

United States Bankruptcy Court
Eastern District of Wisconsin

In re:
Window Select LLC
Debtor

Case No. 23-20646-gmh
Chapter 11

CERTIFICATE OF NOTICE

District/off: 0757-2
Date Rcvd: Dec 13, 2023

User: adkt
Form ID: pdfhrg

Page 1 of 3
Total Noticed: 1

The following symbols are used throughout this certificate:

Symbol	Definition
+	Addresses marked '+' were corrected by inserting the ZIP, adding the last four digits to complete the zip +4, or replacing an incorrect ZIP. USPS regulations require that automation-compatible mail display the correct ZIP.
#	Addresses marked '#' were identified by the USPS National Change of Address system as requiring an update. While the notice was still deliverable, the notice recipient was advised to update its address with the court immediately.

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Dec 15, 2023:

Recip ID	Recipient Name and Address
dbpos	#+ Window Select LLC, N56W13595 Silver Spring Dr, Menomonee Falls, WI 53051-6127

TOTAL: 1

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.
Electronic transmission includes sending notices via email (Email/text and Email/PDF), and electronic data interchange (EDI).

NONE

BYPASSED RECIPIENTS

The following addresses were not sent this bankruptcy notice due to an undeliverable address, *duplicate of an address listed above, *P duplicate of a preferred address, or ## out of date forwarding orders with USPS.

NONE

NOTICE CERTIFICATION

I, Gustava Winters, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed .R. Bank. P.2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Dec 15, 2023

Signature: /s/Gustava Winters

CM/ECF NOTICE OF ELECTRONIC FILING

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on December 13, 2023 at the address(es) listed below:

Name	Email Address
Andrew J. Rubsam	on behalf of Creditor State Of Wisconsin andrew.rubsam@wi.gov jenniferl.strickland@dwd.wi.gov;dwdbankruptcyattorney@dwd.wisconsin.gov
Crystal N Abbey	on behalf of Creditor Community State Bank cabbey@gklaw.com kboucher@gklaw.com,sstrack@gklaw.com
David J. Turiciano	on behalf of Creditor Garwin Mace Road LLC davidturiciano@gmail.com julialagina@turicianolaw.com,blakekambic@turicianolaw.com
David J. Turiciano	on behalf of Creditor Bliffert Lumber & Fuel Company davidturiciano@gmail.com julialagina@turicianolaw.com,blakekambic@turicianolaw.com

David J. Pawlowski	on behalf of Creditor Nicole Luterbach dpawlowski@westdunn.com
David J. Pawlowski	on behalf of Creditor Brandon Luterbach dpawlowski@westdunn.com
Douglas Cole Noble	on behalf of Creditor Phoenix Investment Group Holdings LLC dnoble@mmqnlaw.com, hbreland@mmqnlaw.com
Douglas F. Mann	dfmatty@aol.com dfmann@ecf.axosfs.com;dfmannlaw@gmail.com
Erin A. West	on behalf of Creditor Community State Bank ewest@gklaw.com kboucher@gklaw.com;elewerenz@gklaw.com
Evan Schmit	on behalf of Debtor Attorney Kerkman & Dunn eschmit@kerkmandunn.com lewert@kerkmandunn.com
Evan Schmit	on behalf of Debtor In Possession Window Select LLC eschmit@kerkmandunn.com lewert@kerkmandunn.com
Evan Schmit	on behalf of Defendant Window Select LLC eschmit@kerkmandunn.com lewert@kerkmandunn.com
Gregory M. Schrieber	on behalf of Defendant Window Select LLC gschrieber@kerkmandunn.com lewert@kerkmandunn.com
Gregory M. Schrieber	on behalf of Debtor In Possession Window Select LLC gschrieber@kerkmandunn.com lewert@kerkmandunn.com
Jennifer M Schank	on behalf of Trustee Jennifer M. Schank jschank@fuhrmandodge.com lstefenel@fuhrmandodge.com
Jennifer M. Schank	on behalf of Trustee Jennifer M. Schank jschank@fuhrmandodge.com lstefenel@fuhrmandodge.com
Jennifer M. Schank	on behalf of Interested Party Jennifer M. Schank jschank@fuhrmandodge.com lstefenel@fuhrmandodge.com
Jennifer M. Schank	jschank@fuhrmandodge.com lstefenel@fuhrmandodge.com
Jerome R. Kerkman	on behalf of Defendant Window Select LLC jkerkman@kerkmandunn.com lewert@kerkmandunn.com;nkerkman@kerkmandunn.com;cjrkl11@trustesolutions.net
Jerome R. Kerkman	on behalf of Debtor In Possession Window Select LLC jkerkman@kerkmandunn.com lewert@kerkmandunn.com;nkerkman@kerkmandunn.com;cjrkl11@trustesolutions.net
Jerome R. Kerkman	on behalf of Debtor Attorney Kerkman & Dunn jkerkman@kerkmandunn.com lewert@kerkmandunn.com;nkerkman@kerkmandunn.com;cjrkl11@trustesolutions.net
John W. Menn	on behalf of Creditor Mary Schroeder jmenn@swansonsweet.com ckrutke@swansonsweet.com,6904808420@filings.docketbird.com,Menn.JohnB105803@notify.bestcase.com
John W. Menn	on behalf of Creditor Rob & Betty Ellis jmenn@swansonsweet.com ckrutke@swansonsweet.com,6904808420@filings.docketbird.com,Menn.JohnB105803@notify.bestcase.com
Joseph Qortney Mcleod	on behalf of Creditor United States of America IRS qortney.mcleod@usdoj.gov
Joshua J. Brady	on behalf of Creditor Ally Bank c/o AIS Portfolio Services, LLC jbrady@gpjlaw.com, jjohnson-schafer@gpjlaw.com
Laura D. Steele	on behalf of U.S. Trustee Office of the U. S. Trustee Laura.Steele@usdoj.gov
Michael D. Morris	on behalf of Interested Party State Of Wisconsin Department Of Workforce Development Morrismd@doj.state.wi.us radkeke@doj.state.wi.us;kennedymys@doj.state.wi.us
Nathan R. Russell	on behalf of Creditor Tom Biese nrussell@russelllawwi.com aalt@russelllawofficeswi.com
Nathan R. Russell	on behalf of Plaintiff Tom Biese nrussell@russelllawwi.com aalt@russelllawofficeswi.com
Nathan R. Russell	on behalf of Creditor Matthew Foelker nrussell@russelllawwi.com aalt@russelllawofficeswi.com

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Nicholas Kerkman	on behalf of Debtor In Possession Window Select LLC nkerkman@kerkmandunn.com lewert@kerkmandunn.com
Nicholas Kerkman	on behalf of Debtor Attorney Kerkman & Dunn nkerkman@kerkmandunn.com lewert@kerkmandunn.com
Nicholas Kerkman	on behalf of Defendant Window Select LLC nkerkman@kerkmandunn.com lewert@kerkmandunn.com
Office of the U. S. Trustee	ustpreion11.mi.ecf@usdoj.gov
Robert N. Duimstra	on behalf of Creditor Dan T Dwyer robert-duimstra@mennlaw.com kerry-fox@mennlaw.com
Robert W. Flessas	on behalf of Creditor Erica Reinicke robert@robertflessas.com
Scott Neil Schreiber	on behalf of Interested Party Jacquie Gabel sschreiber@clarkhill.com blambert@clarkhill.com
Scott Neil Schreiber	on behalf of Creditor Paul S. Kiswardy sschreiber@clarkhill.com blambert@clarkhill.com
William A. Rinehart	on behalf of Creditor Sinclair Broadcast Group Inc. war@rsmlaw.com

TOTAL: 39



So Ordered.

Dated: December 13, 2023


G. Michael Halfenger
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In re:

Window Select LLC,

Case No. 23-20646-gmh
Chapter 11

Debtor in possession.

Address: N56W13595 Silver Spring Dr
Menomonee Falls, WI 53051

Employer Identification No.: 84-1860295

ORDER CONFIRMING PLAN

Debtor Window Select LLC filed a chapter 11 plan on July 18, 2023, as modified by modifications filed on September 20, 2023, December 12, 2023, and December 13, 2023. Based on the record, the court finds that the debtor's plan satisfies the requirements for confirmation set forth in 11 U.S.C. § 1191(a).

Accordingly, IT IS THEREFORE ORDERED AS FOLLOWS:

1. The debtor's chapter 11 plan, as modified on December 13, 2023, a copy of which is attached hereto, is confirmed.

2. This order is effective upon entry and is not stayed by operation of Fed. R. Bankr. P. 3020(e).
3. The debtor must serve a copy of this order and the notice of order confirming plan on all creditors and parties in interest within five days of the entry of the order.

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**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

In re:

Window Select LLC,

Debtor.

**Case No. 23-20646-gmh
Chapter 11 (Subchapter V)**

**PLAN OF LIQUIDATION OF THE DEBTOR DATED JULY 18, 2023,
AS MODIFIED DECEMBER 13, 2023**

Background for Cases Filed Under Subchapter V

A. Description and History of the Debtor's Business

The Debtor is in the home improvement industry. It sells windows, siding, doors and other home improvement products, and arranges for their installation and servicing.

Justin Kiswardy started the Debtor's business in 2019. He has always been its sole member. Until resigning in December 2022, he was also its managing member.

By early 2022, the Debtor's business faced increased financial issues that delayed installation of products. Mr. Kiswardy hired Cogent Analytics Inc. ("Cogent") to assist the Debtor in resolving its financial issues. Cogent provides business consulting and has significant experience in the home improvement industry. It also assists clients in recapitalizing their businesses.

Cogent determined that the Debtor's records provided to Cogent were so poor that it could not construct reliable financial statements, such as a balance sheet or income statement.

Mr. Kiswardy asked Cogent to seek investors to provide new equity capital for the Debtor. Cogent reached out to investors that had previously made investments in similar companies. But, because Window Select had few assets and large unfunded liabilities, any interest quickly ceased

upon learning of the Debtor's dire financial circumstances. However, some members of Cogent had an interest. Mr. Kiswardy turned down the first proposal that required him to give up some of his ownership interest. In June 2022, Mr. Kiswardy could not raise working capital from his own sources, which was a requirement of a second proposal.

The Debtor's financial problems caused installation delays due to the inability to purchase materials. The delays led to customer complaints to the Better Business Bureau and the Wisconsin Department of Trade and Consumer Protection. Lawsuits followed.

By October 2022, Mr. Kiswardy and Cogent decided that a chapter 11 proceeding was necessary. The Debtor had already stopped taking new customer orders. The Debtor hired chapter 11 attorneys.

In December 2022, the members of Cogent determined that they were not interested in taking the over the Debtor's business but would invest in a new company to complete the Debtor's unperformed contracts; however, any agreement required that Mr. Kiswardy no longer be involved. Mr. Kiswardy appointed Andrew Parsons as the Chief Executive Officer of the Debtor, authorized a chapter 11 filing and resigned all officer positions.

Mr. Parsons was appointed CEO because he was the Cogent employee leading its efforts to restructure the Debtor's business. He has over 35 years of experience serving as a senior executive and management consultant for domestic and foreign companies, and specializes in advising small to medium sized businesses requiring financial restructuring or seeking growth opportunities.

As the Debtor prepared for a chapter 11 filing, it terminated its original chapter 11 counsel and retained Kerkman & Dunn.

Before the chapter 11 filing, the Debtor was able to operate its business due to loans and financial accommodations by Cogent. Cogent lent approximately \$336,000 that it wrote off on

December 8, 2022 as part of Mr. Kiswardy's agreement to resign. Cogent also reduced its management/consulting fee to \$15,000 per month. Cogent was not been paid for its services in February through the filing on February 17.

After December 8, 2022, Phoenix Investment Group Holding, LLC ("Phoenix") stepped in and provided \$479,000 in loans to keep the business operating and to fund the Debtor's chapter 11 lawyers.

Phoenix made the loans with the intent of taking over the customer contracts with a new wholly-owned entity, TruVista LLC that would begin operating a home improvement business. TruVista's owners consist of two principals of Cogent and two others that own Phoenix. Mr. Kiswardy has no interest in TruVista.

Without funding from Cogent and Phoenix, the Debtor's business would have ceased by November 2022, and no unsecured non-priority creditor would be paid anything.

B. Description of Chapter 11 Proceedings

After the chapter 11 filing on February 17, 2022 (the "Petition Date"), with Mr. Parsons as CEO, the Debtor continued to perform customer contracts. The Court approved debtor-in-possession financing up to an amount of \$300,000 with Phoenix. This was available to the extent customer payments from completed work could not cover the Debtor's business operations and would cover the administrative expenses of the case, such as those of the attorney for the Debtor and the subchapter V trustee.

During the chapter 11 case, the Debtor contacted customers that had unperformed contracts to determine if they wished to have TruVista complete them on modified terms. Approximately 850 agreed to TruVista completing them. The Court approved the Debtor's motion to assume those contracts as modified and assign them to TruVista. After the assignment, the Debtor's business

virtually ceased with operations continuing to ensure a smooth transfer of the assumed contracts to TruVista.

In conjunction with the motion to assume the modified contracts, the Debtor filed a motion to reject all customer contracts that were not assumed and assigned to TruVista, which totaled approximately 1,149. The Court approved that motion.

The next stage in the case was to determine the universe of claims. The Debtor requested a bar date by which creditors were required to file claims against the Debtor. The Court set a bar date for June 30, 2023. Notice of the bar date was mailed to all known creditors and published in newspapers in regions the Debtor had conducted its business. Creditors filed approximately 250 claims by the bar date.

The Debtor's chapter 11 counsel also sought to protect and locate assets that could benefit creditors. Those assets include the following:

(a) **Mr. Kiswardy's Home.** Initially, counsel became aware that Mr. Kiswardy's home in Burlington, Wisconsin, was listed for sale and being foreclosed upon by the first mortgage holder, Greenwood Bank. The home was sold at a sheriff's sale in the foreclosure action. The sale covered only Greenwood Bank's debt and a second mortgage. If there had been excess funds, the Debtor's chapter 11 counsel was prepared to bring an action to prevent it from going to Mr. Kiswardy.

(b) **Account at Community State Bank.** The Debtor's chapter 11 counsel also learned of two accounts holding \$84,112 of funds deposited by the Debtor at Community State Bank in Union Grove, Wisconsin. The bank made a loan to the Debtor secured by all the Debtor's business assets. The bank's liens were behind in priority to Greenwood Bank (which has now been paid in full). The bank claims a lien against the \$84,112 as security for its claim of more than \$1 million.

(c) **Personal Property Stored at Eagle Moving & Storage.** As of the Petition Date, the Debtor had been evicted from its business premises. Its equipment, inventory and office furnishings were stored at Eagle Moving & Storage (“Eagle Moving”), which removed the personal property following the eviction by the Debtor’s former landlord. Eagle Moving asserts a storage lien of approximately \$44,000. Community State Bank asserts that it has a first priority lien after Eagle Moving against the property. The Debtors had sought to facilitate an auction with a carve-out from the proceeds to be paid to the Debtor’s bankruptcy estate. The bank has not committed to the auction as of the date this plan was filed.

(d) **Accounts Receivable.** As of the Petition Date, the Debtor had no collectible accounts receivable. After the Petition Date, as of May 31, 2023, the Debtor had no accounts receivable. When the chapter 11 case was filed, the Debtor anticipated breaking even operational-wise during the case and supplementing any losses with a debtor-in-possession financing facility with Phoenix. That is what occurred. As of May 31, 2023, the Debtor’s balance sheet showed total current liabilities of \$101,707 and total current assets of \$2,197. The Debtor will utilize its debtor-in-possession line of credit to cover its debts incurred after the Petition Date.

(e) **Vehicles.** The Debtor was listed as the owner on the titles of four vehicles as of the Petition Date. During the chapter 11 case, the Debtor sought to sell three vehicles for a total sale price of \$110,911 to net approximately \$42,000 after secured claims are paid. The proceeds will be used to reduce the debtor-in-possession financing with Phoenix. A fourth vehicle, in the possession of Justin Kiswardy since before the Petition Date, was abandoned so the secured creditor could realize on its lien. No proceeds for the Debtor’s estate have yet been realized on that vehicle.

