

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

IN RE: PLOVER APPETIZER CO., f/k/a GOLDEN COUNTY FOODS, INC. et al.,¹ DEBTORS	§ § § § § § §	CHAPTER 11 CASE NO. 15-11062 (KG) JOINTLY ADMINISTERED Re: Docket No. 564
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**NOTICE OF FILING OF PLAN SUPPLEMENT TO DEBTORS' COMBINED
DISCLOSURE STATEMENT AND JOINT PLAN OF LIQUIDATION**

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On December 4, 2015, the above-captioned debtors (collectively, the “Debtors”) filed the solicitation version of their Combined Disclosure Statement and Joint Plan of Liquidation (as may be amended, modified, and revised, the “Combined Disclosure Statement and Plan”)² [Docket No. 564] with the Bankruptcy Court.

2. The Combined Disclosure Statement and Plan contemplates the filing of certain documents (the “Plan Supplement”) in advance of the hearing on, among other things, confirmation of the Combined Disclosure Statement and Plan (the “Confirmation Hearing”). In connection therewith, the Debtors hereby file the following Plan Supplement documents:

Exhibit A Liquidating Trust Agreement³

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

4. The Debtors, in consultation with the 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 Combined Disclosure Statement and Plan, and the Debtors reserve all rights with respect to the final forms of all documents contained in the Plan

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Plover Appetizer Co. (f/k/a Golden County Foods, Inc.) (3018); Plover Appetizer Holding Co. (f/k/a GCF Holdings II, Inc.) (3151); and Plover Appetizer Franchisee Co. (f/k/a GCF Franchisee, Inc.) (4385). The address of the Debtors' corporate headquarters is 300 Moore Road, Plover, Wisconsin 54467.

² Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Combined Disclosure Statement and Plan.

³ The Liquidating Trust Agreement identified Thomas A. Pitta of Emmet, Marvin & Martin LLP as the initial Liquidating Trustee and sets forth the governing terms of the Liquidating Trust.



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 Combined Disclosure Statement and 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.kccllc.net/goldencountyfoods, or (ii) can be obtained by contacting the Debtors' solicitation agent, Kurtzman Carson Consulting LLC, 2335 Alaska Avenue, El Segundo, California 90245, goldencountyfoodsinfo@kccllc.com, (866) 927-7078.

6. The Confirmation Hearing will be held before The Honorable Kevin Gross, United States Bankruptcy Judge, in Courtroom 3 of the United States Bankruptcy Court, 824 N. Market Street, 6th Floor, Wilmington, Delaware 19801, on **January 20, 2016, at 10:00 a.m. (EST)**. 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: January 8, 2016

/s/ Joseph C. Barsalona II

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COUNSEL FOR THE DEBTORS

Exhibit A

Liquidating Trust Agreement

PLOVER APPETIZER CREDITORS' LIQUIDATING TRUST AGREEMENT

This Plover Appetizer Creditors' Liquidating Trust Agreement (the "Agreement") dated as of January ___, 2016 is entered into by and between Plover Appetizer Co. f/k/a Golden County Foods, Inc.; Plover Appetizer Franchisee Co. f/k/a GCF Franchisee, Inc.; and Plover Appetizer Holding Co. f/k/a GCF Holdings II, Inc. (collectively, the "Settlor" or "Debtors"), and Thomas A. Pitta of Emmet, Marvin & Martin LLP (the "Trustee"), for the benefit of the "Beneficiaries" (defined below) under the terms of *Debtors' Combined Disclosure Statement and Joint Plan of Liquidation*, dated January ___, 2016 (the "Plan")¹ confirmed by the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") in Chapter 11 Case No. 15-11062 (KG) by Order January ___, 2016 [Docket No. ___].

WITNESSETH

WHEREAS, the Trust (defined below) is created pursuant to, and to effectuate, the Plan; and

WHEREAS, the Trust is created on behalf, and for the sole benefit, of the Beneficiaries pursuant to the Plan; and

WHEREAS, the Trust is established as a liquidating trust in accordance with Treasury Regulation Section 301.7701-4(d) for the purpose of collecting, liquidating and distributing the Assets (defined below) for the benefit of the Beneficiaries in accordance with the terms of this Agreement, the Plan, and the Confirmation Order 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 Trust; and

¹ Capitalized terms used herein that are undefined in this Agreement shall have the meanings ascribed to them in the Plan or the Confirmation Order, as appropriate.

WHEREAS, pursuant to the Plan, the Settlor, the Trustee and the Beneficiaries are required to treat, for all federal income tax purposes, the transfer of the Assets to the Trust as a transfer of the Assets by the Settlor to the Beneficiaries in satisfaction of their Allowed Claims (as defined in the Plan) followed by a transfer of the Assets by the Beneficiaries to the Trust in exchange for their beneficial interests herein, and to treat the Beneficiaries as the grantors and owners of the Trust in accordance with Treasury Regulation section 301.7701-4; and

WHEREAS, the Trust is intended to be treated as a grantor trust for U.S. federal income tax purposes pursuant to Sections 671 through 677 of the Internal Revenue Code of 1986 (as amended, the “Tax Code”); and

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein and in the Plan and the Confirmation Order, the Settlor and the Trustee agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATIONS

1.1 Definitions.

1.1.1 “Agreement” shall mean this Plover Appetizer Creditors’ Liquidating Trust Agreement.

1.1.2 “Assets” shall mean the Liquidating Trust Assets as defined in the Plan.

1.1.3 “Available Trust Cash” shall mean the proceeds of the Assets (including Causes of Action, as such term is defined in the Plan) after paying, reserving against, or satisfying: (a) fees incurred and due to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6); (b) operating and administrative expenses of the Trust, including, but not limited to, all costs, expenses, and obligations incurred by the Trustee (or professionals who may be employed by the Trustee in administering the Trust) in carrying out his or her responsibilities under this

Agreement, the Plan and the Confirmation Order; and (c) the Reserve (as defined in the Plan) for Disputed Claims (as defined in the Plan).

1.1.4 “Beneficiaries” means the Holders of Allowed Claims, as defined in the Plan, whether their claims are allowed before or after the Effective Date (as defined in the Plan) of the Plan.

