

**FINAL PLAN SUPPLEMENT
EXHIBIT E**

FINAL LIQUIDATION TRUST AGREEMENT

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KHI LIQUIDATION TRUST AGREEMENT

KHI LIQUIDATION TRUST AGREEMENT, dated as of March 23, 2009 (this "Agreement"), by and among KIMBALL HILL, INC. and each of its subsidiaries a party hereto, in their capacities as debtors and debtors in possession and on behalf of themselves and their respective chapter 11 estates (each a "Debtor" and, collectively, the "Debtors"), as settlors, and U.S. Bank National Association, as trustee of the Liquidation Trust referred to herein (in such capacity, the "Liquidation Trust Administrator"). Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Joint Plan of Kimball Hill, Inc. and its Debtor Subsidiaries Pursuant to Chapter 11 of the United States Code, dated December 2, 2008 (as amended and supplemented from time to time, the "Plan").

Background

A. On April 23, 2008, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court;

B. On or about March 12, 2009, the Bankruptcy Court entered an order (the "Confirmation Order") confirming the Plan;

C. The Plan provides that, on the Effective Date, among other things, (a) the Debtors shall grant, assign, transfer, convey and deliver all of their right, title, and interest in the Liquidation Trust Assets, listed, without limitation, on Annex A hereto, to the Liquidation Trust; (b) the Post-Consummation Trust will make the Committee Settlement Payment to the Liquidation Trust on behalf, and for the benefit, of the Holders of Liquidation Trust Series B Interests and Class C-3 Claims to be distributed in accordance with this Agreement, the Plan and the Confirmation Order; and (c) the Liquidation Trust will pay \$10 million on account of the Diminution Claim to the Post-Consummation Trust on behalf, and for the benefit, of the Post-Consummation Trust Beneficiaries, the proceeds of which shall be distributed solely to the Post-Consummation Trust Beneficiaries in accordance with the Post-Consummation Trust Agreement, the Plan and the Confirmation Order.

D. The Liquidation Trust is being created pursuant to this Agreement for the purposes of, among other things, liquidating the Liquidation Trust Assets, collecting the Committee Settlement Payment, implementing the Plan and the Confirmation Order, and distributing the Cash proceeds thereof to the Liquidation Trust Beneficiaries, as described in Articles III.B.6 and VII of the Plan; and

E. The Liquidation Trust Administrator shall have all powers necessary to implement the provisions of this Agreement and administer the Liquidation Trust, including, without limitation, the power to: (i) prosecute for the benefit of the Liquidation Trust Beneficiaries any Causes of Action that may from time to time be held by the Liquidation Trust; (ii) preserve, maintain and liquidate the Liquidation Trust Assets; (iii) distribute the proceeds of the Liquidation Trust Assets and the Committee Settlement Payment in accordance with this Agreement, the Plan and the Confirmation Order; (iv) object to certain creditors' claims; and (v) otherwise perform the functions and take the actions provided for or permitted in the Plan, the Confirmation Order, this Agreement or in any other agreement executed pursuant to and

consistent with the Plan, in each case subject to, among other things, the provisions of Section 6.3 and Section 6.4 of this Agreement regarding the Liquidation Trust Committee.

Agreement

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the Debtors and the Liquidation Trust Administrator agree as follows:

ARTICLE I DECLARATION OF TRUST

1.1 Creation of Trust. The Debtors and the Liquidation Trust Administrator, pursuant to the Plan and the Confirmation Order and in accordance with the applicable provisions of chapter 11 of the Bankruptcy Code, hereby constitute and create the Liquidation Trust, which shall bear the name "KHI Liquidation Trust." In connection with the exercise of the Liquidation Trust Administrator's power hereunder, the Liquidation Trust Administrator may use this name or such variation thereof as the Liquidation Trust Administrator sees fit.

1.2 Purpose of Trust. The purpose of this Agreement is to implement Articles III.B.6, VII, and XI of the Plan on behalf, and for the benefit, of the Liquidation Trust Beneficiaries, and to serve as a mechanism for liquidating and converting to Cash the Liquidation Trust Assets and distributing the Trust Proceeds (as defined herein) to, or utilizing the Trust Proceeds for the benefit of, the Liquidation Trust Beneficiaries.

1.3 Transfer of Liquidation Trust Assets.

(a) In partial satisfaction (in addition to the other distributions provided for under the Plan and the conveyances to the Post-Consummation Trust under the Plan which, together with the transfers contemplated hereby, shall constitute full satisfaction) of all Allowed Senior Unsecured Claims, Allowed General Unsecured Claims, and Allowed Senior Credit Agreement Claims (solely to the extent of the deficiency claims), the Debtors hereby transfer as of the Effective Date, for the sole benefit of the Liquidation Trust Beneficiaries, pursuant to section 1123(a)(5)(B) of the Bankruptcy Code and in accordance with the Plan and the Confirmation Order, the Liquidation Trust Assets and the Liquidation Trust Claims to the Liquidation Trust, free and clear of any and all liens, claims, encumbrances and interests (legal, beneficial or otherwise) of all other entities to the maximum extent contemplated by and permissible under section 1141(c) of the Bankruptcy Code; provided that the transfer of certain Liquidation Trust Assets shall be effected in accordance with Section 1.3(e) of this Agreement. Nothing in this Agreement is intended to, or shall be construed to, effect a release, extinguishment or compromise of any claim or Cause of Action transferred to the Liquidation Trust pursuant to the Plan or this Agreement or to the Post-Consummation Trust pursuant to the Plan or the Post-Consummation Trust Agreement. The term "Liquidation Trust Assets" means the assets listed in Annex A, attached hereto, the Committee Settlement Payment proceeds, and any Causes of Action not transferred to the Post-Consummation Trust pursuant to Section 1.3(e) of this Agreement. The earnings, products, and proceeds, including without limitation interest, of the Liquidation Trust Assets and of any other property held from time to time by the Liquidation Trust under this Agreement shall be referred to herein as the "Trust Proceeds." The

