IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re FULCRUM BIOENERGY, INC., *et al.*,[1] Debtors.	Chapter 11 Case No. 24-12008 (TMH) (Jointly Administered) **RE: D.I. 487**

NOTICE OF FILING OF REVISED EXHIBIT TO PLAN SUPPLEMENT

PLEASE TAKE NOTICE that, on March 6, 2025, the Debtors filed the solicitation version of the *Amended Disclosure Statement for Joint Chapter 11 Plan of Liquidation* [D.I. 455-1]. On March 6, 2025, the Debtors further filed the solicitation version of the Debtors' *Amended Joint Chapter 11 Plan of Liquidation* [D.I. 456-1] (as may be amended, modified or supplemented from time to time, the "Plan").[2]

PLEASE TAKE FURTHER NOTICE that, on March 7, 2025, the Court entered the *Order (I) Approving the Disclosure Statement; (II) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan; (III) Approving the Form of Ballots and Solicitation Packages; (IV) Establishing the Voting Record Date; (V) Scheduling a Hearing and Establishing Notice and Objection Procedures in Respect of Confirmation of the Plan; and (VI) Granting Related Relief* [D.I. 458] (the "Solicitation Procedures Order").

PLEASE TAKE FURTHER NOTICE that the Plan contemplates the submission of certain documents (or forms thereof), the Plan Supplement (as defined herein), in advance of the Confirmation Hearing.

PLEASE TAKE FURTHER NOTICE that on March 24, 2025, pursuant to the Solicitation Procedures Order, the Debtors filed the *Notice of Filing of Plan Supplement to Debtors' Amended Joint Chapter 11 Plan of Liquidation* [D.I. 487] (the "Plan Supplement"), which included, among other things, a form of Liquidation Trust Agreement (the "Liquidation Trust Agreement") attached thereto as Exhibit A.

[1] The debtors and debtors in possession in these chapter 11 cases, along with each debtor's federal tax identification numbers are: Fulcrum BioEnergy, Inc. (3733); Fulcrum Sierra BioFuels, LLC (1833); Fulcrum Sierra Finance Company, LLC (4287); and Fulcrum Sierra Holdings, LLC (8498). The Debtors' service address is: Fulcrum BioEnergy Inc., P.O. Box 220 Pleasanton, CA 94566.

[2] Capitalized terms used but not defined herein are defined in the Plan.

PLEASE TAKE FURTHER NOTICE that, on April 9, 2025, the Debtors filed the *Second Amended Joint Chapter 11 Plan of Liquidation* [D.I. 522-1].

PLEASE TAKE FURTHER NOTICE that attached hereto as **Exhibit A** is a revised form of Liquidation Trust Agreement (the "Revised Liquidation Trust Agreement") and further attached hereto as **Exhibit B** is a redline of the Revised Liquidation Trust Agreement against the Liquidation Trust Agreement.

Exhibit	Document
A	Revised Liquidation Trust Agreement
B	Redline

PLEASE TAKE FURTHER NOTICE that that the Revised Liquidation Trust Agreement attached hereto amends and supersedes the Liquidation Trust Agreement in its entirety.

PLEASE TAKE FURTHER NOTICE that the documents contained herein are integral to and part of the Plan. An order approving these documents has not yet been entered by the Bankruptcy Court. If an order is entered approving the Plan, the documents contained herein will be approved by the Bankruptcy Court as part of the Plan Supplement to the Plan

PLEASE TAKE FURTHER NOTICE that the Debtors reserve all rights to amend, modify, or supplement this notice, and any of the documents contained herein, in accordance with the Plan.

PLEASE TAKE FURTHER NOTICE that the deadline to file objections to the Plan was **March 31, 2025 at 4:00 p.m. (prevailing Eastern Time)**.

PLEASE TAKE FURTHER NOTICE that copies of the Plan, the Solicitation Procedures Order, and any other document filed in these chapter 11 cases may be obtained and/or are available free of charge (a) at the following website maintained by Verita: veritaglobal.net/Fulcrum, or (b) upon request to Verita (x) in writing to Fulcrum BioEnergy, c/o Kurtzman Carson Consultants, LLC dba Verita Global, 222 N. Pacific Highway, Suite 300, El Segundo, CA 90245; (y) by email at FulcrumInfo@veritaglobal.com; or (z) by telephone at (866) 967-0676 (U.S./Canada) or (310) 751-2676 (International). You may also obtain a copy of such documents for a fee via PACER at http://www.ecf.deb.uscourts.gov.

PLEASE TAKE FURTHER NOTICE that the hearing on confirmation of the Plan has been scheduled for **April 14, 2025 at 10:00 a.m. (prevailing Eastern Time)** before The Honorable Thomas M. Horan, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 5th Floor, Courtroom 4, Wilmington, Delaware 19801. The Confirmation Hearing may be further continued from time to time without further notice other than the advisement or announcement of the adjourned date(s) by the Debtors in open court or by notice on the docket.

Dated: April 9, 2025
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Curtis S. Miller

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Counsel to the Debtors and Debtors in Possession

Exhibit A

Revised Liquidation Trust Agreement

LIQUIDATION TRUST AGREEMENT

This Liquidation Trust Agreement (the "Liquidation Trust Agreement") dated as of [●], 2025, is entered into by and among Fulcrum BioEnergy, Inc., Fulcrum Sierra Holdings LLC, Fulcrum Sierra Finance Company, LLC, and Fulcrum Sierra BioFuels, LLC, as debtors and debtors in possession and Wilmington Savings Fund Society, FSB, not individually, but solely in its capacity as trustee (the "Liquidation Trustee," and collectively with the Debtors, the "Parties") of the Liquidation Trust (as defined herein) in accordance with the Debtors' Second Amended Joint Chapter 11 Plan of Liquidation, dated April 9, 2025 (including all exhibits thereto, as the same may be further amended, modified, or supplemented from time to time, the "Plan").[1]

RECITALS

WHEREAS, on September 9, 2024 (the "Petition Date"), each of the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") commencing their chapter 11 cases (the "Chapter 11 Cases");

WHEREAS, on September 19, 2024, the United States Trustee for the District of Delaware (the "United States Trustee") appointed an official committee of unsecured creditors in the Chapter 11 Cases (the "Committee");

WHEREAS, on March 6, 2025, the Debtors filed the Plan;

WHEREAS, on [●], 2025, the Bankruptcy Court entered an order confirming the Plan [D.I. ●] (the "Confirmation Order");

WHEREAS, the Plan became effective on [●], 2025 (the "Effective Date");

WHEREAS, the Plan provides for the creation and formation of a statutory trust (the "Liquidation Trust") as of the Effective Date, which provides, inter alia:

(a) For the transfer of all Liquidation Trust Assets into the Liquidation Trust for distribution to beneficiaries of the Liquidation Trust (the "Liquidation Trust Beneficiaries") pursuant to and in accordance with this Liquidation Trust Agreement, the Plan and the Confirmation Order;

(b) For federal income tax purposes, (i) the Liquidation Trust Beneficiaries of the Liquidation Trust are to be treated as the grantors of the Liquidation Trust and deemed to be the owners of the Liquidation Trust Assets; and (ii) the Debtors are to treat the transfer of the Liquidation Trust Assets to the Liquidation Trust as a deemed transfer to such Liquidation Trust Beneficiaries followed by a deemed transfer by such Liquidation Trust Beneficiaries to the Liquidation Trust;

[1] Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in the Plan.

(c) For the management of the Liquidation Trust Assets by the Liquidation Trust, acting through the Liquidation Trustee; and

(d) For the distribution of the Liquidation Trust Assets to the Liquidation Trust Beneficiaries as set forth in the Plan.

WHEREAS, this Liquidation Trust Agreement is executed to establish the Liquidation Trust and to facilitate the Plan;

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

ARTICLE I

DECLARATION OF TRUST

1.1 Purpose of the Liquidation Trust. The Debtors, the Estates, and the Liquidation Trustee, pursuant to the Plan and the Confirmation Order, and in accordance with the Bankruptcy Code and applicable tax statutes, rules and regulations, hereby constitute and create the Liquidation Trust for the purpose of administering post-Effective Date responsibilities of the Debtors and Wind-Down Estates under the Plan, including, but not limited to, (i) being vested with, administering, and liquidating, the Liquidation Trust Assets, (ii) making Distributions to holders of Allowed Claims in accordance with the terms of the Plan and this Liquidation Trust Agreement, (iii) resolving all Disputed Claims and effectuating the Claims reconciliation process pursuant to the procedures prescribed in the Plan, (iv) prosecuting, settling, and resolving Causes of Action that are Liquidation Trust Assets, (v) recovering, through enforcement, resolution, settlement, collection, or otherwise, assets on behalf of the Liquidation Trust (which assets shall become part of the Liquidation Trust Assets), (vi) winding down the affairs of the Debtors and their subsidiaries, if and to the extent necessary, including taking any steps to dissolve, liquidate, or take other similar action with respect to each Debtor and their subsidiaries, including by terminating the corporate or organizational existence of each such Debtor and subsidiary, and (vii) performing all actions and executing all agreements, instruments and other documents necessary to effectuate the purpose of the Liquidation Trust or as otherwise set forth in the Liquidation Trust Agreement. Further, the Liquidation Trust is created for the purpose of liquidating and distributing the Liquidation Trust Assets with no objective to continue or engage in the conduct of a trade or business. In particular, the Liquidation Trust, acting through the Liquidation Trustee, shall (a) make continuing efforts to collect and reduce the Liquidation Trust Assets to Cash in order to meet the Liquidation Trust's Cash and other obligations, (b) make timely distributions on account of Allowed Claims pursuant to the Plan and this Liquidation Trust Agreement, (c) not unduly prolong the duration of the Liquidation Trust, and (d) 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 Liquidation Trust Agreement. Notwithstanding any provision of Delaware law or any other applicable law to the contrary, the Liquidation Trust shall

not have authority to engage in any trade or business, and no portion of the Liquidation Trust Assets shall be used in the conduct of a trade or business, except as is reasonably necessary for the prompt and orderly collection and reduction to Cash of the Liquidation Trust Assets.

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

1.3 Formation. It is the intention of the Parties hereto that the Liquidation Trust referred to in the Plan and formed hereby constitutes a statutory trust under the Delaware Act and that this Liquidation Trust Agreement constitutes the governing instrument of the Liquidation Trust. Promptly following execution of this Liquidation Trust Agreement, the Liquidation Trustee shall cause an appropriate form of Certificate of Trust of the Liquidation Trust to be filed in the Office of the Secretary of State of the State of Delaware (the "Delaware State Office") in accordance with the applicable provisions of the Delaware Act.

1.4 Offices.

(a) The principal office of the Liquidation Trust, and such additional offices as the Liquidation Trustee may determine to establish, shall be located at such place or places inside or outside the State of Delaware as the Liquidation Trustee may designate from time to time.

(b) Service of process upon the Liquidation Trust may be made by service upon the Delaware Trustee. The principal office of the Delaware Trustee in the State of Delaware is located at 500 Delaware Avenue, Wilmington, Delaware 19801.

1.5 Transfer of Assets to Create Liquidation Trust.

(a) In accordance with Section 6.3 of the Plan, the Debtors and the Estates hereby irrevocably grant, release, assign, transfer, convey and deliver, for and on behalf of the Liquidation Trust Beneficiaries, to the Liquidation Trust all of their rights, title, and interests in and to all of the Liquidation Trust Assets, including, but not limited to, all of the remaining assets of the Debtors, including Causes of Action and all such assets held or controlled by third parties. The Liquidation Trust shall separately account for and administer Liquidation Trust Assets and claims with respect to each Debtor's estate. In accordance with section 1141 of the Bankruptcy Code, except as otherwise provided herein or in the Plan, the Liquidation Trust Assets shall automatically vest in the Liquidation Trust free and clear of all claims, liens, interests and contractually imposed restrictions, and exempt from any stamp, real estate transfer, mortgage reporting, sales, use or other similar tax to the maximum extent permitted under section 1146 of the Bankruptcy Code, as of the Effective Date, to have and to hold unto the Liquidation Trust and to be applied as specified in the Plan, the Confirmation Order and this Liquidation Trust Agreement. Such transfer includes, but is not limited to, all rights to assert, waive or otherwise

exercise all rights of setoffs and recoupment and defenses of the Debtors or their Estates to any counterclaims that may be asserted by any and all defendants as to any Causes of Action or by holders of Disputed Claims, any attorney-client privilege, work product protection or other privilege, immunity, or confidentiality provision vested in, or controlled by, the Debtors or their estates in respect of the Liquidation Trust Assets. Without limiting the generality of the foregoing, the Liquidation Trust, and the Liquidation Trustee on behalf of the Liquidation Trust, shall have the right to invoke section 542 of the Bankruptcy Code to pursue turnover of Liquidation Trust Assets. On the Effective Date, the Liquidation Trust, acting by and through the Liquidation Trustee, shall be substituted for the Debtors for all purposes with respect to Liquidation Trust Assets and administration of Claims and Interests.

(b) The Debtors shall execute and deliver or cause to be executed and delivered to the Liquidation Trust all such documents, in recordable form where necessary or appropriate, and the Debtors shall take or cause to be taken such further or other action, as the Liquidation Trustee may deem appropriate, to vest or perfect in or confirm to the Liquidation Trust, or upon the order of the Liquidation Trustee, title to and possession of all of the Liquidation Trust Assets as of the Effective Date. Upon the transfer of the Liquidation Trust Assets, and except as otherwise provided herein or in the Plan or Confirmation Order, the Debtors shall retain no interest in the Liquidation Trust Assets.

(c) To the extent any Liquidation Trust Assets cannot be transferred to the Liquidation Trust because of a restriction on transferability under applicable non-bankruptcy law that is not superseded or preempted by section 1123 of the Bankruptcy Code or any other provision of the Bankruptcy Code, the Liquidation Trust or the Liquidation Trustee, as applicable, shall be deemed to have been designated as a representative of the Debtors pursuant to section 1123(b)(3)(B) of the Bankruptcy Code to enforce and pursue such Liquidation Trust Assets on behalf of the Debtors. The Liquidation Trust's interest shall be a lien upon and security interest in such Liquidation Trust Assets, held in trust, nevertheless, for the sole use and purposes set forth in this Liquidation Trust Agreement, and this Liquidation Trust Agreement shall be deemed a security agreement granting such interest thereon without need to file financing statements or mortgages. Notwithstanding the foregoing, all net proceeds of such Liquidation Trust Assets shall be transferred to the Liquidation Trust to be distributed to the Liquidation Trust Beneficiaries in accordance with the Plan.

1.6 Acceptance by Liquidation Trustee. The Liquidation Trustee hereby accepts (a) the appointment to serve as Liquidation Trustee; (b) the transfer of the Liquidation Trust Assets on behalf of the Liquidation Trust; and (c) the trust imposed on the Liquidation Trustee by this Liquidation Trust Agreement, to the extent provided in the Plan. The Liquidation Trust, acting through the Liquidation Trustee, agrees to receive, hold, administer and distribute the Liquidation Trust Assets and the income derived therefrom on behalf of the Liquidation Trust pursuant to the terms of the Plan, the Confirmation Order and this Liquidation Trust Agreement. The Liquidation Trustee acting on behalf of the Liquidation Trust expressly assumes the responsibility to reconcile and satisfy Claims and meet all other obligations of the Debtors' Estates in accordance with the Plan and the Confirmation Order. The Liquidation Trustee, acting on behalf

of the Liquidation Trust, agrees to perform all acts necessary to ensure the transfer of the Liquidation Trust Assets to the Liquidation Trust.

1.7 Capacity of Liquidation Trust. Notwithstanding any state or federal law to the contrary or anything herein, the Liquidation Trust itself shall have the capacity, in its own right and name, to act or refrain from acting, including the capacity to sue and be sued and to enter into contracts. The Liquidation Trust may alone be (but is not required to be) the named movant, respondent, party plaintiff or defendant, or the like in all adversary proceedings, contested matters, and other state or federal proceedings brought by or against it, and may settle and compromise all such matters in its own name. Subject to the terms of this Agreement, the Plan, and the Confirmation Order, the Liquidation Trust shall also be entitled to assert all of the Debtors' and the Debtors' Estates' rights under section 558 of the Bankruptcy Code.

ARTICLE II

LIQUIDATION TRUSTEE - GENERALLY

2.1 Appointment. There shall at all times be a trustee who shall be responsible for the administration of the Liquidation Trust. The initial Liquidation Trustee shall be Wilmington Savings Fund Society, FSB.[2] Any successor Liquidation Trustee shall be appointed as herein provided.

2.2 Term of Service. The initial Liquidation Trustee, and each successor Liquidation Trustee, shall serve until the earlier to occur of (a) the termination of the Liquidation Trust in accordance with Article X of this Liquidation Trust Agreement, or pursuant to the Plan, or (b) such Liquidation Trustee's resignation, death, dissolution, removal or liquidation.

2.3 Resignation, Death, Dissolution or Removal of Liquidation Trustee.

(a) The Liquidating Trustee may resign its position at any time by providing 30 days' written notice (the "Resignation Notice") to the Bankruptcy Court. In the event of the resignation, death, removal or incapacity of the Liquidating Trustee, counsel to the Liquidating Trust shall file the Resignation Notice and a motion in the Bankruptcy Court to appoint a successor Liquidating Trustee (the "Successor Liquidating Trustee") as soon as reasonably practicable, and in the interim, shall have the authority to take any necessary action on behalf of the Liquidating Trust as deemed reasonably necessary to take for the benefit of the Liquidating Trust Beneficiaries. Such resignation may become effective on the earlier to occur of (i) the date that is 30 days after such notice is filed with the Bankruptcy Court and (ii) the appointment of a permanent Successor Liquidating Trustee.

(b) The resignation, death, dissolution, removal or incapacity of the Liquidation Trustee shall not operate to terminate the Liquidation Trust created by this Liquidation

Trustee Agreement or to revoke any existing agency created pursuant to the terms of the Liquidation Trust Agreement or invalidate any action therefore taken by the Liquidation Trustee. In the event of the removal, incapacitation, or death of the Liquidation Trustee, counsel to the Liquidation Trust shall file a motion in the Bankruptcy Court to appoint a Successor Liquidation Trustee as soon as reasonably practicable, and in the interim, shall have the authority to take any necessary action on behalf of the Liquidation Trust as deemed reasonably necessary to take for the benefit of the Liquidation Trust Beneficiaries.

