

LIQUIDATING TRUST AGREEMENT

This LIQUIDATING TRUST AGREEMENT is made this 3rd day of June, 2022 (this “Agreement”), by and among Strike, LLC (“Strike”) on behalf of itself and the other Debtors, as settlors, and Redan Advisors LLC, as trustee of the Liquidating Trust referred to herein (in such capacity, the “Liquidating Trustee”), and creates and establishes the Liquidating Trust (the “Liquidating Trust”) referenced herein in order to facilitate the implementation of the plan of liquidation (the “Plan”) as set forth in the *Second Modified Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation of Strike, LLC and Its Affiliated Debtors* dated May 16, 2022 (as the same may be amended, supplemented, or otherwise modified from time to time in accordance with the terms and provisions thereof and including the Plan Supplement). Each Debtor and the Liquidating Trustee are sometimes referred to herein individually as a “Party” and, collectively, as the “Parties.”

RECITALS

WHEREAS, each of the Debtors filed a voluntary petition for relief (collectively, the “Chapter 11 Cases”) under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) on December 6, 2021 (the “Petition Date”) in the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”); and

WHEREAS, on May 17, 2022, the Bankruptcy Court entered its order confirming the Plan (the “Confirmation Order”); and

WHEREAS, the Plan provides, among other things, as of the effective date of the Plan (the “Effective Date”), for (a) the creation and establishment of the Liquidating Trust for the benefit of holders of Class A Trust Interests and Class B Trust Interests (such interests, collectively, the “Liquidating Trust Interests” and such holders, collectively, the “Liquidating Trust Beneficiaries”), (b) the automatic transfer to the Liquidating Trust of the Liquidating Trust Assets, as well as the rights and powers of each Debtor in such Liquidating Trust Assets, free and clear of all Claims, and (c) the prosecution and settlement of the Preserved Estate Claims by the Liquidating Trustee and the distribution of the proceeds therefrom to the Liquidating Trust Beneficiaries, in accordance with the Plan, the Confirmation Order and this Agreement; and

WHEREAS, except to the extent otherwise provided in this Agreement with respect to the Disputed Claims Reserves, the Liquidating Trust is intended to qualify as (i) a “liquidating trust” pursuant to the Internal Revenue Code of 1986, as amended (the “IRC”) and the regulations promulgated thereunder (“Treasury Regulations”), including Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or another business, except to the extent reasonably necessary to, and consistent with, the purpose of the Liquidating Trust and (ii) as a “grantor trust” for U.S. federal income tax purposes, pursuant to sections 671-677 of the IRC; and

WHEREAS, the Liquidating Trust shall not be deemed a successor in interest of the Debtors for any purpose other than as specifically set forth in the Plan, the Confirmation Order or this Agreement, and upon the transfer by the Debtors of the Liquidating Trust Assets to the

Liquidating Trust, neither the Debtors nor the Wind-Down Debtors will have a reversionary or further interest in or with respect to the Liquidating Trust Assets or the Liquidating Trust; and

WHEREAS, the Liquidating Trustee shall have all powers necessary to implement the provisions of this Agreement and administer the Liquidating Trust as provided herein.

NOW, THEREFORE, pursuant to the Plan and the Confirmation Order, in consideration of the promises, 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:

ARTICLE I **DEFINITIONS**

For all purposes of this Agreement, capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

ARTICLE II **ESTABLISHMENT OF THE LIQUIDATING TRUST**

2.1 Establishment of the Liquidating Trust and Appointment of the Liquidating Trustee and the Liquidating Trust Oversight Committee.

(a) The Debtors and the Liquidating Trustee, pursuant to the Plan and the Confirmation Order and in accordance with the applicable provisions of the Bankruptcy Code, hereby establish a trust on behalf of the Liquidating Trust Beneficiaries, which shall be known as the “Strike Liquidating Trust,” on the terms set forth herein. In connection with the exercise of the Liquidating Trustee’s powers hereunder, the Liquidating Trustee may use this name or such variation thereof as the Liquidating Trustee sees fit.

(b) The Liquidating Trustee is hereby appointed as trustee of the Liquidating Trust effective as of the Effective Date.

(c) The initial members of the Liquidating Trust Oversight Committee (each such Person and any other Person appointed to be a member of the Liquidating Trust Oversight Committee pursuant to this Agreement, a “Member”) are identified on Exhibit A hereto and were appointed by the Committee, in consultation with the Debtors and AIPCF VII LLC (“AIP”), pursuant to the Plan. Notwithstanding the foregoing, if no Liquidating Trust Oversight Committee has been appointed by the Committee as of the Effective Date, then at any time during the term of this Agreement, the Majority Holders shall have the right to establish the Liquidating Trust Oversight Committee and to appoint the Members thereof as set forth below and in Section 7.1 hereof. In the event that the Liquidating Trust Oversight Committee has not been established at any time and from time to time, then all references herein to the Liquidating Trust Oversight Committee shall be deemed to be omitted and not effective in any respect (including in Article VII) unless and until the Majority Holders shall have appointed the Members thereof in accordance with this Section 2.1(c). At all times a majority of the Members of the Liquidating Trust Oversight Committee, if established, shall be “United States persons” as such term is defined in Section 7701(a)(30) of the IRC. “Majority Holders” means (i) prior to the satisfaction of the GUC

Threshold Distribution Condition, holders of a majority in aggregate dollar amount of the then outstanding Class A Trust Interests and holders of a majority in aggregate dollar amount of the then outstanding Class B Trust Interests, each as a separate class, and (ii) after satisfaction of the GUC Threshold Distribution Condition, holders of a majority in aggregate dollar amount of the then outstanding Liquidating Trust Interests as a single class.

(d) The Liquidating Trustee agrees to accept and hold the Liquidating Trust Assets in trust for the Liquidating Trust Beneficiaries, subject to the provisions of the Plan, the Confirmation Order and this Agreement, and shall serve at the direction of the Liquidating Trust Oversight Committee (if appointed) in accordance with the terms of this Agreement, including Section 7.2 hereof.

(e) The Liquidating Trustee and each successor trustee serving from time to time hereunder shall have all the rights, powers, and duties as set forth herein.

(f) The Liquidating Trustee is, and any successor trustee serving from time to time hereunder shall be, a “United States person” as such term is defined in Section 7701(a)(30) of the IRC.

(g) The Liquidating Trustee and the Members may serve without bond.

(h) Subject to the terms of this Agreement, any action by the Liquidating Trustee and/or the Liquidating Trust Oversight Committee that affects the interests of more than one Liquidating Trust Beneficiary shall be binding and conclusive on all Liquidating Trust Beneficiaries even if such Liquidating Trust Beneficiaries have different or conflicting interests.

2.2 Transfer of the Liquidating Trust Assets.

(a) Pursuant to the Plan, as of the Effective Date, the Debtors shall irrevocably transfer, assign and deliver, and (except as provided for federal, state and local income tax purposes in Sections 2.2(h), 2.6 and 9.1 hereof) shall be deemed to have transferred, assigned and delivered, to the Liquidating Trust, without recourse, all of their respective rights, title and interest in the Liquidating Trust Assets, free and clear of all Liens, Claims, encumbrances and Interests (legal, beneficial or otherwise) for the benefit of the Liquidating Trust Beneficiaries, including, without limitation, all attorney-client privileges, work-product privileges, accountant-client privileges and any other evidentiary privileges or immunity in respect of the Liquidating Trust Assets that, prior to the Effective Date, belonged to the Debtors pursuant to applicable federal, state and other law, which shall vest in the Liquidating Trust, in trust, and, consistent with sections 1123(a)(5)(B) and 1123(b)(3)(B) of the Bankruptcy Code, for the sole benefit of the Liquidating Trust and the Liquidating Trust Beneficiaries; *provided, however*, that the Debtors shall not be deemed to have transferred any documents, information or privileges related to any claims or causes of action that are released under the Plan; *provided further*, that the foregoing proviso shall not prevent the transfer of any documents, information or privileges to the extent that any such documents, information or privileges also relate to Liquidating Trust Assets. The Debtors shall have no claim to, right, or interest in, whether direct, residual, contingent or otherwise, the Liquidating Trust Assets once such assets have been transferred to the Liquidating Trust. Notwithstanding anything

to the contrary herein, the licenses and permits held by the Debtors as of the Effective Date shall remain property of the Wind-Down Debtors and be subject to the Transition Services Agreement.

(b) From and after the Effective Date, the Parties shall provide reasonable access to copies of the Debtors', the Estates' and Wind-Down Debtors' records and information relating to the Liquidating Trust Assets that are in the possession or control of any of such Parties, including electronic records or documents, copies of which shall be provided to the Liquidating Trust and its advisors, at the cost and expense of the Liquidating Trust, all in compliance with applicable law. From and after the Effective Date, pursuant to the Plan and the Confirmation Order, the Purchaser and its subsidiaries agreed to provide commercially reasonable access to any relevant documents, information or personnel reasonably requested by the Liquidating Trust in connection with carrying out its responsibilities under the Plan and this Agreement so long as such access is not disruptive to normal business operations, and the Purchaser agreed to preserve, for the benefit of the Liquidating Trust, all records and documents (including all electronic records or documents) related to any Liquidating Trust Assets, including Preserved Estate Claims or Claims against the Debtors' Estates, until such time as the Liquidating Trustee notifies the Purchaser in writing that such records are no longer required to be preserved or all necessary and available records and documents have been provided to the Liquidating Trustee (it being understood that neither the Purchaser nor its subsidiaries shall have any liabilities, obligations or responsibilities under this Agreement). Following the Effective Date, the Parties shall use their reasonable best efforts to enter into a written agreement memorializing the common legal interest that exists among the Parties. For the avoidance of doubt, the failure of the Parties to enter into a formal written common interest agreement shall not operate to waive any common legal interests that exist among the Parties or otherwise constitute a breach of this Agreement.

(c) The Debtors, the Estates, the Wind-Down Debtors and any party under their control shall: (i) execute and/or deliver any instruments, documents, books, and records (including those maintained in electronic format and original documents as may be needed); and (ii) take, or cause to be taken, such further actions necessary to evidence or effectuate the transfer of the Liquidating Trust Assets to the Liquidating Trust.

(d) The Debtors, the Estates, the Wind-Down Debtors and any party under the control of such parties shall promptly transfer or make readily available to the Liquidating Trustee and its advisors all records, documents, information, and work product in respect of the Preserved Estate Claims (including all electronic records, documents, information and work product) (the "Preserved Estate Claims Materials") in the possession of the Debtors or the Wind-Down Debtors.

(e) The Debtors, the Estates, the Wind-Down Debtors and any party under the control of such Parties shall take, or cause to be taken, all such further actions as the Liquidating Trustee may reasonably request (including, with respect to reasonably cooperating with the Liquidating Trustee for requests for telephone conferences, interviews, and appearances of current and former directors, officers, employees, agents and professionals as witnesses (by affidavits, at depositions, and at hearings/trials, as necessary) and by providing the last known address of any such individual, to the extent reflected in the books and records of Debtors, the Estates or the Wind-Down Debtors and to the extent permissible under applicable law), in each case in order to permit the Liquidating Trustee to investigate, prosecute, protect and preserve all Preserved Estate Claims.

(f) To the extent reasonably requested by the Liquidating Trustee, the Debtors shall use commercially reasonable efforts to cause the professionals retained by the Debtors during the Chapter 11 Cases (the “Strike Professionals”) to, subject to any applicable professional rules of responsibility or any non-transferred Privileges, use commercially reasonable efforts to cooperate with the Liquidating Trustee in the investigation and prosecution of the Preserved Estate Claims, including, without limitation, by providing access to those attorneys, accountants and other professionals with knowledge of matters relevant to the Preserved Estate Claims. The Strike Professionals shall be reimbursed by the Liquidating Trust for any reasonable and documented fees and out-of-pocket expenses incurred by the Strike Professionals in connection with such cooperation by the Strike Professionals.

(g) Subject to Section 5.1, all of the proceeds received by the Liquidating Trust from the pursuit of any Preserved Estate Claims shall be added to the Liquidating Trust Assets and held as a part thereof (and title thereto shall be vested in the Liquidating Trust).

(h) For all federal, state and local income tax purposes, all parties (including, without limitation, the Debtors, the Liquidating Trust, the Liquidating Trustee and the Liquidating Trust Beneficiaries) shall treat the transfer of the Liquidating Trust Assets to the Liquidating Trust in accordance with Section 9.1 hereof.

(i) Such transfers pursuant to the Plan shall be exempt from any stamp, real estate transfer, mortgage reporting, sales, use or other similar tax, pursuant to and to the extent permitted under section 1146(a) of the Bankruptcy Code.

2.3 Privileges.

(a) All attorney-client privileges, work product protections and other privileges, immunities or protections from disclosure (the “Privileges”) held by any one or more of the Debtors (including any pre-petition or post-petition committee or subcommittee of the board of directors or equivalent governing body of any of the Debtors and their predecessors) and the Committee (together the “Privilege Transfer Parties”) related in any way to the Liquidating Trust Assets and the purpose of the Liquidating Trust (the “Transferred Privileged Information”) are hereby transferred and assigned to the Liquidating Trust. The Transferred Privileged Information shall include documents and information of all manner, whether oral, written, or digital, and whether or not previously disclosed or discussed. For the avoidance of doubt, the Privileges shall include any right to preserve or enforce a privilege that arises from any joint defense, common interest, or similar agreement involving any of the Privilege Transfer Parties.

(b) The foregoing transfer and assignment shall vest the Privileges concerning the Transferred Privileged Information exclusively in the Liquidating Trust, consistent with sections 1123(a)(5)(B) and 1123(b)(3)(B) of the Bankruptcy Code, for the sole benefit of the Liquidating Trust and the Liquidating Trust Beneficiaries. The Liquidating Trust shall have the exclusive authority and sole discretion to maintain the Privileges and keep the Transferred Privileged Information confidential, or waive any Privileges and/or disclose and/or use in litigation or any proceeding any or all of the Transferred Privileged Information.

(c) The Privilege Transfer Parties agree to take all necessary actions to effectuate the transfer of such Privileges, and to provide to the Liquidating Trust without the necessity of a subpoena all Transferred Privileged Information in their respective possession, custody, or control. The Liquidating Trust is further expressly authorized to formally or informally request or subpoena documents, testimony or other information that would constitute Transferred Privileged Information from any persons, including attorneys, professionals, consultants and experts that may possess Transferred Privileged Information, and no such person may object to the production to the Liquidating Trust of such Transferred Privileged Information on the basis of a Privilege held by a Privilege Transfer Party. Until and unless the Liquidating Trust makes a determination in its sole discretion to waive any Privilege, Transferred Privileged Information shall be produced solely to the Liquidating Trust or as required by law. For the avoidance of doubt, this Subsection is subject in all respects to Section 2.3(a) of this Trust Agreement.

(d) Pursuant to, inter alia, Federal Rule of Evidence 502(d), no Privileges shall be waived by the transfer and assignment of the Privileges or the production of any Transferred Privileged Information to the Liquidating Trust or any of its respective employees, professionals or representatives, or by disclosure of such Transferred Privileged Information between the Privilege Transfer Parties, on the one hand, and the Liquidating Trust, on the other hand, or any of their respective employees, professionals or representatives.