Liquidation Trust Assets are to be held, and, the Trust Proceeds distributed, by the Liquidation Trust Administrator in accordance with the terms hereof for the benefit of the Liquidation Trust Beneficiaries, and for no other party, subject to the further covenants, conditions and terms hereinafter set forth.

(b) To the extent any assets of the Debtors ("Assets") cannot be transferred to the Liquidation Trust because of a restriction on transferability under applicable nonbankruptcy law that is not superseded by section 1123 or any other provision of the Bankruptcy Code, such Assets shall be retained by the applicable Debtors and Estates. The proceeds of any such Asset retained by the Debtors and the Estates shall be allocated to the trust that would have received such Asset on the Effective Date pursuant to the Plan had such transfer not been restricted under applicable nonbankruptcy law. The Liquidation Trust Administrator may commence an action in the Bankruptcy Court to resolve any dispute regarding (i) the allocation among the Post-Consummation Trust and the Liquidation Trust of the proceeds of any Assets retained by the Debtors and the Estates or (ii) as to which trust any specific Asset should be allocated, in each case pursuant to the Plan and Confirmation Order. To the extent necessary or appropriate, the Liquidation Trust Administrator may be designated as a representative of one or more of the Estates pursuant to section 1123(b)(3)(B) of the Bankruptcy Code to enforce or pursue any rights, claims or Causes of Action that remain property of the Estates after the Effective Date.

(c) For all federal, state and local income tax purposes, each Holder of an Allowed General Unsecured Claim, Allowed Senior Unsecured Claim, or Allowed Senior Credit Agreement Claim (solely to the extent of its deficiency claim) shall be treated as transferring such Allowed Claim to the Debtors in exchange for such Holder's Pro Rata share of the Liquidation Trust Assets (subject to the liabilities of the Debtors assumed by the Liquidation Trust), in addition to other distributions to which the Holder is entitled under the Plan, and then as transferring such Holder's Pro Rata share of the Liquidation Trust Assets to the Liquidation Trust in exchange for such Holder's Pro Rata share of the interests in the Liquidation Trust in accordance with the terms of this Agreement (also sometimes referred to herein as "Beneficial Interests").

(d) The Debtors, the Liquidation Trust Administrator and the Liquidation Trust Beneficiaries shall each value the Liquidation Trust Assets and assumed liabilities consistently for federal and other income tax purposes. After the Effective Date, the Liquidation Trust Administrator, in reliance upon such professionals as the Liquidation Trust Administrator may retain, shall make a good faith valuation of the Liquidation Trust Assets. Such valuation shall be made available from time to time, to the extent necessary or appropriate as reasonably determined by the Liquidation Trust Administrator in reliance on its professionals or as directed by the Liquidation Trust Committee (which may include posting such valuation on a website established by the Liquidation Trust), and used consistently by all parties (including, without limitation, the Debtors, the Liquidation Trust Administrator and the Liquidation Trust Beneficiaries) for federal and other income tax purposes.

(e) Except to the extent otherwise provided in the Plan, all Causes of Action shall be transferred to the Liquidation Trust, provided that upon the occurrence of a Trust Cause of Action Allocation Event with respect to any Cause of Action, the Liquidation Trust shall transfer such Cause of Action to the Post-Consummation Trust. Not more than once per month,

the Liquidation Trust Administrator shall provide the Post-Consummation Trust Committee with a written notice reasonably acceptable to the Post-Consummation Trust Committee that summarizes the Causes of Action that the Liquidation Trust intends to prosecute (the “Notice”), which Notice shall include, without limitation, the name of the proposed defendant, the proposed relief to be sought, the legal and factual basis of the Causes of Action, and the relationship between the Debtors and the defendant(s). The Post-Consummation Trust Committee shall have 15 days to review the Notice (the “Review Period”) in order to (a) determine (i) whether the Cause of Action is one that belongs to the Post-Consummation Trust pursuant to the terms of the Plan or (ii) whether the Post Consummation Trust Committee believes that any such Causes of Action will have a direct adverse effect on any Post-Consummation Trust Asset (an “Ownership/Adverse Impact Determination”) and (b) provide the Liquidation Trust Administrator with written notice of such Ownership/Adverse Impact Determination. The Liquidation Trust Administrator shall have twenty (20) days from receipt of the Ownership/Adverse Impact Determination (the “Dispute Period”) to dispute such Ownership/Adverse Impact Determination in writing and file a motion with the Bankruptcy Court (a “Dispute”) seeking to resolve such dispute. The term “Trust Cause of Action Allocation Event” refers, with respect to each Cause of Action, to (i) the end of the Dispute Period in the event that the Liquidation Trust Administrator does not raise a Dispute; (ii) if the Liquidation Trust Administrator raises a Dispute prior to the end of the Dispute Period, to any determination by the Bankruptcy Court that a Cause of Action will have a direct adverse impact on a Post-Consummation Trust Asset; or (iii) if the Liquidation Trust Administrator raises a Dispute prior to the end of the Dispute Period, to any determination by the Bankruptcy Court or an agreement of the parties that ownership of a Cause of Action should be transferred to the Post-Consummation Trust.