(c) Any Successor Liquidation Trustee so appointed pursuant to this Section 2.3 shall consent to accept in writing the terms of this Liquidation Trust Agreement and agree that the provisions of this Liquidation Trust Agreement shall be binding upon and insure to the benefit of the Successor Liquidation Trustee. A Successor Liquidation Trustee shall have all the rights, privileges, powers, and duties of its predecessor under this Liquidation Trust Agreement, the Plan, and the Confirmation Order.

(d) No Successor Liquidation Trustee hereunder shall in any event have any liability or responsibility for the acts or omissions of any of his, her or its predecessors. Every Successor Liquidation Trustee selected pursuant to the terms hereof shall execute, acknowledge and deliver to counsel for the Liquidation Trust an instrument in writing accepting such appointment hereunder, and thereupon such Successor Liquidation Trustee, without any further act, shall become fully vested with all of the rights, powers, duties and obligations of his, her or its predecessor.

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

ARTICLE III

DUTIES AND POWERS OF THE LIQUIDATION TRUST AND LIQUIDATION TRUSTEE

3.1 General Powers. The Liquidation Trust, acting by and through the Liquidation Trustee, shall be deemed the Estates' representative in accordance with section 1123 of the Bankruptcy Code and shall be authorized to perform those acts necessary and desirable to accomplish the purposes of the Liquidation Trust, the Plan and the Confirmation Order. The Liquidation Trust, acting by and through the Liquidation Trustee, shall succeed to all rights, remedies, powers and defenses of the Debtors, the Committee, and the Estates necessary to protect, conserve, maximize the value of, distribute and liquidate all Liquidation Trust Assets as quickly as reasonably practicable. Subject to the limitations set forth in this Liquidation Trust Agreement,

the Plan and the Confirmation Order, and in addition to any powers and authority conferred by law or by any other Section or provision of this Liquidation Trust Agreement, the Plan and the Confirmation Order, the Liquidation Trustee may exercise all powers granted to the Liquidation Trust under this Liquidation Trust Agreement, the Plan and Confirmation Order. Without limiting, but subject to the foregoing, the Liquidation Trust, acting through the Liquidation Trustee shall be expressly authorized:

(a) To exercise all power and authority that may be or could have been exercised, commence all proceedings that may be or could have been commenced and take all actions that may be or could have been taken by any of the Debtors with like effect as if authorized, exercised and taken by unanimous action of the officers, directors of any of the Debtors, including, without limitation, amendment of the certificates of incorporation and by-laws of the Debtors and the dissolution or cancellation of any Debtor;

(b) To implement Distributions to holders of Allowed Claims as provided for or contemplated by the Plan and take other actions consistent with the Plan and the implementation thereof, including the creation and maintain of appropriate reserves in accordance with the Plan and this Liquidation Trust Agreement, in the name of the Debtors or the Liquidation Trust, even in the event of the dissolution of one or more of the Debtors;

(c) Subject to the applicable provisions of the Plan, to administer the winding-up of the affairs of the Debtors;

(d) To take all steps and execute all instruments and documents necessary to make Distributions to holders of Allowed Claims and to perform the duties assigned to the Liquidation Trust under the Plan or this Liquidation Trust Agreement;

(e) To comply with and effectuate the Plan and the obligations of the Liquidation Trustee and the Liquidation Trust thereunder;

(f) To employ, retain or replace professionals or other persons to represent and/or assist the Liquidation Trust with respect to its responsibilities, pursuant to the Liquidation Trust Agreement and to compensate such professionals and persons for the performance of services on behalf of the Liquidation Trust;

(g) To wind up the affairs of the Debtors and their subsidiaries, if and to the extent necessary, including taking any steps to dissolve, cancel, liquidate, or take other similar action with respect to each Debtor and subsidiary, including by terminating the corporate or organizational existence of each such Debtor or subsidiary;

(h) To take any actions necessary to (A) resolve all matters related to the Liquidation Trust Assets and (B) vest assets in the Liquidation Trust;

(i) To establish and maintain one or more Cash reserves in his or her reasonable discretion to ensure sufficient funding to pay all current and future Liquidation Trust Expenses;

(j) To make Distributions of the Cash in the Liquidation Trust and any proceeds thereof, in excess of any amounts necessary to pay Liquidation Trust Expenses, in accordance with the terms of the Plan;

(k) To prepare and file appropriate tax returns and other reports on behalf of the Debtors and the Liquidation Trust and pay taxes or other obligations owed by the Debtors that are Allowed Claims (including, without limitation, any Allowed Administrative Expense Claims, Allowed Priority Tax Claims asserted by taxing authorities, and Fee Claims);

(l) To file, prosecute, settle or dispose of any and all objections to asserted Claims;

(m) To file, prosecute, settle or dispose of any and all Causes of Action and or any other claims held by the Debtors as set forth in the Plan, all of which are Liquidation Trust Assets, *provided* that any settlement of a Disputed Claim that results in an Allowed Claim in excess of $2,000,000 must be made after notice and an opportunity for parties-in-interest to object. For the avoidance of doubt, nothing in this Article III shall be read or interpreted as limiting or precluding the Liquidation Trust from taking possession of, asserting, or prosecuting any and all rights, claims, and defenses of the Debtors, the Committee, or the Debtors' Estates;

(n) To establish and maintain the Disputed Claims Reserve;

(o) To enter into and consummate any transactions for the purpose of dissolving the Debtors and their subsidiaries;

(p) To take such actions as are necessary or appropriate to close any of the Debtors' Chapter 11 Cases;

(q) To maintain the books and records and accounts of the Debtors and the Liquidation Trust;

(r) To enter into any agreement or execute any document required by or consistent with the Plan and the Confirmation Order and perform all of the Debtors' obligations thereunder;

(s) To be the Estate representative and successor of the Debtors and the Committee for all purposes;

(t) To purchase such insurance coverage as the Liquidation Trustee, in its sole discretion, deems necessary and appropriate with respect to the liabilities and obligations of the Liquidation Trust and Liquidation Trustee;

(u) To purchase such insurance coverage as the Liquidation Trustee, in its sole discretion, deems necessary and appropriate with respect to real and personal property which may be or become Liquidation Trust Assets;

(v) To pay expenses and make disbursements necessary to preserve, liquidate and enhance the Liquidation Trust Assets;

(w) To coordinate the turnover of property, if any, subject to rejected executory contracts or abandonment or liquidation of any Liquidation Trust Assets and dispose of, and deliver title to others of, or otherwise realize value of, all the remaining Liquidation Trust Assets;

(x) To prepare or have prepared any required financial statements and U.S. Trustee post-confirmation quarterly reports, until such time as the Bankruptcy Court enters an order (i) dismissing the Chapter 11 Cases, (ii) converting the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, or (iii) approving a final decree closing the Chapter 11 Cases;

(y) To file periodic reports with the Bankruptcy Court as required under the Plan;

(z) To execute and deliver all documents, and take all actions, necessary to consummate the Plan and implement this Agreement;

(aa) To implement and/or enforce all provisions of the Plan;

(bb) To assert and/or waive, as the Liquidation Trustee deems appropriate, any attorney-client privilege or similar privilege belonging to any of the Debtors immediately prior to the Effective Date of the Plan;

(cc) To the extent the Liquidation Trust deems it necessary or appropriate, value the Liquidation Trust Assets based on the Liquidation Trustee's good faith determination, which valuation shall be used by all Parties and the Liquidation Trust Beneficiaries for all federal income tax purposes, and seeking resolution from the Bankruptcy Court of any dispute related to such valuation; and

(dd) To take all other actions consistent with the provisions of the Plan that the Liquidation Trustee deems reasonably necessary or desirable with respect to implementing the Plan, the Liquidation Trust and this Liquidation Trust Agreement.

3.2 Limitations on the Liquidation Trustee. Notwithstanding anything in this Liquidation Trust Agreement, the Plan or the Confirmation Order to the contrary, the Liquidation Trust shall not do or undertake any of the following in its capacity as such:

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

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

(c) Receive transfers of any listed stocks or securities, any readily-marketable assets or any operating assets of a going business other than to liquidate such assets.

(d) Receive or retain Cash in excess of a reasonable amount necessary to meet Claims, contingent liabilities (including Disputed Claims) and the expenses of the Liquidation Trust.

(e) Exercise any investment power other than the power to invest in demand and time deposits in banks or savings institutions, or temporary investments such as short term certificates of deposit or Treasury bills.

(f) Enter into or engage in any trade or business (other than the management and disposition of the Liquidation Trust Assets), and no part of the Liquidation Trust Assets or the proceeds, revenue or income therefrom shall be used or disposed of by the Liquidation Trustee in furtherance of any trade or business.

(g) Receive or retain any operating assets of a going business, a partnership interest in a partnership that holds operating assets or fifty percent (50%) or more of the stock of a corporation with operating assets.

3.3 Fees and Expenses of Liquidation Trustee. The Liquidation Trustee shall be entitled to receive compensation and shall be reimbursed for all reasonable and documented costs and expenses incurred in connection with the performance of its duties as Liquidation Trustee hereunder, in accordance with the terms established by the Debtors, Committee and Liquidation Trustee. Such fees and expenses of the Liquidation Trustee shall be expenses of the Liquidation Trust and shall be paid out of the Liquidation Trust Assets attributable to each Debtor without prior approval of the Bankruptcy Court. To the extent the fee arrangement of any Successor Liquidation Trustee is different than the fees charged by the initial Liquidation Trustee, such fee arrangement shall be subject to approval by the Bankruptcy Court.

3.4 Retention of Professionals. Without any further notice to any party or further action, order or approval of the Bankruptcy Court, the Liquidation Trust through the Liquidation Trustee, shall be entitled to retain and engage such professionals and persons as may be necessary to carry out its duties under this Liquidation Trust Agreement, including, without limitation, claims, disbursing and transfer agents, legal counsel, accountants, experts, and other agents or advisors, as the Liquidation Trust deems appropriate. The Professionals or other persons retained by the Liquidation Trust shall be compensated and reimbursed for all reasonable and documented fees and expenses incurred in connection with the performance of services to the Liquidation Trust. To the extent the fees and expenses incurred specifically relate to one Debtor or the assets of one Debtor, the fees and expenses shall be paid from the Liquidation Trust Assets allocable to such Debtor. The Professionals or other persons retained by the Liquidation Trust shall submit monthly invoices for their reasonable fees and expenses to the Liquidation Trust for

payment upon receipt by the Liquidation Trustee from the Liquidation Trust Assets, subject to any limitations and procedures established by this Liquidation Trust Agreement. Professionals need not be "disinterested" as that term is defined in the Bankruptcy Code and may include, without limitation, counsel and financial advisors of the Debtors or the Committee.

3.5 Liquidation Trust Action. Except as provided in the Plan or otherwise specified in this Liquidation Trust Agreement, the Liquidation Trust and Liquidation Trustee need not obtain an order or approval of the Bankruptcy Court in the exercise of any power, rights, or discretion conferred under the Plan or this Liquidation Trust Agreement, or account to the Bankruptcy Court. Notwithstanding the foregoing, the Liquidation Trust, through the Liquidation Trustee, shall have the right to submit to the Bankruptcy Court any question or questions regarding which the Liquidation Trust may desire to have explicit approval of the Bankruptcy Court for the taking of any specific action proposed to be taken by the Liquidation Trust, including the administration or Distribution of any of the Liquidation Trust Assets. The Bankruptcy Court shall retain jurisdiction and power for such purposes and may approve or disapprove any such proposed action upon motion by the Liquidation Trust.

3.6 Appointment of Supplemental Liquidation Trustee. If the Liquidation Trustee has a conflict or any of the Liquidation Trust Assets are situated in any state or other jurisdiction in which the Liquidation Trustee is not qualified to act as trustee, the Liquidation Trustee shall nominate and appoint a Person duly qualified to act as trustee (the "Supplemental Trustee") in such state or jurisdiction and require from each such Supplemental Trustee such security as may be designated by the Liquidation Trustee in its discretion. The Liquidation Trustee may confer upon such Supplemental Trustee all of the rights, powers, privileges, and duties of the Liquidation Trustee hereunder, subject to the conditions and limitations of this Liquidation Trust Agreement, except as modified or limited by the laws of the applicable state or other jurisdiction (in which case, the laws of the state or other jurisdiction in which such Supplemental Trustee is acting shall prevail to the extent necessary). The Liquidation Trustee shall require such Supplemental Trustee to be answerable to the Liquidation Trustee and Liquidation Trust for all monies, assets, and other property that may be received in connection with the administration of all the Liquidation Trust Assets by the Supplemental Trustee. The Liquidation Trustee may remove such Supplemental Trustee, with or without cause, and appoint a successor Supplemental Trustee at any time by executing a written instrument declaring such Supplemental Trustee removed from office and specifying the effective date and time of removal.

ARTICLE IV

LIABILITY OF LIQUIDATION TRUST

4.1 Liquidation Trust Standard of Care; Exculpation. The Liquidation Trust and the Liquidation Trustee and its agents and professionals shall not be liable for actions taken or omitted in their respective capacities as, or on behalf of the Liquidation Trust, or the Liquidation Trustee, except those acts arising out of its or their gross negligence, actual fraud, or willful misconduct, each as determined by a Final Order from a court of competent jurisdiction. The Liquidation Trust (and its agents and professionals) shall be entitled to indemnification and

reimbursement for fees and expenses in defending any and all of its or their actions or inactions in its or their capacity as, or on behalf of, the Liquidation Trustee or the Liquidation Trust, except for any actions or inactions involving gross negligence, actual fraud or willful misconduct, each as determined by a Final Order from a court of competent jurisdiction. Any indemnification claims of the Liquidation Trust and the other parties entitled to indemnification under this subsection shall be satisfied from the Liquidation Trust Assets, as provided herein. The Liquidation Trustee shall be entitled to rely, in good faith, on the advice of its professionals.

4.2 Indemnification. Except as otherwise set forth in the Plan or Confirmation Order, the Liquidation Trustee and its respective accountants, agents, assigns, attorneys, bankers, consultants, directors, employees, executors, financial advisors, investment bankers, real estate brokers, transfer agents, managers, members, officers, partners, predecessors, principals, professional persons, representatives, affiliates, employer and successors (each, an "Indemnified Party") shall be indemnified for, and defended and not be liable for any loss, liability, damage, judgment, fine, penalty, claim, demand, settlement, cost, or expense (including the reasonable fees and expenses of their respective professionals) actually incurred in connection with actions taken or omitted in their respective capacities as, or on behalf of, the Liquidation Trustee or the Liquidation Trust, except those acts arising out of its or their own actual fraud, willful misconduct or gross negligence, each as determined by a Final Order from a court of competent jurisdiction. The Indemnified Parties shall be entitled to advancement, indemnification, and reimbursement for fees and expenses in defending any and all of its or their actions or inactions in its or their capacity as, or on behalf of, the Liquidation Trustee or the Liquidation Trust, except for any actions or inactions involving its or their own actual fraud, willful misconduct or gross negligence, each as determined by a Final Order from a court of competent jurisdiction. Any indemnification claim of the Indemnified Parties under this subsection shall be satisfied from the Liquidation Trust Assets, as provided in this Liquidation Trust Agreement.

4.3 No Liability for Acts of Successor/Predecessor Liquidation Trustees. Upon appointment of a Successor Liquidation Trustee, the predecessor Liquidation Trustee shall have no further liability or responsibility with respect thereto. A Successor Liquidation Trustee shall have no duty to examine or inquire into the acts or omissions of its immediate or remote predecessor and no Successor Liquidation Trustee shall be in any way liable for the acts or omissions of any predecessor Liquidation Trustee unless a Successor Liquidation Trustee expressly assumes such responsibility in writing.

4.4 Reliance by Liquidation Trustee on Documents, Mistake of Fact or Advice of Counsel. Except as otherwise provided in this Liquidation Trust Agreement, the Liquidation 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 Liquidation Trustee to be genuine and to have been presented by an authorized party. Also, the Liquidation Trustee shall not be liable if the Liquidation Trustee acts based on a mistake of fact before having actual knowledge of an event. The Liquidation Trustee shall not be liable for any action taken or suffered by the Liquidation Trustee in reasonably

relying upon the advice of counsel or other professionals engaged by the Liquidation Trustee in accordance with the Plan, the Confirmation Order or this Liquidation Trust Agreement.

4.5 Insurance. The Liquidation Trust, acting through the Liquidation Trustee, shall be authorized, but not required, to obtain any reasonably necessary insurance coverage, at the Liquidation Trust's sole expense, for itself and its respective agents, including coverage with respect to the liabilities, duties and obligations of the Liquidation Trustee, which insurance coverage may, at the sole option of the Liquidation Trustee, be extended for a reasonable period after the termination of this Liquidation Trust Agreement.

ARTICLE V

DUTIES OF THE LIQUIDATION TRUSTEE

5.1 General. The Liquidation Trust, acting through the Liquidation Trustee shall have all duties specified in this Liquidation Trust Agreement, the Plan and the Confirmation Order.

5.2 Register of Liquidation Trust Beneficiaries. The Liquidation Trust, acting through the Liquidation Trustee, shall maintain at all times a register of the names, addresses and amounts of Allowed Claims of the Liquidation Trust Beneficiaries. The Liquidation Trustee shall be entitled, but not required, to conclusively rely on the official claims register maintained in the Chapter 11 Cases (the "Register"). The Liquidation Trustee shall not be liable for relying on the accuracy of the Register.

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

5.4 Post-Confirmation Reports to Liquidation Trust Beneficiaries. As required by the United States Trustee, the Liquidation Trustee will file with the Bankruptcy Court quarterly the Post-Confirmation Reports detailing the aggregate receipts, Liquidation Trust disbursements and distributions to the Liquidation Trust Beneficiaries.

5.5 Final Accounting of Liquidation Trust and Liquidation Trustee. The Liquidation Trust shall within ninety (90) days after the termination of the Liquidation Trust render a final accounting containing at least the following information:

(a) A description of the Liquidation Trust Assets.