1.1.5 “Trust” shall mean the liquidating trust established pursuant to the terms of this Agreement, the Plan, and the Confirmation Order.

1.1.6 “Trustee” shall mean (a) initially, the Person (as defined in the Bankruptcy Code) defined as the “Trustee” above, and (b) any successors or replacements duly appointed under the terms of this Agreement, and is the Person referred to as the “Liquidating Trustee” in the Plan and the Confirmation Order.

1.1.7 “Permitted Investments” shall include (a) short-term direct obligations of, or obligations guaranteed by, the United States of America, (b) short-term obligations of any agency or corporation which is or may hereafter be created by or pursuant to an act of the Congress of the United States as an agency or instrumentality thereof, (c) such other investments as the Bankruptcy Court may approve from time to time, or (d) demand deposits or certificates of deposit at any bank or trust company that has, at the time of the deposit, a capital stock and surplus aggregating at least \$1,000,000,000, *provided, however*, that the scope of any Permitted 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 Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements, or otherwise, and to the investment guidelines of section 345 of the Bankruptcy Code.

1.2 Use of Plan Definitions. All terms which are used in this Agreement but not defined herein shall have the meaning set forth in the Plan or the Confirmation Order, as appropriate.

1.3 Headings; Interpretation. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the provisions of this Agreement. Words denoting the singular number shall include the plural number and vice versa, and words denoting one gender shall include the other gender.

1.4 Particular Words. Reference in this Agreement to any Section or Article is, unless otherwise specified, to that Section or Article under this Agreement. The words “hereof,” “herein,” “hereunder,” and similar terms shall refer to this Agreement and not to any particular Section or Article of this Agreement.

ARTICLE II

DECLARATION OF TRUST

2.1 Creation and Name. Pursuant to the Plan, the Settlor hereby establishes and creates the Trust, on behalf of, and for the benefit of the Beneficiaries as of the date hereof (the “Trust Effective Date”). The Trust shall be known as the “Plover Appetizer Creditors’ Liquidating Trust,” and is the Trust referred to as the “Liquidating Trust” in the Plan. The Trustee may conduct the affairs of the Trust under the name of the “Plover Appetizer Creditors’ Liquidating Trust.”

2.2 Purpose of Trust. The Settlor and the Trustee, pursuant to the Plan, the Confirmation Order and in accordance with the Bankruptcy Code, hereby create the Trust for the purpose of, among other things: (a) investigating and, if appropriate, pursuing Causes of Action not otherwise released under the Plan, (b) administering the Assets, (c) resolving all Disputed Claims and (d) making Distributions (as defined in the Plan) from the Trust as provided for in

the Plan and this Agreement and the Confirmation Order. The activities of the Trust shall be limited to those activities set forth in this Agreement and as otherwise contemplated by the Plan and the Confirmation Order.

2.3 Transfer of Assets.

A. The Settlor hereby grants, releases, assigns, conveys, transfers and delivers, on behalf of the Beneficiaries, all of the Settlor's right, title and interest in the Assets to the Trustee as of the Trust Effective Date in trust for the benefit of the Beneficiaries, pursuant to sections 1123(a)(5)(B) and 1123(b)(3)(B) of the Bankruptcy Code and in accordance with the Plan and Confirmation Order, free and clear of any and all liens, claims, encumbrances, and interests (legal, beneficial, or otherwise) of all other Persons to the maximum extent contemplated by and permissible under section 1141(c) of the Bankruptcy Code for the uses and purposes as specified in this Agreement, the Plan and the Confirmation Order, but subject to the following liabilities: (i) all fees payable pursuant to 28 U.S.C. §1930 until such time as the Bankruptcy Court enters a final decree closing each of the Debtor's Chapter 11 Cases (as defined in the Plan), (ii) any expenses incurred and unpaid, or to be incurred, by the Trustee (including the payment of professionals) in the performance of his or her administrative duties in respect of winding up the Estates (as defined in the Plan) and administering the Trust, and (iii) any obligations owing pursuant to the Plan.

B. The Trustee shall automatically, and without need for further notice or approval of the Bankruptcy Court or the Debtors, be designated as the representative of the Estates pursuant to section 1123(b)(3)(B) of the Bankruptcy Code to enforce or pursue any Cause of Action transferred to the Trust after the Trust Effective Date in accordance with the terms of this Agreement, the Plan, and the Confirmation Order. Any proceeds of a Cause of Action shall be distributed pursuant to the terms of this Agreement, the Plan and the Confirmation Order.

2.4 Securities Law. Under section 1145 of the Bankruptcy Code, the issuance of beneficial interests in the Trust to the Beneficiaries under the Plan shall be exempt from registration under the Securities Act of 1933, as amended, and all applicable state and local laws requiring registration of securities. If the Trustee determines, with the advice of counsel, that the Trust is required to comply with the registration and reporting requirements of the Securities and Exchange Act of 1934, as amended, or the Investment Company Act of 1940, as amended, then the Trustee shall take any and all actions to comply with such reporting requirements as soon as practicable and file necessary periodic reports with the Securities and Exchange Commission.

2.5 Appointment and Acceptance of Trustee. The Trustee shall be deemed to be appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code. The Trustee accepts the Trust created by this Agreement and the grant, assignment, transfer, conveyance, and delivery to the Trustee, on behalf, and for the benefit, of the Beneficiaries, by the Debtors of all of their respective right, title, and interest in the Assets, upon and subject to the terms and conditions set forth in this Agreement, the Plan and the Confirmation Order. The Trustee shall be deemed hereby substituted as plaintiff, defendant, or in any other capacity for the Debtors and/or the

Committee in (a) all pending matters, including, but not limited to, motions, contested matters and adversary proceedings in the Bankruptcy Court and (b) any Cause of Action not otherwise released pursuant to the Plan pending before the Bankruptcy Court or any other court that relates to an Asset without the need for filing any motion for such relief. For the avoidance of doubt, the Trustee may amend the caption of any pleading to substitute the Trustee for the Debtors without further order of the Bankruptcy Court.

