

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re:	)	Chapter 11
	)	
BALMORAL RACING CLUB, INC., et al.,	)	Case No. 14-45711
	)	(Jointly Administered)
Debtors.	)	
	)	Honorable Donald R. Cassling

**ORDER APPROVING AMENDED DISCLOSURE STATEMENT AND  
CONFIRMING AMENDED JOINT LIQUIDATING  
PLAN OF REORGANIZATION**

THIS CAUSE coming on to be heard in connection with the combined hearings to consider the approval of the Amended Disclosure Statement dated, and filed herein on, April 25, 2016 [Docket No. 478] (“**Disclosure Statement**”), by Balmoral Racing Club, Inc., an Ohio corporation, and Maywood Park Trotting Association, Inc., an Illinois corporation, Debtors and Debtors in possession herein (collectively, the “**Debtors**”), and the confirmation of the Amended Joint Liquidating Plan dated, and filed herein on, April 25, 2016 [Doc. No. 479] (“**Plan**”), by the Debtors and Empress Casino Joliet Corporation, Des Plaines Development Limited Partnership, d/b/a Harrah’s Joliet Casino Hotel, Hollywood Casino-Aurora, Inc., and Elgin Riverboat Resort Riverboat Casino, d/b/a Grand Victoria Casino (collectively, the “**Judgment Creditors**”); due written notice having been given to all parties entitled thereto by Order of this Court dated April 26, 2016 [Docket No. 483], as evidenced by an Affidavit of Service and various Certificates of Service, all filed herein on May 3, 2016 [Docket Nos. 494-498]; no objections to the adequacy of the Disclosure Statement having been filed; one objection having been filed to the confirmation of the Plan on May 10, 2016 [Docket No. 510] by Chicagoland Race Meet Operators and Local 134 I.B.E.W. Joint Pension Trust, a creditor herein (“**Fund**” or “**Fund Objection**”), which

objection was withdrawn for the reasons stated in open court on the date hereof; no parties having objected to the entry hereof; the Court having heard and considered the statements of counsel present and the testimony of Randall Olech, Chief Operating Officer and Chief Financial Officer of the Debtors; and the Court being otherwise fully advised in the premises, finds<sup>1</sup>:

A. Due and sufficient notice of the Plan and the Disclosure Statement, and the combined hearings on the adequacy of the Disclosure Statement and confirmation of the Plan has been given to all parties entitled thereto.

B. The Disclosure Statement contains “adequate information”, as defined in Section 1125(a)(1) of the Bankruptcy Code.

C. The Plan sets forth 4 classes of claims and interests for each of the Debtors: Class 1 - priority unsecured claims; Class 2 - secured claims; Class 3 - general unsecured claims; and Class 4 - equity interest holders.

D. Classes 1 and 2 are unimpaired under the Plan and pursuant to Section 1126(f) of the Bankruptcy Code are conclusively presumed to have accepted the Plan.

E. Class 3 is impaired under the Plan. The Plan has been accepted in writing by the requisite number and percentage of the Class 3 creditors entitled to vote and who timely submitted ballots to accept or reject the Plan, without including the acceptance of the Plan by an insider.

F. Class 4 is impaired under the Plan and did not submit a ballot. However, in accordance with Sections 1129(b)(1) and 1129(b)(2)(C)(ii) of the Bankruptcy Code, the Plan does not discriminate unfairly, and is fair and equitable to the Class 4 interest holder.

G. The provisions of Chapter 11 of the Bankruptcy Code have been complied with and the Plan has been proposed in good faith and not by any means forbidden by law.

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<sup>1</sup> All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Plan.

H. With respect to each impaired Class of Claims under the Plan, each holder of a Claim of such Class will receive or retain under the Plan on account of such Claim property of a value, as of the Effective Date of the Plan, that is not less than the amount that such holder would so receive or retain if the Debtors were liquidated under Chapter 7 of the Bankruptcy Code on such date.

I. All payments made or promised by the Debtors under the Plan or by any other person for services or for costs and expenses in, or in connection with, the Plan and incident to these Chapter 11 Cases, have been fully disclosed to the Court and are reasonable or, if to be fixed after confirmation of the Plan, will be subject to the approval of the Court.

J. The identity, qualifications, and affiliations of the persons who are to be members, directors or officers, or voting trustees, if any, of the Debtors after confirmation of the Plan, have been fully disclosed and the appointment of such persons to such offices, or their continuance therein, is equitable, and consistent with the interests of the creditors and equity security holder and with public policy.

K. The Debtors have disclosed the identity of any insider that will be employed or retained by the Creditor Trustee, and the nature of any compensation for such insider.

L. There are no governmental regulatory commissions with jurisdiction, after confirmation of the Plan, over the rates of the Debtors.

M. The Plan provides that:

- (i) With respect to a claim of a kind specified in Sections 507(a)(1) through 507(a)(6) of the Bankruptcy Code, on the Effective Date of the Plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim; and

(ii) With respect to a claim of a kind specified in Section 507(a)(8) of the Bankruptcy Code, on the Effective Date of the Plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim.

N. The complete liquidation of all property of the estates is proposed in the Plan.

O. All fees payable under 28 U.S.C. Section 1930 have been or will be paid.

P. The Debtors are not obligated to pay any retiree benefits, as that term is defined in Section 1114 of the Bankruptcy Code, at any time prior to confirmation of the Plan.

Q. The Debtors shall be deemed to have rejected all executory contracts and leases not expressly assumed prior to or in connection with the entry hereof.

R. The United States Court of Appeals for the Seventh Circuit issued an opinion on August 2, 2016 [Document No. 42] (“**Appellate Order**”) in that certain matter entitled *Empress Casino Joliet Corp. et al., v. Balmoral Racing Club, Inc. and Maywood Park Trotting Association, Inc.*, Case No. 15-2526, affirming in part, and reversing in part, that certain Judgment in a Civil Matter entered on December 11, 2014 by the United States District Court for the Northern District of Illinois, Eastern Division (“**District Court**”) in that certain matter entitled *Empress Casino Joliet Corp. et al., v. Rod Blagojevich, et al.*, Case No. 09-C-3585 [Document No. 338] (“**District Court Action**”), and remanding the matter back to the District Court for the entry of a modified judgment consistent with the Appellate Order.

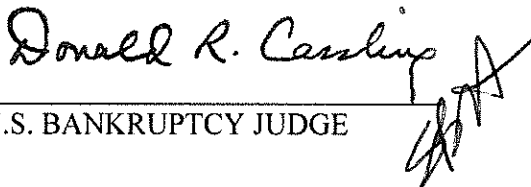
S. Counsel for the Judgment Creditors has represented in open court on the date hereof that the Judgment Creditors have waived their rights to seek a rehearing *en banc* of the Appellate Order or file a Petition for Certiorari before the U.S. Supreme Court seeking to appeal the Appellate Order.

T. In reliance thereon, the Fund withdrew the Fund Objection on the basis that it is moot.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. The above described findings be and they hereby are incorporated herein as if fully set forth.
2. The Creditor Trust Agreement, in the form attached to the Plan as Exhibit "A", is hereby approved and all parties thereto are authorized to execute same.
3. The Disclosure Statement filed by the Debtors is approved.
4. The Plan, a copy of which is attached hereto, is confirmed.
5. The Judgment Creditors' respective Claims shall be deemed allowed in the amounts to be set forth (i) in the modified judgment to be entered by the District Court in the District Court Action consistent with the Appellate Order, and (ii) in any other Final Order(s) entered by the District Court with respect to legal fees of the Judgment Creditors relating to the District Court Action, subject to the rights of any party in interest to object, including, without limitation, the Creditor Trustee notwithstanding Section 10.01(a) of the Plan; in each case, without further act, notice or deed taken in these Chapter 11 Cases.
6. A post-confirmation status hearing shall be held before the undersigned on November 15, 2016 at 10:00 a.m.

ENTER:

  
U.S. BANKRUPTCY JUDGE

*Prepared by:*

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8-8-16

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re:	Chapter 11
BALMORAL RACING CLUB, INC.,	Case No. 14-45711
Debtor.	Honorable Donald R. Cassling
In re:	Chapter 11
MAYWOOD PARK TROTTING ASSOCIATION, INC.,	Case No. 14-45718
Debtor.	Honorable Donald R. Cassling

**AMENDED JOINT LIQUIDATING PLAN**

TO: THE HONORABLE DONALD R. CASSLING  
U.S. BANKRUPTCY JUDGE:

**INTRODUCTION**

BALMORAL RACING CLUB, INC. (“**Balmoral**”), MAYWOOD PARK TROTTING ASSOCIATION, INC. (“**Maywood**,” and together with Balmoral, the “**Debtors**”), debtors and debtors-in-possession herein, and the JUDGMENT CREDITORS (as defined below) propose the following as their Amended Joint Liquidating Plan (the “**Plan**”) pursuant to the provisions of Chapter 11 of the Code (as defined below). This Plan amends and replaces in its entirety that certain Joint Liquidating Plan filed herein on March 31, 2016 [Docket No. 464]. Reference is made to the accompanying Disclosure Statement for a discussion of the Debtors’ history, business and operations, risk factors and other related matters. The Disclosure Statement also provides a summary of the Plan.

**RULES OF INTERPRETATION AND COMPUTATION OF TIME**

For purposes of the Plan, unless otherwise provided herein: (a) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, will include both the singular and the plural; (b) unless otherwise provided in the Plan, any reference in the Plan to a contract, instrument, release or other agreement or document being in a particular form or on particular terms and conditions means that such document will be substantially in such form or substantially on such terms and conditions; (c) any reference in the Plan to an existing document or schedule, filed or to be filed, means such document or schedule, as it may have been or may be amended, modified or supplemented pursuant to the Plan; (d) any reference to an entity as a holder of a claim or interest includes that entity’s successors and assigns; (e) all references in the Plan to Sections, Articles and Schedules are references to Sections, Articles and Schedules of or to the Plan; (f) the words “herein,” “hereunder,” “hereto,” and others of similar import refer to the Plan in its entirety rather than to a particular portion of the Plan; (g) captions and headings to

Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (h) the rules of construction set forth in Section 102 of the Code and in the Rules (as defined below) will apply; (i) in computing any period of time prescribed or allowed by the Plan, the provisions of Rule 9006(a) will apply; and (j) the word “including” shall not be deemed to be exclusive and shall mean “including without limitation.”

## ARTICLE I

### DEFINITIONS

The definitions and rules of construction set forth in the Rules and Sections 101 and 102 of the Code shall apply when the terms defined or construed therein are used in the Plan. Said definitions and rules of construction shall be supplemented by the following definitions:

**1.01 Administrative Claim** shall mean any cost, claim or expense of administration of the Chapter 11 Cases entitled to priority in accordance with Sections 503(b) and 507(a)(1) of the Code, including, without limitation, any actual and necessary expenses of preserving the Estates including, without limitation, all allowances of compensation or reimbursement of expenses for Professional Persons to the extent allowed by the Court against the Estates under Sections 330, 331 and 503 of the Code, and including fees due the United States Trustee assessed against the Estates pursuant to 28 U.S.C. § 1930(a)(6).

**1.02 Allowed or Allowed Claim** shall mean any claim or portion thereof, provided: (a) either (i) a proof of claim with respect thereto has been timely and properly filed before the Bar Date; (ii) such claim has been listed by the Debtors on their bankruptcy schedules on file herein as liquidated in amount and not disputed or contingent, but only in the amount so listed; or (iii) a proof of claim with respect thereto was filed after the Bar Date, with approval of the Court; and (b) either (i) no objection to the allowance of such claim has been made on or prior to the Claims Objection Deadline, or (ii) any objection thereto has been overruled by a Final Order, but only to the extent such objection is overruled. Except as otherwise provided in the Plan or by order of the Court, “Allowed” and “Allowed Claim” shall not include interest on such claim for the period from and after the Petition Date, nor shall it include any claim that may be disallowed under Section 502(d) of the Code.

**1.03 Appeal** shall mean that certain appeal from the Judgment, entered against the Debtors and John A. Johnston, jointly and severally, on December 11, 2014 in the District Court Action, pending in the United States Court of Appeals for the Seventh Circuit, entitled *Empress Casino Joliet Corp. et al., v. Balmoral Racing Club, Inc. et al.*, Case No. 15-2526.

**1.04 Avoidance Actions** shall mean the Estates’ interest in any and all Causes of Action arising out of, under or related to Sections 510, and 542 through 553 of the Code.

**1.05 Bar Date** shall mean the last date to file proofs of claim against the Debtors, which was August 6, 2015 for all creditors including Governmental Units.

**1.06 Beneficiaries** shall mean holders of Allowed Claims entitled to share in the Creditor Fund Assets.

**1.07 Causes of Action** shall mean any claims, actions, causes of action, Avoidance Actions, liabilities, obligations, rights, suits, debts, sums of money, damages, judgments, and demands whatsoever, whether known or unknown, in law, equity, or otherwise accruing to the Debtors or their Estates. Causes of Action include, without limitation, (a) claims and causes of action against the Related Non-Debtor Entities and their respective officers, directors, and shareholders, except as expressly released under Article XIV and Article XV of the Plan; (b) claims and causes of action arising under the IHHA Contract; (c) claims and causes of action against the Debtors' respective directors, officers, attorneys, and shareholders for breach of fiduciary duty, waste, fraud and abuse; (d) claims and causes of action against third parties for recovery of loans to purse accounts; (e) claims and causes of action arising from the transfer of funds from the Debtors and/or Related Non-Debtor Entities to any officer, director, or shareholder of the Debtors and/or any Related Non-Debtor Entities; (f) claims and causes of action arising from the transfer of funds received as a result of House Bill 1918, H.B. 1918, 94th Gen. Assem. (Ill. 2006), and House Bill 4756, H.B. 4578, 95th Gen. Assem. (Ill. 2008); and (g) claims and causes of action arising from the use of the Debtors' assets, including their name and good will, by Andrew Johnston and/or Magic Investments, Inc. to solicit investments and for their own business pursuits and interests.

**1.08 Chapter 11 Cases** shall mean the chapter 11 cases commenced under Chapter 11 of the Code by the Debtors on the Petition Date, styled *In re Balmoral Racing Club, Inc.*, Case No. 14-45711, and *In re Maywood Park Trotting Association, Inc.*, Case No. 14-45718, both currently pending in the Court.

**1.09 Class** shall mean any group or category into which Allowed Claims are classified pursuant to Article II hereof.

**1.10 Code** shall mean Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as amended from time to time.

**1.11 Collateral** shall mean any property or interest in property of the Estates subject to a lien, charge, or other encumbrance to secure the payment or performance of a claim, which lien, charge or other encumbrance is not subject to avoidance or otherwise invalid under the Code or applicable state or federal law.

**1.12 Confirmation Date** shall mean the date on which the Court enters the Confirmation Order.

**1.13 Confirmation Order** shall mean the Final Order that the Court enters pursuant to Section 1129 of the Code confirming the Plan and approving the transactions contemplated therein.

**1.14 Court** shall mean the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, or any court vested with jurisdiction over the Chapter 11 Cases.

**1.15 Creditor Fund** shall include all Creditor Fund Assets, including, the trust account(s) to be established and administered by the Creditor Trustee in accordance with the provisions of Article VII below.



**1.16 Creditor Fund Assets** shall mean (a) all assets of the Debtors other than the Retained Assets and the Restricted Cash, and all proceeds, earnings and replacements arising from or relating thereto, (b) all proceeds, earnings and replacements arising from or relating to the Retained Assets, (c) all assets acquired by the Creditor Trust at any time and all proceeds, earnings and replacements arising from or relating thereto, and (d) all Restricted Cash (i) which is not subject to valid claims or interests under applicable non-bankruptcy law or (ii) with respect to which the statute of limitations period for asserting claims or interests has expired under applicable non-bankruptcy law. Except as otherwise set forth in the Plan, the Creditor Fund Assets shall include, without limitation, (i) all cash on hand and on deposit in any financial institution other than the Restricted Cash, (ii) all proceeds, earnings and replacements arising from or relating to tangible and intangible real and personal property assets of any kind or nature whatsoever owned, in whole or part, in the Estates, including without limitation, proceeds, earnings and replacements arising from or relating to the Retained Assets, (iii) all Causes of Action, together with all proceeds, earnings and replacements arising from or relating thereto, and (iv) all books, records, information, communications, goodwill and intellectual property of the Debtors and the Estates.

**1.17 Creditor Trust** shall mean a common law trust to be established pursuant to the Plan, the Creditor Trust Agreement and the Confirmation Order for the sole and exclusive benefit of the Beneficiaries. The Creditor Trust shall liquidate and distribute the Creditor Fund Assets in accordance with the Creditor Trust Agreement and the Plan.

**1.18 Creditor Trust Agreement** shall mean the agreement to be executed as soon as reasonably practicable after the Confirmation Date, in a form substantially similar to the Creditor Trust Agreement attached hereto as Exhibit A, among the Debtors, the Judgment Creditors and the Creditor Trustee, which shall govern the obligations of the Creditor Trustee with respect to the Creditor Fund Assets.

**1.19 Creditor Trustee** shall mean such person or entity, including any replacements thereof or successors thereto, as may be designated by the Judgment Creditors, to serve as a custodian for the Creditor Fund and to oversee the liquidation and distribution of the Creditor Fund Assets held therein pursuant to Sections 1123 and 1129 of the Code, and further subject to the provisions of Article VII and Article X below and the Creditor Trust Agreement. Any person or entity serving as the Creditor Trustee shall be a Disinterested Person.

**1.20 Debtors** shall mean Balmoral Racing Club, Inc. and Maywood Park Trotting Association, Inc., each a "Debtor."

**1.21 Disclosure Statement** shall mean that certain Amended Disclosure Statement approved in the Chapter 11 Cases by the Court in connection with the Plan.

**1.22 Disputed Claim** shall mean any claim or portion thereof for which an objection has been filed prior to the Claims Objection Deadline.

**1.23 Distribution Dates** shall mean those dates upon which the Creditor Trustee shall make the distributions to holders of Allowed Claims described in Article VII hereof.

**1.24 District Court** shall mean the United States District Court for the Northern District of Illinois.

**1.25 District Court Action** shall mean that certain matter filed in the District Court entitled *Empress Casino Joliet Corp. et al., v. Rod Blagojevich, et al.*, Case No. 1:09-cv-03585.

**1.26 Effective Date** shall mean the first business day after the fourteenth (14th) day after the Confirmation Date, provided, however, that if a stay of the Confirmation Order is in effect on such date, then the Effective Date shall be the first business day thereafter on which (a) no stay of the Confirmation Order is in effect and (b) the Confirmation Order has not been vacated.

**1.27 Estates** shall mean all property of the Debtors' estates, as defined in Section 541 of the Code.

**1.28 Final Order** shall mean an order of the Court or the District Court in the District Court Action, or a mandate or order of the United States Court of Appeals for the Seventh Circuit, as the case may be, as to which the time to appeal, petition for certiorari or motion 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 Creditor Trustee or, in the event that an appeal, writ of certiorari or reargument or rehearing thereof has been sought, such order of the Court 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 motion 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 Rules, may be filed with respect to such order shall not preclude such order from being a Final Order.

