

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION**

In re:)
)
)
UNITED FURNITURE INDUSTRIES, INC., *et al.*¹) Case No. 22-13422-SDM
) Chapter 11
Debtors.) Jointly Administered
)

PLAN OF LIQUIDATION

This *Plan of Liquidation* is proposed and submitted on November 22, 2023, by Derek Henderson, duly appointed Chapter 11 trustee (“**Trustee**”) for each of the above-captioned debtors (each generally a “**Debtor**” and, collectively, the “**Debtors**”).

INTRODUCTION

The Trustee proposes this plan of liquidation under Chapter 11 of the Bankruptcy Code (the “**Plan**”). ALL CREDITORS ARE ENCOURAGED TO CONSULT THE ACCOMPANYING DISCLOSURE STATEMENT APPROVED BY THE BANKRUPTCY COURT BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. NO OTHER SOLICITATION MATERIALS, OTHER THAN THE DISCLOSURE STATEMENT, HAVE BEEN AUTHORIZED BY THE BANKRUPTCY COURT FOR USE IN SOLICITING ACCEPTANCES OR REJECTIONS OF THIS PLAN.

**ARTICLE 1.
Definitions**

Unless the context requires otherwise, for purposes of this Plan and any subsequent amendments or modifications hereof, the following words and phrases shall have the meaning set forth below when used in initially-capitalized form, and any term used herein that is defined in the Bankruptcy Code, but not otherwise defined herein, shall have the meaning set forth in the Bankruptcy Code:

1.1. “**Administrative Claim**” means any indebtedness or obligations incurred or assumed by the Debtors in connection with administration of these estates or performance of this Plan, any fees and expenses of Professionals that are or become an Allowed Claim under § 503(b) of the Bankruptcy Code, the fees payable to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6), and any other Allowed Claims

¹ The Debtors in these Chapter 11 cases, and the last four digits of each Debtor’s federal tax identification number, are as follows: United Furniture Industries, Inc. (2576); United Furniture Industries NC, LLC.(9015); United Furniture Industries CA, Inc. (9966); FW Acquisition, LLC (2133); Furniture Wood, Inc. (9186);United Wood Products, Inc. (1061); Associated Bunk Bed Company (0569); UFI Royal Development, LLC (8143); UFI Exporter, Inc. (6518); UFI Transportation, LLC (9471); and LS Logistics, LLC (7004).

for actual, necessary costs and expenses incurred after the Filing Date for preserving the estate and operating the businesses of the Debtors asserted under §§ 503(b) and 507(a)(1).

1.2. **“Administrative Bar Date”** is November 30, 2023, established by Order of the Bankruptcy Court [Dkt #826] as the deadline for assertion of Administrative Claims against the estates other than Professional Compensation Claims or WARN Act and Related Employment Claims.

1.3. **“Affiliated Debtors”** means all Debtors other than UFI.

1.4. **“Allowed Claim”** means a claim (a) in respect of which a proof of claim has been filed with the Court within the applicable period of limitation fixed by Rule 3003 of the Federal Rules of Bankruptcy Procedure, or filed thereafter with the Court pursuant to a final order, or (b) scheduled in the list of creditors prepared and filed with the Court pursuant to Rule 1007(b) of the Federal Rules of Bankruptcy Procedure and not listed as disputed, contingent, or unliquidated as to amount, and in either case, as to which no written objection to the allowance thereof has been filed within any applicable period of limitation fixed by Rule 3007 of the Federal Rules of Bankruptcy Procedure, or an order of the Court, or as to which any such objection has been determined by an order or judgment which is no longer subject to appeal and as to which no appeal is pending. An allowed claim shall not include unmatured or post-petition interest on the principal amount of such claim, except as specifically provided herein.

1.5. **“Ballot”** means with respect to any class of Claims that are Impaired and entitled to vote under this Plan, the forms which will be distributed to holders of Claims to be used for showing acceptance or rejection of this Plan.

1.6. **“Case”** or **“Cases”** means, as applicable, the chapter 11 case of each Debtor or the jointly administered chapter 11 cases of the Debtors, collectively, currently pending in the Northern District of Mississippi.

1.7. **“Cash”** is lawful currency of the United States of America.

1.8. **“Causes of Action”** means any and all actions, causes of action, controversies, liabilities, obligations, rights, suits, damages, debts, dues, sums of money, accounts, judgments, claims and demands whatsoever of any of the Trustee or the Debtors, whether known or unknown, reduced to judgment, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, secured or unsecured, assertable directly or derivatively, existing or hereafter arising, in law, equity, or otherwise, including all Causes of Action and rights to recover money or property under Chapter 5 of the Bankruptcy Code.

1.9. **“Claim”** shall have the meaning set forth in Bankruptcy Code § 101(5) with regard to any claim asserted against any of the Debtors.

1.10. **“Claimant”** is any holder of a Claim against any of the Debtors.

1.11. **“Claim Bar Date”** is the deadline date by which a Proof of Claim was required to be filed with the clerk of the Bankruptcy Court, said deadline being May 30, 2023, for all Creditors except a Governmental Unit, and July 26, 2023, for all Governmental Units.

1.12. **“Claim Objection Deadline”** is the deadline date by which objections to Claims, including Administrative Claims, shall be filed, said deadline being prior to the date of entry of a Final Decree and the closing of the Cases.

1.13. **“Code”** or **“Bankruptcy Code”** means Title 11 of the United States Code, 11 U.S.C. § 101, et seq., and any amendments thereto.

1.14. **“Collateral”** means any assets or property of the Debtors that is subject to a Lien securing a Secured Claim.

1.15. **“Committee”** is the Official Committee of Unsecured Creditors appointed in the Case by the U.S. Trustee on April 4, 2023 [Dkt #399], as originally constituted or as reconstituted thereafter.

1.16. **“Confirmation”** shall mean the confirmation and approval of the Plan by the Bankruptcy Court in accordance with § 1129 of the Bankruptcy Code after notice and a hearing is held in accordance with Bankruptcy Code § 1128 to consider confirmation of the Plan.

1.17. **“Confirmation Order”** means the order entered by the Court confirming the Plan in accordance with the provisions of Chapter 11 of the Code, whether or not such order shall have become a Final Order.

1.18. **“Court”** or **“Bankruptcy Court”** means the United States Bankruptcy Court for the Northern District of Mississippi in which the Debtors’ Cases are pending, and any court having competent jurisdiction to review its orders of or to hear appeals from its decisions.

1.19. **“Debtor”** or **“Debtors”** shall have the meaning set forth in the preamble of this Plan, above.

1.20. **“Disallowed”** means any Claim to the extent that it is not yet an Allowed Claim, whether in whole or in part.

1.21. **“Disclosure Statement”** is the disclosure statement approved by the Court as containing adequate information concerning the Plan, in accordance with Bankruptcy Code § 1125.

1.22. **“Disputed”** with respect to any Claim or Interest is one (i) to which an objection is timely filed, or which is otherwise disputed, until such objection is resolved by Final Order, or (ii) which is listed as disputed, contingent or unliquidated on the schedules filed by the relevant Debtor in accordance with Bankruptcy Rule 1007.

1.23. **“Effective Date”** of the Plan means the date after the entry of the Confirmation Order confirming this Plan that the conditions to the effectiveness of the Plan have been satisfied or waived.

1.24. **“Executory Contract”** means any executory contract of any of the Debtors as such term is used in § 365 of the Bankruptcy Code.

1.25. **“Final Compensation Applications”** means requests for Allowance and payment of Administrative Claims asserted by Professionals seeking compensation or reimbursement of expenses from the estates and which shall also include requests for Trustee compensation and reimbursement of expenses under § 326 of the Bankruptcy Code.

1.26. **“Final Order”** shall mean an order or judgment of the Court as to which the time to modify, amend, or appeal, petition for certiorari, or seek reargument or rehearing has expired and as to which no modification, amendment, appeal, reargument, certiorari petition, or rehearing is pending, or if such action has been sought, the order of the Court has been affirmed by the highest court to which the order was appealed or from which the reargument or rehearing was sought, or certiorari has been denied,

or the appeal is dismissed or rendered moot, and the time to take any further appeal or to seek certiorari or further reargument or rehearing has expired.

1.27. **“Impaired”** means, with regard to any Class of Claims or Interests, that the rights of the Claimants in such Class are deemed impaired under § 1124 of the Bankruptcy Code.

1.28. **“Insurance Coverage”** means any insurance coverage under any Insurance Policy which is available for the payment of liability, damages, fees or expenses arising from or related to Tort Claims.

1.29. **“Insurance Policy”** means any insurance policy in effect at any time on or before the Effective Date (and as such policy may be continued following the Effective Date) naming any of the Debtors (or any officer, director, employee, agent or other person presently or previously affiliated with any of the Debtors) as an insured, or otherwise affording any such person insurance coverage, upon which any Claim has been or may be made with respect to any Tort Claim.

1.30. **“Interest”** is the legal, equitable and contractual rights of the owner or holder of an equity interest in any of the Debtor entities.

1.31. **“Involuntary Petition”** is the involuntary petition for relief under Chapter 7 of the Code which was filed against UFI on December 30, 2022.

1.32. **“Lien”** is any lien, security interest, encumbrance, charge against or other interest in property or assets of any of the Debtors which secures payment of a Claim or performance of an obligation of any of the Debtors.

1.33. **“Liquidating Trust”** is the trust formed pursuant to the Plan and to be administered pursuant to the Trust Agreement.

1.34. **“Liquidating Trustee”** means Derek Henderson, in his capacity as trustee of the Liquidating Trust.

1.35. **“Net Cash Proceeds”** or **“Net Cash Available”** means the Cash remaining after all expenses have been deducted from Cash proceeds or available Cash, and after all authorized reserves, setoffs, recoupments, holdbacks or escrows have been applied.

1.36. **“Net Trust Proceeds”** means the Net Cash Available in the Liquidating Trust after satisfaction of Trust Expenses and after funding the Trust Expense Reserve.

1.37. **“Order for Relief”** means the order entered January 27, 2023 [Dkt #106] converting the Involuntary Petition against UFI to a voluntary petition under Chapter 11 and also directing the U.S. Trustee to appoint a chapter 11 trustee.

1.38. **“Petition Date”** means, as to UFI, December 30, 2022, and as to all Affiliated Debtors, January 31, 2023.

1.39. **“Plan”** shall mean this Plan, all addenda, exhibits, schedules, releases and other attachments, and any amendments, modifications, or alterations thereof.

1.40. **“Priority Claim”** shall mean an Allowed Unsecured Claim entitled to priority under §§ 507(a)(3), 507(a)(4), 507(a)(5), 507(a)(6), and 507(a)(7) of the Code and which is not a Priority Tax Claim.

1.41. **“Priority Tax Claim”** means any Claim, or portion thereof, entitled to priority pursuant to § 507(a)(8) of the Bankruptcy Code to the extent it becomes an Allowed Claim; *provided, however*, no Priority Tax Claim shall be entitled to receive any payment on account of any penalty arising with respect to or in connection therewith, and any such Claim or demand for any penalty shall be classified and treated as an Unsecured Claim hereunder.

1.42. **“Professionals”** means the professionals retained by the Trustee or the Committee, the retention of which has been approved by the Court, and any other professionals authorized to receive compensation or reimbursement of expenses from the estates by Final Order of the Court.

1.43. **“pro rata”** shall mean in the same proportion that the amount of any Allowed Claim or Interest in a class bears to the aggregate amount of all Claims or Interests in such class, including in such aggregate amount both the Allowed Claims and any then unresolved Disputed Claims in such class as of the date of any distribution payment pursuant to this Plan.

1.44. **“Rejection Claim”** is an Unsecured Claim asserted under § 502(g) of the Bankruptcy Code resulting from the rejection of any Executory Contract or Unexpired Lease in accordance with § 365 of the Bankruptcy Code.

1.45. **“Secured Claim”** shall mean an allowed claim which is secured by a Lien, security interest or other charge against or interest in property in which any Debtor has an interest, or which is subject to setoff under § 553 of the Code, to the extent of the value of the interest of such Claimant’s interest in property of a Debtor as determined in accordance with § 506(a) of the Code.

1.46. **“Surcharge Recoveries”** means all costs incurred or accrued by the Trustee or Liquidating Trustee, as applicable, associated with protection, preservation, collection, or disposition of Collateral securing an Allowed Secured Claim recoverable by the Trustee or Liquidating Trustee from the Collateral in accordance with Bankruptcy Code § 506(c).

1.47. **“Surcharge Settlement Agreement”** is that certain Settlement Agreement [Dkt #799-1] between the Trustee and Wells Fargo resolving the amounts and methodology for assertion and payment of amounts claimed by the Trustee as expenses surchargeable against property securing the Secured Claim of Wells Fargo under § 506(c) of the Bankruptcy Code.

1.48. **“Tort Claim”** is a Claim against any of the Debtors arising from a private or civil wrong or injury, other than breach of contract.

1.49. **“Treasury Regulation”** means Title 26 of the Code of Federal Regulations, 26 C.F.R. § 1.0-1, *et seq.*, as now in effect or hereafter amended.