(e) If a Privilege Transfer Party, the Liquidating Trust, any of their respective employees, professionals or representatives or any other person inadvertently produces or discloses Transferred Privileged Information to any third party, such production shall not be deemed to destroy any of the Privileges, or be deemed a waiver of any confidentiality protections afforded to such Transferred Privileged Information. In such circumstances, the disclosing party shall promptly upon discovery of the production notify the Liquidating Trust of the production and shall demand of all recipients of the inadvertently disclosed Transferred Privileged Information that they return or confirm the destruction of such materials.

(f) Notwithstanding anything to the contrary contained in Section 2.3, for the avoidance of doubt, no Privilege or Transferred Privileged Information related to any claims or causes of action that have been released under the Plan shall be deemed to have been transferred or assigned to the Liquidating Trust, *provided however*, that the foregoing shall not prevent the transfer of any Privilege or Transferred Privileged Information to the extent that such Privilege or Transferred Privileged Information also relates to Liquidating Trust Assets.

2.4 Payment of Fees and Expenses. The Liquidating Trust may incur any reasonable and necessary expenses in connection with the performance of its obligations under the Plan, the Confirmation Order and this Agreement, including fees and expenses incurred to monetize the Liquidating Trust Assets and pursue the Preserved Estate Claims and in connection with retaining professionals, consultants and advisors to aid it in fulfilling its obligations under this Agreement and the Plan (“Liquidating Trust Professionals”). All reasonable, documented, out-of-pocket fees, expenses, and costs of the Liquidating Trust shall be paid from the Liquidating Trust Reserve, and solely be the obligation of, the Liquidating Trust. The Liquidating Trust Beneficiaries shall have no obligation to provide any funding with respect to the Liquidating Trust.

2.5 Title to the Liquidating Trust Assets. The transfer of the Liquidating Trust Assets to the Liquidating Trust pursuant to Section 2.2 hereof is being made for the sole benefit, and on behalf, of the Liquidating Trust Beneficiaries. Upon the transfer of the Liquidating Trust Assets to the Liquidating Trust, the Liquidating Trust shall succeed to all of the Debtors', the Estates' and the Liquidating Trust Beneficiaries' rights, title and interest in the Liquidating Trust Assets and no other Person shall have any interest, legal, beneficial or otherwise, in the Liquidating Trust or the Liquidating Trust Assets upon the assignment and transfer of such assets to the Liquidating Trust.

2.6 Nature and Purpose of the Liquidating Trust.

(a) Purpose. The Liquidating Trust is organized and established as a trust pursuant to which the Liquidating Trustee, subject to the terms and conditions of this Agreement, shall implement the Plan with respect to all Debtors on behalf, and for the benefit, of the Liquidating Trust Beneficiaries. The Liquidating Trust shall (i) serve as a mechanism for prosecuting all Preserved Estate Claims, resolving all Disputed Claims, monetizing the Liquidating Trust Assets, distributing the Liquidating Trust Proceeds and closing the Chapter 11 Cases, in each case, in accordance with the Plan, the Confirmation Order and this Agreement and (ii) liquidate and administer the Liquidating Trust Assets in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or any other business, except to the extent reasonably necessary to, and consistent with, the purpose of the Liquidating Trust.

(b) Relationship. This Agreement is intended to create a trust and a trust relationship and to be governed and construed in all respects as a trust. Subject to Section 4.11(y), the Liquidating Trust is not intended to be, and shall not be deemed to be, or be treated as, a general partnership, limited partnership, joint venture, corporation, joint stock company or association, nor shall the Liquidating Trustee, the Liquidating Trust Oversight Committee (or any Member thereof) or the Liquidating Trust Beneficiaries for any purpose be, or be deemed to be or treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The relationship of the Liquidating Trust Beneficiaries, on the one hand, to the Liquidating Trustee and the Liquidating Trust Oversight Committee, on the other hand, shall be solely that of a beneficiary of a trust and shall not be deemed a principal and agency relationship, and their rights shall be limited to those conferred upon them by the Plan, the Confirmation Order and this Agreement. Notwithstanding the foregoing, in the event of a final determination under section 1313(a) of the IRC that the Liquidating Trust does not qualify as a grantor trust, the Liquidating Trust Beneficiaries and the Liquidating Trustee intend that the Liquidating Trust be treated as a partnership for U.S. federal income tax purposes and will take all actions reasonably necessary to cause the Liquidating Trust to be treated as such.

(c) No Waiver of Claims. In accordance with section 1123(b)(3) of the Bankruptcy Code and subject to the terms and conditions of the Plan, including, for the avoidance of doubt, Article VIII.E of the Plan, the Liquidating Trustee may enforce all rights to commence and pursue, as appropriate, any and all Preserved Estate Claims and objections to and resolution of Disputed Claims after the Effective Date. No Person or Entity may rely on the absence of a specific reference in the Plan to any Claim against it as any indication that the Liquidating Trustee will not pursue any and all Preserved Estate Claims against such Person or Entity; nor may any Person or Entity rely on the absence of a specific reference in the Plan to any Disputed Claim or

Interest as any indication that the Liquidating Trustee will not pursue any objections thereto. The Liquidating Trustee expressly reserves all Preserved Estate Claims for later adjudication, resolution, abandonment, settlement, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise) or laches, shall apply to such Preserved Estate Claims upon, after or as a consequence of the Confirmation Order.

2.7 Appointment as Representative. Pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, the Liquidating Trustee shall be the duly appointed representative of the Estates for certain limited purposes and, as such, to the extent provided herein, the Liquidating Trustee succeeds to the rights and powers of a trustee in bankruptcy solely with respect to prosecution, resolution and settlement of the Preserved Estate Claims and the Disputed Claims. To the extent that any of the Preserved Estate Claims or any right to prosecute, settle or dispose of a Disputed Claim or Interest cannot be transferred to the Liquidating Trust because of a restriction on transferability under applicable non-bankruptcy law that is not superseded or preempted by section 1123 of the Bankruptcy Code or any other provision of the Bankruptcy Code, such Preserved Estate Claims and rights shall be deemed to have been retained by the Debtors and the Wind-Down Debtors (other than for tax purposes) and the Liquidating Trustee shall be deemed to have been designated as a representative of the Debtors to the extent provided herein pursuant to section 1123(b)(3)(B) of the Bankruptcy Code solely to enforce and pursue such Preserved Estate Claims on behalf of the Debtors, the Wind-Down Debtors, and the Estates for the benefit of the Liquidating Trust Beneficiaries or settle or otherwise dispose of Disputed Claims. Notwithstanding the foregoing, all Liquidating Trust Proceeds shall be distributed to the Liquidating Trust Beneficiaries consistent with the provisions of the Plan, Confirmation Order, and this Agreement. For the avoidance of doubt, any of the Preserved Estate Claims subject to this Section 2.7 shall be treated by the Parties for U.S. federal, state and local income tax purposes as a disposition of the Preserved Estate Claims and Disputed Claims by the Debtors as described in Section 2.2 herein.

2.8 Valuation of the Liquidating Trust Assets. As soon as reasonably practicable following the establishment of the Liquidating Trust, the Liquidating Trustee shall determine the value of the Liquidating Trust Assets transferred to the Liquidating Trust, based on the good-faith determination of the Liquidating Trustee, and the Liquidating Trustee shall apprise, in writing, the Liquidating Trust Beneficiaries of such valuation. The valuation shall be used consistently by all Parties (including the Liquidating Trustee and the Liquidating Trust Beneficiaries) for all federal income tax purposes. In connection with the preparation of the valuation contemplated hereby and by the Plan, the Liquidating Trust shall be entitled to retain such Liquidating Trust Professionals as the Liquidating Trustee shall determine to be appropriate or necessary in accordance with the terms of this Agreement, and the Liquidating Trustee shall take such other actions in connection therewith as it determines to be appropriate or necessary. The Liquidating Trust shall bear all of the reasonable costs and expenses incurred in connection with determining such value, including the fees and expenses of any Liquidating Trust Professionals retained in connection therewith.

ARTICLE III

LIQUIDATING TRUST INTERESTS

3.1 Liquidating Trust Interests. On the date hereof, the Liquidating Trust shall issue the Liquidating Trust Interests to the Liquidating Trust Beneficiaries in accordance with the terms

of the Plan, the Confirmation Order, and this Agreement. The Liquidating Trust Beneficiaries shall be entitled to distributions from the Liquidating Trust Proceeds in accordance with the terms of the Plan, the Confirmation Order, and this Agreement. The beneficial interests in the Liquidating Trust will be represented by book entries on the books and records of the Liquidating Trust. The Liquidating Trust will not issue any certificate or certificates to evidence any beneficial interests in the Liquidating Trust.

3.2 Interests Beneficial Only. The ownership of the beneficial interests in the Liquidating Trust shall not entitle the Liquidating Trust Beneficiaries to any title in or to the Liquidating Trust Assets as such (which title shall be vested in the Liquidating Trust) or to any right to call for a partition or division of the Liquidating Trust Assets or to require an accounting.

3.3 Transferability of Liquidating Trust Interests. No transfer, assignment, pledge, hypothecation or other disposition of a Liquidating Trust Interest may be effected until (i) the Liquidating Trustee has received such legal advice or other information that it, in its sole and absolute discretion, deems necessary to assure that any such disposition shall not cause the Liquidating Trust to be subject to entity-level taxation for U.S. federal, state or local income tax purposes, and (ii) either (x) the Liquidating Trustee has received such legal advice or other information that it, in its sole and absolute discretion, deems necessary or appropriate to assure that any such disposition shall not require the Liquidating Trust to comply with the registration and reporting requirements of the Securities Act of 1933, as amended (the “Securities Act”), the Securities Exchange Act of 1934, as amended (the “Exchange Act”), the Trust Indenture Act of 1939, as amended (the “TIA”), or the Investment Company Act of 1940, as amended (the “Investment Company Act”), or (y) the Liquidating Trustee and, if appointed, the Liquidating Trust Oversight Committee, acting unanimously, have determined, in their sole and absolute discretion, to cause the Liquidating Trust to become a public reporting company and/or make periodic reports under the Exchange Act in order to enable such disposition to be made. In the event that any such disposition is allowed, the Liquidating Trustee may add such restrictions upon transfer and other terms and conditions of the disposition as are deemed necessary or appropriate by the Liquidating Trustee, with the advice of counsel, to permit or facilitate such disposition under applicable securities and other laws.

3.4 Registry of Beneficial Interests.

(a) The Liquidating Trustee shall appoint a registrar, which may be the Liquidating Trustee (the “Registrar”), for the purpose of recording ownership of the Liquidating Trust Interests as herein provided. For its services hereunder, the Registrar, unless it is the Liquidating Trustee, shall be entitled to receive reasonable compensation from the Liquidating Trust as a cost of administering the Liquidating Trust.

(b) The Liquidating Trustee shall cause to be kept at the office of the Registrar, or at such other place or places as shall be designated by the Registrar from time to time and acceptable to the Liquidating Trustee, a registry of the Liquidating Trust Beneficiaries (the “Trust Register”), which shall be maintained pursuant to such reasonable regulations as the Liquidating Trustee and the Registrar may prescribe. The Trust Register shall be made available to Liquidating Trust Beneficiaries upon three (3) Business Days’ written notice to the Liquidating Trustee.

3.5 Exemption from Registration. The Parties hereto intend that the rights of the Liquidating Trust Beneficiaries arising under this Liquidating Trust shall not be “securities” under applicable laws, but none of the Parties represent or warrant that such rights shall not be securities or shall be entitled to exemption from registration under applicable securities laws. If such rights constitute securities, the Parties hereto intend for the exemption from registration provided by section 1145 of the Bankruptcy Code and under applicable securities laws to apply to the issuance of the Liquidating Trust Interests to the Liquidating Trust Beneficiaries under the Plan. Subject to Section 3.3 hereof, the Liquidating Trustee may amend this Agreement in accordance with Article XI hereof to make such changes as are deemed necessary or appropriate, with the advice of counsel, to ensure that the Liquidating Trust is not subject to registration and/or reporting requirements of the Securities Act, the Exchange Act, the TIA or the Investment Company Act. Except as provided in Sections 2.1(c) and Articles VI and VII, the Liquidating Trust Interests shall not have consent or voting rights or otherwise confer on the Liquidating Trust Beneficiaries any rights similar to the rights of a shareholder of a corporation in respect of any actions taken or to be taken by the Liquidating Trustee in connection with the Liquidating Trust. Subject to Section 3.3 hereof, neither the Liquidating Trust Oversight Committee nor the Liquidating Trustee shall take any action to establish or support the establishment of an active trading market with respect to the Liquidating Trust Interests.

3.6 Effect of Death, Incapacity or Bankruptcy. The death, incapacity or bankruptcy of any Liquidating Trust Beneficiary during the term of the Liquidating Trust shall not (i) operate to terminate the Liquidating Trust, (ii) entitle the representatives or creditors of the deceased, incapacitated or bankrupt party to an accounting, (iii) entitle the representatives or creditors of the deceased, incapacitated or bankrupt party to take any action in the Bankruptcy Court or elsewhere for the distribution of the Liquidating Trust Assets or for a partition thereof, or (iv) otherwise affect the rights and obligations of any of the Liquidating Trust Beneficiaries under this Agreement.

3.7 Change of Address. Any Liquidating Trust Beneficiaries may, after the Effective Date, select an alternative distribution address by providing notice to the Liquidating Trustee or, as applicable, the Registrar, identifying such alternative distribution address. Such notification shall be effective only upon receipt by the Liquidating Trustee or, as applicable, the Registrar. Absent actual receipt of such notice by the Liquidating Trustee or, as applicable, the Registrar, the Liquidating Trustee shall not recognize any such change of distribution address.

3.8 Absolute Owners. The Liquidating Trustee may deem and treat any Liquidating Trust Beneficiary reflected as the owner of a Liquidating Trust Interest on the applicable Trust 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.

3.9 Standing. No Liquidating Trust Beneficiary shall 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 upon or with respect to the Liquidating Trust Assets.

ARTICLE IV
RIGHTS, POWERS AND DUTIES OF LIQUIDATING TRUSTEE

4.1 Role of the Liquidating Trustee. In furtherance of and consistent with the purpose of the Liquidating Trust and the Plan, subject to the terms and conditions contained in the Plan, the Confirmation Order and this Agreement, the Liquidating Trustee shall (i) receive, manage, supervise and protect the Liquidating Trust Assets upon the receipt of same by the Liquidating Trust on behalf of and for the benefit of the Liquidating Trust Beneficiaries; (ii) investigate, analyze, prosecute and, if necessary and appropriate, settle and compromise the Preserved Estate Claims and any objections to the Disputed Claims; (iii) prepare and file all required tax returns and pay all taxes and all other obligations of the Liquidating Trust; (iv) liquidate and convert the Liquidating Trust Assets to Cash and make distributions to the Liquidating Trust Beneficiaries in accordance with Section 4.7 herein; (v) close the Chapter 11 Cases; and (v) have all such other responsibilities as may be vested in the Liquidating Trustee pursuant to the Plan, the Confirmation Order, this Agreement, and all other applicable orders of the Bankruptcy Court, including, but not limited to, establishment of the Liquidating Trust Reserve. All decisions and duties with respect to the Liquidating Trust and the Liquidating Trust Assets to be made and fulfilled, respectively, by the Liquidating Trustee shall be carried out in accordance with the Plan, the Confirmation Order, this Agreement and all other applicable orders of the Bankruptcy Court. In all circumstances, the Liquidating Trustee shall act in the best interests of all Liquidating Trust Beneficiaries and in furtherance of the purpose of the Liquidating Trust, and shall use commercially reasonable efforts to prosecute, settle or otherwise resolve the Preserved Estate Claims and to make timely distributions of any Liquidating Trust Proceeds realized therefrom and to otherwise monetize the Liquidating Trust Assets and not unreasonably prolong the duration of the Liquidating Trust.

