

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

In re:)	Chapter 11
)	
SGK VENTURES, LLC)	Case No. 13-37603
(f/k/a Keywell L.L.C.),)	
)	Honorable Eugene R. Wedoff
Debtor.)	
)	Hearing Date: October 29, 2014 at 9:30
)	a.m. (Prevailing Central Time)
)	
)	
)	

**NOTICE OF SGK VENTURES, LLC LIQUIDATING TRUST’S
MOTION TO AMEND LIQUIDATING TRUST AGREEMENT**

PLEASE TAKE NOTICE that on **October 29, 2014 at 9:30 a.m. (Central Time)** or as soon thereafter as counsel may be heard, the SGK Ventures, LLC Liquidating Trust shall appear before the Honorable Eugene R. Wedoff, Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Courtroom 744, Chicago, Illinois 60604, or any other Judge sitting in his place or stead, and then and there present the **SGK Ventures, LLC Liquidating Trust’s Motion to Amend Liquidating Trust Agreement**, a copy of which is herewith served upon you.

PLEASE TAKE FURTHER NOTICE that you may obtain copies of any pleadings in this case for free by visiting the above-captioned debtor’s claims and noticing agents’ website at www.omnimgt.com/sgkventures or, for a fee, by visiting the Court’s website at www.ilnb.uscourts.gov and following the procedures set forth therein.

Dated: October 23, 2014

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that true and correct copies of this notice and motion were served upon the parties listed on the service list set forth below via ECF and/or U.S. mail as indicated below, on October 23, 2014.

Dated: October 23, 2014

/s/ David A. Agay _____

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

In re:)	Chapter 11
)	
SGK VENTURES, LLC (f/k/a Keywell L.L.C.),)	Case No. 13-37603
)	
Debtor.)	Honorable Eugene R. Wedoff
)	Hearing Date: October 29, 2014 at 9:30
)	a.m. (Prevailing Central Time)
)	
)	
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**SGK VENTURES, LLC LIQUIDATING TRUST’S MOTION TO
AMEND LIQUIDATING TRUST AGREEMENT**

SGK Ventures, LLC Liquidating Trust (the “Trust”) hereby moves this Court (this “Motion”) for entry of an order permitting the Trust to enter into the Amended and Restated SGK Ventures, LLC Liquidating Trust Agreement (the “Amended Trust Agreement”), a copy of which is attached hereto as **Exhibit A**. A redline reflecting the proposed changes made in the Amended Trust Agreement is attached hereto as **Exhibit B**. In support of this Motion, the Trust respectfully states as follows:

I. Background

1. On September 24, 2013, the above-captioned debtor (the “Debtor”) filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.¹

2. There has not been a trustee appointed in this Chapter 11 Case. On October 3, 2013, the Office of the United States Trustee appointed an official committee of unsecured

¹ Capitalized but undefined terms shall have the meanings ascribed to them in Second Amended Plan of Liquidation of the Official Committee of Unsecured Creditors of SGK Ventures, LLC (as amended, supplemented, and/or modified, the “Plan”).

creditors (the “Committee”) [Docket No. 52; as amended by Docket Nos. 128 and 632]. On November 5, 2013, the Court authorized the Committee’s retention of Alvarez & Marsal North America, LLC (“A&M”) as financial advisor [Docket No. 184].

3. On September 3, 2013, the Court entered that certain Order Confirming Committee’s Plan of Liquidation [Docket No. 853] (the “Confirmation Order”). The Plan went effective on October 21, 2014 (the “Effective Date”) upon the execution of the Trust Agreement (as defined below).

4. Prior to the Effective Date, the Debtor operated its business as a debtor in possession in accordance with 11 U.S.C. §§ 1107 and 1108. On the Effective Date, all of the Debtor’s assets other than the Frewsburg Assets were transferred to the Trust pursuant to the Plan.

5. A copy of the Plan, including the Plan Supplement, was attached to the Confirmation Order as Exhibit A. The SGK Ventures, LLC Liquidating Trust Agreement (the “Trust Agreement”) was included as Exhibit 1 to the Plan Supplement, which contemplates Kelly Beaudin Stapleton (the “Trustee” or “Ms. Stapleton”) acting as the initial liquidating trustee. Ms. Stapleton is employed by A&M.

6. The Plan Supplement was incorporated into and made a part of the Plan as if set forth therein. (Plan at §§ 1.2.3, 4.1, 10.11.) Pursuant to Section 10.1 of the Plan, subject to the restrictions set forth in 11 U.S.C. § 1127, the Committee reserved the right to alter, amend, or modify the Plan before the Effective Date. (*Id.* at § 10.1.) Holders of impaired Claims who were entitled to vote on the Plan are “deemed to have accepted the Plan, as altered, amended, or modified, if the proposed alteration, amendment, or modification does not materially and adversely change the treatment of the Claim or such Holder.” (*Id.*)

7. Due to an administrative oversight, A&M's general counsel did not review the Trust Agreement and provide comments to the Committee prior to entry of the Confirmation Order. A&M subsequently requested that several changes reflected in the redline attached hereto as **Exhibit B** be made to the Trust Agreement. While not objecting to the changes in the Amended Trust Agreement, the Committee and the Debtor advised A&M that Court approval should be sought. At the same time, none of the parties wanted to further delay the Effective Date.

8. So as to cause the Plan to go effective without further delay, the Committee, the Debtor, and the Trustee agreed that they would execute the Trust Agreement, with the following procedural modification:

11.1 Initial Amendment. Within seven (7) days following the Effective Date, the Liquidating Trust's counsel shall file a motion with the Bankruptcy Court seeking approval for the amendments to this Liquidating Trust Agreement set forth on Annex A hereto (the "Proposed Amendments"). Should the Bankruptcy Court fail to issue an order approving the Proposed Amendments within twenty-one (21) days following the filing of the related motion, for any reason, the Liquidating Trustee may resign upon thirty (30) days written notice to the Advisory Committee and the Advisory Committee shall immediately petition the Bankruptcy Court with a proposed replacement.