1.50. **“Trust Agreement”** means agreement effecting formation and governing administration of the Liquidating Trust in form and substance substantially similar to that attached as Exhibit “A” hereto.

1.51. **“Trust Assets”** means all assets and property in which the Trustee or any of the Debtors’ estates holds or retains any interest as of the Effective Date and all rights and privileges of any kind, whether tangible and intangible, movable or immovable, choate or inchoate, and inclusive of all Causes of Action, which shall be transferred on the Effective Date to the Liquidating Trust under Section 6.1 of the Plan.

1.52. **“Trust Expense Reserve”** means that amount of Cash determined by the Liquidating Trustee, in his sole discretion at any given time and from time to time, to be necessary or advisable to reserve for payment of future Trust Expenses anticipated to be incurred by the Liquidating Trust.

1.53. **“Trust Expenses”** are any and all reasonable or necessary expenses of managing, operating, disposing of or preserving the Liquidating Trust and/or Trust Assets, including but not limited to the compensation and expenses incurred by the Liquidating Trustee and Professionals employed by the Liquidating Trustee, and any other costs, expenses, charges associated with administration and maintenance of the Liquidating Trust and/or Trust Assets.

1.54. **“UFI”** means United Furniture Industries, Inc.

1.55. **“Unexpired Lease”** means any unexpired lease of any of the Debtors as such term is used in § 365 of the Bankruptcy Code.

1.56. **“Unimpaired”** means, as to any Class of Claims or Interests, that the rights of the Claimants in such Class are not Impaired.

1.57. **“Unsecured Claim”** shall mean any allowed claim which arises under any Executory Contract or Lease which has been rejected, any deficiency Claim, any Claim of a general trade creditor, any Claim for unpaid wages or benefits (including Claims for vacation, sick and holiday pay) to the extent not entitled to priority and any other obligation, liability or Claim of any kind or nature held against the Debtor which was incurred on or before the Petition Date; provided, however, that an Unsecured Claim shall not include any Secured Claim, Administrative Expense, Priority Claim or Tax Claim.

1.58. **“Voluntary Petition Date”** is January 31, 2023, the date on which voluntary petitions were filed for each of the Affiliated Debtors.

1.59. **“WARN Act and Related Employment Claims”** means the Claims asserted by former employees of the Debtors under the Worker Adjustment and Retraining Notification (“WARN”) Act, 28 USC § 2101, *et. seq.*, and/or under the state laws of California, Mississippi and North Carolina, seeking wages, benefits and/or other forms of compensation allegedly due as a result of the Debtors’ shut-down on or about November 21, 2022. The WARN Act and Related Employment Claims are Disputed Claims to be resolved in the WARN Class Action.

1.60. **“WARN Class Action”** means those certain consolidated adversary proceedings pending as a class action under Adversary Proceeding No. 23-01005 styled *Neal, et al., v. United Furniture Industries, Inc., et al.*, comprised of a proposed WARN Act class and proposed sub-classes for the Related Employment Claims arising under state law.

1.61. **“Wells Fargo”** is Wells Fargo Bank, N.A.

1.62. **“Wells Fargo Secured Claims”** means the portions of Claims asserted by Wells Fargo as evidenced by Claim Nos. 1163, 1164, 1165, 1166, 1170, 1171, 1173, 1174, 1176, 1177, and 1186 filed in the Bankruptcy Case which are Allowed Secured Claims under § 506(b) of the Bankruptcy Code to the extent of the value of any Collateral securing said Claims; *provided, however*, that payments made under the Plan on account of the Wells Fargo Secured Claims remain subject to the terms and conditions of the Surcharge Settlement Agreement.

ARTICLE 2.
Plan Summary

The Plan is a plan of liquidation to be implemented by transferring all remaining assets and properties of the estates to the Liquidating Trust to be administered by the Liquidating Trustee. All Debtor entities shall be substantively consolidated for all purposes relating to consideration, approval and implementation of the Plan, and all Debtors shall have their combined assets and property administered and distributed collectively. The holders of Claims against any Debtor shall be deemed to hold a Claim against the single, substantively consolidated estate. Holders of Claims and Interests will vote on the Plan according to the treatment of the Claims and Interests asserted against the consolidated estate. The Plan provides for the continued liquidation and administration of the Debtors' estates by the Liquidating Trustee pursuant to the Liquidating Trust, including resolving objections to Claims, pursuing Causes of Action and monetizing all other assets from and after the Effective Date. All Interests in the Debtors will be cancelled, and the holders of such Interests will not receive distribution under the Plan.

ARTICLE 3.
Administrative Claims

3.1. *Allowance and Payment.*

3.1.1. Unless otherwise agreed, each holder of an Allowed Administrative Claim shall be paid in Cash equal to the amount of the holder's Allowed Administrative Claim on the later of (i) the Effective Date, (ii) the date funds become available to pay such Allowed Administrative Claim or (iii) as soon as practicable after such Administrative Claim becomes payable pursuant to (a) any agreement between Liquidating Trust, as applicable, and the holder of such Administrative Claim or (b) by Final Order. In the event an Allowed Administrative Claim is not paid in full on or before the Effective Date, the Liquidating Trust shall satisfy the remaining balance in accordance with the distribution provisions contained in Section 6.4 of the Plan. Distributions to holders of Allowed Administrative Claims shall be made from Net Cash Available or Net Trust Proceeds as and when applicable under the Plan.

3.1.2. All requests for payment of previously unpaid Administrative Claims shall have been made by the Administrative Bar Date, and the failure to do so shall render such unpaid Administrative Claims shall be waived, discharged and forever barred. All such requests are subject to review and approval by the Bankruptcy Court after notice and a hearing.

3.1.3. All fees payable to the United States Trustee pursuant to 28 U.S.C. § 1930 that become due prior to the Effective Date shall be paid by the Trustee on or as soon as practicable after the Effective Date, and all such fees which become due thereafter, if any, shall be paid by the Trustee or Liquidating Trustee, as applicable, when due.

3.2. *Final Applications for Compensation by Officers and Professionals.* All Final Compensation Applications shall be filed with the Court within thirty (30) days after the Effective Date, unless another date is established by Order of the Court. Any such Claims for which an application is not timely filed shall be deemed waived, discharged and forever barred.

ARTICLE 4.
Classification Of Claims and Interests

4.1. *Unclassified Claims.* Administrative Claims are not classified pursuant to § 1123(a) of the Bankruptcy Code and are treated separately as provided in § 1129(a) of the Bankruptcy Code.

4.2. *Classified Claims and Interests.* Claims against and Interests in the Debtors are classified in the following classes:

- 4.2.1. Class 1A: Priority Claims
- 4.2.2. Class 1B: Priority Tax Claims
- 4.2.3. Class 2: Wells Fargo Secured Claim
- 4.2.4. Class 3: Other Secured Claims
- 4.2.5. Class 4: WARN Act and Related Employment Claims
- 4.2.6. Class 5: Tort Claims
- 4.2.7. Class 6: Unsecured Claims
- 4.2.8. Class 7: Interests

ARTICLE 5.

Treatment and Voting Rights of Classified Claims and Interests

5.1. *Treatment of Claims and Interests*

5.1.1. Class 1A: Priority Claims

a. **Treatment.** Each holder of an Allowed Class 1A Priority Claim will receive as and when provided for in this Plan its *pro rata* share of (a) Cash on hand on the Effective Date and (b) Cash realized from the liquidation and collection of remaining assets and property of the Debtors by the Liquidating Trustee after the Effective Date, and such distribution(s) shall be in full satisfaction of said Allowed Class 1A Claims.

b. **Impairment.** Class 1A is Impaired and entitled to vote on the Plan.

5.1.2. Class 1B: Priority Tax Claims

a. **Treatment.** Each holder of an Allowed Class 1B Priority Tax Claim will receive as and when provided for in this Plan, after payment of in full of all Class 1A Priority Claims, its *pro rata* share of (a) Cash on hand on the Effective Date and (b) Cash realized from the liquidation and collection of remaining assets and property of the Debtors by the Liquidating Trustee after the Effective Date, and such distribution(s) shall be in full satisfaction of said Allowed Class 1B Claims.

b. **Impairment.** Class 1B is Impaired and entitled to vote on the Plan.

5.1.3. Class 2: Wells Fargo Secured Claims

a. **Treatment.** The Class 2 Claims consist of the Wells Fargo Secured Claims and will be satisfied through one or more distributions in accordance with Section 6.4 of the Plan. The Trustee and Liquidating Trustee, as applicable, will (i) liquidate and collect all remaining Collateral securing the Claims of Wells Fargo and, subject to the Surcharge Settlement Agreement and any other applicable provisions of the Plan, remit all Net Cash Proceeds to Wells Fargo, or (ii) abandon such

Collateral. Payment of all said proceeds and/or abandonment of Collateral shall be in full satisfaction of liability to Wells Fargo on account of its Class 2 Claims. Except as modified by the Plan, Confirmation Order or any previously entered Final Order of the Bankruptcy Court, all loan and security documents existing prior to the Effective Date and all Liens resulting therefrom shall remain in place on and after the Effective Date until such time as the Class 2 Claim is satisfied in full.

b. **Impairment.** Class 2 is Impaired and entitled to vote on the Plan.

5.1.4. Class 3: Other Secured Claims

a. **Treatment.** Each holder of an Allowed Class 3 Secured Claim will receive as and when provided for in this Plan (a) Net Cash Proceeds realized from the liquidation and collection of Collateral securing such Class 3 Claim and/or (b) return of the Collateral. Distribution of such proceeds or return of Collateral shall be in full satisfaction of said Allowed Class 3 Claims.

b. **Impairment.** Class 3 is Unimpaired and not entitled to vote on the Plan.

5.1.5. Class 4: WARN Act and Related Employment Claims

a. **Treatment.** The Class 4 Claims consist of the WARN Act and Related Employment Claims. Resolution of the WARN Class Action will determine (i) whether the WARN Act and Related Employment Claims are Allowed, and (ii) if Allowed, whether and to what extent the WARN Act and Related Employment Claims are Class 1A Priority Claims or Class 6 Unsecured Claims. Upon final adjudication of the WARN Class Action, all Class 4 WARN Act and Related Employment Claims shall be afforded the treatment determined thereby under the appropriate Class and receive distributions on account thereof as provided under Section 6.4 of the Plan. Distribution(s) made shall be in full satisfaction of said Allowed Class 4 Claims.

b. **Impairment.** Class 4 is Impaired. All Class 4 WARN Act and Related Employment Claims are Disputed and therefore not entitled to vote on the Plan.

5.1.6. Class 5: Tort Claims

a. **Treatment.** Class 5 consists of all Tort Claims. The remedy of any holder of a Class 5 Tort Claim shall be to seek to collect on such Tort Claim from any Insurance Coverage to the extent of the amount of coverage. From and after the Effective Date, the automatic stay shall be lifted with respect to the prosecution of any Tort Claim to the extent of such Insurance Coverage, and the holder of a Tort Claim waives any right to any further Claim against the estates and shall look solely to the Insurance Coverage for payment on account of an Allowed Tort Claim. Notwithstanding the foregoing, any holder of a Tort Claim (i) scheduled by the Trustee or (ii) as to which a proof of Claim was timely filed by the Claim Bar Date may file with the Court a notice of its intent to opt out of such treatment prior to the Confirmation Hearing and thereby elect to participate as the holder of a Class 6 Unsecured Claim. Any such holder of such a Class 5 Claim shall receive no distribution on account of its Class 5 Claim until such time as the Tort Claim is no longer Disputed and/or unliquidated, becomes an Allowed Claim in accordance with the provisions of the Plan, and all proceeds available to said Claimant under all applicable Insurance Coverage have been exhausted.

b. **Impairment.** Class 5 is Impaired. All Class 5 Tort Claims are Disputed and therefore not entitled to vote on the Plan.

5.1.7. Class 6: Unsecured Claims

a. **Treatment.** Each holder of an Allowed Class 6 Unsecured Claim will receive as and when provided for in this Plan its *pro rata* share of Net Trust Proceeds realized from the liquidation and collection of the Trust Assets after the Effective Date in accordance with Section 6.4 of the Plan. Such distribution(s) shall be in full satisfaction of said Allowed Class 6 Claims.

b. **Impairment.** Class 6 is Impaired and entitled to vote on the Plan.

5.1.8. Class 7: Interests

a. **Treatment.** All Interests in the Debtors will be cancelled on the Effective Date. Holders of Interests will receive payment of Net Trust Proceeds realized from the liquidation and collection of the Trust Assets after the Effective Date in accordance with Section 6.4 of the Plan. Such distribution(s) shall be in full satisfaction of the Class 7 Interests.

b. **Impairment.** Class 7 is Impaired and entitled to vote on the Plan.

5.2. *Voting Classes.* There are 5 voting Classes under this Plan. Holders of Allowed Claims and Interests in Classes 1A, 1B, 2, 6 and 7 are Impaired, and are therefore entitled to vote to accept or reject this Plan. Class 3 is Unimpaired and deemed to have accepted the Plan. Class 4 and Class 5 Claims are all Disputed and not entitled to vote on the Plan.