4.2 Power to Contract. In furtherance of the purpose of the Liquidating Trust, and except as otherwise specifically restricted in the Plan, Confirmation Order, or this Agreement, the Liquidating Trustee shall have the right and power on behalf of the Liquidating Trust, and also may cause the Liquidating Trust, to enter into any covenants or agreements binding the Liquidating Trust, and to execute, acknowledge and deliver any and all instruments that are necessary or deemed by the Liquidating Trustee to be consistent with and advisable in furthering the purpose of the Liquidating Trust.

4.3 Ultimate Right to Act Based on Advice of Counsel or Other Professionals. Nothing in this Agreement shall be deemed to prevent the Liquidating Trustee from taking or refraining to take any action on behalf of the Liquidating Trust that, based upon the advice of counsel or other professionals, the Liquidating Trustee determines in good faith that it is obligated to take or to refrain from taking in the performance of any duty that the Liquidating Trustee may owe the Liquidating Trust Beneficiaries or any other Person pursuant to the Plan, Confirmation Order, or this Agreement.

4.4 Responsibility for Administration of Administrative Claims, Priority Tax Claims, Priority Non-Tax Claims, Secured Claims and Class 3 Claims. From and after the Effective Date, the Liquidating Trust shall be responsible for administering and paying distributions provided for under the Plan to the holders of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims and Allowed Secured Claims not paid by the Debtors on or

prior to the Effective Date and to the Liquidating Trust Beneficiaries. Except as expressly provided otherwise in and subject to the terms of the Plan (including, without limitation, with respect to Post-Petition Trade Claims), except to the extent the applicable Claims have been previously Allowed prior to the Effective Date, the Liquidating Trust shall control and effectuate the Claims reconciliation process, including to object to, seek to subordinate, compromise or settle any Claims, without any further notice to or action, order or approval by the Bankruptcy Court, and to assert all applicable defenses of the Debtors and their Estates. The Liquidating Trust shall be entitled to assert all of the Debtors' and the Estates rights under, without limitation, section 558 of the Bankruptcy Code. The Trust may also seek estimation of any Claims under and subject to section 502(c) of the Bankruptcy Code.

4.5 Authority to Prosecute and Settle Preserved Estate Claims.

(a) Subject to the provisions of this Agreement, the Plan, and the Confirmation Order, the Liquidating Trustee shall prosecute, pursue, compromise, settle, or abandon any and all Preserved Estate Claims that have not already been resolved as of the Effective Date. The Liquidating Trustee, upon direction by the Liquidating Trust Oversight Committee (if appointed), shall have the absolute right to pursue, not pursue, release, abandon, and/or settle any and all Preserved Estate Claims (including any counterclaims asserted against the Liquidating Trust) as it determines in the best interests of the Liquidating Trust Beneficiaries, and consistent with the purposes of the Liquidating Trust, and shall have no liability for the outcome of its decision; *provided, however*, that the Liquidating Trustee shall have the power and authority to pursue, not pursue, release, abandon and/or settle any and all Preserved Estate Claims with a value of less than \$250,000 without any approval by the Liquidating Trust Oversight Committee (if appointed).

(b) To the extent that any action has been taken to prosecute or otherwise resolve any Preserved Estate Claims prior to the Effective Date by the Debtors, on the Effective Date, the Liquidating Trustee shall be substituted for the Debtors in connection therewith in accordance with Rule 25 of the Federal Rules of Civil Procedure, made applicable to the Liquidating Trust by Bankruptcy Rule 7025, and the caption with respect to such pending litigation shall be changed to the following, at the option of the Liquidating Trust: “[Name of Trustee], as Trustee for the Strike Liquidating Trust v. [Defendant]” or “Strike Liquidating Trust v. [Defendant].” Without limiting the foregoing, the Liquidating Trustee shall take any and all actions necessary or prudent to intervene as plaintiff, movant or additional party, as appropriate, with respect to any applicable Claim. For purposes of exercising its powers, the Liquidating Trustee shall be deemed to be a representative of the Estates pursuant to section 1123(b)(3)(B) of the Bankruptcy Code.

(c) Subject to Section 4.5(a), any determinations by the Liquidating Trustee, with regard to the amount or timing of settlement or other disposition of any Preserved Estate Claims settled in accordance with the terms of this Agreement shall be conclusive and binding on the Liquidating Trust Beneficiaries and all other parties in interest following the entry of an order of a court of competent jurisdiction (including, as relevant, a Final Order issued by the Bankruptcy Court) approving such settlement or other disposition, to the extent any such order is required to be obtained to enforce any such determinations.

4.6 Liquidation of Liquidating Trust Assets. The Liquidating Trustee, in the exercise of its reasonable business judgment, shall, in an expeditious but orderly manner and subject to the other provisions of the Plan, the Confirmation Order, and this Agreement (including Section 2.2), liquidate and convert to Cash the Liquidating Trust Assets, make timely distributions in accordance with the terms of the Plan, the Confirmation Order, and this Agreement, and not unduly prolong the existence of the Liquidating Trust. The Liquidating Trustee shall exercise reasonable business judgment and liquidate the Liquidating Trust Assets to maximize net recoveries to the Liquidating Trust Beneficiaries, *provided, however*, that the Liquidating Trustee shall be entitled to take into consideration the risks, timing, and costs of potential actions in making determinations as to the methodologies to be employed to maximize such recoveries. Such liquidations may be accomplished through the prosecution, compromise and settlement, abandonment or dismissal of any or all of the Preserved Estate Claims or otherwise or through the sale or other disposition of the Liquidating Trust Assets (in whole or in combination). Pursuant to an agreed-upon budget in accordance with Section 4.14(b) of this Agreement, if any, the Liquidating Trustee may incur any reasonable and necessary expenses in connection with the liquidation of the Liquidating Trust Assets and distribution of the Liquidating Trust Proceeds.

4.7 Distributions.

(a) The Liquidating Trustee shall make distributions of the Liquidating Trust Proceeds to the Liquidating Trust Beneficiaries only in accordance with the terms of the Plan, the Confirmation Order, and this Agreement, net of any applicable Disputed Claims Reserve and after the Liquidating Trust Proceeds are received by the Liquidating Trust, and shall make such distributions after funding any reserves deemed necessary or appropriate by the Liquidating Trustee and, in accordance with the Plan, funding the Liquidating Trust Reserve.

(b) In the reasonable discretion of the Liquidating Trustee and subject to the requirements of Treasury Regulation section 301.7701-4(d), the guidance in Revenue Procedure 94-45, 1994-2 C.B. 684, and Section 4.7(a) hereof, the Liquidating Trustee shall distribute all Cash on hand (including, but not limited to, the net income and the Liquidating Trust Proceeds, if any, from any disposition of Preserved Estate Claims, any Cash received on account of or representing Liquidating Trust Proceeds, and treating as Cash for purposes of this Section 4.7 any permitted investments under Section 4.10 below) (i) to the holders of Class A Trust Interests their pro rata share; provided, that (a) prior to satisfaction of the GUC Threshold Distribution Condition, such pro rata share shall be calculated as the proportion that a Class A Trust Interest bears to the aggregate amount of all Class A Trust Interests, and (b) after satisfaction of the GUC Threshold Distribution Condition, such pro rata share shall be calculated as the proportion that a Class A Trust Interest bears to the aggregate amount of all Liquidating Trust Interests; and (ii) to the holders of Class B Trust Interests, a distribution under the Plan only to the extent that the GUC Threshold Distribution Condition is satisfied, in which case, such Holders shall receive their pro rata share of Liquidating Trust Proceeds; provided, that such pro rata share shall be calculated as the proportion that a Class B Trust Interest bears to the aggregate amount of all Liquidating Trust Interests.

(c) The Liquidating Trustee shall make distributions to Liquidating Trust Beneficiaries at the last-known address for each such Liquidating Trust Beneficiary as indicated on the Liquidating Trust's or Registrar's records as of the applicable distribution date (which,

subject to Section 3.7 hereof, for each Holder of an Allowed Claim shall be deemed to be the address set forth in the applicable document set forth in clauses (a) through (e) of Article X.E of the Plan). Any distribution of Cash by the Liquidating Trust shall be made by the Liquidating Trustee via (i) a check drawn on, or (ii) wire transfer from, a bank account established in the name of the Liquidating Trust on or subsequent to the Confirmation Date at a domestic bank selected by the Liquidating Trustee (the “Liquidating Trust Account”), the option of which shall be in the sole discretion of the Liquidating Trustee. If any distribution to any holder is returned as undeliverable, no distribution to such holder shall be made unless and until the Liquidating Trustee or, as applicable, the Registrar, is notified in writing of the then-current address of such holder, at which time such distribution shall be made as soon as reasonably practicable after such distribution has become deliverable or has been claimed to such holder without interest; *provided, however*, that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and forfeited at the expiration of six months from the applicable distribution date. After such date, all “unclaimed property” or interests in property shall revert to the Liquidating Trust (notwithstanding any applicable federal or state escheat, abandoned or unclaimed property laws to the contrary) for redistribution in accordance with the terms of the Plan and this Agreement, and the claim of any holder to such property or interest in property shall be forever barred. Nothing contained herein shall require the Liquidating Trustee to attempt to locate any Holder of an Allowed Claim.

(d) The Liquidating Trustee shall have the authority to enter into agreements with one or more Disbursing Agents to facilitate the distributions required under the Plan and this Agreement. The Liquidating Trustee may pay to the Disbursing Agents from the Liquidating Trust Reserve all reasonable and documented fees and expenses of the Disbursing Agents without the need for any approvals, authorizations, actions or consents.

(e) The Liquidating Trustee may withhold (but not, except as set forth below, set off) from the distribution called for on account of any Allowed Claim an amount equal in value to any claim or Cause of Action of any nature (including in respect of any Claim) that a Debtor may hold against the Holder of such Claim. In the event that the value of a Debtor’s claim or Cause of Action against a particular Holder of an Allowed Claim is undisputed, resolved by settlement or has been adjudicated by Final Order of any court, the Liquidating Trustee may set off such undisputed, resolved or adjudicated amount against distributions that would otherwise be due to such Holder of an Allowed Claim. Neither the failure to effect such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors or the Liquidating Trust of any claims or Causes of Action that the Debtors or the Liquidating Trust may possess against any Holder of an Allowed Claim, except to the extent of any waiver, relinquishment, exculpation, release, compromise, or settlement set forth in the Plan or an order of the Bankruptcy Court (including the Confirmation Order).

(f) The Liquidating Trustee may deduct and withhold taxes from any and all amounts otherwise distributable to any Entity determined in the Liquidating Trustee’s reasonable discretion, required by this Agreement, any law, regulation, rule, ruling, directive, treaty or other governmental requirement in accordance with Section 9.4 hereof.

(g) The Liquidating Trustee shall not be required to make on account of an Allowed Claim (i) partial distributions if any portion of such Claim remains in dispute or payments

of fractions of dollars; (ii) a distribution of fractions of Liquidating Trust Interests; or (iii) a distribution if the amount of cash to be distributed is less than \$250 to any one claimant in a single distribution. Any funds so withheld and not distributed shall be held in reserve and distributed to such claimant in subsequent distributions except if the aggregate distributions (including the final distribution) to be made by the Liquidating Trust to such claimant is less than \$250, in which case such amount shall be included in the Dissolution Process set forth in Section 10.1 of this Agreement.

(h) Any check issued by the Liquidating Trust on account of an Allowed Claim shall be null and void if not negotiated within 120 days after the issuance of such check. Requests for reissuance of any check shall be made directly to the Liquidating Trustee by the Holder of the relevant Allowed Claim with respect to which such check originally was issued. If any Holder of an Allowed Claim holding an un-negotiated check does not request reissuance of that check within six months after the date the check was mailed or otherwise delivered to the Holder, the entitlement of the Holder regarding such un-negotiated check and the funds represented thereby shall be released and the Holder thereof shall be forever barred, estopped and enjoined from asserting any claim with respect to such un-negotiated check and the funds represented thereby against any of the Debtors, the Wind-Down Debtors, the Liquidating Trust, or the Liquidating Trustee. In such cases, any Cash held for payment on account of such un-negotiated check shall be property of the Liquidating Trust, free of any Claims of such Holder with respect thereto. Nothing contained herein shall require the Liquidating Trustee to attempt to locate any Holder of an Allowed Claim. No later than 150 days after the issuance of such checks, the Liquidating Trustee shall file with the Bankruptcy Court a list of the Holders of any un-negotiated checks; *provided, however*, after the closing or dismissal of the Chapter 11 Cases, the Liquidating Trustee shall provide the list of the Holders of any un-negotiated checks on a website maintained by the Liquidating Trust. For the avoidance of doubt, such list shall not include the Holders of any checks that have not been negotiated within six months after the date the check was mailed or otherwise delivered to the Holder. Nothing contained herein shall require the Liquidating Trustee to attempt to locate any Holder of an Allowed Claim.

(i) Subject to Sections 4.9, 4.11 and 4.12 hereof, and the provisions of this Section 4.7, any non-Cash property of the Liquidating Trust may be sold, transferred, abandoned or otherwise disposed of by the Liquidating Trustee. Notice of such sale, transfer, abandonment or disposition shall be provided to the Liquidating Trust Beneficiaries pursuant to the reporting obligations provided in Section 4.14 of this Agreement. If, in the Liquidating Trustee's reasonable judgment, such property cannot be sold in a commercially reasonable manner, or the Liquidating Trustee believes, in good faith, such property has no value to the Liquidating Trust, the Liquidating Trustee shall have the right, subject to the approval of the Liquidating Trust Oversight Committee (if appointed), to abandon or otherwise dispose of such property. Except in the case of fraud, willful misconduct, or gross negligence, no party in interest shall have a Cause of Action against the Liquidating Trust, the Liquidating Trustee, the Liquidating Trust Oversight Committee, any Member, or any of their directors, officers, employees, consultants, or professionals arising from or related to the disposition of non-Cash property in accordance with this Section 4.7(i).

(j) Any payment or distribution due on a day other than a Business Day shall be made, without interest, on the next Business Day.

