

4.6 Fiscal Year. Except for the first and last years of the Liquidation Trust, the fiscal year of the Liquidation Trust shall be the calendar year. For the first and last years of the Liquidation Trust, the fiscal year of the Liquidation Trust shall be such portion of the calendar year that the Liquidation Trust is in existence.

4.7 Books and Records. (a) The Liquidation Trust Administrator shall retain and preserve the Debtors' books, records and files relating to the Liquidation Trust that shall have been delivered to or created by the Liquidation Trust Administrator, including all such books, records and files as may be needed to investigate, prosecute and resolve all Causes of Action. The Liquidation Trust Administrator shall cooperate reasonably with the Post-Consummation Trust to make available to the Plan Administrator and the professionals for the Post-Consummation Trust for inspection and copying during normal business hours at no charge other than for copying books, records and files (or copies thereof) that are reasonably necessary or helpful in investigating, prosecuting and resolving the Causes of Action held by the Post-Consummation Trust.

(b) The Liquidation Trust Administrator shall maintain, in respect of the Liquidation Trust and the Holders of Beneficial Interests, books and records relating to the assets and the income of the Liquidation Trust and the payment of expenses of the Liquidation Trust and the Liquidation Trust Administrator, in such detail and for such period of time as may be necessary to enable it to make full and proper reports in respect thereof in accordance with the provisions of this Agreement and applicable provisions of law. The Liquidation Trust Administrator shall provide any member of the Liquidation Trust Committee or, at its expense, any other Liquidation Trust Beneficiary with access to such books and records during normal business hours as may be reasonably requested with advance notice.

4.8 Cash Payments. All distributions required to be made by the Liquidation Trust Administrator to the Holders of Beneficial Interests shall be made in Cash and shall be denominated in U.S. dollars by checks drawn on a domestic bank selected by the Liquidation Trust Administrator or, at the option of the Liquidation Trust Administrator, by wire transfer from a domestic bank selected by the Liquidation Trust Administrator; provided that Cash payments to foreign Holders of Beneficial Interests may be made, at the option of the Liquidation Trust Administrator, in such funds as and by such means as are necessary or customary in a particular foreign jurisdiction. All Cash of the Liquidation Trust shall be maintained in a United States financial institution.

4.9 Insurance. The Liquidation Trust shall maintain customary insurance coverage for the protection of the Liquidation Trust Administrator, the members of the Liquidation Trust Committee and any such other Persons serving as administrators and overseers of the Liquidation Trust on and after the Effective Date as the Liquidation Trust Administrator determines to be reasonably appropriate in consultation with the Liquidation Trust Committee.

4.10 Disputed Claims; Establishment of Disputed Claims Reserve. The Liquidation Trust Administrator shall have the right to cause the Liquidation Trust to object, in accordance with Article VI of the Plan and applicable law, to any Senior Unsecured Claim or General Unsecured Claim if and to the extent the Liquidation Trust Administrator believes that such Claim is not allowable, provided, that such objection shall have no direct adverse impact on any

Post-Consummation Trust Asset and; provided, further, that such right to cause the Liquidation Trust to object shall not extend to Claim Number 1657, which was allowed pursuant to Article III.B.1.c of the Plan. Notwithstanding anything to the contrary contained in this Agreement, no payments or distributions will be made from the Liquidation Trust on account of a Disputed Claim until such Claim becomes an Allowed Claim. Any amount that would have been paid or distributed on a Disputed Claim had it been an Allowed Claim shall be deposited by the Liquidation Trust Administrator in a disputed claims reserve (the "Disputed Claims Reserve"), which shall be a segregated interest-bearing account maintained by the Liquidation Trust Administrator with a United States financial institution. The Liquidation Trust Administrator will, in its sole discretion, distribute amounts from the Disputed Claims Reserve (net of any expenses, including any taxes relating thereto), as provided herein and in the Plan, as such Disputed Claims are resolved by Final Order, and such amounts will be distributable in respect of such Disputed Claims as such amounts would have been distributable had the Disputed Claims been Allowed Claims as of the Effective Date.

## **ARTICLE V** **TAX MATTERS**

5.1 Tax Treatment. The Debtors, the Liquidation Trust Administrator and the Holders of Beneficial Interests will treat the Liquidation Trust as a "liquidating trust" within the meaning of Treasury Regulation § 301.7701-4(d) and any comparable provision of state or local law. Consistent with this treatment, for all federal, state and local income tax purposes, each Holder of an Allowed Senior Unsecured Claim, an Allowed General Unsecured Claim or an 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 the 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 the Holder's Pro Rata share of the Liquidation Trust Assets (subject to the liabilities) to the Liquidation Trust in exchange for the Holder's Beneficial Interest. The Holders of Beneficial Interests in the Liquidation Trust will be treated solely for tax purposes as the grantors and deemed owners of the Liquidation Trust; and the Debtors, the Liquidation Trust Administrator and the Liquidation Trust Beneficiaries will use consistent valuations for the transferred assets for tax purposes. The Liquidation Trust Administrator shall be authorized to take any action necessary to maintain compliance with this regulation or its successor that does not contradict the terms of this Agreement, the Plan or the Confirmation Order.

