

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

In re: : CASE NO. 13-31943
DESIGNLINE CORPORATION, :
Debtor. : CHAPTER 11
: :
: :
: :
: :

In re: : CASE NO. 13-31944
DESIGNLINE USA, LLC, :
Debtor.¹ : CHAPTER 11
: (Jointly Administered)
: :
: :
: :

AMENDED LIQUIDATING TRUST AGREEMENT

by and among

DESIGNLINE CORPORATION AND DESIGNLINE USA, LLC
Collectively, as Debtors and Debtors-in-possession

and

ELAINE T. RUDISILL
as Trustee

Dated: _____

¹The Debtors, along with the last four digits of each Debtor’s tax identification number, are as follows: DesignLine Corporation (3294) (Case No. 13-31943) and DesignLine USA, LLC (3957) (Case No. 13-31944). The Debtors’ corporate headquarters and mailing address are 2309 Nevada Boulevard, Charlotte, NC 28273. In the last eight (8) years, DesignLine Corporation also used the following names: (i) DesignLine International Holdings, LLC; (ii) DesignLine International Corporation; (iii) Jasper Merger Sub Inc., (iv) Jasper Ventures Inc., and (v) DesignLine Corporation.

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LIQUIDATING TRUST AGREEMENT

THIS LIQUIDATING TRUST AGREEMENT (this “Agreement”) is made this ___ day of _____, 2014, by and among DesignLine Corporation, DesignLine USA, LLC (collectively, the “Debtors” or “DesignLine”) and Elaine T. Rudisill (the “Trustee”).

RECITALS:

A. On August 15, 2013, 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 District of Delaware (the “Bankruptcy Court”).

B. By order, dated March ____, 2014, the United States Bankruptcy Court for the Western District of North Carolina, Charlotte Division (the “Bankruptcy Court”) confirmed the Liquidating Plan of the Official Committee of Unsecured Creditors of DesignLine Corporation and DesignLine USA, LLC pursuant to Chapter 11 of the United States Bankruptcy Code (the “Plan”). Capitalized terms used herein without definition shall have the respective meanings assigned to such terms in the Plan.

C. The Liquidating Trust of DesignLine (the “Liquidating Trust”) is created on behalf of, and for the benefit of, the holders of the DIP Facility Claim and the holders of the Allowed Claims in Classes 1, 2, 3, and 4 (collectively, the “Beneficiaries”).

D. The Liquidating Trust is created pursuant to, and to effectuate, the Plan for the primary purpose of liquidating the assets transferred to it (the “Liquidating Trust Assets”) for the benefit of the Beneficiaries as a liquidating trust, in accordance with Treasury Regulation § 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 Liquidating Trust.

E. The Liquidating Trust provides that the Beneficiaries of the Liquidating Trust will be treated as the grantors of the Liquidating Trust and deemed owners of the Liquidating Trust Assets. The Liquidating Trust requires the Trustee to file returns for the Liquidating Trust as a grantor trust pursuant to Treasury Regulation § 1.671-4(a).

F. The Liquidating Trust is intended to qualify as a “grantor trust” for federal income tax purposes with the Beneficiaries treated as the grantors and owners of the trust.

G. This Liquidating Trust provides for consistent valuations of the transferred property by the Trustee and the Beneficiaries, and those valuations must be used for all federal income tax purposes.

H. All of the Liquidating Trust’s income and/or recoveries are to be treated as subject to tax on a current basis to the Beneficiaries who will be responsible for payment of any tax due.

I. Subject to Article II(F)(i) hereof, this Liquidating Trust contains a fixed determinable termination date that is not more than five years from the date of creation of the Liquidating Trust and that is reasonable based on all the facts and circumstances.

J. The investment powers of the Trustee other than those reasonably necessary to maintain the value of the Liquidating Trust Assets and to further the liquidating purpose of the Liquidating 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.

K. As set forth in Article IV(E) hereof, the Liquidating Trust is required to distribute, after payment of the DIP Facility Claim, to the holders of Allowed Claims in Classes 1, 2, 3 and 4 on account of their interests in the Liquidating Trust the proceeds of any litigation and the proceeds of the sale of any Liquidating Trust Assets no later than the sixtieth (60th) day after the entry of the Final Decree. Prior to such date, the Liquidating Trustee, in his or her business judgment when it is cost effective to do so and subject to approval of the Liquidating Trust Committee (as defined herein), shall be authorized but not required to make one or more interim distributions, provided, however, the Liquidating Trustee shall not make any interim distributions (i) more than one (1) time in any twelve (12) month period; (ii) to the extent that available Cash left after such interim distribution is insufficient to fund the expenses of the Liquidating Trust for the twelve (12) months following such interim distribution plus the Disputed Claim Reserve; or (iii) on account of any Disputed Claim whether such Claim is Disputed in whole or in part.

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

ARTICLE I THE TRUSTEE

A. Appointment. Debtors hereby appoint Elaine T. Rudisill to serve as the initial Trustee, and Elaine T. Rudisill hereby accepts such appointment and agrees to serve in such capacity, effective upon the Effective Date of the Plan. The Trustee will serve until (a) termination of the Liquidating Trust in accordance with this Agreement; or (b) the Trustee's removal or resignation. A successor Trustee may be appointed by majority vote of the Liquidating Trust Committee (defined herein) in the event that the Trustee is removed, resigns pursuant to Article V of this Agreement, or the Trustee otherwise vacates the position.

