

the Plan Administrator with a United States financial institution. The Plan 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 Plan Administrator and the Holders of Beneficial Interests will treat the Post-Consummation 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 Credit Agreement Claim shall be treated as transferring such Allowed Claim to the Debtors in exchange for the Holder's Pro Rata share of the Post-Consummation Trust Assets (subject to the liabilities of the Debtors assumed by the Post-Consummation 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 Post-Consummation Trust Assets (subject to the liabilities) to the Post-Consummation Trust in exchange for the Holder's Beneficial Interest. The Holders of Beneficial Interests in the Post-Consummation Trust will be treated solely for tax purposes as the grantors and deemed owners of the Post-Consummation Trust; and the Debtors, the Plan Administrator and the Post-Consummation Trust Beneficiaries will use consistent valuations for the transferred assets for tax purposes. The Plan 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 Post-Consummation Trust shall be the "calendar year" as those terms are defined in Section 441 of the Internal Revenue Code. The Plan Administrator shall file returns for the Post-Consummation Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a). The Plan 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 Post-Consummation Trust. The Post-Consummation Trust's taxable income, gain, loss, deduction, or credit will be allocated (subject to provisions of the Plan relating to Disputed Claims) to the Post-Consummation Trust Beneficiaries in accordance with their relative Beneficial Interests in the Post-Consummation Trust.

5.3 Tax Withholdings. The Plan 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 Post-Consummation Trust Beneficiaries. All such amounts withheld, and paid to the appropriate taxing authority, shall be treated as amounts distributed to such Post-Consummation Trust Beneficiaries for all purposes of this Agreement. The Plan

Administrator shall be authorized to collect such tax information from the Post-Consummation 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 Plan Administrator may refuse to make a distribution to any Post-Consummation Trust Beneficiary that fails to furnish such information in a timely fashion, until such information is delivered; provided, however, that upon the Post-Consummation Trust Beneficiary's delivery of such information, the Plan Administrator shall make such distribution to which the Post-Consummation Trust Beneficiary is entitled, together with any interest and income actually earned thereon.

ARTICLE VI

POWERS OF AND LIMITATIONS ON THE PLAN ADMINISTRATOR

6.1 Powers of the Plan Administrator. The Plan 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 Post-Consummation Trust Committee in Section 6.3, the Plan Administrator shall be expressly authorized to undertake the following actions, in the Plan Administrator's good faith judgment, in the best interests of the Post-Consummation Trust Beneficiaries and to maximize net recoveries therefor:

- (a) liquidate the Post-Consummation Trust Assets;
- (b) make distributions of the Trust Proceeds to the appropriate Post-Consummation Trust Beneficiaries in accordance with this Agreement, the Plan and the Confirmation Order;
- (c) collect the Diminution Claim Proceeds from the Liquidation Trust;
- (d) prosecute, settle or otherwise compromise or abandon for the benefit of the Post-Consummation Trust all claims and Causes of Action transferred by the Debtors to the Post-Consummation Trust or arising in favor of the Post-Consummation Trust, including, without limitation, take any action with respect to appeals, counterclaims, and defenses of such claims and Causes of Action;
- (e) execute any documents and take any other actions related to, or in connection with, the liquidation of the Post-Consummation Trust Assets and the exercise of the Plan Administrator's powers granted herein;
- (f) hold legal title to any and all rights of the Post-Consummation Trust Beneficiaries in, to or arising from the Post-Consummation Trust Assets and the Trust Proceeds;
- (g) protect and enforce the rights to the Post-Consummation Trust Assets and Trust Proceeds vested in the Plan 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;

- (h) file, if necessary, any and all tax returns with respect to the Post-Consummation Trust and pay taxes properly payable by the Post-Consummation Trust, if any;
- (i) 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;
- (j) 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 Post-Consummation Trust;
- (k) 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;
- (l) invest monies received by the Plan Administrator or otherwise held by the Plan Administrator in accordance with Section 6.8 hereof;
- (m) in the event that the Plan Administrator determines that the Post-Consummation Trust Beneficiaries or the Post-Consummation 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;
- (n) create sub-trusts or title vehicles of which the Post-Consummation Trust or the Post-Consummation Trust Beneficiaries hold the beneficial or ownership interests, as applicable;
- (o) purchase customary insurance coverage in accordance with Section 4.9 hereof;
- (p) 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
- (q) make the Committee Settlement Payment to the Liquidation Trust.

6.2 Establishment of the Post-Consummation Trust Committee.

(a) The Post-Consummation Trust Committee (the "Post-Consummation Trust Committee") shall consist of three (3) members appointed by Harris, N.A. in its capacity as Prepetition Agent who shall also serve as the Class A Representatives (as defined in the Liquidation Trust Agreement) on the Liquidation Trust Committee (as defined in the Liquidation Trust Agreement).

(b) If a member of the Post-Consummation Trust Committee resigns, is not a member of the Liquidation Trust Committee, or no longer holds a Beneficial Interest, the remaining members of the Post-Consummation Trust Committee shall, by a unanimous vote, appoint a new member of the Post-Consummation Trust Committee, who shall also serve as a Class A Representative of the Liquidation Trust Committee.