(f) In accordance with determinations made prior to the Effective Date by the Debtors in consultation with the Prepetition Agent and the Creditors’ Committee pursuant to the Plan or the Confirmation Order, the transfer of certain of the Liquidation Trust Assets to the Liquidation Trust may be effectuated by transferring to the Liquidation Trust the stock or other equity interests of one or more corporations or other entities that own such Liquidation Trust Assets. Each such entity may be a Debtor or an entity into which such Liquidation Trust Assets have been transferred, directly or indirectly, by a Debtor.

1.4 Liquidation of Liquidation Trust Assets. The Liquidation Trust Administrator shall, in an expeditious but orderly manner and subject to the other provisions of the Plan and this Agreement, liquidate and convert to Cash the Liquidation Trust Assets, make timely distributions of the Trust Proceeds in accordance with the terms hereof, and not unduly prolong the existence of the Liquidation Trust. The Liquidation Trust Administrator shall exercise reasonable business judgment and liquidate the Liquidation Trust Assets to maximize net recoveries; provided that the Liquidation Trust Administrator shall be entitled to take into consideration the risks and timing of potential dispositions and the costs of carrying assets in making determinations as to the maximization of recoveries. Such liquidations may be accomplished either through the sale or other disposition of the Liquidation Trust Assets (in whole or in combination, and including the sale of any claims, rights or Causes of Action), or through the prosecution, compromise and settlement, abandonment or dismissal of any or all claims, rights or Causes of Action or otherwise. Pursuant to an agreed upon budget in accordance with Section 4.4 of this Agreement, the Liquidation Trust Administrator may incur

any reasonable and necessary expenses in connection with the liquidation and conversion of the Liquidation Trust Assets into Cash.

1.5 Appointment and Acceptance of Liquidation Trust Administrator. The Liquidation Trust Administrator shall be deemed to be appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code. The Liquidation Trust Administrator accepts the Liquidation Trust created by this Agreement and the grant, assignment, transfer, conveyance and delivery to the Liquidation Trust Administrator, on behalf, and for the benefit, of the Liquidation Trust Beneficiaries, by the Debtors of all of the Liquidation Trust Assets, upon and subject to the terms and conditions set forth herein, in the Plan and in the Confirmation Order.

1.6 No Reversion to Debtors. Subject to Section 1.3(b) of this Agreement, in no event shall any part of the Liquidation Trust Assets or the Trust Proceeds revert to or be distributed to any of the Debtors or, in the case of the Committee Settlement Payment, to the Post-Consummation Trust.

1.7 Incidents of Ownership. The Liquidation Trust Beneficiaries shall be the sole beneficiaries of the Liquidation Trust, the Liquidation Trust Assets, and the Trust Proceeds, and the Liquidation Trust Administrator shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein, in the Plan and in the Confirmation Order, including, but not limited to, those powers set forth in Section 6.1 of this Agreement.

1.8 Payment of the Diminution Claim. The Liquidation Trust is obligated under the Plan to make a payment in the amount of \$10 million on the Effective Date to the Post-Consummation Trust in satisfaction of the Diminution Claim. The Post-Consummation Trust is obligated under the Plan to make the Committee Settlement Payment of \$6 million to the Liquidation Trust. The Liquidation Trust Administrator shall enforce the Liquidation Trust's rights with respect to the Committee Settlement Payment and is authorized and directed to make a payment from the Trust Proceeds to the Post-Consummation Trust in satisfaction of the Diminution Claim on the Effective Date as required by Article IV.B.1 of the Plan. The Diminution Claim payment and the Committee Settlement Payment may be satisfied by means of a net \$4 million payment from the Liquidation Trust to the Post-Consummation Trust in satisfaction of both the Diminution Claim and the Committee Settlement Payment.

1.9 Payment to Holders of Allowed Unsecured Senior Subordinated Note Claims. The Liquidation Trust Administrator is authorized and directed to use Trust Proceeds to pay \$2.1 million to Holders of Allowed Unsecured Senior Subordinated Note Claims pursuant to Article III.B.7.c of the Plan; provided, however, that no Holder of an Allowed Unsecured Senior Subordinated Claim shall have title to, right to, possession of, management of, control of, or any other interest in the Liquidation Trust, the Liquidation Trust Assets, or the Trust Proceeds, including but not limited to the Committee Settlement Payment proceeds, nor shall any Holder of an Allowed Unsecured Senior Subordinated Claim be deemed as a result of such claim to be a Liquidation Trust Beneficiary.