B. Fiduciary Capacity. The Trustee's powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purposes of the Liquidating Trust and not otherwise, except that the Trustee may deal with the Liquidating Trust Assets to pay her fees and expenses as permitted by Article I(I). The Trustee shall have the authority to bind the Liquidating Trust but shall for all purposes hereunder be acting in the capacity as Trustee and not individually.

C. Scope of Authority. The Trustee will have only the rights, powers and privileges to act on behalf of the Liquidating Trust expressly provided for in the Plan and this Agreement,

or as ordered by the Bankruptcy Court, and as provided by law in the event that the Plan or this Agreement does not reference any such right, power or privilege.

D. Powers and Duties.

(i) General Powers. The powers of the Trustee shall, without any further Bankruptcy Court approval (except as specifically required herein) and subject in all respects to the other terms and conditions of this Agreement and the confirmed Plan, including, but not limited to, the review and oversight of the Liquidating Trust Committee as provided for by this Agreement, include:

(a) the power to invest funds in, and withdraw, make distributions and pay taxes and other obligations owed by the Liquidating Trust from funds held by the Trustee in accordance with the Plan and this Agreement;

(b) the power to engage employees, independent contractors and other professional persons to assist the Trustee with respect to its responsibilities;

(c) the power to litigate, compromise and settle all Causes of Action, Transferred Causes of Action and Avoidance Actions;

(d) all rights, powers and benefits afforded to a “trustee” under sections 704 and 1106 of the Bankruptcy Code;

(e) to pay quarterly fees to the Clerk’s Office of the Western District of North Carolina pursuant to 28 U.S.C. § 1930(a)(6);

(f) such other powers as may be vested in or assumed by the Liquidating Trust or the Trustee pursuant to the Plan, the Confirmation Order, Bankruptcy Court order, or as may be necessary and proper to carry out the provisions of the Plan.

(ii) Discretion of Trustee. The Trustee shall in her business judgment pursue or not pursue any and all Causes of Action, Transferred Causes of Action, or Avoidance Actions, or any other rights on behalf of Debtors and this Trust, and shall have no liability for the outcome of any such decision, except as such decision may constitute an act of gross negligence or willful misconduct. The Trustee may incur any reasonable and necessary expenses in liquidating and converting the Liquidating Trust Assets to cash.

(iii) Duties of the Trustee. In connection with the administration of the Liquidating Trust, except as otherwise set forth in this Agreement or the Plan, the Trustee is authorized to perform any and all acts necessary and reasonable to accomplish the purposes of the Liquidating Trust. Without limiting, but subject to the foregoing, and subject in all respects to the other terms and conditions of this Agreement and the confirmed Plan, the Trustee shall be authorized, but shall not be required, to carry out the following duties, in consultation with the Liquidating Trust Committee:

(a) to pursue and prosecute, to settle, or to decline to pursue, all Causes of Action, Transferred Causes of Action, or Avoidance Actions, or to decline to pursue, all Causes of Action, Transferred Causes of Action, or Avoidance Actions based upon the Trustee's assessment of the net benefit expected to be received by the Liquidating Trust in connection therewith (taking into account the costs and expenses projected to be incurred in connection therewith, the likelihood of success on the merits, and the range of potential recoveries to be received by the Liquidating Trust);

(b) to accept, preserve, receive, collect, manage, invest, supervise and protect the Liquidating Trust Assets, each in accordance with the Plan and this Agreement;

(c) to liquidate, transfer, sell, lease or otherwise abandon or dispose of the Liquidating Trust Assets or any part thereof or any interest therein upon such terms as the Trustee determines to be necessary, appropriate or desirable, pursuant to the Plan and this Agreement;

(d) to review, analyze and, as appropriate, prosecute objections to Claims;

(e) to compromise, settle and resolve any Disputed Claims upon such terms and conditions as the Trustee deems appropriate and in the best interests of the Liquidating Trust;

(f) to open and maintain all accounts necessary to make distributions to Beneficiaries of the Liquidating Trust from the assets of the Liquidating Trust and take other actions consistent with the Plan in the name of the Liquidating Trust;

(g) to invest any Cash of the Liquidating Trust in accordance with the terms and limitations hereof;

(h) to prepare and maintain an adequate set of financial books, records and/or databases of the Liquidating Trust;

(i) to retain or engage, with Bankruptcy Court approval, such employees, professional persons and agents as are appropriate, necessary or desirable to complete: (a) disbursements to Beneficiaries and (b) the general administration of the Liquidating Trust as required by law;

(j) to make ordinary and reasonable disbursements from the assets of the Liquidating Trust to pay the ordinary and necessary expenses of administering the Liquidating Trust, without the necessity of providing any notice or seeking or obtaining any approval of the Bankruptcy Court with respect to such disbursements except as otherwise set forth in the Plan, or as otherwise required by Article VI;

(k) to calculate and make interim and final distributions of the assets of the Liquidating Trust to the Beneficiaries in accordance with the terms of this Agreement and applicable law;

(l) to execute, deliver, file, and/or record such contracts, instruments, releases, indentures, and other agreements or documents, and to take such actions, as may be necessary, desirable or appropriate to administer the Liquidating Trust;

(m) to prepare and file tax and informational returns on behalf of the Liquidating Trust as required by applicable federal, state and local law, and in accordance with the terms of this Agreement;

(n) to comply with the Plan and exercise its rights and fulfill its obligations thereunder;

(o) to appear and participate in any proceeding before the Bankruptcy Court with respect to any matter regarding or relating to this Agreement, the Liquidating Trust or the Liquidating Trust Assets;