**1.29 General Unsecured Claim** shall mean any Unsecured Claim, arising prior to the Petition Date, that is not a Professional Fee Administrative Claim, Other Administrative Expense Claim, Priority Claim, Class 1 Claim, Class 2 Claim or Class 4 Claim.

**1.30 Governmental Unit Priority Claims** shall collectively mean all claims held by a "governmental unit", as defined in Section 101(27) of the Code, which are entitled to priority under Section 507(a)(8) of the Code.

**1.31 IHHA Contract** shall mean that certain 2014-June 30, 2015 Agreement dated March 14, 2014 between the Debtors and the Illinois Harness Horsemen's Association, and any and all related documents, memoranda, understandings and agreements, as may have been modified, supplemented and/or amended from time to time, including, but not limited to, that certain Letter of Understanding - Host Track Status, dated March 13, 2014; Letter of Understanding - Recapture, dated March 13, 2014; Amendment to 2014-June 30, 2015 Agreement; and Amendment to previous agreement ending on October 4, 2015.

**1.32 IRB** shall mean the Illinois Racing Board.

**1.33 Johnston Settlement Agreement** shall mean the Settlement Agreement and Mutual General Release by and among the Judgment Creditors, John A. Johnston, and the Johnston Released Parties.

**1.34 Johnston Released Parties** shall collectively mean Julie Johnston, John Andrew Johnston, Jr., Charles Johnston, James Johnston, William Johnston, Jr., not individually but as trustee of the John A. Johnston 1993 Trust, Julie Johnston, not individually, but as the trustee of the John A. Johnston 2012 Special Trust, and Magic Investments, Inc.

**1.35 Judgment** shall mean that certain Judgment in a Civil Action entered in the District Court Action on December 11, 2014 against each of the Debtors and John A. Johnston, jointly and severally.

**1.36 Judgment Creditor Approval** shall mean the prior consent and approval of one or more Judgment Creditors holding at least 51% of the total dollar amount of the Judgment, which approval shall be obtained by the Creditor Trustee after providing not less than three (3) business days prior written notice of a proposed action to the Judgment Creditors. Judgment Creditor Approval shall be required at all times expressly provided for in the Plan and/or the Creditor Trust Agreement, and, unless otherwise specifically stated in the Plan, (a) with respect to any proposed disposition, abandonment or sale of assets, including without limitation, the Retained Assets, with a value of \$37,500 or more, (b) with respect to any proposed action involving a claim in the amount of more than \$37,500 or more, and (c) with respect to any proposed action involving any Cause of Action. In the event the Creditor Trustee is denied Judgment Creditor Approval for any proposed action requiring Judgment Creditor Approval, and no resolution is reached by the Creditor Trustee and the Judgment Creditors within five (5) business days of such denial, the Creditor Trustee may seek Court approval of the denied action based on the Creditor Trustee's business judgment. In the event the notice period expires and the Judgment Creditors have not objected to the proposed action, it shall be presumed that the Judgment Creditors have consented to and/or approved the proposed action, and the Creditor Trustee may proceed with the proposed action.

**1.37 Judgment Creditors** shall mean Empress Casino Joliet Corporation, Des Plaines Development Limited Partnership, d/b/a Harrah's Joliet Casino Hotel, Hollywood Casino-Aurora, Inc., and Elgin Riverboat Resort Riverboat Casino, d/b/a Grand Victoria Casino.

**1.38 Judgment Creditors' Claims** shall mean the proofs of claims filed by the Judgment Creditors in the Chapter 11 Cases.

**1.39 Liquidation Proceeds** shall mean (a) all net proceeds received from the sale, disposition and/or liquidation of (i) the Creditor Fund Assets, (ii) the Retained Assets, and (iii) all assets acquired by the Creditor Trustee at any time, and (b) all Restricted Cash (i) which is not subject to valid claims or interests under applicable non-bankruptcy law or (ii) with respect to which the statute of limitations period for asserting claims or interests has expired under applicable non-bankruptcy law.

**1.40 Olech Declaration** shall mean that certain Declaration of Randall Olech dated January 26, 2016, and filed as Docket Number 413 in the case captioned as *In re Balmoral Racing Club, Inc.*, Case No. 14-45711.

**1.41 Other Administrative Claims** shall mean all Administrative Claims other than Professional Fee Administrative Claims.

**1.42 Petition Date** shall mean December 24, 2014.

**1.43 Plan** shall mean this Joint Liquidating Plan, as amended in accordance with the terms hereof or modified in accordance with the Code.

**1.44 Plan Proponents** shall mean the Debtors and the Judgment Creditors.

**1.45 Priority Claims** shall mean those claims entitled to priority pursuant to Sections 507(a)(2), (a)(3), (a)(4), (a)(5), (a)(7) or (a)(8) of the Code.

**1.46 Professional Fee Administrative Claims** shall mean Administrative Claims held by Professional Persons.

**1.47 Professional Persons** shall mean persons retained or to be compensated pursuant to Sections 327, 328, 330, 331, and 503(b) of the Code.

**1.48 Pro Rata** shall mean the proportion that the amount of a claim in a particular Class bears to the aggregate amount of all claims of such Class (including Disputed Claims until disallowed).

**1.49 Real Property** shall mean all of the Debtors' legal and/or equitable interests in and to those certain real properties common known as 26435 S. Dixie Highway, Crete, Illinois 60417, and 5065 Cal Sag Road, Crestwood, Illinois 60445.

**1.50 Related Non-Debtor Entities** shall mean any entity with shareholders, partners, members, directors or officers that overlap with the Debtors, including but not limited to (a) World Wide Wagering, Inc.; (b) World Wide Broadcasting Systems, Inc.; (c) Printing Specialties, Inc.; (d) Egyptian Trotting Association; (e) Inter-Track Partners, LLC; (f) Coast To Coast Food Services, Ltd. (including its division d/b/a Illinois OTB); (g) Racing Associates of Illinois; (h) Associates Racing Association a/k/a ARA; (i) Magic Investment, Inc.; (j) Johnston Management, LLC; (k) Johnston Properties LLC; (l) Chicago Downs Association, Inc.; and (m) Caterers of Chicago, Inc.

**1.51 Restricted Cash** shall mean (a) funds held by the Debtors for payout of winning tickets purchased at either of the Debtors' tracks for races at such track pursuant to the Illinois Horse Racing Act and the rules and regulations of the IRB ("**Outs**"); (b) funds deposited with the Debtors by horse owners for stakes races which were not subsequently held at the Debtors' tracks ("**Stakes**"); and (c) funds deposited by customers of Maywood d/b/a Betzotic for future bets which were not subsequently made ("**Betzotic Customer Bets**").

**1.52** Retained Assets shall mean all the Real Property and all personal property of the Debtors wherever located, excluding all unrestricted cash in all bank accounts established by the Debtors and transferred to the Creditor Trust.

**1.53** Rules shall mean the Federal Rules of Bankruptcy Procedure, as amended and supplemented by the Local Rules adopted by the Court.

**1.54** Secured Claim shall mean a claim that is secured by a valid, perfected and enforceable, and non-avoidable lien upon property in which the Debtors has an interest, to the extent of the value, as of the Effective Date, of such interest or lien as determined by a Final Order, or as otherwise agreed to in writing by the Debtors and the holder of such claim.

**1.55** Unsecured Claim shall mean a claim of a creditor not secured by a lien on property of the Estates and not entitled to be classified as a Priority Claim pursuant to Section 507 of the Code.

## ARTICLE II

### CLASSIFICATION OF CLAIMS AND INTERESTS

**2.01** Class 1. All Allowed Priority Claims.

**2.02** Class 2. The Allowed Claim of any party secured by a lien(s) on the property in which the Estates have an interest in accordance with the applicable loan documentation and/or law, as allowed by Final Order, to the extent that such claims are not greater than the value of Estates' interests in such property.

**2.03** Class 3. Allowed General Unsecured Claims of whatever nature and description, including Allowed General Unsecured Claims arising from the rejection of executory contracts; but excepting those claims or interests enumerated in the Classes 1 and 2 above, and 4 below.

**2.04** Class 4. Interests of World Wide Wagering, Inc., a Delaware corporation, holder of 100% of the equity security holders of the Debtors.

## ARTICLE III

### TREATMENT OF ADMINISTRATIVE CLAIMS AND GOVERNMENTAL UNIT PRIORITY CLAIMS

**3.01** Administrative Claims. In full and complete satisfaction, discharge, and release of and in exchange for its Allowed Administrative Claim, unless otherwise agreed to by the holder of an Allowed Administrative Claim and the Debtors, each holder of an Allowed Administrative Claim shall be paid in full in cash upon the later of: (a) the date of allowance thereof by Final Order; (b) the earliest date on which there are Liquidation Proceeds available to pay the Administrative Claims; or (c) the Effective Date. The Allowed Administrative Claims shall be paid prior to any payments on the Allowed Governmental Unit Priority Claims, and Allowed Claims and interests in Classes 1, 3 and 4; provided however, that the Creditor Trustee shall be entitled to make such other distributions as are required under the Plan after the

Effective Date provided that in the event that any of the Administrative Claims have not become Allowed Claims prior to the Effective Date, then the Creditor Trustee shall hold in suspense such amounts in the Creditor Fund as are in his reasonable discretion sufficient to pay such Administrative Claims pending the Final Order of such Administrative Claims.

**3.02 Governmental Unit Priority Claims.** In full and complete satisfaction, discharge, and release of and in exchange for its Governmental Unit Priority Claim, unless otherwise agreed to by the holder of an Allowed Governmental Unit Priority Claim and the Debtors, each holder of any Allowed Governmental Unit Priority Claim shall be paid in full in cash Pro Rata upon the later of: (a) the date of allowance thereof by Final Order; (b) the earliest date on which there is Liquidation Proceeds sufficient to pay the Allowed Governmental Unit Priority Claims; or (c) the Effective Date. The Allowed Governmental Unit Priority Claims shall be paid prior to any payments on the Allowed Claims and interests in Classes 1, 3 and 4; *provided, however*, the Creditor Trustee shall be entitled to make such other distributions as are required under the Plan after the Effective Date provided that in the event that any of the Governmental Unit Priority Claims have not become Allowed Claims prior to the Effective Date, then the Creditor Trustee shall hold in suspense such amounts in the Creditor Fund as are in his reasonable discretion sufficient to pay such Governmental Unit Priority Claims pending the Final Order of such Governmental Unit Priority Claims. To the extent that payment is not made on the Effective Date, interest shall be paid as required under §1129(a)(9)(C) at the rate provided in §511.

**3.03 Bankruptcy Fees.** All fees payable under 28 U.S.C. § 1930, as determined by the Court, shall be paid in full on the Effective Date.

#### ARTICLE IV

#### CLAIMS NOT IMPAIRED UNDER THE PLAN

##### **4.01 Class 1 - Priority Claims.**

(a) Class 1(a): Class 1(a) consists of Priority Claims against Balmoral. Allowed Class 1(a) Claims are unimpaired by the Plan and shall be paid in order of the priorities set forth in Section 507 of the Code in full in cash upon the later of: (a) the date of allowance thereof by Final Order; (b) the earliest date on which there are Liquidation Proceeds sufficient to pay Allowed Class 1(a) Claims; or (c) the Effective Date; *provided, however*, the Creditor Trustee shall be entitled to make such other distributions as are required under the Plan after the Effective Date provided that in the event that any Class 1(a) Claims have not become Allowed Claims prior to the Effective Date, the Creditor Trustee shall hold in suspense such amounts in the Creditor Fund as are in his reasonable discretion sufficient to pay such Class 1(a) Claims pending the Final Order respecting such Class 1(a) Claims.

(b) Class 1(b): Class 1(b) consists of Priority Claims against Maywood. Allowed Class 1(b) Claims are unimpaired by the Plan and shall be paid in order of the priorities set forth in Section 507 of the Code in full in cash upon the later of: (a) the date of allowance thereof by Final Order; (b) the earliest date on which there are Liquidation Proceeds sufficient to pay Allowed Class 1(b) Claims; or (c) the Effective Date; *provided, however*, the Creditor

Trustee shall be entitled to make such other distributions as are required under the Plan after the Effective Date provided that in the event that any Class 1(b) Claims have not become Allowed Claims prior to the Effective Date, the Creditor Trustee shall hold in suspense such amounts in the Creditor Fund as are in his reasonable discretion sufficient to pay such Class 1(b) Claims pending the Final Order respecting such Class 1(b) Claims.

#### **4.02 Class 2 - Secured Creditors.**

(a) Class 2(a): Class 2(a) consists of Secured Claims against Balmoral. Allowed Class 2(a) Claims against Balmoral, if any, shall remain unaltered and are not impaired by the Plan, and in full and complete satisfaction of each Allowed Class 2(a) Claim, holders of Allowed Class 2(a) Claims shall be paid in cash from the liquidation of such holder's Collateral, and to the extent not paid on or before the Confirmation Date, upon the later of: (a) the date of allowance thereof by Final Order; (b) the earliest date on which there are proceeds (less all reasonable fees, costs, and expenses) resulting from the liquidation of such holder's Collateral available to pay the secured portion of such holder's Allowed Class 2(a) Claim; or (c) the Effective Date. Any distribution to a holder of an Allowed Class 2(a) Claim shall be subject to disgorgement for payment of: (i) any claim under Section 506(c) of the Code, as allowed by Final Order, asserted by any party in the Chapter 11 Cases; and/or (ii) any other right of avoidance heretofore or hereafter preserved in favor of any party in the Chapter 11 Cases, as allowed by Final Order.

(b) Class 2(b): Class 2(b) consists of Secured Claims against Maywood. Allowed Class 2(b) Claims, if any, shall remain unaltered and are not impaired by the Plan, and in full and complete satisfaction of each Allowed Class 2(b) Claim, holders of Allowed Class 2(b) Claims shall be paid in cash from the liquidation of such holder's Collateral, and to the extent not paid on or before the Confirmation Date, upon the later of: (a) the date of allowance thereof by Final Order; (b) the earliest date on which there are proceeds (less all reasonable fees, costs, and expenses) resulting from the liquidation of such holder's Collateral available to pay the secured portion of such holder's Allowed Class 2(b) Claim; or (c) the Effective Date. Any distribution to a holder of an Allowed Class 2(b) Claim shall be subject to disgorgement for payment of: (i) any claim under Section 506(c) of the Code, as allowed by Final Order, asserted by any party in the Chapter 11 Cases; and/or (ii) any other right of avoidance heretofore or hereafter preserved in favor of any party in the Chapter 11 Cases, as allowed by Final Order.

### **ARTICLE V**

#### **TREATMENT OF CLAIMS AND INTERESTS IMPAIRED UNDER THE PLAN**

##### **5.01 Class 3 - General Unsecured Creditors.**

(a) Class 3(a): Class 3(a) consists of General Unsecured Claims against Balmoral. Allowed General Class 3(a) Claims shall be fully settled and satisfied by Pro Rata payment in cash upon the later of: (a) the date of allowance thereof by Final Order; (b) the earliest date on which there are Liquidation Proceeds available to pay the Allowed Class 3(a) Claims; (c) the Effective Date; or (d) entry of a Final Order in the Appeal or the District Court Action, as the case may be, in accordance with Article X below. The Creditor Trustee shall

disburse payments hereunder in such amounts as are in his reasonable discretion available on the Distribution Dates Pro Rata to the holders of the Allowed Class 3(a) Claims. There shall be no distributions to any holders of Allowed Class 3(a) Claims until all Administrative Claims, Governmental Unit Priority Claims, and Allowed Priority Claims have been paid in full in accordance with the terms of the Plan. To the extent any of the Class 3(a) Claims have not become Allowed Claims prior to the Confirmation Date, the Creditor Trustee may, on or prior to the Claims Objection Deadline, contest such Class 3(a) Claims, and assert and prosecute against the holder of any Class 3(a) Claim such claims, objections, causes of action, defenses and/or offsets against such holder as the Creditor Trustee may determine, in accordance with Article XII of the Plan.

(b) Class 3(b): Class 3(b) consists of General Unsecured Claims against Maywood. Allowed General Class 3(b) Claims shall be fully settled and satisfied by Pro Rata payment in cash upon the later of: (a) the date of allowance thereof by Final Order; (b) the earliest date on which there are Liquidation Proceeds available to pay the Allowed Class 3(b) Claims; (c) the Effective Date; or (d) entry of a Final Order in the Appeal or the District Court Action, as the case may be, in accordance with Article X below. The Creditor Trustee shall disburse payments hereunder in such amounts as are in his reasonable discretion available on the Distribution Dates Pro Rata to the holders of the Allowed Class 3(b) Claims. There shall be no distributions to any holders of Allowed Class 3(b) Claims until all Administrative Claims, Governmental Unit Priority Claims, and Allowed Priority Claims have been paid in full in accordance with the terms of the Plan. To the extent any of the Class 3(b) Claims have not become Allowed Claims prior to the Confirmation Date, the Creditor Trustee may, on or prior to the Claims Objection Deadline, contest such Class 3(b) Claims, and assert and prosecute against the holder of any Class 3(b) Claim such claims, objections, causes of action, defenses and/or offsets against such holder as the Creditor Trustee may determine, in accordance with Article XII of the Plan.

(c) Notwithstanding Section 5.01(c) hereof, there shall be no distributions made on account of the Judgment Creditors' Claims pending the outcome of the Appeal in accordance with Article X below, and provided further, the Creditor Trustee shall be entitled to make such other distributions to the holders of Allowed Administrative Claims, Allowed Governmental Unit Priority Claims, Allowed Class 1 Claims and Allowed Class 2 Claims as are required under the Plan after the Effective Date; *provided, however*, the Creditor Trustee shall hold in suspense such amounts in the Creditor Fund as are in his reasonable discretion sufficient to pay such Judgment Creditors' Claims Pro Rata upon the entry of a judgment in the Appeal or the District Court Action, as the case may be.

(d) The Judgment Creditors' Claims are deemed Allowed General Unsecured Claims, subject only to the results of the Appeal or any reduction of the Judgment Creditors' Claims in accordance with Article X below.

#### **5.02 Class 4 - Equity Security Holders of the Debtors.**

(a) Class 4(a) consists of the interests of Balmoral's equity security holder. The interests of the Class 4(a) equity security holder shall be altered and are impaired by the Plan in that the general responsibility for carrying out the terms of the Plan and the management,



control and operation of the Creditor Fund Assets, the Restricted Cash, the Collateral, and the Retained Assets shall belong to the Creditor Trustee. The rights of the Class 4(a) interest holder to receive distributions under the Plan from the Creditor Fund after the payment in full of all Administrative Claims, Governmental Unit Priority Claims and claims in Classes 1, 2 and 3 remain unaltered. The interests in Class 4(a) shall be fully settled and satisfied by Pro Rata payment in cash upon the later of: (a) the date of allowance thereof by Final Order; (b) the earliest date on which there are Liquidation Proceeds available to pay the Class 4(a) interests; (c) the Effective Date; or (d) entry of a Final Order in the Appeal or the District Court Action, as the case may be, in accordance with Article X below. Pending the outcome of the Appeal in accordance with Article X below, the Creditor Trustee shall disburse payments hereunder in such amounts as are in his reasonable discretion available on the Distribution Dates Pro Rata to the holder of the Class 4(b) interests. There shall be no distributions to the holder of Class 4(b) interests until all of the Administrative Claims, Governmental Unit Priority Claims, and Classes 1, 2 and 3 have been paid in full in accordance with the terms of the Plan.