2.6 No Reversion to Debtors. In no event shall any part of the Assets be distributed to any of the Debtors.

ARTICLE III

ADMINISTRATION OF THE TRUST

3.1 Rights, Powers, and Privileges. The Trustee shall have only the rights, powers and privileges expressly provided in this Agreement, the Plan and the Confirmation Order. Subject to the terms of this Agreement, including Section 3.5 of this Agreement, the Trustee shall have the power to take the actions specified in this Section 3.1 and any actions reasonably incidental thereto, which the Trustee reasonably determines to be necessary or appropriate to fulfill the purpose of the Trust, including, but not limited to:

- A. exercise all power and authority and take all actions that may be necessary to implement the Plan and enforce all provisions thereof, including, but not limited to, commencing and prosecuting all actions and proceedings (including, but not limited to, the Causes of Action) that may be commenced and taking all actions that may be taken by any officer, director or shareholder of the Debtors with like effect as if authorized, exercised and taken by unanimous action of such officers, directors and shareholders, including consummating the Plan;
- B. investigate, prosecute and/or settle or abandon any Causes of Action not otherwise released pursuant to the Plan and transferred to the Trust;
- C. open and maintain all bank accounts, make Distributions and take other actions consistent with the Plan, including the maintenance of appropriate reserves (including the Reserve), in the name of the Trust;

- D. maintain the books and records of the Trust, including any books and records that the Debtors transferred to the Trust;
- E. take all steps reasonably necessary and practicable to terminate the corporate existence of the Debtors, including the filing of any motions or other pleadings in the Bankruptcy Court, if necessary;
- F. incur and pay reasonable and necessary expenses in connection with the implementation and consummation of the Plan;
- G. make decisions without court approval regarding the retention or engagement of professionals or other Persons, and to pay, without court approval, all reasonable fees and expenses of the Trust accruing from and after the Trust Effective Date;
- H. collect and liquidate all Assets transferred to the Trust and administer the wind down of the Debtors' affairs;
- I. prepare and file tax returns and related forms and filings on behalf of the Debtors, protest or appeal any tax assessment, and apply for or otherwise pursue any Claim (as defined in the Plan) for any tax refund, rebate or reduction;
- J. seek a determination of tax liability under section 505 of the Bankruptcy Code or otherwise and pay, or cause to be paid, from the Assets transferred to the Trust, any taxes incurred by the Trustee and/or the Debtors before or after the Trust Effective Date;
- K. collect, or cause to be collected, any accounts receivable or other claims of the Debtors not otherwise disposed of pursuant to the Plan, including by filing proofs of claim in bankruptcy cases or other insolvency proceedings as may be necessary;
- L. invest, or cause to be invested, Cash (as defined in the Plan) as deemed appropriate by the Trustee and as consistent with sections 1.1.8 and 3.8 of this Agreement;
- M. enter, or cause to be entered, into any agreement, or execute any document required by or consistent with the Plan and perform all of the Debtors' obligations under the Plan;
- N. abandon, or cause to be abandoned, in any commercially reasonable manner, any Assets that the Trustee reasonably concludes are burdensome or of inconsequential value and benefit to the Trust without any need for Bankruptcy Court approval;
- O. prepare and file operating reports;

- P. file, prosecute and/or settle objections to Claims filed in each of the Chapter 11 Cases;
- Q. take all other actions not inconsistent with the provisions of the Plan which the Trustee deems reasonably necessary or desirable in connection with the administration and consummation of the Plan;
- R. exercise such other powers as may be vested in the Trustee by order of the Bankruptcy Court;
- S. make distributions of Available Trust Cash to the Beneficiaries; and
- T. wind up the affairs of the Trust once all Available Trust Cash has been distributed and the affairs of the Trust have been concluded.

On and after the Trust Effective Date, the Trustee may exercise any of the foregoing powers without any further order of the Bankruptcy Court provided the Trustee acts in conformity with the Plan, the Confirmation Order, this Agreement and any applicable orders of the Bankruptcy Court.

3.2 Transfer of Privileges. On the Trust Effective Date, the Debtors shall be deemed to transfer to the Trustee the privileges identified in Article X.N of the Plan. From and after such transfer, the Debtors and the Estates shall have no further rights or obligations with respect thereto except as provided in the Plan. Privileged communications may be shared among the Trustee, and those attorneys, financial advisors, accountants or other professionals and employees that the Trustee retains without compromising the privileged nature of such communications, in accordance with the “joint interest” doctrine.

3.3 Agents and Professionals. The Trustee may, but shall not be required to, retain any professionals retained by the Creditors’ Committee or the Debtors, including, but not limited to, Lowenstein Sandler, LLP, GlassRatner Advisory & Capital Group LLC and such other attorneys, financial advisors, disbursing agents, accountants or other professionals and employees as the Trustee deems appropriate in the reasonable exercise of his or her discretion,

and who the Trustee reasonably determines to have qualifications necessary to assist the Trustee in the proper administration of the Trust. Subject to Section 7.9 of this Agreement, the Trustee may pay the reasonable fees, costs and expenses of such Persons, in a manner to be determined by the Trustee, out of the Assets in the ordinary course of business and without any further notice to any party or action, order or approval of the Bankruptcy Court.

3.4 Safekeeping of Assets. All Assets shall, until distributed as provided herein or in the Plan, be held in trust for the benefit of the Beneficiaries in accordance with the Plan, the Confirmation Order and this Agreement. The Trustee shall be under no liability for interest or producing income on any moneys received hereunder and held for Distribution to the Beneficiaries, except as such interest or income shall actually be received by the Trustee.

3.5 Limitations on Trustee. The Trustee shall not at any time, on behalf of the Trust or Beneficiaries, enter into or engage in any trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Trust, and no part of the Assets or the proceeds, revenue, or income therefrom shall be used or disposed of by the Trust in furtherance of any trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Trust.

