

**AMENDED PLAN SUPPLEMENT
EXHIBIT D-2**

**BLACKLINE - FORM OF AMENDED
POST-CONSUMMATION TRUST AGREEMENT**

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KHI POST-CONSUMMATION TRUST AGREEMENT

KHI POST-CONSUMMATION TRUST AGREEMENT, dated as of _____, 2009 (this "Agreement"), by and among KIMBALL HILL, INC. and each of its subsidiaries a party hereto, in their capacities as debtors and debtors in possession and on behalf of themselves and their respective chapter 11 estates (each a "Debtor" and, collectively, the "Debtors"), as settlors, and [____], as trustee of the Post-Consummation Trust referred to herein (in such capacity, the "Plan Administrator"). Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Joint Plan of Kimball Hill, Inc. and its Debtor Subsidiaries Pursuant to Chapter 11 of the United States Code, dated December 2, 2008 (as amended and supplemented from time to time, the "Plan").

Background

- A. On April 23, 2008, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court;
- B. On or about [**March 9, 2009**], the Bankruptcy Court entered an order (the "Confirmation Order") confirming the Plan;
- C. The Plan provides that, on the Effective Date, among other things: (a) the Debtors shall grant, assign, transfer, convey and deliver all of their right, title, and interest in the Post-Consummation Trust Assets, (b) the Liquidation Trust will pay \$10 million on account of the Diminution Claim (the "Diminution Claim Proceeds") to the Post-Consummation Trust on behalf, and for the benefit, of the Post-Consummation Trust Beneficiaries, the proceeds of which shall be distributed solely to the Post-Consummation Trust Beneficiaries in accordance with this Agreement, the Plan and the Confirmation Order, and (c) the Post-Consummation Trust will make the Committee Settlement Payment to the Liquidation Trust;
- D. The Post-Consummation Trust is being created pursuant to this Agreement for the purposes of among other things, liquidating the Post-Consummation Trust Assets, collecting the Diminution Claim Proceeds, implementing the Plan and the Confirmation Order, and distributing the cash proceeds thereof to the Post-Consummation Trust Beneficiaries, as described in Articles III.B.1 and VII of the Plan; and
- E. The Plan Administrator shall have all powers necessary to implement the provisions of this Agreement and administer the Post-Consummation Trust, including, without limitation, the power to: (i) preserve, maintain and liquidate the Post-Consummation Trust Assets; (ii) distribute the proceeds of the Post-Consummation Trust Assets and the Diminution Claim Proceeds to the Post-Consummation Trust Beneficiaries; (iii) prosecute for the benefit of the Post-Consummation Trust Beneficiaries any Causes of Action that may from time to time be held by the Post-Consummation Trust; (iv) object to certain creditors' claims; and (v) otherwise perform the functions and take the actions provided for or permitted in the Plan, the Confirmation Order, this Agreement or in any other agreement executed pursuant to and consistent with the Plan, in each case subject to among other things, the provisions of Section 6.3 of this Agreement regarding the Post-Consummation Trust Committee.

Agreement

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

ARTICLE I **DECLARATION OF TRUST**

1.1 Creation of Trust. The Debtors and the Plan Administrator, pursuant to the Plan and the Confirmation Order and in accordance with the applicable provisions of chapter 11 of the Bankruptcy Code, hereby constitute and create the Post-Consummation Trust, which shall bear the name “KHI Post-Consummation Trust.” In connection with the exercise of the Plan Administrator’s power hereunder, the Plan Administrator may use this name or such variation thereof as the Plan Administrator sees fit.

1.2 Purpose of Trust. The purpose of this Agreement is to implement Articles III.B.1, VII, and X of the Plan on behalf, and for the benefit, of the Post-Consummation Trust Beneficiaries, and to serve as a mechanism for liquidating and converting to Cash the Post-Consummation Trust Assets and distributing the Trust Proceeds to, or utilizing the Trust Proceeds for the benefit of, the Post-Consummation Trust Beneficiaries.

1.3 Transfer of Post-Consummation Trust Assets.

(a) In partial satisfaction (in addition to the other distributions provided for under the Plan and the conveyances to the Liquidation Trust under the Plan which, together with the transfers contemplated hereby, shall constitute full satisfaction) of all Allowed Senior Credit Agreement Claims, the Debtors hereby transfer as of the Effective Date, for the sole benefit of the Post-Consummation Trust Beneficiaries, pursuant to section 1123(a)(5)(B) of the Bankruptcy Code and in accordance with the Plan and the Confirmation Order, the Post-Consummation Trust Assets to the Post-Consummation Trust, free and clear of any and all liens, claims, encumbrances and interests (legal, beneficial or otherwise) of all other entities to the maximum extent contemplated by and permissible under section 1141(c) of the Bankruptcy Code; provided that the transfer of certain Post-Consummation Trust Assets shall be effected in accordance with Section 1.3(e). Nothing in this Agreement is intended to, or shall be construed to, effect a release, extinguishment or compromise of any claim or Cause of Action transferred to the Post-Consummation Trust pursuant to the Plan or this Agreement or to the Liquidation Trust pursuant to the Plan or Liquidation Trust Agreement. The term “Post-Consummation Trust Assets” includes all assets of the Debtors and the proceeds thereof that are not transferred to the Liquidation Trust pursuant the Liquidation Trust Agreement, including without limitation any Causes of Action transferred to the Post-Consummation Trust and the Diminution Claim Proceeds. The earnings, products, and proceeds, including without limitation interest, of the Post-Consummation Trust Assets and of any other property held from time to time by the Plan Administrator under this Agreement shall be referred to herein as the “Trust Proceeds.” The Post-Consummation Trust Assets are to be held, and, the Trust Proceeds distributed, by the Plan Administrator in accordance with the terms hereof for the benefit of the Post-Consummation Trust Beneficiaries, and for no other party, subject to the further covenants, conditions and terms hereinafter set forth.

(b) To the extent any assets of the Debtors (“Assets”) cannot be transferred to the Post-Consummation Trust because of a restriction on transferability under applicable nonbankruptcy law that is not superseded by section 1123 or any other provision of the Bankruptcy Code, such Assets shall be retained by the applicable Debtors and Estates. The proceeds of any such Asset retained by the Debtors and the Estates shall be allocated to the trust that would have received such Asset on the Effective Date pursuant to the Plan had such transfer not been restricted under applicable nonbankruptcy law. The Plan Administrator may commence an action in the Bankruptcy Court to resolve any dispute regarding (i) the allocation among the Post-Consummation Trust and the Liquidation Trust of the proceeds of any Assets retained by the Debtors and the Estates or (ii) as to which trust any specific Asset should be allocated, in each case pursuant to the Plan and Confirmation Order. To the extent necessary or appropriate, the Plan Administrator may be designated as a representative of one or more of the Estates pursuant to section 1123(b)(3)(B) of the Bankruptcy Code to enforce or pursue any rights, claims or Causes of Action that remain property of the Estates after the Effective Date.

(c) For all federal, state and local income tax purposes, each Holder of an Allowed Senior Credit Agreement Claim shall be treated as transferring such Allowed Claim to the Debtors in exchange for such Holder’s Pro Rata share of the Post-Consummation Trust Assets (subject to the liabilities of the Debtors assumed by the Post-Consummation Trust), in addition to other distributions to which the Holder is entitled under the Plan, and then as transferring such Holder’s Pro Rata share of the Post-Consummation Trust Assets to the Post-Consummation Trust in exchange for such Holder’s Pro Rata share of the interests in the Post-Consummation Trust in accordance with the terms of this Agreement (also sometimes referred to herein as “Beneficial Interests”).

(d) The Debtors, the Plan Administrator and the Post-Consummation Trust Beneficiaries shall each value the Post-Consummation Trust Assets and assumed liabilities consistently for federal and other income tax purposes. After the Effective Date, the Plan Administrator, in reliance upon such professionals as the Plan Administrator may retain, shall make a good faith valuation of the Post-Consummation Trust Assets. Such valuation shall be made available from time to time, to the extent necessary or appropriate as reasonably determined by the Plan Administrator in reliance on its professionals or as directed by the Post-Consummation Trust Committee (which may include posting such valuation on a website established by the Post-Consummation Trust), and used consistently by all parties (including, without limitation, the Debtors, the Plan Administrator and the Post-Consummation Trust Beneficiaries) for federal and other income tax purposes.

(e) In accordance with determinations made prior to the Effective Date by the Debtors in consultation with the Prepetition Agent pursuant to the Plan or the Confirmation Order, the transfer of certain of the Post-Consummation Trust Assets to the Post-Consummation Trust may be effectuated by transferring to the Post-Consummation Trust the stock or other equity interests of one or more corporations or other entities that own such Post-Consummation Trust Assets. Each such entity may be a Debtor or an entity into which such Post-Consummation Trust Assets have been transferred, directly or indirectly, by a Debtor.

1.4 Liquidation of Post-Consummation Trust Assets. The Plan Administrator shall, in an expeditious but orderly manner and subject to the other provisions of the Plan and this

Agreement, liquidate and convert to Cash the Post-Consummation Trust Assets, make timely distributions of the Trust Proceeds in accordance with the terms hereof, and not unduly prolong the existence of the Post-Consummation Trust. The Plan Administrator shall exercise reasonable business judgment and liquidate the Post-Consummation Trust Assets to maximize net recoveries; provided that the Plan Administrator shall be entitled to take into consideration the risks and timing of potential dispositions and the costs of carrying assets in making determinations as to the maximization of recoveries. Such liquidations may be accomplished either through the sale or other disposition of the Post-Consummation Trust Assets (in whole or in combination, and including the sale of any claims, rights or Causes of Action solely to the extent that the Plan Administrator has the exclusive authority to sell, settle or compromise such claims, rights or Causes of Action), or through the prosecution, compromise and settlement, abandonment or dismissal of any or all claims, rights or Causes of Action or otherwise solely to the extent that the Plan Administrator has the exclusive right to take such actions. Pursuant to an agreed upon budget in accordance with Section 4.4 of this Agreement, the Plan Administrator may incur any reasonable and necessary expenses in connection with the liquidation and conversion of the Post-Consummation Trust Assets into Cash.