(b) Class 4(b) consists of the interests of Maywood's equity security holder. The interests of the Class 4(b) equity security holder shall be altered and are impaired by the Plan in that the general responsibility for carrying out the terms of the Plan and the management, control and operation of the Creditor Fund Assets, the Restricted Cash, the Collateral, and the Retained Assets shall belong to the Creditor Trustee. The rights of the Class 4(b) interest holder to receive distributions under the Plan from the Creditor Fund after the payment in full of all Administrative Claims, Governmental Unit Priority Claims and claims in Classes 1, 2 and 3 remain unaltered. The interests in Class 4(b) shall be fully settled and satisfied by Pro Rata payment in cash upon the later of: (a) the date of allowance thereof by Final Order; (b) the earliest date on which there are Liquidation Proceeds available to pay the Class 4(a) interests; (c) the Effective Date; or (d) entry of a Final Order in the Appeal or the District Court Action, as the case may be, in accordance with Article X below. Pending the outcome of the Appeal in accordance with Article X below, the Creditor Trustee shall disburse payments hereunder in such amounts as are in his reasonable discretion available on the Distribution Dates Pro Rata to the holder of the Class 4(b) interests. There shall be no distributions to the holders of Class 4(b) interests until all of the Administrative Claims, Governmental Unit Priority Claims, and Classes 1, 2 and 3 have been paid in full in accordance with the terms of the Plan.

## ARTICLE VI

### MEANS FOR IMPLEMENTATION OF THE PLAN

#### **6.01 Substantive Consolidation of the Debtors Solely for Purposes of Distribution.**

(a) The Plan will effectuate a substantive consolidation of the Chapter 11 Cases, but solely for purposes of making distributions under the Plan. On the Effective Date, and solely for purposes of making distributions to the holders of Allowed Claims under the Plan: (a) all guarantees of any Debtor of the payment, performance or collection of another Debtor with respect to claims against such Debtor shall be eliminated and canceled; (b) any single obligation of multiple Debtors shall be treated as a single obligation in the consolidated Chapter 11 Cases; and (c) all guarantees by a Debtor with respect to claims against the other Debtor shall be treated as a single obligation in the consolidated cases. On the Effective Date, and in

accordance with the terms of the Plan and the consolidation of the assets and liabilities of the Debtors, all claims based upon guarantees of collection, payment, or performance made by a Debtor as to the obligation of another Debtor shall be released and of no further force and effect. Except as set forth in this Section, such substantive consolidation shall not affect the legal and corporate structure of the Debtors. The foregoing shall not affect the rights of any creditor holding a Secured Claim with respect to the Collateral securing its Allowed Claim, or the terms and implementation of any settlement, and the rights and obligations of the parties thereto, entered into in connection with the confirmation of the Plan.

(b) Notwithstanding the substantive consolidation of the Estates for the purposes set forth herein, each Debtor shall pay all United States Trustee fees on all disbursements, including disbursements under the Plan, until the entry of a final decree in its Chapter 11 Case, dismissal of its Chapter 11 Case, or conversion of its Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code.

#### **6.02 Vesting of Assets.**

(a) Subject to the terms of the Plan, upon entry of the Confirmation Order, each of the Debtors will be restored to full ownership of all property owned by it and all property of its respective Estate. Without limiting the generality of the foregoing, each of the Debtors will retain their respective rights in and to all Causes of Action, including without limitation, the Avoidance Actions. Upon vesting, all such property will be free and clear of all claims, liens, encumbrances, charges and other interests, except as otherwise provided in the Plan; *provided, however*, all parties (including the IRB) retain their rights to argue whether the Outs for 2014 and 2015 are property of either Debtor's respective Estate and who is entitled to payment of same.

(b) On the Effective Date, each Debtor shall immediately transfer or cause to be transferred all Creditor Fund Assets in its possession, custody and/or control, including without limitation, the Avoidance Actions, to the Creditor Trust and the Creditor Trustee shall thereafter maintain possession, control and management of same subject to the Plan and the Creditor Trust Agreement. The Debtors are hereby authorized and directed to take such steps as may be necessary or appropriate to confirm such transfer and contribution of the Creditor Fund Assets to the Creditor Trust. Upon such transfer, title to the Creditor Fund Assets will automatically and irrevocably vest in the Creditor Trust and be deemed contributed thereto, subject to the terms of the Plan. Upon vesting, the Creditor Trustee shall have the sole authority to administer the Creditor Fund Assets for the benefit of the Beneficiaries, subject to Judgment Creditor Approval as required by Section 1.35 of the Plan. All property held for distribution pursuant to the Plan shall be held by the Creditor Trust solely in trust for the benefit of the Beneficiaries and shall not be deemed property of the Debtors. Nothing in the Plan, however, shall preclude payment of (i) statutory fees under 28 U.S.C. § 1930 to the extent unpaid on the Effective Date; and (ii) the Creditor Trustee's expenses in accordance with the Plan and the Creditor Trust Agreement from the Creditor Fund Assets.

(c) On the Effective Date, title in the Retained Assets shall be retained by the Debtors, as applicable; *provided, however*, the Creditor Trustee shall be vested with the sole authority to administer the Retained Assets for the benefit of the Beneficiaries, including, but not limited to, sale or abandonment of the Retained Assets pursuant to Section 554 of the

Bankruptcy Code, subject to Judgment Creditor Approval as required by Section 1.35 of the Plan. All proceeds, earnings and replacements arising from or relating to the Retained Assets are Liquidation Proceeds under the Plan, shall be immediately transferred to the Creditor Trust, for the benefit of the Beneficiaries and shall not be deemed property of the Debtors. The Debtors and the Creditor Trustee are authorized to take all necessary actions to effectuate the foregoing.

(d) If the Creditor Trustee, after prior Judgment Creditor Approval, determines any Creditor Fund Asset or Retained Asset is burdensome to administer, the Creditor Trustee may abandon such Creditor Fund Asset or Retained Asset in accordance with Section 554 of the Code and Rule 6007, upon approval of the Court, after notice to the Debtors.

(e) Until such time as all of the Allowed Administrative Claims, Allowed Governmental Unit Priority Claims, and Allowed Claims and interests in Classes 1 through 4 have been paid in full in accordance with the terms of the Plan, the Creditor Trustee shall have the general responsibility for the maintenance, possession, control and management of all of the Creditor Fund Assets and Retained Assets and the proceeds thereof.

**6.03 Preservation of Causes of Action.** Pursuant to Section 1123(b)(3)(B) of the Code, any and all Causes of Action, including without limitation, Avoidance Actions, shall be immediately transferred to and vest in the Creditor Fund on the Effective Date. Thereafter, the Creditor Trustee, as a representative of the Debtors pursuant to Section 1123(b)(3)(B) of the Code, shall have the standing and authority to commence and prosecute any and all Causes of Action for the benefit of the beneficiaries of the Creditor Fund, whether or not (a) litigation relating thereto is pending on the Effective Date, (b) such Cause of Action has been listed or referred to in the Plan or any other documents filed with the Court, or (c) such Cause of Action is currently known to the Debtors and the Estates. All Causes of Action now or hereafter existing in favor of the Debtors and/or the Estates, including, but not limited to, (i) all Avoidance Actions, and (ii) any claim or Cause of Action arising out of, under or related to the IHHA Contract, are expressly preserved, and shall be continued, commenced and prosecuted in accordance with the Plan, by and in the discretion of, the Creditor Trustee, subject to Judgment Creditor Approval.

## ARTICLE VII

### THE CREDITOR TRUSTEE

**7.01 Creditor Trust Agreement.** On or prior to the Effective Date, the Creditor Trustee and the Debtors shall execute the Creditor Trust Agreement, in form and substance satisfactory to the Judgment Creditors. The Creditor Trust Agreement shall become effective on the Effective Date. Except to the extent inconsistent with the terms of the Plan, the terms and conditions of the Creditor Trust Agreement shall govern under the Plan.

**7.02 Creditor Trustee.** The Creditor Trustee will be selected by the Plan Proponents and shall be compensated as set forth in the Creditor Trust Agreement. The proposed Creditor Trustee will be Barry A. Chatz, a partner at the Chicago office of Arnstein & Lehr LLP. The Creditor Trustee shall administer the Creditor Fund pursuant to the Plan and the Creditor Trust Agreement from and after the Effective Date. The Creditor Trustee shall be a representative of

the Estates pursuant to Sections 1123(a)(5)(B) and 1123(b)(3)(B) of the Code, and shall be vested with standing to prosecute, settle and otherwise administer all Creditor Fund Assets and Causes of Action transferred to the Creditor Fund, without the need for Court approval or any other notice of approval, except as set forth herein. The Creditor Trustee shall be exempt from giving any bond, surety or other security for the performance of his duties unless otherwise ordered by the Court; *provided, however*, existing surety bonds in favor of the IRB shall remain in effect until terminated or released by the IRB; *provided, further, however*, no party, including, without limitation, the Creditor Trustee, shall be obligated to renew such bonds or otherwise make any further premium or other payments on account thereof. The Creditor Trustee shall be responsible for providing the day to day accounting and financial services, and taking such other actions as are necessary to fully consummate and carry out all of the terms and conditions of the Plan and comply with all of the duties, obligations and reporting requirements set forth in the Plan.

**7.03 Case Administration.** From and after the Effective Date and continuing through the date that a final decree closing the Chapter 11 Cases is entered pursuant to Section 350 of the Code and Rule 3022, and except as otherwise provided in the Plan, the Creditor Trustee shall possess the rights of the Debtors for all matters pertaining to the Chapter 11 Cases without further order of the Court. Without limiting the generality of the foregoing, the Creditor Trustee shall: (a) have the right to appear and be heard on matters brought before the Court or other courts of competent jurisdiction; (b) have the right to obtain records of, or related to, the Debtors (including, without limitation, bank statements and cancelled checks); (c) be entitled to notice and opportunity for hearing; (d) be entitled to participate in all matters brought before the Court, including without limitation, adversary proceedings; (e) have exclusive standing to commence Causes of Action, including, without limitation, Avoidance Actions; (f) be entitled to request entry of a final decree closing the Chapter 11 Cases; and (g) be entitled to receive notice of all applications, motions and other papers and pleadings set before the Court in the Chapter 11 Cases.

**7.04 Creditor Trustee's Compensation.** The Creditor Trustee's compensation shall be in accordance with the terms of the Creditor Trust Agreement at rates established pursuant to the mutual agreement of the Creditor Trustee and the Judgment Creditors, which rates shall be subject to disclosure to Beneficiaries upon reasonable request.

**7.05 Fund Establishment.** As soon after the Confirmation Date as is practicable, the Creditor Trustee shall establish the one or more segregated interest bearing trust fund accounts at a federally insured depository bank(s) (collectively, the "**Creditor Accounts**"). All monies on deposit in the Creditor Accounts shall be insured by an agency of the federal government or secured by bonds or similar instruments in sufficient amounts to fully protect all amounts so deposited. Such accounts shall reference the Chapter 11 Cases, be maintained under the Creditor Trust's federal employer identification number and have the Creditor Trustee as the sole signatory thereto.

**7.06 Ordinary Care.** The Creditor Trustee, his respective agents and designees, shall exercise ordinary care in the discharge of their duties under the Plan and shall be entitled to rely upon advice of counsel concerning legal matters, and upon the Plan and any schedule, certificate, statement, report, notice or other writing which they believe to be genuine or to have been

presented by a proper person. The Creditor Trustee, his respective legal representatives, heirs, successors, assigns, agents, designees and attorneys shall not be held responsible or be liable to the Creditor Trust, the creditors or any other party in interest in the Chapter 11 Cases for any errors in judgment or for any defalcations or shortages of money or for any losses suffered unless the same shall occur through the gross negligence, willful misconduct or fraud of the Creditor Trustee, their respective legal representatives, heirs, successors, assigns, agents, designees or attorneys. Further, the Creditor Trustee shall not be liable for any act he may do or omit to hereunder while acting in good faith and in the exercise of reasonable business judgment, and the fact that such act or omission was advised, directed or approved by an attorney retained by the Creditor Trustee, shall be conclusive evidence of such good faith and reasonable business judgment

**7.07 Attorney-Client Privilege.** Without limiting the generality of the assignment of the Creditor Fund Assets to the Creditor Trustee, and in order to effectively investigate, defend, or pursue the Causes of Action and the Creditor Fund Assets, any privileges that exist between the Debtors and their current or prior counsel, as well as any property to which the Debtors and the Estates are entitled that is in the possession of their current or prior counsel, shall be assigned to the Creditor Trustee.

**7.08 Administrative Claim Bar Date.** After the Effective Date, the Creditor Trustee is authorized to file a motion to set a deadline for filing requests for payment of Administrative Claims.

**7.09 Creditor Fund Distributions.** The Creditor Fund shall be distributed by the Creditor Trustee as follows:

(a) First, from the Creditor Accounts: (i) to the Creditor Trustee as reimbursement for his out-of-pocket costs of disbursement of and accounting for the Creditor Fund in accordance with the terms set forth in the Creditor Trust Agreement and as compensation for the performance of the Creditor Trustee's responsibilities set forth in the Plan at rates to be established pursuant to the mutual agreement of the Creditor Trustee and the Judgment Creditors; and (ii) to such attorneys, accountants and/or other professionals or persons that are retained by Creditor Trustee on behalf of the Creditor Trust for the purposes of carrying out the terms and conditions of the Plan, including, but not limited to the determination of claims and the preparation and filing of the necessary tax returns (collectively, the "**Post-Confirmation Expenses**"). Until such time as the Plan is fully consummated, the Creditor Trustee shall hold in suspense such amounts in the Creditor Fund as are in his reasonable discretion sufficient to pay all Post-Confirmation Expenses. All Post-Confirmation Expenses shall be subject to disclosure to Beneficiaries upon reasonable request;

(b) Second, from the Creditor Accounts to holders of Administrative Claims as allowed by Final Order;

(c) Third, from the Creditor Accounts to holders of Governmental Unit Priority Claims as allowed by Final Order;

(d) Fourth, from the Creditor Accounts to holders of Class 1 Allowed Claims;

(e) Fifth, from the Creditor Accounts to holders of Class 3 Allowed Claims, subject to Section 5.01(b) above; and

(f) Sixth, from the Creditor Accounts to the holders of Class 4 interests as determined by Final Order.

**7.10 Distribution Dates.** The distributions provided for in Section 7.9 above shall be made on the Distribution Dates, which shall be as soon after the Effective Date as is practicable and thereafter, as often as the Creditor Trustee in his reasonable discretion may determine if the amounts on deposit in the Creditor Accounts warrant same; *provided, however*, the Creditor Trustee in his reasonable discretion shall reserve such amounts in the Creditor Accounts as he deems necessary for the requirements set forth in the Plan including, Disputed Claims as set forth below, and for the payment of the Post-Confirmation Expenses in the manner set forth below.

**7.11 No Postpetition Interest.** Unless otherwise specifically provided for in the Plan or in the Confirmation Order, or required by applicable bankruptcy law, no interest from and after the Petition Date shall be paid or accrued to the holder of any Allowed Claim or interest, nor shall any holder of an Allowed Claim or interest be entitled to interest accruing on or after the Petition Date from the Creditor Accounts.

**7.12 Disputed Claims.** In the event that on any Distribution Date, there has not been a Final Order of any claim in the Chapter 11 Cases (the “**Disputed Claims**”), the Creditor Trustee shall make the required Pro Rata distribution to all other claimants enjoying the same priority as the Disputed Claims as follows: In calculating the Pro Rata portion of any Administrative Claims, Governmental Unit Priority Claims or Class of claims at the respective Distribution Date, Disputed Claims shall be included in the full amount claimed by the respective holders thereof. Until the Final Order of the Disputed Claims, the amounts that otherwise would be payable to such claimants shall not be paid by the Creditor Trustee, but shall be held in suspense in the Creditor Funds. In the event that the Final Order for any of the Disputed Claims is in amounts less than the full amounts claimed by the holders thereof, then (i) the Allowed Amount of the Disputed Claims shall be distributed to the holder thereof immediately from the funds held in suspense, as provided above on a Pro Rata basis; and (ii) any excess amounts held in suspense shall be added to the funds available for other distributions herein.

**7.13 Effectuating Documents.** The Creditor Trustee, or such other person(s) as the Creditor Trustee may approve pursuant to the Creditor Trust Agreement, is authorized to execute, deliver, file or record such pleadings, contracts, instruments, releases and other agreements or documents and to take such actions as may be necessary or appropriate to effectuate and implement the provisions of the Plan. The Creditor Trustee or his designee is authorized to certify or attest to any of the foregoing actions.

**7.14 Employment of Professionals.** Upon the Effective Date, the Creditor Trustee, subject to Judgment Creditor Approval, may employ such attorneys, accountants, consultants and other persons or professional as he deems necessary and appropriate to fulfill his duties and obligations under the Plan. All professional and other compensation from and after the Confirmation Date shall be payable in accordance with the Creditor Trust Agreement; *provided, however*, all invoices submitted by professionals retained by the Creditor Trustee shall

contemporaneously be submitted to the Judgment Creditors, who shall have thirty (30) days to review such invoices. Persons retained by the Creditor Trustee are not required to be disinterested and may include, without limitation, any professional who represented parties in interest in the Chapter 11 Cases, and the Creditor Trustee shall be permitted to retain any such persons, subject to Judgment Creditor Approval, in light of the efficiencies implicit in continuity.

**7.15 Insurance Policies.** The Creditor Trustee shall have the authority, in his sole discretion, to bind or cancel any and all insurance policies.

**7.16 United States Trustee Reports.** Until a final decree has been entered closing the Chapter 11 Cases, the Creditor Trustee shall submit all post-confirmation quarterly operating reports to the United States Trustee as required by the United States Trustee's guidelines (with a copy served on the Office of the United States Trustee) setting forth all receipts and disbursements of the Creditor Trust. The Creditor Trustee shall be responsible for any quarterly fees due to the United States Trustee from and after the Effective Date until the Chapter 11 Cases are closed.

**7.17 Payment of Quarterly Fees.** The Creditor Trustee shall pay any quarterly fees pursuant to 28 U.S.C. § 1930(a)(6) to the United States Trustee until the entry of a final decree closing the Chapter 11 Cases.

**7.18 Successor Creditor Trustees.** If the Creditor Trustee resigns or for any other reason is unable to continue to perform his duties as herein provided, then such vacancy shall be filled by Gus A. Paloian, Esq., a partner at Seyfarth Shaw LLP. Thereafter, in the event that Mr. Paloian is unable or unwilling to act, the successor to the Creditor Trustee shall be selected by the Judgment Creditors, subject to Court approval, and subject to Article X.

**7.19 Additional Procedures.** The Creditor Trustee shall have the right to propose such additional procedures as may be reasonably required to administer the assets of the Estates for the benefit of all creditors and consistent with the Plan, the Code, and the Rules. All such procedures proposed by the Creditor Trustee in regard to the Creditor Fund and/or Liquidation Proceeds shall be previously approved in writing by the Judgment Creditors and holders of unpaid Allowed Administrative Claims.