5.3. *Voting Rights as to Confirmation of Plan; Necessity of Allowance of Claims.* If a Claim is a Disputed Claim prior to confirmation of the Plan, such Disputed Claim shall not be entitled to vote on the Plan unless such Claim is estimated, for voting purposes, by Final Order of the Bankruptcy Court.

5.4. *Acceptance by Impaired Classes.* An Impaired Class of Claims shall have accepted this Plan if (a) the holders (other than any holder designated under Bankruptcy Code § 1126(e)) of at least two-thirds (2/3) in amount of the Allowed Claims actually voting in such Class have voted to accept this Plan, and (b) the holders (other than any holder designated under Bankruptcy Code § 1126(e)) of more than one-half in number of the Allowed Claims actually voting in such Class have voted to accept this Plan.

ARTICLE 6.
Formation of Liquidating Trust

6.1. *Creation of Liquidating Trust and Vesting of Assets*

6.1.1. Upon the Effective Date, the Trustee shall enter into a Trust Agreement in form and substance similar to that attached hereto as **Exhibit “A”** which will assign ownership of the Trust Assets. Such transfer shall be deemed to have irrevocably transferred the Trust Assets to the Liquidating Trust, for and on behalf of beneficiaries of the Liquidating Trust, with no reversionary interest in the Trust Assets for any Debtor or any equity holder in any Debtor.

6.1.2. For federal income tax purposes, it is intended that the Liquidating Trust be classified as a trust under Treasury Regulation 301.7701-4 and that such trust be owned by its beneficiaries. Accordingly, for federal income tax purposes, it is intended that the beneficiaries be treated as if they had received a distribution of an undivided interest in Trust Assets and then contributed such interests to Liquidating Trust. The Trust Agreement shall (i) state that the primary purpose of the Liquidating Trust is to liquidate the Trust Assets with no objective to continue or engage in the conduct of

a trade or business, except to the extent reasonably necessary to, and consistent with, its liquidating purpose and (ii) contain a fixed or determinable termination date that is generally not more than five (5) years from the date of creation of Liquidating Trust, which termination date may be extended for one or more finite terms subject to the approval of the Bankruptcy Court upon a finding that the extension is necessary to its liquidating purpose. Each such extension must be approved by the Bankruptcy Court within ninety (90) before the expiration of a term.

6.1.3. All costs and expenses associated with the administration of the Liquidating Trust, including those rights, obligations and duties described this Plan, shall be borne by the Liquidating Trust to facilitate implementation and carrying out of the Trust Agreement and the Plan. The Liquidating Trust shall be funded initially with any and all Cash possessed by the Trustee as of the Effective Date.

6.2. *Appointment of Liquidating Trustee*

6.2.1. The Confirmation Order shall approve appointment of Derek Henderson as the Liquidating Trustee with exclusive and complete authority to administer and exercise control over Trust Assets in accordance with the Trust Agreement. The Liquidating Trustee shall be deemed as the representative of the estates for purposes of Bankruptcy Code § 1123(b)(3), and shall be entitled to take all actions, and assert all powers and rights of a trustee under the Bankruptcy Code, including pursuit of avoidance actions under Chapter 5 of the Bankruptcy Code and objecting to proofs of Claim. The duties of the Liquidating Trustee shall be limited to those provided herein or within the Trust Agreement. The Liquidating Trustee shall have no liability to any person or entity, including holders of Claims or other parties-in-interest in the Cases, for actions taken as Liquidating Trustee unless such actions were grossly negligent or intentional.

6.2.2. The Liquidating Trustee shall have full authority to take any steps necessary to administer Trust Assets, to the extent empowered by the Trust Agreement, including, without limitation, the duty and obligation to pursue and settle any Causes of Action. Upon such transfer (which, as stated above, shall occur on the Effective Date), the Trustee shall have no further rights or obligations with respect thereto. The Liquidating Trustee shall neither be required nor obligated to seek approval from the Bankruptcy Court in the performance of his duties.

6.2.3. The Liquidating Trustee may retain such law firms, accounting firms, experts, advisors, consultants, investigators, appraisers, auctioneers or other professionals, including Professionals currently engaged by the Trustee, as he deems necessary, in his sole discretion and at the sole expense of the Liquidating Trust, to aid in the performance of his responsibilities pursuant to the terms of the Plan. The Liquidating Trustee may pay all fees and expenses of such professionals, costs of administration of the Liquidating Trust, and the Liquidating Trustee's compensation in the ordinary course of business and without Bankruptcy Court approval.

6.2.4. The Liquidating Trustee shall receive as compensation for his services three (3%) percent of all proceeds distributed by the Liquidating Trust, plus reimbursement of all expenses incurred relating to administration of the Liquidating Trust, except that no compensation shall be awarded on amounts distributed as compensation or expense reimbursement to the Liquidating Trustee.

6.2.5. The Liquidating Trustee shall be responsible for filing all federal, state and local tax returns for Liquidating Trust. The Liquidating Trustee shall file all federal tax returns for the Liquidating Trust as a grantor trust pursuant to Treasury Regulation 1.671-4.

6.3. *Administration of Trust Assets*

The Liquidating Trustee shall have complete authority to collect, recover, sell, lease, transfer, abandon or otherwise dispose of Trust Assets.

6.3.1. Sale and Transfer of Assets

a. The Liquidating Trustee may sell and transfer Trust Assets to the purchaser in full and complete satisfaction of any Claims, Liens, Interests or other encumbrances of any kind or nature whatsoever against Trust Assets. The transfer of Trust Assets to the purchaser shall vest the purchaser with all rights, title, and interest of Debtor and Liquidating Trust to Trust Assets free and clear of any and all Liens, Claims, Interests and other encumbrances of any type whatsoever (whether known or unknown, secured or unsecured or in the nature of setoff or recoupment, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, Allowed or disallowed, assessed or unassessed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, whether arising prior to or subsequent to the Petition Date, and whether imposed by agreement, understanding, law, equity, or otherwise, including Claims otherwise arising under doctrines of successor liability), including those that: (i) purport to give to any party a right or option to effect any forfeiture, modification, right of first refusal, or termination of a Debtor's interest in Trust Assets, or any similar rights; (ii) relate to or which arise as a result of any principal or interest due as of the Effective Date; and (iv) relate to taxes arising under or out of, in connection with, or in any way relating to Trust Assets, including the transfer of Trusts Assets to the purchaser.

b. Except as expressly permitted or otherwise specifically provided for herein, pursuant to Bankruptcy Code § 1141(c), Liquidating Trust's (formerly the Trustee's or any Debtor's) right, title and interest in Trust Assets shall be transferred to the purchaser free and clear of all Liens, Claims, Interests and other encumbrances of any type whatsoever, with all such encumbrances to attach to the proceeds from the sale of Trust Assets in the order of their priority against Trust Asset, with the same validity, force, and effect which they had as against Trust Assets immediately before such transfer, subject to any claims and defenses any Debtor, the Trustee or the Bankruptcy Estate possessed with respect thereto. However, to the extent that a Trust Asset constitutes Collateral securing an Allowed Secured Claim, the Trust may not sell such Trust Asset without the consent of the holder of such Allowed Secured Claim unless the Bankruptcy Court enters an Order authorizing such sale notwithstanding the lack of consent of the holder of such Secured Claim.

6.3.2. Collection of Accounts Receivable or Other Amounts. The Liquidating Trustee shall have full authority to continue to collect accounts receivable of the Debtors, including filing and prosecution of adversary proceedings in the Bankruptcy Court or other litigation in any other appropriate forum. All accounts receivable or other amounts constituting Collateral securing the Wells Fargo Secured Claims shall be collected pursuant to that certain Litigation Management Agreement between the Trustee and Wells Fargo except to the extent controlled by the Plan or the Liquidating Trust.

6.3.3. Preservation of Causes of Action. Except to the extent expressly waived under the Plan, as of the Effective Date, pursuant to Bankruptcy Code § 1123(b)(3), any and all Causes of Action are Trust Assets and shall vest as property of the Liquidating Trust on the Effective Date. The Liquidating Trustee shall be deemed, without further action of the Bankruptcy Court, to be the judicial substitutes as the real party-in-interest with Bankruptcy Court-approved standing in the Bankruptcy Cases, under the Plan, or in any judicial proceeding or appeal to which the Trustee or any Debtor is a party, or in which the Liquidating Trustee shall become a party. The Liquidating Trustee shall have the standing provided in the Plan to pursue any and all Causes of Action retained under the Plan. The

Liquidating Trustee shall retain the power and authority to litigate, abandon, sell, settle or compromise any Cause of Action in accordance with the Plan. Unless specifically abandoned by the Trustee prior to the Effective Date, all Causes of Action shall vest in the Liquidating Trust as Trust Assets. The Causes of Action identified below, whether asserted affirmatively, defensively or as a counter-claim or cross-claim, shall vest in the Liquidating Trust but shall not be exclusive of all such rights or Causes of Action constituting Trust Assets:

- a. Any and all D&O or other Claims against the Debtors' fiduciaries;
- b. Any and all E&O Claims against professionals engaged or retained by the Debtors prior to the Petition Date;
- c. All rights to recover money or property under Chapter 5 of the Bankruptcy Code;
- d. All rights to recover and collect accounts receivable, deposits, refunds, setoffs or recoupments of any kind;
- e. Any claims against "insiders" as defined in § 101(31) of the Bankruptcy Code or otherwise;
- f. All rights to object to any Claim or Interest, or to seek to recharacterize or subordinate such Claim or Interest, including but not limited to actions to invalidate or otherwise dispute the validity of any Lien asserted against any Debtor's property;
- g. All rights under any Insurance Policy to coverage or other benefits provided thereunder;
- h. The pending Cause of Action against Rent-A-Box, Inc.;
- i. The Debtors' rights of recovery under pending eminent domain proceedings pending in North Carolina;
- j. All pending Causes of Action or rights to assert claims or request relief of any kind therein; and
- k. All other actual or potential claims or Causes of Action identified in any Debtor's Schedules or Statement of Financial Affairs filed in these Cases.

6.3.4. Rights to Surcharge. To the extent that any Trust Asset constitutes Collateral of the holder of an Allowed Secured Claim, the Liquidating Trustee shall retain the right to collect Surcharge Recoveries from the Collateral prior to making any distribution under the Plan or the Liquidating Trust. With respect to any Collateral securing the Wells Fargo Secured Claims, such rights of the Trustee through and including the Effective Date, and the Liquidating Trustee from and after the Effective Date, shall be governed by the Surcharge Settlement Agreement, which shall remain valid and enforceable and be deemed to be a Trust Asset under the Plan and Trust Agreement.

6.4. *Distributions from Liquidating Trust.*

Distributions to holders of Allowed Claims that are not made on or as of the Effective Date shall be made by the Liquidating Trustee as follows and on a *pro rata* basis:

6.4.1. To the extent any Trust Asset constitutes Collateral of a Secured Creditor, proceeds from collection or disposition thereof shall be first applied in payment of Surcharge Recoveries, including compensation to the Liquidating Trustee, and then in payment of such Secured Creditor's Allowed Secured Claim, subject to the treatment provisions of this Plan, except as may be agreed by the Secured Creditor and the Liquidating Trustee.

6.4.2. To the extent that proceeds remain from a disposition of Collateral of a Secured Creditor after full satisfaction of the Allowed Secured Claim(s) secured thereby, or, to the extent that proceeds remain from a disposition of property not subject to a Lien, such proceeds shall first be used to satisfy Trust Expenses. The Liquidating Trustee may thereafter fund the Trust Expenses Reserve in such amount deemed advisable in his sole discretion.

6.4.3. Any Net Trust Proceeds shall be distributed as follows:

- a. First, in payment in full of Allowed Administrative Claims.
- b. Second, in payment in full of Allowed Class 1A Claims.
- c. Third, in payment in full of all Allowed Class 1B Claims.
- d. Fourth, in payment in full of all Allowed Class 6 Claims.
- e. Fifth, if, after all Allowed Claims are paid in full, plus all interest (if any), then any remaining Net Trust Proceeds shall be distributed to the Holders of the Class 7 Interests.

6.4.4. The Liquidating Trustee will make distributions to holders of Allowed Claims and Interests in accordance with the Section 6.4 of the Plan, but only at such time(s) and in such amount(s) as the Liquidating Trustee determines, in his sole discretion, to be prudent and reasonable.

ARTICLE 7.

Plan Implementation and Execution

7.1. *Substantive Consolidation*

7.1.1. On the Effective Date, the estates of the Debtors will be treated as if substantively consolidated for all purposes with respect to solicitation, voting, confirmation, implementation and execution of this Plan. On and after the Effective Date, all assets and liabilities of the Debtors shall be treated as merged, all guaranty obligations of any Debtor of any obligation of another Debtor will be eliminated, and all Claims filed shall be deemed filed against the single consolidated estate of the Debtors for all purposes relating to this Plan and to the satisfaction of the Claims and Interests by the Liquidating Trustee.

7.2. *Dissolution of Committee.* The Committee shall be dissolved on the Effective Date.