1.5 Appointment and Acceptance of Plan Administrator. The Plan Administrator shall be deemed to be appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code. The Plan Administrator accepts the Post-Consummation Trust created by this Agreement and the grant, assignment, transfer, conveyance and delivery to the Plan Administrator, on behalf, and for the benefit, of the Post-Consummation Trust Beneficiaries, by the Debtors of all of the Post-Consummation Trust Assets, upon and subject to the terms and conditions set forth herein, in the Plan and in the Confirmation Order.

1.6 No Reversion to Debtors. Subject to Section 1.3(b), in no event shall any part of the Post-Consummation Trust Assets or the Trust Proceeds revert to or be distributed to any of the Debtors or, in the case of the Diminution Claim Proceeds, to the Liquidation Trust.

1.7 Incidents of Ownership. The Post-Consummation Trust Beneficiaries shall be the sole beneficiaries of the Post-Consummation Trust, the Post-Consummation Trust Assets, and the Trust Proceeds, and the Plan Administrator shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein, in the Plan and in the Confirmation Order, including, but not limited to, those powers set forth in Section 6.1 hereof.

1.8 Payment of Committee Settlement Payment. The Liquidation Trust is obligated under the Plan to make a payment in the amount of \$10 million on the Effective Date to the Post-Consummation Trust in satisfaction of the Diminution Claim. The Post-Consummation Trust is obligated under the Plan to make the Committee Settlement Payment of \$6 million to the Liquidation Trust. The Plan Administrator shall enforce the Post-Consummation Trust's rights with respect to the Diminution Claim Proceeds and is authorized and directed to make a payment from the Trust Proceeds to the Liquidation Trust in satisfaction of the Committee Settlement Payment on the Effective Date as required by Article IV.C.1 of the Plan. The Diminution Claim payment and the Committee Settlement Payment may be satisfied by means of a net \$4 million payment from the Liquidation Trust to the Post-Consummation Trust in satisfaction of both the Diminution Claim and the Committee Settlement Payment.

ARTICLE II
POST-CONSUMMATION TRUST BENEFICIARIES

2.1 Conflicting Claims. If any conflicting claims or demands are made or asserted with respect to a Beneficial Interest, the Plan Administrator shall be entitled, at its sole election, to refuse to comply with any such conflicting claims or demands. In so refusing, the Plan Administrator may elect to make no payment or distribution with respect to the Beneficial Interest represented by the claims or demands involved, or any part thereof, and the Plan Administrator shall refer such conflicting claims or demands to the Bankruptcy Court, which shall have exclusive jurisdiction over resolution of such conflicting claims or demands. In so doing, the Plan Administrator shall not be or become liable to any party for its refusal to comply with any of such conflicting claims or demands. The Plan Administrator shall be entitled to refuse to act until either (a) the rights of the adverse claimants have been adjudicated by a Final Order of the Bankruptcy Court or (b) all differences have been resolved by a written agreement among all of such parties and the Plan Administrator, which agreement shall include a complete release of the Post-Consummation Trust and the Plan Administrator (the occurrence of either (a) or (b) being referred to as a “Dispute Resolution” in this Section 2.1). Until a Dispute Resolution is reached with respect to such conflicting claims or demands, the Plan Administrator shall hold in a segregated interest-bearing account with a United States financial institution any payments or distributions from the Post-Consummation Trust to be made with respect to the Beneficial Interest at issue. Promptly after a Dispute Resolution is reached, the Plan Administrator shall transfer the payments and distributions, if any, held in the segregated account, together with any interest and income generated thereon, in accordance with the terms of such Dispute Resolution.

2.2 Rights of Post-Consummation Trust Beneficiaries. Each Post-Consummation Trust Beneficiary shall be entitled to participate in the rights and benefits due to a Post-Consummation Trust Beneficiary hereunder according to the terms of its Beneficial Interest. Each Post-Consummation Trust Beneficiary shall take and hold the same, subject to all the terms and conditions of this Agreement, the Plan and the Confirmation Order. The interest of a Post-Consummation Trust Beneficiary is hereby declared and shall be in all respects personal property. Except as expressly provided hereunder, a Post-Consummation Trust Beneficiary shall have no title to, right to, possession of, management of or control of the Post-Consummation Trust, the Post-Consummation Trust Assets, or the Trust Proceeds.

2.3 Interest Beneficial Only. The ownership of a Beneficial Interest in the Post-Consummation Trust shall not entitle any Post-Consummation Trust Beneficiary to any title in or to the Post-Consummation Trust Assets or the Trust Proceeds or to any right to call for a partition or division of such assets or to require an accounting, except as specifically provided herein.

2.4 Evidence of Beneficial Interest. Ownership of a Beneficial Interest in the Post-Consummation 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 Post-Consummation Trust by the Plan Administrator (or any agent appointed by the Plan Administrator for purposes of maintaining a record of the Post-Consummation Trust Beneficiaries and their respective Beneficial Interests in the Post-Consummation Trust). The

Plan Administrator shall, upon written request of a Holder of a Beneficial Interest, provide reasonably adequate documentary evidence of such Holder's Beneficial Interest, as indicated in the books and records of the Post-Consummation Trust. The expense of providing such documentation shall be borne by the requesting Post-Consummation Trust Beneficiary.

2.5 Transfers of Beneficial Interests.

(a) The Beneficial Interests in the Post-Consummation Trust have not been registered pursuant to the Securities Act of 1933, as amended (the "Securities Act"), or any state securities law. To the extent that the Beneficial Interests constitute "securities," the parties hereto intend that the exemption provisions of section 1145 of the Bankruptcy Code shall apply to the issuance and distribution of the Beneficial Interests. The Beneficial Interests shall not be capable of being transferred, assigned, pledged or hypothecated, in whole or in part, unless the conditions set forth in Section 2.5(b) below are met. Any such transfer, assignment, pledge or hypothecation, however, will not be effective until and unless the Plan Administrator receives written notice of such transfer, assignment, pledge or hypothecation, which notice must be in the form attached hereto as Annex A and be executed by the transferor and the transferee and must clearly identify the Beneficial Interest being transferred, assigned, pledged or hypothecated. The Plan Administrator is entitled to rely upon such notice as definitive evidence of such transfer, assignment, pledge or hypothecation without additional investigation. Transfers of record made in accordance with this Section 2.5 shall be indicated on the books and records of the Plan Administrator maintained for such purpose. Any transfer, assignment, pledge or hypothecation of a Beneficial Interest or any part thereof in violation of this Section 2.5 shall be void *ab initio*.

(b) Subject to the requirements of Section 2.5(d), no disposition for value of a Beneficial Interest, including but not limited to any transfer, assignment, pledge or hypothecation of a Beneficial Interest (a "Sale") or any part thereof may be effected until either (i) the Beneficial Interest or part thereof subject to such Sale is registered under the Securities Act or Section 12 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), as applicable, and any applicable state securities laws or (ii) the Plan Administrator receives, not less than five Business Days prior to the proposed Sale, such legal opinions, certificates or other documents that the Plan Administrator, in its reasonable discretion, deems necessary or appropriate to assure that such Sale is exempt from registration under such laws and that the Post-Consummation Trust shall not be required to file reports with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Exchange Act on account of such Sale. Notwithstanding anything to the contrary contained in this Section 2.5, no Sale of a Beneficial Interest, or any part thereof that causes the Post-Consummation Trust to be required to file reports with the Securities and Exchange Commission pursuant to Sections 13 or 15(d) of the Exchange Act, shall be permitted and any such Sale shall be void *ab initio*. Further, no Holder of a Beneficial Interest may transfer, assign, pledge, or hypothecate any portion of such interest to another party unless such Holder also transfers, assigns, pledges, or hypothecates the same *pro rata* share of its Liquidation Trust Series A Interest to the same party. Any transfer, assignment, pledge or hypothecation of any Beneficial Interest in violation of this section shall be void *ab initio*.

(c) Subject to the requirements of Section 2.5(d), with respect to any transfer, assignment, pledge or hypothecation of a Beneficial Interest where no consideration is given (a

“Transfer”), no Transfer of the Beneficial Interests in the Post-Consummation Trust shall be permitted, except as follows:

- (i) to brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants of such Post-Consummation Trust Beneficiary;
- (ii) any trust or estate in which such Post-Consummation Trust Beneficiary holds more than a 50% interest of the beneficial interests (excluding contingent interests);
- (iii) any corporation, partnership, or other organization in which such Post-Consummation Trust Beneficiary is the beneficial owner of more than 50% of the equity securities (excluding directors’ qualifying shares) so long as the Post-Consummation Trust Beneficiary and the transferee certify that there is no current intention of changing the direct and indirect ownership of the transferee;
- (iv) any person or entity that holds directly or indirectly more than 50% of the voting securities of such Post-Consummation Trust Beneficiary; or
- (v) pursuant to the terms of a will or under the laws of descent and distribution.

The parties intend for each Transfer enumerated in clause (i) through (v) above to meet the requirements for “transfers not involving trading” pursuant to Treasury Regulation Section 1.7704-1(e). Accordingly, no Transfer under clause (i) through (iv) shall be valid unless the basis of the Beneficial Interests in the hands of the transferee is determined, in whole or in part, by reference to its basis in the hands of the transferor or is determined under section 732 of the Internal Revenue Code of 1986, as amended (the “Tax Code”). In addition, no Transfer pursuant to clause (i) through (v) above shall be effective until and unless the Plan Administrator receives prior written notice thereof and the requirements of this Section 2.5 are satisfied. Any Transfer pursuant to clause (i) through (v) above of a Beneficial Interest in violation of this Section 2.5 shall be void *ab initio*.