## ARTICLE VIII

### **PERMANENT INJUNCTION IN FAVOR OF THE CREDITOR TRUSTEE AND THE CREDITOR TRUST**

#### **8.01 Permanent Injunction.**

(a) From and after the Confirmation Date, all holders of Administrative Claims, Governmental Unit Priority Claims, and claims or interests in Classes 1 through 4, whether or not they are entitled to and/or have filed proofs of claim in the Chapter 11 Cases on or before the Bar Date, and their respective heirs, legal representatives, officers, directors, shareholders, employees, partners, members, subsidiaries, affiliates, representatives, agents, insurers, successors and assigns, as the case may be, shall be and are hereby permanently stayed, restrained, and enjoined from taking one or more of the following actions against the Creditor

Trustee and the Creditor Trust, and all of their respective heirs, legal representatives, officers, directors, shareholders, agents, employees, representatives, attorneys, successors and assigns, and each of them (collectively, the “**Releasees**”), for the purpose of, directly or indirectly, by claim, cross-claim, or setoff, collecting, recovering or receiving payment of, or recovery on or with respect to any claims against the Debtors or the Estates arising out of, under, or related to the Chapter 11 Cases (the “**Enjoined Claims**”), whether such Enjoined Claim is presently known or unknown, or is presently asserted or assertable (other than actions brought to enforce any right or obligation under the Plan, or otherwise in favor of the Debtors, which actions shall be heard by the Court pursuant to Section 17.01 below):

(i) with respect to the Enjoined Claims, commencing, conducting or continuing in any manner, directly or indirectly, any suit, action, claim, cross-claim, or other proceeding (including, without limitation, any suit, action, claim, cross-claim, or other proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Releasees, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, the Releasees, or any property of any such transferee or successor;

(ii) with respect to the Enjoined Claims, enforcing, levying, attaching (including, without limitation, any pre-judgment attachment), collecting or otherwise recovering by any means or in any manner, whether directly or indirectly, any judgment, award, decree or other order against the Releasees, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, the Releasees, or any property of any such transferee or successor;

(iii) with respect to the Enjoined Claims, creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance against the Releasees, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, the Releasees, or any property of any such transferee or successor;

(iv) with respect to the Enjoined Claims, setting off, seeking reimbursement of, contribution from or subrogation against or otherwise recouping in any manner, directly or indirectly, any amount against any liability owed to the Releasees, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, the Releasees; and

(v) with respect to the Enjoined Claims, proceeding in any manner in any place with regard to any matter that is subject to resolution pursuant to the terms of the Plan, except in conformity and compliance herewith. Notwithstanding anything to the contrary herein, this injunction shall not enjoin any of the Releasees from asserting claims, cross-claims, counterclaims, demands, setoffs, recoupments, arguments, defenses or otherwise against any claims filed in the Chapter 11 Cases against them or otherwise held by any party, all of which rights are hereby expressly preserved. This injunction is an integral part of the Plan because it: (1) enjoins actions which threaten the integrity of the Estates; (2) facilitates the expeditious and effective performance of the Plan; (3) guards against collateral attack or interference with the consummation of the Plan and



improper use of the Creditor Funds; and (4) protects the rights, interests and claims of the Releasees and all creditors in the Chapter 11 Cases. As such, the provisions of this injunction shall be construed as broadly as the law and English language permit.

(b) Nothing contained herein shall relieve or diminish the duties, responsibilities or obligations of the Releasees as set forth in the Plan.

(c) If notwithstanding the permanent injunction in favor of the Releasees set forth herein, any suit, action, claim, cross-claim, or other proceeding (including, without limitation, any suit, action, claim, cross-claim, or other proceeding in a judicial, arbitral, administrative or other forum) is brought against or affects the Releasees in violation of the terms of the Plan prior to the distribution of all monies on deposit in the Creditors Funds, the Creditor Trustee shall, in his reasonable business judgment, be entitled to withhold from distribution to holders of Allowed Claims that amount of monies on deposit in the Creditor Accounts which the Releasees believe will be necessary to pay for any and all judgments, claims, damages, costs and expenses, including reasonable attorneys' fees and expenses, incurred or estimated to be incurred by the Releasees pending the entry of a Final Order resolving such dispute(s). Upon the entry of a Final Order resolving such dispute(s), the Creditor Trustee shall proceed to distribute any and all such funds withheld and not expended in accordance with the terms of the Plan.

(d) Nothing contained in this Article VIII shall restrict, impair or otherwise prohibit the Judgment Creditors from prosecuting the Appeal, or the Judgment Creditors' rights, claims, defenses and remedies in connection with the Judgment, the Appeal and the Judgment Creditors' Claims.

## ARTICLE IX

### PROVISIONS FOR EXECUTORY CONTRACTS

**9.01 Rejection of Executory Contracts.** The Debtors shall be deemed to have rejected all executory contracts and leases not expressly assumed prior to or in connection with the Confirmation Order. Any person or entity claiming rights in the rejected executory contracts and leases not previously rejected by order(s) of the Court shall have an additional thirty (30) calendar days after the Confirmation Date in which to file claims in the Chapter 11 Cases.

## ARTICLE X

### APPEAL

**10.01 Denial of Appeal or Denial of RICO Count.** In the event there is a judgment entered in the Appeal affirming the Judgment entered on Count I (Violation of the Racketeer Influenced and Corrupt Organizations Act), Count II (Civil Conspiracy), Count III (Unjust Enrichment) of the Amended Complaint filed in the District Court Action, or any combination thereof, then (a) the Creditor Trustee shall not litigate, retry or pursue any of the Debtors' rights, claims, defenses or remedies in the District Court Action on remand or otherwise, and (b) the Judgment Creditors' Claims shall be, without further act or deed, deemed Allowed for all

purposes in the Chapter 11 Cases and in the Plan, in the amount set forth in the Judgment Creditors' Claims or in such lower amount as determined by judgment entered in the Appeal.

**10.02 Granting of Appeal.** In the event (a) there is complete reversal of the Judgment in its entirety and judgment in favor of the Debtors is entered in the Appeal, without remand to the District Court in the District Court Action, or the Court on remand is instructed to enter Judgment for the Debtors, and (b) the Judgment Creditors have exhausted all of their rights with respect to rehearing or petition for certiorari, then (i) the Debtors shall have the right, in their sole discretion, to replace the Creditor Trustee with a person or entity of the Debtors' choosing, subject to approval of the Court after notice and hearing, (ii) the Judgment Creditors' Claims shall be, without further act or deed, deemed disallowed in their entirety for all purposes in the Chapter 11 Cases and in the Plan, and the Judgment Creditors shall not be entitled to any distribution under the Plan, and (iii) all provisions in the Plan and the Creditor Trust Agreement which require the Creditor Trustee to consult with and/or obtain the approval of the Judgment Creditors shall be deemed to require the Creditor Trustee to consult with and/or obtain the approval of the Debtors.

**10.03 Other Relief Entered in the Appeal.** In the event there is a judgment entered in the Appeal other than as expressly set forth in the Sections 10.01 or 10.02 above, then (a) the Creditor Trustee shall have the right, subject to approval of the Court, (i) to litigate or defend the Debtors' rights, claims, defenses and remedies in connection with the Judgment, the Appeal and the Judgment Creditors' Claims, (ii) settle or otherwise resolve the Debtors' rights, claims, defenses and remedies in connection with the Judgment, the Appeal and the Judgment Creditors' Claims, or (iii) terminate the Debtors' rights, claims, defenses and remedies in connection with the Judgment, the Appeal and the Judgment Creditors' Claims, and (b) all respective rights, claims, defenses and remedies of the Debtors, the Creditor Trust and the Judgment Creditors in connection with the Judgment, the Appeal and the Judgment Creditors' Claims shall be expressly reserved.

## ARTICLE XI

### MODIFICATION OF PLAN

**11.01 Modification Before Confirmation.** Modifications of the Plan may be proposed in writing by the Plan Proponents at any time before entry of the Confirmation Order, provided that such Plan, as modified, meets the requirements of Sections 1122 and 1123 of the Code and the Plan Proponents shall have complied with the provisions of Section 1125 of the Code to the extent such provisions are applicable.

**11.02 Modification After Confirmation.** The Plan may be modified by the Plan Proponents at any time after entry of the Confirmation Order and before its substantial consummation, provided that: (a) such Plan, as modified, meets the requirements of Sections 1122 and 1123 of the Code; and (b) the Court, after notice and a hearing, confirms such Plan, as modified, under Section 1129 of the Code.

**11.03 Acceptance/Rejection of Plan Modification.** A holder of a claim or interest that has accepted or rejected the Plan shall be deemed to have accepted or rejected, as the case may

be, the Plan, as modified, unless within the time fixed by the Court, such holder changes such holder's previous acceptance or rejection.

## ARTICLE XII

### **PROCEDURES FOR RESOLVING DISPUTED CLAIMS**

**12.01 Objections to Claims.** Except with respect to claims already deemed Allowed Claims by a Final Order of the Court, upon the Effective Date, the Creditor Trustee shall (a) have appropriate standing and the exclusive authority to object to any claim or interest, including Administrative Claims, Governmental Unit Priority Claims, Priority Claims, Unsecured Claims, or interests of the Debtors' equity security holders, whether listed on the Schedules or filed by any Creditor or holder of an Interest, on or before the Claims Objection Deadline, and (b) have and retain any and all rights and defenses that the Debtors had with respect to any Claim, except with respect to any claim deemed an Allowed Claim as of the Effective Date. In the event the Debtors filed a motion to object to any claim that has not been resolved as of the Effective Date, the Creditor Trustee shall succeed the Debtors in the prosecution of such motion from and after the Effective Date. Any and all objections to claims shall be filed with the Court by the Creditor Trustee and served upon each holder of such claims not later than one hundred eighty (180) days after the Effective Date, or as extended by order of the Court (the "**Claims Objection Deadline**"). If an objection to any claim is not filed on or before that date, the claim shall be deemed an Allowed Claim and shall be satisfied as set forth in the Plan.

**12.02 Resolution of Disputed Claims.** All objections to claims shall be litigated to a Final Order except to the extent the Creditor Trustee elects to withdraw any such objection or the Creditor Trustee and holder of such claim elect to compromise, settle or otherwise resolve any such objection, in which event the Creditor Trustee may settle, compromise or otherwise resolve any Disputed Claim without approval of the Court.

**12.03 Estimation.** The Creditor Trustee may, at any time, request the Court estimate any Disputed Claim pursuant to Section 502(c) of the Code regardless of whether the Creditor Trustee has previously objected to such claim, and the Court shall retain jurisdiction (pursuant to Section 17.01 of the Plan) to estimate any claim at any time, including during litigation concerning any objection to such claim.

**12.04 Distribution on Disputed Claims.** No Distributions shall be made with respect to a Disputed Claim until such Disputed Claim becomes an Allowed Claim.

**12.05 Reserve for Disputed Claims.** With respect to claims to be paid pursuant to the Plan, the Creditor Trustee shall hold in reserve, for the benefit of each holder of a Disputed Claim, Cash in an amount required by order of the Court or such other consideration the Creditor Trustee deems appropriate after consultation with, and approval of, the Judgment Creditors.

**12.06 Interest on Disputed Claims.** Interest on any funds reserved for a Disputed Claim shall inure to the benefit of all remaining creditors.

### ARTICLE XIII

#### PROCEDURES FOR RESTRICTED CASH

**13.01 Transfer of Possession, Custody and/or Control of Restricted Cash.** On the Effective Date, each Debtor shall immediately transfer or cause to be transferred all funds designated by the Debtors as Restricted Cash, and all books, records, information, communications related thereto, in its possession, custody and/or control, to the Creditor Trust and the Creditor Trustee shall thereafter maintain possession, control and management of same subject to the Plan and the Creditor Trust Agreement, and in accordance with applicable non-bankruptcy law. The Debtors are hereby authorized and directed to take such steps as may be necessary or appropriate to confirm such transfer of the Restricted Cash, to the extent permitted by applicable non-bankruptcy law, to the Creditor Trust. Upon vesting, the Creditor Trustee shall (a) have the sole authority to administer the Restricted Cash; provided, however, that the Creditor Trustee shall obtain Judgment Creditor Approval with respect to any proposed action with respect to the Restricted Cash in excess of \$37,500; and (b) establish and maintain separate and segregated Creditor Accounts for Outs, Stakes and Betzotic Customer Bets (each, a “**Restricted Cash Account**,” and collectively, the “**Restricted Cash Accounts**”).

**13.02 Disputes Regarding Restricted Cash.** Notwithstanding the Debtors’ designation of funds as Restricted Cash, and the deposit of funds into one or more Restricted Cash Accounts, the Creditor Trustee shall (a) have appropriate standing and the exclusive authority to (i) object to the designation of any and all funds as Restricted Cash, and (ii) object to any and all claims or interests in Restricted Cash, and (b) have and retain any and all rights and defenses that the Debtors had with respect to any and all claims or interests in Restricted Cash. All disputes regarding Restricted Cash shall be litigated to a Final Order except to the extent the Creditor Trustee elects to withdraw any such objection or the Creditor Trustee and holder of such claim elect to compromise, settle or otherwise resolve any such objection, in which event the Creditor Trustee may settle, compromise or otherwise resolve any disputes regarding Restricted Cash without approval of the Court.

**13.03 Creditor Trustee’s Administration of Restricted Cash.** After the Effective Date, all Restricted Cash not subject to an objection by the Creditor Trustee shall be distributed by the Creditor Trustee in accordance with applicable non-bankruptcy law, statutes, rules and regulations as follows:

(a) all Outs shall be paid solely from the Restricted Cash Account holding funds for payment of Outs, to the extent such funds exist;

(b) all Stakes shall be paid solely from the Restricted Cash Account holding funds for payment of Stakes, to the extent such funds exist; and

(c) all Betzotic Customer Bets shall be paid solely from the Restricted Cash Account holding funds for payment of Betzotic Customer Bets, to the extent such funds exist.

The Debtors represent that each Restricted Cash Account will hold, as of the Effective Date, sufficient funds to pay the full amount of Outs, Stakes and Betzotic Customer Bets respectively that are outstanding.

**13.04 Unclaimed Restricted Cash.** Upon the expiration of any applicable statute of limitations period for asserting claims or interests in the Restricted Cash, the Creditor Trustee shall seek entry of an Order from the Court authorizing him to transfer any Restricted Cash not subject to a valid claim or interest into a Creditor Account maintained by the Creditor Trustee for the benefit of the Beneficiaries, after notice (including to the IRB) and a hearing.

#### ARTICLE XIV

##### RELEASE IN FAVOR OF RANDALL OLECH

**14.01 Release in Favor of Randall Olech.** ON THE EFFECTIVE DATE, AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THE PLAN, THE DEBTORS AND THE CREDITOR TRUSTEE SHALL RELEASE AND DISCHARGE RANDALL OLECH, HIS HEIRS, LEGAL REPRESENTATIVES, SUCCESSORS AND ASSIGNS, FROM ANY AND ALL CAUSES OF ACTION, CLAIMS, OBLIGATIONS, DAMAGES, COSTS, LOSSES, EXPENSES AND LIABILITIES OF ANY KIND OR NATURE WHATSOEVER, WHETHER KNOWN OR UNKNOWN, AT LAW OR IN EQUITY, LIQUIDATED OR UNLIQUIDATED, ARISING OUT OF, UNDER OR RELATED TO THE DEBTORS, THE JUDGMENT CREDITORS, THE CHAPTER 11 CASES, RANDALL OLECH'S PRIOR SERVICES AS CHIEF OPERATING OFFICER/CHIEF FINANCIAL OFFICER OF THE DEBTORS, THE RELATED NON-DEBTOR ENTITIES, OR OTHER OCCURRENCE TAKING PLACE ON OR BEFORE THE EFFECTIVE DATE (COLLECTIVELY, THE "OLECH RELEASED CLAIMS"); PROVIDED, HOWEVER, THAT (A) THE "OLECH RELEASED CLAIMS" SHALL NOT INCLUDE ANY CAUSES OF ACTION ARISING OUT OF RANDALL OLECH'S WILLFUL MISCONDUCT, AND (B) IN THE EVENT THE OLECH DECLARATION IS MATERIALLY FALSE OR MISLEADING, THE RELEASES PROVIDED IN THIS SECTION 14.01 SHALL BE AUTOMATICALLY REVOKED AND OF NO FURTHER FORCE AND EFFECT.

**14.02 No Release of Other Persons.** Except as expressly provided in Section 14.01 with respect to Randall Olech, nothing contained in Section 14.01 shall constitute, or be deemed to constitute, a waiver or release by the Debtors or the Creditor Trustee of any "person," as that term is defined in Section 101(41) of the Bankruptcy Code, of any and all Causes of Action, claims, obligations, costs, losses, expenses or liabilities of any kind or nature whatsoever, under applicable law or otherwise, including, without limitation, of the generality of the foregoing, any and all causes of action, claims, obligations, costs, losses, expenses or liabilities of any kind or nature whatsoever, under applicable law or otherwise arising out of, under or related to the Debtors, the Judgment Creditors, the Chapter 11 Cases or otherwise, all of which rights and remedies are expressly preserved by the Debtors and the Creditor Trustee.

ARTICLE XV

**RELEASES IN FAVOR OF JOHN A. JOHNSTON AND  
THE JOHNSTON RELEASED PARTIES**

**15.01 Release in Favor of John A. Johnston. ON THE EFFECTIVE DATE, AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THE PLAN, THE DEBTORS AND THE CREDITOR TRUSTEE SHALL BE DEEMED TO UNCONDITIONALLY RELEASE JOHN A. JOHNSTON FROM ANY AND ALL CAUSES OF ACTION, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREAFTER ARISING, IN LAW, EQUITY OR OTHERWISE, ASSERTABLE ON BEHALF OF OR DERIVATIVE FROM THE DEBTORS, BASED ON ANY ACT, OMISSION, TRANSACTION, AGREEMENT, EVENT, OR OTHER OCCURRENCE TAKING PLACE ON OR BEFORE THE EFFECTIVE DATE IN ANY WAY RELATING TO THE DEBTORS AND THE CHAPTER 11 CASES.**

**15.02 Release in Favor of the Johnston Released Parties. ON THE EFFECTIVE DATE, AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THE PLAN, THE DEBTORS AND THE CREDITOR TRUSTEE SHALL BE DEEMED TO UNCONDITIONALLY RELEASE THE JOHNSTON RELEASED PARTIES FROM ANY AND ALL CAUSES OF ACTION, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREAFTER ARISING, IN LAW, EQUITY OR OTHERWISE, ASSERTABLE ON BEHALF OF OR DERIVATIVE FROM THE DEBTORS, BASED ON ANY ACT, OMISSION, TRANSACTION, AGREEMENT, EVENT, OR OTHER OCCURRENCE TAKING PLACE ON OR BEFORE THE EFFECTIVE DATE ARISING FROM TRANSFERS INITIALLY MADE TO JOHN A. JOHNSTON FROM THE DEBTORS AND SUBSEQUENTLY DISBURSED BY JOHN A. JOHNSTON TO A JOHNSTON RELEASED PARTY.**

**15.03 No Release of Other Persons. Except as expressly provided in Sections 15.01 and 15.02, nothing contained in Sections 15.01 and 15.02 shall (a) constitute, or be deemed to constitute, a waiver or release by the Debtors or the Creditor Trustee of any "person," as that term is defined in Section 101(41) of the Bankruptcy Code, of any and all Causes of Action, claims, obligations, costs, losses, expenses or liabilities of any kind or nature whatsoever, under applicable law or otherwise, including, without limitation, of the generality of the foregoing, any and all causes of action, claims, obligations, costs, losses, expenses or liabilities of any kind or nature whatsoever, under applicable law or otherwise arising out of, under or related to the Debtors, the Judgment Creditors, the Chapter 11 Cases, or otherwise, all of which rights and remedies are expressly preserved by the Debtors and the Creditor Trustee, or (b) constitute, or be deemed to constitute, a waiver or release by the Debtors or the Creditor Trustee of the Johnston Released Parties of any and all Causes of Action, claims, obligations, costs, losses, expenses or liabilities of any kind or nature whatsoever, under applicable law or otherwise, including, without limitation, of the generality of the foregoing, any and all causes of action, claims, obligations, costs, losses, expenses or liabilities of any kind or nature whatsoever, under applicable law or otherwise arising out of, under or related to the Debtors, the Judgment Creditors, the Chapter 11 Cases, or otherwise, except as expressly provided in Section 15.02, all of which rights and remedies are expressly preserved by the Debtors and the Creditor Trustee.**

**ARTICLE XVI**

**MISCELLANEOUS**

**16.01 Unclaimed Distributions Prior to Final Distribution.** Any distributions of the Creditor Funds under the Plan which are unclaimed after one hundred eighty (180) days following any of the Distribution Dates shall revert to the Creditor Funds and be added to the subsequent distributions to be made by the Creditor Trustee.