ARTICLE II
LIQUIDATION TRUST BENEFICIARIES

2.1 **Conflicting Claims.** If any conflicting claims or demands are made or asserted with respect to a Beneficial Interest, the Liquidation Trust Administrator shall be entitled, at its sole election, to refuse to comply with any such conflicting claims or demands. In so refusing, the Liquidation Trust Administrator may elect to make no payment or distribution with respect to the Beneficial Interest represented by the claims or demands involved, or any part thereof, and the Liquidation Trust Administrator shall refer such conflicting claims or demands to the Bankruptcy Court, which shall have exclusive jurisdiction over resolution of such conflicting claims or demands. In so doing, the Liquidation Trust Administrator shall not be or become liable to any party for its refusal to comply with any of such conflicting claims or demands. The Liquidation Trust Administrator shall be entitled to refuse to act until either (a) the rights of the adverse claimants have been adjudicated by a Final Order of the Bankruptcy Court or (b) all differences have been resolved by a written agreement among all of such parties and the Liquidation Trust Administrator, which agreement shall include a complete release of the Liquidation Trust and the Liquidation Trust Administrator (the occurrence of either (a) or (b) being referred to as a "Dispute Resolution" in this Section 2.1). Until a Dispute Resolution is reached with respect to such conflicting claims or demands, the Liquidation Trust Administrator shall hold in a segregated interest-bearing account with a United States financial institution any payments or distributions from the Liquidation Trust to be made with respect to the Beneficial Interest at issue. Promptly after a Dispute Resolution is reached, the Liquidation Trust Administrator shall transfer the payments and distributions, if any, held in the segregated account, together with any interest and income generated thereon, in accordance with the terms of such Dispute Resolution.

2.2 **Rights of Liquidation Trust Beneficiaries.** Each Liquidation Trust Beneficiary shall be entitled to participate in the rights and benefits due to a Liquidation Trust Beneficiary hereunder according to the terms of its Beneficial Interest. Each Liquidation Trust Beneficiary shall take and hold the same, subject to all the terms and conditions of this Agreement, the Plan and the Confirmation Order. The interest of a Liquidation Trust Beneficiary is hereby declared and shall be in all respects personal property. Except as expressly provided hereunder, a Liquidation Trust Beneficiary shall have no title to, right to, possession of, management of or control of the Liquidation Trust, the Liquidation Trust Assets, or the Trust Proceeds.

2.3 **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 the Trust Proceeds or to any right to call for a partition or division of such assets or to require an accounting, except as specifically provided herein.

2.4 **Evidence of Beneficial Interest.** Ownership of a Beneficial Interest in the Liquidation Trust 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 Trust Administrator (or any agent appointed by the Liquidation Trust Administrator for purposes of maintaining a record of the Liquidation Trust Beneficiaries and their respective Beneficial Interests in the Liquidation Trust). The Liquidation Trust Administrator shall, upon written request of a Holder of a Beneficial Interest, provide reasonably

adequate documentary evidence of such Holder's Beneficial Interest, as indicated in the books and records of the Liquidation Trust. The expense of providing such documentation shall be borne by the requesting Liquidation Trust Beneficiary.

2.5 Transfers of Beneficial Interests.

(a) The Beneficial Interests in the Liquidation Trust have not been registered pursuant to the Securities Act of 1933, as amended (the "Securities Act"), or any state securities law. To the extent that the Beneficial Interests constitute "securities," the parties hereto intend that the exemption provisions of section 1145 of the Bankruptcy Code shall apply to the issuance and distribution of the Beneficial Interests. The Beneficial Interests shall not be capable of being transferred, assigned, pledged or hypothecated, in whole or in part, unless the conditions set forth in Section 2.5(b) below are met. Any such transfer, assignment, pledge or hypothecation, however, will not be effective until and unless the Liquidation Trust Administrator receives written notice of such transfer, assignment, pledge or hypothecation, which notice must be in the form attached hereto as Annex C and be executed by the transferor and the transferee and must clearly identify the Beneficial Interest being transferred, assigned, pledged or hypothecated. The Liquidation Trust Administrator is entitled to rely upon such notice as definitive evidence of such transfer, assignment, pledge or hypothecation without additional investigation. Transfers of record made in accordance with this Section 2.5 shall be indicated on the books and records of the Liquidation Trust Administrator maintained for such purpose. Any transfer, assignment, pledge or hypothecation of a Beneficial Interest or any part thereof in violation of this Section 2.5 shall be void *ab initio*.

(b) Subject to the requirements of Section 2.5(d), no disposition for value of a Beneficial Interest, including but not limited to any transfer, assignment, pledge or hypothecation of a Beneficial Interest (a "Sale") or any part thereof may be effected until either (i) the Beneficial Interest or part thereof subject to such Sale is registered under the Securities Act or Section 12 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), as applicable, and any applicable state securities laws or (ii) the Liquidation Trust Administrator receives, not less than five Business Days prior to the proposed Sale, such legal opinions, certificates or other documents that the Liquidation Trust Administrator, in its reasonable discretion, deems necessary or appropriate to assure that such Sale is exempt from registration under such laws and that the Liquidation Trust shall not be required to file reports with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Exchange Act on account of such Sale. Notwithstanding anything to the contrary contained in this Section 2.5, no Sale of a Beneficial Interest or any part thereof that causes the Liquidation Trust to be required to file reports with the Securities and Exchange Commission pursuant to Sections 13 or 15(d) of the Exchange Act shall be permitted and any such Sale shall be void *ab initio*. Further, no Holder of a Liquidation Trust Series A Interest may transfer, assign, pledge, or hypothecate any portion of such interest to another party unless such Holder also transfers, assigns, pledges, or hypothecates the same *pro rata* share of its interest in the Post-Consummation Trust to the same party. Any transfer, assignment, pledge or hypothecation of any Liquidation Trust Series A Interest in violation of this section shall be void *ab initio*.