(p) to defend and participate, as a party or otherwise, in any judicial, administrative, arbitative or other proceeding relating to this Agreement, the Liquidating Trust, or the Liquidating Trust Assets;

(q) to file with the Bankruptcy Court and/or the Office of the Bankruptcy Administrator the reports and other documents required by the Plan or otherwise required to close the Chapter 11 Cases, including but not limited to, quarterly post-confirmation reports. Notwithstanding the foregoing, the Trustee shall provide the Bankruptcy Administrator with a monthly report detailing the amounts on deposit in the Liquidating Trust;

(r) to terminate the Liquidating Trust and seek entry of a Final Decree closing the Chapter 11 Cases in accordance with the terms of the Plan; and

(s) to take all other actions not inconsistent with the provisions of the Plan or the applicable Liquidating Trust Agreement which the Trustee deems reasonably necessary or desirable in connection with the administration of the Liquidating Trust.

(iv) Authority to Act. Except as otherwise set forth in this Agreement or in the Plan, and subject to the retained jurisdiction of the Bankruptcy Court as provided for in the Plan, but without prior or further authorization, the Trustee may control and exercise authority over the Liquidating Trust Assets and over the protection, conservation and disposition thereof. No person dealing with the Liquidating Trust shall be obligated to inquire into the authority of the Trustee in connection with the protection, conservation or disposition of the Liquidating Trust Assets. It is intended that a signed copy of this Agreement serve as adequate proof of the Trustee's authority to act if such proof is required for any reason by any third party.

E. Limitation of Trustee's Authority.

(i) No Trade or Business. The Trustee shall not, and shall not be authorized to, engage in any trade or business with respect to the Liquidating Trust Assets or any proceeds therefrom except to the extent reasonably necessary to comply with the liquidating purpose of the Liquidating Trust and shall take such actions consistent with the prompt orderly liquidation of the Liquidating Trust Assets as are required by applicable law and consistent with the treatment of the Liquidating Trust as a liquidating trust under Treasury Regulation § 301.7701-4(d), and such actions permitted herein.

(ii) Released Claims. The Trustee shall not have any authority to pursue any Claims and Causes of Action waived, exculpated or released in accordance with the provisions of the Plan, or by previous order of the Bankruptcy Court in this bankruptcy case.

(iii) Investment and Safekeeping of the Liquidating Trust Assets. All moneys and other assets received by the Liquidating 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 Liquidating Trust Assets, unless, and to the extent required, by law or by the Plan. The Trustee shall be under no liability for interest or producing income on any moneys received by the Liquidating Trust hereunder and held for distribution or payment to the Beneficiaries, except as such interest shall actually be received by the Trustee. Investments of any moneys held by the Liquidating Trust shall be administered in view of the manner in which individuals of ordinary prudence, discretion and judgment would act in the management of their own affairs; provided, however, that the right and power of the Trustee to invest the Liquidating Trust Assets, the proceeds thereof, or any income earned by the Liquidating Trust, shall be limited to the right and power to invest such assets (pending periodic distributions in accordance with Article IV(E) hereof) 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, provided, further, that the scope of any such permissible investments shall be limited to include only those investments that a liquidating trust, within the meaning of Treasury Regulation § 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the Internal Revenue Service (the "IRS") guidelines, whether set forth in IRS rulings, other IRS pronouncements or otherwise. To the extent that the amounts on deposit in any one account exceed the insurable FDIC limits, the Liquidating Trustee shall consult with the Bankruptcy Administrator.

(iv) Limiting Transfers. The Trustee shall not take, or cause the Liquidating Trust to take, any action that would cause the interests in the Liquidating Trust to be considered readily tradable on a secondary market (or a substantial equivalent thereof) within the meaning of Section 7704(b)(2) of the Internal Revenue Code of 1986, as amended (the "IRS Code"), and Treasury Regulations § 1.7704-1(c), and the Trustee shall not permit any transfer of an interest in the Liquidating Trust if it would cause the Liquidating Trust (were it be classified as a partnership rather than a grantor trust) to be treated as a "publicly traded partnership" as defined in IRS Code § 7704.

(v) Oversight. The actions of the Trustee authorized by this Agreement shall be subject to oversight by the Liquidating Trust Committee in accordance with Article I(N).

F. Liability of Trustee. In no event shall the Trustee, the Trustee's employees, or any of the Trustee's professionals or representatives be held personally liable for any claim asserted against the Liquidating Trust, the Trustee, the Trustee's employees, or any of the Trustee's professionals or representatives, except to the extent occasioned by or based upon willful misconduct or gross negligence. Specifically, the Trustee, the Trustee's employees, and any of the Trustee's professionals or representatives shall not be liable for any negligence or any error of judgment in either case made in good faith, or with respect to any action taken or omitted to be taken in good faith, except to the extent that the action taken or omitted to be taken by the Trustee, the Trustee's employees, or any of the Trustee's professionals or representatives are determined by a final order to be due to their own respective gross negligence or willful misconduct.

G. Reliance by Trustee. Except as otherwise provided herein:

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

(ii) the Trustee may consult with legal counsel, financial or accounting advisors and other professionals, and the Trustee shall not be liable for any action taken or omitted to be taken by her in accordance with the advice thereof, except for acts of willful misconduct or gross negligence; and

(iii) persons dealing with the Trustee shall look only to the Liquidating Trust Assets to satisfy any liability incurred by the Trustee to such person in carrying out the terms of this Agreement, and the Trustee shall have no personal obligation to satisfy any such liability, except to the extent such liability or obligation arises as a result of the gross negligence or willful misconduct of the Trustee in which case the Liquidating Trust Assets shall not be subject to such claims or liabilities.