**16.02 Notices.** All notices and other communications provided for under the Plan to be effective shall be in writing (including by facsimile transmission) and shall be deemed to have been given at the time when mailed in any general or branch United States Post Office, enclosed in a Registered or Certified postage prepaid envelope addressed to the address of the respective parties or in the case of notice by facsimile transmission when received and telephonically confirmed, and addressed or transmitted by facsimile as follows or to such changed address as such party may have fixed by notice given in the manner herein provided:

**If to the Debtors:**

John A. Johnston  
915 S. Elm St.  
Hinsdale, IL 60521

William Johnston III  
7565 Woodland Lane  
Burr Ridge, IL 60527

with copies to:

Chad H. Gettleman, Esq.  
Nathan Q. Rugg, Esq.  
Adelman & Gettleman, Ltd.  
53 W. Jackson Blvd., Suite 1050  
Chicago, Illinois 60604  
[chg@ag-ltd.com](mailto:chg@ag-ltd.com)  
[nqr@ag-ltd.com](mailto:nqr@ag-ltd.com)  
Telephone: (312) 435-1050  
Facsimile: (312) 435-1059

**If to the Judgment Creditors:**

Empress Casino Joliet Corporation  
Attn: Karin Ashford, Director, Legal & Business Affairs  
Penn National Gaming  
825 Berkshire Blvd.  
Wyomissing, Pennsylvania 19610

Karin.Ashford@pngaming.com  
Telephone: (610) 378-8305

Des Plaines Development Limited Partnership, d/b/a Harrah's Joliet Casino Hotel  
Attn: Tim Lambert, Law Department  
Harrah's Joliet  
151 North Joliet St.  
Joliet, Illinois 60432  
tlambert@caesars.com  
Telephone: (815) 740-2320

Hollywood Casino-Aurora, Inc.  
Attn: Karin Ashford, Director, Legal & Business Affairs  
Penn National Gaming  
825 Berkshire Blvd.  
Wyomissing, Pennsylvania 19610  
Karin.Ashford@pngaming.com  
Telephone: (610) 378-8305

Elgin Riverboat Resort Riverboat Casino, d/b/a Grand Victoria Casino  
Attn: Jeff Ehlers, Executive Committee Member  
222 W. Adams St., Suite 2200  
Chicago, Illinois 60606  
jehlers@relationalllc.com  
Telephone: (312) 873-4935

with copies to:

Michael M. Eidelman, Esq.  
Vedder Price P.C.  
222 North LaSalle Street, Suite 2600  
Chicago, Illinois 60601  
meidelman@vedderprice.com  
Telephone: (312) 609-7500  
Facsimile: (312) 609-5000

-and-

Robert M. Andalman, Esq.  
Andrew R. Greene, Esq.  
A&G LAW LLC  
542 South Dearborn, 10th Floor  
Chicago, Illinois 60605  
randalman@aandglaw.com  
agreene@aandglaw.com  
Telephone: (312) 341-3900  
Facsimile: (312)



If to the Creditor Trustee:

Barry A. Chatz, Esq.  
Arnstein & Lehr LLP  
120 South Riverside Plaza, Suite 1200  
Chicago, Illinois 60606  
[bachatz@arnstein.com](mailto:bachatz@arnstein.com)  
Telephone: (312) 876-6670  
Facsimile: (312) 876-6241

**16.03 Transfer of Claims.** In the event that the holder of any claim shall transfer such claim, it shall immediately advise the Creditor Trustee in writing of such transfer. The Creditor Trustee shall be entitled to assume that no transfer of any claim has been made by any holder unless and until he has received written notice of such transfer. Each transferee of any claim shall take such claim subject to the provisions of the Plan and to any request made, waiver or consent given or other action taken hereunder and, except as otherwise expressly provided in such notice, the Creditor Trustee shall be entitled to assume conclusively that the transferee named in such notice shall thereafter be vested with all rights and powers under the Plan of the transferor.

**16.04 Severability.** Should any provision in the Plan be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any other provision of the Plan.

**16.05 Binding Effect.** The rights and obligations of any person or entity named or referred to in the Plan shall be binding upon, and shall inure to the benefit of the successors or assigns of such person or entity.

**16.06 Captions.** The headings contained in the Plan are for convenience of reference only and shall not affect the meaning or interpretation of the Plan.

**16.07 Cram Down.** The Plan Proponents reserve the right to seek the entry of the Confirmation Order in accordance with Sections 1129 (a) and (b)(2)(B)(i) of the Code.

**16.08 Preservation of Setoff/Recoupment Rights Respecting Pari-Mutuel Settlements.** Notwithstanding anything to the contrary in the Confirmation Order or the Plan (including, without limitation, any release, exculpatory or injunctive provision contained in Article VIII of the Plan), nothing in the Confirmation Order or the Plan shall waive, release, extinguish, enjoin or otherwise impair any right of setoff or recoupment concerning pari-mutuel settlements that any creditor has or may have against either of the Debtors, their respective Estates, the Creditors Trustee, or the Creditors Trust.

## ARTICLE XVII

### RETENTION OF JURISDICTION

**17.01 Jurisdiction.** The Court shall retain jurisdiction of the Chapter 11 Cases pursuant to and for the purposes set forth in Sections 1127(b) and 1141 of the Code, and to:

(a) determine the allowance or disallowance of claims against the Estates and claims or interests in and to the Restricted Cash;

(b) determine whether, and to what extent, the IRB has any continued regulatory authority over the Debtors, the Creditor Trust and the Creditor Trustee;

(c) fix allowances of compensation to Professional Persons and other Administrative Claims;

(d) enforce and interpret all provisions of the Plan;

(e) enforce all Causes of Action which may exist on behalf of the Estates;

(f) authorize and approve the sale of property of the Estates;

(g) modification of the Plan pursuant to Section 1127 of the Code;

(h) entry of a final decree closing the Estates; and

(i) for such other matters as the Creditor Trustee deems necessary or appropriate under the circumstances.

Respectfully submitted,

BALMORAL RACING CLUB, INC. and  
MAYWOOD PARK TROTTING ASSOCIATION, INC.

By: /s/ Nathan Q. Rugg  
One of their attorneys

Chad H. Gettleman, Esq. (ARDC #944858)  
Nathan Q. Rugg, Esq. (ARDC #6272969)  
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53 West Jackson Blvd., Suite 1050  
Chicago, Illinois 60604  
(312) 435-1050

*Counsel for the Debtors*

EMPRESS CASINO JOLIET CORPORATION, DES PLAINES DEVELOPMENT LIMITED PARTNERSHIP, D/B/A HARRAH'S JOLIET CASINO HOTEL, HOLLYWOOD CASINO-AURORA, INC., AND ELGIN RIVERBOAT RESORT-RIVERBOAT CASINO, D/B/A GRAND VICTORIA CASINO

By: Michael M. Eidelman

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Chicago, Illinois 60605  
(312) 341-3900  
*Counsel for the Judgment Creditors*

**EXHIBIT A**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re:

BALMORAL RACING CLUB, INC.,

Debtor.

In re:

MAYWOOD PARK TROTTING  
ASSOCIATION, INC.,

Debtor.

Chapter 11

Case No. 14-45711

Honorable Donald R. Cassling

Chapter 11

Case No. 14-45718

Honorable Donald R. Cassling

**BALMORAL RACING CLUB, INC. AND MAYWOOD PARK  
TROTTING ASSOCIATION, INC. CREDITOR TRUST AGREEMENT**

Michael M. Eidelman, Esq. (ARDC #6197788)  
Stephanie K. Hor-Chen, Esq. (ARDC #6283105)  
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--and--

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Chicago, Illinois 60605  
(312) 341-3900

*Counsel for the Judgment Creditors*

**BALMORAL RACING CLUB, INC. AND MAYWOOD PARK  
TROTTING ASSOCIATION, INC. CREDITOR TRUST AGREEMENT**

**PREAMBLE**

This Agreement (the “*Creditor Trust Agreement*”) is made this \_\_ day of \_\_\_\_\_, 2016, by and among Balmoral Racing Club, Inc. and Maywood Park Trotting Association, Inc. (collectively, the “*Debtors*”), the Judgment Creditors (as defined below), and Barry A. Chatz, not individually, but solely as trustee of this Creditor Trust (the “*Creditor Trustee*” and, collectively with the Debtors and the Judgment Creditors, the “*Parties*”) in accordance with the Amended Joint Liquidating Plan dated April \_\_, 2016 (the “*Plan*”), confirmed by the Bankruptcy Court (as defined *infra*) by the Order (I) Approving Disclosure Statement with Respect to the Joint Liquidating Plan; and (II) Confirming Joint Liquidating Plan dated April \_\_, 2016 (the “*Confirmation Order*”).<sup>1</sup>

**RECITALS:**

A. On December 11, 2014, the United States District Court for the Northern District of Illinois entered judgment in the amount of \$81.8 million for Empress Casino Joliet Corporation, Des Plaines Development Limited Partnership, d/b/a Harrah’s Casino Cruises Joliet, Hollywood Casino-Aurora, Inc., and Elgin Riverboat Resort Riverboat Casino, d/b/a Grand Victoria Casino (collectively, the “*Judgment Creditors*”) against the Debtors and John A. Johnston, an executive and stakeholder in the Debtors;

B. On December 24, 2014, the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”) in the United States Bankruptcy Court for the Northern District of Illinois (the “*Bankruptcy Court*”) and commenced their respective chapter 11 cases (the “*Chapter 11 Cases*”);

C. The Plan and the Confirmation Order provide, among other things, that the Creditor Trustee shall be empowered to (i) make distributions, pursuant to the Plan, the Confirmation Order and this Creditor Trust Agreement, to holders of Allowed Claims entitled to share in the Creditor Fund Assets (collectively, the “*Beneficiaries*”); (ii) administer the Retained Assets pursuant to the Plan, the Confirmation Order and this Creditor Trust Agreement; and (iii) administer the Restricted Cash pursuant to the Plan, the Confirmation Order and this Creditor Trust Agreement;

D. The Creditor Trust is created pursuant to, and to effectuate, the Plan and the Confirmation Order;

E. The Creditor Trust is created on behalf of, and for the sole benefit of, the Beneficiaries;

F. The powers, authority, responsibilities and duties of the Creditor Trustee shall be governed by this Creditor Trust Agreement, the Plan, applicable orders issued by the Bankruptcy

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<sup>1</sup> Capitalized terms not defined herein shall have the meanings ascribed to them in the Plan.

Court (including the Confirmation Order) or any court vested with jurisdiction over the Chapter 11 Cases (the “*Court*”), and general fiduciary obligations of trustees under Illinois law;

G. Pursuant to the terms and conditions of the Plan, the Confirmation Order and this Creditor Trust Agreement, the Creditor Trustee shall administer the Creditor Fund Assets, the Retained Assets, and the Restricted Cash;

H. This Creditor Trust Agreement is intended to supplement and complement the Plan and the Confirmation Order; *provided, however*, that if any of the terms and/or provisions of this Creditor Trust Agreement conflict with the terms and/or provisions of the Plan or the Confirmation Order, the Plan and the Confirmation Order shall govern; and

I. The Creditor Trust is intended to qualify as a “liquidating trust” under the Internal Revenue Code of 1986 and the regulations promulgated thereunder, specifically Treas. Reg. § 301.7701-4(d), and as such is a “grantor trust” for federal income tax purposes with the Beneficiaries treated as the grantors and owners of the Creditor Fund Assets. In particular:

- (i) The Creditor Trust is organized for the primary purpose of liquidating the Creditor Fund Assets, with no objective to conduct a trade or business except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Creditor Trust. The Creditor Trust shall not be deemed a successor of the Debtors;
- (ii) The Creditor Trust provides that the Beneficiaries of the Creditor Trust will be treated as the grantors of the Creditor Trust and deemed owners of the Creditor Fund Assets. This Creditor Trust Agreement requires the Creditor Trustee to file returns for the Creditor Trust as a grantor trust pursuant to Treas. Reg. § 1.6714(a);
- (iii) This Creditor Trust Agreement provides for consistent valuations of the transferred property by the Creditor Trustee and the Beneficiaries, and those valuations shall be used for federal income tax purposes;
- (iv) The Creditor Trust contains a fixed or determinable termination date that is not more than thirty (30) years from the date of creation of the Creditor Trust and that is reasonably based on all the facts and circumstances;
- (v) The investment powers of the Creditor Trustee, other than those reasonably necessary to maintain the value of the Creditor Fund Assets and to further the liquidating purpose of the Creditor Trust, are limited to powers to invest in demand and time deposits, such as short-term certificates of deposit, in banks or other savings institutions, or other temporary, liquid investments, such as treasury bills; and
- (vi) The Creditor Trustee is required to make distributions on the Distribution Dates, which shall be as soon after the Effective Date as is practicable and thereafter, as often as the Creditor Trustee in his reasonable discretion may determine if the amounts on deposit in the Creditor Accounts warrant

same; *provided, however*, that the Creditor Trustee in his reasonable discretion shall reserve such amounts in the Creditor Accounts as he deems necessary for the requirements set forth in the Plan including, Disputed Claims as set forth below, and for the payment of the Post-Confirmation Expenses in the manner set forth in the Plan.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein and in the Plan and the Confirmation Order, the Parties agree as follows:

**ARTICLE I**  
**ESTABLISHMENT OF THE CREDITOR TRUST**

1.1 Transfer of Assets to the Creditor Trust

1.1.1 Pursuant to the Plan, the Debtors, the Judgment Creditors and the Creditor Trustee hereby establish the Creditor Trust on behalf of the Beneficiaries, to be treated as the grantors and deemed owners of the Creditor Fund Assets (as defined in Section 1.16 of the Plan), and the Debtors hereby transfer, assign and deliver to the Creditor Trust, on behalf of the Beneficiaries, all of their right, title and interest in the Creditor Fund Assets, notwithstanding any prohibition of assignability under applicable non-bankruptcy law. The Creditor Trust agrees to accept and hold the Creditor Fund Assets in the Creditor Trust for the benefit of the Beneficiaries, subject to the terms of the Plan, the Confirmation Order and this Creditor Trust Agreement, including all limitations and restrictions on the transfer of the Retained Assets and Restricted Cash.

1.1.2 On the Effective Date, each Debtor shall immediately transfer or cause to be transferred all funds designated by the Debtors as Restricted Cash, and all books, records, information, communications related thereto, in its possession, custody and/or control, to the Creditor Trustee who thereafter shall maintain possession, control and management of same subject to the Plan and the Creditor Trustee Agreement, and in accordance with applicable non-bankruptcy law. The Debtors are hereby authorized and directed to take such steps as may be necessary or appropriate to confirm such transfer of the Restricted Cash, to the extent permitted by applicable non-bankruptcy law, to the Creditor Trust. Upon vesting, the Creditor Trustee shall (a) have the sole authority to administer the Restricted Cash; *provided, however*, that the Creditor Trustee shall obtain Judgment Creditor Approval with respect to any proposed action with respect to the Restricted Cash in excess of \$37,500; and (b) establish and maintain separate and segregated Creditor Accounts for Outs, Stakes and Betzotic Customer Bets (each, a "*Restricted Cash Account*," and collectively, the "*Restricted Cash Accounts*").

1.1.3 All rights in connection with the vesting and transfer of the Creditor Fund Assets, including the Causes of Action, and any attorney-client privileges, work-product protection or other privilege or immunity attaching to any documents or communications of the Debtors' professionals (whether written or oral) related to the Creditor Fund Assets, will vest with the Creditor Trust. All cash on hand and on deposit in any bank account established by the Debtors, including all bank accounts, will be transferred to and held in the Creditor Trust on behalf of the Beneficiaries, subject to the provisions of the Plan and this Creditor Trust Agreement. All books, records, information, communications, and data, whether electronically



stored or in hard copy, will be transferred to the Creditor Trustee on the Effective Date. The Debtors and the Creditor Trustee are authorized to take all necessary actions to effectuate the foregoing.

## 1.2 Title to Assets

1.2.1 On the Effective Date, the Debtors shall transfer the Creditor Fund Assets to the Creditor Trust for the benefit of the Beneficiaries. Notwithstanding any prohibition of assignability under applicable non-bankruptcy law, all assets and properties transferred to the Creditor Trust pursuant to the Plan shall vest in the Creditor Trust, with the exception of the Retained Assets and Restricted Cash as set forth in the Plan and Section 1.2.2 below. Upon the transfer of the Creditor Fund Assets to the Creditor Trust, the Debtors shall have no interest in or with respect to such Creditor Fund Assets or the Creditor Trust.

1.2.2 On the Effective Date, title in the Retained Assets shall be retained by the Debtors, as applicable; *provided, however*, the Creditor Trustee shall be vested with the sole authority to administer the Retained Assets for the benefit of the Beneficiaries, including, but not limited to, sale or abandonment of the Retained Assets pursuant to Section 554 of the Bankruptcy Code. Upon vesting, all such property will be free and clear of all claims, liens, encumbrances, charges and other interests, except as otherwise provided in the Plan; *provided, however*, all parties (including the Illinois Racing Board) retain their rights to argue whether the Outs for 2014 and 2015 are property of either Debtor's respective Estate and who is entitled to payment of same. All proceeds, earnings and replacements arising from or relating to the Retained Assets are Liquidation Proceeds under the Plan, shall be immediately transferred to the Creditor Trust for the benefit of the Beneficiaries, and shall not be deemed property of the Debtors. The Debtors and the Creditor Trustee are authorized to take all necessary actions to effectuate the foregoing. For the avoidance of doubt, the Retained Assets consist of all the Real Property and all personal property of the Debtors wherever located, excluding the Creditor Fund Assets.

