

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: )  
 ) Chapter 11  
 )  
ANC RENTAL CORPORATION, *et al.*, ) Case No. 01-11200 (MFW)  
 ) (Jointly Administered)  
 )  
Debtors. )

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JOINT CHAPTER 11 LIQUIDATING PLAN OF THE DEBTORS  
AND STATUTORY CREDITORS' COMMITTEE

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Dated: Wilmington, Delaware  
November 19, 2003

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ANC and its subsidiaries listed on Schedule I, as debtors and debtors-in-possession (collectively, the “Debtors”), together with its Statutory Creditors’ Committee (the “Committee”), hereby propose the following joint chapter 11 liquidating plan pursuant to section 1121(a) of the Bankruptcy Code. This Plan provides for the distribution of the net proceeds realized from the liquidation of the Debtors’ assets and from agreements reached with Vanguard Car Rental USA Inc. (as more fully described herein) in accordance with the priorities established by the Bankruptcy Code and the provisions of this Plan.

## ARTICLE ONE

### DEFINITIONS

Whenever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, the feminine and the neuter. Unless the context requires otherwise, the following words and phrases shall have the meanings set forth below:

Administrative Expense: Any right to payment consisting of a cost or expense of administration of the Chapter 11 Cases (including, without limitation, professional fees and expenses) under section 503(b) of the Bankruptcy Code.

Administrative Expense Bar Date: The last date for timely submission of a request for payment on account of an Administrative Expense.

Ad Valorem Tax Claim: Any Secured Claim of a state or local government arising out of unpaid ad valorem tax liability.

Ad Valorem Tax Claim Escrow: The escrow account established pursuant to paragraph 8 of the Sale Order “for the payment of ad valorem tax liens”, which escrow shall be controlled and managed by the Liquidating Trustee.

Affiliate: As defined in section 101(2) of the Bankruptcy Code.

Allowed: With respect to Claims and Interests, (a) any Claim against or Interest in a Debtor, proof of which is timely filed, or by order of the Bankruptcy Court is not or will not be required to be filed, (b) any Claim or Interest that has been or is hereafter listed in the Schedules as neither disputed, contingent or unliquidated, and for which no timely proof of claim has been filed, or (c) any Claim allowed pursuant to this Plan or by prior Order of the Bankruptcy Court; provided, however, that with respect to any Claim or Interest described in clauses (a) or (b) above, such Claim or Interest shall be allowed only if (i) no objection to the allowance thereof has been interposed within the applicable period of time fixed by this Plan, the Bankruptcy Code, the Bankruptcy Rules or the Bankruptcy Court or (ii) such an objection is so interposed and the Claim or Interest shall have been allowed by either (y) a Final Order (but only to the extent allowed by such Final Order and only if such allowance was not solely for the purpose of

voting to accept or reject this Plan) or (z) a schedule filed in the Chapter 11 Cases by the Liquidating Trustee of Allowed Claims based upon agreement with the Holder of the Claim and the Liquidating Trustee which may be filed from time to time. Except as otherwise specified in this Plan or a Final Order of the Bankruptcy Court, the amount of an Allowed Claim shall not include interest on such Claim from and after the Filing Date.

ANC: ANC Rental Corporation, a Delaware corporation.

ANC Common Stock: The common stock of ANC, par value \$.01 per share, issued and outstanding as of the Filing Date.

ANC Common Stock Interest: Any Interest evidenced by ANC Common Stock or any Claim, if any, relating to ANC Common Stock that is subordinated under section 510(b) of the Bankruptcy Code and any other Interest other than Subsidiary Common Stock Interests.

Asset Purchase Agreement: The Asset Purchase Agreement, dated as of June 12, 2003, as amended, by and among ANC Rental Corporation and certain of its subsidiaries, as Sellers, and Vanguard Car Rental USA Inc. and/or any direct or indirect subsidiaries of Cerberus affiliates of Cerberus or any newly formed entity affiliated with Cerberus, as Cerberus may in its sole discretion designate, as Purchaser, and Cerberus.

AutoNation Settlement Proceeds: Pursuant to the order entered by the Bankruptcy Court on May 13, 2003 approving a settlement agreement among the Debtors, AutoNation and the Committee, AutoNation agreed, upon termination of its guaranty or the additional credit support that it agreed to provide, to make payments to the Liquidating Trust, in an amount equal to one-half of the released credit support, less any payments made by AutoNation on account of the credit support, all as more fully described in said settlement agreement.

Avis/Hertz Claims: The Debtor Claims that may be asserted against Avis and Hertz for their predatory or anti-competitive actions in connection with the Debtor's airport consolidation program.

Avoidance Actions: All preference or other avoidance claims and actions of any Debtor arising under Sections 544 through 553, inclusive, of the Bankruptcy Code or under related federal or state statutes and common law, including fraudulent transfer laws, that are not specified in Section 2.1(ii) of the Asset Purchase Agreement and that are thus retained by the Debtors.

Ballot: The form distributed, together with the Disclosure Statement, to holders of Claims in classes that are Impaired and entitled to vote on this Plan for the purpose of indicating acceptance or rejection of this Plan.

Bankruptcy Code: Title 11 of the United States Code, as amended from time to time, as applicable to the Chapter 11 Cases.

Bankruptcy Court: The United States Bankruptcy Court for the District of Delaware or such other court as may have jurisdiction over these Chapter 11 Cases.



Bankruptcy Rules: The Federal Rules of Bankruptcy Procedure promulgated under section 2075 of title 28 of the United States Code and the Local Rules of the Bankruptcy Court, each as amended from time to time, as applicable to the Chapter 11 Cases.

Board: The board of directors of the Debtors, as it is constituted on the Confirmation Date.

Business Day: Any day other than a Saturday, Sunday or “legal holiday” as such term is defined in Bankruptcy Rule 9006(a).

Business Interruption Insurance Claim: The Debtor Claim relating to the September 11, 2001 terrorist attacks arising under, but not limited to, Lexington Insurance Policy #852-6825, Continental Casualty Company Policy #RMP1988000988, Allianz Insurance Company Policy #CLP3001018, Royal Indemnity Company Policy #RHD319588, Commonwealth Insurance Company Policy #US3225, Hartford Fire Insurance Company Policy #GX00531, Caliber One Insurance Company Policy # ZS100136602 and Essex Insurance Company Policy # MSP6682.

By-Laws: The By-Laws of the Debtors in effect as of the Filing Date.

Cash: United States currency, a certified check, a cashier’s check or a wire transfer of good funds from any source, or a check drawn on a domestic bank by the Debtors, the Liquidating Trust or other Entity making any distribution under this Plan.

Cause of Action: Any and all actions, causes of action, suits, accounts, controversies, agreements, promises, rights to legal remedies, rights to equitable remedies, rights to payment, and claims, whether known or unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured, unsecured and whether asserted or assertable directly or derivatively, in law, equity or otherwise.

Cerberus: Cerberus Capital Management, L.P. or any Entity utilized to purchase substantially all of the Debtors’ assets.

Certificate of Incorporation: The certificate of incorporation of ANC in effect as of the Filing Date.

Chapter 11 Cases: The cases under chapter 11 of the Bankruptcy Code filed by the Debtors that were commenced on the Filing Date, as case number 01-11200 (MFW).

Claim: Any right to (a) payment from a Debtor, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (b) an equitable remedy for breach of performance if such breach gives rise to a right to payment from a Debtor, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

Class: A class of Claims or Interests designated pursuant to this Plan.

Class 1 Interest: An uncertificated beneficial interest in the Liquidating Trust representing the right of the holder of the Class 1 Interest to receive the distributions contemplated by Sections 9.3(a), 9.3(c) and 9.3(d).

Class 2 Interest: An uncertificated beneficial interest in the Liquidating Trust representing the right of the holder of the Class 2 Interest to receive the distributions contemplated by Sections 9.3(b), 9.3(c) and 9.3(d).

Collateral: Any property or interests in property of the Debtors or the Debtors' estates that is subject to a valid, binding, enforceable, perfected and unavoidable lien to secure the payment or performance of a Claim of a creditor.

Committee: The statutory creditors' committee appointed in these Chapter 11 Cases pursuant to section 1102(a) of the Bankruptcy Code, as the same may be constituted from time to time.

Confirmation Date: The date on which the Confirmation Order shall be entered on the docket maintained by the Clerk of the Bankruptcy Court with respect to the Chapter 11 Cases.

Confirmation Hearing: The hearing held by the Bankruptcy Court pursuant to section 1128(a) of the Bankruptcy Code regarding the confirmation of this Plan pursuant to section 1129 of the Bankruptcy Code.

Confirmation Order: The order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

Creditor: Any Entity that is the holder of a Claim against a Debtor that arose on or before the order for relief in these Chapter 11 Cases or a Claim against a Debtor's estate of the kind specified in section 502(g), 502(h) or 502(i) of the Bankruptcy Code.

D&O Indemnification Claims: The meaning ascribed to such term in Section 9.6 of this Plan.

D&O Insurance: The directors and officers insurance policies maintained by one or more of the Debtors which covers the Debtors' present and former officers, directors, and all such other employees, agents, advisors, representatives or other parties who would be entitled to coverage thereunder.

Debtors: ANC and its subsidiaries listed on Schedule I, as debtors and debtors-in-possession in the Chapter 11 Cases.

Debtor Claims. All Causes of Action and Avoidance Actions that a Debtor may have against any Person other than against an affiliate of the Debtor (including a Non-Debtor Affiliate) that arise prior to the Effective Date and that, as of the Effective Date, have not been

waived, settled, released or denied by Final Order of the court having jurisdiction over a proceeding in which such Cause of Action or Avoidance Action was asserted.

Deficiency Claim: The amount by which the total Claim of a holder of a Secured Claim exceeds the amount of such Secured Claim.

Disclosure Statement: The disclosure statement that relates to this Plan and that has been approved by the Bankruptcy Court as containing adequate information as required by section 1125 of the Bankruptcy Code.

Disputed: With respect to Claims, any Claim that is not Allowed.

Disputed Claims Reserve Trusts: The Disputed General Unsecured Claims Reserve Trust and Disputed Priority Claims Reserve Trust.

Disputed General Unsecured Claims Reserve Trust: The trust established on the Effective Date by the Liquidating Trustee to provide for the payment of Disputed General Unsecured Claims that are Allowed after the Effective Date.

Disputed Priority Claims Reserve Trust: The trust established on the Effective Date by the Liquidating Trustee to provide for the payment of Disputed Priority Claims that are Allowed after the Effective Date.

Distribution Reserve Account: The account to be established by the Liquidating Trust as of the Effective Date (or as soon as reasonably practicable after the Liquidating Trust receives sufficient funds) to hold Cash reserved solely for the purpose of making distributions in respect of Other Secured Claims, Ad Valorem Tax Claims, Allowed Priority Claims and Allowed General Unsecured Claims (and to the Disputed Claims Reserve Trusts in respect of Disputed Priority Claims and Disputed General Unsecured Claims) as provided in this Plan.

Effective Date: The first Business Day following the earlier of (i) the day on which the Liquidating Trustee determines that there are sufficient funds or reserves available in the Liquidating Trust to pay all Allowed or Disputed Administrative, Other Secured, Ad Valorem and Priority Claims or (ii) 360 days after the Confirmation Date or such extended date as agreed to between the Debtors and the Liquidating Trustee; provided, however, that if, on or prior to such date, all such conditions to the Effective Date as set forth in Article Thirteen have not been satisfied or waived, then the Effective Date shall be the first Business Day following the day on which all such conditions to the Effective Date have been satisfied or waived or such later date as the Debtors and Liquidating Trustee may jointly determine.

Entity: Any individual, corporation, limited or general partnership, limited liability company, joint venture, association, joint stock company, estate, entity, trust, trustee, United States trustee, unincorporated organization, government, governmental unit (as defined in the Bankruptcy Code), agency or political subdivision thereof.

Excluded Assets: Assets of the Debtors, as defined in Section 2.2 of the Asset Purchase Agreement, which are not being acquired by Cerberus.

Expense Reserve Account: The account to be established by the Liquidating Trust as of the Confirmation Date (or as soon as reasonably practicable thereafter) to hold Cash reserved for the payment of costs and expenses of the Liquidating Trust.

Extinguished/Extinguishment: A claim that is eliminated and discharged by offset, distribution, cancellation or contribution of such claim or otherwise, as determined by the Debtors.

Filing Date: November 13, 2001, which was the date on which each of the Debtors filed a voluntary petition for relief commencing the Chapter 11 Cases.

Final Decree: A final decree closing the Chapter 11 Cases as described in Bankruptcy Rule 3022.

Final Distribution: The distribution of the Final Distribution Assets on the Termination Date pursuant to Section 9.3(d).

Final Distribution Assets: All assets held by the Liquidating Trust on the Termination Date other than the Wind-Up Reserve.

Final Order: An order, ruling or judgment of the Bankruptcy Court or any other court of competent jurisdiction as to which the time to appeal, petition for certiorari, or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing shall then be pending, or as to which any right to appeal, petition for certiorari, reargue, or rehear shall have been waived in writing in form and substance satisfactory to the Debtors or, on and after the Effective Date, the Liquidating Trust or, in the event that an appeal, writ of certiorari, or reargument or rehearing thereof has been sought, such order of the Bankruptcy Court or other court of competent jurisdiction shall have been determined by the highest court to which such order was appealed, or certiorari, reargument or rehearing shall have been denied and the time to take any further appeal, petition for certiorari or move for reargument or rehearing shall have expired; provided, however, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or applicable state court rules of civil procedure, may be filed with respect to such order shall not cause such order not to be a Final Order.

General Unsecured Claims: A Claim against any Debtor that is not a Secured Claim, Other Secured Claim, Ad Valorem Tax Claim, Administrative Claim, Priority Tax Claim, Other Priority Claim, or Intercompany ANC Claim. Without limiting the foregoing, General Unsecured Claim shall include any Deficiency Claim.

German Debtors: The following ANC subsidiaries which are in insolvency proceedings in Germany: Republic Industries Autovermietung GmbH, Republic Industries Fuhrpark Leasing GmbH and Republic Industries (German Holdings) GmbH.

German Intercompany ANC Claims: The claims, whether secured or unsecured of a Debtor against a German Debtor, net of any claims that a German Debtor may hold against any of the Debtors.

Holder: Any Entity that holds a Claim or Interest.

Impaired: Any Class of Claims or Interests that is impaired within the meaning of section 1124 of the Bankruptcy Code.

Indemnification Claims: Any Claims arising out of obligations or rights of the Debtors to indemnify or contribute to the losses, liabilities or expenses of an Indemnitee pursuant to the Debtors' certificate of incorporation, bylaws, policy or other agreement which provides employee indemnification, or applicable state law or specific agreement in respect of any claims, demands, suits, causes of action or proceedings against an Indemnitee based upon any act, conduct or omission to act related to an Indemnitee's service with, for or on behalf of the Debtors.

Indemnitee: All present and former directors, officers, employees, agents, advisors or representatives of the Debtors who are entitled to assert Indemnification Claims.

Initial Distribution Date: The date of the initial distribution of assets to the holders of Allowed Claims.

Intercompany ANC Claims: Any claim, whether secured or unsecured, of an ANC Affiliate against one another, or against ANC (or that ANC may hold against such Affiliate).

Instrument: Any share of stock, security, promissory note or other "Instrument" within the meaning of that term as defined in section 9-102(47) of the UCC.

Interests: All equity interests in a Debtor, including, but not limited to, shares of common stock and any rights, options, warrants, calls, subscriptions or other similar rights or agreements, commitments or outstanding securities obligating a Debtor to issue, transfer or sell any shares of capital stock of a Debtor.

LCPI: Lehman Commercial Paper Inc., in its capacities as administrative agent and lender under the Supplemental Facility, and in its capacities as syndication agent and lender under the Senior Loan Agreement.

Lehman: Collectively, Lehman Brothers and LCPI.

Lehman Brothers: Lehman Brothers Inc., in its capacities as arranger and lender under the Senior Loan Agreement.

Lehman Secured Claim. Lehman's Allowed secured Claim of \$180 million on account of the Senior Loan Agreement that was approved by the Bankruptcy Court on March 19, 2003 as part of a settlement agreement between the Debtors, Committee and Lehman.

Liquidating Trust: The trust described in Section 9 of the Plan to be established under New York trust law that will effectuate the post confirmation wind down of the Debtors, and make distributions to the Holders of Other Secured Claims, Ad Valorem Tax Claims, Allowed Priority Tax Claims, Other Priority Claims and General Unsecured Claims. With

respect to any action required or permitted to be taken by the Liquidating Trust, the term includes the Liquidating Trustee or any other person authorized to take such action in accordance with the Liquidating Trust Agreement.

Liquidating Trust Agreement: The agreement and declaration of trust establishing the Liquidating Trust in conformity with the provisions of this Plan, which shall be approved in the Confirmation Order and entered into by the Debtors, on behalf of the beneficiaries, and the Liquidating Trustee on the Effective Date pursuant to the terms of the Plan, annexed hereto as Exhibit A.

Liquidating Trustee: A Person to be designated by the Committee (in consultation with the Debtors) to serve as the manager of the Liquidating Trust, and any successor thereto.

Market Rate: The rate of interest per annum (rounded upward, if necessary, to the nearest whole 1/100 of 1%) equal to the yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of one-year United States Treasury bills settled at least fifteen (15) days prior to the Effective Date.