(c) Subject to the requirements of Section 2.5(d) of this Agreement, with respect to any transfer, assignment, pledge or hypothecation of a Beneficial Interest where no

consideration is given (a "Transfer"), no Transfer of the Beneficial Interests in the Liquidation Trust shall be permitted, except as follows:

(i) to brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants of such Liquidation Trust Beneficiary;

(ii) any trust or estate in which such Liquidation Trust Beneficiary holds more than a 50% interest of the beneficial interests (excluding contingent interests);

(iii) any corporation, partnership, or other organization in which such Liquidation Trust Beneficiary is the beneficial owner of more than 50% of the equity securities (excluding directors' qualifying shares) so long as the Liquidation Trust Beneficiary and the transferee certify that there is no current intention of changing the direct and indirect ownership of the transferee;

(iv) any person or entity that holds directly or indirectly more than 50% of the voting securities of such Liquidation Trust Beneficiary; or

(v) pursuant to the terms of a will or under the laws of descent and distribution.

The parties intend for each Transfer enumerated in clause (i) through (v) above to meet the requirements for "transfers not involving trading" pursuant to Treasury Regulation Section 1.7704-1(e). Accordingly, no Transfer under clause (i) through (iv) shall be valid unless the basis of the Beneficial Interests in the hands of the transferee is determined, in whole or in part, by reference to its basis in the hands of the transferor or is determined under section 732 of the Internal Revenue Code of 1986, as amended (the "Tax Code"). In addition, no Transfer pursuant to clause (i) through (v) above shall be effective until and unless the Liquidation Trust Administrator receives prior written notice thereof and the requirements of this Section 2.5 are satisfied. Any Transfer pursuant to clause (i) through (v) above of a Beneficial Interest in violation of this Section 2.5 shall be void *ab initio*.

(d) No Sale pursuant to Section 2.5(b) of this Agreement nor Transfer pursuant to Section 2.5(c) of this Agreement shall be permitted if such Sale or Transfer, as applicable: (x) poses a real risk of rendering the Liquidation Trust a taxable entity for U.S. federal income tax purposes, including, without limitation, being treated as a "publicly traded partnership" as defined in Section 7704(b) of the Tax Code if the Liquidation Trust were a partnership for federal income tax purposes; (y) poses a real risk that the Liquidation Trust will be required to register under the Investment Company Act of 1940 or the Exchange Act; or (z) except pursuant to Section 2.5(b)(i) of this Agreement, is not exempt from the registration requirements of the Securities Act.

(e) The Holder effecting a Sale or Transfer of a Beneficial Interest or any part thereof shall pay the Liquidation Trust an assignment fee of \$1,500 on or before the date ten days after the Sale or Transfer is consummated. If payment is not made by the date due, the person owing that amount shall pay interest on the unpaid amount from the date due until paid at a rate

per annum equal to 10%, plus any costs, including attorneys' fees, incurred in the collection of such amount.

2.6 Limited Liability. No provision of this Agreement, the Plan or the Confirmation Order, and no mere enumeration herein of the rights or privileges of any Beneficial Interest Holder, shall give rise to any liability of such Beneficial Interest Holder solely in its capacity as such, whether such liability is asserted by the Debtors, by creditors or employees of the Debtors, or by any other Person. Beneficial Interest Holders are deemed to receive the Trust Proceeds in accordance with the provisions of this Agreement, the Plan and the Confirmation Order in exchange for their Allowed Senior Unsecured Claims, Allowed General Unsecured Claims, and Allowed Senior Credit Agreement Claims (solely to the extent of their deficiency claims) without further obligation or liability of any kind, but subject to the provisions of this Agreement.

ARTICLE III **DURATION AND TERMINATION OF TRUST**

3.1 Duration. The Liquidation Trust shall become effective upon the Effective Date and shall remain and continue in full force and effect until terminated as provided herein. The Liquidation Trust shall terminate upon the occurrence of the earlier of (a) the full liquidation and administration of the Liquidation Trust Assets and the administration and distribution of the Trust Proceeds in accordance with the Plan, the Confirmation Order and this Agreement and the full performance of all other duties and functions of the Liquidation Trust Administrator set forth in the Plan, the Confirmation Order and this Agreement or (b) the third anniversary of the Effective Date, subject to one or more finite extensions, which must be approved by the Bankruptcy Court pursuant to the terms set forth in the Plan within six months prior to the then-current termination date and provided that the Liquidation Trust Administrator receives an opinion of counsel or a favorable ruling from the Internal Revenue Service to the effect that any such extension would not adversely affect the status of the Liquidation Trust as a grantor trust for federal income tax purposes. Notwithstanding anything to the contrary in this Agreement, in no event shall the Liquidation Trust Administrator unduly prolong the duration of the Liquidation Trust, and the Liquidation Trust Administrator shall, in the exercise of its reasonable business judgment and in the interests of the Liquidation Trust Beneficiaries, at all times endeavor to (i) liquidate the Liquidation Trust Assets to maximize net recoveries and (ii) otherwise terminate the Liquidation Trust as soon as practicable in accordance with this Agreement.