3.6 Claims Administration. Except as specifically provided in the Plan, the Trustee shall have the authority to: (a) file, withdraw or litigate to judgment objections to Claims; (b) settle or compromise any Disputed Claims without any further notice to any party, or any order or approval by the Bankruptcy Court; and (c) administer and adjust the claims register to reflect any settlements or compromises of a Disputed Claim, without any further notice to or action, order or approval by the Bankruptcy Court. Notwithstanding the foregoing in this Section 3.6, the Trustee shall not have the authority to settle or compromise objections to any Fee Claim (as

defined in the Plan) arising before the Trust Effective Date, which shall be considered by the Bankruptcy Court upon notice as required by the applicable Bankruptcy Rules, Local Rules, and any previous orders of the Court.

3.7 Resolution of Causes of Action. Except as specifically provided in the Plan, the Trustee shall have the authority to commence, litigate to judgment or settle any Causes of Action. The Trustee may settle any Cause of Action without further order or approval by the Bankruptcy Court; *provided, however*, in accordance with Section 3.10 of this Agreement, the Trustee may seek Court approval of any such settlement.

3.8 Investment. The Trustee may only invest funds held in the Trust in Permitted Investments and, provided that the Trustee does so, he or she shall have no liability in the event of insolvency of any institution in which he or she has invested any of the Assets or any proceeds, revenue, or income therefrom. The Trustee may expend the Cash of the Trust: (a) as reasonably necessary to meet contingent liabilities and to maintain the value of the Assets during liquidation, (b) to pay reasonable administrative expenses (including, but not limited to, any taxes imposed on the Trust and professional fees), and (c) to satisfy other liabilities incurred by the Trust in accordance with the Plan, the Confirmation Order and this Agreement (including, without limitation, the payment of any taxes).

3.9 Trustee Action. The Trustee shall hold, collect, conserve, protect and administer the Trust in accordance with the provisions of this Agreement, the Plan and the Confirmation Order, and pay and distribute amounts as set forth herein for the purposes set forth in this Agreement. Any good faith determination by the Trustee as to what actions are in the best interests of the Trust shall be determinative.

3.10 Bankruptcy Court Approval of Trustee Actions. Except as provided in the Plan, the Confirmation Order or otherwise specified in this Agreement, the Trustee need not obtain an order or approval of the Bankruptcy Court in the exercise of any power, rights, or discretion conferred hereunder, or account to the Bankruptcy Court for any purpose. The Trustee shall exercise his or her business judgment for the benefit of the Beneficiaries in order to maximize the value of the Assets and Distributions, giving due regard to the cost, risk, and delay of any course of action. Notwithstanding the foregoing in this Section 3.10, the Trustee may, in his or her sole discretion, submit to the Bankruptcy Court any matter related to the Assets, the Trust, this Agreement, the Plan and the Confirmation Order, or the Debtors, including the administration and Distribution of the Assets, for which the Trustee desires explicit approval of the Bankruptcy Court. The Bankruptcy Court shall retain jurisdiction for such purposes and shall approve or disapprove any such proposed action upon a motion filed by the Trustee. In addition, subject to Section 3.5 of this Agreement, the Trustee shall have the authority, but not the obligation, to seek Bankruptcy Court approval to sell any Asset free and clear of any and all liens, claims, and encumbrances (to the extent any Asset is not already free and clear of any and all liens, claims, and encumbrances pursuant to the Plan or the Confirmation Order).

3.11 Periodic Consultation with Beneficiaries. In addition to any other consultation and reporting requirements set forth in this Agreement, the Trustee shall report and consult with the Beneficiaries at his or her discretion or as reasonably requested by a Beneficiary concerning the status and administration of the Trust and the Assets.

3.12 Confidentiality. The Trustee shall, during the period that they serve in such capacities under this Agreement, after removal, incapacitation or resignation, and after dissolution of the Trust, hold strictly confidential and not use for personal gain any material,

non-public information of or pertaining to any entity to which any of the Assets relates or which they have become aware of in their capacities as Trustee.

ARTICLE IV DISTRIBUTIONS FROM THE TRUST

4.1 Timing of Distributions. Distributions of Available Trust Cash shall be made on a *pro rata* basis, no less frequently than once annually, such period to be measured from the Trust Effective Date (each a “Distribution Date”); *provided, however*, that the Trustee may, (i) defer a Distribution to the next Distribution Date if the Trustee determines, in the reasonable exercise of the Trustee’s discretion, that the amount available for Distribution at such time is insufficient to justify the cost of effecting the Distribution (ii) make more frequent Distributions if the Trustee determines that such interim distributions are warranted and economical; *provided further*, however, that the Trustee may, in the reasonable exercise of the Trustee’s discretion, cause the Trust to retain an amount of Cash reasonably necessary to maintain the value of the Assets or to meet Trust liabilities, including maintenance of the Liquidating Trust Operating Reserve, and withhold such Cash from Distributions to Beneficiaries. The Trustee shall not make any Distributions to the Beneficiaries unless the Trustee retains such amounts that are reasonably necessary to satisfy amounts that would have been distributed in accordance with this Article IV on account of Disputed Claims if the Disputed Claims were determined to be Allowed Claims in their full amounts immediately prior to such proposed Distribution to the Beneficiaries. On the final Distribution Date, and after satisfaction of all Liquidating Trust Operating Expenses, the Trustee shall distribute any Cash remaining in the Liquidating Trust Operating Reserve to holders of Allowed Claims in accordance with the respective priorities set forth in the Plan. After final Distributions have been made in accordance with the terms of the Plan and this Agreement, if the amount held by the Trust becomes, in the sole discretion of the Trustee, too

small to cost-effectively make further distributions, the Trustee may make a charitable donation of the funds to the American Bankruptcy Institute Endowment Fund.

4.2 Distributions. Holders of Allowed Claims against the Debtors shall receive, in full and final satisfaction of such Allowed Claims, their share (as set forth in the Plan) of the Liquidating Trust Assets after the Trustee maintains appropriate reserves for Disputed Claims and the Liquidating Trust Operating Expenses.