(d) No Sale pursuant to Section 2.5(b) nor Transfer pursuant to Section 2.5(c) shall be permitted if such Sale or Transfer, as applicable: (x) poses a real risk of rendering the Post-Consummation Trust a taxable entity for U.S. federal income tax purposes, including, without limitation, being treated as a “publicly traded partnership” as defined in Section 7704(b) of the Tax Code if the Post-Consummation Trust were a partnership for federal income tax purposes; (y) poses a real risk that the Post-Consummation Trust will be required to register under the Investment Company Act of 1940 or the Exchange Act; or (z) except pursuant to Section 2.5(b)(i), is not exempt from the registration requirements of the Securities Act.

(e) The Holder effecting a Sale or Transfer of a Beneficial Interest or any part thereof shall pay the Post-Consummation Trust an assignment fee of \$1,500 on or before the date ten days after the Sale or Transfer is consummated. If payment is not made by the date due, the person owing that amount shall pay interest on the unpaid amount from the date due until paid at

a rate per annum equal to 10%, plus any costs, including attorneys' fees, incurred in the collection of such amount.

2.6 Limited Liability. No provision of this Agreement, the Plan or the Confirmation Order, and no mere enumeration herein of the rights or privileges of any Beneficial Interest Holder, shall give rise to any liability of such Beneficial Interest Holder solely in its capacity as such, whether such liability is asserted by the Debtors, by creditors or employees of the Debtors, or by any other Person. Beneficial Interest Holders are deemed to receive the Trust Proceeds in accordance with the provisions of this Agreement, the Plan and the Confirmation Order in exchange for their Allowed Senior Credit Agreement Claims without further obligation or liability of any kind, but subject to the provisions of this Agreement.

ARTICLE III **DURATION AND TERMINATION OF TRUST**

3.1 Duration. The Post-Consummation Trust shall become effective upon the Effective Date and shall remain and continue in full force and effect until terminated as provided herein. The Post-Consummation Trust shall terminate upon the occurrence of the earlier of (a) the full liquidation and administration of the Post-Consummation Trust Assets and the administration and distribution of the Trust Proceeds in accordance with the Plan, the Confirmation Order and this Agreement and the full performance of all other duties and functions of the Plan Administrator set forth in the Plan, the Confirmation Order and this Agreement or (b) the third anniversary of the Effective Date, subject to one or more finite extensions, which must be approved by the Bankruptcy Court pursuant to the terms set forth in the Plan within six months prior to the then-current termination date and provided that the Plan Administrator receives an opinion of counsel or a favorable ruling from the Internal Revenue Service to the effect that any such extension would not adversely affect the status of the Post-Consummation Trust as a grantor trust for federal income tax purposes. Notwithstanding anything to the contrary in this Agreement, in no event shall the Plan Administrator unduly prolong the duration of the Post-Consummation Trust, and the Plan Administrator shall, in the exercise of its reasonable business judgment and in the interests of the Post-Consummation Trust Beneficiaries, at all times endeavor to (i) liquidate the Post-Consummation Trust Assets to maximize net recoveries and (ii) otherwise terminate the Post-Consummation Trust as soon as practicable in accordance with this Agreement.

3.2 Continuance of Trust for Winding Up. After the termination of the Post-Consummation Trust and solely for the purpose of liquidating and winding up the affairs of the Post-Consummation Trust, the Plan Administrator shall continue to act as such until its duties have been fully performed. Upon distribution of all the Trust Proceeds, the Plan Administrator shall retain the books, records and files that shall have been delivered to or created by the Plan Administrator. At the Plan Administrator's discretion, all of such records and documents may be destroyed at any time following the date that is six years after the final distribution of Trust Proceeds (unless such records and documents are necessary to fulfill the Plan Administrator's obligations pursuant to Sections 4.7(a) and 6.1 hereof). Except as otherwise specifically provided herein, upon the final distribution of Trust Proceeds, the Plan Administrator shall be deemed discharged and have no further duties or obligations hereunder, except to account to the Post-Consummation Trust Beneficiaries as provided in Section 4.4 hereof and as may be

imposed on the Plan Administrator by virtue of Section 6.1 hereof, and the Post-Consummation Trust will be deemed to have been dissolved.

ARTICLE IV **ADMINISTRATION OF TRUST**

4.1 Payment of Claims, Expenses and Liabilities. Subject to the budget agreed upon by the Post-Consummation Trust Committee in accordance with Section 4.4 of this Agreement, the Plan Administrator shall expend the Cash of the Post-Consummation Trust: (a) to pay reasonable and documented administrative expenses of the Post-Consummation Trust that are incurred (including, but not limited to, any taxes imposed on the Post-Consummation Trust or fees and expenses in connection with the administration and liquidation of the Post-Consummation Trust Assets and preservation of books and records as provided in Section 3.2 hereof); (b) to satisfy other obligations or other liabilities incurred or assumed by the Post-Consummation Trust (or to which the Post-Consummation Trust Assets are otherwise subject) in accordance with the Plan, including but not limited to Article IV.B.3 of the Plan, the Confirmation Order or this Agreement (it being understood that the Post-Consummation Trust has not assumed any obligations or liabilities of the Debtors except as expressly set forth in the Plan or the Confirmation Order), including fees and costs incurred in connection with the protection, preservation and liquidation of the Post-Consummation Trust Assets and the protection, preservation, and distribution of the Trust Proceeds and reasonable, documented out-of-pocket expenses of members of the Post-Consummation Trust Committee; and (c) to satisfy any other obligations of the Post-Consummation Trust expressly set forth in the Plan.

4.2 Distributions.

(a) Generally. All distributions from the Post-Consummation Trust to the Holders of Beneficial Interests shall be made to the Post-Consummation Trust Beneficiaries in accordance with such Post-Consummation Trust Beneficiaries' respective Pro Rata shares of the total Beneficial Interests.

(b) Timing and Amount of Distributions. The Plan Administrator shall make distributions of the Trust Proceeds Available for Distribution (as defined below) on each Quarterly Distribution Date (as defined below) and on such additional dates that the Plan Administrator, in consultation with the Post-Consummation Trust Committee, determines are appropriate from time to time; provided, that the Plan Administrator shall be entitled, with the consent of the Post-Consummation Trust Committee, to defer any such distribution to the next Quarterly Distribution Date if the Plan Administrator determines that the amount of Trust Proceeds Available for Distribution at such time is insufficient to justify the cost of effecting the distribution. "Quarterly Distribution Date" means the last Business Day of the month following the end of each calendar quarter after the Effective Date; provided, however, that if the Effective Date is less than 30 days prior to the end of a calendar quarter, the first Quarterly Distribution Date will be the last Business Day of the first month following the calendar quarter in which the Effective Date occurs. The Plan Administrator shall establish a record date for any distributions of not less than 10 days nor more than 60 days prior to the proposed date of such distribution (the "Record Date").

(c) Trust Proceeds Available for Distribution. Notwithstanding anything in this Agreement to the contrary, the Plan Administrator shall cause the Post-Consummation Trust at all times to retain sufficient funds (the “Expense Reserve”) as the Plan Administrator shall determine, in consultation with the Post-Consummation Trust Committee and subject to the budget agreed upon by the Post-Consummation Trust Committee in accordance with Section 4.4 of this Agreement, are reasonably necessary for the Post-Consummation Trust to: (i) meet contingent liabilities and maintain the value of the Post-Consummation Trust Assets during liquidation; (ii) make the payments and satisfy the obligations and liabilities described in Section 4.1 as and when they become due and owing; and (iii) fund any other amounts to the extent required under the Plan and as identified in the Post-Consummation Trust budget, including any unpaid Allowed Administrative Claims, Priority Non-Tax Claims, Priority Tax Claim, and wind-down expenses, but only to the extent required by the Plan, and fund the fees and expenses of the Plan Administrator, the professionals retained by the Plan Administrator (the “Plan Professionals”) and the Post-Consummation Trust and the reasonable, documented out-of-pocket expenses of the Post-Consummation Trust Committee members. “Trust Proceeds Available for Distribution” shall be determined by the Plan Administrator in advance of each Quarterly Distribution Date by subtracting the Expense Reserve from the then available Trust Proceeds. The Plan Administrator shall distribute Trust Proceeds Available for Distribution to the Post-Consummation Trust Beneficiaries on a Pro Rata basis in proportion to their respective Beneficial Interests.

(d) Distribution of Trust Proceeds Upon Termination. Promptly following the termination of the Post-Consummation Trust, the Plan Administrator shall distribute any amounts not yet distributed from the Post-Consummation Trust to the Post-Consummation Trust Beneficiaries in accordance with the terms of this Agreement, the Plan and the Confirmation Order.

(e) De Minimis Distributions. No distribution shall be made if the amount to be distributed to the specific Holder of a Beneficial Interest on the particular Quarterly Distribution Date does not constitute a final distribution to such Holder and is or has an economic value less than \$250.

(f) Fractional Distributions. Notwithstanding any other provision of the Plan to the contrary, the Plan Administrator shall not be required to make distributions or payments of fractions of dollars. Whenever any payment of Cash of a fraction of a dollar would otherwise be required, the actual payment shall reflect a rounding of such fraction to the nearest whole dollar, with half dollars or less being rounded down.

(g) Location for Distributions; Notice of Change of Address. Distributions shall be made by the Plan Administrator to the Post-Consummation Trust Beneficiaries as of each Record Date at the address listed in the Plan Administrator’s records or such other address as may be provided to the Plan Administrator by such Post-Consummation Trust Beneficiary. Each Post-Consummation Trust Beneficiary shall be responsible for providing the Plan Administrator with timely written notice of any change in address. The Plan Administrator is not obligated to make any effort to determine the correct address of any Post-Consummation Trust Beneficiary.

(h) Priority of Distribution of Trust Proceeds. Any Trust Proceeds Available for Distribution shall be applied: (a) first, to the fees, costs, expenses and liabilities of the Post-Consummation Trust and the Plan Administrator, and the reasonable, documented out-of-pocket expenses of the Post-Consummation Trust Committee members as provided in Section 4.1; (b) second, to such claims as are payable by the Post-Consummation Trust pursuant to the Plan and; (c) third, to distributions to Post-Consummation Trust Beneficiaries.