9. On the Effective Date, the Committee, the Debtor, and the Trustee, executed this modified version of the Trust Agreement, which included the aforementioned Section 11.1 and which had attached the proposed Amended Trust Agreement. A copy of the fully-executed Trust Agreement is attached hereto as **Exhibit C**.

10. Thus, the Trust now moves this Court for entry of an order permitting the Trust to enter into the Amended Trust Agreement.

11. This Court has retained jurisdiction over certain issues relating to the Chapter 11 Case and the implementation of the Plan, including issues relating to the Trust Agreement, pursuant to Article IX of the Plan and Paragraph 14 of the Confirmation Order.

II. Argument

12. A&M has made clear that the proposed changes set forth in the Amended Trust Agreement are important to A&M, which has indicated that it may consider instructing Ms. Stapleton to resign as the Trustee if the terms of the Amended Trust Agreement are not adopted.

13. While certain of the proposed terms are substantive, the Trust does not believe such changes have a meaningful economic impact on the Trust's beneficiaries. Moreover, the Trust believes that it is exceedingly important to retain Ms. Stapleton as the liquidating trustee, which will benefit all Trust beneficiaries as it will allow the Trust to preserve Ms. Stapleton's and A&M's knowledge of the Chapter 11 Case, including their significant involvement in the NewKey Action. Further, retaining Ms. Stapleton will enable the Trust to preserve the valuable expertise and experience of A&M and Ms. Stapleton, a former United States Trustee. Balancing all of these factors, the Trust decided that it would be in its best interest to seek Court approval of the Amended Trust Agreement.

14. In summary, the proposed substantive changes reflected in the Amended Trust Agreement are as follows:

- a. Section 2.4: Revised to elaborate on the Trustee's powers to retain and rely upon professionals, including expressly (i) authorizing the Trustee to indemnify its agents, professionals, and employees, (ii) limiting the Trustee's responsibility for the misconduct of its agents, professionals, and employees, (iii) stating that the Trustee's professionals need not be "disinterested" as that term is defined in the Bankruptcy Code, which professionals may include A&M as well as counsel, interim management, and financial advisors of the Debtor or the Committee and their employees, independent contractors, and agents, (iv) directing the Trustee to utilize A&M and its affiliates and personnel as professionals notwithstanding that the Trustee may benefit (directly or indirectly) from the compensation paid to related parties or that other persons or entities may be available to provide the same or similar work at similar or more competitive prices, (v) and releasing the Trustee, A&M, and A&M's affiliates from any claims of conflict of interest or breach of fiduciary duty

or any other claims arising out of the appointment of any person in accordance with this provision.

- b. Section 4.2(b): Revised to state that the Trustee and the Advisory Committee may consult with their legal counsel, and any advice or opinion of such counsel, accountants, or other professional advisors shall constitute full and complete authorization and protection in respect of any action taken or not taken by them in good faith and in accordance with such advice. Notwithstanding such authority, the Trustee and the Advisory Committee shall not be under any obligation to consult with their attorneys, accountants, financial advisors, and agents, and their determination not to do so shall not result in the imposition of liability on the Trustee or the Advisory Committee, except to the extent such determination is based on willful misconduct, gross negligence, or fraud.
- c. Section 4.4(e): Added to confirm that the Trustee shall have no liability for any act or omission taken which has been approved or directed by the Advisory Committee.
- d. Section 4.3: Revised to expand the definition of “Indemnified Parties” to include A&M and its affiliates and the officers, employees, and agents of A&M and its affiliates. The Indemnified Parties shall not be liable to the Trust except for liability arising primarily and directly from their own acts as shall constitute such Indemnified Party’s own willful misconduct, fraud, or gross negligence. This section is also revised to expand the scope of the indemnification and to further exculpate the Indemnified Parties and limit their liabilities. More specifically, the Indemnified Parties shall be defended, held harmless, and indemnified against any and all losses arising out of acts or omissions with respect to the implementation or administration of the Trust or the Plan or the discharge of their duties thereunder or any agreement between such Indemnified Parties and the Trust or the Trustee.
- e. Section 9.1: Revised to allow the Trustee to resign without the need for a Bankruptcy Court order, so long as the Trustee provides not less than thirty days’ prior written notice to the Bankruptcy Court and the Advisory Committee.

15. Despite the scope and purpose of the proposed changes to the Trust Agreement, it is not believed that the Trust is required to obtain this Court’s permission before entering into the Amended Trust Agreement because none of the proposed changes constitute alterations, amendments, or modifications that would materially and adversely change the treatment of any Claims or any Holders of such Claims. (*See* Plan at § 10.1.) More specifically, none of the

proposed changes will have any substantive impact on the overall economics of the Trust and are better classified as changes that are conditions under which A&M will allow the Ms. Stapleton to serve as the Trustee.

16. Nevertheless, out of an abundance of caution, because A&M's proposed changes are substantive to an extent, the Trust requests an order from this Court expressly allowing the Trust to enter into the Amended Trust Agreement. Furthermore, the Trust's filing of this Motion provides notice of the proposed changes to all interested parties, including this Court and the United States Trustee, who the Trust understands are particularly sensitive to issues relating to terms of employment and indemnification.

17. Given Ms. Stapleton's qualifications and her familiarity with this Chapter 11 Case, as well as A&M's qualifications and expertise, the Trust believes that the proposed changes in the Amended Trust Agreement do not warrant taking the risk that Ms. Stapleton would resign as the Trustee. Moreover, any additional costs that arguably might be imposed by the proposed changes are significantly less than the costs to the Trust of not retaining Ms. Stapleton as a result of the replacement liquidating trustee's "getting up to speed" costs. Additionally, there is no guaranty that any proposed successor liquidating trustee would not condition his or her retention on the Trust agreeing to make similar modifications to the Trust Agreement as those requested by A&M.