(f) **Employee Retention Tax Credit.** The Debtor listed an Employee Retention Tax Credit of potentially \$408,000 on its schedules. However, after investigation, the Debtor's chapter 11 counsel does not believe the credit is available because employees were not retained as required to be eligible for the credit and the Debtor did not timely file required tax returns related to employment taxes. However, this will be further examined by the Liquidating Trustee and the Debtor's credit is being assigned to the Liquidating Trust.

(g) **Escrowed Funds in Ohio.** During the case, the Debtor's chapter 11 counsel learned of \$210,000 being held in escrow from the sale of a building in Ohio. Justin Kiswardy had directly tried to obtain the funds by filing a suit under the name of "Justin Gabel" as the plaintiff. The body of the complaint identifies Justin Gabel as "Justin Gabel aka Justin Kiswardy." Gabel is Justin Kiswardy's mother's family name. The Debtor's chapter 11 counsel has learned that \$160,000 of funds involved can be traced from transfers made directly from the Debtor's bank accounts. Based upon the information known, the Debtor's chapter 11 counsel concludes that at least \$160,000 is property of the Debtor's bankruptcy estate that can be reached with a fraudulent transfer complaint. Preparation of the complaint is in process.

(h) **\$4.3 Million Paid to Insiders.** Cogent reviewed the Debtor's records that now includes information not provided to Cogent in early 2022. Based upon all the information available to Cogent, it prepared 2020 and 2021 financial statements for the Debtor. Those statements are attached as Exhibit 3. As of December 31, 2021, the Debtor's balance sheet shows the following cumulative amounts were paid to insiders of the Debtor for which no apparent consideration received by the Debtor:

Recipient	Amount Received	Insider Relationship
Justin Kiswardy	\$ 3,837,215	Sole member and manager of the Debtor
Christi Russell	\$ 298,210	Significant other of Justin Kiswardy
Matt Kiswardy	\$ 118,461	Sibling of Justin Kiswardy
Paul Kiswardy	\$ 59,555	Parent of Justin Kiswardy
Jacque Gabel	\$ 54,785	Parent of Justin Kiswardy

C. Plan of Liquidation

The Debtor filed this Plan of Liquidation of the Debtor dated July 18, 2023, on July 18, 2023 (including all subsequent modifications or amendments, the “Plan”). The Court entered an order establishing deadlines and dates necessary for the Court to confirm (or approve) the Plan. The notice and order accompany this plan. Essentially, on its effective date, the Plan vests all assets into a liquidating trust on the effective date of the Plan for administration by a liquidating trustee who is identified and whose qualifications are listed on Exhibit 4.¹

B. Liquidation Analysis

To confirm this Plan, the Court must find that all creditors and interest holders who do not accept the Plan will receive at least as much under the Plan as creditors and interest holders would receive in a liquidation under chapter 7 of the Code.² The liquidation analysis required by § 1190 of the Code is attached to this Plan as Exhibit 2. In a chapter 7 liquidation, the Debtor estimates that nothing would be paid to unsecured creditors.

C. Ability to Make Future Plan Payments and Operate Without Further Reorganization

A plan proponent (here, the Debtor) must also show that it will have enough cash over the life of the Plan to make the required Plan payments. Section 1190 of the Code requires that a Plan must provide projections that support the ability to make all payments required by the Plan.

¹ Exhibit 4 is not attached to the version of the Plan mailed to all creditors. Exhibit 4 is on file with the Court and may be viewed at the Clerk of the Bankruptcy Court’s office or online at the Debtor’s website: <https://dm.epiq11.com/case/windowselect>

² The “Code” is a defined term for the Bankruptcy Code, which is located at title 11, United States Code.

All payments under the Plan are dependent upon liquidation of assets and recovery of avoidable transfers either as preferential or fraudulent transfers. The Debtor's best estimate of recoveries and payments to classes of creditors is attached as Exhibit 2. By definition, no further reorganization can be necessary because all assets are being liquidated and paid to creditors.

You should consult with your accountant or other financial advisor if you have any questions pertaining to the financial projections on Exhibit 2.

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SPECIFIC PLAN TERMS

ARTICLE 1: SUMMARY

This Plan is being proposed under subchapter V of chapter 11 of the Code. It proposes to pay creditors of the Debtor from the liquidation of its assets and the recovery of preferential and fraudulent transfers by a “Liquidating Trustee” under a “Liquidating Trust,” both of which are defined and addressed later in this Plan. The Debtor will no longer conduct any business after confirmation of the Plan.

This Plan, which is also summarized on Exhibit 1, provides for:

[6]	Classes of secured claims; Class 1 – Ally Financial Class 2 – Ascentium Capital Class 3 – Community State Bank Class 4 – Eagle Moving & Storage Class 5 – Greenwood Bank Class 6 – Phoenix Investment Group, LLC
[1]	Classes of priority unsecured claims Class 7 – Individual Deposit Claims of \$3,350 or less
[1]	Classes of non-priority unsecured claims Class 8 – Unsecured Claims
[1]	Class 9 – Equity Interests

Payment of non-priority unsecured claims. Non-priority unsecured creditors holding allowed claims will receive distributions from the liquidation of assets and collection of preference

and fraudulent transfer avoidance actions. As shown on Exhibit 2, the Debtor has valued distributions to non-priority claims at approximately 5 cents on the dollar.

Payment of administrative expenses and priority claims: This Plan provides for full payment of administrative expenses on the effective date of the Plan (the “Effective Date”).³ Administrative expenses will be paid from the Phoenix debtor-in-possession loan. On the Effective Date, Phoenix will forgive the debtor-in-possession loan estimated to be \$175,000. Priority tax claims will be paid from the liquidation of assets and recovery of preference and fraudulent transfer avoidance actions.

All creditors and equity security holders should refer to Articles 2 through 4 of this Plan for information regarding the precise treatment of their claim.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one.)

ARTICLE 2: CLASSIFICATION OF CLAIMS AND INTERESTS

2.01: Class 1. Ally Financial shall retain all its rights, including all liens to secure its claim, and be unaffected by the Plan. As of the Effective Date, if it has not already done so, the Debtor abandons any interest it may have in the collateral securing Ally Financial’s claim. The collateral is a 2020 Jeep Grand Cherokee SUV that has been in the possession of Justin Kiswardy since before the Petition Date. The total amount of the Class 1 claim is estimated to be \$ 61,558.

2.02: Class 2. The claim of Ascentium Capital, to the extent allowed as a secured claim under § 506 of the Code, shall be satisfied by (a) the sale of its collateral (three vehicles) pursuant to a motion filed by the Debtor prior to filing the Plan, or (b) the sale by the Liquidating Trustee under the Liquidating Trust if the collateral has not been sold before the Effective Date, or (c) at

³ The “Effective Date” is determined by Section 8.02 of the Plan.

the Liquidating Trustee's option if the vehicles are transferred to the Liquidating Trust, surrendered back to Ascentium Capital in full satisfaction of its secured claim. To the extent the claim is not paid in full from the proceeds, the balance of its claim shall be a general unsecured claim under Class 8. The total amount of the Class 2 claim is estimated to be \$69,444.

2.03: Class 3. The claim of Community State Bank, to the extent allowed as a secured claim under § 506 of the Code, shall be satisfied from collateral in which it has a perfected security interest. The Debtor believes that the bank has a perfected security interest in the Debtor's two accounts at the bank that total approximately \$84,112 plus personal property stored at Eagle Moving. After considering the storage lien of Eagle Moving, the Debtor estimates the bank's secured interest is \$156,000. Assuming these values, the bank's secured claim is \$240,112. The Liquidating Trustee will determine if the bank has perfect liens and whether to surrender the accounts and personal property to the bank, or sell the personal property in cooperation with the bank. The liquidation analysis (Exhibit 2) assumes that the Liquidating Trustee will sell the personal property and net \$5,000 as a carve-out from the sale but the bank has not yet consented to this carve-out. To the extent the bank's claim is not paid in full from the proceeds, the balance of its claim shall be a general unsecured claim under Class 8. The total amount of the Class 4 claim is estimated to be \$240,112 with the amount of \$773,030 as a general unsecured claim under Class 8.

2.05: Class 4. The claim of Eagle Moving, to the extent allowed as a secured claim under § 506 of the Code, shall be satisfied by the sale of its collateral either before the Effective Date if it has been sold after approval by the Court, or by the Liquidating Trustee under the Liquidating Trust. Eagle Moving shall receive any proceeds from the sale to which it is entitled under the lien priority applicable under Wisconsin state law. Alternatively, the Liquidating Trustee may choose to abandon any interest in the collateral. In that case, Eagle Moving shall be paid from its sale of

its collateral as it may proceed with its rights under applicable non-bankruptcy law. To the extent the claim is not paid in full from the proceeds, the balance of its claim shall be a general unsecured claim under Class 8. The total amount of Class 5 claims is estimated to be \$44,000. The Debtor does not anticipate that Eagle Moving will have any unsecured claim.

2.06: Class 5 – The claim of Greenwood Bank, to the extent allowed as a secured claim under § 506 of the Code, has been satisfied from the sale of its collateral during the Debtor’s chapter 11 case and before the filing of the Plan. The Plan does not affect the rights of Greenwood Bank under applicable non-bankruptcy law. The total amount of the Class 6 claim (as of the Petition Date) is estimated to be \$1,250,000. As of the Effective Date, the amount of the claim is estimated to be \$0.

2.07: Class 6 – The claim of Phoenix, to the extent allowed as a secured claim under § 506 of the Code, shall be extinguished on the Effective Date. It shall receive nothing on account of its liens or claim. Additionally, any unsecured claim of Phoenix is forgiven as of the Effective Date. The total amount of the Class 6 claim is estimated to be \$554,000 before the Petition Date and \$175,000 after the Petition Date, a total of \$729,000. In conjunction with the debt forgiveness, the Debtor is releasing Phoenix and Cogent from any claims that the Debtor may have against them. This is being done to avoid baseless suits from aggressive creditors. The Debtor’s chapter 11 counsel has not identified any colorable claims against Phoenix or Cogent.

2.08: Class 7 – All priority unsecured claims allowed under § 507(a)(7) of the Code as deposits of individuals shall be limited to \$3,350, as limited by the Code, and shall be paid 100% up to \$3,350 from the sale of assets and collection of preferential transfers and fraudulent transfers by the Liquidating Trustee under the Liquidating Trust under the priority applicable under the Code. Under the Plan, that priority of distribution is first costs of the Liquidating Trustee to

administer the Liquidating Trust and then priority unsecured claims in this Class 7. The total amount of Class 7 claims is estimated to be \$87,992.

2.09: Class 8 – All non-priority unsecured claims will be paid from the sale of assets and collection of preferential transfers and fraudulent transfers by the Liquidating Trustee under the Liquidating Trust under the priority applicable under the Code. Under the Plan, that priority is (a) first, costs of the Liquidating Trustee to administer the Liquidating Trust, (b) second, priority unsecured claims in Class 7, and (c) third, priority tax claims and then unsecured claims in Class 8.

2.10: Class 9 – The interests of the equity security holder are not impaired by the Plan. Mr. Kiswardy shall retain them after the Effective Date.

2.11: Intentionally omitted.

ARTICLE 3: TREATMENT OF ADMINISTRATIVE EXPENSES, PRIORITY TAX CLAIMS, AND QUARTERLY AND COURT FEES

3.01: Unclassified claims. Under § 1123(a)(1) of the Code, allowed administrative expenses and priority tax claims are not in classes. Administrative expenses in the ordinary course of the Debtor's financial affairs and business will be paid as they become due. The Debtor expects that the amount of administrative expenses as of the Effective Date will be \$0.

3.02: Administrative expenses. Administrative expenses allowed under § 503 of the Code will be paid in full on the Effective Date from the debtor-in-possession loan with Phoenix. The total amount paid by Phoenix before and under the Plan shall not exceed the amount authorized for debtor-in-possession financing. The amount paid from the loan will be forgiven by Phoenix as of the Effective Date and not be a claim or administrative expense. All such expenses are subject to Court approval.

3.03: Priority tax claims. Each holder of an allowed priority tax claim will be paid in full with interest at the rate under applicable non-bankruptcy law from the liquidation of the Debtor's assets and the collection of preference and fraudulent transfers recovered by the Liquidating Trustee under the Liquidating Trust. Subject to further amendment or a determination on a claim objection by the Debtor or Liquidating Trustee, the Internal Revenue Service ("IRS") has an allowed priority tax claim in the amount of \$1,289,990.42, entitled to interest at the rate of 7%, to be paid in full as set forth in this section.⁴ Subject to further amendment or a determination on a claim objection by the Debtor or Liquidating Trustee, the Wisconsin Department of Workforce Development, Unemployment Insurance Division, has an allowed priority tax claim in the amount of \$29,810.45, entitled to interest at the statutory rate under Wis. Stat. § 108.22(1)(a), which is an annual rate of 9% through December 31, 2023 and which will adjust as of January 1, 2024, to be paid in full as set forth in this section.

3.04: Statutory fees. All unpaid fees required to be paid under 28 U.S.C. § 1930 that are owed on or before the Effective Date will be paid on or before the Effective Date from the debtor-in-possession loan with Phoenix. The amount paid from the loan will be forgiven by Phoenix and not be a claim or administrative expense. The Debtor estimates that none will be accrued.

ARTICLE 4: TREATMENT OF CLAIMS AND INTERESTS UNDER THE PLAN

4.01: Claims and interests are treated as follows under this Plan:

⁴ Since filing the plan on July 18th, the Debtor has filed additional forms 940 and 941 reports with the IRS. Once the IRS processes the reports, the Debtor expects that the IRS will amend its claim to significantly reduce the amount of its allowed priority tax claim. The Debtor estimates that future amendment will reduce the priority amount of the IRS's claim to less than \$100,000.

Class	Impairment	Treatment
Class 1 – Secured claim of Ally Financial	<input type="checkbox"/> Impaired <input checked="" type="checkbox"/> Unimpaired	The claim of Ally Financial, estimated to be in the gross amount of \$61,558 (before determining the value of the collateral securing the claim), will be unaffected by the Plan and Ally Financial will retain all rights under its contract. If it has not already done so, the Debtor, as of the Effective Date, abandons any interest it may have in the collateral securing the claim.
Class 2 – Secured claim of Ascentium Capital	<input checked="" type="checkbox"/> Impaired <input type="checkbox"/> Unimpaired	The claim of Ascentium, estimated to be in the amount of \$69,444 (before determining the value of the collateral securing the claim), will be paid from the sale of its collateral under the motion filed but not granted before this Plan was filed, or by the Liquidating Trustee under the Liquidating Trust if the collateral has not been sold by the Effective Date. At the Liquidating Trustee's option, he can sell less than all the collateral or abandon any interest in the collateral in which case Ascentium may exercise its state law rights under its contract to realize on its collateral.
Class 3 – Secured claim of Community State Bank	<input checked="" type="checkbox"/> Impaired <input type="checkbox"/> Unimpaired	The claim of Community State Bank, estimated to be in the amount of \$1,013,142 (before determining the value of the collateral securing the claim) shall be satisfied by the sale of its collateral by the Liquidating Trustee under the Liquidating Trust if the collateral has not been sold by the Effective Date and from the Debtor's accounts at the bank if the Liquidating Trustee determines it is in the best interests of the Liquidating Trust to abandon the Debtor's accounts at bank, or as determined by the Court if the Liquidating Trustee or another party determines it has rights in the accounts superior to the bank. At the Liquidating Trustee's option, it may sell less than all the collateral and abandon any interest in the collateral in which case bank may exercise its state law rights under its contract to realize on its collateral.