4.3 Fractional Cents; De Minimis Distributions. The Trustee shall (a) not be required to make Distributions or payments of fractions of cents, and whenever any Distribution of a fraction of a cent under the Plan would otherwise be required, the actual Distribution made shall reflect a rounding of such fraction to the nearest whole cent (up or down), with fractions equal to or greater than half a cent being rounded up, and fractions less than half a cent rounded down; and (b) not be required to make a Distribution on account of any Allowed Claim on a Distribution Date if the amount to be distributed to a Beneficiary on a particular Distribution Date is less than \$25.00, in which case such Distribution shall be deferred to the next Distribution Date (unless such Distribution is the final Distribution to a Beneficiary, in which case such Distribution shall revert to the Trust to be reallocated and distributed to the remaining Beneficiaries).

4.4 Compliance with Tax Requirements. The Trustee shall be authorized to require each Beneficiary to provide it with a current executed Form W-9, W-8, or similar tax form as a condition precedent to receiving a Distribution. The Trustee shall provide advance written notice of any such requirement to each Beneficiary affected thereby. The notice shall provide each Beneficiary with a minimum of 60 days after the date of mailing of such notice to provide a current executed Form W-9, W-8, or similar tax form to the Trustee and shall expressly state that

a failure to provide such form within the stated period shall result in a forfeiture of the right to receive any Distribution, that any such Distribution shall revert to the Trust for distribution on account of other Allowed Claims and that the claim of the Beneficiary originally entitled to such Distribution shall be waived, discharged and forever barred without further order of the Bankruptcy Court. If a Beneficiary does not provide the Trustee with a current executed Form W-9, W-8 or similar tax form within the time period specified in such notice, or such later time period agreed to by the Trustee in writing in his or her discretion, such Beneficiary shall be deemed to have forfeited the right to receive any Distribution, any such Distribution shall revert to the Trust for distribution to other Beneficiaries and the claim originally entitled to such Distribution shall be waived, discharged and forever barred without further order of the Bankruptcy Court.

4.5 Administrative Claims. Allowed Administrative Claims (as defined in the Plan) that have not been or were not required to be paid on or before the Trust Effective Date, other than Fee Claims, shall be paid in accordance with the terms of the Plan. All U.S. Trustee fees due and owing under 28 U.S.C. 1930(a)(6) shall continue to accrue and be paid by the Trustee until the Chapter 11 Cases are closed, dismissed or converted. Allowed Fee Claims shall be paid in accordance with the Plan, the Confirmation Order, and any orders of the Bankruptcy Court with respect to final allowance of such Fee Claims.

4.6 Distributions After Allowance or Disallowance of a Disputed Claim. Within 10 days of a Disputed Claim becoming an Allowed Claim, if one or more Distribution Dates have passed, the Trustee shall distribute to the holder thereof such amount of Cash as would have been distributed to such holder on all Distribution Dates that have passed. Subject to the limitations in section 4.1 hereof, the Trustee shall no longer reserve for and the Trustee shall

distribute to the Beneficiaries on the next Distribution Date, pursuant to this Agreement, the Plan and the Confirmation Order, their *pro rata* share of the funds held in reserve on account of any Disputed Claim that becomes disallowed.

4.7 Undeliverable Distributions and Unclaimed Property. If the Distribution to any Beneficiary is returned as undeliverable, no additional Distributions shall be made to such Beneficiary unless and until the Trustee is notified in writing of such Beneficiary's then-current address, at which time such Distribution shall be made without interest, *provided, however*, that unless a Beneficiary asserts a claim for an undeliverable Distribution within 3 months after such Distribution is returned as undeliverable such Distribution shall be deemed unclaimed property and all title to and beneficial interest in any such undeliverable Distribution shall be cancelled and revert to and/or remain in the Trust automatically and without need for further order by the Bankruptcy Court (notwithstanding any applicable federal, state or other escheat, abandoned or unclaimed property laws to the contrary), and such undeliverable Distribution shall be distributed *pro rata* to other Beneficiaries on account of their Allowed Claims. Nothing contained in this Agreement shall require the Trustee to attempt to locate any Beneficiary. In the event that any check sent to a Beneficiary in connection with a Distribution has not been cashed within six (6) months after the Distribution Date, the Trustee may cancel such check and such Distribution shall be deemed unclaimed property and all title to and beneficial interest in any such undeliverable Distribution shall be cancelled and revert to and/or remain in the Trust automatically and without need for further order of the Bankruptcy Court (notwithstanding any applicable federal, state or other escheat, abandoned or unclaimed property laws to the contrary).

4.8 Payments Limited to Liquidating Trust Available Cash. All Distributions to be made by the Trustee to or for the benefit of any Beneficiary shall be made only from the Liquidating Trust Available Cash.

4.9 United States Trustee Fees and Reports. After the Trust Effective Date, the Trustee shall pay as an expense of the Trust all fees incurred under 28 U.S.C. § 1930(a)(6) by reason of the Trust's disbursements as required under the Plan and Confirmation Order until the Chapter 11 Cases are closed. After the Trust Effective Date, the Trust shall prepare and serve on the Office of the U.S. Trustee such quarterly disbursement reports for the Trust as required by the U.S. Trustee for as long as the Chapter 11 Cases remain open.

4.10 Insurance. The Trustee may use Available Trust Cash in the Trustee's reasonable business judgment to maintain customary insurance coverage, if available, for the protection of the Assets. The Trustee may, but shall not be required to, obtain insurance coverage with respect to the liabilities and obligations of the Trustee under this Agreement (in the form of an errors and omissions policy or otherwise).

ARTICLE V

BENEFICIARIES

5.1 Incidents of Ownership. The Beneficiaries shall be the sole beneficiaries of the Trust and the Assets, and the Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized in this Agreement, the Plan and the Confirmation Order.

5.2 Interest Beneficial Only. The ownership of a beneficial interest in the Trust shall not entitle any Beneficiary or the Settlor to any title in or to the Assets or to any right to call for a partition or division of such Assets or to require an accounting, except as specifically provided herein, the Plan or the Confirmation Order.

5.3 Evidence of Beneficial Interest. Ownership of a beneficial interest in the Assets 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 Trust by the Trustee.