3.2 Continuance of Trust for Winding Up. After the termination of the Liquidation Trust and solely for the purpose of liquidating and winding up the affairs of the Liquidation Trust, the Liquidation Trust Administrator shall continue to act as such until its duties have been fully performed. Upon distribution of all the Trust Proceeds, the Liquidation Trust Administrator shall retain the books, records and files that shall have been delivered to or created by the Liquidation Trust Administrator. At the Liquidation Trust Administrator's discretion, all of such records and documents may be destroyed at any time following the date that is six years after the final distribution of Trust Proceeds (unless such records and documents are necessary to fulfill the Liquidation Trust Administrator's obligations pursuant to Sections 4.7(a) and 6.1 of this Agreement). Except as otherwise specifically provided herein, upon the final distribution of Trust Proceeds, the Liquidation Trust Administrator shall be deemed discharged and have no

further duties or obligations hereunder, except to account to the Liquidation Trust Beneficiaries as provided in Section 4.4 of this Agreement and as may be imposed on the Liquidation Trust Administrator by virtue of Section 6.1 of this Agreement hereof, and the Liquidation Trust will be deemed to have been dissolved.

ARTICLE IV **ADMINISTRATION OF TRUST**

4.1 Payment of Claims, Expenses and Liabilities. Subject to the budget agreed upon by the Liquidation Trust Committee in accordance with Section 4.4 of this Agreement, the Liquidation Trust Administrator shall expend the Cash of the Liquidation Trust: (a) to pay reasonable and documented administrative expenses of the Liquidation Trust that are incurred (including, but not limited to, any taxes imposed on the Liquidation Trust or fees and expenses in connection with the administration and liquidation of the Liquidation Trust Assets and preservation of books and records as provided in Section 3.2 of this Agreement); (b) to satisfy other obligations or other liabilities incurred or assumed by the Liquidation Trust (or to which the Liquidation Trust Assets are otherwise subject) in accordance with the Plan, including but not limited to Article IV.C.3 of the Plan, the Confirmation Order or this Agreement (it being understood that the Liquidation Trust has not assumed any obligations or liabilities of the Debtors except as expressly set forth in the Plan or the Confirmation Order), including fees and costs incurred in connection with the protection, preservation, and liquidation of the Liquidation Trust Assets and the protection, preservation, and distribution of the Trust Proceeds and reasonable, documented out-of-pocket expenses of members of the Liquidation Trust Committee; and (c) to satisfy any other obligations of the Liquidation Trust expressly set forth in the Plan.

4.2 Distributions.

(a) Generally. All distributions from the Liquidation Trust to the Holders of Beneficial Interests shall be made to the Liquidation Trust Beneficiaries in accordance with such Liquidation Trust Beneficiaries' respective Pro Rata shares of the total Beneficial Interests. Pursuant to Article III.B.1.c.iii and Article III.B.6.c.ii of the Plan, the Holders of Allowed Senior Credit Agreement Claims shall receive their allocable share of 100% of the Liquidation Trust Series A Interests, which is 64% of the aggregate Liquidation Trust Interests, and the Holders of Allowed Senior Unsecured Claims and Allowed General Unsecured Claims shall receive their allocable share of 100% of the Liquidation Trust Series B Interests, which is 36% of the aggregate Liquidation Trust Interests.

(b) Timing and Amount of Distributions. The Liquidation Trust Administrator shall make distributions of the Trust Proceeds Available for Distribution (as defined below) on each Quarterly Distribution Date (as defined below) and on such additional dates that the Liquidation Trust Administrator, in consultation with the Liquidation Trust Committee, determines are appropriate from time to time; provided, that the Liquidation Trust Administrator shall be entitled, with the consent of the Liquidation Trust Committee, to defer any such distribution to the next Quarterly Distribution Date if the Liquidation Trust Administrator determines that the amount of Trust Proceeds Available for Distribution at such time is insufficient to justify the cost of effecting the distribution. "Quarterly Distribution Date"

means the last Business Day of the month following the end of each calendar quarter after the Effective Date or as soon as reasonably practicable thereafter; provided, however, that if the Effective Date is less than 30 days prior to the end of a calendar quarter, the first Quarterly Distribution Date will be the last Business Day of the first month following the calendar quarter in which the Effective Date occurs. The Liquidation Trust Administrator shall establish a record date for any distributions of not less than 10 days nor more than 60 days prior to the proposed date of such distribution (the "Record Date").

(c) Trust Proceeds Available for Distribution. Notwithstanding anything in this Agreement to the contrary, the Liquidation Trust Administrator shall cause the Liquidation Trust at all times to retain sufficient funds (the "Expense Reserve") as the Liquidation Trust Administrator shall determine, in consultation with the Liquidation Trust Committee and subject to the budget agreed upon by the Liquidation Trust Committee in accordance with Section 4.4 of this Agreement, are reasonably necessary for the Liquidation Trust to: (i) meet contingent liabilities and maintain the value of the Liquidation Trust Assets during liquidation; (ii) make the payments and satisfy the obligations and liabilities described in Section 4.1 of this Agreement as and when they become due and owing; and (iii) fund any other amounts to the extent required under the Plan and as identified in the Liquidation Trust budget, including any unpaid Allowed Administrative Claims, Priority Non-Tax Claims, Priority Tax Claim, and wind-down expenses, but only to the extent required by the Plan, and fund the fees and expenses of the Liquidation Trust Administrator, the professionals retained by the Liquidation Trust Administrator (the "Plan Professionals") and the Liquidation Trust and the reasonable, documented out-of-pocket expenses of the Liquidation Trust Committee members. "Trust Proceeds Available for Distribution" shall be determined by the Liquidation Trust Administrator in advance of each Quarterly Distribution Date by subtracting the Expense Reserve from the then available Trust Proceeds. The Liquidation Trust Administrator shall distribute Trust Proceeds Available for Distribution to the Liquidation Trust Beneficiaries on a Pro Rata basis in proportion to their respective Beneficial Interests.

