

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

POOR CHARLIE AND COMPANY

Defendant.

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Consent Decree

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I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the U.S. Environmental Protection Agency (“EPA”), filed a Complaint in this matter pursuant to Sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9607 and 9613 (“CERCLA”) against Poor Charlie and Company (“Settling Defendant”). The Complaint seeks reimbursement of response costs incurred and to be incurred for response actions taken and to be taken at or in connection with the release or threatened release of hazardous substances at the Twin Cities Iron and Metal Site in Bristol, Virginia (“the Site”), and a declaratory judgment that the Settling Defendant is liable for any future response costs incurred by the United States in connection with the Site.

B. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, which included the removal of over 5,500 tons of soil contaminated by lead and PCBs from the Site. As of May 28, 2016, the United States has incurred at least \$3,401,833.31 in unreimbursed response costs, including pre-judgment interest, and continues to incur costs relating to the response actions at the Site.

C. The United States alleges that Settling Defendant is a responsible party pursuant to Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), as owner and operator of the Site at the time of disposal of hazardous substances, and is jointly and severally liable for response costs incurred and to be incurred at the Site.

D. Settling Defendant does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

E. The United States has reviewed confidential Financial Information and Insurance

Information submitted by Settling Defendant to determine whether Settling Defendant is financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information and Insurance Information, the United States has determined that Settling Defendant has limited financial ability to pay for response costs incurred and to be incurred at the Site. In particular, the Financial Information demonstrates that Settling Defendant has no operations and no employees, limited assets, and substantial environmental liabilities other than the claims alleged in the Complaint.

F. Settling Defendant's outstanding environmental liabilities include the unfinished obligations under the West Virginia Voluntary Remediation Program to remediate three facilities that it owns in West Virginia: 1) the "Sattes Yard" property, located at Owens Street, Nitro, West Virginia; 2) the "Riverside" property, located at U.S. Route 60 E, Glasgow, West Virginia; and 3) the "Cremer Iron" property, located at 1800 Garfield Avenue, Parkersburg, West Virginia (collectively, the "Properties").

G. Settling Defendant has spent approximately \$323,000 to date on remediating the Sattes Yard property, and estimates that future remediation costs at that property will be approximately \$529,625. Settling Defendant has spent approximately \$754,000 to date on remediating the Riverside property, and estimates that future remediation costs at that property will be approximately \$1,106,875. Settling Defendant has spent approximately \$72,970 to date on remediating the Cremer Iron property, and estimates that future remediation costs at that property will be approximately \$531,875. Settling Defendant also spent approximately \$700,000 remediating a facility located at 141 Campbell's Creek Drive, Charleston, West Virginia, which it no longer owns. These costs and estimated future costs are in addition to the response costs incurred by the United States at the Twin Cities Iron and Metal

Site, for which the United States alleges that Settling Defendant is liable.

H. All of the outstanding common shares of the Settling Defendant are currently owned by the Poor Charlie Stock Trust, which is held by the Robert Levine 2009 Revocable Trust (“Revocable Trust”). The Parties have agreed that as set forth in this Consent Decree, the Poor Charlie Stock Trust will be transferred to an Environmental Trust for the purposes set forth in this Consent Decree and in the Environmental Trust Agreement attached as Appendix E, and that Poor Charlie will perform remediation at the Properties at the behest of the Environmental Trust as set forth therein.

I. The Revocable Trust contends that it never actively operated the sites owned by the Settling Defendant. The Revocable Trust is included as a party because: (i) it owes the Settling Defendant certain promissory notes that are outstanding; and (ii) it is required to transfer its interest in the Poor Charlie Stock Trust to the Environmental Trust to effectuate one of the purposes of this Consent Decree.

J. Settling Defendant certifies that the United States and West Virginia, by and through the West Virginia Department of Environmental Protection (“WVDEP”), are its only known creditors, other than governmental taxing authorities as tax obligations may arise from time to time after lodging of the Consent Decree.

K. The United States and Settling Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendant, the Trusts, and the Revocable Trust. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendant, the Trusts, and the Revocable Trust waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendant, the Trusts, and the Revocable Trust shall not challenge entry or the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, the Trusts, the Revocable Trust, and Settling Defendant and its successors and assigns.

IV. DEFINITIONS

3. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601-9675.

b. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

c. “Day” or “day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. “DOJ” shall mean the U.S. Department of Justice and its successor departments, agencies, or instrumentalities.

e. “Effective Date” shall mean the date upon which the approval of this Consent Decree is recorded on the Court’s docket.

f. “Environmental Trust” shall mean the Environmental Trust that is created pursuant to Section VII of this Consent Decree and the Environmental Trust Agreement.

g. “Environmental Trustee” shall mean Ann R. Starcher or her successor, as the then serving trustee of the Environmental Trust.

h. “Environmental Trust Account” shall mean an account established pursuant to paragraph 2.4 of the Environmental Trust Agreement and any Poor Charlie Account.

i. “Environmental Trust Agreement” shall mean the trust agreement in the form of Appendix E, which has been fully executed pursuant to Paragraph 9.

j. “Environmental Trust Assets” shall mean any and all assets of the Environmental Trust, including, without limitation, all of the stock of Poor Charlie and Company and the Poor Charlie Assets.

k. “EPA” shall mean the U.S. Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

l. “EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

m. “Financial Information” shall mean those financial documents identified in

Appendix B.

n. “Insurance Information” shall mean those insurance documents identified in Appendix C.

o. “Insurance Policies” shall mean all liability insurance policies issued to or for the benefit of Poor Charlie and Company, Cremer Iron & Metal Co., Raleigh Junk Co., Robert Corporation (d/b/a Twin City Iron and Metal), and/or any predecessor in interest to these organizations, including all policies for which these organizations and/or their predecessors are an “insured,” “named insured,” or “additional insured,” and including but not limited to all policies for general, public, primary, excess, excess/umbrella, umbrella, pollution legal liability, and environmental impairment liability. This includes, but is not limited to, the Insurance Information included in Appendix C.

p. “Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

q. “Judgment” shall mean the final judgment in the amount of \$3,401,833.31 entered pursuant to Paragraph 5 of this Consent Decree.

r. “Net Sales Proceeds” shall mean all consideration received from the sale of all or any portion of the Properties, less reasonable costs of sale as approved by EPA, after consultation with the State, including customary real estate brokerage fees and closing costs.

s. “Oversight Agency” shall mean the governmental agency that is serving as the lead agency overseeing implementation of Response Actions at the Properties. As of the

lodging of the Consent Decree, the Oversight Agency is WVDEP. EPA and the State may mutually agree to change the agency serving as Oversight Agency, and upon such change must promptly notify the Environmental Trust.

t. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

u. “Parties” shall mean the United States, the Settling Defendant, the Poor Charlie Stock Trust, the Revocable Trust and the Environmental Trust.

v. “Plaintiff” shall mean the United States.

w. “Poor Charlie Account” shall mean any of the following accounts held by Settling Defendant: (i) operating account with Branch Banking & Trust Company, (ii) investment account with Wells Fargo, and (iii) any and all other accounts as may currently exist or be created after entry of this Consent Decree.

x. “Poor Charlie Assets” includes any and all assets of Poor Charlie, including the Properties, cash, cash equivalents, accounts receivable, Poor Charlie Accounts, equipment, licenses, and permits.

y. “Poor Charlie Stock Trust” shall mean the Poor Charlie Stock Trust as it currently exists, which holds all the stock of Poor Charlie and Company. This Consent Decree contemplates its transfer from the Revocable Trust to the stand-alone Environmental Trust.

z. “Properties” shall mean all real property owned by the Settling Defendant as of the Effective Date, including: i) the “Sattes Yard” property, located at Owens Street, Nitro, West Virginia; ii) the “Riverside” property, located at U.S. Route 60 E, Glasgow, West Virginia; and iii) the “Cremer Iron” property, located at 1800 Garfield Avenue, Parkersburg, West Virginia, as further described in the deeds attached as Appendix D.

aa. “RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

bb. “Response Actions” shall mean the work required by the Voluntary Remediation Agreements entered into between WVDEP and Poor Charlie and Company for Sattes Yard (dated December 12, 2000), Riverside Yard (dated October 11, 2000), and Cremer Iron and Metal (dated January 28, 2002), and all WVDEP and/or EPA approved work plans submitted thereunder.

cc. “Revocable Trust” shall mean the Robert Levine 2009 Revocable Trust.

dd. “Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

ee. “Settling Defendant” shall mean Poor Charlie and Company.

ff. “Site” shall mean the Twin Cities Iron and Metal Superfund Site, encompassing approximately 12 acres, located along 950-1000 Fairview Street in Bristol, Virginia, and generally designated by the following tax parcel numbers: Parcels 29-9-1A, 29-9-1B, 29-9-6, 29-9-7A, and 29-9-7B. See Appendix A.

gg. “State” shall mean the State of West Virginia, by and through the West Virginia Department of Environmental Protection.

hh. “Trusts” shall mean the Poor Charlie Stock Trust and, once established, the Environmental Trust, as well as the Trustee of each Trust.

ii. “United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the mutual objective of the Parties is for

Settling Defendant to resolve its alleged civil liability for the Site under Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, as provided in Section X (Covenants Not to Sue by United States) and subject to the Reservation of Rights by United States in Section XI by:

a. Creating an Environmental Trust for the benefit of the United States and the State and transferring the Poor Charlie Stock Trust to that Environmental Trust; and

b. Assigning Settling Defendant's rights to claim proceeds from Insurance Policies to the United States for all response costs incurred and to be incurred in connection with the Site and for the costs of remediating the Properties.

VI. JUDGMENT AND NOTICE OF LIEN

5. Settling Defendant and the Trusts consent to entry of a judgment against Settling Defendant and in favor of the Plaintiff in the amount of \$3,401,833.31 for unreimbursed response costs incurred by the United States at the Site, plus Interest running from the Effective Date until the date of payment. Upon approval and entry, this Consent Decree shall constitute the final judgment for resolution of the Plaintiff's claims against Settling Defendant, and no other form of judgment shall be required or entered. This Judgment shall be satisfied solely by: (a) Settling Defendant's and the Revocable Trust's conveyance of the Poor Charlie Stock Trust to the Environmental Trust, in accordance with Section VII, (b) the final distribution of Environmental Trust Assets, if any, in accordance with Paragraph 17.b.i of this Consent Decree, and (c) recovery of proceeds from Insurance Policies, if any, as specified in Section VIII. This Judgment shall remain in effect until Settling Defendant, the Trusts, and the Revocable Trust have complied with all of their obligations under this Consent Decree.

VII. CREATION OF ENVIRONMENTAL TRUST

6. Settling Defendant and the Poor Charlie Stock Trust shall establish an

Environmental Trust in accordance with this Section. Settling Defendant and the Poor Charlie Stock Trust shall cooperate fully in the establishment and implementation of the Environmental Trust in accordance with this Consent Decree and the Environmental Trust Agreement, and provide such information as the Environmental Trustee may reasonably require to carry out the obligations of the Environmental Trust.

7. The purpose of the Environmental Trust is to act for the benefit of the United States and the State by:

a. accepting the transfer of the Poor Charlie Stock Trust from the Revocable Trust, managing Environmental Trust Assets, and making disbursements therefrom as reasonably necessary in order to execute the purposes of the Environmental Trust as provided in this Consent Decree and in the Environmental Trust Agreement;

b. implementing Response Actions at the Properties;

c. upon approval by EPA, after consultation with the State, selling, leasing, or otherwise disposing of the Properties;

d. disbursing the Net Sales Proceeds and other Environmental Trust Assets in accordance with the Consent Decree and the Environmental Trust Agreement; and

e. designating corporate officers and taking other measures necessary to maintain valid corporate status for Settling Defendant.

8. The United States, on behalf of EPA and DOJ, and the State, and any of their respective officers, directors, agents, employees, affiliates, successors, or assigns, shall not be deemed to be an owner, operator, trustee, partner, agent, shareholder, officer, or director of the Environmental Trust or Poor Charlie and Company. The Environmental Trust and its beneficiaries shall not be deemed to be successor to any liabilities of Settling Defendant and

shall have no liability for any liability that Settling Defendant may have to any third parties; provided, however, that the Environmental Trust shall be liable to perform the Response Actions, and any other actions approved by EPA and WVDEP, and to reimburse WVDEP and/or EPA for response costs to the extent provided in the Environmental Trust Agreement and this Consent Decree.

9. Upon the Effective Date, Settling Defendant and the Trusts shall submit to EPA a fully executed Environmental Trust Agreement, to be signed by the Environmental Trustee, the trustee for the Poor Charlie Stock Trust, and Settling Defendant's corporate officer, which shall be in the form attached to this Consent Decree as Appendix E. If EPA determines that the Environmental Trust Agreement needs to be amended to conform to the requirements of this Consent Decree or to effectuate the purposes of the Environmental Trust, Settling Defendant and the Trusts shall cooperate fully in the amendment of the Environmental Trust Agreement, and their agreement to amend the Environmental Trust Agreement shall not be unreasonably withheld.

10. Upon the Effective Date, the Revocable Trust shall enter into the Amendment to the Robert Levine 2009 Revocable Trust authorizing transfer of the Poor Charlie Stock Trust to the Environmental Trust, which shall be in the form attached to this Consent Decree as Appendix F.

11. Upon the Effective Date, Settling Defendant and the Revocable Trust shall transfer the Poor Charlie Stock Trust to the Environmental Trust. No assets shall be removed from the Poor Charlie Stock Trust prior to its transfer to the Environmental Trust, and Settling Defendant, the Revocable Trust, and the Poor Charlie Stock Trust hereby certify that no assets were transferred out of the Poor Charlie Stock Trust prior to their execution of this Consent

Decree. Upon its transfer to the Environmental Trust, the Poor Charlie Stock Trust shall terminate and the Poor Charlie Stock Trust assets shall become Environmental Trust Assets.

12. All Environmental Trust Assets shall be used solely for the purposes provided in this Consent Decree and the Environmental Trust Agreement, with the remainder to be distributed pursuant to Paragraph 17.b.

13. The Revocable Trust shall retain no ownership or residual interest whatsoever with respect to the Environmental Trust or the Environmental Trust Assets after making the required transfer to the Environmental Trust pursuant to Paragraph 11, except as provided in Paragraph 17.b.ii.

14. Upon transfer of the Poor Charlie Stock Trust to the Environmental Trust pursuant to Paragraph 11, Settling Defendant, the Trusts, and the Revocable Trust shall provide notice of such transfer to the United States and the State in accordance with Section XVI (Notices and Submissions).

15. Upon transfer of the Poor Charlie Stock Trust to the Environmental Trust pursuant to Paragraph 11, Settling Defendant shall amend its corporate bylaws to conform with Appendix G to this Consent Decree, to effectuate the purposes of the Consent Decree and the Environmental Trust Agreement.

16. Disposition of the Properties.

a. Except as provided in Paragraph 16.c below, after completing Response Actions on a Property pursuant to paragraph 3.1 of the Environmental Trust Agreement, the Environmental Trustee shall cause the Settling Defendant to use all reasonable efforts to sell that Property, including retaining a commercial real estate broker on customary and reasonable terms to assist in the marketing and sale of the Property, and taking other commercially reasonable

actions to maximize the Net Sales Proceeds. EPA must approve any sale in writing, after consultation with the State. If within three years after commencement of efforts to market a Property the Settling Defendant has not executed a contract for the sale of the Property, upon receipt of notice from EPA, after consultation with the State, the Environmental Trustee shall cause the Settling Defendant to commence all reasonable efforts to sell the Property to the highest bidder at a public auction.

b. To the extent that any existing lease on a Property expires during the term of this Environmental Trust, and subject to approval of EPA, after consultation with the State, the Environmental Trustee may authorize the Settling Defendant to lease a Property while Response Actions are still pending on that Property, provided that the Environmental Trustee reasonably determines that the net effect of any proposed lease is to lessen the total financial obligations and liabilities that would otherwise be incurred by the Settling Defendant and the Environmental Trust in the absence of any such lease. EPA, after consultation with the State, must approve such lease and the terms thereof in advance and in writing.

c. Subject to approval of EPA, after consultation with the State, the Environmental Trustee may cause the Settling Defendant to propose a sale of a Property while Response Actions are still pending on that Property, provided that the prospective purchaser agrees to assume responsibility for completion of the Response Actions on that Property and all other associated environmental liabilities, and the proposed sale maximizes achievable proceeds. EPA, after consultation with the State, must approve such sale and the terms thereof in advance and in writing.

d. Proceeds from any approved sale of Property under this Paragraph shall be distributed as provided in Paragraph 17.a. In the event of any approved lease under Paragraph

16.b, any net proceeds shall be paid by the Settling Defendant to an Environmental Trust Account.

17. Distribution of Environmental Trust Assets.

a. Distribution of Proceeds from Property Sale. At the time the Settling Defendant closes on the sale of all or any portion of the Properties, the Environmental Trustee shall distribute the proceeds as follows:

i. First, the Environmental Trustee shall pay the reasonable costs of sale as approved by EPA, after consultation with the State, including customary real estate brokerage fees and closing costs, which shall mean attorneys' fees for the closing, property transfer taxes, title and title insurance costs.

ii. Second, the Environmental Trustee shall deposit the Net Sales Proceeds into an Environmental Trust Account for use consistent with the purposes of the Environmental Trust Agreement and this Consent Decree.

b. Final Distribution of Environmental Trust Assets. As set forth in paragraph 2.7 of the Environmental Trust Agreement, the Environmental Trust may be terminated when all assets are exhausted or when EPA, after consultation with the State, finds that the Environmental Trust has accomplished the purposes of the Environmental Trust (including, but not limited to, completion of the Response Actions and payment of the Oversight Agency's unreimbursed costs). In the event that funds remain in the Environmental Trust at its termination, the Environmental Trustee shall liquidate all remaining assets and distribute the amounts as follows:

i. First, the Environmental Trustee shall pay EPA the amount necessary to satisfy the Judgment in full.

ii. Second, the Environmental Trustee shall pay any remaining cash or cash equivalents to the Revocable Trust.

VIII. INSURANCE PROCEEDS

18. The Settling Defendant, the Revocable Trust, and the Trusts, to the extent they have any interest or control, hereby assign to the United States all rights to insurance proceeds under the Insurance Policies, including but not limited to all rights to insurance proceeds relating to the Judgment as well as all rights to insurance proceeds relating to amounts previously spent, or to be spent, by Settling Defendant or the Environmental Trust. Upon request of the United States, Settling Defendant and the Environmental Trust shall, at their own expense, reasonably cooperate with and assist the United States in: (a) asserting and pursuing claims for coverage under those policies, (b) negotiating or litigating to obtain the most favorable resolution of claims under those policies as is reasonable, and (c) executing any agreement resolving claims under those policies.

19. Settling Defendant and the Environmental Trust shall not be required by this Consent Decree or the assignment in Paragraph 18 to fund any litigation against the insurers, nor shall they be required to travel to any location outside the Western District of Virginia in connection with their obligation to cooperate with the United States.

20. The United States may, at its election and at its sole expense, pursue and conduct (or pay to conduct) any coverage claims, including without limitation any future litigation against the insurers, subject to any reimbursement pursuant to Paragraph 22.b. In the event an insurer brings a declaratory action on an Insurance Policy which names as defendant the Settling Defendant or the Environmental Trust, the United States shall seek to dismiss the action as to the Settling Defendant or the Environmental Trust or to substitute itself for Settling Defendant or the

Environmental Trust as a party to the action on the basis of the assignment of rights conferred by this subparagraph. Settling Defendant and the Environmental Trust shall not be required by this Consent Decree to participate at their own expense in any such declaratory action beyond the level of cooperation required in this Section.

21. Settling Defendant agrees that 100% of any recovery from applicable Insurance Policies shall be paid to the United States in satisfaction of the Judgment, and any recovery in excess of the judgment amount shall be disbursed pursuant to Paragraph 22. Settling Defendant shall use best efforts to have these insurance proceeds paid by its insurers directly to the United States, in accordance with the procedures specified in Section IX, or as otherwise directed by the United States. If it is not practicable for the insurers to pay the United States directly, Settling Defendant shall receive payment from the insurers and shall pay these insurance proceeds to the United States within 30 Days of receiving them, in accordance with the procedures specified in Section IX or as otherwise directed by the United States in writing.

22. In the event that the United States recovers an amount in excess of the Judgment, then that amount shall be disbursed as follows:

a. First, to the Environmental Trust solely for use in completing Response Actions at the Properties, and only to the extent that Environmental Trust Assets are insufficient for that purpose;

b. Second, to the United States for any costs incurred in enforcing the Judgment plus applicable interest, including costs incurred in pursuing claims for coverage under the Insurance Policies pursuant to Paragraph 20;

c. Third, to the State for any unreimbursed costs incurred in overseeing the Response Actions at the Properties; and

d. Fourth, any funds remaining after payment under Paragraph 22.a, 22.b, and 22.c shall be returned to the Revocable Trust.

23. The Environmental Trust shall provide notice to EPA, the State, and the Revocable Trust of the timing and amount of any disbursement pursuant to Paragraph 22, including documentation supporting the amount disbursed to each entity.

IX. PAYMENT OF UNITED STATES RESPONSE COSTS

24. The Environmental Trust shall provide written notice to DOJ and EPA in accordance with Section XVI (Notices and Submissions) of upcoming payments to be made to the United States pursuant to the terms of the Consent Decree and/or Environmental Trust Agreement at least 10 Days in advance of the payment.

25. Payments to the United States shall be made at <https://www.pay.gov> to the U.S. Department of Justice account, in accordance with instructions provided to the Environmental Trust by the Financial Litigation Unit (“FLU”) of the U.S. Attorney’s Office for the Western District of Virginia after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which shall be used to identify all payments required to be made in accordance with this Consent Decree. The FLU shall provide the payment instructions to:

As to Poor Charlie and Company:

Poor Charlie and Company
c/o Ann R. Starcher, Esq.
Lewis, Glasser, Casey & Rollins, PLLC
P.O. Box 1746
Charleston, WV 25326
304-345-2000
astarcher@lgcr.com

As to the Environmental Trust:

Ann R. Starcher, Esq.
Lewis, Glasser, Casey & Rollins, PLLC
P.O. Box 1746
Charleston, WV 25326
304-345-2000
astarcher@lgcr.com

The Environmental Trust and Settling Defendant may change the individual to receive payment instructions on its behalf by providing written notice to DOJ and EPA of such change in accordance with Section XVI (Notices and Submissions).

26. Deposit of Payment. The total amount to be paid pursuant to the United States pursuant to this Consent Decree and the Environmental Trust Agreement shall be deposited by EPA in the EPA Hazardous Substance Superfund.

27. Notice of Payment. At the time of payment to the United States, Settling Defendant or the Environmental Trustee, as applicable, shall send notice that payment has been made to EPA and DOJ in accordance with Section XVI (Notices and Submissions) and to:

EPA CFO by email: cinwd_acctsreceivable@epa.gov

EPA CFO by regular mail: EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference the CDCS Number, Site/Spill ID Number 03-EN, and DJ # 90-11-3-10712.

X. COVENANTS NOT TO SUE BY UNITED STATES

28. Except as specifically provided in Section XI (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendant, the Trusts, or the Revocable Trust pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a) regarding the Site. With respect to present and future liability,

these covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Defendant, the Trusts, and the Revocable Trust of their obligations under this Consent Decree, including but not limited to, the transfer by the Revocable Trust of the Poor Charlie Stock Trust to the Environmental Trust as required by Paragraph 11 and compliance with Section VIII (Insurance Proceeds). These covenants are also conditioned upon the veracity and completeness of the Financial Information and Insurance Information provided to EPA by Settling Defendant and the Poor Charlie Stock Trust, and the financial, insurance, and indemnity certification made by Settling Defendant, the Revocable Trust, and the Poor Charlie Stock Trust in Section XIV (Certification). These covenants extend only to Settling Defendant, the Trusts, and the Revocable Trust and do not extend to any other person.

XI. RESERVATION OF RIGHTS BY UNITED STATES

29. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant, the Trusts, and the Revocable Trust with respect to all matters not expressly included within the Covenants Not to Sue by United States in Paragraph 28. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights with respect to:

- a. liability of Settling Defendant, the Trusts, and the Revocable Trust for failure to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability based on the ownership or operation of the Site by Settling Defendant and the Environmental Trust when such ownership or operation commences after

signature of this Consent Decree by Settling Defendant and the Environmental Trust;

e. liability based on Settling Defendant's and the Environmental Trust's transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by Settling Defendant and the Environmental Trust; and

f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

30. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the Financial Information or Insurance Information provided by Settling Defendant and the Poor Charlie Stock Trust, or the financial, insurance, or indemnity certification made by Settling Defendant, the Revocable Trust, and the Poor Charlie Stock Trust in Section XIV (Certification) is false or, in any material respect, inaccurate.

XII. COVENANTS BY SETTLING DEFENDANT, THE TRUSTS, AND THE REVOCABLE TRUST

31. Settling Defendant, the Trusts, and the Revocable Trust covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site, the Properties, and this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site

or the Properties, including any claim under the United States Constitution, the Virginia or West Virginia Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law, relating to the Site or the Properties.

32. Except as provided in Paragraph 34 (claims against other potentially responsible parties) and Paragraph 39 (res judicata and other defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XI (Reservation of Rights by United States), other than in Paragraph 29.a (liability for failure to meet a requirement of the Consent Decree) or 29.b (criminal liability), but only to the extent that Settling Defendant's, the Trusts', or the Revocable Trust's claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

33. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

34. Settling Defendant, the Trusts, and the Revocable Trust agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA, 42 U.S.C. §§ 9607(a) and 9613) that they may have for response costs relating to the Site against any other person who is a potentially responsible party ("PRP") under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Defendant, the Trusts, or the Revocable

Trust may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Defendant, the Trusts, or the Revocable Trust.

XIII. EFFECT OF SETTLEMENT/CONTRIBUTION

35. Except as provided in Paragraph 34 (claims against other PRPs), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Section XII (Covenants by Settling Defendant, the Trusts, and the Revocable Trust), each of the Parties expressly reserves any and all rights (including, but not limited to, under Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons related to the Site to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

36. The Parties agree, and by entering this Consent Decree this Court finds, that this settlement constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Settling Defendant, the Trusts, and the Revocable Trust are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person, except for the Commonwealth of Virginia; provided, however, that if the United States exercises rights under the reservations in

Section XI (Reservation of Rights by United States), other than in Paragraphs 29.a (liability for failure to meet a requirement of Consent Decree) or 29.b (criminal liability), the “matters addressed” in this Consent Decree will no longer include those response costs or response actions that are within the scope of the exercised reservation.

37. The Parties further agree, and by entering this Consent Decree this Court finds, that the Complaint filed by the United States in this action is a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this Consent Decree constitutes a judicially-approved settlement pursuant to which Settling Defendant, the Trusts, and the Revocable Trust have, as of the Effective Date, resolved their liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

38. Settling Defendant or the Environmental Trust, as applicable, shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendant or the Environmental Trust also shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify EPA and DOJ in writing within 10 days after service of the complaint or claim upon it. In addition, Settling Defendant or the Environmental Trust shall notify EPA and DOJ within 10 days after service or receipt of any Motion for Summary Judgment, and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

39. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendant, the Trusts, and the Revocable Trust shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue

preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by United States set forth in Section X (Covenants Not to Sue by United States).

XIV. CERTIFICATION

40. Settling Defendant and the Poor Charlie Stock Trust certify that, to the best of their knowledge and belief, after thorough inquiry, they have:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information (including records, reports, documents and other information in electronic form) (hereinafter referred to as “Records”) relating to their potential liability regarding the Site since the earlier of notification of potential liability by the United States or the Commonwealth of Virginia, and that they have fully complied with any and all EPA requests for information regarding the Site and Settling Defendant’s financial circumstances, including but not limited to insurance and indemnity information, pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e) and state law; and

b. submitted to EPA financial information that fairly, accurately, and materially sets forth Settling Defendant’s financial circumstances, and that those circumstances have not materially changed between the time the financial information was submitted to EPA and the time Settling Defendant executes this Consent Decree.

41. Insurance Claims Certification. Settling Defendant and the Poor Charlie Stock Trust certify that, to the best of their knowledge and belief, after thorough inquiry, they have fully disclosed to the United States the existence of any Insurance Policies, or evidence of such policies, that may cover claims relating to cleanup of the Site or the Properties, that they continue

to hold all rights under the Insurance Policies, and that except to the extent that insurance claims unrelated to the response costs sought in the above-captioned action have been made in the past under one or more of the Insurance Policies, they have not settled, compromised, or assigned any insurance rights or the assigned claims proceeds prior to entry of this Consent Decree.

42. The Revocable Trust certifies that, to the best of its knowledge and belief, after thorough inquiry, it:

a. has no Records relating to activities at the Site, potential liability of any person under CERCLA at the Site, Settling Defendant's financial circumstances, or Insurance Policies, and

b. has not altered, mutilated, discarded, destroyed or otherwise disposed of any such Records since the earlier of notification to Settling Defendant of potential liability by the United States or the Commonwealth of Virginia.

XV. ACCESS TO INFORMATION

43. Settling Defendant and the Trusts shall provide to EPA, upon request, copies of all Records within their possession or control or that of their contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Site.

44. Privileged and Protected Claims.

a. Settling Defendant and the Trusts may assert that all or part of a Record is privileged or protected as provided under federal law, provided they comply with Paragraph 44.b, and except as provided in Paragraph 44.c.

b. If Settling Defendant or a Trust asserts a claim of privilege or protection, it

shall provide Plaintiff with the following information regarding such Record: its title; its date; the name, title, affiliation (*e.g.*, company or firm), and address of the author, each addressee, and each recipient; a description of the Records' contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Settling Defendant or the Trust (as applicable) shall provide the Record to the United States in redacted form to mask the privileged or protected information only. Settling Defendant and the Trusts shall retain all Records that they claim to be privileged or protected until the United States has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Settling Defendant's or the Trust's favor.

c. Settling Defendant and the Trusts may make no claim of privilege or protection regarding:

i. any data regarding the Site, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or

ii. the portion of any Record that Settling Defendant or any Trust is required to create or generate pursuant to this Consent Decree.

45. Business Confidential Claims. Settling Defendant and the Trusts may assert that all or part of a Record submitted to Plaintiff under this Section is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Settling Defendant and the Trusts shall segregate and clearly identify all Records or parts thereof submitted under this Consent Decree for which Settling Defendant and the Trusts assert a business confidentiality claim. Records submitted to

EPA, determined to be confidential by EPA, will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Settling Defendant or the Trusts that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Settling Defendant or the Trusts.

46. Notwithstanding any provision of this Consent Decree, the United States retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XVI. NOTICES AND SUBMISSIONS

47. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to EPA, DOJ, the State, the Trusts, the Revocable Trust, and Settling Defendant, respectively.

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-3-10712

As to EPA:

Robin E. Eiseman, Esq.
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III

1650 Arch Street (3RC41)
Philadelphia, PA 19103

As to the State:

Charles S. Driver, Esq.
Office of Legal Services
WV Department of Environmental Protection
601 57th St. SE
Charleston, WV 25304

As to Settling Defendant:

Poor Charlie and Company
c/o James D. Elliott, Esq.
Spilman Thomas & Battle, PLLC
1100 Bent Creek Blvd.
Mechanicsburg, PA 17050

As to the Trusts and the Revocable Trust:

Ann R. Starcher, Esq.
Lewis, Glasser, Casey & Rollins, PLLC
P.O. Box 1726
Charleston, WV 25326

XVII. RETENTION OF JURISDICTION

48. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVIII. INTEGRATION/APPENDICES

49. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the map of the Site.

“Appendix B” is a list of the financial documents submitted to EPA by Settling Defendant and the Poor Charlie Stock Trust.

“Appendix C” is a list of the insurance documents submitted to EPA by Settling Defendant and the Poor Charlie Stock Trust.

“Appendix D” is the deeds for the Properties.

“Appendix E” is the Environmental Trust Agreement.

“Appendix F” is the Amendment to the Revocable Trust, authorizing transfer of the Poor Charlie Stock Trust to the Environmental Trust.

“Appendix G” is the Amended and Restated Bylaws of Poor Charlie and Company.

XIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

50. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations that indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant, the Trusts, and the Revocable Trust consent to the entry of this Consent Decree without further notice.

51. If for any reason this Court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the sole discretion of any Party and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

XX. SIGNATORIES/SERVICE

52. Each undersigned representative of Settling Defendant, the Trusts, the Revocable Trust, and the Deputy Chief, U.S. Department of Justice, Environment and Natural Resources

Division, Environmental Enforcement Section, certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

53. Settling Defendant, the Trusts, and the Revocable Trust agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendant, the Trusts, and the Revocable Trust in writing that it no longer supports entry of the Consent Decree.

54. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendant agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that Settling Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXI. FINAL JUDGMENT

55. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between the United States and Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS __ DAY OF _____, 2016.

United States District Judge
Western District of Virginia

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Poor Charlie and Company*,

FOR THE UNITED STATES OF AMERICA:

Date: 10/28/16



NATHANIEL DOUGLAS
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611



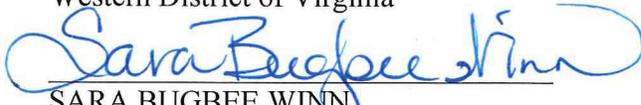
LAURA A. THOMS
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Poor Charlie and Company*,

FOR THE UNITED STATES OF AMERICA:

John P. Fishwick, Jr.
United States Attorney
Western District of Virginia

Date: 11-1-16



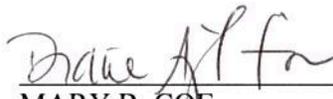
SARA BUGBEE WINN
Assistant U.S. Attorney
Western District of Virginia
310 First Street, S.W. Room 906
Roanoke, VA 24011
Phone: (540) 857-2250
sara.winn@usdoj.gov

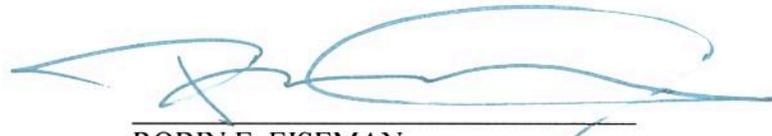
THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Poor Charlie and Company*,

FOR THE UNITED STATES OF AMERICA:

Date: 10/31/2016


SHAWN M. GARVIN
Regional Administrator, Region III
U.S. Environmental Protection Agency
1650 Arch Street (3RA00)
Philadelphia, PA 19103


MARY B. COE
Regional Counsel
U.S. Environmental Protection Agency
1650 Arch Street (3RC00)
Philadelphia, PA 19103


ROBIN E. EISEMAN
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
1650 Arch Street (3RC41)
Philadelphia, PA 19103

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Poor Charlie and Company*,

FOR POOR CHARLIE AND COMPANY

10/13/16
Date


Name (print): Ann R. Starcher
Title: Trustee of Robert Levine 2009 Revocable Trust,
as Trustee of the Poor Charlie Stock Trust
Address: P.O. Box 1746
Charleston, WV 25326

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Ann R. Starcher
Title: Trustee of Robert Levine 2009 Revocable
Trust, as Trustee of the Poor Charlie Stock Trust
Address: P.O. Box 1746
Charleston, WV 25326
Phone: 304-345-2000
email: astarcher@lgcr.com

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Poor Charlie and Company*,

FOR THE ENVIRONMENTAL TRUST

10/13/14
Date


Name (print): Ann R. Starcher
Title: Trustee
Address: P.O. Box 1746
Charleston, WV 25326
Phone: 304-345-2000
Email: astarcher@lgcr.com

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Poor Charlie and Company*.

FOR THE ROBERT LEVINE REVOCABLE TRUST

10/13/16
Date


Name (print): Ann R. Starcher
Title: Trustee
Address: P.O. Box 1746
Charleston, WV 25326
Phone: 304-345-2000
Email: astarcher@lgcr.com

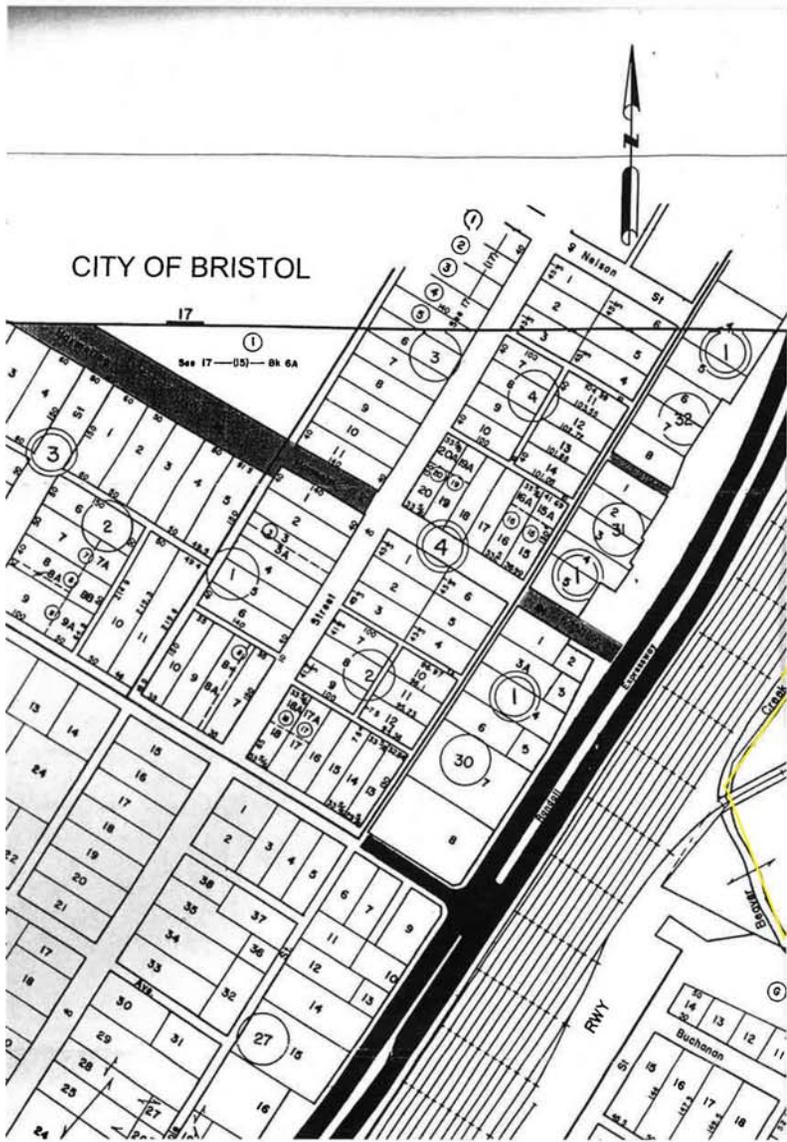
THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Poor Charlie and Company*,

FOR THE POOR CHARLIE STOCK TRUST

10/13/14
Date


Name (print): Ann R. Starcher
Title: Trustee
Address: P.O. Box 1746
Charleston, WV 25326
Phone: 304-345-2000
Email: astarcher@lgcr.com

CONSENT DECREE APPENDIX A:
SITE MAP
United States v. Poor Charlie and Company, Inc.



CONSENT DECREE APPENDIX B:
FINANCIAL DOCUMENTS
United States v. Poor Charlie and Company

**Appendix B:
List of Financial Documents**

1. U.S. Corporate Income Tax Returns, Form 1120S, for Poor Charlie and Company for the years ending December 31, 2005 through 2013.
2. Amended U.S. Corporate Income Tax Return, Form 1120S, for Poor Charlie and Company for the year ended December 31, 2008.
3. Financial Statement of Corporate Debtor signed by Ann R Starcher, Trustee, for the Robert Levine 2009 Revocable Trust on October 7, 2014.
4. Unsigned Financial Statement of Corporate Debtor submitted by Ann R. Starcher on February 22, 2012.
5. Response of Ann Starcher, Esq., as Trustee of the Robert L. Levine Revocable Trust, to EPA's November 9, 2011 Information Request, dated December 15, 2011.
6. Response of Ann Starcher, Esq., as Trustee of the Robert L. Levine Revocable Trust, to EPA's January 24, 2012 Information Request, dated February 22, 2012.
7. Response of Ann Starcher, Esq., as Trustee of the Robert L. Levine Revocable Trust, to EPA's September 19, 2012 request for additional financial information, dated October 31, 2012.
8. Poor Charlie and Company Owens Street, Nitro, West Virginia, Property Appraisal Conducted by Darrell Rolston, Rolston & Company, dated January 25, 2013.
9. Poor Charlie and Company Route 60, Glasgow, West Virginia, Property Appraisal Conducted by Darrell Rolston, Rolston & Company, dated January 25, 2013.
10. Poor Charlie and Company 1800 Garfield Avenue, Parkersburg, West Virginia, Property Appraisal Conducted by Darrell Rolston, Rolston & Company, dated January 25, 2013.
11. Response of James D. Elliot, Esq., on behalf of Poor Charlie and Company, to EPA's December 13, 2012 request for additional information, dated January 29, 2013.
12. Email from James D. Elliot, Spilman, Thomas, and Battle, PLLC, on behalf of Poor Charlie and Company, to Laura Thoms, USDOJ, Re: "October 2014 Updated Financial Information part 1 of 2.PDF;October 2014 Updated Financial Information part 2 of 2.PDF;Memo to DEP and EPA Updated 141014.DOCX [STB-WORKSITE.FID466536]," dated October 15, 2014.

13. Email from Dennis L. Litwinoqicz, Senior Scientist, LRS, Potesta & Associates, to Carlyn Prisk, EPA, Re: "Poor Charlie Riverside," dated August 8, 2014.
14. Email from James D. Elliot Spilman, Thomas, and Battle, PLLC, on behalf of Poor Charlie and Company to Laura Thoms, USDOJ, Re: "Poor Charlie tax return [STB-WORKSITE.FID466536]," dated November 6, 2014.
15. Email from Ann R. Starcher, Lewis Glasser Casey & Rollins PLLC, on behalf of Poor Charlie and Company, to Laura Thoms, USDOJ, Re: "Consent Order and Agreements," dated December 22, 2014.
16. Email from Ann R. Starcher, Lewis Glasser Casey & Rollins PLLC, on behalf of Poor Charlie and Company, to Laura Thoms, USDOJ, Re: "Poor Charlie," dated December 22, 2014.
17. Email from Ann R. Starcher, Lewis Glasser Casey & Rollins PLLC, on behalf of Poor Charlie and Company, to Laura Thoms, USDOJ, Re: "Remediation Cost Estimates," dated December 22, 2014.
16. Letter and attached documents from James D. Elliot Spilman, Thomas, and Battle, PLLC, dated March 23, 2015.
17. Letter from Dennis L. Litwinowicz, Senior Scientist, Potesta & Associates to Ann R. Starcher, Lewis Glasser Casey & Rollins PLLC, dated July 8, 2016.

**CONSENT DECREE APPENDIX C:
INSURANCE INFORMATION**
United States v. Poor Charlie and Company

Appendix C:
Insurance Information

1. Response of Ann Starcher, Esq., as Trustee of the Robert L. Levine Revocable Trust, to EPA's November 9, 2011 Information Request, dated December 15, 2011.

**CONSENT DECREE APPENDIX D:
DEEDS FOR THE PROPERTIES**
United States v. Poor Charlie and Company, Inc.

APPENDIX D1: SATTES YARD

THIS DEED, Made this 1st day of July, 1994, by and between JERRY L. GOLDBERG, as Executor of the Estate of Jerome Goldberg, deceased, party of the first part, JERRY L. GOLDBERG, as Trustee of the Jerome Goldberg Marital Trust, party of the second part, JERRY L. GOLDBERG, as Trustee of the Jerome Goldberg Family Trust, party of the third part, and RALEIGH JUNK COMPANY, a corporation, party of the fourth part;

WITNESSETH: That for and in consideration of the sum of Ten Dollars (10.00), and other good and valuable consideration, all cash in hand paid by the party of the fourth part to the party of the second part and the third part, the receipt and sufficiency whereof is hereby acknowledged, the party of the first part, party of the second part and party of the third part do hereby GRANT and CONVEY unto the party of the fourth part, all of that certain parcel of real property described herein which are situate in Nitro, Union District, Kanawha County, West Virginia, and more particularly described as follows:

BEGINNING at an iron pin at the junction of the easterly right of way line of Owen Street, the northerly line of a ten (10) foot abandoned alley and the southerly line the Consolidated Rail Corporation (formerly New York Central) railroad right of way; thence leaving said iron pin and running with the southerly right of way line of said railroad right of way, S. 70° 50' 13" E. 186.41, S. 72° 32' E. 97.45; S. 73° 57' E. 98.25, S. 74° 36' 41 E. 93.12, S. 74° 49' E. 119.35, S. 74° 59' E. 83.10, S. 74° 52' E. 685.74, to an iron pin in First Street, thence leaving said railroad right of way and running with the westerly right of way line of First Street S. 12° 58' W. 300 feet, more or less, passing at the easterly end of said ten (10) foot alley, with the easterly lines of said Lot 27, Block "B" of "East Crawford City" the easterly side of that portion of Kanawha Avenue which has been abandoned and the easterly line of Lot 28 of Block "C" of said East Crawford to a point in the low water mark in Kanawha River; thence with the meanders of the low water mark of Kanawha River, S. 78° 37' W. 230.31 feet, N. 71° 04' W. 213.32, N. 72° 31' W. 209.32, N. 80° 51' W. 145.74; N. 72° 21' W. 64.53, N. 69° 10' W. 264.64, N. 74° 11' W. 231.17, N. 76° 02' W. 67.88, N. 79° 01' W. 25.61, to a point which is the common corner to Lot No. 1 of Block "D" of the Sunbright Addition to East Crawford City and Lot No. 28 of Section No. 2 of East Crawford City, thence leaving said River and with the common division line of said Lot No. 28 and 1, N. 24° 36' E. 153 feet, more or less, to the southerly line of Kanawha Avenue; thence with the southerly line of Kanawha Avenue and the northerly line of said Lot No. 1, S. 70° 50' 13" E. 25 feet to the common corner of Lot Nos. 1 and 2 of said Sunbright Addition; thence leaving said point and running with the westerly end of of that portion of Kanawha Avenue, which has been abandoned N. 24° 36' E. 83

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 KANAWHA COUNTY, WEST VIRGINIA
 DTE/TIME RECORDED 07/26/1994 12:45:37:00
 INET # 562228 TYPE DEED
 CLERK OF THE COUNTY COMMISSION
 TOTAL RECD/DUE: 750.20 739.20

150.67 feet more or less passing the southwest corner of Lot No. 1 of Block E, of said Sunbright addition, and continuing with the westerly line of said lot No. 1 and the easterly right of way line of Owen Street, to a point in the westerly end of an abandoned ten (10) foot alley, and the northwesterly corner of said Lot No. 1, thence continuing with the westerly end of said ten (10) foot alley and the easterly right of way line of Owen Street, to the place of beginning and being all of Blocks "B" and "C" of the East Crawford City, all of Blocks "D" and "E" of Sunbright Addition to East Crawford City, the abandoned ten (10) foot alley running parallel and adjacent to the south of the aforesaid railroad right of way, the abandoned portion of Wallace Street lying south of said railroad right of way and the abandoned portion of Kanawha Avenue extending from its intersection with Owen Street in an Easterly direction to the intersection with First Street, all of which are more particularly identified on that certain map of East Crawford and Sunbright Addition which is recorded in the Office of the Clerk of the County Commission of Kanawha County, in Map Book 6, at pages 62 and 63;

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FPC 3009

and being A.) all of the lots in Blocks "D" and "E" in "Sunbright Addition East Crawford", as conveyed to Jerome Goldberg in that certain deed from F. L. Sattes, et. al. dated January 15, 1948, and recorded in the aforesaid Clerk's office in Deed Book 821, page 107; B.) All of the lots in Blocks "B" and "C" in Section One of "East Crawford" plus the rights: to the easterly one-half of Wallace Street from the railroad to Kanawha River, Kanawha Avenue, extending from the middle of Wallace Street in an easterly direction to the easterly line of the Lots "B" and "C" together with a ten (10) foot alley adjacent to the southerly right of way line of the New York Central Railroad (now Consolidated Rail Corporation) and extending from Wallace Street in an easterly direction to the side line of Block "B" as conveyed to Jerome Goldberg, in that certain deed from E. S. Bock and Lulu Bock, his wife, dated June 11, 1948, and recorded in the aforesaid Clerk's office in Deed Book 836, page 324; D.) all of the ten (10) foot alley which lies between the southerly right of way line of the aforesaid Railroad and the northerly lot line of of the Lots in Block "B" of East Crawford and Block "E" of Sunbright Addition to East Crawford, all of Wallace Street lying between the south right of way line of said railroad and the northerly line of Kanawha Avenue, and all of Kanawha Avenue extending in an easterly direction from Owen Street to the Westerly line of First Street all of which were abandoned by the City of Nitro, a municipal corporation, dated September 3, 1993,

and recorded in the aforesaid Clerk's office in Deed Book 2324, at page 34, with a map attached; E). The said Jerome Goldberg died testate on May 14, 1979, in Kanawha County, West Virginia, and by his Will dated February 22, 1979, and recorded in the aforesaid Clerk's office in Will Book 321, at page 487, the parcels described in "A" and "B" were made a part of his residuary estate and thereby became a part of two trusts created therein, the Jerome Goldberg Marital Trust and the Jerome Goldberg Family Trust. In the aforesaid Will Jerry L. Goldberg was named Executor of the Estate and Trustee for both of the Trusts. Neither the Estate or the Trust have been closed or terminated. That in said Will both as Executor and Trustee Jerry Goldberg has the Power and authority to Execute a deed conveying same; and E). That the parcels referred to in "A" and "B" herein were conveyed to Jerome Goldberg Marital Trust, Jerry L. Goldberg, Trustee and the Jerome Goldberg Family Trust, Jerry L. Goldberg, Trustee, established by the proportionate interest each trust has in the real estate in and by that certain deed and confirmation Deed from the Estate of Jerome Goldberg, Jerry L. Goldberg, Trustee, dated December 30, 1988, and May 27, 1994, respectfully, and recorded in the aforesaid Clerk's office in Deed Book 2340, page 73; reference to which deeds, will and map aforesaid is herewith made for all pertinent purposes.

The Grantee previously leased the property from the Grantor. Grantee has advised that Grantors that several drums of paint, which were disposed of as hazardous waste, were stored on the property for a period of years. The Grantee has also advised that the Grantors did not own this paint, and further that the paint was owned by Jerome Goldberg. The Grantors know of no other hazardous waste which has been stored, treated, or disposed of on the property. Grantee has represented to the Grantors that other than this paint mentioned above, the Grantee has not treated, stored, or disposed of hazardous waste on the property.

This conveyance is made subject to any and all other covenants, restrictions, conditions, reservations, prior mineral reservations, rights of way and easements set forth and contained in former deeds on the chain of title, together with any and all

6007-2344 PAGE 421

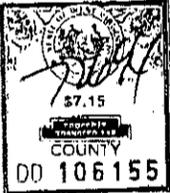
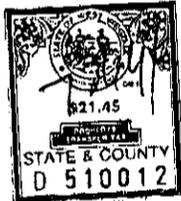
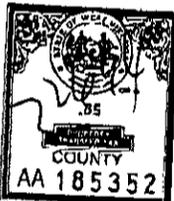
necessary rights incidental thereto, contained of record in the aforesaid Clerk's office.

Subject to the matters noted herein and subject further to the lien of the 1994 real estate taxes, which taxes are not yet due or ascertainable, the payment of which shall be prorated between the parties hereto on a calendar year basis as of the date of delivery of this deed, the payment of which is assumed by the party of the second part, the party of the first part covenants that they will WARRANT GENERALLY the title to the real estate herein conveyed and that the same is free and clear from all liens and encumbrances.

BOOK 2341 PAGE 422

The undersigned grantor do hereby state that the total consideration paid for the real estate transferred by this instrument is \$168,000 and 00/100.

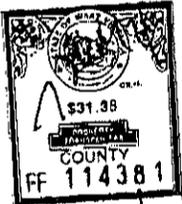
WITNESS the following signatures:



Jerry L. Goldberg
JERRY L. GOLDBERG, as Executor of the Estate of Jerome Goldberg, deceased

Jerry L. Goldberg
JERRY L. GOLDBERG, as Trustee of the Jerome Goldberg Marital Trust

Jerry L. Goldberg
JERRY L. GOLDBERG, as Trustee of the Jerome Goldberg Family Trust.

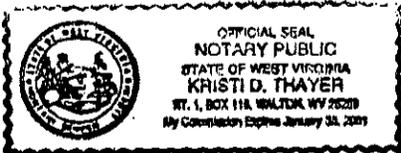


STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to-wit:

The foregoing instrument was acknowledged before me this 1st day of July, 1994, by JERRY L. GOLDBERG, as Executor of the Estate of Jerome Goldberg, deceased, JERRY L. GOLDBERG, as Trustee of the Jerome Goldberg Marital Trust, JERRY L. GOLDBERG, as Trustee of the Jerome Goldberg Family Trust.

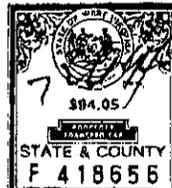
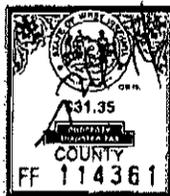


My commission expires January 30, 2001



Kristi D. Thayer
Notary Public

Prepared by:
J. Stephen Max
Attorney at Law



A F F I D A V I T

STATE OF WEST VIRGINIA,
 COUNTY OF KANAWHA, to-wit:

That after first being duly sworn the undersigned,
 Jerry L. Goldberg, Nancy Rosenthal, Deidre Lord, Scott Goldman,
 Kim Goldman, and Greg Goldman, do state the following:

1. That we are all of the heirs and beneficiaries of
 the Estates and Trusts of Jerome Goldberg, who died testate in
 Kanawha County, West Virginia, on May 13, 1979, and Alma
 Goldberg, who died testate in Kanawha County, West Virginia, on
 April 14, 1989;

2. That the said Jerome Goldberg in his will dated
 February 22, 1979, created two trusts, the Jerome Goldberg
 Marital Trust and the Jerome Goldberg Family Trust, named Jerry
 L. Goldberg, as Executor of his estate and Trustee of the said
 Trusts;

3. That the said Alma Goldberg in her will dated March
 16, 1984, she named Jerry L. Goldberg, as Executor and exercised
 the option to name the beneficiaries of the Jerome Goldberg
 Marital Trust, who are the undersigned;

4. That the estate of Jerome Goldberg and Alma
 Goldberg, have not been settled and Jerry L. Goldberg is
 currently and has continuously remained since his appointment as
 Executor of the said Estate;

5. That Jerry L. Goldberg is currently and has
 continuously remained since his appointment as Trustee of both
 the Jerome Goldberg Family Trust and the Jerome Goldberg Marital
 Trust;

6. That Jerry L. Goldberg has the authority to execute
 the deeds and negotiate the sale of real estate which was owned
 by or became the property a party of the Estates of Jerome
 Goldberg and Alma Goldberg, and/or either of the aforesaid
 Trusts; and

7. That in particular Jerry Goldberg, as either
 Executor and/or Trustee of the aforesaid estates and Trusts has
 the authority to sell the following described parcel of real
 estate upon such terms and conditions as he sees fit.

BOOK 2344 PAGE 423

All of that certain parcel of real property described herein which are situate in Nitro, Union District, Kanawha County, West Virginia, and more particularly described as follows:

BEGINNING at an iron pin at the junction of the easterly right of way line of Owen Street, the northerly line of a ten (10) foot abandoned alley and the southerly line the Consolidated Rail Corporation (formerly New York Central) railroad right of way; thence leaving said iron pin and running with the southerly right of way line of said railroad right of way, S. 70° 50' 13" E. 186.41, S. 72° 32' E. 97.45; S. 73° 57' E. 98.25, S. 74° 36' 41 E. 93.12, S. 74° 49' E. 119.35, S. 74° 59' E. 83.10, S. 74° 52' E. 685.74, to an iron pin in First Street, thence leaving said railroad right of way and running with the westerly right of way line of First Street S. 12° 58' W. 300 feet, more or less, passing at the easterly end of said ten (10) foot alley, with the easterly lines of said Lot 27, Block "B" of "East Crawford City" the easterly side of that portion of Kanawha Avenue which has been abandoned and the easterly line of Lot 28 of Block "C" of said East Crawford to a point in the low water mark in Kanawha River: thence with the meanders of the low water mark of Kanawha River, S. 78° 37' W. 230.31 feet, N. 71° 04' W. 213.32, N. 72° 31' W. 209.32, N. 80° 51' W. 145.74; N. 72° 21' W. 64.53, N. 69° 10' W. 264.64, N. 74° 11' W. 231.17, N. 76° 02' W. 67.88, N. 79° 01' W. 25.61, to a point which is the common corner to Lot No. 1 of Block "D" of the Sunbright Addition to East Crawford City and Lot No. 28 of Section No. 2 of East Crawford City, thence leaving said River and with the common division line of said Lot No. 28 and 1, N. 24° 36' E. 153 feet, more or less, to the southerly line of Kanawha Avenue; thence with the southerly line of Kanawha Avenue and the northerly line of said Lot No. 1, S. 70° 50' 13" E. 25 feet to the common corner of Lot Nos. 1 and 2 of said Sunbright Addition; thence leaving said point and running with the westerly end of of that portion of Kanawha Avenue, which has been abandoned N. 24° 36' E, 150.67 feet more or less passing the southwest corner of Lot No. 1 of Block E, of said Sunbright addition, and continuing with the westerly line of said lot No. 1 and the easterly right of way line of Owen Street, to a point in the westerly end of an abandoned ten (10) foot alley, and the northwesterly corner of said Lot No. 1, thence continuing with the westerly end of said ten (10) foot alley and the easterly right of way line of Owen Street, to the place of beginning and being all of Blocks "B" and "C" of the East Crawford City, all of Blocks "D" and "E" of Sunbright Addition to East Crawford City, the abandoned ten (10) foot alley running parallel and adjacent to the south of the aforesaid railroad right of way, the abandoned portion of Wallace Street lying south of said railroad right of way and the abandoned portion of Kanawha Avenue extending from its intersection with Owen Street in an Easterly direction to the intersection with First Street, all of which are more particularly identified on that certain map of East Crawford and Sunbright Addition which is recorded in the Office of the Clerk of the County Commission of Kanawha County, in Map Book 6, at pages 62 and 63;

and being A.) all of the lots in Blocks "D" and "E" in "Sunbright Addition East Crawford", as conveyed to Jerome

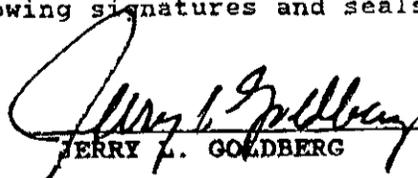
BOOK 2344 PAGE 424

Goldberg in that certain deed from F. L. Sattes, et. al. dated January 15, 1948, and recorded in the aforesaid Clerk's office in Deed Book 821, page 107; b.) All of the lots in Blocks "B" and "C" in Section One of "East Crawford" plus the rights: to the easterly one-half of Wallace Street from the railroad to Kanawha River, Kanawha Avenue, extending from the middle of Wallace Street in an easterly direction to the easterly line of the Lots "B" and "C" together with a ten (10) foot alley adjacent to the southerly right of way line of the New York Central Railroad (now Consolidated Rail Corporation) and extending from Wallace Street in an easterly direction to the side line of Block "B" as conveyed to Jerome Goldberg, in that certain deed from E. S. Bock and Lulu Bock, his wife, dated June 11, 1948, and recorded in the aforesaid Clerk's office in Deed Book 836, page 324; C.) all of the ten (10) foot alley which lies between the southerly right of way line of the aforesaid Railroad and the northerly lot line of of the Lots in Block "B" of East Crawford and Block "E" of Sunbright Addition to East Crawford, all of Wallace Street lying between the south right of way line of said railroad and the northerly line of Kanawha Avenue, and all of Kanawha Avenue extending in an easterly direction from Owen Street to the Westerly line of First Street all of which were abandoned by the City of Nitro, a municipal corporation, dated September 3, 1993, and recorded in the aforesaid Clerk's office in Deed Book 2324, at page 34, with a map attached; D.) The said Estates of Jerome Goldberg and Alma Goldberg; reference to which deeds, estates and map aforesaid is herewith made for all pertinent purposes.

BOOK 2324 PAGE 425

DATED this 30 day of June, 1994.

WITNESS the following signatures and seals:


 _____ (SEAL)
 JERRY F. GOLDBERG


 _____ (SEAL)
 NANCY ROSENTHAL


 _____ (SEAL)
 DEIDRE LORD

BOOK 2344 PAGE 426

[Signature] (SEAL)
SCOTT GOLDMAN

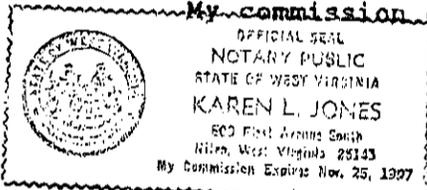
[Signature] (SEAL)
KIM GOLDMAN

[Signature] (SEAL)
GREG GOLDMAN

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to-wit:

The foregoing instrument was acknowledged before me
this 30 day of June, 1994, by JERRY L. GOLDBERG.

My commission expires Nov 25, 1997

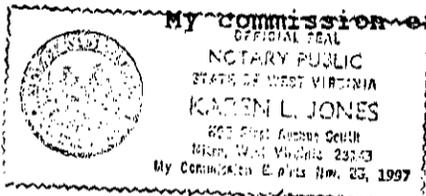


[Signature]
Notary Public

STATE OF West Virginia,
COUNTY OF Kanawha, to-wit:

The foregoing instrument was acknowledged before me
this 30 day of June, 1994, by NANCY ROSENTHAL.

My commission expires Nov 25, 1997

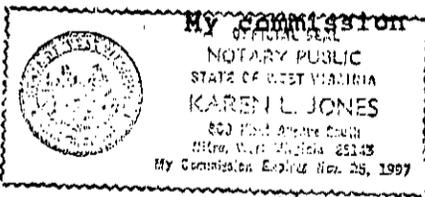


[Signature]
Notary Public

STATE OF West Virginia,
COUNTY OF Kanawha, to-wit:

The foregoing instrument was acknowledged before me
this 30 day of June, 1994, by DEIDRE LORD.

My commission expires Nov 25, 1997

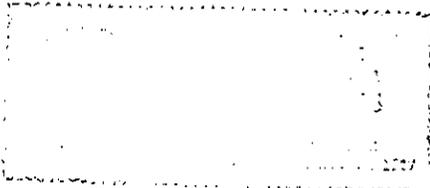


[Signature]
Notary Public

STATE OF West Virginia,
COUNTY OF Kanawha, to-wit:

The foregoing instrument was acknowledged before me
this 30 day of June, 1994, by SCOTT GOLDMAN.

My commission expires Nov 25, 1997



[Signature]
Notary Public

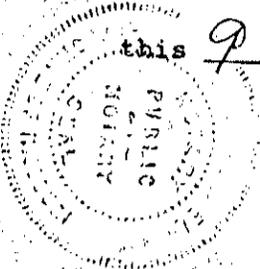
STATE OF Missouri

COUNTY OF St Louis, to-wit:

The foregoing instrument was acknowledged before me

this 9 day of July, 1994, by KIM GOLDMAN.

My commission expires Aug 4, 1995



Martha J. Terplinan
Notary Public
MARTHA J. TERPLINAN
NOTARY PUBLIC STATE OF MISSOURI
ST LOUIS COUNTY
MY COMMISSION EXP. AUG 4 1995

BOOK 2344 PAGE 427

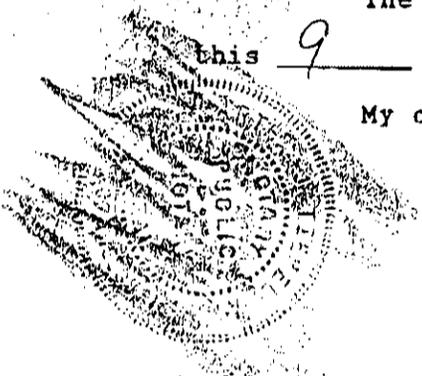
STATE OF Missouri

COUNTY OF St Louis, to-wit:

The foregoing instrument was acknowledged before me

this 9 day of July, 1994, by GREG GOLDMAN.

My commission expires Aug 4, 1995



Martha J. Terplinan
Notary Public
MARTHA J. TERPLINAN
NOTARY PUBLIC STATE OF MISSOURI
ST LOUIS COUNTY
MY COMMISSION EXP. AUG 4 1995

This instrument was presented to the Clerk of the County Commission of Kanawha County, West Virginia, on and the same is admitted to record.

JUL 26 1994

Teste: *Alma King* Clerk
Kanawha County Commission

APPENDIX D2: RIVERSIDE

BOOK 2375 PAGE 540

THIS DEED, made this 31st day of October, 1995, by and between METRO CORPORATION, a West Virginia corporation, party of the first part, and RALEIGH JUNK COMPANY, a West Virginia corporation, party of the second part;

WITNESSETH

That for and in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid and other good and valuable considerations not herein mentioned, the receipt and sufficiency of which are hereby acknowledged, the party of the first part does hereby GRANT and CONVEY unto the party of the second part, all those certain lots or parcels of land, together with the improvements thereon and the appurtenances thereunto belonging, situate in Cabin Creek Tax District, Kanawha County, West Virginia, said lots or parcels being more particularly bounded and described as follows:

PARCEL NO. 1: BEGINNING at an iron pin in a fence line in the southerly right of way line of the New York Central Railroad, located at the intersection of the common division line between the parcel hereby conveyed and a tract of land presently owned by the J.G.W. Tompkins Estate with said southerly right of way line, and running thence with the said southerly right of way line with a curved line to the left, chord of which bears N 76° 18' E 109.39 feet to an iron pin; thence continuing with said southerly right of way line N 75° 26' E 973.95 feet to an iron pin; thence continuing with said southerly right of way line with a curved line to the left, chord of which bears N 75° 11' E 187.90 feet to an iron pin, located at the intersection of said southerly right of way with the westerly right of way line of the road to Former Lock No. 3; thence leaving said southerly right of way line of the New York Central Railroad and running with said westerly right of way line of said road to Former Lock No. 3, S 25° 28' E 103.76 feet to an iron pin by a large set stone, common corner to the tract hereby conveyed and a tract now or formerly owned by the Riverton Coal Company; thence leaving said westerly right of way line of said road to Former Lock No. 3 and running with four common division lines between the tract hereby conveyed and the tract now or formerly owned by the Riverton Coal Company, S 64° 10' W 125.33 feet to a stone; S 25° 11' E 99.65 feet to a stone; S 64°

Lewis, Friedberg, Glasser, Casey & Rollins (JCS)
Suite 700, One Valley Square
P.O. Box 1745
Charleston, West Virginia 25326

01
Book/Page : 2375- / 540-
KANAWHA COUNTY, WV
DATE/TIME RECORDED 11/02/1995 12:13:52:00
INST #: 449250 TYPE: DEED
CLERK OF THE COUNTY COMMISSION
TOTAL RECD/DUE: 1613.00 1606.00

BOOK 2375 PAGE 541

07' W 573.94 feet to a stone; S 25° 53' E 79.00 feet, more or less, to a stake in the contour line of the normal pool stage of the Kanawha River created by the Marmet Dam; thence leaving said common division line between the tract hereby conveyed and tract now or formerly owned by Riverton Coal Company, and running down the river with the meanders of said contour line of the normal pool stage of Kanawha River S 72° 58' W 145.60 feet; S 68° 48' W 180.12 feet; S 60° 52' W 231.51 feet; S 59° 42' W 90.49 feet to a stake in said contour line of the normal pool stage of Kanawha River located at the intersection of the common division line between the parcel hereby conveyed and the said tract presently owned by J.G.W. Tompkins Estate, with said contour line of the normal pool stage of Kanawha River; thence leaving said contour line of the normal pool stage of Kanawha River and running with two common division lines between the said tract presently owned by J.G.W. Tompkins Estate and the tract hereby conveyed, N 14° 57' W 115 feet, more or less, to an iron pin; thence N 14° 57' W 410.06 feet to the place of beginning, containing 10.326 acres, more or less. The parcel of land hereby conveyed is shown and designated as PARCEL NO. 1 on a map entitled "Map showing Land Improvements Owned by Knight and Couch Coal Company, Located at Riverside, Cabin Creek District, Kanawha County, West Virginia", dated August 4, 1941, and made by Field Engineering Company of Charleston, West Virginia, of record in the office of the Clerk of the County Commission, Kanawha County, West Virginia, in Deed Book 814, at page 400-A,

and being the same property conveyed to Midwest Steel Corporation, a corporation, by Midwest Rail Corporation, a corporation, by deed dated June 7, 1955, of record in the Office of the Clerk of the County Commission of Kanawha County, West Virginia, in Deed Book 1276, page 209. The oil and gas underlying the said property has been excepted and reserved by predecessors in the title to said land and there is expressly excepted and reserved also from this conveyance all rights-of-way, easements, leases and rights as have been heretofore made and granted by predecessors in title.

PARCEL NO. 2: BEGINNING at a corner, marked by a stone monument, located in the easterly boundary line of a tract of land of the United States of America, known as Kanawha River Lock No. 3 Reservation, said corner being common to lands of E. J. Myers; thence from said point of beginning and running with said lands of E. J. Myers, S 30° 40' E 238.0 feet to a stake at normal

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pool level of Marmet Dam; thence along said line extended, a distance of 97 feet, more or less, to a point at low water on the right descending bank of the Kanawha River; thence leaving said lands of E. J. Myers, and running downstream with the meanders of and binding upon said low water a distance of 1,000 feet, more or less, to a point at the end of a line common to the lands of the Knight and Couch Coal Company; thence, leaving said low water and running with said lands of the Knight and Couch Coal Company; N 30° 40' W 124 feet, more or less, to a stake at said normal pool level of Marmet Dam; thence continuing with said Knight and Couch Coal Company's line, N 30° 40' W 75.7 feet to a stone monument; thence, following other lines of said Knight and Couch Coal Company N 59° 20' E 575.0 feet to a stone monument; N 30° 40' W 100.0 feet to a stone monument; thence N 59° 20' E 125.0 feet to a stake; thence N 30° 40' W 220.0 feet to a point in the southerly right of way line of United States Highway Route 60; thence leaving said lands of the Knight and Couch Coal Company and running with said right of way line, N 59° 20' E 40.0 feet to a point, common to lands of said E. J. Myers; thence leaving said right of way line and running with said lands of E. J. Myers, S 30° 40' E 222.0 feet to an iron stake; thence N 59° 20' E 260.0 feet to the place of beginning; containing 6.18 acres, more or less,

and being the same property conveyed to Midwest Rail Corporation by deed dated the 1st day of November, 1947, by Riverton Coal Company of Crown Hill, a corporation, and Ernest Michie, of record in said Clerk's office in Deed Book 814, at page 475, and being the same land conveyed of two tracts of land to the United States of America, one by a deed dated October 25, 1877, from John G. W. Tompkins and Amelia C. Tompkins, his wife, for 2.5 acres and recorded in Deed Book 33, at page 96, of record in said Clerk's office, and the other by Court Order dated March 8, 1878, for 3.74 acres from Justin Rideout, W. H. Lovell and George H. Duling, and recorded in Court Order Book No. 3, at pages 66, 263, and 293, of the records of Kanawha County, West Virginia, and being the same property conveyed by Midwest Rail Corporation, a corporation, to Midwest Steel Corporation, a corporation, by deed dated June

BOOK 2375 PAGE 543

7, 1955, and recorded in said Clerk's office on April 29, 1959, in Deed Book 1276, at page 209.

Parcel No. 2 is conveyed subject to the perpetual right of over flowage excepted and reserved unto the United States of America as referred to in the deed from the United States of America to Riverton Coal Company, dated May 27, 1937, of record in said Clerk's office in Deed Book 434, at page 197, and which said easement is expressly excepted and reserved from this conveyance and is further subject to the right of way granted to the Kanawha and Ohio Railroad Company (New York Central Railroad Company, lessee), under authority of an Act of Congress approved February 28, 1887, (24 Stat. 429-30).

PARCEL NO. 3: BEGINNING at a point in the southerly right of way line of the New York Central Railroad, thence S 31° 50' E a distance of 96 feet to a stone; thence N 58° 15' E a distance of 259.5 feet to an iron pin; thence S 31° 00' E a distance of 7.5 feet to an iron pin; thence N 41° 00' E a distance of 157.5 feet to a stake; thence N 25° 20' W a distance of 10 feet to the southerly right of way line of the New York Central Railroad; thence with said right of way line in a westerly direction to the beginning.

and being the same property conveyed to Midwest Steel Corporation a corporation, by deed dated August 2, 1957, from William H. Ferrel and Ruth Mae Ferrel, his wife, of record in the aforesaid Clerk's office in Deed Book 1219, at page 128.

Parcel No. 3 is subject to a right of way to the C & P Telephone Company, dated April 2, 1948, and of record in said Clerk's office in Deed Book 851, at page 392.

The aforesaid property hereinabove described as " PARCEL NO. 1 ", " PARCEL NO. 2 " and " PARCEL NO. 3 ", is part of the same property heretofore conveyed to A.P.S., Inc., a West Virginia corporation, from Midwest Steel Corporation, a West Virginia corporation, by deed dated September 15, 1970, of record in the aforesaid Clerk's office on December 4, 1970, in Deed Book 1607, at page 507 and further, by Confirmatory Deed dated August 31, 1989, conveying subject property to Metro Corporation from A.P.S. Inc., which merged with and into Metro Corporation, effective August 31, 1989, of record in the aforesaid Clerk's office in Deed Book 2233, at page 580.

BOOK 2375 PAGE 544

Reference to said deeds and maps being here made for a more particular description hereby conveyed.

There is expressly excepted and reserved from this conveyance all rights of way, easements, leases and rights as have been heretofore made and granted by the party of the first part and its predecessors in title.

Subject to the aforementioned perpetual right of overflowage and to the aforesaid rights of way, easements, leases and rights, and subject further to 1995 and 1996 real estate taxes, payment of the 1995 real property taxes shall be prorated between the parties hereto on calendar year basis and payment of the 1996 real property taxes shall be paid by the party of the second part when due, the party of the first part hereby covenants that it will WARRANT GENERALLY the property hereby conveyed and that the same is free and clear of liens and encumbrances.

DECLARATION OF CONSIDERATION OR VALUE

The undersigned grantor hereby declare that the total consideration paid for real estate transferred by this instrument is Three Hundred Sixty-Five Thousand Dollars (\$365,000.00).

IN WITNESS the following signature and seal.



METRO CORPORATION,
a West Virginia corporation

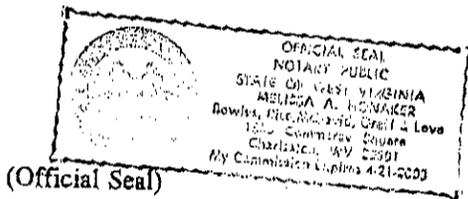
By [Signature]
Its [Signature]

BOOK 2375 PAGE 545

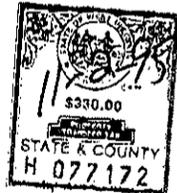
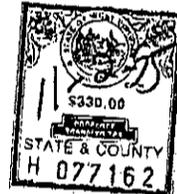
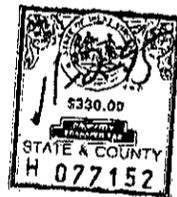
STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to-wit:

The foregoing instrument was acknowledged before me this 31st day of October 1995, by Dennis Silverstein for METRO CORPORATION, a West Virginia Corporation, as its President.

My commission expires April 21, 2003.



Melissa A. Donaker
Notary Public



This instrument prepared by Paul M. Friedberg, Attorney at Law, P.O. Box 1746, Charleston, West Virginia.

This instrument was presented to the Clerk of the County Commission of Kanawha County, West Virginia, on NOV 02 1995 and the same is admitted to record.

Teste: Alma J. King Clerk
Kanawha County Commission

APPENDIX D3: CREMER IRON

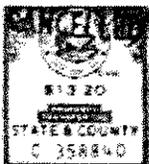
4737 THIS DEED, Made this 1st day of October, 1985, by and between MARTIN CREMER and JUNE CREMER, his wife, SALLY CREMER, Widow, and STEVEN ANDREW CREMER, Single, parties of the first part, and CREMER IRON & METAL COMPANY, a corporation, party of the second part;

W I T N E S S E T H:

That for and in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, and other good and valuable considerations not herein mentioned, the receipt and sufficiency of all of which is hereby acknowledged, the said parties of the first part do hereby GRANT and CONVEY unto the said party of the second part all that certain parcel or tract of real estate, together with the improvements thereon and the appurtenances thereunto belonging, situate in the City of Parkersburg, Wood County, West Virginia, in Parkersburg City Tax District, and shown upon a certain map or plat recorded in Plat Book 19, at Page 45, entitled: "SURVEY OF CREMER IRON & METAL CO. PROPERTY PARKERSBURG CORP. DISTRICT WOOD COUNTY W.VA. SCALE: 1"=100' AUG. 12, 1985", prepared by Paul K. Marshall, Licensed Land Surveyor, said parcel or tract of real estate being more particularly bounded and described as follows:

10-11-85

Mail To: Lewis, Ciccarello, Masliner & Friedberg
812 Quarrier St.
6th Floor - I&S Bldg.
Charleston, W.Va. 25301



Beginning at an iron rod set at the northwesterly intersection of 16th Street and Garfield Avenue (also being West Virginia Route 14 & 68) and from said point of beginning, running along the northerly right of way line of said 16th Street N. 64° 12' W. 674.49 feet to an iron rod set in the easterly line of the Baltimore and Ohio Railroad property; thence, following the easterly property line of said railroad, N. 1° 17' E. 638.79 feet to an iron rod set in the common corner of said railroad property line and property now or formerly owned by Kanawha Traction & Electric Co.; thence, leaving said railroad property line and following the common boundary line between said Kanawha Traction & Electric Co. property and property herein conveyed, S. 64° 12' E. 928.72 feet to a P. K. nail in pavement in the westerly line of Garfield Avenue; thence, following the westerly line of Garfield Avenue S. 24° 27' W. 150.0 feet to an iron rod set in the westerly line of Garfield Avenue; thence, leaving said Garfield Avenue, N.

64° 12' W. 140.0 feet to an iron rod set; thence S. 24° 27' W. 281.35 feet to a point; thence S. 64° 12' E. 140 feet to an iron rod set in the westerly line of Garfield Avenue; thence following the westerly line of Garfield Avenue the following courses and distances: S. 24° 27' W. 70.06 feet to a point, S. 26° 27' W. chord distance equals 78.52 feet to a point and S. 28° 27' W. 1.68 feet to an iron rod set, the place of beginning, and containing 9.79 acres more or less.

The property hereinabove described is comprised of four tracts acquired by the parties of the first part as follows:

(1) Seven (7) acres: By Deed dated March 6, 1957, and recorded in the Office of the Clerk of the County Commission of Wood County, West Virginia, in Deed Book 408, at Page 288, Ross Cox, Inc. conveyed this property to Martin Cremer, Dave Cremer, Louis Cremer and Manuel Cremer, d/b/a Cremer Company; the said Manuel Cremer having died, testate, December 21, 1962, and by the terms of his Last Will and Testament filed of record in said Clerk's Office in Will Book 34, at Page 294, he devised his undivided one-fourth (1/4) interest to his three children, to-wit: Eileen Janet Cremer, Ellen Rose Cremer and Mark Steven Cremer, subject to a dower interest in his widow, Sylvia Freedman Cremer; and by Deed dated November 2, 1964, and recorded in said Clerk's Office in Deed Book 496, at Page 318, Sylvia Freedman Cremer, Widow, conveyed all of her undivided interest to Eileen Janet Cremer Bushman, Ellen Rose Cremer Schwartz and Mark Steven Cremer; by Deed dated December 11, 1964, and recorded in said Clerk's Office in Deed Book 498, at Page 598, Eileen Janet Cremer Bushman and Harry Bushman, her husband, Ellen Rose Cremer Schwartz and Harvey Schwartz, her husband, conveyed their undivided interests to Dave Cremer, Martin Cremer and Louis Cremer; by Deed dated February 10, 1965, and recorded in Deed Book 498, at Page 601, Dave Cremer as Guardian of Mark Steven Cremer, conveyed the latter's interest to Louis Cremer; by Deed

dated February 15, 1965, and recorded in Deed Book 499, at Page 14, Louis Cremer and Cynthia Cremer, his wife, conveyed an undivided one-thirty-sixth (1/36) interest to both Dave Cremer and Martin Cremer; the said Dave Cremer died, testate, on or about the 6th day of January, 1970, and by the terms of his Last Will and Testament filed of record in said Clerk's Office in Will Book 44, at Page 19, he devised all of his undivided interest to his wife, Sally Cremer; the said Louis Cremer, also known as Louis Herman Cremer, died, testate, on or about the 10th day of March, 1970, and by the terms of his Last Will and Testament filed of record in said Clerk's Office in Will Book 44, at Page 500, he devised all of his undivided interest in trust to his wife, Cynthia Cremer, and in trust to his son, Steven Andrew Cremer; the said Cynthia Cremer (later Pollard) died, testate, on or about the 26th day of July, 1978, and by the terms of her Last Will and Testament filed of record in said Clerk's Office in Will Book 64, at Page 134, she devised all of her undivided interest to her son, Steven Andrew Cremer.

(2) Five (5) acres: By Deed dated the 21st day of February, 1957, and recorded in said Clerk's Office in Deed Book 407, at Page 409, W. A. Berdine and Lillian Joy Berdine, his wife, conveyed this property to Martin Cremer, Dave Cremer, Louis Cremer and Manuel Cremer, d/b/a Cremer Company; said Manuel Cremer died, testate, on or about December 21, 1962, and by the terms of his Last Will and Testament filed of record in said Clerk's Office in Will Book 34, at Page 294, he devised all of his interest to his three children, to-wit: Eileen Cremer (later known as Eileen Cremer Bushman), Ellen Rose Cremer (later known as Ellen Rose Cremer Schwartz) and Mark Steven Cremer, subject to a dower interest in his widow, Sylvia Cremer; said Sylvia Cremer,

later known as Sylvia Freedman Levine, by Deed dated October 1, 1966, and recorded in Deed Book 523, at Page 488, conveyed all of her interest to Eileen Janet Cremer Bushman, Ellen Rose Cremer Schwartz and Mark Steven Cremer; and by Deed dated October 15, 1966, and recorded in Deed Book 524, at Page 174, Mark Steven Cremer and Sandra Cremer, Eileen Janet Cremer Bushman and Harry Bushman, her husband, Ellen Rose Cremer Schwartz and Harvey Schwartz, her husband, conveyed their interest to Dave Cremer, Martin Cremer and Louis Cremer, d/b/a Cremer Company; Reference is hereby made to the respective deaths of Dave Cremer and Louis Cremer as set forth above under seven (7) acre tract for the descent of their respective interests to Sally Cremer and Steven Andrew Cremer.

(3) Lot 50' x 140', Garfield Avenue: By Deed dated September 20, 1971, and recorded in Deed Book 594, at Page 229, Cremer Iron and Metal Company, a West Virginia corporation, conveyed this property to Martin Cremer, Cynthia Cremer and Sally Cremer; Cynthia Cremer died on or about July 26, 1978, devising her interest to her son, Steven Andrew Cremer (see seven (7) acre source of title).

(4) Lot 100' x 140' and Lot 40' x 140' (also known as part of Lot 3 of B. Cook Estate): By Deed dated the 30th day of March, 1965, and recorded in said Clerk's Office in Deed Book 500, at Page 275, Russell Vincent and Estella Vincent, his wife, conveyed this property to David Cremer, Martin Cremer and Louis Cremer; David Cremer died on or about January 6, 1970, devising his interest to Sally Cremer (see seven (7) acre source of title); Louis Cremer died on or about March 10, 1970, devising his interest, in trust, to his widow, Cynthia Cremer, and his son, Steven Andrew Cremer, the said Cynthia Cremer later devising her interest to said Steven Andrew Cremer (see seven (7) acre source of title).

The four (4) tracts above set forth are now vested in Martin Cremer, subject to inchoate dower interest of his wife, June Cremer; Sally Cremer, widow; and Steven Andrew Cremer, Single. Reference is hereby made to the aforementioned Survey, Wills and Deeds for all pertinent purposes.

Subject to the lien of ad valorem real estate taxes for the years 1985 and 1986, payment of which is expressly assumed by the said party of the second part herein, and subject further to covenants, reservations, rights of ways and easements reserved or granted by predecessors in title, and subject further to a certain ten (10) foot strip fronting on Garfield Avenue as shown on the attached Survey for which no warranty is herein given, the said parties of the first part do hereby covenant with the said party of the second part that they will WARRANT GENERALLY the title to the real estate herein conveyed, and further covenant that the same is free and clear of all liens and encumbrances.

The above-described property is assessed for taxation purposes upon the Land Books of Wood County, Parkersburg City Tax District, for the year 1985, as follows:

(a) Tax Ticket No. 14419, Account No. 3143, i/n/o Cremer Martin, Sally, Cynthia, Lot 50 x 140 x 50 x 140 Garfield Avenue, Tax I.D. 060-24;

(b) Tax Ticket No. 14425, Account No. 3144, i/n/o Cremer Sally, Martin, Lewis, Tax I.D. 060-27C,28, Lot 100 x 140 x 100 x 140, Sidney Street; Lot 140 x 40 x 140 x 40, Garfield Avenue, being Part No. J B. Cook Estate;

(c) Tax Ticket No. 14423, Account No. 3145, i/n/o Cremer, Sally, Martin, Louis, d/b/a Cremer Co., Tax I.D. 060-H, 5 acres being part of No. 2 Bennet Cook Est. less lot; and,

(d) Tax Ticket No. 14421, Account No. 3146, 1/n/o Cremer, Sally, Martin, Louis, Tax I.D. 060-1, 7 acres, 16th Street 140 feet west of Garfield less 1.52 acres to B & O.

DECLARATION OF CONSIDERATION OR VALUE: Under the penalties of fine and imprisonment as provided by law, Grantors herein do hereby declare that the total consideration paid for the property conveyed by the document to which this declaration is appended is \$367,500.00.

This instrument was prepared by Richard H. Hess, Attorney, Charleston, West Virginia.

WITNESS the following signatures and seals:

Martin Cremer (SEAL)
MARTIN CREMER

June Cremer (SEAL)
JUNE CREMER

Sally Cremer (SEAL)
SALLY CREMER

Steven Andrew Cremer (SEAL)
STEVEN ANDREW CREMER

STATE OF WEST VIRGINIA,

COUNTY OF WOOD, to-wit:

I, Lucille Kirby, a Notary Public in and for the County and State aforesaid, do hereby certify that MARTIN CREMER and JUNE CREMER, his wife, whose names are signed to the foregoing writing, bearing date the 1st day of October, 1985, have this day acknowledged the same before me in my said County.

My commission expires July 13, 1993.

Lucille Kirby
NOTARY PUBLIC



STATE OF FLORIDA,

COUNTY OF DADE, to-wit:

I, Barbara Taha, a Notary Public in and for the County and State aforesaid, do hereby certify that SALLY CREMER, Widow, whose name is signed to the foregoing writing, bearing date the 1st day of October, 1985, has this day acknowledged the same before me in my said County.

My commission expires 11-1-93

(NOTARIAL SEAL)

Barbara Taha
NOTARY PUBLIC

STATE OF WEST VIRGINIA,

COUNTY OF WOOD, to-wit:

I, Richard H. Hess, a Notary Public in and for the County and State aforesaid, do hereby certify that STEVEN ANDREW CREMER, Single, whose name is signed to the foregoing writing, bearing date the 1st day of October, 1985, has this day acknowledged the same before me in my said County.

My commission expires 11-1-93

Richard H. Hess
NOTARY PUBLIC

STATE OF WEST VIRGINIA, COUNTY OF WOOD, TO-WIT:
OFFICE OF THE CLERK OF THE COUNTY COMMISSION OF WOOD COUNTY

The foregoing paper writing was this day, October 9, 19 85, at 11:45 AM presented for record in my office, and thereupon, together with the certificate thereto attached is admitted to record.

Teste: H. B. Smith Clerk
County Commission of Wood County.

CONSENT DECREE APPENDIX E:
ENVIRONMENTAL TRUST AGREEMENT
United States v. Poor Charlie and Company

ENVIRONMENTAL TRUST AGREEMENT

This Environmental Trust Agreement (“Environmental Trust Agreement”) is entered into as of this ___ day of ___, 2016, by and between Poor Charlie and Company (“Poor Charlie”), the Poor Charlie Stock Trust, and the Environmental Trustee, Ann R. Starcher, pursuant to the terms of the Consent Decree in *United States v. Poor Charlie and Company* (W.D. Va.) (“Consent Decree”).

RECITALS

A. The United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”) has asserted claims against Poor Charlie under the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) for recovery of costs incurred and to be incurred in connection with the release or threatened release of hazardous substances at the Twin Cities Iron and Metal Superfund Site in Bristol, Virginia (the “Site”). Based on financial information provided by Poor Charlie, the United States has determined that Poor Charlie has limited financial ability to pay for response costs incurred and to be incurred at the Site.

B. In addition to the claims asserted by the United States, Poor Charlie’s outstanding environmental liabilities include the obligation under the West Virginia Voluntary Remediation Program to remediate three facilities that it owns in West Virginia: 1) the “Sattes Yard” property, located at Owens Street, Nitro, West Virginia; 2) the “Riverside” property, located at U.S. Route 60 E, Glasgow, West Virginia; and 3) the “Cremer Iron” property, located at 1800 Garfield Avenue, Parkersburg, West Virginia (collectively, the “Properties”).

C. Poor Charlie has certified that the United States and the State of West Virginia, by and through the West Virginia Department of Environmental Protection (“WVDEP”), are its only known creditors, other than governmental taxing authorities as tax obligations may arise from time to time after lodging of the Consent Decree.

D. Presently the Poor Charlie Stock Trust is a trust held by the Robert Levine 2009 Revocable Trust (“Revocable Trust”). The Poor Charlie Stock Trust holds all of the outstanding common stock of Poor Charlie.

E. The United States and Poor Charlie have entered into the Consent Decree resolving the United States’ claims, under which the Poor Charlie Stock Trust shall be transferred from the Revocable Trust to this Environmental Trust for the benefit of the United States and WVDEP.

F. The Revocable Trust authorizes the transfer of the Poor Charlie Stock Trust and its assets to the Environmental Trust, through execution of the Amendment to the Robert Levine 2009 Revocable Trust attached as Appendix F to the Consent Decree. Upon its transfer to the Environmental Trust, the Poor Charlie Stock Trust shall terminate and the Poor Charlie Stock Trust assets shall become Environmental Trust Assets, as defined in Paragraph 1.1.13 of this Agreement.

G. Upon its transfer to the Environmental Trust, Poor Charlie shall amend its corporate bylaws to conform with Appendix G to the Consent Decree to effectuate the purposes of this Environmental Trust Agreement and the Consent Decree.

H. This Environmental Trust Agreement is created pursuant to and to effectuate the terms of the Consent Decree.

Now therefore, in consideration of the mutual covenants and agreements contained herein and in the Consent Decree, the parties agree as follows:

ARTICLE I **Definitions**

1.1 Definitions. The following terms as used in this Environmental Trust Agreement shall have the definitions given below:

1.1.1 “Article” shall mean a portion of this Environmental Trust Agreement identified by a Roman numeral.

1.1.2 “Authorized Representative” shall mean those individuals or their designated successors who have the authority for all purposes of this Environmental Trust Agreement to take any action or give any approval required herein for any party or entity.

1.1.3 “Beneficiaries” shall mean the United States of America on behalf of EPA, and West Virginia, by and through the West Virginia Department of Environmental Protection.

1.1.4 “CERCLA” shall mean the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601-9675.

1.1.5 “Consent Decree” shall mean the CERCLA Consent Decree in *United States v. Poor Charlie and Company* (W.D. Va.).

1.1.6 “Consent Decree Effective Date” shall mean the date upon which the approval of the Consent Decree is recorded on the Court’s docket.

1.1.7 “Court” shall mean the United States District Court for the Western District of Virginia.

1.1.8 “Day” or “day” shall mean a calendar day. In computing any period of time under this Environmental Trust Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

1.1.9 “DOJ” shall mean the United States Department of Justice and any successor departments, agencies, or instrumentalities of the United States.

1.1.10 “Environmental Trust” shall mean the Environmental Trust established pursuant to Section VII of the Consent Decree and this Environmental Trust Agreement.

1.1.11 “Environmental Trustee” shall mean Ann R. Starcher or her successor, as the then serving trustee of the Environmental Trust.

1.1.12 “Environmental Trust Account” shall mean an account established pursuant to Paragraph 2.4 of this Agreement and any Poor Charlie Account.

1.1.13 “Environmental Trust Assets” shall mean any and all assets of the Environmental Trust, including, without limitation, all of the stock of Poor Charlie and the Poor Charlie Assets.

1.1.14 “Environmental Trust Effective Date” shall mean the date upon which all Environmental Trust Parties have signed this Environmental Trust Agreement or the Consent Decree Effective Date, whichever is later.

1.1.15 “Environmental Trust Parties” shall mean the Poor Charlie Stock Trust, Poor Charlie, and the Environmental Trustee.

1.1.16 “EPA” shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities.

1.1.17 “Net Sales Proceeds” shall mean all consideration received from the sale of all or any portion of the Properties, less reasonable costs of sale as approved by EPA, after consultation with the State, including customary real estate brokerage fees and closing costs.

1.1.18 “Oversight Agency” shall mean the governmental agency that is serving as the lead agency overseeing implementation of Response Actions at the Properties. As of the lodging of the Consent Decree, the Oversight Agency will be WVDEP. EPA and the State may mutually agree to change the agency serving as Oversight Agency, and upon such change must promptly notify the Environmental Trust.

1.1.19 “Person” shall mean an individual, corporation, company, partnership, joint venture, association, trust, charitable foundation, unincorporated organization, government or any agency or political subdivision thereof, or any other entity.

1.1.20 “Poor Charlie Account” shall mean the following accounts held by Poor Charlie: (i) operating account with Branch Banking & Trust Company, (ii) investment account with Wells Fargo, and (iii) any and all other accounts as may currently exist or be created after entry of the Consent Decree.

1.1.21 “Poor Charlie Assets” includes any and all assets of Poor Charlie, including the Properties, cash, cash equivalents, accounts receivable, Poor Charlie Accounts, equipment, licenses, and permits.

1.1.22 “Properties” shall mean all real property owned by Poor Charlie as of the Effective Date for the Consent Decree, including: i) the “Sattes Yard” property, located at Owens Street, Nitro, West Virginia; ii) the “Riverside” property, located at U.S. Route 60 E, Glasgow, West Virginia; and iii) the “Cremer Iron” property, located at 1800 Garfield Avenue, Parkersburg, West Virginia, as further described in the deeds attached as Appendix D to the Consent Decree.

1.1.23 “Response Actions” shall mean the work required by the Voluntary Remediation Agreements entered into between WVDEP and Poor Charlie and Company for Sattes Yard (dated December 12, 2000), Riverside Yard (dated October 11, 2000), and Cremer Iron and Metal (dated January 28, 2002), and all WVDEP and/or EPA approved work plans submitted thereunder.

1.1.24 “Site” shall mean the Twin Cities Iron and Metal Superfund Site, encompassing approximately 12 acres, located along 950-1000 Fairview Street in Bristol, Virginia, and generally designated by the following tax parcel numbers: Parcels 29-9-1A, 29-9-1B, 29-9-6, 29-9-7A, and 29-9-7B. See Appendix A to the Consent Decree.

1.1.25 “State” shall mean the State of West Virginia, by and through the West Virginia Department of Environmental Protection.

1.1.26 “United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

1.2 Capitalized terms used herein without definition shall have the meanings provided in the Consent Decree.

ARTICLE II

Environmental Trust

2.1 Establishment of Environmental Trust. The Environmental Trust Parties hereby establish, on behalf of the Beneficiaries, the Environmental Trust.

2.2 The United States, on behalf of EPA and DOJ, and the State, and any of their respective officers, directors, agents, employees, affiliates, successors, or assigns, shall not be deemed to be an owner, operator, trustee, partner, agent, shareholder, officer, or director of the Environmental Trust. The Environmental Trust shall not be deemed to be successor to any liabilities of Poor Charlie and shall have no liability for any liability that Poor Charlie may have to any third parties; provided, however, that the Environmental Trust shall be liable to perform the Response Actions, and any other actions approved by EPA and WVDEP, and to reimburse WVDEP and/or EPA for response costs to the extent provided in this Environmental Trust Agreement and the Consent Decree.

2.3 Environmental Trust Purpose. The purpose of this Environmental Trust is to act for the benefit of the United States and the State by:

2.3.1. receiving the Poor Charlie Stock Trust, managing the Environmental Trust Assets, and making disbursements therefrom as reasonably necessary in order to execute the purpose of this

Environmental Trust as provided in the Consent Decree and in this Environmental Trust Agreement;

2.3.2. implementing Response Actions at the Properties;

2.3.3. upon approval by EPA, after consultation with the State, selling, leasing, or otherwise disposing of the Properties;

2.3.4. disbursing the Net Sales Proceeds and other Environmental Trust Assets in accordance with this Environmental Trust Agreement and the terms of the Consent Decree; and

2.3.5. designating corporate officers and taking other measures necessary to maintain valid corporate status for Settling Defendant, until such time as the Environmental Trust is terminated pursuant to Paragraph 2.7 herein.

2.4 Environmental Trust Accounts. The Environmental Trustee shall establish, hold, and maintain such accounts and subaccounts as deemed necessary by the Environmental Trustee to administer the Environmental Trust Assets and make any distribution therefrom.

2.5 Investment of Environmental Trust Assets. The Environmental Trustee shall invest and reinvest the principal and income of the Environmental Trust Assets in those investments that are reasonably calculated to preserve the principal value, taking into account the need for the safety and liquidity of principal required by the purposes of the Environmental Trust, and not of speculating or carrying on any business for profit or derivation of gains therefrom.

2.5.1. In investing, selling, and managing the Environmental Trust Assets, the Environmental Trustee must perform her duties solely in the interest of the Beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which a person in the same circumstances and familiar with such matters would manage their own affairs.

2.5.2. The right and power of the Environmental Trustee to invest and reinvest the Environmental Trust Assets shall be limited to investments in United States direct obligations, obligations guaranteed by agencies of the United States government, common trust funds or mutual funds that invest in United States direct or guaranteed obligations, or bank accounts or certificates of deposit to the extent such are insured by the federal government.

2.5.3. Nothing in this Article shall be construed as authorizing the Environmental Trustee to cause the Environmental Trust to carry on any business or to divide the gains therefrom. The sole purpose of this Section is to authorize the investment of the Environmental Trust Assets or any portion thereof as may be reasonably prudent pending use of the proceeds for the purposes of the Environmental Trust.

2.6 Accounting. The Environmental Trustee shall maintain the books and records relating to the assets and incomes of the Environmental Trust and the payment of expenses of and liabilities against the Environmental Trust. The detail of these books and records and the duration the Environmental Trustee shall keep such books and records shall be such as to allow the

Environmental Trustee to make a full and accurate accounting of the Environmental Trust Assets in accordance with Article VII of this Environmental Trust Agreement, as well as to comply with applicable provisions of law and good accounting practices. Beneficiaries shall have the right upon 14 Days' prior written notice to inspect such books and records. Except as otherwise provided herein, the Environmental Trustee shall not be required to file any accounting or seek approval of the Court with respect to the administration of the Environmental Trust, or as a condition for making any payment or distribution out of the Environmental Trust Assets.

2.7 Termination. To the extent consistent with the Consent Decree and this Environmental Trust Agreement, the Environmental Trustee shall not unduly prolong the duration of the Environmental Trust and shall, at all times, endeavor to fulfill its purpose. The Environmental Trust is irrevocable and shall terminate in accordance with applicable provisions of law upon either (1) written approval by EPA, after consultation with the State, finding that the Environmental Trust has accomplished its purposes as described in this Environmental Trust Agreement, or (2) EPA's and the State's receipt of the Environmental Trustee's written notice of the complete exhaustion of Environmental Trust Assets.

ARTICLE III **Response Actions and Sale of Properties**

3.1 Response Actions. The Environmental Trustee shall cause Poor Charlie to perform, to the extent of Environmental Trust Assets only, all Response Actions at the Properties using a licensed remediation specialist, as that term is defined in W. Va. Code 22-22-2(n). The Environmental Trust and Poor Charlie shall cooperate fully with the State and EPA in performance of the Response Actions, and comply with all applicable local, State, and federal laws and regulations. The Environmental Trustee shall cause Poor Charlie to provide a means of complying with the State's requirements under the West Virginia Voluntary Remediation and Redevelopment Act (W.Va. Code §§ 22-22-1 to -21) including, *inter alia*, the requirement under W. Va. Code 22-22-4(b) for "financial and technical capability to perform the voluntary remediation."

3.2 Environmental Consulting Contract. Within 45 Days of the Environmental Trust Effective Date, the Environmental Trustee shall cause Poor Charlie to: (a) solicit bids for environmental consulting services to perform the Response Actions; (b) select a consultant to perform the work and execute a contract with the chosen consultant; and (c) provide copies of the contract and its terms to the Oversight Agency. Within the contract's terms, the Environmental Trustee shall cause Poor Charlie and the selected bidder to agree, at a minimum, that: (1) the selected bidder must undertake those services necessary to manage performance of the Response Actions, (2) the selected bidder will submit to the Environmental Trustee the scope and budget for such work subject to approval by the Environmental Trustee, and (3) that the Environmental Trustee shall cause Poor Charlie to pay the selected bidder using Environmental Trust Assets. All work plans submitted by the selected bidder are subject to approval by the Oversight Agency.

3.3 Access and Institutional Controls.

3.3.1. The Environmental Trustee and Poor Charlie shall provide EPA, the United States, and the State and their representatives, contractors, and subcontractors with access at all reasonable times to the Properties to conduct any activity relating to Response Actions.

3.3.2. The Environmental Trustee shall cause Poor Charlie to implement any institutional controls requested by EPA or the State with respect to any of the Properties.

3.4 Disposition of the Properties.

3.4.1. Except as provided in Paragraph 3.4.3 below, after completing Response Actions on a Property pursuant to Paragraph 3.1, the Environmental Trustee shall cause Poor Charlie to use all reasonable efforts to sell the Property, including retaining a commercial real estate broker on customary and reasonable terms to assist in the marketing and sale of the Property, and taking other commercially reasonable actions to maximize the Net Sales Proceeds. EPA must approve any sale in writing, after consultation with the State. If within three years after commencement of efforts to market a Property Poor Charlie has not executed a contract for the sale of the Property, upon receipt of notice from EPA, after consultation with the State, the Environmental Trustee shall cause Poor Charlie to commence all reasonable efforts to sell the Property to the highest bidder at a public auction.

3.4.2. To the extent that any existing lease on a Property expires during the term of this Environmental Trust, and subject to approval of EPA, after consultation with the State, the Environmental Trustee may cause Poor Charlie to lease a Property while Response Actions are still pending on that Property, provided that the Environmental Trustee reasonably believes that the net effect of any proposed lease is to lessen the total financial obligations and liabilities that would otherwise be incurred by Poor Charlie and the Environmental Trust in the absence of any such lease. EPA, after consultation with the State, must approve such lease and the terms thereof in advance and in writing.

3.4.3. Subject to approval of EPA, after consultation with the State, the Environmental Trustee may cause Poor Charlie to propose a sale of a Property while Response Actions are still pending on that Property, provided that the prospective purchaser agrees to assume responsibility for completion of the Response Actions on that Property and all other associated environmental liabilities, and the proposed sale maximizes achievable proceeds. EPA, after consultation with the State, must approve such sale and the terms thereof in advance and in writing.

3.4.4. Proceeds from any approved sale of Property under this Paragraph shall be distributed as provided in Paragraph 4.2.1. In the event of any approved lease under this Paragraph, any net proceeds shall be paid to an Environmental Trust Account.

ARTICLE IV **Payments and Distributions**

4.1 Payment of Environmental and Administrative Expenses. The Environmental Trustee shall cause Poor Charlie to provide EPA and the State with balance statements and proposed budgets as described in Paragraphs 4.1.1 and 4.1.2 below. Neither Poor Charlie nor the Environmental Trustee

shall incur or pay any expense that has not been provided for in an approved budget, approved revised budget, or approved revised line item for an approved budget.

4.1.1. **Environmental Expenses.** Within 90 Days of the Environmental Trust Effective Date, and thereafter by December 1 of each year, the Environmental Trustee shall cause Poor Charlie to provide the Oversight Agency with balance statements and annual budgets of projected expenditures for Response Actions at the Properties, which may be approved or disapproved by the Oversight Agency. If disapproved, a budget shall be revised and resubmitted as expeditiously as possible.

4.1.2. **Administrative Expenses.** Within 90 Days of the Environmental Trust Effective Date, and thereafter by December 1 of each year, the Environmental Trustee shall cause Poor Charlie to provide EPA and the State with an annual budget for administration of the Environmental Trust, which may be approved or disapproved by EPA, after consultation with the State. If disapproved, such budget shall be revised and resubmitted as expeditiously as possible.

4.1.3. The Environmental Trust shall cause Poor Charlie to regularly, but not less often than annually, and otherwise upon the reasonable request of EPA or the State, provide documentation to EPA and the State to substantiate compliance with the applicable approved budget and application of Environmental Trust Assets consistent with the terms of this Environmental Trust Agreement and the Consent Decree.

4.1.4. **Reimbursement of the Oversight Agency.** The Environmental Trustee shall cause Poor Charlie to pay funds to the Oversight Agency within 30 Days of receipt of a written request for reimbursement of costs. Such written request shall: (i) be in accordance with the approved budget set forth in Paragraph 4.1.1 above, and (ii) shall specify what the funds were used for and shall certify that they were used only for Response Actions and/or oversight costs for Response Actions incurred after the Environmental Trust Effective Date by the requesting agency.

4.2 Distribution of Environmental Trust Assets.

4.2.1. Distribution of Proceeds from Property Sale. At the time Poor Charlie closes on the sale of all or any portion of the Properties, Poor Charlie shall transfer proceeds from the sale to the Environmental Trust. The Environmental Trustee shall then distribute the proceeds as follows:

4.2.1.1. First, the Environmental Trustee shall pay the reasonable costs of sale as approved by EPA, including customary real estate brokerage fees and closing costs, which shall mean attorneys' fees for the closing, property transfer taxes, title and title insurance costs.

4.2.1.2. Second, the Environmental Trustee shall deposit the balance into an Environmental Trust Account for use consistent with the purposes of this Environmental Trust Agreement and the Consent Decree.

4.2.2. Final Distribution of Environmental Trust Assets. As set forth in Paragraph 2.7 of the Environmental Trust Agreement, the Environmental Trust may be terminated when all Environmental Trust Assets are exhausted or when EPA, after consultation with the State, finds that

the Environmental Trust has accomplished the purposes of the Environmental Trust (including, but not limited to, completion of the Response Actions and payment of the Oversight Agency's unreimbursed costs). In the event that assets remain in the Environmental Trust at its termination, the Environmental Trustee shall liquidate all remaining assets and distribute the amounts as follows:

4.2.2.1. First, the Environmental Trustee shall pay EPA the amount necessary to satisfy the Judgment in full.

4.2.2.2. Second, the Environmental Trustee shall pay any remaining cash or cash equivalents to the Revocable Trust.

4.2.3. Compliance with Laws. Any and all distributions of Environmental Trust Assets shall be done in compliance with any applicable federal or state laws.

4.3 Payments to EPA. Payments made to EPA pursuant to this Environmental Trust Agreement shall be made in accordance with the procedures set forth in Section IX (Payment of United States Response Costs) of the Consent Decree.

4.4 Payments to the State. Payments made to the State pursuant to this Environmental Trust Agreement shall be sent to the following address:

Department of Environmental Protection
Office of Environmental Remediation
(Treas./RPD)
P.O. Box 681
Charleston, WV 25323

ARTICLE V **Environmental Trustee**

5.1 Appointment. Ann R. Starcher, not individually but in her representative capacity as Environmental Trustee, is hereby appointed to serve as the Environmental Trustee to administer the Environmental Trust in accordance with this Environmental Trust Agreement and the Consent Decree. The Environmental Trustee hereby accepts such appointment and agrees to serve in such fiduciary capacity to the Environmental Trust upon the Environmental Trust Effective Date.

5.2 The Environmental Trustee must administer and manage the Environmental Trust solely in the interest of the Beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which a person in the same circumstances and familiar with such matters would manage their own affairs. Additionally, and without limiting any other provision of this Environmental Trust Agreement, the Environmental Trustee must take all reasonable steps to minimize the costs of performing the obligations and duties imposed by this Environmental Trust Agreement. However, the Environmental Trustee is not obligated to take actions or omit to take an action that, on advice of counsel, the Environmental Trustee believes is not consistent with the Environmental Trustee's fiduciary duties to the Environmental Trust. The Environmental Trustee

shall not be deemed to have breached her fiduciary duties in connection with any act or omission that is consistent with written directions received from the Court.

5.3 Powers of the Environmental Trustee.

5.3.1. Except as set forth in this Environmental Trust Agreement, the Environmental Trustee shall have the power to perform those acts necessary and desirable to accomplish the purposes of the Environmental Trust, which shall be exercised in a fiduciary capacity and in furtherance of and in a manner consistent with the purposes of this Environmental Trust Agreement and the Consent Decree.

5.3.2. The powers of the Environmental Trustee, without any further approval from EPA or the State, include the following:

5.3.2.1. To receive, manage, invest, supervise, and protect the Environmental Trust Assets as provided in this Environmental Trust Agreement;

5.3.2.2. To appoint Ann R. Starcher as the sole member of the Board of Directors and corporate officer of Poor Charlie to effectuate the liquidation and sale of the Poor Charlie Assets as provided under this Environmental Trust Agreement and the Consent Decree;

5.3.2.3. To incur and pay any and all customary and commercially reasonable charges, taxes, and expenses upon or connected with this Environmental Trust in the discharge of its fiduciary obligations;

5.3.2.4. To engage and compensate professional Persons to assist the Environmental Trustee in accordance with this Environmental Trust Agreement;

5.3.2.5. To the extent that the Environmental Trust has sufficient available cash, purchase any insurance policies as the Environmental Trustee may determine to be prudent under the circumstances to protect the Environmental Trust, the Environmental Trust Assets, and the Environmental Trustee from any claims that might be asserted against each;

5.3.2.6. To make distributions of the Environmental Trust Assets for the purposes contemplated in this Environmental Trust Agreement and the Consent Decree; and

5.3.2.7. To effect all actions and execute all contracts, instruments, agreements, or other documents that may be necessary to administer the Environmental Trust in accordance with this Environmental Trust Agreement and the Consent Decree, provided that such contracts, instruments, or agreements do not require approval from EPA or the State. No Person dealing with the Environmental Trust shall be obligated to inquire into the authority of the Environmental Trustee in connection with the protection, conservation, or disposition of Environmental Trust Assets. The Environmental Trustee is authorized to execute and deliver all documents on behalf of the Environmental Trust to accomplish the purposes of this Environmental Trust Agreement and the Consent Decree.

5.3.3. Other Professionals. The Environmental Trustee may employ an independent certified public accounting firm or individual to complete federal or state tax returns for the Environmental Trust and Poor Charlie. Subject to the approval of EPA, after consultation with the State, the Environmental Trustee may employ such attorneys, accountants, custodians, environmental consultants, engineers, surveyors, contractors, clerks, and investment counsel as the Environmental Trustee may deem necessary and commercially reasonable for the implementation of the purposes of the Environmental Trust. The Environmental Trustee may pay all such Persons compensation for services rendered and expenses incurred in accordance with budgets approved as provided in Paragraph 4.1.

5.3.4. Limitation of the Environmental Trustee's Authority. The Environmental Trustee is not authorized to engage in any trade or business with respect to the Environmental Trust Assets or proceeds therefrom except those necessary according to this Environmental Trust Agreement or the Consent Decree, including, without limitation, the management of the Poor Charlie Assets.

5.4 Other Activities. The Environmental Trustee may perform other services or be employed by other Persons that are not parties to the Environmental Trust as long as the Environmental Trustee has sufficient time to carry out all of her duties and responsibilities as set forth in this Environmental Trust Agreement and such employment or service be rendered by the Environmental Trustee to such other Persons would not in any way hinder or cause the Environmental Trustee to not carry out its fiduciary duties to the Environmental Trust. The Environmental Trustee may delegate the performance of services and the fulfillment of responsibilities under this Environmental Trust Agreement to other Persons so long as approved in writing by EPA and the State. Such Persons shall be entitled to compensation in the same manner as the Environmental Trustee, as provided in Paragraph 5.6.

5.5 Conditions of Environmental Trustee's Obligations. The Environmental Trustee accepts appointment as the Environmental Trustee subject to the following express terms and conditions:

5.5.1. No Bond. Notwithstanding any state law to the contrary, the Environmental Trustee, including any successor Environmental Trustee, shall be exempt from giving any bond or other security in any jurisdiction.

5.5.2. Limitation of Environmental Trustee Liability. In no event shall the Environmental Trustee be held personally liable for any claims asserted against the Environmental Trust except for actions or omissions that are determined by a court order to be fraudulent, grossly negligent, or willful misconduct. Except as provided herein, the Environmental Trustee may consult with legal counsel, accounting and financial professionals, environmental professionals, and other professionals, and shall not be personally liable for any action taken or omission made by it in accordance with advice given by such professionals, except in the case of a court order determining fraud, gross negligence, or willful misconduct by the Environmental Trustee. In the absence of fraud, gross negligence, or willful misconduct by the Environmental Trustee, as determined by a court, the Environmental Trustee shall not be personally liable to Persons seeking payment from or asserting actions against the Environmental Trust resulting from the Environmental Trustee carrying out the provisions of this Environmental Trust Agreement.

5.5.3. Reliance on Documentation. The Environmental Trustee may rely on, and shall be protected in acting upon, any notice, requisition, request, consent, certificate, order, affidavit, letter, or other paper or document reasonably believed by it to be genuine and to have been signed or sent by the proper person or persons.

5.5.4. Right to Demand Documentation. Notwithstanding anything else in this Environmental Trust, in the administration of the Environmental Trust Assets, the Environmental Trustee shall have the right, but shall not be required, to demand before the disbursement of any cash or in respect of any action whatsoever within the purview of this Environmental Trust, any showings, certificates, opinions, appraisals, or other information, or action or evidence thereof, in addition to that required by the terms hereof that the Environmental Trustee reasonably believes to be necessary or desirable.

5.6 Environmental Trustee's Compensation. The Environmental Trust shall pay its own reasonable and necessary costs and expenses, and shall reimburse the Environmental Trustee for the actual reasonable out-of-pocket fees, costs, and expenses to the extent incurred by the Environmental Trustee in connection with the Environmental Trustee's duties hereunder, including, without limitation, necessary travel, lodging, office rent (to be paid directly by the Environmental Trust), professional fees, postage, photocopying, telephone and facsimile charges upon receipt of periodic billings, all in accordance with an annual budget or fee schedule approved by the Beneficiaries. The Environmental Trustee shall be entitled to receive reasonable compensation for services rendered on behalf of the Environmental Trust in accordance with an annual budget or fee schedule approved by the Beneficiaries.

5.7 Termination, Resignation, and Removal of the Environmental Trustee.

5.7.1. Termination of Environmental Trustee. The rights, powers, duties, and obligations of the Environmental Trustee to the Environmental Trust will terminate on the date the Environmental Trust is terminated in accordance with Paragraph 2.7 of this Environmental Trust Agreement.

5.7.2. Resignation of Environmental Trustee. The Environmental Trustee may resign by giving not less than 60 Days written notice to EPA, the State, and the Court, and such resignation either shall take effect: (a) if EPA and the State have consented in writing, upon the date agreed by and among the Environmental Trustee, EPA, and the State; or (b) if EPA or the State has not consented in writing, upon order of the Court. If any individual Environmental Trustee becomes mentally or physically unable to serve, a certificate so stating from such Environmental Trustee's then attending physician shall constitute such Environmental Trustee's resignation. If any Environmental Trustee, if a corporation or limited liability company, shall be dissolved or in the course of dissolution or liquidation, or is otherwise unable to continue to act as Environmental Trustee, as finally determined by EPA (after consultation with the State), a certificate so stating from EPA shall constitute such Environmental Trustee's resignation. The Environmental Trustee's resignation shall be recorded as provided in this Environmental Trust Agreement immediately prior to the recording of the successor Environmental Trustee's acceptance or upon the effective date of resignation, whichever is earlier.

5.7.3. Removal of Environmental Trustee. In the event that EPA or the State finds that the Environmental Trustee has violated any provision of this Environmental Trust Agreement or the Consent Decree, or is seriously or repeatedly deficient or late in performance of the work required under this Environmental Trust Agreement or the Consent Decree, EPA or the State may, with concurrence from the other, remove the Environmental Trustee and appoint a successor Environmental Trustee pursuant to Paragraph 5.8.

5.8 Appointment of Successor Environmental Trustee. The Environmental Trustee shall remain in its capacity as Environmental Trustee for a reasonable period after termination or resignation to allow for the appointment of a successor Environmental Trustee. A successor Environmental Trustee shall be appointed by EPA, after consultation with the State, by an instrument in writing. Approval of the successor Environmental Trustee by the current Environmental Trustee is not required. Any successor Environmental Trustee hereunder shall execute an instrument accepting such appointment and shall file such acceptance in the Environmental Trust's records. Thereupon, such successor Environmental Trustee shall, without any further act, become fully vested with all the estates, properties, rights, powers, trusts, duties, and other obligations hereunder of its predecessor; but such predecessor shall nevertheless, upon written request of the successor Environmental Trustee, execute and deliver an instrument transferring to such successor Environmental Trustee all the estates, properties, rights, powers, and trusts of such predecessor; and every predecessor Environmental Trustee shall deliver all securities and money held by it to its successor.

ARTICLE VI **Beneficiaries**

6.1 Beneficiaries. Only EPA and the State hold beneficial interests in the Environmental Trust, and are together the Beneficiaries of the Environmental Trust and each is individually a Beneficiary as used in this Environmental Trust Agreement.

6.2 Beneficiary Representation. The individuals authorized to represent a Beneficiary when dealing with the Environmental Trust or its Parties are the representatives named in Paragraph 8.9 of this Environmental Trust Agreement, who may from time to time provide additional or replacement names and addresses of Authorized Representatives.

6.3 No Recourse to Beneficiaries. In no event shall the Beneficiaries have any responsibility for paying any expenses, fees, or other obligations of the Environmental Trust, and in no event shall the Environmental Trust or the Environmental Trustee, or any of their agents, representatives, or professionals, have recourse to the Beneficiaries therefor.

6.4 Non-Beneficiaries. No Person not named in Paragraph 6.1 is a beneficiary to the Environmental Trust or holds a beneficial interest in the Environmental Trust.

ARTICLE VII

Reporting

7.1 **Reports.** As soon as practicable after the end of each quarter, beginning with the quarter ending after the Environmental Trust Effective Date, the Environmental Trustee shall submit to EPA, the State, and DOJ a written report, including: (a) an accounting of all assets, income, earnings, and disbursements of Environmental Trust Assets; (b) a description of any previously unreported action taken by the Environmental Trust in performance of its duties which, as determined by counsel, public accountants, or other professionals retained by the Environmental Trustee, affect the Environmental Trust in a materially adverse way; and (c) a brief description of all actions taken in accordance with the Environmental Trust Agreement and the Consent Decree during the recently concluded quarter. The Environmental Trustee shall promptly submit additional reports to EPA and the State whenever (as determined by counsel, public accountants, or other professionals) a material adverse event occurs that affects the Environmental Trust or the Persons receiving payment pursuant to this Environmental Trust Agreement. In addition, the Environmental Trustee shall, upon the reasonable request of EPA or the State, provide documentation to substantiate use of Environmental Trust Assets consistently with the terms of the Consent Decree and this Environmental Trust Agreement.