Non-Acquired Foreign Subsidiaries: The following foreign subsidiaries that were not acquired by the Purchaser: ANC Rental (Europe), Republic Industries (German Holdings) GmbH, Alamo Rent-A-Car (Vienna) GmbH, Republic Industries Autovermietung GmbH, ANC Handeks GmbH & Co. KG, Republic Industries Fuhrpark Leasing GmbH, Alamo-CC Raule Autovermietung-erwaltungs GmbH, National Car Rental System (New Zealand) Limited, National Car Rental System (Hong Kong) Limited, National Car Rental System do Brasil Empreendimentos Ltda. and Alamo Renta A Car Locadora De Automoveis Ltda.

Other Priority Claim: Any Claim, other than a Priority Tax Claim or an Administrative Expense, which is entitled to priority of payment under section 507(a) of the Bankruptcy Code.

Other Secured Claim: Any Secured Claim other than an Ad Valorem Tax Claim, Lehman Secured Claim, or Secured Claim satisfied pursuant to the Sale Order or Sale Transaction.

Person: An individual, corporation, partnership, joint venture, association, joint stock company, limited liability company, limited liability partnership, trust, estate, unincorporated organization, governmental unit or other entity.

Plan: This joint chapter 11 liquidating plan of the Debtors and the Committee, together with all exhibits hereto, as the same may be amended and modified from time to time in accordance with section 1127 of the Bankruptcy Code.

Post-Petition Indemnification Claims: The meaning given to such term in Section 9.6.

Pre-Petition Indemnification Claims: The meaning given to such term in Section 9.6.

Priority Claim: Claim that is a Priority Tax Claim or an Other Priority Claim.

Priority Tax Claim: Any Claim which is entitled to priority of payment under section 507(a)(8) of the Bankruptcy Code.

Pro Rata Share: A proportionate share, so that the ratio of the amount of property distributed on account of an Allowed Claim or a Disputed Claim when a distribution is to be made to a Disputed Claims Reserve Trust, as the case may be, in a class is the same as the ratio such Claim bears to the total amount of all Claims (including Disputed Claims until disallowed) in such class.

Reinstate: To leave unaltered the legal, equitable and contractual rights to which a Claim entitles the holder of such Claim, in accordance with Section 1124 of the Bankruptcy Code.

Related Documents: This Plan and all documents necessary to consummate the transactions contemplated by this Plan.

Released Claims: All preference or other avoidance claims or actions of any Debtor arising out of Sections 544 through 553, inclusive, of the Bankruptcy Code (i) against the Acquired Subsidiaries (as defined in the Asset Purchase Agreement), (ii) against Purchaser or its Affiliates or (iii) relating to an Assigned Contract (as defined in the Asset Purchase Agreement) or a Current Asset (as defined in the Asset Purchase Agreement) as of the closing of the Sale Transaction.

Released Parties: Each of the Board and current corporate officers of the Debtors, as well as the Committee, the individual members of the Committee in their capacity as members of the Committee, and each of their respective advisors and agents and professionals retained by the foregoing parties and the Debtors.

Sale Order: The Order of the Bankruptcy Court dated September 3, 2003, which Order appears on the docket of the Chapter 11 Cases as docket no. 5236.

Sale Transaction: The sale of substantially all of the Debtors' assets to Vanguard Car Rental USA Inc., a wholly owned subsidiary of Cerberus.

Schedules: The schedule of assets and liabilities filed by the Debtors with the Bankruptcy Court on January 16, 17 and 18, 2002 in accordance with section 521(1) of the Bankruptcy Code, and any supplements and amendments thereto.

Secured Claim: Any Claim secured by a Lien on any Asset of the Debtor, or right of setoff, which Lien or right of setoff, as the case may be, is valid, perfected and enforceable under applicable law and is not subject to avoidance under the Bankruptcy Code or applicable nonbankruptcy law, but only to the extent of the value, pursuant to Section 506(a) of the Bankruptcy Code, of any interest of the holder of the Claim in property of the Estate(s) securing such Claim.

Secured Claims Account: The account established on the Effective Date by the Liquidating Trustee to provide for the payment of Disputed Secured Claims that are Allowed and unpaid after the Effective Date.

Subsidiary Common Stock: Collectively, all common stock of the Debtors (other than ANC) issued and outstanding as of the Filing Date.

Subsidiary Common Stock Interest: Any Interest evidenced by Subsidiary Common Stock.

Senior Loan Agreement: The Amended and Restated Senior Loan Agreement, dated as of June 30, 2000, as amended (the “Senior Loan Agreement”), among ANC and Lehman in an aggregate principal amount of \$225 million.

Subsidiary Debtors: All of the Debtors other than ANC.

Termination Date: The date upon which the Liquidating Trustee has made the Final Distribution from the Liquidating Trust pursuant to section 9.3(d) of the Plan and has filed all appropriate documentation with the Court and, if necessary, other relevant governmental authorities.

Transfer: As a noun, any voluntary or involuntary transfer, sale, pledge, hypothecation or other disposition and, as a verb, voluntarily or involuntarily to transfer, sell, pledge or hypothecate or otherwise dispose of.

UCC: The Uniform Commercial Code in effect in the State of New York as of the date hereof, as applicable.

Unclaimed Distribution: Distributions to holders of Allowed Claims that are returned as undeliverable.

Unclaimed Distributions Reserve: The reserve created with the Unclaimed Distributions that are returned as undeliverable, which may be claimed after the Effective Date.

Unimpaired: Any Class of Claims or Interests that is not Impaired.

Voting Deadline: The date established in the order of the Bankruptcy Court approving the Disclosure Statement as the deadline by which votes to accept or reject this Plan must be received.

Wind-Up Reserve: As more fully described in the Liquidating Trust Agreement, a Cash reserve to be established by the Liquidating Trustee at the time of making a final distribution to creditors for purposes of paying the expenses of such final distribution and winding up the affairs of the Liquidating Trust after such final distribution, including the projected costs of dissolving the Liquidating Trust, preparing final tax returns, filing reports or other documents in the Chapter 11 Cases or under applicable non-bankruptcy law, and storing or disposing of records and any other property of the Liquidating Trust.



## ARTICLE TWO

### TREATMENT OF ADMINISTRATIVE EXPENSES AND SECURED CLAIMS

2.1. Administrative Expenses. Except to the extent that any Entity entitled to payment of any Allowed Administrative Expense Claim agrees to a less favorable treatment, all Administrative Expense Claims shall be reconciled and all Allowed Administrative Expense Claims shall receive Cash from the Debtors or the Liquidating Trust, as the case may be, in an amount equal to the Allowed Administrative Expense Claim, as soon as practicable after the Effective Date as such Claims are reconciled.

(a) Administrative Expense Procedures. All requests for payment of Administrative Expenses incurred up to and including the Confirmation Date (including requests for payment of all professional fees and expenses) must be filed within forty-five (45) days of the Confirmation Date in accordance with any procedures set forth in the Confirmation Order. The Debtors shall mail notices to creditors within ten (10) business days of the Confirmation Date by first class mail. All holders of Administrative Expenses incurred up to and including the Confirmation Date that do not file a request for payment pursuant to the Confirmation Order within forty-five (45) days of the mailing of the notice of the Confirmation Date will forever be barred and enjoined from seeking any payment on account of their Administrative Expense Claim.

2.2. Secured Claims.

(a) Other Secured Claims

(i) Treatment. As soon as practicable after the Effective Date as such Other Secured Claims are reconciled, at the sole election of the Liquidating Trustee, each holder of an Allowed Other Secured Claim shall be: (a) paid in full in Cash in an amount equal to the Allowed amount of such Secured Claim; (b) satisfied by returning to the Holder of such Secured Claim the Collateral securing such Allowed Secured Claim; (c) paid and/or satisfied through any combination of subparagraphs (a) and (b) of this Section 2.2 of the Plan; or (d) treated as may otherwise be agreed upon by the Holder of such Secured Claim and the Liquidating Trustee.

(ii) Full Settlement. The distributions provided in this Section 2.2(a) are in full settlement, release and discharge of each Holder's Other Secured Claim.

Holders of Other Secured Claims are not Impaired.

(b) Ad Valorem Tax Claims

(i) Treatment. As soon as practicable after the Effective Date as such Other Ad Valorem Tax Claims are reconciled, each holder of an Allowed Ad Valorem Tax Claim shall receive payment in full from the Ad Valorem Tax Escrow established pursuant to the Sale Order; provided, however, that in the event that the amounts in the Ad Valorem Tax Escrow are insufficient to pay any Allowed Ad Valorem Tax Claim, the Liquidating Trust shall pay to

the holder of the Allowed Ad Valorem Tax Claim an amount equal to such insufficiency as soon as practicable after the Effective Date as such Claims are reconciled.

(ii) Full Settlement. The distributions provided in this Section are in full settlement, release and discharge of each Holder's Ad Valorem Tax Claim.

Holders of Ad Valorem Tax Claims are not Impaired.

### ARTICLE THREE

#### TREATMENT OF PRIORITY TAX CLAIMS

3.1. Priority Tax Claims. With respect to each Allowed Priority Tax Claim, as soon as practicable after the Effective Date as such Claims are reconciled, each holder of an Allowed Priority Tax Claim shall be entitled to receive from the Debtors or the Liquidating Trust (as the case may be), Cash, in an amount sufficient to render such Allowed Priority Tax Claim Unimpaired under section 1124 of the Bankruptcy Code or such other treatment as to which the Debtors, the Liquidating Trust and such Holder shall have agreed upon in writing. Notwithstanding the forgoing, and to the extent that there are funds available to the Liquidating Trust to make distributions to Allowed Priority Tax Claims on the Effective Date, the Liquidating Trust may make in its discretion interim distributions to Allowed Priority Tax Claims pursuant to Section 9.3 of this Plan.

3.2. Full Settlement. The distributions provided for in Section 3.1 are in full settlement, release and discharge of all Priority Tax Claims.

### ARTICLE FOUR

#### CLASSIFICATION OF CLAIMS AND INTERESTS

4.1. Designation of Classes Pursuant to Sections 1122 and 1123(a)(1) of the Bankruptcy Code. Set forth below is a designation of classes of Claims and Interests. Administrative Expenses, Other Secured Claims, Ad Valorem Tax Claims and Priority Tax Claims of the kinds specified in sections 507(a)(1) and 507(a)(8) of the Bankruptcy Code (set forth in Articles Two and Three above) have not been classified and are excluded from the following classes in accordance with section 1123(a)(1) of the Bankruptcy Code.

4.2. Claims.

Class 1. Class 1 consists of all Other Priority Claims.

Class 2. Class 2 consists of all General Unsecured Claims.

Class 3. Class 3 consists of all Intercompany ANC Claims.

4.3. Interests.

Class 4. Class 4 consists of all ANC Common Stock Interests.

ARTICLE FIVE

IDENTIFICATION OF CLASSES OF CLAIMS AND INTERESTS IMPAIRED AND NOT IMPAIRED BY THIS PLAN

5.1. Classes of Claims and Interests Impaired by this Plan and Entitled to Vote. General Unsecured Claims (Class 2) are Impaired by this Plan and the holders of Allowed Claims in such Class are entitled to vote to accept or reject this Plan.

5.2. Classes of Claims Not Impaired by this Plan and Conclusively Presumed to Accept this Plan. Other Priority Claims (Class 1) are not Impaired by this Plan. Under section 1126(f) of the Bankruptcy Code, the holders of such Claims are conclusively presumed to accept this Plan, and the acceptances of such Holders will not be solicited.

5.3. Classes of Claims and Interests Impaired by this Plan and Deemed Not to Have Accepted this Plan. Intercompany ANC Claims (Class 3) and ANC Common Stock Interests (Class 4) are Impaired by this Plan and do not receive or retain any property under this Plan. Under section 1126(g) of the Bankruptcy Code, the holders of ANC Common Stock Interests are deemed not to have accepted this Plan, and the acceptance of such Holders will not be solicited

ARTICLE SIX

TREATMENT OF CLAIMS AND INTERESTS

6.1. Other Priority Claims (Class 1).

(a) Treatment. As soon as practicable after the Effective Date as such Claims are reconciled, each holder of an Allowed Other Priority Claim shall be entitled to receive from the Liquidating Trust, Cash, in an amount sufficient to render such Allowed Other Priority Claim Unimpaired under section 1124 of the Bankruptcy Code or such other treatment as to which the Liquidating Trust and such Holder shall have agreed upon in writing. Notwithstanding the forgoing, and to the extent that there are funds available to the Liquidating Trust to make distributions to Allowed Other Priority Claims on the Effective Date, the Liquidating Trust may in its discretion make interim distributions to Allowed Other Priority Claims pursuant to Section 9.3(a) of this Plan.

(b) Full Settlement. The distributions provided in this Section 6.1 are in full settlement, release and discharge of each Holder's Other Priority Claim.

Class 1 is not Impaired.

6.2. General Unsecured Claims (Class 2).

(a) Treatment. As soon as practicable after (i) the Effective Date, (ii) the date of receipt by the Liquidating Trust of sufficient funds to allow for distributions to be made, and (iii) the date on which all Priority Claims have either been Disallowed or Allowed and paid in full or the date on which the Disputed Priority Claims Reserve Trust has been funded with an amount of Cash sufficient to pay all Disputed Priority Claims in full, each holder of an Allowed General Unsecured Claim shall receive a Pro Rata Share distribution of all funds available to the Liquidating Trust or such other treatment as to which the Debtors and the Committee, or the Liquidating Trust, and such Holder shall have agreed upon in writing. Notwithstanding the forgoing, and to the extent that there are funds available to the Liquidating Trust after payment of all Priority Tax and Other Priority Claims, the Liquidating Trust may make interim distributions to Allowed General Unsecured Claims pursuant to Section 9.3(b) of this Plan.

(b) Full Settlement. The distributions provided in this Section 6.2 are in full settlement, release and discharge of each Holder's General Unsecured Claim and all other Claims, if any, of such Holder directly or indirectly related to or arising out of the transactions, agreements or Instruments upon which such General Unsecured Claim is based.

Class 2 is Impaired.

6.3. Intercompany ANC Claims (Class 3). On or prior to the Effective Date, all Intercompany ANC Claims, with the exception of the German Intercompany ANC Claims, will be Extinguished and no distributions from the Liquidating Trust will be made in respect of such Intercompany ANC Claims.

Class 3 is Impaired.

6.4. ANC Common Stock Interests (Class 4). On the Effective Date, all ANC Common Stock Interests will be extinguished and no distributions will be made in respect of such ANC Common Stock Interests.

Class 4 is Impaired.

## ARTICLE SEVEN

### ACCEPTANCE OR REJECTION OF THIS PLAN; EFFECT OF REJECTION BY ONE OR MORE IMPAIRED CLASSES OF CLAIMS OR INTERESTS

7.1. Impaired Classes of Claims Entitled to Vote. General Unsecured Claims (Class 2) are Impaired and the holders of Allowed Claims in such Class are entitled to vote to accept or reject this Plan.

7.2. Acceptance by an Impaired Class of Creditors. Consistent with section 1126(c) of the Bankruptcy Code and except as provided in section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims shall have accepted this Plan if this Plan is accepted by holders of at least two-thirds in dollar amount and more than one-half in number of the Allowed Claims in such Class that have timely and properly voted to accept or reject this Plan.

7.3. Classes of Claims and Interests Not Impaired by this Plan and Conclusively Presumed to Accept this Plan. Other Priority Claims (Class 1) are not Impaired by this Plan. Under section 1126(f) of the Bankruptcy Code, the holders of such Claims and Interests are conclusively presumed to accept this Plan, and the acceptances of such Holders will not be solicited.

7.4. Classes of Claims and Interests Deemed Not to Have Accepted this Plan. Intercompany ANC Claims (Class 3) and ANC Common Stock Interests (Class 4) are Impaired by this Plan and do not receive or retain any property under this Plan. Under section 1126(g) of the Bankruptcy Code, the holders of ANC Common Stock Interests are deemed not to have accepted this Plan, and the acceptance of such Holders will not be solicited.

7.5. Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code. With respect to any Class that does not accept this Plan, the Debtors and the Committee intend to request that the Bankruptcy Court confirm this Plan in accordance with section 1129(b) of the Bankruptcy Code.

## ARTICLE EIGHT

### UNEXPIRED LEASES AND EXECUTORY CONTRACTS

8.1. Rejection of Executory Contracts and Unexpired Leases. Any executory contracts or unexpired leases which have not expired by their own terms on or prior to the Confirmation Date, which have not been assumed, assumed and assigned, or rejected with the approval of the Bankruptcy Court, or which the Debtors have obtained the authority to reject but have not rejected as of the Confirmation Date, or which are not the subject of a motion to assume the same pending as of the Confirmation Date, shall be deemed rejected by the Debtors on the Confirmation Date, and the entry of the Confirmation Order by the Bankruptcy Court shall

constitute approval of such rejections pursuant to Sections 365(a) and 1123 of the Bankruptcy Code.

8.2. Bar Date for Rejection Damages. Unless otherwise provided by an order of the Bankruptcy Court entered prior to the Confirmation Date, a proof of claim with respect to any Claim against the Debtors arising from the rejection of any executory contract or unexpired lease pursuant to an order of the Bankruptcy Court must be filed with the Bankruptcy Court within (a) the time period established by the Bankruptcy Court in an order of the Bankruptcy Court approving such rejection, or (b) if no such time period is or was established, thirty (30) days from the date of entry of such order of the Bankruptcy Court approving such rejection. Any Entity that fails to file a proof of claim with respect to its Claim arising from such a rejection within the periods set forth above shall be forever barred from asserting a Claim against the Debtors or the property or interests in property of the Debtors or the Liquidating Trust. All Allowed Claims arising from the rejection of executory contracts or unexpired leases shall be classified as General Unsecured Claims (Class 2) under this Plan, as appropriate.