(d) Distribution of Trust Proceeds Upon Termination. Promptly following the termination of the Liquidation Trust, the Liquidation Trust Administrator shall distribute any amounts not yet distributed from the Liquidation Trust to the Liquidation Trust Beneficiaries in accordance with the terms of this Agreement, the Plan and the Confirmation Order.

(e) De Minimis Distributions. No distribution shall be made if the amount to be distributed to the specific Holder of a Beneficial Interest on the particular Quarterly Distribution Date does not constitute a final distribution to such Holder and is or has an economic value less than \$250.

(f) Fractional Distributions. Notwithstanding any other provision of the Plan to the contrary, the Liquidation Trust Administrator shall not be required to make distributions or payments of fractions of dollars. Whenever any payment of Cash of a fraction of a dollar would otherwise be required, the actual payment shall reflect a rounding of such fraction to the nearest whole dollar, with half dollars or less being rounded down.

(g) Location for Distributions; Notice of Change of Address. Distributions shall be made by the Liquidation Trust Administrator to Liquidation Trust Beneficiaries as of

each Record Date at the address listed in the Liquidation Trust Administrator's records or such other address as may be provided to the Liquidation Trust Administrator by such Liquidation Trust Beneficiary. Each Liquidation Trust Beneficiary shall be responsible for providing the Plan Administrator with timely written notice of any change in address. The Liquidation Trust Administrator is not obligated to make any effort to determine the correct address of any Liquidation Trust Beneficiary.

(h) Priority of Distribution of Trust Proceeds. Any Trust Proceeds Available for Distribution shall be applied: (a) first, to the fees, costs, expenses and liabilities of the Liquidation Trust and the Liquidation Trust Administrator, and the reasonable, documented out-of-pocket expenses of the Liquidation Trust Committee members as provided in Section 4.1 of this Agreement; (b) second, to such claims as are payable by the Liquidation Trust pursuant to the Plan and; (c) third, to distributions to Liquidation Trust Beneficiaries.

(i) Conflicts. In the event of any conflict or inconsistency between the provisions of Section 4.2 or Section 4.3 of this Agreement and the Plan or the Confirmation Order, the provisions of the Plan and the Confirmation Order shall control.

(j) Withholding Distributions of Trust Proceeds. The Liquidation Trust may withhold from amounts distributable to any entity any and all amounts, determined in the Liquidation Trust Administrator's sole discretion, to be required by the Plan or any law, regulation, rule, ruling, directive, or other governmental requirement.

4.3 Undeliverable Property.

(a) If any distribution of Trust Proceeds to a Liquidation Trust Beneficiary is returned to the Liquidation Trust Administrator as undeliverable, no further distribution to such Liquidation Trust Beneficiary shall be made unless and until the Liquidation Trust Administrator is notified in writing of such Liquidation Trust Beneficiary's then-current address. For purposes of this Agreement, undeliverable distributions shall include checks sent to a Liquidation Trust Beneficiary, respecting distributions to such Liquidation Trust Beneficiary, which checks have not been cashed within six months following the date of issuance of such checks. Undeliverable distributions shall remain in the possession of the Liquidation Trust Administrator until the Liquidation Trust Beneficiary provides the Liquidation Trust Administrator with written notice of the Liquidation Trust Beneficiary's then-current address. Upon the Liquidation Trust Administrator's timely receipt of the Liquidation Trust Beneficiary's then-current address, the undelivered distributions shall be made on the next Quarterly Distribution Date, subject to Section 4.3(b) of this Agreement.

(b) Any undeliverable distribution to a Liquidation Trust Beneficiary that is an Unclaimed Distribution for a period of six months after the distribution shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and such Unclaimed Distribution shall revert in the Liquidation Trust. In such cases, all title to and all Beneficial Interests in the funds represented by any such undeliverable distributions shall revert to or remain in the Liquidation Trust and shall be redistributed to the remaining Holders of Beneficial Interests in accordance with Section 4.2 of this Agreement. Upon such reversion, the Claim of any Holder or its successors with respect to such property shall be cancelled, discharged, and

forever barred notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary,

4.4 Reports.

(a) Notwithstanding anything to the contrary in the Plan, not later than ten (10) business days after the end of each month, the Liquidation Trust Administrator shall deliver a monthly report (a "Monthly Report") to members of the Liquidation Trust Committee detailing property sales during the previous month and projections regarding the sale of properties during the subsequent month. Each Monthly Report shall, without limitation, with respect to the sold property and the projected sold property: (i) identify the property; and (ii) provide the actual or projected sales proceeds, as applicable.