H. Authorization to Expend Liquidating Trust Assets. The Trustee may expend the assets of the Liquidating Trust (i) to pay expenses of administration of the Liquidating Trust (including, but not limited to, the fees and expenses of the Trustee and the Liquidating Trustee Professionals, any taxes imposed on the Liquidating Trust or in respect of the assets of the Liquidating Trust, and fees and expenses in connection with litigation), and (ii) to satisfy other liabilities incurred or assumed by the Liquidating Trust (or to which the assets are otherwise subject) in accordance with this Agreement or the Plan.

I. Compensation of the Trustee

(i) Expense Reimbursements. In accordance with Article I, Sections I and J herein, the Liquidating Trust shall reimburse, from the Liquidating Trust Assets, the Trustee for the actual reasonable out-of-pocket expenses incurred by the Trustee, including, without limitation, necessary travel, lodging, postage, telephone and facsimile charges upon receipt of periodic billings.

(ii) Good Faith Reimbursements. The Liquidating Trust Assets shall be subject to the claims of the Trustee, and the Trustee shall be entitled to reimburse herself out of any available cash in the Liquidating Trust for her actual out-of-pocket expenses and against and from any and all loss, liability, expense, or damage which the Trustee may sustain in good faith and without willful misconduct, gross negligence, or fraud in the exercise and performance of any of the powers and duties of the Trustee. All requests for reimbursement for professional services rendered and expenses incurred by the Liquidating Trustee shall be subject to the notice provisions of Article IV(C)(1)(e) of the Plan.

(iii) Payment of Expenses. All compensation and other amounts payable to the Trustee shall first be paid from the assets of the Liquidating Trust in accordance with the waterfall set forth in Article IV(E)(ii).

J. Indemnification; Bond.

(i) Indemnification. The Liquidating Trust shall indemnify, defend and hold harmless the Trustee, the Trustee's employees, independent contractors and any of the Trustee's professionals or representatives from and against any and all claims, causes of action, liabilities, obligations, losses, damages or expenses (including attorneys' fees) (other than only to the extent determined by a Final Order to be due to the Trustee's own gross negligence or willful misconduct after the Effective Date) to the fullest extent permitted by applicable law. Any action taken or omitted to be taken with the approval of the Bankruptcy Court will conclusively be deemed not to constitute gross negligence or willful misconduct.

(ii) Bond. The Trustee shall not be required to post a bond, unless otherwise ordered by the Bankruptcy Court.

K. Confidentiality. The Trustee shall hold, and shall cause her agents and representatives to hold, during the period that she serves as Trustee under this Agreement, strictly confidential (except as required by law or order of a court) and not use for personal gain any material, non-public information of or pertaining to any entity or matter to which any of the Liquidating Trust Assets relates or of which she has become aware in her capacity as Trustee.

L. Final Decree. It shall be the duty of the Trustee to seek and obtain a final decree or decrees from the Bankruptcy Court.

M. Termination. The duties, responsibilities and powers of the Trustee will terminate on the date the Liquidating Trust is dissolved under applicable law in accordance with the Plan and this Agreement, or by an Order of the Bankruptcy Court.

N. Liquidating Trust Committee. On the Effective Date, a committee (the "Liquidating Trust Committee") shall be established to fulfill the duties and obligations set forth in this Agreement. The Liquidating Trust Committee shall be comprised of those members of the official committee of unsecured creditors in the Debtors' bankruptcy case, who wish to serve on the Liquidating Trust Committee, as set forth on Exhibit "A". Additionally, the Cyrus Entities (as defined on Exhibit "A") shall appoint one individual to serve as an ex-officio, non-voting member of the Liquidating Trust Committee. The Liquidating Trust Committee shall oversee, on an advisory basis, the activities of the Liquidating Trust and the Trustee in order to insure that

the Liquidating Trust is administered effectively and efficiently. The Liquidating Trust Committee may adopt rules of procedure or bylaws.

(i) Powers of the Liquidating Trust Committee. The powers of the Liquidating Trust Committee shall include the following: (i) monitoring the activities of the Trust and the Trustee as provided in this Agreement, (ii) consulting with the Trustee with respect to the distribution of the Liquidating Trust Assets to the Beneficiaries in accordance with the Plan, (iii) petitioning the Court for an order compelling the Trustee to distribute funds in the event that the Liquidating Trust Committee believes that the Trustee is unreasonably withholding Liquidating Trust Assets from distribution, (iv) participating in the process of removing the Trustee for cause, pursuant to an order of the Court, in accordance with Article V; (v) participating in the process of appointing a successor Trustee, pursuant to an order of the Court, as provided in Article V; (vi) approving any change or addition proposed by the Trustee to the employees, professional persons or agents of the Liquidating Trust; (vii) approving the settlement or abandonment of any Liquidating Trust Assets in excess of \$50,000, provided, however, that the Liquidating Trust Committee and the members thereof shall have no fiduciary duties to any person or entity, other than the Liquidating Trust, notwithstanding the foregoing, non-voting members of the Liquidating Trust Committee shall have no fiduciary duty to the Liquidating Trust.