(c) Each Post-Consummation Trust Committee member shall designate (i) one or more persons who shall attend meetings of and participate in other activities of the Post-Consummation Trust Committee and (ii) an alternate person to attend meetings and participate in other activities of the Post-Consummation 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 Post-Consummation Trust Committee shall be to oversee the liquidation of the Post-Consummation Trust Assets and distribution of the Trust Proceeds by the Plan Administrator, in accordance with the terms of this Agreement.

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

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

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

(h) Post-Consummation Trust Committee members shall be reimbursed by the Post-Consummation 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 Post-Consummation Trust Committee. Post-Consummation Trust Committee members shall not receive any other compensation from the Post-Consummation Trust for their services as committee members.

(i) Each Post-Consummation Trust Committee member's vote shall have the same weight.

6.3 Approval of the Post-Consummation Trust Committee. Notwithstanding anything in this Agreement to the contrary, the Plan Administrator shall submit to the Post-Consummation Trust Committee for its review and prior approval, by a majority vote of the non-recused members of the Post-Consummation Trust Committee, the following matters and any other matters that the Post-Consummation Trust Committee may direct the Plan Administrator to

submit for its approval or that expressly require the approval of the Post-Consummation Trust Committee pursuant to the terms of this Agreement:

(a) Any transaction to sell, assign, transfer, compromise and settle, abandon or dismiss any claims, rights or Causes of Action in which the amount of the transaction exceeds such amount as may be determined from time to time by the Post-Consummation Trust Committee;

(b) Any transaction to sell, assign, transfer or abandon any other Post-Consummation Trust Assets (other than claims, rights or Causes of Action) in which the amount of the transaction exceeds such amount as may be determined from time to time by the Post-Consummation Trust Committee;

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

(d) 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;

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

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

(g) Any actions that would give rise to or alleviate adverse tax consequences to the Post-Consummation Trust or the Post-Consummation Trust Beneficiaries;

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

(i) Any determination regarding the investment of Trust Proceeds pursuant to Section 6.6 of this Agreement.

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

6.5 Agents and Professionals; Employees. The Post-Consummation Trust may, but shall not be required to, from time to time enter into contracts with, consult with and retain, as approved by the Post-Consummation Trust Committee, independent contractors, including attorneys, accountants, appraisers, disbursing agents or other parties deemed by the Plan Administrator to have qualifications necessary or desirable to assist in the proper administration of the Post-Consummation Trust, including any estate professionals retained during the Debtors' bankruptcy cases as may be appropriate in the circumstances. The Plan 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 Post-Consummation Trust may, but shall not be required to, from time to time, employ such persons in such capacities as may be approved by the Post-Consummation Trust Committee. In addition, the Post-Consummation Trust may, subject to the approval of the Post-Consummation 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.

6.6 Investment of Trust Monies. The Plan Administrator shall, as approved by the Post-Consummation Trust Committee, invest the Trust Proceeds received by the Plan Administrator or otherwise held by the Plan 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 Post-Consummation Trust Committee.

ARTICLE VII

CONCERNING THE PLAN ADMINISTRATOR

7.1 Generally. The Plan 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 Plan Administrator from liability for its own gross negligence, fraud or reckless, intentional or willful misconduct, except that the Plan Administrator shall not be liable for any action taken in good faith in reliance upon the advice of professionals retained by the Plan Administrator in accordance with this Agreement.

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

(a) the Plan 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 Plan 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 Plan Administrator in accordance with this Agreement) engaged in transactions with the Plan Administrator shall look

only to the Trust Proceeds to satisfy any liability incurred by the Plan Administrator to such person in carrying out the terms of this Agreement, the Plan or the Confirmation Order, and the Plan Administrator shall have no personal or individual obligation to satisfy any such liability.

7.3 Liability to Third Persons. No Post-Consummation Trust Beneficiary shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the Post-Consummation Trust Assets, the Trust Proceeds, or the affairs of the Plan Administrator. The Plan Administrator, agents of and professionals retained by the Plan Administrator and the members of the Post-Consummation Trust Committee shall not be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the Post-Consummation Trust Assets, the Trust Proceeds or the affairs of the Post-Consummation 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 Post-Consummation 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 Post-Consummation 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 Plan 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 Plan Administrator of any of the liabilities, obligations or duties of the Debtors or Post-Consummation Trust Beneficiaries and shall not be deemed to be or contain a covenant or agreement by the Plan Administrator to assume or accept any such liability, obligation or duty. Any successor Plan Administrator may accept and rely upon any accounting made by or on behalf of any predecessor Plan Administrator hereunder, and any statement or representation made as to the assets comprising the Post-Consummation Trust Assets or the Trust Proceeds or as to any other fact bearing upon the prior administration of the Post-Consummation Trust, so long as it has a good faith basis to do so. A Plan 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 Plan Administrator or successor Plan Administrator shall not be liable for any act or omission of any predecessor Plan Administrator, nor have a duty to enforce any claims against any predecessor Plan Administrator on account of any such act or omission, unless directed to do so by the Post-Consummation 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 Post-Consummation Trust, any Post-Consummation 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 Plan Administrator, the members of the Post-Consummation 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 Post-Consummation Trust, to the fullest extent permitted by law, solely from the Post-Consummation 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 Plan Administrator or the members of the Post-Consummation Trust Committee solely in their capacity as such; provided, however, that the Post-Consummation 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 Post-Consummation 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 Post-Consummation 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 Plan 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 B or as otherwise agreed from time to time with the Post-Consummation 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 Agent and the Creditors' Committee or (ii) the Post-Consummation Trust and Liquidation Trust that provides for such an allocation. If the Post-Consummation Trust terminates prior to the termination of the Liquidation Trust, the Post-Consummation Trust must have, and set aside for such purpose, resources sufficient to satisfy the obligations under such employment agreements.

ARTICLE VIII

SUCCESSOR PLAN ADMINISTRATORS

8.1 Resignation. The Plan Administrator may resign from the Post-Consummation Trust by giving at least 30 days prior written notice thereof to each member of the Post-Consummation 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 Plan 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 Plan Administrator may be removed, with or without cause, by an affirmative vote of a majority of the members of the Post-Consummation Trust Committee.

Such removal shall become effective on the date specified in such action by the Post-Consummation Trust Committee.

8.3 Effect of Resignation or Removal. The resignation, removal, or incompetency of the Plan Administrator shall not operate to terminate the Post-Consummation 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 Plan Administrator. All fees and expenses incurred by the Plan Administrator prior to the resignation, incompetency or removal of the Plan Administrator shall be paid from the Trust Proceeds, unless such fees and expenses are disputed by (a) the Post-Consummation Trust Committee or (b) the successor Plan Administrator, in which case the Bankruptcy Court shall resolve the dispute and any disputed fees and expenses of the predecessor Plan 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 Plan Administrator, such Plan Administrator shall: (i) promptly execute and deliver such documents, instruments and other writings as may be reasonably requested by the successor Plan Administrator or directed by the Bankruptcy Court to effect the termination of such Plan Administrator's capacity under this Agreement; (ii) promptly deliver to the successor Plan Administrator all documents, instruments, records and other writings related to the Post-Consummation Trust as may be in the possession of such Plan Administrator; provided that such Plan 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 Plan Administrator. From and after its resignation or removal, the Plan Administrator shall be paid for its reasonable fees and expenses, including attorneys' fees and expenses, incurred in transitioning administration of the Post-Consummation Trust to the successor Plan Administrator or otherwise complying with any request or demand of the successor Plan Administrator or the Post-Consummation 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 Plan Administrator, a vacancy shall be deemed to exist and a successor shall be appointed by a majority of the Post-Consummation Trust Committee. In the event that a successor Plan 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 Post-Consummation Trust Beneficiary or member of the Post-Consummation Trust Committee, shall appoint a successor Plan Administrator.

8.5 Acceptance of Appointment by Successor Plan Administrator. Any successor Plan 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 Plan Administrator's resignation, to the resigning Plan Administrator. Thereupon, such successor Plan Administrator shall, without any further act, become vested with all the liabilities, duties, powers, rights, title, discretion and privileges of its predecessor in the Post-Consummation Trust with like effect as if originally named Plan Administrator and shall be deemed appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code. The resigning or removed Plan Administrator shall duly assign, transfer and deliver to such successor Plan Administrator all property and money held by such resigning or removed Plan Administrator hereunder and shall, as directed by the Bankruptcy Court or reasonably requested by such

successor Plan Administrator, execute and deliver an instrument or instruments conveying and transferring to such successor Plan Administrator upon the Post-Consummation Trust herein expressed, all the liabilities, duties, powers, rights, title, discretion and privileges of such resigning or removed Plan 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 Post-Consummation Trust and the Plan Administrator, including, without limitation, the administration and activities of the Post-Consummation Trust and the Plan Administrator; provided, however, that notwithstanding the foregoing, the Plan 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 Post-Consummation 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 Plan 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 Post-Consummation Trust Committee, to the last known address of such member according to the Plan Administrator's records.
- (iii) if to any Post-Consummation Trust Beneficiary, to the last known address of such Post-Consummation Trust Beneficiary according to the Plan 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 with respect to the Post-Consummation Trust are inconsistent with the terms set forth in this Agreement, then this Agreement shall govern.

9.7 Cooperation. The Debtors shall turn over or otherwise make available to the Plan Administrator at no cost to the Post-Consummation Trust or the Plan Administrator, all books and records reasonably required by the Plan Administrator to carry out its duties hereunder, and agree to otherwise reasonably cooperate with the Plan 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 Plan Administrator and a unanimous vote of the Post-Consummation 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 Plan
Administrator**

By: _____
Name: Cindy Woodward
Title: Vice President

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;
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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 Plan
Administrator**

By:  _____

Name: Cindy Woodward

Title: Vice President