5.4 Notice of Transfer of Beneficial Interest. An assignment or transfer of a beneficial interest in the Trust, whether by operation of law or otherwise, shall not be effective or acknowledged by the Trust until appropriate notification and proof thereof, in a form satisfactory to the Trustee in the exercise of his or her reasonable discretion, is submitted to the Trustee by electronic mail, and the Trustee may continue to pay all amounts to or for the benefit of the assigning or transferring Beneficiary until receipt of such written notification and proof of assignment or transfer. Except where a change of beneficial interest ownership occurs by operation of law, the notice shall be executed by both the transferee and the transferor. For purposes of each Distribution, the Trustee will not recognize any transfer during the period commencing thirty (30) calendar days prior to making any Distribution. Except as otherwise provided in this Agreement, the Plan or the Confirmation Order, any transfer of a Claim, whether occurring prior to or after the Confirmation Date, shall not affect or alter the classification and treatment of such Claim under the Plan and the Confirmation Order and any such transferred Claim shall be subject to classification and treatment under the Plan as if such Claim were held by the transferor who held such Claim on the Petition Date. The Trustee may rely, without any further investigation, upon any notification and proof of an assignment or transfer of a beneficial interest in the Trust submitted in accordance with this Section 5.4 that the Trustee reasonably believes to be genuine.

ARTICLE VI

THIRD PARTY RIGHTS AND LIMITATION OF LIABILITY

6.1 Parties Dealing With the Trustee. In the absence of actual knowledge to the contrary, any Person dealing with the Trust or the Trustee, the Trustee's duly designated agents and any professionals retained by the Trustee in accordance with this Agreement (collectively, but excluding the Trust, the "Trust Parties"), shall be entitled to rely on the authority of the Trust Parties to act in connection with the Assets. There shall be no obligation on any Person dealing with the Trust Parties to inquire into the validity, expediency or propriety of any transaction by the Trust Parties.

6.2 Limited Recourse. Except as otherwise provided in this Agreement, the Plan or the Confirmation Order, any Person (including the Trust Parties) engaged in transactions with the Trust or the Trustee shall look only to the Assets to satisfy any liability incurred in connection with carrying out the terms of this Agreement, the Plan or the Confirmation Order.

6.3 Limitation of Liability. The Trust, the Trustee, and any professionals retained by the Trustee, shall have no liability on account of any Claims or Interests (as defined in the Plan) except as set forth in this Agreement, the Plan or the Confirmation Order. All payments and all Distributions made by the Trustee under this Agreement, the Plan or the Confirmation Order shall be in full and final satisfaction, settlement, and release of and in exchange for all Claims or Interests against the Debtors. Neither the Trustee nor his professionals, or any duly designated agent or representative of the Trustee, nor their respective employees (each a "Limited Liability Party" and collectively, the "Limited Liability Parties"), shall be liable for the act or omission of any other Limited Liability Party. The Limited Liability Parties shall not be liable for any act taken or omission in their respective capacities other than for acts or omissions of such Limited Liability Party that has been determined, upon the entry of a final order of a court of competent

jurisdiction, to constitute willful misconduct, gross negligence or fraud. The Trustee shall be entitled to enjoy all of the rights, powers, immunities and privileges applicable to a Chapter 7 trustee. Other than as set forth in the Plan or Confirmation Order, nothing in this Agreement shall be deemed to release any Beneficiary, including, but not limited to, the Brazos Parties (as defined in the Plan), from any actions or omissions occurring prior to the Trust Effective Date.

6.4 Non-Liability for Acts of Others. The Trustee may, in connection with the performance of their functions, and in his sole and absolute discretion, consult with his attorneys, accountants, financial advisors and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such Persons, regardless of whether such advice or opinions are provided orally or in writing. Notwithstanding such authority, the Trustee shall not be under any obligation to consult with their respective attorneys, accountants, financial advisors or agents, and his determination not to do so shall not result in the imposition of liability on the Trustee, unless such determination is based on willful misconduct, gross negligence, or fraud. Nothing contained in this Agreement, the Plan or the Confirmation Order shall be deemed to be an assumption by the Trustee of any of the liabilities, obligations, or duties of the Debtors or Beneficiaries or a covenant or agreement by the Trustee to assume or accept any such liability, obligation or duty. Any successor Trustee may accept and rely upon any accounting made by or on behalf of any predecessor Trustee hereunder, and any statement or representation made by a predecessor Trustee or his or her agents as to the Assets or as to any other fact bearing upon the prior administration of the Trust, so long as it has a good faith basis to do so. A successor Trustee shall not be liable for having accepted and relied in good faith upon any such accounting, statement, or representation if it is later proved to be incomplete, inaccurate, or untrue. A successor Trustee shall not be liable for any act or omission

of any predecessor Trustee, nor have a duty to enforce any claims against any predecessor Trustee on account of any such act or omission.

6.5 Indemnification. The Trust shall indemnify and hold harmless, to the fullest extent permitted by law, the Limited Liability Parties from and against and in respect to all liabilities, losses, damages, claims, costs and expenses (including reasonable attorneys' fees, disbursements, and related expenses) which the Limited Liability Parties may incur or to which the Limited Liability Parties may become subject to in connection with any action, suit, proceeding or investigation brought by or threatened against the Limited Liability Parties arising out of or due to their acts or omissions, or consequences of such acts or omissions, with respect to the implementation or administration of the Trust, the Plan, or the Confirmation Order, or the discharge of their duties under this Agreement; *provided, however*, that no such indemnification will be made to the Limited Liability Parties for actions or omissions that have been determined, upon the entry of a final order of a court of competent jurisdiction, to constitute willful misconduct, gross negligence or fraud. Persons dealing with the Limited Liability Parties may only look to the Assets to satisfy any liability incurred by the Limited Liability Parties to such Person in carrying out the terms of this Agreement, and the Limited Liability Parties shall not have any personal obligation to satisfy any such liability. This indemnification shall survive the death, dissolution, resignation, or removal, as may be applicable, of the Limited Liability Parties, or the termination of the Trust, and shall inure to the benefit of the Limited Liability Parties' heirs and assigns.