Class 4 – Secured claim of Eagle Moving & Storage	<input checked="" type="checkbox"/> Impaired <input type="checkbox"/> Unimpaired	The claim of Eagle Moving, estimated to be in the amount of \$44,000 (before determining the value of the collateral securing the claim) will be paid from the sale of its collateral by the Liquidating Trustee under the Liquidating Trust if the collateral has not been sold by the Effective Date. At the Liquidating Trustee's option, it may sell less than all the collateral and abandon any interest in the collateral in which case Eagle Moving may exercise its state law rights under its contract to realize on its collateral.
Class 5 – Secured claim of Greenwood Bank	<input type="checkbox"/> Impaired <input checked="" type="checkbox"/> Unimpaired	The claim of Greenwood Bank, estimated to be in the amount of \$0 as of the Effective Date was paid from the sale of its collateral before the Effective Date.
Class 6 – Secured claim of Phoenix Investment Group, LLC	<input checked="" type="checkbox"/> Impaired <input type="checkbox"/> Unimpaired	The claim of Phoenix, estimated to be in the amount of \$729,000, including its post-petition claim arising from the debtor-in-possession financing (before determining the value of the collateral securing the claim) will be paid nothing and its claim will be extinguished on the Effective Date.
Class 7 – Priority, unsecured claims under § 507(a)(7)	<input checked="" type="checkbox"/> Impaired <input type="checkbox"/> Unimpaired	All priority unsecured claims allowed under § 507(a)(7) of the Code, which are capped at \$3,350, estimated to total \$87,992, will be paid from the sale of assets and collection of preferential transfers and fraudulent transfers by the Liquidating Trustee under the Liquidating Trust under the priority applicable under the Code after payment of the costs of the Liquidating Trust.
Class 8 – Non-Priority, unsecured claims	<input checked="" type="checkbox"/> Impaired <input type="checkbox"/> Unimpaired	All non-priority unsecured claims allowed under § 502 of the Code, estimated to total \$5,208,809 (excluding Phoenix's claim), will be paid from the sale of assets and collection of preferential transfers and fraudulent transfers by the Liquidating Trustee under the Liquidating Trust under the priority applicable under the Code.
Class 9 – Equity Interests in the Debtor	<input type="checkbox"/> Impaired <input checked="" type="checkbox"/> Unimpaired	The equity interest holder shall retain his interest in the Debtor.

4.02: Terms applicable to Classes 1 through 9. The following terms shall apply to Classes 1 through 9:

- (a) Intentionally omitted.
- (b) Under § 1111(b)(1)(B)(ii), no holder of a secured claim in Classes 1 through 6 can make an election under § 1111(b)(1)(A) because all collateral is being sold either under § 363 or the Plan.
- (c) The liens securing the allowed secured claims in Classes 1 through 6 shall remain after confirmation of the Plan.
- (d) Upon the sale of any property against which there is a lien, claims secured by liens shall attach to the proceeds of the sale in their order of priority under applicable state law and the Code.
- (e) Upon the Liquidating Trustee filing a notice with the Court that property is abandoned, the property is immediately abandoned and creditors may immediately exercise their state law rights against the property without any further relief from the Court. No stay or injunction shall apply to property that the Liquidating Trustee abandons. Provided however, that any injunction applicable due to a discharge or the confirmation order unrelated to the property abandoned shall not be affected by this Section 4.02(e).
- (f) Intentionally omitted.

ARTICLE 5: ALLOWANCE AND DISALLOWANCE OF CLAIMS

5.01: Disputed claim. A “disputed claim” is a claim that has not been allowed or disallowed and as to which either:

- (a) A proof of claim has been filed or deemed filed, and the Debtor or another party in interest has filed an objection; or

(b) No proof of claim has been filed, and the Debtor has scheduled such claim as disputed, contingent or unliquidated.

5.02: Delay of distribution on a disputed claim. No distribution will be made on account of a disputed claim unless and until it is allowed.

5.03: Settlement of disputed claims. After the Effective Date, the Liquidating Trustee will have the power and authority to settle and compromise a disputed claim without court approval or compliance with Rule 9019(a).⁵

ARTICLE 6: PROVISIONS FOR EXECUTORY CONTRACTS AND UNEXPIRED LEASES

As of the Effective Date, all executory contracts or unexpired leases that have not been assumed are rejected and a claim arising from the rejection shall be filed within 30 days after the Effective Date or be forever barred from receiving distribution under the Plan.

ARTICLE 7: MEANS FOR IMPLEMENTATION OF THE PLAN

7.01: Overview. On the Effective Date, all property of the Debtor and causes of action shall vest in the Liquidating Trust that will be administered by the Liquidating Trustee. “Causes of action” include (a) preference, fraudulent transfer and other claims arising under chapter 5 of the Code that are listed on Exhibit 2 against Justin Kiswardy, Christi Russell, Matt Kiswardy, Paul Kiswardy and Jacquie Gabel and (b) the claim against the deposit in Ohio . The Liquidating Trustee will pay claims in their order of priority under applicable state law and the Code.

7.02: Appointment of the Liquidating Trustee.

(a) On the Effective Date, the Liquidating Trustee shall take control of all the Debtor’s assets and causes of action that exist on the Effective Date. The Liquidating Trustee does not need to be “disinterested.” The subchapter V trustee may be the

⁵ “Rule” is defined as the Federal Rules of Bankruptcy Procedure.

Liquidating Trustee. The Liquidating Trustee will be named in the order confirming the Plan. The name, background and compensation of the proposed Liquidating Trustee is attached as Exhibit 3 but may be changed by the Debtor filing a supplement to the Plan at least 20 days before the date set to consider confirmation of the Plan. ***Creditors will need to inquire if a supplement has been filed for the Debtor's attorneys identified below or from the Court.***

(b) Upon the Effective Date, the Debtor shall transfer all its accounts and other assets to the Liquidating Trust to be administered by the Liquidating Trustee. The Liquidating Trust is on file with the Court as Exhibit 4 to the Plan and may be viewed online at the Debtor's website: <https://dm.epiq11.com/case/windowselect>.

(c) The Liquidating Trustee shall have broad authority to liquidate the Debtor's assets and pursue causes of action to recover preferences or fraudulent transfers, which are summarized on the attached Exhibit 2 and described earlier in this Plan.

(d) The Liquidating Trustee may retain professionals, including accountants and attorneys to represent it on terms deemed appropriate by the Liquidating Trustee. The professionals need not be disinterested. The Liquidating Trustee shall be compensated for its services. All compensation for the Liquidating Trustee or its professionals shall be reasonable.

(e) The Liquidating Trustee, at his sole discretion, may pursue, not pursue or settle actions without Court oversight or approval.

(f) The Liquidating Trustee may make interim distributions on allowed claims as it deems appropriate.

(g) After the Liquidating Trustee has fully administered the Debtor's assets and distributed their proceeds as provided under the Liquidating Trust, it shall provide a final accounting to the Court and move to close the case.

7.03: Distribution by the Liquidating Trust

(a) The proceeds from the liquidation of assets and recoveries of preferential and fraudulent transfer actions shall be distributed in the following order:

- (i) Collection costs, including attorney fees and costs of the Liquidating Trustee;
- (ii) Costs of administering the Liquidating Trust, including the professional fees and fees of the Liquidating Trustee and the subchapter V trustee if she has not been discharged;
- (iii) To satisfy and liens against the proceeds in their order of priority under state law;
- (iv) To Class 7 priority unsecured claims distributed on a pro-rata basis up to 100% of their allowed amounts;
- (v) To priority tax claims distributed on a pro-rata basis up to 100% of their allowed amounts with interest at their applicable rates under non-bankruptcy law; and
- (vi) To Class 8 non-priority unsecured claims distributed on a pro-rata basis up to 100% of their allowed amounts.
- (vii) To Class 9 equity interests.

(b) If there are still funds remaining after all of Classes stated in Section 7.03(a) above are fully paid and interest at the rate of 12% per annum from the Effective Date has

been paid to Classes 7 and 8, the remaining funds shall be paid to the Class 9 equity interest holder.

7.06: Phoenix's \$25,000 Funding. On the Effective Date, Phoenix shall fund the Liquidating Trust with \$25,000 for the Liquidating Trustee to administer the Liquidating Trust and investigate causes of action. However, the total amount paid by Phoenix before and under the Plan, including the \$25,000, shall not exceed the amount authorized for debtor-in-possession financing. The \$25,000 paid from the loan will be forgiven by Phoenix as of the Effective Date and not be a claim or administrative expense.

7.05: Subchapter V Trustee's Role. The subchapter V trustee's duties shall be discharged as of the confirmation of this Plan if the Plan is confirmed as a "consensual" Plan. If the Plan is not confirmed as a "consensual" Plan, the Liquidating Trustee shall provide the subchapter V trustee with a report of any proposed distributions at least 21 days before they are made for her approval. After distributions are approved, the Liquidating Trustee shall make the payments.

ARTICLE 8: GENERAL PROVISIONS

8.01: Definitions and rules of construction. The definitions and rules of construction set forth in §§ 101 and 102 of the Code shall apply when terms defined or construed in the Code are used in this Plan.

8.02: Effective date. The "Effective Date" is the day that is 14 days after the entry of the confirmation order. If, however, a stay of the confirmation order is in effect on that date, the Effective Date will be the day after the date on which the stay expires or is otherwise terminated. These periods are calculated as provided in Rule 9006(a)(1).

8.03: Binding effect. The rights and obligations of any entity named or referred to in this Plan will be binding upon and will inure to the benefit of the successors or assigns of such entity.

8.04: Captions. The headings contained in this Plan are for convenience of reference only and do not affect the meaning or interpretation of this Plan.

8.05: Retention of Jurisdiction. The Court confirming the Plan may exercise jurisdiction to the full extent necessary to administer this case after Plan confirmation and to adjudicate any related adversary proceedings or contested matters, including those relating to the Plan, such as concerning the Plan's construction, implementation, or modification. Neither this provision nor anything in this Plan constitutes a limitation on or an expansion of the jurisdiction authorized by title 28 of the United States Code.

ARTICLE 9: DISCHARGE AND INJUNCTION

9.01: No Discharge Granted to the Debtor. This Plan shall not result in the discharge of any claim against the Debtor.

9.02: Injunction. *Although the Debtor shall not be granted a discharge, all persons are enjoined from taking any action against the assets, rights, causes of action or interests vested in the Liquidating Trust under the Plan until the Debtor's assets and chapter 11 case are fully administered by the Liquidating Trustee and the Court closes the chapter 11 case.*

9.03: Release and Discharge of Phoenix and Cogent. *In consideration of the releases of their claims, both secured and unsecured, and Phoenix's administrative expenses, the Debtor and its estate release Phoenix and Cogent from any claims the Debtor may have, including avoidance claims under chapter 5 of the Code, as of the Effective Date. The release includes all officers, directors, professionals, attorneys and agents of Phoenix and Cogent.* A detailed description of

the relationship and transactions between the Debtor and Phoenix or Cogent can be found in the Declaration of Andrew Parsons filed as document no. 19-1 in the Debtor's chapter 11 case. A copy of Mr. Parsons' Declaration can be obtained from the Bankruptcy Clerk of Courts, the Debtor's website, <https://dm.epiq11.com/case/windowselect>, or from the Debtor's attorneys listed at the end of this Plan.

ARTICLE 10: OTHER PROVISIONS

10.01: Retention of Property. The Debtor shall transfer all its rights to property of the estate to the Liquidating Trust to be administered by the Liquidating Trustee on the Effective Date.

10.02: Prepayment. The Debtor may prepay any amount to any Class at any time without penalty.

10.03: Distribution Addresses. All distributions shall be mailed to creditors at the addresses shown on the Debtor's schedules, except those creditors who have filed proofs of claim or notices of appearance in this action shall have their distribution checks sent to the addresses shown on those documents. Any creditor may change the address for mailing of its distribution check by written notice to counsel for the Debtor. Any distribution checks properly sent to such addresses which are returned shall become the property of the Debtor without further liability for such distributions.

Dated: December 13, 2023.

Respectfully submitted,

/s/ Evan P. Schmit

Jerome R. Kerkman

Evan P. Schmit

Gregory Schrieber

Kerkman & Dunn

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Exhibit 1
Plan Summary

Class Description	Claim Amount as of Effective Date	Effective Date	Funded by Phoenix	From Assets for Distribution	Treatment
Sources of Cash					
Phoenix - DIP Lender			\$ 25,000	\$ 1,066,747	
Litigation Proceeds					
Administrative Expenses					
Kerkman & Dunn	\$ 20,000		\$ 20,000		
Accountant	\$ 5,000		\$ 5,000		
Department of Workforce Development	\$ 15,789		\$ 15,789		
Subchapter V Trustee	\$ 10,000		\$ 10,000		
Phoenix - DIP Lender					
Misc Post-Petition Payables					
Priority Wages	\$ -				
Priority Trade Debt - Line of Credit from DIP Lender	\$ 175,000				Forgiven on Effective Date
Tax Claims (Secured, Unsecured & Priority)*	\$ 217,080			\$ 217,080	Paid from assets realized after deposit claims
1 Ally Financial (not impaired)	\$ 61,558				2020 Jeep Grand Cherokee - abandoned and paid with collateral
2 Ascentium Capital	\$ 69,444				Two 2019 Chevrolet Silverado and 2016 Isuzu - abandoned and paid with collateral
3 Community State Bank	\$ 240,112	\$ 240,112			Realizes net value from interests in collateral: bank account (\$84,112), personal property (\$156,000)
4 Eagle Moving & Storage	\$ 44,000	\$ 44,000			Realizes net value from interests in collateral: personal property (\$200,000); claim amount is estimated
5 Greenwood Bank (not impaired)	\$ -	\$ -			Claim satisfied from foreclosure on other property pledged to secure the loan
6 Phoenix Investment Group, LLC	\$ 729,000				Entire pre-petition Claim and post-petition Administrative Expense is forgiven
7 Individual Deposit Claims	\$ 90,992			\$ 90,992	Paid from assets realized
8 Non-Priority Unsecured Claims Estimated Distribution Percentage:	\$ 5,792,261			\$ 738,675 13%	Paid from assets realized; Phoenix's claim of \$554,000 is excluded and will be forgiven under the Plan
9 Equity Interests				N/A	

* Assumes future amendment by IRS to non-priority claim amount of not more than \$100,000. Estimated Distribution to Class 8 will decrease if priority tax amount is larger.

Exhibit 2
Liquidation Analysis
(Plan vs. Chapter 7 Recovery)

Description ¹	Gross Amount	Assumed Liens	Liquidation Discount	Estate Carve-Out	Projected Net Amount	Explanation
Cash Paid by Phenix on Effective Date	\$ 25,000	\$ -		\$ -	-	Funds used by liquidating trustee to investigate or bring causes of action.
Bank Account at Community State Bank	\$ 84,112	\$ 84,112		\$ -	-	Two accounts at Community State Bank. The bank asserts a first priority lien on the accounts.
Personal Property shared with Eagle Motors	\$ 200,000	\$ 200,000		\$ 5,000	\$ 5,000	The accounts are secured by the community state bank. The bank asserts a first priority lien on the accounts. The Debtor's do not believe that returns were timely filed so the credit would likely not be available.
Employee Retention Tax Credit	\$ 408,000	\$ -	\$ (408,000)	\$ -	\$ 135,000	The Debtor's do not believe that returns were timely filed so the credit would likely not be available.
Funds held in escrow in Ohio	\$ 210,000	\$ -	\$ (75,000)	\$ -	\$ 135,000	Records show that the Debtor directly paid \$160,000 to the party holding the \$210,000 escrowed funds.
J. Kewadny	\$ 3,872,215	\$ -	\$ (3,006,722)	\$ -	\$ 766,443	Side owner.
J. Kewadny	\$ 17,443,410	\$ -	\$ (14,443,410)	\$ -	\$ 3,000,000	Side owner.
M. Kewadny	\$ 18,460	\$ -	\$ (82,923)	\$ -	\$ 35,438	J. Kewadny's brother.
P. Kewadny	\$ 59,555	\$ -	\$ (41,689)	\$ -	\$ 17,867	J. Kewadny's parent.
J. Gabel	\$ 54,786	\$ -	\$ (38,350)	\$ -	\$ 16,436	J. Kewadny's parent.
Totals	\$ 5,295,539	\$ 284,112	\$ (3,949,480)	\$ 5,000	\$ 1,066,747	

¹ The assets are the same as shown on the Liquidating Trust Assets. The difference is that the Plan provides benefits that are not available in a chapter 7.

Comparison of Payments to Unsecured Creditors under the Plan versus Chapter 7 Liquidation

Estimated Net Assets (before adjustments)	Under the Plan	Under Chapter 7 Liquidation
The Plan is not confirmed. Phenix will not contribute \$54,000.	\$ 1,066,747	\$ 1,066,747
If the Plan is confirmed, Phenix will contribute its DIP Loan.	\$ -	\$ (175,000)
Liquidating Trustee and Chapter 7 Trustee Fees are assumed to be equal.	\$ -	\$ -
Individual Deposit Claims (Class 9)(total amount is based upon filed proofs of claim)	\$ (90,992)	\$ (90,992)
Tax Claims (Unclassified)	\$ (217,680)	\$ (217,680)
Amount Available for Unsecured Claims without Priority	\$ 758,675	\$ 538,675
Total Unsecured Claims, excluding Phenix's pre-petition claim	\$ 5,792,261	\$ 6,346,261
If the Plan is not confirmed, Phenix's pre-petition claim of \$554,000 will not be forgiven.		
Percentage Paid to Unsecured Claims based upon assumed amounts:	13.1%	8.8%
Roundoff:	1.3%	9%

Assumes Chapter 7 Trustee would pursue collection actions without funds to investigate.