18. Consequently, on balance, in light of the importance of retaining Ms. Stapleton and utilizing Ms. Stapleton's and A&M's vast resources and experience, the Trust believes that agreeing to make A&M's proposed changes in the Amended Trust Agreement are necessary to successfully administer the Trust.

19. Therefore, the Trust respectfully requests that this Court enter an order authorizing the Trust to enter into the Amended Trust Agreement.

No Prior Request

20. No prior motion for the relief requested herein has been made to this or any other court.

Notice

21. Notice of this Motion has been served as set forth in the foregoing Certificate of Service attached to the Notice of Motion. In light of the nature of the relief requested herein, the Trust submits that no other or further notice need be provided.

[Remainder of page intentionally left blank]

WHEREFORE, the Trust respectfully requests that this Court: (i) grant the Motion and enter an order substantially similar to the proposed order submitted with this Motion; and (ii) grant such other and further relief as this Court deems appropriate.

Dated: October 23, 2014

/s/ David A. Agay

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EXHIBIT A

**AMENDED AND RESTATED SGK VENTURES, LLC LIQUIDATING TRUST
AGREEMENT**

Dated as of _____, 2014

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- Exhibit B Confirmation Order**

SGK VENTURES, LLC LIQUIDATING TRUST AGREEMENT

This Amended and Restated Liquidating Trust Agreement (this "Agreement") amends and restates that certain Liquidating Trust Agreement is executed as of _____, 2014, by and among Kelly Stapleton (a Managing Director with Alvarez & Marsal North America, LLC, as initial liquidating trustee under this Agreement (the initial liquidating trustee or any successor, the "Liquidating Trustee"); the Official Committee of Unsecured Creditors duly appointed for the Chapter 11 Case (as defined below) (the "Committee"); and SGK Ventures, LLC (f/k/a Keywell L.L.C.) (the "Debtor"). Except as otherwise defined in this Agreement, and except as the context requires otherwise, the capitalized terms in this Agreement shall have the meaning ascribed to them in the Second Amended Plan of Liquidation of the Official Committee of Unsecured Creditors of SGK Ventures, LLC, dated as of August 27, 2014 (as amended, modified or supplemented, the "Plan"). This trust may also be referred to as the "SGK Ventures Liquidating Trust" or by employing words of similar meaning.

RECITALS

WHEREAS, on September 24, 2013 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in United States Bankruptcy Court for the Northern District of Illinois (the "Bankruptcy Court"), thereby commencing Case No. 13-37603 (the "Chapter 11 Case");

WHEREAS, on October 3, 2013, the Committee was appointed and authorized to act as a representative of the unsecured creditors. The Committee is the proponent of the Plan;

WHEREAS, this Agreement is entered into in accordance with, and to facilitate the implementation and execution of, the Plan;

WHEREAS, on September 3, 2014, the Bankruptcy Court entered an order confirming the Plan (the "Confirmation Order"). A copy of the Plan and the Confirmation Order are attached hereto as **Exhibits A** and **B**, respectively;

WHEREAS, on the Effective Date, the Plan provides that all rights, title, and interests of the Debtor and the Debtor's Estate in and to the Liquidating Trust Assets shall become and comprise the liquidating estate of the Debtor subject to a liquidating trust. The Plan further provides that the Liquidating Trust Assets shall be administered through a liquidating trust established pursuant to the Plan. The Plan authorizes and appoints the Liquidating Trustee to receive, hold, administer, and distribute the Liquidating Trust Assets for the benefit of the Beneficiaries (as defined below) and their successors and assigns as permitted for under the Plan and this Agreement;

WHEREAS, the Liquidating Trust Assets include all of the Debtor's Assets as of the Effective Date of the Plan other than the Frewsburg Assets. The Plan provides that the Frewsburg Assets shall be liquidated by the Frewsburg Administrator and the proceeds of such liquidation, if any, shall be transferred to the Liquidating Trust and thereafter become Liquidating Trust Assets; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Debtor, the Committee and the Liquidating Trustee agree as follows:

**ARTICLE I:
CREATION AND PURPOSE**

1.1 **Creation.** The Debtor and the Committee, pursuant to the terms of the Plan, hereby establish a liquidating trust (the "Liquidating Trust") to hold, administer, liquidate, and distribute Liquidating Trust Assets and all proceeds and profits therefrom, which are hereby granted to and deposited with the Liquidating Trustee. The Liquidating Trustee accepts the Liquidating Trust Assets and shall hold the same in trust and shall administer such assets as provided under the Plan and this Agreement.

1.2 **Purpose.** The Liquidating Trust shall be established solely for the purpose of holding, administering, and liquidating the Liquidating Trust Assets in accordance with Treasury Regulation Section 301.7701-4(d), all pursuant to the provisions of the Plan, with no objective to continue to or engage in the conduct of a trade or business. The purpose of this Agreement is to set forth the rights, powers, and duties of the Liquidating Trustee in receiving, holding, liquidating, and administering the Liquidating Trust Assets as provided in this Agreement and in the Plan. This Agreement also will set forth the rights, powers, and duties of the Advisory Committee, as defined below, in providing guidance to the Liquidating Trustee with respect to certain aspects of the Liquidating Trust.

1.3 **Beneficiaries.** All holders of Allowed General Unsecured Claims and, until such Claims are satisfied, the holders of other Allowed Claims to be paid by the Liquidating Trust under the Plan, are the beneficiaries of the Liquidating Trust (each is referred to as a "Beneficiary" and together the "Beneficiaries"). The interest and priority of each Beneficiary shall be as provided in the Plan.

**ARTICLE II:
LIQUIDATING TRUSTEE**

2.1 **Appointment.** On the Effective Date of the Plan, pursuant to the Confirmation Order, the Liquidating Trustee shall be appointed and authorized to act as the Liquidating Trustee under this Agreement, and by signing this Agreement, the Liquidating Trustee accepts such appointment all in accordance with the terms of this Agreement and the Plan.