7.3. *Continued Corporate Existence.* From and after the Effective Date, each Debtor entity shall continue in existence for as long as the Liquidating Trustee deems necessary or appropriate for the purposes consistent with carrying out the terms of this Plan or the Liquidating Trust, which include, *inter alia*: (1) transferring property to the Liquidating Trust; (2) liquidating Trust Assets; (3) enforcing and prosecuting Claims, rights, interests and privileges of the Liquidating Trust, including Causes of Action; (4) filing appropriate tax returns; (5) assisting in the administration of the Plan and taking such actions as are necessary to effectuate this Plan; and (6) an exculpation of the Liquidating Trustee for all acts other

than gross negligence and willful misconduct. The Liquidating Trustee shall serve as the representative of each Debtor until the entry of a final decree in the Bankruptcy Case.

7.4. *Prosecution and Settlement of Claims and Causes of Action.* The Trustee or Liquidating Trustee (a) may commence or continue in any appropriate court or tribunal any suit or other proceeding for the enforcement of any Cause of Action which the Debtors had or had power to assert immediately prior to the Effective Date or in prosecution of an objection to a Claim, and (b) may settle or adjust such Cause of Action or Claim. From and after the Effective Date, the Liquidating Trustee shall be authorized pursuant to Bankruptcy Rule 9019(b) and § 105(a) of the Bankruptcy Code to compromise and settle any Cause of Action or objection to a Claim subject to approval and entry of a Final Order by the Bankruptcy Court.

7.5. *Instruments Cancelled.* On the Effective Date, except as otherwise provided in this Plan, all notes, instruments, certificates and other documents evidencing Claims against or Interests in any of the Debtors shall be canceled and deemed terminated.

ARTICLE 8. Administration of Claims

8.1. *Objection to Claims.*

8.1.1. Prior to the Effective Date, and subject to the provisions of Section 8.1.2, below, the Trustee, and after the Effective Date, the Liquidating Trustee, shall have the exclusive authority to file objections, settle, compromise, withdraw or litigate to judgment objections to Claims or Interests. From and after the Effective Date, the Liquidating Trustee may withdraw, abandon, settle or compromise any Claim subject to approval and entry of a Final Order by the Bankruptcy Court. The Trustee and Liquidating Trustee also reserve the right to resolve any Claims outside the Bankruptcy Court under applicable governing law. Nothing in this Plan shall prevent holders of Claims from filing adversary complaints or commencing other proceedings to object to Claims or other requests for relief by other creditors.

8.1.2. Any creditor shall have the right to send written request to the Liquidating Trustee to object to a Claim along with information that such creditor may possess that supports the Claim objection. Upon receipt of such request, the Liquidating Trustee shall advise the creditor within thirty (30) days as to whether the Liquidating Trustee intends to pursue the Claim objection. If the Liquidating Trustee does not advise of an affirmative intent to pursue the Claim objection, a creditor may, by written notice to the Liquidating Trustee, object, and have standing to object, to any such Claim on behalf of the Liquidating Trust; *provided, however* that the creditor shall be required to pay the expenses and costs associated with such Claim objection, which costs and expenses shall be solely recoverable from the amounts recovered on account of the Claim and not from the Liquidating Trust.

8.2. *Objection Deadline.* Objections to Claims shall be filed with the Bankruptcy Court, served upon the holders of each Claim to which objection is made, and resolved or withdrawn prior to entry of the Final Decree in these Cases.

8.3. *Allowance of Claims.*

8.3.1. Except as to Claims Allowed by the Plan, or as otherwise expressly provided herein or in any order by the Bankruptcy Court prior to the Effective Date (including the Confirmation Order), no Claim shall be deemed Allowed unless and until such Claim is deemed Allowed in accordance with the Plan.

8.3.2. The Trustee and Liquidating Trustee shall have and retain any and all rights and defenses a Debtor had with respect to any Claim or Interest as of the applicable Petition Date or Order for Relief.

8.4. *Determination by Bankruptcy Court.* Any Disputed Claim not Allowed under the terms of this Plan shall be deemed Disputed unless and until such Claim is deemed Allowed under the Bankruptcy Code or the Bankruptcy Court enters a Final Order in the Bankruptcy Case Allowing such Claim.

8.5. *Treatment of Disputed Claims.* Cash shall be distributed to a holder of any type of Disputed Claim when, and only to the extent that, such Disputed Claim becomes an Allowed Claim as provided in the Plan.

8.6. *Disallowed Claims.* All Claims held by any Claimant against whom the Trustee or Liquidating Trustee has, or has asserted, a Cause of Action that arises under Chapter 5 of the Bankruptcy Code shall be deemed disallowed pursuant to § 502(d) of the Bankruptcy Code, and holders of such Claims may not vote to accept or reject the Plan until the Cause of Action against the Claimant has been settled or a Final Order entered and all sums due on account thereof have been paid in full.

8.7. *Estimation of Claims.* The Trustee, prior to the Effective Date, and the Liquidating Trustee, after the Effective Date, may for any purpose, including for purposes of making distributions hereunder, request that the Bankruptcy Court estimate any contingent or Disputed Claim pursuant to § 502(c) of the Bankruptcy Code without regard to whether such Claim has been subject to a previous objection or whether such objection has been ruled upon or is subject to continued proceedings, including appeal.

8.8. *Distributions Pending Allowance.* Notwithstanding any other provision of the Plan, if any Claim or any portion of a Claim is Disputed, no payment or distribution provided in the Plan shall be made on account of such Claim unless and until the Disputed Claim is resolved and becomes Allowed. The Liquidating Trustee or Agent may estimate an amount to which a Disputed Claim may be Allowed, and may reserve from any distribution such amounts as the Liquidating Trustee deems necessary and appropriate.

8.9. *Means of Payment.* Payments made pursuant to this Plan shall be made in Cash and paid by check drawn or by wire transfer initiated from a domestic bank as determined by the Liquidating Trustee.

8.10. *Delivery of Distributions.* For purposes of all distributions under the Plan, the Liquidating Trustee shall be entitled to rely on the name and address of the holder of each Allowed Claim or Interest as shown any timely filed proof of Claim and, if no such proof of Claim is filed, as shown on the Schedules, except to the extent that the Liquidating Trustee receives adequate written notice of a transfer or change of address, properly executed by the holder or its authorized agent. If a distribution is returned as undeliverable, no further distributions to such holder shall be made unless and until the Liquidating Trustee is notified, in writing, of such holder's then current address, at which time distributions shall be made to such holder without interest.

8.11. *Right of Offset.* Pursuant to Bankruptcy Code § 553 or applicable non-bankruptcy law, the Liquidating Trustee may set off against any Allowed Claim or Interest and the distributions to be made pursuant hereto on account of such Claim or Interest (before any Distribution is made on account of such Claim or Interest), the claims, equity interests, rights, and causes of action of any nature that the Trustee or Liquidating Trustee, as applicable, may hold against the holder of such Allowed Claim or

Interest; *provided, however*, that neither the failure to effect such a setoff nor the Allowance of any Claim or Interest hereunder shall constitute a waiver or release by any Debtor, the Trustee or Liquidating Trustee of any such claims, equity interests, rights, and causes of action that the Debtor or the Liquidating Trustee, as applicable, may possess except as specifically provided herein. No entity shall retain the right of offset, set off, recoupment, or any other right, Claim, Lien or Secured Claim as against any estate or the Liquidating Trust, as applicable, under Bankruptcy Code § 553 or otherwise unless such entity is the Holder of a Claim that has been timely filed under Bankruptcy Code § 502 and such Claim is an Allowed Claim.

ARTICLE 9.

Executory Contracts and Unexpired Leases

9.1. *Rejection*

9.1.1. Blanket Rejection. Except for those Executory Contracts and Unexpired Leases previously assumed or rejected during the pendency of these Cases or otherwise specifically addressed elsewhere in this Plan, all Executory Contracts and Unexpired Leases that existed as of the Petition Date to which any Debtor was a party shall be rejected on the Effective Date. Subject to the occurrence of the Effective Date, the rejection of any Executory Contract or Unexpired Lease pursuant to this Article shall be effective upon the earliest of (i) the date that the Trustee provided notice to the counter-party of the effectiveness of such rejection and (ii) the date specified as the effective date in any notice of rejection filed by the Trustee or as established by order of the Court.

9.1.2. Approval of Rejection. Entry of the Confirmation Order shall constitute the approval, pursuant to §§ 365(a) and 1123(b)(2) of the Bankruptcy Code, of the rejection of all Executory Contracts and Unexpired Leases rejected pursuant to Section 9.1 hereof.

9.1.3. Bar Date for Asserting Rejection Claims. Rejection Claims arising out of the rejection of an Executory Contract or Unexpired Lease occurring on the Effective Date must be filed with the Court within thirty (30) days after the Effective Date. The Confirmation Order shall provide that notice of the Effective Date be provided to all counter-parties to any rejected Executory Contract or Unexpired Lease. Any Rejection Claim arising from rejection of an Executory Contract or Unexpired Lease during the pendency of the Cases shall have been filed by the date set by the notice of rejection or Court order approving such rejection. Any Rejection Claims not filed within such times are/will be forever barred from assertion against any applicable Debtor, its estate, and its property. If any Rejection Claim becomes an Allowed Claim, it shall be treated as an Unsecured Claim under Class 6.

ARTICLE 10.

Cramdown and Plan Modification

10.1. *Confirmation by “Cram Down”*. If any Impaired Class does not vote to accept the Plan as provided in § 1126 of the Bankruptcy Code, the Trustee will request confirmation of the Plan pursuant to § 1129(b) of the Code with respect to any Impaired Class in the applicable voting estate. The Trustee reserves the right to amend the Plan pursuant to this Article 10.

10.2. *Right to Modify*. The Trustee reserves the right, according to the Bankruptcy Code, to amend or modify the Plan before the Effective Date. After the Effective Date, the Trustee may, upon order of the Bankruptcy Court, and according to § 1127(b) of the Bankruptcy Code, remedy any defect or omission or reconcile any inconsistencies in the Plan in such manner as may be necessary to carry out the purposes and intentions of the Plan.

10.3. *Deemed Acceptance or Rejection.* A Claimant that has accepted or rejected the Plan will be deemed to have either accepted or rejected, as the case may be, the Plan as modified or amended, even if the modifications or amendments are made after the solicitation of votes of acceptance or rejection of the Plan, unless the Bankruptcy Court orders that such Claimant may change its previous vote within a time established by the Bankruptcy Court for such change to be made.

ARTICLE 11.
Conditions to Confirmation and Effective Date of Plan

11.1. *Conditions to Confirmation.* The Plan shall not be confirmed unless the Confirmation Order and the Plan, as confirmed pursuant to the Confirmation Order, shall be in a form and substance satisfactory to the Trustee.

11.2. *Conditions to Occurrence of the Effective Date.* The Effective Date of the Plan shall not occur unless and until the following conditions shall have been satisfied, waived or extended, as the case may be, in writing by the Trustee:

11.2.1. The Confirmation Order shall have been entered, unstayed and become a Final Order.

11.2.2. The Liquidating Trust shall have been duly formed and the Liquidating Trust Agreement executed; and

11.2.3. All consents, regulatory approvals and other authorizations required for implementation of the Plan have been granted and effective.

11.3. *Revocation or Withdrawal of the Plan.*

11.3.1. The Trustee may revoke or withdraw the Plan prior to the Confirmation Date.

11.3.2. If the Plan is revoked or withdrawn prior to the Confirmation Date in accordance with Section 11.3.1 hereof, or the Effective Date does not occur because the conditions precedent thereto have not been satisfied, then at the election of the Trustee the Plan may be deemed null and void. In such event, (i) the Trustee and all holders of Claims and Interests shall be restored to the status quo ante as of the day immediately preceding the filing of the Plan, and (ii) all the Debtors' respective obligations with respect to the Claims shall remain unchanged, all of the Debtors' and Trustee's rights against all parties shall be fully preserved and nothing contained herein or in the Disclosure Statement shall be deemed an admission or statement against interest or to constitute a waiver or release of any claims by or against the Debtors, the Trustee or any other party or to prejudice in any manner the rights of the Trustee or any party in any further proceedings.

ARTICLE 12.
Post-Effective Date Administration

12.1. *Post-Effective Date Compensation and Professional Expenses.* From and after the Effective Date, the Liquidating Trustee shall, in the ordinary course of business and without the necessity for any approval by the Bankruptcy Court, be permitted to pay the Liquidating Trustee's compensation and expenses and the reasonable fees and expenses of Professionals incurred on behalf of the Liquidating Trust, including without limitation, those fees and expenses incurred in connection with the implementation and consummation of the Plan and administration of the Liquidating Trust. The

Liquidating Trustee may pay such amounts as and when due and without having to obtain approval from the Bankruptcy Court or any other party.

12.2. *Reporting and Payment of Statutory Fees.* All fees payable to the United States Trustee pursuant to 28 U.S.C. § 1930 will be paid until the Court enters a final decree closing these Cases or directing otherwise. After Confirmation, the Liquidating Trustee shall continue to report to the United States Trustee the total of all disbursements for the prior calendar quarter up to the date an order is entered either granting the final decree, converting the Cases to Chapter 7 or dismissing the Cases. Prior to entry of an order of final decree, the Liquidating Trustee will file monthly operating reports with respect to the total disbursements up to the date of the final decree insofar as not previously reported. However, nothing herein shall be construed as a waiver of the right of the Liquidating Trustee to request that, after the Effective Date, the Bankruptcy Case be administratively closed.