4.8 Retention of Counsel and Other Professionals. The Liquidating Trust may, but shall not be required to, retain such Liquidating Trust Professionals as the Liquidating Trustee deems necessary to aid it in fulfilling its obligations under this Agreement and the Plan, and on whatever reasonable and/or customary fee arrangements the Liquidating Trustee deems appropriate, including contingency fee arrangements, with such retention and compensation being subject to the approval of the Liquidating Trust Oversight Committee (if appointed) and consultation with AIP (but without application to or order of the Bankruptcy Court). The Liquidating Trustee may pay the reasonable salaries, fees and expenses of such Persons out of the Liquidating Trust Reserve in the ordinary course of business and neither the Liquidating Trustee nor any Liquidating Trust Beneficiary shall have any liability or obligation for any fees or expenses of any such professional. For the avoidance of doubt, prior employment in any capacity in the Debtors' bankruptcy cases on behalf of the Debtors, their estates, the Committee, or any creditors shall not preclude the Liquidating Trust's retention of such professionals, consultants, or other persons.

4.9 Management of Liquidating Trust Assets.

(a) Except as otherwise provided in the Plan, the Confirmation Order or this Agreement, and subject to Treasury Regulations governing liquidating trusts and the retained jurisdiction of the Bankruptcy Court as provided for in the Plan, but without prior or further authorization, the Liquidating Trustee may, subject to the direction of the Liquidating Trust Oversight Committee (if appointed) to the extent provided in this Agreement, control and exercise authority over the Liquidating Trust Assets, over the management and disposition thereof, and over the management and conduct of the Liquidating Trust, in each case, as necessary or advisable to enable the Liquidating Trustee to fulfill the intents and purposes of this Agreement. No Person dealing with the Liquidating Trust will be obligated to inquire into the authority of the Liquidating Trustee in connection with the acquisition, management or disposition of the Liquidating Trust Assets.

(b) In connection with the management and use of the Liquidating Trust Assets and except as otherwise expressly limited in the Plan, the Confirmation Order or this Agreement, the Liquidating Trust will have, in addition to any powers conferred upon the Liquidating Trust by any other provision of this Agreement, the power to take any and all actions as, in the Liquidating Trustee's reasonable discretion, are necessary or advisable to effectuate the primary purposes of the Liquidating Trust, subject to any approvals of the Liquidating Trust Oversight Committee (if appointed) as set forth herein, including, without limitation, the power and authority to (i) pay taxes and other obligations owed by the Liquidating Trust or incurred by the Liquidating Trustee; (ii) engage and compensate the Liquidating Trust Professionals to assist the Liquidating Trustee and the Liquidating Trust Oversight Committee with respect to their respective responsibilities; (iii) object to, compromise, and settle Disputed Claims, subject to Bankruptcy Court approval, if applicable; (iv) commence and/or pursue any and all actions involving the Preserved Estate Claims that could arise or be asserted at any time, unless otherwise limited, waived, released, compromised, settled, or relinquished in the Plan, the Confirmation Order, or this Agreement; and (v) implement the Plan, this Agreement, and applicable orders of the Bankruptcy Court (including, as applicable, the Confirmation Order).

4.10 Investment of Cash. The right and power of the Liquidating Trustee to invest the Liquidating Trust Assets, the proceeds thereof, or any income earned by the Liquidating Trust shall be limited to the right and power to invest such Liquidating Trust Assets only in Cash and U.S. Government securities as defined in section 2(a)(16) of the Investment Company Act; *provided, however,* that (a) the scope of any such permissible investments shall be further limited to include only those investments that a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the Internal Revenue Service guidelines, whether set forth in Internal Revenue Service rulings, other Internal Revenue Service pronouncements, or otherwise, (b) the Liquidating Trustee may retain any Liquidating Trust Assets received that are not Cash only for so long as may be required for the prompt and orderly liquidation of such assets, and (c) the Liquidating Trustee may expend the Liquidating Trust Assets (i) as reasonably necessary to meet contingent liabilities and maintain the value of the Liquidating Trust Assets during liquidation, (ii) to pay reasonable and documented administrative expenses (including, but not limited to, any taxes imposed on the Liquidating Trust or reasonable fees and expenses in connection with liquidating the Liquidating Trust Assets), subject in all cases to Section 2.4 of this Agreement, and (iii) to satisfy other liabilities incurred or assumed by the Liquidating Trust (or to which the Liquidating Trust Assets are otherwise subject) in accordance with the Plan or this Agreement (including, as applicable, Section 2.4).

4.11 Additional Powers of the Liquidating Trustee. In addition to any and all of the powers enumerated above, and except as otherwise provided in the Plan, the Confirmation Order or this Agreement, and subject to the Treasury Regulations governing liquidating trusts and the retained jurisdiction of the Bankruptcy Court as provided for in the Plan, the Liquidating Trustee, subject to the direction and approval of the Liquidating Trust Oversight Committee (if appointed) as provided in this Agreement, shall be empowered to:

(a) except (i) to the extent Disputed Claims have been previously Allowed or (ii) with respect to Post-Petition Trade Claims, control and effectuate the Disputed Claims reconciliation process, including to object to, seek to subordinate, compromise or settle any and all Disputed Claims;

(b) make Distributions to Holders of Allowed Claims as set forth in, and implement the wind-down pursuant to, the Plan;

(c) determine Distribution Dates, in accordance with the Plan;

(d) hold legal title to any and all rights in or arising from the Liquidating Trust Assets, including, but not limited to, the right to collect any and all money and other property belonging to the Liquidating Trust (including any Liquidating Trust Proceeds);

(e) perform the duties, exercise the powers, and assert the rights of a trustee under sections 704 and 1106 of the Bankruptcy Code with respect to the Liquidating Trust Assets, including the right to assert claims, defenses, offsets, and privileges, subject in all cases to Section 2.2 hereof;

(f) protect and enforce the rights of the Liquidating Trust in and to the Liquidating Trust Assets by any method deemed reasonably appropriate including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium, or similar law (whether foreign or domestic) and general principles of equity;

(g) determine and satisfy any and all liabilities created, incurred or assumed by the Liquidating Trust;

(h) subject to Section 2.3, assert, enforce, release, or waive any Privilege or defense on behalf of the Liquidating Trust or the Liquidating Trust Assets, as applicable;

(i) make all payments relating to the Liquidating Trust;

(j) expunge from the Claims Register Disputed Claims that have been paid, satisfied, superseded, or released and adjust on the Claims Register any Disputed Claims that have been amended without having to file an objection to such Disputed Claims and without any further notice to or action, order or approval of the Bankruptcy Court; *provided, however*, that beginning at the end of the first full calendar quarter that is at least 90 days after the Effective Date, the Liquidating Trustee shall file with the Bankruptcy Court (prior to the closing or dismissal of the Chapter 11 Cases) and make available on the Debtors' restructuring website each calendar quarter a list of all Disputed Claims that have been paid, satisfied, superseded, released, or amended during such prior calendar quarter;

(k) obtain reasonable insurance coverage with respect to the potential liabilities and obligations of the Liquidating Trust, the Liquidating Trustee, the Liquidating Trust Oversight Committee and the Members under this Agreement (in the form of a directors and officers policy, an errors and omissions policy, or otherwise, all at the sole cost and expense of the Liquidating Trust);

(l) (i) receive, manage, invest, supervise, protect, and liquidate the Liquidating Trust Assets, withdraw and make distributions from and pay taxes and other obligations owed by the Liquidating Trust from funds held by the Liquidating Trustee and/or the Liquidating Trust in the Liquidating Trust Account and (ii) withdraw and make distributions from and pay taxes and other obligations owed in respect of any Disputed Claims from the applicable Disputed Claims Reserve in accordance with the Plan, in each case as long as such actions are consistent with the Liquidating Trust's status as a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d) and are merely incidental to its liquidation and dissolution;

(m) prepare, or have prepared, and file, if necessary, with the appropriate Governmental Unit any and all tax returns, information returns, and other required documents with respect to the Liquidating Trust (including, without limitation, U.S. federal, state, local or foreign tax or information returns required to be filed by the Liquidating Trust) and the Disputed Claims Reserves, pay taxes properly payable by the Liquidating Trust and the Disputed Claims Reserves, if any, cause all taxes payable by the Liquidating Trust and the Disputed Claims Reserves, if any, to be paid exclusively out of the Liquidating Trust Assets or the relevant Disputed Claims Reserve, as applicable, make all tax withholdings, and file and prosecute tax refund claims on behalf of the Liquidating Trust;

(n) request any appropriate tax determination with respect to the Debtors, the Liquidating Trust and the Disputed Claims Reserves, including, without limitation, a determination pursuant to section 505 of the Bankruptcy Code;

(o) make tax elections by and on behalf of the Liquidating Trust and the Disputed Claims Reserves, which are deemed by the Liquidating Trustee, either independently or with the advice of Liquidating Trust Professionals, to be in the best interest of maximizing the liquidation value of the Liquidating Trust Assets;

(p) investigate, analyze, compromise, adjust, arbitrate, mediate, sue on or defend, pursue, prosecute, abandon, dismiss, exercise rights, powers and privileges with respect to or otherwise deal with and settle, in accordance with the terms set forth in this Agreement, the Preserved Estate Claims;

(q) without expanding the scope of the definition of “Preserved Estate Claims” in the Plan, take appropriate actions to recover transfers of any Debtors’ property as provided for in the Plan as may be permitted by the Bankruptcy Code or applicable state law; *provided, however,* that nothing herein shall give the Liquidating Trustee the power to recover any of the Purchased Assets (as defined in the Asset Purchase Agreement) that were transferred to the Purchaser pursuant to the Asset Purchase Agreement;

(r) execute offsets or assert counterclaims against Holders of Allowed Claims (except to the extent of any releases, waivers, settlements, compromises or relinquishments set forth in the Plan or the Confirmation Order) and make distributions as provided for in the Plan and this Agreement;

(s) subject to applicable law, seek the examination of any Entity or Person, with respect to the Preserved Estate Claims;

(t) retain and reasonably compensate for services rendered and expenses incurred by Liquidating Trust Professionals to perform such reviews and/or audits of the financial books and records of the Liquidating Trust as may be appropriate in the Liquidating Trustee’s reasonable discretion and to prepare and file any tax returns or informational returns for the Liquidating Trust as may be required;

(u) take or refrain from taking any and all actions the Liquidating Trustee reasonably deems necessary for the continuation, protection, and maximization of the Liquidating Trust Assets consistent with the purposes hereof;

(v) take all steps and execute all instruments and documents the Liquidating Trustee reasonably deems necessary to effectuate the Liquidating Trust;

(w) liquidate any remaining Liquidating Trust Assets, and provide for the distributions therefrom in accordance with the provisions of the Plan, the Confirmation Order and this Agreement;

(x) take all actions the Liquidating Trustee reasonably deems necessary to comply with the Plan, the Confirmation Order, and this Agreement (including all obligations thereunder);

(y) in the event that the Liquidating Trust shall fail or cease to qualify as a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d), take any and all necessary actions as it shall reasonably deem appropriate to have such assets treated as held by an entity classified as a partnership for federal tax purposes;

(z) (i) take commercially reasonable actions after the Effective Date to assist and cooperate in good faith with the reasonable efforts by holders of Class A and Class B Trust Interests or Liquidating Trust Interests, as applicable, to constitute the Majority Holders in accordance with Section 2.1(c) for the purposes of establishing the Liquidating Trust Oversight Committee and appointing the Members thereof (it being understood that such efforts are primarily the responsibility of such holders and that the Liquidating Trustee by this provision shall only be required to provide reasonable assistance and cooperation to them) and (ii) if by the requisite majority or majorities, holders of Class A and Class B Trust Interests or Liquidating Trust Interests, as applicable pursuant to Section 2.1(c), constituting the Majority Holders have established the Liquidating Trust Oversight Committee and appointed the Members thereof as provided in Section 2.1(c), file a notice thereof disclosing the names and relevant biographical information regarding the Members, the compensation (if any) to be paid to them by the Liquidating Trust and such other information deemed appropriate by the Liquidating Trustee (in consultation with the Liquidating Trust Oversight Committee) with the Bankruptcy Court (prior to the closing or dismissal of the Chapter 11 Cases) and post such notice to the website maintained by the Liquidating Trust; and

(aa) exercise such other powers as may be vested in the Liquidating Trustee pursuant to the Plan, the Confirmation Order, this Agreement, any order of the Bankruptcy Court or as otherwise determined by the Liquidating Trustee to be reasonably necessary and proper to carry out the obligations of the Liquidating Trustee in relation to the Liquidating Trust.

4.12 Limitations on Power and Authority of the Liquidating Trustee. The Liquidating Trustee will not have the authority to do any of the following:

(a) take any action in contravention of the Sale Order, the Plan, the Confirmation Order, or this Agreement;

(b) take any action that would make it impossible to carry on the activities of the Liquidating Trust;

(c) possess property of the Liquidating Trust or assign the Liquidating Trust's rights in specific property for any purpose other than as provided herein;

(d) cause or permit the Liquidating Trust to engage in any trade or business or utilize or dispose of any part of the Liquidating Trust Assets or the proceeds, revenue or income therefrom in furtherance of any trade of business;

(e) without approval of the Liquidating Trust Oversight Committee as provided in Section 4.8, retain Liquidating Trust Professionals or agree to any compensation arrangements for such Liquidating Trust Professionals;

(f) dissolve the Liquidating Trust;

(g) receive transfers of any listed stocks or securities or any readily marketable assets or any operating assets of a going business to the extent that the Liquidating Trust receiving any such investment would jeopardize treatment of the Liquidating Trust as a “liquidating trust” for federal income tax purposes under Treasury Regulation section 301.7701-4(d), or any successor provision thereof;

(h) receive or retain any operating assets of an operating business, a partnership interest in a partnership that holds operating assets or 50% or more of the stock of a corporation with operating assets; *provided, however*, that in no event shall the Liquidating Trustee receive or retain any such asset or interest that would jeopardize treatment of the Liquidating Trust as a “liquidating trust” for federal income tax purposes under Treasury Regulation section 301.7701-4(d) or any successor provision thereof;

(i) take any other action or engage in any investments or activities that would jeopardize treatment of the Liquidating Trust as a liquidating trust for federal income tax purposes under Treasury Regulation section 301.7701-4(d), or any successor provision thereof; or

(j) issue any Liquidating Trust Interests other than as expressly contemplated by the Plan, the Confirmation Order, or this Agreement.

4.13 Books and Records. The Liquidating Trustee shall maintain books and records relating to the Liquidating Trust Assets (including income realized therefrom and the Liquidating Trust Proceeds) and the payment of, costs and expenses of, and liabilities for claims against or which, pursuant to the Plan, are the responsibility of the Liquidating Trust in such detail and for such period of time as may be necessary to enable the Liquidating Trustee to make full and proper accounting in respect thereof and in accordance with applicable law. Such books and records shall be maintained as reasonably necessary to facilitate compliance with the tax reporting requirements of the Liquidating Trust. Nothing in this Agreement requires 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 managing any payment or distribution out of the Liquidating Trust Assets, except as may otherwise be set forth in the Plan or the Confirmation Order.