Fees are included in "Liquidation Discount"

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Accrual Basis

Exhibit 3
Window Select 2020-2021
Balance Sheet
 As of December 31, 2020

	Dec 31, 20
ASSETS	
Current Assets	
Checking/Savings	
1010 · BOA	164,162.05
Total Checking/Savings	164,162.05
Total Current Assets	164,162.05
TOTAL ASSETS	164,162.05
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Other Current Liabilities	
2010 · Unknown - Bank of America acct	100,000.00
Total Other Current Liabilities	100,000.00
Total Current Liabilities	100,000.00
Total Liabilities	100,000.00
Equity	
3100 · Shareholder Distrib - JKiswardy	-1,146,816.79
3110 · SH Distrib-BNF Christi Russell	-149,421.08
3120 · SH Distrib-BNF Matt Kiswardy	-77,143.50
3130 · SH Distrib-BNF Paul Kiswardy	-27,545.79
3140 · SH Distrib-BNF Jacquie Gabel	-6,010.22
Net Income	1,471,099.43
Total Equity	64,162.05
TOTAL LIABILITIES & EQUITY	164,162.05

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Exhibit 3
Window Select 2020-2021
Balance Sheet
 As of December 31, 2021

04/03/23

Accrual Basis

	<u>Dec 31, 21</u>
ASSETS	
Current Assets	
Checking/Savings	
1010 · BOA	31,415.00
1020 · CSB	59,824.98
1030 · CSB - GB	4,866.10
1050 · Greenwoods Bank	40,000.00
1060 · Unknown WS Acct - US Bank	3,000.00
Total Checking/Savings	<u>139,106.08</u>
Total Current Assets	<u>139,106.08</u>
TOTAL ASSETS	<u>139,106.08</u>
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Other Current Liabilities	
2005 · Unknown - LOC - CSB BankersBnk	202,684.00
2010 · Unknown - Bank of America acct	100,000.00
2025 · Delta Bridge Funding	260,206.00
2030 · Heavenly Funding	185,577.72
Total Other Current Liabilities	<u>748,467.72</u>
Total Current Liabilities	<u>748,467.72</u>
Total Liabilities	748,467.72
Equity	
3100 · Shareholder Distrib - JKiswardy	-3,837,214.85
3110 · SH Distrib-BNF Christi Russell	-298,210.30
3120 · SH Distrib-BNF Matt Kiswardy	-118,461.80
3130 · SH Distrib-BNF Paul Kiswardy	-59,555.48
3140 · SH Distrib-BNF Jacquie Gabel	-54,785.87
3200 · Members Equity	1,471,099.43
Net Income	2,287,767.23
Total Equity	<u>-609,361.64</u>
TOTAL LIABILITIES & EQUITY	<u>139,106.08</u>

Exhibit 3
Window Select 2020-2021
Profit & Loss
January through December 2020

	Jan - Dec 20
Ordinary Income/Expense	
Income	
4000 · Sales - Deposit Revenue	1,024,129.00
4001 · Sales - Mobile Deposit	847,049.93
4005 · Sales Preencoded Branch Deposit	1,647,053.38
4008 · Sales B of A Merchant Services	3,668,953.70
4010 · Sales - Greensky Revenue	357,294.75
4015 · Sales - Foundation Finance	17,200.18
4050 · B of A Chargebacks	-95,193.20
4100 · Deposit Refund	-151,478.99
4200 · Customer Discount/Reimbursement	-3,537.30
Total Income	7,311,471.45
Cost of Goods Sold	
5000 · Cost of Goods Sold	
5100 · Materials	1,740,689.43
5300 · Subcontractor - Labor	1,033,417.33
5700 · Equipment Rental	26,999.52
5800 · Supplies and Small Tools	108,334.29
5900 · Other Job Related Costs	60,393.25
5950 · Worker's Comp Insurance	20,830.08
Total 5000 · Cost of Goods Sold	2,990,663.90
Total COGS	2,990,663.90
Gross Profit	4,320,807.55
Expense	
6100 · Advertising & Marketing	
6110 · Radio	90,438.79
6120 · Television	300,565.82
6125 · Internet/Social Media	169,800.06
6130 · Print Materials	58,054.95
6140 · PPC - Pay Per Click	24,956.02
6150 · Agency & Promo	172,740.96
6160 · Sales Displays - POS	15,683.24
Total 6100 · Advertising & Marketing	832,239.84
6180 · Recruiting	12,441.49
6190 · Dues & Subscriptions	
6191 · Dues - Membership	2,302.75
6192 · Subscriptions	363.60
Total 6190 · Dues & Subscriptions	2,666.35
6200 · Computer & Internet	
6210 · Web Hosting & Domains	10,464.70
6220 · Online Apps	1,970.00
6230 · Repairs & Maintenance	2,855.75
6245 · Hardware	731.52
6250 · Software	196.84
Total 6200 · Computer & Internet	16,218.81
6300 · Sponsorships	1,880.00
6310 · Home Shows - Trade Shows	61,293.20
6400 · Office Supplies & Expenses	
6410 · Office Supplies	27,904.40
6420 · Office Expense	16,468.15
6430 · Office Furniture	24,242.32
6440 · Printer	7,405.25
Total 6400 · Office Supplies & Expenses	76,020.12
6450 · Postage & Delivery	1,150.66

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Accrual Basis

Exhibit 3
Window Select 2020-2021
Profit & Loss
January through December 2020

	Jan - Dec 20
6500 · Vehicle Auto Expense	
6510 · Auto Repairs & Maintenance	12,383.52
6520 · Vehicle Payments	117,288.33
6530 · Fuel	12,681.90
6540 · Truck/Auto Other Expense	365.50
	<hr/>
Total 6500 · Vehicle Auto Expense	142,719.25
6600 · Payroll	
6610 · Payroll Expenses - Wages	480,956.91
6620 · Payroll Tax Expense	198,203.78
6630 · Bonuses	22,054.00
6640 · Garnishment EE	1,851.64
	<hr/>
Total 6600 · Payroll	703,066.33
6670 · Payroll Processing Fees	2,170.69
6680 · Expense Reimbursement	18,935.29
6840 · Travel Expense	
6842 · Hotel	851.77
6840 · Travel Expense - Other	1,609.27
	<hr/>
Total 6840 · Travel Expense	2,461.04
6855 · Rent & Storage	88,244.58
6860 · Utilities	
6865 · Telephone	16,936.84
6870 · Gas & Electric	2,435.34
6875 · Cable/Internet	4,840.55
6880 · Water/Sewage	132.50
6885 · Waste Disposal	46,516.18
6890 · Security System	6,161.89
	<hr/>
Total 6860 · Utilities	77,023.30
6910 · Office Repairs/Maintenance	
6920 · Office Maintenance	3,906.48
6930 · Office Repairs	9,033.77
	<hr/>
Total 6910 · Office Repairs/Maintenance	12,940.25
6940 · Meals & Entertainment	
6950 · Meals	9,503.97
	<hr/>
Total 6940 · Meals & Entertainment	9,503.97
7000 · Insurance Expense	47,273.43
7100 · Taxes & Licenses	
7110 · State & Local	5,086.01
7130 · Licenses and Permits	415.36
	<hr/>
Total 7100 · Taxes & Licenses	5,501.37
7200 · Bank Fees	
7205 · NSF - Unknown Returned Checks	0.00
7210 · Greensky Fees	181,670.62
7230 · B of A - Merchant Services Fee	96,660.44
7235 · Bank Service Fees and NSF Chgs	2,014.06
	<hr/>
Total 7200 · Bank Fees	280,345.12

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Accrual Basis

Exhibit 3
Window Select 2020-2021
Profit & Loss
 January through December 2020

	Jan - Dec 20
7300 · Professional Fees	
7310 · Legal	41,702.63
7320 · Consulting	456,979.51
7330 · Accounting	6,400.00
	<hr/>
Total 7300 · Professional Fees	505,082.14
	<hr/>
Total Expense	2,899,177.23
	<hr/>
Net Ordinary Income	1,421,630.32
Other Income/Expense	
Other Income	
9000 · Other Income	
9010 · Rewards & Bank Discounts	5,804.11
9020 · PPP - Cares Act	43,665.00
	<hr/>
Total 9000 · Other Income	49,469.11
	<hr/>
Total Other Income	49,469.11
	<hr/>
Net Other Income	49,469.11
	<hr/>
Net Income	1,471,099.43
	<hr/> <hr/>

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04/04/23

Accrual Basis

Exhibit 3
Window Select 2020-2021
Profit & Loss
January through December 2021

	Jan - Dec 21
Ordinary Income/Expense	
Income	
4000 · Sales - Deposit Revenue	5,654,440.45
4001 · Sales - Mobile Deposit	1,500,718.88
4005 · Sales Preencoded Branch Deposit	3,670,458.13
4010 · Sales - Greensky Revenue	5,415,616.28
4015 · Sales - Foundation Finance	425,359.61
4050 · B of A Chargebacks	-541,740.11
4055 · Duplicate & Return Deposit Item	-92,476.00
4100 · Deposit Refund	-441,506.79
4200 · Customer Discount/Reimbursement	-11,197.60
4300 · Uncategorized Income	20,000.00
Total Income	15,599,672.85
Cost of Goods Sold	
5000 · Cost of Goods Sold	
5100 · Materials	4,381,889.00
5300 · Subcontractor - Labor	1,959,505.69
5700 · Equipment Rental	46,646.07
5800 · Supplies and Small Tools	57,155.60
5900 · Other Job Related Costs	49,196.73
5950 · Worker's Comp Insurance	55,496.25
Total 5000 · Cost of Goods Sold	6,549,889.34
Total COGS	6,549,889.34
Gross Profit	9,049,783.51
Expense	
6100 · Advertising & Marketing	
6110 · Radio	704,891.95
6120 · Television	671,979.75
6125 · Internet/Social Media	503,287.50
6130 · Print Materials	54,529.68
6140 · PPC - Pay Per Click	86,315.81
6150 · Agency & Promo	299,861.99
6100 · Advertising & Marketing - Other	13,879.99
Total 6100 · Advertising & Marketing	2,334,746.67
6180 · Recruiting	85,346.60
6190 · Dues & Subscriptions	
6191 · Dues - Membership	5,510.00
6192 · Subscriptions	1,960.20
Total 6190 · Dues & Subscriptions	7,470.20
6200 · Computer & Internet	
6210 · Web Hosting & Domains	3,212.62
6230 · Repairs & Maintenance	11,506.75
6245 · Hardware	1,679.97
Total 6200 · Computer & Internet	16,399.34
6300 · Sponsorships	2,841.23
6310 · Home Shows - Trade Shows	129,772.88
6400 · Office Supplies & Expenses	
6410 · Office Supplies	51,702.76
6420 · Office Expense	15,520.76
6430 · Office Furniture	30,557.69
6440 · Printer	2,683.77
Total 6400 · Office Supplies & Expenses	100,464.98
6450 · Postage & Delivery	2,601.21

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04/04/23

Accrual Basis

Exhibit 3
Window Select 2020-2021
Profit & Loss
January through December 2021

	Jan - Dec 21
6500 · Vehicle Auto Expense	
6510 · Auto Repairs & Maintenance	11,586.42
6520 · Vehicle Payments	145,328.03
6530 · Fuel	32,810.23
6540 · Truck/Auto Other Expense	29,257.28
Total 6500 · Vehicle Auto Expense	218,981.96
6550 · Office Equipment Rental	600.00
6600 · Payroll	
6610 · Payroll Expenses - Wages	2,041,362.96
6620 · Payroll Tax Expense	481,511.85
6630 · Bonuses	8,000.00
6640 · Garnishment EE	9,012.04
6655 · Payroll 401 K	14,768.91
6660 · PR Other Expense	33,025.93
Total 6600 · Payroll	2,587,681.69
6670 · Payroll Processing Fees	9,953.18
6680 · Expense Reimbursement	56,327.94
6800 · Employee Expenses	
6820 · Uniforms	2,489.83
6830 · Employee Appreciation	520.30
Total 6800 · Employee Expenses	3,010.13
6840 · Travel Expense	
6842 · Hotel	26,595.91
6840 · Travel Expense - Other	20,115.97
Total 6840 · Travel Expense	46,711.88
6855 · Rent & Storage	241,228.52
6860 · Utilities	
6865 · Telephone	25,702.70
6870 · Gas & Electric	1,996.67
6875 · Cable/Internet	2,843.61
6880 · Water/Sewage	1,008.52
6885 · Waste Disposal	64,501.71
6890 · Security System	5,996.02
Total 6860 · Utilities	102,049.23
6910 · Office Repairs/Maintenance	
6920 · Office Maintenance	12,315.00
6930 · Office Repairs	8,930.84
Total 6910 · Office Repairs/Maintenance	21,245.84
6940 · Meals & Entertainment	
6950 · Meals	9,302.43
6960 · Entertainment	5,382.39
Total 6940 · Meals & Entertainment	14,684.82
6970 · Customer Gifts	50.00
7000 · Insurance Expense	164,763.97
7100 · Taxes & Licenses	
7120 · Property	451.25
7130 · Licenses and Permits	2,681.15
Total 7100 · Taxes & Licenses	3,132.40

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04/04/23

Accrual Basis

Exhibit 3
Window Select 2020-2021
Profit & Loss
January through December 2021

	Jan - Dec 21
7200 · Bank Fees	
7205 · NSF - Unknown Returned Checks	45,000.00
7210 · Greensky Fees	12,158.00
7230 · B of A - Merchant Services Fee	114,346.79
7235 · Bank Service Fees and NSF Chgs	7,980.80
7245 · Bank Adjustment Correction	36,171.10
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Total 7200 · Bank Fees	215,656.69
7300 · Professional Fees	
7310 · Legal	38,932.70
7320 · Consulting	416,145.82
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Total 7300 · Professional Fees	455,078.52
8000 · Miscellaneous Expense	2,132.73
8700 · Unknown Expense - Need Detail	12,500.00
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Total Expense	6,835,432.61
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Net Ordinary Income	2,214,350.90
Other Income/Expense	
Other Income	
9000 · Other Income	
9010 · Rewards & Bank Discounts	7,899.33
9020 · PPP - Cares Act	65,517.00
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Total 9000 · Other Income	73,416.33
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Total Other Income	73,416.33
	<hr/>
Net Other Income	73,416.33
	<hr/>
Net Income	2,287,767.23
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Paul G. Swanson

Practice Areas

Bankruptcy & Insolvency Law, Business Workouts, Agricultural Restructuring / Reorganization, Collection Matters, Receiverships, Foreclosure Defense

Education

University of Wisconsin Law School, J.D. – 1979

University of Wisconsin Oshkosh, B.B.A. – 1977

Bar Admissions

State Bar of Wisconsin – 1979

United States District Court for the Eastern District of Wisconsin – 1990

United States District Court for the Western District of Wisconsin – 1979

United States Court of Appeals for the 7th Circuit – 1990

United States Bankruptcy Court for the Northern District of Illinois

United States Bankruptcy Court for the District of Colorado

United States Bankruptcy Court for the Western District of Michigan

Professional Associations/Achievements

Paul G. Swanson is a senior partner in the firm and primarily represents individuals and businesses in financial reorganizations, restructurings, formal bankruptcy proceedings, receiverships and other debt adjustment strategies. His representation is limited primarily to debtors in both simple and complex matters. He has practiced Bankruptcy & Insolvency Law for close to 39 years. He represents clients in the Eastern and Western Districts of Wisconsin, and the Western District of Michigan (UP).

Mr. Swanson has represented farmers in financial distress for the last 30 years, helping them in workouts, and voluntary through formal restructuring, to save their farms. He was an author of the Farmers Guide to the Farm Crisis published by the Young Lawyers Division of the State Bar of Wisconsin and has been representing farmers in Chapter 12 reorganizations since the inception of that Chapter. He has lectured at the Chapter 12 Trustee's Farm and Ranch Symposium held at Texas Tech and addressed the Chapter 12 Trustees at their meeting in Indianapolis in 2019. His experience in farm reorganization is extensive and in depth.