(i) Conflicts. In the event of any conflict or inconsistency between the provisions of Section 4.2 or Section 4.3 and the Plan or the Confirmation Order, the provisions of the Plan and the Confirmation Order shall control.

(j) Withholding Distributions of Trust Proceeds. The Post-Consummation Trust may withhold from amounts distributable to any entity any and all amounts, determined in the Plan Administrator's sole discretion, to be required by the Plan or any law, regulation, rule, ruling, directive, or other governmental requirement.

4.3 Undeliverable Property.

(a) If any distribution of Trust Proceeds to a Post-Consummation Trust Beneficiary is returned to the Plan Administrator as undeliverable, no further distribution to such Post-Consummation Trust Beneficiary shall be made unless and until the Plan Administrator is notified in writing of such Post-Consummation Trust Beneficiary's then-current address. For purposes of this Agreement, undeliverable distributions shall include checks sent to a Post-Consummation Trust Beneficiary, respecting distributions to such Post-Consummation Trust Beneficiary, which checks have not been cashed within six months following the date of issuance of such checks. Undeliverable distributions shall remain in the possession of the Plan Administrator until the Post-Consummation Trust Beneficiary provides the Plan Administrator with written notice of the Post-Consummation Trust Beneficiary's then-current address. Upon the Plan Administrator's timely receipt of the Post-Consummation Trust Beneficiary's then-current address, the undelivered distributions shall be made on the next Quarterly Distribution Date, subject to Section 4.3(b) hereof.

(b) Any undeliverable distribution to a Post-Consummation Trust Beneficiary that is an Unclaimed Distribution for a period of six months after the distribution shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and such Unclaimed Distribution shall revert in the Post-Consummation Trust. In such cases, all title to and all Beneficial Interests in the funds represented by any such undeliverable distributions shall revert to or remain in the Post-Consummation Trust and shall be redistributed to the remaining Holders of Beneficial Interests in accordance with Section 4.2 of this Agreement. Upon such reversion, the Claim of any Holder or its successors with respect to such property shall be cancelled, discharged, and forever barred notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary.

4.4 Reports and Budgets.

(a) Notwithstanding anything to the contrary in the Plan, not later than ten (10) business days after the end of each month, the Plan Administrator shall deliver a monthly

report (a “Monthly Report”) to members of the Post-Consummation Trust Committee detailing property sales during the previous month and projections regarding the sale of properties during the subsequent month. Each Monthly Report shall, without limitation, with respect to the sold property and the projected sold property: (i) identify the property; and (ii) provide the actual or projected sales proceeds, as applicable.

(b) The Plan Administrator shall deliver (i) a quarterly report (a “Quarterly Report”) to members of the Post-Consummation Trust Committee, not later than 15 days prior to each Quarterly Distribution Date, except for the final quarter of any fiscal year, (ii) an annual report (an “Annual Report”) to members of the Post-Consummation Trust Committee, not later than 15 days prior to the Quarterly Distribution Date for the final quarter of any fiscal year, and (iii) a material event report (a “Material Event Report”) promptly following the occurrence of any events sufficiently material to mandate the issuance of such a report. Each Quarterly Report, Annual Report, and Material Event Report, as applicable, shall specify in reasonable detail: (i) the status of the claims and other assets assigned to the Post-Consummation Trust; (ii) the fees and expenses of the Post-Consummation Trust, the Plan Administrator and the Plan Professionals incurred and/or earned during such quarterly or annual period; (iii) the aggregate fees and expenses of the Post-Consummation Trust, the Plan Administrator and the Plan Professionals incurred and/or earned since the date of this Agreement; (iv) the amount of Trust Proceeds received by the Post-Consummation Trust during the most recent calendar quarter or annual period; (v) the aggregate amount of Trust Proceeds received by the Post-Consummation Trust since the date of this Agreement; (vi) the calculation of the Trust Proceeds Available for Distribution for the next Quarterly Distribution Date, including the amounts of available Trust Proceeds and the Expense Reserve; (vii) the aggregate amount of distributions from the Post-Consummation Trust to Post-Consummation Trust Beneficiaries since the date of this Agreement; and (viii) such other information as the Post-Consummation Trust Committee may reasonably request from time to time. The Plan Administrator shall also timely prepare, file and distribute such additional statements, reports and submissions (I) as may be necessary to cause the Post-Consummation Trust and the Plan Administrator to be in compliance with applicable law or (II) as may be otherwise reasonably requested from time to time by the Post-Consummation Trust Committee.

(c) The Plan Administrator shall prepare and submit to the Post-Consummation Trust Committee for approval an annual plan and budget at least 30 days prior to the commencement of each fiscal year of the Post-Consummation Trust, provided, however, that the first such report shall be submitted no later than 30 days after the Effective Date. Such annual plan and budget (**the “Operating Budget”**) shall set forth in reasonable detail: (i) the Plan Administrator’s anticipated actions to administer and liquidate the Post-Consummation Trust Assets; and (ii) the anticipated expenses, including professional fees, associated with conducting the affairs of the Post-Consummation Trust. ~~Such annual plan and budget~~**Operating Budget** shall be updated and submitted to the Post-Consummation Trust Committee for review and approval on a quarterly basis, and each such quarterly update shall reflect the differences between the anticipated actions described in the annual report and actual operations of the Post-Consummation Trust to date. If the aggregate actual expenses for the semi-annual period ending June 30th of the year in question vary from the Operating Budget by more than fifteen percent (15%), the Plan Administrator will also provide the Post-Consummation Trust Committee with the reasons for the variance and the Plan Administrator and the Post-Consummation Trust

Committee shall discuss whether and what adjustments are needed for subsequent periods. All actions by the Plan Administrator must be reasonably consistent with the plan and budget, as updated on a quarterly basis and approved by the Post-Consummation Trust Committee.

(d) The Operating Budget shall provide that the Post-Consummation Trust shall pay 100% of (i) the cost of the fees and expenses of any professionals that it retains and of the Plan Administrator, and (ii) direct construction costs and land development costs associated with the Post-Consummation Trust Assets. The Operating Budget shall further provide that the Post-Consummation Trust shall pay 95% of all other expenses paid by the Post-Consummation Trust and the Liquidation Trust, excluding only (i) the cost of the fees and expenses of any professionals retained by the Liquidation Trust and of the Liquidation Trust Administrator, and (b) direct construction costs and land development costs associated with the Liquidation Trust Assets.

(e) The Operating Budget shall provide that the Liquidation Trust shall pay 100% of (i) the cost of the fees and expenses of any professionals that it retains and of the Liquidation Trust Administrator (excluding any incentive fee due and owing to the Liquidation Trust Administrator), and (ii) the direct construction costs and land development costs associated with the Liquidation Trust Assets. The Operating Budget shall further provide that the Liquidation Trust shall pay 5% of all other expenses paid by the Post-Consummation Trust and the Liquidation Trust, excluding only (i) direct construction costs and land development costs associated with the Post-Consummation Trust Assets, and (ii) the fees and expenses of the professionals retained by the Post-Consummation Trust and of the Plan Administrator. The Operating Budget shall also provide that any incentive fee due and payable to the Liquidation Trust Administrator shall be paid solely from the Liquidation Trust proceeds available for distribution to the holders of the Liquidation Trust Series B Interests.

(f) Notwithstanding anything to the contrary herein, the allocation of costs and expenses set forth in Sections 4.4(d) and 4.4(e) may not be amended or otherwise modified without the prior written consent of a majority of the representatives of Post-Consummation Committee and the Class B Representatives (as defined in the Liquidation Trust Agreement).

(g) ~~(d)~~ The Plan Administrator shall provide the Post-Consummation Trust Committee with such other information as may be reasonably requested from time to time or on a regular basis by the Post-Consummation Trust Committee.

4.5 Exchange Act. If the Post-Consummation Trust becomes subject to the registration requirements of the Exchange Act, the Plan Administrator shall cause the Post-Consummation Trust to register pursuant to, and comply with, the applicable reporting requirements of the Exchange Act.

4.6 Fiscal Year. Except for the first and last years of the Post-Consummation Trust, the fiscal year of the Post-Consummation Trust shall be the calendar year. For the first and last

years of the Post-Consummation Trust, the fiscal year of the Post-Consummation Trust shall be such portion of the calendar year that the Post-Consummation Trust is in existence.

4.7 Books and Records. (a) The Plan Administrator shall retain and preserve the Debtors' books, records and files relating to the Post-Consummation Trust that shall have been delivered to or created by the Plan Administrator, including all such books, records and files as may be needed to investigate, prosecute and resolve all Causes of Action. The Plan Administrator shall cooperate reasonably with the Liquidation Trust to make available to the Liquidation Trust Administrator and the professionals for the Liquidation Trust for inspection and copying during normal business hours at no charge other than for copying books, records and files (or copies thereof) that are reasonably necessary or helpful in investigating, prosecuting and resolving the Causes of Action held by the Liquidation Trust.

(b) The Plan Administrator shall maintain, in respect of the Post-Consummation Trust and the Holders of Beneficial Interests, books and records relating to the assets and the income of the Post-Consummation Trust and the payment of expenses of the Post-Consummation Trust and the Plan Administrator, 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 in accordance with the provisions of this Agreement and applicable provisions of law. The Plan Administrator shall provide any member of the Post-Consummation Trust Committee or, at its expense, any other Post-Consummation Trust Beneficiary with access to such books and records during normal business hours as may be reasonably requested with advance notice.

4.8 Cash Payments. All distributions required to be made by the Plan Administrator to the Holders of Beneficial Interests shall be made in Cash and shall be denominated in U.S. dollars by checks drawn on a domestic bank selected by the Plan Administrator or, at the option of the Plan Administrator, by wire transfer from a domestic bank selected by the Plan Administrator; provided that Cash payments to foreign Holders of Beneficial Interests may be made, at the option of the Plan Administrator, in such funds as and by such means as are necessary or customary in a particular foreign jurisdiction. All Cash of the Post-Consummation Trust shall be maintained in a United States financial institution.