12.3. *Section 1146 Exemption.* Pursuant to Bankruptcy Code § 1146(c), any transfers of property pursuant hereto, which shall by Confirmation be deemed transfers pursuant to this Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax or other similar tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forgo the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

12.4. *Estate Tax Returns.* The Trustee and Liquidating Trustee shall ensure that all federal and state tax returns are filed, or lawful extensions for filing are obtained, for all Debtors for all applicable periods for which such returns have not been filed and/or are required for lawful administration of the Debtors' estates and/or the Liquidating Trust.

ARTICLE 13. General Provisions

13.1. *Effect of Confirmation.* The provisions of § 1141 of the Bankruptcy Code shall apply in full to the Plan and the actions contemplated here on and after the Effective Date. PURSUANT TO § 1141(D)(3) OF THE BANKRUPTCY CODE, THE DEBTORS SHALL NOT BE ENTITLED TO A DISCHARGE.

13.2. *Automatic Stay.* The automatic stay of § 362 of the Bankruptcy Code shall continue in effect until the Effective Date.

13.3. *INJUNCTION.* THERE SHALL BE AN INJUNCTION TO THE FULL EXTENT ALLOWED UNDER § 1141 OF THE BANKRUPTCY CODE, AND ALL HOLDERS OF CLAIMS AND INTERESTS OR OTHER PERSONS BOUND BY THE PROVISIONS OF THE PLAN SHALL BE ENJOINED FROM PURSUING ANY ACTION ON ACCOUNT OF OR RELATED TO ANY CLAIM OR INTEREST THROUGH ANY CONDUCT OR PROCEEDING WHATSOEVER, WITH RESPECT TO SUCH HOLDER'S CLAIMS OR WITH RESPECT TO ANY EXCULPATED CLAIMS. ALL CLAIMS AGAINST, INTERESTS IN, AND ANY OTHER RIGHT OF RECOVERY FROM THE DEBTORS ARE HEREBY CHANNLED TO THE LIQUIDATING TRUST, WHICH IS AND SHALL BE THE SOLE SOURCE OF RECOVERY IN ACCORDANCE WITH THE PLAN.

FURTHERMORE, NO CREDITOR POSSESSING A LIEN RIGHT IN, TO, OR UPON PROPERTY OF THE ESTATE OR TRUST ASSETS MAY CONTINUE OR COMMENCE ANY ACTION TO SIEZE, SELL, DISTRAIN, RETAIN, RESTRAIN, REPLEVIN, SEQUESTER, ATTACH,

OR OTHERWISE OBTAIN POSSESSION, CUSTODY, CONTROL, OWNERSHIP OR EFFECTUATE A TRANSFER OF OWNERSHIP OF PROPERTY OF THE ESTATE OR TRUST ASSETS THROUGH NON-BANKRUPTCY LAW PROCEDURES WITHOUT FURTHER ORDER OF THE BANKRUPTCY COURT.

13.4. *Exculpation.* This Plan does not affect an exculpation or release of any person or entity, save and except the officers and employees employed by the Trustee during the pendency of these Cases or serving in such capacity as of the Effective Date, the Trustee, and Professionals authorized to be employed by the Trustee under Order[s] of the Bankruptcy Court. Upon the Effective Date, such protected persons shall be released by the Debtor pursuant to §1123(b)(3) of the Bankruptcy Code and shall not have or incur any liability to the Debtors or the estates under any theory of liability for any act or omission occurring on or after the Petition Date in connection with or related to any Debtor, the Cases, or the estates, including, but not limited to, (i) formulating, preparing, disseminating, implementing, confirming, consummating or administering this Plan (including soliciting acceptances or rejections thereof); or (ii) the Disclosure Statement or any contract, instrument, release or other agreement or document entered into or any action taken or omitted to be taken in connection with this Plan, except for acts constituting willful misconduct, gross negligence, or ultra vires activity and in all respects such protected persons shall be entitled to rely in good faith upon the advice of counsel.

13.5. *Effect of Injunction and Exculpation*

13.5.1. Other than as limited by the foregoing injunction (Section 13.3) and exculpation (Section 13.4) provisions of this Plan, or any other provision of the Plan, no third-person legally responsible with the Debtors for taxes owed to any state or federal taxing authority is released from any liability they may have in relation to any Allowed Priority Tax Claims. Such third-parties shall remain liable for any unpaid amounts to the same extent to which applicable law may impose personal liability upon them. Immediately upon the effective date, any taxing authority shall have the right immediately and without prior Bankruptcy Court approval to enforce collection of its unpaid Allowed Priority Tax Claims from any person legally responsible with any Debtor and may do so using any means available under applicable law.

13.5.2. Other than as limited by the foregoing injunction (Section 13.3) and exculpation (Section 13.4) provisions of this Plan, or any other provision of the Plan, neither the Plan, the Confirmation Order nor any documents executed or filed in connection with the Plan, the Confirmation Order or the Cases shall release, impair or affect any claims or causes of action possessed by the holder of a Claim against any non-Debtor person who may be liable with any Debtor on account of such Claim.

13.6. *Default.* In the event that the Trustee or Liquidating Trustee fail to make any payment required under this Plan when due, or that the Trustee or Liquidating Trustee fail to perform any obligation required to be performed under this Plan timely, the aggrieved party may notify the Trustee or Liquidating Trustee of such default by providing written notification as required under the Plan of such failure to perform or failure to pay and thirty (30) business days to cure the default. Upon default, such aggrieved party may exercise any remedy to which it may be entitled under this Plan, the Bankruptcy Code, or non-bankruptcy law to recover its Allowed Claim without further action required by the Bankruptcy Court, except to the extent prohibited by Section 13.3, supra.

13.7. *Binding Effect.* On the Effective Date, according to § 1141 of the Bankruptcy Code, the provisions of this Plan will bind the Debtors, the Trustee and any holder of a Claim or Interest, whether or not the Claim is Impaired under the Plan and whether or not the holder of the Claim has accepted the Plan.

13.8. *Notices.* Except as otherwise specified, all notices and requests will be given by any written means, including but not limited to, telex, telecopy, telegram, first class mail, express mail or similar overnight delivery service and hand delivered letters, and any such notice or request will be deemed to have been given when received. Notices will be delivered as follows:

If to the Trustee/Liquidating Trustee

Derek A. Henderson
1765-1 Lelia Drive, Suite 103
Jackson, Mississippi 39216
Telephone: (601) 948-3167
Email: derek@derekhendersonlaw.com

with a copy to

Douglas C. Noble
McCraney | Montagnet | Quin | Noble PLLC
602 Steed Road • Suite 200
Ridgeland, Mississippi 39157
Telephone: (601) 707-5725
Facsimile: (601) 510-2939
Email: dnoble@MMQNLaw.com

13.9. *Headings.* The headings used in the Plan are inserted for convenience only and constitute part neither of the Plan nor in any manner affect the provisions or interpretations of the Plan.

13.10. *Enforceability.* Should any provision of the Plan be determined to be unenforceable for any reason, such determination will in no way limit or affect the enforceability and operative effect of any other provision of the Plan.

ARTICLE 14. Retention of Jurisdiction

The Bankruptcy Court will retain jurisdiction of all matters arising out of or related to the Cases and the Plan as long as necessary for the purposes of §§ 105(a), 1127, 1142(b) and 1144 of the Bankruptcy Code and for, *inter alia*, the following non-inclusive purposes:

- a. to recover all assets of the Debtors, wherever located;
- b. to decide any objections to the allowance, disallowance or subordination of Claims or a controversy as to the classification of Claims;
- c. to decide and fix (i) all Administrative Claims, (ii) Claims arising from the rejection of any Executory Contracts or Unexpired Leases, (iii) Liens on any assets or any proceeds thereof, and (iv) any other fee and expense authorized to be paid or reimbursed under the Bankruptcy Code;
- d. to liquidate or estimate damages or determine the manner and time for such liquidation or estimation in connection with any disputed, contingent or unliquidated Claims;

- Order;
- e. to adjudicate any matters as may be provided for in the Confirmation
 - f. to effectuate distributions under and enforce the provisions of the Plan;
 - g. to hear and determine any pending applications, adversary proceedings or contested matter including all controversies, suits and disputes that may arise in connection with the interpretation or enforcement of the Plan, and matters concerning state, local and federal taxes according to §§ 346, 505 and 1146 of the Bankruptcy Code;
 - h. to amend or to correct any defect, cure any omission or reconcile any inconsistency in the Plan or the Confirmation Order as may be necessary to carry out the purposes and intent of the Plan;
 - i. to enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked or vacated;
 - j. to consider any modification of the Plan pursuant to § 1127 of the Bankruptcy Code or modification of the Plan after substantial consummation, as such terms is defined in § 1101(2) of the Bankruptcy Code;
 - k. to determine such other matters as may be provided for in the Confirmation Order or as may be authorized under the provisions of the Bankruptcy Code to the maximum extent of its jurisdiction; and
 - l. to enter a final decree closing any of these Cases.

[remainder of page intentionally left blank]

THIS the 22nd day of November, 2023.

Respectfully submitted,

**DEREK HENDERSON, CHAPTER 11 TRUSTEE of
UNITED FURNITURE INDUSTRIES, INC., et al.**

By: /s/ Derek Henderson

Douglas C. Noble, MS Bar No. 10526
McCraney | Montagnet | Quin | Noble PLLC
602 Steed Road • Suite 200
Ridgeland, Mississippi 39157
Telephone: (601) 707-5725
Facsimile: (601) 510-2939
Email: dnoble@MMQNLaw.com

and

Derek A. Henderson, MS Bar No. 2260
Anna Claire Henderson, MS Bar No. 106230
1765-1 Lelia Drive, Suite 103
Jackson, Mississippi 39216
Telephone: (601) 948-3167
Email: derek@derekhendersonlaw.com

Counsel to Chapter 11 Trustee

EXHIBIT

A

LIQUIDATING TRUST AGREEMENT

This *Liquidating Trust Agreement* (the “Trust Agreement”), dated as of _____, 2024 by and among United Furniture Industries, Inc. and all its subsidiary companies, through its duly authorized corporate representative and Chapter 11 Trustee, Derek Henderson (in this capacity, the “Trustee”), on the one hand, and Derek Henderson (in this capacity, the “Liquidating Trustee”) as the trustee of the Trust created hereby, on the other, is executed in connection with the *Chapter 11 Plan of Liquidation* [Dkt #____] as subsequently amended and modified (the “Plan”). Capitalized terms used in this Trust Agreement and not otherwise defined herein shall have the meanings ascribed to them in the Plan.

WITNESSETH

WHEREAS, an involuntary petition under chapter 7 of the Bankruptcy Code was filed against UFI on the Involuntary Petition Date which ultimately resulted in entry of the Order for Relief and thereafter voluntary petitions being filed by all Affiliated Debtor on January 31, 2023, all of which were jointly administered Cases in the Bankruptcy Court;

WHEREAS the commencement of the Cases created estates pursuant to § 541 of the Bankruptcy Code consisting of all property and assets owned by the Debtors as of the Petition Date and all property and assets acquired after the commencement of the Cases, inclusive of Causes of Action;

WHEREAS, on _____, 2024, the Bankruptcy Court entered the Confirmation Order confirming the Plan;

WHEREAS, the Plan provides for the creation of a post-confirmation liquidation trust (the “Trust”) to hold and administer the Trust Assets, to distribute the assets or proceeds of such assets in accordance with the terms of the Plan to holders of Allowed Claims (the “Trust Beneficiaries”), and to take all actions necessary to wind down and close the estates and the Cases, all in accordance with the terms of this Trust Agreement and the Plan;

WHEREAS, the name of the Trust shall be the “**UFI Liquidating Trust**”;

WHEREAS, this Trust Agreement is executed to establish the Trust for the sole purpose of liquidating the Trust Assets for the benefit of the Trust Beneficiaries (including holders of Disputed Claims that become Allowed Claims) in accordance with Treasury Regulation Section 301.7701-4(d), with no objective or authority to continue or engage in the conduct of a trade or business except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Trust including the wind down and closure of the Trust estate;

WHEREAS, the Trust is intended to qualify as a Trust within the meaning of Treasury Regulation Section 301.7701-4(d) for United States federal income tax purposes;

WHEREAS, the respective powers, authority, responsibilities and duties of the Liquidating Trustee shall be governed by this Trust Agreement, the Plan, the Confirmation Order, other applicable orders issued by the Bankruptcy Court, and any obligations under applicable law;

WHEREAS, this Trust Agreement is intended to supplement, complement and implement the Plan; *provided, however*, that except as otherwise expressly stated herein, if any of the terms and/or provisions of this Trust Agreement conflict with the terms and/or provisions of the Plan, then the Plan shall govern.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein and in the Plan, the Trustee and Liquidating Trustee agree as follows:

ARTICLE 1

ESTABLISHMENT OF THE TRUST

1.1. Establishment of Trust. The Liquidating Trustee hereby accepts his appointment. Pursuant to the Plan, the Trustee and the Liquidating Trustee hereby establish the Trust on behalf of the Trust Beneficiaries. The Liquidating Trustee agrees to accept and hold the Trust Assets in trust for the Trust Beneficiaries subject to the terms of this Trust Agreement, and agree to assume their respective roles and duties as provided in this Trust Agreement.