(ii) Prosecution of Claims Against Liquidating Trust Committee Members. Avoidance and other claims or causes of action may exist in favor of the Liquidating Trust against certain Liquidating Trust Committee members or affiliates thereof. The Trust shall prosecute any and all claims and causes of action that it may have with regard to collection of accounts receivable, or recoveries in respect of preferences, fraudulent conveyances and other avoidance actions and other claims, without regard to whether such claims or causes of action involve Liquidating Trust Committee members, or affiliates of such members.

(iii) Liquidating Trust Committee Recusal. A Liquidating Trust Committee member shall be recused from any discussions or deliberations of the Trustee concerning any action which directly or indirectly relates to any claim or cause of action, including a claim objection, which may be considered or brought by the Liquidating Trust against such Liquidating Trust Committee member, or affiliates of such member. Liquidating Trust Committee members that are required to be so recused shall not have access to any non-publicly available information that may be the subject of litigation concerning any such claim or cause of action described above.

ARTICLE II THE LIQUIDATING TRUST

A. Transfer of Assets to Liquidating Trust. Pursuant to the Plan, Debtors and the Trustee hereby establish, on behalf of the Beneficiaries, and Debtors hereby transfer, assign, and deliver to the Liquidating Trust, on behalf of the Beneficiaries, the Liquidating Trust Assets and the Prepetition Collateral, with no reversionary interest in the Debtor. The Trustee agrees to accept and hold the Liquidating Trust Assets and Prepetition Collateral and reduce to Cash or otherwise liquidate the Liquidating Trust Assets and the Prepetition Collateral and distribute such liquidated assets in accordance with and subject to the terms and priority of the Plan and

this Agreement. Notwithstanding the foregoing, the transfer of the Liquidating Trust Assets and Prepetition Collateral shall be subject to lien under the DIP Facility.

B. Title to Assets. The transfer of the Transferred Assets to the Liquidating Trust shall be made for the benefit of the Beneficiaries in accordance with the Plan and this Agreement. The payment of distributions and the utilization of all Liquidating Trust Assets shall be made in accordance with the Plan and this Agreement.

C. Grantor Trust. For all federal income tax purposes, all parties (including, without limitation, Debtors, the Trustee, and the Beneficiaries) shall treat the transfer of Debtors' assets to the Liquidating Trust, as set forth in this Article II, as a transfer of such assets to the Beneficiaries followed by a transfer of such assets by the Beneficiaries to the Liquidating Trust. Thus, the Beneficiaries shall be treated as the grantors and owners of the Liquidating Trust for federal income tax purposes.

D. Funding of Liquidating Trust. Debtors shall, on the Effective Date, transfer to the Liquidating Trust the Liquidating Trust Assets and Prepetition Collateral, subject to the DIP Lien. Following such transfer, Debtors shall have no further obligation to provide any funding with respect to the Liquidating Trust.

E. Valuation of Assets. The Liquidating Trust consists of fully encumbered property and unasserted claims and causes of action of unascertainable or zero value. For such reason, the Liquidating Trustee has ascribed a zero value to such Liquidating Trust Assets as of the date of transfer. The valuation ascribed to the Liquidating Trust Assets shall be used consistently by the Liquidating Trust and the beneficiaries of the Liquidating Trust for all Federal income tax purposes.

F. Termination of Liquidating Trust.

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

(ii) **Expeditious Liquidation.** The Trustee shall not unduly prolong the duration of the Liquidating Trust and shall at all times endeavor to resolve, settle or otherwise dispose of all claims that constitute Liquidating Trust Assets and to effect the distribution of the Liquidating Trust Assets to the Beneficiaries in accordance with the terms hereof and terminate the Liquidating Trust as soon as practicable.

ARTICLE III BENEFICIARIES

A. Identification of Beneficiaries. In order to determine the actual names, addresses and tax identification numbers of the Beneficiaries, the Trustee shall be entitled to conclusively rely on the names, addresses and tax identification numbers set forth in the most recent proof of Claim, Administrative Claim, pleading, notice of appearance, or written change of address notice filed and served on Debtors. If a Beneficiary has not filed any of the foregoing documents or written notice indicating such information, the Trustee shall be entitled to conclusively rely on the names, addresses and tax identification numbers reflected in the applicable Schedules of Debtors or, if more recent, contained in Debtors' records. Each Beneficiary's right to distribution from the Liquidating Trust, which is dependent upon such Beneficiary's classification under the Plan, shall be that accorded to such Beneficiary under the Plan. Each distribution by the Trustee to the Beneficiaries shall be made in accordance with the terms set forth herein.

B. Withholding. The Trustee may withhold from the amounts distributable to the Beneficiaries from the Liquidating Trust Assets at any time such sum or sums as may be required to be withheld under the income tax laws of the United States or of any state or political subdivision thereof.

C. Tax Identification Numbers. The Trustee shall request (in writing) from each Beneficiary a properly completed IRS Form W-9 or substitute Form W-9 providing the Employer or Taxpayer Identification Number for each Beneficiary as assigned by the IRS. Any Beneficiary that does not provide a completed Form W-9 within forty-five (45) days of the date of such written request (which such response deadline shall be included in the written request by the Trustee) sent by the Trustee shall have its Claim disallowed.

ARTICLE IV PURPOSE, AUTHORITY, LIMITATIONS, AND DISTRIBUTIONS

A. Purpose of the Liquidating Trust. The Liquidating Trust shall be established for the primary purpose of liquidating its assets, in accordance with Treasury Regulation § 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 Liquidating Trust. Accordingly, the Liquidating Trust shall, in an expeditious but orderly manner, liquidate and convert to cash the Liquidating Trust Assets, make timely distributions and not unduly prolong the duration of the Liquidating Trust. The liquidation of the Liquidating Trust Assets may be accomplished through the prosecution, compromise and settlement, abandonment or dismissal of any or all claims, rights, Causes of Action, Avoidance Actions, or otherwise.