4.9 Insurance. The Post-Consummation Trust shall maintain customary insurance coverage for the protection of the Plan Administrator, the members of the Post-Consummation Trust Committee and any such other Persons serving as administrators and overseers of the Post-Consummation Trust on and after the Effective Date as the Plan Administrator determines to be reasonably appropriate in consultation with the Post-Consummation Trust Committee.

4.10 Disputed Claims; Establishment of Disputed Claims Reserve. The Plan Administrator shall have the right to cause the Post-Consummation Trust to object, in accordance with Article VI of the Plan and applicable law, to any Senior Credit Agreement Claim, Administrative Claim, Priority Non-Tax Claim, or Priority Tax Claim, if and to the extent the Plan Administrator believes that such Claim is not allowable; provided, however, that such right to cause the Post-Consummation Trust to object shall not extend to Claim Number 1657, which was allowed pursuant to Article III.B.1.c of the Plan. Notwithstanding anything to the contrary contained in this Agreement, no payments or distributions will be made from the Post-Consummation Trust on account of a disputed Claim until such Claim becomes an Allowed

Claim. Any amount that would have been paid or distributed on a disputed Claim had it been an Allowed Claim shall be deposited by the Plan Administrator in a disputed claims reserve (the “Disputed Claims Reserve”), which shall be a segregated interest-bearing account maintained by the Plan Administrator with a United States financial institution. The Plan Administrator will, in its sole discretion, distribute amounts from the Disputed Claims Reserve (net of any expenses, including any taxes relating thereto), as provided herein and in the Plan, as such disputed Claims are resolved by Final Order, and such amounts will be distributable in respect of such disputed Claims as such amounts would have been distributable had the disputed Claims been Allowed Claims as of the Effective Date.

ARTICLE V **TAX MATTERS**

5.1 Tax Treatment. The Debtors, the Plan Administrator and the Holders of Beneficial Interests will treat the Post-Consummation Trust as a “liquidating trust” within the meaning of Treasury Regulation § 301.7701-4(d) and any comparable provision of state or local law. Consistent with this treatment, for all federal, state and local income tax purposes, each Holder of an Allowed Senior Credit Agreement Claim shall be treated as transferring such Allowed Claim to the Debtors in exchange for the Holder’s Pro Rata share of the Post-Consummation Trust Assets (subject to the liabilities of the Debtors assumed by the Post-Consummation Trust), in addition to other distributions to which the Holder is entitled under the Plan, and then as transferring the Holder’s Pro Rata share of the Post-Consummation Trust Assets (subject to the liabilities) to the Post-Consummation Trust in exchange for the Holder’s Beneficial Interest. The Holders of Beneficial Interests in the Post-Consummation Trust will be treated solely for tax purposes as the grantors and deemed owners of the Post-Consummation Trust; and the Debtors, the Plan Administrator and the Post-Consummation Trust Beneficiaries will use consistent valuations for the transferred assets for tax purposes. The Plan Administrator shall be authorized to take any action necessary to maintain compliance with this regulation or its successor that does not contradict the terms of this Agreement, the Plan or the Confirmation Order.

5.2 Tax Reporting. The “taxable year” of the Post-Consummation Trust shall be the “calendar year” as those terms are defined in Section 441 of the Internal Revenue Code. The Plan Administrator shall file returns for the Post-Consummation Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a). The Plan Administrator shall annually, as soon as reasonably practicable after filing a tax return, send to each record Holder of a Beneficial Interest a separate statement setting forth the Holder’s share or items of income, gain, loss, deduction, or credit and will instruct all such Holders to report such items on their federal income tax returns. Such reporting shall also occur within sixty (60) days of the dissolution of the Post-Consummation Trust. The Post-Consummation Trust’s taxable income, gain, loss, deduction, or credit will be allocated (subject to provisions of the Plan relating to Disputed Claims) to the Post-Consummation Trust Beneficiaries in accordance with their relative Beneficial Interests in the Post-Consummation Trust.

5.3 Tax Withholdings. The Plan Administrator may withhold and pay to the appropriate taxing authority all amounts required to be withheld pursuant to the Internal Revenue Code of 1986, as amended, or any provision of any foreign, state or local tax law with respect to

any payment or distribution to the Post-Consummation Trust Beneficiaries. All such amounts withheld, and paid to the appropriate taxing authority, shall be treated as amounts distributed to such Post-Consummation Trust Beneficiaries for all purposes of this Agreement. The Plan Administrator shall be authorized to collect such tax information from the Post-Consummation Trust Beneficiaries (including, without limitation, social security numbers or other tax identification numbers) as it in its sole discretion deems necessary to effectuate the Plan, the Confirmation Order and this Agreement. The Plan Administrator may refuse to make a distribution to any Post-Consummation Trust Beneficiary that fails to furnish such information in a timely fashion, until such information is delivered; provided, however, that upon the Post-Consummation Trust Beneficiary's delivery of such information, the Plan Administrator shall make such distribution to which the Post-Consummation Trust Beneficiary is entitled, together with any interest and income actually earned thereon.

ARTICLE VI
POWERS OF AND LIMITATIONS ON THE PLAN ADMINISTRATOR

6.1 Powers of the Plan Administrator. The Plan Administrator shall have only such rights, powers and privileges expressly set forth in the Plan, the Confirmation Order, and this Agreement and as otherwise provided by applicable law. Subject to the other provisions herein, including, without limitation, the provisions relating to the Post-Consummation Trust Committee in Section 6.3, the Plan Administrator shall be expressly authorized to undertake the following actions, in the Plan Administrator's good faith judgment, in the best interests of the Post-Consummation Trust Beneficiaries and to maximize net recoveries therefor:

- (a) liquidate the Post-Consummation Trust Assets;
- (b) make distributions of the Trust Proceeds to the appropriate Post-Consummation Trust Beneficiaries in accordance with this Agreement, the Plan and the Confirmation Order;
- (c) collect the Diminution Claim Proceeds from the Liquidation Trust;
- (d) prosecute, settle or otherwise compromise or abandon for the benefit of the Post-Consummation Trust all claims and Causes of Action transferred by the Debtors to the Post-Consummation Trust or arising in favor of the Post-Consummation Trust, including, without limitation, take any action with respect to appeals, counterclaims, and defenses of such claims and Causes of Action;
- (e) execute any documents and take any other actions related to, or in connection with, the liquidation of the Post-Consummation Trust Assets and the exercise of the Plan Administrator's powers granted herein;
- (f) hold legal title to any and all rights of the Post-Consummation Trust Beneficiaries in, to or arising from the Post-Consummation Trust Assets and the Trust Proceeds;
- (g) protect and enforce the rights to the Post-Consummation Trust Assets and Trust Proceeds vested in the Plan Administrator by this Agreement by any method deemed

reasonably appropriate, including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

(h) file, if necessary, any and all tax returns with respect to the Post-Consummation Trust and pay taxes properly payable by the Post-Consummation Trust, if any;

(i) make all necessary filings in accordance with any applicable law, statute or regulation, including, but not limited to, to the extent applicable, the Exchange Act;

(j) determine and satisfy from the Trust Proceeds any and all taxes and ordinary course liabilities, including reasonable professional fees and expenses, created, incurred or assumed by the Post-Consummation Trust;

(k) retain and pay professionals, employees (including former employees of the Debtors), contractors or other agents, including any and all estate professionals, from the Trust Proceeds to carry out its duties and obligations hereunder;

(l) invest monies received by the Plan Administrator or otherwise held by the Plan Administrator in accordance with Section 6.8 hereof;

(m) in the event that the Plan Administrator determines that the Post-Consummation Trust Beneficiaries or the Post-Consummation Trust may, will or have become subject to adverse tax consequences, take such actions that will, or are intended to, alleviate such adverse tax consequences;

(n) create sub-trusts or title vehicles of which the Post-Consummation Trust or the Post-Consummation Trust Beneficiaries hold the beneficial or ownership interests, as applicable;

(o) purchase customary insurance coverage in accordance with Section 4.9 hereof;

(p) perform such functions and take such actions as are provided for or permitted in the Plan, the Confirmation Order, this Agreement or any other agreement executed pursuant to the Plan; and

(q) make the Committee Settlement Payment to the Liquidation Trust.

6.2 Establishment of the Post-Consummation Trust Committee.

(a) The Post-Consummation Trust Committee (the "Post-Consummation Trust Committee") shall consist of three (3) members appointed by Harris, N.A. in its capacity as Prepetition Agent who shall also serve as the Class A Representatives (as defined in the Liquidation Trust Agreement) on the Liquidation Trust Committee (as defined in the Liquidation Trust Agreement).

(b) If a member of the Post-Consummation Trust Committee resigns, is not a member of the Liquidation Trust Committee, or no longer holds a Beneficial Interest, the

remaining members of the Post-Consummation Trust Committee shall, by a unanimous vote, appoint a new member of the Post-Consummation Trust Committee, who shall also serve as a Class A Representative of the Liquidation Trust Committee.

(c) Each Post-Consummation Trust Committee member shall designate (i) one or more persons who shall attend meetings of and participate in other activities of the Post-Consummation Trust Committee and (ii) an alternate person to attend meetings and participate in other activities of the Post-Consummation Trust Committee when the persons designated pursuant to clause (i) above are unavailable to participate in such meetings and activities.

(d) The purpose of the Post-Consummation Trust Committee shall be to oversee the liquidation of the Post-Consummation Trust Assets and distribution of the Trust Proceeds by the Plan Administrator, in accordance with the terms of this Agreement.

(e) A quorum for meetings of the Post-Consummation Trust Committee shall consist of a majority of the non-recused members of the Post-Consummation Trust Committee then serving; provided that, for purposes of determining whether a quorum is present at such a meeting, a member of the Post-Consummation Trust Committee shall be deemed present if a representative of the member is attending in person, by telephone or by proxy.