1.2. Purpose of the Trust. The Trust shall be established for the purpose of liquidating the Trust Assets and taking all actions necessary to wind down and close the estates, in accordance with Treasury Regulations Section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business. Accordingly, the Liquidating Trustee shall, in an expeditious but orderly manner, preserve and liquidate and convert to Cash the Trust Assets, make distributions, and not unduly prolong the duration of the Trust. The Trust shall not be deemed a successor-in-interest of the Debtors for any purpose other than as specifically set forth herein or in the Plan.

1.3. Transfer of Assets and Rights to the Liquidating Trustee. Except as provided otherwise in the Plan, as of the Effective Date the Debtor, on behalf of the estates, hereby transfers, assigns, conveys and delivers to the Liquidating Trustee (a) all of its rights with respect to Claims and Causes of Action, (b) the attorney-client privilege held by the Debtors or the Trustee related to all matters, including with respect to all Claims and Causes of Action so transferred, (c) all of its right, title, and interest in the Trust Assets, and (d) all of its rights with respect to the Trust Assets, and the Liquidating Trustee on behalf of the Trust hereby assumes and agrees that all such Trust Assets will be transferred to the Trust.

1.4. Title to Trust Assets.

(a) The transfer of the Trust Assets to the Trust shall be made for the benefit of the Trust Beneficiaries, whether the Claims of the Trust Beneficiaries are Allowed on or after the Effective Date of the Plan. In this regard, the Trust Assets will be treated for tax purposes as being transferred by the Debtor and its estates to the Trust Beneficiaries, and then by the Trust Beneficiaries to the Trust in exchange for beneficiary interests in the Trust, which interests shall be distributed by the Liquidating Trustee to the Trust Beneficiaries in exchange for their Allowed Claims in accordance with the Plan and as set forth in Article 3 below. Upon the transfer of the Trust Assets, the respective Trustee shall succeed to all of the Debtor's and estates' right, title and interest in and to the Trust Assets as described in ¶ 1.3(a) and (b), *supra*, and the Debtor and the estates will have no further interest in or with respect to the Trust Assets or this Trust.

(b) For all United States federal income tax purposes, all parties (including, without limitation, the Debtors, the estates, the Trustee, the Liquidating Trustee, and the Trust Beneficiaries) shall treat the transfer of Trust Assets to the Trust described in this Section 1.4 and in the Plan (and any subsequent transfers of Assets) as a transfer to the Trust Beneficiaries followed by a deemed transfer by such Trust Beneficiaries to the Trust, and the beneficiaries of this Trust shall be treated as the grantors and owners hereof.

1.5. Reliance. The Liquidating Trustee may rely upon the Debtors' books and records, including its filed schedules and statements of financial affairs, and all other information available provided by or obtained from the Debtors or its representatives concerning Claims filed against the Debtors and the Debtors' reconciliation relating thereto, if any, and other documents supporting such reconciliation.

1.6. Valuation of Trust Assets. As reasonably determined from time to time by the Liquidating Trustee in his good faith and reasonable judgment, valuation of the Trust Assets transferred to the Trust shall be used consistently by the Liquidating Trustee and the Trust Beneficiaries for all federal income tax purposes. The Liquidating Trustee, the estates and the Trust Beneficiaries agree that (i) the value of the Causes of Action on the date of their transfer to the Trust shall be zero dollars; and (ii) the transfer of the Causes of Action to the Trust shall "close" the transaction for tax purposes as to the Debtor with respect to any subsequent receipt of proceeds by the Trust in connection with the Causes of Action or investment earnings thereon.

1.7. Governance of the Trust. The Trust shall be governed by the Liquidating Trustee subject to the provisions set forth in this Trust Agreement and Mississippi law. The Liquidating Trustee' powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purposes of this Trust and not otherwise, except that the Liquidating Trustee may deal with the Trust Assets for their own account as provided herein.

1.8. Appointment of the Liquidating Trustee. The Liquidating Trustee has been selected pursuant to the terms of the Plan. Confirmation of the Plan shall constitute the Bankruptcy Court's approval of selection and appointment of the Liquidating Trustee who shall hold such position until his removal, resignation, or death.

1.9. Bond. The Liquidating Trustee shall serve without bond.

1.10. Funding of the Trust. The Liquidating Trustee shall be initially funded with Net Cash Proceeds on hand on the Effective Date of the Plan. The Liquidating Trustee may from time to time make withdrawals from unencumbered Trust Assets in amounts and at times that the Liquidating Trustee deems necessary or appropriate to fund any and all costs and expenses that the Liquidating Trustee and the Trust incur subsequent to the Effective Date in accordance with this Trust Agreement and the Plan.

ARTICLE 2

THE LIQUIDATING TRUSTEE

2.1. Role of the Liquidating Trustee. In furtherance of and consistent with the purpose of the Trust and the Plan, the Liquidating Trustee shall, for the benefit of the Trust Beneficiaries

and subject to the provisions set forth in this Trust Agreement and the Plan: (i) have the power and authority to hold, manage, sell, lease, abandon, and distribute the Trust Assets, including with authority over all Claims and Causes of Action and ownership and control over the attorney-client privilege held by the Debtors or the Trustee related to any Trust Assets, including with respect to all Claims and Causes of Action; (ii) have the power and authority to hold, manage, and distribute the Cash or non-Cash Trust Assets obtained through the exercise of his power and authority; and (iii) have the power and responsibility to take all actions necessary to wind down and close the estates, including objecting to any and all Claims, file all required tax returns, and file and receive approval of a final report from the Bankruptcy Court, all as may be provided for in additional and further detail below. In all circumstances, the Liquidating Trustee shall act in the best interests of all Trust Beneficiaries of the Trust and in furtherance of the purpose of the Trust.

2.2. Authority of Liquidating Trustee. In connection with the administration of the Trust, subject to and except as otherwise set forth in this Trust Agreement or the Plan, the Liquidating Trustee is authorized to perform any and all acts necessary or desirable to accomplish the purposes of the Trust and the roles to which they are assigned herein.

2.3. Limitation of Liquidating Trustee' Authority. The Liquidating Trustee shall have no power or authority except as set forth in this Trust Agreement or in the Plan. Notwithstanding anything herein to the contrary, the Liquidating Trustee shall not be authorized to engage in any trade or business, and shall only take such actions consistent with the orderly liquidation of the Trust Assets as are required or contemplated by applicable law, the Plan and this Trust Agreement, and the actions necessary to wind down and close the estates and dissolve the Trust.

2.4. Books and Records. The Liquidating Trustee shall maintain, in respect of his responsibility to the Trust, books and records relating to the Trust Assets (including the Causes of Action), income and the payment of expenses of, and liabilities of claims against or assumed by, the Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained on a modified cash or other comprehensive basis of accounting necessary to facilitate compliance with the tax reporting requirements of the Trust. Except as otherwise may be expressly provided in this Trust Agreement, nothing in this Trust Agreement requires either Liquidating Trustee to file any accounting or seek approval of any court with respect to the administration of the Trust, or as a condition for managing any payment or distribution out of the Trust Assets. Subject to all applicable privileges, the Trust Beneficiaries shall have the right, in addition to any other rights they may have pursuant to this Trust Agreement, under the Plan or otherwise, upon twenty (20) days' prior written notice to the Liquidating Trustee, to request a reasonable inspection of the books and records held by the Liquidating Trustee; *provided, however*, that all reasonable costs associated with such inspection shall be paid by such requesting Trust Beneficiary; provided further, however, that if so requested, such Trust Beneficiary shall have entered into a confidentiality agreement satisfactory in form and substance to the Liquidating Trustee, and make such other arrangements as may be reasonably requested by the Liquidating Trustee. One (1) year after dissolution of the Trust or the Debtor entities, the Liquidating Trustee is authorized to destroy any and all books and records without further notice or Bankruptcy Court order, unless the Bankruptcy Court has ordered otherwise; provided, however, that the Liquidating Trustee may move the Bankruptcy Court for entry of an order authorizing the destruction of any and all books and records prior to expiration of the one (1) year period following dissolution of the Trust.

2.5. Additional Powers. Except as otherwise set forth in this Trust Agreement or in the Plan, and subject to the Treasury Regulations governing creditors' 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 control and exercise authority over the relevant Trust Assets and over the protection, conservation and disposition thereof. No Person dealing with the Trust shall be obligated to inquire into the authority of the Liquidating Trustee in connection with the protection, conservation or disposition of the Trust Assets.

2.6. Tax and Reporting Duties of the Liquidating Trustee. The Liquidating Trustee shall file returns for the Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a) and comply with all withholding and reporting requirements imposed by any federal, state, local or foreign taxing authority, including, without limitation, any requirements imposed with respect to distributions hereunder and under the Plan. The Liquidating Trustee shall also file (or cause to be filed) any other statements, returns, reports or disclosures relating to the Trust that are required by any governmental authority, and all such statements, returns, reports or disclosures shall be prepared in reasonable detail in accordance with all applicable laws.

2.7. Compliance with Laws. Any and all distributions of Trust Assets and proceeds of borrowings, if any, shall be in compliance with applicable laws, including, without limitation, applicable federal and state securities laws. The Liquidating Trustee may withhold a distribution from any Trust Beneficiary if the Liquidating Trustee is unable, after reasonable investigation, to obtain taxpayer identification information for any Trust Beneficiary sufficient to permit the Liquidating Trustee to make any distribution in compliance with applicable law.

2.8. Confidentiality. The Liquidating Trustee shall forever hold in strict confidence and not use for personal gain any material, non-public information of or pertaining to the Trust Assets, or the operation of the Trust and any other entity to which any of the Trust Assets may at any time relate.

2.9. Compensation of the Liquidating Trustee. As compensation for services as Liquidating Trustee, and under any other agreements to which the Liquidating Trustee is a party as contemplated by the Plan, the Liquidating Trustee shall receive three (3%) percent of all proceeds distributed by the Trust other than that distributed to the Liquidating Trustee.

2.10. Costs and Expenses of the Liquidating Trustee. All costs and expenses of the Liquidating Trustee and Trust shall be borne either (i) as surchargeable expenses against Collateral securing an Allowed Secured Claim under § 506(c) of the Bankruptcy Code or (ii) by and as a charge against unencumbered Trust Assets.

2.11. Compensation Procedures. The Trust and all professionals or other persons employed by the Liquidating Trustee shall be entitled to payment of compensation and reimbursement of all reasonable expenses on a monthly basis by the Liquidating Trustee from the Trust Assets.

2.12. Reliance by Liquidating Trustee.

(a) The Liquidating Trustee may rely, and shall be protected in acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent,

order, or other paper or document believed by him/her to be genuine and to have been signed or presented by the proper party or parties including, but not limited to, the Claims Register maintained by the Clerk of the Bankruptcy Court in the Case; and

(b) persons dealing with the Liquidating Trustee shall look only to the Trust Assets to satisfy any liability incurred by the Liquidating Trustee to such person in carrying out the terms of this Trust Agreement, and the Liquidating Trustee shall not have any personal obligation to satisfy any such liability, except to the extent that actions taken or not taken after the Effective Date by the Liquidating Trustee are determined by a Final Order to be solely due to the Liquidating Trustee's gross negligence, fraud or willful misconduct.

(c) the Liquidating Trustee may consult with and shall not be liable for any actions taken or suffered by the Liquidating Trustee in accordance with the advice of such counsel or other professionals, and may also consult with and rely upon accountants and former consultants or advisors of the Debtor, present and former officers, directors and consultants of the Debtor or its affiliates or subsidiaries.

2.13. Investment and Safekeeping of Trust Assets. The right and power of the Liquidating Trustee to invest Trust Assets, the proceeds thereof, or any income earned by the Trust, shall be limited to the right and power that a Trust, within the meaning of Treasury Regulations Section 301.7701-4(d), is permitted to hold, pursuant to the Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements or otherwise.

2.14. Authorization to Expend Trust Assets. The Liquidating Trustee may expend the Trust Assets: (a) as reasonably necessary to maintain the value of the Trust Assets during liquidation; (b) to pay all costs and expenses of the Trust (including, without limitation, any taxes imposed on the Trust); and (c) to satisfy all other liabilities incurred or assumed by the Trust (or to which the Trust Assets are otherwise subject) in accordance with this Trust Agreement and the Plan.

2.15. Termination. The duties, responsibilities and powers of the Liquidating Trustee will terminate on the date the Trust is dissolved under applicable law in accordance with the Plan, Article 8 of this Trust Agreement, or by an order of the Bankruptcy Court.

2.16. Reliance. Any Person dealing with the Liquidating Trustee shall be fully protected in relying upon the Liquidating Trustee's certificate or instrument signed by the Liquidating Trustee that he or she has authority to take any action under this Trust.