(b) Notwithstanding anything in the Plan to the contrary, the Liquidation Trust Administrator shall deliver (i) a quarterly report (a "Quarterly Report") to members of the Liquidation Trust Committee, not later than 15 days prior to each Quarterly Distribution Date, except for the final quarter of any fiscal year, (ii) an annual report (an "Annual Report") to members of the Liquidation Trust Committee, not later than 15 days prior to the Quarterly Distribution Date for the final quarter of any fiscal year, and (iii) a material event report (a "Material Event Report") promptly following the occurrence of any events sufficiently material to mandate the issuance of such a report. Each Quarterly Report, Annual Report, and Material Event Report, as applicable, shall specify in reasonable detail: (i) the status of the claims and other assets assigned to the Liquidation Trust; (ii) the fees and expenses of the Liquidation Trust, the Liquidation Trust Administrator and the Plan Professionals incurred and/or earned during such quarterly or annual period; (iii) the aggregate fees and expenses of the Liquidation Trust, the Liquidation Trust Administrator and the Plan Professionals incurred and/or earned since the date of this Agreement; (iv) the amount of Trust Proceeds received by the Liquidation Trust during the most recent calendar quarter or annual period; (v) the aggregate amount of Trust Proceeds received by the Liquidation Trust since the date of this Agreement; (vi) the calculation of the Trust Proceeds Available for Distribution for the next Quarterly Distribution Date, including the amounts of available Trust Proceeds and the Expense Reserve; (vii) the aggregate amount of distributions from the Liquidation Trust to Liquidation Trust Beneficiaries since the date of this Agreement; and (viii) such other information as the Liquidation Trust Committee may reasonably request from time to time. The Liquidation Trust Administrator shall also timely prepare, file and distribute such additional statements, reports and submissions (I) as may be necessary to cause the Liquidation Trust and the Liquidation Trust Administrator to be in compliance with applicable law or (II) as may be otherwise reasonably requested from time to time by the Liquidation Trust Committee.

(c) The Liquidation Trust Administrator shall prepare and submit to the Liquidation Trust Committee for approval an annual plan and budget at least 30 days prior to the commencement of each fiscal year of the Liquidation Trust, provided, however, that the first such report shall be submitted no later than 30 days after the Effective Date. Such annual plan and budget shall set forth in reasonable detail: (i) the Liquidation Trust Administrator's anticipated actions to administer and liquidate the Liquidation Trust Assets; and (ii) the anticipated expenses, including professional fees, associated with conducting the affairs of the Liquidation Trust. Such annual plan and budget shall be updated and submitted to the

Liquidation Trust Committee for review and approval on a quarterly basis, and each such quarterly update shall reflect the differences between the anticipated actions described in the annual report and actual operations of the Liquidation Trust to date. If the aggregate actual expenses for the semi-annual period ending June 30th of the year in question vary from the Operating Budget by more than fifteen percent (15%), the Liquidation Trust Administrator will also provide the Liquidation Trust Committee with the reasons for the variance and the Liquidation Trust Administrator and the Liquidation Trust Committee shall discuss whether and what adjustments are needed for subsequent periods. All actions by the Liquidation Trust Administrator must be reasonably consistent with the plan and budget, as updated on a quarterly basis and approved by the Liquidation Trust Committee.

(d) The Operating Budget shall provide that the Post-Consummation Trust shall pay 100% of (i) the cost of the fees and expenses of any professionals that it retains and of the Plan Administrator, and (ii) direct construction costs and land development costs associated with the Post-Consummation Trust Assets. The Operating Budget shall further provide that the Post-Consummation Trust shall pay 95% of all other expenses paid by the Post-Consummation Trust and the Liquidation Trust, excluding only (i) the cost of the fees and expenses of any professionals retained by the Liquidation Trust and of the Liquidation Trust Administrator, and (b) direct construction costs and land development costs associated with the Liquidation Trust Assets.

(e) The Operating Budget shall provide that the Liquidation Trust shall pay 100% of (i) the cost of the fees and expenses of any professionals that it retains and of the Liquidation Trust Administrator (excluding any incentive fee due and owing to the Liquidation Trust Administrator), and (ii) the direct construction costs and land development costs associated with the Liquidation Trust Assets. The Operating Budget shall further provide that the Liquidation Trust shall pay 5% of all other expenses paid by the Post-Consummation Trust and the Liquidation Trust, excluding only (i) direct construction costs and land development costs associated with the Post-Consummation Trust Assets, and (ii) the fees and expenses of the professionals retained by the Post-Consummation Trust and of the Plan Administrator. The Operating Budget shall also provide that any incentive fee due and payable to the Liquidation Trust Administrator shall be paid solely from the Trust Proceeds available for distribution to the holders of the Liquidation Trust Series B Interests.

(f) Notwithstanding anything to the contrary herein, the allocation of costs and expenses set forth in Sections 4.4(d) and 4.4(e) may not be amended or otherwise modified without the prior written consent of a majority of the representatives of Post-Consummation Committee and the Class B Representatives (as defined in the Liquidation Trust Agreement).

(g) The Liquidation Trust Administrator shall provide the Liquidation Trust Committee with such other information as may be reasonably requested from time to time or on a regular basis by the Liquidation Trust Committee.

4.5 Exchange Act. If the Liquidation Trust becomes subject to the registration requirements of the Exchange Act, the Liquidation Trust Administrator shall cause the Liquidation Trust to register pursuant to, and comply with, the applicable reporting requirements of the Exchange Act.