5.2 Tax Reporting. The "taxable year" of the Liquidation Trust shall be the "calendar year" as those terms are defined in Section 441 of the Internal Revenue Code. The Liquidation Trust Administrator shall file returns for the Liquidation Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a). The Liquidation Trust Administrator shall annually, as soon as reasonably practicable after filing a tax return, send to each record Holder of a Beneficial Interest a separate statement setting forth the Holder's share or items of income, gain, loss, deduction, or credit and will instruct all such Holders to report such items on their federal income tax returns. Such reporting shall also occur within sixty (60) days of the dissolution of the Liquidation Trust. The Liquidation Trust's taxable income, gain, loss, deduction, or credit will be allocated (subject to provisions of the Plan relating to Disputed Claims) to the

Liquidation Trust Beneficiaries in accordance with their relative Beneficial Interests in the Liquidation Trust.

5.3 Tax Withholdings. The Liquidation Trust Administrator may withhold and pay to the appropriate taxing authority all amounts required to be withheld pursuant to the Internal Revenue Code of 1986, as amended, or any provision of any foreign, state or local tax law with respect to any payment or distribution to the Liquidation Trust Beneficiaries. All such amounts withheld, and paid to the appropriate taxing authority, shall be treated as amounts distributed to such Liquidation Trust Beneficiaries for all purposes of this Agreement. The Liquidation Trust Administrator shall be authorized to collect such tax information from the Liquidation Trust Beneficiaries (including, without limitation, social security numbers or other tax identification numbers) as it in its sole discretion deems necessary to effectuate the Plan, the Confirmation Order and this Agreement. The Liquidation Trust Administrator may refuse to make a distribution to any Liquidation Trust Beneficiary that fails to furnish such information in a timely fashion, until such information is delivered; provided, however, that upon the Liquidation Trust Beneficiary's delivery of such information, the Liquidation Trust Administrator shall make such distribution to which the Liquidation Trust Beneficiary is entitled, together with any interest and income actually earned thereon.

**ARTICLE VI**  
**POWERS OF AND LIMITATIONS ON THE LIQUIDATION TRUST**  
**ADMINISTRATOR**

6.1 Powers of the Liquidation Trust Administrator. The Liquidation Trust Administrator shall have only such rights, powers and privileges expressly set forth in the Plan, the Confirmation Order, and this Agreement and as otherwise provided by applicable law. Subject to the other provisions herein, including, without limitation, the provisions relating to the Liquidation Trust Committee in Section 6.3 of this Agreement, the Liquidation Trust Administrator shall be expressly authorized to undertake the following actions, in the Liquidation Trust Administrator's good faith judgment, in the best interests of the Liquidation Trust Beneficiaries and to maximize net recoveries therefor:

- (a) liquidate the Liquidation Trust Assets;
- (b) make distributions of the Trust Proceeds to the appropriate Liquidation Trust Beneficiaries in accordance with this Agreement, the Plan and the Confirmation Order;
- (c) collect the Committee Settlement Payment from the Post-Consummation Trust;
- (d) use Trust Proceeds to make an aggregate \$2.1 million payment to the Holders of Allowed Unsecured Senior Subordinated Note Claims through the Indenture Trustee;
- (e) subject to Section 1.3(e) of this Agreement, prosecute, settle or otherwise compromise or abandon for the benefit of the Liquidation Trust all claims and Causes of Action transferred by the Debtors to the Liquidation Trust or arising in favor of the Liquidation Trust, including, without limitation, take any action with respect to appeals, counterclaims, and defenses of such claims and Causes of Action; provided that no Liquidation Trust Claim shall

have a direct adverse impact on any Post-Consummation Trust Asset and no Cause of Action that will have a direct adverse impact on any Post-Consummation Trust Asset shall be deemed a Liquidation Trust Claim.

(f) execute any documents and take any other actions related to, or in connection with, the liquidation of the Liquidation Trust Assets and the exercise of the Liquidation Trust Administrator's powers granted herein;

(g) hold legal title to any and all rights of the Liquidation Trust Beneficiaries in, to or arising from the Liquidation Trust Assets and the Trust Proceeds;

(h) protect and enforce the rights to the Liquidation Trust Assets and Trust Proceeds vested in the Liquidation Trust Administrator by this Agreement by any method deemed reasonably appropriate, including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

(i) file, if necessary, any and all tax returns with respect to the Liquidation Trust and pay taxes properly payable by the Liquidation Trust, if any;

(j) make all necessary filings in accordance with any applicable law, statute or regulation, including, but not limited to, to the extent applicable, the Exchange Act;