(b) A summarized accounting in sufficient detail of all gains, losses, receipts, disbursements and other transactions in connection with the Liquidation Trust and the Liquidation Trust Assets during the Liquidation Trustee's term of service, including their source and nature, which can be satisfied by incorporating the quarterly Post-Confirmation Reports by reference;

(c) Separate entries for all receipts of principal and income;

(d) The ending balance of all Liquidation Trust Assets as of the date of the Liquidation Trustee's accounting, including the Cash balance on hand and the name(s) and location(s) of the depository or depositories where the Cash is kept, and

(e) All known liabilities of the Liquidation Trust.

The final accounting shall be presented to the Bankruptcy Court for approval, and all Liquidation Trust Beneficiaries shall have the opportunity to request notice (by emailing the Liquidation Trustee's counsel requesting same no later than ten (10) days prior to the publishing of the final accounting) regarding the final accounting having been filed and an opportunity to have a hearing on the approval of the accounting and discharge of the Liquidation Trustee.

5.6 Fees and Expenses of Liquidation Trust. From and after the Effective Date, Liquidation Trust Expenses, including, without limitation, reasonable fees and expenses of professionals and other persons retained by the Liquidation Trust, shall be paid from the Liquidation Trust Assets in the ordinary course of business, in accordance with the Plan and this Liquidation Trust Agreement.

ARTICLE VI

LIQUIDATION TRUST BENEFICIARIES

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

6.2 Evidence of Beneficial Interest. Ownership of a beneficial interest in the Liquidation 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 Liquidation Trust by the Liquidation Trustee or its appointee.

6.3 Registration of Beneficial Interest. The Liquidation Trustee shall cause the Register to be kept at its office or at such other place or places as may be designated by the Liquidation Trustee from time to time (and for the avoidance of doubt, such Register may be

maintained electronically and will be reflective of the then-current register of Holders of Allowed Claims against the Debtors, as updated by the Liquidation Trustee and/or the claims agent for the Liquidation Trust). The Register shall reflect the ownership of the beneficial interests of the Liquidation Trust Beneficiaries.

6.4 Absolute Owners. The Liquidation Trustee may deem and treat the Liquidation Trust Beneficiary 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 Effect of Death, Dissolution, Incapacity or Bankruptcy of Liquidation Trust Beneficiary. The death, dissolution, incapacity or bankruptcy of a Liquidation Trust Beneficiary during the term of the Liquidation Trust shall not operate to terminate the Liquidation Trust during the term of the Liquidation Trust nor shall it entitle the representative or creditors of the deceased, incapacitated or bankrupt Liquidation Trust Beneficiary to an accounting or to take any action in any court or elsewhere for the distribution of the Liquidation Trust Assets or for a partition thereof nor shall it otherwise affect the rights and obligations of the Liquidation Trust Beneficiary under this Liquidation Trust Agreement or in the Liquidation Trust.

6.6 Limitation on Transferability. The beneficial interests herein shall be non-transferable and non-assignable during the term of this 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 Liquidation Trust, and the Liquidation Trust shall no pay all amounts to or for the benefit of the assigning Liquidation Trust Beneficiary until receipt of proper notification and proof of assignment by operation of law. The Liquidation Trustee may rely upon such proof without the requirement of any further investigation.

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

6.8 Addresses of Liquidation Trust Beneficiaries. The Liquidation Trustee may deliver a notice to the Liquidation Trust Beneficiaries and such notice may include a form for each Liquidation Trust Beneficiary (as determined to be necessary by the Liquidation Trustee, as applicable, including, without limitation, IRS Form W-8 and/or Form W-9) to complete in order to be properly registered as a Liquidation Trust Beneficiary and be eligible for distributions from the Liquidation Trust. Such form may request the Liquidation Trust Beneficiary's federal taxpayer identification number or social security number if the Liquidation Trustee determines that such information is necessary to fulfill the Liquidation Trust's tax reporting and withholding obligations. A Liquidation Trust Beneficiary may, after the Effective Date, select an alternative mailing address from the one set forth on such form or in its Proof of Claim by notifying the

Liquidation Trust or its designee in writing of such alternative distribution address. Absent receipt of such notice, neither the Liquidation Trust nor the Liquidation Trustee shall be obligated to recognize any such change of address for any purpose hereunder. Such notification shall be effective only upon receipt by the Liquidation Trustee or its designee. The Liquidation Trustee, in its reasonable discretion, may suspend distributions to any Liquidation Trust Beneficiary that has not provided its federal taxpayer identification number or social security number, as the case may be, after a request is made pursuant to this Section 6.9. If tax information is not provided within one hundred and eighty (180) days after such request, the applicable Liquidation Trust Beneficiary's underlying claim will be expunged for all purposes of this Liquidation Trust Agreement to the extent provided under the Plan.

6.9 Exemption from Registration. The rights of the Liquidation Trust Beneficiaries arising under this Liquidation Trust Agreement may be deemed "securities" under applicable law. However, such rights have not been defined as "securities" under the Plan because (a) the Parties hereto intend that such rights shall not be securities and (b) if the rights under this Liquidation Trust Agreement in favor of the Liquidation Trust Beneficiaries are deemed to be "securities," the exemption from registration under section 1145 of the Bankruptcy Code is intended to be applicable to such securities. No Party to this Agreement shall make a contrary or different contention.

ARTICLE VII

PROCEDURES FOR RESOLVING AND TREATING CONTESTED CLAIMS

7.1 Objection Deadline. The Liquidation Trust, acting by and through the Liquidation Trustee, shall have the right to object to the allowance of any claims by no later than the Objection Deadline. As soon as practicable, but in no event later than 180 days after the Effective Date, Objections to Claims shall be filed with the Bankruptcy Court and served upon holders of each of the Claims to which Objections are made, provided, however, that such deadline may be extended upon motion of the Liquidation Trustee on behalf of the Liquidation Trust and entry of an order of the Bankruptcy Court. In addition, the Liquidation Trust may, at any time, request that the Bankruptcy Court estimate any Contingent Claim, Disputed Claim or Unliquidated Claim pursuant to Section 502(c) of the Bankruptcy Code regardless of whether any party previously objected to or sought estimation of such Claim.

7.2 Prosecution of Disputed Claims. The Liquidation Trust is authorized and empowered, but not required, to resolve consensually any disputes regarding the allowance, classification or amount of any Claim, without further order of or approval from the Bankruptcy Court. All objections that are filed and prosecuted as provided herein shall be litigated to Final Order or compromised and settled in accordance with Sections 7.4 and 7.5 of this Liquidation Trust Agreement and the Plan.

7.3 Disputed Claim Reserve. In determining the amount of distributions to be made under the Plan to holders of Allowed Claims, the appropriate distribution required by the Plan shall be made according to estimates and subject to the provisions of the Plan. The Liquidation Trust may, in its sole discretion, establish a reserve ("Disputed Claim Reserve") for each Disputed Claim in an amount that reasonably approximates the distribution that would otherwise be made to such holder of a Claim assuming such Claim were to be Allowed in the amount set forth on the holder of a Claim's proof of Claim or as estimated pursuant to agreement with the holder of a Claim or order of the Bankruptcy Court. The Liquidation Trust shall fund the Disputed Claim Reserve from the Liquidation Trust Assets.

7.4 Claims Settlement Authority. Notwithstanding any requirement that may be imposed pursuant to Bankruptcy Rule 9019, from and after the Effective Date, the Liquidation Trust, acting through the Liquidation Trustee, may settle consistent with its fiduciary duties all Claims and all claims that any of the Debtors, the Estates or the Liquidation Trust, as appropriate, have or may have asserted against other parties or any Claims that have been or will be asserted against the Debtors, their Estates or the Liquidation Trust, prior to objection 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 United States Trustee, consistent with and pursuant to the terms of the Plan or the Confirmation Order, provided that any settlement that results in an Allowed Claim in excess of $2,000,000 must be made after notice and an opportunity for parties-in-interest to object.

7.5 Prosecution and/or Settlement of Retained Causes of Action. The Liquidation Trust, by and through the Liquidation Trustee, shall have the exclusive right to assert and prosecute in accordance with the its reasonable business judgment the Causes of Action. The Liquidation Trust shall have the authority to settle and comprise, in its sole discretion and without approval of the Bankruptcy Court, any and all Causes of Action; *provided, however*, that the Liquidation Trustee may not settle any Cause of Action where the initial amount of such Cause of Action, without consideration of any defenses to the same, exceeds $2,000,000 without approval of the Bankruptcy Court.

ARTICLE VIII

DISTRIBUTIONS

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

made by the Liquidation Trust, acting by and through the Liquidation Trustee, in good faith shall be binding and conclusive on all interested parties.

8.2 Reserves; Pooling of Reserved Funds. Before any distribution can be made, the Liquidation Trust shall, in its reasonable discretion, establish, supplement, and maintain a reserve in an amount sufficient to meet any and all Liquidation Trust fees and expenses, including but not limited to attorneys' fees and expenses and the fees and expenses of other professionals,. In accordance with section 7.3 of this Agreement, the Liquidation Trust may also maintain as necessary a reserve for Disputed Claims. For the avoidance of doubt, the Liquidation Trustee may withhold any distribution pending the Liquidation Trust's determination of whether to object to a General Unsecured Claim. Any such withheld distribution shall become part of the Liquidation Trust's reserve for Disputed Claims and shall be distributed to the appropriate Liquidation Trust Beneficiary no later than the first distribution after a decision is made not to object to the pertinent General Unsecured Claim or the General Unsecured Claim becomes Allowed. The Liquidation Trustee need not maintain the Liquidation Trust's reserves in segregated bank accounts and may pool funds in the reserves with each other and other funds of the Liquidation Trust; *provided, however*, that the Liquidation Trust shall treat all such reserved funds as being held in a segregated manner in its books and records.

8.3 Distributions; Withholding.

(a) The first Distribution (the "Initial Distribution") made by the Liquidation Trust, as applicable, shall be made in accordance with the Plan.

(b) After the Initial Distribution, the Liquidation Trust shall make Distributions from the Liquidation Trust Assets at least annually but not prior to the Distribution Date to the Liquidation Trust Beneficiaries from all net Cash income and all other net Cash proceeds received by the Liquidation Trust from the sale or liquidation of Liquidation Trust Assets; provided, however, that the Liquidation Trust may, to the extent consistent with Revenue Procedure 82-58, 1982-2 C.B. 847, as amplified by Revenue Procedure 94-45, 1994-2 C.B. 684, retain such amounts (a) as are reasonably necessary to meet contingent liabilities and to maintain the value of the Liquidation Trust Assets during the term of the Liquidation Trust, (b) to pay reasonable administrative expenses of the Liquidation Trust including, without limitation, the compensation and the reimbursement of reasonable, actual and necessary costs and fees (including attorneys' fees) and expenses of the Liquidation Trustee and any retained professionals in connection with the performance of its duties in connection with this Liquidation Trust Agreement, and (c) to satisfy all other liabilities incurred or assumed by the Liquidation Trust (or to which the Liquidation Trust Assets are otherwise subject) in accordance with the Plan, the Confirmation Order and this Liquidation Trust Agreement. All Distributions shall be made as provided, and subject to any withholding or reserve, in this Liquidation Trust Agreement, the Plan or the Confirmation Order. Additionally, the Liquidation Trust may withhold from amounts distributable to any Liquidation Trust Beneficiary any and all amounts, determined in the Liquidation Trustee's reasonable sole direction, to be required by any law, regulation, rule, ruling, directive or other governmental requirement, including withholding the entirety of a Distribution until the

Liquidation Trust receives the necessary tax information from a Liquidation Trust Beneficiary. The Liquidation Trust, acting through the Liquidation Trustee, shall make continuing efforts to dispose of the Liquidation Trust Assets, make timely Distributions and not unduly prolong the duration of the Liquidation Trust.

8.4 No Distribution Pending Allowance. Notwithstanding anything to the contrary in the Plan, the Confirmation Order or this Liquidation Trust Agreement, no payment or Distribution shall be made with respect to any Claim to the extent it is a Disputed Claim unless and until such Disputed Claim becomes an Allowed Claim provided that payment or Distribution may be made on an Allowed portion of a Claim pending adjudication of the Disputed portion of such Claim.

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

8.6 Disputed Identity of Holder. If any dispute arises as to the identity of a holder of an Allowed Claim or Interest who is to receive any Distribution hereunder, the Liquidation Trust 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 Liquidation Trust, Liquidation Trustee. Notwithstanding that the allowed amount of any particular Disputed 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 recovery equal to that received by other holders of Allowed Claims in the relevant Class, no Claim holder shall have recourse to the Liquidation Trust, Liquidation Trustee or any of its professionals, or its successors or assigns, or the holder of any other Claim, or any of their respective property. However, nothing in the Plan shall modify any right of a holder of a Claim under Section 502(j) of the Bankruptcy Code. Thus, the Court's entry of an estimation order may limit the Distribution to be made on individual Disputed Claims, regardless of the amount finally allowed on account of such Disputed Claims.

8.8 Non-Cash Property. Any non-Cash property of the Liquidation Trust may be sold, transferred or abandoned by the Liquidation Trustee. The net proceeds of such sales shall be held in the Liquidation Trust pending Distribution or until used to fund the Liquidation Trust's obligations hereunder. If, in the Liquidation Trustee's judgment, any Liquidation Trust Asset that is not Cash cannot be sold, settled, or otherwise reduced to Cash in a commercially reasonably manner, the Liquidation Trustee shall have the right to abandon, withdraw, or otherwise dispose of such property consistent with applicable law, including by donation of such property to a charity designated by the Liquidation Trustee.

8.9 Time Bar to Cash Payments. Checks issued by the Liquidation Trust in respect of Allowed Claims shall be null and void if not negotiated within ninety (90) days after the

date of issuance thereof. Requests for reissuance of any check shall be made to the Liquidation Trust by the holder of the Allowed Claim to whom such check originally was issued within such ninety (90) day period. Thereafter, the amount represented by such voided check shall irrevocably revert to the Liquidation Trust for all purposes, including, but not limited to, distribution to other holders of Allowed Claims. Any Claim in respect of such voided check shall be discharged and forever barred notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary.

8.10 Withholding Taxes and Expenses of Distribution. Any federal, state or local withholding taxes or other amounts required to be withheld under applicable law, as determined by the Liquidation Trust or the Liquidation Trustee in their sole discretion, shall be deducted from distributions hereunder. All persons holding Claims shall be required to provide the Liquidation Trust with any information necessary to effect the withholding of such taxes and the Liquidation Trust may withhold all distributions pending receipt of such information. In addition, all distributions under the Plan shall be net of the actual and reasonable costs of making such distributions.

8.11 Method of Cash Distributions. Any Cash payment to be made by the Liquidation Trust pursuant to the Plan will be in U.S. dollars and may be made, at the sole discretion of the Liquidation Trustee, by draft, check, wire transfer, or as otherwise required or provided in any relevant agreement or applicable law.

8.12 Timing of Distributions. Any payment or other Distribution required to be made under the Plan on a day other than a Business Day shall be due on the next succeeding Business Day but shall be deemed to have been made on the required date. Any payment of Cash to be made pursuant to the Plan, subject to the terms hereof, shall be deemed made, if by electronic wire transfer, when the applicable electronic wire transfer is initiated by the sending bank or, if by check drawn on a domestic bank, when the earliest occurs of depositing in the mail for the entitled in a recipient, receipt by the entitled recipient, or delivery to a third party delivery service for delivery to the entitled recipient.

8.13 No Distribution in Excess of Allowed Amount of Claim. Notwithstanding anything to the contrary herein, no holder of an Allowed Claim shall receive on account of such Claim any Distribution (of a value set forth herein or in the Plan or Disclosure Statement) in excess of the allowed amount of such Claim.

8.14 Objections to Claims/ Setoff Rights. The Liquidation Trust may, but shall not be required to, setoff against or recoup from any Holder (including any Liquidation Trust Beneficiary) on which payments or other Distributions are to be made hereunder, claims or defenses of any nature that the Liquidation Trust, the Debtors or the Estates may have against such Person, including with respect to any claim objection asserted or which could be asserted pursuant to section 502 of the Bankruptcy Code. However, neither the failure to do so, nor the allowance of any Claim or Interest under the Plan or otherwise, shall constitute a waiver or release of any such claim, right of setoff or right of recoupment against the holder of such Allowed Claim.

8.15 Conflicting Claims.

(a) If any conflicting claims or demands are made or asserted with respect to the beneficial interest of a Liquidation Trust Beneficiary under this Liquidation Trust Agreement, or if there is any disagreement between the assignees, transferees, heirs, representatives, or legatees succeeding to all or a part of such an interest resulting in adverse claims or demands being made in connection with such interest, then, in any of such events, the Liquidation Trust, acting through the Liquidation Trustee, shall be entitled, in its sole discretion, to refuse to comply with any such conflicting claims or demands.

(b) The Liquidation Trust, acting through the Liquidation Trustee, at its sole election, may elect to cause the Liquidation Trust to make no payment or Distribution with respect to any Liquidation Trust Beneficiary's interest in the Liquidation Trust subject to the conflicting claims or demand, 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. Neither the Liquidation Trust nor the Liquidation Trustee shall be or become liable to any of such parties for their refusal to comply with any such conflicting claims or demands, nor shall the Liquidation Trust or Liquidation Trustee be liable for interest on any funds which may be so withheld.

(c) The Liquidation Trust and the Liquidation Trustee shall be entitled to refuse to act until either (i) the rights of the adverse claimants have been adjudicated by a final order of the Bankruptcy Court or (ii) all differences have been resolved by a valid written agreement among all such parties to the satisfaction of the Liquidation Trustee, which agreement shall include a complete release of the Liquidation Trust and Liquidation Trustee. Until the Liquidation Trustee receives written notice that one of the conditions of the preceding sentence is met, the Liquidation Trustee may deem and treat as the absolute owner under this Liquidation Trust Agreement the interest of such Liquidation Trust Beneficiary identified as the owner of that interest in the books and records maintained by the Liquidation Trust. The Liquidation Trustee may deem and treat such Liquidation Trust Beneficiary as the absolute owner for purposes of receiving distributions and any payments on account thereof for federal and state income tax purposes, and for all other purposes whatsoever.