(f) Except as expressly provided herein, the affirmative vote of a majority of the non-recused members of the Post-Consummation Trust Committee shall be the act of the Post-Consummation Trust Committee with respect to any matter that requires the determination, consent, approval or agreement of the Post-Consummation Trust Committee. In a matter in which the Plan Administrator cannot obtain direction or authority from the Post-Consummation Trust Committee, the Plan Administrator may file a motion, on notice to the Post-Consummation Trust Committee members, requesting such direction or authority from the Bankruptcy Court.

(g) A Post-Consummation Trust Committee member shall be recused from the Post-Consummation Trust Committee's deliberations and votes on any matters as to which such member has a conflicting interest. If a Post-Consummation Trust Committee member does not recuse itself from any such matter, that Post-Consummation Trust Committee member may be recused from such matter by the majority vote of the remaining members of the Post-Consummation Trust Committee that are not recused from the matter.

(h) Post-Consummation Trust Committee members shall be reimbursed by the Post-Consummation Trust for reasonable, documented out-of-pocket business expenses, other than attorneys' and other professionals' fees and expenses, incurred in connection with their service on the Post-Consummation Trust Committee. Post-Consummation Trust Committee members shall not receive any other compensation from the Post-Consummation Trust for their services as committee members.

(i) Each Post-Consummation Trust Committee member's vote shall have the same weight.

6.3 Approval of the Post-Consummation Trust Committee. Notwithstanding anything in this Agreement to the contrary, the Plan Administrator shall submit to the Post-Consummation Trust Committee for its review and prior approval, by a majority vote of the non-recused

members of the Post-Consummation Trust Committee, the following matters and any other matters that the Post-Consummation Trust Committee may direct the Plan Administrator to submit for its approval or that expressly require the approval of the Post-Consummation Trust Committee pursuant to the terms of this Agreement:

(a) Any transaction to sell, assign, transfer, compromise and settle, abandon or dismiss any claims, rights or Causes of Action in which the amount of the transaction exceeds such amount as may be determined from time to time by the Post-Consummation Trust Committee;

(b) Any transaction to sell, assign, transfer or abandon any other Post-Consummation Trust Assets (other than claims, rights or Causes of Action) in which the amount of the transaction exceeds such amount as may be determined from time to time by the Post-Consummation Trust Committee;

(c) Determinations of the amounts of the Expense Reserve and the Trust Proceeds Available for Distribution;

(d) Determinations of the date and amount of all distributions made on dates other than a Quarterly Distribution Date and determinations to defer distributions otherwise required on a Quarterly Distribution Date;

(e) Any determinations to retain attorneys, accountants or other professionals;

(f) Any determinations to initiate lawsuits or other proceedings;

(g) Any actions that would give rise to or alleviate adverse tax consequences to the Post-Consummation Trust or the Post-Consummation Trust Beneficiaries;

(h) The reports and budgets described in Section 4.4 of this Agreement; and

(i) Any determination regarding the investment of Trust Proceeds pursuant to Section 6.6 of this Agreement.

6.4 Limitations on Plan Administrator. No part of the Post-Consummation Trust Assets or the Trust Proceeds shall be used or disposed of by the Plan Administrator in furtherance of any trade or business; provided that, for the avoidance of doubt, Post-Consummation Trust Assets held for liquidation may be used or disposed of in connection with the continuation of the business in which such Post-Consummation Trust Assets were used as of the date of this Agreement. The Plan Administrator shall, on behalf of the Post-Consummation Trust, hold the Post-Consummation Trust out as a trust in the process of liquidation and not as an investment company. The Plan Administrator shall not become a market-maker for the Beneficial Interests or otherwise attempt to create a secondary market for the Beneficial Interests. The Plan Administrator shall be restricted to the liquidation of the Post-Consummation Trust Assets on behalf, and for the benefit, of the Post-Consummation Trust Beneficiaries and the distribution and application of Trust Proceeds for the purposes set forth in this Agreement, the Plan and the Confirmation Order, and the conservation and protection of the Post-

Consummation Trust Assets and the Trust Proceeds and the administration thereof in accordance with the provisions of this Agreement, the Plan and the Confirmation Order.

6.5 Agents and Professionals; Employees. The Post-Consummation Trust may, but shall not be required to, from time to time enter into contracts with, consult with and retain, as approved by the Post-Consummation Trust Committee, independent contractors, including attorneys, accountants, appraisers, disbursing agents or other parties deemed by the Plan Administrator to have qualifications necessary or desirable to assist in the proper administration of the Post-Consummation Trust, including any estate professionals retained during the Debtors' bankruptcy cases as may be appropriate in the circumstances. The Plan Administrator shall pay the reasonable fees and expenses of such persons out of the Trust Proceeds in the ordinary course of business without the need for approval of the Bankruptcy Court. The Post-Consummation Trust may, but shall not be required to, from time to time, employ such persons in such capacities as may be approved by the Post-Consummation Trust Committee. In addition, the Post-Consummation Trust may, subject to the approval of the Post-Consummation Trust Committee, enter into an agreement with the Debtors that exist following the Effective Date to utilize the services of one or more employees of the Debtors.

6.6 Investment of Trust Monies. The Plan Administrator shall, as approved by the Post-Consummation Trust Committee, invest the Trust Proceeds received by the Plan Administrator or otherwise held by the Plan Administrator in highly-rated short-term investments of which the length of term shall be consistent with the obligations to pay costs, expenses and other obligations and make distributions under Article IV of this Agreement, which investments shall consist solely of: (a) short-term investments issued or guaranteed by the United States or by a department, agency or instrumentality of the United States; (b) other short-term instruments of the highest credit rating available of two nationally recognized rating agencies; or (c) other short-term investments approved by the Post-Consummation Trust Committee.

ARTICLE VII **CONCERNING THE PLAN ADMINISTRATOR**

7.1 Generally. The Plan Administrator shall exercise such of the rights and powers vested in it by this Agreement, the Plan and the Confirmation Order, and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of its own affairs. No provision of this Agreement, the Plan or the Confirmation Order shall be construed to relieve the Plan Administrator from liability for its own gross negligence, fraud or reckless, intentional or willful misconduct, except that the Plan Administrator shall not be liable for any action taken in good faith in reliance upon the advice of professionals retained by the Plan Administrator in accordance with this Agreement.

7.2 Reliance by Plan Administrator. Except as otherwise provided in this Agreement, the Plan or the Confirmation Order:

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

(b) persons (including any professionals retained by the Plan Administrator in accordance with this Agreement) engaged in transactions with the Plan Administrator shall look only to the Trust Proceeds to satisfy any liability incurred by the Plan Administrator to such person in carrying out the terms of this Agreement, the Plan or the Confirmation Order, and the Plan Administrator shall have no personal or individual obligation to satisfy any such liability.

7.3 Liability to Third Persons. No Post-Consummation Trust Beneficiary shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the Post-Consummation Trust Assets, the Trust Proceeds, or the affairs of the Plan Administrator. The Plan Administrator, agents of and professionals retained by the Plan Administrator and the members of the Post-Consummation Trust Committee shall not be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the Post-Consummation Trust Assets, the Trust Proceeds or the affairs of the Post-Consummation Trust, except for its own gross negligence, fraud or reckless, intentional or willful misconduct, and all such persons shall look solely to the Liquidation Trust Assets and/or the Trust Proceeds for satisfaction of claims of any nature arising in connection with affairs of the Post-Consummation Trust. Other than as set forth in the Plan or the Confirmation Order, nothing in this Section 7.3 shall be deemed to release any Post-Consummation Trust Beneficiary from any actions or omissions occurring prior to the Effective Date; provided that nothing in this Section 7.3 shall contravene any releases granted pursuant to the Plan or the Confirmation Order.

7.4 Nonliability of Plan Administrator for Acts of Others. Nothing contained in this Agreement, the Plan or the Confirmation Order shall be deemed to be an assumption by the Plan Administrator of any of the liabilities, obligations or duties of the Debtors or Post-Consummation Trust Beneficiaries and shall not be deemed to be or contain a covenant or agreement by the Plan Administrator to assume or accept any such liability, obligation or duty. Any successor Plan Administrator may accept and rely upon any accounting made by or on behalf of any predecessor Plan Administrator hereunder, and any statement or representation made as to the assets comprising the Post-Consummation Trust Assets or the Trust Proceeds or as to any other fact bearing upon the prior administration of the Post-Consummation Trust, so long as it has a good faith basis to do so. A Plan Administrator 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 Plan Administrator or successor Plan Administrator shall not be liable for any act or omission of any predecessor Plan Administrator, nor have a duty to enforce any claims against any predecessor Plan Administrator on account of any such act or omission, unless directed to do so by the Post-Consummation Trust Committee.

7.5 Exculpation. To the fullest extent permitted by law, no Indemnified Party (defined below) shall be liable, responsible, or accountable in damages or otherwise to the Post-Consummation Trust, any Post-Consummation Trust Beneficiary, or any other third party for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Indemnified Party; provided, however, that any Indemnified Party shall be liable for all loss, damages, and claims stemming from any act or omission constituting gross negligence, fraud or reckless, intentional or willful misconduct.

7.6 Indemnity. The Plan Administrator, the members of the Post-Consummation Trust Committee, Ann M. Hamilton, Bradley R. Grining, Michael Richardson, and their

respective agents, employees, officers, directors, professionals, attorneys, accountants, advisors, representatives and principals (collectively, the “Indemnified Parties”) shall be indemnified and held harmless by the Post-Consummation Trust, to the fullest extent permitted by law, solely from the Post-Consummation Trust Assets and/or the Trust Proceeds for any losses, claims, damages, liabilities and expenses, including, without limitation, reasonable attorneys’ fees, disbursements and related expenses which the Indemnified Parties may incur or to which the Indemnified Parties may become subject in connection with any action, suit, proceeding or investigation brought or threatened against one or more of the Indemnified Parties on account of the acts or omissions of the Plan Administrator or the members of the Post-Consummation Trust Committee solely in their capacity as such; provided, however, that the Post-Consummation Trust shall not be liable to indemnify any Indemnified Party for any act or omission constituting gross negligence, fraud or reckless, intentional or willful misconduct. Notwithstanding any provision herein to the contrary, the Indemnified Parties shall be entitled to obtain advances from the Post-Consummation Trust to cover their reasonable expenses of defending themselves in any action brought against them as a result of the acts or omissions, actual or alleged, of an Indemnified Party in its capacity as such; provided, however, that the Indemnified Parties receiving such advances shall repay the amounts so advanced to the Post-Consummation Trust upon the entry of a Final Order finding that such Indemnified Parties were not entitled to any indemnity under the provisions of this Section 7.6. The foregoing indemnity in respect of any Indemnified Party shall survive the termination of such Indemnified Party from the capacity for which they are indemnified.