2.17. Liquidating Trustee Funds. No provision of this Trust Agreement or the Plan shall require the Liquidating Trustee to expend or risk his own funds or otherwise incur any financial liability in the performance of any of their duties as Liquidating Trustee hereunder or under the Plan, or in the exercise of any of their rights or powers, if the Liquidating Trustee shall have reasonable grounds for believing that repayment of funds or adequate indemnity or security satisfactory to the Liquidating Trustee against such risk or liability is not reasonably assured.

ARTICLE 3

DISTRIBUTIONS

3.1. Distribution; Withholding. In accordance with this Article 3, and in the discretion of the Liquidating Trustee as to timing, the Liquidating Trustee shall distribute from the Trust to each Trust Beneficiary Cash on hand (including, without limitation, all net Cash income plus all net Cash proceeds from the liquidation of Trust Assets, including, without limitation, as Cash for this purpose, all permissible investments described the Trust to the Trust Beneficiaries, after making reserve for Disputed Claims as provided below; provided, however, that no distribution to an individual unit holder will be required unless such aggregate distribution would be at least \$25.00.

3.2. Payment of distributions.

(a) *Provisions of Plan Shall Control.* Notwithstanding anything to the contrary herein, the provisions of the Plan governing the distribution rights, restrictions, and priorities of payment, specifically the provisions of the Plan governing distribution of Net Liquidation Trust Proceeds as set forth in the Plan, are copied herein by reference, and shall be followed by the Liquidating Trustee in making distributions to Trust Beneficiaries.

(b) *Limitations on Payments.* Notwithstanding anything to the contrary contained in this Article 3 or the Plan, prior to making any distribution to the Trust Beneficiaries, the Liquidating Trustee may retain such amounts as deemed reasonably necessary to: (i) meet contingent liabilities and to maintain the value of the Trust Assets of the Trust during liquidation; and (ii) to pay reasonable estimated expenses. The Liquidating Trustee may withhold from amounts distributable to any Person any and all amounts, determined in the Liquidating Trustee's reasonable sole discretion, required by any law, regulation, rule, ruling, directive or other governmental requirement.

3.3. Manner of Payment of Distributions. All distributions to Trust Beneficiaries from the Trust shall be payable only to Trust Beneficiaries of record and, as to each such Trust Beneficiary within a Class then entitled to payment, in amounts equal to such Trust Beneficiaries' pro rata portion of the distribution. All distributions to Trust Beneficiaries from the Trust shall be payable in Cash by wire transfer, check or such other method as the Liquidating Trustee deems appropriate under the circumstances. All payments of the costs and expenses of the Trust shall be paid in Cash from unencumbered assets by wire transfer, check or such other method as the Liquidating Trustee deems appropriate under the circumstances.

3.4. Documents Required to Receive Distribution. To the extent that the Liquidating Trustee does not have sufficient information about a Trust Beneficiary (Social Security number, Federal Tax I.D. number, etc.) to complete a Form W-9 or other form or document required in connection with making a distribution from the Trust, the Liquidating Trustee shall be entitled to request from a Trust Beneficiary all information necessary to complete such forms before making the distribution. The Liquidating Trustee shall be entitled to provide written notice to a Trust Beneficiary of his intent to make a distribution, that such information is required in order for the

Liquidating Trustee to make the distribution, and that if the requested information is not provided within ninety (90) days the Claim shall be barred and all right to the distribution shall be waived.

3.5. Distributions on Business Days. Any payment or distribution due on a day other than a Business Day shall be made, without interest, on the next Business Day.

3.6. Filing and Prosecution of Objections to Claims and of Causes of Action; Creditor Action. The Liquidating Trustee shall have the exclusive right to file and prosecute any objections to Claims and any Causes of Action on behalf of the Trust, including all Avoidance Actions and derivative Causes of Action. The Liquidating Trustee shall have the authority to compromise, settle, withdraw, sell, abandon, or otherwise resolve all objections to any Claim or any Cause of Action filed or asserted without approval of the Bankruptcy Court except as set forth herein. Unless otherwise ordered by the Bankruptcy Court, the Liquidating Trustee shall file and serve all objections to Claims no later than the Claims Objection Deadline.

Any holder of a Claim shall have the right to send written request to the Liquidating Trustee to pursue a Claim or Cause of Action along with information that such Claimant may possess that supports the Claim or Cause of Action. Upon receipt of such request, the Liquidating Trustee shall advise within thirty (30) days as to whether the Liquidating Trustee intends to pursue the Claim or Cause of Action. If the Liquidating Trustee does not advise that he intends to pursue the Claim or Cause of Action, a Claimant may, by written notice to the Liquidating Trustee, pursue, and have standing to pursue, any such claim on behalf of the Trust; provided however that the creditor shall be required to pay the expenses and costs associated with such claim, which costs and expenses shall be solely recoverable from the amounts recovered on account of the claim and not from the Trust.

3.7. Estimation of Claims. The Liquidating Trustee may at any time request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to § 502(c) of the Bankruptcy Code regardless of whether the Trustee or the Liquidating Trustee previously have objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including, without limitation, during the pendency of any appeal relating to any such objection. Subject to the provisions of § 502(j) of the Bankruptcy Code, in the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, the amount so estimated shall constitute the maximum allowed amount of such Claim. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Liquidating Trustee may pursue supplementary proceedings to object to the allowance of such Claim. All of the aforementioned objection, estimation and resolution procedures are intended to be cumulative and not necessarily exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

3.8. Reserve for Disputed Claims.

(a) No Cash or other property shall be distributed on account of any Disputed Claim or, if less than the entire Claim is a Disputed Claim, the portion of a Claim that is Disputed, unless and until such Claim becomes an Allowed Claim. The Liquidating Trustee shall reserve and segregate Cash sufficient to pay holders of Disputed Claims their pro rata portion, if any, of

the Net Trust Proceeds distributed to Trust Beneficiaries. Any such Cash reserved shall be held and segregated by the Trust for the benefit of holders of Disputed Claims. In the event a Disputed Claim is ultimately Allowed, the holder of such previously Disputed Claim shall, within sixty (60) days, be entitled to payment of such holder's pro rata portion of any distributions previously made.

(b) The Liquidating Trustee may make such determinations on Disputed Claims as are appropriate, and as further subject to any Bankruptcy Court authorization as may be requested. The Liquidating Trustee is authorized, as often as desired but at least annually, to make determinations as to the valuation of the Disputed Claims.

(c) Upon the Effective Date, any Claims that are Disputed Claims shall be recognized in the Disputed Claims Reserve until entry of a Final Order of the Bankruptcy Court or other binding resolution of the status of the Disputed Claim occurs.

3.9. No Distribution in Excess of Allowed Amounts. Notwithstanding anything to the contrary contained in the Plan or this Trust Agreement, no Trust Beneficiary shall receive distributions of a value which exceed the amount of such Trust Beneficiary's Allowed Claim as of the Petition Date, plus accrued interest if such is provided for in the Plan. The foregoing shall not limit holders of Disputed Claims from receiving distributions on account of accrued interest as provided herein and in the Plan, if such holders' Disputed Claims becomes Allowed.

3.10. De Minimis Distributions. Notwithstanding anything to the contrary contained in the Plan or this Trust Agreement, the Liquidating Trustee shall not be required to distribute Cash to the holder of an Allowed Claim if the amount of cash to be distributed on account of such Claim is less than \$25.00. Any holder of an Allowed Claim on account of which the amount of Cash to be distributed is less than \$25.00 shall have such Claim discharged and shall be forever barred from asserting any such Claim against the Debtor, the Trust, or their respective property. Any Cash not distributed pursuant to this provision shall be the property of the Trust, free of any restrictions thereon. The Liquidating Trustee may, in his sole discretion, remit any Cash not distributed or otherwise utilized by the Trust pursuant to this Section 3.10 of the Trust Agreement into the registry of the Bankruptcy Court.

3.11. Setoffs. The Liquidating Trustee may set off against any distributions to be made to a Trust Beneficiary hereunder, any claims, rights and Causes of Action of any nature that the Liquidating Trustee (solely as Liquidating Trustee under this Trust Agreement) may at any time hold against such Trust Beneficiary; *provided, however*, that neither the failure to effect such a setoff nor the allowance of any Claim under or in accordance with the Plan shall constitute a waiver or release by the Liquidating Trustee of any such Claim, right and Causes of Action that the Liquidating Trustee may at any time possess against such Trust Beneficiary.

3.12. Disputed Payments. If any dispute arises as to the identity of a holder of an Allowed Claim who is to receive any distribution, the Liquidating Trustee may, in lieu of making such distribution to such Person, make reserve for such distribution. Such distribution shall be held in reserve until the disposition thereof shall be determined by order of the Bankruptcy Court or other court of competent jurisdiction or by written agreement among the interested parties to such dispute.

3.13. Unclaimed Distributions.

(a) Any distributions made hereunder which remain unclaimed (“Unclaimed Distributions”) shall be held and reserved by the Trust for the benefit of the Trust Beneficiaries entitled thereto under the terms of this Trust Agreement and the Plan. All such unclaimed distributions shall be held for a period of sixty (60) days following the filing of the applicable notice of distribution and during such period shall be released from the Trust and delivered to the Trust Beneficiaries entitled thereto only upon presentation of proper proof by such Trust Beneficiaries of such entitlement. At the end of sixty (60) days following the filing of the relevant Notice of distribution of any Unclaimed Distributions, the Trust Beneficiaries theretofore entitled to such Unclaimed Distributions shall cease to be entitled thereto and the Unclaimed distributions for each such Trust Beneficiary shall then be distributed on the succeeding Payment Date on a pro rata basis to the Trust Beneficiaries who have received and have claimed distributions and who are otherwise entitled to further distributions under Sections 3.2 and 3.10, and if no such Trust Beneficiaries then exist, such Unclaimed Distributions shall be excess distributions to be distributed in accordance with Section 3.10 of this Trust Agreement.

(b) The Liquidating Trustee may choose to file, or cause to be filed, any tax or information return. All Cash held shall be invested in accordance with this Trust Agreement and § 345 of the Bankruptcy Code.

3.14. Uncashed Checks. Checks issued in respect of a distribution will be null and void if not negotiated within ninety (90) days after the date of issuance. distributions with respect to such un-negotiated checks shall be treated as an Unclaimed Distribution and will revert to the Trust for distribution in accordance with the Plan and Trust Agreement, and payment to such Holder with respect to such un-negotiated check shall be discharged.

3.15. Allocation of Tax Items.

(a) Unless otherwise required by applicable tax law, items of income, gain, loss and deduction recognized or incurred by the Trust and the amount of distributions received by the Trust shall be allocated Pro Rata among the Trust Beneficiaries who are entitled to receive distributions in the tax year in accordance with the priorities set forth in Section 3.2 hereof.

(b) Absent definitive guidance from the IRS or a court of competent jurisdiction to the contrary, the Liquidating Trustee shall:

- (i) treat all Trust Assets allocable to, or retained on account of, Disputed Claims, as a discrete trust for federal income tax purposes, consisting of separate and independent shares to be established in respect of each Disputed Claim;
- (ii) on the last day of each calendar year, to the extent there is a reserve for Disputed Claims on that date, treat as taxable income or loss of this separate trust, the portion of the annual taxable income or loss of the Trust that would have been allocated to the holders of such Disputed Claims had such claims been Allowed on the Effective Date;

- (iii) treat as a distribution from this separate trust any increased amounts distributed by the Trust as a result of any Disputed Claim resolved earlier in the taxable year; and
- (iv) to the extent permitted by applicable law, report consistently for state and local income tax purposes.

ARTICLE 4

SUCCESSOR CO-TRUSTEE

4.1. Removal of Liquidating Trustee. The Liquidating Trustee may be removed, with cause, by the Bankruptcy Court upon motion of a Trust Beneficiary. Such removal shall become effective on the date specified by the Bankruptcy Court. In the event such removal occurs, a notice of the identity of the successor trustee shall be filed with the Bankruptcy Court and served on the Trust Beneficiaries. Upon removal under this section, the removed Liquidating Trustee shall make a final report to the Trust Beneficiaries of all amounts collected under his or her ambit.

4.2. Resignation of Liquidating Trustee. The Liquidating Trustee may resign by filing written notice thereof with the Bankruptcy Court. Such resignation shall become effective on the earlier to occur of (i) sixty (60) days after the filing of such notice, or (ii) the appointment of a successor and the acceptance by such successor of such appointment. Upon resignation under this section, the resigned Liquidating Trustee shall make a final report to the Trust Beneficiaries of all amounts collected under his or her ambit.

4.3. Appointment of Successor Liquidating Trustee upon Removal, Resignation, or Death. If a Liquidating Trustee is removed pursuant to Section 4.1, resigns pursuant to Section 4.2, or dies, the Bankruptcy Court shall appoint a successor Liquidating Trustee. Any successor Liquidating Trustee appointed hereunder shall execute and file a statement accepting such appointment and agreeing to be bound by the terms of the Plan and upon such filing, the successor Liquidating Trustee shall immediately become vested with all the rights, powers, trusts and duties of the respective Liquidating Trustee.