2.2 **Duties and Powers of the Liquidating Trustee.** The Liquidating Trustee shall have the following duties and powers with respect to the Liquidating Trust:

- (a) employ and pay professionals to assist in administration of the Liquidating Trust;
- (b) receive, hold, deposit, and invest funds of the Liquidating Trust;
- (c) open any accounts necessary to maintain and distribute funds in the Liquidating Trust;

- (d) pay any fees, costs, and expenses of administering the Liquidating Trust;
- (e) establish and maintain the Disputed Claims Reserve and the Cash Reserve;
- (f) liquidate and administer assets of the Liquidating Trust, including, but not limited to, enforcing Causes of Action of the Liquidating Trust and collecting amounts due with respect to such Causes of Action;
- (g) compromise, settle or abandon any Causes of Action of the Liquidating Trust as authorized under the Plan and this Agreement;
- (h) liquidate and administer claims against the Liquidating Trust;
- (i) calculate and implement distributions from the Liquidating Trust in accordance with the Plan and this Agreement;
- (j) maintain a list of holders of Allowed General Unsecured Claims;
- (k) report to the Beneficiaries of the Liquidating Trust by filing the reports required in Section 4.3.5 of the Plan;
- (l) utilize Liquidating Trust Assets to pay premiums for any insurance policies that the Liquidating Trustee deems necessary, in his/her sole discretion, to insure the assets of the Liquidating Trust against loss and/or to insure the Liquidating Trustee and Advisory Committee against liability with respect to third persons;
- (m) file any necessary tax returns and utilize Liquidating Trust Assets to pay any necessary taxes;
- (n) take such actions that are necessary to dissolve the Liquidating Trust in accordance with Article X of this Agreement; and
- (o) such other powers that are necessary and appropriate to administer the Liquidating Trust as contemplated under the Plan and this Agreement.

2.3 Consent of Advisory Committee. The Liquidating Trustee shall obtain the approval of the Advisory Committee before doing any of the following:

- (a) selling or liquidating non-Cash Liquidating Trust Assets for greater than \$250,000;
- (b) settling, compromising, abandoning, or withdrawing any Cause of Action with face value greater than \$100,000; and
- (c) settling or compromising any Disputed Claims with face value greater than \$50,000 for an Administrative Claim, Priority Tax Claim or Other Priority Claim, or greater than \$100,000 for a General Unsecured Claim.

2.4 Compensation; Retention of Trustee Professionals. The Liquidating Trustee shall be compensated at a rate of \$725 per hour, without further order of the Bankruptcy Court,

for services rendered to or on behalf of the Liquidating Trust. The Liquidating Trustee also shall be reimbursed, without further order of the Bankruptcy Court, for all reasonable out-of-pocket fees, costs, and expenses in acting under the Plan and this Agreement, including, but not limited to, reimbursement of its reasonable attorneys' and other professionals' fees subject to the provisions below.

The Liquidating Trustee is empowered from available funds (as set forth in Article VIII hereof): (a) to elect, appoint, engage, retain and employ any persons as professionals and advisors ("Trustee Professionals") in one or more capacities as is reasonably necessary to enable the Liquidating Trustee to implement this Agreement and the Plan or to assist the Liquidating Trustee in performing its duties hereunder; (b) to pay fees to and to reimburse the expenses of those employees, agents or independent contractors elected, appointed, engaged, retained or employed by the Liquidating Trustee; (c) to indemnify the Liquidating Trustee's agents, professionals and employees from any loss (including reasonable attorneys' fees) incurred in connection with the execution and implementation of the Plan or their duties to the Liquidating Trust and/or the Liquidating Trustee other than a loss due to the indemnified party's willful misconduct, gross negligence, or fraud; and (d) to prescribe the titles, powers and duties, terms of service and other terms and conditions of the election, appointment, engagement, retention, or employment of such persons as are reasonable and appropriate. The Liquidating Trustee shall not be responsible for the misconduct of those appointed, engaged, retained, or employed by the Liquidating Trustee with due care.

Such persons so retained need not be "disinterested" as that term is defined in the Bankruptcy Code and may include, without limitation, A&M, counsel, interim management and financial advisors of the Debtors and of the Committee as well as employees, independent contractors or agents of the Debtors, the Committee or A&M.

The Liquidating Trustee is hereby expressly directed to utilize A&M, its affiliates and personnel as Trustee Professionals (rather than utilizing other similarly situated or available personnel or professional services firms) notwithstanding that (a) the Liquidating Trustee may benefit (directly or indirectly) from the compensation paid to such A&M related parties and (b) other persons or entities may be available to provide the same or similar work at similar or more competitive prices. The terms of A&M's engagement by the Liquidating Trustee, on behalf of the Trust, shall be subject to approval by the Advisory Committee. In no event shall the Liquidating Trustee, A&M or its Affiliates be subject to a claim of a conflict of interest or breach of fiduciary duty or any other claim arising as a result of the appointment of any such person in accordance with this provision.

The Liquidating Trustee shall file quarterly reports with the Bankruptcy Court identifying payments made by the Liquidating Trust to the Trustee Professionals. Any Beneficiary of the Liquidating Trust may, in its capacity as unsecured creditor under applicable law, request from the Liquidating Trustee copies of any non-privileged legal bills of the Trustee Professionals and may file a motion with the Bankruptcy Court seeking review of the Trustee Professionals' fees to the extent the Beneficiary believes an abuse is occurring.

2.5 Liquidating Trustee's Lien. The Liquidating Trustee shall have a first priority lien on all assets of the Liquidating Trust to secure payment of his/her compensation and reimbursement of his/her fees, costs, and expenses. The lien also shall secure the

indemnification obligation of the Liquidating Trust to the Liquidating Trustee as set forth in Section 4.3 of this Agreement. The Liquidating Trustee's lien shall be *parri passu* with the first priority lien of the Advisory Committee granted under Section 3.5 of this Agreement.