7.7 Compensation and Expenses. The Plan Administrator shall receive fair and reasonable compensation for its services in accordance with [**identify relevant contract**] or as otherwise agreed from time to time with the Post-Consummation Trust Committee.

7.8 Allocation of Employee Responsibility. Under all circumstances, the Post-Consummation Trust will be responsible for ninety-five percent (95%) and the Liquidation Trust will be responsible for five percent (5%) of all obligations, including but not limited to all payments and benefits, due pursuant to any employment agreement approved by (i) the Agent and the Creditors’ Committee or (ii) the Post-Consummation Trust and Liquidation Trust that provides for such an allocation. If the Post-Consummation Trust terminates prior to the termination of the Liquidation Trust, the Post-Consummation Trust must have, and set aside for such purpose, resources sufficient to satisfy the obligations under such employment agreements.

ARTICLE VIII

SUCCESSOR PLAN ADMINISTRATORS

8.1 Resignation. The Plan Administrator may resign from the Post-Consummation Trust by giving at least 30 days prior written notice thereof to each member of the Post-Consummation Trust Committee. Such resignation shall become effective on the later to occur of (a) the date specified in such written notice or (b) the effective date of the appointment of a successor Plan Administrator in accordance with Section 8.4 of this Agreement and such successor’s acceptance of such appointment in accordance with Section 8.5 of this Agreement.

8.2 Removal. The Plan Administrator may be removed, with or without cause, by an affirmative vote of a majority of the members of the Post-Consummation Trust Committee.

Such removal shall become effective on the date specified in such action by the Post-Consummation Trust Committee.

8.3 Effect of Resignation or Removal. The resignation, removal, or incompetency of the Plan Administrator shall not operate to terminate the Post-Consummation Trust or to revoke any existing agency created pursuant to the terms of this Agreement, the Plan or the Confirmation Order or invalidate any action theretofore taken by the Plan Administrator. All fees and expenses incurred by the Plan Administrator prior to the resignation, incompetency or removal of the Plan Administrator shall be paid from the Trust Proceeds, unless such fees and expenses are disputed by (a) the Post-Consummation Trust Committee or (b) the successor Plan Administrator, in which case the Bankruptcy Court shall resolve the dispute and any disputed fees and expenses of the predecessor Plan Administrator that are subsequently allowed by the Bankruptcy Court shall be paid from the Trust Proceeds. In the event of the resignation or removal of the Plan Administrator, such Plan Administrator shall: (i) promptly execute and deliver such documents, instruments and other writings as may be reasonably requested by the successor Plan Administrator or directed by the Bankruptcy Court to effect the termination of such Plan Administrator's capacity under this Agreement; (ii) promptly deliver to the successor Plan Administrator all documents, instruments, records and other writings related to the Post-Consummation Trust as may be in the possession of such Plan Administrator; provided that such Plan Administrator may retain one copy of each of such documents for its purposes; and (iii) otherwise assist and cooperate in effecting the assumption of its obligations and functions by such successor Plan Administrator.

8.4 Appointment of Successor. In the event of the resignation, removal, incompetency, bankruptcy or insolvency of the Plan Administrator, a vacancy shall be deemed to exist and a successor shall be appointed by a majority of the Post-Consummation Trust Committee. In the event that a successor Plan Administrator is not appointed within 30 days after the date of such vacancy, the Bankruptcy Court, upon its own motion or the motion of a Post-Consummation Trust Beneficiary or member of the Post-Consummation Trust Committee, shall appoint a successor Plan Administrator.

8.5 Acceptance of Appointment by Successor Plan Administrator. Any successor Plan Administrator appointed hereunder shall execute an instrument accepting its appointment and shall deliver one counterpart thereof to the Bankruptcy Court for filing and, in case of the Plan Administrator's resignation, to the resigning Plan Administrator. Thereupon, such successor Plan Administrator shall, without any further act, become vested with all the liabilities, duties, powers, rights, title, discretion and privileges of its predecessor in the Post-Consummation Trust with like effect as if originally named Plan Administrator and shall be deemed appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code. The resigning or removed Plan Administrator shall duly assign, transfer and deliver to such successor Plan Administrator all property and money held by such resigning or removed Plan Administrator hereunder and shall, as directed by the Bankruptcy Court or reasonably requested by such successor Plan Administrator, execute and deliver an instrument or instruments conveying and transferring to such successor Plan Administrator upon the Post-Consummation Trust herein expressed, all the liabilities, duties, powers, rights, title, discretion and privileges of such resigning or removed Plan Administrator.

ARTICLE IX
MISCELLANEOUS PROVISIONS

9.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois (without reference to conflicts of law).

9.2 Jurisdiction. Subject to the proviso below, the parties agree that the Bankruptcy Court shall have exclusive jurisdiction over the Post-Consummation Trust and the Plan Administrator, including, without limitation, the administration and activities of the Post-Consummation Trust and the Plan Administrator; provided, however, that notwithstanding the foregoing, the Plan Administrator shall have power and authority to bring any action in any court of competent jurisdiction to prosecute any claims or Causes of Action assigned to the Post-Consummation Trust.

9.3 Severability. In the event that any provision of this Agreement or the application thereof to any person or circumstances shall be determined by Final Order to be invalid or unenforceable to any extent, the remainder of this Agreement or the application of such provision to persons or circumstances or in jurisdictions other than those as to or in which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

9.4 Notices. Any notice or other communication required or permitted to be made under this Agreement shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if delivered personally or by telex, facsimile or other telegraphic means, sent by nationally recognized overnight delivery service or mailed by first-class mail:

- (i) if to the Plan Administrator, to:

[Trustee Contact Info]

- (ii) if to a member of the Post-Consummation Trust Committee, to the last known address of such member according to the Plan Administrator's records.
- (iii) if to any Post-Consummation Trust Beneficiary, to the last known address of such Post-Consummation Trust Beneficiary according to the Plan Administrator's records.

9.5 Headings. The 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.

9.6 Plan. The terms of this Agreement are intended to supplement the terms provided by the Plan and the Confirmation Order. However, except as specifically provided herein, to the extent that the terms of the Plan or the Confirmation Order with respect to the Post-Consummation Trust are inconsistent with the terms set forth in this Agreement, then this Agreement shall govern.

9.7 Cooperation. The Debtors shall turn over or otherwise make available to the Plan Administrator at no cost to the Post-Consummation Trust or the Plan Administrator, all books and records reasonably required by the Plan Administrator to carry out its duties hereunder, and agree to otherwise reasonably cooperate with the Plan Administrator in carrying out its duties hereunder.

9.8 Entire Agreement. This Agreement and the Annexes attached hereto contain the entire agreement between the parties and supersede all prior and contemporaneous agreements or understandings between the parties with respect to the subject matter hereof.

9.9 Amendment. This Agreement may be amended by (a) order of the Bankruptcy Court or (b) approval by the Plan Administrator and a unanimous vote of the Post-Consummation Trust Committee; provided, however, that Bankruptcy Court approval shall be required for any changes or amendments to this Agreement that are inconsistent with the terms of the Plan or the Confirmation Order.

9.10 Meanings of Other Terms. Except where the context otherwise requires, words importing the masculine gender include the feminine and the neuter, if appropriate, words importing the singular number shall include the plural number and vice versa and words importing persons shall include firms, associations, corporations and other entities. All references herein to Articles, Sections and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code, the Bankruptcy Rules, or other law, statute or regulation, refer to the corresponding Articles, Sections and other subdivisions of this Agreement, and the words herein and words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision of this Agreement. The term “including” shall mean “including, without limitation.”

9.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but such counterparts shall together constitute but one and the same instrument. A facsimile signature of any party shall be considered to have the same binding legal effect as an original signature.

[Remainder of Page Blank — Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement or caused this Agreement to be duly executed by their respective officers, representatives or agents, effective as of the date first above written.

KIMBALL HILL, INC.