(k) determine and satisfy from the Trust Proceeds any and all taxes and ordinary course liabilities, including reasonable professional fees and expenses, created, incurred or assumed by the Liquidation Trust;

(l) retain and pay professionals, employees (including former employees of the Debtors), contractors or other agents, including any and all estate professionals, from the Trust Proceeds to carry out its duties and obligations hereunder;

(m) invest monies received by the Liquidation Trust Administrator or otherwise held by the Liquidation Trust Administrator in accordance with Section 6.8 of this Agreement;

(n) in the event that the Liquidation Trust Administrator determines that the Liquidation Trust Beneficiaries or the Liquidation Trust may, will or have become subject to adverse tax consequences, take such actions that will, or are intended to, alleviate such adverse tax consequences;

(o) create sub-trusts or title vehicles of which the Liquidation Trust or the Liquidation Trust Beneficiaries hold the beneficial or ownership interests, as applicable;

(p) purchase customary insurance coverage in accordance with Section 4.9 of this Agreement;

(q) perform such functions and take such actions as are provided for or permitted in the Plan, the Confirmation Order, this Agreement or any other agreement executed pursuant to the Plan; and

(r) make payment on account of the Diminution Claim to the Post-Consummation Trust.

## 6.2 Establishment of the Liquidation Trust Committee.

(a) The Liquidation Trust Committee (the "Liquidation Trust Committee") shall consist of five (5) members. The Holders of the Liquidation Trust Series A Interests shall appoint three members of the Liquidation Trust Committee (collectively, the "Class A Representatives" and each a "Class A Representative"). The Holders of the Liquidation Trust Series B Interests shall appoint two members of the Liquidation Trust Committee (collectively, the "Class B Representatives" and each a "Class B Representative" and with the A Representatives, collectively the "Representatives"). Each Representative's vote shall have the same weight.

(b) If a Class A Representative resigns or no longer holds a Beneficial Interest, the remaining members of the Post-Consummation Trust Committee (as defined in the Post-Consummation Trust Agreement) shall replace such Class A Representative in accordance with the Post-Consummation Trust Agreement. If a Class B Representative resigns or no longer holds a Beneficial Interest, the remaining Class B Representative shall replace such Class B Representative.

(c) Each Representative shall designate (i) one or more persons who shall attend meetings of and participate in other activities of the Liquidation Trust Committee and (ii) an alternate person to attend meetings and participate in other activities of the Liquidation Trust Committee when the persons designated pursuant to clause (i) above are unavailable to participate in such meetings and activities.

(d) The purpose of the Liquidation Trust Committee shall be to oversee the liquidation of the Liquidation Trust Assets and distribution of the Trust Proceeds by the Liquidation Trust Administrator, in accordance with the terms of this Agreement.

(e) A quorum for meetings of the Liquidation Trust Committee shall consist of a majority of the non-recused Representatives; provided that, for purposes of determining whether a Representative is present at such a meeting, a member of the Liquidation Trust Committee shall be deemed present if a person representing the member is attending in person, by telephone or by proxy.

(f) A Representative shall be recused from the Liquidation Trust Committee's deliberations and votes on any matters as to which such member has a conflicting interest. If a Representative does not recuse itself from any such matter, that Representative may be recused from such matter by the majority vote of the remaining members of the Liquidation Trust Committee that are not recused from the matter.

(g) Except as expressly provided herein, the affirmative vote of a majority of the non-recused members of the Liquidation Trust Committee shall be the act of the Liquidation Trust Committee with respect to any matter that requires the determination, consent, approval or agreement of the Liquidation Trust Committee. In a matter in which the Liquidation Trust Administrator cannot obtain direction or authority from the Liquidation Trust Committee, the Liquidation Trust Administrator may file a motion, on notice to the Liquidation Trust Committee members, requesting such direction or authority from the Bankruptcy Court.

(h) Liquidation Trust Committee members shall be reimbursed by the Liquidation Trust for reasonable, documented out-of-pocket business expenses, other than attorneys' and other professionals' fees and expenses, incurred in connection with their service on the Liquidation Trust Committee. Liquidation Trust Committee members shall not receive any other compensation from the Liquidation Trust for their services as committee members.

6.3 Voting. Notwithstanding anything in this Agreement to the contrary, the Liquidation Trust Administrator shall submit to the Liquidation Trust Committee for its review and prior approval (by the non-recused members of the Liquidation Trust Committee or the Class B Representatives and the Liquidation Trust Administrator, as applicable), the following matters and any other matters that the Liquidation Trust Committee may direct the Liquidation Trust Administrator to submit for its approval or that expressly require the approval of the Liquidation Trust Committee pursuant to the terms of this Agreement:

(a) Any transaction to sell, assign, transfer, compromise and settle, abandon or dismiss a Claim disputed pursuant to Section 4.10 of this Agreement for which the claimant asserts a Claim in an amount in excess of \$2,000,000 shall be approved by a majority vote of the Class B Representatives and the Liquidation Trust Administrator. If a Disputed Claim asserted by the claimant is for an amount greater than \$250,000 but does not exceed \$2,000,000, the Liquidation Trust Administrator shall provide written notice to the Class B Representatives and if neither of the Class B Representatives objects to the proposed settlement within ten (10) calendar days of receipt of such notice of such settlement or payment, the Liquidation Trust Administrator may proceed with the settlement and subsequent payment. If an objection is received from either of the Class B Representatives, the proposed settlement of the Claim shall be submitted for approval by a majority vote of the Class B Representatives and the Liquidation Trust Administrator. For the avoidance of doubt, claims settled for a face value of less than \$250,000 shall not require prior notice to or approval by the Class B Representatives but shall be included in the Monthly Report;

(b) Any transaction to sell, assign, transfer or abandon any other Liquidation Trust Asset (excluding Causes of Action) in which the transaction will result in the Liquidation Trust's receipt of net proceeds in excess of \$1,000,000 (or in the case of abandonment where the fair market value of such Liquidation Trust Asset exceeds \$1,000,000) shall be approved by a majority vote of the members of the Liquidation Trust Committee. If the net proceeds to the Liquidation Trust of such a transaction (or the fair market value of a Liquidation Trust Asset proposed to be abandoned) is greater than \$100,000, but less than \$1,000,000, the Liquidation Trust Administrator shall provide written notice of the asset sale to the Liquidation Trust Committee and if none of the representatives objects to the proposed settlement within ten (10) calendar days of receipt of such notice of such sale, the Liquidation Trust Administrator may

proceed with the asset sale. If an objection is received from any member of the Liquidation Trust Committee, the proposed sale of such asset shall be submitted for approval by a majority vote of the Liquidation Trust Committee. For the avoidance of doubt, asset sales where the sale price is less than \$100,000 shall not require prior notice to or approval by the Liquidation Trust Committee, but shall be included in the Monthly Report; and

(c) Any transaction to settle or otherwise resolve any Cause of Action in which the value of the relief sought is in excess of \$1,000,000 (or in the case of abandonment where the fair market value of such Liquidation Trust Asset exceeds \$1,000,000) shall be approved by a majority vote of the members of the Liquidation Trust Committee. If the value of the relief sought in such a settlement (or the fair market value of a Liquidation Trust Asset proposed to be abandoned) is greater than \$100,000, but less than \$1,000,000, the Liquidation Trust Administrator shall provide written notice of the settlement to the Liquidation Trust Committee and if none of the representatives objects to the proposed settlement within ten (10) calendar days of receipt of such notice of such sale, the Liquidation Trust Administrator may proceed with the settlement. If an objection is received from any member of the Liquidation Trust Committee, the proposed settlement shall be submitted for approval by a majority vote of the Liquidation Trust Committee. For the avoidance of doubt, settlements where the value of the relief sought is less than \$100,000 shall not require prior notice to or approval by the Liquidation Trust Committee, but shall be included in the Monthly Report.

(d) Notwithstanding anything in this Agreement to the contrary, the Liquidation Trust Administrator shall also submit to the Liquidation Trust Committee for its review and prior approval by a majority vote of the non-recused members of the Liquidation Trust Committee, the following matters:

(i) Determinations of the amounts of the Expense Reserve and the Trust Proceeds Available for Distribution;

(ii) Determinations of the date and amount of all distributions made on dates other than a Quarterly Distribution Date and determinations to defer distributions otherwise required on a Quarterly Distribution Date;

(iii) Any determinations to retain attorneys, accountants or other professionals;

(iv) Any determinations to initiate lawsuits or other proceedings;

(v) Any actions that would give rise to or alleviate adverse tax consequences to the Liquidation Trust or the Liquidation Trust Beneficiaries;

(vi) The reports and budgets described in Section 4.4 of this Agreement; and

(vii) Any determination regarding the investment of Trust Proceeds pursuant to Section 6.7 of this Agreement.

6.4 Supermajority Approval of the Liquidation Trust Committee. Notwithstanding anything in this Agreement to the contrary, the Liquidation Trust Administrator shall submit to the Liquidation Trust Committee for its review and prior approval, by not less than an 80% vote of the Liquidation Trust Committee, the following matters:

(a) Any transaction to sell, assign, transfer or abandon any other Liquidation Trust Assets in which the transaction will result in the Liquidation Trust's receipt of net proceeds in excess of \$5,000,000; and

(b) Any transaction to settle or otherwise resolve any Cause of Action in which the value of the relief sought is in excess of \$5,000,000.

6.5 Limitations on Liquidation Trust Administrator. No part of the Liquidation Trust Assets or the Trust Proceeds shall be used or disposed of by the Liquidation Trust Administrator in furtherance of any trade or business; provided that, for the avoidance of doubt, Liquidation Trust Assets held for liquidation may be used or disposed of in connection with the continuation of the business in which such Liquidation Trust Assets were used as of the date of this Agreement. The Liquidation Trust Administrator shall, on behalf of the Liquidation Trust, hold the Liquidation Trust out as a trust in the process of liquidation and not as an investment company. The Liquidation Trust Administrator shall not become a market-maker for the Beneficial Interests or otherwise attempt to create a secondary market for the Beneficial Interests. The Liquidation Trust Administrator shall be restricted to the liquidation of the Liquidation Trust Assets on behalf, and for the benefit, of the Liquidation Trust Beneficiaries and the distribution and application of Trust Proceeds for the purposes set forth in this Agreement, the Plan and the Confirmation Order, and the conservation and protection of the Liquidation Trust Assets and the Trust Proceeds and the administration thereof in accordance with the provisions of this Agreement, the Plan and the Confirmation Order.

6.6 Agents and Professionals; Employees. The Liquidation Trust may, but shall not be required to, from time to time enter into contracts with, consult with and retain, as approved by the Liquidation Trust Committee, independent contractors, including attorneys, accountants, appraisers, disbursing agents or other parties deemed by the Liquidation Trust Administrator to have qualifications necessary or desirable to assist in the proper administration of the Liquidation Trust, including any estate professionals retained during the Debtors' bankruptcy cases as may be appropriate in the circumstances. The Liquidation Trust Administrator shall pay the reasonable fees and expenses of such persons out of the Trust Proceeds in the ordinary course of business without the need for approval of the Bankruptcy Court. The Liquidation Trust may, but shall not be required to, from time to time, employ such persons in such capacities as may be approved by the Liquidation Trust Committee. In addition, the Liquidation Trust may, subject to the approval of the Liquidation Trust Committee, enter into an agreement with the Debtors that exist following the Effective Date to utilize the services of one or more employees of the Debtors.

6.7 Investment of Trust Monies. The Liquidation Trust Administrator shall, as approved by the Liquidation Trust Committee, invest the Liquidation Trust Assets and Trust Proceeds received by the Liquidation Trust Administrator or otherwise held by the Liquidation Trust Administrator in highly-rated short-term investments of which the length of term shall be



consistent with the obligations to pay costs, expenses and other obligations and make distributions under Article IV of this Agreement, which investments shall consist solely of: (a) short-term investments issued or guaranteed by the United States or by a department, agency or instrumentality of the United States; (b) other short-term instruments of the highest credit rating available of two nationally recognized rating agencies; or (c) other short-term investments approved by the Liquidation Trust Committee.

## **ARTICLE VII**

### **CONCERNING THE LIQUIDATION TRUST ADMINISTRATOR**

7.1 **Generally.** The Liquidation Trust Administrator shall exercise such of the rights and powers vested in it by this Agreement, the Plan and the Confirmation Order, and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of its own affairs. No provision of this Agreement, the Plan or the Confirmation Order shall be construed to relieve the Liquidation Trust Administrator from liability for its own gross negligence, fraud or reckless, intentional or willful misconduct, except that the Liquidation Trust Administrator shall not be liable for any action taken in good faith in reliance upon the advice of professionals retained by the Liquidation Trust Administrator in accordance with this Agreement.

7.2 **Reliance by Liquidation Trust Administrator.** Except as otherwise provided in this Agreement, the Plan or the Confirmation Order:

(a) the Liquidation Trust Administrator may rely and shall be protected in acting upon any resolution, statement, instrument, opinion, report, notice, request, consent, order or other paper or document reasonably believed by the Liquidation Trust Administrator to be genuine and to have been signed or presented by the proper party or parties; and

(b) persons (including any professionals retained by the Liquidation Trust Administrator in accordance with this Agreement) engaged in transactions with the Liquidation Trust Administrator shall look only to the Trust Proceeds to satisfy any liability incurred by the Liquidation Trust Administrator to such person in carrying out the terms of this Agreement, the Plan or the Confirmation Order, and the Liquidation Trust Administrator shall have no personal or individual obligation to satisfy any such liability.

7.3 **Liability to Third Persons.** No Liquidation Trust Beneficiary shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the Liquidation Trust Assets, the Trust Proceeds, or the affairs of the Liquidation Trust Administrator. The Liquidation Trust Administrator, agents of and professionals retained by the Liquidation Trust Administrator and the members of the Liquidation Trust Committee shall not be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the Liquidation Trust Assets, the Trust Proceeds, or the affairs of the Liquidation Trust, except for its own gross negligence, fraud or reckless, intentional or willful misconduct, and all such persons shall look solely to the Liquidation Trust Assets and/or the Trust Proceeds for satisfaction of claims of any nature arising in connection with affairs of the Liquidation Trust. Other than as set forth in the Plan or the Confirmation Order, nothing in this **Section 7.3** shall be deemed to release any Liquidation Trust Beneficiary from any actions or

omissions occurring prior to the Effective Date; provided that nothing in this Section 7.3 shall contravene any releases granted pursuant to the Plan or the Confirmation Order.

7.4 Nonliability of Liquidation Trust Administrator for Acts of Others. Nothing contained in this Agreement, the Plan or the Confirmation Order shall be deemed to be an assumption by the Liquidation Trust Administrator of any of the liabilities, obligations or duties of the Debtors or Liquidation Trust Beneficiaries and shall not be deemed to be or contain a covenant or agreement by the Liquidation Trust Administrator to assume or accept any such liability, obligation or duty. Any successor Liquidation Trust Administrator may accept and rely upon any accounting made by or on behalf of any predecessor Liquidation Trust Administrator hereunder, and any statement or representation made as to the assets comprising the Liquidation Trust Assets or the Trust Proceeds or as to any other fact bearing upon the prior administration of the Liquidation Trust, so long as it has a good faith basis to do so. A Liquidation Trust Administrator shall not be liable for having accepted and relied in good faith upon any such accounting, statement or representation if it is later proved to be incomplete, inaccurate or untrue. A Liquidation Trust Administrator or successor Liquidation Trust Administrator shall not be liable for any act or omission of any predecessor Liquidation Trust Administrator, nor have a duty to enforce any claims against any predecessor Liquidation Trust Administrator on account of any such act or omission, unless directed to do so by the Liquidation Trust Committee.

7.5 Exculpation. To the fullest extent permitted by law, no Indemnified Party (defined below) shall be liable, responsible, or accountable in damages or otherwise to the Liquidation Trust, any Liquidation Trust Beneficiary, or any other third party for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Indemnified Party; provided, however, that any Indemnified Party shall be liable for all loss, damages, and claims stemming from any act or omission constituting gross negligence, fraud or reckless, intentional or willful misconduct.

7.6 Indemnity. The Liquidation Trust Administrator, the members of the Liquidation Trust Committee, Ann M. Hamilton, Bradley R. Grining, Michael Richardson, and their respective agents, employees, officers, directors, professionals, attorneys, accountants, advisors, representatives and principals (collectively, the "Indemnified Parties") shall be indemnified and held harmless by the Liquidation Trust, to the fullest extent permitted by law, solely from the Liquidation Trust Assets and/or the Trust Proceeds for any losses, claims, damages, liabilities and expenses, including, without limitation, reasonable attorneys' fees, disbursements and related expenses which the Indemnified Parties may incur or to which the Indemnified Parties may become subject in connection with any action, suit, proceeding or investigation brought or threatened against one or more of the Indemnified Parties on account of the acts or omissions of the Liquidation Trust Administrator or the members of the Liquidation Trust Committee solely in their capacity as such; provided, however, that the Liquidation Trust shall not be liable to indemnify any Indemnified Party for any act or omission constituting gross negligence, fraud or reckless, intentional or willful misconduct. Notwithstanding any provision herein to the contrary, the Indemnified Parties shall be entitled to obtain advances from the Liquidation Trust to cover their reasonable expenses of defending themselves in any action brought against them as a result of the acts or omissions, actual or alleged, of an Indemnified Party in its capacity as such; provided, however, that the Indemnified Parties receiving such advances shall repay the amounts

so advanced to the Liquidation Trust upon the entry of a Final Order finding that such Indemnified Parties were not entitled to any indemnity under the provisions of this Section 7.6. The foregoing indemnity in respect of any Indemnified Party shall survive the termination of such Indemnified Party from the capacity for which they are indemnified.

7.7 Compensation and Expenses. The Liquidation Trust Administrator shall receive fair and reasonable compensation for its services in accordance with the US Bank Corporate Trust Services Fee Schedule attached hereto as Annex D or as otherwise agreed from time to time with the Liquidation Trust Committee.

7.8 Allocation of Employee Responsibility. Under all circumstances, the Post-Consummation Trust will be responsible for ninety-five percent (95%) and the Liquidation Trust will be responsible for five percent (5%) of all obligations, including but not limited to all payments and benefits, due pursuant to any employment agreement approved by (i) the Prepetition Agent and the Creditors' Committee or (ii) the Post-Consummation Trust and Liquidation Trust that provides for such an allocation. If the Liquidation Trust terminates prior to the termination of the Post-Consummation Trust, the Liquidation Trust must have, and set aside for such purpose, resources sufficient to satisfy the obligations under such employment agreements.

## **ARTICLE VIII**

### **SUCCESSOR LIQUIDATION TRUST ADMINISTRATORS**

8.1 Resignation. The Liquidation Trust Administrator may resign from the Liquidation Trust by giving at least 30 days prior written notice thereof to each member of the Liquidation Trust Committee. Such resignation shall become effective on the later to occur of (a) the date specified in such written notice or (b) the effective date of the appointment of a successor Liquidation Trust Administrator in accordance with Section 8.4 of this Agreement and such successor's acceptance of such appointment in accordance with Section 8.5 of this Agreement.

8.2 Removal. The Liquidation Trust Administrator may be removed, with or without cause, by an affirmative vote of at least 80% of the members of the Liquidation Trust Committee. Such removal shall become effective on the date specified in such action by the Liquidation Trust Committee.

8.3 Effect of Resignation or Removal. The resignation, removal, or incompetency of the Liquidation Trust Administrator shall not operate to terminate the Liquidation Trust or to revoke any existing agency created pursuant to the terms of this Agreement, the Plan or the Confirmation Order or invalidate any action theretofore taken by the Liquidation Trust Administrator. All fees and expenses incurred by the Liquidation Trust Administrator prior to the resignation, incompetency or removal of the Liquidation Trust Administrator shall be paid from the Trust Proceeds, unless such fees and expenses are disputed by (a) the Liquidation Trust Committee or (b) the successor Liquidation Trust Administrator, in which case the Bankruptcy Court shall resolve the dispute and any disputed fees and expenses of the predecessor Liquidation Trust Administrator that are subsequently allowed by the Bankruptcy Court shall be paid from the Trust Proceeds. In the event of the resignation or removal of the Liquidation Trust

Administrator, such Liquidation Trust Administrator shall: (i) promptly execute and deliver such documents, instruments and other writings as may be reasonably requested by the successor Liquidation Trust Administrator or directed by the Bankruptcy Court to effect the termination of such Liquidation Trust Administrator's capacity under this Agreement; (ii) promptly deliver to the successor Liquidation Trust Administrator all documents, instruments, records and other writings related to the Liquidation Trust as may be in the possession of such Liquidation Trust Administrator; provided that such Liquidation Trust Administrator may retain one copy of each of such documents for its purposes; and (iii) otherwise assist and cooperate in effecting the assumption of its obligations and functions by such successor Liquidation Trust Administrator. From and after its resignation or removal, the Liquidation Trust Administrator shall be paid for its reasonable fees and expenses, including attorneys' fees and expenses, incurred in transitioning administration of the Liquidation Trust to the successor Liquidation Trust Administrator or otherwise complying with any request or demand of the successor Liquidation Trust Administrator or the Liquidation Trust Committee as set forth in this Section 8.3.

8.4 Appointment of Successor. In the event of the resignation, removal, incompetency, bankruptcy or insolvency of the Liquidation Trust Administrator, a vacancy shall be deemed to exist and a successor shall be appointed by a unanimous vote of the Liquidation Trust Committee. In the event that a successor Liquidation Trust Administrator is not appointed within 30 days after the date of such vacancy, the Bankruptcy Court, upon its own motion or the motion of a Liquidation Trust Beneficiary or member of the Liquidation Trust Committee, shall appoint a successor Liquidation Trust Administrator.

8.5 Acceptance of Appointment by Successor Liquidation Trust Administrator. Any successor Liquidation Trust Administrator appointed hereunder shall execute an instrument accepting its appointment and shall deliver one counterpart thereof to the Bankruptcy Court for filing and, in case of the Liquidation Trust Administrator's resignation, to the resigning Liquidation Trust Administrator. Thereupon, such successor Liquidation Trust Administrator shall, without any further act, become vested with all the liabilities, duties, powers, rights, title, discretion and privileges of its predecessor in the Liquidation Trust with like effect as if originally named Liquidation Trust Administrator and shall be deemed appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code. The resigning or removed Liquidation Trust Administrator shall duly assign, transfer and deliver to such successor Liquidation Trust Administrator all property and money held by such resigning or removed Liquidation Trust Administrator hereunder and shall, as directed by the Bankruptcy Court or reasonably requested by such successor Liquidation Trust Administrator, execute and deliver an instrument or instruments conveying and transferring to such successor Liquidation Trust Administrator upon the Liquidation Trust herein expressed, all the liabilities, duties, powers, rights, title, discretion and privileges of such resigning or removed Liquidation Trust Administrator.

## **ARTICLE IX**

### **MISCELLANEOUS PROVISIONS**

9.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois (without reference to conflicts of law).

9.2 Jurisdiction. Subject to the proviso below, the parties agree that the Bankruptcy Court shall have exclusive jurisdiction over the Liquidation Trust and the Liquidation Trust Administrator, including, without limitation, the administration and activities of the Liquidation Trust and the Liquidation Trust Administrator; provided, however, that notwithstanding the foregoing, the Liquidation Trust Administrator shall have power and authority to bring any action in any court of competent jurisdiction to prosecute any claims or Causes of Action assigned to the Liquidation Trust.

9.3 Severability. In the event that any provision of this Agreement or the application thereof to any person or circumstances shall be determined by Final Order to be invalid or unenforceable to any extent, the remainder of this Agreement or the application of such provision to persons or circumstances or in jurisdictions other than those as to or in which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

9.4 Notices. Any notice or other communication required or permitted to be made under this Agreement shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if delivered personally or by telex, facsimile or other telegraphic means, sent by nationally recognized overnight delivery service or mailed by first-class mail:

- (i) if to the Liquidation Trust Administrator, to:  
  
U.S. Bank National Association  
Corporate Trust Services  
60 Livingston Avenue  
St. Paul, Minnesota 55107  
Attn: Cindy Woodward
- (ii) if to a member of the Liquidation Trust Committee, to the address set forth on Annex B, or such other address as may be provided to the Liquidation Trust Administrator by such member of the Liquidation Trust Committee.
- (iii) if to any Liquidation Trust Beneficiary, to the last known address of such Liquidation Trust Beneficiary according to the Liquidation Trust Administrator's records.

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

9.6 Plan. The terms of this Agreement are intended to supplement the terms provided by the Plan and the Confirmation Order. However, except as specifically provided herein, to the extent that the terms of the Plan or the Confirmation Order are inconsistent with the terms set forth in this Agreement with respect to the Liquidation Trust, then this Agreement shall govern.

9.7 Cooperation. The Debtors shall turn over or otherwise make available to the Liquidation Trust Administrator at no cost to the Liquidation Trust or the Liquidation Trust Administrator, all books and records reasonably required by the Liquidation Trust Administrator to carry out its duties hereunder, and agree to otherwise reasonably cooperate with the Liquidation Trust Administrator in carrying out its duties hereunder.

9.8 Entire Agreement. This Agreement and the Annexes attached hereto contain the entire agreement between the parties and supersede all prior and contemporaneous agreements or understandings between the parties with respect to the subject matter hereof.

9.9 Amendment. This Agreement may be amended by (a) order of the Bankruptcy Court or (b) approval by the Liquidation Trust Administrator and a unanimous vote of the Liquidation Trust Committee; provided, however, that Bankruptcy Court approval shall be required for any changes or amendments to this Agreement that are inconsistent with the terms of the Plan or the Confirmation Order.

9.10 Meanings of Other Terms. Except where the context otherwise requires, words importing the masculine gender include the feminine and the neuter, if appropriate, words importing the singular number shall include the plural number and vice versa and words importing persons shall include firms, associations, corporations and other entities. All references herein to Articles, Sections and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code, the Bankruptcy Rules, or other law, statute or regulation, refer to the corresponding Articles, Sections and other subdivisions of this Agreement, and the words herein and words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision of this Agreement. The term "including" shall mean "including, without limitation."

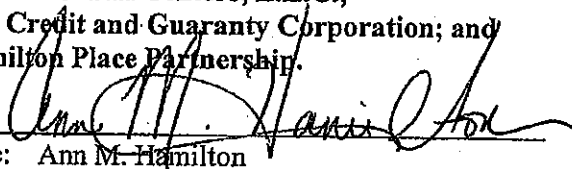
9.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but such counterparts shall together constitute but one and the same instrument. A facsimile signature of any party shall be considered to have the same binding legal effect as an original signature.

**[Remainder of Page Blank — Signature Page Follows]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement or caused this Agreement to be duly executed by their respective officers, representatives or agents, effective as of the date first above written.

**KIMBALL HILL, INC.;**

18th and Peoria, LLC;  
KH Financial Holding Company;  
KH Ingham Park South, LLC;  
KHH Texas Trading Company L.P.;  
Kimball Hill Far East Detroit, LLC;  
Kimball Hill Homes Austin, L.P.;  
Kimball Hill Homes California, Inc.;  
Kimball Hill Homes Dallas, L.P.;  
Kimball Hill Homes Florida, Inc.;  
Kimball Hill Homes Houston, L.P.;  
Kimball Hill Homes Illinois, LLC;  
Kimball Hill Homes Nevada, Inc.;  
Kimball Hill Homes Ohio, Inc.;  
Kimball Hill Homes Oregon, Inc.;  
Kimball Hill Homes Realty Florida, Inc.;  
Kimball Hill Homes San Antonio, L.P.;  
Kimball Hill Homes Texas Investments, L.L.C.;  
Kimball Hill Homes Texas Operations, L.L.C.;  
Kimball Hill Homes Texas, Inc.;  
Kimball Hill Homes Washington, Inc.;  
Kimball Hill Homes Wisconsin, Inc.;  
Kimball Hill Stateway, Inc.;  
Kimball Hill Texas Investment Company, L.L.C.;  
Kimball Hill Urban Centers Chicago One, L.L.C.;  
Kimball Hill Urban Centers Chicago Two, L.L.C.;  
Kimball Hill Urban Centers Special Purposes, LLC;  
Kimball Hill Urban Centers, L.L.C.;  
National Credit and Guaranty Corporation; and  
The Hamilton Place Partnership.

By:   
Name: Ann M. Hamilton  
Title: Authorized Signatory

**U.S. Bank National Association, as  
Liquidation Trust Administrator**

By: \_\_\_\_\_  
Name: Cindy Woodward  
Title: Vice President