With the advent of Subchapter V of Chapter 11 in 2020, he filed and confirmed the first such case in Wisconsin and has pending several more at this time. He and his associate, Peter Nowak authored the recent Wisconsin Lawyer article on the new Subchapter and Mr. Swanson was a co-panellist at the annual LSU Bankruptcy Conference on the topic in December 2020.

As a Chapter 7 Trustee since 1983, Mr. Swanson has presided over tens of thousands of Chapter 7 liquidations, some that have been complex, and has delivered multiple millions of dollars to creditors through that process. As an independent receiver in state court receiverships under Chapter 128, Mr. Swanson has mediated disputes among secured creditors and other constituencies and managed to sell dozens of companies as going concerns, arguably delivering the highest and best value to creditors and, in many instances, shareholders. Generally, Mr. Swanson works when brought into such proceedings by ownership in order to maximize the value of the going concern of the business, in many cases, after a key officer of the business has left due to illness or other reasons and the business needs to continue operating while seeking buyers. Additionally, when appropriate,

Exhibit 4

the firm works in concert with financial advisors to the struggling business, or may bring in financial advisors who are highly qualified professionals.

He has also had extensive experience in difficult Ch. 128 Receiverships, most recently serving in the Hotel Northland case in Brown County wherein he took over, investigated, contracted to finish and sold at auction a \$40 million hotel project. His receivership experience usually involves multiple secured creditors with competing interests as opposed to acting for a single secured creditor selling its collateral. He represented Olsen's Mill in what was then the largest receivership in the State and which ultimately involved an appeal to the Supreme Court of Wisconsin which defined the limit of a Court's authority in such cases.

Mr. Swanson has been recognized and selected to Super Lawyers since 2005, including the current year. This recognition places him in the top five percent of the practice areas for which he was recognized, Bankruptcy and Debtor/Creditor Rights.

Mr. Swanson is currently a Past President of the State Bar of Wisconsin (2017 – 2018), having been elected by the membership. He has previously served as the Treasurer, Chair of the Board of Governors, and a Governor of the organization. As a young lawyer, he served as President of the Young Lawyers Division. He has been active in the Bar virtually his entire career and has served as Chair of the Bankruptcy, Insolvency and Creditors' Rights Section from 2007-2009 and remains a member of the section. He was instrumental, along with his partner, Claire Ann Resop, in establishing and continuing the annual Bankruptcy Section Retreat held in March of each year at the American Club in Kohler, wherein virtually all of the bankruptcy judges and the majority of bankruptcy practitioners in Wisconsin gather for education and professional development.

Mr. Swanson frequently lectures, locally and nationally, on bankruptcy related topics. He has spoken at the annual meetings of the National Association of Bankruptcy Trustees, the American Bankruptcy Institute, and the State Bar of Wisconsin, as well as for other continuing legal education seminars. He was the organizer and coordinator for over a decade for the annual Law Education Institute conference held in Vail or Aspen, CO, wherein he brought national speakers to a five day seminar, speaking on leading edge topics within the bankruptcy community. The Colorado Bar Continuing Education section sponsored the conference. He has also taught a graduate level course in the College of Business at the University of Wisconsin-Oshkosh, acquainting MBA candidates with the nature and diversity of bankruptcy and insolvency issues as related to business.

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In re:

Window Select LLC,

Debtor.

Case No. 23-20646-gmh
Chapter 11 (Subchapter V)

LIQUIDATING TRUST AGREEMENT FOR WINDOW SELECT LLC

Preamble

This Agreement (the “Liquidating Trust Agreement”) is made this ____ day of _____, 2023, by and between the chapter 11 bankruptcy estate of Window Select LLC (the “Debtor”) and _____, not individually, but solely as trustee of this Liquidating Trust (the “Liquidating Trustee” and, collectively with the Debtor, the “Parties”) in accordance with the Plan of Liquidation of the Debtor dated July 18, 2023, as modified (the “Plan”), confirmed by the Bankruptcy Court (as defined later) by the Order Confirming the Plan, dated _____, 2023 (the “Confirmation Order”).²

Recitals

A. On February 17, 2022, the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”) in the United States Bankruptcy Court for the Eastern District of Wisconsin (the “*Bankruptcy Court*”) and commenced its chapter 11 case.

B. The Plan and the Confirmation Order provide, among other things, that the Liquidating Trustee shall be empowered to make distributions, pursuant to the Plan, the Confirmation Order and this Liquidating Trust Agreement, to holders of claims as provided in Section 7.03 of the Plan (the “*Beneficiaries*”).

C. The Liquidating Trust is created pursuant to, and to effectuate, the Plan and the Confirmation Order.

D. The Liquidating Trust is created on behalf of, and for the sole benefit of, the Beneficiaries.

E. The powers, authority, responsibilities and duties of the Liquidating Trustee shall be governed by this Liquidating Trust Agreement, the Plan, applicable orders issued by the

² Capitalized terms not defined herein shall have the meanings ascribed to them in the Plan.

Exhibit 5

Bankruptcy Court (including the Confirmation Order), and general fiduciary obligations of trustees under Wisconsin law.

F. Pursuant to the terms and conditions of the Plan, the Confirmation Order and this Liquidating Trust Agreement, the Liquidating Trustee shall administer the Liquidating Trust Assets (defined below).

G. This Liquidating Trust Agreement is intended to supplement and complement the Plan and the Confirmation Order; provided, however, that if any of the terms and/or provisions of this Liquidating Trust Agreement conflict with the terms and/or provisions of the Plan or the Confirmation Order, the Plan and the Confirmation Order shall govern.

H. The Liquidating Trust is intended to qualify as a “liquidating trust” under the Internal Revenue Code of 1986 and the regulations promulgated thereunder, specifically Treas. Reg. § 301.7701-4(d), and as such is a “grantor trust” for federal income tax purposes with the Beneficiaries treated as the grantors and owners of the Liquidating Trust Assets. In particular:

- (i) The Liquidating Trust is organized for the primary purpose of liquidating the Liquidating Trust Assets, with no objective to conduct a trade or business except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust. The Liquidating Trust shall not be deemed a successor of the Debtor;
- (ii) The Liquidating Trust provides that the Beneficiaries of the Liquidating Trust will be treated as the grantors of the Liquidating Trust and deemed owners of the Liquidating Trust Assets. This Liquidating Trust Agreement requires the Liquidating Trustee to file returns for the Liquidating Trust as a grantor trust pursuant to Treas. Reg. § 1.6714(a);
- (iii) This Liquidating Trust Agreement provides for consistent valuations of the transferred property by the Liquidating Trustee and the Beneficiaries, and those valuations shall be used for federal income tax purposes;
- (iv) All of the Liquidating Trust’s income is to be treated as subject to tax on a current basis to the Beneficiaries who will be responsible for payment of any tax due;
- (v) This Liquidating Trust contains a fixed or determinable termination date that is not more than thirty (30) years from the date of creation of the Liquidating Trust and that is reasonably based on all the facts and circumstances;
- (vi) The investment powers of the Liquidating Trustee, other than those reasonably necessary to maintain the value of the Liquidating Trust Assets and to further the liquidating purpose of the Liquidating Trust, are limited to powers to invest in demand and time deposits, such as short-term certificates of deposit, in banks or other savings institutions, or other temporary, liquid investments, such as treasury bills; and

Exhibit 5

- (vii) The Liquidating Trustee is required to make a distribution at least once per twelve-month period to the Beneficiaries in the order of priorities set forth in this Liquidating Trust Agreement based on the Liquidating Trust's net income, except that the Liquidating Trustee may retain an amount of net income reasonably necessary to maintain the value of the Liquidating Trust Assets or to satisfy claims and contingent liabilities (including Disputed Claims).

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein and in the Plan and the Confirmation Order, the Parties agree as follows:

Article I Establishment of the Liquidating Trust

1.1 Transfer of Assets to the Liquidating Trust

1.1.1 Pursuant to the Plan, the Debtor and the Liquidating Trustee hereby establish the Liquidating Trust on behalf of the Beneficiaries, to be treated as the grantors and deemed owners of all assets of the Debtor, including, without limitation: (i) the Cash in the accounts of the Debtor on the Effective Date that is not necessary to satisfy obligations due under the Plan on the Effective Date and for estimated Allowed Administrative Expenses approved or subject to Court approval or otherwise due after the Effective Date; (ii) causes of action to recover preferences or fraudulent transfers; and (iii) other assets of the Debtor (collectively, the "*Liquidating Trust Assets*"). The Debtor hereby transfers, assigns and delivers to the Liquidating Trust, on behalf of the Beneficiaries, all of its right, title and interest in the Liquidating Trust Assets, notwithstanding any prohibition of assignability under applicable non-bankruptcy law. The Liquidating Trust agrees to accept and hold the Liquidating Trust Assets in the Liquidating Trust for the benefit of the Beneficiaries, subject to the terms of the Plan, the Confirmation Order and this Liquidating Trust Agreement.

1.1.2 All rights in connection with the vesting and transfer of the Liquidating Trust Assets, including the causes of action, and any attorney-client privileges, work-product protection or other privilege or immunity attaching to any documents or communications of the Debtor's professionals (whether written or oral) related to the Liquidating Trust Assets, will vest with the Liquidating Trust. All bank accounts established by the Debtor will be transferred to and held in the Liquidating Trust on behalf of the Beneficiaries, subject to the provisions of the Plan and this Liquidating Trust Agreement. The Debtor and the Liquidating Trustee are authorized to take all necessary actions to effectuate the foregoing.

1.2 Title to Assets

1.2.1 As provided in the Plan, the Debtor shall transfer the Liquidating Trust Assets to the Liquidating Trust for the benefit of the Beneficiaries. Notwithstanding any prohibition of assignability under applicable non-bankruptcy law, all assets and properties transferred to the Liquidating Trust pursuant to the Plan shall vest in the Liquidating Trust. Upon

Exhibit 5

the transfer of the Liquidating Trust Assets to the Liquidating Trust, the Debtor shall have no interest in or with respect to such Liquidating Trust Assets or the Liquidating Trust.

1.2.2 For federal income tax purposes, all parties (including, without limitation, the Debtor, the Liquidating Trustee and the Beneficiaries) shall treat the transfer of the Liquidating Trust Assets by the Debtor to the Liquidating Trust as a transfer of such assets by the Debtor to the holders of Allowed Claims entitled to distributions under the Plan and the Confirmation Order, followed by a transfer by such holders to the Liquidating Trust. Thus, the Beneficiaries shall be treated as the grantors and owners of a grantor trust for federal income tax purposes.

1.2.3 To any extent not effectuated by the Confirmation Order, the Debtor shall execute and deliver or cause to be executed and delivered all such documents (in recordable form where necessary or appropriate), and the Debtor shall take or cause to be taken such further action as may reasonably be necessary or appropriate, to vest or perfect in or confirm to the Liquidating Trust title to and possession of the Liquidating Trust Assets.

1.3 Valuation of Assets

The Liquidating Trust, to the extent that the Liquidating Trustee deems it necessary or appropriate, may conduct a good faith valuation of the Liquidating Trust Assets, and shall make such valuation available to the Beneficiaries by filing a report of such valuation with the Bankruptcy Court promptly after its completion. The valuation shall be used consistently by all parties (including the Debtor, the Liquidating Trustee and the Beneficiaries) for federal income tax purposes. Any dispute regarding the valuation of the Liquidating Trust Assets shall be resolved by the Bankruptcy Court.

1.4 Claims Against the Liquidating Trust Assets

The Liquidating Trust Assets shall be subject to the claims of the Liquidating Trustee, its Professionals (as defined *infra*) and Non-Professionals (as defined *infra*) and U.S. Trustee or subchapter V trustee fees. The Liquidating Trustee shall be entitled to reimburse such persons out of any available Cash in the Liquidating Trust, for reasonable compensation and actual reasonable out-of-pocket expenses, and against and from any and all loss, liability, expense or damage, which each may sustain in good faith and without willful misconduct, gross negligence, fraud or, solely in the case of the Liquidating Trustee, breach of fiduciary duty other than negligence, in the exercise and performance of any of the powers and duties of the Liquidating Trustee.

ARTICLE II APPOINTMENT OF THE LIQUIDATING TRUSTEE

2.1 Initial Liquidating Trustee

Pursuant to the Confirmation Order, _____ is hereby appointed to serve as the initial Liquidating Trustee under the Plan and hereby accepts this appointment and agrees to serve in such capacity, effective upon the date of this Liquidating Trust Agreement. Any successor Liquidating Trustee shall be appointed as set forth in Section 4.6 in the event any Liquidating Trustee is removed or resigns pursuant to this Liquidating Trust Agreement, or if such Liquidating Trustee otherwise vacates the position. Any Liquidating Trustee need not be “disinterested” as

Exhibit 5

the term is defined in the Bankruptcy Code and may include, without limitation, employees, independent contractors and agents of any party in the Cases for efficiency.

ARTICLE III DUTIES AND POWERS OF THE LIQUIDATING TRUSTEE

3.1 General Duties and Powers

The Liquidating Trustee shall be responsible for administering the Liquidating Trust Assets and taking actions on behalf of, and representing, the Liquidating Trust. The Liquidating Trustee shall have the authority to bind the Liquidating Trust within the limitations set forth herein, the Plan and the Confirmation Order, but shall for all purposes hereunder be acting in the capacity of Liquidating Trustee and not individually.

3.2 Scope of Authority

The responsibilities and authority of the Liquidating Trustee shall include, without limitation: (a) collecting and liquidating the Liquidating Trust Assets and distributing the Liquidating Trust Assets to the Beneficiaries in accordance with the Plan, the Confirmation Order and this Liquidating Trust Agreement; (b) facilitating the prosecution or settlement of objections to, or estimations of, Claims in accordance with, but subject to the limitations set forth in, the Plan; (c) analyzing, prosecuting and settling causes of action to recover preferences or fraudulent transfers; (d) in accordance with Section 11.1, filing all required tax returns and paying taxes and all other obligations on behalf of the Liquidating Trust from funds held by the Liquidating Trust; (e) filing Quarterly Reports; (f) providing periodic reports to the Bankruptcy Court and other parties-in-interest on the status of the Claims resolution process, the status of the prosecution of causes of action to recover preferences or fraudulent transfers, distributions to Beneficiaries and the financial status of the Liquidating Trust; (g) performing such administrative, ministerial, and other functions reasonably appropriate to the Debtor's orderly liquidation, including but not limited to, such actions as may be associated with the filing of all required tax returns and the dissolution of the Debtor under Wisconsin law; and (h) carrying out such other responsibilities not specifically set forth herein as may be vested in the Liquidating Trustee pursuant to the Plan, this Liquidating Trust Agreement, any Bankruptcy Court order or as may otherwise be necessary and proper to carry out the provisions of the Plan and the Confirmation Order.

3.3 Fiduciary Obligations to the Liquidating Trust and Beneficiaries

The Liquidating Trustee's actions as Liquidating Trustee will be held to the same standard as a trustee of a trust under Wisconsin law. His or her fiduciary obligations to the Liquidating Trust and its Beneficiaries are the same fiduciary obligations that the trustee of a trust owes to that trust and its beneficiaries under Wisconsin law.

3.4 Powers

In connection with the administration of the Liquidating Trust, except as otherwise set forth in this Liquidating Trust Agreement, the Plan or the Confirmation Order, the Liquidating Trustee is hereby authorized to perform those acts necessary to accomplish the purposes of the Liquidating

Exhibit 5

Trust, without further authorization from the Bankruptcy Court. Without limiting, but subject to, the foregoing, the Liquidating Trustee is expressly authorized, but not required, unless otherwise provided in this Liquidating Trust Agreement and subject to the limitations contained herein, in the Plan and in the Confirmation Order, to:

(a) hold legal title (on behalf of the Liquidating Trust as Liquidating Trustee, but not individually) to the Liquidating Trust Assets;

(b) effect all actions and execute all agreements, instruments and other documents necessary to implement the Plan;

(c) protect and enforce the rights to the Liquidating Trust Assets vested in the Liquidating Trust by the Plan and the Confirmation Order by any method deemed appropriate, including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

(d) invest funds (in the manner set forth in Section 3.8), make distributions, and pay taxes and other obligations owed by the Liquidating Trust from funds held by the Liquidating Trustee and/or the Liquidating Trust in accordance with the Plan and the Confirmation Order;

(e) prosecute, defend, compromise, adjust, arbitrate, abandon or otherwise deal with and settle, in accordance with the terms set forth herein and in the Plan and Confirmation Order, all actions arising under state law or the Bankruptcy Code, specifically, but not limited to, Avoidance Actions arising under or related to Chapter 5 of the Bankruptcy Code and all other causes of action (the “*Miscellaneous Causes of Action*”);

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

(g) file, if necessary, any and all tax and information returns with respect to the Liquidating Trust and pay taxes properly payable by the Liquidating Trust, if any, commensurate with the Liquidating Trust’s classification as a grantor trust pursuant to Treas. Reg. § 1.671-4(a);

(h) make all tax withholdings and make tax elections by and on behalf of the Liquidating Trust;

(i) send annually to each Beneficiary a separate statement stating the Beneficiary’s share of income, gain, loss, deduction or credit and instruct all such Beneficiaries to report such items on their federal tax returns;

(j) in reliance upon the Claims List (as defined *infra*) provided by the Debtor, maintain on the Liquidating Trustee’s books and records, a register evidencing the beneficial interest herein held by each Beneficiary;

(k) administer, reconcile, compromise, estimate and/or resolve Claims in accordance with, but subject to the limitations set forth in, the Plan (including the filing of any objections to such Claims as appropriate);

Exhibit 5

(l) establish such reserves for Disputed Claims, taxes, assessments, Professional fees and other expenses of administration of the Liquidating Trust as may be necessary and appropriate for the proper operation of matters incident to the Liquidating Trust;

(m) make distributions as provided for in this Liquidating Trust Agreement, the Plan and the Confirmation Order;

(n) open and maintain bank accounts on behalf of or in the name of the Liquidating Trust;

(o) pay expenses and make disbursements necessary to preserve, liquidate and enhance the Liquidating Trust Assets;

(p) purchase such insurance coverage as the Liquidating Trustee deems necessary and appropriate with respect to the liabilities and obligations of the Liquidating Trustee (in the form of an errors and omissions policy, fiduciary policy or otherwise);

(q) purchase such insurance coverage as the Liquidating Trustee deems necessary and appropriate with respect to real and personal property which may be or may become Liquidating Trust Assets;

(r) retain and pay Professionals and Non-Professionals as provided for in Article X of this Liquidating Trust Agreement to assist the Liquidating Trust and/or the Liquidating Trustee with respect to its responsibilities to the extent permitted by this Liquidating Trust Agreement, the Plan and the Confirmation Order;

(s) take such actions as are necessary, appropriate or desirable to close or dismiss the Case;

(t) take such actions as are necessary, appropriate or desirable to terminate the existence of the Debtor to the extent not already effectuated pursuant to the Plan;

(u) terminate and dissolve the Liquidating Trust pursuant to and in accordance with the terms of the Plan and this Liquidating Trust Agreement; and

(v) assume such other powers as may be vested in or assumed by the Liquidating Trust pursuant to the Plan or Bankruptcy Court order, or as may be necessary and proper to carry out the provisions of the Plan, the Confirmation Order or this Liquidating Trust Agreement.

3.5 General Authority of the Liquidating Trustee

Unless specifically stated otherwise herein, the Liquidating Trustee shall not be required to obtain Bankruptcy Court approval with respect to any proposed action or inaction authorized in this Liquidating Trust Agreement or specifically contemplated in the Plan and the Confirmation Order.

Exhibit 5

3.6 Limitation of Liquidating Trustee's Authority; No On-Going Business

The Liquidating Trustee shall have no power or authority except as set forth in this Liquidating Trust Agreement, in the Plan or in the Confirmation Order. For federal tax purposes, the Liquidating Trustee shall not be authorized to engage in any trade or business with respect to the Liquidating Trust Assets except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust. The Liquidating Trustee shall take such actions consistent with the prompt orderly liquidation of the Liquidating Trust Assets as required by applicable law and consistent with the treatment of the Liquidating Trust as a liquidating trust under Treas. Reg. § 301.7701-4(d), to the extent such actions are permitted by this Liquidating Trust Agreement.

3.7 Other Activities of the Liquidating Trustee

The Liquidating Trustee shall be entitled to be employed by third parties while serving as Liquidating Trustee for the Liquidating Trust; provided, however, that such employment shall not include actions or representations of parties that are adverse to the Liquidating Trust.

3.8 Investment and Safekeeping of Liquidating Trust Assets

All monies and other assets received by the Liquidating Trust shall, until distributed or paid over as herein provided, be held in trust for the benefit of the Beneficiaries, but need not be segregated from other Liquidating Trust Assets. The Liquidating Trustee shall promptly invest any such monies in the manner set forth in this Section 3.8, but shall otherwise be under no liability for interest or income on any monies received by the Liquidating Trust hereunder and held for distribution or payment to the Beneficiaries, except as such interest shall actually be received by the Liquidating Trustee. Investment of any monies held by the Liquidating Trust shall be administered in accordance with the Liquidating Trustee's general duties and obligations hereunder and in view of the Liquidating Trustee's general fiduciary duties under Wisconsin law. The rights and powers of the Liquidating Trustee to invest the Liquidating Trust Assets transferred to the Liquidating Trust, the proceeds thereof or any income earned by the Liquidating Trust, shall be limited to the right and power to: (a) invest such Liquidating Trust Assets (pending distributions in accordance with the Plan and the Confirmation Order) in (i) short-term direct obligations of, or obligations guaranteed by, the United States of America or (ii) short-term obligations of any agency or corporation which is or may hereafter be created by or pursuant to an act of the Congress of the United States as an agency or instrumentality thereof; or (b) deposit such assets in demand accounts at any bank or trust company, which has, at the time of the deposit, a capital stock and surplus aggregating at least \$1,000,000,000 ² (collectively, the "*Permissible Investments*"); provided, however, that the scope of any such Permissible Investments shall be limited to include only those investments that a liquidating trust, within the meaning of Treas. Reg. § 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the Internal Revenue Service ("*IRS*") guidelines, whether set forth in IRS rulings, other IRS pronouncements or otherwise.

² Unless otherwise stated, all references to dollars or cash refers to legal tender of the United States of America.

Exhibit 5

3.9 Authorization to Expend Liquidating Trust Assets

The Liquidating Trustee may expend assets of the Liquidating Trust to the extent necessary to: (a) satisfy and discharge liabilities and to maintain the value of the Liquidating Trust Assets during liquidation; (b) pay Trustee Expenses (including, but not limited to, any taxes imposed on the Liquidating Trust, and fees and expenses in connection with litigation or compensation of the Liquidating Trustee in accordance with Section 4.1 below); (c) satisfy other liabilities incurred or assumed by the Liquidating Trust (or to which the Liquidating Trust Assets are otherwise subject) in accordance with this Liquidating Trust Agreement, the Plan or the Confirmation Order; and (d) make distributions to Beneficiaries on account of their interest in the Liquidating Trust (the “*Trust Interests*”) in accordance with this Liquidating Trust Agreement, the Plan and the Confirmation Order.

ARTICLE IV LIQUIDATING TRUSTEE

4.1 Compensation of the Liquidating Trustee

The Liquidating Trustee shall be entitled to receive, but is not required to accept, reasonable compensation for services rendered on behalf of the Liquidating Trust. All compensation and other amounts payable to the Liquidating Trustee shall be paid out of the Liquidating Trust Assets. The Liquidating Trust shall reimburse the Liquidating Trustee for its actual reasonable out-of-pocket expenses incurred including, without limitation, postage, telephone and facsimile charges upon receipt of periodic billings. All reimbursement for expenses payable to the Liquidating Trustee shall be paid from the Liquidating Trust Assets in priority over any distributions to Beneficiaries to be made under the Plan. If the Liquidating Trust Assets are insufficient to fully satisfy the amounts payable to, or other obligations owing to, the Liquidating Trustee, the Beneficiaries shall be required to disgorge their Pro Rata share of any interim distributions received from the Liquidating Trust, until all such amounts have been fully paid and all such obligations have been fully satisfied. If the Liquidating Trustee dies or becomes disabled, then such former Liquidating Trustee (or his or her estate, successor or assigns) shall be entitled to any remaining unpaid compensation and reimbursement due hereunder.

4.2 Term of Service

The Liquidating Trustee shall serve until the earliest of: (a) the completion of all the Liquidating Trustee’s duties, responsibilities and obligations under this Liquidating Trust Agreement and the Plan; (b) termination of the Liquidating Trust in accordance with this Liquidating Trust Agreement; and (c) the Liquidating Trustee’s death, resignation or removal.

4.3 No Bond

The Liquidating Trustee shall serve without bond.

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4.4 Removal

A majority of the Beneficiaries may at any time, for cause, petition the Bankruptcy Court for the removal of the Liquidating Trustee; provided, however, that the Liquidating Trustee may not be removed until a successor Liquidating Trustee has been named. “Cause” shall include, without limitation: (a) the undue prolongation of the duration of the Liquidating Trust and of distributions of the Liquidating Trust Assets to the Beneficiaries; (b) gross negligence, fraud or willful misconduct (as determined by a Final Order) in connection with the affairs of the Liquidating Trust; (c) a physical and/or mental disability that substantially prevents the Liquidating Trustee from performing the duties of a Liquidating Trustee hereunder; or (d) breach of fiduciary duty or an unresolved conflict of interest. Removal shall be effective on the date specified in the order approving the removal.

4.5 Resignation

The Liquidating Trustee may resign by giving not less than thirty (30) days’ prior written notice thereof to the parties entitled to notice under Section 13.10 hereof. The resignation will be effective on the later of: (a) the date specified in the notice; (b) the date that is thirty (30) days after the date the notice is delivered; and (c) the date the successor Liquidating Trustee accepts his or her appointment as such.

4.6 Appointment of Successor Trustee

4.6.1 In the event the Liquidating Trustee resigns pursuant to this Liquidating Trust Agreement, the resigning Liquidating Trustee shall designate a successor Liquidating Trustee. Any successor Liquidating Trustee appointed hereunder shall execute an instrument accepting such appointment and shall deliver such acceptance to the Bankruptcy Court. Thereupon, such successor Liquidating Trustee shall, without any further act, become vested with all of the properties, rights, powers, trusts and duties of his or her predecessor in the Liquidating Trust with like effect as if originally named herein; provided, however, that the resigning Liquidating Trustee shall, nevertheless, when requested in writing by the successor Liquidating Trustee, execute and deliver any reasonable instrument or instruments conveying and transferring to such successor Liquidating Trustee all the estates, properties, rights, powers and trusts of the removed or resigning Liquidating Trustee.

4.6.2 In the event the Liquidating Trustee is removed for cause or vacates the position due to death or incapacity (or the resigning Liquidating Trustee fails to timely designate a successor Liquidating Trustee pursuant to Section 4.6.1 hereof), the Bankruptcy Court shall appoint a successor Liquidating Trustee as soon as practicable, but in any event within thirty (30) days after the occurrence of the vacancy.

4.7 Liquidating Trust Continuance

The resignation or removal of the Liquidating Trustee will not terminate the Liquidating Trust or revoke any existing agency created pursuant to this Liquidating Trust Agreement or invalidate any action theretofore taken by the Liquidating Trustee.

Exhibit 5

ARTICLE V LIQUIDATING TRUST BENEFICIARIES

5.1 Identification of Beneficiaries

The beneficial interests of each Beneficiary in the Liquidating Trust shall be recorded and set forth in the Claims List maintained by the Liquidating Trustee.

5.2 Beneficial Interest Only

The ownership of a beneficial interest in the Liquidating Trust shall not entitle any Beneficiary or the Debtor to any title in or to the Liquidating Trust Assets or to any right to call for a partition or division of such Liquidating Trust Assets or to require an accounting, except as specifically provided herein.

5.3 Ownership of Beneficial Interests Hereunder

Each Beneficiary shall own a beneficial interest in the Liquidating Trust Assets equal in proportion to the Pro Rata share of such Beneficiary's Allowed Claim in accordance with the Plan.

5.4 Evidence of Beneficial Interest

Ownership of a beneficial interest in the Liquidating Trust Assets shall not be evidenced by any certificate, security or receipt or in any other form or manner whatsoever, except as maintained on the Claims List.

5.5 Limitation on Transferability

It is understood and agreed that the beneficial interests in the Liquidating Trust shall be non-assignable during the term of this Liquidating Trust Agreement except by operation of law. An assignment by operation of law shall not be effective until appropriate notification and proof thereof is submitted to the Liquidating Trustee, and the Liquidating Trustee may continue to pay all amounts to or for the benefit of the assigning Beneficiary until receipt of proper notification and proof of assignment by operation of law. The Liquidating Trustee may rely upon such proof without the requirement of any further investigation. Any notice of a change of beneficial interest ownership as permitted by operation of law shall be forwarded to the Liquidating Trustee by registered or certified mail pursuant to the notice provisions set forth in Section 13.10 hereof. The notice shall be executed by both the transferee and the transferor, and the signatures of the parties shall be acknowledged before a notary public and as required by Bankruptcy Rule 3001(e). The notice must clearly describe the interest to be transferred. The Liquidating Trustee may conclusively rely upon such signatures and acknowledgments as evidence of such transfer without the requirement of any further investigation.

5.6 Conflicting Claims

If any conflicting claims or demands are made or asserted with respect to the Liquidating Trust Assets, or if there is any disagreement between the assignees, transferees, heirs, representatives or legatees succeeding to all or a part of the Liquidating Trust Assets resulting in

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adverse claims or demands being made in connection with such assets, then, in any of such events, the Liquidating Trustee shall be entitled to refuse to comply with any such conflicting claims or demands. In so refusing, the Liquidating Trustee may elect to make no payment or distribution with respect to the Liquidating Trust Assets that are the subject of the claims or demands involved, or any part thereof, and to refer such conflicting claims or demands to the Bankruptcy Court, which shall retain jurisdiction over resolution of such conflicting claims or demands. In so doing, the Liquidating Trustee shall not be or become liable to any of such parties for its refusal to comply with any of such conflicting claims or demands, nor shall the Liquidating Trustee be liable for interest on any funds that it may so withhold. The Liquidating Trustee shall be entitled to refuse to act until either: (a) the rights of the adverse claimants have been adjudicated by a Final Order of the Bankruptcy Court; or (b) all differences have been resolved by a valid written agreement among all of such parties and the Liquidating Trustee.

ARTICLE VI PROVISIONS REGARDING DISTRIBUTIONS

6.1 Timing and Methods of Distributions

6.1.1 Generally The Liquidating Trustee, on behalf of the Liquidating Trust, or such other entity as may be designated by the Liquidating Trustee, on behalf of the Liquidating Trust, will make all distributions to the Beneficiaries as set forth in, and as required by, this Liquidating Trust Agreement, the Plan and the Confirmation Order. Unless the entity or Person receiving a payment agrees otherwise, the Liquidating Trustee, in its sole discretion, will make any payment in Cash to be made by the Liquidating Trust by check drawn on a domestic bank or by wire transfer from a domestic bank.

6.1.2 Distributions by the Liquidating Trustee Subject to the provisions of this Article VI, the Liquidating Trustee shall distribute to holders of record of Trust Interests, all net Cash income (including as Cash for this purpose, all cash equivalents) from time to time at such time intervals as decided by the Liquidating Trustee (but within a reasonable time after creation of a Disputed Claims Reserve (as defined *infra*) determined to be sufficient to make Pro Rata distributions on Disputed Claims and to pay the Trustee Expenses in full), pursuant to the terms of the Plan and the Confirmation Order. The Liquidating Trustee may cause the Liquidating Trust to retain an amount of net Cash proceeds or net Cash income reasonably necessary to maintain the value of its assets, as set forth in, and to effectuate the provisions of, the Plan and the Confirmation Order. The Liquidating Trustee may withhold from the amount distributable from the Liquidating Trust at any time to any Person (except with respect to the IRS) such sum or sums as may be sufficient to pay any tax or taxes or other charge or charges that have been or may be imposed on such Person or upon the Liquidating Trust with respect to the amount distributable or to be distributed under the income tax laws of the United States or of any state or political subdivision or entity by reason of any distribution provided for in this Liquidating Trust Agreement, whenever such withholding is required by any law, regulation, rule, ruling, directive or other governmental requirement, and the Liquidating Trustee may enter into agreements with taxing or other authorities for the payment of such amounts as may be withheld in accordance with the provisions of this Section 6.1.2. Notwithstanding the foregoing, but without prejudice to the Liquidating Trustee's rights hereunder, such Person shall have the right with respect to the United States, or

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any state, or any political subdivision of either, to contest the imposition of any tax or other charge by reason of any distribution hereunder.

6.1.3 Claims List As of the date the Liquidating Trust Assets are transferred to the Liquidating Trust, the Debtor will deliver to the Liquidating Trustee a list of all Claims scheduled by the Debtor and/or filed against the Debtor as of such date, the addresses of all such holders as of a record date that is not more than fifteen (15) days prior to the date of the list, the designation and amount of each such Claim as disputed or not disputed, fixed or contingent and liquidated or unliquidated, and, to the extent ascertainable from the Debtor's books and records, the Employer or Taxpayer Identification Number as assigned by the IRS for each holder (the "*Claims List*"). The Liquidating Trustee shall be entitled to rely upon the Claims List in calculating and making distributions from the Liquidating Trust as provided herein; provided, however, that the Claims List shall be adjusted from time to time by the Liquidating Trustee as necessary to maintain its accuracy. The Liquidating Trustee shall also revise the Claims List from time to time upon receipt of notice from a Beneficiary notifying the Liquidating Trustee of a change of address or stating that its Claim has been transferred to a new Beneficiary, that the new Beneficiary has complied with any applicable provisions of Bankruptcy Rule 3001(e) (and providing evidence thereof) and setting forth the name and address of such new Beneficiary. The Liquidating Trustee shall establish the revised Claims List that is to be used in conjunction with any particular distribution no less than fourteen (14) days prior to the date of such distribution. Nothing herein shall impair or otherwise affect the Liquidating Trustee's right to object to the Allowance of Claims as provided in Section 7.1.

6.2 Delivery of Distributions

Subject to the provisions of Bankruptcy Rule 2002(g), and except as otherwise provided herein, distributions and deliveries to holders of record of Trust Interests shall be made at the address of each such holder set forth on the Claims List.

6.3 No Post-Petition Interest on Claims

Except as expressly provided in the Plan, the Confirmation Order or any contract, instrument, release, settlement or other agreement entered into in connection with the Plan, or as required by applicable bankruptcy law, post-petition interest will not accrue on account of any Claim and the Liquidating Trustee will not distribute post-petition interest on account of any Claim.

6.4 No Post-Confirmation Date Interest on Claims

Post-Confirmation Date interest will not accrue on account of any Claim, and the Liquidating Trustee will not distribute post-Confirmation Date interest on account of any Claim.

6.5 Undeliverable Distributions

If any distribution with respect to a Trust Interest is returned to the Liquidating Trustee as undeliverable, no further distributions shall be made to such holder, unless the Liquidating Trustee is notified in writing of the Trust Interest holder's current address. Upon receipt of the notification, the Liquidating Trustee will remit all missed distributions to the Trust Interest holder without

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interest. All claims for undeliverable distributions must be made on or before the first anniversary of the Confirmation Date of the Plan. If a claim is not made within that time, all unclaimed distributions will revert to the Liquidating Trust and be distributed Pro Rata to the remaining Beneficiaries of the Liquidating Trust. Nothing contained in the Plan, the Confirmation Order or this Liquidating Trust Agreement shall require the Liquidating Trustee to attempt to locate any holder of a Trust Interest.

6.6 Lapsed Distributions

Any distribution that has not cleared within one hundred eighty (180) days of the date of the distribution will lapse. With respect to any lapsed distributions, the lapsed distribution will revert to the Liquidating Trust and be distributed to the remaining Beneficiaries of the Liquidating Trust.

6.7 Compliance with Tax Requirements/Allocation

To the extent applicable, the Liquidating Trust shall comply with all tax withholding and reporting requirements imposed on it by any governmental unit, and all distributions pursuant to the Plan and the Confirmation Order shall be subject to such withholding and reporting requirements. For tax purposes, distributions received in respect of Trust Interests will be allocated first to the principal amount of such Claims, with any excess allocated to unpaid accrued interest.

6.8 Fractional Dollars; *De Minimis* Distributions

Notwithstanding anything contained herein to the contrary, payments of fractions of dollars will not be made. Whenever any payment of a fraction of a dollar under this Liquidating Trust Agreement, the Plan or the Confirmation Order would otherwise be called for, the actual payment made will reflect a rounding of such fraction to the nearest dollar (up or down), with half dollars being rounded down. The Liquidating Trustee shall not be required to make any interim distribution of less than fifty dollars (\$50) with respect to any Trust Interest. To the extent that any interim distribution is not paid to a Beneficiary on the grounds that it amounts to less than fifty dollars (\$50), the amount of such withheld distribution shall be reserved for addition to any future distribution or as the final distribution to such Beneficiary, and may be made at that time if the total distribution is at least fifty dollars (\$50).

6.9 Setoffs

The Liquidating Trustee may, pursuant to sections 502(d) or 553 of the Bankruptcy Code or applicable non-bankruptcy law, set off against any Allowed Claim and the distributions to be made pursuant to the Plan and the Confirmation Order on account thereof (before any distribution is made on account of such Claim), the claims, rights and causes of action of any nature that the Liquidating Trust may hold against the holder of such Allowed Claim; provided, however, that neither the failure to effect such a setoff nor the allowance of any Claim shall constitute a waiver or release by the Liquidating Trust or the Estates of any such claims, rights and causes of action that they may possess against such holder.

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6.10 Preservation of Debtor's Subordination Rights

All subordination rights and claims relating to the subordination by the Debtor or its Estate of the Allowed Claims of any Liquidating shall remain valid and enforceable by the Liquidating Trust, unimpaired in accordance with section 510 of the Bankruptcy Code or otherwise, and may be asserted by the Liquidating Trustee as necessary or appropriate.

ARTICLE VII PROCEDURES FOR RESOLUTION OF DISPUTED, CONTINGENT AND UNLIQUIDATED CLAIMS

7.1 Objections to Claims; Prosecution of Disputed Claims

The Liquidating Trustee, on behalf of the Liquidating Trust, may file objections to Claims, even if such Claims were scheduled by the Debtor as undisputed, liquidated and non-contingent. The Liquidating Trustee shall have the authority to file, settle, compromise or withdraw any objections to Claims, without approval of the Bankruptcy Court. The Liquidating Trustee shall file objections to Claims no later than 120 days after the Effective Date (unless extended by an order of the Bankruptcy Court). Notwithstanding the deadline to file objections to Claims provided in the Plan, the Liquidating Trustee may file objections to Claims within ninety (90) days of the filing of an amended Claim. Nothing herein or in the Plan shall limit or otherwise affect the right of any party-in-interest under section 502(a) of the Bankruptcy Code to object to any Claim.

7.2 Estimation of Claims

The Liquidating Trustee, on behalf of the Liquidating Trust, may at any time request that the Bankruptcy Court estimate any contingent or Disputed Claim pursuant to section 502(c) of the Bankruptcy Code, regardless of whether the Debtor 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 such Claim, including, without limitation, during the pendency of any appeal relating to any such objection. Subject to the provisions of section 502(j) of the Bankruptcy Code, in the event that the Bankruptcy Court estimates any contingent or Disputed 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 Trust 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 exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

7.3 Disputed Claims

7.3.1 If the Liquidating Trustee or other party-in-interest has objected to a Claim, distributions will be withheld only with respect to the amount actually in dispute, and such objection shall not affect payments or distributions under the Plan on the undisputed portion of the Claim.

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7.3.2 The Liquidating Trustee shall maintain, in accordance with the Liquidating Trustee's powers and responsibilities under the Plan, the Confirmation Order and this Liquidating Trust Agreement, a reserve for any distributable amounts required to be set aside on account of Disputed Claims (the "*Disputed Claims Reserve*").

7.3.3 Once a Disputed Claim becomes an Allowed Claim, the Liquidating Trustee shall, as soon as practicable following the entry of a Final Order regarding the allowance of such Claim, and to the extent of the allowance of such Claim, distribute to the holder thereof, from the Disputed Claims Reserve, such amount of Liquidating Trust Assets as would have been distributed to such holder if the allowed portion of its Claim had been an Allowed Claim on the Confirmation Date, less such holder's share of any taxes paid or payable by the Disputed Claims Reserve. If a Disputed Claim becomes disallowed, in whole or part, the Liquidating Trustee shall reallocate the disallowed amount previously set aside in the Disputed Claims Reserve in connection with such Disputed Claim among the Beneficiaries and the Disputed Claims Reserve on behalf of the Disputed Claims not yet resolved, as applicable, all to be distributed pursuant to Article VI of this Liquidating Trust Agreement.

ARTICLE VIII ARTICLE IX LIABILITY AND EXCULPATION PROVISIONS

8.1 Standard of Liability

In no event shall the Liquidating Trustee or the Liquidating Trust, or their respective Professionals, Non-Professionals or representatives, be held personally liable for any claim asserted against the Liquidating Trust or the Liquidating Trustee, or any of their Professionals, Non-Professionals or representatives. Specifically, the Liquidating Trustee, the Liquidating Trust and their respective Professionals, Non-Professionals or representatives shall not be liable for any negligence or any error of judgment made in good faith with respect to any action taken or omitted to be taken in good faith. Notwithstanding the foregoing, the Liquidating Trust or the Liquidating Trustee, or any of their Professionals, Non-Professionals or representatives may be held personally liable to the extent that the action taken or omitted to be taken by each of the same or their respective Professionals, Non-Professionals or representatives is determined by a Final Order to be solely due to their own respective gross negligence, willful misconduct, fraud or, solely in the case of the Liquidating Trustee, breach of fiduciary duty other than negligence. Any act or omission taken with the approval of the Bankruptcy Court will be conclusively deemed not to constitute gross negligence, willful misconduct, fraud or a breach of fiduciary duty.

8.2 Reliance by Liquidating Trustee

Except as otherwise provided in Article III hereof:

(a) the Liquidating Trustee may rely, and shall be protected in acting upon, any resolution, certificate, statement, installment, opinion, report, notice, request, consent, order or other paper or document reasonably believed by him or her to be genuine and to have been signed or presented by the proper party or parties except as otherwise provided in the Plan or the Confirmation Order; and

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(b) the Liquidating Trustee shall not be liable for any action reasonably taken or not taken by him or her in accordance with the advice of a Professional retained pursuant to Article X, and persons dealing with the Liquidating Trustee shall look only to the Liquidating Trust Assets to satisfy any liability incurred by the Liquidating Trustee to such person in carrying out the terms of this Liquidating Trust Agreement, and the Liquidating Trustee shall have no 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 own gross negligence, willful misconduct, fraud or breach of fiduciary duty, other than negligence.

8.3 Exculpation

8.3.1 From and after the Effective Date, the Liquidating Trustee and its Professionals, Non-Professionals and representatives shall be and hereby are exculpated by all Persons, 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 Liquidating Trust Agreement, the Plan, the Confirmation Order 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, fraud or, solely in the case of the Liquidating Trustee, breach of fiduciary duty, other than negligence.

8.3.2 No holder of a Claim or other party-in-interest will be permitted to pursue any claim or cause of action against the Liquidating Trustee or its Professionals, Non-Professionals or representatives for making payments in accordance with the Plan or the Confirmation Order or for implementing the provisions of the Plan or the Confirmation Order. Any act taken or not taken by the Liquidating Trustee with the approval of the Bankruptcy Court will be conclusively deemed not to constitute gross negligence, willful misconduct or fraud or, solely in the case of the Liquidating Trustee, a breach of fiduciary duty, other than negligence.

8.4 Indemnification

The Liquidating Trust shall indemnify, defend and hold harmless the Liquidating Trustee and its respective Professionals, Non-Professionals and representatives from and against any and all claims, causes of action, liabilities, obligations, losses, damages or expenses (including reasonable attorneys' fees and expenses) occurring after the Effective Date, other than to the extent determined by a Final Order to be solely due to their own respective gross negligence, willful misconduct or fraud or, solely in the case of the Liquidating Trustee, breach of fiduciary duty, other than negligence, to the fullest extent permitted by applicable law.

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ARTICLE IX ADMINISTRATION

9.1 Purpose of the Liquidating Trust

The Liquidating Trust shall be established for the primary purpose of liquidating its assets, in accordance with Treas. Reg. § 301.7701-4(d), 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, the liquidating purpose of the Liquidating Trust. Accordingly, the Liquidating Trust shall, in an expeditious but orderly manner, liquidate and convert to Cash the Liquidating Trust Assets, make timely distributions to the Beneficiaries and not unduly prolong the duration of the Liquidating Trust.

9.2 Books and Records

9.2.1 Maintenance of Books and Records. The Liquidating Trustee shall maintain, with respect to the Liquidating Trust and the Beneficiaries, books and records relating to the assets and income of the Liquidating Trust and the payment of expenses of and liabilities of, claims against or assumed by, the Liquidating Trust in such detail and for such period of time as the Liquidating Trustee determines may be necessary to make full and proper accounting in respect thereof in accordance with Article IX hereof and to comply with applicable provisions of law. Except as otherwise provided herein, in the Plan, or in the Confirmation Order, nothing in this Liquidating Trust Agreement requires the Liquidating Trust to file any accounting or seek approval of any court with respect to the administration of the Liquidating Trust, or as a condition for making any payment or distribution out of the Liquidating Trust Assets. Subject to all applicable privileges, the Beneficiaries shall have the right, in addition to any other rights they may have pursuant to this Liquidating Trust Agreement, under the Plan and the Confirmation Order, or otherwise, upon thirty (30) days' prior written notice delivered to the Liquidating Trustee, to request a reasonable inspection (as determined by the Liquidating Trustee) of such books and records; provided, however, that, if so requested, such Beneficiary shall: (a) first enter into a confidentiality agreement satisfactory in form and substance to the Liquidating Trustee; (b) make such other reasonable arrangements as requested by the Liquidating Trustee; and (c) bear all costs and expenses of such inspection.

9.2.2 Quarterly Reports. Within thirty (30) days after the conclusion of every calendar quarter during the term of this Liquidating Trust Agreement following the Effective Date, the Liquidating Trustee shall file a Quarterly Report with the Bankruptcy Court. The Quarterly Report shall set forth: (a) all distributions to Beneficiaries during the calendar quarter; (b) a summary of the Liquidating Trust deposits and disbursements during the calendar quarter; and (c) a summary of the Liquidating Trust Assets. For the avoidance of doubt, the first Quarterly Report shall cover the period of the Effective Date through June 30, 2023 and shall be filed with the Bankruptcy Court on or before July 1, 2023.

9.3 Security Interests

The Liquidating Trustee, its respective Professionals and Non-Professionals and the U.S. Trustee are hereby granted a first-priority lien on, and security interest in, the Liquidating Trust

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Assets to secure the payment of all amounts owed to, accrued or reserved on account of, to be retained by or otherwise due hereunder to each of the above. The Liquidating Trustee shall cause the Liquidating Trust to take such actions and execute such documents as the Liquidating Trustee, its respective Professionals and Non-Professionals and the U.S. Trustee deem appropriate to perfect the security interests granted hereunder. The Liquidating Trustee is authorized to execute and deliver all documents on behalf of the Liquidating Trust to accomplish the purposes of this Liquidating Trust Agreement, the Plan and the Confirmation Order.

9.4 Compliance with Laws

Any and all distributions of Liquidating Trust Assets shall comply with all applicable laws and regulations, including, but not limited to, applicable federal and state tax and securities laws.

ARTICLE X PROFESSIONALS AND NON-PROFESSIONALS

10.1 Retention of Professionals and Non-Professionals

10.1.1 Retention of Professionals The Liquidating Trustee, upon the later to occur of the Effective Date and acceptance by the Liquidating Trustee of its appointment in accordance with the Plan and this Liquidating Trust Agreement, shall have the right to retain its own professionals without any further approval by any court or otherwise including, without limitation, legal counsel, accountants, experts, advisors, consultants, investigators, appraisers, real estate brokers, auctioneers and other professionals as the Liquidating Trustee deems appropriate (collectively, the “*Professionals*”). Such Professionals shall be compensated in accordance with Section 10.3 hereof. The Professionals so retained need not be “disinterested” as that term is defined in the Bankruptcy Code and may include, without limitation, advisors of any party in the Cases for efficiency.

10.1.2 Retention of Non-Professionals The Liquidating Trustee, upon the later to occur of the Effective Date and acceptance by the Liquidating Trustee of its appointment in accordance with the Plan and this Liquidating Trust Agreement, shall have the right to retain non-professionals without any further approval by any court or otherwise including, without limitation, employees, independent contractors or other agents as the Liquidating Trustee deems appropriate (the “*Non-Professionals*”). Such Non-Professionals shall be compensated in accordance with Section 10.3 hereof. The Non-Professionals so retained need not be “disinterested” as that term is defined in the Bankruptcy Code and may include, without limitation, employees, independent contractors and agents of any party in the Cases for efficiency.

10.2 Retention of Liquidating Trustee’s Legal Counsel

The initial Liquidating Trustee has chosen to retain _____ as its counsel. Such retention is made pursuant to this Article X without any further approval by any court. _____ is a Professional as that term is used herein, and shall be compensated in accordance with Section 10.3 hereof.

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10.3 Compensation of Professionals and Non-Professionals

Each Professional and Non-Professional shall submit monthly invoices to the Liquidating Trustee for its fees and expenses incurred in connection with services requested by, and provided to, the Liquidating Trustee. The Liquidating Trustee may pay the reasonable fees and expenses of such Professionals and Non-Professionals as an expense of the Liquidating Trust without application to the Bankruptcy Court, subject to the following procedure: Each Professional and Non-Professional shall serve its fee invoice (which shall contain detailed time entries) upon the Liquidating Trustee no more frequently than once a month. The Liquidating Trustee shall have until fourteen (14) days after its receipt of an invoice (the “*Objection Deadline*”) to review such invoice and deliver to the applicable Professional or Non-Professional, any objections thereto. Any objection to an invoice (each an “*Objection*”) must: (a) be in writing; and (b) set forth the precise nature of the Objection and the amount of objectionable fees and expenses at issue. If no Objection is timely filed, served and received in respect of an invoice, then the Professional or Non-Professional shall be entitled to payment from the Liquidating Trust on such invoice. If a timely Objection is filed, the Professional or Non-Professional shall be entitled to payment from the Liquidating Trust of only that portion of the invoice that is not the subject of the Objection, and the Liquidating Trustee and the affected Professional or Non-Professional may attempt to resolve on a consensual basis that portion of the invoice that is the subject of the Objection. If the parties are unable to reach a resolution of the Objection, the affected Professional or Non-Professional may file a request for payment of the disputed amount with the Bankruptcy Court and serve such request on the Liquidating Trustee on regular notice, and the Liquidating Trustee or the affected Professional or Non-Professional may request, by motion, that the Bankruptcy Court adjudicate and rule on the Objection.

ARTICLE XI TAXES

11.1 Tax Returns and Payments

The Liquidating Trustee will be responsible for: (a) the preparation and timely filing of all required federal, state and local tax returns for the Liquidating Trust and the Debtor; (b) the timely payment of any taxes shown on such returns as owing by the Liquidating Trust or the Debtor (as applicable) from the applicable Liquidating Trust Assets; and (c) the preparation and timely distribution to the Beneficiaries of any necessary federal, state or local information returns. The Liquidating Trustee will retain all tax returns and supporting documentation until the expiration of the applicable statute of limitations. The Liquidating Trustee may request an expedited determination of the taxes owed by the Debtor, the Liquidating Trust or any Disputed Claims Reserve under section 505(b) of the Bankruptcy Code for any tax return for which such determination may be requested.

11.2 Liquidating Trust

The Liquidating Trustee will file tax returns pursuant to Treas. Reg. § 1.671-4(a) on the basis that the Liquidating Trust is a grantor trust that is a “liquidating trust” within the meaning of Treas. Reg. § 301.7701-4(d) and related regulations. Pursuant to such provisions, for federal income tax purposes, the Liquidating Trustee will allocate to the Beneficiaries their applicable

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shares of any income or loss of the Liquidating Trust Assets, and such Beneficiaries will be subject to tax on the Liquidating Trust Assets' taxable income on a current basis. As soon as reasonably practicable after the close of each calendar year, the Liquidating Trustee will send each affected Beneficiary a statement setting forth such Beneficiary's share of the Liquidating Trust's income, gain, deduction, loss and credit for the year and will instruct the Beneficiary to report all such items on his, her or its tax return for such year and pay any tax due with respect thereto.

11.3 Disputed Claims Reserve

The Liquidating Trustee will file all applicable tax and other returns and statements for the Disputed Claims Reserve in accordance with the requirements for discrete trusts taxed pursuant to section 641, *et seq.* of the Internal Revenue Code or as "disputed ownership funds" within the meaning of Treas. Reg. § 1.468B-9(b)(1), as applicable. In addition, the Liquidating Trustee will pay from the applicable Liquidating Trust Assets on a current basis any taxes owed on any net income or gain of such Disputed Claims Reserve.

11.4 Tax Withholding and Reporting; Liability for Taxes

The Liquidating Trustee (and its designees) will comply with all applicable tax withholding and reporting requirements imposed on it or on the Liquidating Trust by any governmental unit, and all distributions pursuant to the Plan will be subject to applicable withholding and reporting requirements. The Liquidating Trustee (and its designees) will be authorized to take any actions that may be necessary or appropriate to comply with such tax withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes or establishing any other mechanism the Liquidating Trustee believes is reasonable and appropriate, including requiring holders of Trust Interests to submit appropriate tax and withholding certifications. To the extent any Trust Interest holder fails to submit appropriate tax and withholding certifications as required by the Liquidating Trustee, such Trust Interest holder's distribution may, in the Liquidating Trustee's reasonable discretion, be deemed undeliverable and be subject to the provisions of the Plan and this Liquidating Trust Agreement with respect to undeliverable distributions. Each Person or entity receiving (or deemed to receive) a distribution pursuant to the Plan will have sole responsibility for the payment of any taxes imposed on it.

ARTICLE XII TERMINATION OF THE LIQUIDATING TRUST

12.1 Duration and Extension

The Liquidating Trust will terminate no later than the fifth (5th) anniversary of the Effective Date; provided, however, that on or prior to the date six (6) months prior to such termination, the Bankruptcy Court, upon motion by a party in interest, may extend the term of the Liquidating Trust for a finite period if it is necessary to the liquidating purpose thereof. Multiple extensions may be obtained so long as Bankruptcy Court approval is obtained at least six (6) months prior to the expiration of such extended term; provided, however, that prior to requesting any such extension, the Liquidating Trustee must receive an opinion of counsel or a favorable

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ruling from the IRS that any further extension would not adversely affect the status of the trust as a grantor trust for federal income tax purposes.

12.2 Termination Upon Distribution of All Liquidating Trust Assets

The Liquidating Trust will terminate and the Liquidating Trustee will have no additional responsibility in connection therewith except as may be required to effectuate such termination under relevant law and except as described in Section 12.4 hereof, upon the latest of: (a) the payment of all costs, expenses and obligations incurred in connection with administering the Liquidating Trust; (b) the distribution of all remaining Liquidating Trust Assets; (c) the closure or dismissal of the Case; and (d) the completion of any necessary or appropriate reports, tax returns or other documentation determined by the Liquidating Trustee, in its reasonable discretion, to be necessary, appropriate or desirable, in each case pursuant to and in accordance with the Plan, the Confirmation Order and this Liquidating Trust Agreement.

12.3 Diligent Administration

The Liquidating Trustee shall: (a) not unduly prolong the duration of the Liquidating Trust; (b) at all times endeavor to resolve, settle or otherwise dispose of all claims that constitute Liquidating Trust Assets; (c) effect the distribution of the Liquidating Trust Assets to the Beneficiaries in accordance with the terms hereof; and (d) endeavor to terminate the Liquidating Trust as soon as practicable and without derogating from the Plan or this Liquidating Trust Agreement. Prior to and upon termination of the Liquidating Trust, the Liquidating Trustee shall distribute the Liquidating Trust Assets to the Beneficiaries in accordance with their distribution rights under the Plan and the Confirmation Order, subject to the provisions set forth herein. If any distributions of the Liquidating Trust are not duly claimed, the Liquidating Trustee shall dispose of all such distributions in accordance with the Plan, the Confirmation Order and this Liquidating Trust Agreement.

12.4 Other Termination Procedures

Upon termination of this Liquidating Trust, the Liquidating Trustee will file a written notice with the Bankruptcy Court disclosing the Liquidating Trust's termination. Notwithstanding the foregoing, after the termination of the Liquidating Trust, the Liquidating Trustee will have the power to exercise all the rights, powers and privileges herein conferred solely for the purpose of liquidating and winding up the affairs of the Liquidating Trust. Except as otherwise provided under the Plan or this Liquidating Trust Agreement, for a period of five (5) years after the distribution of all of the Liquidating Trust Assets, the Liquidating Trustee will retain the books, records and files that have been delivered to or created by the Liquidating Trustee, at which time the Liquidating Trustee may dispose of such books, records and files in any manner that the Liquidating Trustee deems appropriate. Except as otherwise specifically provided herein, after termination of this Liquidating Trust Agreement, the Liquidating Trustee shall have no further duties or obligations hereunder.

ARTICLE XIII
MISCELLANEOUS PROVISIONS

13.1 Intention of Parties to Establish a Grantor Trust

This Liquidating Trust Agreement is intended to create a grantor trust for United States federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as a grantor trust. Nothing herein contained shall be deemed or construed by the Parties or by any third party to create a relationship between the Parties of principal and agent, trustee and beneficiary, partnership or joint venture.

13.2 Preservation of Privilege

In connection with the rights, claims and causes of action that are included in the Liquidating Trust Assets, any attorney-client privilege, work-product privilege or other privilege or immunity attaching to any documents or communications (whether written or oral) transferred to the Liquidating Trust shall vest in the Liquidating Trust and its representatives, and the Debtor on the one hand, and the Liquidating Trustee, on the other hand, are authorized to take all necessary actions to effectuate the transfer of such privileges. For the avoidance of doubt, neither the Liquidating Trustee nor the Liquidating Trust shall be treated as a successor to the Debtor or its Estate for any purpose.

13.3 Cooperation

Upon reasonable notification and without any cost, the Debtor shall provide the Liquidating Trustee with access to or copies of such of its books and records as the Liquidating Trustee shall reasonably require for the purpose of performing its duties and exercising its powers under this Liquidating Trust Agreement, the Plan or the Confirmation Order. All third parties in possession of the Debtor's books and records shall provide the Liquidating Trustee with similar cooperation, and the Liquidating Trustee shall have the right to seek appropriate relief from the Bankruptcy Court or any other court with jurisdiction over the matter to the extent that a third party unreasonably refuses to cooperate with the Liquidating Trustee's requests.

13.4 Payment of Statutory Fees

Following the transfer of all Liquidating Trust Assets to the Liquidating Trust on and after the Effective Date and through the date that a final decree is entered in the Case, the Liquidating Trust shall be obligated to pay any U.S. Trustee fees associated with the Case pursuant to 28 U.S.C. § 1930(a)(6).

13.5 Prevailing Party

In the event of a dispute regarding the provisions of this Liquidating Trust Agreement or the enforcement thereof, the prevailing party 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. Notwithstanding anything to the contrary provided in this Agreement, it is specifically understood and agreed that there shall be absolutely no liability on the part of Debtor from and after the contemplated transfer of Assets under Section 1.1, and there

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shall be absolutely no personal liability on the part of any employee, officer, director, or shareholder of the Debtor, their respective successors and assigns, with respect to this Agreement, such exculpation of liability to be absolute and without any exception whatsoever.

13.6 Implied Authority of the Liquidating Trustee

No person dealing with the Liquidating Trust shall be obligated to inquire into the authority of the Liquidating Trustee in connection with the protection, conservation or disposition of Liquidating Trust Assets.

13.7 Confidentiality

The Liquidating Trustee, its employees, Professionals and Non-Professionals (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 Liquidating Trust Assets relate; 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; (b) was available to the Confidential Parties on a non-confidential basis prior to its disclosure to the Confidential Parties pursuant to this Liquidating Trust Agreement; (c) becomes available to the Confidential Parties on a non-confidential basis from a source other than their work in connection with the Debtor or the Liquidating Trust, provided that the source is not also bound by a confidentiality agreement with the Debtor or the Liquidating Trust; or (d) 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 subparagraph (d), such Confidential Party shall promptly, in advance of making such disclosure, provide reasonable notice of such required disclosure to the Liquidating Trustee to allow the Liquidating Trustee 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 the Liquidating Trustee’s objection to such disclosure.

13.8 Governing Law; Submission to Jurisdiction; Service of Process

This Liquidating Trust Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin, without giving effect to rules governing the conflict of law. The Bankruptcy Court will have exclusive jurisdiction over any dispute arising out of or in connection with the transactions contemplated by this Liquidating Trust Agreement. The parties to this Liquidating Trust Agreement consent to the exclusive jurisdiction of the Bankruptcy Court (and of the appropriate appellate courts therefrom) and irrevocably waive, to the fullest extent permitted by law, any objection that they may now or hereafter have to the laying of the venue of any such dispute in the Bankruptcy Court or that any such dispute brought in the Bankruptcy Court has been brought in an inconvenient forum. This Liquidating Trust Agreement is subject to any order or act of the Bankruptcy Court applicable hereto. Process may be served on any party anywhere in the world, whether within or without the jurisdiction of the Bankruptcy Court. Without limiting the foregoing, each party to this Liquidating Trust Agreement agrees that service

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of process on that party may be made upon the designated Person or entity at the address provided in Section 13.10 hereof and will be deemed to be effective service of process on that party.

13.9 Severability

If any provision of this Liquidating 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 Liquidating 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 shall be valid and enforceable to the fullest extent permitted by law.

13.10 Notices

Any notice or other communication hereunder shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if delivered via personal delivery, first-class mail (unless registered or certified mail is required), facsimile or electronic mail to the addresses as set forth below unless otherwise notified in writing of different addresses for notice purposes, or such other addresses as may be filed with the Bankruptcy Court:

If to the Liquidating Trustee:

[LIQUIDATING TRUSTEE]

Telephone: _____

Facsimile: _____

E-Mail: _____

with a copy to:

[COUNSEL FOR LIQUIDATING TRUSTEE]

Telephone: _____

Facsimile: _____

E-Mail: _____

If to the Debtor:

Evan P. Schmit
839 N. Jefferson St. Suite 400

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Milwaukee, WI 53202
Telephone: 414-277-8200
Facsimile: 414-277-0100
E-Mail: eschmit@kerkmandunn.com

13.11 Notices if to a Beneficiary

Any notice or other communication hereunder shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if deposited, postage prepaid, in a post office or letter box addressed to the person for whom such notice is intended to the name and address set forth on the Claims List.

13.12 Headings

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

13.13 Counterparts and Facsimile Signatures

This Liquidating Trust Agreement may be executed in counterparts and a facsimile or other electronic form of signature shall be of the same force and effect as an original.

13.14 Amendment or Waiver

Any substantive provision of this Liquidating Trust Agreement may be materially amended or waived by the Liquidating Trustee, with the approval of the Bankruptcy Court upon notice and an opportunity for a hearing; provided, however, that no change may be made to this Liquidating Trust Agreement that would adversely affect the federal income tax status of the Liquidating Trust as a “grantor trust,” if applicable. Technical or non-material amendments to or waivers of portions of this Liquidating Trust Agreement may be made by the Liquidating Trustee without the approval of the Bankruptcy Court, as necessary, to clarify this Liquidating Trust Agreement or to enable the Liquidating Trust to effectuate the terms of this Liquidating Trust Agreement.

13.15 Intervention

On the Effective Date, and without requirement of obtaining any order of the Bankruptcy Court, the Liquidating Trustee shall be deemed to have intervened or substituted as plaintiff, moving, defendant or additional party, as appropriate, in any adversary proceeding, contested matter, Claim objection or other motion that was filed prior to the Effective Date, where the subject matter of such action involves any Disputed Claim, any Liquidating Trust Asset or any Claim, to the extent such Claim impacts the Liquidating Trust Assets.

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

_____, AS
LIQUIDATING TRUSTEE

By: _____, not
individually, but solely as trustee of the Liquidating
Trust

WINDOW SELECT LLC

By: _____

Its: _____