE 145, MANATEE COUNTY, FLORIDA, DESCRIBED AS: BEGIN AT THE SOUTHWEST CORNER OF SAID N 1/2 OF LOT 1 (WHICH BEGINNING POINT IS 334.24 FEET SOUTH OF THE NORTHWEST CORNER OF SAID LOT 1), RUN THENCE EASTERLY 1343.11 FEET TO THE SOUTHEAST CORNER OF SAID N 1/2 OF LOT 1, THENCE NORTHERLY ALONG THE EAST LINE OF SAID LOT 1 A DISTANCE OF 33 FEET, THENCE WESTERLY 1343.53 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

(D) THE S 1/2 OF LOT 1 OF JOHN PIPLACK'S SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 2, PAGE 145, MANATEE COUNTY, FLORIDA.

(E) LOTS 6, 7, 8, 12 AND 13 OF JOHN PIPLACK'S SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 2, PAGE 145, MANATEE COUNTY, FLORIDA.

(F) THE N 1/2 OF LOT 1 OF JOHN PIPLACK'S SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 2, PAGE 145, MANATEE COUNTY, FLORIDA, TOGETHER WITH A TRIANGULAR PARCEL OF LAND LYING IN SECTION 6, TOWNSHIP 33 SOUTH, RANGE 18 EAST, MANATEE COUNTY, FLORIDA, DESCRIBED AS FOLLOWS: BEGIN AT THE NORTHWEST CORNER OF LOT 1 OF JOHN PIPLACK'S SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 2, PAGE 145, MANATEE COUNTY, FLORIDA, AND RUN THENCE SOUTH 89°14'54" EAST ALONG SAID SOUTH LINE OF SECTION 6, SAID SOUTH LINE ALSO BEING THE NORTH LINE OF SAID LOT 1, A DISTANCE OF 1334.54 FEET, THENCE NORTH 1°52'15" WEST 33 FEET, THENCE SOUTH 89°20'35" WEST 1333.43 FEET TO THE POINT OF BEGINNING, LESS A TRIANGULAR PARCEL OF LAND LYING IN THE SAID N 1/2 OF LOT 1 DESCRIBED AS FOLLOWS: BEGIN AT THE SOUTHWEST CORNER OF SAID N 1/2 OF LOT 1 (WHICH BEGINNING POINT IS 334.24 FEET SOUTH OF THE NORTHWEST CORNER OF SAID LOT 1), RUN THENCE EASTERLY 1343.11 FEET TO THE SOUTHEAST CORNER OF SAID N 1/2 OF LOT 1, THENCE NORTHERLY ALONG THE EAST LINE OF SAID LOT 1 A DISTANCE OF 33 FEET, THENCE WESTERLY 1343.53 FEET TO THE POINT OF BEGINNING, AND LESS A TRIANGULAR PARCEL OF LAND DESCRIBED AS FOLLOWS: COMMENCE AT THE NORTHWEST CORNER OF SAID LOT 1, JOHN PIPLACK'S SUBDIVISION AS RECORDED IN PLAT BOOK 2, PAGE 145, OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA; RUN THENCE SOUTH 89°14'54" EAST ALONG THE NORTH BOUNDARY OF SAID LOT 1 A DISTANCE OF 1334.54 FEET TO THE POINT OF BEGINNING, FROM THE POINT OF BEGINNING CONTINUE SOUTH 89°14'54" EAST 8.59 FEET TO THE NORTHEAST CORNER OF SAID LOT 1, THENCE SOUTH 0°14'14" EAST ALONG THE EAST BOUNDARY OF SAID LOT 1 A DISTANCE OF 301.09 FEET TO A POINT 33 FEET NORTH OF THE SOUTHEAST CORNER OF SAID N 1/2 OF LOT 1, THENCE NORTH 1°52'15" WEST 301.17 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT THOSE PORTIONS OF (C), (D), (E) AND (F) CONVEYED TO STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION DESCRIBED IN DEEDS RECORDED IN OFFICIAL RECORDS BOOK 285, PAGE 96, OFFICIAL RECORDS BOOK 286, PAGE 370, OFFICIAL RECORDS BOOK 286, PAGE 372 AND OFFICIAL RECORDS BOOK 288, PAGE 251, PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA.

SECTION 8: THEW 1/2 OF NE 1/4, AND THE NW 1/4.

LESS AND EXCEPT THAT PORTION OF PARCEL 1 CONVEYED TO AIR PRODUCTS & CHEMICALS INC. BY THE SPECIAL WARRANTY DEED RECORDED IN OFFICIAL

RECORDS BOOK 2444, PAGE 7399, OF THE PUBLIC RECORDS OF MANATEE COUNTY

ALSO LESS AND EXCEPT THAT PORTION OF PARCEL 1 CONVEYED TO THATCHER CHEMICAL OF FLORIDA, INC. BY THE FEE SIMPLE DEED RECORDED IN OFFICIAL RECORDS BOOK 2504, PAGE 2840, OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA.