## ARTICLE NINE

### IMPLEMENTATION OF THIS PLAN

#### 9.1. The Liquidating Trust

(a) Incorporation of Liquidating Trust Agreement. The Liquidating Trust Agreement is incorporated herein in full and is made a part of this Plan as if set forth herein.

#### (b) Establishment and Administration of Liquidating Trust.

(i) On the Confirmation Date, the Liquidating Trust shall be established according to the Liquidating Trust Agreement. Upon execution and delivery of the Liquidating Trust Agreement, the Liquidating Trustee shall be authorized to take all other steps necessary to complete the formation of the Liquidating Trust; provided that prior to the Confirmation Date, the Debtors or the Liquidating Trustee, as applicable, may act as organizers of the Liquidating Trust and take such steps in furtherance thereof as may be necessary, useful or appropriate under applicable law to ensure that the Liquidating Trust shall be formed and in existence as of the Confirmation Date. Upon the Confirmation Date and prior to the Effective Date, the Liquidating Trust shall have the authority to dissolve the Debtors' corporations. The Liquidating Trust shall be administered by the Liquidating Trustee.

(ii) It is intended that the Liquidating Trust be classified for federal income tax purposes as a "liquidating trust" within the meaning of Treasury Regulations Section 301.7701-4(d) and as a "grantor trust" within the meaning of Sections 671 through 679 of the Internal Revenue Code. In furtherance of this objective, the Liquidating Trustee shall, in its business judgment, make continuing best efforts not to unduly prolong the duration of the Liquidating Trust. All assets held by the Liquidating Trust on the Effective Date shall be deemed for federal income tax purposes to have been distributed by the Debtors pro rata to

holders of Allowed Priority Claims and Allowed General Unsecured Claims and then contributed by such holders to the Liquidating Trust in exchange for beneficial interests in the Liquidating Trust. All holders have agreed to use the valuation of the assets transferred to the Liquidating Trust as established by the Liquidating Trustee for all federal income tax purposes. All of the Liquidating Trust's trust income will be treated as subject to tax on a current basis. The Beneficiaries will be treated as the deemed owners of the Liquidating Trust. The Liquidating Trust will be responsible for filing information returns on behalf of the Liquidating Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a). Subject to issuance of definitive guidance to the contrary, the Liquidating Trustee will treat each of the Disputed Claims Reserve Trusts as a discrete trust, subject to a separate entity-level tax.

(c) Assets of the Liquidating Trust. On the Effective Date, or as soon as reasonably practicable thereafter, the Debtors will transfer and assign to the Liquidating Trust all property and assets of the Debtors that have neither been abandoned nor sold under the Asset Purchase Agreement, including without limitation, all Cash and Cash equivalents, the AutoNation Settlement Proceeds, all Debtor Claims not assigned under the Asset Purchase Agreement to Vanguard Car Rental USA Inc., all rights of the Debtors to their portion of the Avis/Hertz Claims, all rights of the Debtors to the Business Interruption Insurance Claim<sup>i</sup> and any other remaining assets of the Debtors, with the exception of the stock of the Non-Acquired Foreign Subsidiaries. Additionally, any checks of the Debtors that remain uncashed six (6) months after the Confirmation Date shall revert to the Liquidating Trust. The Liquidating Trust will hold and administer the following assets: (i) the Expense Reserve Account; (ii) the Distribution Reserve Account; (iii) all Debtor Claims, if any; and (iv) any other Assets of the Debtors that are neither abandoned nor distributed on the Effective Date. The Liquidating Trust will also hold and administer the Unclaimed Distributions Reserve, and the Liquidating Trustee shall administer the Disputed Claims Reserve Trusts. Any remaining office equipment, supplies, leases, etc., of the Liquidating Trust shall be sold by the Liquidating Trustee for Cash or cash equivalents.

(d) Expense Reserve Account. On the Confirmation Date, or as soon as reasonably practicable thereafter, the Liquidating Trust will establish the Expense Reserve Account, to be funded initially with \$250,000 (which Lehman has agreed to pay in accordance with the "third party release issue") transferred by the Debtors to the Liquidating Trust. On the Effective Date, or as soon as reasonably practicable thereafter, the Liquidating Trust will deposit in the Expense Reserve Account sufficient funds from the Distribution Reserve Account to pay all accrued and projected expenses and costs (including, without limitation, the Wind-Up Reserve or any Administrative Expenses that may remain or that may be incurred by the Liquidating Trust up to the Effective Date) of the Liquidating Trust to be incurred through the Termination Date. All funds or other property that are reallocated by either of the Disputed Claims Reserve Trusts to the Liquidating Trust shall (a) to the extent that there are insufficient funds in the Expense Reserve Account to pay the fees and expenses of the Liquidating Trust, be used to pay the fees and expenses of the Liquidating Trust as and to the extent set forth in the

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<sup>i</sup> Notwithstanding anything contained herein to the contrary, this provision shall not be read to cause or create an assignment of any insurance policy to the Liquidating Trust to the extent that such assignment would cause abrogation of any insurance coverage rights thereunder.

Plan and the Liquidating Trust Agreement, and (b) thereafter be distributed by the Liquidating Trust in accordance with the provisions of the Plan.

(e) Secured Claims Reserve Account. On the Effective Date, or as soon as reasonably practicable thereafter, the Liquidating Trust will establish the Secured Claims Reserve Account.

(f) Interests in the Liquidating Trust.

(i) Priority Claims and Class 1 Interests: On the Effective Date, each holder of an Allowed Priority Claim shall, by operation of the Plan, receive an uncertificated Class 1 Interest in the Liquidating Trust. Class 1 Interests reserved for Disputed Priority Claims shall be issued by the Liquidating Trust to, and held by the Liquidating Trustee, in the Disputed Priority Claims Reserve Trust pending allowance or disallowance of such Claims.

(ii) General Unsecured Claims and Class 2 Interests: On the Effective Date, each holder of an Allowed Class 2 General Unsecured Claim shall, by operation of the Plan, receive an uncertificated Class 2 Interest in the Liquidating Trust. Class 2 Interests reserved for Disputed General Unsecured Claims shall be issued by the Liquidating Trust to, and held by the Liquidating Trustee in, the Disputed General Unsecured Claims Reserve Trust pending allowance or disallowance of such Claims.

(iii) No other entity, including without limitation the Debtors, shall have any interest, legal, beneficial, or otherwise, in the Liquidating Trust or its assets or Causes of Action or Debtor Claims upon their assignment and Transfer to the Liquidating Trust.

## 9.2. Initial Distribution of Assets and Creation of Reserves and Accounts

As soon as reasonably practicable after the Effective Date, the Liquidating Trustee shall:

(a) either (i) pay in full in Cash the Allowed amount of a Secured Claim, (b) satisfy by returning to the Holder of a Secured Claim the Collateral securing such Allowed Secured Claim, (c) pay and/or satisfy through any combination of subparagraphs (a) and (b) of Section 2.2 of the Plan, or (d) treat the Claim as may otherwise be agreed upon by the Holder of such Secured Claim and the Liquidating Trustee;

(b) pay in full all Allowed Ad Valorem Tax Claims from the Ad Valorem Tax Escrow established pursuant to the Sale Order; provided; however, in the event that the Ad Valorem Tax Escrow is insufficient to pay any Allowed Ad Valorem Tax Claim in full, the Liquidating Trustee shall pay to the holder of the Allowed Ad Valorem Tax Claim an amount equal to such insufficiency;

(c) pay in full all Allowed Priority Claims, if sufficient funds exist to make such distributions as is economically practicable in the judgment of the Liquidating Trustee;

(d) transfer a Pro Rata Share of Cash to the Disputed Priority Claims Reserve Trust for the account of each holder of a Disputed Priority Claim;



(e) pay each Disputed Priority Claim from the Disputed Priority Claims Reserve Trust on the last Business Day of the first month following the end of the fiscal quarter in which, and to the extent, such Claim becomes an Allowed Claim, if sufficient funds exist to make such distribution economically practicable in the judgment of the Liquidating Trustee;

(f) retransfer, when all Disputed Priority Claims have been either Allowed and paid, disallowed, or withdrawn, to the Distribution Reserve Account any Remaining Funds from the Disputed Priority Claims Reserve Trust; and

(g) distribute all Cash that is not payable to or reserved for the Expense Reserve Account, or any other payments required under the Plan to be made or reserved by the Liquidating Trustee, as follows:

(i) distribute a Pro Rata Share of such Cash to each holder of an Allowed General Unsecured Claim; and

(ii) transfer a Pro Rata Share of Cash to the Liquidating Trustee which shall deposit such Pro Rata Share in the Disputed General Unsecured Claims Reserve Trust for the account of each holder of a Disputed General Unsecured Claim.

9.3. Interim and Final Distributions to Priority Claimants and General Unsecured Creditors from the Liquidating Trust.

(a) Class 1 Interim Distributions. The Liquidating Trustee shall make interim distributions of Cash from the Distribution Reserve Account to holders of Allowed Priority Claims and to the Disputed Priority Claims Reserve Trust on the last Business Day of the first month following the end of each fiscal quarter, if sufficient funds exist to make such distribution economically practicable in the judgment of the Liquidating Trustee. In addition, to the extent that 43% of the amount of taxable income allocated to the holders of Allowed Priority Claims (and, in respect of Disputed Priority Claims, the Disputed Priority Claims Reserve Trust) for any taxable year of the Liquidating Trust exceeds the amount distributable from the Liquidating Trust to such holders in respect of such taxable year, the Liquidating Trustee shall, subject to Section 9.4, make an interim distribution of Cash to such holders from the Distribution Reserve Account (and, if the amount of Cash held in the Distribution Reserve Account is insufficient for such purpose, from other income, if any, allocated for tax purposes to holders of Allowed Priority Claims under the Plan) in an amount equal to such excess, with such distributions treated as an advance of (and shall be applied against) future distributions of the Liquidating Trust to such holders, again, if sufficient funds exist to make such distribution economically practicable, in the judgment of the Liquidating Trustee.

(b) Class 2 Interim Distributions. When all Disputed Priority Claims have been either Allowed and paid, disallowed, or withdrawn, or if the Disputed Priority Claims Reserve Trust is funded with an amount of Cash sufficient to pay all Disputed Priority Claims in full, the Liquidating Trustee shall make interim distributions of Cash from the Distribution

Reserve Account to holders of Allowed General Unsecured Claims and to the Disputed General Unsecured Claims Reserve Trust on the last Business Day of the first month following the end of each fiscal quarter, if sufficient funds exist to make such distribution economically practicable in the judgment of the Liquidating Trustee. In addition, to the extent that 43% of the amount of taxable income allocated to the holders of Allowed General Unsecured Claims (and, in respect of Disputed General Unsecured Claims, the Disputed General Unsecured Claims Reserve Trust) for any taxable year of the Liquidating Trust exceeds the amount distributable from the Liquidating Trust to such holders in respect of such taxable year, the Liquidating Trustee shall, subject to Section 9.4, make an interim distribution of Cash to such holders from the Distribution Reserve Account (and, if the amount of Cash held in the Distribution Reserve Account is insufficient for such purpose, from other income, if any, allocated for tax purposes to holders of Allowed General Unsecured Claims under the Plan) in an amount equal to such excess, with such distributions treated as an advance of (and shall be applied against) future distributions of the Liquidating Trust to such holders, again, if sufficient funds exist to make such distribution economically practicable, in the judgment of the Liquidating Trustee.

(c) Interim Distributions from Expense Reserve Account. Subject to the terms and provisions of the Liquidating Trust Agreement, the Liquidating Trustee may, in its discretion, transfer Cash from the Expense Reserve Account to the Distribution Reserve Account for interim distributions in accordance with the provisions of Section 9.3(a) and (b), to the extent that the amount of Cash held in the Expense Reserve Account exceeds the amount that the Liquidating Trustee determines should be retained for purposes of paying the fees and expenses of the Liquidating Trust or any unpaid Administrative Expenses that remain or that were incurred by the Liquidating Trust up to the Effective Date.

(d) Interim Distributions from Secured Claims Account. Subject to the terms and provisions of the Liquidating Trust Agreement, the Liquidating Trustee may, in its discretion, transfer Cash from the Secured Claims Account to the Distribution Reserve Account for interim distributions in accordance with the provisions of Section 9.3(a) and (b), to the extent that the amount of Cash held in the Secured Claims Account exceeds the amount that the Liquidating Trustee determines should be retained for purposes of paying Secured Claims that remain unpaid.

(e) Final Distribution. The Liquidating Trust shall be dissolved and its affairs wound up and the Liquidating Trustee shall make the Final Distribution upon the earlier of (i) the date which is 5 years after the Effective Date, and (ii) that date when, (A) in the reasonable judgment of the Liquidating Trustee, substantially all of the assets of the Liquidating Trust have been liquidated and there are no substantial potential sources of additional Cash for distribution; (B) there remain no substantial Disputed Claims; and (C) the Liquidating Trustee is in a position to make the Final Distribution in accordance with applicable law. Notwithstanding the foregoing, on or prior to a date not less than six (6) months prior to such termination, the Bankruptcy Court, upon motion by a party in interest, may extend the term of the Liquidating Trust for one or more finite terms based upon the particular facts and circumstances at that time, if an extension is necessary to the liquidating purpose of the Liquidating Trust. The date on which the Final Distribution is made is referred to as the "Termination Date." The Liquidating Trustee shall provide at least thirty (30) days prior notice of the Termination Date to holders of

all Claims, except to the extent such Claims have been disallowed, withdrawn, paid or satisfied in full as of the time such notice is provided.

- (i) On the Termination Date, the Liquidating Trustee shall
  - (A) transfer Cash from the Expense Reserve Account to all unpaid Administrative Expenses, if any;
  - (B) establish the Wind-Up Reserve with funds from the Expense Reserve Account;
  - (C) transfer the Expense Reserve Account residual, including Cash remaining as a result of undrawn checks written by the Debtors or the Liquidating Trust, to the Distribution Reserve Account;
  - (D) transfer Cash remaining in the Secured Claims Account (i) to all unpaid Secured Claims; and (ii) to the Distribution Reserve Account;
  - (E) distribute all Cash held in the Distribution Reserve Account to the holders of Allowed Priority Claims and if sufficient funds are available, to the holders of Allowed General Unsecured Claims;
  - (F) distribute any other Final Distribution Assets to holders of Allowed Claims in accordance with their interests as specified in the Plan; and
  - (G) promptly thereafter, request the Bankruptcy Court to enter an order closing the Chapter 11 Cases.
- (ii) Remaining Funds. All funds withheld from the Final Distribution pursuant to Section 9.4 and any funds remaining in the Wind-Up Reserve after the Liquidating Trustee has performed all of his responsibilities under the Plan shall be paid or distributed as determined in accordance with the Liquidating Trust Agreement; provided, however, that the Liquidating Trustee shall not be required to make *de minimis* distributions as described in Section 9.4. The Liquidating Trustee shall be entitled to deduct from any such supplemental distribution his fees and expenses for making such supplemental distribution.

9.4. De Minimis Distributions. Any other provision of the Plan notwithstanding, the Liquidating Trustee shall not be required to make interim distributions to

each claimant in an amount less than \$30.00 or final distributions to each claimant in an amount less than \$300.00. Cash allocated to an Allowed Claim but withheld from an interim distribution pursuant to this subsection shall be held by the Liquidating Trustee for the account of and future distribution to the holder of such Allowed Claim. Cash allocated to an Allowed Claim but withheld from the Final Distribution pursuant to this subsection shall be distributed as provided in Section 9.3(d)(ii) and the holder of such Allowed Claim shall have no further interest therein or rights with respect thereto.

9.5. Release of Claims.

(a) **As of the Effective Date, the Released Parties, their officers, directors, agents, advisors and other retained professionals, shall be deemed to have been released and discharged by (i) the Debtors' estates and the Liquidating Trustee, and (ii) any holder of a Claim or Interest or any other party in interest or any of their respective agents, employees, representatives, financial advisors, attorneys or affiliates, or any of their successors or assigns (all such holders and other parties listed in this Section 9.5(a)(ii), (the "Releasor Parties")**, from any and all claims, Causes of Action and/or Avoidance Actions arising out of or based upon their service in any such capacity or any transaction, event, circumstance or other matter involving or relating to the Debtors or these Chapter 11 Cases that occurred on or before the Confirmation Date; **provided, however,** that nothing in this section shall be deemed to (I) release any such person from liability for acts or omissions that are the result of willful misconduct or gross negligence; (II) prevent the Debtors or the Liquidating Trustee from objecting to any Claim filed by any such person; or (III) preclude police, federal tax, or regulatory agencies from fulfilling their statutory duties. The Releasor Parties shall be enjoined from commencing or continuing any action, employment of process or act to collect, offset or recover any claims, Avoidance Actions and/or Causes of Action released and discharged pursuant to this Section; **provided, however,** that the injunction provided for in this section shall not (x) bar actions based upon liability for acts or omissions that are the result of willful misconduct or gross negligence or (y) preclude police, federal tax, or regulatory authorities from fulfilling their statutory duties. Notwithstanding anything in this Section to the contrary and/or any similar provisions in the Plan or the Confirmation Order providing for the release or discharge of non-Debtors, or an injunction on behalf of non-Debtors, such release or injunction shall not apply to the United States of America or to any agency thereof. Further, notwithstanding anything contained in this Plan to the contrary, nothing in this Plan shall be deemed to release or affect any Avoidance Action commenced as of the Confirmation Date (or any amendments to complaints filed in those actions as appropriate under the Bankruptcy Rules).