1.2.3 For federal income tax purposes, all parties (including, without limitation, the Debtors, the Creditor Trustee and the Beneficiaries) shall treat the transfer of the Creditor Fund Assets by the Debtors to the Creditor Trust as a transfer of such assets by the Debtors and to the holders of Allowed Claims entitled to distributions under the Plan and the Confirmation Order, followed by a transfer by such holders to the Creditor Trust. Thus, the Beneficiaries shall be treated as the grantors and owners of a grantor trust for federal income tax purposes.

1.2.4 To any extent not effectuated by the Confirmation Order, the Debtors shall execute and deliver or cause to be executed and delivered all such documents (in recordable form where necessary or appropriate), and the Debtors and the Judgment Creditors shall take or cause to be taken such further action as may reasonably be necessary or appropriate, to vest or perfect in or confirm to the Creditor Trust title to and possession of the Creditor Fund Assets and administration of the Retained Assets.

1.3 Valuation of Assets

The Creditor Trust, to the extent that the Creditor Trustee deems it necessary or appropriate after consultation with the Judgment Creditors, may conduct a good faith valuation of the Creditor Fund Assets, and shall make such valuation available to the Beneficiaries. The valuation shall be used consistently by all parties (including the Debtors, the Creditor Trustee and the Beneficiaries) for federal income tax purposes. Any dispute regarding the valuation of the Creditor Fund Assets shall be resolved by the Court.

1.4 Claims Against the Creditor Fund Assets

The Creditor Fund Assets shall be subject to the claims of the Creditor Trustee, its Professionals (as defined *infra*) and Non-Professionals (as defined *infra*) and U.S. Trustee fees. The Creditor Trustee shall be entitled to reimburse such persons out of any available Cash in the Creditor Trust, for reasonable compensation and actual reasonable out-of-pocket expenses, and against and from any and all loss, liability, expense or damage, which each may sustain in good faith and without willful misconduct, gross negligence, fraud or, solely in the case of the Creditor Trustee, breach of fiduciary duty other than negligence, in the exercise and performance of any of the powers and duties of the Creditor Trustee.

**ARTICLE II**  
**APPOINTMENT OF THE CREDITOR TRUSTEE**

Barry A. Chatz is hereby appointed to serve as the initial Creditor Trustee under the Plan and hereby accepts this appointment and agrees to serve in such capacity, effective upon the date of this Creditor Trust Agreement. Any successor Creditor Trustee shall be appointed as set forth in Section 4.7 in the event any Creditor Trustee is removed or resigns pursuant to this Creditor Trust Agreement, or if such Creditor Trustee otherwise vacates the position. Any person or entity serving as the Creditor Trustee shall be a Disinterested Person.

**ARTICLE III**  
**DUTIES AND POWERS OF THE CREDITOR TRUSTEE**

3.1 Generally

The Creditor Trustee shall be responsible for administering the Creditor Fund Assets, the Retained Assets, and the Restricted Cash, and taking actions on behalf of, and representing, the Creditor Trust. The Creditor Trustee shall have the authority to bind the Creditor Trust within the limitations set forth herein, but shall for all purposes hereunder be acting in the capacity of Creditor Trustee and not individually. The Creditor Trustee shall be a representative of the Estates pursuant to Sections 1123(a)(5)(B) and 1123(b)(3)(B) of the Bankruptcy Code, and shall be vested with standing to prosecute, settle and otherwise administer (a) all Creditor Fund Assets, including without limitation, Causes of Action, transferred to the Creditor Fund, (b) the Retained Assets, and (c) the Restricted Cash, without the need for Court approval or any other notice of approval, except as set forth herein.

### 3.2 Scope of Authority

The responsibilities and authority of the Creditor Trustee shall include, without limitation: (a) collecting and liquidating the Creditor Fund Assets and distributing the Creditor Fund Assets to the Beneficiaries in accordance with the Plan, the Confirmation Order and this Creditor Trust Agreement; (b) facilitating the prosecution or settlement of objections to, or estimations of, Claims in accordance with, but subject to the limitations set forth in, the Plan; (c) analyzing, prosecuting and settling all Causes of Action, including without limitation, the Avoidance Actions; (d) in accordance with Section 11.1, except as set forth therein, filing all required tax returns and paying taxes and all other obligations on behalf of the Creditor Trust from funds held by the Creditor Trust; (e) filing Quarterly Reports; (f) providing periodic reports to the Judgment Creditors, the Court and other parties-in-interest on the status of the Claims resolution process, the status of the prosecution of Avoidance Actions and Causes of Action, distributions to Beneficiaries and the financial status of the Creditor Trust; (g) performing such administrative, ministerial, and other functions reasonably appropriate to the Debtors' orderly liquidation; and (h) carrying out such other responsibilities not specifically set forth herein as may be vested in the Creditor Trustee pursuant to the Plan, this Creditor Trust Agreement, any Court order or as may otherwise be necessary and proper to carry out the provisions of the Plan and the Confirmation Order.

### 3.3 Fiduciary Obligations to the Creditor Trust and Beneficiaries

The Creditor Trustee's actions as Creditor Trustee will be held to the same standard as a trustee of a trust under Illinois law. His or her fiduciary obligations to the Creditor Trust and its Beneficiaries are the same fiduciary obligations that the trustee of a trust owes to that trust and its beneficiaries under Illinois law.

### 3.4 Powers

In connection with the administration of the Creditor Trust, except as otherwise set forth in this Creditor Trust Agreement, the Plan or the Confirmation Order, subject to Judgment Creditor Approval as appropriate, the Creditor Trustee is hereby authorized to perform those acts necessary to accomplish the purposes of the Creditor Trust, without further authorization from the Court. Without limiting, but subject to, the foregoing, the Creditor Trustee is expressly authorized, but not required, unless otherwise provided in this Creditor Trust Agreement and subject to the limitations contained herein, in the Plan and in the Confirmation Order, to:

- (a) hold legal title (on behalf of the Creditor Trust as Creditor Trustee, but not individually) to the Creditor Fund Assets;
- (b) effect all actions and execute all agreements, instruments and other documents necessary to implement the Plan;
- (c) administer the Retained Assets for the benefit of the Beneficiaries, including, but not limited to, the sale, liquidation, development, transfer, or abandonment of the Retained Assets;

(d) liquidate and monetize the Creditor Fund Assets, including, without limitation, the Retained Assets, for the benefit of the Beneficiaries;

(e) make distributions as provided for in this Creditor Trust Agreement, the Plan and the Confirmation Order, including, without limitation, distribution of the Restricted Cash;

(f) protect and enforce the rights to the Creditor Fund Assets vested in the Creditor Trust by the Plan and the Confirmation Order by any method deemed appropriate, including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

(g) invest funds (in the manner set forth in Section 3.10), make distributions, and pay taxes and other obligations owed by the Creditor Trust from funds held by the Creditor Trustee and/or the Creditor Trust in accordance with the Plan and the Confirmation Order;

(h) issue subpoenas prior to filing any complaint related to all Causes of Action, specifically, but not limited to, Avoidance Actions arising under or related to Chapter 5 of the Bankruptcy Code;

(i) prosecute, defend, compromise, adjust, arbitrate, abandon or otherwise deal with and settle, in accordance with the terms set forth herein and in the Plan and Confirmation Order, all Causes of Action, specifically, but not limited to, Avoidance Actions arising under or related to Chapter 5 of the Bankruptcy Code;

(j) determine, compromise and satisfy any and all liabilities created, incurred or assumed by the Creditor Trust;

(k) file, if necessary, any and all tax and information returns with respect to the Creditor Trust and pay taxes properly payable by the Creditor Trust, if any, commensurate with the Creditor Trust's classification as a grantor trust pursuant to Treas. Reg. § 1.671-4(a);

(l) make all tax withholdings and make tax elections by and on behalf of the Creditor Trust;

(m) administer, reconcile, compromise, estimate and/or resolve claims in accordance with, but subject to the limitations set forth in, the Plan (including the filing of any objections as appropriate);

(n) administer, reconcile, compromise, estimate and/or resolve any disputes related to the Restricted Cash in accordance with, but subject to the limitations set forth in, the Plan (including the filing of any objections to such claims as appropriate)

(o) establish such reserves for Disputed Claims, taxes, assessments, Professional fees and other expenses of administration of the Creditor Trust as may be necessary and appropriate for the proper operation of matters incident to the Creditor Trust;

(p) open and maintain bank accounts on behalf of or in the name of the Creditor Trust, including, without limitation, the Restricted Cash Accounts;

(q) pay expenses and make disbursements necessary to preserve, liquidate and enhance the Creditor Fund Assets;

(r) purchase, maintain, replace or cancel such insurance coverage as the Creditor Trustee deems necessary and appropriate with respect to the liabilities and obligations of the Creditor Trustee (in the form of an errors and omissions policy, fiduciary policy or otherwise);

(s) purchase, maintain, replace or cancel such insurance coverage as the Creditor Trustee deems necessary and appropriate with respect to real and personal property which may be or may become Creditor Fund Assets;

(t) retain and pay Professionals and Non-Professionals as provided for in Article X of this Creditor Trust Agreement to assist the Creditor Trust and/or the Creditor Trustee with respect to its responsibilities to the extent permitted by this Creditor Trust Agreement, the Plan and the Confirmation Order;

(u) take such actions as are necessary, appropriate or desirable to close or dismiss the Chapter 11 Cases, including without limitation, filing a motion seeking a final decree in the Chapter 11 Cases prior to, or contemporaneously with, the termination of the Creditor Trust;

(v) upon notice to the Debtors, take such actions as are necessary to terminate the existence of the Debtors to the extent not already effectuated pursuant to the Plan;

(w) terminate and dissolve the Creditor Trust pursuant to and in accordance with the terms of the Plan and this Creditor Trust Agreement; and

(x) assume such other powers as may be vested in or assumed by the Creditor Trust pursuant to the Plan or Court order, or as may be necessary and proper to carry out the provisions of the Plan, the Confirmation Order or this Creditor Trust Agreement.

### 3.5 General Authority of the Creditor Trustee

Unless specifically stated otherwise herein or in the Plan, subject to Judgment Creditor Approval in accordance with the Plan, the Creditor Trustee shall not be required to obtain Court approval with respect to any proposed action or inaction authorized in this Creditor Trust Agreement or specifically contemplated in the Plan and the Confirmation Order.

### 3.6 Limitation of Creditor Trustee's Authority; No On-Going Business

The Creditor Trustee shall have no power or authority except as set forth in this Creditor Trust Agreement, in the Plan or in the Confirmation Order or, as necessary, to carry out the powers and authority set forth in this Creditor Trust Agreement, in the Plan or in the Confirmation Order. For federal tax purposes, the Creditor Trustee shall not be authorized to

engage in any trade or business with respect to the Creditor Fund Assets except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Creditor Trust. The Creditor Trustee shall take such actions consistent with the prompt orderly liquidation of the Creditor Fund Assets as required by applicable law and consistent with the treatment of the Creditor Trust as a liquidating trust under Treas. Reg. § 301.7701-4(d), to the extent such actions are permitted by this Creditor Trust Agreement.

### 3.7 Other Activities of the Creditor Trustee

The Creditor Trustee shall be entitled to be employed by third parties while serving as Creditor Trustee for the Creditor Trust; *provided, however*, that such employment shall not include actions or representations of parties that are adverse to the Creditor Trust.

### 3.8 Judgment Creditor Approval

Judgment Creditor Approval shall be obtained in accordance with the terms and conditions set forth in the Plan.

### 3.9 Deposits

(a) Immediately upon receipt, the Creditor Trustee shall deposit all Liquidation Proceeds in kind when and as the same are received in the Creditor Accounts;

(b) As soon after the Confirmation Date as is practicable, the Debtors shall deliver or cause to be delivered to the Creditor Trustee for immediate deposit into the Creditor Accounts as set forth above any and all cash and Liquidation Proceeds on deposit in the Estates; and

(c) As soon after the Confirmation Date as is practicable, the Debtors shall, in accordance with the Plan, deliver or cause to be delivered to the Creditor Trustee for immediate deposit into the Restricted Cash Accounts, as set forth in Section 1.1.2 above, any and all Restricted Cash.

### 3.10 Investment and Safekeeping of Creditor Fund Assets

All monies and other assets received by the Creditor Trust shall, until distributed or paid over as herein provided, be held in trust for the benefit of the Beneficiaries, but need not be segregated from other Creditor Fund Assets. The Creditor Trustee shall promptly invest any such monies in the manner set forth in this Section 3.10, but shall otherwise be under no liability for interest or income on any monies received by the Creditor Trust hereunder and held for distribution or payment to the Beneficiaries, except as such interest shall actually be received by the Creditor Trustee. Investment of any monies held by the Creditor Trust shall be administered in accordance with the Creditor Trustee's general duties and obligations hereunder and in view of the Creditor Trustee's general fiduciary duties under Illinois law. The rights and powers of the Creditor Trustee to invest the Creditor Fund Assets transferred to the Creditor Trust, the proceeds thereof or any income earned by the Creditor Trust, shall be limited to the right and power to invest the monies on deposit in the Creditor Accounts only as follows: (a) securities with maturities of 90 days or less from the date of acquisition issued, which are fully guaranteed

or insured by the United States Government or any agency thereof; (b) certificates of deposit, overnight bank deposits and bankers' acceptances of any commercial bank having combined capital and surplus of at least \$200,000,000, a short term deposit rate of A1/P1 or better, and organized under the laws of the United States of America, having maturities of 90 days or less from the date of acquisition; or (c) commercial paper with maturities of 90 days or less having a rating of A1/P1 or better.

### 3.11 Authorization to Expend Creditor Fund Assets

Subject to Judgment Creditor Approval, the Creditor Trustee may expend assets of the Creditor Trust to the extent necessary to: (a) satisfy and discharge liabilities and to maintain the value of the Creditor Fund Assets during liquidation; (b) pay Trustee Expenses (including, but not limited to, any taxes imposed on the Creditor Trust, and fees and expenses in connection with litigation or compensation of the Creditor Trustee in accordance with Section 4.1 below); (c) satisfy other liabilities incurred or assumed by the Creditor Trust (or to which the Creditor Fund Assets are otherwise subject) in accordance with this Creditor Trust Agreement, the Plan or the Confirmation Order; and (d) make distributions to Beneficiaries on account of their Trust Interests in accordance with this Creditor Trust Agreement, the Plan and the Confirmation Order.

## **ARTICLE IV** **CREDITOR TRUSTEE**

### 4.1 Compensation of the Creditor Trustee

The Creditor Trustee shall be entitled to receive, but is not required to accept, reasonable compensation for services rendered on behalf of the Creditor Trust. All compensation and other amounts payable to the Creditor Trustee shall be paid out of the Creditor Fund Assets after Judgment Creditor Approval. The Creditor Trust shall reimburse the Creditor Trustee for his actual reasonable out-of-pocket expenses incurred including, without limitation, postage, telephone and facsimile charges upon receipt of periodic billings. All reimbursement for expenses payable to the Creditor Trustee shall be paid from the Creditor Fund Assets in priority over any distributions to Beneficiaries to be made under the Plan. If the Creditor Fund Assets are insufficient to fully satisfy the amounts payable to, or other obligations owing to, the Creditor Trustee, then, upon entry of a Court order after notice and hearing, the Beneficiaries shall be required to disgorge their Pro Rata share of any interim distributions received from the Creditor Trust, until all such amounts have been fully paid and all such obligations have been fully satisfied. If the Creditor Trustee dies or becomes disabled, then such former Creditor Trustee (or his or her estate, successor or assigns) shall be entitled to any remaining unpaid compensation and reimbursement due hereunder.

### 4.2 Term of Service

The Creditor Trustee shall serve until the earliest of: (a) the completion of all the Creditor Trustee's duties, responsibilities and obligations under this Creditor Trust Agreement and the Plan; (b) termination of the Creditor Trust in accordance with this Creditor Trust Agreement; and (c) the Creditor Trustee's death, resignation or removal.

#### 4.3 No Bond, Surety or Other Security

The Creditor Trustee shall serve without bond, surety or other security for the performance of its duties; *provided, however*, existing surety bonds in favor of the Illinois Racing Board (“IRB”) shall remain in effect until terminated or released by the IRB; *provided, further, however*, no party, including, without limitation, the Creditor Trustee, shall be obligated to renew such bonds or otherwise make any further premium or other payments on account thereof.

#### 4.4 Removal

The Creditor Trustee may be removed for cause by the Judgment Creditors; *provided, however*, that the Creditor Trustee may not be removed until a successor Creditor Trustee has been named. “Cause” shall include, without limitation: (a) the undue prolongation of the duration of the Creditor Trust and of distributions of the Creditor Fund Assets to the Beneficiaries; (b) gross negligence, fraud or willful misconduct (as determined by a Final Order) in connection with the affairs of the Creditor Trust; (c) a physical and/or mental disability that substantially prevents the Creditor Trustee from performing the duties of a Creditor Trustee hereunder; or (d) breach of fiduciary duty or an unresolved conflict of interest. The compensation or reimbursement of expenses previously paid or accrued at the time of the Creditor Trustee’s removal shall not subject to disgorgement, unless such removal is for “cause” pursuant to Sections 4.4(b) or (d) of this Creditor Trust Agreement. Any successor Creditor Trustee shall pay such accrued compensation and expenses upon appointment.

#### 4.5 Resignation

The Creditor Trustee may resign by giving not less than thirty (30) days’ prior written notice thereof to the parties entitled to notice under Section 13.8 hereof. In the event of a resignation, the resigning Creditor Trustee shall render to the Judgment Creditors a statement of discharge as described in Section 4.6 below. The resignation will be effective on the later of: (a) the date specified in the notice; (b) the date that is thirty (30) days after the date the notice is delivered; (c) the date the statement of discharge is delivered; and (d) the date the successor Creditor Trustee accepts his or her appointment as such.

#### 4.6 Discharge of Creditor Trustee

4.6.1 Statement of Discharge. The Creditor Trustee shall, upon termination of the Creditor Trust or upon the Creditor Trustee’s resignation, removal or death (in which case the Creditor Trustee’s estate or third-party employer, as may be appropriate, shall) render a statement of discharge containing the following information: (a) all assets and funds of the Creditor Trust originally charged under the Creditor Trustee’s control; (b) a summarized accounting, in sufficient detail, of all purchases, sales, gains, losses and income of the Creditor Trust during the Creditor Trustee’s term of service; and (c) the ending balance of all assets and funds of the Creditor Trust as of the date of discharge.

4.6.2 Costs Relating to Statement of Discharge. The expenses of any accounting, including, but not limited to those incurred in the preparation of any statement of



discharge conducted under Section 4.6.1, shall be paid by the Creditor Trust as an expense of the Creditor Trust.