ALSO LESS AND EXCEPT THAT PORTION OF PARCEL 1 CONVEYED TO ALLIED NEW TECHNOLOGIES 2, INC. BY THE SPECIAL WARRANTY DEED RECORDED IN OFFICIAL RECORDS BOOK 2514, PAGE 7689, OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA.

ALSO LESS AND EXCEPT THAT PORTION OF PARCEL 1 CONVEYED TO MANATEE BULK STORAGE, LLC, BY THE SPECIAL WARRANTY DEED RECORDED IN OFFICIAL RECORDS BOOK 2514, PAGE 7821, OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA.

ALSO LESS AND EXCEPT THAT PORTION OF PARCEL 1 CONVEYED TO MANATEE BULK STORAGE, LLC BY SPECIAL WARRANTY DEED RECORDED IN OFFICIAL RECORDS BOOK 2514, PAGE 7815, OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA.

ALSO LESS AND EXCEPT THAT PORTION OF PARCEL 1 CONVEYED TO AIR PRODUCTS AND CHEMICALS, INC. BY THE WARRANTY DEED RECORDED IN OFFICIAL RECORDS BOOK 2697, PAGE 7547, OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA.

PARCEL 2 (EASEMENT):

THE EASEMENT CREATED BY EASEMENT INSTRUMENT DATED AND FILED DECEMBER 22, 1967, RECORDED IN OFFICIAL RECORDS BOOK 346, PAGE 142, MANATEE COUNTY, FLORIDA, FROM SKYWAY GROVES, INC., TO THE BORDEN COMPANY, WITH RESPECT TO THE LAND DESCRIBED BELOW:

IN TOWNSHIP 33 SOUTH, RANGE 18 EAST, MANATEE COUNTY, FLORIDA: SECTION 8: THE SE 1/4, AND THEE 1/2 OF SW 1/4.



**EASEMENT FOR ACCESS AND AUTHORIZATION TO
CONDUCT ON SITE ACTIVITIES**

THIS EASEMENT is made and entered into this 15 day of August, 2006, by and between V. John Brooks as Chapter 7 Trustee in Bankruptcy for Piney Point Phosphates, Inc., a Florida corporation, a debtor in the case styled: In Re Piney Point Phosphates, Inc., Case No. 01-2006-8P7, in the United States Bankruptcy Court for the Middle District of Florida, hereinafter referred to as "GRANTOR", and the Florida Department of Environmental Protection, an agency of the State of Florida, and its contractors, subcontractors, agents or licensees, hereinafter collectively referred to as "GRANTEE".

WHEREAS, GRANTOR is the owner of certain real property (the "Piney Point Site" (hereinafter more particularly described in Exhibit "A")); and

WHEREAS, GRANTEE desires a non-exclusive easement over, across beneath and on the Piney Point Site for the purpose of closing the phosphogypsum stack systems formerly operated by Piney Point Phosphates, Inc. at the Piney Point Site (the "phosphogypsum stack systems") in accordance with applicable laws and regulations, to manage any and all environmental risk associated with such site identified by GRANTEE which GRANTEE deems necessary, in such manner as GRANTEE deems appropriate, and to render such phosphogypsum stack systems of beneficial use.

NOW THEREFORE, GRANTOR, pursuant to authority granted to him by the Bankruptcy Code and having obtained any and all required approvals by the Bankruptcy Court, and in consideration of mutual covenants and agreements hereinafter contained, has granted, and by these presents does create, grant, transfer and convey a non-exclusive easement unto GRANTEE and all agents, employees, contractors or subcontractors acting under the authority of GRANTEE over and across the Piney Point Site, subject to the following terms and conditions:

1. TERM: The term of this easement shall be for a period of sixty years commencing on March 1, 2005, and ending on February 28, 2065, with no option for renewal unless sooner terminated pursuant to the provisions of this easement.

2. USE OF PROPERTY AND UNDUE WASTE: This easement shall be limited to access over, across beneath and on the Piney Point Site during the term of this easement for the purposes of closing the phosphogypsum stack systems in accordance with applicable laws and regulations, to manage any and all environmental risk associated with such site identified by GRANTEE which GRANTEE deems necessary, in such manner as GRANTEE deems appropriate, and to render such phosphogypsum stacks of beneficial use. This easement shall be non-exclusive.

GRANTOR retains the right to engage in any activities over, across, beneath or on the easement area which do not unreasonably interfere with GRANTEE'S exercise of this easement and further retains the right to grant compatible uses to third parties during the term of this easement, upon reasonable notice to GRANTEE and to any agency or authority having jurisdiction or an interest in the Piney Point Site.