8.16 *De Minimus* Distributions. The Liquidation Trust shall have no obligation to make a distribution that is less than Fifty Dollars ($50) in Cash. If an interim distribution to the holder of an Allowed Claim is less than $50, such distribution shall be held for future distributions. If a final distribution to any holder of an Allowed Claim is less than $50, such amount shall become and constitute unclaimed property and be treated in accordance with section 8.9 of this Agreement.

8.17 Postponement. The Liquidating Trust may postpone any Distribution if the Liquidation Trustee determines that the amount of such Distribution would be too small to justify administrative costs associated with making it. The Liquidation Trustee shall make continuing efforts to dispose of the Liquidating Trust Assets, make timely distributions, and not unduly prolong the duration of the Liquidation Trust.

ARTICLE IX

TAXES

9.1 Income Tax Status. Consistent with Revenue Procedure 94-45, 1994-2 C.B. 684, the Liquidation Trust shall be treated as a Liquidation 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 (the "Tax Code"). As such, the Liquidation Trust Beneficiaries will be treated as both the grantors and the deemed owners of the Liquidation Trust. Any items of income, deduction, credit and loss of the Liquidation Trust shall be allocated for federal income tax purposes to the Liquidation Trust Beneficiaries.

9.2 Tax Returns. The Liquidation Trust shall file such tax returns as may be required by federal, state or local taxing authorities. The Liquidation Trust shall file with the IRS annual tax returns on Form 1041 or comply with other applicable tax return filing options, in accordance with Tax Code Section 6012 and Treasury Regulation Sections 1.671-4(a) and 1.671-4(b). In addition, the Liquidation Trust shall file in a timely manner such other tax returns as are required by applicable law and pay any taxes shown as due thereon. The Liquidation Trustee shall send to each Liquidation Trust Beneficiary a copy of the Form 1041 for the Liquidation Trust (without attaching any other Liquidation Trust Beneficiary's Schedule K-1 or other applicable information form) within a reasonable time following the end of the taxable year, along with such Liquidation Trust Beneficiary's Schedule K-1 or other applicable information form.

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

9.4 Valuations. The Liquidation Trust and the Liquidation Trust Beneficiaries shall utilize consistent valuations of the Liquidation Trust Assets and such valuations shall be used for all federal income tax purposes.

9.5 Survival. For the avoidance of doubt, the foregoing provisions of this Article IX shall survive the termination of a Liquidation Trust Beneficiary's beneficial interests in the Liquidation Trust pursuant to Article X hereof.

ARTICLE X

TERMINATION OF TRUST

10.1 Maximum Term. The term of the Liquidation Trust shall end no later than the fifth (5th) anniversary of the Effective Date (the "Initial Trust Term") if not otherwise terminated sooner by the Distribution of all of the Liquidation Trust Assets to the Liquidation Trust Beneficiaries in accordance with the Plan and this Liquidation Trust Agreement; provided, however, that the Liquidation Trustee may seek to extend the term of the Liquidation Trust if necessary to facilitate or complete the liquidation of the Liquidation Trust Assets or the distributions required to be made to the Liquidation Trust Beneficiaries hereunder for an additional term (the "Supplemental Liquidation Trust Term") by filing a notice of the Liquidation Trustee's intent to extend the term of the Liquidation Trust with the Bankruptcy Court and obtaining the approval of the Bankruptcy Court within thirty (30) days prior to the beginning of the extended term; provided further, however, that the aggregate of the Initial Trust Term and any Supplemental Liquidation Trust Term shall not exceed ten (10) years unless the Liquidation Trust receives a favorable ruling from the IRS or an opinion of counsel satisfactory to the Liquidation Trustee that any further extension would not adversely affect the status of the Liquidation Trust as a Liquidation Trust within the meaning of Treas. Reg. §301.7701-4(d) for federal income tax purposes. Notwithstanding anything to the contrary in this Liquidation Trust Agreement, in no event shall the Liquidation Trustee unduly prolong the duration of the Liquidation Trust, and the Liquidation Trustee shall at all times endeavor to prosecute, direct, settle or compromise expeditiously the Causes of Action and Claims objections, so as to distribute the Liquidation Trust Assets to the Liquidation Trust Beneficiaries and terminate the Liquidation Trust as soon as practicable in accordance with this Liquidation Trust Agreement.

10.2 Events Upon End of Term Termination. Upon the termination of the Liquidation Trust, the Liquidation Trustee shall distribute the remaining Liquidation Trust Assets, if any, to the Liquidation Trust Beneficiaries, in accordance with the Plan, the Confirmation Order and this Liquidation Trust Agreement. In connection with the termination of the Liquidation Trust, notwithstanding other provisions hereof, any remaining Liquidation Trust Assets that are of inconsequential value or otherwise insufficient to support the cost of a Distribution may be transferred by the Liquidation Trustee to a non-profit charitable organization qualifying under Section 501(c)(3) of the Tax Code and selected by the Liquidation Trustee in consultation with counsel to the Liquidation Trust, in their sole discretion.

10.3 Winding Up and Discharge of the Liquidation Trustee. For the purposes of winding up the affairs of the Liquidation Trust at its termination, the Liquidation Trustee shall continue to act on behalf the Liquidation Trust until its duties have been fully discharged. After doing so, the Liquidation Trustee, its agents and employees shall have no further duties or obligations hereunder, except as required by this Liquidation Trust Agreement, the Plan, the Disclosure Statement or applicable law concerning the termination of a trust. Upon a motion by the Liquidation Trustee, the Bankruptcy Court may enter an order relieving the Liquidation Trustee, its agents and employees of any further duties, discharging the Liquidation Trustee and releasing its bond, if any.

10.4 Dissolution. Upon the dissolution of the Liquidation Trust and completion of the winding up of the Liquidation Trust's affairs, a Certificate of Cancellation Canceling the Certificate of Trust of the Liquidation Trust shall be filed with the Delaware State Office, which Certificate of Cancellation may be executed by the Liquidation Trustee.

ARTICLE XI

DELAWARE TRUSTEE

11.1 Delaware Trustee. The Following terms and conditions shall apply to the Delaware Trustee:

(a) The Delaware Trustee shall constitute the trustee required pursuant to Section 3807(a) of the Delaware Act, shall have only the rights, obligations and liabilities specifically provided for in this Liquidation Trust Agreement and the Delaware Act, and shall have no implied rights, obligations or liabilities with respect to the affairs of the Liquidation Trust. Notwithstanding any other provision of this Liquidation Trust Agreement, unless specifically directed by the Liquidation Trustee and consented to by the Delaware Trustee, the Delaware Trustee shall not participate in any decisions relating to, or possess any authority independently to manage or control, the business of the Liquidation Trust. The Delaware Trustee shall have the power and authority to execute, deliver, acknowledge and file all necessary documents and to maintain all necessary records of the Liquidation Trust as required by the Delaware Act. The Delaware Trustee shall provide prompt notice to the Liquidation Trustee of its performance of any of the foregoing.

(b) So long as required by the Delaware Act, there shall be one (1) Delaware Trustee who or which shall be (i) a natural person who is a resident of the State of Delaware or (ii) if not a natural person, an entity that has its principal place of business in the State of Delaware and otherwise meets the requirements of applicable law.

11.2 Limitation of Delaware Trustee Liability. The Delaware Trustee shall not be liable for the acts or omissions of the Liquidation Trustee or any other person or entity, nor shall the Delaware Trustee be liable for supervising or monitoring the performance of the duties of the Liquidation Trustee or the Liquidation Trust or of any other person or entity under this Liquidation Trust Agreement or any related document. The Delaware Trustee shall not be personally liable under any circumstances, except for its own willful misconduct, fraud, or gross negligence. In particular, but not by way of limitation:

(c) The Delaware Trustee shall not be personally liable for any error of judgment made by a responsible officer of the Delaware Trustee in good faith;

(d) No provision of this Liquidation Trust Agreement shall require the Delaware Trustee to expend or risk its personal funds or otherwise incur any financial liability in the performance of its rights or powers hereunder;

(e) Under no circumstance shall the Delaware Trustee be personally liable for any representation, warranty, covenant, agreement, or indebtedness of the Liquidation Trust;

(f) The Delaware Trustee shall not be personally responsible for or in respect of the validity or sufficiency of this Liquidation Trust Agreement or for the due execution hereof by the other parties;

(g) The Delaware Trustee shall incur no liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper believed by it to be genuine and believed by it to be signed by the proper party or parties. The Delaware Trustee may accept a certified copy of a resolution of any governing body of any person as conclusive evidence that such resolution has been duly adopted by such person and that the same is in full force and effect. As to any fact or matter the manner of ascertainment of which is not specifically prescribed herein, the Delaware Trustee may for all purposes hereof rely on a certificate, signed by any officer of the party delivering the certificate, as to such fact or matter, and such certificate shall constitute full protection to the Delaware Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon;

(h) In the exercise or administration of its duties hereunder, the Delaware Trustee (A) may act directly or through agents or attorneys pursuant to agreements entered into with any of them, and the Delaware Trustee shall not be liable for the default or misconduct of such agents or attorneys if such agents or attorneys shall have been selected by the Delaware Trustee in good faith and (B) may consult with counsel, accountants and other skilled persons to be selected in good faith and employed by it, and it shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons; and

(i) In accepting and performing its duties hereunder the Delaware Trustee acts solely as trustee hereunder and not in its individual capacity, and all persons having any claim against the Delaware Trustee or the Liquidation Trust by reason of the transactions contemplated by this Liquidation Trust Agreement shall look only to the Liquidation Trust Assets for payment or satisfaction thereof.

11.3 Compensation and Expenses of Delaware Trustee. The Delaware Trustee shall be entitled to receive compensation as agreed to by the Debtors and the Committee and after the Effective Date, the Liquidation Trustee.

ARTICLE XII

MISCELLANEOUS PROVISIONS

12.1 Amendments.

(a) This Liquidation Trust Agreement may only be modified, supplemented or amended by the Liquidation Trust or the Liquidation Trustee in a written, acknowledged

instrument: (i) to cure any ambiguity, omission, defect or inconsistency in this Liquidation Trust Agreement; provided that such amendments, supplements or waivers shall not contravene or otherwise be inconsistent with the terms of the Plan, and the Confirmation Order, adversely affect the distributions to be made or other rights under this Liquidation Trust Agreement to any of the Liquidation Trust Beneficiaries, or adversely affect the U.S. federal income tax status of the Liquidation Trust as a "Liquidation Trust"; (ii) to comply with any requirements in connection with the U.S. federal income tax status of the Liquidation Trust as a "Liquidation Trust"; (iii) to comply with any requirements in connection with maintaining that the Liquidation Trust is not subject to registration or reporting requirements of the Exchange Act or the Investment Company Act; and (iv) to evidence and provide for the acceptance of appointment hereunder by a successor trustee in accordance with the terms of this Liquidation Trust Agreement.

(b) Any substantive provision of this Liquidation Trust Agreement may be amended or waived by the Liquidation Trust, with the approval of the Bankruptcy Court upon notice by the Liquidation Trustee and an opportunity for a hearing; provided, however, that no change may be made to this Liquidation Trust Agreement that contravenes or is otherwise inconsistent with the terms of the Plan or the Confirmation Order.

12.2 Waiver. No failure by the Liquidation Trust or the Liquidation 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.

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

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

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

(a) On the Effective Date or as soon thereafter as is reasonably practicable, all books and records of the Debtors, to the extent they exist and are in the Debtors' possession, including, without limitation, all books and records relating to the administration of the Estates, the Liquidation Trust, all Claims against the Debtors and the Liquidation Trust and all Causes of Action, shall be transferred or deemed assigned to the Liquidation Trust. 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. Except as set forth in the Plan and Confirmation Order, the Liquidation Trust shall maintain such books and records until five years from the filing of the Debtors' final tax returns. Thereafter, said records may be destroyed or otherwise disposed of, except as otherwise set forth in the Confirmation Order. If the Liquidation Trust seeks to destroy or otherwise dispose of any records of the Debtors'

Estates prior to the time periods set forth herein, the Liquidation Trust shall be entitled to do so upon Order of the Bankruptcy Court obtained on motion by the Liquidation Trustee on 20 days negative notice to then current Bankruptcy Rule 2002 service list.

(b) Any documents or communications (whether written or oral, and including confidential information) transferred by the Debtors or the Committee to the Liquidation Trust shall vest, including all rights and privileges, including the attorney-client and work product privileges, related thereto, in the Liquidation Trust and its representatives, and the Debtors, the Committee, and the Liquidation Trustee are authorized to take all necessary actions to effectuate the transfer of such privileges. After the Effective Date, no person other than the Liquidation Trustee on behalf of the Liquidation Trust shall have the right to assert or waive any privilege of the Debtors or to make any admission or statement against interest respecting the Debtors.

12.6 Irrevocability. This Liquidation Trust Agreement and the Liquidation Trust created hereunder shall be irrevocable and may not be amended except as expressly provided in Section 11.1 of this Liquidation Trust Agreement.

12.7 Tax Identification Numbers. The Liquidation Trust may require any Liquidation Trust Beneficiary to furnish to the Liquidation Trustee its social security number or employer or taxpayer identification number as assigned by the IRS and the Liquidation Trust may condition any distribution to any Liquidation Trust Beneficiary upon the receipt of such identification number.

12.8 Relationship to the Plan. The principal purpose of this Liquidation Trust Agreement is to aid in the implementation of the Plan and, therefore, this Liquidation Trust Agreement incorporates and is subject to the provisions of the Plan and the Confirmation Order. In the event that any provision of this Liquidation Trust 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, as applicable, shall control.

12.9 Governing Law. This Liquidation Trust Agreement is made in the State of Delaware, and Liquidation Trust and this Liquidation Trust Agreement, and the rights and obligations of the Liquidation Trust and the Liquidation Trustee are to be governed by and construed and administered according to the laws of the State of Delaware, *provided, however*, that, except as expressly provided in this Liquidation Trust Agreement, there shall not be applicable to the Liquidation Trust, the Liquidation Trustee or this Liquidation Trust Agreement, any provisions of the laws (statutory or common) of the State of Delaware, other than the Delaware Act, pertaining to trusts which relate to or regulate, in a manner inconsistent with the terms hereof (i) the filing with any court or governmental body or agency of trustee accounts or schedules of trustee fees and charges, (ii) affirmative requirements to post bonds for trustees, officers, agents, or employees of a trust, (iii) the necessity for obtaining court or other governmental approval concerning the acquisition, holding or disposition of real or personal property, (iv) fees or other sums payable to trustees, officers, agents, or employees of a trust, (v) the allocation of receipts and expenditures to income and principal, (vi) restrictions or limitations on the permissible nature,

amount or concentration of trust investments or requirements relating to the titling, storage or other manner of holding or investing trust assets, or (vii) the establishment of fiduciary or other standards or responsibilities or limitations on the acts or powers of trustees, which are inconsistent with the limitations or liabilities or authorities and powers of the Liquidation Trustee set forth or referenced in this Liquidation Trust Agreement. Each party hereto, including any Successor Liquidation Trustee, hereby irrevocably consents to the exclusive jurisdiction of the Bankruptcy Court or, if the Bankruptcy Court refuses such jurisdiction, to the non-exclusive jurisdiction of the courts of the State of Delaware, sitting in New Castle County and having proper subject matter jurisdiction, or the Federal District Court for the District of Delaware, for all purposes in connection with any action or proceeding that arises out of or relates to this Liquidation Trust Agreement (the "Proceedings") and hereby agrees that service of summons, complaint or other process in connection with any Proceedings may be made pursuant to the notice provisions of Section 11.11 of this Liquidation Trust Agreement, and that service so made shall be as effective as if personally made in the State of Delaware. Nothing herein shall affect the right of either party hereto to serve legal process in any manner permitted by law.

12.10 Retention of Jurisdiction. Notwithstanding any other provision of this Liquidation Trust Agreement, and to the fullest extent permitted by law, the Bankruptcy Court shall retain jurisdiction over the Liquidation 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 Liquidation Trust, including, without limitation, this Liquidation Trust Agreement, or any entity's obligations incurred in connection herewith, including without limitation, any action against the Liquidation Trust, the Liquidation Trustee or any professional retained by the Liquidation Trustee or the Liquidation Trust, in each case in its capacity as such. Each party to this Liquidation Trust Agreement hereby irrevocably consents to the exclusive jurisdiction of the Bankruptcy Court in any action to enforce, interpret or construe any provision of this Liquidation Trust Agreement or of any other agreement or document delivered in connection with this Liquidation Trust Agreement, and also hereby irrevocably waives any defense of improper venue, forum non conveniens or lack of personal jurisdiction to any such action brought in the Bankruptcy Court. Each party further irrevocably agrees that (i) any action to enforce, interpret or construe any provision of this Liquidation Trust 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 12.13 of this Liquidation Trust 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 Liquidation Trust 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 LIQUIDATION TRUST AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

12.11 Severability. In the event that any provision of this Liquidation Trust 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 remainder of this Liquidation Trust 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 Liquidation Trust Agreement shall be valid and enforced to the fullest extent permitted by law.

12.12 Limitation of Benefits. Except as otherwise specifically provided in this Liquidation Trust 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 Liquidation Trust Beneficiaries any rights or remedies under or by reason of this Liquidation Trust Agreement.

12.13 Notices. All notices, requests, demands, consents and other communication hereunder shall be in writing and shall be deemed to have been given (a) at the time of actual delivery thereof, (b) 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 (c) if given by overnight courier, the next business day after being sent, charges prepaid and properly addressed:

If to the Debtors:

Fulcrum BioEnergy, Inc.
P.O. Box 220
Pleasanton, CA 94566
Attn: Rick Barraza

with a copy to:

Morris, Nichols, Arsht & Tunnell LLP
1201 N. Market St., 16th Floor
Wilmington, Delaware 19801
Attn: Curtis S. Miller
Ph: 302-658-9200

If to the Liquidation Trustee:

Wilmington Savings Fund Society, FSB
500 Delaware Avenue,
Wilmington, Delaware 19801
Attn: Patrick Healy
Ph: 302-888-7420

With a copy to:

Eversheds Sutherland (US) LLP
999 Peachtree Street, NE
Atlanta, GA 30309
Attn: Todd C. Meyers
Ph: 404-868-6645

-and

Eversheds Sutherland (US) LLP
1114 Avenue of the Americas, 40th Floor
New York, NY 10036
Attn: Jennifer B. Kimble
Ph: 212-301-6598

Any notice or other communication hereunder shall be in writing and shall be deemed to have been sufficiently given to a Liquidation Trust Beneficiary, for all purposes, if deposited, postage prepaid, in a post office or letter box addressed to the person or entity for whom such notice is intended, or via electronic mail, to the name and address (1) set forth in the underlying Proof of Claim, if filed, (2) set forth on the Debtors' Schedules, if no Proof of Claim is filed, or (3) pursuant to a written change of address delivered in accordance with the provisions of this Agreement.