#### 4.7 Appointment of Successor Trustee

4.7.1 In the event the Creditor Trustee is removed or resigns pursuant to this Creditor Trust Agreement or the Creditor Trustee otherwise vacates his or her position, the Judgment Creditors shall designate a successor Creditor Trustee. Any successor Creditor Trustee appointed hereunder shall execute an instrument accepting such appointment and shall deliver such acceptance to the Court. Thereupon, such successor Creditor Trustee shall, without any further act, become vested with all of the properties, rights, powers, trusts and duties of his or her predecessor in the Creditor Trust with like effect as if originally named herein; *provided, however,* that the removed or resigning Creditor Trustee shall, nevertheless, when requested in writing by the successor Creditor Trustee, execute and deliver any reasonable instrument or instruments conveying and transferring to such successor Creditor Trustee all the estates, properties, rights, powers and trusts of the removed or resigning Creditor Trustee.

4.7.2 The Judgment Creditors shall appoint a successor Creditor Trustee as soon as practicable, but in any event within thirty (30) days after the occurrence of the vacancy or, in the case of resignation, at least fifteen (15) days before the proposed resignation is to take effect. If the Judgment Creditors fail to appoint a successor Creditor Trustee within the prescribed period, any Judgment Creditor or any Beneficiary may petition the Court to appoint a proposed successor Creditor Trustee. If the Judgment Creditors or any Beneficiary fails to appoint a successor Creditor Trustee, then: (a) if the Creditor Trustee is resigning, the Creditor Trustee may appoint a qualified successor; or (b) if the Creditor Trustee is removed or upon the Creditor Trustee's death, the Court may appoint a successor Creditor Trustee.

#### 4.8 Creditor Trust Continuance

The resignation or removal of the Creditor Trustee will not terminate the Creditor Trust or revoke any existing agency created pursuant to this Creditor Trust Agreement or invalidate any action theretofore taken by the Creditor Trustee.

### **ARTICLE V** **PROVISIONS REGARDING DISTRIBUTIONS**

#### 5.1 Timing and Methods of Distributions

5.1.1 Generally. The Creditor Trustee, on behalf of the Creditor Trust, or such other entity as may be designated by the Creditor Trustee, on behalf of the Creditor Trust, will make all distributions to the Beneficiaries as set forth in, and as required by, this Creditor Trust Agreement, the Plan and the Confirmation Order. Unless the entity or Person receiving a payment agrees otherwise, the Creditor Trustee, in its sole discretion, will make any payment in Cash to be made by the Creditor Trust by check drawn on a domestic bank or by wire transfer from a domestic bank.

5.1.2 Distributions by the Creditor Trustee. The Creditor Fund shall be distributed by the Creditor Trustee as follows:

(a) First, from the Creditor Accounts: (i) to the Creditor Trustee as reimbursement for his out-of-pocket costs of disbursement of and accounting for the Creditor Fund in accordance with the terms set forth in the Creditor Trust Agreement and as compensation for the performance of the Creditor Trustee's responsibilities set forth in the Plan at rates to be established pursuant to the mutual agreement of the Creditor Trustee and the Judgment Creditors; and (ii) to such attorneys, accountants and/or other professionals or persons that are retained by Creditor Trustee on behalf of the Creditor Trust for the purposes of carrying out the terms and conditions of the Plan, including, but not limited to the determination of claims and the preparation and filing of the necessary tax returns (collectively, the "*Post-Confirmation Expenses*"). Until such time as the Plan is fully consummated, the Creditor Trustee shall hold in suspense such amounts in the Creditor Fund as are in his reasonable discretion sufficient to pay all Post-Confirmation Expenses;

(b) Second, from the Creditor Accounts to holders of Administrative Claims as allowed by Final Order;

(c) Third, from the Creditor Accounts to holders of Governmental Unit Priority Claims as allowed by Final Order;

(d) Fourth, from the Creditor Accounts to holders of Class 1 Allowed Claims;

(e) Fifth, from the Creditor Accounts to holders of Class 3 Allowed Claims; and

(f) Sixth, from the Creditor Accounts to the holders of Class 4 interests as determined by Final Order.

5.1.3 Distribution Dates. The distributions provided for in Section 5.1.2 above shall be made on the Distribution Dates, which shall be as soon after the Effective Date as is practicable and thereafter, as often as the Creditor Trustee in his reasonable discretion may determine if the amounts on deposit in the Creditor Accounts warrant same; *provided, however*, that the Creditor Trustee in his reasonable discretion shall reserve such amounts in the Creditor Accounts as he deems necessary for the requirements set forth in the Plan including, Disputed Claims as set forth below, and for the payment of the Post-Confirmation Expenses in the manner set forth below.

## 5.2 No Post-Petition Interest on Claims

Except as expressly provided in the Plan, the Confirmation Order or any contract, instrument, release, settlement or other agreement entered into in connection with the Plan, or as required by applicable bankruptcy law, post-petition interest will not accrue on account of any Claim and the Creditor Trustee will not distribute post-petition interest on account of any Claim.

5.3 No Post-Confirmation Date Interest on Claims

Post-Confirmation Date interest will not accrue on account of any Claim, and the Creditor Trustee will not distribute post-Confirmation Date interest on account of any Claim.

5.4 Undeliverable Distributions

If any distribution with respect to a Trust Interest is returned to the Creditor Trustee as undeliverable, no further distributions shall be made to such holder, unless the Creditor Trustee is notified in writing of the Trust Interest holder's current address. Upon receipt of the notification, the Creditor Trustee will remit all missed distributions to the Trust Interest holder without interest. All claims for undeliverable distributions must be made on or before the first anniversary of the Confirmation Date of the Plan. If a claim is not made within that time, all unclaimed distributions will revert to the Creditor Trust and be distributed Pro Rata to the remaining Beneficiaries of the Creditor Trust if practical. Nothing contained in the Plan, the Confirmation Order or this Creditor Trust Agreement shall require the Creditor Trustee to attempt to locate any holder of an Allowed Claim. If all Allowed Claims are paid in full, the Creditor Trustee shall donate the funds to the "Thoroughbred Charities of America Inc." in Lexington, Kentucky.

5.5 Lapsed Distributions

Any distribution that has not cleared within ninety (90) days of the date of the distribution will lapse. With respect to any lapsed distributions, the lapsed distribution will revert to the Creditor Trust and be distributed to the remaining Beneficiaries of the Creditor Trust.

5.6 Compliance with Tax Requirements/Allocation

To the extent applicable, the Creditor Trust shall comply with all tax withholding and reporting requirements imposed on it by any governmental unit, and all distributions pursuant to the Plan and the Confirmation Order shall be subject to such withholding and reporting requirements. For tax purposes, distributions received in respect of Trust Interests will be allocated first to the principal amount of such Claims, with any excess allocated to unpaid accrued interest.

5.7 Fractional Dollars; *De Minimis* Distributions

Notwithstanding anything contained herein to the contrary, payments of fractions of dollars will not be made. Whenever any payment of a fraction of a dollar under this Creditor Trust Agreement, the Plan or the Confirmation Order would otherwise be called for, the actual payment made will reflect a rounding of such fraction to the nearest dollar (up or down), with half dollars being rounded down. The Creditor Trustee shall not be required to make any interim distribution of less than Fifty Dollars (\$50) with respect to any Trust Interest. To the extent that any interim distribution is not paid to a Beneficiary on the grounds that it amounts to less than Fifty Dollars (\$50), the amount of such withheld distribution shall be reserved for addition to any future distribution or as the final distribution to such Beneficiary, and may be made at that time if the total distribution is at least Fifty Dollars (\$50).

5.8 Setoffs

The Creditor Trustee may, pursuant to Sections 502(d) or 553 of the Bankruptcy Code or applicable non-bankruptcy law, set off against any Allowed Class 3 Claim or Allowed Class 4 interest and the distributions to be made pursuant to the Plan and the Confirmation Order on account thereof (before any distribution is made on account of such Claim), the claims, rights and causes of action of any nature that the Creditor Trust may hold against the holder of such Allowed Class 3 Claim or Allowed Class 4 interest; *provided, however*, that neither the failure to effect such a setoff nor the allowance of any Claim or interest shall constitute a waiver or release by the Creditor Trust or the Estates of any such claims, rights and causes of action that they may possess against such holder.

5.9 Preservation of Debtors' Subordination Rights

All subordination rights and claims relating to the subordination by the Debtors or their Estates of the Allowed Claims of any Creditor shall remain valid and enforceable by the Creditor Trust, unimpaired in accordance with Section 510 of the Bankruptcy Code or otherwise, and may be asserted by the Creditor Trustee as necessary or appropriate.

**ARTICLE VI**  
**PROCEDURES FOR RESTRICTED CASH**

6.1 Restricted Cash. The Creditor Trustee shall have the sole power and authority to distribute, dispute, and otherwise administer the Restricted Cash. For the avoidance of doubt, Restricted Cash shall mean (a) funds held by the Debtors for payout of winning tickets purchased at either of the Debtors' tracks for races at such track pursuant to the Illinois Horse Racing Act and the rules and regulations of the Illinois Racing Board ("*Outs*"); (b) funds deposited with the Debtors by horse owners for stakes races which were not subsequently held at the Debtors' tracks ("*Stakes*"); and (c) funds deposited by customers of Maywood d/b/a Betzotic for future bets which were not subsequently made ("*Betzotic Customer Bets*").

6.2 Disputes Regarding Restricted Cash. Notwithstanding the Debtors' designation of funds as Restricted Cash, and the deposit of funds into one or more Restricted Cash Accounts, the Creditor Trustee shall (a) have appropriate standing and the exclusive authority to (i) object to the designation of any and all funds as Restricted Cash, and (ii) object to any and all claims or interests in Restricted Cash, and (b) have and retain any and all rights and defenses that the Debtors had with respect to any and all claims or interests in Restricted Cash. All disputes regarding Restricted Cash shall be litigated to a Final Order except to the extent the Creditor Trustee elects to withdraw any such objection or the Creditor Trustee and holder of such Claim elect to compromise, settle or otherwise resolve any such objection, in which event the Creditor Trustee may settle, compromise or otherwise resolve any disputes regarding Restricted Cash without approval of the Court.

6.3 Creditor Trustee's Administration of Restricted Cash. After the Effective Date, all Restricted Cash not subject to an objection by the Creditor Trustee shall be distributed by the Creditor Trustee in accordance with applicable non-bankruptcy law, statutes, rules and regulations as follows:

(a) all Outs shall be paid solely from the Restricted Cash Account holding funds for payment of Outs, to the extent such funds exist;

(b) all Stakes shall be paid solely from the Restricted Cash Account holding funds for payment of Stakes, to the extent such funds exist; and

(c) all Betzotic Customer Bets shall be paid solely from the Restricted Cash Account holding funds for payment of Betzotic Customer Bets, to the extent such funds exist;

6.4 Unclaimed Restricted Cash. Upon the expiration of any applicable statute of limitations period for asserting claims or interests in the Restricted Cash, the Creditor Trustee shall seek entry of an Order from the Court authorizing him to transfer any Restricted Cash not subject to a valid claim or interest into a Creditor Account maintained by the Creditor Trustee for the benefit of the Beneficiaries, after notice (including to the IRB) and a hearing.

**ARTICLE VII**  
**PROCEDURES FOR RESOLUTION OF DISPUTED,**  
**CONTINGENT AND UNLIQUIDATED CLAIMS**

7.1 Objections to Claims. Except with respect to Claims already deemed Allowed Claims by a Final Order of the Court, upon the Effective Date, the Creditor Trustee shall (a) have appropriate standing and the exclusive authority to object to any Claim, including Administrative Claims, Governmental Unit Priority Claims, Priority Claims, Unsecured Claims, or interests held by holders of equity interests in the Debtors, whether listed on the Schedules or filed by any creditor or holder of an Interest, on or before the Claims Objection Deadline, and (b) have and retain any and all rights and defenses that the Debtors had with respect to any Claim, except with respect to any Claim deemed an Allowed Claim as of the Effective Date. In the event the Debtors filed a motion to object to any Claim that has not been resolved as of the Effective Date, the Creditor Trustee shall succeed the Debtors in the prosecution of such motion from and after the Effective Date. Any and all objections to claims shall be filed with the Court by the Creditor Trustee and served upon each holder of such claims not later than one hundred eighty (180) days after the Effective Date (the "*Claims Objection Deadline*"). If an objection to any claim is not filed on or before that date, the claim shall be deemed an Allowed Claim and shall be satisfied as set forth in the Plan.

7.2 Resolution of Disputed Claims. All objections to Claims shall be litigated to a Final Order except to the extent the Creditor Trustee elects to withdraw any such objection or the Creditor Trustee and holder of such Claim elect to compromise, settle or otherwise resolve any such objection, in which event the Creditor Trustee may settle, compromise or otherwise resolve any Disputed Claim without approval of the Court.

7.3 Estimation. The Liquidating Trustee may, at any time, request the Court estimate any Disputed Claim pursuant to Section 502(c) of the Code regardless of whether the Creditor Trustee has previously objected to such Claim, and the Court shall retain jurisdiction (pursuant to Section 12.01 of the Plan) to estimate any Claim at any time, including during litigation concerning any objection to such Claim.

7.4 Distribution on Disputed Claims. No Distributions shall be made with respect to a Disputed Claim until such Disputed Claim becomes an Allowed Claim.

7.5 Reserve for Disputed Claims. With respect to Claims to be paid pursuant to the Plan, the Creditor Trustee shall hold in reserve, for the benefit of each holder of a Disputed Claim, Cash in an amount required by order of the Court or such other consideration the Creditor Trustee deems appropriate after consultation with, and approval of, the Judgment Creditors.

7.6 Interest on Disputed Claims. Interest on any funds reserved for a Disputed Claim shall inure to the benefit of all remaining creditors.

**ARTICLE VIII**  
**LIABILITY AND EXCULPATION PROVISIONS**

8.1 Standard of Liability

In no event shall the Creditor Trustee or the Creditor Trust, or their respective Professionals, Non-Professionals or representatives, be held personally liable for any claim asserted against the Creditor Trust or the Creditor Trustee, or any of their Professionals, Non-Professionals or representatives. Specifically, the Creditor Trustee, the Creditor Trust and their respective Professionals, Non-Professionals or representatives shall not be liable for any negligence or any error of judgment made in good faith with respect to any action taken or omitted to be taken in good faith. Notwithstanding the foregoing, the Creditor Trust or the Creditor Trustee, or any of their Professionals, Non-Professionals or representatives may be held personally liable to the extent that the action taken or omitted to be taken by each of the same or their respective Professionals, Non-Professionals or representatives is determined by a Final Order to be solely due to their own respective gross negligence, willful misconduct, fraud or, solely in the case of the Creditor Trustee, breach of fiduciary duty other than negligence. Any act or omission taken with the approval of the Court will be conclusively deemed not to constitute gross negligence, willful misconduct, fraud or a breach of fiduciary duty.

8.2 Reliance by Creditor Trustee

Except as otherwise provided in Article III hereof:

(a) the Creditor Trustee may rely, and shall be protected in acting upon, any resolution, certificate, statement, installment, opinion, report, notice, request, consent, order or other paper or document reasonably believed by him or her to be genuine and to have been signed or presented by the proper party or parties except as otherwise provided in the Plan or the Confirmation Order; and

(b) the Creditor Trustee shall not be liable for any action reasonably taken or not taken by him or her in accordance with the advice of a Professional retained pursuant to Article X, and persons dealing with the Creditor Trustee shall look only to the Creditor Fund Assets to satisfy any liability incurred by the Creditor Trustee to such person in carrying out the terms of this Creditor Trust Agreement, and the Creditor Trustee shall have no personal obligation to satisfy any such liability, except to the extent that actions taken or not taken after the Effective Date by the Creditor Trustee are determined by a Final Order to be solely due to the

Creditor Trustee's own gross negligence, willful misconduct, fraud or breach of fiduciary duty, other than negligence.

### 8.3 Exculpation

8.3.1 From and after the Effective Date, the Creditor Trustee and its Professionals, Non-Professionals and representatives shall be and hereby are exculpated by all persons, including, without limitation, holders of Claims and other parties in interest, from any and all claims, causes of action and other assertions of liability arising out of the discharge of the powers and duties conferred upon said parties pursuant to or in furtherance of this Creditor Trust Agreement, the Plan, the Confirmation Order or any order of the Court or applicable law or otherwise, except only for actions taken or not taken, from and after the Effective Date only to the extent determined by a Final Order to be solely due to their own respective gross negligence, willful misconduct, fraud or, solely in the case of the Creditor Trustee, breach of fiduciary duty, other than negligence.

8.3.2 No holder of a Claim or other party-in-interest will be permitted to pursue any claim or cause of action against the Creditor Trustee or its Professionals, Non-Professionals or representatives for making payments in accordance with the Plan or the Confirmation Order or for implementing the provisions of the Plan or the Confirmation Order. Any act taken or not taken by the Creditor Trustee with the approval of the Court will be conclusively deemed not to constitute gross negligence, willful misconduct or fraud or, solely in the case of the Creditor Trustee, a breach of fiduciary duty, other than negligence.

### 8.4 Indemnification

The Creditor Trust shall indemnify, defend and hold harmless the Creditor Trustee and its respective Professionals, Non-Professionals and representatives from and against any and all claims, causes of action, liabilities, obligations, losses, damages or expenses (including reasonable attorneys' fees and expenses) occurring after the Effective Date, other than to the extent determined by a Final Order to be solely due to their own respective gross negligence, willful misconduct or fraud or, solely in the case of the Creditor Trustee, breach of fiduciary duty, other than negligence, to the fullest extent permitted by applicable law.

## **ARTICLE IX ADMINISTRATION**

### 9.1 Purpose of the Creditor Trust

The Creditor Trust shall be established for the primary purpose of liquidating its assets, in accordance with Treas. Reg. § 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Creditor Trust. Accordingly, the Creditor Trust shall, in an expeditious but orderly manner, liquidate and convert to Cash the Creditor Fund Assets, make timely distributions to the Beneficiaries and not unduly prolong the duration of the Creditor Trust.

9.2 Books and Records

9.2.1 Turnover of Books and Records. On the Effective Date, all books, records, information, communications, and data of the Debtors, whether electronically stored or in hard copy, shall be transferred to the Creditor Trustee. The Debtors and the Creditor Trustee are authorized to take all necessary actions to effectuate the foregoing.

9.2.2 Maintenance of Books and Records. The Creditor Trustee shall maintain, with respect to the Creditor Trust and the Beneficiaries, books and records relating to the assets and income of the Creditor Trust and the payment of expenses of and liabilities of, claims against or assumed by, the Creditor Trust in such detail and for such period of time as the Creditor Trustee determines, after consultation with the Judgment Creditors, may be necessary to make full and proper accounting in respect thereof in accordance with Article IX hereof and to comply with applicable provisions of law. Except as otherwise provided herein, in the Plan, or in the Confirmation Order, nothing in this Creditor Trust Agreement requires the Creditor Trust to file any accounting or seek approval of any court with respect to the administration of the Creditor Trust, or as a condition for making any payment or distribution out of the Creditor Fund Assets. Subject to all applicable privileges, the Beneficiaries shall have the right, in addition to any other rights they may have pursuant to this Creditor Trust Agreement, under the Plan and the Confirmation Order, or otherwise, upon ten (10) days' prior written notice delivered to the Creditor Trustee, to request a reasonable inspection (as determined by the Creditor Trustee, following consultation with the Judgment Creditors) of such books and records; *provided, however,* that, if so requested, such Beneficiary shall: (a) first enter into a confidentiality agreement satisfactory in form and substance to the Creditor Trustee and the Judgment Creditors; (b) make such other reasonable arrangements as requested by the Creditor Trustee and the Judgment Creditors; and (c) bear all costs and expenses of such inspection.