**18th and Peoria, LLC;
KH Financial Holding Company;
KH Ingham Park South, LLC;
KHH Texas Trading Company L.P.;
Kimball Hill Far East Detroit, LLC;
Kimball Hill Homes Austin, L.P.;
Kimball Hill Homes California, Inc.;
Kimball Hill Homes Dallas, L.P.;
Kimball Hill Homes Florida, Inc.;
Kimball Hill Homes Houston, L.P.;
Kimball Hill Homes Illinois, LLC;
Kimball Hill Homes Nevada, Inc.;
Kimball Hill Homes Ohio, Inc.;
Kimball Hill Homes Oregon, Inc.;
Kimball Hill Homes Realty Florida, Inc.;
Kimball Hill Homes San Antonio, L.P.;
Kimball Hill Homes Texas Investments, L.L.C.;
Kimball Hill Homes Texas Operations, L.L.C.;
Kimball Hill Homes Texas, Inc.;
Kimball Hill Homes Washington, Inc.;
Kimball Hill Homes Wisconsin, Inc.;
Kimball Hill Stateway, Inc.;
Kimball Hill Texas Investment Company, L.L.C.;
Kimball Hill Urban Centers Chicago One, L.L.C.;
Kimball Hill Urban Centers Chicago Two, L.L.C.;
Kimball Hill Urban Centers Special Purposes, LLC;
Kimball Hill Urban Centers, L.L.C.;
National Credit and Guaranty Corporation; and
The Hamilton Place Partnership.**

By: _____
Name:
Title:

[_____] , as Plan Administrator

By: _____
Name:
Title:

Annex A

BENEFICIAL INTEREST TRANSFER AGREEMENT

TRANSFER AND ACCEPTANCE AGREEMENT

TRANSFER AND ACCEPTANCE AGREEMENT, dated as of _____, 200__ (this "Agreement"), by and between the party identified as the Transferor on the signature page hereto (the "Transferor"), and the party identified as the Transferee on the signature page hereto (the "Transferee"), and consented to by the KHI Post-Consummation Trust (the "Trust"). Reference is made to the KHI Post-Consummation Trust Agreement, dated as of _____, 2009 (as from time to time amended and in effect with respect to the Post-Consummation Trust, the "Trust Agreement"), by and among: (i) Kimball Hill, Inc., as a debtor and a debtor in possession and its subsidiaries party thereto, each as a debtor and a debtor in possession (collectively, the "Debtors"); and (ii) [____], as Plan Administrator (in such capacity, the "Plan Administrator"). Initially capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Trust Agreement.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Transferor and Transferee hereby agree as follows:

I. TRANSFER; ASSIGNMENT. Subject to the terms and conditions of this Agreement (including, without limitation, Section 5 below), the Transferor hereby transfers and assigns to the Transferee, and the Transferee hereby purchases and assumes without recourse to the Transferor, the right, title, interest, and obligations of the Transferor under the Trust Agreement and with respect to the Trust, but only to the extent that such right, title, interest, and obligations relate to the Beneficial Interest described on Annex A hereto (the "Transferred Interest").

II. TRANSFEROR'S REPRESENTATIONS. The Transferor represents and warrants to the Plan Administrator and the Transferee, as of the date of this Agreement and the "Effective Transfer Date" specified in the signature area of this Agreement (the "Effective Transfer Date"), that: (i) the Transferor is duly created under the laws of its state of formation, and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder; this Agreement has been duly approved by all necessary action, has been duly executed by the Transferor, and constitutes the valid and binding agreement of the Transferor, enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors rights generally; and the execution, delivery and performance of this Agreement by the Transferor does not violate or conflict with any applicable law, rule or regulation or violate, conflict with or cause a default under any court order, administrative ruling or decree or any agreement, contract, indenture or other binding arrangement to which the Transferor is a party or any of its property is subject; and (ii) the transfer and assignment evidenced by this Agreement complies with the requirements of the Trust Agreement (including, without limitation, Section 2.5 of the Trust Agreement). Transferor makes no representation or warranty, express or implied, and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Trust Agreement or the execution, legality, validity, enforceability, genuineness or sufficiency of the Trust Agreement or any other instrument or document furnished pursuant thereto or value of a Transferred Interest; provided, however, that, notwithstanding the foregoing, Transferor represents and warrants to the Plan Administrator and the Transferee, as of the date of this Agreement and the Effective Transfer Date, that Transferor is the legal and beneficial owner of the Transferred Interest free and clear

of any claim or encumbrance whatsoever. The Transferor requests that the Plan Administrator update its books and records as of the Effective Transfer Date to indicate that the Transferee is the record owner of the Transferred Interest.

III. TRANSFEEE'S REPRESENTATIONS. The Transferee represents and warrants to the Plan Administrator and the Transferor, as of the date of this Agreement and the Effective Transfer Date, that: (i) the Transferee is duly created under the laws of its state of formation, and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder; (ii) this Agreement has been duly approved by all necessary action, has been duly executed by the Transferee and constitutes the valid and binding agreement of the Transferee, enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors rights generally; (iii) the execution, delivery and performance of this Agreement by the Transferee does not violate or conflict with any applicable law, rule or regulation or violate, conflict with or cause a default under any court order, administrative ruling, or decree, or any agreement, contract, indenture or other binding arrangement to which the Transferee is a party or any of its property is subject; (iv) the transfer and assignment evidenced by this Agreement complies with the requirements of the Trust Agreement (including, without limitation, Section 2.5 of the Trust Agreement); (v) the Transferee has received a copy of the Trust Agreement and such other documents and information as it has deemed appropriate to make its own analysis and decision to enter into this Agreement, and Transferee has made such analysis and decision independently and without reliance on the Transferor or the Plan Administrator; and (vi) the true and correct name, address, telephone number, telecopier number and bank account information of Transferee are set forth on the signature page hereto. Transferee agrees that it will, independently and without reliance upon the Transferor or the Plan Administrator and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Trust Agreement or with respect to the Trust.

IV. BACKUP DOCUMENTATION.

- (a) Attached as Annex B hereto are the legal opinions, certificates, and other documents that the Plan Administrator, pursuant to Section 2.5 of the Trust Agreement, in its reasonable discretion, deems necessary or appropriate in connection with the transactions contemplated by this Agreement (including, without limitation, the transfer of the Transferred Interest) (collectively, the "Backup Documentation"). Such Backup Documentation consists of the following legal opinions, certificates and other documents:
- (i) a legal opinion to the effect that it is not necessary in connection with the transactions contemplated by this Agreement (including, without limitation, the transfer of the Transferred Interest) to register the Transferred Interest under the Securities Act of 1933, as amended;
 - (ii) a "Blue Sky Memorandum" regarding any and all state securities laws applicable to the transactions contemplated by this Agreement (including, without limitation, the transfer of the Transferred Interest); and

- (iii) such other legal opinions, certificates and other documents as the Plan Administrator, in its reasonable discretion, may deem necessary or appropriate;

in each case, in form and substance reasonably satisfactory to the Plan Administrator.

- (b) In accordance with Section 2.5 of the Trust Agreement, Transferor and Transferee have provided the Backup Documentation to the Plan Administrator at least five (5) days prior to the Effective Transfer Date.

V. EFFECTIVE TRANSFER DATE. Notwithstanding anything to the contrary in this Agreement, this Agreement, and the transfer and assignment evidenced by this Agreement, will not be effective unless and until the Effective Transfer Date has occurred. The Effective Transfer Date shall be the date on which the Plan Administrator has consented to this Agreement by duly authorizing and executing this Agreement, as such Effective Transfer Date is indicated in the signature area of this Agreement.

VI. RIGHTS UNDER TRUST AGREEMENT. From and after the Effective Transfer Date: (i) the Transferee shall, to the extent of the Transferred Interest, be a beneficiary with respect to the Trust and the Trust Agreement and, to the extent provided in this Agreement, have the rights and obligations of a beneficiary with respect thereto and thereunder; and (ii) the Transferor shall, with respect to the Transferred Interest, relinquish its right, title and interest and be released from its obligations under the Trust Agreement and with respect to the Trust.

VII. PAYMENTS. With respect to any and all distributions made by the Plan Administrator with respect to the Trust that have a "record date" on or after the Effective Transfer Date, the Plan Administrator will pay such distributions with respect to the Transferred Interest to the Transferee. The Transferor and the Transferee shall make any appropriate adjustments directly between themselves for any consideration paid or payable in connection with this Agreement.

VIII. EXPENSES. Transferor ratifies and confirms its obligations to pay to the Trust the assignment fee required by Section 2.5(e) of the Trust.

IX. FURTHER ASSURANCES. The Transferor and the Transferee agree that they will perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and other acts, instruments and assurances as may reasonably be required by the Plan Administrator for the carrying out or performing of the provisions of this Agreement.

X. SUCCESSORS AND ASSIGNS. Subject to Section 2.5 of the Trust Agreement, this Agreement shall inure to the benefit of and shall be binding upon all of the parties to this Agreement and their respective successors and assigns.

XI. HEADINGS. All Section headings in this Agreement are included for convenience only and do not constitute a part of this Agreement.

XII. GOVERNING LAW. THIS AGREEMENT IS TO BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ILLINOIS (WITHOUT REFERENCE TO CONFLICT OF LAWS).

XIII. COUNTERPARTS. This Agreement may be executed in any number of counterparts which shall together constitute but one and the same agreement. Any signature page to this Agreement transmitted by fax or as an attachment to an email will have the same legal effect as an original executed signature page.

XIV. TRANSFeree'S ACKNOWLEDGMENT. The Transferee acknowledges and agrees that it has made its own evaluation of the Transferred Interest(s) and has not relied upon any oral or written statement by the Plan Administrator or any of the professionals or agents of the Plan Administrator as to matters that could affect the value of the Transferred Interest(s), the value of any of the Post-Consummation Trust Assets or the claims or objections to claims being pursued or prosecuted by the Plan Administrator or the Trust.

* * * * Remainder of Page Blank — Signature Page Follows * * * *

IN WITNESS WHEREOF, intending to be legally bound, each of the undersigned has caused this Agreement to be executed on its behalf by its officer thereunto duly authorized, as of the date first above written.

TRANSFEROR:

TRANSFeree:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Transferor Information

Transferee Information

Address: _____

Address: _____

Contact: _____
Telephone: _____
Telecopier: _____

Contact: _____
Telephone: _____
Telecopier: _____
ABA#: _____
Bank Name: _____
Account No. _____

CONSENTED TO AS OF _____, 200__ (the "Effective Transfer Date"):

PLAN ADMINISTRATOR:

[_____], as Plan Administrator

By: _____
[Name], [Title]

ANNEX A

Description of Transferred Interest

<i>Complete each row, even if amounts are zero</i>		
<i>(A)</i>	<i>(B)</i>	<i>(A) + (B)</i>
<i><u>Principal Amount</u></i>	<i><u>Accrued Interest</u> <i>(thru. [])</i></i>	<i><u>Total</u></i>

ANNEX B

Backup Documentation

Attached

Document comparison done by DeltaView on Wednesday, February 25, 2009 4:59:57 PM

Input:	
Document 1	iManageDeskSite://CHIMDM/CHDB03/9206381/1
Document 2	iManageDeskSite://CHIMDM/CHDB03/9206381/2
Rendering set	Deletions struck through - Inserts dbl und and bold

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	9
Deletions	2
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	11