

SCHEDULE E

Liquidating Trust Agreement

TRINITY UNSECURED CREDITORS TRUST AGREEMENT

This Liquidating Trust Agreement (the “Liquidating Trust Agreement”), is being entered into as of January 31, 2014, by and between Trinity Coal Corporation (“Trinity”), on its own behalf and on behalf of its direct and indirect subsidiaries and affiliated entities (collectively the “Debtors”), as debtors and debtors-in-possession in the chapter 11 cases pending in the United States Bankruptcy Court for the Eastern District of Kentucky, Lexington Division (the “Bankruptcy Court”), Case Number 13-50364 (jointly administered), and Ellen Arvin Kennedy, solely in her capacity as trustee under this Liquidating Trust Agreement (the “Liquidating Trustee”). The Fourth Amended Debtors’ Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code (the “Plan”)¹ was confirmed by the Bankruptcy Court’s order, entered on the docket on November 8, 2013 [Docket No. 1034] (the “Confirmation Order”) and provides, *inter alia*, for:

(a) The transfer (the “Transfer”) of all right, title and interest of the Debtors in the Trust Assets to the Trinity Unsecured Creditors Trust (the “Liquidating Trust”) on the Effective Date for distribution to the Holders of Allowed General Unsecured Claims (the “Beneficiaries”) pursuant to, in accordance with, and except as specifically provided in this Liquidating Trust Agreement, the Plan and the Confirmation Order;

(b) The treatment of the Transfer for federal income tax purposes as the transfer of the Trust Assets by the Debtors to the Beneficiaries followed by the transfer of such assets by the Beneficiaries to the Liquidating Trust in exchange for their respective beneficial interests therein;

(c) The treatment for all purposes, including federal income tax purposes, of the Beneficiaries as the deemed owners of their respective Trust Assets and as the grantors of the Liquidating Trust;

(d) The treatment of the Trust as a grantor trust for federal income tax purposes;

(e) The valuation of the Trust Assets by the Liquidating Trustee and the use of such valuations by the Liquidating Trustee and the Beneficiaries for all federal income tax purposes;

(f) The management of the Trust Assets by the Liquidating Trustee; and

(g) The distribution of the Trust Assets or the proceeds thereof to the Beneficiaries as set forth in the Plan, the Confirmation Order and this Liquidating Trust Agreement.

NOW, THEREFORE, pursuant to the Plan and the Confirmation Order and in consideration of the mutual agreements of the parties contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and affirmed, the parties hereby agree as follows:

¹ Capitalized terms not otherwise defined herein shall have the meanings given to them in the Plan.

ARTICLE I
DECLARATION OF TRUST

Section 1.1 Purpose of the Liquidating Trust. The Debtors and the Liquidating Trustee, pursuant to the Plan and the Confirmation Order and in accordance with the Bankruptcy Code, applicable tax statutes, rules and regulations, to the extent incorporated in this Liquidating Trust Agreement, hereby settle the Liquidating Trust on behalf of and for the sole benefit of the Beneficiaries and for the primary purpose of liquidating the Trust Assets and distributing the Trust Assets or proceeds thereof to the Beneficiaries pursuant to the Plan and in accordance with Treas. Reg. § 301.7701-4(d). The Liquidating Trust has no objective to continue or engage in the conduct of a trade or business except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust. It shall not be the objective or purpose of this Liquidating Trust to, and the Liquidating Trustee shall have no authority to, conduct a trade or business except as reasonable and necessary to, and consistent with, the liquidation of the Trust Assets. In particular, the Liquidating Trust, through the Liquidating Trustee, will oversee the wind down, dissolution, and liquidation of the Trust Assets and the remaining Estates, other than the duties assigned to the Equity Commitment Escrow Agent, in accordance with the Plan, including without limitation the following: (a) accept and place all Trust Assets into the Liquidating Trust; (b) to the extent feasible, reduce all remaining Trust Assets, including, but not limited to, Causes of Action, to cash; (c) object to and resolve Disputed Claims in Class 6 under the Plan in accordance with the terms of the Plan; (d) make all distributions in accordance with the Plan to the extent such distributions are to be made from the Trust Assets; (e) pay U.S. Trustee Fees accruing in the Chapter 11 Cases after the Effective Date; (f) retain professionals and other agents; and (g) take such steps as are reasonable and necessary to accomplish the Liquidating Trust's purpose, all as provided in, and subject to the terms and provisions of, the Plan, the Confirmation Order and this Liquidating Trust Agreement. The Trust Assets shall be held for the exclusive and sole benefit of the Beneficiaries and shall only be used to fund distributions to such Beneficiaries in accordance with the Plan and to fund payment of costs, fees, and expenses incurred in connection with the administration of the Liquidating Trust or the Plan.

Section 1.2 Rights of Debtors, Plan Sponsor, and Reorganized Debtors. The Debtors, Plan Sponsor, and Reorganized Debtors shall have no claim to or right or interest, whether direct, residual, contingent or otherwise, in the Trust Assets once such assets have been transferred to the Liquidating Trust.

Section 1.3 Name of the Liquidating Trust. The Liquidating Trust established hereby shall be known as the "Trinity Unsecured Creditors Trust." In connection with the exercise of her powers, the Liquidating Trustee may use the name or such variation thereof as she sees fit, and may transact the affairs of the Liquidating Trust in such name.

Section 1.4 Transfer of Assets to Create Liquidating Trust. Effective as of the Effective Date, the Debtors hereby grant, release, assign, transfer, convey and deliver to the Liquidating Trustee and her successors, to be held in trust and to be applied as specified in the Plan, the Confirmation Order, and this Liquidating Trust Agreement, the Trust Assets. Through the transfer of each Estate's assets, and except as otherwise provided herein or in the Plan, such

assets are Trust Assets and the Liquidating Trust has the sole and exclusive right, title and interest in and possession of the Trust Assets.

Section 1.5 Acceptance by Liquidating Trustee. The Liquidating Trustee hereby accepts and confirms the following: (a) the appointment to serve as Liquidating Trustee; (b) the Transfer of the Trust Assets, and all right, title and interest therein, to the Liquidating Trust; and (c) the obligations and duties imposed on her by this Liquidating Trust Agreement. The Liquidating Trustee agrees to receive, hold, administer and distribute the Trust Assets and the income derived therefrom, and to reconcile, administer and satisfy Claims pursuant to the terms of the Plan, the Confirmation Order and this Liquidating Trust Agreement.

ARTICLE II TERMINATION OF TRUST

Section 2.1 Maximum Term. The Liquidating Trust shall terminate its existence as soon as practicable upon the occurrence of the complete liquidation, administration and distribution of the Trust Assets in accordance with the Plan and the full performance of all other duties and functions set forth in the Plan and this Liquidating Trust Agreement. Notwithstanding the foregoing, the Liquidating Trust shall terminate no later than the fifth anniversary of the Effective Date (the “Initial Liquidating Trust Term”); provided, however, that, on or later than the date that is six months prior to such termination, the Bankruptcy Court, upon motion by a party in interest, may extend the term of the Liquidating Trust for a finite period if such extension is necessary to liquidate the Trust Assets. Multiple extensions may be obtained so long as: (a) Bankruptcy Court approval is obtained no more than six months prior to the expiration of each extended term, and (b) the Liquidating Trustee receives an opinion of counsel or a favorable ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the Liquidating Trust as a grantor trust for federal income tax purposes.

Section 2.2 Winding Up and Discharge of the Liquidating Trustee. For purposes of winding up the affairs of the Liquidating Trust at its termination, the Liquidating Trustee shall continue to act as Liquidating Trustee until her duties have been fully discharged. After doing so, the Liquidating Trustee, her agents, professionals and employees, if any, shall have no further duties or obligations hereunder, except as required by this Liquidating Trust Agreement, the Plan, the Confirmation Order or applicable law concerning the termination of a trust.

ARTICLE III OBLIGATIONS OF THE LIQUIDATING TRUSTEE

Section 3.1 Establishment and Maintenance of Accounts, Reserves and Escrows.

(a) Initial Establishment of Accounts and Reserves. On the Effective Date or as soon thereafter as practicable, the Liquidating Trustee shall establish the following accounts and reserves at an institution(s) approved by the United States Trustee:

(i) General Account(s): One or more general accounts (the “General Account(s)”) into which shall be deposited, to the extent sufficient assets are available, cash

comprising Trust Assets for distribution to the holders of Allowed General Unsecured Claims pursuant to this Liquidating Trust Agreement and the Plan.

(ii) Disputed Claims Reserve: An account or accounts, designated as a “Disputed Claims Reserve,” as described more fully in Section 3.2 below (the “Disputed Claims Reserve”).

(iii) Operating Reserve Account: An account, designated as a “Operating Reserve Account,” as described more fully in Section 3.3 below (the “Operating Reserve Account”).

(b) Subsequent Establishment of Accounts, Reserves and Escrows. On or after the Effective Date, the Liquidating Trustee (i) shall establish and maintain such additional accounts, reserves and escrows, to the extent sufficient assets are available, as may be required by applicable law or by order of a court of competent jurisdiction, and (ii) may establish and maintain such additional accounts, reserves and escrows as she deems necessary or desirable to carry out the provisions of the Plan and this Liquidating Trust Agreement.

(c) Amounts Deposited in Reserves. The amounts to be initially deposited in the reserves shall be established by the Liquidating Trustee consistent with the terms of the Plan. Changes in the amounts maintained in the reserves may be made at any time thereafter in the discretion of the Liquidating Trustee.

Section 3.2 Disputed Claims Reserve.

(a) Prior to making each of the distributions under the Plan, the Liquidating Trustee shall create and fund, to the extent that sufficient assets are available, one or more, as appropriate, Disputed Claims Reserves with an amount of cash equal to the distributions to which holders of Disputed Claims would be entitled under the Plan as of such date if such Disputed Claims were Allowed Claims; provided, however, that the Liquidating Trustee may at any time file a motion(s) pursuant to section 502(c) of the Bankruptcy Code for an order(s) estimating and limiting the amount of cash which shall be deposited in any Disputed Claims Reserve in respect of any Disputed Claims, with notice and an opportunity to be heard to the affected holders of such Disputed Claims.

(b) After a Final Order has been entered or other final resolution has been reached with respect to any Disputed Claim for which cash was reserved in a Disputed Claims Reserve, the balance, if any, of cash remaining in such Disputed Claims Reserve on account of such Claim, after making the distribution, if any, to which the holder of such Claims became entitled by virtue of such Final Order or other final resolution, shall be transferred to the General Account(s).

Section 3.3 Operating Reserve Account.

(a) On the Effective Date (or as soon thereafter as practicable), the Liquidating Trustee shall establish the Operating Reserve Account, which shall be funded in an amount to be determined in the sole discretion of the Liquidating Trustee and administered pursuant to the Plan and this Liquidating Trust Agreement for purposes of providing funds

necessary to cover the ordinary and reasonable costs, expenses and obligations to be incurred in administering the Liquidating Trust and the Plan.

(b) The Liquidating Trustee may, in her sole discretion, transfer funds from the General Account(s) to the Operating Reserve Account if she deems it necessary or appropriate to provide funds necessary to cover the ordinary and reasonable costs, expenses and obligations to be incurred in administering the Liquidating Trust or the Plan.

(c) In connection with making a distribution of cash or other assets under the Plan, if the Liquidating Trustee determines, in her sole discretion, that any excess cash is available from the Operating Reserve Account (the "Excess Operating Reserve Amount"), the Liquidating Trustee may transfer the Excess Operating Reserve Amount to the General Account(s) for subsequent distribution to the Beneficiaries pursuant to the terms of the Plan.

(d) While in no way limiting their obligations under the Plan with respect to the Essar Unsecured Commitment Amount, neither the Plan Sponsor nor the Reorganized Debtors shall have any obligations to pay any amounts related to the Operating Reserve Account or the costs and expenses of the Liquidating Trust.

Section 3.4 Use of Assets. All cash or other property held or collected by the Liquidating Trustee shall be used solely for the purposes contemplated by the Plan or this Liquidating Trust Agreement.

Section 3.5 Distributions. The Liquidating Trustee shall make the first distribution to Beneficiaries on the Effective Date or as soon as practicable thereafter, as provided in the Plan and in this Liquidating Trust Agreement. Following such initial distributions, the Liquidating Trustee shall make further distributions to Beneficiaries at least once per calendar year. The Liquidating Trustee shall make all distributions in accordance with the Plan.

ARTICLE IV POWERS AND DUTIES OF THE LIQUIDATING TRUSTEE

Section 4.1 Duties of Liquidating Trustee. The Liquidating Trustee shall have such duties and responsibilities as are specified in the Plan, the Confirmation Order and this Liquidating Trust Agreement.

Section 4.2 Authority of Liquidating Trustee. The Liquidating Trust and the Liquidating Trustee shall be vested with the property, rights, interests, and powers of the Debtors transferred to the Liquidating Trust, as specified in the Plan or the Confirmation Order. The Liquidating Trustee shall make continuing efforts to dispose of the Trust Assets, make timely distributions and not unduly prolong the duration of the Liquidating Trust. The Liquidating Trustee's rights, duties, and authority shall include, without limitation, all of the following:

(a) receive, control, manage and dispose of all Trust Assets for the benefit of the Beneficiaries who may receive distributions under the Plan;

(b) act as custodian of the Trust Assets and liquidate and reduce such assets to cash at such time as the Liquidating Trustee deems appropriate to accomplish the purpose of the Liquidating Trust, in accordance with the terms of the Plan and the Liquidating Trust Agreement;

(c) calculate and pay all distributions required or permitted to be made from the Trust Assets under the Plan, this Liquidating Trust Agreement and/or orders of the Bankruptcy Court;

(d) subject to the provisions of the Plan and this Liquidating Trust Agreement, establish, fund, and/or administer the Disputed Claims Reserve and such other reserves, accounts and escrows as may be authorized by this Liquidating Trust Agreement, the Plan, or order of the Bankruptcy Court;

(e) employ, supervise and compensate attorneys, accountants, financial advisors and other professionals or other persons retained to represent the interests of and serve on behalf of the Liquidating Trust (the "Trust Professionals") and waive any conflicts of interest as deemed necessary or appropriate in her discretion;

(f) file the tax returns described in Section 7.4 in the manner described therein;

(g) object to or seek to recharacterize, reclassify or subordinate General Unsecured Claims filed against any of the Debtors and compromise and settle, abandon or dismiss any and all Disputed Claims in accordance with the terms of the Plan;

(h) seek estimation of contingent or unliquidated General Unsecured Claims under section 502(c) of the Bankruptcy Code;

(i) seek determination of tax liability under section 505 of the Bankruptcy Code;

(j) prosecute, settle, dismiss, abandon or otherwise dispose of any and all Causes of Action of the Debtors or their Estates constituting Trust Assets, including, without limitation, all Causes of Action arising under sections 510, 542 through 551 and 553 of the Bankruptcy Code in accordance with section 1123(b)(3)(B) of the Bankruptcy Code;

(k) pay all expenses and make other necessary payments relating to the Trust Assets;

(l) assert or waive any privilege or defense of the Debtors related to the Trust Assets;

(m) seek the examination of any entity under Bankruptcy Rule 2004;

(n) perform any and all acts necessary or appropriate for the conservation and protection of the Trust Assets;

(o) exercise all powers and rights, and take all actions contemplated by or provided for under the Plan or this Liquidating Trust Agreement;

(p) withhold from amounts distributable to any Person or Entity any and all amounts required by any law, rule, regulation, ruling, directive, or other governmental requirement, or as otherwise provided herein, as determined by the Liquidating Trustee in her sole discretion;

(q) except as otherwise set forth in the Plan, undertake all administrative functions remaining in the Chapter 11 Cases, including the ultimate closing of the Chapter 11 Cases pursuant to a Final Decree, and file with the Bankruptcy Court such status reports as are required by the Bankruptcy Code, Bankruptcy Court, United States Trustee's Office, or other applicable law or Bankruptcy Court procedure;

(r) respond to the inquiries of Holders of General Unsecured Claims; and

(s) take any and all other actions necessary or appropriate to implement or consummate the Plan and the provisions of this Liquidating Trust Agreement.

Section 4.3 Limitations on the Liquidating Trustee. Notwithstanding anything in this Liquidating Trust Agreement to the contrary, the Liquidating Trustee, in her capacity as such, shall not do or undertake any of the following: (i) guaranty any debt; (ii) loan Trust Assets; (iii) purchase Trust Assets from the Liquidating Trust; (iv) transfer Trust Assets to another trust with respect to which the Liquidating Trustee serves as trustee; or (v) except as otherwise reasonably necessary to maintain the value of the Trust Assets and to further the liquidating purpose of the Liquidating Trust, invest Trust Assets other than in short-term, liquid investments, such as bank demand and time deposits, short-term bank or saving institution certificates of deposit or Treasury Bills.

Section 4.4 Liquidating Trustee and Conflicts of Interest. If the Liquidating Trustee determines, in the exercise of her reasonable discretion, that she has a material conflict of interest with respect to the settlement of a Claim, the resolution or prosecution of a Cause of Action or any other matter, the Liquidating Trustee may select a designee to act on behalf of the Liquidating Trust solely with respect to such matter (the "Designee"), with such Designee's authority to act on behalf of the Liquidating Trust to terminate upon the matter's conclusion. If the Designee files a pleading, motion or other filing with a court or tribunal on behalf of the Liquidating Trust, it shall do so in its own name as "Designee of the Trinity Unsecured Creditors Trust."

Section 4.5 Register of Beneficiaries. The Debtors shall provide the Liquidating Trustee with a register of the names, addresses and amounts of Allowed Claims of the Beneficiaries (the "Register") as of the close of business on the Effective Date. Thereafter, the Register will be maintained by the Liquidating Trustee, and changes thereto will be made upon notification proper under this Liquidating Trust Agreement submitted to the Liquidating Trustee. The Liquidating Trustee shall not be liable for relying on the accuracy of the Register, provided that she has properly maintained the Register in accordance with this Liquidating Trust Agreement.

Section 4.6 Books and Records. The Liquidating Trustee also shall maintain in respect of the Liquidating Trust and the Beneficiaries, books and records relating to the Trust Assets and income realized therefrom and the payment of expenses of and claims against or assumed by the Liquidating Trust in such detail and for such period of time as may be necessary to enable her to make full and proper reports in respect thereof. Such books and records shall be maintained in a manner consistent with the Plan and this Liquidating Trust Agreement. Except as expressly provided in this Liquidating Trust Agreement, the Plan or the Confirmation Order, nothing in the Liquidating Trust Agreement is intended to require the Liquidating Trustee to file any accounting or seek approval of any court with respect to the administration of the Liquidating Trust, or as a condition for making any payment or distribution out of the Trust Assets.

Section 4.7 United States Trustee Statutory Fees. The Liquidating Trustee shall pay all U.S. Trustee Fees for each quarter following the Effective Date (including any fraction thereof), as calculated taking into account the substantive consolidation of the Debtors, out of the Trust Assets until the Chapter 11 Cases are converted, dismissed, or closed, whichever occurs first.

Section 4.8 Retention of Trust Professionals. The Liquidating Trustee may commit the Liquidating Trust to and shall pay such Trust Professionals reasonable compensation for services rendered and expenses incurred. A law firm or other professional shall not be disqualified from being employed by the Liquidating Trustee solely because of its current or prior retention as counsel or professional to the Debtors or the Committee in the Chapter 11 Cases.

Section 4.9 Final Accounting of Liquidating Trustee. The Liquidating Trustee shall within ninety days after the termination of the Liquidating Trust or her resignation, removal, liquidation or death (in which case, the obligation contained in this Section shall pass to a successor Liquidating Trustee pursuant to Section 5.4 of this Liquidating Trust Agreement), render a final accounting containing at least the following information:

- (a) A description of the Trust Assets and their disposition;
- (b) A summarized accounting in sufficient detail of all gains, losses, receipts, disbursements and other transactions in connection with the Liquidating Trust and the Trust Assets during the Liquidating Trustee's term of service, including their source and nature;
- (c) Separate entries for all receipts of principal and income;
- (d) The ending balance of all Trust Assets as of the date of the Liquidating Trustee's accounting, including the cash balance on hand and the name and location of the depository where it is kept;
- (e) All known liabilities owed by the Liquidating Trust; and
- (f) The then-current Register of Allowed and Disputed Claims.

The final accounting shall be filed with the Bankruptcy Court.

ARTICLE V LIABILITY OF LIQUIDATING TRUSTEE

Section 5.1 Appointment. The Liquidating Trustee is Ellen Arvin Kennedy, solely in her capacity as Liquidating Trustee of the Trinity Unsecured Creditors Trust and not otherwise.

Section 5.2 Resignation. The Liquidating Trustee may resign by giving not less than sixty (60) days' prior written notice thereof to the United States Trustee; provided, however, that such resignation shall not become effective until the appointment and Bankruptcy Court approval of a successor Liquidating Trustee in accordance with Section 5.4 hereof. If the Liquidating Trustee resigns from her position hereunder, subject to a final accounting, such Liquidating Trustee shall be entitled to all accrued but unpaid fees, expenses, and other compensation to the extent incurred, arising or relating to events occurring before such resignation, and any out-of-pocket expenses reasonably incurred in connection with the transfer of all powers and duties to the successor Liquidating Trustee.

Section 5.3 Removal. At any time upon the request of a party-in-interest through a motion filed in the Bankruptcy Court, the Bankruptcy Court may remove the Liquidating Trustee, including any successor Liquidating Trustee or Designee, for cause. For purposes of this Section 5.3, "cause" shall mean: (a) an act of fraud, embezzlement, or theft in connection with the Liquidating Trustee's duties or in the course of her employment in such capacity, (b) the intentional wrongful damage to the Trust Assets, (c) the intentional wrongful disclosure of confidential information of the Liquidating Trust resulting in material harm to the Liquidating Trust, or (d) gross negligence by the Liquidating Trustee in connection with the performance of her duties under this Liquidating Trust Agreement. Unless the Bankruptcy Court orders immediate removal, the Liquidating Trustee shall continue to serve until a successor Liquidating Trustee is appointed, and such appointment becomes effective, in accordance with Section 5.4 hereof. If the Liquidating Trustee is removed for cause, the Liquidating Trustee shall not be entitled to any accrued but unpaid fees, expenses or other compensation under this Liquidating Trust Agreement or otherwise. If the Liquidating Trustee is unwilling or unable to serve (i) by virtue of her inability to perform her duties under this Liquidating Trust Agreement due to death, illness, or other physical or mental disability, or (ii) for any other reason whatsoever other than for "cause," subject to a final accounting, such Liquidating Trustee shall be entitled to all accrued but unpaid fees, expenses, and other compensation, to the extent incurred, arising or relating to events occurring before her removal or resignation, and to any out-of-pocket expenses reasonably incurred in connection with the transfer of all powers and duties and all rights to any successor Liquidating Trustee.

Section 5.4 Appointment of Successor Liquidating Trustee. In the event of a vacancy by reason of the death or immediate removal of the Liquidating Trustee or prospective vacancy by reason of resignation or removal, the Trust Committee shall have the right to nominate the successor Liquidating Trustee, but the Bankruptcy Court shall be vested with final authority to appoint the successor Liquidating Trustee consistent with the best interests of the Beneficiaries of the Liquidating Trust. Every successor Liquidating Trustee appointed hereunder shall execute, acknowledge and deliver to the Bankruptcy Court and the retiring Liquidating Trustee, if any, an instrument accepting such appointment subject to the terms and provisions hereof. The successor

Liquidating Trustee, without any further act, shall become vested with all the rights, powers and duties of the Liquidating Trustee; provided, however, that no Liquidating Trustee shall be liable for the acts or omissions of any prior or later Liquidating Trustee.

Section 5.5 Continuity. The death, resignation or removal of the Liquidating Trustee shall not terminate the Liquidating Trust or revoke any existing agency (other than any agency of such Liquidating Trustee as a Liquidating Trustee) created pursuant to the Liquidating Trust Agreement or invalidate any action theretofore taken by the Liquidating Trustee, and the successor Liquidating Trustee agrees that the provisions of the Liquidating Trust Agreement shall be binding on and inure to the benefit of each successor Liquidating Trustee and all her heirs and legal and personal representatives, successors or assigns. In the event of the resignation or removal of the Liquidating Trustee, such Liquidating Trustee shall (a) execute and deliver by the effective date of her resignation or removal such documents, instruments and other writings as may be reasonably required to effect the termination of such Liquidating Trustee's capacity under this Liquidating Trust Agreement and (b) assist and cooperate in effecting the assumption of such Liquidating Trustee's obligations and functions by the successor Liquidating Trustee. If, for any reason, the Liquidating Trustee fails to execute the documents described in clause (a) of the preceding sentence, the Bankruptcy Court may enter such orders as are necessary to effect termination of such Liquidating Trustee's capacity under this Liquidating Trust Agreement.

Section 5.6 Compensation. The Liquidating Trustee shall be compensated on an hourly basis based on her normal and customary rates for such services, or on such other terms as may be agreed with the consent of the Trust Committee, and shall be entitled to reimbursement of expenses incurred. Any Trust Professionals or agents retained or utilized by the Liquidating Trustee shall be entitled to reasonable compensation for services rendered and reimbursement of expenses incurred. Compensation of the Liquidating Trustee and the Trust Professionals shall be paid out of the Operating Reserve Account. After the Effective Date, the payment of the fees and expenses of the Liquidating Trustee and her agents, financial advisors, attorneys, consultants, independent contractors, representatives and other Trust Professionals shall be made in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court. Any successor Liquidating Trustee shall receive such reasonable compensation and reimbursement of expenses in the same manner as the initial Liquidating Trustee. The Trust Committee shall not be entitled to reimbursement of any attorneys' fees or other professional fees from the Liquidating Trust; provided, however, that the members of the Trust Committee shall have the right to be reimbursed by the Liquidating Trust for any actual and reasonable out of pocket expenses incurred in serving on the Trust Committee upon submitting proof of the incurrence of such expenses to the Liquidating Trustee.

Section 5.7 Indemnification; Limitation of Liability, etc.

(a) The Liquidating Trust shall indemnify and hold harmless each of (i) the Liquidating Trustee (and any successor Liquidating Trustee), (ii) the Trust Professionals, and (iii) each member of the Trust Committee and his/her heirs, legal representatives and permitted assigns (collectively, the "Indemnified Parties"), from and against and with respect to any and all liabilities, losses, damages, claims, costs and expenses, including, but not limited to, attorneys' fees, arising out of or due to their actions or omissions, or consequences of such actions or

omissions, with respect to the Liquidating Trust Agreement, the Estates or the implementation or administration of the Plan, except to the extent it is finally determined by a final and non-appealable order of a court of competent jurisdiction that such Indemnified Party acted in bad faith or in a manner reasonably believed to be not in, or opposed to, the best interests of the Beneficiaries, or, with respect to any criminal action or proceeding, had reasonable cause to believe its conduct was unlawful. To the extent the Liquidating Trust indemnifies and holds harmless the Indemnified Parties as provided above, the legal fees and related costs incurred by counsel to the Liquidating Trustee in monitoring and participating in the defense of the claims giving rise to the right of indemnification shall be paid from the Trust Assets.

(b) Each of the Indemnified Parties, whether or not acting upon the advice of counsel, shall incur no liability because of any error of law or fact, mistake of judgment or any matter or thing done or omitted under this Liquidating Trust Agreement except to the extent it is finally determined by a final and non-appealable order of a court of competent jurisdiction that such Indemnified Party acted in bad faith or in a manner reasonably believed to be not in, or opposed to, the best interests of the Beneficiaries, or, with respect to any criminal action or proceeding, such Indemnified Party had reasonable cause to believe its conduct was unlawful. Anything done or suffered in good faith by an Indemnified Party in accordance with the advice of counsel shall be conclusively in favor of such Indemnified Party against the Liquidating Trust or other interested party.

(c) Any Person acting at any time as the Liquidating Trustee, a Trust Professional or a member of the Trust Committee shall not be liable for acts or defaults of any other person acting at any other time in any such capacity. Each Indemnified Party shall be protected and free from liability in acting upon any notice, request, consent, certificate, declaration, guarantee, affidavit or other paper or document or signature reasonably believed by him to be genuine and to have been signed by the proper party or parties or by the party or parties purporting to have signed the same.

(d) No provision of this Liquidating Trust Agreement shall require any Indemnified Party to expend or risk his own funds or otherwise incur any financial liability in the performance of any of his duties hereunder, or in the exercise of any of his rights or powers, if he shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to him.

(e) Notwithstanding anything to the contrary in this Liquidating Trust Agreement, each of the Indemnified Parties shall be entitled to deduct and withhold from the Trust Assets and any amounts otherwise payable to any Beneficiary pursuant to this Liquidating Trust Agreement such amounts as may be owed by the Liquidating Trust or the Beneficiaries to the Indemnified Parties as expenses or other liabilities under Sections 5.6 or 5.7 of this Liquidating Trust Agreement.

Section 5.8 Insurance. The Liquidating Trustee shall be authorized to obtain all reasonably necessary insurance coverage for herself and the Trust Professionals, including, but not limited to, coverage with respect to (i) any property that is or may in the future become the property of the Liquidating Trust, and (ii) the liabilities, duties and obligations of the Liquidating Trustee and the Trust Professionals (in the form of an errors and omissions policy or otherwise),

the latter of which insurance coverage may, at the sole option of the Liquidating Trustee, remain in effect for a reasonable period after the conclusion of the Liquidating Trustee's service, and the costs and expenses of such insurance coverage shall be an expense for which the Liquidating Trustee is entitled to reimbursement hereunder.

Section 5.9 Reliance by Liquidating Trustee. The Liquidating Trustee may rely, and shall be fully protected in acting or refraining from acting if she relies, upon any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order, or other instrument or document that the Liquidating Trustee reasonably believes to be genuine and to have been signed or presented by the proper party or parties or, in the case of cables, telecopies, e-mails and telexes, to have been sent by the proper party or parties, and the Liquidating Trustee may conclusively rely as to the truth of the statements and correctness of the opinions expressed therein. The Liquidating Trustee may consult with counsel and other professionals with respect to matters in their area of expertise (and the reasonable fees and expenses of such counsel shall be an expense for which the Liquidating Trustee is entitled to reimbursement hereunder), and any advice of counsel shall be full and complete authorization and protection in respect of any action taken or not taken by the Liquidating Trustee. The Liquidating Trustee shall be entitled to rely upon the advice of such professionals in acting or failing to act, and shall not be liable for any act taken or not taken in reliance thereon. The Liquidating Trustee shall have the right at any time to seek and rely upon instructions from the Bankruptcy Court concerning this Liquidating Trust Agreement, the Plan, the Confirmation Order or any other document executed in connection therewith, and the Liquidating Trustee shall be entitled to rely upon such instructions in acting or failing to act and shall not be liable for any act taken or not taken in reliance thereon. The Liquidating Trustee may rely upon the Debtors' filed schedules and statements of financial affairs and all other information provided by the Debtors or their representatives to the Liquidating Trustee concerning Claims filed against the Debtors, and their reconciliation and documents supporting such reconciliation.

Section 5.10 Reliance by Persons Dealing with the Liquidating Trustee. In the absence of actual knowledge to the contrary, any person dealing with the Liquidating Trustee shall be entitled to rely on the authority of the Liquidating Trustee to act on behalf of the Liquidating Trust and shall have no obligation to inquire into the existence of such authority.

ARTICLE VI BENEFICIARIES

Section 6.1 Interest Beneficial Only. The ownership of a beneficial interest in the Liquidating Trust shall not entitle any Beneficiary under the Liquidating Trust to any title in or to the Trust Assets or to any right to call for a partition or division of the Trust Assets or to require an accounting, except as specifically provided by this Liquidating Trust Agreement.

Section 6.2 Evidence of Beneficial Interest. Ownership of a beneficial interest in the Trust Assets shall not be evidenced by any certificate, security or receipt or in any other form or manner whatsoever, except as maintained on the books and records of the Liquidating Trust by the Liquidating Trustee.

Section 6.3 Registration of Beneficial Interest. The Liquidating Trustee shall cause the Register to be kept at her office or at such other place or places as may be designated by the Liquidating Trustee from time to time. The Register shall reflect the ownership of the beneficial interests of the Beneficiaries.

Section 6.4 Absolute Owners. The Liquidating Trustee may deem and treat the Beneficiaries reflected as the owner of a beneficial interest on the Register as the absolute owner thereof for the purposes of receiving distributions and payments on account thereof for federal and state income tax purposes and for all other purposes whatsoever.

Section 6.5 Standing of Beneficiary. Except as expressly provided in the Liquidating Trust Agreement, the Plan or the Confirmation Order, a Beneficiary does not have standing to direct the Liquidating Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any party (other than the Liquidating Trustee) upon or with respect to the Trust Assets.

Section 6.6 Employer Identification Number. At the written request of the Liquidating Trustee, a Beneficiary must provide an Employer Identification Number (“EIN”) to the Liquidating Trustee. If a Beneficiary fails to provide an EIN within 120 days of the Liquidating Trustee’s written request to the Beneficiary for an EIN, the Beneficiary shall forfeit its interest in the Liquidating Trust.

ARTICLE VII TAXES

Section 7.1 Income Tax Treatment. The Debtors, the Liquidating Trustee and the Beneficiaries shall treat the Liquidating Trust as a “liquidating trust” within the meaning of Treasury Regulation § 301.7701-4(d) and any comparable provision of state or local law. For income tax purposes, the Debtors, the Trustee and the Beneficiaries shall treat the transfer of the Trust Assets by the Debtors as having been made to the Beneficiaries, followed by the transfer of such assets by the Beneficiaries to the Liquidating Trust in exchange for their beneficial interests therein. The Beneficiaries shall be treated for tax purposes as the grantors and deemed owners of their respective shares of the Trust Assets, and shall include in their taxable incomes their allocable share of each item of the Liquidating Trust’s income, gain, deduction, loss and credit. All such items shall be allocated by the Liquidating Trustee to the Beneficiaries using any reasonable allocation method.

Section 7.2 Valuation of Trust Assets. No later than 180 days following the Effective Date, the Liquidating Trustee shall, in consultation with the Trust Committee, determine the fair market value of each Trust Asset other than Cash based on a good faith determination and the advice of any professional retained by the Liquidating Trustee for such purpose. The Liquidating Trustee shall then, as soon as reasonably possible after such determination, notify each Beneficiary of the value of such holder’s interest in the Liquidating Trust. The Liquidating

Trustee and the Beneficiaries shall use such values consistently for all federal income tax purposes.

Section 7.3 Disputed Claims Reserve. The Liquidating Trustee may elect to treat the Disputed Claims Reserve as a discrete trust taxed as a “disputed ownership fund” described in Treasury Regulation § 1.468B-9, in which event no item of income, gain, deduction, loss or credit attributable to the Trust Assets held in the Disputed Claims Reserve shall be taxed to a Beneficiary unless and until such Beneficiary receives a distribution from the Disputed Claims Reserve.

Section 7.4 Tax Returns. The Liquidating Trustee shall timely file all tax returns required to be filed by the Liquidating Trust on the basis that the Liquidating Trust is a grantor trust pursuant to Treasury Regulation § 1.671-4(a). If the Liquidating Trustee elects to treat the Disputed Claims Reserve as a disputed ownership fund, it shall timely file all tax returns required to be filed by a disputed ownership fund. As soon as reasonably possible after the close of each calendar year, the Liquidating Trustee shall send each Beneficiary a statement setting forth such Beneficiary’s share of the Liquidating Trust’s income, gain, deduction, loss and credit for the year and shall instruct the holder to report all such items on his, her or its tax return for such year and pay any tax due with respect thereto. The Liquidating Trustee shall not prepare or file any Debtor’s tax return.

Section 7.5 Tax Withholding. The Liquidating Trustee shall withhold and pay over to the appropriate taxing authority any amount required to be withheld from any payment made pursuant to this Agreement or the Plan. Any tax withheld shall be treated as distributed to the Beneficiary for purposes of this Agreement. The Liquidating Trustee may require that each Beneficiary certify such Beneficiary’s taxpayer identification number, and that payments to such Beneficiary are exempt from backup withholding. The Liquidating Trustee may condition payment to a Beneficiary on prior receipt of such information.

ARTICLE VIII POST-CONFIRMATION TRUST COMMITTEE

Section 8.1 Creation of the Trust Committee. Immediately upon the Liquidating Trustee’s entry into this Liquidating Trust Agreement, a post-confirmation trust committee for the Liquidating Trust shall come into existence (the “Trust Committee”). The Trust Committee shall consist of the following members: Duke Energy Carolinas, LLC, Caterpillar Financial Services Corporation and Wayne Supply Company. Each member of the Trust Committee shall be entitled to one vote on matters that are presented to the Trust Committee for decision. Members of the Trust Committee shall be bound by a duty to maintain the confidentiality of all information they receive in their capacity as Trust Committee members.

Section 8.2 Consultation with the Trust Committee. The Liquidating Trustee shall consult with the Trust Committee from time to time concerning the administration of the Trust Assets including, but not limited to, the prosecution or settlement of Causes of Action; provided, however, that the Liquidating Trustee has the sole discretion to make decisions on behalf of the Liquidating Trust and is not bound to follow any recommendations made by the Trust Committee.

Section 8.3 Existence of Trust Committee and Resignation of Members. The Trust Committee shall continue to exist until the termination of the Liquidating Trust, at which time the Trust Committee shall disband and shall cease to exist. Any member of the Trust Committee may resign at any time, in which event the Liquidating Trustee shall have the option of appointing a successor member, who shall be a holder of a General Unsecured Claim. The provisions of Sections 5.6 and 5.7 of this Liquidating Trust Agreement shall apply to any such successor, and shall survive such resignation with respect to any former member.

ARTICLE IX MISCELLANEOUS PROVISIONS

Section 9.1 Definitions. Unless the context otherwise requires, a capitalized term used but not defined herein shall have the meaning given to such term in the Plan.

Section 9.2 Descriptive Headings. The headings contained in this Liquidating Trust Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Liquidating Trust Agreement.

Section 9.3 Amendment. This Liquidating Trust Agreement may not be amended except by an instrument executed by the Liquidating Trustee with the approval of the Bankruptcy Court following the Effective Date.

Section 9.4 Governing Law. This Liquidating Trust Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky without regard to the rules of conflict of laws of the Commonwealth of Kentucky or any other jurisdiction.

Section 9.5 Counterparts; Effectiveness. This Liquidating Trust Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement. This Liquidating Trust Agreement shall become effective when each party hereto shall have received counterparts thereof signed by all the other parties hereto.

Section 9.6 Severability; Validity. If any provision of this Liquidating Trust Agreement or the application thereof to any person or circumstance is held invalid or unenforceable, the remainder of this Liquidating Trust Agreement, and the application of such provision to other persons or circumstances, shall not be affected thereby, and to such end, the provisions of this Liquidating Trust Agreement are agreed to be severable.

Section 9.7 No Waiver by Liquidating Trustee. No failure by the Liquidating Trustee to exercise or delay in exercising any right, power or privilege hereunder shall operate as a waiver, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any further exercise thereof, or of any other right, power or privilege.

Section 9.8 Preservation of Privilege and Defenses. In connection with the rights, claims, and Causes of Action that constitute Trust Assets and any objections to Disputed Claims prosecuted or resolved by the Liquidating Trustee in accordance with the Plan (including, without limitation, all defenses, counterclaims, setoffs and recoupments belonging to the Debtors), any applicable privilege or immunity of the Debtors, including, without limitation, any

attorney-client privilege or work-product privilege attaching to any documents or communications (whether written or oral) shall vest in the Liquidating Trust.

Section 9.9 No Bond. Notwithstanding any state law to the contrary, the Liquidating Trustee (including any successor Liquidating Trustee) shall be exempt from giving any bond or other security in any jurisdiction.

Section 9.10 Notices. Any notice or other communication hereunder shall be in writing and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by a standard overnight carrier or when delivered by hand, or (c) the expiration of five (5) Business Days after the day when mailed by registered or certified mail (postage prepaid, return receipt requested), addressed to the respective parties at the following addresses (or such other address for a party as shall be specified by like notice):

If the Liquidating Trustee, to:

Ellen Arvin Kennedy
Dinsmore & Shohl LLP
Lexington Financial Center
250 West Main Street
Suite 1400
Lexington, KY 40507
T: (859) 425-1020
F: (859) 425-1099
ellen.kennedy@dinsmore.com
dsbankruptcy@dinsmore.com

If to a Beneficiary:

To the name and address set forth in the Register or on the service list used for service of the Plan.

Section 9.11 Irrevocability. The Liquidating Trust is irrevocable.

Section 9.12 Relationship to Plan. The Liquidating Trustee shall have full power and authority to take any action consistent with the purposes and provisions of the Plan. However, in the event that the provisions of this Liquidating Trust Agreement are found to be inconsistent with the provisions of the Plan, the provisions of the Plan shall control.

Section 9.13 Retention of Jurisdiction. The Bankruptcy Court shall retain jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases and the Plan, including, but not limited to, interpreting and implementing the provisions of this Liquidating Trust Agreement.

Section 9.14 Successors or Assigns. The terms of the Liquidating Trust Agreement shall be binding upon, and shall inure to the benefit of the parties hereto and their respective successors and assigns.

EXECUTION VERSION

IN WITNESS WHEREOF, the parties hereto have either executed and acknowledged this Liquidating Trust Agreement, or caused it to be executed and acknowledged on their behalf by their duly authorized representatives all as of the date first above written.

TRINITY COAL CORPORATION
(on its own behalf and on behalf of all Debtors)

By: 

Title: Chief Restructuring Officer

ELLEN ARVIN KENNEDY, SOLELY IN HER
CAPACITY AS LIQUIDATING TRUSTEE OF
THE TRINITY UNSECURED CREDITORS
TRUST