B. Resolution of Liquidating Trust Assets by the Trustee. The Trustee shall be empowered to and, in her discretion (subject to the provisions hereof), may take all appropriate action with respect to the prosecution, settlement or other resolution of Claims, Causes of Action, and Avoidance Actions constituting the Liquidating Trust Assets. The Trustee shall deal with all collections and settlements within the normal course of her duties.

C. Books and Records.

(i) Liquidating Trust's Books and Records. On behalf of the Liquidating Trust, the Trustee shall maintain, in respect of the Liquidating Trust and the Beneficiaries, books and records relating to the assets and income of the Liquidating Trust and the payment of expenses of, and liabilities of, claims against or assumed by, the Liquidating Trust in such detail and for such period of time as may be necessary to enable her to make full and proper accounting in respect thereof and to comply with applicable provisions of law. Nothing in this Agreement requires the Liquidating Trust or the Trustee to file any accounting or seek approval of any court with respect to the administration of the Liquidating Trust, or as a condition for making any payment or distribution out of the Liquidating Trust Assets. Beneficiaries shall have the right upon thirty (30) days' prior written notice delivered to the Trustee to inspect such books and records, provided that, if so requested, such Beneficiary shall have entered into a confidentiality agreement satisfactory in form and substance to the Trustee.

(ii) Debtors' Books and Records. On the Effective Date, the Debtors' books and records in any form, including all electronic records (the "Books and Records"), shall be transferred to the Liquidating Trust. To the extent the Debtors retained Books and Records and such were transferred to the Liquidating Trust, the Liquidating Trustee shall preserve and not destroy such Books and Records without first obtaining approval by the Bankruptcy Court.

D. Disputed Claim Reserve. The Trustee may maintain, in accordance with the Trustee's powers and responsibilities under the Plan and this Agreement, a reserve for any distributable amounts to be set aside on account of Disputed Claims; *provided, however*, that the Trustee may not retain Cash or Cash equivalents in excess of a reasonable amount to meet any claims or contingent liabilities (including the Disputed Claims) or to maintain the value of the Liquidating Trust Assets during liquidation. Such amounts (net of any expenses, including any taxes, of the escrow relating thereto) shall be distributed, as provided herein and in the Plan, as such Disputed Claims against Debtors are resolved.

E. Application of Liquidating Trust Assets (Distributions and Reserves).

(i) In accordance with this Article IV(E), the Liquidating Trustee is required to distribute to the Beneficiaries on account of their interests in the Liquidating Trust the proceeds of the Liquidating Trust Assets from the Distribution Account in accordance with the Plan and this Agreement. The Liquidating Trustee, in her business judgment, when it is cost effective to do so and subject to approval of the Liquidating Trust Committee, shall be authorized but not required to make one or more interim distributions. The Liquidating Trustee shall not make any interim distributions (i) more than one (1) time in any twelve (12) month period; (ii) to the extent that available Cash left after such interim distribution is insufficient to fund the expenses of the Liquidating Trust for the twelve (12) months following such interim distribution plus the Disputed Claim Reserve; or (iii) on account of any Disputed Claim whether such Claim is disputed in whole or in part. Subject to the Waterfall (as defined herein), the Liquidating Trustee is required to distribute to the holders of Allowed Claims in Classes 1, 2, 3, and 4 an account of their interests in the Liquidating Trust the proceeds of any litigation and the proceeds of the sale of any Liquidating Trust Assets no later than the sixtieth (60th) day after the entry of the Final Order. The Trustee shall reserve such amounts (i) as have been reserved on

account of Disputed Claims, or are otherwise part of the claims reserve established by the Trustee, (ii) as are reasonably necessary to maintain the value of the Liquidating Trust Assets during liquidation, (iii) as are necessary to pay reasonably incurred or anticipated expenses (including, but not limited to, any taxes imposed on or payable by the Debtors or the Liquidating Trust or in respect of the Liquidating Trust Assets), or (iv) as are necessary to satisfy other liabilities incurred or anticipated by the Liquidating Trust in accordance with the Plan or this Agreement; provided, however, that the Liquidating Trustee shall not be required to make a distribution pursuant to this Article IV(E) if the aggregate, net amount of unrestricted Cash available for distribution (taking into account the above listed exclusions) is such as would make the distribution impracticable as reasonably determined by the Trustee, in accordance with applicable law. Following the Final Distribution, if, as a result of undeposited checks or undeliverable mail, there remains in the Distribution Account 180 days after the Final Distribution, Cash less than \$10,000, those funds may, in the Trustee's sole discretion, be donated to any 501(c)(3) tax entity the Trustee chooses. If such proceeds are greater than \$10,000, then the Trustee shall make a supplemental Final Distribution of all remaining funds, in accordance with the delineation of distributions set forth in Article IV(E)(ii) herein.

(ii) Waterfall. Notwithstanding the foregoing, the distributions to the holders of Allowed Claims in Classes 1, 2, 3, and 4 proscribed in subsection (i) above shall be made only from the Liquidating Trust Assets and only subsequent to payment of (i) the DIP Facility Claim, (ii) Administrative Claims and Expenses, (iii) Priority Tax Claims, and (iv) Priority Claims.

F. Undeliverable Distributions

(i) Holders of Undeliverable Distributions. If any distribution pursuant to this Plan to any Holder is returned to the Liquidating Trustee as undeliverable, no further distributions shall be made to such Holder unless and until the Liquidating Trustee is notified by such Holder, in writing, of such Holder's then-current address. Upon such an occurrence, the appropriate distribution shall be made as soon as reasonably practicable after such distribution has become deliverable. All Entities ultimately receiving previously undeliverable Cash shall not be entitled to any interest or other accruals of any kind. Nothing contained in the Plan or this Agreement shall require the Debtors or the Liquidating Trustee to attempt to locate any Holder of an Allowed Claim.

(ii) Failure to Claim Undeliverable Distributions. Any Holder of an Allowed Claim entitled to an undeliverable or unclaimed distribution that does not provide notice of such Holder's correct address to the Chapter 11 Trustee or the Liquidating Trustee within the later of six (6) months after the Effective Date shall be deemed to have forfeited its claim for such undeliverable or unclaimed distribution and shall be forever barred and enjoined from asserting any such claim for an undeliverable or unclaimed distribution against any of the Debtors, their Estates or the Liquidating Trust. In such cases, the Forfeited Distributions shall be distributed in accordance with the terms of the Plan and this Agreement. Nothing contained in the Plan or this Agreement shall require the Debtors or the Liquidating Trustee to attempt to locate any holder of an Allowed Claim.

G. No Interest on Claims. Except as set forth in a Final Order of the Bankruptcy Court, no Beneficiary shall be entitled to interest accruing on or after the Petition Date on such

Claim. Interest shall not accrue or be paid on any Disputed Claim with respect to the period from the Petition Date to the date a final Distribution or payment is made thereon if and after any such Disputed Claim, or any part thereof, becomes an Allowed Claim.

H. Rounding. Whenever any payment of a fraction of a dollar would otherwise be called for, the actual payment shall reflect a rounding of such fraction to the nearest dollar (up or down), with half dollars being rounded down.

I. Setoffs. Any Entity claiming a right of setoff against the Debtors, their Estates and/or the Liquidating Trust that has not identified such right in such Entity's timely filed proof of Claim shall be forever barred from asserting such right of setoff in any manner against, and such right shall be unenforceable against, the Debtors, their Estates, the Liquidating Trustee, and the Liquidating Trust.

J. De Minimis Distributions. Payments of fractions of dollars will not be made. Whenever any payment of a fraction of a dollar under the Plan 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 Liquidating Trustee will not make any payment of less than twenty-five dollars (\$25.00) on account of any Allowed Claim.

K. Taxes. The Trustee will comply with all tax withholding and reporting requirements imposed by all governmental entities, and all Distributions or payments pursuant to this Agreement and the Plan will, to the extent applicable, be subject to such withholding and reporting requirements. Debtors and the Trustee shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements. Notwithstanding any other provision of this Agreement or the Plan, each entity receiving a Distribution or payment pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding and other tax obligations, on account of such Distribution or payment. Pending the implementation of satisfactory arrangements, any Distribution or payment to be made pursuant to the Plan shall be treated as undeliverable.

L. Compliance with Laws. Any and all distributions of Liquidating Trust Assets shall be in compliance with applicable laws, including, but not limited to, applicable federal and state securities laws.

ARTICLE V SUCCESSOR TRUSTEES

A. Removal. The Trustee may be removed by order of the Bankruptcy Court. Further, the Liquidating Trust Committee shall be authorized to remove and replace the Trustee if circumstances, in their collective judgment, warrant such removal, with court approval.

B. Resignation. The Trustee may resign by giving not less than thirty (30) days' prior written notice thereof to the Bankruptcy Court or, after a final decree has been entered in the Bankruptcy Cases, to the Liquidating Trust Committee. Such resignation shall become effective on the later to occur of (i) the date specified in such notice and (ii) the selection of a successor and the acceptance by such successor of such appointment.

C. **Acceptance of Appointment by Successor Trustee.** Any successor Trustee shall be chosen by the Liquidating Trust Committee. Any successor Trustee appointed hereunder shall execute an instrument accepting such appointment hereunder and shall file such acceptance with the Liquidating Trust records. Thereupon, such successor Trustee shall, without any further act, become vested with all the estates, properties, rights, powers, trusts and duties of his or her predecessor in the Liquidating Trust with like effect as if originally named herein; **provided, however,** that a removed or resigning Trustee shall, nevertheless, when requested in writing by the successor Trustee, execute and deliver an instrument or instruments conveying and transferring to such successor Trustee under the Liquidating Trust all the estates, properties, rights, powers, and trusts of such predecessor Trustee.

ARTICLE VI REPORTING

A. **Tax and Other Reports Generally.** As soon as practicable after the end of each quarter, and as soon as practicable upon termination of the Liquidating Trust, the Trustee shall submit to the Bankruptcy Court a written report including: (i) financial statements of the Liquidating Trust at the end of such quarter or period and the receipts and disbursements of the Liquidating Trust for such period; (ii) a description of any action taken by the Trustee in the performance of his or her duties which materially and adversely affects the Liquidating Trust and of which notice has not previously been given to the Beneficiaries, and (iii) subject to Article VI(B) hereof, a separate statement for each Beneficiary setting forth the holder's share of items of income, gain, loss, deduction or credit and instructing all such holders to report such items on their federal income tax returns. The Trustee shall promptly submit additional reports to the Bankruptcy Court and whenever an adverse material event or change occurs which affects either the Liquidating Trust or the rights of the Beneficiaries hereunder.

B. **Federal Income Tax.**

(i) **Grantor Trust Status.** Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the issuance of applicable Treasury Regulations, the receipt by the Trustee of a private letter ruling if the Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Trustee), the Trustee shall file returns for the Liquidating Trust as a grantor trust pursuant to Treasury Regulation § 1.671-4(a).

(ii) **Allocations of Liquidating Trust Taxable Income.** All of the Liquidating Trust's income is subject to tax on a current basis, regardless of whether the Trustee has established a Disputed Claims Reserve against Debtors. Subject to the provisions of Article VI(B)(i) hereof, allocations of Liquidating Trust taxable income among Beneficiaries shall be determined by reference to the manner in which an amount of cash equal to such taxable income would be distributed (without regard to any restriction on distributions described herein) if, immediately prior to such deemed distribution, the Liquidating Trust had distributed all of its other assets (valued for this purpose at their tax book value) to Beneficiaries (treating to the extent determined by the Trustee in her sole discretion, any holder of a Disputed Claim against Debtors, for this purpose, as a current Beneficiary entitled to distributions), taking into account all prior and concurrent distributions from the Liquidating Trust (including all distributions held

in reserve pending the resolution of Disputed Claims against Debtors). Similarly, taxable losses of the Liquidating Trust will be allocated among Beneficiaries by reference to the manner in which an economic loss would be borne immediately after a liquidating distribution of the remaining Liquidating Trust Assets. The tax book value of the Liquidating Trust Assets for this purpose shall equal their fair market value on the Effective Date or, if later, the date such assets were acquired by the Liquidating Trust, adjusted in either case in accordance with tax accounting principles prescribed by the IRS Code), the regulations promulgated thereunder and other applicable administrative and judicial authorities and pronouncements.

(iii) Taxable Income for Disputed Claims Reserve. Any net taxable income with respect to the Disputed Claim Reserve assets will be subject to tax at the Trust level as if it were a C corporation for federal income tax purposes. For the avoidance of doubt, the Liquidating Trust will not constitute a “business entity.”

C. Other Reporting Requirements. The Trustee shall also file (or cause to be filed) any other statements, returns or disclosures relating to the Liquidating Trust, that are required to be filed by any governmental unit or under applicable law, guidelines, rules and regulations.

ARTICLE VII TRANSFER OF BENEFICIARY’S INTERESTS

The interests of the Beneficiaries in the Liquidating Trust, which are reflected only on the records of the Liquidating Trust maintained by the Trustee, are not negotiable and shall be transferable, subject to the Trustee’s ability to prevent such transfer pursuant to Article I(D) hereof, after written notice to the Trustee only: (1) pursuant to applicable laws of descent and distribution (in the case of a deceased individual Beneficiary); or (2) by operation of law. The Trustee shall not be required to record any transfer in favor of any transferee which, in the sole discretion of the Trustee, is or might be construed to be ambiguous or to create uncertainty as to the holder of the interest in the Liquidating Trust. Until a transfer is in fact recorded on the books and records maintained by the Trustee for the purpose of identifying Beneficiaries, the Trustee, whether or not in receipt of documents of transfer or other documents relating to the transfer, may nevertheless make distributions and send communications to Beneficiaries, as though they have no notice of any such transfer, and in so doing the Trustee shall be fully protected and incur no liability to any purported transferee or any other Entity.

ARTICLE VIII MISCELLANEOUS PROVISIONS

A. Amendment; Waiver. This Agreement cannot be amended or waived in a material manner without approval of the Bankruptcy Court; provided, however, that no change shall be made to this Agreement that would adversely affect the federal income tax status of the Liquidating Trust as a “grantor trust.”

B. Intention of Parties to Establish Grantor Trust. This Agreement is intended to create a “liquidating trust,” as defined in Treasury Regulations § 301.7701-4(d), to be taxed as a

grantor trust for federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as a grant or trust.

C. Preservation of Privilege. In connection with the rights, claims, and causes of action that constitute the Liquidating Trust 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 Liquidating Trust shall vest in the Liquidating Trust and its representatives, and the Debtors and the Trustee are authorized to take all necessary actions to effectuate the transfer of such privileges.

D. Cooperation. Debtors shall provide the Trustee with copies of such of its books and records as the Trustee shall reasonably require for the purpose of performing her or his duties and exercising her powers hereunder.

E. Laws as to Construction. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, without giving effect to rules governing the conflict of law. In the case of a conflict between the Plan and this Agreement, the Plan shall control.

F. Severability. If any provision of this 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 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 such provision of this Agreement shall be valid and enforced to the fullest extent permitted by law unless the Agreement, as modified, will no longer effectuate the intent of the parties hereto in all material respects.

G. Notices. 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 at such address as set forth below or such other address as filed with the Bankruptcy Court:

(i) If to the Liquidating Trust or the Trustee:

**Michael J. Barrie, Esq.
Jennifer R. Hoover, Esq.
Benesch, Friedlander, Coplan & Aronoff LLP
222 Delaware Avenue, Suite 801
Wilmington, DE 19801**

with copies to:

**Elaine T. Rudisill
The Finley Group
6100 Fairview Road
Suite 1220
Charlotte, NC 28210**

(ii) 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 determined in accordance with Article III(A) hereof.

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

I. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have either executed and acknowledged this 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.

DEBTORS:

DESIGNLINE CORPORATION

By: _____

Its: _____

DESIGNLINE USA, LLC

By: _____

Its: _____

TRUSTEE:

ELAINE T. RUDISILL

By: _____

Its: _____