7.2 **Final Accounting Report.** Environmental Trustee shall provide a final accounting to EPA and the State of all Environmental Trust Assets, along with earnings and disbursements therefrom, with copies of a closing binder including all documents pertaining to the sale of all Properties, as soon as practicable upon sale of all Properties pursuant to Paragraph 3.4.

7.3 **Reports in Support of Insurance Claims.** The Environmental Trustee shall also file (or cause to be filed) reports and cost analyses in support of claims against insurance carriers at the request of EPA and the State and shall provide the United States and the State a copy of any such reports and cost analyses.

7.4 **Other Reports.** The Environmental Trustee shall also cause to be filed any other statement, returns, disclosures, or forms relating to the Environmental Trust that are required by any applicable federal or state laws.

ARTICLE VIII

Miscellaneous

8.1 **Modification.** Material modifications to the Environmental Trust may be made only with the consent of EPA and the State and by order of the Court, and only to the extent that such modification does not change or inhibit the purpose of this Environmental Trust as set forth in Paragraph 2.3. Minor modifications or clarifying amendments may be made upon written approval by EPA and the State, as necessary to enable the Environmental Trustee to effectuate the provisions of this Environmental Trust Agreement.

8.2 **Insurance Claims.** The Environmental Trustee shall reasonably cooperate with and assist the United States in: (a) asserting and pursuing claims for coverage against insurance carriers under applicable policies, (b) negotiating or litigating to obtain the most favorable resolution of claims

under those policies as is reasonable, and (c) executing any agreement resolving claims under those policies.

8.3 Jurisdiction. The Environmental Trust and the Environmental Trustee are each subject to the jurisdiction of the Court for the purposes of enforcing this Environmental Trust Agreement and resolving disputes under its terms, including the obligations of the Environmental Trustee to perform its obligations hereunder.

8.4 Laws Governing Construction. The validity, interpretation, and performance of this Environmental Trust shall be governed by the laws of the State of West Virginia and the United States, without giving effect to the rules governing the conflicts of law that would require the application of the law of another jurisdiction.

8.5 Severability. If any provision of this Environmental Trust under any circumstances is held invalid and unenforceable, the remainder of this Environmental Trust Agreement, and the application of such provision to persons or entities in circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and such provisions of this Environmental Trust Agreement shall be valid and enforced to the fullest extent permitted by law.

8.6 Headings. The headings contained in this Environmental Trust Agreement are solely for convenience of reference and do not affect the meaning or interpretation of this Environmental Trust Agreement or any of its terms or provision.

8.7 Construction of Terms. In the event of any ambiguity or contradiction in the terms of this Environmental Trust Agreement, such terms shall be construed so as to conform to the provisions of the Consent Decree, where applicable, and so as to fulfill the purposes of this Environmental Trust. Where the provisions of this Environmental Trust Agreement are irreconcilable with the provisions of the Consent Decree, the provisions of the Consent Decree shall prevail.

8.8 Particular Words. Any words contained in the text of this Environmental Trust shall be read as a singular or plural and a masculine, feminine, or neuter as may be applicable in the particular context.

8.9 Authorized Representatives. The following are the Authorized Representatives of EPA and the State.

EPA: Robin E. Eiseman, Esq.
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street (3RC41)
Philadelphia, PA 19103

STATE: Patty Hickman
Director
Division of Land Restoration
West Virginia Department of Environmental Protection

601 57th Street, S.E.
Charleston, WV 25304

EPA or the State may, by written notice to the other parties, change its Authorized Representative or notice addresses above.

THE UNDERSIGNED PARTIES ENTER INTO THIS ENVIRONMENTAL TRUST AGREEMENT.

FOR POOR CHARLIE AND COMPANY

Date:

Name (print):

Title:

Address:

FOR THE POOR CHARLIE STOCK TRUST

Date:

Name (print):
Title:
Address:

FOR THE ENVIRONMENTAL TRUST:

Date:

Name (print): Ann R. Starcher
Title: Trustee
Address: P.O. Box 1746
Charleston, WV 25326
Phone: 304-345-2000
Email: astarcher@lgcr.com

FOR EPA:

Date: _____

FOR THE STATE:

Date: _____

Patricia A. Hickman
Director
Division of Land Restoration
West Virginia Department of Environmental
Protection
601 57th Street, S.E.
Charleston, WV 25304

**CONSENT DECREE APPENDIX F:
AMENDMENT TO THE ROBERT LEVINE 2009
REVOCABLE TRUST**
United States v. Poor Charlie and Company

AMENDMENT TO THE ROBERT LEVINE 2009 REVOCABLE TRUST

THIS AMENDMENT TO THE ROBERT LEVINE 2009 REVOCABLE TRUST (“Revocable Trust Amendment”), made this ____ day of _____, 2016, is acknowledged and consented to by the Trustee of the Revocable Trust, Ann R. Starcher (“Trustee”), and the Beneficiaries as defined in the Revocable Trust (“Beneficiaries”).

RECITALS:

WHEREAS, Robert Levine established the Robert Levine 2009 Revocable Trust on July 8, 2009, as the settlor and trustee thereunder, as restated by that certain Restatement of the Robert Levine Revocable Trust on August 19, 2009 (jointly, the “Revocable Trust”).

WHEREAS, Robert Levine is now deceased.

WHEREAS, pursuant to the terms of the Revocable Trust, the Revocable Trust is the holder of the Poor Charlie Stock Trust (“Poor Charlie Stock Trust”), whereby the Poor Charlie Stock Trust holds all of the outstanding shares of Poor Charlie and Company, a West Virginia corporation (“Poor Charlie”) and whereby as a result of such ownership, the Trustee is tasked with the liquidation of the assets and satisfaction of the liabilities of Poor Charlie.

WHEREAS, the Trustee has determined that the liabilities of Poor Charlie may potentially exceed the value of the assets of Poor Charlie, and that it is in the best interests of the Revocable Trust to amend the Revocable Trust as to allow the Poor Charlie Stock Trust to be transferred from the Revocable Trust into a liquidating trust for the benefit of Creditors (“Environmental Trust”). The creditors who have claims or potential claims against Poor Charlie consist of the United States Environmental Protection Agency (“EPA”) and the West Virginia Department of Environmental Protection (“DEP”, jointly, with EPA, the “Creditors”).

WHEREAS, the provisions of the Revocable Trust are hereby amended to provide for the transfer of the Poor Charlie Stock Trust from the Revocable Trust to the Environmental Trust pursuant to the Environmental Trust Agreement dated _____ and attached hereto as Exhibit A (“Environmental Trust Agreement”).

WHEREAS, the parties as indicated by their respective signatures below acknowledge that the Revocable Trust’s interest in Poor Charlie was limited to its interest in the Poor Charlie Stock Trust. Poor Charlie’s only assets consist of certain real property located in the State of West Virginia, cash, and notes receivable due from Robert Levine. The Revocable Trust by virtue of its interest in the Poor Charlie Stock Trust never conducted any active business operations on such real property located in the State of West Virginia.

NOW, THEREFORE, WITNESSETH, the parties hereby acknowledge and consent as follows:

1. Purpose. The primary purpose of this Revocable Trust Amendment is to transfer the Poor Charlie Stock Trust into the Environmental Trust created for the benefit of the Creditors to facilitate the liquidation of Poor Charlie's assets to satisfy outstanding contingent claims and liabilities of Poor Charlie.

2. Transfer of the Poor Charlie Stock Trust. The Revocable Trust shall transfer the Poor Charlie Stock Trust to the Environmental Trust upon the Environmental Trust Effective Date. Upon transfer of the Poor Charlie Stock Trust to the Environmental Trust, Article Five and Article Four, Paragraph A.2 of the Revocable Trust shall be deleted from the Revocable Trust and of no further force and effect. Upon its transfer to the Environmental Trust, the Poor Charlie Stock Trust shall terminate and its assets shall become assets of the Environmental Trust.

3. Repayment of Note Due Poor Charlie. Upon transfer of the Poor Charlie Stock Trust to the Environmental Trust, the Trustee shall cause any amounts due and owing from Robert Levine to Poor Charlie as more particularly detailed in Exhibit B attached hereto to be repaid from the Revocable Trust to Poor Charlie.

4. Effective Date. This Revocable Trust Amendment shall become effective on the date hereof.

IN WITNESS WHEREOF the Trustee and Beneficiaries have acknowledged and consented to this instrument.

By: _____
Ann R. Starcher, Trustee

[Affix notary seal]

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by Ann R. Starcher, as Trustee of the 2009 Robert Levine Revocable Trust.

My commission expires _____.

NOTARY PUBLIC

By: _____
Natalie Cowley

[Affix notary seal]

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by _____.

My commission expires _____.

NOTARY PUBLIC

By: _____
Carolyn Cohen, Trustee

[Affix notary seal]

STATE OF FLORIDA,
COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____,
2016, by Carolyn Cohen.

My commission expires _____.

NOTARY PUBLIC

By: _____
Marilyn Segal

[Affix notary seal]

STATE OF FLORIDA,
COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____,
2016, by Marilyn Segal.

My commission expires _____.

NOTARY PUBLIC

By: _____
Debra Levine

[Affix notary seal]

STATE OF _____,
COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____,
2016, by Debra Levine.

My commission expires _____.

NOTARY PUBLIC

**CONSENT DECREE APPENDIX G:
AMENDED AND RESTATED BYLAWS OF POOR
CHARLIE AND COMPANY**
United States v. Poor Charlie and Company

**AMENDED AND RESTATED BYLAWS OF
POOR CHARLIE AND COMPANY**

WHEREAS, Poor Charlie and Company (“Poor Charlie” or the “Corporation”) is a party to that certain Consent Decree whereby Poor Charlie has settled certain claims asserted by the United States of America, on behalf of the Environmental Protection Agency (“EPA”) relating to the Twin Cities Iron and Metal Superfund Site (the “Consent Decree”).

WHEREAS, pursuant to the Consent Decree, Poor Charlie is bound to certain terms and provisions.

WHEREAS, pursuant to the Consent Decree, an Environmental Trust was established to which the Poor Charlie Stock Trust and all of its assets were transferred from the Robert Levine 2009 Revocable Trust (the “Environmental Trust”). A copy of the Environmental Trust Agreement is attached hereto as Exhibit A.

WHEREAS, the Environmental Trust is now the sole shareholder of Poor Charlie.

WHEREAS, the Environmental Trust Agreement stipulates certain terms and provisions to which Poor Charlie shall be obligated and bound, and which the Environmental Trustee (as defined in the Environmental Trust Agreement) shall have the authority and power under Article VI herein to carry out.

WHEREAS, these amended and restated bylaws provide for a single member Board of Directors (the “Director”).

WHEREAS, these amended and restated bylaws are hereby unanimously approved and adopted pursuant to W. Va. Code § 31D-10-1020(a) by the Environmental Trust, as the sole shareholder of Poor Charlie.

ARTICLE I. OFFICES

The principal office of the Corporation shall be 300 Summers Street, Suite 700, Charleston, West Virginia 25301, or such other office as the Director may designate.

ARTICLE II. SHAREHOLDERS

Section 1. Annual Meeting. The shareholders shall meet not less than annually at the Corporation’s principal office or such other location as announced by written notice. The failure to hold an annual meeting in accordance with these Bylaws does not affect the validity of any corporate action.

Section 2. Special Meeting. Special meetings of the shareholders for any purpose or purposes, shall be called by the Director at the request of a majority of shareholders of the Corporation.

Section 3. Place of Meeting. The Director may designate any place as the place of meeting for any annual meeting or special meeting of shareholders called by the Director.

Section 4. Notice. Written notice stating the place, day and hour of the meeting and in case of a special meeting, the purpose or purposes for which the meeting is called, shall be in writing and mailed to each shareholder not less than 10 days prior to such meeting. Such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his last known address with postage thereon paid. A waiver of notice of any such meeting signed by a shareholder will obviate the necessity of giving such shareholder written notice.

Section 5. Informal Action by Shareholder. Any action required to be taken at a meeting of the shareholders or any action, which may be taken at a meeting of the shareholders, may be taken without a meeting if a consent, in writing, setting forth the action so taken, shall be signed by all the shareholders entitled to vote with respect to the subject matter thereof.

Section 6. Quorum. Sixty percent of the outstanding voting shares of the Corporation entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders.

Section 7. Proxies. At all meetings of the shareholders, a shareholder may vote in person or by proxy executed in writing by the shareholder or by his duly authorized attorney-in-fact. Such proxy shall be filed with the President of the Corporation before or at the time of the meeting.

Section 8. Voting for Director. At each election for the Director every shareholder entitled to vote at such election shall have the right to vote in person or by proxy the number of shares owned by him for the Director.

Section 9. Shareholder Control. The shareholders shall have the power and authority to direct the Director to execute or undertake any action the shareholders deem necessary, including but not limited to the operation and management of the Corporation, the execution of contracts or agreements, the sale of assets or real property, and the winding up of the Corporation.

ARTICLE III. BOARD OF DIRECTORS

Section 1. Duties and Number of Directors. The business property and affairs of the Corporation shall be managed and controlled by the Director, subject to the terms and purposes of the Consent Decree and the Environmental Trust Agreement.

Section 2. Tenure and Qualifications. The Director shall hold office until the next annual meeting of shareholders and until his successor shall have been elected or qualified. The Director need not be a resident of the State of West Virginia or shareholder of the Corporation.

Section 3. Action Without a Meeting. Any action that may be taken by the Director at a meeting may be taken without a meeting with consent, in writing, setting forth the action and signed by the Director.

Section 4. Removal of Directors. At a meeting called expressly for that purpose the Director may be removed by a vote of the majority of the shares then entitled to vote at an election of the Director.

Section 5. Vacancies. If there is no Director for any reason, the Director may be appointed by the affirmative vote of a majority of the shares then entitled to vote at an election of the Director. The Director elected to fill a vacancy shall be elected for the unexpired term of their predecessor in office.

Section 6. Shareholder Authority. The Director is subject to any and all directions and order given by the shareholders, subject to West Virginia law.

ARTICLE IV. MEETING OF BOARD OF DIRECTORS

Section 1. Regular Meeting. There shall be a regular meeting of the Director immediately following and at the same place as the annual shareholders' meeting. No notice other than this bylaw need be given for such meeting.

Section 2. Special Meetings. The Director may call a special meeting wherein he may take action pursuant to these amended and restated bylaws or West Virginia law.

Section 3. Notice. No notice is required for a special meeting of the Director because the Director is the sole participant.

ARTICLE V. OFFICERS

Section 1. Officers. The President shall be appointed by the Director and be the sole officer of the Corporation. The Director may appoint herself or another natural person as the President of the Corporation. The Director may remove the President and name a successor officer at any time by a written notice to the President. An officer shall serve in office until his successor shall have been duly elected or until death, resignation or removal by the Director. If the officer resigns, dies, becomes mentally incompetent or is removed by the Director, then the Director shall appoint a successor.

Section 2. President. The President shall be the principal executive officer of the Corporation, and, subject to the control of the Director, shall, in general, supervise and control any business and affairs of the Corporation, subject to the terms and purposes of the Consent Decree and the Environmental Trust Agreement. The President may sign and acknowledge any and all instruments requiring the signature and acknowledgment of the Corporation. The President shall perform any and all other duties required of corporate officers by West Virginia law.

Section 3. Appointment and Term of Office. The President shall be appointed by the Director at the annual regular election of the Director and hold office until his successor shall have been appointed or until death or until resignation or shall have been removed by the Director.

ARTICLE VI. ENVIRONMENTAL TRUST

Notwithstanding anything stated herein, the Environmental Trust, through the Environmental Trustee, shall have the full power and authority to direct Poor Charlie's actions to ensure compliance with the Consent Decree and the Environmental Trust Agreement, and the actions of the Director, and any and all officers, shareholders, or agents of Poor Charlie shall be

consistent with the terms and purposes of the Consent Decree and the Environmental Trust Agreement at all times.

ARTICLE VII. CERTIFICATES FOR SHARES AND THEIR TRANSFERS

Section 1. Certificates for Shares. Certificates representing shares of the Corporation shall be in the form determined by the Director. Such certificates shall be signed by the President.

Section 2. Lost or Destroyed Certificates. In the event that a certificate for shares should become lost or destroyed, the owner (as shown on the stock transfer book of the Corporation) may file an affidavit with the Director setting forth the circumstances of such loss or destruction. Thereupon the Director may cause a new certificate to be issued to such owner in lieu of the lost or destroyed certificate. The Director, in his discretion, may require such owner to post a security bond with sufficient surety and publish notice of the loss or destruction of such certificate or certificates as set forth by the Statutes of the State of West Virginia.

Section 3. Transfer of Shares of Stock. Shares of stock of the Corporation shall be transferable only on the books of the Corporation by the holder thereof in person or by his attorney, upon surrender and cancellation of certificates of a like number of shares.

ARTICLE VIII. CORPORATE SEAL

The Director may adopt a seal, an impression of which shall be made in the minutes at the time of its adoption and such seal shall be the corporate seal of the Corporation.

ARTICLE IX. NOTICE

Whenever any notice is required to be given to any shareholders or any Director of the Corporation, under the provisions of these bylaws or under the provisions of the Statutes of the State of West Virginia, a waiver thereof, in writing, signed by the person or persons entitled to such notice shall be deemed equivalent to the timely giving of such notices.

ARTICLE X. AMENDMENT

These bylaws may not be altered, amended, repealed or added to except by vote of seventy-five percent (75%) of the shareholders.