4.4. Acceptance of Appointment by Successor Liquidating Trustee. Any successor Liquidating Trustee appointed pursuant to this Article 4 shall execute an instrument accepting such appointment as the Liquidating Trustee under this Trust Agreement and shall file and maintain such acceptance with the books and records of the Trust. Upon acceptance of such appointment as aforesaid, such successor Liquidating Trustee shall, without any further act, become vested with all the estates, properties, rights, powers, trusts and duties of its predecessor in the Trust with like effect as if originally named herein; provided, however, that a removed or resigning 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 Trust all the estates, properties, rights, powers, and trusts of such predecessor Liquidating Trustee.

ARTICLE 5

EXCULPATION AND INDEMNIFICATION

5.1. Exculpation.

(a) From and after the Effective Date, the Liquidating Trustee shall be and hereby is exculpated by all Persons and entities, including, without limitation, Holders of Claims and other parties in interest, from any and all claims, causes of action and other assertions of liability arising out of the discharge of the powers and duties conferred upon said parties pursuant to or in furtherance of this Trust Agreement, the Plan, or any order of the Bankruptcy Court or applicable law or otherwise, except only for actions taken or not taken, from and after the Effective Date only to the extent determined by a Final Order to be solely due to their own respective gross negligence, willful misconduct or fraud.

(b) No Trust Beneficiary or other party-in-interest will have or be permitted to pursue any claim or cause of action against the Liquidating Trustee for making payments in accordance with the Plan or this Trust Agreement or for implementing the provisions of the Plan or this Trust Agreement. Any act taken or not taken, in the case of the Liquidating Trustee, with the approval of the Bankruptcy Court, will be conclusively deemed not to constitute gross negligence, willful misconduct, or a breach of fiduciary duty.

5.2. Indemnification. Upon application to and order entered by the Bankruptcy Court, the Trust shall indemnify, defend and hold harmless the Liquidating Trustee and his or her professionals, non-professionals, employees, affiliates and representatives, including but not limited to attorneys and accountants employed by the Liquidating Trustee or the Trust (the "Protected Parties") from and against any and all claims, causes of action, liabilities, obligations, losses damages or expenses (including attorneys' fees and expenses) occurring after the Effective Date which the Protected Parties may incur or which the Protected Parties may become subject to in connection with any action, suit, proceeding, or investigation brought by or threatened against such Protected Parties arising out of or due to their acts or omissions or consequences of such acts or omissions, with respect to the implementation or administration of the Trust or the Plan or the discharge of their duties hereunder or otherwise to the Trust or the Liquidating Trustee ("Related Matters"), other than to the extent determined by a Final Order to be solely due to their own respective gross negligence, willful misconduct, to the fullest extent permitted by applicable law.

5.3. Reimbursement. Upon application to and order entered by the Bankruptcy Court, the Liquidating Trustee may authorize available unencumbered funds of the Trust to be advanced to satisfy any reasonable and documented out-of-pocket costs and expenses (including reasonable attorneys' fees and other costs of defense) incurred by any Protected Party who is threatened to be named or made a defendant or a respondent in any proceeding concerning the administration, business, and affairs of the Trust; provided, however, that all such payments are subject to disgorgement in the event that the underlying claim against the Protected Party has been finally and judicially determined to have resulted from such Protected Party's own willful misconduct, gross negligence, or fraud. In the event that, at any time whether before or after termination of this Trust Agreement, as a result of or in connection with Related Matters, any Protected Party is required to produce any of its personnel (including former employees) for examination, deposition

or other written, recorded or oral presentation, or any Protected Party is required to produce or otherwise review, compile, submit, duplicate, search for, organize or report on any material within such Protected Party's possession or control pursuant to a subpoena or other legal (including administrative) process, the Protected Party shall be reimbursed by the Trust for its out of pocket expenses, including the reasonable fees and expenses of its counsel, and will be compensated by the Trust for the time expended by its personnel based on such personnel's then current hourly rate.

ARTICLE 6

REPORTS TO BENEFICIARIES OF CREDITORS' TRUST

6.1. Reporting to the U.S. Trustee. Commencing from and after the Effective Date, the Liquidating Trustee shall file those periodic reports required by the Plan and shall promptly pay any and all United States Trustee fees as and when due.

6.2. Tax Reporting. The Liquidating Trustee shall submit to each Trust Beneficiary appearing on its records during such year a separate statement setting forth the holder's share of items of income, gain, loss, deduction or credit. The Trust's taxable income, gain, loss, deduction, and credit will be allocated pro rata to the holders of Trust in accordance with such holders' respective beneficial interests in the Trust Assets. In addition, the Liquidating Trustee shall file all tax returns required to be filed and shall pay all taxes on such returns, if any. The Liquidating Trustee shall file (or cause to be filed) any other statements, returns, or disclosures relating to the Trust that are required by any governmental authority.

6.3. Other Reporting. The Liquidating Trustee may, but is not required, prepare and file, if deemed necessary or advisable, reports of distributions and dispositions of Trust Assets other than the reports required in this Agreement.

ARTICLE 7

TERMINATION AND FINAL DISTRIBUTION

7.1. Termination of Trust. The Trust will terminate on the earlier of (a) thirty (30) days after the full and final distribution of the Trust Assets or proceeds thereof in accordance with the terms of this Trust Agreement and the Plan, and (b) the fifth (5th) anniversary of the Effective Date; provided, however, that within six months of the fifth (5th) anniversary of the Effective Date, the Bankruptcy Court, upon a motion by the Liquidating Trustee or any party in interest, may extend the term of the Trust for an additional term of not more than five (5) years if it is necessary for the liquidation of the Trust Assets. Multiple extensions may be obtained so long as Bankruptcy Court approval is obtained within six months of the beginning of each such extended term. Notwithstanding the foregoing, the Liquidating Trustee shall not unduly prolong the duration of the Trust and shall at all times endeavor to resolve, settle or otherwise dispose of all property and Claims that constitute Trust Assets and to effect the full and final distribution of the Trust Assets to the Trust Beneficiaries in accordance with the terms hereof and the Plan and, thereafter, terminate the Trust as soon as practicable. Notwithstanding anything to the contrary herein, any termination of the Trust is conditioned upon payment of all costs and fees payable to the U.S. Trustee and filing and receiving Bankruptcy Court approval of an order to close the Case.

7.2. Final Distribution. Prior to and upon termination of the Trust, the Trust Assets will be finally distributed to the beneficiaries of Trust pursuant to the provisions set forth herein.

ARTICLE 8

AMENDMENT AND WAIVER

8.1. Amendment and Waiver. This Trust Agreement may not be amended, modified or supplemented, and no provision hereof or rights hereunder may be waived, except with the written consent of the Liquidating Trustee and authorization from the Bankruptcy Court. Any amendments to the Trust Agreement shall not be inconsistent with the purpose and intention of the Trust to liquidate in an expeditious but orderly manner the Trust Assets. Notwithstanding anything to the contrary herein, no amendment, modification, supplement or waiver shall be effective if it materially and adversely affects the liquidation and distributions contemplated by the Plan, or if it would adversely affect the federal income tax status of the Trust as a “grantor trust.” The Liquidating Trustee shall promptly file a copy of each amendment, modification, supplement or waiver of this Trust Agreement.

ARTICLE 9

MISCELLANEOUS PROVISIONS

9.1. Intention of Parties to Establish Trust. This Trust Agreement is intended to create a Creditors’ Trust for United States federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a trust and any ambiguity herein shall be construed consistent with such intent and purpose and, if necessary, this Trust Agreement may be amended to comply with such federal income tax laws, which amendments may be made to apply retroactively.

9.2. Preservation of Privilege and Defenses. Notwithstanding anything herein or in the Plan to the contrary, the Debtor shall not be required to waive any existing rights or privileges to which they are entitled under applicable law, including but not limited to the attorney-client privilege, except with regards to Claims and Causes of Action transferred to the Trust. Notwithstanding anything herein or in the Plan to the contrary, all professionals shall reserve all rights at law regarding work product privilege.

9.3. Prevailing Party. If the Liquidating Trustee or the Trust, as the case may be, is the prevailing party in a dispute regarding the provisions of this Trust Agreement or the enforcement thereof, the Liquidating Trustee or the Trust, as the case may be, shall be entitled to collect any and all costs, expenses and fees, including attorneys’ fees, from the non- prevailing party incurred in connection with such dispute or enforcement action.

9.4. Confidentiality. The Liquidating Trustee, and each of their respective employees, members, agents, professionals and advisors (each a “Confidential Party” and collectively, the “Confidential Parties”) shall hold strictly confidential and not use for personal gain any material, non-public information of which they have become aware in their capacity as a Confidential Party, of or pertaining to any entity to which any of the Trust Assets relates; provided, however, that such information may be disclosed if (a) it is now or in the future becomes generally available to the

public other than as a result of a disclosure by the Confidential Parties, or (b) such disclosure is required of the Confidential Parties pursuant to legal process including but not limited to subpoena or other court order or other applicable laws or regulations. In the event that any Confidential Party is requested to divulge confidential information pursuant to this subparagraph (b), such Confidential Party shall promptly, in advance of making such disclosure, provide reasonable notice of such required disclosure to the Liquidating Trustee to allow him/her sufficient time to object to or prevent such disclosure through judicial or other means and shall cooperate reasonably with the Liquidating Trustee in making any such objection, including but not limited to appearing in any judicial or administrative proceeding in support of any objection to such disclosure.

9.5. Laws as to Construction. This Trust Agreement shall be governed and construed in accordance with the laws of the State of Mississippi, without giving effect to rules governing the conflict of laws.

9.6. Severability. If any provision of this Trust Agreement or the application thereof to any Person or circumstance shall be finally determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Trust Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Trust Agreement shall be valid and enforced to the fullest extent permitted by law.

9.7. Retention of Jurisdiction. Notwithstanding the Effective Date and to the fullest extent permitted by law, the Bankruptcy Court shall retain exclusive jurisdiction over the Trust after the Effective Date, including, without limitation, jurisdiction to resolve any and all controversies, suits and issues that may arise in connection with the Trust, the Trust Agreement, or any entity's obligations incurred in connection with the Trust, and any action against the Liquidating Trustee or any professional retained by the Liquidating Trustee or the Trust, in each case in its capacity as such. Each party to this Trust Agreement hereby irrevocably consents to the exclusive jurisdiction of the Bankruptcy Court in any action to enforce, interpret or construe any provision of this Trust Agreement or of any other agreement or document delivered in connection with this Trust 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. Each party further irrevocably agrees that any action to enforce, interpret or construe any provision of this Trust Agreement will be brought only in the Bankruptcy Court. Each party hereby irrevocably consents to service by certified or registered mail, return receipt requested, to be sent to its address set forth in this Trust Agreement or in the official Schedules filed in the Cases or to such other address as it may designate from time to time by notice given in the manner provided above, of any process in any action to enforce, interpret or construe any provision of this Trust Agreement.

9.8. Notices. Any notice or other communication under this Trust Agreement shall be in writing and shall be given by either (i) hand-delivery, (ii) first class mail (postage prepaid), (iii) reliable overnight commercial courier (charges prepaid), or (iv) email, if confirmed promptly by any of the methods specified in clauses (i), (ii) and (iii) of this sentence, to the following addresses:

If to the Liquidating Trustee

Derek A. Henderson
1765-1 Lelia Drive, Suite 103
Jackson, Mississippi 39216
Telephone: (601) 948-3167
Email: derek@derekhendersonlaw.com

with a copy to

Douglas C. Noble
**McCraney | Montagnet | Quin | Noble
PLLC**
602 Steed Road • Suite 200
Ridgeland, Mississippi 39157
Telephone: (601) 707-5725
Facsimile: (601) 510-2939
Email: dnoble@MMQNLaw.com

Notice given by email shall be deemed to have been given and received when received and read by recipient, and notices via email shall require a read-receipt attachment for such purposes. Notice by overnight courier shall be deemed to have been given and received on the date scheduled for delivery. Notice by mail shall be deemed to have been given and received three (3) calendar days after the date first deposited in the United States Mail. Notice by hand delivery shall be deemed to have been given and received upon delivery. A party may change its address by giving written notice to the other party as specified herein.

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

9.10. Integration. This Trust Agreement and the Plan constitute the entire agreement of the parties with respect to the subject matter hereof and thereof and supersede all oral negotiations and prior writings with respect to the subject matter hereof and thereof.

9.11. 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 the Trust and to consummate the transactions contemplated hereby.

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

9.13. Counterparts. This Trust Agreement may be signed by the parties hereto in counterparts, which, taken together, shall constitute one and the same document, and the

counterparts may be delivered by facsimile transmission or by electronic mail in portable document format (.pdf).

9.14. Relationship to the Plan. The principal purpose of this Trust Agreement is to aid in the implementation of the Plan and therefore this Trust Agreement incorporates the provisions of the Plan. To that end, the Liquidating Trustee shall have full power and authority to take any action consistent with the purpose and provisions of the Plan, and to seek any orders from the Bankruptcy Court in furtherance of implementation of the Plan and this Trust Agreement. If any provisions of this Trust Agreement are found to be inconsistent with the provisions of the Plan, the provisions of the Plan shall control.

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

Date: _____, 2024.

DEREK HENDERSON,
Chapter 11 Trustee of United Furniture Industries, Inc., et al.

By: _____

DEREK HENDERSON,
Liquidating Trustee of UFI Liquidating Trust

By: _____