4.14 Reports.

(a) Financial and Status Reports. The fiscal year of the Liquidating Trust shall be the calendar year. Within 90 days after the end of each calendar year during the term of the Liquidating Trust, and within 45 days after the end of each calendar quarter during the term of the Liquidating Trust (other than the fourth quarter) and as soon as practicable upon termination of the Liquidating Trust, the Liquidating Trustee shall make available to the Liquidating Trust Beneficiaries appearing in the Trust Register as of the end of such period or such date of termination, a written report including: (i) financial statements of the Liquidating Trust for such period, and, if the end of a calendar year, an unaudited report (which may be prepared by an

independent certified public accountant employed by the Liquidating Trustee) reflecting the result of such procedures relating to the financial accounting administration of the Liquidating Trust as may be adopted by the Liquidating Trustee; (ii) a summary description of any action taken by the Liquidating Trust which, in the judgment of the Liquidating Trustee, materially affects the Liquidating Trust and of which notice has not previously been given to the Liquidating Trust Beneficiaries; (iii) a description of the progress of liquidating the Liquidating Trust Assets and making distributions to the Liquidating Trust Beneficiaries, which description shall include a written report providing, among other things, a summary of the litigation status of the Preserved Estate Claims transferred to the Liquidating Trust, any settlements entered into by the Liquidating Trust with respect to the Preserved Estate Claims, the Liquidating Trust Proceeds recovered to date, and the distributions made by the Liquidating Trust to date; (iv) payments made to the Liquidating Trustee and the Liquidating Trust Professionals (including fees and expenses paid to contingency fee counsel); and (v) any other material information relating to the Liquidating Trust Assets and the administration of the Liquidating Trust deemed appropriate to be disclosed by the Liquidating Trustee. In addition, the Liquidating Trust shall provide unaudited financial statements to each Liquidating Trust Beneficiary on a quarterly basis (which may be quarterly operating reports filed with the Bankruptcy Court). The Liquidating Trustee may post any such report on a website maintained by the Liquidating Trust or electronically file it with the Bankruptcy Court in lieu of actual notice to each Liquidating Trust Beneficiary. The Liquidating Trustee shall respond, as soon as reasonably practicable, to reasonable requests for information (to the extent available) described in this clause (a) that is reasonably requested from Liquidating Trust Beneficiaries during reasonable business hours, in each case, to the extent such requests do not (i) request the disclosure of privileged or confidential information, (ii) request the disclosure of information which would not be in the best interest of the Liquidating Trust (in the reasonable discretion of the Liquidating Trustee), and (iii) interfere with the duties of the Litigation Trustee hereunder.

(b) Annual Plan and Budget. If instructed by the Liquidating Trust Oversight Committee, the Liquidating Trustee shall prepare and submit to the Liquidating Trust Oversight Committee for approval an annual plan and budget in such detail as is reasonably requested or, if the Liquidating Trust Oversight Committee has not been established, prepare and adopt such annual plan and budget as the Liquidating Trustee deems reasonably appropriate.

ARTICLE V

LIQUIDATING TRUST RESERVES

5.1 Establishment of Liquidating Trust Reserve. On the Effective Date, the Liquidating Trustee shall fund the Liquidating Trust Reserve, which shall vest in the Liquidating Trust free and clear of all Claims, Liens, encumbrances, and charges. The Liquidating Trust Reserve shall be held separately from the other Liquidating Trust Assets and shall be used to (a) fund the Wind-Down Manager Reserve, (b) satisfy all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims, and Allowed Secured Claims not paid by the Debtors on or prior to the Effective Date, (c) fund Disputed Claims Reserves relating to such Claims, (d) fund the Liquidating Trust Expenses, and (e) fund the Prepetition Junior Loan Agent Fee Reserve. The Liquidating Trustee shall transfer any net Cash proceeds from the Preserved Estate Claims to the Liquidating Trust Reserve until such time as (a) all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims, and Allowed Secured Claims have been

paid in full or otherwise resolved or the Disputed Claims Reserves relating to such Claims have been fully funded, and (b) the Administrative Claims Bar Date and any other applicable Claims Bar Date has expired. Any excess funds in the Liquidating Trust Reserve remaining after the payment or funding of amounts required under the preceding clauses (a)-(e) shall be deemed to be Liquidating Trust Proceeds and shall be available for distribution to Liquidating Trust Beneficiaries in accordance with the Plan and this Agreement.

5.2 Cash in the Liquidating Trust Reserve. Cash held in the Liquidating Trust Reserve (including any earnings that have accrued on such Cash, net of any expenses, including any tax, relating thereto) shall be retained by the Liquidating Trustee for the benefit of Holders of Claims and Liquidating Trust Beneficiaries as contemplated in Section 5.1, the Plan, the Confirmation Order and this Agreement pending determination of their entitlement thereto under the terms of the Plan. Cash shall be either (x) held by the Liquidating Trustee in an interest-bearing account or (y) invested in interest-bearing obligations issued by the U.S. government and guaranteed by the U.S. government, and having (in either case) a maturity date of not more than 30 days. All such Cash or investments shall be held by the Liquidating Trustee in an account at a nationally recognized bank, financial institution, trust company or investment/brokerage firm chosen by the Liquidating Trustee and bearing the name “Liquidating Trust Reserve Account” or words of similar import (the “Liquidating Trust Reserve Account”). Cash held in the Liquidating Trust Reserve Account will (i) be held in trust, pending distribution by the Liquidating Trustee and (ii) be accounted for separately from the Liquidating Trust Assets.

5.3 Distributions After Allowance of Disputed Claims or Disputed Interests. At such time as a Disputed Claim or Interest becomes Allowed, the Liquidating Trustee shall distribute to the holder thereof the distributions, if any, to which such Holder is then entitled under the Plan (including, with respect to Cash held in the applicable Liquidating Trust Reserve Account, any earnings that have accrued on the amount of Cash so retained, net of any expenses, including any taxes, relating thereto), but only to the extent that such earnings are attributable to the amount of the Allowed Claim. Such distribution, if any, shall be made as soon as reasonably practicable after the date upon which such Disputed Claim or Interest becomes Allowed, whether by settlement, compromise or Final Order or judgment of the Bankruptcy Court, but in no event more than 90 days thereafter. The balance of any Cash thereafter retained in a Disputed Claims Reserve account shall be allocated to and included in future distributions to Holders of the remaining applicable Disputed Claims on a Pro Rata basis at such time as any such Disputed Claim becomes an Allowed Claim or otherwise as provided in the Plan, the Confirmation Order and this Agreement.

5.4 Distributions After Disallowance of Disputed Claims. If a Disputed Claim or Interest is disallowed, in whole or in part, the Liquidating Trustee shall cancel the applicable Liquidating Trust Interest, if applicable, and distribute the Cash held in the applicable Disputed Claims Reserve account with respect to such Claim or Interest to the holders of the applicable series of Liquidating Trust Interests in accordance with the terms of the Plan, the Confirmation Order and this Agreement.

ARTICLE VI
THE LIQUIDATING TRUSTEE GENERALLY

6.1 Independent Liquidating Trustee. The Liquidating Trustee, in accordance with the Plan and the Confirmation Order, shall be a professional natural person, entity or financial institution with experience administering other liquidating trusts and may not be a Member of the Liquidating Trust Oversight Committee.

6.2 Liquidating Trustee's Term of Service, Compensation and Reimbursement.

(a) Term of Service. The Liquidating Trustee shall serve as of the Effective Date until: (a) the completion of all of the Liquidating Trustee's duties, responsibilities and obligations under this Agreement and the Plan; (b) termination of the Liquidating Trust in accordance with this Agreement; or (c) the Liquidating Trustee's death or dissolution, incapacitation, resignation or removal.

(b) Compensation. The Liquidating Trustee shall receive compensation from the Liquidating Trust as provided on Exhibit B hereto (the "Liquidating Trustee Compensation"). The compensation of the Liquidating Trustee may be modified from time to time by agreement of the Liquidating Trustee and the Majority Holders or, if the Chapter 11 Cases have not been closed or dismissed, by order of the Bankruptcy Court. Notice of any modification of the Liquidating Trustee's compensation shall be filed promptly with the Bankruptcy Court; *provided, however*, that after the closing or dismissal of the Chapter 11 Cases, such notice will be provided on a website maintained by the Liquidating Trust.

(c) Expenses. The Liquidating Trust will reimburse the Liquidating Trustee from the Liquidating Trust Reserve for all actual, reasonable and documented out-of-pocket expenses incurred by the Liquidating Trustee in connection with the performance of the duties of the Liquidating Trustee hereunder or under the Confirmation Order or the Plan, including but not limited to, actual, reasonable and documented fees and disbursements of the Liquidating Trustee's legal counsel incurred in connection with the review, execution, and delivery of this Agreement and related documents (collectively, the "Liquidating Trustee Expenses" and, together with the Liquidating Trustee Compensation, the "Liquidating Trustee Fees").

(d) Payment. The Liquidating Trustee Fees shall be paid to the Liquidating Trustee from the Liquidating Trust Reserve without necessity for review or approval by the Bankruptcy Court or any other Person. The Bankruptcy Court shall retain jurisdiction until the closing or dismissal of the Chapter 11 Cases to adjudicate any dispute regarding the Liquidating Trustee Fees.

6.3 Resignation. The Liquidating Trustee may resign by giving not less than 45 days' prior written notice thereof by filing a notice with the Bankruptcy Court (and such notice shall be served on the Liquidating Trust Beneficiaries); *provided however*, after the closing or dismissal of the Chapter 11 Cases, such notice shall be posted on a website maintained by the Liquidating Trust and served on the Liquidating Trust Beneficiaries. Such resignation shall become effective on the earlier to occur of: (a) the day specified in such notice, and (b) the appointment of a successor satisfying the requirements set out in Section 6.5 by the Majority Holders or the Bankruptcy Court

and the acceptance by such successor of such appointment. Notwithstanding the foregoing, upon the Termination Date (as defined in Section 10.1 below), the Liquidating Trustee shall be deemed to have resigned, except as otherwise provided for in Section 10.2 herein. Written notice of the resignation of the Liquidating Trustee and the appointment of a successor Liquidating Trustee shall be provided promptly to the Liquidating Trust Beneficiaries.

6.4 Removal.

(a) The Liquidating Trustee (or any successor Liquidating Trustee) may be removed (i) by the Majority Holders, for Cause (as defined in Section 7.7(b) herein), immediately upon notice thereof, or without Cause, upon not less than 45 days' prior written notice; *provided, however*, that the Liquidating Trustee (or any successor Liquidating Trustee) may only be removed without Cause if a successor Liquidating Trustee is simultaneously appointed, or (ii) by order of the Bankruptcy Court for Cause.

(b) To the extent there is any dispute regarding the removal of a Liquidating Trustee (including any dispute relating to any portion of the Liquidating Trustee Fees) and so long as the Chapter 11 Cases have not been closed or dismissed, the Bankruptcy Court shall retain jurisdiction to consider and adjudicate any such dispute. Notwithstanding the foregoing, the Liquidating Trustee will continue to serve as the Liquidating Trustee after his, her or its removal other than for Cause until the earlier of (i) the time when appointment of a successor Liquidating Trustee will become effective in accordance with Section 6.5 of this Agreement or (ii) 45 days after the date of removal.

6.5 Appointment of Successor Liquidating Trustee.

(a) In the event of the death or Disability (as defined in Section 7.7 herein) (in the case of a Liquidating Trustee that is a natural person), dissolution (in the case of a Liquidating Trustee that is not a natural person), resignation, incompetency or removal of the Liquidating Trustee (each, a "Succession Event"), the Majority Holders shall promptly designate a successor Liquidating Trustee satisfying the requirements set forth in Section 6.1 hereof; *provided, however*, the Bankruptcy Court may designate a successor Liquidating Trustee to the extent that the Majority Holders have not designated a successor Liquidating Trustee within 30 days of a Succession Event resulting from the death, Disability, dissolution, resignation or incompetency of the Liquidating Trustee. Such appointment shall specify the date on which such appointment shall be effective. Every successor Liquidating Trustee appointed hereunder shall execute, acknowledge and deliver to the Liquidating Trust Beneficiaries an instrument accepting the appointment under this Agreement and agreeing to be bound as Liquidating Trustee hereto and subject to the terms of this Agreement, and thereupon the successor Liquidating Trustee, without any further act, deed or conveyance, shall become vested with all rights, powers, trusts and duties of the predecessor Liquidating Trustee and the successor Liquidating Trustee shall not be personally liable for any act or omission of the predecessor Liquidating Trustee; *provided, however*, that a predecessor Liquidating Trustee shall, nevertheless, when requested in writing by the successor Liquidating Trustee, execute and deliver an instrument or instruments conveying and transferring to such successor Liquidating Trustee under the Liquidating Trust all the estates, properties, rights, powers and trusts of such predecessor Liquidating Trustee and otherwise assist and cooperate, without cost or expense to the predecessor Liquidating Trustee, in effectuating the assumption by the

successor Liquidating Trustee of his/her/its obligations and functions hereunder. For notice purposes only and not for approval, the Majority Holders shall file with the Bankruptcy Court (or post on a website maintained by the Liquidating Trust if the Chapter 11 Cases have been closed) a notice appointing the successor Liquidating Trustee.

(b) During any period in which there is a vacancy in the position of Liquidating Trustee, the Majority Holders shall appoint (or the Bankruptcy Court may appoint) an interim Liquidating Trustee (the “Interim Trustee”). The Interim Trustee shall be subject to all the terms and conditions applicable to a Liquidating Trustee hereunder; *provided, however*, any such Interim Trustee shall not be entitled to receive the Liquidating Trustee Compensation unless approved by the Majority Holders, but shall be entitled to receive payment for the Liquidating Trustee Expenses. Such Interim Trustee shall not be limited in any manner from exercising any rights or powers as a member of the Majority Holders merely by such Person’s appointment as Interim Trustee, but shall be limited in the exercise of such rights or powers as a Liquidating Trustee to the extent the Majority Holders shall, to the extent applicable in this Agreement, fail to approve any such action or undertaking by the Interim Trustee.

(c) To the extent that the Majority Holders are unable to appoint a successor Liquidating Trustee or Interim Trustee and the Chapter 11 Cases have been closed or dismissed, the Chapter 11 Cases may be reopened for the limited purpose of seeking an order of the Bankruptcy Court to appoint a successor Liquidating Trustee.

6.6 Effect of Resignation or Removal. The death, Disability, dissolution, bankruptcy, resignation, incompetency, incapacity or removal of the Liquidating Trustee, as applicable, shall not operate to terminate the Liquidating Trust created by this Agreement or to revoke any existing agency created pursuant to the terms of this Agreement or invalidate any action theretofore taken by the Liquidating Trustee or any prior Liquidating Trustee. In the event of the resignation or removal of the Liquidating Trustee, such Liquidating Trustee will promptly (a) execute and deliver such documents, instruments and other writings as may be ordered by the Bankruptcy Court (or any other court of competent jurisdiction) or reasonably requested by the Majority Holders or the successor Liquidating Trustee to effect the termination of such Liquidating Trustee’s capacity under this Agreement, (b) deliver to the successor Liquidating Trustee all documents, instruments, records and other writings related to the Liquidating Trust as may be in the possession of such Liquidating Trustee, including any Preserved Estate Claims Materials, and shall not retain any copies of such materials, even for archival purposes, and (c) otherwise assist and cooperate in effecting the assumption of its obligations and functions by such successor Liquidating Trustee.

6.7 Confidentiality. The Liquidating Trustee shall, during the period that the Liquidating Trustee serves as Liquidating Trustee under this Agreement and for a period of two (2) years following the termination of this Agreement or following such Liquidating Trustee’s removal or resignation hereunder, hold strictly confidential and not use for personal gain or for the gain of any Entity or Person for whom such Liquidating Trustee may be employed any non-public information of or pertaining to any Person to which any of the Preserved Estate Claims Materials or Liquidating Trust Assets relates or of which the Liquidating Trustee has become aware in the Liquidating Trustee’s capacity as Liquidating Trustee (including information contained or reflected in the Liquidating Trust Materials), until (a) such information is made public other than by disclosure by the Liquidating Trust, the Liquidating Trustee, or any Liquidating Trust

Professionals in violation of this Agreement; (b) the Liquidating Trust is required by law to disclose such information (in which case the Liquidating Trust shall provide the relevant Person reasonable advance notice and an opportunity to protect his, her, or its rights); or (c) the Liquidating Trust obtains a waiver of confidentiality from the applicable Person.

ARTICLE VII

LIQUIDATING TRUST OVERSIGHT COMMITTEE

7.1 Liquidating Trust Oversight Committee. Subject to Section 2.1(c) hereof, on or prior to the effective date of this Agreement, a Liquidating Trust Oversight Committee may be appointed by the Committee in consultation with the Debtors and AIP, which initial Members are identified on Exhibit A hereto. The Liquidating Trust Oversight Committee also may be appointed in accordance with Section 2.1(c). In all circumstances, the Liquidating Trust Oversight Committee shall act in the best interests of all Liquidating Trust Beneficiaries and in furtherance of the purpose of the Liquidating Trust.

7.2 Authority and Responsibilities.

(a) The Liquidating Trust Oversight Committee shall, as and when requested by the Liquidating Trustee, or when the Members otherwise deem it to be appropriate or as is otherwise required under the Plan, the Confirmation Order, or this Agreement, consult with and advise the Liquidating Trustee as to the administration and management of the Liquidating Trust in accordance with the Plan, the Confirmation Order, and this Agreement and shall have the other responsibilities and powers as set forth herein. The Liquidating Trust Oversight Committee shall have the authority and responsibility to oversee and review and, as specifically set forth herein, direct the activities of the Liquidating Trust and the performance of the Liquidating Trustee; *provided, however*, that the Liquidating Trust Oversight Committee may not direct the Liquidating Trustee to nor shall the Members act in a manner inconsistent with their respective duties and obligations under the Plan, the Confirmation Order, or this Agreement.

(b) The Liquidating Trust Oversight Committee shall also (a) monitor and oversee the administration of the Liquidating Trust and the Liquidating Trustee's performance of his/her/its responsibilities under the Plan, the Confirmation Order, and this Agreement and (b) perform such other tasks as are set forth in the Plan, the Confirmation Order, and this Agreement.

(c) The Liquidating Trustee shall consult with and provide information to the Liquidating Trust Oversight Committee in accordance with and pursuant to the terms of the Plan, the Confirmation Order, and this Agreement sufficient in scope and detail to enable the Liquidating Trust Oversight Committee to meet its obligations hereunder.

(d) The Liquidating Trustee shall not be required to obtain the approval or follow the directions of the Liquidating Trust Oversight Committee to the extent that (i) the Liquidating Trust Oversight Committee has not authorized the Liquidating Trustee to take any action that the Liquidating Trustee, in good faith, reasonably determines, based on the advice of legal counsel, is required to be taken by applicable law or (ii) the Liquidating Trust Oversight Committee directs the Liquidating Trustee to take action that the Liquidating Trustee, in good

faith, reasonably determines, based on the advice of legal counsel, is not permitted by or is contrary to the terms of this Agreement or is prohibited by applicable law.

7.3 Meetings of the Liquidating Trust Oversight Committee. Meetings of the Liquidating Trust Oversight Committee (if established) are to be held not less often than quarterly. Special meetings of the Liquidating Trust Oversight Committee may be held whenever and wherever called for by the Liquidating Trustee or any Member; *provided, however*, that notice of any such meeting shall be duly given in writing no less than 48 hours prior to such meeting (such notice being subject to waiver by the Members). Any action required or permitted to be taken by the Liquidating Trust Oversight Committee at a meeting may be taken without a meeting if the action is taken by unanimous written consent of the Liquidating Trust Oversight Committee as evidenced by one or more written consents describing the action taken, signed by all Members and recorded in the minutes, if any, or other transcript, if any, of proceedings of the Liquidating Trust Oversight Committee.

7.4 Manner of Acting.

(a) A quorum for the transaction of business at any meeting of the Liquidating Trust Oversight Committee shall consist of at least two Members. Except as set forth in Sections 3.3, 3.5, 7.4(c) and 7.8(a) herein, the majority vote of the Members present at a duly called meeting at which a quorum is present throughout shall be the act of the Liquidating Trust Oversight Committee except as otherwise required by law or as provided for in this Agreement. Any or all of the Members may participate in a regular or special meeting by, or conduct the meeting through the use of, conference telephone, video conference or similar communications equipment by means of which all Persons participating in the meeting may hear each other, in which case any required notice of such meeting may generally describe the arrangements (rather than or in addition to the place) for the holding thereof. Any Member participating in a meeting by this means is deemed to be present in person at the meeting. Voting (including on negative notice) may be conducted by electronic mail or individual communications by the Liquidating Trustee and each Member.

(b) Any Member who is present and entitled to vote at a meeting of the Liquidating Trust Oversight Committee (including any meeting of the Liquidating Trustee and the Liquidating Trust Oversight Committee) when action is taken is deemed to have assented to the action taken, subject to the requisite vote of the Liquidating Trust Oversight Committee, unless: (i) such Member of the Liquidating Trust Oversight Committee objects at the beginning of the meeting (or promptly upon his/her arrival) to holding or transacting business at the meeting; (ii) his/her dissent or abstention from the action taken is entered in the minutes of the meeting; or (iii) he/she delivers written notice (including by electronic or facsimile transmission) of his/her dissent or abstention to the Liquidating Trust Oversight Committee before its adjournment. The right of dissent or abstention is not available to any Member of the Liquidating Trust Oversight Committee who votes in favor of the action taken.

(c) Prior to the taking of a vote on any matter or issue or the taking of any action with respect to any matter or issue, each Member of the Liquidating Trust Oversight Committee shall report to the Liquidating Trust Oversight Committee any conflict of interest such Member has or may have with respect to the matter or issue at hand and fully disclose the nature of such

conflict or potential conflict (including, without limitation, disclosing any and all financial or other pecuniary interests that such Member may have with respect to or in connection with such matter or issue, other than solely as a holder of Liquidating Trust Interests). A Member who, with respect to a matter or issue, has or who may have a conflict of interest whereby such Member's interests are adverse to the interests of the Liquidating Trust (i) shall be deemed to be a "Conflicted Member" who shall not be entitled to vote or take part in any action with respect to such matter or issue, (ii) the vote or action with respect to such matter or issue shall be undertaken only by Members of the Liquidating Trust Oversight Committee who are not Conflicted Members and (iii) the affirmative vote of the other Members of the Liquidating Trust Oversight Committee who are not Conflicted Members shall be required to approve of such matter or issue and the same shall be the act of the Liquidating Trust Oversight Committee; *provided, however*, that a Member shall not be deemed to be a Conflicted Member with respect to a particular matter or issue if such Member merely has an economic interest in the outcome of such matter or issue solely as a holder of Liquidating Trust Interests.

7.5 Tenure of the Members of the Liquidating Trust Oversight Committee. The authority of the Members will be effective as of the Effective Date and will remain and continue in full force and effect until the Liquidating Trust is terminated in accordance with Section 10.1 hereof. The Members will serve until such Member's successor is duly appointed or until such Member's earlier death or resignation pursuant to Section 7.6 below, or removal pursuant to Section 7.7 below.

7.6 Resignation. Subject to Section 7.10 hereof, a Member may resign by giving not less than 30 days' prior written notice thereof to the Liquidating Trustee and the other Members. Such resignation shall become effective on the earlier to occur of: (i) the day specified in such notice and (ii) the appointment of a successor in accordance with Section 7.8 below.

7.7 Removal.

(a) (x) A majority of the Liquidating Trust Oversight Committee may remove any Member for Cause or Disability. Notwithstanding the foregoing, upon the occurrence of the Termination Date (as defined in Section 10.1 below), any or all of the Members shall be deemed, automatically and without further action by any of them, to have resigned.

(b) For purposes of Section 6.4 hereof and this Section 7.7:

(i) "Cause" shall mean (i) a Person's willful failure to perform his/her/its material duties hereunder (including, without limitation, with respect to a Member or, to the extent applicable, the Liquidating Trustee, regular attendance at meetings of the Liquidating Trust Oversight Committee), which is not remedied within 30 days of notice; (ii) a Person's commission of an act of fraud, theft or embezzlement; (iii) a Person's conviction of a felony with all appeals having been exhausted or appeal periods lapsed; (iv) a Person's gross negligence, willful misconduct, or knowing violation of law in the performance of his/her/its duties hereunder, or (v) a Person's breach of fiduciary duties or an unresolved conflict of interest; and

(ii) “Disability” of the Liquidating Trustee or a Member who is a natural person shall have occurred if, as a result of such Person’s incapacity due to physical or mental illness as determined by a physician selected by the Liquidating Trustee or the Member, as applicable, and reasonably acceptable to the Liquidating Trust Oversight Committee, the Liquidating Trustee or the Member shall have been substantially unable to perform his or her duties hereunder for three (3) consecutive months or for an aggregate of 180 days during any period of twelve (12) consecutive months.

7.8 Appointment of a Successor Member.

(a) Subject to Section 7.10 hereof, in the event of a vacancy on the Liquidating Trust Oversight Committee (whether by removal, death or resignation), a new Member may be appointed to fill such position by the remaining Members acting unanimously, in consultation with AIP to the extent AIP still holds Liquidating Trust Interests. The appointment of a successor Member will be further evidenced by the Liquidating Trustee’s filing with the Bankruptcy Court (so long as the Chapter 11 Cases have not been closed or dismissed) and posting on a website maintained by the Liquidating Trust a notice of appointment, at the direction of the Liquidating Trust Oversight Committee, which notice will include the name and a summary of the background and business experience of the successor Member.

(b) Immediately upon the appointment of any successor Member, all rights, powers, duties, authority and privileges of the predecessor Member hereunder will be vested in and undertaken by the successor Member without any further act, and such successor Member will not be liable personally for any act or omission of the predecessor Member.

(c) Every successor Member appointed hereunder shall execute, acknowledge and deliver to the Liquidating Trustee and other Members an instrument accepting the appointment under this Agreement and agreeing to be bound hereto, and thereupon the successor Member without any further act, deed or conveyance, shall become vested with all rights, powers, trusts and duties of the retiring Member.

7.9 Compensation and Reimbursement of Expenses. Unless determined by the Liquidating Trust Oversight Committee, no Member shall be entitled to compensation in connection with his or her service to the Liquidating Trust Oversight Committee. However, the Liquidating Trust will reimburse the Members for all reasonable and documented out-of-pocket expenses incurred by the Members in connection with the performance of each of their duties hereunder (including reasonable fees, costs and expenses of legal counsel only as set forth in this Agreement).

7.10 Confidentiality. Each Member shall, during the period that such Member serves as a Member under this Agreement and following the termination of this Agreement or following such Member’s removal or resignation, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any Person to which any of the Liquidating Trust Assets relates or of which such Member has become aware in the Member’s capacity as a Member, except as otherwise required by law.

ARTICLE VIII
LIABILITY AND INDEMNIFICATION

8.1 No Further Liability. Each of the Liquidating Trustee, the Members and their representatives shall have no liability for any actions or omissions in accordance with this Agreement or with respect to the Liquidating Trust unless arising out of such Person's own fraud, willful misconduct or gross negligence. Unless arising out of such Person's own fraud, willful misconduct or gross negligence, in performing its duties under this Agreement, the Liquidating Trustee, the Members and their representatives (as applicable) shall have no liability for any action taken by such Person in good faith, in the reasonable belief that such action was in the best interests of the Liquidating Trust and/or in accordance with the advice of the Liquidating Trust Professionals retained by the Liquidating Trust Oversight Committee or the Liquidating Trust. Without limiting the generality of the foregoing, the Liquidating Trustee, the Members and their representatives may rely without independent investigation on copies of orders of the Bankruptcy Court reasonably believed by such Person to be genuine and shall have no liability for actions taken in reliance thereon. None of the provisions of this Agreement shall require the Liquidating Trustee, the Members or their representatives to expend or risk their own funds or otherwise incur personal financial liability in the performance of any of their duties hereunder or in the exercise of any of their rights and powers. Each of the Liquidating Trustee, the Members and their representatives may rely without inquiry upon writings delivered to such Person pursuant to the Plan, the Confirmation Order or this Agreement (including in the execution of such Person's duties hereunder or thereunder) that such Person reasonably believes to be genuine and to have been properly given. Notwithstanding the foregoing, nothing in this Section 8.1 shall relieve the Liquidating Trustee, the Members or their representatives from any liability for any actions or omissions arising out of such Person's fraud, willful misconduct or gross negligence. Any action taken or omitted to be taken in the case of the Liquidating Trustee or the Liquidating Trust Oversight Committee with the express approval of the Bankruptcy Court (so long as the Chapter 11 Cases have not been closed or dismissed) and, in the case of the Liquidating Trustee, with the express approval of the Liquidating Trust Oversight Committee will conclusively be deemed not to constitute fraud, willful misconduct or gross negligence. No termination of this Agreement or amendment, modification or repeal of this Section 8.1 shall adversely affect any right or protection of the Liquidating Trustee, the Members of the Liquidating Trust Oversight Committee or their respective designees, professional agents or representatives that exists at the time of such amendment, modification or repeal.

8.2 Indemnification of the Liquidating Trustee and Liquidating Trust Oversight Committee.

(a) From and after the Effective Date, each of the Liquidating Trustee, the Liquidating Trust Oversight Committee, the Liquidating Trust Professionals and each of the Liquidating Trustee's and Members' representatives (each, a "Liquidating Trust Indemnified Party," and collectively, the "Liquidating Trust Indemnified Parties") shall be, and hereby is, indemnified by the Liquidating Trust, to the fullest extent permitted by applicable law, from and against any and all claims, debts, dues, accounts, actions, suits, Causes of Action, bonds, covenants, judgments, damages, attorneys' fees, defense costs and other assertions of liability arising out of any such Liquidating Trust Indemnified Party's exercise of what such Liquidating Trust Indemnified Party reasonably understands to be its powers or the discharge of what such

Liquidating Trust Indemnified Party reasonably understands to be its duties conferred by the Plan, the Confirmation Order or this Agreement, any order of the Bankruptcy Court entered pursuant to, or in furtherance of, the Plan, applicable law or otherwise (except only for actions or omissions to act to the extent determined by a Final Order to be due to such Liquidating Trust Indemnified Party's own fraud, willful misconduct or gross negligence on and after the Effective Date). The foregoing indemnification shall also extend to matters directly or indirectly in connection with, arising out of, based on, or in any way related to: (i) this Agreement; (ii) the services to be rendered pursuant to this Agreement; (iii) any document or information, whether oral or written, referred to herein or supplied to the Liquidating Trustee; or (iv) proceedings by or on behalf of any creditor. Expenses, including attorney's fees and other expenses and disbursements, incurred by a Liquidating Trust Indemnified Party in defending or investigating a threatened or pending action, suit or proceeding shall be paid or reimbursed by the Liquidating Trust, solely out of the Liquidating Trust Assets (including any insurance policy obtained by the Liquidating Trust for the benefit of Liquidating Trust Indemnified Parties), in advance of the final disposition of such action, suit or proceeding; *provided, however*, that any Liquidating Trust Indemnified Party receiving any such advance shall execute a written undertaking to repay such advance if a court of competent jurisdiction ultimately determines, by Final Order, that such Liquidating Trust Indemnified Party is not entitled to indemnification hereunder due to such Person's own fraud, willful misconduct or gross negligence.. Any indemnification claim of a Liquidating Trust Indemnified Party shall be entitled to a priority distribution from the Liquidating Trust Reserve, ahead of the Liquidating Trust Interests and any other claim to or interest in such assets. In any matter covered by the first two sentences of this subsection, any party entitled to indemnification shall have the right to employ such party's own separate counsel, at the Liquidating Trust's expense, subject to the foregoing terms and conditions. In addition, the Liquidating Trust shall purchase insurance coverage as set forth in Section 4.11(k) hereof, including fiduciary liability insurance using funds from the Liquidating Trust Reserve for the benefit of the Liquidating Trustee and the Members. The indemnification provided under this Section 8.2 shall survive the death, dissolution, resignation or removal, as may be applicable, of the Liquidating Trustee, the Liquidating Trust Oversight Committee, any Member or any other Liquidating Trust Indemnified Party and shall inure to the benefit of the Liquidating Trustee's, each Member's and each other Liquidating Trust Indemnified Party's respective heirs, successors and assigns.

(b) The foregoing indemnity in respect of any Liquidating Trust Indemnified Party shall survive the termination of such Liquidating Trust Indemnified Party from the capacity for which such party is indemnified. Termination or modification of this Agreement shall not limit or negatively affect any indemnification rights or obligations set forth herein.

(c) Any Liquidating Trust Indemnified Party may waive the benefits of indemnification under this Section 8.2, but only by an instrument in writing executed by such Liquidating Trust Indemnified Party.

(d) The rights to indemnification under this Section 8.2 are not exclusive of other rights which any Liquidating Trust Indemnified Party may otherwise have at law or in equity, including, without limitation, common law rights to indemnification or contribution. Nothing in this Section 8.2 will affect the rights or obligations of any Person (or the limitations on those rights or obligations) under any other agreement or instrument to which that Person is a party. Further, the Liquidating Trust hereby agrees: (i) that the Liquidating Trust is the indemnitor of first resort

(i.e., in the event any Liquidating Trust Indemnified Party has the right to receive indemnification from one or more third party, the Liquidating Trust's obligations to such Liquidating Trust Indemnified Party are primary); (ii) that the Liquidating Trust shall be required to pay the full amount of expenses (including attorneys' fees) actually incurred by such Liquidating Trust Indemnified Party in connection with any proceeding as to which the Liquidating Trust Indemnified Party is entitled to indemnification hereunder in advance of the final disposition of such proceeding from the Liquidating Trust Reserves; (iii) that the Liquidating Trust irrevocably waives, relinquishes and releases such third parties from any and all claims by the Liquidating Trust against such third parties for contribution, subrogation or any other recovery of any kind in respect thereof; and (iv) no Liquidating Trust Indemnified Party shall have the obligation to reduce, offset, allocate, pursue or apportion any indemnification advancement, contribution or insurance coverage among multiple parties owing indemnification obligations to such Liquidating Trust Indemnified Party prior to the Liquidating Trust's satisfaction of its indemnification obligations hereunder. For the avoidance of doubt, each Liquidating Trust Indemnified Party shall be entitled, subject to the terms hereof, to indemnification for any costs and attorneys' fees such Liquidating Trust Indemnified Party may incur in connection with enforcing any of its rights under this Article VIII.

8.3 Liquidating Trust Liabilities. All liabilities of the Liquidating Trust, including, without limitation, indemnity obligations under Section 8.2 of this Agreement and applicable law, will be liabilities of the Liquidating Trust as an Entity and will be paid or satisfied solely from the Liquidating Trust Reserve and paid on a priority basis, *provided, however,* that the Liquidating Trust may obtain liability insurance to satisfy its indemnity obligations under Section 8.2 and applicable law. No liability of the Liquidating Trust will be payable in whole or in part by any Liquidating Trust Beneficiary individually or in the Liquidating Trust Beneficiary's capacity as a Liquidating Trust Beneficiary, by the Liquidating Trustee individually or in the Liquidating Trustee's capacity as Liquidating Trustee, by any Member individually or in the Member's capacity as Member, or by any representative, member, partner, shareholder, director, officer, professional, employee, agent, affiliate or advisor of any Liquidating Trust Beneficiary, any Member, the Liquidating Trustee or their respective affiliates.

8.4 Limitation of Liability. None of the Liquidating Trust Indemnified Parties shall be liable for direct, indirect, monetary, punitive, exemplary, consequential, special or other damages for a breach of this Agreement, except to the extent his/her/its actions or omissions to act, as determined by a Final Order, are due to such Liquidating Trust Indemnified Party's own fraud or willful misconduct from and after the Effective Date and any of the foregoing damages are awarded pursuant to any such Final Order.

8.5 Burden of Proof. In making a determination with respect to entitlement to exculpation or indemnification hereunder, the court, Person or Entity making such determination shall presume that any Liquidating Trust Indemnified Party is entitled to exculpation and indemnification under this Agreement and any Person seeking to overcome such presumption shall have the burden of proof to overcome that presumption.

ARTICLE IX **TAX MATTERS**

9.1 Treatment of Liquidating Trust Assets Transfer. For all federal, state and local income tax purposes, all parties (including, without limitation, the Debtors, the Liquidating Trustee and the Liquidating Trust Beneficiaries) shall treat the transfer of the Liquidating Trust Assets to the Liquidating Trust for the benefit of the Liquidating Trust Beneficiaries, whether their Claims are Allowed on or after the Effective Date, including any amounts or other assets subsequently transferred to the Liquidating Trust (but only at such time as actually transferred) as (i) a transfer of the Liquidating Trust Assets (subject to any obligations relating to such Liquidating Trust Assets) directly to the Liquidating Trust Beneficiaries and, to the extent the Liquidating Trust Assets are allocable to Disputed Claims that are the responsibility of the Liquidating Trust to resolve, to the applicable Disputed Claims Reserve, followed by (ii) the transfer by the Liquidating Trust Beneficiaries to the Liquidating Trust of the Liquidating Trust Assets (other than the Liquidating Trust Assets allocable to the Disputed Claims Reserves) in exchange for Liquidating Trust Interests. Accordingly, the Liquidating Trust Beneficiaries shall be treated for U.S. federal income tax purposes as the grantors and owners of their respective share of the Liquidating Trust Assets (other than such Liquidating Trust Assets as are allocable to the Disputed Claims Reserves). The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9.2 Tax Treatment of Disputed Claims Reserves.

(a) Subject to contrary definitive guidance from the Internal Revenue Service or a court of competent jurisdiction (including the receipt by the Liquidating Trustee of a private letter ruling if the Liquidating Trustee so requests, or the receipt of an adverse determination by the Internal Revenue Service upon audit if not contested by the Liquidating Trustee), the Liquidating Trustee shall (A) timely elect to treat any Disputed Claims Reserve as a “disputed ownership fund” governed by Treasury Regulation section 1.468B-9 and (B) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes. All parties (including, without limitation and as applicable, the Debtors, Wind-Down Debtors, the Liquidating Trustee and the Liquidating Trust Beneficiaries) shall report for U.S. federal, state and local income tax purposes consistently with the foregoing election, if made.

(b) With respect to any Liquidating Trust Assets and any other income or gain of the Liquidating Trust allocable to Disputed Claims, the Liquidating Trustee shall cause the Liquidating Trust to pay any taxes imposed on the Liquidating Trust by any federal, state or local, or any non-U.S. Governmental Unit. The amount of such taxes paid by the Liquidating Trust with respect to a Disputed Claim (i) will reduce the amount distributed with respect to such Disputed Claim to the extent it becomes an Allowed Claim and (ii) to the extent such Disputed Claim does not become an Allowed Claim will reduce distributions ratably to all Holders in the same Class as such Disputed Claim; *provided, however*, that any taxes that reduce distributions pursuant to the foregoing clauses (i) and (ii) shall, for all purposes of this Agreement, be treated as amounts distributed to those Holders of Claims whose distributions are so reduced.

9.3 Tax Reporting.

(a) The “taxable year” of the Liquidating Trust shall be the “calendar year” as such terms are defined in section 441 of the IRC. The Liquidating Trustee shall file tax returns for the Liquidating Trust treating the Liquidating Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a) and in accordance with this Section 9.3 and Article XIX,C-D of the Plan. The Liquidating Trustee also will annually send to each Liquidating Trust Beneficiary a separate statement setting forth such holder’s share of items of income, gain, loss, deduction or credit (including the receipts and expenditures of the Liquidating Trust) as relevant for U.S. federal income tax purposes and will instruct all such Liquidating Trust Beneficiaries to use such information in preparing their U.S. federal income tax returns; *provided*, that if the Liquidating Trustee elects to make distributions through an intermediary, it shall provide such statement to such intermediaries for them to provide to such Liquidating Trust Beneficiaries. The Liquidating Trustee shall also file or provide (or cause to be filed or provided) any other statement, return or disclosure relating to the Liquidating Trust that is required by any Governmental Unit.

(b) Allocations of Liquidating Trust taxable income among the Liquidating Trust Beneficiaries (other than taxable income allocable to the Disputed Claims Reserves) shall be determined by reference to the manner in which an amount of Cash equal to such taxable income would be distributed (were such Cash permitted to be distributed at such time, and without regard to any restrictions on distributions set forth in the Plan or this Agreement) if, immediately prior to such deemed distribution, the Liquidating Trust had distributed all its assets (valued at their tax book value, and other than assets allocable to the Disputed Claims Reserves) to the Liquidating Trust Beneficiaries, adjusted for prior taxable income and loss and taking into account all prior and concurrent distributions from the Liquidating Trust. Similarly, taxable loss of the Liquidating Trust shall be allocated by reference to the manner in which an economic loss would be borne immediately after a hypothetical liquidating distribution of the remaining Liquidating Trust Assets. The tax book value of the Liquidating Trust Assets for purposes of this Section 9.3(b) shall equal their fair market value on the Effective Date, adjusted in accordance with tax accounting principles prescribed by the IRC, the applicable Treasury Regulations and other applicable administrative and judicial authorities and pronouncements.

(c) The Liquidating Trustee shall be responsible for payment, out of the Liquidating Trust Assets, of any taxes imposed on the Liquidating Trust or the Liquidating Trust Assets, including the Disputed Claims Reserves. In the event, and to the extent, any Cash retained on account of Disputed Claims in the Disputed Claims Reserve is insufficient to pay the portion of any such taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims, such taxes shall be (i) reimbursed from any subsequent Cash amounts retained on account of such Disputed Claims, or (ii) to the extent such Disputed Claims have subsequently been resolved, deducted from any amounts otherwise distributable by the Liquidating Trustee as a result of the resolution of such Disputed Claims.

9.4 Withholding of Taxes. (a) The Liquidating Trustee shall deduct and withhold and pay to the appropriate Governmental Unit all amounts required to be deducted or withheld pursuant to the IRC or any provision of any state, local or non-U.S. tax law with respect to any payment or distribution to the Liquidating Trust Beneficiaries. Notwithstanding the above, each holder of an Allowed Claim that is to receive a distribution under the Plan shall have the sole and exclusive

responsibility for the satisfaction and payment of any taxes imposed on such holder by any governmental authority, including income, withholding and other tax obligations, on account of such distribution. All such amounts withheld and paid to the appropriate Governmental Unit shall be treated as amounts distributed to such Liquidating Trust Beneficiaries for all purposes of this Agreement.

(b) The Liquidating Trustee shall be authorized to collect such tax information from the Liquidating Trust Beneficiaries (including, without limitation, social security numbers or other tax identification numbers) as it, in its sole discretion, deems necessary to effectuate the Plan, the Confirmation Order and this Agreement. As a condition to receive distributions under the Plan, all Liquidating Trust Beneficiaries may be required to identify themselves to the Liquidating Trustee and provide tax information and the specifics of their holdings, to the extent the Liquidating Trustee deems appropriate, including an IRS Form W-9 or, in the case of Liquidating Trust Beneficiaries that are not United States persons for federal income tax purposes, certification of foreign status on an applicable IRS Form W-8.

(c) The Liquidating Trustee may refuse to make a distribution to any Liquidating Trust Beneficiary that fails to furnish such information in a timely fashion, until such information is delivered; *provided, however*, that, upon the delivery of such information by a Liquidating Trust Beneficiary, the Liquidating Trustee shall make such distribution to which the Liquidating Trust Beneficiary is entitled, without interest; and, *provided, further*, that, if the Liquidating Trustee fails to withhold in respect of amounts received or distributable with respect to any such holder and the Liquidating Trustee is later held liable for the amount of such withholding, such holder shall reimburse the Liquidating Trustee for such liability. The identification requirements in Section 9.4(b) and this Section 9.4(c) may, in certain cases, extend to holders who hold their securities in street name. If a Liquidating Trust Beneficiary fails to comply with such a request for tax information within 180 days, the Liquidating Trustee may file a document with the Bankruptcy Court, or if the Chapter 11 Cases have been closed or dismissed, post a document on a website maintained by the Liquidating Trust, that will provide twenty-one (21) days' notice before such distribution may be deemed an unclaimed distribution and treated in accordance with Article X.F of the Plan.

(d) In the event that the Liquidating Trustee elects to make distributions through an intermediary, the party who would be the withholding agent with respect to distributions to the Liquidating Trust Beneficiary under U.S. federal income tax principles shall be responsible for withholding tax compliance with respect to any such distribution, based on instructions on the character of the income from the Liquidating Trustee.

9.5 Valuation. The valuation of the Liquidating Trust Assets prepared pursuant to Section 2.8 of this Agreement shall be used consistently by all parties (including, without limitation, the Liquidating Trust) for all federal income tax purposes. The Liquidating Trust also shall file (or cause to be filed) any other statements, returns or disclosures relating to the Liquidating Trust that are required by any governmental unit.

9.6 Expedited Determination of Taxes. The Liquidating Trustee may request an expedited determination of taxes of the Liquidating Trust under section 505(b) of the Bankruptcy

Code for all returns filed for, or on behalf of, the Liquidating Trust for all taxable periods through the termination of the Liquidating Trust.

9.7 Foreign Tax Matters. The Liquidating Trustee shall duly comply on a timely basis with all obligations, and satisfy all liabilities, imposed on the Liquidating Trustee or the Liquidating Trust under non-United States law relating to taxes. The Liquidating Trustee, or any other legal representative of the Liquidating Trust, shall not distribute the Liquidating Trust Assets or proceeds thereof without having first obtained all certificates required to have been obtained under applicable non-United States law relating to taxes.

ARTICLE X

TERMINATION OF LIQUIDATING TRUST

10.1 Termination. The Liquidating Trustee, the Liquidating Trust Oversight Committee and the Liquidating Trust shall be discharged or dissolved, as the case may be, at such time as (a) the Liquidating Trustee has liquidated or abandoned all Liquidating Trust Assets, (b) the Liquidating Trustee determines, with the approval of the Liquidating Trust Oversight Committee, that the pursuit of Preserved Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Preserved Estate Claims, (c) all objections to the Disputed Claims have been resolved, (d) all Distributions required to be made by the Liquidating Trust under the Plan have been made and (e) the Transition Period (as defined in the Transition Services Agreement) has expired; *provided, however*, that in no event shall the Liquidating Trust be dissolved later than five years from the Effective Date unless the Bankruptcy Court, upon motion within the six-month period prior to the fifth anniversary (or within the six-month period prior to the end of any extension period), determines that a fixed period extension (not to exceed two years, including any prior extensions, without a favorable private letter ruling from the Internal Revenue Service or a “should” level opinion of counsel satisfactory to the Liquidating Trustee that any further extension would not adversely affect the status of the Liquidating Trust as a liquidating trust for U.S. federal income tax purposes) is necessary to facilitate or complete the recovery and liquidation of the Liquidating Trust Assets; *provided further, however*, that if the Chapter 11 Cases have been closed or dismissed before the date that is five years from the Effective Date, then no Bankruptcy Court approval shall be required and the only requirement for an extension is a private letter ruling from the Internal Revenue Service or an opinion of counsel satisfactory to the Liquidating Trustee. If at any time the Liquidating Trustee determines, in reliance upon the advice of the Liquidating Trust Professionals (or any one or more of them), that the expense of administering the Liquidating Trust so as to make a final distribution to the Liquidating Trust Beneficiaries is likely to exceed the value of the Liquidating Trust Assets then remaining in the Liquidating Trust and provided that clause (e) above has been satisfied, the Liquidating Trustee may apply to the Bankruptcy Court for authority to (i) reserve any amount necessary to dissolve the Liquidating Trust, (ii) donate any balance to a charitable organization (A) described in section 501(c)(3) of the IRC, (B) exempt from U.S. federal income tax under section 501(a) of the IRC, (C) not a “private foundation,” as defined in section 509(a) of the IRC and (D) that is unrelated to the Debtors, the Liquidating Trust, the Liquidating Trustee, the Members, any Liquidating Trust Professionals and any insider of any of the foregoing and (iii) dissolve the Liquidating Trust (all of the foregoing actions in clauses (i) through (iii) being referred to as the “Dissolution Process”). Such date upon which the Liquidating Trust shall finally be dissolved shall be referred to herein as the “Termination Date.”

10.2 Continuance of Liquidating Trust for Winding Up. During the Dissolution Process, the Liquidating Trustee, solely for the purpose of liquidating and winding up the affairs of the Liquidating Trust, shall continue to act as such until its duties have been fully performed. During the Dissolution Process, the Liquidating Trustee shall continue to be entitled to receive the Liquidating Trustee Fees called for by Section 6.2(a) hereof and subject to Section 2.4 hereof. Upon distribution of all the Liquidating Trust Assets, the Liquidating Trustee shall retain the books, records and files that shall have been delivered or created in connection with the administration of the Liquidating Trust to the extent not otherwise required to be handled by the Liquidating Trustee in accordance with Section 2.2 hereof. At the Liquidating Trustee's discretion, but subject in all cases to Section 2.2 hereof, all of such records and documents may be destroyed no earlier than two (2) years following the Termination Date as the Liquidating Trustee deems appropriate (unless such records and documents are necessary to fulfill the Liquidating Trustee's obligations hereunder). Except as otherwise specifically provided herein, upon the Termination Date, the Liquidating Trustee shall be deemed discharged and have no further duties or obligations hereunder, except to account to the Liquidating Trust Beneficiaries as provided herein, the Liquidating Trust Interests shall be cancelled, and the Liquidating Trust will be deemed to have dissolved.

ARTICLE XI

AMENDMENT AND WAIVER

11.1 Subject to Sections 11.2 and 11.3 of this Agreement, the Liquidating Trustee may amend, supplement or waive any provision of this Agreement. Technical amendments to this Agreement may be made, as necessary to clarify this Agreement or enable the Liquidating Trustee to effectuate the terms of this Agreement, by the Liquidating Trustee.

11.2 Notwithstanding Section 11.1 of this Agreement, no amendment, supplement or waiver of or to this Agreement shall (a) adversely affect the interests, rights or treatment of the Liquidating Trust Beneficiaries, (b) adversely affect the payments and/or distributions to be made under the Plan, the Confirmation Order or this Agreement, (c) amend Sections 2.1(h) or 6.2(b) hereof, (d) be inconsistent with the Sale Order, the Plan or the Confirmation Order, (e) adversely affect the U.S. federal income tax status of the Liquidating Trust as a "liquidating trust" or (f) be inconsistent with the purpose and intention of the Liquidating Trust to liquidate in an expeditious but orderly manner the Liquidating Trust Assets in accordance with Treasury Regulation section 301.7701-4(d).

11.3 No failure by the Liquidating Trust, the Liquidating Trustee, or the Liquidating Trust Oversight Committee 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.

ARTICLE XII

MISCELLANEOUS PROVISIONS

12.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York (without reference to principles of conflicts of law that would require or permit application of the law of another jurisdiction).

12.2 Jurisdiction. Subject to the proviso below and so long as the Chapter 11 Cases have not been closed or dismissed, the Parties agree that the Bankruptcy Court shall have jurisdiction over the Liquidating Trust and the Liquidating Trustee, including, without limitation, the administration and activities of the Liquidating Trust and the Liquidating Trustee to the fullest extent permitted by law; *provided, however*, that notwithstanding the foregoing, the Liquidating Trustee shall have power and authority to bring any action in any court of competent jurisdiction to prosecute any of the Preserved Estate Claims and pursue any recoveries in respect of any Preserved Estate Claims. Each Party to this Agreement hereby irrevocably consents to the jurisdiction of the Bankruptcy Court in any action to enforce, interpret or construe any provision of this Agreement or of any other agreement or document delivered in connection with this Agreement, and also hereby irrevocably waives any defense of improper venue, *forum non conveniens*, or lack of personal jurisdiction to any such action brought in the Bankruptcy Court. Until the closing or dismissal of the Chapter 11 Cases, any action to enforce, interpret, or construe any provision of this Agreement will be brought only in the Bankruptcy Court; *provided, however*, that in the event that the Bankruptcy Court does not have jurisdiction pursuant to the foregoing provision, including after the closing or dismissal of the Chapter 11 Cases, any action to enforce, interpret, or construe any provision of this Agreement will be brought in either a state or federal court of competent jurisdiction in the borough of Manhattan in the state of New York (without prejudice to the right of any Party to seek to reopen the Chapter 11 Cases to hear matters with respect to this Agreement). Each Party hereby irrevocably consents to the service by certified or registered mail, return receipt requested, of any process in any action to enforce, interpret, or construe any provision of this Agreement.

12.3 Severability. In the event any provision of this Agreement or the application thereof to any person or circumstances shall be determined by Final Order to be invalid or unenforceable to any extent, the remainder of this Agreement or the application of such provision to persons or circumstances or in jurisdictions other than those as to or in which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

12.4 Notices. Any notice or other communication required or permitted to be made under this Agreement shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if delivered personally or by facsimile or electronic communication, sent by nationally recognized overnight delivery service or mailed by first-class mail. The date of receipt of such notice shall be the earliest of (a) the date of actual receipt by the receiving party, (b) the date of personal delivery (or refusal upon presentation for delivery), (c) the date of the transmission confirmation or (d) three Business Days after service by first-class mail, to the receiving party's below address(es):

- (i) if to the Liquidating Trustee, to:

Redan Advisors LLC
Attn: Patrick J. Bartels, Jr.
5330 Carmel Crest Lane
Charlotte, NC 28226
Telephone: (917) 680-4348
Email: patrick@redanadvisors.com

With a copy to:

Jackson Walker LLP
Attn: Kristhy Peguero
1401 McKinney Street, Suite 1900
Houston, Texas 77010
Telephone: (713) 752-4200
Email: kpeguero@jw.com

and

Opportune LLP
Attn: Glenn Sniezek
711 Louisiana Street, Suite 3100
Houston, Texas 77002
Telephone: (713) 250-3000
Email: gsniezek@dacarba.com

(ii) if to any Liquidating Trust Beneficiary, to the last known address of such Liquidating Trust Beneficiary according to the Liquidating Trustee's records;

(iii) if to a Member of the Liquidating Trust Oversight Committee, to the applicable address(es) of such person according to the Liquidating Trustee's records.

12.5 Headings. The headings contained in this Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Agreement or of any term or provision hereof.

12.6 Plan and Confirmation Order. The principal purpose of this Agreement is to aid in the implementation of the Plan and, therefore, this Agreement incorporates and is subject to the provisions of the Plan and the Confirmation Order. In the event of any direct conflict or inconsistency between any provision of this Agreement, on the one hand, and the provisions of the Plan, on the other hand, the provisions of this Agreement shall govern and control. In the event of any direct conflict or inconsistency between any provision in this Agreement, on the one hand, and the provisions of the Confirmation Order, on the other hand, the provisions of the Confirmation Order shall govern and control.

12.7 Entire Agreement. This Agreement and the exhibits attached hereto, together with the Plan and the Confirmation Order, contain the entire agreement between the parties and supersede all prior and contemporaneous agreements or understandings between the parties with respect to the subject matter hereof.

12.8 Cumulative Rights and Remedies. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights under law or in equity, subject to any limitations provided under the Plan and the Confirmation Order.

12.9 Meanings of Other Terms. Except where the context otherwise requires, words importing the masculine gender include the feminine and the neuter, if appropriate, words importing the singular number shall include the plural number and vice versa and words importing persons shall include firms, associations, corporations and other entities. All references herein to Articles, Sections and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code, the Bankruptcy Rules or other law, statute or regulation, refer to the corresponding Articles, Sections and other subdivisions of this Agreement and the words “herein,” “hereof” or “herewith” and words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision of this Agreement. The term “including” shall mean “including, without limitation.”

12.10 Successors in Interest. This Agreement shall be binding upon and inure to the benefit of any successor in interest to any one or more of the Debtors, including, but not limited to, the Wind-Down Debtors (as limited by the Plan and the Confirmation Order), that shall, upon becoming any such successor be subject to and obligated to comply with the terms and conditions hereof, including, specifically, the terms of Section 2.2 hereto. The obligations of the Liquidating Trust and Liquidating Trustee to any one or more of the Debtors pursuant to this Agreement shall also be obligations of the Liquidating Trust and Liquidating Trustee to any such successor in interest, including, but not limited to, the Wind-Down Debtors, including their obligations under Section 2.2 hereto. For the avoidance of doubt, in the event that any Person (including, as applicable, the Wind-Down Debtors) becomes a successor in interest to a Debtor, the claims, privileges, books and records and directors, officers, employees, agents and professionals of such Person, to the extent not otherwise subject to the provisions and requirements of this Agreement (including Section 2.2) prior to such Person becoming a successor in interest to the applicable Debtor, shall not become subject to the provisions and requirements of this Agreement (including Section 2.2) solely because such Person becomes a successor in interest to the applicable Debtor.

12.11 Limitations. Except as otherwise specifically provided in this Agreement, the Plan or the Confirmation Order, nothing herein is intended or shall be construed to confer upon or to give any person other than the parties hereto any rights or remedies under or by reason of this Agreement. The parties hereby acknowledge and agree that nothing herein is intended to, does, or shall be construed to prejudice or harm in any way the rights, remedies or treatment (including any releases, exculpation, indemnification, or otherwise) of any Released Party or Exculpated Party, solely in their capacity as a Released Party or Exculpated Party, under the Plan.

12.12 Further Assurances. From and after the Effective Date, the parties hereto covenant and agree to execute and deliver all such documents and notices and to take all such further actions as may reasonably be required from time to time to carry out the intent and purposes of this Agreement, and to consummate the transactions contemplated hereby.

12.13 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but such counterparts shall together constitute but one and the same instrument. A facsimile or electronic mail signature of any party shall be considered to have the same binding legal effect as an original signature.

12.14 Authority. Each Party hereby represents and warrants to the other Parties that: (i) such Party has full corporate power and authority to enter into this Agreement, to carry out its

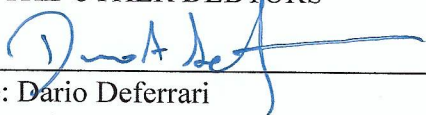
obligations hereunder and to consummate the transactions contemplated hereby; (ii) the execution and delivery by such Party of this Agreement and the performance by such Party of its obligations hereunder have been duly authorized by all requisite corporate action on the part of such Party; (iii) this Agreement has been duly executed and delivered by such Party, and (assuming due authorization, execution and delivery by the other Parties hereto) this Agreement constitutes a legal, valid and binding obligation of such Party enforceable against such Party in accordance with its terms.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement or caused this Agreement to be duly executed by their respective officers, representatives or agents, effective as of the date first above written.

REDAN ADVISORS LLC, AS TRUSTEE OF
THE STRIKE LIQUIDATING TRUST

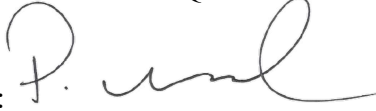
By: _____
Name: Patrick J. Bartels, Jr.
Title: Managing Member

STRIKE, LLC, ON BEHALF OF ITSELF
AND THE OTHER DEBTORS

By:  _____
Name: Dario Deferrari
Title: Senior Vice President and Treasurer

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement or caused this Agreement to be duly executed by their respective officers, representatives or agents, effective as of the date first above written.

REDAN ADVISORS LLC, AS TRUSTEE OF
THE STRIKE LIQUIDATING TRUST

By:  _____

Name: Patrick J. Bartels, Jr.

Title: Managing Member

STRIKE, LLC, ON BEHALF OF ITSELF
AND THE OTHER DEBTORS

By: _____

Name: Dario Deferrari

Title: Senior Vice President and Treasurer

EXHIBIT A

Initial Members of the Liquidating Trust Oversight Committee

Pursuant to Section 2.1(c) of this Agreement, there shall be no Liquidating Trust Oversight Committee appointed as of the Effective Date. A Liquidating Trust Oversight Committee may be established at any time during the term of this Agreement in accordance with Section 2.1(c) and 7.1 of this Agreement.

EXHIBIT B

Compensation of Liquidating Trustee

The Liquidating Trustee shall be entitled to compensation of \$10,000 per month plus 3% of Net Litigation Recoveries.

“Net Litigation Recoveries” means gross proceeds from Preserved Estate Claims less out of pocket expenses (without deducting contingency counsel fees or fees and expense relating to administration of the Liquidating Trust).