

Everything You Need to Know About Liquidating Chapter 11 Plans

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ABI 34th Annual Spring Meeting

Liquidating Plans Panel



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Introduction to the Panel Discussion

- Liquidating Plans with emphasis on Liquidating Trusts
 - Options to Close a Case
 - Utilizing a Liquidating Trust to Generate Return
 - Structuring the Liquidating Trust
 - Trends in Liquidating Plans and Trusts
- Additional Materials Included
 - Sample Liquidating Trust Agreement with Oversight Committee
 - Sample Liquidating Trust Agreement without Oversight Committee



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Options to Close a Case

- Common Methods
 - Operating Existing Corporate Shell
 - Conversion of Bankruptcy Case
 - Structured Dismissal
 - Liquidating Plan
 - Post-Confirmation Trust



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Options to Close a Case

- Obstacles to Closing the Case
 - Residual Asset Types
 - Real assets remaining post-sale
 - Preference Litigation
 - D&O Litigation
 - Other Litigation
 - Remaining Claimants
 - Claimant type mix
 - Vendors and service providers (i.e. PBGC, taxing authorities, litigation judgements)
 - Claim security mix
 - Secured lender residual claims in addition to priority and administrative claims



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Options to Close a Case

- Obstacles to Closing the Case
 - Trust Seed Funding
 - Secured Lender carve out of proceeds
 - Newco loan
 - Constituency Agendas
 - Old/New owner(s) and management
 - Claimants



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Utilizing a Liquidating Trust to Generate Return

- Target Specific Responsibilities
 - Monetize assets
 - Adjudicate Claims
 - Pursue and Resolve Litigation
 - All of the Above



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Utilizing a Liquidating Trust to Generate Return

- Picking a Trustee
 - Who are the beneficiaries?
 - Former debtor management (institutional knowledge)
 - Former UCC FA (knowledge of the case and relationships with the creditors)
 - Outsider (provide objective analysis and/or specific experience)



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Utilizing a Liquidating Trust to Generate Return

- Define Powers of the Trustee
 - Provision to hire professionals
 - Settlement authority for litigation with or without court approval?
 - Claim resolution with or without court approval?
 - Provide in plan



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Structuring the Liquidating Trust

- Key Informational Needs
 - Describe specific tasks and areas of responsibility
 - Asset Recovery
 - Assert and litigation preference claims
 - Claims reconciliation
 - reporting
 - Provide access to necessary company information needed to execute the plan
 - Access to books and records
 - Sublet space
 - Access to management and staff that have knowledge of the business
 - Understand any privilege issues



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Structuring the Liquidating Trust

- Key Structure Concepts
 - Trust must be Internal Revenue Code compliant
 - Primary purpose to liquidate assets and generally cannot carry on for-profit business
 - Duration limitation of initially 5 years, but may be extended under certain circumstances
 - Treated as Grantor Trust with creditors deemed to be both grantor and beneficiary who receive K-1's
 - Greater detail available in Revenue Procedure 94-45



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Structuring the Liquidating Trust

- Key Structure Concepts
 - Oversight Committee or No Oversight Committee?
 - For Oversight Committee:
 - Creditors stay involved and continue to have a voice in the process
 - Creditors get some transparency to process
 - Trustee gets buy-in from major beneficiaries that are on board that may give some protection from criticism
 - No Oversight Committee:
 - Removes a layer of administration that could shorten the process
 - Lowers expense of time and resources for care and additional reporting to the Oversight Committee
 - Boards often want indemnity, like the trustee, as well as hiring of their own professionals



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Trends in Liquidating Plans and Trusts

- Bankruptcy Related Issues
 - Control of releases and exculpations
 - 363 Sale impacts on closing of estates
 - Alternative methods (i.e. ABC/State Court procedures)
 - Venue problems?



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Trends in Liquidating Plans and Trusts

- Funding Sources Diminishing
 - Secured Lenders increasingly not carving out monies
 - Self-funded Trusts
 - Loan from Creditor
 - Sale process proceeds (e.g. sharing in upside over stalking horse bid)



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Trends in Liquidating Plans and Trusts

- Bankruptcy Estate Insolvent
 - Post-sale remnants can't satisfy Administrative obligations
 - Process to settlement with various creditors
 - Ability to wind up debtor entities without conversion
 - Who gets indemnification?



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Questions?



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Other Included Documents

- Sample Liquidating Trust with Oversight Committee
 - Schwab Industries
- Sample Liquidating Trust without Oversight Committee
 - FKF Madison Group



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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:) Chapter 11
)
SCHWAB INDUSTRIES, INC., *et al.*,¹) Case No. 10-60702-rk
) (Jointly Administered)
Debtors.)
) Judge Russ Kendig
)

SCHWAB INDUSTRIES, INC. CREDITOR TRUST AGREEMENT

Dated: December 20, 2010

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¹ The Debtors in these Cases, along with the last four digits of each Debtor's tax identification number are: Schwab Industries, Inc. (2467); Medina Cartage Co. (9373); Medina Supply Company (3995); Quality Block & Supply, Inc. (2186); O.I.S. Tire, Inc. (7525); Twin Cities Concrete Company (9196); Schwab Ready-Mix, Inc. (8801); Schwab Materials, Inc. (8957); and Eastern Cement Corp. (7232).

SCHWAB INDUSTRIES, INC. CREDITOR TRUST AGREEMENT

PREAMBLE

This Agreement (the “*Creditor Trust Agreement*”) is made this 20th day of December, 2010, by and among Schwab Industries, Inc. and its affiliated debtors and debtors-in-possession (the “*Debtors*”), the Official Committee of Unsecured Creditors (the “*Committee*”), and John B. Pidcock, not individually, but solely as trustee of this Creditor Trust (the “*Creditor Trustee*” and, collectively with the Debtors and the Committee, the “*Parties*”) in accordance with the First Amended Joint Plan of Liquidation dated October 26, 2010 (the “*Plan*”), confirmed by the Bankruptcy Court (as defined *infra*) by the Order Confirming First Amended Joint Plan of Liquidation, dated December 15, 2010 (the “*Confirmation Order*”).²

RECITALS:

A. On February 28, 2010, the Debtors each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”) in the United States Bankruptcy Court for the Northern District of Ohio (the “*Bankruptcy Court*”) and commenced their chapter 11 cases (the “*Cases*”);

B. On March 9, 2010, the Office of the United States Trustee (the “*U.S. Trustee*”) appointed the Committee, which consists of the following five (5) unsecured creditors: National Lime & Stone Co. (Committee Chair), Holcim (US) Inc. (Committee Vice Chair), Cemex Inc., St. Marys Cement and The Euclid Chemical Company;

C. The Plan and the Confirmation Order provide, among other things, that the Creditor Trustee shall be empowered to make distributions, pursuant to the Plan, the Confirmation Order and this Creditor Trust Agreement, to holders of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Claims, Allowed Class 2a Claims and Allowed Class 3 Claims (collectively, the “*Beneficiaries*”);

D. The Creditor Trust is created pursuant to, and to effectuate, the Plan and the Confirmation Order;

E. The Creditor Trust is created on behalf of, and for the sole benefit of, the Beneficiaries;

F. The powers, authority, responsibilities and duties of the Creditor Trustee shall be governed by this Creditor Trust Agreement, the Plan, applicable orders issued by the Bankruptcy Court (including the Confirmation Order), and general fiduciary obligations of trustees under Ohio law;

G. Pursuant to the terms and conditions of the Plan, the Confirmation Order and this Creditor Trust Agreement, the Creditor Trustee shall administer all assets of the Creditor Trust,

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

including, without limitation: (a) all Cash held by the Debtors (less any Cash paid or to be paid on account of unpaid Allowed Professional Fee Claims); (b) the Settlement Amount; (c) the Debtors' remaining property, including real estate, motor vehicles, furniture, fixtures, inventory, investments, partnership or other ownership interests, refunds, accounts, equipment, any other tangible or intangible personal property and any and all proceeds thereof; (d) the Debtors' outstanding accounts receivable; (e) the proceeds from any Avoidance Actions or Miscellaneous Causes of Action engaged in by the Creditor Trust; (f) the 503(b)(9) Fund; and (g) the Administrative Expense Fund (collectively, the "*Creditor Trust Assets*"); provided, however, that the Creditor Trust Assets shall not include any assets that may be excluded by the Creditor Trustee from any transfer of assets from the Debtors and their Estates to the Creditor Trust;

H. This Creditor 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 Creditor Trust Agreement conflict with the terms and/or provisions of the Plan or the Confirmation Order, the Plan and the Confirmation Order shall govern; and

I. The Creditor 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 Creditor Trust Assets. In particular:

- (i) The Creditor Trust is organized for the primary purpose of liquidating the Creditor 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 Creditor Trust. The Creditor Trust shall not be deemed a successor of the Debtors;
- (ii) The Creditor Trust provides that the Beneficiaries of the Creditor Trust will be treated as the grantors of the Creditor Trust and deemed owners of the Creditor Trust Assets. This Creditor Trust Agreement requires the Creditor Trustee to file returns for the Creditor Trust as a grantor trust pursuant to Treas. Reg. § 1.6714(a);
- (iii) This Creditor Trust Agreement provides for consistent valuations of the transferred property by the Creditor Trustee and the Beneficiaries, and those valuations shall be used for federal income tax purposes;
- (iv) All of the Creditor 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 Creditor Trust contains a fixed or determinable termination date that is not more than thirty (30) years from the date of creation of the Creditor Trust and that is reasonably based on all the facts and circumstances;
- (vi) The investment powers of the Creditor Trustee, other than those reasonably necessary to maintain the value of the Creditor Trust Assets and to further the liquidating purpose of the Creditor 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

- (vii) The Creditor 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 Creditor Trust Agreement based on the Creditor Trust's net income, except that the Creditor Trustee, after consultation with the Oversight Committee (as defined *infra*) may retain an amount of net income reasonably necessary to maintain the value of the Creditor 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 CREDITOR TRUST

1.1 Transfer of Assets to the Creditor Trust

1.1.1 Pursuant to the Plan, the Debtors, the Committee and the Creditor Trustee hereby establish the Creditor Trust on behalf of the Beneficiaries, to be treated as the grantors and deemed owners of the Creditor Trust Assets, and the Debtors and their Estates hereby transfer, assign and deliver to the Creditor Trust, on behalf of the Beneficiaries, all of their right, title and interest in the Creditor Trust Assets, other than any claims and causes of action waived, exculpated or released in accordance with the provisions of the Plan and the Confirmation Order, notwithstanding any prohibition of assignability under applicable non-bankruptcy law. The Creditor Trust agrees to accept and hold the Creditor Trust Assets in the Creditor Trust for the benefit of the Beneficiaries, subject to the terms of the Plan, the Confirmation Order and this Creditor Trust Agreement.

1.1.2 All rights in connection with the vesting and transfer of the Creditor 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 Debtors' or Committee's professionals (whether written or oral) related to the Creditor Trust Assets, will vest with the Creditor Trust. All bank accounts established by the Debtors will be transferred to and held in the Creditor Trust on behalf of the Beneficiaries, subject to the provisions of the Plan and this Creditor Trust Agreement. The Debtors, the Committee and the Creditor Trustee are authorized to take all necessary actions to effectuate the foregoing.

1.2 Title to Assets

1.2.1 Within seven (7) days of the Confirmation Date, the Debtors and their Estates shall transfer the Creditor Trust Assets to the Creditor Trust for the benefit of the Beneficiaries. Notwithstanding any prohibition of assignability under applicable non-bankruptcy law, all assets and properties transferred to the Creditor Trust pursuant to the Plan shall vest in the Creditor Trust in accordance with section 1141 of the Bankruptcy Code. Upon the transfer of

the Creditor Trust Assets to the Creditor Trust, the Debtors shall have no interest in or with respect to such Creditor Trust Assets or the Creditor Trust.

1.2.2 For federal income tax purposes, all parties (including, without limitation, the Debtors, the Creditor Trustee and the Beneficiaries) shall treat the transfer of the Creditor Trust Assets by the Debtors and their Estates to the Creditor Trust as a transfer of such assets by the Debtors and their Estates to the holders of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Claims, Allowed Class 2a Secured Claims and Allowed Class 3 General Unsecured Claims entitled to distributions under the Plan and the Confirmation Order, followed by a transfer by such holders to the Creditor 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 Debtors and the Committee shall execute and deliver or cause to be executed and delivered all such documents (in recordable form where necessary or appropriate), and the Debtors and the Committee 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 Creditor Trust title to and possession of the Creditor Trust Assets.

1.3 Valuation of Assets

The Creditor Trust, to the extent that the Creditor Trustee deems it necessary or appropriate after consultation with the Oversight Committee, may conduct a good faith valuation of the Creditor 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 Debtors, the Creditor Trustee and the Beneficiaries) for federal income tax purposes. Any dispute regarding the valuation of the Creditor Trust Assets shall be resolved by the Bankruptcy Court.

1.4 Claims Against the Creditor Trust Assets

The Creditor Trust Assets shall be subject to the claims of the Creditor Trustee, its Professionals (as defined *infra*) and Non-Professionals (as defined *infra*) and U.S. Trustee fees. The Creditor Trustee shall be entitled to reimburse such persons out of any available Cash in the Creditor 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 Creditor Trustee, breach of fiduciary duty other than negligence, in the exercise and performance of any of the powers and duties of the Creditor Trustee.

ARTICLE II APPOINTMENT OF THE CREDITOR TRUSTEE

John B. Pidcock is hereby appointed to serve as the initial Creditor Trustee under the Plan and hereby accepts this appointment and agrees to serve in such capacity, effective upon the date of this Creditor Trust Agreement. Any successor Creditor Trustee shall be appointed as set forth in **Section 4.7** in the event any Creditor Trustee is removed or resigns pursuant to this Creditor Trust Agreement, or if such Creditor Trustee otherwise vacates the position.

**ARTICLE III
DUTIES AND POWERS OF THE CREDITOR TRUSTEE**

3.1 Generally

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

3.2 Scope of Authority

Within the limitations set forth herein, the responsibilities and authority of the Creditor Trustee shall include, without limitation: (a) collecting and liquidating the Creditor Trust Assets and distributing the Creditor Trust Assets to the Beneficiaries in accordance with the Plan, the Confirmation Order and this Creditor 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 Avoidance Actions and Miscellaneous Causes of Action; (d) filing all required tax returns and paying taxes and all other obligations on behalf of the Creditor Trust from funds held by the Creditor Trust; (e) filing Quarterly Reports (commencing upon the occurrence of the Effective Date of the Plan); (f) providing periodic reports to the Oversight Committee, the Bankruptcy Court and other parties-in-interest on the status of the Claims resolution process, the status of the prosecution of Avoidance Actions and Miscellaneous Causes of Action, distributions to Beneficiaries and the financial status of the Creditor Trust; and (g) carrying out such other responsibilities not specifically set forth herein as may be vested in the Creditor Trustee pursuant to the Plan, this Creditor 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 Creditor Trust and Beneficiaries

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

3.4 Powers

In connection with the administration of the Creditor Trust, except as otherwise set forth in this Creditor Trust Agreement, the Plan or the Confirmation Order, the Creditor Trustee is hereby authorized to perform those acts necessary to accomplish the purposes of the Creditor Trust, without further authorization from the Bankruptcy Court. Without limiting, but subject to, the foregoing, the Creditor Trustee is expressly authorized, but not required, unless otherwise provided in this Creditor 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 Creditor Trust as Creditor Trustee, but not individually) to the Creditor 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 Creditor Trust Assets vested in the Creditor Trust by the Plan and the Confirmation Order by any method deemed appropriate, following consultation with, and subject to the approval of, the Oversight Committee, including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

(d) following consultation with, and subject to the approval of, the Oversight Committee, invest funds (in the manner set forth in **Section 3.8**), make distributions, and pay taxes and other obligations owed by the Creditor Trust from funds held by the Creditor Trustee and/or the Creditor Trust in accordance with the Plan and the Confirmation Order;

(e) following consultation with, and subject to the approval of, the Oversight Committee, 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 the Miscellaneous Causes of Action; provided, however, that the Creditor Trustee shall not be required to consult with or obtain approval of the Oversight Committee, to the extent such matters are limited to a claim or cause of action where the amount demanded or claimed is, in the aggregate, less than or equal to \$50,000 (a “*De Minimis Claim or Cause of Action*”);

(f) following consultation with, and subject to the approval of, the Oversight Committee, determine, compromise and satisfy any and all liabilities created, incurred or assumed by the Creditor Trust;

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

(h) following consultation with, and subject to the approval of, the Oversight Committee, make all tax withholdings and make tax elections by and on behalf of the Creditor Trust;

(i) following consultation with, and subject to the approval of, the Oversight Committee, 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 Debtors’ claims, noticing and balloting agent, The Garden City Group, Inc. (“*Garden City*”),

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maintain on the Creditor Trustee's books and records, a register evidencing the beneficial interest herein held by each Beneficiary;

(k) following consultation with, and subject to the approval of, the Oversight Committee, 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); provided, however, that the Creditor Trustee shall not be required to consult with or obtain approval of the Oversight Committee, to the extent such matters are limited to a De Minimis Claim or Cause of Action;

(l) following consultation with, and subject to the approval of, the Oversight Committee, establish such reserves for Disputed Claims, taxes, assessments, Professional fees and other expenses of administration of the Creditor Trust as may be necessary and appropriate for the proper operation of matters incident to the Creditor Trust;

(m) following consultation with, and subject to the approval of, the Oversight Committee, make distributions as provided for in this Creditor Trust Agreement, the Plan and the Confirmation Order;

(n) following consultation with, and subject to the approval of, the Oversight Committee, determine the allocation of funds remaining in the 503(b)(9) Fund and the Administrative Expense Fund as of the Confirmation Date;

(o) following consultation with, and subject to the approval of, the Oversight Committee, open and maintain bank accounts on behalf of or in the name of the Creditor Trust;

(p) following consultation with, and subject to the approval of, the Oversight Committee, pay expenses and make disbursements necessary to preserve, liquidate and enhance the Creditor Trust Assets;

(q) purchase such insurance coverage as the Creditor Trustee, following consultation with, and subject to the approval of, the Oversight Committee, deems necessary and appropriate with respect to the liabilities and obligations of the Creditor Trustee (in the form of an errors and omissions policy, fiduciary policy or otherwise);

(r) purchase such insurance coverage as the Creditor Trustee, following consultation with, and subject to the approval of, the Oversight Committee, deems necessary and appropriate with respect to real and personal property which may be or may become Creditor Trust Assets;

(s) following consultation with, and subject to the approval of, the Oversight Committee, retain and pay Professionals and Non-Professionals as provided for in **Article XI** of this Creditor Trust Agreement to assist the Creditor Trust and/or the Creditor Trustee with respect to its responsibilities to the extent permitted by this Creditor Trust Agreement, the Plan and the Confirmation Order;

(t) following consultation with, and subject to the approval of, the Oversight Committee, take such actions as are necessary, appropriate or desirable to close or dismiss the Cases;

(u) following consultation with, and subject to the approval of, the Oversight Committee, take such actions as are necessary, appropriate or desirable to terminate the existence of the Debtors to the extent not already effectuated pursuant to the Plan;

(v) following consultation with, and subject to the approval of, the Oversight Committee, terminate and dissolve the Creditor Trust pursuant to and in accordance with the terms of the Plan and this Creditor Trust Agreement;

(w) following consultation with, and subject to the approval of, the Oversight Committee, file a notice of dismissal of the SII Case prior to the Effective Date if the Creditor Trustee determines that the Creditor Trust will be unable to generate sufficient cash proceeds from the liquidation of Creditor Trust Assets to pay Allowed Administrative Claims, Allowed Priority Tax Claims and Allowed Priority Claims in full; and

(x) following consultation with, and subject to the approval of, the Oversight Committee, assume such other powers as may be vested in or assumed by the Creditor 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 Creditor Trust Agreement.

3.5 General Authority of the Creditor Trustee

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

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

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

3.7 Other Activities of the Creditor Trustee

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

3.8 Investment and Safekeeping of Creditor Trust Assets

All monies and other assets received by the Creditor 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 Creditor Trust Assets. Upon consultation with the Oversight Committee, the Creditor 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 Creditor Trust hereunder and held for distribution or payment to the Beneficiaries, except as such interest shall actually be received by the Creditor Trustee. Investment of any monies held by the Creditor Trust shall be administered in accordance with the Creditor Trustee's general duties and obligations hereunder and in view of the Creditor Trustee's general fiduciary duties under Ohio law. The rights and powers of the Creditor Trustee to invest the Creditor Trust Assets transferred to the Creditor Trust, the proceeds thereof or any income earned by the Creditor Trust, shall be limited to the right and power to: (a) invest such Creditor 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 (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.

3.9 Authorization to Expend Creditor Trust Assets

Upon consultation with the Oversight Committee, the Creditor Trustee may expend assets of the Creditor Trust to the extent necessary to: (a) satisfy and discharge liabilities and to maintain the value of the Creditor Trust Assets during liquidation; (b) pay Trustee Expenses (including, but not limited to, any taxes imposed on the Creditor Trust, and fees and expenses in connection with litigation or compensation of the Creditor Trustee in accordance with **Section 4.1** below); (c) satisfy other liabilities incurred or assumed by the Creditor Trust (or to which the Creditor Trust Assets are otherwise subject) in accordance with this Creditor Trust Agreement, the Plan or the Confirmation Order; and (d) make distributions to Beneficiaries on account of their Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Claims, Allowed Class 2a Secured Claims and Allowed Class 3 General Unsecured Claims in accordance with this Creditor Trust Agreement, the Plan and the Confirmation Order. Notwithstanding anything to the contrary in this Creditor Trust Agreement, proceeds from the liquidation of the Creditor Trust Assets subject to the Liens of the Pre-Petition Lenders shall only be used to satisfy the Trustee Expenses incurred solely in connection with the liquidation of such assets, and such Trustee Expenses relating to the liquidation of the Creditor Trust Assets subject to the Liens of the Pre-Petition Lenders shall be subject to the prior written approval of KeyBank.

ARTICLE IV
CREDITOR TRUSTEE

4.1 Compensation of the Creditor Trustee

The Creditor Trustee shall be entitled to receive, but is not required to accept, reasonable compensation for services rendered on behalf of the Creditor Trust. All compensation and other amounts payable to the Creditor Trustee shall be paid out of the Creditor Trust Assets. The Creditor Trust shall reimburse the Creditor 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 Creditor Trustee shall be paid from the Creditor Trust Assets in priority over any distributions to Beneficiaries to be made under the Plan. If the Creditor Trust Assets are insufficient to fully satisfy the amounts payable to, or other obligations owing to, the Creditor Trustee, the Beneficiaries shall be required to disgorge their Pro Rata share of any interim distributions received from the Creditor Trust, until all such amounts have been fully paid and all such obligations have been fully satisfied. If the Creditor Trustee dies or becomes disabled, then such former Creditor Trustee (or his or her estate, successor or assigns) shall be entitled to any remaining unpaid compensation and reimbursement due hereunder. The initial Creditor Trustee has elected to forgo receipt of compensation (but not reimbursement of out-of-pocket expenses).

4.2 Term of Service

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

4.3 No Bond

The Creditor Trustee shall serve without bond.

4.4 Removal

The Creditor Trustee may be removed for cause by the Oversight Committee; provided, however, that the Creditor Trustee may not be removed until a successor Creditor Trustee has been named. "Cause" shall include, without limitation: (a) the undue prolongation of the duration of the Creditor Trust and of distributions of the Creditor 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 Creditor Trust; (c) a physical and/or mental disability that substantially prevents the Creditor Trustee from performing the duties of a Creditor Trustee hereunder; or (d) breach of fiduciary duty or an unresolved conflict of interest. In addition, the Creditor Trustee may be removed for cause at any time by any other person upon entry of an order of the Bankruptcy Court following a noticed motion for removal served upon the Creditor Trustee (and his or her Professionals) and the Oversight Committee. Any person seeking removal through an order of the Bankruptcy Court must demonstrate to the Bankruptcy Court

that such removal is appropriate for cause. The removal in this instance shall be effective on the date specified in the order.

4.5 Resignation

The Creditor Trustee may resign by giving not less than thirty (30) days' prior written notice thereof to the parties entitled to notice under **Section 14.10** hereof. In the event of a resignation, the resigning Creditor Trustee shall render to the Oversight Committee a statement of discharge as described in **Section 4.6** below. 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; (c) the date the statement of discharge is delivered; and (d) the date the successor Creditor Trustee accepts his or her appointment as such.

4.6 Discharge of Creditor Trustee

4.6.1 Statement of Discharge. The Creditor Trustee shall, upon termination of the Creditor Trust or upon the Creditor Trustee's resignation, removal or death (in which case the Creditor Trustee's estate or third-party employer, as may be appropriate, shall) render a statement of discharge containing the following information: (a) all assets and funds of the Creditor Trust originally charged under the Creditor Trustee's control; (b) a summarized accounting, in sufficient detail, of all purchases, sales, gains, losses and income of the Creditor Trust during the Creditor Trustee's term of service; and (c) the ending balance of all assets and funds of the Creditor Trust as of the date of discharge. At the discretion of the Oversight Committee, such statement may be audited by independent accountants in accordance with generally accepted auditing standards.

4.6.2 Approval of Statement of Discharge. The statement of discharge required by **Section 4.6.1** shall be presented to the Oversight Committee. Unless the Oversight Committee requests that such statement of discharge not be approved within thirty (30) days after the date on which such statement of discharge was presented to the Oversight Committee, the withdrawing Creditor Trustee shall be discharged from all liability to the Creditor Trust or any Person who has had or may then or thereafter have an interest in the Creditor Trust for acts or omissions in the Creditor Trustee's capacity as the Creditor Trustee or in any other capacity contemplated by this Creditor Trust Agreement or the Plan.

4.6.3 Costs Relating to Statement of Discharge. The expenses of any accounting, including, but not limited to any statement of discharge, shall be paid by the Creditor Trust as an expense of the Creditor Trust.

4.7 Appointment of Successor Trustee

4.7.1 In the event the Creditor Trustee is removed or resigns pursuant to this Creditor Trust Agreement or the Creditor Trustee otherwise vacates his or her position, the Oversight Committee shall designate a successor Creditor Trustee. Any successor Creditor Trustee appointed hereunder shall execute an instrument accepting such appointment and shall deliver such acceptance to the Bankruptcy Court. Thereupon, such successor Creditor 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 Creditor Trust with like effect as if originally named herein; provided, however, that the removed or resigning Creditor Trustee shall, nevertheless, when requested in writing by the successor Creditor Trustee, execute and deliver any reasonable instrument or instruments conveying and transferring to such successor Creditor Trustee all the estates, properties, rights, powers and trusts of the removed or resigning Creditor Trustee.

4.7.2 The Oversight Committee shall appoint a successor Creditor Trustee as soon as practicable, but in any event within thirty (30) days after the occurrence of the vacancy or, in the case of resignation, at least fifteen (15) days before the proposed resignation is to take effect. If the Oversight Committee fails to appoint a successor Creditor Trustee within the prescribed period, any Member (as defined *infra*) of the Oversight Committee or any Beneficiary may petition the Bankruptcy Court to appoint a proposed successor Creditor Trustee. If the Oversight Committee, or if any Member of the Oversight Committee or any Beneficiary, fails to appoint a successor Creditor Trustee, then: (a) if the Creditor Trustee is resigning, the Creditor Trustee may appoint a qualified successor; or (b) if the Creditor Trustee is removed or upon the Creditor Trustee's death, the Bankruptcy Court may appoint a successor Creditor Trustee.

4.8 Creditor Trust Continuance

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

ARTICLE V OVERSIGHT COMMITTEE

5.1 Creation of the Oversight Committee

Simultaneously with the creation of the Creditor Trust, a committee (the "*Oversight Committee*") comprised of three (3) members (the "*Members*"), at least two (2) of which shall be representatives of the Committee and at least one (1) of which shall be a representative of the Debtors (subject to the approval of the Committee, which shall not be unreasonably withheld or delayed), shall be established. The Oversight Committee shall perform an advisory role in the administration of the Creditor Trust and shall carry out such other responsibilities as may be required or permitted under this Creditor Trust Agreement or under the Plan. The initial Members of the Oversight Committee are Cemex Inc. (Committee's representative), St. Marys Cement (Committee's representative) and David A. Schwab (Debtors' representative). These Members of the Oversight Committee will serve, not as individuals, but as representatives of their respective organizations. Each Member of the Oversight Committee shall serve until the earlier of: (a) his or her death or resignation; (b) his or her removal pursuant to **Section 5.5** of the Creditor Trust Agreement; and (c) the termination of the Creditor Trust. To any extent a Member of the Oversight Committee has a conflict of interest with respect to any matter being handled by the Creditor Trustee, such Member of the Oversight Committee shall recuse themselves and be recused from any such discussions in accordance herewith and any by-laws governing operation of the Oversight Committee approved by the Creditor Trustee.

5.2 Role of the Oversight Committee

The Oversight Committee shall monitor, and the Creditor Trustee shall consult with the Oversight Committee in connection with, the administration of the Creditor Trust by the Creditor Trustee. The Oversight Committee may provide advice or recommendations with respect to any action to be taken by the Creditor Trustee in connection therewith, including, without limitation: (a) the arrangement of any sale, transfer or other disposition of Creditor Trust Assets; (b) the investment of any proceeds of Creditor Trust Assets in Permitted Investments; (c) the conduct and settlement of litigation with respect to any Disputed Claims and any Cause of Action (other than with respect to a De Minimis Claim or Cause of Action), or otherwise; and (d) the making of any distributions in respect of Allowed Claims. Further, the Oversight Committee may from time to time issue written directives to the Creditor Trustee with respect to any of the foregoing, which shall be complied with by the Creditor Trustee. All decisions of the Oversight Committee, and all actions, directives, approvals and consents of the Oversight Committee required or contemplated hereunder, shall be effective upon a majority vote of the Members thereof. In taking or failing to take any action hereunder, the Creditor Trustee may rely upon a written statement (including signatures by counterpart facsimile or approval by electronic transmission) by such majority of the Oversight Committee. The Oversight Committee will have the authority to remove and/or replace the Creditor Trustee as set forth in **Sections 4.4 and 4.7** hereof. Without limiting the foregoing, neither the Oversight Committee nor its Members shall exercise any control or authority over the Creditor Trust or the Creditor Trust Assets that is inconsistent with the provisions of this Creditor Trust Agreement.

5.3 Compensation of the Oversight Committee

The Oversight Committee shall not be compensated for services rendered to the Creditor Trust. However, the Oversight Committee Members shall be reimbursed from the Creditor Trust Assets for all reasonable out-of-pocket expenses incurred by serving on the Oversight Committee, except fees and expenses of professionals retained by individual Oversight Committee Members.

5.4 Resignation of Member

An Oversight Committee Member may resign by giving not less than fifteen (15) days' prior written notice thereof to the parties entitled to notice under **Section 14.10** hereof. From and after the date of its resignation from the Oversight Committee, the resigning Oversight Committee member shall have no further rights or obligations under this Creditor Trust Agreement.

5.5 Removal of Member

5.5.1 Removal for Disability. Subject to Bankruptcy Court approval, a Member of the Oversight Committee may be removed by a unanimous vote of all other Members of the Oversight Committee upon a finding that such Member is unable to perform his or her duties due to illness or other physical or mental disability.

5.5.2 Removal for Cause. Subject to Bankruptcy Court approval, a Member of the Oversight Committee may be removed for cause by a unanimous vote of all other Members

of the Oversight Committee. “Cause” shall include, without limitation: (a) fraud or willful misconduct in connection with the affairs of the Creditor Trust; or (b) breach of fiduciary duty or an unresolved conflict of interest.

5.6 Replacement of Member

In the event that an Oversight Committee Member resigns or is removed as an Oversight Committee Member in accordance with this **Article V**, the entity that designated the removed or resigning Member (i.e., the Committee or the Debtors) may designate a successor Member; provided, however, that prior to the replacement of the resigning or removed Member pursuant to this **Section 5.6**, Holcim (US) Inc., as the alternative Oversight Committee Member, may elect to assume the vacant Oversight Committee Member position.

5.7 Reliance by Oversight Committee Members

The Oversight Committee Members may rely, and shall be fully protected in acting or refraining from acting, on any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order or other instrument or document that the Oversight Committee Member has no reason to believe to be other than genuine and to have been signed or presented by the proper party or parties or, in the case of facsimiles, to have been sent by the proper party or parties, and the Oversight Committee Members may conclusively rely as to the truth of the statements and correctness of the opinions expressed therein. The Oversight Committee Members may consult with any counsel employed by the Creditor Trust or by the Oversight Committee.

5.8 Meetings of the Creditor Trustee and the Oversight Committee

5.8.1 Regular Meetings of the Creditor Trustee and the Oversight Committee. Meetings of the Creditor Trustee and the Oversight Committee are to be held with such frequency and at such place as the Oversight Committee may determine in its sole discretion, but in no event shall meetings be held less frequently than quarterly.

5.8.2 Special Meetings of the Creditor Trustee and the Oversight Committee. Special meetings of the Creditor Trustee and the Oversight Committee may be held whenever and wherever called for either by the Creditor Trustee or at least two Members of the Oversight Committee.

5.8.3 Notice of, and Waiver of Notice for, Creditor Trustee and Oversight Committee Meetings. Notice of the time and place (but not necessarily the purpose or all of the purposes) of any regular or special meeting will be given to the Creditor Trustee and/or the Members of the Oversight Committee in person or by telephone, mail, electronic mail or facsimile transmission. Notice to the Creditor Trustee and the Members of the Oversight Committee of any such meeting will be deemed given sufficiently in advance when: (a) if given by mail, the same is deposited in the United States mail at least ten (10) calendar days before the meeting date, with postage thereon prepaid; (b) if given by electronic mail or facsimile transmission, the same is transmitted at least one (1) business day prior to the convening of the meeting; or (c) if personally delivered (including by overnight courier) or given by telephone, the same is handed, or the substance thereof is communicated over the telephone to the Creditor

Trustee and/or the Members of the Oversight Committee or to an adult member of his/her office staff or household, at least one (1) business day prior to the convening of the meeting. The Creditor Trustee and any Member of the Oversight Committee may waive notice of any meeting and any adjournment thereof at any time before, during or after it is held, as provided by law. Except as provided in the next sentence below, the waiver must be in writing, signed by the Creditor Trustee or the applicable Member or Members of the Oversight Committee entitled to the notice and filed with the minutes or records of the Creditor Trust. The attendance of the Creditor Trustee or a Member of the Oversight Committee at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

5.8.4 Manner of Participation in Creditor Trustee and Oversight Committee Meetings. The Creditor Trustee or any Member of the Oversight Committee may participate in a regular or special meeting by, or conduct the meeting in person or through the use of conference telephone, videoconference or similar communications equipment by means of which all persons participating in the meeting may hear each other, in which case any required notice of such meeting may generally describe the arrangements (rather than or in addition to the place) for the holding thereof. The Creditor Trustee or any Member of the Oversight Committee participating in a meeting by this means is deemed to be present in person at the meeting.

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

5.9 Oversight Committee Action Without a Meeting

Any action required or permitted to be taken by the Oversight Committee at a meeting may be taken without a meeting if the action is taken by unanimous written consent of the Oversight Committee as evidenced by one or more written consents describing the action taken, signed by all Members of the Oversight Committee and recorded in the minutes or other transcript of proceedings of the Oversight Committee and the Creditor Trustee.

5.10 Dispute Resolution

In the event of a dispute between the Creditor Trustee and the Oversight Committee, or between Members of the Oversight Committee, involving an allegation that either party has failed to act in a manner consistent with the Plan or this Creditor Trust Agreement, the parties shall meet and confer and attempt to reach a consensual resolution of the dispute. Should a consensual resolution not be reached, the Creditor Trustee or the Oversight Committee or any of

its Members may seek appropriate relief from the Bankruptcy Court, and the Bankruptcy Court shall retain jurisdiction to resolve such disputes. This **Section 5.10** shall also apply to any disputes relating to recusal pursuant to **Section 5.1** of this Agreement.

5.11 Confidentiality of Information and Conflicts of Interest

The Creditor Trustee shall have authority to exclude any Oversight Committee Member from any deliberations, or withhold any information from any Oversight Committee Member, regarding matters affecting the Creditor Trust or Creditor Trust Assets in which such excluded Member is encumbered by a conflict of interest that has been disclosed or otherwise becomes known to the Creditor Trustee. The non-conflicted Oversight Committee Members may overrule the Creditor Trustee's decision to exclude or withhold information from a conflicted Oversight Committee Member by unanimous vote of any non-conflicted Oversight Committee Members; provided, however, that the Creditor Trustee shall not be liable to the Oversight Committee or the Creditor Trust in any way for any statements made or actions taken by such conflicted Oversight Committee Member following such overruling by the Oversight Committee, and the Creditor Trust shall hold the Creditor Trustee harmless for any claims that may arise as a result of such conflicted Oversight Committee Member's statements and actions. Any Oversight Committee Member that is excluded from deliberations or denied access to information under this **Section 5.11** may challenge the Creditor Trustee's determination in accordance with the dispute resolution procedure set forth in **Section 5.10** of this Creditor Trust Agreement.

5.12 Limitation of Liability and Indemnification of the Oversight Committee

5.12.1 The Members of the Oversight Committee shall not be personally liable to the Creditor Trust or to any Beneficiary (or any successor of such entities) except for such of their own respective acts as shall constitute willful misconduct or fraud as determined by a Final Order. The Members of the Oversight Committee and any officers, employees, professionals and agents of any Member of the Oversight Committee, shall be defended, held harmless and indemnified and shall be entitled to advancement of their expenses; provided, however, that such Member shall be obligated to repay any amounts advanced hereunder if a court of competent jurisdiction shall determine by a Final Order that such Member violated its standard of care hereunder.

5.12.2 The obligation of the Creditor Trust to indemnify the Members of the Oversight Committee and their respective officers, employees, professionals and agents hereunder, and any such Person's rights to be compensated and to be reimbursed for its reasonable out-of-pocket expenses and disbursements, shall constitute indebtedness of the Creditor Trust. In acting hereunder, any Member of the Oversight Committee acts in its representative and not individual capacity. All Persons having any claim against any Member of the Oversight Committee or their agents by reason of the transactions contemplated hereby shall look only to the Creditor Trust Assets for payment or satisfaction thereof.

5.12.3 The indemnification and exculpation provisions hereunder shall supplement and augment those provisions set forth in the Plan.

ARTICLE VI
CREDITOR TRUST BENEFICIARIES

6.1 Identification of Beneficiaries

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

6.2 Beneficial Interest Only

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

6.3 Ownership of Beneficial Interests Hereunder

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

6.4 Evidence of Beneficial Interest

Ownership of a beneficial interest in the Creditor 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.

6.5 Limitation on Transferability

It is understood and agreed that the beneficial interests in the Creditor Trust shall be non-assignable during the term of this Creditor 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 Creditor Trustee, and the Creditor 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 Creditor 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 Creditor Trustee by registered or certified mail pursuant to the notice provisions set forth in **Section 14.10** 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 Creditor Trustee may conclusively rely upon such signatures and acknowledgments as evidence of such transfer without the requirement of any further investigation.

6.6 Conflicting Claims

If any conflicting claims or demands are made or asserted with respect to the Creditor Trust Assets, or if there is any disagreement between the assignees, transferees, heirs,

representatives or legatees succeeding to all or a part of the Creditor Trust Assets resulting in adverse claims or demands being made in connection with such assets, then, in any of such events, the Creditor Trustee, following consultation with the Oversight Committee, shall be entitled to refuse to comply with any such conflicting claims or demands. In so refusing, the Creditor Trustee may elect to make no payment or distribution with respect to the Creditor 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 have exclusive jurisdiction over resolution of such conflicting claims or demands. In so doing, the Creditor 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 Creditor Trustee be liable for interest on any funds that it may so withhold. The Creditor 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 Creditor Trustee.

ARTICLE VII PROVISIONS REGARDING DISTRIBUTIONS

7.1 Timing and Methods of Distributions

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

7.1.2 Priority of Distributions. After payment of all unpaid Trustee Expenses, the Creditor Trustee in its good faith judgment and based on available Creditor Trust Assets, shall: (a) distribute the 503(b) Fund first, to holders of Allowed 503(b)(9) Claims and second, to any unpaid Allowed Administrative Claims in accordance with Section 5.1.2 of the Plan; (b) distribute the Administrative Expense Fund to holders of Allowed Administrative Claims in accordance with Section 5.1.2 of the Plan; (c) distribute the Net Proceeds of Creditor Trust Assets subject to the Liens of the Pre-Petition Lenders to holders of Allowed Class 2a Claims until the Pre-Petition Lenders have recovered an amount equal to \$51,000,000 with respect to their Secured Claims, at which point, all further distributions of the Net Proceeds of Creditor Trust Assets subject to the Liens of the Pre-Petition Lenders shall be subject to the sharing formula appended to the Core Sale Order; and (d) distribute the Settlement Amount to holders of Allowed Class 3 Claims in accordance with Section 5.6.2 of the Plan. The Creditor Trustee shall distribute all remaining Cash in the order of priorities as follows: (a) first, to holders of Allowed Administrative Claims, Pro Rata; (b) second, to holders of Allowed Priority Tax Claims and Allowed Priority Claims, Pro Rata; and (c) third, to holders of Allowed Class 3 General Unsecured Claims, Pro Rata. The Creditor Trustee may withhold from amounts distributable to any entity any and all amounts, determined in the Creditor Trustee's reasonable discretion, following consultation with the Oversight Committee, to be required by any law, regulation, rule,

ruling, directive or other government equivalent of the United States or of any political subdivision thereof, or to otherwise facilitate the administration of the Creditor Trust.

7.1.3 Distributions by the Creditor Trustee. Subject to the provisions of this **Article VII**, the Creditor Trustee shall distribute to the holders of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Claims, Allowed Class 2a Secured Claims (solely from the Net Proceeds of Creditor Trust Assets subject to the Liens of the Pre-Petition Lenders) and Allowed Class 3 General Unsecured Claims, in the priorities set forth in the Plan and in this Creditor Trust Agreement, 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 Creditor Trustee following consultation with, and subject to the approval of, the Oversight Committee (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 Creditor Trustee may, following consultation with, and subject to the approval of, the Oversight Committee, cause the Creditor 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 Creditor Trustee may withhold from the amount distributable from the Creditor 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 Creditor 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 Creditor Trust Agreement, whenever such withholding is required by any law, regulation, rule, ruling, directive or other governmental requirement, and the Creditor 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 7.1.3**. Notwithstanding the foregoing, but without prejudice to the Creditor Trustee's rights hereunder, such Person shall have the right with respect to the United States, or any state, or any political subdivision of either, to contest the imposition of any tax or other charge by reason of any distribution hereunder.

7.1.4 Claims List. At least ten (10) days prior to the Confirmation Date, Garden City will deliver to the Creditor Trustee a list of all Claims scheduled by the Debtors and/or filed against the Debtors 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 the Employer or Taxpayer Identification Number as assigned by the IRS for each holder (the "Claims List"). The Creditor Trustee shall be entitled to rely upon the Claims List in calculating and making distributions from the Creditor Trust as provided herein; provided, however, that the Claims List shall be adjusted from time to time by the Creditor Trustee as necessary to maintain its accuracy. The Creditor Trustee shall also revise the Claims List from time to time upon receipt of notice from a Beneficiary notifying the Creditor 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 Creditor 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.

7.1.5 503(b)(9) Fund. Notwithstanding any provision of this Creditor Trust Agreement to the contrary, the 503(b)(9) Fund provided by Oldcastle shall be held by the Creditor Trustee solely for the benefit of the holders of Allowed 503(b)(9) Claims. Distributions from the 503(b)(9) Fund shall be made first, to holders of Allowed 503(b)(9) Claims, and second, to any unpaid Allowed Administrative Claims in accordance with Section 5.1.2 of the Plan.

7.1.6 Administrative Expense Fund. Notwithstanding any provision of this Creditor Trust Agreement to the contrary, the Administrative Expense Fund provided by Oldcastle shall be held by the Creditor Trustee solely for the benefit of the holders of Allowed Administrative Claims.

7.1.7 Settlement Amount. Notwithstanding any provision of this Creditor Trust Agreement to the contrary, the Settlement Amount provided by the Pre-Petition Lenders pursuant to the Core Sale Order shall be held by the Creditor Trustee solely for the benefit of the holders of Allowed Class 3 General Unsecured Claims. No distribution with respect to such Settlement Amount shall be made to any holders of Claims or Interests other than Class 3 General Unsecured Claims; provided, however, that the Settlement Amount may be used to satisfy the Trustee's Expenses pursuant to any budget approved by the Oversight Committee.

7.1.8 Creditor Trust Assets Subject to Liens. Notwithstanding any provisions of this Creditor Trust Agreement to the contrary, the Net Proceeds of Creditor Trust Assets subject to the Liens of the Pre-Petition Lenders shall be made solely to holders of Allowed Class 2a Secured Claims until the Pre-Petition Lenders have received \$51,000,000 with respect to their Secured Claims (whether from distributions from the Creditor Trust or otherwise), at which point all further distributions of the Net Proceeds of Creditor Trust Assets subject to the Liens of the Pre-Petition Lenders shall be subject to the sharing formula appended to the Core Sale Order.

7.1.9 Sufficiency of Creditor Trust Assets.

(a) If, prior to the Effective Date of the Plan, the Creditor Trustee determines, following consultation with the Oversight Committee, that the Creditor Trust will be unable to generate sufficient cash proceeds from the liquidation of Creditor Trust Assets to pay Allowed Administrative Claims, Allowed Priority Tax Claims and Allowed Priority Claims in full, it may, upon approval by the Oversight Committee, file a notice of dismissal of the SII Case pursuant to section 1112(b) of the Bankruptcy Code, which shall be deemed immediately effective. Following such dismissal, the Creditor Trustee shall, following consultation with, and approval by, the Oversight Committee: (a) oversee the liquidation of the Creditor Trust Assets and distribution of the Net Proceeds through the commencement of dissolution proceedings in the Common Pleas Courts of Cuyahoga County, Ohio, including, without limitation, conducting a Claims reconciliation process and distributing Net Proceeds (not including the Settlement Amount, collateral subject to the Liens of the Pre-Petition Lenders, the 503(b)(9) Fund or the Administrative Expense Fund other than as directed below) to holders of Allowed Claims according to the priority scheme set forth in the Bankruptcy Code, Pro Rata; (b) distribute the Settlement Amount to the holders of Allowed Class 3 General Unsecured Claims, Pro Rata; (c) distribute Net Proceeds of Creditor Trust Assets subject to the Liens of the Pre-Petition Lenders to holders of Allowed Class 2a Secured Claims, Pro Rata, until the Pre-Petition Lenders

have received \$51,000,000 with respect to their Allowed Secured Claims, at which point any future Net Proceeds of such collateral shall be distributed to holders of Allowed Class 2a Secured Claims and Allowed Class 3 General Unsecured Claims pursuant to the sharing formula appended to the Core Sale Order; (d) distribute the 503(b)(9) Fund to holders of Allowed 503(b)(9) Claims, Pro Rata; and (e) distribute the Administrative Expense Fund to holders of Allowed Administrative Claims, Pro Rata. Pursuant to the Plan and the Confirmation Order, the Debtors, their creditors and all other parties-in-interest shall be deemed to have consented to the substantive consolidation of the Debtors into SII, the dismissal of the SII Case and the jurisdiction of the Common Pleas Courts of Cuyahoga County, Ohio to supervise its dissolution. Notwithstanding the foregoing, pursuant to the Plan, the Creditor Trustee shall have standing to commence, prosecute and settle Avoidance Actions and Miscellaneous Causes of Action in the Bankruptcy Court, with all Net Proceeds of such Causes of Action to be distributed to holders of Allowed Claims according to the priority scheme set forth in the Bankruptcy Code, Pro Rata, and the Bankruptcy Court will retain jurisdiction over the Avoidance Actions and Miscellaneous Causes of Action notwithstanding the dismissal of the Cases.

(b) If, any time after the Effective Date, the Creditor Trustee determines, following consultation with the Oversight Committee, that the aggregate proceeds and income available for distribution are not sufficient to pay holders of Allowed Administrative Claims, Allowed Priority Tax Claims and Allowed Priority Claims in full, the Creditor Trustee shall not be required to make any distributions other than: (a) distributing the Settlement Amount to holders of Allowed Class 3 General Unsecured Claims, Pro Rata, less any amount expressly reserved by the Oversight Committee to satisfy Trustee's Expenses; (b) distributing the 503(b)(9) Fund to holders of 503(b)(9) Claims, Pro Rata; (c) distributing the Administrative Expense Fund to holders of Allowed Administrative Claims, Pro Rata; (d) distributing the Net Proceeds of Creditor Trust Assets subject to the Liens of the Pre-Petition Lenders to holders of Allowed Class 2a Secured Claims, Pro Rata, until the Pre-Petition Lenders have received \$51,000,000 with respect to their Allowed Secured Claims, at which point the remaining Net Proceeds of such collateral shall be distributed to holders of Allowed Class 2a Secured Claims and Allowed Class 3 General Unsecured Claims pursuant to the sharing formula appended to the Core Sale Order; and (e) distributing all remaining Creditor Trust Assets, first, to holders of Allowed Administrative Claims, Pro Rata, second, to holders of Allowed Priority Tax Claims, Pro Rata, and, third, to holders of Allowed Priority Claims, Pro Rata.

7.2 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 Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Claims, Allowed Class 2a Secured Claims and Allowed Class 3 General Unsecured Claims shall be made at the address of each such holder set forth on the Claims List.

7.3 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 Creditor Trustee will not distribute post-petition interest on account of any Claim.

7.4 No Post-Confirmation Date Interest on Claims

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

7.5 Undeliverable Distributions

If any distribution with respect to a Claim is returned to the Creditor Trustee as undeliverable, no further distributions shall be made to such holder, unless the Creditor Trustee is notified in writing of the Claim holder's current address. Upon receipt of the notification, the Creditor Trustee will remit all missed distributions to the Claim holder without interest. All claims for undeliverable distributions must be made on or before the second anniversary of the Confirmation Date of the Plan. If a claim is not made within that time, all unclaimed distributions will revert to the Creditor Trust and be distributed to the remaining Beneficiaries of the Creditor Trust in accordance with the priority scheme set forth in the Plan and in this Creditor Trust Agreement. Nothing contained in the Plan, the Confirmation Order or this Creditor Trust Agreement shall require the Creditor Trustee to attempt to locate any holder of an Allowed Administrative Claim, an Allowed Priority Tax Claim, an Allowed Priority Claim, an Allowed Class 2a Secured Claim or an Allowed Class 3 General Unsecured Claim.

7.6 Lapsed Distributions

Any distribution that has not cleared within ninety (90) days of the date of the distribution will lapse. With respect to any lapsed distributions, the lapsed distribution will revert to the Creditor Trust and be distributed to the remaining Beneficiaries of the Creditor Trust in accordance with the priorities set forth in the Plan and this Creditor Trust Agreement; provided, however, that: (a) lapsed distributions from the 503(b)(9) Fund shall be distributed only to the remaining holders of Allowed 503(b)(9) Claims (or, if Allowed 503(b)(9) Claims have been paid in full, to remaining holders of Allowed Administrative Claims); (b) lapsed distributions from the Administrative Expense Fund shall be distributed only to the remaining holders of Allowed Administrative Claims; (c) lapsed distributions from the Net Proceeds of Creditor Trust Assets subject to the Liens of the Pre-Petition Lenders shall be distributed only to the remaining holders of Allowed Class 2a Secured Claims (only until such holders have received \$51,000,000 with respect to their Allowed Secured Claims); and (d) lapsed distributions from the Settlement Amount shall be distributed only to the remaining holders of Allowed Class 3 General Unsecured Claims; provided further, however, that the lapsed distributions from the Settlement Amount may be used to satisfy the Trustee's Expenses pursuant to any budget approved by the Oversight Committee.

7.7 Compliance with Tax Requirements/Allocation

To the extent applicable, the Creditor 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 Allowed Administrative

Claims, Allowed Priority Tax Claims, Allowed Priority Claims, Allowed Class 2a Secured Claims and Allowed Class 3 General Unsecured Claims will be allocated first to the principal amount of such Claims, with any excess allocated to unpaid accrued interest.

7.8 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 Creditor 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 Creditor Trustee shall not be required to make any payment of less than Fifty Dollars (\$50) with respect to any Allowed Administrative Claim, Allowed Priority Tax Claim, Allowed Priority Claim, Allowed Class 2a Secured Claim or Allowed Class 3 General Unsecured Claim. 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).

7.9 Setoffs

The Creditor Trustee may, pursuant to sections 502(d) or 553 of the Bankruptcy Code or applicable non-bankruptcy law, set off against any Allowed Administrative Claim, Allowed Priority Tax Claim, Allowed Priority Claim, Allowed Class 2a Secured Claim or Allowed Class 3 General Unsecured 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 Creditor Trust may hold against the holder of such Allowed Administrative Claim, Allowed Priority Tax Claim, Allowed Priority Claim, Allowed Class 2a Secured Claim or Allowed Class 3 General Unsecured 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 Creditor Trust or the Estates of any such claims, rights and causes of action that they may possess against such holder.

7.10 Preservation of Debtors' Subordination Rights

All subordination rights and claims relating to the subordination by the Debtors or their Estates of the Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Claims, Allowed Class 2a Secured Claims and Allowed Class 3 General Unsecured Claims of any Creditor shall remain valid and enforceable by the Creditor Trust, unimpaired in accordance with section 510 of the Bankruptcy Code or otherwise, and may be asserted by the Creditor Trustee as necessary or appropriate.

7.11 Waiver by Creditors of All Subordination Rights

Except as otherwise ordered by the Bankruptcy Court, each holder of an Allowed Administrative Claim, Allowed Priority Tax Claim, Allowed Priority Claim, Allowed Class 2a Secured Claim or Allowed Class 3 General Unsecured Claim shall be deemed to have waived all

contractual, legal and equitable subordination rights that they may have, whether arising under general principles of equitable subordination, section 510(c) of the Bankruptcy Code or otherwise, with respect to any and all distributions to be made under the Plan and the Confirmation Order, and all such contractual, legal or equitable subordination rights that each holder of a Claim has individually and collectively, with respect to any such distribution, made pursuant to the Plan and the Confirmation Order shall be discharged and terminated, and all actions related to the enforcement of such subordination rights will be permanently enjoined.

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

8.1 Objections to Claims; Prosecution of Disputed Claims

The Creditor Trustee, following consultation with, and subject to the approval of, the Oversight Committee, and on behalf of the Creditor Trust, may file objections to Claims, even if such Claims were scheduled by the Debtors as undisputed, liquidated and non-contingent. The Creditor Trustee shall have the authority to file, settle, compromise or withdraw any objections to Claims, without approval of the Bankruptcy Court. The Creditor Trustee shall file objections to Claims no later than 180 days after the Confirmation Date (unless extended by an order of the Bankruptcy Court). Notwithstanding the deadline to file objections to Claims provided in the Plan, the Creditor Trustee may file objections to Claims within ninety (90) days of the filing of an amended Claim.

8.2 Estimation of Claims

The Creditor Trustee, on behalf of the Creditor 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 Debtors, the Committee or the Creditor 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 Creditor 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.

8.3 Disputed Claims

8.3.1 If the Creditor Trustee 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.

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

8.3.3 Once a Disputed Claim becomes an Allowed Claim, the Creditor 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 Creditor 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 Creditor 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 VII** of this Creditor Trust Agreement.

ARTICLE IX LIABILITY AND EXCULPATION PROVISIONS

9.1 Standard of Liability

In no event shall the Creditor Trustee or the Creditor Trust, or their respective Professionals, Non-Professionals or representatives, be held personally liable for any claim asserted against the Creditor Trust or the Creditor Trustee, or any of their Professionals, Non-Professionals or representatives. Specifically, the Creditor Trustee, the Creditor 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 Creditor Trust or the Creditor 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 Creditor 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.

9.2 Reliance by Creditor Trustee

Except as otherwise provided in **Article III** hereof:

(a) the Creditor 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

(b) the Creditor 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 XI**, and persons dealing with the Creditor Trustee shall look only to the Creditor Trust Assets to satisfy any liability incurred by the Creditor Trustee to such person in carrying out the terms of this Creditor Trust Agreement, and the Creditor Trustee shall have no personal obligation to satisfy any such liability, except to the extent that actions taken or not taken after the Confirmation Date by the Creditor Trustee are determined by a Final Order to be solely due to the Creditor Trustee's own gross negligence, willful misconduct, fraud or breach of fiduciary duty, other than negligence.

9.3 Exculpation

9.3.1 From and after the Confirmation Date, the Creditor 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 Creditor 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 Confirmation 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 Creditor Trustee, breach of fiduciary duty, other than negligence.

9.3.2 No holder of a Claim or other party-in-interest will be permitted to pursue any claim or cause of action against the Creditor 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 Creditor 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 Creditor Trustee, a breach of fiduciary duty, other than negligence.

9.4 Indemnification

The Creditor Trust shall indemnify, defend and hold harmless the Creditor 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 Confirmation 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 Creditor Trustee, breach of fiduciary duty, other than negligence, to the fullest extent permitted by applicable law.

ARTICLE X
ADMINISTRATION

10.1 Purpose of the Creditor Trust

The Creditor 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 Creditor Trust. Accordingly, the Creditor Trust shall, in an expeditious but orderly manner, liquidate and convert to Cash the Creditor Trust Assets, make timely distributions to the Beneficiaries and not unduly prolong the duration of the Creditor Trust.

10.2 Books and Records

10.2.1 Maintenance of Books and Records. The Creditor Trustee shall maintain, with respect to the Creditor Trust and the Beneficiaries, books and records relating to the assets and income of the Creditor Trust and the payment of expenses of and liabilities of, claims against or assumed by, the Creditor Trust in such detail and for such period of time as the Creditor Trustee determines, after consultation with the Oversight Committee, may be necessary to make full and proper accounting in respect thereof in accordance with **Article X** 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 Creditor Trust Agreement requires the Creditor Trust to file any accounting or seek approval of any court with respect to the administration of the Creditor Trust, or as a condition for making any payment or distribution out of the Creditor 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 Creditor Trust Agreement, under the Plan and the Confirmation Order, or otherwise, upon thirty (30) days' prior written notice delivered to the Creditor Trustee, to request a reasonable inspection (as determined by the Creditor Trustee, following consultation with the Oversight Committee) 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 Creditor Trustee and the Oversight Committee; and (b) make such other reasonable arrangements as requested by the Creditor Trustee and the Oversight Committee.

10.2.2 Consultation. The Creditor Trustee shall consult with the Oversight Committee in good faith regarding all material issues affecting the Creditor Trust, including, without limitation, the resolution of objections to Disputed Claims and the disposition of Creditor Trust Assets, and seek the prior approval (written, as applicable) from the Oversight Committee as may be required by this Creditor Trust Agreement, except to the extent: (a) the Oversight Committee or any individual Oversight Committee Member is encumbered by a conflict of interest that has been disclosed or otherwise becomes known to the Creditor Trustee, in which event the Creditor Trustee shall seek the advice and approval, as may be required, of the Oversight Committee without such Member, except as provided in **Section 5.11** hereof; and (b) the Oversight Committee instructs the Creditor Trustee, in writing, that the Creditor Trustee need not consult it with respect to one or more particular issues. In addition, the Creditor Trustee, at the written request of the Oversight Committee, shall present one or more budgets for

the Creditor Trust that set forth expected disbursements for litigation, operations and other purposes.

10.2.3 Quarterly Reports. Within thirty (30) days after the conclusion of every calendar quarter during the term of this Creditor Trust Agreement following the Effective Date, the Creditor Trustee shall provide a Quarterly Report to the Oversight Committee and shall file it with the Bankruptcy Court. The Quarterly Report shall set forth: (a) all distributions to Beneficiaries during the calendar quarter; (b) a summary of the Creditor Trust deposits and disbursements during the calendar quarter; and (c) a summary of the Creditor Trust Assets. In the event the Effective Date of the Plan does not occur, the Creditor Trustee shall have no obligation to prepare and file Quarterly Reports.

10.2.4 Distribution of Reports. Within ten (10) business days after the end of the relevant Quarterly Report preparation period, the Creditor Trustee shall make available any information listed in **Section 10.2.3** above to the Oversight Committee and (if requested) to the U.S. Trustee, and, to the extent required under the Bankruptcy Rules or other local rules, shall file the same with the Bankruptcy Court.

10.2.5 The Creditor Trustee may post any report or records required to be provided under this **Section 10.2** on a website maintained by the Creditor Trustee in lieu of actual delivery of such reports or records to the Oversight Committee (unless otherwise required by law), subject to the provisions of notice of such website and its purpose to the Oversight Committee.

10.3 Security Interests

The Creditor 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 Creditor Trust 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 Creditor Trustee shall cause the Creditor Trust to take such actions and execute such documents as the Creditor Trustee, its respective Professionals and Non-Professionals and the U.S. Trustee deem appropriate to perfect the security interests granted hereunder. The Creditor Trustee is authorized to execute and deliver all documents on behalf of the Creditor Trust to accomplish the purposes of this Creditor Trust Agreement, the Plan and the Confirmation Order.

10.4 Compliance with Laws

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

ARTICLE XI PROFESSIONALS AND NON-PROFESSIONALS

11.1 Retention of Professionals and Non-Professionals

11.1.1 Retention of Professionals. Subject to the approval of the Oversight Committee, the Creditor Trustee, upon the later to occur of the Confirmation Date and

acceptance by the Creditor Trustee of its appointment in accordance with the Plan and this Creditor 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 Creditor Trustee deems appropriate (collectively, the “*Professionals*”). Such Professionals shall be compensated in accordance with **Section 11.3** hereof. The Professionals so retained may be “interested” as that term is defined in the Bankruptcy Code and may include, without limitation, counsel and financial advisors of any party in the Cases for efficiency.

11.1.2 Retention of Non-Professionals. Subject to the approval of the Oversight Committee, the Creditor Trustee, upon the later to occur of the Confirmation Date and acceptance by the Creditor Trustee of its appointment in accordance with the Plan and this Creditor 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 Creditor Trustee deems appropriate (the “*Non-Professionals*”). Such Non-Professionals shall be compensated in accordance with **Section 11.3** hereof. The Non-Professionals so retained may be “interested” as that term is defined in the Bankruptcy Code and may include, without limitation, employees, independent contractors and agents of the Debtors or the Committee.

11.2 Retention of Creditor Trustee’s Legal Counsel

The initial Creditor Trustee has chosen to retain Freeborn & Peters LLP as its primary counsel and Frost Brown Todd LLC as its Ohio counsel (together, the “*Initial Professionals*”). Such retention is made pursuant to this **Article XI** without any further approval by any court. The Initial Professionals are Professionals as that term is used herein, and shall be compensated in accordance with **Section 11.3** hereof.

11.3 Compensation of Professionals and Non-Professionals

Each Professional and Non-Professional shall submit monthly invoices to the Creditor Trustee for its fees and expenses incurred in connection with services requested by, and provided to, the Creditor Trustee. The Creditor Trustee may pay the reasonable fees and expenses of such Professionals and Non-Professionals as an expense of the Creditor 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 Creditor Trustee no more frequently than once a month. The Creditor 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 Creditor Trust on such invoice. If a timely Objection is filed, the Professional or Non-Professional shall be entitled to payment from the Creditor Trust of only that portion of the invoice that is not the subject of the Objection, and the Creditor 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 Creditor Trustee on regular notice, and the Creditor Trustee or the affected Professional or Non-Professional may request, by motion, that the Bankruptcy Court adjudicate and rule on the Objection.

ARTICLE XII TAXES

12.1 Tax Returns and Payments

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

12.2 Creditor Trust

The Creditor Trustee will file tax returns pursuant to Treas. Reg. § 1.671-4(a) on the basis that the Creditor 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 Creditor Trustee will allocate to the Beneficiaries their applicable shares of any income or loss of the Creditor Trust Assets, and such Beneficiaries will be subject to tax on the Creditor Trust Assets’ taxable income on a current basis. As soon as reasonably practicable after the close of each calendar year, the Creditor Trustee will send each affected Beneficiary a statement setting forth such Beneficiary’s share of the Creditor 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.

12.3 Disputed Claims Reserve

The Creditor 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 Creditor Trustee will pay from the applicable Creditor Trust Assets on a current basis any taxes owed on any net income or gain of such Disputed Claims Reserve.

12.4 Tax Withholding and Reporting; Liability for Taxes. The Creditor Trustee (and its designees) will comply with all applicable tax withholding and reporting requirements imposed on it or on the Creditor Trust by any governmental unit, and all distributions pursuant to

the Plan will be subject to applicable withholding and reporting requirements. The Creditor 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 Creditor Trustee believes is reasonable and appropriate following consultation with the Oversight Committee, including requiring holders of Claims to submit appropriate tax and withholding certifications. To the extent any Claim holder fails to submit appropriate tax and withholding certifications as required by the Creditor Trustee, such Claim holder's distribution may, in the Creditor Trustee's reasonable discretion, be deemed undeliverable and be subject to the provisions of the Plan and this Creditor 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 XIII
TERMINATION OF THE CREDITOR TRUST**

13.1 Duration and Extension

The Creditor Trust will terminate no later than the fifth (5th) anniversary of the Confirmation 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 Creditor 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 Creditor Trustee must receive an opinion of counsel or a favorable 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.

13.2 Termination Upon Distribution of All Creditor Trust Assets

The Creditor Trust will terminate and the Creditor 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 13.4** hereof, upon the latest of: (a) the payment of all costs, expenses and obligations incurred in connection with administering the Creditor Trust; (b) the distribution of all remaining Creditor Trust Assets; (c) the closure or dismissal of the Cases; and (d) the completion of any necessary or appropriate reports, tax returns or other documentation determined by the Creditor 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 Creditor Trust Agreement.

13.3 Diligent Administration

The Creditor Trustee shall: (a) not unduly prolong the duration of the Creditor Trust; (b) at all times endeavor to resolve, settle or otherwise dispose of all claims that constitute Creditor Trust Assets; (c) effect the distribution of the Creditor Trust Assets to the Beneficiaries in accordance with the terms hereof; and (d) endeavor to terminate the Creditor Trust as soon as

practicable and without derogating from the Plan or this Creditor Trust Agreement. Prior to and upon termination of the Creditor Trust, the Creditor Trustee shall distribute the Creditor 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 Creditor Trust are not duly claimed, the Creditor Trustee shall dispose of all such distributions in accordance with the Plan, the Confirmation Order and this Creditor Trust Agreement.

13.4 Other Termination Procedures

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

ARTICLE XIV
MISCELLANEOUS PROVISIONS

14.1 Intention of Parties to Establish a Grantor Trust

This Creditor 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.

14.2 Preservation of Privilege

In connection with the rights, claims and Causes of Action that constitute the Creditor 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 Creditor Trust shall vest in the Creditor Trust and its representatives, and the Debtors and the Committee, on the one hand, and the Creditor 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 Creditor Trustee nor the Creditor Trust shall be treated as a successor to the Debtors or their Estates for any purpose.

14.3 Cooperation

The Debtors shall provide the Creditor Trustee with access to or copies of such of its books and records as the Creditor Trustee shall reasonably require for the purpose of performing its duties and exercising its powers under this Creditor Trust Agreement, the Plan or the Confirmation Order. All third parties in possession of the Debtors' books and records shall provide the Creditor Trustee with similar cooperation, and the Creditor Trustee shall have the

right to seek appropriate relief from the Bankruptcy Court to the extent that a third party unreasonably refuses to cooperate with the Creditor Trustee's requests.

14.4 Payment of Statutory Fees

Following the transfer of all Creditor Trust Assets to the Creditor Trust on and after the Confirmation Date and through the date that a final decree is entered in the Cases, the Creditor Trust shall be obligated to pay any U.S. Trustee fees pursuant to 28 U.S.C. § 1930(a)(6) on account of each Estate. For the purpose of payment of such U.S. Trustee fees, the SII Estate shall be treated as the only Estate from which Creditor Trust Assets are to be distributed under the Plan and under this Creditor Trust Agreement. Although the Creditor Trust may pay U.S. Trustee fees on account of each of the other Estates, such fees will be calculated based upon there having been no distributions by such Estates.

14.5 Prevailing Party

In the event of a dispute regarding the provisions of this Creditor 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.

14.6 Implied Authority of the Creditor Trustee

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

14.7 Confidentiality

The Creditor Trustee, its employees, Professionals and Non-Professionals, and each Member of the Oversight Committee (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 Creditor 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 Creditor 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 Debtors or the Creditor Trust, provided that the source is not also bound by a confidentiality agreement with the Debtors or the Creditor 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 Creditor Trustee to allow the Creditor Trustee sufficient time to object to or prevent such disclosure through judicial or other means and shall cooperate reasonably with the Creditor Trustee in making any such objection,

including, but not limited to, appearing in any judicial or administrative proceeding in support of the Creditor Trustee's objection to such disclosure.

14.8 Governing Law; Submission to Jurisdiction; Service of Process

14.8.1 Bankruptcy Court Jurisdiction. This Creditor Trust Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, 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 Creditor Trust Agreement. The parties to this Creditor 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 Creditor 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 Creditor Trust Agreement agrees that service of process on that party may be made upon the designated Person or entity at the address provided in **Section 14.10** hereof and will be deemed to be effective service of process on that party.

14.8.2 Jurisdiction of the Common Pleas Courts of Cuyahoga County, Ohio. In the event of a dismissal of the SII Case pursuant to **Section 7.1.9** of this Creditor Trust Agreement, the parties to this Creditor Trust Agreement consent to the jurisdiction of the Common Pleas Courts of Cuyahoga County, Ohio with respect to all matters related to the liquidation of the Creditor Trust Assets and distribution of the Net Proceeds, except for those matters for which the Bankruptcy Court shall retain jurisdiction pursuant to **Section 7.1.9**.

14.9 Severability

If any provision of this Creditor 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 Creditor 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.

14.10 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, or such other addresses as may be filed with the Bankruptcy Court:

Creditor Trustee:

John B. Pidcock
c/o Conway MacKenzie, Inc.
109 North Main Street
500 Performance Place
Dayton, Ohio 45402
Telephone: 513-235-0164
Facsimile: 513-672-2175
E-Mail: jpidcock@c-m-d.com

with a copy to:

Aaron L. Hammer, Esq.
Freeborn & Peters LLP
311 South Wacker Drive, Suite 3000
Chicago, Illinois 60606
Telephone: 312-360-6000
Facsimile: 312-360-6520
E-Mail: ahammer@freebornpeters.com

and:

Douglas L. Lutz, Esq.
Frost Brown Todd LLC
2200 PNC Center
201 East Fifth Street
Cincinnati, Ohio 45202-4182
Telephone: 513-651-6724
Facsimile: 513-651-6981
E-Mail: dlutz@fbtlaw.com

Debtors:

Laurence V. Goddard
The Parkland Group Inc.
One Cleveland Center
1375 East 9th Street, Suite 1350
Cleveland, Ohio 44114
Telephone: 216-621-1985
Facsimile: 216-621-1894
E-Mail: lgoddard@parkland.com

with a copy to:

Lawrence E. Oscar, Esq.
Hahn Loeser & Parks LLP
200 Public Square, Suite 2800
Cleveland, Ohio 44114
Telephone: 216-621-0150
Facsimile: 216-241-2824
E-Mail: leoscar@hahnlaw.com

Oversight Committee:

Cemex Inc.
Attn: Thomas Shimko
2600 Paramount Place, Suite 450
Fairborn, Ohio 45324
Telephone: 937-306-4126
Facsimile: 937-306-4128
E-Mail: thomas.shimko@cemex.com

St. Marys Cement
Attn: Paul J. Lemanski
9333 Dearborn Street
Detroit, Michigan 48209
Telephone: 313-849-4588
Facsimile: 313-849-4555
E-Mail: pjlemanski@vcsmc.com

David A. Schwab
Notice to be provided to the Creditor Trustee

14.11 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.

14.12 Headings

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

14.13 Counterparts and Facsimile Signatures

This Creditor 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.

14.14 Amendment or Waiver

Any substantive provision of this Creditor Trust Agreement may be materially amended or waived by the Creditor Trustee, subject to the prior approval of a two-thirds vote of the Members of the Oversight Committee, 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 Creditor Trust Agreement that would adversely affect the federal income tax status of the Creditor Trust as a “grantor trust,” if applicable. Technical or non-material amendments to or waivers of portions of this Agreement may be made by the Creditor Trustee without the approval of the Bankruptcy Court, as necessary, to clarify this Creditor Trust Agreement or to enable the Creditor Trust to effectuate the terms of this Creditor Trust Agreement; provided, however, that such amendments are subject to the prior approval of a two-thirds vote of the Members of the Oversight Committee.

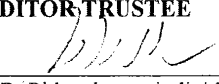
14.15 Intervention

On the Confirmation Date, and without requirement of obtaining any order of the Bankruptcy Court, the Creditor 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 Confirmation Date, where the subject matter of such action involves any Disputed Claim, any Creditor Trust Asset or any Claim, to the extent such Claim impacts the Creditor Trust Assets.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the Parties hereto have either executed and acknowledged this Creditor 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.

CREDITOR TRUSTEE

By: 
John B. Pidcock, not individually, but solely
as trustee of the Creditor Trust

SCHWAB INDUSTRIES, INC.

By: _____
Laurence V. Goddard, Chief Restructuring
Officer

**OFFICIAL COMMITTEE OF
UNSECURED CREDITORS**

By: _____
National Lime & Stone Co., Committee
Chair

2016 ANNUAL SPRING MEETING

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Goddard/Rote

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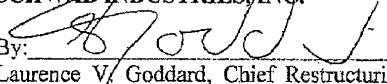
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IN WITNESS WHEREOF, the Parties hereto have either executed and acknowledged this Creditor Trust Agreement, or caused it to be executed and acknowledged on their behalf by their duly authorized officers all as of the date first above written.

CREDITOR TRUSTEE

By: _____
John B. Pidcock, not individually, but solely
as trustee of the Creditor Trust

SCHWAB INDUSTRIES, INC.

By:  _____
Laurence V. Goddard, Chief Restructuring
Officer

OFFICIAL COMMITTEE OF UNSECURED CREDITORS

By: _____
National Lime & Stone Co., Committee
Chair

IN WITNESS WHEREOF, the Parties hereto have either executed and acknowledged this Creditor 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.


CREDITOR TRUSTEE

By: _____
John B. Pidcock, not individually, but solely
as trustee of the Creditor Trust

SCHWAB INDUSTRIES, INC.

By: _____
Laurence V. Goddard, Chief Restructuring
Officer

**OFFICIAL COMMITTEE OF
UNSECURED CREDITORS**

By:  _____
National Lime & Stone Co., Committee
Chair

PLAN ADMINISTRATOR TRUST AGREEMENT

This Plan Administrator Trust Agreement (the “Agreement”), dated as of _____, 2012, by and among FKF Madison Group Owner, LLC, JMJS 23rd Street Realty Owner, LLC, Madison Park Group Owner, LLC, and Slazer Enterprises Owner, LLC (each a “Debtor” and collectively, the “Debtors”), Kelly Stapleton, in her capacity as Plan Administrator and trustee (together with each successor trustee hereunder, the “Trustee”), and One Madison FM, LLC (“OMF” and together with the Debtors, the “Proponents”) is being entered into in connection with the *Revised First Amended Joint Plan of Reorganization for FKF Madison Group Owner, LLC and Its Affiliated Debtors* (as the same has been or may be amended, revised or supplemented, the “Plan”) (D.I. ____), filed in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) and confirmed by Order of the Bankruptcy Court dated April __, 2012 (the “Confirmation Order”) (D.I. ____), and that provides, *inter alia*, for, at the option of the Plan Administrator, the transfer of all of the Plan Administrator Claims Distribution Assets (as defined in the Plan) that shall, together with the earnings thereon and additions thereto, constitute the trust estate hereunder (the “Trust Assets”), into a liquidating trust (which trust is created by this Agreement and may be referred to hereinafter as the “Trust”) for the liquidation and eventual distribution to Holders of Allowed Class 6 Claims (collectively, the “Beneficiaries”) pursuant to and in accordance with this Agreement, the Plan and the Confirmation Order. As set forth herein, for federal income tax purposes, (i) the Beneficiaries of the Trust are to be treated as the grantors of the Trust and deemed to be the owners of the Trust Assets and (ii) the Proponents are to treat the transfer of the Trust Assets to the Trust as a deemed transfer to such Beneficiaries followed by a deemed transfer by such Beneficiaries to the Trust.

Unless the context otherwise requires, all capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Plan.

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

ARTICLE I

DECLARATION OF TRUST

1.1 Purpose of the Trust. The Debtors and the Trustee, pursuant to the Plan and the Confirmation Order and in accordance with the Bankruptcy Code and applicable tax statutes, rules and regulations, to the extent incorporated in this Agreement, hereby constitute and create the Trust for the purpose of liquidating and distributing the Trust Assets with no objective to continue or engage in the conduct of a trade or business. In particular, the Trust, through the Trustee, shall (i) collect and, where applicable or appropriate and in accordance with the terms of the Plan, reduce the Trust Assets to Cash in order to meet the Trust’s Cash needs and other obligations; (ii) make Distributions on account of Allowed Class 6 Claims pursuant to

the Plan and this Agreement, (iii) take such steps as are reasonably necessary to accomplish such purpose, all as more fully provided in, and subject to the terms and provisions of the Plan, the Confirmation Order and this Agreement. The Trustee shall not have authority to engage in a trade or business, and no portions of the Trust Assets shall be used in the conduct of a trade or business, except as is reasonably necessary to the prompt and orderly collection and reduction to Cash of the Trust Assets.

1.2 Name of the Trust. The Trust established hereby shall be known as the "One Madison Plan Trust." In connection with the exercise of its powers, the Trustee may use such name or such variation thereof as the Trustee sees fit, and may transact the business and affairs of the Trust in such name.

1.3 Transfer of Assets to Create Trust. The Debtors, the Estates, and the Plan Funder, as appropriate, hereby grant, release, assign, transfer, convey and deliver, for and on behalf of the Beneficiaries, the Trust Assets to the Trust, which transfer shall be free and clear of all Liens, Claims and Old Equity Interests (except as to the right of Holders of Claims in Class 6 to receive *pro rata* distributions in accordance with the Plan), as of the Effective Date, to have and to hold unto the Trustee and her successors in trust and to be applied as specified in the Plan, the Confirmation Order and this Agreement. Upon the transfer of the Trust Assets, and except as otherwise provided herein or in the Plan, the Debtors, the Estates, and the Plan Funder, as appropriate, shall retain no interest in the Trust Assets. The Debtors shall execute and deliver or cause to be executed and delivered to or upon the order of the Trustee all such documents, in recordable form where necessary or appropriate, and the Proponents shall take or cause to be taken such further or other action, as the Trustee may deem appropriate, to vest or perfect in or confirm to the Trustee, or upon the order of the Trustee, title to and possession of all of the Trust Assets as of the Effective Date.

1.4 Acceptance by Trustee. The Trustee hereby accepts (i) the appointment to serve as Trustee; (ii) the transfer of the Trust Assets to the Trustee; (iii) the trust imposed on the Trustee by this Agreement, and (iv) any liabilities of the Trustee, on behalf of the Trust, to the extent provided in the Plan. The Trustee agrees to receive, hold, administer and distribute the Trust Assets and the income derived therefrom pursuant to the terms of the Plan, the Confirmation Order and this Agreement. The Trustee expressly assumes the responsibility to reconcile and make Distributions on account of Class 6 Claims (as set forth in the Plan) and meet all other obligations assigned to the Trustee in accordance with the Plan and the Confirmation Order. The Trustee agrees to perform all acts necessary to ensure the transfer of the Trust Assets to the Trustee on behalf of the Trust.

ARTICLE II

TRUSTEE - GENERALLY

2.1 Appointment. The initial Trustee shall be Kelly Stapleton.

2.2 Term of Service. The Trustee shall serve until the earlier of (a) the termination of the Trust and Distribution of the Trust Assets in accordance with Article X of this Agreement, or (b) the Trustee's resignation, death, incapacity, removal, or liquidation.

2.3 Services. The Trustee shall be entitled to engage in such other activities as the Trustee deems appropriate which are not in conflict with the Plan, the Confirmation Order, this Agreement or the interests of the Beneficiaries. The Trustee shall devote such time as is necessary to fulfill all of the duties of the Trustee.

2.4 Resignation, Death, Incapacity or Removal of Trustee. The Trustee may resign at any time upon 45 days' written notice filed with the Bankruptcy Court. The Trustee may be removed by the Bankruptcy Court upon application for good cause shown. In the event of any such resignation or removal, or the death or incapacity of the Trustee, the Bankruptcy Court shall appoint a new Trustee. The Trustee's resignation shall not be effective until the date on which the Bankruptcy Court appoints a successor Trustee and the successor Trustee accepts such appointment; provided, however, that in no event shall the Trustee be required to act in such capacity for more than ninety days following the Trustee's resignation. Every successor Trustee appointed pursuant to the terms hereof shall execute, acknowledge and file with the Bankruptcy Court an instrument in writing accepting such appointment hereunder, and thereupon such successor Trustee, without any further act, shall become fully vested with all of the rights, powers, duties and obligations of his, her or its predecessor.

2.5 Trust Continuance. The death, incapacity, resignation or removal of the Trustee shall not terminate the Trust or revoke any existing agency (other than any agency of such Trustee as a Trustee) created pursuant to this Agreement or invalidate any action theretofore taken by the Trustee, and the successor Trustee agrees that the provisions of this Agreement shall be binding upon and inure to the benefit of the successor Trustee and all her heirs and legal and personal representatives, successors or assigns.

2.6 Compensation and Expenses of Trustee. The Trustee and any successor Trustee shall be entitled to receive compensation and reimbursement of expenses in connection with the performance of her duties hereunder without approval of the Bankruptcy Court. The Trustee's compensation shall be paid at the Trustee's normal hourly rate for work of this type, which is \$700 per hour, subject to periodic adjustments. Such compensation and expenses shall be expenses of the Trust and shall be paid from the Trust Assets.

2.7 Retention of Professionals. The Trustee shall employ John Fioretti on mutually agreeable terms as a consultant to assist the Trustee, solely to the extent directed by the Trustee, in the execution of her duties under the Plan and this Agreement. If the Trustee believes that it is advisable for the Trustee to employ one or more other professionals, including any personnel of Alvarez & Marsal North America, LLC or and of their affiliates (together, "A&M"), to assist or advise her in the execution of her duties under the Plan, she may do so upon the written agreement of John Fioretti. If John Fioretti does not promptly agree after a request for the same, the Trustee may file a motion or application with the Bankruptcy Court seeking approval of the employment of such professional. The Trustee may determine, in her sole discretion, (i) whether to utilize John Fioretti's services with respect to claims and causes of

action against any insider including, without limitation, Ira Shapiro, Cevdet Caner, or any related entities (the term “insider” shall have the meaning given to it in Section 101(31) of Title 11 of the United States Code) of one or more of the Debtors; and (ii) whether or not to utilize John Fioretti's services in the course of evaluating whether to pursue any claim objections, claims, or causes of action asserted by the Committee in a motion, complaint, or other pleading prior to the Effective Date of the Plan. The Trustee will not employ Ira Shapiro (or a related entity, including an entity that he controls or he is employed by) in any capacity and such individuals or entities shall not receive any payments from the Trustee on account of any services; provided, however, that the Trustee may consult or seek information from Ira Shapiro in her discretion in connection with the execution of her duties under the Plan and this Agreement. Professionals retained by the Trustee shall submit monthly invoices for their reasonable fees and expenses to the Trustee for payment upon receipt by the Trustee from the Trust Assets without approval of the Bankruptcy Court. It is expressly acknowledged that the Trustee is a Managing Director with A&M. In no event will the Trustee be subject to any liability or claim on account of her choice to utilize A&M as a Trust professional as opposed to others so long as she complies with the terms of this Agreement, the Plan and the Confirmation Order.

ARTICLE III
POWERS AND LIMITATIONS OF TRUSTEE

3.1 Responsibilities of the Trustee. The Trustee shall (a) establish and maintain such operating, reserve and trust account(s) of the Trust as are necessary and appropriate to wind down the affairs of the Debtors with respect to Plan Administrator Claim Distribution Assets and Plan Administrator Claims; (b) invest the Trust Assets, to the extent appropriate; (c) pursue objections to, estimations of and settlements of Plan Administrator Claims; (d) calculate and distribute from the Trust Assets all Distributions to Holders of Allowed Class 6 Claims (and including, for the avoidance of doubt, any Allowed Class 5 Claims to be treated as an Allowed Class 6 Claim) to be made under the Plan; (e) pursue the Plan Administrator Actions on behalf of the Trust; and (f) undertake such other responsibilities as may be vested in the “Plan Administrator” pursuant to the Plan, this Agreement, the Confirmation Order, other Bankruptcy Court orders, or as otherwise may be consistent with and necessary and proper to carry out the duties of the “Plan Administrator” under the Plan and this Agreement. The Trustee shall not be required to prepare, file, or assist in the preparation and filing of any local, state, or federal tax returns unrelated to the operation of the Trustee or the Trust.

3.2 General Powers of Trustee. The powers of the Trustee shall include, without limitation and without further Bankruptcy Court approval, each of the following:

(a) To maintain the Trust's accounts, to make distributions from the Trust Assets to holders of Allowed Class 6 Claims provided for or contemplated by the Plan; and to take other actions consistent with the Plan and the implementation thereof, including the establishment, re-evaluation, adjustment and maintenance of appropriate reserves;

(b) To object to Plan Administrator Claims, to compromise or settle Plan Administrator Claims prior to objection and to prosecute, compromise and settle Plan Administrator Actions without supervision or approval of the Bankruptcy Court, free of any restrictions of the Bankruptcy Code, the Bankruptcy Rules, the local rules of the Bankruptcy Court, and the guidelines and requirements of the U.S. Trustee, other than those restrictions expressly imposed by the Plan, the Confirmation Order or this Agreement;

(c) To dispose of, in any commercially reasonable manner, including abandonment or donation to a charitable organization of her choice, any Plan Administrator Claims Distribution Assets held by the Trustee hereunder, if the Trustee concludes that they are of immaterial benefit to the Trust or Holders of Class 6 Claims;

(d) Subject to the provisions of this Agreement, to make decisions regarding the retention or engagement of professionals, employees and consultants, and to pay from the Trust Assets, the fees and charges incurred by the Trustee on or after the Effective Date for fees and expenses of professionals (including those retained by the Trustee), disbursements, expenses or related support services without application to, or approval of, the Bankruptcy Court;

(e) To take all other actions not inconsistent with the provisions of the Plan and this Agreement, which the Trustee deems reasonably necessary or desirable with respect to administration of the Plan Administrator Claims and Plan Administrator Actions vested in the Trustee;

(f) To invest Cash of the Trust as deemed appropriate by the Trustee;

(g) To maintain any books and records of the Trust, including financial books and records, as is necessary and/or appropriate in the Trustee's discretion and consistent with this Agreement and the Plan;

(h) To investigate, object to prosecute and/or settle the Plan Administrator Actions vested in the Trustee and Plan Administrator Claims on behalf of the Trust without approval of the Bankruptcy Court and, in respect thereof, exercise, participate in or initiate any proceeding before the Bankruptcy Court or any other court of appropriate jurisdiction and participate as a party or otherwise in any administrative, arbitative or other nonjudicial proceeding and pursue to settlement or judgment such actions;

(i) To purchase or create and carry all insurance policies and pay all insurance premiums and costs the Trustee deems necessary or advisable, including, without limitation, errors and omissions coverage for the Trustee;

(j) To administer the Plan Administrator Claims Distribution Assets held by the Trustee hereunder and distribute all Plan Administrator Claims Distribution Assets held by the Trustee hereunder pursuant to the Plan, the Confirmation Order and this Agreement;

(k) To hold legal title to any and all Plan Administrator Claims Distribution Assets;

(l) To exercise such other powers as may be vested in or assumed by the Trustee pursuant to the Plan, this Agreement, the Confirmation Order, other orders of the Bankruptcy Court, or as may be desirable, necessary and/or proper to carry out the provision of the Plan;

(m) The Trustee shall stand in the same position as the Debtors and the Reorganized Debtors with respect to any Plan Administrator Claim and Plan Administrator Action as to which the Debtors may have to assert an attorney-client privilege, the work product doctrine, or any other privilege against production, and the Trustee shall be entitled to assert all of the Debtors' rights to preserve, assert or waive any such privilege.

3.3 Limitations on the Liquidating Trustee. Notwithstanding anything in this Agreement to the contrary, the Trustee shall not do or undertake any of the following:

(a) Take any action in contravention of the Plan, the Confirmation Order or this Agreement.

(b) Take any action that would significantly jeopardize treatment of the Trust as a "liquidating trust" for federal income tax purposes.

(c) Grant liens on any of the Trust Assets.

(d) Guaranty any debt.

(e) Commingle any of the Trust Assets with the Trustee's own property or the property of any other Person.

3.4 Termination of the Trustee's Appointment. The Trustee's appointment shall terminate upon the Distribution of all property in accordance with the terms of this Agreement and the Plan and the entry of a final decree by the Bankruptcy Court closing all of the Chapter 11 Cases.

3.5 Trustee Conflicts of Interest. If the Trustee determines, in the exercise of the Trustee's discretion, that she has a material conflict of interest with respect to the settlement of a Claim or Claims, the resolution or prosecution of litigation or any other matter, the Trustee may request the Bankruptcy Court to approve the Trustee's choice of a designee to act on behalf of the Trustee solely with respect to such matter, with such designee's authority to act on behalf of the Trustee to terminate upon the matter's conclusion.

3.6 Investment Power. The investment power of the Trustee shall be limited to the power to invest (a) in demand and time deposits, such as short-term certificates of deposit, (b) in banks or other savings institutions, or (c) in other temporary, liquid, and reasonably risk-limited investments, such as treasury bills.

3.7 Establishment of Reserves. Subject to the other terms of this Agreement, on the Effective Date, the Trustee shall establish such reserves and escrows that she determines are appropriate. In the sole discretion of the Trustee, any reserves created may be established with segregated accounts or book entry accounts.

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

ARTICLE IV

LIABILITY OF LIQUIDATING TRUSTEE

4.1 Trustee Standard of Care; Exculpation. Neither the Trustee, nor any director, officer, affiliate, employee, employer, professional, agent or representative of the Trust or Trustee (if applicable) shall be personally liable in connection with affairs of the Trust to any Holder of a Claim or Beneficiary of the Trust, or the Trust, or any other Person, except for such person's acts or omissions as shall constitute fraud, bad faith, willful misconduct, gross negligence, or willful disregard of their duties. Persons dealing with the Trustee, or seeking to assert claims against the Debtors, their Estates, or the Trustee, shall have recourse only to the Trust Assets to satisfy any liability incurred by the Trustee to such persons in carrying out the terms of this Agreement.

4.2 Indemnification. Except as otherwise set forth in the Plan or Confirmation Order, the Trustee and any director, officer, affiliate, employee, employer, professional, agent or representative of the Trust or Trustee (if applicable) shall be defended, held harmless and indemnified from time to time by the Trust against any and all losses, claims, costs, expenses and liabilities (including reasonable attorneys' fees, disbursements and related expenses) to which such indemnified parties may be subject by reason of such indemnified party's execution in good faith of her duties pursuant to the discretion, power and authority conferred on such Person by this Agreement, the Plan or the Confirmation Order; provided, however, that the indemnification obligations arising pursuant to this section shall indemnify neither the Trustee, nor any director, officer, affiliate, employee, employer, professional, agent or representative of the Trustee (if applicable) for any actions taken by such indemnified parties which are finally and judicially determined to have constituted bad faith, fraud, willful misconduct, gross negligence, willful disregard of their duties or material breach of the Plan or this Agreement or any other form of personal liability not incurred in the indemnified party's capacity under this Agreement. Satisfaction of any obligation of the Trust arising pursuant to the terms of this section shall be payable only from the Trust Assets and such right to payment shall be prior and superior to any other rights to receive a Distribution of the Trust Assets.

4.3 No Liability for Acts of Predecessor Trustees. No successor Trustee shall be in any way liable for the acts or omissions of any predecessor Trustee unless a successor Trustee expressly assumes such responsibility.

4.4 Reliance by Trustee on Documents, Mistake of Fact or Advice of Counsel. Except as otherwise provided in this Agreement, the Trustee may rely, and shall be protected from liability for acting, upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order or other paper or document reasonably believed by the Trustee to be genuine and to have been presented by an authorized party. Also, the Trustee shall not be liable if the Trustee acts based on a mistake of fact before having actual knowledge of an event. The Trustee shall not be liable for any action taken or suffered by the Trustee in reasonably relying upon the advice of counsel or other professionals engaged by the Trustee in accordance with the Plan, the Confirmation Order or this Agreement.

4.5 Trustee's Delegation Powers. The Trustee may execute any of her powers or duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any such agent or attorney appointed by her with due care.

4.6 Insurance. The Trustee may cause the Trust to purchase errors and omissions insurance with regard to any liabilities, losses, damages, claims, costs and expenses the Trustee may incur, including but not limited to attorneys' fees, arising out of or due to her actions or omissions, or consequences of such actions or omissions, other than as a result of her finally judicially determined bad faith, willful misconduct, gross negligence, fraud, or willful disregard of her duties, with respect to the implementation and administration of the Plan and this Agreement.

ARTICLE V DUTIES OF TRUSTEE

5.1 General. The Trustee shall have all duties specified in this Agreement and in the Plan, including those duties set forth for the Plan Administrator, including, without limitation, the following: (i) the establishment and maintenance of operating, reserve and trust accounts for the Trust as are necessary and appropriate to wind down the affairs of the Debtors with respect to the Plan Administrator Claim Distribution Assets and Plan Administrator Claims; (ii) the pursuit of objections to, estimations and settlements of Plan Administrator Claims on behalf of the Trust, regardless of whether such Claims are listed in the Schedules; (iii) the calculation and distribution of all Distributions of Trust Assets to Holders of Allowed Class 6 Claims to be made under the Plan; and (iv) the filing of all required tax returns and paying of taxes and all other obligations, if any, related to the Trust Assets being administered by the Trustee on behalf of the Beneficiaries.

5.2 Register of Beneficiaries. The Trustee shall maintain at all times a register of the names, addresses and amounts of Allowed Claims of the Beneficiaries (the "Register"). The Trustee shall not be liable for relying on the accuracy of the Register, provided

that the Trustee has properly maintained the Register in accordance with this Agreement and the Plan, including making all changes based upon notification proper under this Agreement having been submitted to the Trustee.

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

5.4 Tax Returns. The Trustee shall file such tax returns as may be required by federal, state or local taxing authorities.

5.5 Interim Reports to Beneficiaries. Each calendar year, the Trustee shall file a report concerning the status of the Trust to the Beneficiaries and include a discussion of (a) the assets and liabilities of the Trust as of the end of the calendar year; (b) the receipts and disbursements of the Trust during the calendar year; (c) a general description of the activities of the Trust; (d) the amount of compensation paid to the Trustee for the preceding calendar year; and (e) to the extent known, any adjustments to billing rates of the Trustee or any other professionals providing services to the Trustee or Trust. That report shall be filed within two months after the conclusion of each calendar year.

ARTICLE VI BENEFICIARIES

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

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

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

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

6.5 Change of Address. Any change of address of a Beneficiary shall be forwarded to the Trustee by registered mail at the address set forth in section 11.13 of this Agreement. The notice shall be executed by the respective Beneficiary and notarized. Absent such written notice, the Trustee shall not be obligated to recognize any such change of address.

6.6 Effect of Death, Incapacity or Bankruptcy of Beneficiary. The death, incapacity or bankruptcy of a Beneficiary during the term of the Trust shall not operate to terminate the Trust during the term of the Trust nor shall it entitle the representative or creditors of the deceased, incapacitated or bankrupt Beneficiary to an accounting or to take any action in any court or elsewhere for the distribution of the Trust Assets or for a petition thereof nor shall it otherwise affect the rights and obligations of the Beneficiary under this Agreement or in the Trust.

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

ARTICLE VII

PROCEDURES FOR RESOLVING AND TREATING PLAN ADMINISTRATOR CLAIMS AND PLAN ADMINISTRATOR ACTIONS

7.1 Objection Deadline. Unless otherwise extended by the Bankruptcy Court, any Claim Objection shall be served and Filed on or before one hundred eighty (180) days after all of the Abstention Issues have been fully and finally adjudicated.

7.2 Prosecution of Plan Administrator Claims and Causes of Action. Subject to section 7.3 below, the Trustee is authorized and empowered, but not required, to resolve consensually any disputes regarding Plan Administrator Actions vested in the Trustee and the allowance, classification or amount of any Plan Administrator Claims on behalf of the Trust without further action or approval from the Bankruptcy Court. All objections and Plan Administrator Actions that are filed and prosecuted as provided herein shall be litigated to Final Order or compromised and settled in accordance with section 7.4 of this Agreement and the Plan. Upon such determination, the Claim shall become an Allowed Claim to the extent set forth in the applicable Final Order and will be treated in accordance with the Plan. Any Claim that has been or is hereafter listed in the Schedules in an amount that is not disputed, contingent or unliquidated and with respect to which no contrary or superseding Proof of Claim or Claim Objection has been timely Filed on or before the Claims Objection Deadline, shall be deemed Allowed in the fixed amount so listed in the Schedules for purposes of the Plan unless otherwise ordered by the Bankruptcy Court.

7.3 Committee Meeting. The Official Committee of Unsecured Creditors appointed in the Debtors' cases may meet with the Trustee prior to the Effective Date of the Plan to provide information regarding claims and causes of action of the Debtors' Estates. The Trustee may determine whether to pursue those claims and causes of action in her sole discretion.

7.4 Disputed Claim Reserve. As of and after the Effective Date with respect to Distributions to be made under the Plan, to the extent that a Claim is a Disputed Claim that if Allowed, the Holder of such Claim would be entitled to a Distribution from the Trust Assets, the Trustee shall establish a reserve for the payment of any such Disputed Claim at such time that a Distribution would otherwise be made under the Plan on account of such Claim if it was an Allowed Claim, funded from the Trust Assets upon such reserve's establishment as follows: the amount reserved for each Disputed Claim shall be the amount that the Holder of such Disputed Claim would have been entitled to receive under the Plan if it was an Allowed Claim based upon the Claim being the lower of: (i) the amount set forth in a Proof of Claim Filed by the Holder of such Claim, or if no Proof of Claim has been Filed, the Scheduled amount set forth for such Claim if it is shown on the Schedules as being non-contingent, liquidated, and undisputed and (ii) the estimated amount of such Claim for Distribution purposes, as determined by the Bankruptcy Court. As soon as practicable after (and to the extent) that a Disputed Claim becomes an Allowed Class 6 Claim, the Trustee shall make a payment on such Allowed Claim from the reserve established for such Disputed Claim that becomes an Allowed Claim. Any amount reserved on account of a Disputed Claim that becomes a Disallowed Class 6 Claim shall be released from the reserve and held by the Trustee for Distribution to all Holders of Allowed Class 6 Claims in accordance with the Plan.

7.5 Settlement Authority. On and after the Effective Date and without any further notice to or action, order or approval of the Bankruptcy Court, the Trustee, with respect to Plan Administrator Actions vested in the Trustee and Plan Administrator Claims, shall have the sole right to compromise and settle such Claims and Causes of Action on behalf of the Trust and to execute all necessary documents, including a stipulation of settlement or release, in the Trustee's sole discretion, without notice to any party, and without the need for further approval of the Bankruptcy Court and without following Bankruptcy Rule 9019(a), as set forth in the Plan and Confirmation Order.

7.6 Estimation of Claims. The Trustee may, at any time, request that the Bankruptcy Court estimate, pursuant to section 502(c) of the Bankruptcy Code, any Claim that is contingent, disputed, or unliquidated, regardless of whether such Claim has been previously objected to or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. All of the aforementioned Claims objection, estimation and resolution procedures are cumulative and are not necessarily exclusive of one another. Claims may be estimated and thereafter resolved in any manner consistent with the Plan, the Confirmation Order or the provisions of this Agreement.

**ARTICLE VIII
DISTRIBUTIONS**

8.1 Distributions to Beneficiaries from Trust Assets. All payments to be made by the Trustee to any Beneficiary shall be made only in accordance with the Plan, the Confirmation Order and this Agreement and from the Trust Assets (or from the income and proceeds realized from the Trust Assets) and only to the extent that the Trustee has sufficient Trust Assets (or income and proceeds realized from the Trust Assets) to make such payments in accordance with and to the extent provided for in the Plan, the Confirmation Order and this Agreement. Any Distribution made by the Trustee in good faith and in accordance with the Plan, the Confirmation Order or this Agreement shall be binding and conclusive on all interested parties.

8.2 Distributions. Unless the Holder of an Allowed Class 6 Claim and the Trustee agree to a different Distribution Date, Distributions required under the Plan to be made on the Effective Date on account of Claims (i) that are Allowed as of the Effective Date shall be made by the Trustee on the Initial Distribution Date or as soon as practicable thereafter and (ii) that are Disputed Claims as of the Effective Date shall be made by the Trustee on such later date as such Disputed Claim becomes an Allowed Claim. Any payment or Distribution required to be made under the Plan on a day other than a Business Day shall be made on the next succeeding Business Day. All Distributions shall be made as provided, and subject to any withholding or reserve, in this Agreement, the Plan or the Confirmation Order. Additionally, the Trustee may withhold from amounts distributable to any Beneficiary any and all amounts, determined in the Trustee's reasonable sole direction, to be required by any law, regulation, rule, ruling, directive or other governmental requirement.

8.3 Withholding and Reporting Requirements. The Trustee may require any Beneficiary to furnish to the Trustee its social security number or employer or taxpayer identification number as assigned by the Internal Revenue Service and the Trustee may condition any Distribution to any Beneficiary upon the receipt of such identification number. In connection with the Plan and all instruments issued in connection herewith and Distributions under the Plan, the Trustee shall comply with all withholding and reporting requirements imposed by any federal, state, local or foreign taxing authority, and all Distributions under this Plan shall be subject to any such withholding and reporting requirements, and the Trustee shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements; provided, however, that, notwithstanding anything to the contrary contained in the Plan or this Agreement, (a) any Class 6 Claim Holder entitled to receive any Distribution under the Plan shall be required to deliver to the Trustee an appropriate Form W-9 or (if the payee is a foreign Person) Form W-8 to avoid the incurrence of certain federal income withholding tax obligations on its respective Distribution and (b) each Holder of an Allowed Class 6 Claim that is to receive a Distribution under the Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed on such Holder by any governmental unit, including, without limitation, income, withholding and other tax obligations, on account of such Distribution. No Distribution shall be made to or on behalf of any Holder of an Allowed Class 6 Claim unless and until such Holder has made arrangements

satisfactory to the Trustee for the payment and satisfaction of any such tax obligations. The Trustee shall cause a notice of this requirement to be sent to all Holders of Allowed Class 6 Claims, which notice may be contained in the Confirmation Order or Notice of Effective Date.

8.4 No Distribution Pending Allowance. Notwithstanding anything to the contrary in the Plan, Confirmation Order or this Agreement, no payment or Distribution shall be made with respect to any Class 6 Claim to the extent it is a Disputed Claim unless and until such Disputed Claim becomes an Allowed Claim.

8.5 Distributions after Allowance. Distributions to each holder of a Disputed Claim, to the extent that such Claim ultimately becomes an Allowed Class 6 Claim, shall be made in accordance with the provisions of the Plan governing Class 6 Claims.

8.6 Disputed Payment. If any dispute arises as to the identity of a Holder of an Allowed Claim who is to receive any Distribution, the Trustee may, in lieu of making such Distribution to such Person, make such Distribution into an escrow account until the disposition thereof shall be determined by Bankruptcy Court order or by written agreement among the interested parties to such dispute.

8.7 No Recourse to Trust or Trustee. Notwithstanding that the allowed amount of any particular Disputed Class 6 Claim is reconsidered under the applicable provisions of the Bankruptcy Code and Bankruptcy Rules or is Allowed in an amount for which there is insufficient Cash to provide a percentage recovery equal to that received by other Holders of Allowed Class 6 Claims, the Holder of such a Claim shall not have recourse to the Debtors, the Trustee, or any of their respective professionals, or their successors or assigns, or the Holder of any other Claim, or any of their respective property. Nothing in the Plan shall modify any right of a Holder of a Claim under section 502(j) of the Bankruptcy Code. **THUS, THE BANKRUPTCY COURT'S ENTRY OF AN ESTIMATION ORDER MAY HAVE THE EFFECT OF LIMITING THE DISTRIBUTION TO BE MADE ON INDIVIDUAL DISPUTED CLAIMS, REGARDLESS OF THE AMOUNT FINALLY ALLOWED ON ACCOUNT OF SUCH DISPUTED CLAIMS.**

8.8 Delivery of Distributions in General. Distributions to Holders of Allowed Claims shall be made at the addresses set forth in the Debtors' records unless such addresses are superseded by Proofs of Claim or notices of transfer timely Filed prior to the Distribution Record Date pursuant to Bankruptcy Rule 3001.

8.9 Holding and Investment of Undeliverable and Unclaimed Distributions. If the Distribution to any Holder of an Allowed Claim is returned to the Trustee as undeliverable or is otherwise unclaimed because the check or instrument for such Distribution is not cashed by such Holder within ninety (90) days following the mailing of such check or instrument, no further Distributions shall be made to such Holder, and such Holder shall be deemed to have forfeited any rights to further distributions, unless the Trustee is notified in writing by the Holder of such Holder's then current address within ninety (90) days after the mailing of such undelivered or unclaimed Distribution.

8.10 Forfeiture of Distributions. Any Holder of an Allowed Claim that does not provide any information required by section 8.9 hereof within the time period set forth in section 8.9 hereof shall be deemed to have forfeited its Claim and shall be forever barred and enjoined from seeking any further Distributions on such claim or asserting such Claim against the Debtors or their Estates, the Trustee, or the Reorganized Debtors or their respective property.

8.11 Redistribution to Other Holders. Any Distributions forfeited pursuant to section 5.3 of the Plan and section 8.10 of this Agreement, shall be redistributed to other claimants pro rata subject to section 5.10 of the Plan and notwithstanding any federal or state escheat laws to the contrary. Nothing contained in this Plan shall require the Trustee to attempt to locate any Holder of an Allowed Claim.

8.12 Record Date for Distributions. The Trustee will have no obligation to, but may, in her sole and absolute discretion, recognize the transfer of, or the sale of any participation in, any Allowed Class 6 Claim that occurs after the close of business on the Distribution Record Date, and will be entitled for all purposes herein to recognize and distribute only to those Holders of Allowed Class 6 Claims that are Holders of such Claims, or participants therein, as of the close of business on the Distribution Record Date. The Trustee shall be entitled to recognize and deal for all purposes under this Plan with only those record Holders stated on the official claims register as of the close of business on the Distribution Record Date.

8.13 Allocation of Plan Distributions Between Principal and Interest. Except as otherwise expressly provided in the Plan, to the extent that any Allowed Class 6 Claim entitled to a Distribution under the Plan is comprised of indebtedness and accrued but unpaid interest thereon, such Distribution shall, for all income tax purposes, be allocated to the principal amount of the Claim first and then, to the extent that the consideration exceeds the principal amount of the Claim, to the portion of such Claim representing accrued but unpaid interest.

8.14 Means of Cash Payment. Payments of cash made pursuant to the Plan shall be in U.S. dollars and shall be made, at the option and in the sole discretion of the Trustee, by (i) checks drawn on or (ii) wire transfer from an account at a bank selected by the Trustee.

8.15 De Minimis Distributions. No payment of fractional cents shall be made under the Plan and any such Distribution shall be rounded to the nearest whole cent. All Distributions (other than the final Distribution) less than one hundred dollars (\$100) will be held by the Trustee for the benefit of the Holder of the Allowed Claim entitled to such Distribution. When the aggregate amount held by the Trustee for the Holder of an Allowed Claim equals or exceeds \$100, the Trustee shall make a Distribution to such Holder. If at the time the Trustee is to make the final Distribution to Holders of Allowed Class 6 Claims and the Trustee is holding a Distribution for a Holder of an Allowed Claim of less than twenty-five dollars (\$25), inclusive of any final Distribution, the Trustee shall not be required to make such final Distribution and the amount of such final Distribution for such Holder shall instead be submitted as an undeliverable

Distribution to a charity in the form of the Combined Campaign for Justice then in effect in the State of Delaware.

8.16 Setoffs and Recoupments. The Trustee may, pursuant to Section 553 of the Bankruptcy Code or applicable non-bankruptcy laws, but shall not be required to, set off or recoup against any Class 6 Claim and the payments or other Distributions to be made pursuant to the Plan in respect of such Claim, claims of any nature whatsoever that the Trustee may have against the Holder of such Claim, including, without limitation, claims relating to or for any Causes of Action; provided, however, that neither the failure to assert such rights of setoff or recoupment nor the allowance of any Claim hereunder shall constitute a waiver or release by the Trustee of any Claim that the Trustee may assert against any Holder of an Allowed Class 6 Claim.

ARTICLE IX

TAXES

9.1 Income Tax Status. Consistent with Revenue Procedure 94-45, 1994-28 I.R.B. 124, the Trust shall be treated as a liquidating trust pursuant to Treasury Regulation Section 301.7701-4(d) and as a grantor trust pursuant to Sections 671-677 of the Internal Revenue Code of 1986, as amended. As such, the Beneficiaries will be treated as both the grantors and the deemed owners of the Trust Assets. Any items of income, deduction, credit and loss of the Trust shall be allocated for federal income tax purposes to the Beneficiaries.

9.2 Tax Returns. In accordance with Internal Revenue Code Section 6012 and Treasury Regulation Section 1.671-4(a), the Trustee shall file with the Internal Revenue Service annual tax returns on Form 1041. In addition, the Trustee shall file in a timely manner such other tax returns as are required by applicable law. The Trustee shall send to each Beneficiary a copy of the Form 1041 (without attaching any other Beneficiary's Schedule K-1) and such Beneficiary's Schedule K-1.

9.3 Withholding of Taxes Related to Trust Operations. To the extent that the operation of the Trust or the liquidation of the Trust Assets creates a tax liability of the Trust in excess of applicable net operating losses, the Trustee shall promptly pay such tax liability and any such payment shall be considered a cost and expense of the operation of the Trust payable from the Trust Assets. The Trustee may reserve a sum, the amount of which shall be determined by the Trustee in her sole discretion, sufficient to pay the accrued or potential tax liability arising out of the operations of the Trust or the operation of the Trust Assets. In the exercise of her discretion and judgment, the Trustee may enter into agreements with taxing authorities or other governmental units for the payment of such amounts as may be withheld.

ARTICLE X
TERMINATION OF TRUST

10.1 Maximum Term. The Trust shall terminate no later than the fourth (4th) anniversary of the Effective Date (the “Initial Trust Term”) if not effectively terminated sooner by the Distribution, liquidating, abandonment, liquidation, or disposition of all of the Trust Assets; provided, however, that the Trustee may extend the term of the Trust for additional finite periods of time as necessary based on all of the facts and circumstances at that time (the “Supplemental Trust Term”) by filing a notice of the Trustee’s intent to extend the term of the Trust with the Bankruptcy Court and obtaining an Order from the Bankruptcy Court approving the extension(s) of the Initial Trust Term or the Supplemental Trust Term, as the case may be, within six months before the beginning of the Supplemental Trust Term.

10.2 Final Distribution Upon Termination. Upon the termination of the Trust, the Trustee shall distribute the remaining Trust Assets, if any, to the Beneficiaries, in accordance with the Plan, Confirmation Order and this Agreement.

10.3 Winding Up and Discharge of the Trustee. For the purposes of winding up the affairs of the Trust at its termination, the Trustee shall continue to act as Trustee until her duties have been fully discharged. After doing so, the Trustee, her agents and employees shall have no further duties or obligations hereunder, except as required by this Agreement, the Plan, the Disclosure Statement or applicable law concerning the termination of a trust. Upon a motion by the Trustee, the Bankruptcy Court may enter an order relieving the Trustee, her agents and employees of any further duties, discharging the Trustee and releasing her bond, if any. Upon termination of the Trust, the Trustee shall file an accounting with the Bankruptcy Court setting forth the amount she has collected and disbursed, and the fees and expenses incurred in administering the Trust.

ARTICLE XI
MISCELLANEOUS PROVISIONS

11.1 Amendments. This Agreement may only be modified, supplemented or amended by the Trustee in a written, acknowledged instrument approved by the Bankruptcy Court.

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

11.3 Cumulative Rights and Remedies. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights under law or in equity.

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

11.5 Transfer of Books and Records; Preservation of Privileges and Immunities.

(a) Subject to the rights, if any, of the Reorganized Debtors pursuant to the Plan, on the Effective Date or as soon thereafter as is reasonably practicable, all books and records of the Debtors relating to the administration of the Trust and Trust Assets, all Plan Administrator Claims, and all Plan Administrator Actions, shall be transferred or deemed assigned to the Trustee; provided, however, that the Trustee may allow the Reorganized Debtors access to any and all such books and records for any purpose not inconsistent with the Plan and Confirmation Order. The Debtors, their Affiliates and agents shall take all steps, and execute all documents, necessary to cause the transfer of all of the books and records of the Debtors in accordance with the Plan.

(b) With respect to Plan Administrator Claims Distribution Assets and Plan Administrator Claims only, the Trustee shall (i) automatically be conferred with and have authority and standing, and shall be the sole authorized Person with authority and standing, to take any and all actions that were previously vested in the Debtors or their Estates, including, without limitation, the prosecution or settlement of Plan Administrator Claims and Plan Administrator Actions, and (ii) stand in the same position as the Debtors with respect to any claim the Debtors may have to an attorney-client privilege, the work product doctrine, or any other privilege against production, and the Trustee shall succeed to all of the Debtors' rights to preserve, assert or waive any such privilege.

11.6 Irrevocability. This Agreement and the Trust created hereby are irrevocable.

11.7 Relationship to the Plan. The principal purpose of this Agreement is to aid in the implementation of the Plan and, therefore, this Agreement incorporates and is subject to the provisions of the Plan and the Confirmation Order. In the event that any provision of this Agreement is found to be inconsistent with a provision of the Plan or the Confirmation Order, the provisions of the Plan or the Confirmation Order shall control.

11.8 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Delaware, and all matters pertaining to the validity and construction of this Agreement, and the administration of the Trust created hereunder, shall be governed by the laws of Delaware, without giving effect to rules governing the conflict of laws.

11.9 Retention of Jurisdiction. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the Bankruptcy Court shall retain exclusive jurisdiction over the Trust after the Effective Date, including, without limitation, jurisdiction as set forth in the Plan and the Confirmation Order and to resolve any and all controversies, suits and issues that may arise in connection with the Trust, including, without

limitation, this Agreement, or any entity's obligations incurred in connection herewith, including without limitation, any action against the Trustee or any professional retained by the Trustee, in each case in its capacity as such. Each party to this Agreement hereby irrevocably consents to the exclusive jurisdiction of the Bankruptcy Court in any action to enforce, interpret or construe any provision of this Agreement or of any other agreement or document delivered in connection with this Agreement, and also hereby irrevocably waives any defense of improper venue, forum non conveniens or lack of personal jurisdiction to any such action brought in the Bankruptcy Court. Each party further irrevocably agrees that (i) any action to enforce, interpret or construe any provision of this Agreement will be brought only in the Bankruptcy Court and (ii) all determinations, decisions, rulings and holdings of the Bankruptcy Court shall be final and non-appealable and not subject to reargument or reconsideration. Each party hereby irrevocably consents to the service by certified or registered mail, return receipt requested, to be sent to its address set forth in section 11.13 of this Agreement or to such other address as he, she or it may designate from time to time by notice given in the manner provided above, of any process in any action to enforce, interpret or construe any provision of this Agreement. **ANY AND ALL RIGHT TO TRIAL BY JURY IS HEREBY WAIVED AND THERE SHALL BE NO RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THE AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

11.10 Severability. In the event that any provision of this Agreement or the application thereof to any person or circumstance shall be determined by the Bankruptcy Court or another court of competent jurisdiction to be invalid or unenforceable to any extent, the other provisions of this Agreement, or the application of such provision to persons or circumstance, other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

11.11 Limitation of Benefits. Except as otherwise specifically provided in this Agreement, the Plan or the Confirmation Order, nothing herein is intended or shall be construed to confer upon or to give any person other than the parties hereto and the Beneficiaries any rights or remedies under or by reason of this Agreement.

11.12 Notices. All notices, requests, demands, consents and other communication hereunder shall be in writing and shall be deemed to have been duly given, if delivered in person or by facsimile with an electromechanical report of delivery or if sent by overnight mail or by registered or certified mail with postage prepaid, return receipt requested, to the following addresses:

If to the Trustee:

Kelly Stapleton
Alvarez & Marsal
1760 Market Street, Suite 706
Philadelphia, PA 19103
Tel: (267) 507-3100

Fax: (267) 507-3101

with copies to:

[INSERT COUNSEL]

If to a Beneficiary:

To the name and address set forth in the Register.

The parties may designate in writing from time to time other and additional places to which notices may be sent. All demands, requests, consents, notices and communications shall be deemed to have been given (i) at the time of actual delivery thereof, (ii) if given by certified or registered mail, five (5) business days after being deposited in the United States mail, postage prepaid and properly addressed, or (iii) if given by overnight courier, the next business day after being sent, charges prepaid and properly addressed.

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

11.14 Integration. This Agreement, the Plan and the Confirmation Order constitute the entire agreement with, by and among the parties, and there are no representations, warranties, covenants or obligations except as set forth herein, in the Plan and in the Confirmation Order. This Agreement, together with the Plan and the Confirmation Order, supersede all prior and contemporaneous agreements, understandings, negotiations and discussions, written or oral, of the parties hereto, relating to any transaction contemplated hereunder. Except as otherwise provided herein, the Plan or Confirmation Order, nothing herein is intended or shall be construed to confer upon or give any person other than the parties hereto and the Beneficiaries any rights or remedies under or by reason of this Agreement.

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

11.16 Interpretation. The enumeration and section headings contained in this Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Agreement or of any term or provision hereof. Unless context otherwise requires, whenever used in this Agreement the singular shall include the plural and the plural shall include the singular, and words importing the masculine gender shall include the feminine and the neuter, if appropriate, and vice versa, and words importing persons shall include partnerships, associations and corporations. The words herein, hereby, and hereunder and words with similar import, refer to this Agreement as a whole and not to any particular section or subsection hereof unless the context requires otherwise.

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

IN WITNESS WHEREOF, the parties hereto have either executed and acknowledged this 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.

**FKF MADISON GROUP OWNER, LLC
JMJS 23RD STREET REALTY OWNER, LLC
MADISON PARK GROUP OWNER, LLC
SLAZER ENTERPRISES OWNER, LLC**

By: _____
Name:

ONE MADISON FM, LLC

By: _____
Name: Richard O'Toole

TRUSTEE OF ONE MADISON PLAN TRUST

By: _____
Name: Kelly Stapleton

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