ARTICLE VII

SELECTION, REMOVAL AND COMPENSATION OF TRUSTEE

7.1 Initial Trustee. The initial Trustee as selected by the Committee is Thomas A. Pitta of Emmet, Marvin & Martin LLP.

7.2 Fiduciary Duties of the Trustee. The Trustee shall act in a fiduciary capacity on behalf of the interests of all holders of Claims that will receive Distributions pursuant to the terms of the Plan.

7.3 Term of Service. The Trustee shall serve until (a) the completion of all the Trustee's duties, responsibilities and obligations under this Agreement, the Plan and the Confirmation Order, (b) termination of the Trust in accordance with this Agreement, the Plan and the Confirmation Order, or (c) the Trustee's death or dissolution, incapacitation, resignation, or removal.

7.4 Removal of a Trustee. Any Person serving as Trustee may be removed at any time upon the determination of the Bankruptcy Court on a motion for cause shown by any party in interest. Any Trustee so removed is entitled to payment of reasonable fees and necessary expenses accrued prior to removal, subject to the terms of this Agreement.

7.5 Resignation of Trustee. The Trustee may resign at any time by giving the Bankruptcy Court and the Beneficiaries at least 30 days' written notice of the Trustee's intention to do so. In the event of a resignation, the resigning Trustee shall render to the Beneficiaries a full and complete accounting of monies and assets received, disbursed, and held during the term of office of that Trustee. The resignation shall be effective on the later of (a) the date specified in the notice; (b) the date that is 30 days after the date the notice is delivered; or (c) the date the accounting described in the preceding sentence is delivered.

7.6 Appointment of Successor Trustee. Upon the resignation, death, incapacity, or removal of a Trustee, the Bankruptcy Court shall appoint a replacement trustee based upon submissions from interested parties (including the Trustee or any Beneficiary). Any successor Trustee so appointed shall consent to and accept in writing the terms of this Agreement and agree

that the provisions of this Agreement shall be binding upon and inure to the benefit of the successor Trustee and all of the successor Trustee's heirs and legal and personal representatives, successors or assigns.

7.7 Powers and Duties of Successor Trustee. A successor Trustee shall have all the rights, privileges, powers, and duties of the predecessor Trustee under this Agreement and the Plan.

7.8 Trust Continuance. The death, dissolution, incapacity, resignation or removal of the Trustee shall not terminate the Trust or revoke any existing agency created pursuant to this Agreement or invalidate any action theretofore taken by the Trustee.

7.9 Compensation and Costs of Administration. The Trustee shall be compensated on reasonable terms as determined initially by the Committee. The Trustee may also retain and compensate professionals and may retain Kurtzman Carson Consultants LLC or another qualified entity to act as disbursing agent ("Disbursing Agent"). The Trustee shall be entitled to receive reimbursement for professional fees and expenses incurred by his or her counsel and professionals, at their normal hourly rates and without further notice to any person or approval by the Bankruptcy Court, in reviewing, negotiating, executing, and implementing this Trust prior to the Effective Date. The Trustee shall also be entitled to receive reimbursement for his or her professional fees incurred in the performance of his or her duties after the Effective Date, plus the reimbursement of all reasonable out-of-pocket expenses incurred in connection with this Trust Agreement without further notice to any person or approval by the Bankruptcy Court. Any successor to the Trustee shall also be entitled to reasonable compensation in connection with the performance of his or her duties. All such fees and expenses are payable solely from Liquidating Trust Assets.

ARTICLE VIII

TRUST OBLIGATIONS

8.1 Reporting and Filing Requirements. Within 30 days after December 31 of each calendar year in which the Trust shall remain in existence, the Trustee shall file a report with the Bankruptcy Court of all Assets received by the Trust, all Cash disbursed to Beneficiaries, all Assets held by the Trust and all fees paid, income, and expenses related to the Trust during the preceding calendar year. The Trustee's report shall be available to any Beneficiary upon written request.

8.2 Filing of Tax Returns. The Trustee shall file tax returns for the Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a) and any other applicable laws or regulations; *provided, however*, that the Trustee may, in the Trustee's reasonable discretion, determine the best way to report for tax purposes with respect to the Cash reserved, including (i) filing a tax election to treat any and all reserves for Disputed Claims as a disputed ownership fund ("DOF") within the meaning of Treasury Income Tax Regulation Section 1.468B-9 for federal income tax purposes rather than to tax such reserve as a part of the Trust or (ii) electing to report as a separate trust or sub-trust or other entity. If an election is made to report the reserve as a DOF, the Trust shall comply with all federal and state tax reporting and tax compliance requirements of the DOF, including, but not limited to, the filing of a separate federal tax return for the DOF and the payment of federal and/or state income tax due.

8.3 Preparation of Statements. To the extent reasonably practicable, the Trustee shall, within 75 days after the end of each calendar year, send to each Beneficiary a statement setting forth the Beneficiary's share of items of income, gain, loss, deduction, or credit, and the statement will instruct all such holders to report such items on their federal income tax returns. A final such statement shall also be sent to each Beneficiary within 75 days after the dissolution

of the Trust. The Trust's taxable income, gain, loss, deduction, or credit will be allocated (subject to provisions of the Plan and Confirmation Order relating to Disputed Claims) to the Beneficiaries in accordance with their relative beneficial interests in the Trust, as determined pursuant to this Agreement, the Plan, and the Confirmation Order.

8.4 Valuation of Assets. As soon as practicable after the Trust Effective Date, the Trustee, to the extent that he or she deems it necessary or appropriate in the reasonable exercise of his or her discretion, shall, in good faith, value the Assets, and shall apprise the Beneficiaries of such valuation. The valuation shall be used consistently by all parties (including the Debtors, the Trustee and the Beneficiaries) for all federal income tax purposes. The Trustee shall be under no obligation to hire an expert to make such a valuation. The Bankruptcy Court shall resolve any dispute regarding the valuation of the Assets.

ARTICLE IX

MAINTENANCE OF RECORDS

9.1 Books and Records. The Trustee shall maintain books and records containing a description of all property from time to time constituting the Assets and an accounting of all receipts and disbursements. Said books and records shall be open to inspection by any Beneficiary at any reasonable time during normal business hours and after reasonable advance notice. The Trustee shall furnish to any Beneficiary upon written request an annual statement of receipts and disbursements, including a summary of all income and expenses of the Trust.