(b) **Nothing in this Section of the Plan shall limit or impair in any way any rights of the holders of Claims referenced in Section 9.6 of this Plan.**

9.6. Indemnification Obligations. Indemnification Claims based upon any act, conduct or omission to act arising out of or relating to any Indemnitee's service with, for or on behalf of the Debtors, before the Filing Date (the "Pre-Petition Indemnification Claims") shall be General Unsecured Claims (subject to Allowance by the Bankruptcy Court or as otherwise

provided in this Plan and subject to all rights and defenses the Debtors and/or the Liquidating Trust may have) entitled to the treatment provided for such Claims in the Plan. Indemnification Claims based upon any act, conduct or omission to act arising out of or relating to any Indemnitee's service with, for or on behalf of the Debtors on or after the Filing Date (the "Post-Petition Indemnification Claims") shall be Administrative Claims (subject to Allowance by the Bankruptcy Court or as otherwise provided in this Plan and subject to all rights and defenses the Debtors and/or the Liquidating Trust may have) and, subject to the notice provisions of this Section of the Plan, shall remain in full force and effect on and after the Effective Date as rights against the Liquidating Trust. Indemnification Claims covered under the Debtors' D&O Insurance relating to any act, conduct or omission to act arising out of or relating to any Indemnitee's service with, for or on behalf of the Debtors before, on or after the Filing Date (the "D&O Indemnification Claims") shall remain in full force and effect on and after the Effective Date as rights against the issuers of the Debtors' D&O Insurance. The Pre-Petition, Post-Petition and D&O Indemnification Claims shall not be modified, reduced, discharged or otherwise affected in any way by the Chapter 11 Cases, except as specifically provided in the Plan. All claims against the Liquidating Trust with respect to Post-Petition Indemnification Claims or the D&O Indemnification Claims must be asserted in writing to the Liquidating Trustee at least five (5) Business Days prior to the Termination Date or be forever barred (as against the Liquidating Trust only). If any such claims are timely asserted, the Final Distribution shall not occur until all such timely asserted claims have been paid in full or disallowed pursuant to an order of the Bankruptcy Court. Timely claims based upon Post-Petition Indemnification Claims that remain after the Confirmation Date, shall be satisfied out of Reserves established in the Liquidating Trust Agreement. To the extent an Indemnitee may have Pre-Petition or Post-Petition Indemnification Claims and D&O Indemnification Claims arising out of the same act, conduct or omission to act, nothing in this Section of the Plan shall impair any right of such Indemnitee to pursue the Pre-Petition or Post-Petition Indemnification Claims prior to or instead of the D&O Indemnification Claims, or vice-versa; provided that, to the extent any amounts are actually paid by the Liquidating Trust to such Indemnitee in respect of such Pre-Petition or Post-Petition Indemnification Claims, such Indemnitee is hereby deemed to assign to the Liquidating Trust such Indemnitee's rights to recover such amounts from the issuers of the Debtors' D&O Insurance in respect of the D&O Indemnification Claims (with the Indemnitee retaining all rights to recover from such issuers in respect of such D&O Indemnification Claims for amounts in excess of the amounts actually paid by the Liquidating Trust to such Indemnitee).

9.7. Substantive Consolidation. (a) This Plan contemplates and is predicated upon entry of the Confirmation Order effecting the substantive consolidation of the Chapter 11 Cases of the Subsidiary Debtors into a single Chapter 11 Case solely for the purposes of all actions associated with confirmation and consummation of this Plan.<sup>ii</sup> On or prior to the Effective Date: (i) all Intercompany Claims, with the exception of the German Intercompany ANC Claims, shall be Extinguished; (ii) solely for the purposes of this Plan and the distributions and transactions contemplated hereby, all assets and liabilities of the Subsidiary Debtors shall be

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<sup>ii</sup> After the entry of the Confirmation Order effecting the substantive consolidation of the Chapter 11 Cases of the Subsidiary Debtors into a single Chapter 11 Case, the Debtors or the Liquidating Trustee, as the case may be, may take all actions necessary to dissolve any Subsidiary Debtor that is not needed for the consummation of this Plan. Additionally, all of the Debtors shall be dissolved at the latest by the closing of the last Chapter 11 Case.

treated as though they were merged; (iii) all pre-Filing Date cross-corporate guarantees of the Subsidiary Debtors shall be eliminated; (iv) any obligation of any Subsidiary Debtor and all guarantees thereof executed by one or more of the Subsidiary Debtors shall be deemed to be one obligation of the consolidated Subsidiary Debtors; (v) any Claims filed or to be filed in connection with any such obligation and such guarantees shall be deemed one Claim against the consolidated Subsidiary Debtors; (vi) each and every Claim filed in the individual Chapter 11 Case of any of the Subsidiary Debtors shall be deemed filed against the consolidated Subsidiary Debtors in the consolidated Chapter 11 Case of the Subsidiary Debtors and shall be deemed a single obligation of all of the Subsidiary Debtors under this Plan on and after the Confirmation Date; (vii) all duplicative claims (identical in both amount and subject matter) filed against more than one of the Subsidiary Debtors will be automatically expunged so that only one Claim survives against the consolidated Subsidiary Debtors but in no way shall such claim be deemed Allowed by reason of this Section of the Plan; and (viii) the consolidated Subsidiary Debtors will be deemed, for purposes of determining the availability of the right of set-off under section 553 of the Bankruptcy Code, to be one entity, so that, subject to other provisions of section 553 of the Bankruptcy Code, the debts due to a particular Subsidiary Debtor may be offset against claims against such Subsidiary Debtor or another Subsidiary Debtor. On the Confirmation Date, and in accordance with the terms of this Plan and the consolidation of the assets and liabilities of the Subsidiary Debtors, all Claims based upon guarantees of collection, payment or performance made by the Subsidiary Debtors as to the obligations of another Subsidiary Debtor or of any other Person shall be discharged, released and of no further force and effect; provided, however, that nothing herein shall affect the obligations of each of the Subsidiary Debtors under this Plan.

(b) Pursuant to Bankruptcy Rule 9019 and any applicable state law and as consideration for the distributions and other benefits provided under this Plan, the provisions of Section 9.7(a) shall constitute a good faith compromise and settlement of any Causes of Action or disputes that could be brought by a holder of a Claim or Interest asserting that such Claim or Interest would have received more favorable treatment had substantive consolidation not been effected. This compromise and settlement is in the best interests of holders of Claims and Interests and is fair, equitable and reasonable. This Plan shall be approved by the Bankruptcy Court as a settlement of all such Causes of Action and disputes. Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of this settlement pursuant to Bankruptcy Rule 9019 and its finding that this is a good faith settlement pursuant to any applicable state laws, given and made after due notice and opportunity for hearing, and shall bar any such Cause of Action by any holder of a Claim or Interest with respect to the matters described in this Section of the Plan.

9.8. Retention and Enforcement of Causes of Action and Debtor Claims. Pursuant to section 1123(b)(3) of the Bankruptcy Code, the Liquidating Trust shall retain and shall have the exclusive right, in its discretion, to enforce against any Entity any and all Causes of Action of the Debtors or Debtor Claims, including, without limitation, all Avoidance Actions.

## ARTICLE TEN

### PROVISIONS COVERING DISTRIBUTIONS

10.1. Timing of Distributions Under this Plan. Except as otherwise provided in this Plan, payments and distributions in respect of Allowed Claims shall be made by the Debtors or the Liquidating Trust on the Effective Date or as soon as reasonably practicable after the Liquidating Trust receives sufficient funds (except that the distributions to holders of Allowed Ad Valorem Tax Claims shall receive a distribution from the Ad Valorem Tax Escrow as soon as reasonably practicable as provided for in this Plan).

10.2. Allocation of Consideration. The aggregate consideration to be distributed to the holders of Allowed Claims in each Class under this Plan shall be treated as first satisfying an amount equal to the stated principal amount of the Allowed Claim for such Holders and any remaining consideration as satisfying accrued, but unpaid, interest, if any.

10.3. Cash Payments. Cash payments made pursuant to this Plan will be in U.S. dollars. Cash payments to foreign Creditors may be made, at the option of the Liquidating Trustee, in such funds and by such means as are necessary or customary in a particular foreign jurisdiction. Cash payments made pursuant to this Plan in the form of checks issued by the Liquidating Trustee shall be null and void if not cashed within 120 days of the date of the issuance thereof. Requests for reissuance of any check shall be made directly to the Liquidating Trust as set forth in Section 10.7 below.

10.4. Payment of Statutory Fees. All fees payable pursuant to 28 U.S.C. § 1930 as determined by the Bankruptcy Court at the Confirmation Hearing shall be paid by the Debtors or the Liquidating Trust on or before the Effective Date.

10.5. No Interest. Except with respect to holders of Unimpaired Claims entitled to interest under applicable non-bankruptcy law or as otherwise expressly provided herein, no holder of an Allowed Claim or Interest shall receive interest on the distribution to which such Holder is entitled hereunder, regardless of whether such distribution is made on the Effective Date or thereafter.

10.6. Withholding of Taxes. The Liquidating Trust shall withhold from any property distributed under this Plan any property which must be withheld for taxes payable by the Entity entitled to such property to the extent required by applicable law. As a condition to making any distribution under this Plan, the Liquidating Trust may request that the holder of any Allowed Claim provide such Holder's taxpayer identification number and such other certification as may be deemed necessary to comply with applicable tax reporting and withholding laws. Proceeds that would have been distributed to a Holder that does not provide the information requested by the Liquidating Trust shall be distributed to other Holders based on their Pro Rata Shares.

## ARTICLE ELEVEN

### PROCEDURES FOR RESOLVING DISPUTED CLAIMS

11.1. Objections to Claims. Only the Liquidating Trust shall have the authority to file, settle, compromise, withdraw or litigate to judgment objections to Claims after the Confirmation Date. The Liquidating Trust shall be fair and equitable in filing, settling, compromising or litigating objections to Disputed Claims. Subject to an order of the Bankruptcy Court providing otherwise, the Liquidating Trust, in consultation with the Committee, may object to a Claim by filing an objection with the Bankruptcy Court and serving such objection upon the holder of such Claim not later than one hundred and twenty (120) days after the Confirmation Date or one hundred and twenty (120) days after the filing of the proof of such Claim, whichever is later, or such other date determined by the Bankruptcy Court upon motion to the Bankruptcy Court, which motion may be made without further notice or hearing.

11.2. Procedure. Unless otherwise ordered by the Bankruptcy Court or agreed to by written stipulation of the Liquidating Trust, or until an objection thereto by the Liquidating Trust, is withdrawn, the Liquidating Trust shall litigate the merits of each Disputed Claim until determined by a Final Order; provided, however, that, (a) prior to the Effective Date, the Debtors, in consultation with the Liquidating Trustee and subject to the approval of the Bankruptcy Court, and (b) after the Effective Date, the Liquidating Trust, subject to the approval of the Bankruptcy Court for settlements deemed “material” in the reasoned view of the Liquidating Trustee, may compromise and settle any objection to any Claim. The Liquidating Trust shall retain outside legal counsel that is mutually satisfactory to the Liquidating Trust to advise and represent the Liquidating Trust and the Committee in connection with the resolution, administration and prosecution of all matters with respect to Disputed Claims.

11.3. Payments and Distributions With Respect to Disputed Claims. Except for distributions to either Disputed Claims Reserve Trust in respect of Disputed Claims, no payments or distributions shall be made in respect of any Disputed Claim until such Disputed Claim becomes an Allowed Claim.

11.4. Setoffs. Except with respect to Causes of Action of any nature released pursuant to the Plan or Confirmation Order, the Debtors or the Liquidating Trust may, pursuant to section 553 of the Bankruptcy Code or applicable non-bankruptcy law, set off against any Allowed Claim, and the distributions to be made pursuant to the Plan on account of such Claim, the Causes of Action of any nature that the applicable Debtor or the Liquidating Trust may hold against the holder of such Allowed Claim; provided that neither the failure to effect a setoff nor the allowance of any Claim hereunder will constitute a waiver or release by the applicable Debtor or the Liquidating Trust of any Causes of Action that the Debtor or the Liquidating Trust may possess against such Holder.



## ARTICLE TWELVE

### DISCHARGE, INJUNCTION, RELEASES AND SETTLEMENTS OF CLAIMS

(a) **Injunction.** The satisfaction and release pursuant to Sections 9.5, 12.1 and 12.2 of this Plan, shall act as an injunction against any Entity commencing or continuing any action, employment of process, or act to collect, offset or recover any Claim or Cause of Action satisfied or released under this Plan. The injunction and releases described in Sections 9.5, 12.1, 12.2 and 12.3 of this Plan shall apply regardless of whether or not a proof of Claim or Interest based on any Claim, debt, liability or Interest is filed or whether or not a Claim or Interest based on such Claim, debt, liability or Interest is Allowed, or whether or not such Entity voted to accept or reject this Plan. Without in any way limiting the foregoing, all injunctions or stays entered in these Chapter 11 Cases and existing immediately prior to the Confirmation Date shall remain in full force and effect until the Effective Date. Notwithstanding anything contained in this Plan to the contrary, nothing in this Plan shall be deemed to release or affect any Avoidance Action commenced as of the Confirmation Date (or any amendments to complaints filed in those actions as appropriate under the Bankruptcy Rules).

(b) **Exculpation.** In consideration of the distributions under this Plan, upon the Effective Date, each holder of a Claim or Interest will be deemed to have released the Debtors, the Committee, the members of the Committee in their capacity as such, and each of the foregoing parties' directors, officers, agents, attorneys, independent accountants, advisors, financial advisors, investment bankers and employees (as applicable) employed by the Debtors from and after the Filing Date from any and all Causes of Action (other than the right to enforce the Debtors' obligations under this Plan and the right to pursue a claim based on any willful misconduct or gross negligence) arising out of actions or omissions during the administration of the Debtors' estates or the distribution of any property pursuant to the Plan. Notwithstanding anything contained in this Plan to the contrary, nothing in this Plan shall be deemed to release or affect any Avoidance Action commenced as of the Confirmation Date (or any amendments to complaints filed in those actions as appropriate under the Bankruptcy Rules).

12.2. **Guaranties.** The classification and the manner of satisfying all Claims under this Plan takes into consideration the possible existence of any alleged guaranties by the Debtors of obligations of any Entity or Entities, and that the each Debtor may be a joint obligor with another Entity or Entities with respect to the same obligation. All Claims against the Debtors based upon any such guaranties shall be satisfied and released in the manner provided in this Plan and the holders of Claims shall be entitled to only one distribution with respect to any given obligation of the Debtors.

12.3. **Liberty Mutual Insurance Company.** Notwithstanding anything to the contrary contained in this Plan, any amendments to this Plan or in the Confirmation Order, the terms and provisions of paragraph 17 of the Sale Order, including the rights and protections afforded to Liberty Mutual Insurance Company thereunder, are incorporated into this Plan in full, with such terms and provisions to prevail in the event of any conflict or inconsistency with

any term or provision of this Plan, any amendment to this Plan or the Confirmation Order, and the Confirmation Order shall include a provision consistent with the foregoing.

## ARTICLE THIRTEEN

### CONDITIONS PRECEDENT TO CONFIRMATION ORDER AND EFFECTIVE DATE

13.1. Conditions Precedent to Entry of the Confirmation Order. The following conditions must occur and be satisfied or waived in accordance with Section 13.3 of this Plan on or before the Confirmation Date for this Plan to be confirmed on the Confirmation Date.

(a) The Confirmation Order is in form and substance reasonably acceptable to the Debtors and the Committee.

13.2. Conditions Precedent to the Effective Date. The following conditions must occur and be satisfied or waived by the Debtors and the Committee jointly on or before the Effective Date for this Plan to become effective on the Effective Date.

(a) Final Order. The Confirmation Order shall have become a Final Order.

(b) The Confirmation Order shall, among other things provide that:

(i) all transfers of property by the Debtors (A) to the Liquidating Trust (1) are or shall be legal, valid, and effective transfers of property, (2) vest or shall vest the Liquidating Trust with good title to such property free and clear of all liens, charges, claims, encumbrances or interests, except as expressly provided in the Plan or Confirmation Order, (3) do not and shall not constitute avoidable transfers under the Bankruptcy Code or under applicable nonbankruptcy law, (4) shall be exempt from any transfer, sales, stamp or other similar tax (which exemption shall also apply to transfers by the Liquidating Trust), and (5) do not and shall not subject the Liquidating Trustee or holders of Claims, Interests or property to any liability by reason of such transfer under the Bankruptcy Code or under applicable nonbankruptcy law, including, without limitation, any laws affecting successor or transferee liability, and (B) to holders of Claims and Interests under the Plan are for good consideration and value; and

(ii) Upon entry of the Confirmation Order, notwithstanding the Effective Date, the Liquidating Trust shall have the authority to dissolve the Debtors' corporations.

13.3. Waiver of Conditions. The Debtors and the Committee may waive one or more of the conditions precedent to the confirmation or effectiveness of this Plan set forth in Sections 13.1 and 13.2 of this Plan.

## ARTICLE FOURTEEN

### MISCELLANEOUS PROVISIONS

14.1. Bankruptcy Court to Retain Jurisdiction. The business and assets of the Debtors shall remain subject to the jurisdiction of the Bankruptcy Court until the Effective Date. From and after the Effective Date, the Bankruptcy Court shall retain and have exclusive jurisdiction of all matters arising out of, and related to the Chapter 11 Cases, the Liquidating Trust, the Liquidating Trust Agreement or this Plan pursuant to, and for purposes of, subsection 105(a) and section 1142 of the Bankruptcy Code and for, among other things, the following purposes: (a) to determine any and all disputes relating to Claims and Interests and the allowance and amount thereof; (b) to determine any and all disputes among creditors with respect to their Claims; (c) to hear and determine any and all Causes of Action and/or Debtor Claims; (d) to consider and allow any and all applications for compensation for professional services rendered and disbursements incurred in connection therewith; (e) to determine any and all applications, motions, adversary proceedings and contested or litigated matters pending on the Effective Date and arising in or related to the Chapter 11 Cases or this Plan; (f) to remedy any defect or omission or reconcile any inconsistency in the Confirmation Order; (g) to enforce the provisions of this Plan relating to the distributions to be made hereunder; (h) to issue such orders, consistent with section 1142 of the Bankruptcy Code, as may be necessary to effectuate the consummation and full and complete implementation of this Plan; (i) to enforce and interpret any provisions of this Plan; (j) to determine such other matters as may be set forth in the Confirmation Order or that may arise in connection with the implementation of this Plan; (k) to determine the amounts allowable as compensation or reimbursement of expenses pursuant to section 503(b) of the Bankruptcy Code; (l) to hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of this Plan and the Related Documents; (m) to hear and determine any issue for which this Plan or any Related Document requires a Final Order of the Bankruptcy Court; (n) to hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code; (o) to hear any other matter not inconsistent with the Bankruptcy Code; and (p) to enter a Final Order closing the Chapter 11 Case.

14.2. Binding Effect of this Plan. The provisions of this Plan shall be binding upon and inure to the benefit of the Debtors, the Liquidating Trust, any holder of a Claim or

Interest, their respective predecessors, successors, assigns, agents, officers, managers and directors and any other Entity affected by this Plan.

14.3. Authorization of Corporate Action. The entry of the Confirmation Order shall constitute a direction and authorization of the Debtors and the Liquidating Trust to take or cause to be taken any action necessary or appropriate to consummate the provisions of this Plan and the Related Documents prior to and through the Effective Date and all such actions taken or caused to be taken shall be deemed to have been authorized and approved by the Bankruptcy Code without the need for any additional authorizations, approvals or consents.

14.4. Effectuating Documents; Further Transactions. Any executive officer of any of the Debtors and the Liquidating Trustee shall be authorized to execute, deliver, file or record such contracts, instruments, releases, indentures and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Secretary or Assistant Secretary of any of the Debtors, or the Liquidating Trustee shall be authorized to certify or attest to any of the foregoing actions.

14.5. Transactions on Business Days. If the Effective Date or any other date on which a transaction may occur under this Plan shall occur on a day that is not a Business Day, the transactions contemplated by this Plan to occur on such day shall instead occur on the next succeeding Business Day.

14.6. Cancellation of Existing Securities and Agreements. On the Effective Date, the ANC Common Stock, and any ANC Common Stock Interests, as well as any and all shareholder agreements relating to the ANC Common Stock, shall be canceled.

14.7. Withdrawal of this Plan. The Debtors and Committee jointly reserve the right, at any time prior to the entry of the Confirmation Order, to revoke or withdraw this Plan. If the Debtors and the Committee jointly revoke or withdraw this Plan, if the Confirmation Date does not occur, or if the Effective Date does not occur then (i) this Plan will be deemed null and void and (ii) this Plan shall be of no effect and shall be deemed vacated, and the Chapter 11 Cases shall continue as if this Plan had never been filed and, in such event, the rights of any holder of a Claim or Interest shall not be affected nor shall such Holder be bound by, for purposes of illustration only, and not limitation, (a) this Plan, (b) any statement, admission, commitment, valuation or representation contained in this Plan, the Disclosure Statement, or the Related Documents or (c) the classification and proposed treatment (including any allowance) of any Claim in this Plan.

14.8. Captions. Article and Section captions used in this Plan are for convenience only and will not affect the construction of this Plan.

14.9. Method of Notice. All notices required to be given under this Plan, if any, shall be in writing and shall be sent by facsimile transmission (with hard copy to follow), by first class mail, postage prepaid, by hand delivery or by overnight courier to:

If to the Debtors to:

ANC Rental Corporation  
200 South Andrews Avenue, 11th Floor  
Fort Lauderdale, Florida 33301-1864  
Attn: John Chapman  
Fax: (954) 320-4000

with copies to:

Blank Rome LLP  
1201 Market Street  
Suite 800  
Wilmington, Delaware 19801  
Attn: Bonnie Glantz Fatell  
Fax: (302) 425-6464

and

Fried, Frank, Harris, Shriver & Jacobson  
(A Professional Partnership Including Professional Corporations)  
One New York Plaza  
New York, New York 10004  
Attn: Janice Mac Avoy  
Fax: (212) 859-4000

If to the Committee

Young Conaway Stargatt & Taylor, LLP  
The Brandywine Building  
1000 West Street, 17th Floor  
P.O. Box 391  
Wilmington, Delaware 19899-0391  
Attn: Brendan L. Shannon  
Fax: (302) 571-1253

-and-

Wilmer, Cutler & Pickering  
399 Park Avenue  
New York, New York 10022  
Attn: Andrew N. Goldman  
Fax: (212) 230-8888

Attorneys for the Official Committee of Unsecured  
Creditors

Any of the above may, from time to time, change its address for future notices and other communications hereunder by filing a notice of the change of address with the Bankruptcy Court. Any and all notices given under this Plan shall be effective when received.

14.10. Dissolution of Committees. On the Confirmation Date, any committees appointed in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code shall cease to exist and its members and employees or agents (including, without limitation, attorneys, investment bankers, financial advisors, accountants and other professionals) shall be released and discharged from further duties, responsibilities and obligations relating to and arising from and in connection with these Chapter 11 Cases; provided, however, that following the Confirmation Date, the responsibilities of any such committees and its members and employees or agents shall be limited to the preparation of their respective fee applications, if any.

14.11. Amendments and Modifications to Plan. This Plan may be altered, amended or modified by the Debtors and the Committee jointly, before or after the Confirmation Date, as provided in section 1127 of the Bankruptcy Code.

14.12. Section 1125(e) of the Bankruptcy Code. (a) The Debtors and the Committee (and each of their respective Affiliates, agents, directors, officers, employees, advisors and attorneys) have, and upon confirmation of this Plan shall be deemed to have, solicited acceptances of this Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code.

(b) The Debtors and each of the members of the Committee (and each of their respective Affiliates, agents, directors, officers, employees, advisors, and attorneys) have, and upon confirmation of this Plan shall be deemed to have, participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code with regards to the distributions under this Plan, and therefore are not, and on account of such distributions will not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of this Plan or such distributions made pursuant to this Plan.

14.13. Post-Confirmation Obligations. Under current applicable law, the Liquidating Trust is required to pay fees assessed against the Debtors' estates under 28 U.S.C. § 1930(a)(6) until entry of an order closing the Chapter 11 Cases. Subject to a change in applicable law, the Liquidating Trust shall pay all fees assessed against such Debtor's estate under 28 U.S.C. § 1930(a)(6) and shall file reports in accordance with the Bankruptcy Court's Local Rules until entry of an order closing the chapter 11 case of each Debtor.

Dated: Wilmington, Delaware  
November 19, 2003

ANC RENTAL CORPORATION, *et al.*,  
Debtors and Debtors-In-Possession

By: /s/ John Chapman  
John Chapman, President

#### ANC STATUTORY CREDITORS' COMMITTEE

By: /s/ Duncan Robertson  
Duncan Robertson  
WestLB AG, New York Branch (formerly known as  
Westdeutsche Landesbank Girozentrale New York Branch)  
Chairperson of the Statutory Creditors' Committee  
with the Support and Approval of the Other Members of the  
Statutory Creditors' Committee: AutoNation, Inc.,  
General Motors Corporation, Perot Systems Corporation  
and Walt Disney World Co. & American Broadcast Companies, Inc.

By: /s/ Michael McWalters  
Michael McWalters  
WestLB AG, New York Branch (formerly known as  
Westdeutsche Landesbank Girozentrale New York Branch)  
Chairperson of the Statutory Creditors' Committee  
with the Support and Approval of the Other Members of the  
Statutory Creditors' Committee: AutoNation, Inc.,  
General Motors Corporation, Perot Systems Corporation  
and Walt Disney World Co. & American Broadcast Companies, Inc.

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# **Schedule I to Plan**

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## **SCHEDULE I TO PLAN**

ARG Reservation Services, LLC, Debtor, Case No. 01-11196,  
Alamo Rent-A-Car, LLC, Debtor, Case No. 01-11197  
Rental Liability Management Holdings, LLC, Debtor, Case No. 01-11199,  
ANC Financial Properties LLC, Debtor, Case No. 01-11201  
ANC Payroll Administration, LLC, Debtor, Case No. 01-11202  
ARC-TM Properties LLC, Debtor, Case No. 01-11203  
NCR Affiliate Servicer Properties LLC, Debtor, Case No. 01-11204,  
Alamo Rent-A-Car Management, LP, Debtor, Case No. 01-11205  
ANC Financial, LP, Debtor, Case No. 01-11206  
ANC Information Technology, L.P., Debtor, Case No. 01-11207,  
ANC Management Services, LP, Debtor, Case No. 01-11208,  
ANC-TM Management LP, Debtor, Case No. 01-11209,  
NCRAS Management, LP, Debtor, Case No. 01-11210,  
SRAC Management, LP, Debtor, Case No. 01-11211,  
Alamo International Sales, Inc., Debtor, Case No. 01-11212,  
ANC Aviation, Inc., Debtor, Case No. 01-11213,  
ANC Collector Corporation, Debtor, Case No. 01-11214,  
ANC Financial Corporation, Debtor, Case No. 01-11215,  
ANC Financial GP Corporation, Debtor, Case No. 01-11216,  
ANC-GP, Inc., Debtor, Case No. 01-11217,  
ANC Information Technology, Inc., Debtor, Case No. 01-11218,  
ANC Information Technology Holding, Inc., Debtor, Case No. 01-11219,  
ANC IT Collector Corporation, Debtor, Case No. 01-11220,  
ANC Management Services Corporation, Debtor, Case No. 01-11221,  
ARC-GP, Inc., Debtor, Case No. 01-11222,  
ARC-TM, Inc., Debtor, Case No. 01-11223,  
ARI Fleet Services, Inc., Debtor, Case No. 01-11224,  
Auto Rental Inc., Debtor, Case No. 01-11225,  
Car Rental Claims, Inc., Debtor, Case No. 01-11226,  
Claims Management Center, Inc., Debtor, Case No. 01-11227,  
National Car Rental Licensing, Inc., Debtor, Case No. 01-11228,  
National Car Rental System, Inc., Debtor, Case No. 01-11229  
Spirit Leasing, Inc., Debtor, Case No. 01-11230,  
Spirit Rent-A-Car, Inc., Debtor, Case No. 01-11231,  
Guy Salmon USA, Inc., Debtor, Case No. 01-11232,  
Liability Management Companies Holding, Inc., Debtor, Case No. 01-11233,  
NCR Affiliate Servicer, Inc., Debtor, Case No. 01-11234,  
NCRAS-GP, Inc., Debtor, Case No. 01-11235,  
NCRS Insurance Agency, Inc., Debtor, Case No. 01-11236,  
Post Retirement Liability Management, Inc., Debtor, Case No. 01-11237,  
Rental Liability Management, Inc., Debtor, Case No. 01-11238,  
Republic Fiduciary, Inc., Debtor, Case No. 01-11239,  
Republic Guy Salmon Partner, Inc., Debtor, Case No. 01-11240,  
SRAC-GP, Inc., Debtor, Case No. 01-11241,  
SRAC-TM, Inc., Debtor, Case No. 01-11242

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# **Exhibit A to Plan**

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## **LIQUIDATING TRUST AGREEMENT**

This AGREEMENT AND DECLARATION OF TRUST (this "Agreement") is entered into and shall be effective as of the [ ] day of [ ], 2003, by and among ANC Rental Corporation ("ANC") and its Subsidiary Debtors (collectively, the "Debtors"), and [ ], as trustee (the "Liquidating Trustee"), for the benefit of the Beneficiaries (as defined herein) of the liquidating trust established pursuant to this Agreement (the "Liquidating Trust").

### **PRELIMINARY STATEMENT**

WHEREAS on November 13, 2001, the Debtors filed petitions for relief under Chapter 11 of Title 11 of the United States Code.

WHEREAS a Joint Chapter 11 Liquidating Plan of the Debtors and the Statutory Committee (as such Plan may be amended from time to time, the "Plan"), , was filed with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") on or about October 21, 2003.

WHEREAS the Plan was confirmed by order of the Bankruptcy Court entered [ ], 2003.

WHEREAS the Plan provides for certain of the Debtors' property and assets, as more fully described in the Plan, to be Transferred to the Liquidating Trust on the Effective Date of the Plan, and for the Liquidating Trust to hold, administer, liquidate and distribute those assets and property in accordance with the Plan.

WHEREAS the Liquidating Trust is created on behalf of, and for the sole benefit of, the holders of Allowed Other Secured Claims, Allowed Priority Tax Claims, Allowed Other Priority Claims (together with Allowed Priority Tax Claims, "Allowed Priority Claims") and Allowed General Unsecured Claims (provided that beneficial interests with respect to Disputed Priority Claims and Disputed General Unsecured Claims shall be held by the Liquidating Trustee in the Disputed Priority Claims Reserve Trust and the Disputed General Unsecured Claims Reserve Trust, respectively, pending allowance or disallowance of such Claims).

WHEREAS the Liquidating Trust is established for the sole purpose of liquidating its assets for the benefit of the holders of the Allowed Other Secured Claims, Allowed Priority Claims and the Allowed General Unsecured Claims, in accordance with Treasury Regulation Section 301.7701-4(d), with no objective or authority to continue or engage in the conduct of a trade or business.

WHEREAS the Liquidating Trust is intended to qualify as a liquidating trust for federal income tax purposes pursuant to Treasury Regulations Section 301.7701-4(d), and as a

“grantor trust” for federal income tax purposes pursuant to Sections 671 through 679 of the Internal Revenue Code.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein and in the Plan, the Debtors and the Liquidating Trustee agree as follows:

## **SECTION 1 ESTABLISHMENT OF THE LIQUIDATING TRUST**

### **1.1 Declaration of Trust.**

Pursuant to the Plan, the Debtors and the Liquidating Trustee hereby establish on behalf of the holders of Allowed Priority Claims and Allowed General Unsecured Claims, whether such claims are allowed on or after the Effective Date of the Plan, the Liquidating Trust, and the Debtors hereby transfer, assign, and deliver to the Liquidating Trustee, in trust, all of their right, title, and interest in the assets described in Section 1.2(a), free and clear of any Lien, Claim or Interest in such Property of any other Person or entity except as provided in the Plan. The Liquidating Trustee agrees to accept and hold the Liquidating Trust assets in trust for the holders of the Allowed Priority Claims and the Allowed General Unsecured Claims, whether such claims are allowed on or after the Effective Date of the Plan, subject to the terms of this Agreement and the Plan.

### **1.2 Liquidating Trust Assets.**

(a) On behalf of the Beneficiaries, the Debtors hereby Transfer and assign to the Liquidating Trust, pursuant to the terms of this Agreement and the Plan, all property and assets of the Debtors (other than the stock of the Non-Acquired Foreign Subsidiaries) that, as of the Effective Date, have neither been sold under the Asset Purchase Agreement, abandoned, nor distributed under the Plan itself, including without limitation, all Cash and Cash equivalents, all Debtor Claims not assigned under the Asset Purchase Agreement to Cerberus, all rights of the Debtors to their portion of the Avis/Hertz Claims, any other remaining assets of the Debtors, including specifically any and all rights of the Debtors with respect to any and all choses in action, demands, claims for relief, Causes of Action, debts, losses and liabilities, or any combination of the same, of every type and nature whatsoever, whether known or unknown, whether suspected or unsuspected, and whether asserted or unasserted, together with all insurance coverage applicable to such Causes of Action, including the Business Interruption Insurance Claim and all Causes of Action against insurers that sold insurance policies covering liabilities of the Debtors, free and clear of any Lien, Claim or Interest in such causes of action of any other Person. Notwithstanding anything contained herein to the contrary, this provision shall not be read to cause or create an assignment of any insurance policy to the Liquidating Trust to the extent that such assignment would cause abrogation of any insurance coverage rights thereunder.

(b) The Liquidating Trust shall be deemed not to be the same legal entity as the Debtors, but only the intended, designated sole assignee of the Debtors’ assets. In



addition, on the Effective Date, the Liquidating Trustee shall be deemed the representative of the estate under § 1123(b)(3)(B) of the Bankruptcy Code with all rights to pursue, and shall be granted and vested with, all rights and Causes of Action of the Debtors or their estates which remain post-consummation of the Asset Purchase Agreement, including but not limited to all powers of a trustee under Chapter 5 of the Bankruptcy Code. The Liquidating Trustee shall have the right to enforce, prosecute, abandon or settle (as the case may be) any such remaining Causes of Action and any recoveries therefrom shall be distributed in accordance with the provisions of the Plan and this Agreement.

### **1.3 Name.**

The name of the Liquidating Trust shall be ANC Liquidating Trust.

### **1.4 Purposes.**

The purpose of the Liquidating Trust is to liquidate its assets for the benefit of the holders of the Allowed Priority Claims and the Allowed General Unsecured Claims, with no objective or authority to continue or engage in the conduct of a trade or business, by implementing the terms of the Plan that are not fully performed on the Effective Date. To that end, the Liquidating Trust shall be empowered to (i) hold, administer, liquidate and distribute the property and assets Transferred to the Liquidating Trust by the Debtors and/or by Cerberus pursuant to the Plan, (ii) pursue those claims and Causes of Action transferred by the Debtors to the Liquidating Trust, (iii) dispute and resolve proofs of claims asserted against the Debtors, (iv) wind-up the affairs of the Debtors, and (v) engage in any and all activities reasonably necessary or incidental to the purposes set forth in clauses (i) through (iv). It is intended that the Liquidating Trust be classified for federal income tax purposes as a “liquidating trust” within the meaning of Treasury Regulations Section 301.7701-4(d). In furtherance of this objective, the Liquidating Trustee shall, in its business judgment, make continuing best efforts not to unduly prolong the duration of the Liquidating Trust, in accordance with this Agreement.

### **1.5 Incidents of Ownership; No Reversion.**

The Beneficiaries shall be the sole beneficiaries of the Liquidating Trust and the Liquidating Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein. In no event shall any part of the Liquidating Trust assets revert to or be distributed to the Debtors or any person or persons other than the Beneficiaries.

### **1.6 Definitions.**

The terms used in this Agreement shall, unless otherwise noted or unless the context otherwise requires, have the meanings assigned to them below. Capitalized terms used but not defined in this Agreement shall have the meanings assigned to them in the Plan, attached hereto as Exhibit A. The definitions shall apply equally to both the singular and the plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.”

(a) “Affiliate” means, with respect to any Person (i) any Person directly or indirectly controlling, controlled by or under common control with such Person, (ii) any officer, director, manager or trustee of such Person or (iii) any Person who is an officer, director, member or trustee of any Person described in clauses (i) or (ii) of this sentence. For purposes of this definition, the terms “controlling,” “controlled by” or “under common control with” shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person or Entity, whether through the ownership of voting securities, by contract or otherwise, or the power to elect at least fifty percent (50%) of the directors, managers, or persons exercising similar authority with respect to such Person or entities.

(b) “Beneficiary” means each holder of an Allowed Priority Claim or an Allowed General Unsecured Claim, whether such Claim is Allowed on or after the Effective Date, and the Disputed Claims Reserve Trusts.

(c) “Debt” means (i) any indebtedness for borrowed money or the deferred purchase price of property as evidenced by a note, bonds, or other instruments, (ii) obligations as lessee under capital leases, (iii) obligations secured by any mortgage, pledge, security interest, encumbrance, lien or charge of any kind existing on any asset owned or held by the Liquidating Trust whether or not the Liquidating Trust has assumed or become liable for the obligations secured thereby, (iv) any obligation under any interest rate swap agreement, (v) accounts payable and (vi) obligations under direct or indirect guarantees of (including obligations (contingent or otherwise) to assure a creditor against loss in respect of) indebtedness or obligations of the kinds referred to in clauses (i), (ii), (iii), (iv) and (v), above.

(d) “Engagement Agreement” means the Liquidating Trustee Agreement, a copy of which is attached hereto as Exhibit B, or any other agreement between the Liquidating Trust and the Liquidating Trustee with respect to the terms of the engagement of the Liquidating Trustee.

(e) “Internal Revenue Code” means the United States Internal Revenue Code of 1986, as amended from time to time.

(f) “Liquidating Trust” means the trust established pursuant to this Agreement.

(g) “Permitted Transfer” has the meaning set forth in Section 10.1.

(h) “Person” means any individual, company (whether general or limited), limited liability company, corporation, trust, estate, association, nominee, governmental unit or other entity.

(i) “Transfer” means, as a noun, any voluntary or involuntary transfer, sale, pledge or hypothecation or other disposition and, as a verb, voluntarily or involuntarily to transfer, sell, pledge or hypothecate or otherwise dispose of.

(j) “Treasury Regulations” means the regulations, including temporary regulations, promulgated under the Internal Revenue Code, as such regulations are amended from time to time.

## **SECTION 2 BENEFICIARIES AND BENEFICIAL INTERESTS**

### **2.1 Initial Distribution of Beneficial Interests in Trust.**

(a) On the Effective Date, each holder of an Allowed Priority Claim shall, by operation of the Plan, receive an uncertificated Class 1 Interest in the Liquidating Trust, as such beneficial interests are more particularly described in the Plan. Class 1 Interests with respect to Disputed Priority Claims shall be issued to the Disputed Priority Claims Reserve Trust and held by the Liquidating Trustee in such trust pending allowance or disallowance of such Claims.

(b) On the Effective Date, each holder of an Allowed Class 2 General Unsecured Claim shall, by operation of the Plan, receive an uncertificated Class 2 Interest in the Liquidating Trust, as such beneficial interests are more particularly described in the Plan. Class 2 Interests with respect to Disputed General Unsecured Claims shall be issued to the Disputed General Unsecured Claims Reserve Trust and held by the Liquidating Trustee in such trust pending allowance or disallowance of such Claims.

(c) No other entity, including the Debtors or Debtors in Possession, shall have any interest, legal, beneficial, or otherwise, in the Liquidating Trust or its assets or Causes of Action or Avoidance Claims upon their assignment and Transfer to the Liquidating Trust.

(d) No Beneficiary shall have any authority or right to act for or bind the Liquidating Trust or to participate in or have any control over the business of the Liquidating Trust, except for the express rights of the Beneficiaries to consent to or approve certain actions and decisions as expressly set forth in this Agreement.

### **2.2 Registry.**

The Liquidating Trustee or its agents shall maintain a registry of the membership interests in the Liquidating Trust. All references in this Agreement to holders shall be read to mean holders of record as set forth in the official register maintained by the Liquidating Trustee and shall not mean any beneficial owner not recorded on such official registry. Unless expressly provided herein, the Liquidating Trustee may establish a record date that it deems practicable for determining the holders for a particular purpose.

## **SECTION 3 LIQUIDATING TRUSTEE**

### **3.1 Liquidating Trustee.**

(a) The Liquidating Trustee's powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purposes of this Liquidating Trust and not otherwise, except as otherwise permitted under this Agreement. The Liquidating Trustee shall be selected by the majority of the members of the Committee and appointed pursuant to the Confirmation Order, or any successor. Beneficiaries shall not have the right to vote to designate or elect the Liquidating Trustee.

(b) The Liquidating Trustee shall perform all duties as a Liquidating Trustee in good faith, in a manner the Liquidating Trustee reasonably believes to be in the best interests of the Liquidating Trust, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. A person who so performs such duties shall not have any liability to any Beneficiary or other entity by reason of being or having been a Liquidating Trustee of the Liquidating Trust; provided that the Liquidating Trustee shall be liable for the performance of such duties and obligations as are specifically set forth in this Agreement.

(c) Subject to clause (b) of Section 3.2 hereof, the Liquidating Trustee shall have the power to delegate authority to such consultants, professionals, employees, agents and representatives of the Liquidating Trust as it may from time to time deem appropriate.

(d) The Liquidating Trustee shall not be liable under a judgment, decree or order of court, or in any other manner, for any Debt, obligation or liability of the Liquidating Trust; and neither the Beneficiaries nor the Liquidating Trustee shall be obligated personally for any such Debt, obligation or liability of the Liquidating Trust solely by reason of being a Beneficiary of, or acting as a Liquidating Trustee of, the Liquidating Trust.

(e) The Liquidating Trustee may be replaced by vote of 80% of the Beneficiaries, subject to the terms of the Engagement Agreement. The Beneficiaries shall not otherwise have the right to remove or replace the Liquidating Trustee.

### **3.2 Powers of the Liquidating Trustee.**

(a) Except as otherwise provided in this Agreement or the Plan, all powers to control and manage the business and affairs of the Liquidating Trust shall be exclusively vested in the Liquidating Trustee. The Liquidating Trustee may exercise all powers of the Liquidating Trust and do all such lawful acts that are not by law, the Plan or this Agreement directed or required to be exercised or done by the Beneficiaries and in so doing shall have the right and authority to take all actions which the Liquidating Trustee deems -- in his prudent and sound business judgment -- necessary, useful or appropriate for the management and conduct of the business and affairs of the Liquidating Trust, including, but not limited to, exercising the rights and powers to:

- Section 4.7 hereof;
- (i) Invest any Cash of the Liquidating Trust as described in Section 4.7 hereof;
  - (ii) Sell or otherwise transfer for fair market value any other non-Cash assets that are included in the Liquidating Trust;
  - (iii) File with the Bankruptcy Court the reports and other documents required by the Plan or otherwise required to close the Chapter 11 Cases;
  - (iv) Subject to clause (b) of this Section 3.2, retain such professionals as the Liquidating Trustee may in its discretion deem necessary for the operation and management of the Liquidating Trust, including entering into contingent fee type arrangements with respect to the Liquidating Trust's prosecution of various Causes of Action and claims reconciliation work;
  - (v) Subject to clause (b) of this Section 3.2, litigate or settle any Claims or Causes of Action asserted against the Debtors or the Liquidating Trust;
  - (vi) Subject to clause (b) of this Section 3.2, evaluate, file, litigate, settle or abandon remaining Debtor Claims and/or Causes of Action;
  - (vii) Set off amounts owed to the Debtors or the Liquidating Trust against any and all amounts otherwise due to be distributed to the holder of a Claim under the Plan;
  - (viii) Abandon any property of the Debtors or the Liquidating Trust that cannot be sold or otherwise disposed of for Value and whose distribution to holders of Allowed Claims would not be feasible or cost-effective in the reasonable and prudent business judgment of the Liquidating Trustee;
  - (ix) Administer the Disputed Priority Claims Reserve Trust, which shall be maintained as a separate, segregated trust. The Liquidating Trustee's services as trustee of the Liquidating Trust and administrator of the Disputed Priority Claims Reserve Trust shall be considered as being provided in separate capacities. The Liquidating Trust shall indemnify the Liquidating Trustee for its actions as administrator of the Disputed Priority Claims Reserve Trust to the fullest extent allowed by law;
  - (x) Administer the Disputed General Unsecured Claims Reserve Trust, which shall be maintained as a separate, segregated trust. The Liquidating Trustee's services as trustee of the Liquidating Trust and administrator of the Disputed General Unsecured Claims Reserve Trust shall be considered as being provided in separate capacities. The Liquidating Trust shall indemnify the Liquidating Trustee for its actions as administrator of the Disputed General Unsecured Claims Reserve Trust to the fullest extent allowed by law;
  - (xi) Represent the estate as its representative under section 1123(b)(3)(B) of the Bankruptcy Code with all rights, subject to clause (b) of this Section 3.2, to pursue or settle, in the Liquidating Trustee's discretion, any and all remaining Debtor Claims

and/or Causes of Action held by the Liquidating Trust. Any recoveries therefrom shall be distributed in accordance with the provisions of the Plan;

(xii) Make interim and final distributions of Liquidating Trust assets to the holders of Allowed Claims;

(xiii) Wind up the affairs of the Debtors and the Liquidating Trust and dissolve each of them under applicable law;

(xiv) Provide for storage and destruction of records; without limiting the foregoing, the Liquidating Trustee may determine to secure appropriate facilities, lease such other equipment, and make such other arrangements as are necessary in order to store and preserve the books and records and communications (written and electronic) of the Debtors for a minimum period of six months after the Effective Date;

(xv) Incur, at the expense of the Liquidating Trust, such charges, costs and fees as are necessary and appropriate in connection with the operation of the Liquidating Trust;

(xvi) Establish one or more checking, savings and investment accounts in the name of the Liquidating Trust, and to have exclusive control over the disbursement of the Liquidating Trust's funds on deposit or invested therein, subject to Section 4.7 hereof;

(xvii) Engage in all acts that would constitute ordinary performance of the obligations of a trustee under a liquidating trust, and to file all tax returns of the Liquidating Trust as grantor trust for the Beneficiaries pursuant to Treasury Regulations Section 1.671-4(a) or (b) and any other tax returns that may be required with respect to the Liquidating Trust; and

(xviii) Subject to the terms and conditions hereof, take any other actions that the Liquidating Trustee, in its reasonable and prudent business discretion, determines to be in the best interests and consistent with the purposes of the Liquidating Trust.

(b) The Liquidating Trustee may settle any Claims, Debtor Claims or Causes of Action (i) asserted against the Debtors or the Liquidating Trust or (ii) held by the Debtors or the Liquidating Trust, at any time in his prudent business judgment, upon the advice of counsel and other retained advisors.

(c) Notwithstanding any other authority granted by Section 3.2, the Liquidating Trustee is not authorized to engage in any investments or activities inconsistent with the treatment of the Liquidating Trust as a liquidating trust within the meaning of Treasury Regulation Sections 301.7701-4(d).

### **3.3 Duties and Obligations of the Liquidating Trustee.**

(a) The Liquidating Trustee shall cause the Liquidating Trust to conduct its operations separate and apart from those of any Beneficiary or its Affiliates, including, without limitation, (i) segregating Liquidating Trust assets and not allowing funds or other assets of the Liquidating Trust to be commingled with the funds or other assets of, held by, or registered in the name of, any Beneficiary or its Affiliates, (ii) maintaining books and financial records of the Liquidating Trust separate from the books and financial records of any Beneficiary or its Affiliates, and observing all Liquidating Trust procedures and formalities, including, without limitation, maintaining minutes of Liquidating Trust meetings, (iii) causing the Liquidating Trust to pay its liabilities from assets of the Liquidating Trust, and (iv) causing the Liquidating Trust to conduct its dealings with third parties in its own name and as a separate and independent entity.

(b) The Liquidating Trustee shall take all actions which may be necessary or appropriate (i) for the continuation of the Liquidating Trust's valid existence as a trust under the laws of the State of New York and of each other jurisdiction in which such existence is necessary to protect the limited liability of the Beneficiaries or to enable the Liquidating Trust to conduct the activities in which it is engaged and (ii) for the accomplishment of the Liquidating Trust's purposes in accordance with the provisions of this Agreement, the Plan and applicable laws and regulations.

(c) The Liquidating Trustee shall be under a fiduciary duty to conduct the affairs of the Liquidating Trust in the best interests of the Liquidating Trust and of the Beneficiaries, including the safekeeping and use of all of Liquidating Trust funds and assets and the use thereof for the exclusive benefit of the Liquidating Trust.

### **3.4 Exculpation and Indemnification of the Liquidating Trustee and Beneficiaries.**

(a) Unless otherwise provided in Section 3.4(d), the Liquidating Trustee and his present or former members, officers, directors, employees, advisors, attorneys, representatives, financial advisors, investment bankers or agents in their capacities as such and any of such parties' successors and assigns (all such parties collectively, the "Affiliated Parties" of the Liquidating Trustee), shall not have or incur, and are hereby released from, any claim, obligation, cause of action, or liability, to one another or to any Beneficiary, or any other party in interest, or any of their respective successors and assigns, for any act or omission in connection with, relating to or arising out of any act to be performed or omitted to be performed by the Liquidating Trustee, any Beneficiary or any of their respective Affiliated Parties in connection with the business and affairs of the Liquidating Trust, and the Liquidating Trust, its receiver, or its trustee shall indemnify, save harmless, and pay all judgments and claims against the Liquidating Trustee, his Affiliated Parties relating to any liability or damage incurred by reason of any act performed or omitted to be performed by the Liquidating Trustee, or his respective Affiliated Parties in connection with the business and affairs of the Liquidating Trust, including reasonable attorneys' fees incurred by the Liquidating Trustee, or his respective Affiliated

Parties in connection with the defense of any action based on any such act or omission, which attorneys' fees may be paid as incurred.

(b) Unless otherwise provided in Section 3.4(d), in the event of any action by a Beneficiary against the Liquidating Trustee, or any of his Affiliated Parties, including a Liquidating Trust derivative suit, the Liquidating Trust shall indemnify, save harmless, and pay all expenses of such Liquidating Trustee, or Affiliated Party, including reasonable attorneys' fees incurred in the defense of such action.

(c) Unless otherwise provided in Section 3.4(d), the Liquidating Trust shall indemnify, save harmless, and pay all expenses, costs, or liabilities of the Liquidating Trustee or any of its Affiliated Parties, if for the benefit of the Liquidating Trust and in accordance with this Agreement said Liquidating Trustee or Affiliated Party makes any deposit or makes any other similar payment or assumes any obligation in connection with any property proposed to be acquired by the Liquidating Trust and suffers any financial loss as a result of such action.

(d) Notwithstanding the provisions of Sections 3.4(a) - (c) above, such Sections shall be enforced only to the maximum extent permitted by law, and the Liquidating Trustee or any of its Affiliated Parties shall not be exculpated or indemnified from any liability for the fraud, intentional misconduct, bad faith or knowing violation of the law which was material to the cause of action, or to the extent that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

(e) The obligations of the Liquidating Trust set forth in this Section 3.4 are expressly intended to create third party beneficiary rights of the Liquidating Trustee and his Affiliated Parties.

### **3.5 Compensation of the Liquidating Trustee.**

On the Effective Date, the Liquidating Trust and the Liquidating Trustee shall enter into the Engagement Agreement, which shall govern the compensation and terms of employment of the Liquidating Trustee. Any subsequent modification in the compensation and terms of employment of any subsequent Liquidating Trustee shall be made by the Liquidating Trustee, upon prior written notice to the Beneficiaries, and in the absence of a written "no vote" submitted within ten days thereafter by at least 50% of the Beneficiaries.

### **3.6 Confidentiality**

The Liquidating Trustee shall, during the period that it serves as Liquidating Trustee under this Agreement and for a period of twelve (12) months following the termination of this Agreement or following its removal or resignation hereunder, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any entity to which any of the Liquidating Trust assets relates or of which it has become aware in its capacity as Liquidating Trustee.



**SECTION 4**  
**DISPUTED CLAIMS RESERVE TRUSTS;**  
**OTHER SPECIAL RESERVES AND ACCOUNTS**

**4.1 Disputed Priority Claims Reserve Trust.**

(a) The Liquidating Trustee shall administer the Disputed Priority Claims Reserve Trust. The Liquidating Trustee shall set aside, segregate and hold in trust for the benefit of holders of Disputed Priority Claims, the property included in the Disputed Priority Claims Reserve Trust, including the Class 1 Interests (and any Cash distributable on account thereof) deposited in the Disputed Priority Claims Reserve Trust pursuant to the Plan. The parties intend to establish the Disputed Priority Claims Reserve Trust as a trust under New York law pursuant to this Section 4.1 and the Plan.

(b) Payments and distributions from the Disputed Priority Claims Reserve Trust to each holder of a Disputed Priority Tax Claim or Disputed Other Priority Claim, to the extent that the Claim ultimately becomes an Allowed Claim, will be made in accordance with the provisions of the Plan that govern distributions to holders of Allowed Priority Tax Claims or Allowed Other Priority Claims (or as soon thereafter as is practical after sufficient monies are received to enable the Liquidating Trust to make such payments). The Liquidating Trustee will distribute from time to time to the holders of such Claims any Cash and other property in the Disputed Priority Claims Reserve Trust that would have been distributed on the Effective Date had such Allowed Claim been an Allowed Claim on the Effective Date, increased by such holder's shares of any earnings attributable to the investment of such Cash during the time it was held in the Disputed Priority Claims Reserve Trust, and decreased by any taxes paid or payable on such portion of the Disputed Priority Claims Reserve Trust.

(c) The Liquidating Trustee will add to the Disputed Priority Claims Reserve Trust (i) any dividends, payments or other distributions made on account of, as well as any obligations arising from, the property held in the Disputed Priority Claims Reserve Trust, to the extent that such property continues to be held in the Disputed Priority Claims Reserve Trust at the time such distributions are made or such obligations arise; and (ii) any Cash realized from, among other things, the investment of Cash and the liquidation of non-Cash assets held in the Disputed Priority Claims Reserve Trust. If practicable, the Liquidating Trustee will invest any Cash that is held in the Disputed Priority Claims Reserve Trust in accordance with Section 4.7 hereof. Nothing in this Agreement will be deemed to entitle the holder of a Disputed Priority Claim to post-petition interest on such Claim.

(d) To the extent a Disputed Priority Claim is disallowed, the amount of Cash or property reserved for that Claim (including amounts received as distributions on the Class 1 Interest reserved for such Claim, but excluding the Class 1 Interest itself, which shall be cancelled), increased by any earnings attributable to investment of such Cash during the time it was held in the Disputed Priority Claims Reserve Trust and decreased by any taxes paid or payable on the portion of the Disputed Priority Claims Reserve Trust reserved for the disallowed Disputed Priority Claim, will be reallocated to holders of Allowed Priority Tax Claims, Allowed Other Priority Claims, Disputed Priority Tax Claims and Disputed Other Priority Claims based

on the holders' Pro Rata Shares. Notwithstanding the foregoing, to the extent that reallocation of an amount reserved for a disallowed Disputed Priority Claim in the manner described above would cause holders of Allowed Priority Tax Claims, Allowed Other Priority Claims, Disputed Priority Tax Claims and Disputed Other Priority Claims to receive more than such holders are entitled to receive under the Plan, that amount shall instead be allocated to holders of Allowed General Unsecured Claims and Disputed General Unsecured Claims based on such holders' Pro Rata Shares. Reallocated amounts will initially be deposited in the Distribution Reserve Account to be held therein until such amounts are distributed in accordance with Section 9.2 and 9.3 of the Plan (including to the Disputed Claims Reserve Trusts, as applicable, with respect to their respective Class 1 and Class 2 Interests in the Liquidating Trust).

(e) In the event, and to the extent, the Disputed Priority Claims Reserve Trust has insufficient funds to pay taxes attributable to the Class 1 Interests held therein, the necessary funds to pay such taxes shall be advanced to the Disputed Priority Claims Reserve Trust by the Liquidating Trust from the Distribution Reserve Account and the Disputed Priority Claims Reserve Trust shall reimburse the Distribution Reserve Account for any such advance from future distributions and disbursements to or for the benefit of the Disputed Priority Claims Reserve Trust.

#### **4.2 Disputed General Unsecured Claims Reserve Trust.**

(a) The Liquidating Trustee shall administer the Disputed General Unsecured Claims Reserve Trust. The Liquidating Trustee shall set aside, segregate and hold in trust for the benefit of holders of Disputed General Unsecured Claims, the property included in the Disputed General Unsecured Claims Reserve Trust, including the Class 2 Interests (and any Cash distributable on account thereof) deposited in the Disputed General Unsecured Claims Reserve Trust pursuant to the Plan. The parties intend to establish the Disputed General Unsecured Claims Reserve Trust as a trust under New York law pursuant to this Section 4.2 and the Plan

(b) Payments and distributions from the Disputed General Unsecured Claims Reserve Trust to each holder of a Disputed General Unsecured Claim, to the extent that it ultimately becomes an Allowed Claim, will be made in accordance with provisions of the Plan that govern distributions to holders of Allowed General Unsecured Claims (or as soon thereafter as is practical after sufficient monies are received to enable the Liquidating Trust to make such payments). The Liquidating Trustee will distribute from time to time to the holders of such Claims any Cash and other property in the Disputed General Unsecured Claims Reserve Trust that would have been distributed on the Effective Date had such Allowed Claim been an Allowed Claim on the Effective Date, increased by such holder's shares of any earnings attributable to the investment of such Cash during the time it was held in the Disputed General Unsecured Claim Reserve Trust, and decreased by any taxes paid or payable on such portion of the Disputed General Unsecured Claim Reserve Trust.

(c) The Liquidating Trustee will add to the Disputed General Unsecured Claims Reserve Trust (i) any dividends, payments or other distributions made on account of, as well as any obligations arising from, the property held in the Disputed General Unsecured

Claims Reserve Trust, to the extent that such property continues to be held in the Disputed General Unsecured Claims Reserve Trust at the time such distributions are made or such obligations arise; and (ii) any Cash realized from, among other things, the investment of Cash and the liquidation of any non-Cash assets held in the Disputed General Unsecured Claims Reserve Trust. If practicable, the Liquidating Trustee will invest any Cash that is held in the Disputed General Unsecured Claims Reserve Trust in accordance with Section 4.7 hereof. Nothing in this Agreement will be deemed to entitle the holder of a Disputed General Unsecured Claim to post-petition interest on such Claim.

(d) To the extent a Disputed General Unsecured Claim is disallowed, the amount of Cash or property reserved for that Claim (including amounts received as distributions on the Class 2 Interest reserved for such claim, but excluding the Class 2 Interest itself, which shall be cancelled), increased by any earnings attributable to investment of such Cash during the time it was held in the Disputed General Unsecured Claims Reserve Trust and decreased by any taxes paid or payable on the portion of the Disputed General Unsecured Claims Reserve Trust reserved for the disallowed Disputed General Unsecured Claim, will be reallocated to holders of Allowed General Unsecured Claims and Disputed General Unsecured Claims based on such holders' Pro Rata Shares. Reallocated amounts will initially be deposited in the Distribution Reserve Account to be held therein until such amounts are distributed in accordance with Section 9.2 and 9.3 of the Plan (including to the Disputed General Unsecured Claims Reserve Trust with respect to its Class 2 Interest in the Liquidating Trust).

(e) In the event, and to the extent, the Disputed General Unsecured Claims Reserve Trust has insufficient funds to pay taxes attributable to the membership interests held therein, the necessary funds to pay such taxes shall be advanced to the Disputed General Unsecured Claims Reserve Trust by the Liquidating Trust from the Distribution Reserve Account and the Disputed General Unsecured Claims Reserve Trust shall reimburse the Distribution Reserve Account for any such advance from future distributions and disbursements to or for the benefit of the Disputed General Unsecured Claims Reserve Trust.

#### **4.3 Unclaimed Distributions Reserve.**

(a) The Liquidating Trustee shall administer the Unclaimed Distributions Reserve to hold funds that were returned as unclaimed or undeliverable to the holder of the Claim. The Liquidating Trustee shall hold such Cash in the Unclaimed Distributions Reserve for the benefit of such holder, unless otherwise ordered by the Bankruptcy Court, until the earlier of six (6) months after such Unclaimed Distribution was made or the Termination Date. The Liquidating Trustee may maintain the Unclaimed Distributions Reserve as a book-keeping entry, rather than as a separate account.

(b) If the holder of a Claim to whom an Unclaimed Distribution was payable makes a claim to the Liquidating Trustee within the period specified in Section 4.3(a), the Liquidating Trustee shall pay the holder from the Unclaimed Distributions Reserve upon presentation by the holder of proper proof of its entitlement thereto. If the holder does not make claim to the Liquidating Trustee by the expiration of such period, the holder shall forfeit all rights to payment, and the funds relating to such Claim shall be redistributed to other creditors of

the same Class as part of the Final Distribution (or as soon thereafter as is practical after sufficient monies are received to enable the Liquidating Trust to make such payments).

#### **4.4 Distribution Reserve Account.**

On the Effective Date (or as soon as reasonably practicable after the Liquidating Trust receives sufficient funds), the Liquidating Trustee shall establish the Distribution Reserve Account, in which the Liquidating Trustee shall deposit (i) all Cash, Cash equivalents and Cash proceeds received from the Debtors on the Effective Date and (ii) the Cash proceeds received by the Liquidating Trustee thereafter from, among other things, liquidation of non-Cash assets and the prosecution of Debtor Claims. The Liquidating Trustee shall (i) administer the Distribution Reserve Account, (ii) transfer funds between the Distribution Reserve Account and the Expense Reserve Account and/or the Unclaimed Distributions Reserve, and (iii) make distributions from the Distribution Reserve Account, in each case as provided in Article 9 of the Plan (or as soon thereafter as is practical after sufficient monies are received to enable the Liquidating Trust to make such payments). The Liquidating Trustee may maintain the Distribution Reserve Account as a book-keeping entry, rather than as a separate account.

#### **4.5 Expense Reserve Account.**

On the Confirmation Date, or as soon as reasonably practicable thereafter, the Liquidating Trust will establish the Expense Reserve Account, to be funded initially with \$250,000 (which Lehman has agreed to pay in accordance with the “third party release issue”) transferred by the Debtors to the Liquidating Trust. On the Effective Date (or as soon as reasonably practicable thereafter), the Liquidating Trust shall deposit in the Expense Reserve Account sufficient funds from the Distribution Reserve Account to pay all accrued and projected expenses and costs (including, without limitation, the Wind-Up Reserve or any Administrative Expenses that may remain or that may be incurred by the Liquidating Trust up to the Effective Date) of the Liquidating Trust to be incurred through the Termination Date. The Liquidating Trustee shall (i) administer the Expense Reserve Account, (ii) establish the Wind-Up Reserve, (iii) transfer funds (including, without limitation, the Expense Reserve Account residual) between the Expense Reserve Account and the Distribution Reserve Account and/or the Wind-Up Reserve Account, and (iv) pay or distribute any remaining funds in the Wind-Up Reserve after the Liquidating Trustee has performed all of its responsibilities under the Plan and this Agreement, in each case as provided in Article 9 of the Plan. The Liquidating Trustee may maintain the Expense Reserve Account as a book-keeping entry, rather than as a separate account. Prior to the Effective Date, the professionals will carry receivables for work performed, and shall be entitled to reimbursement from monies subsequently received through the AutoNation Settlement Proceeds, the Avis/Hertz Claims, recoveries from the Avoidance Actions or other asset sales/realizations.

#### **4.6 Secured Claims Reserve Account**

On the Effective Date, or as soon as reasonably practicable thereafter, the Liquidating Trust will establish the Secured Claims Reserve Account. On the Effective Date (or as soon as reasonably practicable thereafter), the Liquidating Trust will deposit in the Secured

Claims Reserve Account sufficient funds from the Distribution Reserve Account to pay in full (i) all Allowed Ad Valorem Tax Claims to the extent that the Ad Valorem Tax Escrow is insufficient to pay such claims in full, and (ii) all Other Secured Claims that are Allowed and unpaid after the Effective Date. The Liquidating Trustee shall administer the Secured Claims Reserve Account and transfer funds (including, without limitation, the Secured Claims Reserve Account residual) between the Secured Claims Reserve Account and the Distribution Reserve Account and/or the Wind-Up Reserve. The Liquidating Trustee may maintain the Secured Claims Reserve Account as a book-keeping entry, rather than as a separate account.

#### **4.7 Investment of Monies.**

The investment power of the Liquidating Trustee shall be limited to investments in Cash, money market funds and treasury bills. The scope of permissible investments shall be limited to include only those investments that a liquidating trust, within the meaning of Treasury Regulation Section 301.7701-4(d), may be permitted to invest in, pursuant to the Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements or otherwise.

### **SECTION 5 DISTRIBUTIONS**

#### **5.1 Timing and Amount of Distributions.**

The Liquidating Trustee shall be entitled to make interim and final distributions to the Beneficiaries at such times and in such amounts as provided in Section 9.2 and 9.3 of the Plan.

#### **5.2 Limitations on Distributions.**

The Liquidating Trust shall make no distributions to the Beneficiaries except as provided in this Agreement, the Plan, or further order of the Bankruptcy Court.

#### **5.3 Withholding on Distributions.**

(a) All amounts withheld pursuant to the Internal Revenue Code, the Treasury Regulations or any provision of any state, local or foreign tax law with respect to any payment, distribution or allocation to the Liquidating Trust or the Beneficiaries shall be treated as amounts paid or distributed, as the case may be, to the Beneficiaries with respect to which such amount was withheld pursuant to this Section 5.3 for all purposes under this Agreement. The Liquidating Trust is authorized to withhold from payments and distributions, or with respect to allocations to the Beneficiaries, and to pay over to any federal, state and local government or any foreign government, any amounts required to be so withheld pursuant to the Internal Revenue Code or any provisions of any other federal, state or local law or any foreign law, and shall allocate any such amounts to the Beneficiaries with respect to which such amount was withheld.

(b) As a condition to making any distribution under this Agreement and the Plan, the Liquidating Trust may require that the holder of any Allowed Claim provide such holder's taxpayer identification number and such other certification as may be deemed necessary to comply with applicable tax reporting and withholding laws. Proceeds that would have been distributed to a holder that does not provide the information requested by the Liquidating Trust shall be distributed to the other holders based on their Pro Rata Shares.

## **SECTION 6 ROLE OF BENEFICIARIES**

### **6.1 No Beneficiary Voting Rights.**

Except as otherwise specifically provided for herein, no Beneficiary shall have the right to vote. All decision-making authority with respect to the Liquidating Trust shall be vested in the Liquidating Trustee.

### **6.2 Beneficiary Liability.**

No Beneficiary shall be liable under a judgment, decree or order of a court, or in any other manner for the Debts or any other obligations or liabilities of the Liquidating Trust.

### **6.3 Transactions Between a Beneficiary and the Liquidating Trust.**

Except as otherwise provided by applicable law, any Beneficiary may, but shall not be obligated to, lend money to the Liquidating Trust, act as surety for the Liquidating Trust and transact other business with the Liquidating Trust and has the same rights and obligations when transacting business with the Liquidating Trust as a person or entity who is not a Beneficiary. A Beneficiary, any Affiliate thereof or an employee, stockholder, agent, director or officer of a Beneficiary or any Affiliate thereof, may also be an employee or be retained as an agent of the Liquidating Trust. The existence of these relationships and acting in such capacities will not result in the Beneficiary being deemed to be participating in the control of the business of the Liquidating Trust or otherwise affect the limited liability of the Beneficiary.

### **6.4 Other Instruments.**

Each Beneficiary hereby agrees to execute and deliver to the Liquidating Trust within fifteen (15) Business Days after receipt of a written request therefore, such other and further documents and instruments, statements of interest and holdings, designations, powers of attorney and other instruments and to take such other action as the Liquidating Trustee deems necessary, useful or appropriate to comply with any laws, rules or regulations as may be necessary to enable the Liquidating Trust to fulfill its responsibilities under this Agreement.

**SECTION 7**  
**ACCOUNTING, BOOKS AND RECORDS**

**7.1 Accounting, Books and Records.**

(a) The Liquidating Trust shall keep on site at its principal place of business separate books of account for the Liquidating Trust, which shall show a true and accurate record of all costs and expenses incurred, all charges made, all credits made and received, and all income derived in connection with the conduct of the Liquidating Trust and the operation of the business in accordance with this Agreement.

(b) The Liquidating Trustee shall select a method of accounting for preparation of the Liquidating Trust's financial reports and for tax purposes and shall keep its tax preparation books and records accordingly. Any Beneficiary or its designated representative has the right to have reasonable access to inspect the contents of such tax preparation books or records, subject to compliance with safety, security and confidentiality procedures, and guidelines imposed by the Liquidating Trust.

**7.2 Reports of Distributions from the Liquidating Trust.**

Every 360 days after the Effective Date, the Liquidating Trustee shall file with the Bankruptcy Court a summary report detailing the calculation of Cash and Claims for the immediately preceding 360-day period. The report shall also provide a summary of the duties and operations performed by the Liquidating Trustee during such preceding 360-day period.

**7.3 Tax Information.**

Necessary tax information shall be delivered to each Beneficiary as soon as practicable after the end of each fiscal year of the Liquidating Trust.

**7.4 Tax Reporting.**

(a) For all federal income tax purposes, all parties (including, without limitation, the Debtors, the Liquidating Trustee, and the holders of Allowed and Disputed Claims) shall follow the treatment set forth in this Section 7.4 in characterizing the transfer of assets to the Liquidating Trust, Disputed Priority Claims Reserve Trust or the Disputed General Unsecured Claims Reserve Trust in accordance with the terms of this Agreement and the Plan.

(b) The assets that are transferred to the Liquidating Trust on the Effective Date shall be deemed for federal income tax purposes to have been distributed by the Debtors on the Effective Date first to holders of Allowed Priority Claims pro rata to the extent of the amount of those Claims, with any excess distributed pro rata to holders of Allowed General Unsecured Claims. Such holders shall then be treated as contributing such rights to the Liquidating Trust in exchange for Class 1 or Class 2 Interests, respectively.

(c) In the case of each Disputed Priority Claim and Disputed General Unsecured Claim that becomes an Allowed Claim, all property held for the account of the holder

of such Disputed Priority Claim in the Disputed Priority Claims Reserve Trust or Disputed General Unsecured Claim Trust, including any Class 1 or Class 2 Interests, will be treated as having been distributed by such trust to such holder, which then shall hold such interest directly. With respect to each Disputed Priority Claim or Disputed General Unsecured that becomes a Disallowed Claim, property held for the account of the holder of such Disputed Claim in either the Disputed Priority Claims Reserve Trust or the Disputed General Unsecured Claims Reserve Trust will be treated as having been transferred by such trust back to the Liquidating Trust for reallocation (to holders of either Allowed Priority Claims or Allowed General Unsecured Claims and, in respect of Disputed Claims, to the Disputed Priority Claims Reserve Trust or Disputed General Unsecured Claims Reserve Trust). All holders of Allowed and Disputed General Unsecured Claims shall report, for tax purposes, consistently with the foregoing.

(d) As soon as possible after the Effective Date, but in no event later than sixty (60) days thereafter, the Liquidating Trustee and its advisors shall estimate, in good faith, the value of the assets Transferred to the Liquidating Trust under the Agreement and Plan. The value determined by the Liquidating Trustee shall be conclusive absent manifest error. All parties (including, without limitation, the Debtors, the Liquidating Trustee and the holders of Allowed Claims) shall use this valuation for all federal income tax purposes. This valuation shall be made available by the Liquidating Trustee upon written request of the parties or their assigns.

(e) The Liquidating Trust will be treated as a liquidating trust and a grantor trust for federal tax purposes and, to the extent permitted under applicable law, for state and local income tax purposes. The Beneficiaries will be treated as the grantors and deemed owners of the Liquidating Trust. The Liquidating Trustee shall be responsible for filing information returns on behalf of the Liquidating Trust as a grantor trust pursuant to Treasury Regulations Section 1.671-4(a), and distributing information statements to the holders of the membership interests in the Liquidating Trust, setting forth each member's allocable share of the income, loss, deduction or credit of the Liquidating Trust.

(f) All of the Liquidating Trust's trust income will be treated as subject to tax on a current basis. For federal income tax purposes, items of income, gain, loss, and deduction of the Liquidating Trust will be allocated among the Beneficiaries in a manner, to be determined by the Liquidating Trustee, that is equitable to the Beneficiaries, that is consistent with applicable Treasury Regulations and that reflects the Beneficiaries' respective contributions (determined in accordance with this Section 7.4) and their respective interests in the interim and final distributions to be made by the Liquidating Trust. These respective interests may shift from time to time as the result of the disallowance of Disputed Claims.

(g) Subject to definitive guidance from the Internal Revenue Service or a court of competent jurisdiction to the contrary (including the receipt by the Liquidating Trustee of an adverse determination on audit if not contested by the Liquidating Trustee), the Liquidating Trustee shall (A) treat the Disputed Priority Claims Reserve Trust and Disputed General Unsecured Claims Reserve Trust as discrete trusts for federal income tax purposes, consisting of separate and independent shares to be established in respect of each Disputed Claim in accordance with the trust provisions of the Internal Revenue Code Section 641 et. seq.; (B) to the



extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes; (C) prepare and file tax returns for the Disputed Priority Claims Reserve Trust and Disputed General Unsecured Claims Reserve Trust; and (D) pay any amounts of tax attributable to the Disputed Priority Claims Reserve Trust and Disputed General Unsecured Claims Reserve Trust from amounts held in such trust. All holders of Allowed and Disputed Claims shall report, for tax purposes, consistently with the foregoing.

(h) The Liquidating Trustee shall file (or cause to be filed) any other statements, returns or disclosures relating to the Liquidating Trust that are required by any governmental unit or applicable law.

(i) The Liquidating Trustee is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code for all tax returns filed for or on behalf of the Debtors or the Liquidating Trust for all taxable periods through the termination of the Liquidating Trust.

(j) Pursuant to section 1146(c) of the Bankruptcy Code, the issuance, Transfer, or exchange of notes or equity securities under the Plan or the making or delivery of any deed or other instrument or Transfer under, in furtherance of, or in connection with the Plan, including without express or implied limitation, any Transfers to or by the Liquidating Trust shall not be subject to any Transfer, sales or other similar tax.

## **SECTION 8 AMENDMENTS**

### **8.1 Amendments.**

(a) Amendments to this Agreement may be proposed by the Liquidating Trustee upon written notice to the Beneficiaries. Except as provided in Section 8.1(b), a proposed amendment shall be adopted and be effective as an amendment hereto if it receives approval of the Liquidating Trustee and the absence of a written “no vote” by at least 50% of the Beneficiaries submitted within ten days thereafter.

(b) The Liquidating Trustee may amend this Agreement without the consent or approval of the Beneficiaries:

(i) To preserve the legal status of the Liquidating Trust as a trust under applicable state or federal laws, if such amendment does not materially adversely affect the interests of the Beneficiaries; and

(ii) To satisfy the requirements of the Internal Revenue Code and Treasury Regulations thereunder with respect to liquidating trusts and grantor trusts and of any federal or state securities laws or regulations if such amendment does not materially adversely affect the interests of the Beneficiaries.

## **8.2 Limitation on Amendments.**

Notwithstanding any other provision of this Agreement, this Agreement shall not be amended without the consent of each Beneficiary adversely affected if such amendment would modify the limited liability of a Beneficiary, or modify the manner of determining and allocating profits and losses and making distributions. In addition, notwithstanding anything in this Agreement to the contrary, no amendment to this Agreement shall be inconsistent with the purpose and intention of the Liquidating Trust to liquidate in an expeditious but orderly manner the Liquidating Trust assets in accordance with Treasury Regulation 301.7701-4(d) and Section 1.4 hereof.

## **SECTION 9 ADDITIONAL BENEFICIARIES**

Except as provided in Section 10, no additional Beneficiaries may be admitted to the Liquidating Trust.

## **SECTION 10 TRANSFERS**

### **10.1 Restrictions on Transfers.**

Upon issuance thereof, Class 1 and Class 2 Interests in the Liquidating Trust will be non-Transferable, except with respect to the following Transfers: (a) distributions of beneficial interests in the Liquidating Trust from the Disputed Claims Reserve Trusts; (b) Transfers under the laws of descent, including transfers from an estate or testamentary trust; (c) Transfers between certain designated family members; (d) Transfers involving distributions from certain qualifying retirement plans; (e) Transfers in which the tax basis of the Liquidating Trust membership interest in the hands of the Transferee is determined in whole or in part with reference to its basis in the hands of the Transferor; and (f) “block transfers” as defined in section 1.7704-1(e)(2) of the Treasury Regulations; provided, however, that any Transfer described in (b) through (f) that would result in the Liquidating Trust being subject to the reporting or registration requirements of the Securities Exchange Act of 1934, as amended, or the Investment Company Act of 1940, as amended, is prohibited. In the case of Transfers described in (b) through (f), the Liquidating Trustee shall have the right to receive written notice thirty days prior to the proposed Transfer, including all pertinent facts and, if applicable, documents relating to the Transfer; to approve or disapprove the Transfer and impose any conditions with respect to the Transfer that, in each case, the Liquidating Trustee reasonably deems necessary or advisable in its sole discretion to prevent the Liquidating Trust from being treated as a publicly traded partnership for federal income tax purposes (if the Liquidating Trust were to be treated as a partnership rather than a liquidating trust for federal income tax purposes) and to prevent the Liquidating Trust from being subject to the reporting or registration requirements of the Securities Exchange Act of 1934, as amended, or the Investment Company Act of 1940, as amended; to require from the Transferor or obtain from counsel to the Liquidating Trust (at the Liquidating Trustee’s option) an opinion in form and substance satisfactory to the Liquidating

Trustee that the Transfer will not cause the Liquidating Trust to be taxable as a corporation for federal income tax purposes or to be subject to the reporting or registration requirements of the Securities Exchange Act of 1934 or the Investment Company Act of 1940; and to require the Transferor to reimburse the Liquidating Trust for any reasonable expenses incurred in connection with the proposed Transfer, whether or not approved. Any Transfer not described in (a) through (f) or any Transfer described in (b) through (f) that is prohibited or is not approved by the Liquidating Trustee pursuant to these procedures will be null and void. Any Transfer that is not prohibited and is approved by the Liquidating Trustee shall be a “Permitted Transfer.”

## **10.2 Prohibited Transfers.**

Any purported Transfer of Interests that is not a Permitted Transfer shall be null and void and of no force or effect whatever; provided, that if the Liquidating Trust is required to recognize a Transfer that is not a Permitted Transfer (or if the Liquidating Trustee elects to recognize a Transfer that is not a Permitted Transfer), the Interests Transferred shall be strictly limited to the Transferor’s rights to allocations and distributions as provided by this Agreement with respect to the Transferred Interests, which allocations and distributions may be applied (without limiting any other legal or equitable rights of the Liquidating Trust) to satisfy any Debts, obligations, or liabilities for damages that the Transferor or Transferee may have to the Liquidating Trust.

In the case of a Transfer or attempted Transfer of Interests that is not a Permitted Transfer, the parties engaging or attempting to engage in such Transfer shall be liable to indemnify and hold harmless the Liquidating Trust and the other Beneficiaries from all cost, liability, and damage that the Liquidating Trust and any of such indemnified Beneficiaries may incur (including, without limitation, incremental tax liabilities, lawyers’ fees and expenses) as a result of such Transfer or attempted Transfer and efforts to enforce the indemnity granted hereby.

## **SECTION 11 DISSOLUTION AND WINDING UP**

### **11.1 Dissolution Events.**

The Liquidating Trust shall be dissolved and its affairs wound up and the Liquidating Trustee shall make the Final Distribution upon the earlier of (a) the date which is 5 years after the Effective Date, and (b) that date when, (i) in the reasonable judgment of the Liquidating Trustee, substantially all of the assets of the Liquidating Trust have been liquidated and there are no substantial potential sources of additional Cash for distribution; (ii) there remain no substantial Disputed Claims; and (iii) the Liquidating Trustee is in a position to make the Final Distribution in accordance with applicable law. Notwithstanding the foregoing, on or prior to a date not less than six (6) months prior to such termination, the Bankruptcy Court, upon motion by a party in interest, may extend the term of the Liquidating Trust for one or more finite terms based upon the particular facts and circumstances at that time, if an extension is necessary to the liquidating purpose of the Liquidating Trust. The date on which the Final Distribution is made is referred to as the “Termination Date.” The Liquidating Trustee shall provide at least

thirty (30) days' prior written notice of the Termination Date to holders of all Claims, except to the extent such Claims have been disallowed, withdrawn or paid or satisfied in full as of the time such notice is provided.

## **11.2 Winding Up.**

Upon the occurrence of (i) an event described in Section 11.1 or (ii) the determination by a court of competent jurisdiction that the Liquidating Trust has dissolved prior to the occurrence of an event described in Section 11.1, the Liquidating Trust shall continue solely for the purposes of winding up its affairs in an orderly manner. After making the Final Distribution, the Liquidating Trustee shall proceed as promptly as possible (but in not event for a period longer than three (3) months, unless a longer period is approved by the Bankruptcy Court) to wind up the affairs of the Liquidating Trust and make any required federal, state or local filings for the dissolution of the Liquidating Trust. The Beneficiaries shall have no right to wind up the affairs of the Liquidating Trust. Upon its dissolution, the Liquidating Trust will file its final tax returns, and arrange for storage of its records for a period of not less than one year from the filing of its final tax returns. Upon completion of such process, the Liquidating Trustee shall file a final report of distributions with the Bankruptcy Court stating that the Liquidating Trust has been dissolved and request the Bankruptcy Court to enter an order closing the Chapter 11 Cases, whereupon the Liquidating Trustee shall be discharged from any further responsibility under the Agreement.

## **SECTION 12 MISCELLANEOUS**

### **12.1 Preservation of Debtor Claims.**

In accordance with section 1123(b)(3) of the Bankruptcy Code and as more fully described in Section 9.8 of the Plan, the Liquidating Trust shall retain all Debtor Claims and Causes of Action against any entity. The Liquidating Trustee, in the exercise of its sound business judgment, will determine whether to pursue such Debtor Claims in accordance with the best interests of the Beneficiaries of the Liquidating Trust. Such Debtor Claims, if prosecuted, will be prosecuted in the Bankruptcy Court only. The Bankruptcy Court shall only be required to preside over settlements of such claims where (x) the gross Debtor Claim in questions exceeds \$5,000,000, (y) where the settlement of such Debtor Claim exceeds \$500,000, or (z) the Liquidating Trust and the settling claimant both request Bankruptcy Court approval.

### **12.2 Notices.**

All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given or made if mailed by first class mail, postage prepaid, to the Liquidating Trustee on behalf of the Liquidating Trust, and to the address of each Beneficiary as reflected on the books and records of the Liquidating Trust. Any such notice shall be deemed received by the Liquidating Trustee or Beneficiary five (5) days after the notice is postmarked. Any Beneficiary may change his address by giving

notice, in writing, stating his new address to the Liquidating Trust, and the Liquidating Trustee may change his address by giving such notice to all Beneficiaries and the Liquidating Trust.

### **12.3 Binding Effect.**

Except as otherwise provided in this Agreement, every covenant, term, and provision of this Agreement shall be binding upon and inure to the benefit of the Beneficiaries and their respective successors, Transferees, and assigns.

### **12.4 Construction.**

Every covenant, term, and provision of this Agreement shall be construed according to its fair meaning and not strictly for or against any Beneficiary. To the extent the provisions of this Agreement conflict with the terms and conditions of the Plan, the provisions of the Plan shall govern.

### **12.5 Headings.**

Section and other headings contained in this Agreement are for reference purposes only and are not intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof.

### **12.6 Severability.**

Except as otherwise provided in the succeeding sentence, every provision of this Agreement is intended to be severable, and, if any term or provision of this Agreement is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity or legality of the remainder of this Agreement. The preceding sentence of this Section 12.6 shall be of no force or effect if the consequence of enforcing the remainder of this Agreement without such illegal or invalid term or provision would be to cause any Beneficiary to lose the material benefit of its economic bargain.

### **12.7 Incorporation by Reference.**

Every exhibit, schedule, and other appendix attached to this Agreement and referred to herein is incorporated in this Agreement by reference unless this Agreement expressly otherwise provides.

### **12.8 Governing Law/Jurisdiction.**

The substantive and procedural laws of the State of New York shall govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties arising hereunder, without reference to any conflict or choice of law rules or principles thereof. The Court retains exclusive jurisdiction to resolve any disputes arising out of this Agreement or involving the Liquidating Trust.

## **12.9 Counterpart Execution.**

This Agreement may be executed in any number of counterparts with the same effect as if all of the Beneficiaries had signed the same document. All counterparts shall be construed together and shall constitute one agreement.

**IN WITNESS WHEREOF**, the parties have executed and entered into this Operating Agreement of the Liquidating Trust as of the day first above set forth.

[\_\_\_\_\_] ,  
as [\_\_\_\_\_] of the Debtors, on behalf of the  
Beneficiaries

\_\_\_\_\_

[\_\_\_\_\_] , as Liquidating Trustee

\_\_\_\_\_

By:  
Title:

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**EXHIBIT A**

**PLAN**

**EXHIBIT B**

**ENGAGEMENT AGREEMENT TO BE  
FILED PRIOR TO CONFIRMATION HEARING**