The Parties may designate in writing from time to time other and additional places to which notices may be sent.

12.14 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 Liquidation Trust Agreement, and to consummate the transactions contemplated hereby.

12.15 Integration. This Liquidation Trust Agreement, the Plan and the Confirmation Order constitute the entire agreement with, by and among the Parties thereto, and there are no representations, warranties, covenants or obligations except as set forth herein, in the Plan and in the Confirmation Order. Except as provided in this Liquidation Trust Agreement, the Plan or the Confirmation Order, this Liquidation Trust 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 in this Liquidation Trust Agreement, the Plan or the Confirmation Order, nothing herein is intended or shall be construed to confer upon or give any person other than the Parties hereto and the Liquidation Trust Beneficiaries any rights or remedies under or by reason of this Liquidation Trust Agreement.

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

12.17 Interpretation. The enumeration and Section headings contained in this Liquidation Trust Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Liquidation Trust Agreement or of any term or provision hereof. Unless context otherwise requires, whenever used in this Liquidation Trust 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 Liquidation Trust Agreement as a whole and not to any particular Section or subsection hereof unless the context requires otherwise.

12.18 Counterparts. This Liquidation Trust 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 Liquidation 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.

DEBTORS:

Fulcrum BioEnergy, Inc.

By:_____
Name: Mark J. Smith
Title: Chief Restructuring Officer

LIQUIDATION TRUSTEE:

Wilmington Savings Fund Society, FSB, not in its individual capacity but solely as Liquidation Trustee of the Fulcrum Liquidation Trust

By:_____
Name: Patrick Healy
Title: Senior Vice President & Director, Global Capital Markets

Exhibit B

Redline

LIQUIDATION TRUST AGREEMENT

This Liquidation Trust Agreement (the "Liquidation Trust Agreement") dated as of [●], 2025, is entered into by and among Fulcrum BioEnergy, Inc., Fulcrum Sierra Holdings LLC, Fulcrum Sierra Finance Company, LLC, and Fulcrum Sierra BioFuels, LLC, as debtors and debtors in possession and Wilmington Savings Fund Society, FSB, not individually, but solely in its capacity as trustee (the "Liquidation Trustee," and collectively with the Debtors, the "Parties") of the Liquidation Trust (as defined herein) in accordance with the Debtors' Second Amended Joint Chapter 11 Plan of Liquidation, dated ~~March 6~~April 9, 2025 (including all exhibits thereto, as the same may be further amended, modified, or supplemented from time to time, the "Plan").[1]

RECITALS

WHEREAS, on September 9, 2024 (the "Petition Date"), each of the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") commencing their chapter 11 cases (the "Chapter 11 Cases");

WHEREAS, on September 19, 2024, the United States Trustee for the District of Delaware (the "United States Trustee") appointed an official committee of unsecured creditors in the Chapter 11 Cases (the "Committee");

WHEREAS, on March 6, 2025, the Debtors filed the Plan;

WHEREAS, on [●], 2025, the Bankruptcy Court entered an order confirming the Plan [D.I. ●] (the "Confirmation Order");

WHEREAS, the Plan became effective on [●], 2025 (the "Effective Date");

WHEREAS, the Plan provides for the creation and formation of a statutory trust (the "Liquidation Trust") as of the Effective Date, which provides, inter alia:

(a) For the transfer of all Liquidation Trust Assets into the Liquidation Trust for distribution to beneficiaries of the Liquidation Trust (the "Liquidation Trust Beneficiaries") pursuant to and in accordance with this Liquidation Trust Agreement, the Plan and the Confirmation Order;

(b) For federal income tax purposes, (i) the Liquidation Trust Beneficiaries of the Liquidation Trust are to be treated as the grantors of the Liquidation Trust and deemed to be the owners of the Liquidation Trust Assets; and (ii) the Debtors are to treat the transfer of the Liquidation Trust Assets to the Liquidation Trust as a deemed transfer to such

[1] Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in the Plan.

Liquidation Trust Beneficiaries followed by a deemed transfer by such Liquidation Trust Beneficiaries to the Liquidation Trust;

(c) For the management of the Liquidation Trust Assets by the Liquidation Trust, acting through the Liquidation Trustee; and

(d) For the distribution of the Liquidation Trust Assets to the Liquidation Trust Beneficiaries as set forth in the Plan.

WHEREAS, this Liquidation Trust Agreement is executed to establish the Liquidation Trust and to facilitate the Plan;

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

ARTICLE I

DECLARATION OF TRUST

1.1 Purpose of the Liquidation Trust. The Debtors, the Estates, and the Liquidation Trustee, pursuant to the Plan and the Confirmation Order, and in accordance with the Bankruptcy Code and applicable tax statutes, rules and regulations, hereby constitute and create the Liquidation Trust for the purpose of administering post-Effective Date responsibilities of the Debtors and Wind-Down Estates under the Plan, including, but not limited to, (i) being vested with, administering, and liquidating, the Liquidation Trust Assets, (ii) making Distributions to holders of Allowed Claims in accordance with the terms of the Plan and this Liquidation Trust Agreement, (iii) resolving all Disputed Claims and effectuating the Claims reconciliation process pursuant to the procedures prescribed in the Plan, (iv) prosecuting, settling, and resolving Causes of Action that are Liquidation Trust Assets, (v) recovering, through enforcement, resolution, settlement, collection, or otherwise, assets on behalf of the Liquidation Trust (which assets shall become part of the Liquidation Trust Assets), (vi) winding down the affairs of the Debtors and their subsidiaries, if and to the extent necessary, including taking any steps to dissolve, liquidate, or take other similar action with respect to each Debtor and their subsidiaries, including by terminating the corporate or organizational existence of each such Debtor and subsidiary, and (vii) performing all actions and executing all agreements, instruments and other documents necessary to effectuate the purpose of the Liquidation Trust or as otherwise set forth in the Liquidation Trust Agreement. Further, the Liquidation Trust is created for the purpose of liquidating and distributing the Liquidation Trust Assets with no objective to continue or engage in the conduct of a trade or business. In particular, the Liquidation Trust, acting through the Liquidation Trustee, shall (a) make continuing efforts to collect and reduce the Liquidation Trust Assets to Cash in order to meet the Liquidation Trust's Cash and other obligations, (b) make timely distributions on account of Allowed Claims pursuant to the Plan and this Liquidation Trust Agreement, (c) not

unduly prolong the duration of the Liquidation Trust, and (d) 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 Liquidation Trust Agreement. Notwithstanding any provision of Delaware law or any other applicable law to the contrary, the Liquidation Trust shall not have authority to engage in any trade or business, and no portion of the Liquidation Trust Assets shall be used in the conduct of a trade or business, except as is reasonably necessary for the prompt and orderly collection and reduction to Cash of the Liquidation Trust Assets.

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

1.3 Formation. It is the intention of the Parties hereto that the Liquidation Trust referred to in the Plan and formed hereby constitutes a statutory trust under the Delaware Act and that this Liquidation Trust Agreement constitutes the governing instrument of the Liquidation Trust. Promptly following execution of this Liquidation Trust Agreement, the Liquidation Trustee shall cause an appropriate form of Certificate of Trust of the Liquidation Trust to be filed in the Office of the Secretary of State of the State of Delaware (the "Delaware State Office") in accordance with the applicable provisions of the Delaware Act.

1.4 Offices.

(a) The principal office of the Liquidation Trust, and such additional offices as the Liquidation Trustee may determine to establish, shall be located at such place or places inside or outside the State of Delaware as the Liquidation Trustee may designate from time to time.

(b) Service of process upon the Liquidation Trust may be made by service upon the Delaware Trustee. The principal office of the Delaware Trustee in the State of Delaware is located at 500 Delaware Avenue, Wilmington, Delaware 19801.

1.5 Transfer of Assets to Create Liquidation Trust.

(a) In accordance with Section 6.3 of the Plan, the Debtors and the Estates hereby irrevocably grant, release, assign, transfer, convey and deliver, for and on behalf of the Liquidation Trust Beneficiaries, to the Liquidation Trust all of their rights, title, and interests in and to all of the Liquidation Trust Assets, including, but not limited to, all of the remaining assets of the Debtors, including Causes of Action and all such assets held or controlled by third parties. The Liquidation Trust shall separately account for and administer Liquidation Trust Assets and claims with respect to each Debtor's estate. In accordance with section 1141 of the Bankruptcy Code, except as otherwise provided herein or in the Plan, the Liquidation Trust Assets shall automatically vest in the Liquidation Trust free and clear of all claims, liens,

interests and contractually imposed restrictions, and exempt from any stamp, real estate transfer, mortgage reporting, sales, use or other similar tax to the maximum extent permitted under section 1146 of the Bankruptcy Code, as of the Effective Date, to have and to hold unto the Liquidation Trust and to be applied as specified in the Plan, the Confirmation Order and this Liquidation Trust Agreement. Such transfer includes, but is not limited to, all rights to assert, waive or otherwise exercise all rights of setoffs and recoupment and defenses of the Debtors or their Estates to any counterclaims that may be asserted by any and all defendants as to any Causes of Action or by holders of Disputed Claims, any attorney-client privilege, work product protection or other privilege, immunity, or confidentiality provision vested in, or controlled by, the Debtors or their estates in respect of the Liquidation Trust Assets. Without limiting the generality of the foregoing, the Liquidation Trust, and the Liquidation Trustee on behalf of the Liquidation Trust, shall have the right to invoke section 542 of the Bankruptcy Code to pursue turnover of Liquidation Trust Assets. On the Effective Date, the Liquidation Trust, acting by and through the Liquidation Trustee, shall be substituted for the Debtors for all purposes with respect to Liquidation Trust Assets and administration of Claims and Interests.

(b) The Debtors shall execute and deliver or cause to be executed and delivered to the Liquidation Trust all such documents, in recordable form where necessary or appropriate, and the Debtors shall take or cause to be taken such further or other action, as the Liquidation Trustee may deem appropriate, to vest or perfect in or confirm to the Liquidation Trust, or upon the order of the Liquidation Trustee, title to and possession of all of the Liquidation Trust Assets as of the Effective Date. Upon the transfer of the Liquidation Trust Assets, and except as otherwise provided herein or in the Plan or Confirmation Order, the Debtors shall retain no interest in the Liquidation Trust Assets.

(c) To the extent any Liquidation Trust Assets cannot be transferred to the Liquidation Trust because of a restriction on transferability under applicable non-bankruptcy law that is not superseded or preempted by section 1123 of the Bankruptcy Code or any other provision of the Bankruptcy Code, the Liquidation Trust or the Liquidation Trustee, as applicable, shall be deemed to have been designated as a representative of the Debtors pursuant to section 1123(b)(3)(B) of the Bankruptcy Code to enforce and pursue such Liquidation Trust Assets on behalf of the Debtors. The Liquidation Trust's interest shall be a lien upon and security interest in such Liquidation Trust Assets, held in trust, nevertheless, for the sole use and purposes set forth in this Liquidation Trust Agreement, and this Liquidation Trust Agreement shall be deemed a security agreement granting such interest thereon without need to file financing statements or mortgages. Notwithstanding the foregoing, all net proceeds of such Liquidation Trust Assets shall be transferred to the Liquidation Trust to be distributed to the Liquidation Trust Beneficiaries in accordance with the Plan.

1.6 Acceptance by Liquidation Trustee. The Liquidation Trustee hereby accepts (a) the appointment to serve as Liquidation Trustee; (b) the transfer of the Liquidation Trust Assets on behalf of the Liquidation Trust; and (c) the trust imposed on the Liquidation Trustee by this Liquidation Trust Agreement, to the extent provided in the Plan. The Liquidation Trust, acting through the Liquidation Trustee, agrees to receive, hold, administer and distribute

the Liquidation Trust Assets and the income derived therefrom on behalf of the Liquidation Trust pursuant to the terms of the Plan, the Confirmation Order and this Liquidation Trust Agreement. The Liquidation Trustee acting on behalf of the Liquidation Trust expressly assumes the responsibility to reconcile and satisfy Claims and meet all other obligations of the Debtors' Estates in accordance with the Plan and the Confirmation Order. The Liquidation Trustee, acting on behalf of the Liquidation Trust, agrees to perform all acts necessary to ensure the transfer of the Liquidation Trust Assets to the Liquidation Trust.

1.7 Capacity of Liquidation Trust. Notwithstanding any state or federal law to the contrary or anything herein, the Liquidation Trust itself shall have the capacity, in its own right and name, to act or refrain from acting, including the capacity to sue and be sued and to enter into contracts. The Liquidation Trust may alone be (but is not required to be) the named movant, respondent, party plaintiff or defendant, or the like in all adversary proceedings, contested matters, and other state or federal proceedings brought by or against it, and may settle and compromise all such matters in its own name. Subject to the terms of this Agreement, the Plan, and the Confirmation Order, the Liquidation Trust shall also be entitled to assert all of the Debtors' and the Debtors' Estates' rights under section 558 of the Bankruptcy Code.

ARTICLE II

LIQUIDATION TRUSTEE - GENERALLY

2.1 Appointment. There shall at all times be a trustee who shall be responsible for the administration of the Liquidation Trust. The initial Liquidation Trustee shall be Wilmington Savings Fund Society, FSB.[2] Any successor Liquidation Trustee shall be appointed as herein provided.

2.2 Term of Service. The initial Liquidation Trustee, and each successor Liquidation Trustee, shall serve until the earlier to occur of (a) the termination of the Liquidation Trust in accordance with Article X of this Liquidation Trust Agreement, or pursuant to the Plan, or (b) such Liquidation Trustee's resignation, death, dissolution, removal or liquidation.

2.3 Resignation, Death, Dissolution or Removal of Liquidation Trustee.

(a) The Liquidating Trustee may resign its position at any time by providing 30 days' written notice (the "Resignation Notice") to the Bankruptcy Court. In the event of the resignation, death, removal or incapacity of the Liquidating Trustee, counsel to the Liquidating Trust shall file the Resignation Notice and a motion in the Bankruptcy Court to appoint a successor Liquidating Trustee (the "Successor Liquidating Trustee") as soon as reasonably practicable, and in the interim, shall have the authority to take any necessary action on behalf of the Liquidating Trust as deemed reasonably necessary to take for the benefit of the

Liquidating Trust Beneficiaries. Such resignation may become effective on the earlier to occur of (i) the date that is 30 days after such notice is filed with the Bankruptcy Court and (ii) the appointment of a permanent Successor Liquidating Trustee.

(b) The resignation, death, dissolution, removal or incapacity of the Liquidation Trustee shall not operate to terminate the Liquidation Trust created by this Liquidation Trustee Agreement or to revoke any existing agency created pursuant to the terms of the Liquidation Trust Agreement or invalidate any action therefore taken by the Liquidation Trustee. In the event of the removal, incapacitation, or death of the Liquidation Trustee, counsel to the Liquidation Trust shall file a motion in the Bankruptcy Court to appoint a Successor Liquidation Trustee as soon as reasonably practicable, and in the interim, shall have the authority to take any necessary action on behalf of the Liquidation Trust as deemed reasonably necessary to take for the benefit of the Liquidation Trust Beneficiaries.

(c) Any Successor Liquidation Trustee so appointed pursuant to this Section 2.3 shall consent to accept in writing the terms of this Liquidation Trust Agreement and agree that the provisions of this Liquidation Trust Agreement shall be binding upon and insure to the benefit of the Successor Liquidation Trustee. A Successor Liquidation Trustee shall have all the rights, privileges, powers, and duties of its predecessor under this Liquidation Trust Agreement, the Plan, and the Confirmation Order.

(d) No Successor Liquidation Trustee hereunder shall in any event have any liability or responsibility for the acts or omissions of any of his, her or its predecessors. Every Successor Liquidation Trustee selected pursuant to the terms hereof shall execute, acknowledge and deliver to counsel for the Liquidation Trust an instrument in writing accepting such appointment hereunder, and thereupon such Successor Liquidation Trustee, without any further act, shall become fully vested with all of the rights, powers, duties and obligations of his, her or its predecessor.

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

ARTICLE III

DUTIES AND POWERS OF THE LIQUIDATION TRUST AND LIQUIDATION TRUSTEE

3.1 General Powers. The Liquidation Trust, acting by and through the Liquidation Trustee, shall be deemed the Estates' representative in accordance with section 1123

of the Bankruptcy Code and shall be authorized to perform those acts necessary and desirable to accomplish the purposes of the Liquidation Trust, the Plan and the Confirmation Order. The Liquidation Trust, acting by and through the Liquidation Trustee, shall succeed to all rights, remedies, powers and defenses of the Debtors, the Committee, and the Estates necessary to protect, conserve, maximize the value of, distribute and liquidate all Liquidation Trust Assets as quickly as reasonably practicable. Subject to the limitations set forth in this Liquidation Trust Agreement, the Plan and the Confirmation Order, and in addition to any powers and authority conferred by law or by any other Section or provision of this Liquidation Trust Agreement, the Plan and the Confirmation Order, the Liquidation Trustee may exercise all powers granted to the Liquidation Trust under this Liquidation Trust Agreement, the Plan and Confirmation Order. Without limiting, but subject to the foregoing, the Liquidation Trust, acting through the Liquidation Trustee shall be expressly authorized:

(a) To exercise all power and authority that may be or could have been exercised, commence all proceedings that may be or could have been commenced and take all actions that may be or could have been taken by any of the Debtors with like effect as if authorized, exercised and taken by unanimous action of the officers, directors of any of the Debtors, including, without limitation, amendment of the certificates of incorporation and by-laws of the Debtors and the dissolution or cancellation of any Debtor;

(b) To implement Distributions to holders of Allowed Claims as provided for or contemplated by the Plan and take other actions consistent with the Plan and the implementation thereof, including the creation and maintain of appropriate reserves in accordance with the Plan and this Liquidation Trust Agreement, in the name of the Debtors or the Liquidation Trust, even in the event of the dissolution of one or more of the Debtors;

(c) Subject to the applicable provisions of the Plan, to administer the winding-up of the affairs of the Debtors;

(d) To take all steps and execute all instruments and documents necessary to make Distributions to holders of Allowed Claims and to perform the duties assigned to the Liquidation Trust under the Plan or this Liquidation Trust Agreement;

(e) To comply with and effectuate the Plan and the obligations of the Liquidation Trustee and the Liquidation Trust thereunder;

(f) To employ, retain or replace professionals or other persons to represent and/or assist the Liquidation Trust with respect to its responsibilities, pursuant to the Liquidation Trust Agreement and to compensate such professionals and persons for the performance of services on behalf of the Liquidation Trust;

(g) To wind up the affairs of the Debtors and their subsidiaries, if and to the extent necessary, including taking any steps to dissolve, cancel, liquidate, or take other

similar action with respect to each Debtor and subsidiary, including by terminating the corporate or organizational existence of each such Debtor or subsidiary;

(h) To take any actions necessary to (A) resolve all matters related to the Liquidation Trust Assets and (B) vest assets in the Liquidation Trust;

(i) To establish and maintain one or more Cash reserves in his or her reasonable discretion to ensure sufficient funding to pay all current and future Liquidation Trust Expenses;

(j) To make Distributions of the Cash in the Liquidation Trust and any proceeds thereof, in excess of any amounts necessary to pay Liquidation Trust Expenses, in accordance with the terms of the Plan;

(k) To prepare and file appropriate tax returns and other reports on behalf of the Debtors and the Liquidation Trust and pay taxes or other obligations owed by the Debtors that are Allowed Claims (including, without limitation, any Allowed Administrative Expense Claims, Allowed Priority Tax Claims asserted by taxing authorities, and Fee Claims);

(l) To file, prosecute, settle or dispose of any and all objections to asserted Claims;

(m) To file, prosecute, settle or dispose of any and all Causes of Action and or any other claims held by the Debtors as set forth in the Plan, all of which are Liquidation Trust Assets, *provided* that any settlement of a Disputed Claim that results in an Allowed Claim in excess of $2,000,000 must be made after notice and an opportunity for parties-in-interest to object. For the avoidance of doubt, nothing in this Article III shall be read or interpreted as limiting or precluding the Liquidation Trust from taking possession of, asserting, or prosecuting any and all rights, claims, and defenses of the Debtors, the Committee, or the Debtors' Estates;

(n) To establish and maintain the Disputed Claims Reserve;

(o) To enter into and consummate any transactions for the purpose of dissolving the Debtors and their subsidiaries;

(p) To take such actions as are necessary or appropriate to close any of the Debtors' Chapter 11 Cases;

(q) To maintain the books and records and accounts of the Debtors and the Liquidation Trust;

(r) To enter into any agreement or execute any document required by or consistent with the Plan and the Confirmation Order and perform all of the Debtors' obligations thereunder;

(s) To be the Estate representative and successor of the Debtors and the Committee for all purposes;

(t) To purchase such insurance coverage as the Liquidation Trustee, in its sole discretion, deems necessary and appropriate with respect to the liabilities and obligations of the Liquidation Trust and Liquidation Trustee;

(u) To purchase such insurance coverage as the Liquidation Trustee, in its sole discretion, deems necessary and appropriate with respect to real and personal property which may be or become Liquidation Trust Assets;

(v) To pay expenses and make disbursements necessary to preserve, liquidate and enhance the Liquidation Trust Assets;

(w) To coordinate the turnover of property, if any, subject to rejected executory contracts or abandonment or liquidation of any Liquidation Trust Assets and dispose of, and deliver title to others of, or otherwise realize value of, all the remaining Liquidation Trust Assets;

(x) To prepare or have prepared any required financial statements and U.S. Trustee post-confirmation quarterly reports, until such time as the Bankruptcy Court enters an order (i) dismissing the Chapter 11 Cases, (ii) converting the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, or (iii) approving a final decree closing the Chapter 11 Cases;

(y) To file periodic reports with the Bankruptcy Court as required under the Plan;

(z) To execute and deliver all documents, and take all actions, necessary to consummate the Plan and implement this Agreement;

(aa) To implement and/or enforce all provisions of the Plan;

(bb) To assert and/or waive, as the Liquidation Trustee deems appropriate, any attorney-client privilege or similar privilege belonging to any of the Debtors immediately prior to the Effective Date of the Plan;

(cc) To the extent the Liquidation Trust deems it necessary or appropriate, value the Liquidation Trust Assets based on the Liquidation Trustee's good faith determination, which valuation shall be used by all Parties and the Liquidation Trust Beneficiaries for all federal income tax purposes, and seeking resolution from the Bankruptcy Court of any dispute related to such valuation; and

(dd) To take all other actions consistent with the provisions of the Plan that the Liquidation Trustee deems reasonably necessary or desirable with respect to implementing the Plan, the Liquidation Trust and this Liquidation Trust Agreement.

3.2 Limitations on the Liquidation Trustee. Notwithstanding anything in this Liquidation Trust Agreement, the Plan or the Confirmation Order to the contrary, the Liquidation Trust shall not do or undertake any of the following in its capacity as such:

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

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

(c) Receive transfers of any listed stocks or securities, any readily-marketable assets or any operating assets of a going business other than to liquidate such assets.

(d) Receive or retain Cash in excess of a reasonable amount necessary to meet Claims, contingent liabilities (including Disputed Claims) and the expenses of the Liquidation Trust.

(e) Exercise any investment power other than the power to invest in demand and time deposits in banks or savings institutions, or temporary investments such as short term certificates of deposit or Treasury bills.

(f) Enter into or engage in any trade or business (other than the management and disposition of the Liquidation Trust Assets), and no part of the Liquidation Trust Assets or the proceeds, revenue or income therefrom shall be used or disposed of by the Liquidation Trustee in furtherance of any trade or business.

(g) Receive or retain any operating assets of a going business, a partnership interest in a partnership that holds operating assets or fifty percent (50%) or more of the stock of a corporation with operating assets.

3.3 Fees and Expenses of Liquidation Trustee. The Liquidation Trustee shall be entitled to receive compensation and shall be reimbursed for all reasonable and documented costs and expenses incurred in connection with the performance of its duties as Liquidation Trustee hereunder, in accordance with the terms established by the Debtors, Committee and Liquidation Trustee. Such fees and expenses of the Liquidation Trustee shall be expenses of the Liquidation Trust and shall be paid out of the Liquidation Trust Assets attributable to each Debtor without prior approval of the Bankruptcy Court. To the extent the fee arrangement of any Successor Liquidation Trustee is different than the fees charged by the initial Liquidation Trustee, such fee arrangement shall be subject to approval by the Bankruptcy Court.

3.4 Retention of Professionals. Without any further notice to any party or further action, order or approval of the Bankruptcy Court, the Liquidation Trust through the Liquidation Trustee, shall be entitled to retain and engage such professionals and persons as may be necessary to carry out its duties under this Liquidation Trust Agreement, including, without limitation, claims, disbursing and transfer agents, legal counsel, accountants, experts, and other agents or advisors, as the Liquidation Trust deems appropriate. The Professionals or other persons retained by the Liquidation Trust shall be compensated and reimbursed for all reasonable and documented fees and expenses incurred in connection with the performance of services to the Liquidation Trust. To the extent the fees and expenses incurred specifically relate to one Debtor or the assets of one Debtor, the fees and expenses shall be paid from the Liquidation Trust Assets allocable to such Debtor. The Professionals or other persons retained by the Liquidation Trust shall submit monthly invoices for their reasonable fees and expenses to the Liquidation Trust for payment upon receipt by the Liquidation Trustee from the Liquidation Trust Assets, subject to any limitations and procedures established by this Liquidation Trust Agreement. Professionals need not be "disinterested" as that term is defined in the Bankruptcy Code and may include, without limitation, counsel and financial advisors of the Debtors or the Committee.

3.5 Liquidation Trust Action. Except as provided in the Plan or otherwise specified in this Liquidation Trust Agreement, the Liquidation Trust and Liquidation Trustee need not obtain an order or approval of the Bankruptcy Court in the exercise of any power, rights, or discretion conferred under the Plan or this Liquidation Trust Agreement, or account to the Bankruptcy Court. Notwithstanding the foregoing, the Liquidation Trust, through the Liquidation Trustee, shall have the right to submit to the Bankruptcy Court any question or questions regarding which the Liquidation Trust may desire to have explicit approval of the Bankruptcy Court for the taking of any specific action proposed to be taken by the Liquidation Trust, including the administration or Distribution of any of the Liquidation Trust Assets. The Bankruptcy Court shall retain jurisdiction and power for such purposes and may approve or disapprove any such proposed action upon motion by the Liquidation Trust.

3.6 Appointment of Supplemental Liquidation Trustee. If the Liquidation Trustee has a conflict or any of the Liquidation Trust Assets are situated in any state or other jurisdiction in which the Liquidation Trustee is not qualified to act as trustee, the Liquidation Trustee shall nominate and appoint a Person duly qualified to act as trustee (the "Supplemental Trustee") in such state or jurisdiction and require from each such Supplemental Trustee such security as may be designated by the Liquidation Trustee in its discretion. The Liquidation Trustee may confer upon such Supplemental Trustee all of the rights, powers, privileges, and duties of the Liquidation Trustee hereunder, subject to the conditions and limitations of this Liquidation Trust Agreement, except as modified or limited by the laws of the applicable state or other jurisdiction (in which case, the laws of the state or other jurisdiction in which such Supplemental Trustee is acting shall prevail to the extent necessary). The Liquidation Trustee shall require such Supplemental Trustee to be answerable to the Liquidation Trustee and Liquidation Trust for all monies, assets, and other property that may be received in connection with the administration of all the Liquidation Trust Assets by the Supplemental Trustee. The

Liquidation Trustee may remove such Supplemental Trustee, with or without cause, and appoint a successor Supplemental Trustee at any time by executing a written instrument declaring such Supplemental Trustee removed from office and specifying the effective date and time of removal.

ARTICLE IV
LIABILITY OF LIQUIDATION TRUST

4.1 Liquidation Trust Standard of Care; Exculpation. The Liquidation Trust and the Liquidation Trustee and its agents and professionals shall not be liable for actions taken or omitted in their respective capacities as, or on behalf of the Liquidation Trust, or the Liquidation Trustee, except those acts arising out of its or their gross negligence, actual fraud, or willful misconduct, each as determined by a Final Order from a court of competent jurisdiction. The Liquidation Trust (and its agents and professionals) shall be entitled to indemnification and reimbursement for fees and expenses in defending any and all of its or their actions or inactions in its or their capacity as, or on behalf of, the Liquidation Trustee or the Liquidation Trust, except for any actions or inactions involving gross negligence, actual fraud or willful misconduct, each as determined by a Final Order from a court of competent jurisdiction. Any indemnification claims of the Liquidation Trust and the other parties entitled to indemnification under this subsection shall be satisfied from the Liquidation Trust Assets, as provided herein. The Liquidation Trustee shall be entitled to rely, in good faith, on the advice of its professionals.

4.2 Indemnification. Except as otherwise set forth in the Plan or Confirmation Order, the Liquidation Trustee and its respective accountants, agents, assigns, attorneys, bankers, consultants, directors, employees, executors, financial advisors, investment bankers, real estate brokers, transfer agents, managers, members, officers, partners, predecessors, principals, professional persons, representatives, affiliates, employer and successors (each, an "Indemnified Party") shall be indemnified for, and defended and not be liable for any loss, liability, damage, judgment, fine, penalty, claim, demand, settlement, cost, or expense (including the reasonable fees and expenses of their respective professionals) actually incurred in connection with actions taken or omitted in their respective capacities as, or on behalf of, the Liquidation Trustee or the Liquidation Trust, except those acts arising out of its or their own actual fraud, willful misconduct or gross negligence, each as determined by a Final Order from a court of competent jurisdiction. The Indemnified Parties shall be entitled to advancement, indemnification, and reimbursement for fees and expenses in defending any and all of its or their actions or inactions in its or their capacity as, or on behalf of, the Liquidation Trustee or the Liquidation Trust, except for any actions or inactions involving its or their own actual fraud, willful misconduct or gross negligence, each as determined by a Final Order from a court of competent jurisdiction. Any indemnification claim of the Indemnified Parties under this subsection shall be satisfied from the Liquidation Trust Assets, as provided in this Liquidation Trust Agreement.

4.3 No Liability for Acts of Successor/Predecessor Liquidation Trustees. Upon appointment of a Successor Liquidation Trustee, the predecessor Liquidation Trustee shall

have no further liability or responsibility with respect thereto. A Successor Liquidation Trustee shall have no duty to examine or inquire into the acts or omissions of its immediate or remote predecessor and no Successor Liquidation Trustee shall be in any way liable for the acts or omissions of any predecessor Liquidation Trustee unless a Successor Liquidation Trustee expressly assumes such responsibility in writing.

4.4 Reliance by Liquidation Trustee on Documents, Mistake of Fact or Advice of Counsel. Except as otherwise provided in this Liquidation Trust Agreement, the Liquidation 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 Liquidation Trustee to be genuine and to have been presented by an authorized party. Also, the Liquidation Trustee shall not be liable if the Liquidation Trustee acts based on a mistake of fact before having actual knowledge of an event. The Liquidation Trustee shall not be liable for any action taken or suffered by the Liquidation Trustee in reasonably relying upon the advice of counsel or other professionals engaged by the Liquidation Trustee in accordance with the Plan, the Confirmation Order or this Liquidation Trust Agreement.

4.5 Insurance. The Liquidation Trust, acting through the Liquidation Trustee, shall be authorized, but not required, to obtain any reasonably necessary insurance coverage, at the Liquidation Trust's sole expense, for itself and its respective agents, including coverage with respect to the liabilities, duties and obligations of the Liquidation Trustee, which insurance coverage may, at the sole option of the Liquidation Trustee, be extended for a reasonable period after the termination of this Liquidation Trust Agreement.

ARTICLE V

DUTIES OF THE LIQUIDATION TRUSTEE

5.1 General. The Liquidation Trust, acting through the Liquidation Trustee shall have all duties specified in this Liquidation Trust Agreement, the Plan and the Confirmation Order.

5.2 Register of Liquidation Trust Beneficiaries. The Liquidation Trust, acting through the Liquidation Trustee, shall maintain at all times a register of the names, addresses and amounts of Allowed Claims of the Liquidation Trust Beneficiaries. The Liquidation Trustee shall be entitled, but not required, to conclusively rely on the official claims register maintained in the Chapter 11 Cases (the "Register"). The Liquidation Trustee shall not be liable for relying on the accuracy of the Register.

5.3 Books and Records. The Liquidation Trustee shall maintain, in respect of the Liquidation Trust and the Liquidation Trust Beneficiaries, books and records relating to the Liquidation Trust Assets and income realized therefrom and the payment of expenses of and claims against or assumed by the Liquidation Trust in accordance with generally accepted accounting principles and for such period of time as may be necessary to enable the Liquidation

Trust, acting through the Liquidation Trustee, to make full and proper reports in respect thereof. Except as expressly provided in this Liquidation Trust Agreement, the Plan or the Confirmation Order, nothing in this Liquidation Trust Agreement is intended to require the Liquidation Trust to file any accounting or seek approval of any court with respect to the administration of the Liquidation Trust, or as a condition for making any payment or distribution out of the Liquidation Trust Assets.

5.4 Post-Confirmation Reports to Liquidation Trust Beneficiaries. As required by the United States Trustee, the Liquidation Trustee will file with the Bankruptcy Court quarterly the Post-Confirmation Reports detailing the aggregate receipts, Liquidation Trust disbursements and distributions to the Liquidation Trust Beneficiaries.

5.5 Final Accounting of Liquidation Trust and Liquidation Trustee. The Liquidation Trust shall within ninety (90) days after the termination of the Liquidation Trust render a final accounting containing at least the following information:

(a) A description of the Liquidation Trust Assets.

(b) A summarized accounting in sufficient detail of all gains, losses, receipts, disbursements and other transactions in connection with the Liquidation Trust and the Liquidation Trust Assets during the Liquidation Trustee's term of service, including their source and nature, which can be satisfied by incorporating the quarterly Post-Confirmation Reports by reference;

(c) Separate entries for all receipts of principal and income;

(d) The ending balance of all Liquidation Trust Assets as of the date of the Liquidation Trustee's accounting, including the Cash balance on hand and the name(s) and location(s) of the depository or depositories where the Cash is kept, and

(e) All known liabilities of the Liquidation Trust.

The final accounting shall be presented to the Bankruptcy Court for approval, and all Liquidation Trust Beneficiaries shall have the opportunity to request notice (by emailing the Liquidation Trustee's counsel requesting same no later than ten (10) days prior to the publishing of the final accounting) regarding the final accounting having been filed and an opportunity to have a hearing on the approval of the accounting and discharge of the Liquidation Trustee.

5.6 Fees and Expenses of Liquidation Trust. From and after the Effective Date, Liquidation Trust Expenses, including, without limitation, reasonable fees and expenses of professionals and other persons retained by the Liquidation Trust, shall be paid from the Liquidation Trust Assets in the ordinary course of business, in accordance with the Plan and this Liquidation Trust Agreement.

ARTICLE VI

LIQUIDATION TRUST BENEFICIARIES

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

6.2 Evidence of Beneficial Interest. Ownership of a beneficial interest in the Liquidation 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 Liquidation Trust by the Liquidation Trustee or its appointee.

6.3 Registration of Beneficial Interest. The Liquidation Trustee shall cause the Register to be kept at its office or at such other place or places as may be designated by the Liquidation Trustee from time to time (and for the avoidance of doubt, such Register may be maintained electronically and will be reflective of the then-current register of Holders of Allowed Claims against the Debtors, as updated by the Liquidation Trustee and/or the claims agent for the Liquidation Trust). The Register shall reflect the ownership of the beneficial interests of the Liquidation Trust Beneficiaries.