GRANTEE agrees that upon termination of this easement all authorization granted herein shall cease and terminate.

3. ASSIGNMENT: This easement shall not be assigned in whole or in part to any non Agency or non governmental body without the prior written consent of the GRANTOR.

4. RIGHT OF INSPECTION: The GRANTOR, or his duly authorized agents, representatives or employees shall have the right at any and all reasonable times to inspect this easement and the works of GRANTEE in any matter pertaining to this easement.

5. COMPLIANCE WITH LAWS: GRANTEE agrees it shall be responsible for obtaining all applicable permits and complying with all applicable permits, regulations, ordinances, rules, and laws of the State of Florida or the United States or of any political subdivision or agency of either.

6. PROHIBITIONS AGAINST LIENS: Fee title to the lands underlying this easement is held by GRANTOR. GRANTEE may not lease or license use of the Piney Point site other than as appropriate or necessary in conjunction with the purposes of this easement. GRANTEE shall not do or permit anything to be done which purports to create a lien for any debt against the real property of GRANTOR including, but not limited to, mortgages or construction liens against the Piney Point Site or against any interest of GRANTOR therein.

7. PARTIAL INVALIDITY: If any term, covenant, condition or provision of this easement shall be ruled by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

8. ENTIRE UNDERSTANDING: This easement sets forth the entire understanding between the parties and shall only be amended with the prior written approval of GRANTOR.

9. TIME: Time is expressly declared to be of the essence of this easement.

10. LIABILITY: GRANTEE shall provide reasonable assistance in the investigation of injury or damage claims either for or against GRANTOR or the State of Florida pertaining to GRANTEE'S respective areas of responsibility under this easement or arising out of GRANTEE'S respective management programs or activities.

11. RECORDING OF EASEMENT: The GRANTEE, at its own expense, shall record this fully executed easement in its entirety in the public records of the county within which the easement site is located within fourteen days after receipt, and shall provide to the GRANTOR within ten days following the recordation a copy of the recorded easement in its entirety which contains the O.R. Book and Pages at which the easement is recorded.

12. TERMINATION: GRANTEE may extinguish this easement by recording a sworn statement attesting that GRANTEE has ceased all uses authorized hereunder.

13. GOVERNING LAW: This easement shall be governed by and interpreted according to the laws of the State of Florida.

14. SECTION CAPTIONS: Articles, subsections and other captions contained in this easement are for reference purposes

only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this easement or any provisions thereof.

IN WITNESS WHEREOF, the parties have caused this easement to be executed the day and year first above written.

PINEY POINT PHOSPHATES, INC., a Florida corporation.

By:

[Signature]
V. JOHN BROOKS, CHAPTER 7
TRUSTEE IN BANKRUPTCY FOR
PINEY POINT PHOSPHATES, INC.
("GRANTOR")

[Signature]
Witness

Herbert R. Donica
Print/Type Witness Name

[Signature]
Witness

Janice N. Donica
Print/Type Witness Name

STATE OF FLORIDA
COUNTY OF ~~LEON~~ HILLSBOROUGH

The foregoing instrument was acknowledged before me this 15th day of August, 2006, by V. JOHN BROOKS, acting as Chapter 7 Trustee in Bankruptcy for Piney Point Phosphates, Inc., a Florida corporation, a debtor in the case styled In Re Piney Point Phosphates, Inc., Case No. 01-2006-8P7, in the U.S. Bankruptcy Court for the Middle District of Florida. He is personally known to me or produced _____ as identification.

Scott D. Litchfield
Notary Public, State of Florida

Print/Type Notary Name

Commission Number:

Commission Expires:



SCOTT D. LITCHFIELD
MY COMMISSION # DD 435601
EXPIRES: May 31, 2009
Bonded Thru Budget Notary Services

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, a Florida agency,

By: Richard W. Cantrell (SEAL)

Richard W. Cantrell
Print/Type name
Title: Dep. Division Director
("GRANTEE")



Witness

John A. Coates
Print/Type Witness Name

Marjane C. Monahan
Witness

C. Monahan
Print/Type Witness Name

STATE OF FLORIDA
COUNTY OF Lee

The foregoing instrument was acknowledged before me this 16th day of August, 2006, by Richard W. Cantrell as Deputy Division Director of the Florida Department of Environmental Protection, a Florida agency, on behalf of the agency. He she is personally known to me or produced _____ as identification.



C. Monahan
ic, State of Florida

Marjane C. Monahan
Print/Type Notary Name

Commission Number: DD339295

Commission Expires: July 20, 2008

EXHIBIT "A"

LEGAL DESCRIPTION OF THE EASEMENT

EXHIBIT "A"

PARCEL 1:

In Township 33 South, Range 18 East, Manatee County, Florida:

Section 5: The SW 1/4 of SE 1/4, and the S 1/2 of SW 1/4.

Section 6: All that part of Section 6 lying south and east of U.S. Highway 41 LESS a triangular parcel quit-claimed by R. B. Whisenant, and wife, and The Borden Company to Harry E. Henderson, and wife, under deed dated February 18, 1966, filed April 8, 1966, in Official Records Book 279, Page 270, described as: Begin on the South boundary of the SE-1/4 of said Section 6 at the Northwest corner of Lot 1 of JOHN PIPLACK'S SUBDIVISION, according to the plat thereof recorded in Plat Book 2, Page 145, Manatee County, Florida, and run South 89°14'54" East along said South boundary 1334.54 feet, thence North 1°52'15" West 33 feet, thence South 89°20'35" West 1333.43 feet to the Point of Beginning.

Section 7:

(a) The NE 1/4 of NE 1/4.

(b) Part of the N 1/2 of Lot 1 of JOHN PIPLACK'S SUBDIVISION, according to the plat thereof recorded in Plat Book 2, Page 145, Manatee County, Florida, described as: from the Northwest corner of said Lot 1 run thence South 89°14'54" East along the North boundary of said Lot 1 a distance of 1334.54 feet to the Point of Beginning, from the Point of Beginning continue South 89°14'54" East 8.59 feet to the Northeast corner of said Lot 1, thence South 0°14'14" East along the East boundary of said Lot 1 a distance of 301.09 feet to a point 33 feet North of the Southeast corner of said N 1/2 of Lot 1, thence North 1°52'15" West 301.17 feet to the Point of Beginning.

(c) Part of the N 1/2 of Lot 1 of JOHN PIPLACK'S SUBDIVISION, according to the plat thereof recorded in Plat Book 2, Page 145, Manatee County, Florida, described as: Begin at the Southwest corner of said N 1/2 of Lot 1 (which beginning point is 334.24 feet South of the Northwest corner of said Lot 1), run thence Easterly 1343.11 feet to the Southeast corner of said N 1/2 of Lot 1, thence Northerly along the East line of said Lot 1 a distance of 33 feet, thence Westerly 1343.53 feet, more or less, to the Point of Beginning.

(d) The S 1/2 of Lot 1 of JOHN PIPLACK'S SUBDIVISION, according to the plat thereof recorded in Plat Book 2, Page 145, Manatee County, Florida.

(e) Lots 6, 7, 8, 12 and 13 of JOHN PIPLACK'S SUBDIVISION, according to the plat thereof recorded in Plat Book 2, Page 145, Manatee County, Florida.

(f) The N 1/2 of Lot 1 of JOHN PIPLACK'S SUBDIVISION, according to the plat thereof recorded in Plat Book 2, Page 145, Manatee County, Florida, together with a triangular parcel of land lying in Section 6, Township 33 South, Range East, Manatee County, Florida, described as follows: Begin at the Northwest corner of Lot 1 of JOHN PIPLACK'S SUBDIVISION, according to the plat thereof recorded in Plat Book 2, Page 145, Manatee County, Florida, and run thence South 89°14'54" East along said South line of Section 6, said South line also being the North line of said Lot 1, a distance of 1334.54 feet, thence North 1°52'15" West 33 feet, thence South 89°20'35" West 1333.43 feet to the Point of Beginning, LESS a triangular parcel of land lying in the said N1/2 of Lot 1 described as follows: Begin at the Southwest corner of said N 1/2 of Lot 1 (which beginning point is 334.24 feet South of the Northwest corner of said Lot 1), run thence Easterly 1343.11 feet to the Southeast corner of said N 1/2 of Lot 1, thence Northerly along the East line of said Lot 1 a distance of 33 feet, thence Westerly 1343.53 feet to the Point of Beginning, and LESS a triangular parcel of land described as follows: Commence at the Northwest corner of said Lot 1, JOHN PIPLACK'S SUBDIVISION as

EXHIBIT B

recorded in Plat Book 2, Page 145, of the Public Records of Manatee County, Florida; run thence South 89°14'54" East along the North boundary of said Lot 1 a distance of 1334.54 feet to the Point of Beginning, from the Point of Beginning continue South 89°14'54" East 8.59 feet to the Northeast corner of said Lot 1, thence South 0°14'14" East along the East boundary of said Lot 1 a distance of 301.09 feet to a point 33 feet North of the Southeast corner of said N 1/2 of Lot 1, thence North 1°52'15" West 301.17 feet to the Point of Beginning.

Section 8: The W 1/2 of NE 1/4, and the NW 1/4.

PARCEL 2:

The easement interest created by easement instrument dated May 7, 1985, filed May 29, 1985, recorded in Official Records Book 1113, Page 1608, Manatee County, Florida, from Kendrick D. Williams and others to Amax Chemical Corporation, with respect to a strip of land 100 feet wide as described below:

In Township 33 South, Range 18 East, Manatee County, Florida.

Section 6: That part of the E 1/2 of SW 1/4 described as: Commence at the Southwest corner of Section 6, and run Easterly along the South boundary of Section 6, a distance of 2667.58 feet to a point on a curve, concave to the East, having a radius of 22918.32 feet and the centerline of the southbound lane of U.S. Highway 41 (State Road 45); thence along said curve with a tangent bearing of North 00°02'36" East, run Northerly along said centerline through a central angle of 00°12'17" a distance of 81.87 feet; thence North 00°14'53" East along said centerline a distance of 653.63 feet to the P.C. of a curve, concave to the Southeast, having a radius of 1909.86 feet; thence along said curve through a central angle of 10°22'34", and along said centerline a distance of 345.87 feet, having a chord of 345.40 feet bearing North 05°16'00" East; thence North 79°32'43" West, a distance of 68.00 feet to a point on a curve concave to the Southeast having a radius of 1977.86 feet; thence along said curve through a central angle of 00°34'46", a distance of 20.00 feet, having a chord of 20.00 feet bearing South 10°09'54" West, to a Florida Department of Transportation right-of-way monument; thence continue along said curve and the Westerly right-of-way line of U.S. Highway 41 (State Road 45) being said curve, having a radius of 1977.86 feet, through a central angle of 03°21'53", a distance of 116.15 feet, having a chord of 116.13 feet bearing South 08°11'34" West, to the Point of Beginning; thence continue along said right-of-way curve, having a radius of 1977.86 feet and being the Westerly right-of-way line of U.S. Highway 41 (State Road 45) through a central angle of 02°53'55", a distance of 100.06 feet, having a chord of 100.05 feet bearing South 05°03'40" West; thence North 86°39'10" West, a distance of 638.51 feet to a point on the Easterly right-of-way line of the railroad of Seaboard System Railroad, Inc., said right-of-way line being a curve, concave to the Southeast, having a radius of 2774.01 feet; thence Northeasterly along said right-of-way line through a central angle of 02°18'48" and along said curve a distance of 112.00 feet, having a chord of 111.99 feet bearing North 30°06'08" East, thence South 86°39'10" East, a distance of 591.09 feet to the Point of Beginning.

PARCEL 3:

The easement created by easement instrument dated and filed December 22, 1967, recorded in Official Records Book 346, Page 142, Manatee County, Florida, from Skyway Groves, Inc., to The Borden Company, with respect to the land described below:

In Township 33 South, Range 18 East, Manatee County, Florida.

Section 8: The SE 1/4, and the E 1/2 of SW 1/4.

EXHIBIT C

Page 1 of 3

Initial Memorandum of Understanding Summary of Terms and Conditions

- Introduction:** This document references certain documents and defined terms agreed to by the Parties prior to this Agreement. For consistency purposes, those terms have the same meanings as previously outlined in such foundational documents including, but not limited to: Consent Order, Administrative Order and Settlement Agreement. This agreement does not amend, modify or alter the foundational documents, or other final agency actions.
- Purpose:** To summarize the framework, general terms and conditions by which Parties have agreed to address the funding of the LTC Trust Fund from the future sales of the Property by HRK and to confirm the Funding Obligation ("Agreement").
- Parties:** HRK Holdings, LLC and HRK Industries, LLC (collectively, "HRK" or "Debtors"); Regions Bank ("Regions") and State of Florida Department of Environmental Protection ("Department" or "FDEP").
- Background:** HRK is in the process of developing and submitting its Plan of Reorganization ("Plan"), which is predicated on the continued sale of all or portions the Property. In order to obtain additional post-petition financing to implement the Plan, Regions has required the Parties agree to the Purpose. As an inducement, Regions is willing to modify its first priority to the application of such net sales proceeds in order to fund the HRK Long Term Care Trust Fund ("LTC Trust Fund").
- Additionally, Regions and HRK believe it is necessary to quantify and memorialize the Funding Obligation in order to generate additional interest in the sale of smaller land tracts ("Retail Sale") or a comprehensive sale of the unsold portions of the Property ("Bulk Sale"). It is HRK's expectation that HRK will remain responsible for the long-term care of the Stack System, as it is not currently believed that another party will purchase the Stack System or assume HRK's responsibilities under the Consent Order, Administrative Order, Settlement Agreement, and Florida Laws and Rules. As such, the funding of the LTC Trust Fund in the amount of the Funding Obligation will provide the Department with assurance that funds will be available to provide long-term care for the Stack System and will allow for the sale of the remaining portions of the Property.
- Effective Date:** The last date by which any of the Parties execute the Agreement.
- Funding Obligation:** For purposes of this Agreement, the term "Funding Obligation" shall be defined as \$15,000,000.00, provided however, the Parties agree to revisit the amount of the Funding Obligation based upon the final determined estimate of HRK's approved Long Term Care Plan. Under no circumstance will the Funding Obligation be in excess of \$15,000,000.00 ("LTC Trust Fund Threshold"). Notwithstanding any provision to the contrary contained in the LTC Consent Order clerked March 17, 2014, the Funding Obligation as used herein shall apply only to the deposit of Property Sale Proceeds Split (defined below) and the Ardaman Litigation Proceeds Split (defined below).

Regions Exposure: Regions has previously provided certain financial instruments on behalf of HRK to satisfy partial initial financial assurances required by the Department. Those financial instruments include:

- (i) An irrevocable, standby letter of credit in the amount of \$1,650,000 ("Standby LC"), and
- (ii) A line of credit with the maximum availability of up to \$2,500,000 ("LTCTF LOC"), which currently has an outstanding balance of \$0.

LTC Carveout: Upon any future sale of all or a portion of the Property or receipt by Regions of proceeds from the Ardaman Litigation (as defined below), a portion of the cash proceeds will be deposited directly into the LTC Trust Fund to be used to satisfy the Funding Obligation ("Long Term Care Carveout"). A condition to the transfer of the LTC Carveout to the LTC Trust Fund is the delivery of certain documents and other assurances to the future purchaser of Property regarding the release of any environmental liability prior to the closing of a sale of Property, including a covenant not to sue, if and when requested ("FIDEP Relief Documents"). The amount of the LTC Carveout from each sale of Property will depend upon the conditions of such sale, as discussed below:

- (i) from the net proceeds of all future real property sales, the first dollars will be paid to Regions to satisfy all DIP loans or additional advances made after April 21, 2014, but not to exceed one million one hundred fifty thousand dollars (\$1,150,000) plus any additional amounts agreed to by the parties and authorized by the bankruptcy court in the future;
- (ii) thereafter, the net proceeds of the sale will be split 50/50 between Regions and the LTC Trust Fund (the "Property Sale Proceeds Split"), until Regions indebtedness has been paid in full.

In addition to the Property Sale Proceeds Split, Regions will pay fifty cents of every dollar it receives from the proceeds of HRK's lawsuit against Ardaman & Associates, Inc., and others, which lawsuit is currently pending in the Ninth Judicial Circuit, in and for Orange County, Florida, under case number 2013-CA-98-O (the "Ardaman Litigation") to the LTC Trust Fund up to the amount of the Funding Obligation (the "Ardaman Litigation Proceeds Split").

Regions Exposure Reduction:

In connection with the LTC Carveout, should the sum of the LTC Trust Fund Balance and the Regions Exposure ("LTC Trust Fund Security") exceed the Funding Obligation, the Regions Exposure will be reduced in an amount equal to the excess of the Funding Obligation. Regions will have the discretion to reduce such exposure through the cancellation of capacity/availability under the LTCTF LOC, the demand for release of the Standby LC or a combination of both.

Upon meeting the Funding Obligation by depositing the LTC Carveout into the LTC Trust Fund, any remaining Regions Exposure will be eliminated, cancelled and/or released.

The foregoing summary of terms and conditions are acceptable to the Parties, as evidenced by the signatures below. Parties understand and will immediately undertake to document the aforementioned Agreement in a formal settlement agreement to be signed by the Parties. Final terms of the Agreement may also be included in the Plan and or the Order confirming the Plan.

HRK Holdings, LLC

By: John T. [Signature]
As its: CEO
(Print Title)

Date: 4/23/14

HRK Industries, LLC

By: John T. [Signature]
As its: CEO
(Print Title)

Date: 4/23/14

Regions Bank

By: _____
As its: _____
(Print Title)

Date: _____

State of Florida Department of Environmental Protection

By: _____
As its: _____
(Print Title)

Date: _____

The foregoing summary of terms and conditions are acceptable to the Parties, as evidenced by the signatures below. Parties understand and will immediately undertake to document the aforementioned Agreement in a formal settlement agreement to be signed by the Parties. Final terms of the Agreement may also be included in the Plan and or the Order confirming the Plan.

HRK Holdings, LLC

By: _____
As its: _____
(Print Title)

Date: _____

HRK Industries, LLC

By: _____
As its: _____
(Print Title)

Date: _____

Regions Bank

By: [Signature]
As its: William P. Carroll
(Print Title)

Date: 4/27/14

State of Florida Department of Environmental Protection

By: _____
As its: _____
(Print Title)

Date: _____

The foregoing summary of terms and conditions are acceptable to the Parties, as evidenced by the signatures below. Parties understand and will immediately undertake to document the aforementioned Agreement in a formal settlement agreement to be signed by the Parties. Final terms of the Agreement may also be included in the Plan and or the Order confirming the Plan.

HRK Holdings, LLC

By: _____
As its: _____
(Print Title)

Date: _____

HRK Industries, LLC

By: _____
As its: _____
(Print Title)

Date: _____

Regions Bank

By: _____
As its: _____
(Print Title)

Date: _____

State of Florida Department of Environmental Protection

By:  _____
As its:  _____
(Print Title)

Date: 4/25/14 _____

Agreement to Amend and Supplement Initial Memorandum of Understanding

This Agreement between Regions Bank (Regions) and the Florida Department of Environmental Protection (Department) (collectively the Parties), amends and supplements the covenants and obligations as between and among the Parties arising from the Initial Memorandum of Understanding, entered into by the Parties as well as HRK Holdings, LLC and HRK Industries, LLC. (collectively HRK), on or about April 25, 2014, and approved by the United States Bankruptcy Court for the Middle District of Florida (Bankruptcy Court), in HRK's bankruptcy case number 12-9868 (Bankruptcy Case) as subsequently amended (IMU).

The Parties acknowledge the terms and enforceability of the IMU, and the good and valuable consideration for the following amended and supplemental terms between them. The terms and conditions of this Agreement are not intended to and shall not affect the rights and obligations of HRK under the IMU.

Premises:

1. Regions is the successor to AmSouth Bank, which issued its irrevocable standby letter of credit for the benefit of HRK payable to the Department in the sum of \$1,650,000 (the Letter of Credit), and which Letter of Credit is outstanding and currently subject to demand by the Department.
2. By the terms of the IMU, the Parties and HRK agreed that a portion of proceeds from the sale of HRK's real property and from litigation commenced by HRK against Ardaman and Associates, et al in the Ninth Judicial Circuit, in and for Orange County, Florida, case number 2013-CA-98-O (the Ardaman Litigation), which are security for Region's claims, would be deposited into the HRK Long-Term Care (LTC) Trust Fund (the proportions of such allocation, and a super-priority for certain debt to Regions are more particularly described in the LTC Carveout provisions of the IMU).
3. On August 16, 2015 (Doc. No. 889), HRK's plan of reorganization (the Plan) was confirmed by the Bankruptcy Court, which Plan adopted and re-affirmed the terms of the IMU.
4. On August 24, 2016, the Department, HRK, and Regions entered into the Multi Party Escrow Agreement, which agreement established the Long-Term Care Escrow Account with the State of Florida Department of Financial Services (LTC Escrow Account) to replace and carry out the purposes of the HRK LTC Trust Fund, in accordance with the August 1, 2016, Substitution Agreement Among HRK Holdings, LLC, HRK Industries, LLC, Regions Bank and Florida Department of Environmental Protection For Replacement of Standby Trust Fund with Florida Department of Financial Services Escrow Account.
5. HRK has been unable to meet the funding obligations imposed by statute, rule and Administrative Agreement to establish financial responsibility for the Piney Point Phosphogypsum stack system (Piney Point).

6. HRK has been unable to fund site management operations at Piney Point, as required by statute, rule and Administrative Agreements. As a result, commencing in May 2019 and monthly since then, the Department has been compelled to authorize distributions from the LTC Escrow Account to meet HRK's ongoing obligations of site management and process water management.
7. The Department has advised Regions of the need and Department's intent to supplement the funds in the LTC Escrow Account from Letter of Credit proceeds and has entered into discussions with Regions with regard to the timing and scale of such demand(s).

Forbearance Agreement

The Parties agree as follows:

The Department shall forbear from making immediate demand on the Letter of Credit and shall forbear from doing so until not sooner than March 1, 2020 (the Commencement Date) - provided the following terms are met:


- A. Upon the Commencement Date, provided no prior demand has been made as a result of a default arising or existing under this Agreement, Regions shall make, and the Department shall accept, monthly installments of \$45,834 as partial payments on the Letter of Credit, continuing for 36 successive months, which amounts Regions shall deposit directly into the LTC Escrow Account (without setoff or delay).
- B. Following March 1, 2020, the effective date of this Agreement, and until the full \$1,650,000 currently available under the Letter of Credit has been funded by Regions into the LTC Escrow Account pursuant to Paragraph A. above, all proceeds otherwise payable to Regions pursuant to its pre and post-petition first lien positions encumbering HRK assets and under the terms of the IMU from HRK asset sales, settlements or transactions and/or received by Regions from the sale of all or any of its credit facilities outstanding to HRK, shall be deposited by Regions into the HRK LTC Escrow Account. All amounts deposited by Regions into the LTC Escrow Account pursuant to this Paragraph, including all periodic payments made by Regions under Paragraph A. above, shall be credited in full against Regions' then remaining liability under the Letter of Credit up to the total amount remaining due thereunder.
- C. In the event Regions elects to assign all or any of its currently due HRK credit facilities and liens securing same to a special purpose entity (SPE) established by Regions for that purpose, that SPE shall remain bound by the terms of the IMU and will be entitled to receive the remaining \$868,000 due under the super priority LTC Carveout provided for thereunder, subject to the provisions of Paragraph B. above.
- D. Regions may in the future and in its sole discretion, elect to unconditionally release its liens encumbering the stack system portion of the HRK real estate at Piney Point

securing the currently due HRK credit facilities and thereafter foreclose upon the remaining non stack system HRK real estate at Piney Point, all without the further consent of or opposition/objection by the Department.

- E. The remaining rights, obligations and covenants of the Parties under the IMU shall remain unaltered, including the right of Regions to receive the remaining portion of the super priority LTC Carveout in the amount of \$868,000, subject to the provisions of Paragraph B. above.
- F. Any further sale or transfer by Regions of HRK's debt to Regions, or the security or collateral therefore, shall be conditioned and contingent upon any subsequent buyer assuming the terms of the IMU, including the LTC Carveout provisions thereof, and this Agreement, and the immediate funding of any remaining balance of the Letter of Credit to the LTC Escrow.

The foregoing terms and conditions are acceptable to the Parties, as evidenced by the signatures below. The Parties understand and will undertake to draft, execute and record such further documentation as either shall reasonably request. Further documentation notwithstanding, the Parties agree to the terms hereof, and that they have received adequate consideration thereof.


Regions Bank

By: 
(Print) William P. Carnob

As its: SVP
(print title)

Date: 3/16/2020

State of Florida Department of Environmental Protection

By: 
(Print) John A. Coates

As its: Managing Director
(Print title)

Date: 3/18/2020

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA
CIVIL DIVISION

FORTRESS 2020 LANDCO, LLC, a Delaware
limited liability company, as assignee of Regions
Bank, as successor in interest by merger of
AmSouth Bank,

Plaintiff,

vs.

Civil Action No. 2020-CA-004459-AX

HRK HOLDINGS, LLC, a Florida limited liability
company, ARSENAL GROUP, LLC, a Delaware
limited liability company, WILLIAM F. HARLEY
III, FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,
ARDAMAN & ASSOCIATES, INC., a Florida
corporation, INTERNATIONAL SALT
COMPANY, LLC, a Delaware limited liability
company, MC WEIGHING SYSTEMS, LLC, a
Florida limited liability company, 9079-8042
QUEBEC, INC., a foreign corporation,
JOHN DOE1, JANE DOE1, JOHN DOE2 and
JANE DOE2,

Defendants.


AGREED ORDER ON MOTION TO APPOINT RECEIVER

This matter having come before the court pursuant to a Motion for Entry of Order Appointing Receiver (Motion), filed by the Florida Department of Environmental Protection (Department) and the Department, Fortress 2020 Landco, LLC (Fortress or Plaintiff), HRK Holdings, LLC (HRK), Arsenal Group LLC (Arsenal), William F. Harley, III (Harley), Ardaman & Associates Inc. (Ardaman) (Fortress, Landco, HRK, Department, Arsenal, Harley, collectively, the Parties)¹ having entered into a Stipulation for Agreed Order on the Motion and this court having

¹ It is noted that International Salt Company LLC (ISC), MC Weighing Systems LLC (MC), Quebec, Inc. (Quebec) have not filed an appearance or any responsive pleading in this Civil Action.

jurisdiction over the Parties and subject matter hereto and being otherwise fully advised as to the premises does hereby Grant the Motion and it is ORDERED AND ADJUDGED that the terms of the Stipulation (attached hereto as Exhibit A), entered into between the Parties are hereby adopted and incorporated as though fully set forth herein. This court retains jurisdiction to enforce the terms of the Stipulation.

DONE AND ORDERED this 25th day of Aug, 2021.


Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order Appointing Receiver has been furnished by Electronic mail, this 25 day of August, 2021, to:

DARRIN J. QUAM, ESQUIRE
dquam@stearnsweaver.com
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*Attorneys for Plaintiff Fortress 2020
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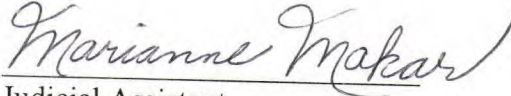
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