ARTICLE X

DURATION OF TRUST

10.1 Duration. The Trust shall become effective upon the Effective Date (as defined in the Plan) of the Plan, and the Trust and its provisions herein shall remain and continue in full force and effect until the Trust is terminated.

10.2 Termination. The Trust shall terminate upon the occurrence of the earlier of the following: (a) the final liquidation, administration, and Distribution of the Assets in accordance with this Agreement, the Plan and the Confirmation Order and the full performance of all other duties and functions of the Trustee set forth in this Agreement, the Plan, and the Confirmation Order and (b) the fifth anniversary of the Trust Effective Date. Notwithstanding the foregoing, the duration of the Trust may be extended for multiple fixed terms upon motion of the Trustee if approved by the Bankruptcy Court for cause shown prior to the termination of the Trust. Any such motion shall be filed no earlier than six months prior to the expiration of the term of the Trust and each extended term. The aggregate of all such extensions shall not exceed three years, unless the Trustee receives a favorable ruling from the IRS that any further extension would not adversely affect the status of the Trust as a liquidating trust within the meaning of section 301.7701-4(d) of the Treasury Regulations for federal income tax purposes. After (i) the final Distributions pursuant to the Plan and the Confirmation Order, (ii) the filing by or on behalf of the Trust of a certification of dissolution with the Bankruptcy Court and (iii) any other action deemed appropriate by the Trustee, the Trust shall be deemed dissolved for all purposes without the necessity for any other or further actions. The Trustee will make continuing efforts to dispose of the Assets, make timely distributions, and not unduly prolong the duration of the Trust.

10.3 Continuance of Trust for Winding Up. After the termination of the Trust and for the purpose of liquidating and winding up the affairs of the Trust, the Trustee shall continue to act as such until the Trustee's duties have been fully performed. After the termination of the Trust, the Trustee shall retain for a period of one year the books, records and certificates and other documents and files which shall have been delivered to or created by the Trustee. At the

Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after such one year period. Except as otherwise specifically provided herein, upon the discharge of all liabilities of the Trust and final Distributions pursuant to the Plan and the Confirmation Order, the Trustee shall have no further duties or obligations hereunder. For the avoidance of doubt, the limitations on liability contained in Sections 6.2, 6.3, 6.4, 6.5 and 6.6 hereof shall apply to any actions taken by the Trustee during the course of winding up the affairs of the Trust.

ARTICLE XI

MISCELLANEOUS

11.1 Jurisdiction. The Bankruptcy Court shall have exclusive jurisdiction over (a) the Trust and the Trustee with respect to the administration of and activities relating to the Trust, and (b) any issues or disputes arising out of this Agreement; *provided, however*, that notwithstanding the foregoing, the Trustee shall have the sole power and authority to bring any action in any court of competent jurisdiction to prosecute any Cause of Action assigned to the Trust.

11.2 Notices. All notices to be given to Beneficiaries may be given by first-class Mail or similar method of mail delivery (however, neither a return receipt nor proof of delivery shall be required) to the holders at the addresses appearing on the books and records kept by the Trustee. Any notice or other communication which may be or is required to be given, served, or sent to the Trustee shall be in writing and shall be sent by registered or certified United States mail, return receipt requested (or by similar means of mail delivery, including Federal Express or United Parcel Service, that provides proof of delivery) addressed as follows:

If to the Trust/Trustee:

Emmet, Marvin & Martin LLP
Attn: Thomas A. Pitta
120 Broadway

32nd Floor
New York, NY 10271
Telephone: 212-238-3148
E-mail: tpitta@emmetmarvin.com

With a copy to counsel to the Trust/Trustee:

Lowenstein Sandler LLP
Attn: Sharon L. Levine, Jeffrey D. Prol, Eric S. Chafetz
65 Livingston Avenue
Roseland, NJ 07068
Telephone: 973-597-2500
E-mail: slevine@lowenstein.com; jprol@lowenstein.com;
echafetz@lowenstein.com

or to such other address as may from time to time be provided in a written notice by the Trustee.

11.3 Bond. Notwithstanding any state law to the contrary, the Trustee (including any successor) shall be exempt from giving any bond or other security in any jurisdiction.

11.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to conflicts of law principles.

11.5 Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

11.6 No Execution. All funds in the Trust shall be deemed *in custodia legis* until such times as the funds have actually been paid to or for the benefit of a Beneficiary, and no Beneficiary or any other Person can bind, pledge, encumber, execute upon, garnish, or attach the Assets in any manner or compel payment from the Trust except by Final Order of the Bankruptcy Court. Any such payment shall be governed solely by the Plan, the Confirmation Order, and this Agreement.

11.7 Plan and Confirmation Order. To the extent that the terms of this Agreement are inconsistent with the terms set forth in the Plan, then the terms of this Agreement shall govern

and control. To the extent that the terms of this Agreement are inconsistent with the terms set forth in the Confirmation Order, then the terms of the Confirmation Order shall govern and control. Any immaterial effectuating provisions of the Plan, the Confirmation Order, or this Agreement may be interpreted by the Trustee in such a manner that is consistent with the overall purpose and intent of the Plan, the Confirmation Order and this Agreement all without further Bankruptcy Court order, and the Trustee shall have no liability for any such interpretation made based on the advice of counsel.

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

11.9 Amendment. This Agreement may only be amended by order of the Bankruptcy Court.

11.10 Severability. If any term, provision, covenant or restriction contained in this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable or against its regulatory policy, the remainder of the terms, provisions, covenants and restrictions contained in this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

[signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement (or are deemed to have so executed this Agreement) as of the day and year written above.

Thomas A. Pitta, Emmet, Marvin & Martin
LLP

Plover Appetizer, Co.

By: _____

Name:
Title:

By: _____

Name:
Title:

Plover Appetizer Franchisee Co.

By: _____

Name:
Title:

Plover Appetizer Holding Co.

By: _____

Name:
Title: