

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

F-Squared Investment Management, LLC, *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 15-11469 (LSS)
)
) Jointly Administered
)
) **Re: Docket Nos. 417 & 421**

**NOTICE OF FILING OF PLAN SUPPLEMENT TO JOINT PLAN OF LIQUIDATION
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE PROPOSED BY THE
DEBTORS AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On December 7, 2015, the above-captioned debtors (collectively, the “**Debtors**”) filed solicitation versions of (i) the *Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code Proposed by the Debtors and the Official Committee of Unsecured Creditors* [Docket No. 417] (as may be amended, the “**Plan**”)² and (ii) the *Disclosure Statement for Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code Proposed by the Debtors and the Official Committee of Unsecured Creditors* [Docket No. 421] (as may be amended, the “**Disclosure Statement**”) with the Bankruptcy Court.

2. The Plan and Disclosure Statement contemplate the filing of certain documents (the “**Plan Supplement**”) in advance of the hearing on confirmation of the Plan (the “**Confirmation Hearing**

- **Exhibit A** Liquidating Trust Agreement³
- **Exhibit B** Schedule of Rejected Insurance Policies

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: F-Squared Investment Management, LLC (9247), F-Squared Investments, Inc. (0788), F-Squared Retirement Solutions, LLC (9247), F-Squared Alternative Investments, LLC (9247), F-Squared Solutions, LLC (9247), F-Squared Institutional Advisors, LLC (9247), F-Squared Capital, LLC (5257), AlphaSector LLS GP 1, LLC (3342), and Active Index Solutions, LLC (0788). The Debtors' address is 945 Concord Street, Framingham, Massachusetts 01701.

Capitalized terms used herein and not otherwise defined shall have the meanings given to them in the Plan.

³ The Liquidating Trust Agreement includes (i) the identity of the Liquidating Trustee, (ii) the identities of the members of the Liquidating Trust Committee, and (iii) the material terms of the Liquidating Trustee's compensation.

3. The documents contained in the Plan Supplement are integral to, and are considered part of, the Plan. If the Plan is confirmed, the documents contained in the Plan Supplement will be approved by the Bankruptcy Court pursuant to the order confirming the Plan.

4. The Debtors and Creditors' Committee reserve the right to alter, amend, modify, or supplement any of the documents contained in the Plan Supplement in accordance with the terms of the Plan, and the Debtors and the Creditors' Committee reserve all rights with respect to the final forms of all documents contained in the Plan Supplement. If any document in the Plan Supplement is altered, amended, modified, or supplemented in any material respect prior to the Confirmation Hearing, the Debtors will file a blackline of such document with the Bankruptcy Court.

5. In accordance with the Bankruptcy Rules and the Local Rules, only certain parties in interest are receiving copies of the Disclosure Statement, the Plan, and the documents contained in the Plan Supplement. Such documents, however, (i) are available for viewing or downloading, free of charge, on the Debtors' restructuring website at www.bmcgroup.com/fsquared, or (ii) can be obtained by contacting the Debtors' solicitation agent BMC Group, Inc. via telephone ((888) 909-0100) or via email (fsquared@bmcgroup.com).

6. The Confirmation Hearing will be held before The Honorable Laurie Selber Silverstein, United States Bankruptcy Judge, in Courtroom 2 of the Bankruptcy Court, 824 N. Market Street, 6th Floor, Wilmington, Delaware 19801, on **January 14, 2016, at 10:00 a.m. (Eastern Standard Time)**. Please be advised that the Confirmation Hearing may be continued from time to time without further notice other than the announcement by the Debtors of the adjourned date(s) at the Confirmation Hearing or any continued hearing or as indicated in any notice of agenda of matters scheduled for hearing filed with the Bankruptcy Court.

Date: December 28, 2015
Wilmington, Delaware

RICHARDS, LAYTON & FINGER, P.A.

/s/ Zachary I. Shapiro

Russell C. Silberglid (No. 3462)

Zachary I. Shapiro (No. 5103)

920 N. King Street

Wilmington, Delaware 19801

Telephone: 302-651-7700

Facsimile: 302-651-7701

Email: silberglid@rlf.com

shapiro@rlf.com

Counsel for Debtors and Debtors in Possession

Exhibit A

Liquidating Trust Agreement

F-SQUARED LIQUIDATION TRUST AGREEMENT

This liquidation trust agreement (the “Agreement”) is made this [__] day of January, 2016 by and among F-Squared Investment Management, LLC, F-Squared Investments, Inc., F-Squared Retirement Solutions, LLC, F-Squared Alternative Investments, LLC, F-Squared Solutions, LLC, F-Squared Institutional Advisors, LLC, F-Squared Capital, LLC, AlphaSector LLS GP 1, LLC and Active Index Solutions, LLC (together, the “Debtors”), and Craig R. Jalbert of Verdolino & Lowey, P.C., as trustee (the “Liquidating Trustee”). Capitalized terms used but not otherwise defined in this Agreement shall have the meanings ascribed to them in the Plan (as defined below).

RECITALS

WHEREAS, on July 8, 2015, each of the Debtors filed a voluntary Chapter 11 petition with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”); and

WHEREAS, on January __, 2016, the Bankruptcy Court entered an order [Docket No. __] (the “Confirmation Order”) confirming the *Joint Chapter 11 Plan of Debtors and Official Committee of Unsecured Creditors* (the “Plan”); and

WHEREAS, the Plan’s Effective Date occurred on January __, 2016; and

WHEREAS, the Plan contemplates, on the Effective Date, (a) the creation of a liquidation trust (the “Liquidating Trust”) and the creation of the beneficial interests in the Liquidating Trust of holders of Allowed Claims entitled to Distributions (the “Beneficiaries”), and (b) that the Liquidating Trust will be vested with the Liquidating Trust Assets (including the right to prosecute and settle any causes of action belonging to the estates (the “Estate Causes of Action”), to be liquidated and distributed to the Beneficiaries, as set forth in the Plan; and

WHEREAS, the Plan contemplates that, pursuant to Treasury Regulation Section 301.7701-4(d), the Liquidating Trust shall be created for the primary purpose of liquidating the Liquidating Trust Assets in an expeditious and orderly manner for the benefit of the Beneficiaries, 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 and the Plan; and

WHEREAS, the Liquidating Trust is intended to qualify as a “grantor trust” for U.S. federal income tax purposes, pursuant to Sections 671-677 of the Internal Revenue Code of 1986, as amended (the “IRC”), with the Beneficiaries to be treated as the grantors of the Liquidating Trust and deemed to be the owners of the Liquidating Trust Assets (subject to the rights of creditors of the Liquidating Trust), and, consequently, the transfer of the Liquidating Trust Assets to the Liquidating Trust shall be treated as a deemed transfer of those assets from the Debtors and the Estates to the Beneficiaries followed by a deemed transfer by such Beneficiaries to the Liquidating Trust for federal income tax purposes.

NOW, THEREFORE, pursuant to the Plan and the Confirmation Order, in consideration of the mutual agreements of the parties contained herein, and for other good and valuable

consideration, the receipt and sufficiency of which are hereby acknowledged and affirmed, the parties hereby agree as follows:

ARTICLE I DECLARATION OF TRUST

1.1 Creation and Purpose of the Liquidating Trust. The Debtors and the Liquidating Trustee hereby create the Liquidating Trust for the primary purpose of liquidating and distributing the Liquidating Trust Assets to the Beneficiaries in accordance with their respective entitlements, if any, under the Plan, the Confirmation Order, and applicable tax statutes, rules, and regulations, and in an expeditious but orderly manner, with no objective to continue or engage in the conduct of a trade or business. In particular, the Liquidating Trustee shall (a) make continuing efforts to collect and reduce the Liquidating Trust Assets to Cash, and (b) make timely distributions and not unduly prolong the duration of the Liquidating Trust.

1.2 Declaration of Trust. In order to declare the terms and conditions hereof, and in consideration of the confirmation of the Plan, the Debtors and the Liquidating Trustee have executed this Agreement and, effective on the Plan's Effective Date, hereby irrevocably transfer to the Liquidating Trust, all of the right, title, and interests of the Debtors in and to the Liquidating Trust Assets, to have and to hold unto the Liquidating Trust and its successors and assigns forever, under and subject to the terms of the Plan and the Confirmation Order, for the benefit of the Beneficiaries (to the extent of their respective legal entitlements) and their successors and assigns as provided for in this Agreement and in the Plan and Confirmation Order.

1.3 Vesting of Estate Assets. On the Effective Date, pursuant to the terms of the Plan, all assets of the Debtors and the Estates (that are not abandoned pursuant to the terms of the Plan, the Confirmation Order, or other Bankruptcy Court order) shall be vested in the Liquidating Trust, which also shall be authorized to obtain, liquidate, and collect all of the assets of the Debtors and the Estate not in its possession and pursue all Estate Causes of Action (other than those released or exculpated pursuant to the Plan). In addition, on the Effective Date, the Liquidating Trust shall: (i) take possession of all books, records, and files of the Debtors and their Estates and (ii) provide for the retention and storage of such books, records, and files until such time as the Liquidating Trust determines, in accordance with this Agreement, that retention of same is no longer necessary or required. Subject to the provisions of the Plan, all Liquidating Trust Assets shall be delivered to the Liquidating Trust free and clear of liens, Claims, and Interests of any kind. Moreover, on the Effective Date, all privileges with respect to any assets of the Estates and/or of the Debtors to which the Debtors are entitled, including the attorney-client privilege, shall be automatically vested in, and available for assertion or waiver by the Liquidating Trustee on behalf of, the Liquidating Trust. To the extent any of the foregoing does not automatically occur on the Effective Date or is not effectuated through the Confirmation Order or this Agreement, the Debtors shall, on the Effective Date, execute such other and further documents as are reasonably necessary to effectuate all of the foregoing.

1.4 Acceptance by Liquidating Trustee. The Liquidating Trustee hereby accepts the trust imposed on it by this Agreement and agrees to observe and perform that trust on and subject to the terms and conditions set forth in this Agreement, the Plan, and the Confirmation

Order. In connection with and in furtherance of the purposes of the Liquidating Trust, the Liquidating Trustee hereby accepts the transfer of the Liquidating Trust Assets.

1.5 Name of the Liquidating Trust. The Liquidating Trust established hereby shall be known as the “F2 Liquidating Trust.”

1.1 Oversight Committee. Pursuant to the Plan and this Agreement, a supervisory committee (the “Oversight Committee”) shall be created on the Plan’s Effective Date comprised of the following members: (i) Nathan Eigerman; (ii) Cantella & Co.; and (iii) Grove Street Advisors. The Oversight Committee shall be comprised of the foregoing three (3) members; provided, however, that the Oversight Committee may be comprised of fewer than three (3) members as set forth in Section 3.1 of this Agreement. Except as otherwise expressly provided in the Plan and this Agreement, the Oversight Committee shall not have any power or authority as to the Liquidating Trust Assets, Estate Causes of Action, or other assets or property belonging to the Debtors’ Estate or Liquidating Trust.

ARTICLE II THE LIQUIDATION TRUSTEE

2.1 Appointment. The Liquidating Trustee has been selected pursuant to the provisions of the Plan and has been appointed as of the Effective Date. The Liquidating Trustee’s appointment shall continue until the earlier of (a) the termination of the Liquidating Trust or (b) the Liquidating Trustee’s resignation, death, dissolution, or removal. To effectuate an orderly and efficient transition of the administration of the Liquidating Trust Assets from the Debtors to the Liquidating Trustee, the Liquidating Trustee may perform certain services in connection with its duties and obligations under this Agreement prior to the Effective Date.

2.2 General Powers. Except as otherwise provided in this Agreement, the Plan, or the Confirmation Order, the Liquidating Trustee may control and exercise authority over the Liquidating Trust Assets, over the acquisition, management, and disposition thereof, and over the management and conduct of the business of the Liquidating Trust. Nothing in this Agreement shall be deemed to prevent the Liquidating Trustee from taking, or failing to take, any action that it is obligated to take (or fail to take) in the performance of any fiduciary or similar duty that the Liquidating Trustee owes to the Beneficiaries or any other Person. No person dealing with the Liquidating Trust shall be obligated to inquire into the Liquidating Trustee’s authority in connection with the acquisition, management, or disposition of Liquidating Trust Assets. Without limiting the generality of the foregoing, but subject to the Plan, the Confirmation Order, and other provisions of this Agreement, the Liquidating Trustee shall be expressly authorized to, with respect to the Liquidating Trust and the Liquidating Trust Assets:

(a) Exercise all power and authority that may be or could have been exercised, commence all proceedings that may be or could have been commenced, and take all actions that may be or could have been taken with respect to the Liquidating Trust Assets, by any officer, director, shareholder, or other party acting in the name of the Debtors or their Estates with like effect as if duly authorized, exercised, and taken by action of such officers, directors, shareholders, or other party.

(b) Open and maintain bank accounts on behalf of or in the name of the Liquidating Trust, calculate and make distributions, and take other actions consistent with the Plan and the implementation thereof, including the establishment, re-evaluation, adjustment, and maintenance of appropriate reserves, in the name of the Liquidating Trust.

(c) Receive, manage, invest, supervise, and protect the Liquidating Trust Assets, subject to the limitations provided herein.

(d) Hold legal title to any and all Liquidating Trust Assets.

(e) Subject to the applicable provisions of the Plan, collect and liquidate all Liquidating Trust Assets.

(f) Review and, where appropriate, object to and/or move to estimate or recharacterize Claims and Interests and supervise and administer the resolution, settlement and payment of all Claims and Interests and the distribution to the Beneficiaries and creditors of the Liquidating Trust, in accordance with this Agreement, the Plan, and the Confirmation Order.

(g) Subject to Section 4.2 of this Agreement, prosecute, compromise, and settle all Estate Causes of Action.

(h) (i) Seek a determination of tax liability under Bankruptcy Code Section 505; (ii) file, if necessary, any and all tax and information returns required with respect to the Debtors and the Liquidating Trust; (iii) make tax elections for and on behalf of the Debtors and the Liquidating Trust; and (iv) pay taxes, if any, payable for and on behalf of the Debtors and the Liquidating Trust.

(i) Pay all lawful, expenses, debts, charges, taxes, and liabilities of the Debtors (as required by the Plan) and the Liquidating Trust.

(j) Take all other actions consistent with the provisions of the Plan that the Liquidating Trustee deems reasonably necessary or desirable to administer the Plan.

(k) Make Distributions or payments to Beneficiaries and to creditors of the Liquidating Trust, as provided for or contemplated by the Plan, the Confirmation Order, and this Agreement.

(l) Withhold from the amount distributable to any person such amount as may be sufficient to pay any tax or other charge which the Liquidating Trustee has determined, in its sole discretion, may be required to be withheld therefrom under the income tax laws of the United States, any foreign country, or of any state, local, or political subdivision of either.

(m) Enter into any agreement or execute any document required by or consistent with the Plan, the Confirmation Order, or this Agreement and perform all obligations thereunder.

(n) If any of the Liquidating Trust Assets are situated in any state or other jurisdiction in which the Liquidating Trustee is not qualified to act as trustee, nominate and

appoint a person duly qualified to act as trustee in such state or jurisdiction and require from each such trustee such security as may be designated by the Liquidating Trustee in its discretion; confer on such trustee all the rights, powers, privileges, and duties of the Liquidating Trustee hereunder, subject to the conditions and limitations of this Agreement, except as modified or limited by the Liquidating Trustee and except where the conditions and limitations may be modified by the laws of such state or other jurisdiction (in which case, the laws of the state or other jurisdiction in which such trustee is acting shall prevail to the extent necessary); require such trustee to be answerable to the Liquidating Trustee for all monies, assets, and other property that may be received in connection with the administration of all property; and, remove such trustee, with or without cause, and appoint a successor trustee at any time by the execution by the Liquidating Trustee of a written instrument declaring such trustee removed from office, and specifying the effective date and time of removal.

(o) Purchase and carry all insurance policies and pay all insurance premiums and costs it deems reasonably necessary or advisable.

(p) Subject to Section 3.3 herein, retain and compensate, without further order of the Bankruptcy Court, the services of employees, professionals, and consultants to advise and assist in the administration, prosecution and distribution of the Liquidating Trust Assets.

(q) Implement, enforce, or discharge all of the terms, conditions and all other provisions of, and all duties and obligations under, the Plan, the Confirmation Order, and this Agreement.

(r) Enter into agreements with any entity or with Holders of Claims or Interests for the prosecutions of Causes of Action, including Avoidance Actions.

(s) Undertake all administrative functions of the Bankruptcy Cases, including the ultimate dissolution of the Debtors and the closing of the Bankruptcy Cases.

(t) Take all other actions consistent with the provisions of the Plan that the Liquidating Trustee deems reasonably necessary or desirable to administer the Plan.

2.3 Limitations on the Liquidating Trustee. Notwithstanding anything under applicable law, this Agreement, or the Plan to the contrary, the Liquidating Trustee shall not do or undertake any of the following:

(a) Take any action that would jeopardize treatment of the Liquidating Trust as a “liquidating trust” for federal income tax purposes.

(b) Receive transfers of any listed stocks or securities, or any readily marketable securities, except as is absolutely necessary or required under the Plan and the Confirmation Order; provided, however, that in no event shall the Liquidating Trustee receive any such investment that would jeopardize treatment of the Liquidating Trust as a “liquidating trust” for federal income tax purposes.

(c) Receive or retain Cash or cash equivalents in excess of a reasonable amount necessary to make applicable Distributions to Beneficiaries and satisfy any liabilities of the Liquidating Trust (including any Liquidating Trust Operating Expenses) and to establish and maintain the reserves contemplated by the Plan.

(d) Exercise any investment power other than the power to invest in demand and time deposits in banks or savings institutions, or other temporary liquid investments, such as short-term certificates of deposit or Treasury bills or other investments that a “liquidating trust” within the meaning of Treasury Regulation Section 301.7701-4(d) may be permitted to hold, pursuant to the Treasury Regulations or any Internal Revenue Service (“IRS”) guidelines, whether set forth in IRS rulings, IRS revenue procedures, other IRS pronouncements, or otherwise.

(e) Receive or retain any operating assets of a going business, a partnership interest in a partnership that holds operating assets, or fifty percent (50%) or more of the stock of a corporation with operating assets, except as is absolutely necessary or required under the Plan and the Confirmation Order; provided, however, that in no event shall the Liquidating Trustee receive or retain any such asset or interest that would jeopardize treatment of the Liquidating Trust as a “liquidating trust” for federal income tax purposes.

(f) Commence any Cause of Action released pursuant to the Plan.

(g) Accept or take on, directly or indirectly, any obligation or other liability, monetary or otherwise, on behalf of the Liquidating Trust, including but not limited to the assumption or assignment of any Executory Contract or Unexpired Lease, as provided in the Plan.

2.4 Compensation of Liquidating Trustee and Its Professionals. The initial Liquidating Trustee shall be entitled to be paid from the Liquidating Trust Assets reasonable compensation in connection with the performance of its duties (including any work performed prior to the Effective Date) as set forth in Exhibit A hereto, plus the reimbursement of reasonable out-of-pocket expenses. The hourly fee payments set forth in Exhibit A shall be paid in arrears within the timeframe set forth in this Section 2.4; provided, however, that the hourly fee payments relating to work performed prior to the Effective Date shall be paid in arrears as soon as practicable after the Effective Date. The reimbursement of reasonable out-of-pocket expenses shall be paid in arrears within the time frame provided in this Section 2.4; provided, however, that any reasonable out-of-pocket expenses relating to work performed prior to the Effective Date shall be paid as soon as practicable after the Effective Date. Any successor to the Liquidating Trustee shall also be entitled to reasonable compensation in connection with the performance of its duties, which compensation may be different from the terms provided in Exhibit A, plus the reimbursement of reasonable out-of-pocket expenses.

Subject to Section 3.3 herein, the Liquidating Trustee may retain the services of employees, professionals, and consultants to advise and assist in the administration, prosecution and distribution of the Liquidating Trust Assets. The Liquidating Trustee shall also be entitled to pay from the Liquidating Trust Assets reasonable compensation, plus the reimbursement of out-of-pocket expenses, to each of its professionals.

The Liquidation Trustee and any employees, professionals or consultants employed or retained by the Liquidation Trustee that seek compensation or reimbursement of reasonable out-of-pocket expenses shall provide to the Oversight Committee monthly billing statements (the “Fee Statement”), by printed copy delivered by first-class mail or a by portable document format (“PDF”) file delivered by electronic mail, at the option of each respective professional, which Fee Statement shall include the names and titles of each professional, the hourly rates for each such professional, the amount of hours spent by each professional and a statement of the reasonable and necessary expenses for which each such professional seeks reimbursement; provided, however, that solely for any ordinary course professionals employed by the trust, the Oversight Committee may, at its sole discretion, determine not to require copies of Fee Statements to be provided other than to the Trustee. Payment of the amounts requested in a Fee Statement shall be paid no later than seven (7) days from the date of the Fee Statement; provided, however, that the Oversight Committee may object to the compensation or reimbursement of out-of-pocket expenses contained in the Fee Statement by sending the Liquidation Trustee or professional, as applicable, a written objection within seven (7) days of the date of the Fee Statement. If an objection to a portion of the compensation or reimbursement of out-of-pocket expenses is received, the Liquidation Trustee shall promptly pay the undisputed portion of such compensation or out-of-pocket expenses and reserve Cash in the amount of the disputed compensation or out-of-pocket expenses.

In the event that the parties are unable to reach an agreement to resolve the Oversight Committee’s objection to the Fee Statement within five (5) days from the date on which such objection to the Fee Statement is received, the Liquidation Trustee shall schedule a hearing with the Bankruptcy Court or other court of competent jurisdiction to take place within fourteen (14) days, or as soon as such court’s calendar permits. The Oversight Committee shall file a written objection with the Bankruptcy Court or other court of competent jurisdiction, as applicable, no

later than seven (7) days prior to the scheduled hearing. Any response to the Oversight Committee's objection must be submitted no later than three (3) days prior to the scheduled hearing. All objections to a Fee Statement shall be resolved either by (i) a written agreement between the party requesting payment of fees and expenses and the Oversight Committee, or (ii) by resolution of the disputed amount by the Bankruptcy Court or other court of competent jurisdiction. The Liquidation Trustee shall promptly pay any amounts determined to be owing following the resolution described in the preceding sentence.

2.5 General Duties, Obligations, Rights and Benefits of the Liquidating Trustee.

The Liquidating Trustee shall have all duties, obligations, rights and benefits assumed by, assigned to or vested in the Liquidating Trust under the Plan, the Confirmation Order, this Liquidating Trust Agreement and any other agreement entered into pursuant to or in connection with the Plan. Such duties, obligations, rights and benefits include, without limitation, all duties, obligations, rights and benefits relating to the collection and liquidation of the Liquidating Trust Assets, resolution of Claims and, if necessary, Interests, satisfaction of claims of creditors of the Liquidating Trust, the pursuit of Estate Causes of Action, Distributions to Beneficiaries, administration of the Liquidating Trust and any other duties, obligations, rights and benefits reasonably necessary to accomplish the purpose of the Liquidating Trust under the Plan, the Confirmation Order, this Liquidating Trust Agreement and any other agreement entered into pursuant to or in connection with the Plan. Without limiting the duties, obligations, rights and benefits of the Liquidating Trustee under this Section or any other provision of this Liquidating Trust Agreement, the Liquidating Trustee shall have all duties, obligations, rights and benefits assigned to the Liquidating Trustee under the Confirmation Order.

2.6 Liquidating Trust Operational Reserve. Subject to Section 9.2, the Liquidating Trustee may establish, fund, and administer the Liquidating Trust Operational Reserve to hold the amount of Cash deemed necessary to satisfy its anticipated future Liquidating Trust Expenses.

2.7 Investments and Bonds. Subject to Section 2.3, the Liquidating Trustee may invest the Liquidating Trust Assets in prudent investments other than those described in Bankruptcy Code Section 345.

2.8 Replacement of the Liquidating Trustee. The Liquidating Trustee may resign at any time upon thirty (30) days' written notice delivered to the Bankruptcy Court and the members of the Oversight Committee, provided that such resignation shall only become effective up on the appointment of a permanent or interim successor Liquidating Trustee. The Oversight Committee may, by a unanimous vote, remove the Liquidating Trustee with or without cause upon (30) days' written notice delivered to the Liquidating Trustee. The Liquidating Trustee may be removed by the Bankruptcy Court upon motion and after notice and a hearing, which motion may be brought by any party in interest (including any members of the Oversight Committee). In the event of the death, medical incapacity, dissolution, resignation or removal of the Liquidating Trustee, the Oversight Committee may, by majority vote, designate a person to serve as successor Liquidating Trustee. If the Oversight Committee shall fail to appoint a successor within thirty (30) days, the successor Liquidating Trustee shall be appointed by the Bankruptcy Court upon request and based upon submissions from interested parties (including the Oversight Committee, any Beneficiary or counsel to the Liquidating Trust). Upon its

appointment, the successor Liquidating Trustee, without any further act, shall become fully vested with all of the rights, powers, duties and obligations of its predecessor and all responsibilities of the predecessor Liquidating Trustee relating to the Liquidating Trust shall be terminated; provided, however, that the original Liquidating Trustee's right to indemnification shall survive termination and is subject to Sections 5.2 and 5.3 hereof. In the event the Liquidating Trustee's appointment terminates by reason of termination without cause, death or disability (meaning herein, incapacity resulting in the inability to perform services for three consecutive months or in the aggregate of 180 days during any 12 month period), amounts owed to the original Liquidating Trustee (or his estate or representative), on the one hand, and any successor Liquidating Trustee, on the other, shall be allocated between them to reflect their respective periods of service; provided, however, that the original Liquidating Trustee shall be compensated for all reasonable fees and expenses accrued through the effective date of termination, whether or not previously invoiced and shall be paid the portion of the incentive fee compensation, if any, that may be earned by, or which would be earned as a result of claims objections in progress at, the time of his termination. In the event of the removal or resignation of any Liquidating Trustee with cause, such Liquidating Trustee (or his estate or representatives) shall be immediately compensated for all reasonable fees and expenses accrued through the effective date of termination, whether or not previously invoiced; provided, however, that the Liquidating Trustee shall not be entitled to the incentive fee compensation, if any. The provisions of Article V shall survive the resignation or removal of any Liquidating Trustee.

2.9 Liquidating Trust Continuance. The death, medical incapacity, dissolution, resignation, or removal of the Liquidating Trustee shall not terminate the Liquidating Trust or revoke any existing agency created by the Liquidating Trustee pursuant to this Agreement or invalidate any action theretofore taken by the Liquidating Trustee, and the successor Liquidating Trustee agrees that the provisions of this Agreement shall be binding upon and inure to the benefit of the successor Liquidating Trustee and all its successors or assigns.

ARTICLE III OVERSIGHT COMMITTEE

3.1 Oversight Committee. As of the Effective Date, the Oversight Committee shall be comprised of the following three (3) members (each a "Member" and collectively, the "Members"): (i) Nathan Eigerman; (ii) Cantella & Co.; and (iii) Grove Street Advisors. Should any of the Members resign from the Liquidating Trust Oversight Committee, a vote shall be scheduled (upon reasonable notice to the remaining Members) to be held not later than the tenth Business Day following such resignation. Each remaining Member is permitted to nominate one individual for consideration as a replacement Member with respect to the vote to be held with respect to each Member vacancy to be filled, provided that any individual under consideration as a replacement Member must be a United States person as defined in Section 7701(a)(30) of the IRC. A replacement Member shall be selected by a majority of the remaining Members who choose to vote and, if such remaining voting Members are unable to reach a majority, the replacement Member shall be selected by the Liquidating Trustee from among the pool of nominees provided by the remaining Members; provided, however, that no replacement Member need be selected in the event the remaining Members and the Liquidating Trustee determine that a replacement is not necessary for the efficient administration of the Liquidating Trust Assets.

3.2 Reports to Oversight Committee. Notwithstanding any other provision of this Agreement, the Liquidating Trustee shall report to the Oversight Committee on a regular basis, not less than two (2) times per year, which reports shall include such matters and information as reasonably requested by the Oversight Committee. The Oversight Committee shall keep all such information strictly confidential, except to the extent that the Oversight Committee deems it reasonably necessary to disclose such information to the Bankruptcy Court (in which case, a good faith effort shall be made to file such information under seal).

3.3 Actions Requiring Approval of the Oversight Committee. The Liquidating Trustee shall obtain the approval of the Oversight Committee (by not less than a majority vote) prior to taking any action regarding any of the following matters:

(a) Subject to Section 4.2 of this Agreement, the commencement, settlement, compromise, dismissal, or prosecution of any Estate Cause of Action by the Liquidating Trust where the disputed amount at issue equals or exceeds \$250,000;

(b) The abandonment of any non-Cash asset that has a valuation as reasonably determined by the Liquidating Trustee (for any individual transaction or series of related transactions) of at least \$250,000;

(c) Subject to Section 4.4 of this Agreement, the prosecution of objections to Disputed Claims, or the settlement, compromise or other resolution of any Disputed Claims, wherein the disputed amount at issue equals or exceeds \$250,000;

(d) Retention of employees, professionals, and consultants to advise and assist in the administration, prosecution and distribution of the Liquidating Trust Assets; *provided, however*, that the Liquidating Trustee shall not be required to obtain the approval of the Oversight Committee prior to retaining any professionals that are used in the ordinary course of business;

(e) The borrowing of any funds by the Liquidating Trust or pledge of any portion of the Liquidating Trust Assets;

(f) Any matter which could reasonably be expected to have a material effect on the amount of distributions to be made by the Liquidating Trust, including any determinations regarding the amount of the Liquidating Trust Operational Reserve; and

(g) The decision whether to enter into an agreement with any Entity respecting the joint prosecution of Estate Causes of Action and causes of action belonging to holders of Claims or Interests.

3.4 Approval of the Oversight Committee. Wherever the approval of the Oversight Committee is required prior to the Liquidating Trustee taking any action hereunder (other than with respect to Section 12.1 hereof), such approval shall be deemed given if the Members of the Oversight Committee do not object in writing to any such action upon two (2) Business Days' prior written (including e-mail) notice or such shorter period as is necessary under the circumstances from the Liquidating Trustee, and if any objection is received in writing, then any such action must be approved by a majority vote of the Oversight Committee.

3.5 Compensation of Oversight Committee. Members of the Oversight Committee shall not be entitled to receive compensation in connection with his or her duties; provided, however, each Member of the Oversight Committee may receive reimbursement of reasonable out-of-pocket expenses (which expense reimbursements shall not include payment of professional costs) incurred in connection with his or her duties. Members of the Oversight Committee shall be entitled to receive the benefit of any insurance as provided in Section 5.5 of this Liquidating Trust Agreement.

ARTICLE IV PROSECUTION AND RESOLUTION OF DISPUTED CLAIMS AND ESTATE CAUSES OF ACTION

4.1 The Liquidating Trust's Exclusive Authority To Pursue, Settle, or Abandon Estate Causes of Action. Subject to the provisions of the Plan, the Liquidating Trust shall have exclusive rights, powers, and interests of the Estates to pursue, settle, or abandon all Estate Causes of Action not otherwise released pursuant to the Plan as the sole representative of the Estates pursuant to Bankruptcy Code Section 1123(b)(3).

4.2 Settlement of Estate Causes of Action. Notwithstanding Section 3.3 of this Agreement, settlement by the Liquidating Trust of any Estate Causes of Action shall require: (i) approval only of the Liquidating Trustee, if the amount claimed by the Liquidating Trust against a defendant is less than \$250,000; and (ii) approval only of the Liquidating Trustee and the Oversight Committee, if the amount claimed by the Liquidating Trust against a defendant is equal to or exceeds \$250,000. The Liquidation Trustee may, in its discretion, seek approval from the Bankruptcy Court or another court of competent jurisdiction, in connection with settling any Estate Causes of Action.

4.3 The Liquidating Trust's Authority To Pursue, Settle, or Abandon Disputed Claims. Subject to the provisions of the Plan and Section 3.3(c) of this Agreement, the Liquidating Trust shall have the exclusive rights, powers, and interests of the Estates to pursue, settle, or abandon all Disputed Claims not otherwise released pursuant to the Plan as the sole representative of the Estates pursuant to Bankruptcy Code Section 1123(b)(3).

4.4 Settlement of Disputed Claims. Notwithstanding Section 3.3 of this Agreement, settlement by the Liquidating Trust of any Disputed Claim shall require: (i) approval only of the Liquidating Trustee, if the disputed amount at issue is less than \$250,000; (ii) approval only of the Liquidating Trustee and the Oversight Committee, if the disputed amount at issue is equal to or exceeds \$250,000. The Liquidating Trustee may, in its discretion, seek approval of the Bankruptcy Court or another court of competent jurisdiction.

ARTICLE V LIABILITY OF LIQUIDATION TRUSTEE AND THE OVERSIGHT COMMITTEE

5.1 Standard of Care; Exculpation. Neither the Liquidating Trustee, the Members of the Oversight Committee, nor any director, officer, affiliate, employee, employer, professional, agent, or representative of the Liquidating Trustee shall be liable for losses, claims,

damages, liabilities, or expenses in connection with the affairs or property of the Liquidating Trust to any Beneficiary of the Liquidating Trust, or any other person, for the acts or omissions of the Liquidating Trustee or the Oversight Committee; provided, however, that the foregoing limitation shall not apply as to any losses, claims, damages, liabilities or expenses suffered or incurred by any Beneficiary that are found by a final judgment by a court of competent jurisdiction (not subject to further appeal) to have resulted primarily and directly from the fraud, gross negligence, or willful misconduct of such person or entity. Every act done, power exercised or obligation assumed by the Liquidating Trust, the Liquidating Trustee, the Oversight Committee, or any director, officer, affiliate, employee, employer, professional, agent, or representative of the Liquidating Trustee, or any Member of the Oversight Committee pursuant to the provisions of this Agreement shall be held to be done, exercised, or assumed, as the case may be, by the Liquidating Trust, the Liquidating Trustee, the Oversight Committee, or any director, officer, affiliate, employee, employer, professional, agent, or representative of the Liquidating Trustee or any Member of the Oversight Committee acting for and on behalf of the Liquidating Trust and not otherwise; provided, however, that none of the foregoing Entities or Persons are deemed to be responsible for any other such Entities' or Persons' actions or inactions outside of the scope of the authority provided by the Liquidating Trust or the Oversight Committee. Except as provided in the proviso of the first sentence of this Section 5.1 with respect to any Beneficiary, every Person, firm, corporation or other Entity contracting or otherwise dealing with or having any relationship with the Liquidating Trust, the Liquidating Trustee, the Oversight Committee or any director, officer, affiliate, employee, employer, professional, agent, or representative of the Liquidating Trustee, or any Member of the Oversight Committee shall have recourse only to the Liquidating Trust Assets for payment of any liabilities or other obligations arising in connection with such contracts, dealings, or relationships and the Liquidating Trust, the Liquidating Trustee, the Oversight Committee, any director, officer, affiliate, employee, employer, professional, agent, or representative of the Liquidating Trustee, and the Members of the Oversight Committee shall not be individually liable therefor.

5.2 Indemnification.

(a) Except as otherwise set forth in the Plan or Confirmation Order, the Liquidating Trustee, the Members of the Oversight Committee, and any director, officer, affiliate, employee, employer, professional, agent, or representative of the Liquidating Trustee (collectively, the "Indemnified Parties") shall be defended, held harmless, and indemnified from time to time by the Liquidating Trust against any and all losses, claims, damages, liabilities, penalties, obligations, and expenses, including the costs for counsel or others in investigating, preparing, or defending any action or claim, whether or not in connection with litigation in which any Indemnified Party is a party, or enforcing this Agreement (including these indemnity provisions), as and when incurred, caused by, relating to, based on, or arising out of (directly or indirectly) the Liquidating Trustee's or Oversight Committee's acceptance of or the performance or nonperformance of its obligations under this Agreement, the Plan, or the Confirmation Order; provided, however, such indemnity shall not apply to any such loss, claim, damage, liability, or expense to the extent it is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) to be a liability for which recourse is not limited to the Liquidating Trust Assets pursuant to Section 5.1 above. Satisfaction of any obligation of the Liquidating Trust arising pursuant to the terms of this Section shall be payable only from the Liquidating Trust Assets, may be advanced, with the approval of the Oversight Committee, prior to the

conclusion of such matter, and such right to payment shall be prior and superior to any other rights to receive a distribution of the Liquidating Trust Assets.

(b) The Liquidating Trust shall promptly pay expenses reasonably incurred by any Indemnified Party in defending, participating in, or settling any action, proceeding, or investigation in which such Indemnified Party is a party or is threatened to be made a party or otherwise is participating in connection with the Agreement or the duties, acts, or omissions of the Liquidating Trustee, upon submission of invoices therefor, whether in advance of the final disposition of such action, proceeding, or investigation or otherwise. Each Indemnified Party hereby undertakes, and the Liquidating Trust hereby accepts its undertaking, to repay any and all such amounts so advanced if it shall ultimately be determined that such Indemnified Party is not entitled to be indemnified therefor under this Agreement.

5.3 No Liability for Acts of Successor/Predecessor Liquidating Trustees. Upon the appointment of a successor Liquidating Trustee and the delivery of the Liquidating Trust Assets to the successor Liquidating Trustee, the predecessor Liquidating Trustee and any director, officer, affiliate, employee, employer, professional, agent, or representative of the predecessor Liquidating Trustee shall have no further liability or responsibility with respect thereto. A successor Liquidating Trustee shall have no duty to examine or inquire into the acts or omissions of its immediate or remote predecessor and no successor Liquidating Trustee shall be in any way liable for the acts or omissions of any predecessor Liquidating Trustee, unless a successor Liquidating Trustee expressly assumes such responsibility. A predecessor Liquidating Trustee shall have no liability for the acts or omissions of any immediate or subsequent successor Liquidating Trustee for any events or occurrences subsequent to the cessation of its role as Liquidating Trustee.

5.4 Reliance by Liquidating Trustee and the Oversight Committee on Documents or Advice of Counsel. Except as otherwise provided in this Agreement, the Liquidating Trustee, the Oversight Committee, any director, officer, affiliate, employee, employer, professional, agent, or representative of the Liquidating Trustee, and the Members of the Oversight Committee may rely, and shall be protected from liability for acting, on any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document reasonably believed by the Liquidating Trustee or the Oversight Committee to be genuine and to have been presented by an authorized party. Neither the Liquidating Trustee nor the Oversight Committee shall be liable for any action taken or suffered by the Liquidating Trustee or the Oversight Committee, as applicable, in reasonable reliance upon the advice of counsel or other professionals engaged by the Liquidating Trustee or the Oversight Committee, as applicable, in accordance with this Agreement.

5.5 Insurance. The Liquidating Trust may purchase, using Liquidating Trust Assets, and carry all insurance policies and pay all insurance premiums and costs that the Oversight Committee or the Liquidating Trustee deem reasonably necessary or advisable, including, without limitation, purchasing any errors and omissions insurance with regard to any liabilities, losses, damages, claims, costs, and expenses it may incur, including but not limited to attorneys' fees, arising out of or due to its actions or omissions, or consequences of such actions or omissions, other than as a result of its fraud or willful misconduct, with respect to the implementation and administration of the Plan or this Agreement.

ARTICLE VI
GENERAL PROVISIONS CONCERNING
ADMINISTRATION OF THE LIQUIDATION TRUST

6.1 Register of Beneficiaries. The Liquidating Trust shall maintain at all times a register of the names, mailing addresses, amounts of Allowed Claims, and the Pro Rata interests in the Liquidating Trust of the Beneficiaries (the “Register”). The Liquidating Trustee shall cause the Register to be kept at its office or at such other place or places as may be designated by the Liquidating Trustee from time to time.

6.2 Books and Records. The Liquidating Trust also shall maintain in respect of the Liquidating Trust and the Beneficiaries books and records relating to the Liquidating Trust Assets and income realized therefrom and the payment of expenses of and claims against or assumed by the Liquidating Trust in such detail and for such period of time as may be necessary to enable it to make full and proper reports in respect thereof. Except as expressly provided in this Agreement, the Plan, or the Confirmation Order, or as may be required by applicable law (including securities law), nothing in this Agreement is intended to require the Liquidating Trust 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. The Oversight Committee shall have the right to inspect the books and records of the Liquidating Trust at any time upon reasonable notice to the Liquidating Trustee. Beneficiaries shall have the right upon thirty (30) days’ prior written notice delivered to the Liquidating Trustee to inspect the Liquidating Trust’s books and records, including the Register, provided such Beneficiary shall have entered into a confidentiality agreement in form and substance reasonably satisfactory to the Liquidating Trustee. Satisfaction of the foregoing condition notwithstanding, if (a) the Liquidating Trustee and the Oversight Committee determine in good faith that the inspection of the Liquidating Trust’s books and records, including the Register, by any Beneficiary would be detrimental to the Liquidating Trust or (b) such Beneficiary is a defendant (or potential defendant) in a pending (or potential) action brought by the Liquidating Trust, the Liquidating Trust may deny such request for inspection. The Bankruptcy Court shall resolve any dispute between any Beneficiary and the Liquidating Trustee under this Section 6.2.

6.3 Periodic Reporting Obligations to Bankruptcy Court and Payment of Statutory Fees. The Liquidating Trustee may file with the Bankruptcy Court on a periodic basis a report setting forth the amounts and dates of all distributions made by the Liquidating Trustee under the Plan through each applicable reporting period. Additionally, all statutory fees with respect to the period prior to the Effective Date shall be paid by the Debtors in Cash on the Effective Date or other required payment date. With respect to the period after the Effective Date, the Liquidating Trustee shall be obligated to pay quarterly statutory fees to the Office of the United States Trustee and such obligation shall continue until such time as a particular Chapter 11 Case is closed, dismissed, or converted.

6.4 Final Accounting of Liquidating Trustee. The Liquidating Trustee (or any such successor Liquidating Trustee) shall within ninety (90) days after the termination of the Liquidating Trust or the death, dissolution, resignation, or removal of the Liquidating Trustee, render an accounting containing at least the following information:

- (a) A description of the Liquidating Trust Assets;
- (b) A summarized accounting in sufficient detail of all gains, losses, receipts, disbursements, and other transactions in connection with the Liquidating Trust and the Liquidating Trust Assets during the Liquidating Trustee's term of service, including their source and nature;
- (c) Separate entries for all receipts of principal and income;
- (d) The ending balance of all Liquidating Trust Assets as of the date of the accounting, including the Cash balance on hand and the name(s) and location(s) of the depository or depositories where the Cash is kept;
- (e) All known liabilities of the Liquidating Trust; and
- (f) All pending actions.

6.5 Filing of Accounting. The accounting shall be filed with the Bankruptcy Court and all Beneficiaries shall have notice that the final accounting has been filed and an opportunity to have a hearing on the approval of the accounting and, to the extent applicable, the discharge of the Liquidating Trustee.

6.6 Filing of Tax Returns. The Liquidating Trust shall be responsible for filing all federal, state, local, and foreign tax returns for the Debtors and the Liquidating Trust.

ARTICLE VII BENEFICIAL INTERESTS AND BENEFICIARIES

7.1 Trust Beneficial Interests. Holders of Allowed Claims or Interests shall be entitled to receive distributions as set forth in the Plan.

7.2 Interest Beneficial Only. The ownership of a beneficial interest in the Liquidating Trust shall not entitle any Beneficiary to any title in or to the Liquidating Trust Assets or to any right to call for a partition or division of the Liquidating Trust Assets or to require an accounting.

7.3 Evidence of Beneficial Interest. Ownership of a beneficial interest in the Liquidating Trust shall not be evidenced by any certificate, security, or receipt or in any other form or manner whatsoever, except as maintained on the books and records of the Liquidating Trust by the Liquidating Trustee.

7.4 Transfers of Beneficial Interests. Beneficial interests in the Liquidating Trust shall be nontransferable except upon death of the interest Holder or by operation of law. The Liquidating Trust shall not have any obligation to recognize any transfer of Claims or Interests occurring after the first Distribution Date. Only those Holders of Claims and Interests of record stated on the transfer ledgers as of the close of business on the Effective Date, to the extent applicable, shall be entitled to be recognized for all purposes hereunder.

7.5 Absolute Owners. The Liquidating Trustee may deem and treat the Beneficiary reflected as the owner of a beneficial interest on the Register as the absolute owner thereof for the purposes of receiving distributions and payments on account thereof for federal and state income tax purposes and for all other purposes whatsoever.

7.6 Change of Address. A Beneficiary may, after the Effective Date, select an alternative mailing address by notifying the Liquidating Trust in writing of such alternative Distribution Address. Absent such notice, the Liquidating Trustee shall not recognize any such change of address. Such notification shall be effective only upon receipt by the Liquidating Trustee.

7.7 Effect of Death, Dissolution, Incapacity or Bankruptcy of Beneficiary. The death, dissolution, incapacity, or bankruptcy of a Beneficiary during the term of the Liquidating Trust shall not operate to terminate the Liquidating Trust during the term of the Liquidating Trust nor shall it entitle the representative or creditors of the deceased, dissolved, incapacitated, or bankrupt Beneficiary to an accounting or to take any action in any court or elsewhere for the distribution of the Liquidating Trust Assets or for a partition thereof, nor shall it otherwise affect the rights and obligations of the Beneficiary under this Agreement or in the Liquidating Trust.

7.8 Standing. Except as expressly provided in this Agreement, the Plan, or the Confirmation Order, a Beneficiary does not have standing to direct the Liquidating Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any party (other than against the Liquidating Trustee to the extent provided in this Agreement) with respect to the Liquidating Trust Assets.

ARTICLE VIII PROCEDURES FOR RESOLVING AND TREATING DISPUTED CLAIMS

8.1 Incorporation of Plan Provisions. As of the Effective Date, the Liquidating Trust shall assume responsibility for all Claims matters established by the Plan. In accordance with the Plan, the Liquidating Trust shall establish a Disputed Claims Reserve Account in which it will deposit the appropriate Disputed Claims Reserve pending resolution, as set forth in the Plan.

8.2 Disputed Claims Reserve.

(a) **Establishment of Disputed Claims Reserve.** On the Initial Distribution Date (or on any other date on which distributions for any particular Class of Claims are made by the Liquidating Trustee), and in connection with making all distributions required to be made on any such date under the Plan, the Liquidating Trustee shall establish a separate Disputed Claims Reserve on account of distributions of Cash for each of the relevant Classes, as necessary pursuant to the Plan.

(b) **Amounts to Be Reserved.** The Liquidating Trustee shall reserve the Pro Rata proportion of all Cash allocated for distribution on account of each Disputed Claim based on the amount of each such Disputed Claim, or such lesser amount as may be agreed to by the Holder of the Claim on one hand and the Liquidating Trust on the other hand, as applicable, or in such amount as may otherwise be determined by order of the Bankruptcy Court. All Cash

allocable to the Disputed Claims in the relevant Class under the Plan shall be distributed by the Liquidating Trustee to the relevant Disputed Claim Reserve on the Initial Distribution Date (or such other date on which distributions for any particular Class of Claims are made pursuant to the Plan). All Cash distributed into a Disputed Claim Reserve shall be deposited in an interest-bearing account at a qualified institution, consistent with this Agreement.

(c) **Distribution.** Unless otherwise required by the applicable treatment provisions of the Plan, payments on any Disputed Claim that becomes an Allowed Claim shall be distributed on the first Subsequent Distribution Date after the Claim is Allowed in accordance with the Plan. Distributions shall be made only to the extent of the aggregate distributions that the Holder of any such Allowed Claim would have received had such Claim been Allowed as of the Effective Date (less any taxes paid with respect to amounts held in the Disputed Claims Reserve).

(d) **Termination of Disputed Claims Reserve.** The Disputed Claim Reserve shall be closed and extinguished by the Liquidating Trustee when all distributions and other dispositions of Cash or other property required to be made therefrom under the Plan and the Agreement have been made. Upon closure of the Disputed Claim Reserve, all Cash and other property held in the Disputed Claim Reserve shall revert in the Liquidating Trust and such Cash and property shall first be distributed Pro Rata to the other Holders of Allowed Claims in the Class in respect of which such Disputed Claims Reserve was created, and once the Claims in such Class are paid in full, shall be distributed to Holders of Allowed Claims in the order of the priority established by the Plan.

ARTICLE IX DISTRIBUTIONS

9.1 Distributions to Beneficiaries from Liquidating Trust Assets. All payments to be made by the Liquidating Trust to any Beneficiary shall be made only in accordance with the Plan, the Confirmation Order, and this Agreement and from the Liquidating Trust Assets (or from the income and proceeds realized from the Liquidating Trust Assets) net of the Liquidating Trust Operational Reserve, and only to the extent that the Liquidating Trust has sufficient Liquidating Trust Assets (or income and proceeds realized from the Liquidating Trust Assets) to make such payments in accordance with and to the extent provided for in the Plan, the Confirmation Order, and this Agreement.

9.2 Distributions; Withholding. The Liquidating Trustee shall make Initial Distributions with respect to each Class of Allowed Claims as provided in the Plan and, following the Initial Distributions required under the Plan, the Liquidating Trustee shall make Distributions to each Class of Allowed Claims (including distributions of all net Cash (including net Cash proceeds)) on Subsequent Distribution Dates. All such Distributions shall be made as provided, and subject to any withholding or reserve, in this Agreement, the Plan, or the Confirmation Order. Notwithstanding anything to the contrary in this Agreement, the Liquidating Trust shall distribute at least annually to the Beneficiaries its net income plus all net proceeds from the sale of Liquidating Trust Assets, except that the Liquidating Trust may retain an amount of net proceeds or net income reasonably necessary to maintain the value of its Liquidating Trust Assets or to meet claims and contingent liabilities (including Disputed

Claims). Additionally, the Liquidating Trustee may withhold from amounts distributable to any Beneficiary any and all amounts, determined in the Liquidating Trustee's sole discretion, to be required by any law, regulation, rule, ruling, directive, or other governmental requirement. Prior to the making of any distributions contemplated hereunder to any Class of Beneficiaries, the Liquidating Trustee shall provide the Oversight Committee with three (3) business days' written notice of any such distribution, which notice shall include a summary of the aggregate amounts to be distributed to each Class of Beneficiaries. Within two (2) business days of receipt of the notice of distribution, any Member of the Oversight Committee may request additional information regarding the calculation of the aggregate distribution amounts for such Class of Beneficiaries.

9.3 No Distribution Pending Allowance. No payment or Distribution shall be made with respect to any Claim to the extent it is a Disputed Claim unless and until such Disputed Claim becomes an Allowed Claim, except for distributions into the Disputed Claims Reserve Account in accordance with the Plan, Confirmation Order, and this Agreement.

9.4 Distributions After Allowance. Distributions to each Holder of a Disputed Claim, to the extent that such Claim ultimately becomes an Allowed Claim, shall be made in accordance with the provisions of the Plan governing the Class of Claims to which such Holder of a Claim belongs.

9.5 Unclaimed Property. In the event that any Distribution to any Beneficiary is returned as undeliverable, such Distributions shall be deemed unclaimed property and will be considered available Cash and may be used to fund the Liquidating Trust Operational Reserve or to fund distributions under the Plan; provided, however, that, pursuant to the Plan, the Liquidating Trust shall not be obligated to make distributions to a Class of Claims if the amount of the available Cash is *de minimis* and not sufficient to warrant the incurrence of costs in making the distribution. In the event the Liquidating Trustee holds available Cash after paying all operating expenses and Distributions are made, such remaining available Cash shall be Distributed to a nationally recognized charitable organization of the Liquidating Trustee's choice to the extent economically feasible. Neither available Cash nor any Claim or any unclaimed property attributable to such Claim, shall escheat to any federal, state, or local government or other entity.

9.6 Withholding Taxes. Any federal, state, or local withholding taxes or other amounts required to be withheld under applicable law shall be deducted from Distributions hereunder. All Beneficiaries shall be required to provide the Liquidating Trustee with any information necessary in connection with the withholding of such taxes.

9.7 Distributions on Non-Business Days. Any Distribution due on a day other than a Business Day shall be made, without interest, on the next Business Day.

9.8 No Distribution in Excess of Allowed Amount of Claim. Notwithstanding anything to the contrary in the Plan, no Beneficiary shall receive in respect of such Claims held by the Beneficiary any distribution in excess of the Allowed amount of such Claim, plus postpetition interest thereon to the extent allowed by the Plan. Upon a Beneficiary's recovering

the full amount of its Allowed Claim from another source, it thereafter shall no longer have any entitlement to receive distributions under the Plan.

ARTICLE X TAXES

10.1 Income Tax Status. Consistent with Revenue Procedure 94-45, 1994-28 I.R.B. 124, the Liquidating Trust shall be treated as a liquidating trust pursuant to Treasury Regulation Section 301.7701-4(d) and as a grantor trust pursuant to IRC Sections 671-677. Accordingly, the Beneficiaries shall be treated for federal income tax purposes (i) as direct recipients of an undivided interest in the Liquidation Trust Assets (other than to the extent such Liquidating Trust Assets are allocable to Disputed Claims) and as having immediately contributed such Liquidating Trust Assets to the Liquidation Trust, and (ii) thereafter, as both the grantors and the deemed owners of the Liquidating Trust (other than the Liquidation Trust Assets as are allocable to Disputed Claims). Any items of income, deduction, credit and loss of the Liquidating Trust shall be allocated for federal income tax purposes to the Beneficiaries.

10.2 Tax Returns. In accordance with IRC Section 6012 and Treasury Regulation Section 1.671-4(a), the Liquidating Trust shall file with the IRS annual tax returns on Form 1041. In addition, the Liquidating Trust shall file in a timely manner such other tax returns, including any state and local tax returns, as are required by applicable law and pay any taxes shown as due thereon. Within a reasonable time following the end of the taxable year, the Liquidating Trust shall send to each Beneficiary a separate statement setting forth the Beneficiary's share of items of income, gain, loss, deduction or credit and will instruct each such Beneficiary to report such items on their federal income tax returns. The Liquidating Trust may provide each Beneficiary with a copy of the Form 1041 for the Liquidating Trust (without attaching any other Beneficiary's Schedule K-1 or other applicable information form) along with such Beneficiary's Schedule K-1 or other applicable information form in order to satisfy the foregoing requirement. The Liquidating Trust shall allocate the taxable income, gain, loss, deduction or credit of the Liquidating Trust with respect to each Beneficiary.

10.3 Withholding of Taxes and Reporting Related to Liquidating Trust Operations. In connection with the Plan and all Distributions thereunder, the Liquidating Trustee shall, to the extent applicable, comply with all tax withholding and reporting requirements imposed by any federal, state, provincial, local, or foreign taxing authority, and all Distributions thereunder shall be subject to any such withholding and reporting requirements. The Liquidating Trustee is authorized by the Plan 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 the Plan, (a) each holder of an Allowed Claim or, if applicable, an Allowed Interest, that is to receive a Distribution pursuant to the Plan has 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, and (b) no Distribution shall be made to or on behalf of such holder pursuant to the Plan unless and until such holder has made arrangements satisfactory to the Liquidating Trustee for the payment and satisfaction of such withholding tax obligations. Any property to be distributed pursuant to the Plan, pending the implementation of such arrangements, shall be treated as an undeliverable Distribution to be held by the Liquidating Trustee until such time as

the Liquidating Trustee is satisfied with the holder's arrangements for any withholding tax obligations. The Liquidating Trustee may require any Beneficiary to furnish to the Liquidating Trustee its social security number or employer or taxpayer identification number as assigned by the IRS and the Liquidating Trustee may condition any Distribution to any Beneficiary upon the receipt of such identification number.

10.4 Valuations. As soon as possible after the Effective Date, the Liquidating Trustee, in consultation with any financial advisors it deems appropriate, shall make a good faith valuation of the Liquidating Trust Assets, and such valuation shall be used consistently by all parties (including, without limitation, the Liquidating Trust and the Beneficiaries) for all federal income tax purposes. The Liquidating Trust also shall file (or cause to be filed) any other statements, returns, or disclosures relating to the Liquidating Trust that are required by any governmental unit.

10.5 Treatment of Disputed Claims Reserve. Notwithstanding any other provision of this Liquidating Trust Agreement to the contrary, subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary, the Liquidating Trustee may (i) treat any Liquidating Trust Assets allocable to, or retained on account of, a Disputed Claims Reserve in accordance with Section 7.2 of this Liquidating Trust Agreement as held by one or more discrete trusts for federal income tax purposes, consisting of separate and independent shares to be established in respect of each Disputed Claim, in accordance with the trust provisions of the IRC (sections 641 et seq.) or (ii) elect to treat such Liquidation Trust Assets as a "disputed ownership fund" governed by Treasury Regulation Section 1.468B-9. All parties shall report, for income tax purposes, consistent with the foregoing. In the event, and to the extent, any Cash retained on account of Disputed Claims in the Disputed Claims Reserve is insufficient to pay the portion of any such taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims, such taxes shall be (a) reimbursed from any subsequent Cash amounts retained on account of Disputed Claims, or (b) to the extent such Disputed Claims have subsequently been resolved, deducted from any amounts distributable by the Liquidating Trustee as a result of the resolutions of such Disputed Claims.

10.6 Expedited Determination of Taxes. The Liquidating Trust may request an expedited determination of taxes of the Debtors and of the Liquidating Trust, including the Disputed Claims Reserve, under Bankruptcy Code Section 505 for all returns filed for, or on behalf of, the Debtors and the Liquidating Trust for all taxable periods through the termination of the Liquidating Trust.

ARTICLE XI TERMINATION OF LIQUIDATION TRUST

11.1 Termination of Liquidating Trust. The Liquidating Trustee shall be discharged and the Liquidating Trust shall be terminated, at such time as (i) all Disputed Claims have been resolved, (ii) all of the Liquidating Trust Assets have been liquidated, (iii) all duties and obligations of the Liquidating Trustee hereunder have been fulfilled, (iv) all distributions required to be made by the Liquidating Trustee under the Plan and this Agreement have been made, and (v) the Chapter 11 Cases of the Debtors have been closed; provided, however, that in

no event shall the Liquidating Trust be terminated later than the term of the Liquidating Trust under Section 11.2 of this Agreement, as such term may be extended pursuant to Section 11.2.

11.2 Maximum Term. The term of the Liquidating Trust shall end no later than the fifth (5th) anniversary of the Effective Date (the “Initial Liquidating Trust Term”); provided, however, that the Liquidating Trustee may extend the term of the Liquidating Trust for such additional period of time as is necessary to facilitate or complete the recovery and liquidation of the Liquidating Trust Assets by filing with the Bankruptcy Court within the six (6) month period prior to the termination of the Initial Liquidating Trust Term a notice of intent to extend the term of the Liquidating Trust. The Liquidating Trust may file one or more such extension notices, each notice to be filed within the six (6) month period prior to the termination of the extended term of the Liquidating Trust (all such extensions, collectively, the “Supplemental Liquidating Trust Term”).

11.3 Events Upon End of Term Termination. At the conclusion of the term of the Liquidating Trust, the Liquidating Trustee shall distribute the remaining Liquidating Trust Assets, if any, to the Beneficiaries, in accordance with the Plan, the Confirmation Order, and this Agreement; provided, however, that the Liquidating Trustee shall not be obligated to make distributions to a Class of Claims if the amount of the available Cash is *de minimis* and is not sufficient to warrant the incurrence of cost of making such distribution.

11.4 Winding Up and Discharge of the Liquidating Trustee. For the purposes of winding up the affairs of the Liquidating Trust at the conclusion of its term, the Liquidating Trustee shall continue to act as Liquidating Trustee until its duties under this Agreement have been fully discharged or its role as Liquidating Trustee is otherwise terminated under this Agreement and the Plan. Upon a motion by the Liquidating Trustee, the Bankruptcy Court may enter an order relieving the Liquidating Trustee, its agents, and employees of any further duties, discharging the Liquidating Trustee and releasing its bond, if any.

ARTICLE XII MISCELLANEOUS PROVISIONS

12.1 Amendments. The Liquidating Trustee may, with the approval of a majority of the Members of the Oversight Committee, modify, supplement, or amend this Agreement but only to clarify any ambiguity or inconsistency, or render the Agreement in compliance with its stated tax purposes, and only if such amendment does not materially and adversely affect the interests, rights, treatment, or distributions of any Beneficiaries. The Liquidating Trustee may, with the approval of a majority of the Members of the Oversight Committee, modify, supplement, or amend this Agreement in any way that is not inconsistent with the Plan or the Confirmation Order. In the event that a majority of the Members of the Oversight Committee are unable to reach a consensus regarding a proposed modification, supplement, or amendment, the Liquidating Trustee may seek Bankruptcy Court approval of any such modification, supplement, or amendment.

12.2 Waiver. No failure by the Liquidating Trust, the Liquidating Trustee, or the Oversight Committee to exercise or delay in exercising any right, power or privilege hereunder

shall operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any further exercise thereof, or of any other right, power or privilege.

12.3 Cumulative Rights and Remedies. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights under law or in equity.

12.4 No Bond Required. Notwithstanding any state law to the contrary, the Liquidating Trustee (including any successor Liquidating Trustee) shall be exempt from giving any bond or other security in any jurisdiction.

12.5 Irrevocability. This Agreement and the Liquidating Trust created hereunder shall be irrevocable, except as otherwise expressly provided in this Agreement.

12.6 Relationship to the Plan. The principal purpose of this Agreement is to aid in the implementation of the Plan and, therefore, this Agreement incorporates and is subject to the provisions of the Plan and the Confirmation Order. In the event that any provision of this Agreement is found to be inconsistent with a provision of the Plan or the Confirmation Order, the provisions of the Plan or the Confirmation Order, as applicable, shall control. Notwithstanding anything to the contrary in this Agreement, the Liquidating Trust, the Oversight Committee, and the Members shall be bound by the terms of the Plan and, accordingly, shall not commence any proceeding with respect to any Cause of Action released, enjoined, and/or exculpated pursuant to the Plan.

12.7 Division of Liquidating Trust. Under no circumstances shall the Liquidating Trustee have the right or power to divide the Liquidating Trust unless authorized to do so by the Oversight Committee and the Bankruptcy Court.

12.8 Applicable Law. The Liquidating Trust is made in the State of Delaware, and the Liquidating Trust and this Agreement, and the rights and obligations of the Liquidating Trustee or the Oversight Committee are to be governed by and construed and administered according to the laws of the State of Delaware; provided, however, that, except as expressly provided in this Agreement, there shall not be applicable to the Liquidating Trust, the Liquidating Trustee, the Oversight Committee or its Members, or this Agreement any provisions of the laws (statutory or common) of the State of Delaware pertaining to trusts which relate to or regulate: (i) the filing with any court or governmental body or agency of trustee accounts or schedules of trustee fees and charges; (ii) affirmative requirements to post bonds for trustees, officers, agents, or employees of a trust; (iii) the necessity for obtaining court or other governmental approval concerning the acquisition, holding or disposition of real or personal property; (iv) fees or other sums payable to trustees, officers, agents or employees of a trust; (v) the allocation of receipts and expenditures to income or principal; (vi) restrictions or limitations on the permissible nature, amount or concentration of trust investments or requirements relating to the titling, storage or other manner of holding of trust assets; or (vii) the establishment of fiduciary or other standards or responsibilities or limitations on the acts or powers of trustees, which are inconsistent with the limitations or liabilities or authorities and powers of the Liquidating Trustee set forth or referenced in this Agreement.

12.9 Retention of Jurisdiction. Notwithstanding the Effective Date, and to the fullest

extent permitted by law and as set forth in Article X of the Plan, the Bankruptcy Court shall retain exclusive jurisdiction over the Liquidating Trust after the Effective Date, including, without limitation, jurisdiction to resolve any and all controversies, suits, and issues that may arise in connection therewith, including, without limitation, this Agreement, or any entity's obligations incurred in connection herewith, including without limitation, any action against the Liquidating Trustee or any Member of the Oversight Committee or any professional retained by the Liquidating Trustee or the Oversight Committee, in each case in its capacity as such. Each party to this Agreement and each beneficiary of the Liquidating Trust hereby irrevocably consents to the exclusive jurisdiction of the Bankruptcy Court in any action to enforce, interpret, or construe any provision of this Agreement or of any other agreement or document delivered in connection with this Agreement, and also hereby irrevocably waives any defense of improper venue, forum *non conveniens*, or lack of personal jurisdiction to any such action brought in the Bankruptcy Court. Each party further irrevocably agrees that any action to enforce, interpret, or construe any provision of this Agreement will be brought only in the Bankruptcy Court. Each party hereby irrevocably consents to the service by certified or registered mail, return receipt requested, of any process in any action to enforce, interpret or construe any provision of this Agreement. Notwithstanding the preceding, nothing herein shall be interpreted as requiring the commencement or prosecution of any Causes of Action in the Bankruptcy Court, and all determinations regarding the proper forum for initiating any Cause of Action shall be at the discretion of the Liquidating Trust, consistent with applicable law.

12.10 Severability. In the event that any provision of this Agreement or the application thereof to any person or circumstance shall be determined by the Bankruptcy Court to be invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such provision to persons or circumstance, 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.

12.11 Limitation of Benefits. Except as otherwise specifically provided in this Agreement, the Plan, or the Confirmation Order, nothing herein is intended or shall be construed to confer on or to give any person other than the parties hereto and the Beneficiaries any rights or remedies under or by reason of this Agreement.

12.12 Notices. All notices, requests, demands, consents, and other communication hereunder shall be in writing and shall be deemed to have been duly given to a person, if delivered in person or if sent by overnight mail, registered mail, certified mail or regular mail, with postage prepaid, to the following addresses:

If to the Liquidating Trustee:

Verdolino & Lowey, P.C.
c/o Craig R. Jalbert, CIRA
124 Washington Street, Suite 101
Foxboro, MA 02035
Phone: (508) 543-1720
Fax: (508) 543-4114

with a copy to:

Brown Rudnick LLP
c/o Sunni P. Beville, Esq.
1 Financial Center
Boston, MA 02111
Phone: (617) 856-8475
Fax: (617) 289-0457

If to a Beneficiary:

To the name and mailing address set forth in the Register with respect to such Beneficiary.

The parties may designate in writing from time to time other and additional places to which notices may be sent.

12.13 Further Assurances. From and after the Effective Date, the parties hereto covenant and agree to execute and deliver all such documents and notices and to take all such further actions as may reasonably be required from time to time to carry out the intent and purposes of this Agreement, and to consummate the transactions contemplated hereby.

12.14 Integration. This Agreement, the Plan, and the Confirmation Order constitute the entire agreement with, by, and among the parties thereto, and there are no representations, warranties, covenants, or obligations except as set forth herein, in the Plan, and in the Confirmation Order. This Agreement, together with the Plan and the Confirmation Order, supersede all prior and contemporaneous agreements, understandings, negotiations, and discussions, written or oral, of the parties hereto, relating to any transaction contemplated hereunder. Except as otherwise provided in this Agreement, the Plan, or Confirmation Order, nothing herein is intended or shall be construed to confer upon or give any person other than the parties hereto and the Beneficiaries any rights or remedies under or by reason of this Agreement. To the extent there is an inconsistency between the Plan and this Agreement, the Plan shall control.

12.15 Interpretation. The enumeration and 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. Unless context otherwise requires, whenever used in this Agreement the singular shall include the plural and the plural shall include the singular, and words importing the masculine gender shall include the feminine and the neuter, if appropriate, and vice versa, and words importing persons shall include partnerships, associations and corporations. The words herein, hereby, and hereunder and words with similar import, refer to this Agreement as a whole and not to any particular Section or subsection hereof unless the context requires otherwise. Any reference to the "Liquidating Trustee" shall be deemed to include a reference to the "Liquidating Trust" and any reference to the "Liquidating Trust" shall be deemed to include a reference to the "Liquidating Trustee" except for the references in Sections 5.1, 5.2, and such other provisions in which the context otherwise requires.

12.16 Counterparts. This Agreement may be signed by the parties hereto in counterparts, which, when taken together, shall constitute one and the same document.

[Signature Page(s) Follow(s)]

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 or representatives, all as of the date first above written.

DEBTORS

**F-Squared Investment Management, LLC,
F-Squared Investments, Inc.,
F-Squared Retirement Solutions, LLC,
F-Squared Alternative Investments, LLC,
F-Squared Solutions, LLC,
F-Squared Institutional Advisors, LLC,
F-Squared Capital, LLC,
AlphaSector LLS GP 1, LLC, and
Active Index Solutions, LLC**

By: _____
Name: _____
Title: _____

THE LIQUIDATION TRUSTEE

By: _____
Craig R. Jalbert, CIRA
Verdolino & Lowey, P.C.
124 Washington Street, Suite 101
Foxboro, MA 02035

Exhibit A
Liquidating Trustee Compensation

VERDOLINO & LOWEY, P.C., Certified Public Accountants Professional Rates (Hourly)

- Principals \$435.00
- Managers \$245.00 - \$390.00
- Staff \$125.00 - \$375.00
- Bookkeepers \$110.00 - \$210.00
- Clerical \$85.00

On September 1st of each year, the Firm reviews and adjusts the hourly rates of all employees. These rates will be in effect until August 31, 2016.

Exhibit B

Schedule of Rejected Insurance Policies

At this time, the Debtors have not identified any insurance policies to include on this schedule. The Debtors reserve the right to add insurance policies to this schedule and/or file a motion to reject and/or assume any insurance policies.