9.2.3 Quarterly Reports. Within thirty (30) days after the conclusion of every calendar quarter during the term of this Creditor Trust Agreement following the Effective Date, the Creditor Trustee shall provide a Quarterly Report to the Judgment Creditors and shall file it with the Court. The Quarterly Report shall set forth: (a) all distributions to Beneficiaries during the calendar quarter; (b) a summary of the Creditor Trust deposits and disbursements during the calendar quarter; and (c) a summary of the Creditor Fund Assets.

9.2.4 Distribution of Reports. Within ten (10) business days after the end of the relevant Quarterly Report preparation period, the Creditor Trustee shall make available any information listed in Section 9.2.3 above to the Judgment Creditors and (if requested) to the U.S. Trustee, and, to the extent required under the Bankruptcy Rules or other local rules, shall file the same with the Court.

9.2.5 Posting of Reports. The Creditor Trustee may post any report or records required to be provided under this Section 9.2 on a website maintained by the Creditor Trustee in lieu of actual delivery of such reports or records to the Judgment Creditors (unless otherwise required by law), subject to the provisions of notice of such website and its purpose to the Judgment Creditors.



9.2.6 Privilege, Access to Records. Without limiting the generality of the assignment of the Creditor Fund Assets to the Creditor Trustee, and in order to effectively investigate, defend, or pursue the Causes of Action and the Creditor Fund Assets, any privileges that exist between the Debtors and their current or prior counsel, as well as any property to which the Debtors and the Estates are entitled that is in the possession of their current or prior counsel, shall be assigned to the Creditor Trustee. Transfer of the books and records of the Debtors shall not constitute a waiver of or otherwise affect any claims of privilege, including, but not limited to, the attorney-client privilege.

9.2.7 Confidential and Private Information. The Creditor Trustee shall take the Debtors' books and records subject to all obligations and responsibilities related to the same, including, without limitation, all requirements under state and federal law related to the preservation, safeguarding and dissemination of confidential and private information.

9.2.8 Destruction of Books and Records. After termination of the Creditor Trust, in compliance with Article XI *infra*, and all applicable rules and laws, the Creditor Trustee shall be authorized to destroy such books and records as he determines appropriate under the circumstances and in compliance with relevant laws.

### 9.3 Security Interests

The Creditor Trustee, its respective Professionals and Non-Professionals and the U.S. Trustee are hereby granted a first-priority lien on, and security interest in, the Creditor Fund Assets to secure the payment of all amounts owed to, accrued or reserved on account of, to be retained by or otherwise due hereunder to each of the above. The Creditor Trustee shall cause the Creditor Trust to take such actions and execute such documents as the Creditor Trustee, its respective Professionals and Non-Professionals and the U.S. Trustee deem appropriate to perfect the security interests granted hereunder. The Creditor Trustee is authorized to execute and deliver all documents on behalf of the Creditor Trust to accomplish the purposes of this Creditor Trust Agreement, the Plan and the Confirmation Order.

### 9.4 Compliance with Laws

Any and all distributions of Creditor Fund Assets shall comply with all applicable laws and regulations, including, but not limited to, applicable federal and state tax and securities laws.

## **ARTICLE X** **PROFESSIONALS AND NON-PROFESSIONALS**

### 10.1 Retention of Professionals and Non-Professionals

10.1.1 Retention of Professionals. Upon the Effective Date, the Creditor Trustee, subject to Judgment Creditor Approval, may employ such attorneys, accountants, consultants and other persons or professionals as he deems necessary and appropriate to fulfill his duties and obligations under the Plan. All professional and other compensation from and after the Confirmation Date shall be payable in accordance with the Creditor Trust Agreement; *provided, however*, that all invoices submitted by professionals retained by the Creditor Trustee

shall contemporaneously be submitted to the Judgment Creditors, who shall have thirty (30) days to review such invoices. Persons retained by the Creditor Trustee are not required to be disinterested and may include, without limitation, any professional who represented parties in interest in the Chapter 11 Cases, and the Creditor Trustee shall be permitted to retain any such persons, subject to Judgment Creditor Approval, in light of the efficiencies implicit in continuity.

10.1.2 Retention of Non-Professionals. Upon the Effective Date, the Creditor Trustee, subject to Judgment Creditor Approval, shall have the right to retain non-professionals without any further approval by any court or otherwise including, without limitation, employees, independent contractors or other agents as the Creditor Trustee deems appropriate (the “*Non-Professionals*”). All Non-Professional and other compensation from and after the Confirmation Date shall be payable in accordance with the Creditor Trust Agreement; *provided, however*, that all invoices submitted by professionals retained by the Creditor Trustee shall contemporaneously be submitted to the Judgment Creditors, who shall have thirty (30) days to review such invoices. Persons retained by the Creditor Trustee are not required to be disinterested and may include, without limitation, any professional who represented parties in interest in the Chapter 11 Cases, and the Creditor Trustee shall be permitted to retain any such persons, subject to Judgment Creditor Approval, in light of the efficiencies implicit in continuity.

10.2 Compensation of Professionals and Non-Professionals. The Creditor Trustee’s compensation shall be as established pursuant to the mutual agreement of the Creditor Trustee and the Judgment Creditors. The Creditor Trustee shall be exempt from giving any bond, surety or other security for the performance of its duties unless otherwise ordered by the Court.

## **ARTICLE XI** **TAXES**

### 11.1 Tax Returns and Payments

The Creditor Trustee will be responsible for: (a) the preparation and timely filing of all required federal, state and local tax returns for the Creditor Trust; (b) the timely payment of any taxes shown on such returns as owing by the Creditor Trust from the applicable Creditor Fund Assets; and (c) the preparation and timely distribution to the Beneficiaries of any necessary federal, state or local information returns. The Debtors shall prepare and execute all federal, state and local tax returns relevant to the tax years prior to the Effective Date. In the event the Debtors fail or refuse to comply with this provision, the Creditor Trustee is authorized to file or amend such tax returns as necessary and appropriate. The Creditor Trustee will retain all tax returns and supporting documentation until the expiration of the applicable statute of limitations. The Creditor Trustee may request an expedited determination of the taxes owed by the Debtors, the Creditor Trust or any Disputed Claims Reserve under Section 505(b) of the Bankruptcy Code for any tax return for which such determination may be requested.

### 11.2 Creditor Trust

The Creditor Trustee will file tax returns pursuant to Treas. Reg. § 1.671-4(a) on the basis that the Creditor Trust is a grantor trust that is a “liquidating trust” within the meaning of Treas.

Reg. § 301.7701-4(d) and related regulations. Pursuant to such provisions, for federal income tax purposes, the Creditor Trustee will allocate to the Beneficiaries their applicable shares of any income or loss of the Creditor Fund Assets, and such Beneficiaries will be subject to tax on the Creditor Fund Assets' taxable income on a current basis. As soon as reasonably practicable after the close of each calendar year, the Creditor Trustee will send each affected Beneficiary a statement setting forth such Beneficiary's share of the Creditor Trust's income, gain, deduction, loss and credit for the year and will instruct the Beneficiary to report all such items on his, her or its tax return for such year and pay any tax due with respect thereto.

### 11.3 Disputed Claims Reserve

The Creditor Trustee will file all applicable tax and other returns and statements for the reserve for Disputed Claims in accordance with the requirements for discrete trusts taxed pursuant to Section 641, *et seq.* of the Internal Revenue Code or as "disputed ownership funds" within the meaning of Treas. Reg. § 1.468B-9(b)(1), as applicable. In addition, the Creditor Trustee will pay from the applicable Creditor Fund Assets on a current basis any taxes owed on any net income or gain of such reserve.

### 11.4 Tax Withholding and Reporting; Liability for Taxes

The Creditor Trustee (and his designees) will comply with all applicable tax withholding and reporting requirements imposed on it or on the Creditor Trust by any governmental unit, and all distributions pursuant to the Plan will be subject to applicable withholding and reporting requirements. The Creditor Trustee (and his designees) will be authorized to take any actions that may be necessary or appropriate to comply with such tax withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes or establishing any other mechanism the Creditor Trustee believes is reasonable and appropriate following consultation with the Judgment Creditors, including requiring holders of Claims to submit appropriate tax and withholding certifications. To the extent any Claim holder fails to submit appropriate tax and withholding certifications as required by the Creditor Trustee, such Claim holder's distribution may, in the Creditor Trustee's reasonable discretion, be deemed undeliverable and be subject to the provisions of the Plan and this Creditor Trust Agreement with respect to undeliverable distributions. Each person or entity receiving (or deemed to receive) a distribution pursuant to the Plan will have sole responsibility for the payment of any taxes imposed on it.

## **ARTICLE XII** **TERMINATION OF THE CREDITOR TRUST**

### 12.1 Duration and Extension

The Creditor Trust will terminate no later than the fifth (5th) anniversary of the Effective Date; *provided, however*, that on or prior to the date six (6) months prior to such termination, the Court, upon motion by a party in interest, may extend the term of the Creditor Trust for a finite period if it is necessary to the liquidating purpose thereof. Multiple extensions may be obtained so long as Court approval is obtained at least six (6) months prior to the expiration of such extended term; *provided, however*, that prior to requesting any such extension, the Creditor

Trustee must receive an opinion of counsel or a favorable ruling from the IRS that any further extension would not adversely affect the status of the trust as a grantor trust for federal income tax purposes.

#### 12.2 Termination Upon Distribution of All Creditor Fund Assets

The Creditor Trust will terminate and the Creditor Trustee will have no additional responsibility in connection therewith except as may be required to effectuate such termination under relevant law and except as described in Section 12.4 hereof, upon the latest of: (a) the payment of all costs, expenses and obligations incurred in connection with administering the Creditor Trust; (b) the distribution of all remaining Creditor Fund Assets; (c) the closure or dismissal of the Chapter 11 Cases; or (d) the completion of any necessary or appropriate reports, tax returns or other documentation determined by the Creditor Trustee, in its reasonable discretion, to be necessary, appropriate or desirable, in each case pursuant to and in accordance with the Plan, the Confirmation Order and this Creditor Trust Agreement.

#### 12.3 Diligent Administration

The Creditor Trustee shall: (a) not unduly prolong the duration of the Creditor Trust; (b) at all times endeavor to resolve, settle or otherwise dispose of all claims that constitute Creditor Fund Assets; (c) effect the distribution of the Creditor Fund Assets to the Beneficiaries in accordance with the terms hereof; and (d) endeavor to terminate the Creditor Trust as soon as practicable and without derogating from the Plan or this Creditor Trust Agreement. Prior to and upon termination of the Creditor Trust, the Creditor Trustee shall distribute the Creditor Fund Assets to the Beneficiaries in accordance with their distribution rights under the Plan and the Confirmation Order, subject to the provisions set forth herein. If any distributions of the Creditor Trust are not duly claimed, the Creditor Trustee shall dispose of all such distributions in accordance with the Plan, the Confirmation Order and this Creditor Trust Agreement.

#### 12.4 Other Termination Procedures

Upon termination of this Creditor Trust, the Creditor Trustee will file a written notice with the Court disclosing the Creditor Trust's termination. Notwithstanding the foregoing, after the termination of the Creditor Trust, the Creditor Trustee will have the power to exercise all the rights, powers and privileges herein conferred solely for the purpose of liquidating and winding up the affairs of the Creditor Trust. Except as otherwise provided under the Plan or this Creditor Trust Agreement, for a period of five (5) years after the distribution of all of the Creditor Fund Assets, the Creditor Trustee will retain the books, records and files that have been delivered to or created by the Creditor Trustee, at which time the Creditor Trustee may dispose of such books, records and files in any manner that the Creditor Trustee deems appropriate. Except as otherwise specifically provided herein, after termination of this Creditor Trust Agreement, the Creditor Trustee shall have no further duties or obligations hereunder.

### **ARTICLE XIII MISCELLANEOUS PROVISIONS**

#### 13.1 Intention of Parties to Establish a Grantor Trust

This Creditor Trust Agreement is intended to create a grantor trust for United States federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as a grantor trust.

### 13.2 Preservation of Privilege

In connection with the rights, claims and Causes of Action that constitute the Creditor Fund Assets, any attorney-client privilege, work-product privilege or other privilege or immunity attaching to any documents or communications (whether written or oral) transferred to the Creditor Trust shall vest in the Creditor Trust and its representatives, and the Debtors, on the one hand, and the Creditor Trustee, on the other hand, are authorized to take all necessary actions to effectuate the transfer of such privileges.

### 13.3 Cooperation

The Debtors shall provide the Creditor Trustee with their books and records, as maintained in the ordinary course of the Debtors' business, as the Creditor Trustee shall reasonably require for the purpose of performing its duties and exercising its powers under this Creditor Trust Agreement, the Plan or the Confirmation Order. The Creditor Trustee shall be responsible for all costs and expenses arising from the transfer of such books and records, and for the storage and maintenance thereafter. All third parties in possession of the Debtors' books and records shall provide the Creditor Trustee with similar cooperation, and the Creditor Trustee shall have the right to seek appropriate relief from the Court or any other court with jurisdiction over the matter to the extent that a third-party unreasonably refuses to cooperate with the Creditor Trustee's requests.

### 13.4 Payment of Statutory Fees

Following the transfer of all Creditor Fund Assets to the Creditor Trust on and after the Effective Date and through the date that a final decree is entered in the Chapter 11 Cases, the Creditor Trust shall be obligated to pay any U.S. Trustee fees associated with the Chapter 11 Cases pursuant to 28 U.S.C. § 1930(a)(6).

### 13.5 Implied Authority of the Creditor Trustee

No person dealing with the Creditor Trust shall be obligated to inquire into the authority of the Creditor Trustee in connection with the protection, conservation or disposition of Creditor Fund Assets.

### 13.6 Governing Law; Submission to Jurisdiction; Service of Process

This Creditor Trust Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without giving effect to rules governing the conflict of law. The Court will have exclusive jurisdiction over any dispute arising out of or in connection with the transactions contemplated by this Creditor Trust Agreement, including, without limitation, abandonment of any assets, the issuance of subpoenas, prosecution of Causes of Action, settlement of Causes of Action, or any other matters related to actions initiated by the Creditor Trustee and arising under state law, federal law, or the Bankruptcy Code. The parties to this

Creditor Trust Agreement consent to the exclusive jurisdiction of the Court (and of the appropriate appellate courts therefrom) and irrevocably waive, to the fullest extent permitted by law, any objection that they may now or hereafter have to the laying of the venue of any such dispute in the Court or that any such dispute brought in the Court has been brought in an inconvenient forum. This Creditor Trust Agreement is subject to any order or act of the Court applicable hereto. Process may be served on any party anywhere in the world, whether within or without the jurisdiction of the Court. Without limiting the foregoing, each party to this Creditor Trust Agreement agrees that service of process on that party may be made upon the designated Person or entity at the address provided in Section 13.8 hereof and will be deemed to be effective service of process on that party.

13.7 Severability

If any provision of this Creditor Trust Agreement or the application thereof to any person or circumstance shall be finally determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Creditor Trust Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

13.8 Notices

Any notice or other communication hereunder shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if delivered via personal delivery, first-class mail (unless registered or certified mail is required), facsimile or electronic mail to the addresses as set forth below, or such other addresses as may be filed with the Court:

**Creditor Trustee:**

Barry A. Chatz  
Arnstein & Lehr LLP  
120 South Riverside Plaza, Suite 1200  
Chicago, Illinois 60606  
Telephone: 312-876-6670  
Facsimile: 312-876-6241  
E-Mail: [bachatz@arnstein.com](mailto:bachatz@arnstein.com)

**Judgment Creditors:**

Michael M. Eidelman, Esq. (ARDC #6197788)  
Stephanie K. Hor-Chen, Esq. (ARDC #6283105)  
Vedder Price P.C.  
222 North LaSalle Street, Suite 2600  
Chicago, Illinois 60601  
Telephone: (312) 609-7500  
E-Mail: [meidelman@vedderprice.com](mailto:meidelman@vedderprice.com)  
[schen@vedderprice.com](mailto:schen@vedderprice.com)

Robert M. Andalman, Esq. (ARDC #6209454)  
Andrew R. Greene, Esq. (ARDC #6225072)  
A&G LAW LLC  
542 South Dearborn, 10th Floor  
Chicago, Illinois 60605  
Telephone: (312) 341-3900  
E-Mail: [randalman@aandglaw.com](mailto:randalman@aandglaw.com)  
[agreene@aandglaw.com](mailto:agreene@aandglaw.com)

### 13.9 Notices if to a Beneficiary

Any notice or other communication hereunder shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if deposited, postage prepaid, in a post office or letter box addressed to the person for whom such notice is intended to the name and address set forth on the respective Beneficiary's proof of claim.

### 13.10 Headings

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

### 13.11 Counterparts and Facsimile Signatures

This Creditor Trust Agreement may be executed in counterparts and a facsimile or other electronic form of signature shall be of the same force and effect as an original.

### 13.12 Amendment or Waiver

Any substantive provision of this Creditor Trust Agreement may be materially amended or waived by the Creditor Trustee, subject to the prior approval of a three-fifths vote of the Members of the Judgment Creditors, with the approval of the Court upon notice and an opportunity for a hearing; *provided, however*, that no change may be made to this Creditor Trust Agreement that would adversely affect the federal income tax status of the Creditor Trust as a "grantor trust," if applicable. Technical or non-material amendments to or waivers of portions of this Agreement may be made by the Creditor Trustee without the approval of the Court, as necessary, to clarify this Creditor Trust Agreement or to enable the Creditor Trust to effectuate the terms of this Creditor Trust Agreement; *provided, however*, that such amendments are subject to the prior approval of a three-fifths vote of the Judgment Creditors.

### 13.13 Intervention

On the Effective Date, and without requirement of obtaining any order of the Court, the Creditor Trustee shall be deemed to have intervened or substituted as plaintiff, movant, defendant or additional party, as appropriate, in any adversary proceeding, contested matter, Claim objection or other motion that was filed prior to the Effective Date, where the subject

matter of such action involves any Disputed Claim, any Creditor Trust Asset or any Claim, to the extent such Claim impacts the Creditor Fund Assets.

IN WITNESS WHEREOF, the Parties hereto have either executed and acknowledged this Creditor Trust Agreement, or caused it to be executed and acknowledged on their behalf by their duly authorized officers all as of the date first above written.

**CREDITOR TRUSTEE**

By: \_\_\_\_\_  
Barry A. Chatz, not individually, but  
solely as trustee of the Creditor Trust

**BALMORAL RACING CLUB, INC.**

**MAYWOOD PARK TROTTING  
ASSOCIATION, INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

**EMPRESS CASINO JOLIET  
CORPORATION**

**DES PLAINES DEVELOPMENT  
LIMITED PARTNERSHIP D/B/A  
HARRAH'S CASINO CRUISES JOLIET**

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

**HOLLYWOOD CASINO-AURORA, INC.**

**ELGIN RIVERBOAT RESORT-  
RIVERBOAT CASINO, D/B/A GRAND  
VICTORIA CASINO**

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_