6.4 Absolute Owners. The Liquidation Trustee may deem and treat the Liquidation Trust Beneficiary 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 Effect of Death, Dissolution, Incapacity or Bankruptcy of Liquidation Trust Beneficiary. The death, dissolution, incapacity or bankruptcy of a Liquidation Trust Beneficiary during the term of the Liquidation Trust shall not operate to terminate the Liquidation Trust during the term of the Liquidation Trust nor shall it entitle the representative or creditors of the deceased, incapacitated or bankrupt Liquidation Trust Beneficiary to an accounting or to take any action in any court or elsewhere for the distribution of the Liquidation Trust Assets or for a partition thereof nor shall it otherwise affect the rights and obligations of the Liquidation Trust Beneficiary under this Liquidation Trust Agreement or in the Liquidation Trust.

6.6 Limitation on Transferability. The beneficial interests herein shall be non-transferable and non-assignable during the term of this 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 Liquidation Trust, and the Liquidation Trust shall no pay all amounts to or for the benefit of the assigning Liquidation Trust Beneficiary until receipt of

proper notification and proof of assignment by operation of law. The Liquidation Trustee may rely upon such proof without the requirement of any further investigation.

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

6.8 Addresses of Liquidation Trust Beneficiaries. The Liquidation Trustee may deliver a notice to the Liquidation Trust Beneficiaries and such notice may include a form for each Liquidation Trust Beneficiary (as determined to be necessary by the Liquidation Trustee, as applicable, including, without limitation, IRS Form W-8 and/or Form W-9) to complete in order to be properly registered as a Liquidation Trust Beneficiary and be eligible for distributions from the Liquidation Trust. Such form may request the Liquidation Trust Beneficiary's federal taxpayer identification number or social security number if the Liquidation Trustee determines that such information is necessary to fulfill the Liquidation Trust's tax reporting and withholding obligations. A Liquidation Trust Beneficiary may, after the Effective Date, select an alternative mailing address from the one set forth on such form or in its Proof of Claim by notifying the Liquidation Trust or its designee in writing of such alternative distribution address. Absent receipt of such notice, neither the Liquidation Trust nor the Liquidation Trustee shall be obligated to recognize any such change of address for any purpose hereunder. Such notification shall be effective only upon receipt by the Liquidation Trustee or its designee. The Liquidation Trustee, in its reasonable discretion, may suspend distributions to any Liquidation Trust Beneficiary that has not provided its federal taxpayer identification number or social security number, as the case may be, after a request is made pursuant to this Section 6.9. If tax information is not provided within one hundred and eighty (180) days after such request, the applicable Liquidation Trust Beneficiary's underlying claim will be expunged for all purposes of this Liquidation Trust Agreement to the extent provided under the Plan.

6.9 Exemption from Registration. The rights of the Liquidation Trust Beneficiaries arising under this Liquidation Trust Agreement may be deemed "securities" under applicable law. However, such rights have not been defined as "securities" under the Plan because (a) the Parties hereto intend that such rights shall not be securities and (b) if the rights under this Liquidation Trust Agreement in favor of the Liquidation Trust Beneficiaries are deemed to be "securities," the exemption from registration under section 1145 of the Bankruptcy Code is intended to be applicable to such securities. No Party to this Agreement shall make a contrary or different contention.

ARTICLE VII

PROCEDURES FOR RESOLVING AND TREATING CONTESTED CLAIMS

7.1 Objection Deadline. The Liquidation Trust, acting by and through the Liquidation Trustee, shall have the ~~exclusive~~ right to object to the allowance of any claims by no later than the Objection Deadline. As soon as practicable, but in no event later than 180 days after the Effective Date, Objections to Claims shall be filed with the Bankruptcy Court and served upon holders of each of the Claims to which Objections are made, provided, however, that such deadline may be extended upon motion of the Liquidation Trustee on behalf of the Liquidation Trust and entry of an order of the Bankruptcy Court. In addition, the Liquidation Trust may, at any time, request that the Bankruptcy Court estimate any Contingent Claim, Disputed Claim or Unliquidated Claim pursuant to Section 502(c) of the Bankruptcy Code regardless of whether any party previously objected to or sought estimation of such Claim.

7.2 Prosecution of Disputed Claims. The Liquidation Trust is authorized and empowered, but not required, to resolve consensually any disputes regarding the allowance, classification or amount of any Claim, without further order of or approval from the Bankruptcy Court. All objections that are filed and prosecuted as provided herein shall be litigated to Final Order or compromised and settled in accordance with Sections 7.4 and 7.5 of this Liquidation Trust Agreement and the Plan.

7.3 Disputed Claim Reserve. In determining the amount of distributions to be made under the Plan to holders of Allowed Claims, the appropriate distribution required by the Plan shall be made according to estimates and subject to the provisions of the Plan. The Liquidation Trust may, in its sole discretion, establish a reserve ("Disputed Claim Reserve") for each Disputed Claim in an amount that reasonably approximates the distribution that would otherwise be made to such holder of a Claim assuming such Claim were to be Allowed in the amount set forth on the holder of a Claim's proof of Claim or as estimated pursuant to agreement with the holder of a Claim or order of the Bankruptcy Court. The Liquidation Trust shall fund the Disputed Claim Reserve from the Liquidation Trust Assets.

7.4 Claims Settlement Authority. Notwithstanding any requirement that may be imposed pursuant to Bankruptcy Rule 9019, from and after the Effective Date, the Liquidation Trust, acting through the Liquidation Trustee, may settle consistent with its fiduciary duties all Claims and all claims that any of the Debtors, the Estates or the Liquidation Trust, as appropriate, have or may have asserted against other parties or any Claims that have been or will be asserted against the Debtors, their Estates or the Liquidation Trust, prior to objection 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 United States Trustee, consistent with and pursuant to the terms of the Plan or the Confirmation Order, provided that any settlement that results in an Allowed Claim in

excess of $2,000,000 must be made after notice and an opportunity for parties-in-interest to object.

7.5 Prosecution and/or Settlement of Retained Causes of Action. The Liquidation Trust, by and through the Liquidation Trustee, shall have the exclusive right to assert and prosecute in accordance with the its reasonable business judgment the Causes of Action. The Liquidation Trust shall have the authority to settle and comprise, in its sole discretion and without approval of the Bankruptcy Court, any and all Causes of Action; *provided, howeve*r, that the Liquidation Trustee may not settle any Cause of Action where the initial amount of such Cause of Action, without consideration of any defenses to the same, exceeds $2,000,000 without approval of the Bankruptcy Court.

ARTICLE VIII
DISTRIBUTIONS

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

8.2 Reserves; Pooling of Reserved Funds. Before any distribution can be made, the Liquidation Trust shall, in its reasonable discretion, establish, supplement, and maintain a reserve in an amount sufficient to meet any and all Liquidation Trust fees and expenses, including but not limited to attorneys' fees and expenses and the fees and expenses of other professionals,. In accordance with section 7.3 of this Agreement, the Liquidation Trust may also maintain as necessary a reserve for Disputed Claims. For the avoidance of doubt, the Liquidation Trustee may withhold any distribution pending the Liquidation Trust's determination of whether to object to a General Unsecured Claim. Any such withheld distribution shall become part of the Liquidation Trust's reserve for Disputed Claims and shall be distributed to the appropriate Liquidation Trust Beneficiary no later than the first distribution after a decision is made not to object to the pertinent General Unsecured Claim or the General Unsecured Claim becomes Allowed. The Liquidation Trustee need not maintain the Liquidation Trust's reserves in segregated bank accounts and may pool funds in the reserves with each other and other funds of the Liquidation Trust; *provided, however*, that the Liquidation Trust shall treat all such reserved funds as being held in a segregated manner in its books and records.

8.3 Distributions; Withholding.

(a) The first Distribution (the "Initial Distribution") made by the Liquidation Trust, as applicable, shall be made in accordance with the Plan.

(b) After the Initial Distribution, the Liquidation Trust shall make Distributions from the Liquidation Trust Assets at least annually but not prior to the Distribution Date to the Liquidation Trust Beneficiaries from all net Cash income and all other net Cash proceeds received by the Liquidation Trust from the sale or liquidation of Liquidation Trust Assets; provided, however, that the Liquidation Trust may, to the extent consistent with Revenue Procedure 82-58, 1982-2 C.B. 847, as amplified by Revenue Procedure 94-45, 1994-2 C.B. 684, retain such amounts (a) as are reasonably necessary to meet contingent liabilities and to maintain the value of the Liquidation Trust Assets during the term of the Liquidation Trust, (b) to pay reasonable administrative expenses of the Liquidation Trust including, without limitation, the compensation and the reimbursement of reasonable, actual and necessary costs and fees (including attorneys' fees) and expenses of the Liquidation Trustee and any retained professionals in connection with the performance of its duties in connection with this Liquidation Trust Agreement, and (c) to satisfy all other liabilities incurred or assumed by the Liquidation Trust (or to which the Liquidation Trust Assets are otherwise subject) in accordance with the Plan, the Confirmation Order and this Liquidation Trust Agreement. All Distributions shall be made as provided, and subject to any withholding or reserve, in this Liquidation Trust Agreement, the Plan or the Confirmation Order. Additionally, the Liquidation Trust may withhold from amounts distributable to any Liquidation Trust Beneficiary any and all amounts, determined in the Liquidation Trustee's reasonable sole direction, to be required by any law, regulation, rule, ruling, directive or other governmental requirement, including withholding the entirety of a Distribution until the Liquidation Trust receives the necessary tax information from a Liquidation Trust Beneficiary. The Liquidation Trust, acting through the Liquidation Trustee, shall make continuing efforts to dispose of the Liquidation Trust Assets, make timely Distributions and not unduly prolong the duration of the Liquidation Trust.

8.4 No Distribution Pending Allowance. Notwithstanding anything to the contrary in the Plan, the Confirmation Order or this Liquidation Trust Agreement, no payment or Distribution shall be made with respect to any Claim to the extent it is a Disputed Claim unless and until such Disputed Claim becomes an Allowed Claim provided that payment or Distribution may be made on an Allowed portion of a Claim pending adjudication of the Disputed portion of such Claim.

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

8.6 Disputed Identity of Holder. If any dispute arises as to the identity of a holder of an Allowed Claim or Interest who is to receive any Distribution hereunder, the

Liquidation Trust 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 Liquidation Trust, Liquidation Trustee. Notwithstanding that the allowed amount of any particular Disputed 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 recovery equal to that received by other holders of Allowed Claims in the relevant Class, no Claim holder shall have recourse to the Liquidation Trust, Liquidation Trustee or any of its professionals, or its successors or assigns, or the holder of any other Claim, or any of their respective property. However, nothing in the Plan shall modify any right of a holder of a Claim under Section 502(j) of the Bankruptcy Code. Thus, the Court's entry of an estimation order may limit the Distribution to be made on individual Disputed Claims, regardless of the amount finally allowed on account of such Disputed Claims.

8.8 Non-Cash Property. Any non-Cash property of the Liquidation Trust may be sold, transferred or abandoned by the Liquidation Trustee. The net proceeds of such sales shall be held in the Liquidation Trust pending Distribution or until used to fund the Liquidation Trust's obligations hereunder. If, in the Liquidation Trustee's judgment, any Liquidation Trust Asset that is not Cash cannot be sold, settled, or otherwise reduced to Cash in a commercially reasonably manner, the Liquidation Trustee shall have the right to abandon, withdraw, or otherwise dispose of such property consistent with applicable law, including by donation of such property to a charity designated by the Liquidation Trustee.

8.9 Time Bar to Cash Payments. Checks issued by the Liquidation Trust in respect of Allowed Claims shall be null and void if not negotiated within ninety (90) days after the date of issuance thereof. Requests for reissuance of any check shall be made to the Liquidation Trust by the holder of the Allowed Claim to whom such check originally was issued within such ninety (90) day period. Thereafter, the amount represented by such voided check shall irrevocably revert to the Liquidation Trust for all purposes, including, but not limited to, distribution to other holders of Allowed Claims. Any Claim in respect of such voided check shall be discharged and forever barred notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary.

8.10 Withholding Taxes and Expenses of Distribution. Any federal, state or local withholding taxes or other amounts required to be withheld under applicable law, as determined by the Liquidation Trust or the Liquidation Trustee in their sole discretion, shall be deducted from distributions hereunder. All persons holding Claims shall be required to provide the Liquidation Trust with any information necessary to effect the withholding of such taxes and the Liquidation Trust may withhold all distributions pending receipt of such information. In addition, all distributions under the Plan shall be net of the actual and reasonable costs of making such distributions.

8.11 Method of Cash Distributions. Any Cash payment to be made by the Liquidation Trust pursuant to the Plan will be in U.S. dollars and may be made, at the sole discretion of the Liquidation Trustee, by draft, check, wire transfer, or as otherwise required or provided in any relevant agreement or applicable law.

8.12 Timing of Distributions. Any payment or other Distribution required to be made under the Plan on a day other than a Business Day shall be due on the next succeeding Business Day but shall be deemed to have been made on the required date. Any payment of Cash to be made pursuant to the Plan, subject to the terms hereof, shall be deemed made, if by electronic wire transfer, when the applicable electronic wire transfer is initiated by the sending bank or, if by check drawn on a domestic bank, when the earliest occurs of depositing in the mail for the entitled in a recipient, receipt by the entitled recipient, or delivery to a third party delivery service for delivery to the entitled recipient.

8.13 No Distribution in Excess of Allowed Amount of Claim. Notwithstanding anything to the contrary herein, no holder of an Allowed Claim shall receive on account of such Claim any Distribution (of a value set forth herein or in the Plan or Disclosure Statement) in excess of the allowed amount of such Claim.

8.14 Objections to Claims/ Setoff Rights. The Liquidation Trust may, but shall not be required to, setoff against or recoup from any Holder (including any Liquidation Trust Beneficiary) on which payments or other Distributions are to be made hereunder, claims or defenses of any nature that the Liquidation Trust, the Debtors or the Estates may have against such Person, including with respect to any claim objection asserted or which could be asserted pursuant to section 502 of the Bankruptcy Code. However, neither the failure to do so, nor the allowance of any Claim or Interest under the Plan or otherwise, shall constitute a waiver or release of any such claim, right of setoff or right of recoupment against the holder of such Allowed Claim.

8.15 Conflicting Claims.

(a) If any conflicting claims or demands are made or asserted with respect to the beneficial interest of a Liquidation Trust Beneficiary under this Liquidation Trust Agreement, or if there is any disagreement between the assignees, transferees, heirs, representatives, or legatees succeeding to all or a part of such an interest resulting in adverse claims or demands being made in connection with such interest, then, in any of such events, the Liquidation Trust, acting through the Liquidation Trustee, shall be entitled, in its sole discretion, to refuse to comply with any such conflicting claims or demands.

(b) The Liquidation Trust, acting through the Liquidation Trustee, at its sole election, may elect to cause the Liquidation Trust to make no payment or Distribution with respect to any Liquidation Trust Beneficiary's interest in the Liquidation Trust subject to the conflicting claims or demand, 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. Neither the Liquidation Trust nor the Liquidation Trustee

shall be or become liable to any of such parties for their refusal to comply with any such conflicting claims or demands, nor shall the Liquidation Trust or Liquidation Trustee be liable for interest on any funds which may be so withheld.

(c) The Liquidation Trust and the Liquidation Trustee shall be entitled to refuse to act until either (i) the rights of the adverse claimants have been adjudicated by a final order of the Bankruptcy Court or (ii) all differences have been resolved by a valid written agreement among all such parties to the satisfaction of the Liquidation Trustee, which agreement shall include a complete release of the Liquidation Trust and Liquidation Trustee. Until the Liquidation Trustee receives written notice that one of the conditions of the preceding sentence is met, the Liquidation Trustee may deem and treat as the absolute owner under this Liquidation Trust Agreement the interest of such Liquidation Trust Beneficiary identified as the owner of that interest in the books and records maintained by the Liquidation Trust. The Liquidation Trustee may deem and treat such Liquidation Trust Beneficiary as the absolute owner for purposes of receiving distributions and any payments on account thereof for federal and state income tax purposes, and for all other purposes whatsoever.

8.16 ***De Minimus*** **Distributions.** The Liquidation Trust shall have no obligation to make a distribution that is less than Fifty Dollars ($50) in Cash. If an interim distribution to the holder of an Allowed Claim is less than $50, such distribution shall be held for future distributions. If a final distribution to any holder of an Allowed Claim is less than $50, such amount shall become and constitute unclaimed property and be treated in accordance with section 8.9 of this Agreement.

8.17 Postponement. The Liquidating Trust may postpone any Distribution if the Liquidation Trustee determines that the amount of such Distribution would be too small to justify administrative costs associated with making it. The Liquidation Trustee shall make continuing efforts to dispose of the Liquidating Trust Assets, make timely distributions, and not unduly prolong the duration of the Liquidation Trust.

ARTICLE IX

TAXES

9.1 Income Tax Status. Consistent with Revenue Procedure 94-45, 1994-2 C.B. 684, the Liquidation Trust shall be treated as a Liquidation 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 (the "Tax Code"). As such, the Liquidation Trust Beneficiaries will be treated as both the grantors and the deemed owners of the Liquidation Trust. Any items of income, deduction, credit and loss of the Liquidation Trust shall be allocated for federal income tax purposes to the Liquidation Trust Beneficiaries.

9.2 Tax Returns. The Liquidation Trust shall file such tax returns as may be required by federal, state or local taxing authorities. The Liquidation Trust shall file with the IRS annual tax returns on Form 1041 or comply with other applicable tax return filing options, in

accordance with Tax Code Section 6012 and Treasury Regulation Sections 1.671-4(a) and 1.671-4(b). In addition, the Liquidation Trust shall file in a timely manner such other tax returns as are required by applicable law and pay any taxes shown as due thereon. The Liquidation Trustee shall send to each Liquidation Trust Beneficiary a copy of the Form 1041 for the Liquidation Trust (without attaching any other Liquidation Trust Beneficiary's Schedule K-1 or other applicable information form) within a reasonable time following the end of the taxable year, along with such Liquidation Trust Beneficiary's Schedule K-1 or other applicable information form.

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

9.4 Valuations. The Liquidation Trust and the Liquidation Trust Beneficiaries shall utilize consistent valuations of the Liquidation Trust Assets and such valuations shall be used for all federal income tax purposes.

9.5 Survival. For the avoidance of doubt, the foregoing provisions of this Article IX shall survive the termination of a Liquidation Trust Beneficiary's beneficial interests in the Liquidation Trust pursuant to Article X hereof.

ARTICLE X

TERMINATION OF TRUST

10.1 Maximum Term. The term of the Liquidation Trust shall end no later than the fifth (5th) anniversary of the Effective Date (the "Initial Trust Term") if not otherwise terminated sooner by the Distribution of all of the Liquidation Trust Assets to the Liquidation Trust Beneficiaries in accordance with the Plan and this Liquidation Trust Agreement; provided, however, that the Liquidation Trustee may seek to extend the term of the Liquidation Trust if necessary to facilitate or complete the liquidation of the Liquidation Trust Assets or the distributions required to be made to the Liquidation Trust Beneficiaries hereunder for an additional term (the "Supplemental Liquidation Trust Term") by filing a notice of the Liquidation Trustee's intent to extend the term of the Liquidation Trust with the Bankruptcy Court and obtaining the approval of the Bankruptcy Court within thirty (30) days prior to the beginning of the extended term; provided further, however, that the aggregate of the Initial Trust Term and any Supplemental Liquidation Trust Term shall not exceed ten (10) years unless the

Liquidation Trust receives a favorable ruling from the IRS or an opinion of counsel satisfactory to the Liquidation Trustee that any further extension would not adversely affect the status of the Liquidation Trust as a Liquidation Trust within the meaning of Treas. Reg. §301.7701-4(d) for federal income tax purposes. Notwithstanding anything to the contrary in this Liquidation Trust Agreement, in no event shall the Liquidation Trustee unduly prolong the duration of the Liquidation Trust, and the Liquidation Trustee shall at all times endeavor to prosecute, direct, settle or compromise expeditiously the Causes of Action and Claims objections, so as to distribute the Liquidation Trust Assets to the Liquidation Trust Beneficiaries and terminate the Liquidation Trust as soon as practicable in accordance with this Liquidation Trust Agreement.

10.2 Events Upon End of Term Termination. Upon the termination of the Liquidation Trust, the Liquidation Trustee shall distribute the remaining Liquidation Trust Assets, if any, to the Liquidation Trust Beneficiaries, in accordance with the Plan, the Confirmation Order and this Liquidation Trust Agreement. In connection with the termination of the Liquidation Trust, notwithstanding other provisions hereof, any remaining Liquidation Trust Assets that are of inconsequential value or otherwise insufficient to support the cost of a Distribution may be transferred by the Liquidation Trustee to a non-profit charitable organization qualifying under Section 501(c)(3) of the Tax Code and selected by the Liquidation Trustee in consultation with counsel to the Liquidation Trust, in their sole discretion.

10.3 Winding Up and Discharge of the Liquidation Trustee. For the purposes of winding up the affairs of the Liquidation Trust at its termination, the Liquidation Trustee shall continue to act on behalf the Liquidation Trust until its duties have been fully discharged. After doing so, the Liquidation Trustee, its agents and employees shall have no further duties or obligations hereunder, except as required by this Liquidation Trust Agreement, the Plan, the Disclosure Statement or applicable law concerning the termination of a trust. Upon a motion by the Liquidation Trustee, the Bankruptcy Court may enter an order relieving the Liquidation Trustee, its agents and employees of any further duties, discharging the Liquidation Trustee and releasing its bond, if any.

10.4 Dissolution. Upon the dissolution of the Liquidation Trust and completion of the winding up of the Liquidation Trust's affairs, a Certificate of Cancellation Canceling the Certificate of Trust of the Liquidation Trust shall be filed with the Delaware State Office, which Certificate of Cancellation may be executed by the Liquidation Trustee.

ARTICLE XI

DELAWARE TRUSTEE

11.1 Delaware Trustee. The Following terms and conditions shall apply to the Delaware Trustee:

(a) The Delaware Trustee shall constitute the trustee required pursuant to Section 3807(a) of the Delaware Act, shall have only the rights, obligations and liabilities specifically provided for in this Liquidation Trust Agreement and the Delaware Act, and shall

have no implied rights, obligations or liabilities with respect to the affairs of the Liquidation Trust. Notwithstanding any other provision of this Liquidation Trust Agreement, unless specifically directed by the Liquidation Trustee and consented to by the Delaware Trustee, the Delaware Trustee shall not participate in any decisions relating to, or possess any authority independently to manage or control, the business of the Liquidation Trust. The Delaware Trustee shall have the power and authority to execute, deliver, acknowledge and file all necessary documents and to maintain all necessary records of the Liquidation Trust as required by the Delaware Act. The Delaware Trustee shall provide prompt notice to the Liquidation Trustee of its performance of any of the foregoing.

(b) So long as required by the Delaware Act, there shall be one (1) Delaware Trustee who or which shall be (i) a natural person who is a resident of the State of Delaware or (ii) if not a natural person, an entity that has its principal place of business in the State of Delaware and otherwise meets the requirements of applicable law.

11.2 Limitation of Delaware Trustee Liability. The Delaware Trustee shall not be liable for the acts or omissions of the Liquidation Trustee or any other person or entity, nor shall the Delaware Trustee be liable for supervising or monitoring the performance of the duties of the Liquidation Trustee or the Liquidation Trust or of any other person or entity under this Liquidation Trust Agreement or any related document. The Delaware Trustee shall not be personally liable under any circumstances, except for its own willful misconduct, fraud, or gross negligence. In particular, but not by way of limitation:

(c) The Delaware Trustee shall not be personally liable for any error of judgment made by a responsible officer of the Delaware Trustee in good faith;

(d) No provision of this Liquidation Trust Agreement shall require the Delaware Trustee to expend or risk its personal funds or otherwise incur any financial liability in the performance of its rights or powers hereunder;

(e) Under no circumstance shall the Delaware Trustee be personally liable for any representation, warranty, covenant, agreement, or indebtedness of the Liquidation Trust;

(f) The Delaware Trustee shall not be personally responsible for or in respect of the validity or sufficiency of this Liquidation Trust Agreement or for the due execution hereof by the other parties;

(g) The Delaware Trustee shall incur no liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper believed by it to be genuine and believed by it to be signed by the proper party or parties. The Delaware Trustee may accept a certified copy of a resolution of any governing body of any person as conclusive evidence that such resolution has been duly adopted by such person and that the same is in full force and effect. As to any fact or matter the manner of ascertainment of which is not specifically prescribed herein, the Delaware Trustee may for all purposes hereof rely on a certificate, signed by any officer of the party delivering the

certificate, as to such fact or matter, and such certificate shall constitute full protection to the Delaware Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon;

(h) In the exercise or administration of its duties hereunder, the Delaware Trustee (A) may act directly or through agents or attorneys pursuant to agreements entered into with any of them, and the Delaware Trustee shall not be liable for the default or misconduct of such agents or attorneys if such agents or attorneys shall have been selected by the Delaware Trustee in good faith and (B) may consult with counsel, accountants and other skilled persons to be selected in good faith and employed by it, and it shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons; and

(i) In accepting and performing its duties hereunder the Delaware Trustee acts solely as trustee hereunder and not in its individual capacity, and all persons having any claim against the Delaware Trustee or the Liquidation Trust by reason of the transactions contemplated by this Liquidation Trust Agreement shall look only to the Liquidation Trust Assets for payment or satisfaction thereof.

11.3 Compensation and Expenses of Delaware Trustee. The Delaware Trustee shall be entitled to receive compensation as agreed to by the Debtors and the Committee and after the Effective Date, the Liquidation Trustee.

ARTICLE XII

MISCELLANEOUS PROVISIONS

12.1 Amendments.

(a) This Liquidation Trust Agreement may only be modified, supplemented or amended by the Liquidation Trust or the Liquidation Trustee in a written, acknowledged instrument: (i) to cure any ambiguity, omission, defect or inconsistency in this Liquidation Trust Agreement; provided that such amendments, supplements or waivers shall not contravene or otherwise be inconsistent with the terms of the Plan, and the Confirmation Order, adversely affect the distributions to be made or other rights under this Liquidation Trust Agreement to any of the Liquidation Trust Beneficiaries, or adversely affect the U.S. federal income tax status of the Liquidation Trust as a "Liquidation Trust"; (ii) to comply with any requirements in connection with the U.S. federal income tax status of the Liquidation Trust as a "Liquidation Trust"; (iii) to comply with any requirements in connection with maintaining that the Liquidation Trust is not subject to registration or reporting requirements of the Exchange Act or the Investment Company Act; and (iv) to evidence and provide for the acceptance of appointment hereunder by a successor trustee in accordance with the terms of this Liquidation Trust Agreement.

(b) Any substantive provision of this Liquidation Trust Agreement may be amended or waived by the Liquidation Trust, with the approval of the Bankruptcy Court upon notice by the Liquidation Trustee and an opportunity for a hearing; provided, however, that no change may be made to this Liquidation Trust Agreement that contravenes or is otherwise inconsistent with the terms of the Plan or the Confirmation Order.

12.2 Waiver. No failure by the Liquidation Trust or the Liquidation 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.

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

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

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

(a) On the Effective Date or as soon thereafter as is reasonably practicable, all books and records of the Debtors, to the extent they exist and are in the Debtors' possession, including, without limitation, all books and records relating to the administration of the Estates, the Liquidation Trust, all Claims against the Debtors and the Liquidation Trust and all Causes of Action, shall be transferred or deemed assigned to the Liquidation Trust. 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. Except as set forth in the Plan and Confirmation Order, the Liquidation Trust shall maintain such books and records until five years from the filing of the Debtors' final tax returns. Thereafter, said records may be destroyed or otherwise disposed of, except as otherwise set forth in the Confirmation Order. If the Liquidation Trust seeks to destroy or otherwise dispose of any records of the Debtors' Estates prior to the time periods set forth herein, the Liquidation Trust shall be entitled to do so upon Order of the Bankruptcy Court obtained on motion by the Liquidation Trustee on 20 days negative notice to then current Bankruptcy Rule 2002 service list.

(b) Any documents or communications (whether written or oral, and including confidential information) transferred by the Debtors or the Committee to the Liquidation Trust shall vest, including all rights and privileges, including the attorney-client and work product privileges, related thereto, in the Liquidation Trust and its representatives, and the Debtors, the Committee, and the Liquidation Trustee are authorized to take all necessary actions to effectuate the transfer of such privileges. After the Effective Date, no person other than the Liquidation Trustee on behalf of the Liquidation Trust shall have the right to assert or waive any

privilege of the Debtors or to make any admission or statement against interest respecting the Debtors.

12.6 Irrevocability. This Liquidation Trust Agreement and the Liquidation Trust created hereunder shall be irrevocable and may not be amended except as expressly provided in Section 11.1 of this Liquidation Trust Agreement.

12.7 Tax Identification Numbers. The Liquidation Trust may require any Liquidation Trust Beneficiary to furnish to the Liquidation Trustee its social security number or employer or taxpayer identification number as assigned by the IRS and the Liquidation Trust may condition any distribution to any Liquidation Trust Beneficiary upon the receipt of such identification number.

12.8 Relationship to the Plan. The principal purpose of this Liquidation Trust Agreement is to aid in the implementation of the Plan and, therefore, this Liquidation Trust Agreement incorporates and is subject to the provisions of the Plan and the Confirmation Order. In the event that any provision of this Liquidation Trust 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, as applicable, shall control.

12.9 Governing Law. This Liquidation Trust Agreement is made in the State of Delaware, and Liquidation Trust and this Liquidation Trust Agreement, and the rights and obligations of the Liquidation Trust and the Liquidation Trustee are to be governed by and construed and administered according to the laws of the State of Delaware, *provided, however*, that, except as expressly provided in this Liquidation Trust Agreement, there shall not be applicable to the Liquidation Trust, the Liquidation Trustee or this Liquidation Trust Agreement, any provisions of the laws (statutory or common) of the State of Delaware, other than the Delaware Act, pertaining to trusts which relate to or regulate, in a manner inconsistent with the terms hereof (i) the filing with any court or governmental body or agency of trustee accounts or schedules of trustee fees and charges, (ii) affirmative requirements to post bonds for trustees, officers, agents, or employees of a trust, (iii) the necessity for obtaining court or other governmental approval concerning the acquisition, holding or disposition of real or personal property, (iv) fees or other sums payable to trustees, officers, agents, or employees of a trust, (v) the allocation of receipts and expenditures to income and principal, (vi) restrictions or limitations on the permissible nature, amount or concentration of trust investments or requirements relating to the titling, storage or other manner of holding or investing trust assets, or (vii) the establishment of fiduciary or other standards or responsibilities or limitations on the acts or powers of trustees, which are inconsistent with the limitations or liabilities or authorities and powers of the Liquidation Trustee set forth or referenced in this Liquidation Trust Agreement. Each party hereto, including any Successor Liquidation Trustee, hereby irrevocably consents to the exclusive jurisdiction of the Bankruptcy Court or, if the Bankruptcy Court refuses such jurisdiction, to the non-exclusive jurisdiction of the courts of the State of Delaware, sitting in New Castle County and having proper subject matter jurisdiction, or the Federal District Court for the District of Delaware, for all purposes in connection with any action or proceeding that

arises out of or relates to this Liquidation Trust Agreement (the "Proceedings") and hereby agrees that service of summons, complaint or other process in connection with any Proceedings may be made pursuant to the notice provisions of Section 11.11 of this Liquidation Trust Agreement, and that service so made shall be as effective as if personally made in the State of Delaware. Nothing herein shall affect the right of either party hereto to serve legal process in any manner permitted by law.

12.10 Retention of Jurisdiction. Notwithstanding any other provision of this Liquidation Trust Agreement, and to the fullest extent permitted by law, the Bankruptcy Court shall retain ~~exclusive~~ jurisdiction over the Liquidation 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 Liquidation Trust, including, without limitation, this Liquidation Trust Agreement, or any entity's obligations incurred in connection herewith, including without limitation, any action against the Liquidation Trust, the Liquidation Trustee or any professional retained by the Liquidation Trustee or the Liquidation Trust, in each case in its capacity as such. Each party to this Liquidation Trust Agreement hereby irrevocably consents to the exclusive jurisdiction of the Bankruptcy Court in any action to enforce, interpret or construe any provision of this Liquidation Trust Agreement or of any other agreement or document delivered in connection with this Liquidation Trust Agreement, and also hereby irrevocably waives any defense of improper venue, forum non conveniens or lack of personal jurisdiction to any such action brought in the Bankruptcy Court. Each party further irrevocably agrees that (i) any action to enforce, interpret or construe any provision of this Liquidation Trust 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 12.13 of this Liquidation Trust 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 Liquidation Trust 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 LIQUIDATION TRUST AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

12.11 Severability. In the event that any provision of this Liquidation Trust 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 remainder of this Liquidation Trust 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 Liquidation Trust Agreement shall be valid and enforced to the fullest extent permitted by law.

12.12 Limitation of Benefits. Except as otherwise specifically provided in this Liquidation Trust 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 Liquidation Trust Beneficiaries any rights or remedies under or by reason of this Liquidation Trust Agreement.

12.13 Notices. All notices, requests, demands, consents and other communication hereunder shall be in writing and shall be deemed to have been given (a) at the time of actual delivery thereof, (b) 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 (c) if given by overnight courier, the next business day after being sent, charges prepaid and properly addressed:

If to the Debtors:

Fulcrum BioEnergy, Inc.
P.O. Box 220
Pleasanton, CA 94566
Attn: Rick Barraza

with a copy to:

Morris, Nichols, Arsht & Tunnell LLP
1201 N. Market St., 16th Floor
Wilmington, Delaware 19801
Attn: Curtis S. Miller
Ph: 302-658-9200

If to the Liquidation Trustee:

Wilmington Savings Fund Society, FSB
500 Delaware Avenue,
Wilmington, Delaware 19801
Attn: Patrick Healy
Ph: 302-888-7420

With a copy to:

Eversheds Sutherland (US) LLP
999 Peachtree Street, NE
Atlanta, GA 30309
Attn: Todd C. Meyers
Ph: 404-868-6645

-and

Eversheds Sutherland (US) LLP
1114 Avenue of the Americas, 40th Floor
New York, NY 10036
Attn: Jennifer B. Kimble
Ph: 212-301-6598

Any notice or other communication hereunder shall be in writing and shall be deemed to have been sufficiently given to a Liquidation Trust Beneficiary, for all purposes, if deposited, postage prepaid, in a post office or letter box addressed to the person or entity for whom such notice is intended, or via electronic mail, to the name and address (1) set forth in the underlying Proof of Claim, if filed, (2) set forth on the Debtors' Schedules, if no Proof of Claim is filed, or (3) pursuant to a written change of address delivered in accordance with the provisions of this Agreement.

The Parties may designate in writing from time to time other and additional places to which notices may be sent.

12.14 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 Liquidation Trust Agreement, and to consummate the transactions contemplated hereby.

12.15 Integration. This Liquidation Trust Agreement, the Plan and the Confirmation Order constitute the entire agreement with, by and among the Parties thereto, and there are no representations, warranties, covenants or obligations except as set forth herein, in the Plan and in the Confirmation Order. Except as provided in this Liquidation Trust Agreement, the Plan or the Confirmation Order, this Liquidation Trust 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 in this Liquidation Trust Agreement, the Plan or the Confirmation Order, nothing herein is intended or shall be construed to confer upon or give any person other than the Parties hereto and the Liquidation Trust Beneficiaries any rights or remedies under or by reason of this Liquidation Trust Agreement.

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

12.17 Interpretation. The enumeration and Section headings contained in this Liquidation Trust Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Liquidation Trust Agreement or of any term or provision hereof. Unless context otherwise requires, whenever used in this Liquidation Trust 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 Liquidation Trust Agreement as a whole and not to any particular Section or subsection hereof unless the context requires otherwise.

12.18 Counterparts. This Liquidation Trust 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 Liquidation 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.

DEBTORS:

Fulcrum BioEnergy, Inc.

By:_____
Name: Mark J. Smith
Title: Chief Restructuring Officer

LIQUIDATION TRUSTEE:

Wilmington Savings Fund Society, FSB, not in its individual capacity but solely as Liquidation Trustee of the Fulcrum Liquidation Trust

By:_____
Name: Patrick Healy
Title: Senior Vice President & Director, Global Capital Markets