2.6 Co-Liquidating Trustees or Separate Liquidating Trustees. To meet any legal requirements of any jurisdiction in which any of the Liquidating Trust Assets may from time to time be located, the Liquidating Trustee shall have the power to appoint and remove, subject to the approval of the Advisory Committee, one or more Persons either to act as co-trustee(s) jointly with the Liquidating Trustee of all or any part of the Liquidating Trust Assets or to act as separate trustee(s) of all or any part of the Liquidating Trust Assets and to vest in such Person or Persons, in such capacity, such title to the Liquidating Trust Assets or any part thereof, and such rights, powers, duties, trusts or obligations as the Liquidating Trustee determines may be necessary for the Liquidating Trustee to perform his/her duties under this Agreement.

ARTICLE III: ADVISORY COMMITTEE

3.1 Appointment; Composition. As of the Effective Date, pursuant to the Confirmation Order, the following are appointed and authorized under Section 4.3.3 of the Plan to act as the advisory committee for the Liquidating Trust (the "Advisory Committee"):

- Omnisource Corporation, Attn: Marlene Sloat
- Schupan & Sons, Inc., Attn: Andrew Knowlton
- Ferrous Processing & Trading Co., Attn: Howard Sherman
- Schnitzer Steel Industries, Inc., Attn: Richard Josephson and Debora Diamond-Burt
- SA Recycling LLC, Attn: Dan Navabpour

The Advisory Committee shall have no more than five (5) and no less than three (3) members. If any member resigns, a replacement shall be appointed pursuant to the procedures set forth in this Agreement.

3.2 Duties and Powers of the Advisory Committee. The Advisory Committee shall have the following duties and powers with respect to the Liquidating Trust:

- (a) approve certain actions of the Liquidating Trustee as set forth in Section 2.3 of this Agreement;
- (b) in the Liquidating Trustee's discretion, consult with and advise the Liquidating Trustee on the administration of the Liquidating Trust;
- (c) authorize the appointment of successor Liquidating Trustees and members of the Advisory Committee as provided in the Plan and this Agreement; and
- (d) such other powers as are necessary to fulfill its duties as set forth in this Agreement.

Except as otherwise authorized under this Agreement, an affirmative vote (which may be by written consent on notice to all members) from a majority of total Advisory Committee

members present is necessary for the Advisory Committee to take any action authorized under the Plan and this Agreement.

3.3 Resignation and Successors. The members of the Advisory Committee may resign at any time by giving thirty (30) days' written notice to the Liquidating Trustee and other members of the Advisory Committee. In the event of a resignation, the remaining members of the Advisory Committee shall appoint a successor member. To qualify for appointment on the Advisory Committee, a successor must hold an Allowed General Unsecured Claim and must not have voted to reject the Plan. A successor member shall be appointed and authorized to act on the Advisory Committee upon accepting such appointment.

3.4 Compensation and Expenses. The members of the Advisory Committee shall be reimbursed, without further order of the Bankruptcy Court, for all actual and necessary reasonable expenses in acting as a member of the Advisory Committee.

3.5 Lien. The members of the Advisory Committee shall have a first priority lien on all assets of the Liquidating Trust to secure reimbursement of their expenses. The lien also shall secure the indemnification obligation of the Liquidating Trust to the members of the Advisory Committee as set forth in Section 4.3 of this Agreement. The lien shall be *pari passu* with the first priority lien of the Liquidating Trustee granted under Section 2.5 of this Agreement.

ARTICLE IV: CONDUCT OF THE LIQUIDATING TRUSTEE AND ADVISORY COMMITTEE

4.1 Exercise of Duties and Responsibilities. The Liquidating Trustee and the Advisory Committee shall exercise the rights and powers vested in them under the Plan and this Agreement, and use the same degree of care and skill in their exercise of such rights and powers as a prudent person would exercise or use under such circumstances in the administration of such person's own affairs, provided, however, that

- (a) the duties and obligations of the Liquidating Trustee and the Advisory Committee shall be determined solely by the express provisions of the Plan and this Agreement, and they shall not be liable except for the performance of such duties and obligations as are specifically set forth in the Plan and this Agreement, and no implied covenants or obligations shall be read into the Plan or this Agreement against the Liquidating Trustee or the Advisory Committee;
- (b) the Liquidating Trustee shall not be liable for any right, duty, or conduct of the Advisory Committee; and
- (c) the Advisory Committee shall not be liable for any right, duty, or conduct of the Liquidating Trustee.

The provisions of this Section shall apply to any right, conduct, power, duty, or responsibility of the Liquidating Trustee or the Advisory Committee, as the case may be, under the Plan or this Agreement. None of the provisions in the Plan or this Agreement shall be construed to require the Liquidating Trustee or any member of the Advisory Committee to

expend or risk their own funds or otherwise incur personal financial liability in the performance of their duties or in the exercise of their rights and powers.

4.2 Reliance on Documents, Statements, etc. The Liquidating Trustee and the Advisory Committee:

- (a) may rely upon, and shall be protected in acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other document believed by them to be genuine and to have been signed or presented by the proper party or parties;
- (b) may consult with their legal counsel, and any advice or opinion of their or the Liquidating Trust's legal counsel, accountants or other professional advisors shall be full and complete authorization and protection in respect of any action taken or not taken by them in good faith and in accordance with such advice or opinion of counsel. Notwithstanding such authority, the Liquidating Trustee and the Advisory Committee shall not be under any obligation to consult with their attorneys, accountants, financial advisors, and agents, and their determination not to do so shall not result in the imposition of liability on the Liquidating Trustee or the Advisory Committee, except to the extent such determination is based on willful misconduct, gross negligence, or fraud;
- (c) shall not be liable for any action taken or not taken if in good faith and believed by them to be authorized or within their discretion or rights or powers under the Plan and this Agreement;
- (d) may exercise any of the rights and powers, or perform any of the duties under the Plan and this Agreement either directly or through agents or attorneys, and they shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care; and
- (e) the Liquidating Trustee shall have no liability for any act or omission taken which has been approved or directed by the Advisory Committee.

4.3 Indemnification of the Liquidating Trustee and the Advisory Committee Exculpation; Limitations on Liability. The Liquidating Trustee and the Advisory Committee and A&M and their respective affiliates and their and their affiliates respective officers, employees and agents (the "Indemnified Parties") shall not be personally liable to the Liquidating Trust, to any Beneficiary or any other Person (or any predecessor or successor thereto) for any reason whatsoever, except for such liability arising primarily and directly from their own acts as shall constitute such Indemnified Party's own willful misconduct, fraud or gross negligence. Except as aforesaid, the Indemnified Parties shall be defended, held harmless, and indemnified from time to time, but solely from the Liquidating Trust Assets, against any and all losses, claims, costs, expenses, and liabilities to which the Indemnified Parties may be subject by reason of or arising out of the Indemnified Parties' acts or omissions or consequences of such acts or omissions, with respect to the implementation or administration of the Liquidating Trust or the Plan or the discharge of the duties hereunder or under any agreement between such Indemnified Parties and the Liquidating Trust and/or Liquidating Trustee. Without limiting the

generality of the foregoing, the Liquidating Trustee shall have no liability to any Beneficiary on account of the Liquidating Trustee's investment or non-investment of any Liquidating Trust Assets or any losses with respect to any such investments of Liquidating Trust Assets, provided that such investments are made, or the Liquidating Trustee's decision not to invest any Liquidating Trust Assets in any case is made, in accordance with Section 6.4 or otherwise in accordance with the terms of this Agreement. The Indemnified Parties shall not be obligated to give any bond or surety or other security for the performance of any of their duties, unless otherwise ordered by the Bankruptcy Court and, if so ordered, all costs and expenses of procuring any such bond shall be deemed Liquidating Trust Expenses.

**ARTICLE V:
NON-TRANSFERABILITY OF BENEFICIAL INTERESTS; INTERESTS BENEFICIAL
ONLY; NO VOTING RIGHTS; SUCCESSORS**

All interests of the Beneficiaries of this Liquidating Trust shall be uncertificated and non-transferable, except by will, intestate succession, or operation of law. The rights to a beneficial interest hereunder shall not entitle any Beneficiary to (a) any title in or to the Liquidating Trust Assets as such (which title is vested in the Liquidating Trustee) or to any right to call for a partition or division of Liquidating Trust Assets or to require an accounting, other than as set forth in Section 6.7 of this Agreement, or (b) any voting rights with respect to the administration of the Liquidating Trust and the actions of the Liquidating Trustee in connection therewith. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns hereunder.

**ARTICLE VI:
ADMINISTRATION OF THE LIQUIDATING TRUST**

6.1 Right to Bring Causes of Action. The Liquidating Trustee shall be deemed a party in interest for all purposes under the Plan and Bankruptcy Code, including, but not limited to, filing objections to Claims. The Liquidating Trustee shall have the right to bring or assert any Cause of Action of the Liquidating Trust. The Liquidating Trustee also shall have the right to continue to defend or prosecute or commence any case commenced or that could have been commenced prior to the Effective Date. In any Cause of Action brought by the Liquidating Trustee, the Liquidating Trustee shall be deemed to represent all of the Beneficiaries of the Liquidating Trust, and it shall not be necessary to make any Beneficiary a party to such action.

Except as expressly provided in the Plan, no Beneficiary shall have any right to take any action, in law or equity, on account of the property of the Liquidating Trust.

6.2 Settlement of Causes of Action and Disputed Claims. Confirmation of the Plan shall constitute authority for the Liquidating Trustee, without further action or order of the Bankruptcy Court, to settle, compromise, abandon, or dismiss any Cause of Action or Disputed Claim; provided, however, that the Liquidating Trustee shall first obtain approval of the Advisory Committee if such approval is required under Section 2.3 of this Agreement. Nothing in the Plan or this Agreement shall prohibit the Liquidating Trustee from: (a) seeking an order of the Bankruptcy Court regarding the compromise, settlement, abandonment, or dismissal of any Cause of Action or Disputed Claim, or (b) dismissing or abandoning any Cause of Action that

the Liquidating Trustee, in his/her sole and absolute discretion, determines may result in personal liability for the Liquidating Trustee.

In considering whether to compromise, dismiss, abandon, or settle a Cause of Action or Disputed Claim (or give approval with respect to such action), the Liquidating Trustee or the Advisory Committee, as the case may be, shall consider the following factors:

- (a) the probability of success in the litigation;
- (b) the complexity of litigation;
- (c) the expense, inconvenience, and delay necessarily attending the litigation;
- (d) the time value of money; and
- (e) the difficulties, if any, to be encountered in collecting any judgment.

6.3 Right to File Claims. The Liquidating Trustee may file such proofs of claim and other papers or take such other actions as may be necessary or appropriate to have the Causes of Action or other rights of the Liquidating Trust allowed in any judicial proceeding.

6.4 Investment of Moneys. Except as otherwise provided in this Agreement, the Liquidating Trustee shall hold all moneys of the Liquidating Trust in segregated accounts established on the books of the Liquidating Trustee (the "Trust Accounts"), and shall invest moneys in the Trust Accounts in: (a) demand and time deposits (such as certificates of deposit), (b) other temporary liquid investments (such as U.S. treasury bills), and (c) shares of any investment company registered under the Federal Investment Company Act of 1940 whose shares are registered under the Securities Act of 1933 and whose only investments comprise: (i) obligations issued or guaranteed as to principal and interest by the U.S. government, and thus constitute direct obligations of the U.S. government, or (ii) obligations issued by state or municipal governmental bodies, the interest of which is exempt from federal income taxation and which are rated in the two highest rating categories published by Standard & Poor's Corporation.

6.5 Fees and Expenses. Subject to the priority of payment established under Section 8.3 of this Agreement and Article II of the Plan, the Liquidating Trustee shall pay all fees, costs, and expenses of administering the Liquidating Trust (including, without limitation, fees and expenses reimbursed to members of the Advisory Committee and any statutory fees) from the Cash Reserve or other available moneys of the Liquidating Trust, as and when such fees, costs, and expenses become due and owing.

6.6 Reports to Beneficiaries. As soon as practicable after June 30 and December 31 of each calendar year, the Liquidating Trustee, on behalf of the Liquidating Trust, shall File with the Bankruptcy Court (and provide to any other party entitled to receive any such report pursuant to this Agreement) a semi-annual report regarding the administration of property subject to its ownership and control pursuant to the Plan and this Agreement, distributions made by it, and other matters relating to the implementation of the Plan; *provided, however*, that the filing of any such report is solely to provide centralized access to information and there is no implication or suggestion that the Bankruptcy Court is supervising the Liquidating Trustee.

6.7 **Books and Records.** The Liquidating Trustee shall maintain complete and accurate records concerning all receipts and distributions to and from the Liquidating Trust, including, but not limited to, the date and amount of each distribution to the Beneficiaries. The Beneficiaries shall, upon reasonable notice to the Liquidating Trustee and only during reasonable business hours, have the right to audit the books, records and accounts relating to the Liquidating Trust within one (1) year following the end of each calendar year. Any such audit will be completed within twelve (12) months after its commencement. The auditing Beneficiary shall be responsible for reimbursing the Liquidating Trustee for any of the Liquidating Trustee's out-of-pocket expenses incurred during such audit.

6.8 **Compliance with Securities Laws.** Under Bankruptcy Code section 1145, the issuance of interests in a liquidating trust pursuant to a chapter 11 plan is exempt from registration under the Securities Act of 1933, as amended, and applicable state and local laws requiring registration or qualification of securities. If the Liquidating Trustee determines, with the advice of counsel, that the Liquidating Trust is required to comply with the reporting requirements of the Securities Exchange Act of 1934, as amended, or the Investment Company Act of 1940, as amended, then the Liquidating Trustee shall take any and all actions to comply with such reporting requirements and file periodic, current, and other reports in compliance therewith with the Securities and Exchange Commission.

ARTICLE VII: TAX MATTERS

7.1 **Purpose and Intent of Liquidating Trust.** The primary purpose of the Liquidating Trust is to liquidate the Liquidating Trust Assets in an expeditious and commercially prudent manner, and all activities of the Liquidating Trustee will be limited to those activities reasonably necessary to, and consistent with, the accomplishment of that purpose. The Liquidating Trustee shall make continuing efforts to dispose of the Liquidating Trust Assets and shall value the Liquidating Trust Assets using consistent standards. There is no intention on the part of any party in interest to carry on a profit-making business or to unreasonably prolong the liquidation process.

7.2 **Tax Characterization.** The Liquidating Trustee shall take or cause to be taken all reasonable and necessary actions, including without limitation, timely preparation and filing of required Tax Returns for the Liquidating Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a), to carry into effect the intent that the Liquidating Trust created by the Plan and this Agreement qualify as a liquidating trust within the meaning of section 301.7701-4(d) of the Treasury Regulations, and to treat the Beneficiaries of the Liquidating Trust as the grantor-owners of the Liquidating Trust within the meaning of sections 671 through 678 of the Internal Revenue Code. In the event the Liquidating Trust shall fail or cease to qualify as a liquidating trust in accordance with Treasury Regulations Section 301.7701-4(d), the parties to this Agreement intend that the Liquidating Trustee take such action as he/she shall deem appropriate to have the Liquidating Trust classified as a partnership for federal tax purposes under Treasury Regulations Section 301.7701-3 (but not a publicly traded partnership under Internal Revenue Code Section 7704), including, if necessary, creating or converting it into an Illinois limited liability partnership or limited liability company. All of the Liquidating Trust's income shall be subject to tax on a current basis.

For all U.S. federal income tax purposes, all parties (including, without limitation, the Debtor, the Liquidating Trustee, and the Beneficiaries) shall treat the transfer of the Liquidating Trust Assets to the Liquidating Trust as (a) a deemed transfer by the Debtor of the Liquidating Trust Assets directly to the Beneficiaries in full satisfaction of the Beneficiaries' claims against and interests in the Debtor and, to the extent Liquidating Trust Assets are allocable to Disputed Claims, to the Disputed Claims Reserve, followed by (b) the deemed transfer by such Beneficiaries to the Liquidating Trust of the Liquidating Trust Assets (other than the Liquidating Trust Assets allocable to the Disputed Claims Reserve) in exchange for interests in the Liquidating Trust. Accordingly, the Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Liquidating Trust Assets (other than Liquidating Trust Assets allocable to the Disputed Claims Reserve). The foregoing treatment shall also apply, to the extent permitted by applicable law, for all state, provincial, territorial, and local income tax purposes.

7.3 Tax Reporting. The Liquidating Trustee shall prepare and provide to, or file with, the appropriate taxing authorities and other parties such notices, tax returns, and other filings, including all federal, state, and local tax returns for the Liquidating Trust, as may be required under the Internal Revenue Code, the Plan, or as may be required by applicable law of other jurisdictions including, if required under applicable law, notices required to report interest or dividend income ("Tax Reports"). The Liquidating Trustee shall treat the Liquidating Trust as a grantor trust for U.S. federal income tax purposes pursuant to Treasury Regulation section 1.671-4(a) and in accordance with the Plan. The Liquidating Trustee also will annually send to each Beneficiary a separate statement regarding the receipts and expenditures of the Liquidating Trust as relevant for all U.S. federal income tax purposes and will instruct all such Beneficiaries to use such information in preparing their U.S. federal income tax returns or to forward the appropriate information to such Beneficiary's underlying beneficial holders with instructions to utilize such information in preparing their U.S. federal income tax returns. If additional tax information is provided at the specific request of a Beneficiary (and not as required by applicable law), then such Beneficiary shall pay a reasonable fee to the Liquidating Trustee, in an amount to be then determined by the Liquidating Trustee, together with all costs and expenses incurred by the Liquidating Trustee in providing such tax information to such Beneficiary. The Liquidating Trustee shall also file (or cause to be filed) any other statement, return, or disclosure relating to the Liquidating Trust that is required by any governmental units in the U.S. and elsewhere.

In connection with the Liquidating Trustee's performance of his/her duties pursuant to this Section, the Liquidating Trustee may require any Beneficiary to furnish to the Liquidating Trustee its employer or taxpayer identification number as assigned by the Internal Revenue Service, together with such other information, returns, or forms as the Liquidating Trustee may determine are required, and the Liquidating Trustee may condition any distribution of Liquidating Trust Assets to any Beneficiary upon such receipt of such identification number, any other information and returns and forms as are required for the Liquidating Trustee to comply with Internal Revenue Service requirements.

The Liquidating Trustee will, in good faith, value all Liquidating Trust Assets, and shall make all such values available from time to time, to the extent relevant, and such values shall be used consistently by all parties to the Liquidating Trust (including, without limitation, the Debtor, the Liquidating Trustee, and the Beneficiaries) for all U.S. federal income tax purposes.

Allocations of Liquidating Trust taxable income among the Beneficiaries (other than taxable income allocable to the Disputed Claims Reserve) shall be determined by reference to the manner in which an amount of cash representing such taxable income would be distributed (were such cash permitted to be distributed at such time) if, immediately prior to such deemed distribution, the Liquidating Trust had distributed all of the Liquidating Trust Assets (valued at their tax book value, and other than assets allocable to the Disputed Claims Reserve) to the holders of the interests in the Liquidating Trust, adjusted for prior taxable income and loss and taking into account all prior and concurrent distributions from the Liquidating Trust. Similarly, taxable loss of the Liquidating Trust shall be allocated by reference to the manner in which an economic loss would be borne immediately after a hypothetical liquidating distribution of the remaining Liquidating Trust Assets. The tax book value of the Liquidating Trust Assets for purpose of this paragraph shall equal their fair market value on the Effective Date, adjusted in accordance with tax accounting principles prescribed by the Internal Revenue Code, the applicable Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements.

Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the receipt by the Liquidating Trustee of a private letter ruling if the Liquidating Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Liquidating Trustee), the Liquidating Trustee shall (a) timely elect to treat any Disputed Claims Reserve as a “disputed ownership fund” governed by Treasury Regulation section 1.468B-9, and (b) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes. All parties (including the Liquidating Trustee, the Debtor, and the Beneficiaries) shall report for U.S. federal, state, and local income tax purposes consistently with the foregoing.

The Liquidating Trustee shall be responsible for payment, out of the Liquidating Trust Assets, of any U.S., local, or foreign taxes imposed on the Liquidating Trust or the Liquidating Trust Assets, including the Disputed Claims Reserve. In the event, and to the extent, any Cash retained on account of Disputed Claims in the Disputed Claims Reserve is insufficient to pay the portion of any such U.S., local, or foreign taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims, such U.S., local, or foreign taxes shall be (a) reimbursed from any subsequent Cash amounts retained on account of Disputed Claims, or (b) to the extent such Disputed Claims have subsequently been resolved, deducted from any amounts otherwise distributable by the Liquidating Trustee as a result of the resolution of such Disputed Claims.

The Liquidating Trustee may request an expedited determination of taxes of the Liquidating Trust, including the Disputed Claims Reserve, or the Debtor under Bankruptcy Code section 505(b) for all tax returns filed for, or on behalf of, the Liquidating Trust or the Debtor for all taxable periods through the dissolution of the Liquidating Trust.

7.4 Compliance with Tax Withholding Requirements. In connection with making distributions under the Plan and this Agreement, the Liquidating Trustee shall comply with all tax withholding and reporting requirements imposed on him/her by any governmental unit, and all distributions pursuant to the Plan and this Agreement shall be subject to such withholding and reporting requirements. Any property so withheld will then be paid by the Liquidating Trust to the appropriate authority. The Liquidating Trustee may withhold the entire distribution due any

Beneficiary until such time as such Beneficiary provides the necessary information to comply with any withholding requirements of any governmental unit, including an IRS Form W-9 containing its, his, or her employer or taxpayer identification number as assigned by the Internal Revenue Service, or, in the case of Beneficiaries that are not U.S. persons for federal income tax purposes, certification of foreign status on IRS Form W-8BEN, W-81MY or W-8ECI. If the Liquidating Trustee requests information necessary to comply with any tax withholding or reporting requirements of any governmental unit of any Beneficiary by certified mail and (i) does not receive a response to such request within sixty (60) days, sends a second request by certified mail and again receives no response within sixty (60) days or (ii) the request is returned to the Liquidating Trustee as undeliverable and the Liquidating Trustee is unable to determine a correct address after reasonable efforts, then no further distributions shall be made to such Beneficiary unless the Liquidating Trustee is notified in writing within six (6) months after the date that the initial request was sent of such Beneficiary's necessary information (subject to the Liquidating Trustee's right to require supporting documents evidencing that the necessary information is that of the rightful Beneficiary), in which case all currently due missed distributions shall be made to such Beneficiary on the next Periodic Distribution Date (as defined below) subject to such withholding and reporting requirements, and shall not be supplemented with any interest, dividends or other accruals of any kind. If the Liquidating Trustee does not receive notice of a Beneficiary's necessary information within six (6) months after the date of the initial request, then all distributions to the Beneficiary that has not provided the information necessary to comply with any tax withholding and reporting requirements of any governmental unit may be treated as an unclaimed distribution in accordance with Section 8.8 below or the amount required to be withheld may be so withheld and turned over to the applicable authority.

**ARTICLE VIII:
APPLICATION AND PRIORITY OF DISTRIBUTION OF LIQUIDATING TRUST
FUNDS**

8.1 **Money Held in Trust.** All moneys and other assets that the Liquidating Trustee receives under this Agreement, until used or applied as provided in this Agreement, shall be held in trust for the purposes for which they were received. The Liquidating Trustee shall not be obligated to pay interest on any moneys that it receives under this Agreement. However, except as otherwise provided in this Agreement, the Liquidating Trustee shall promptly invest moneys of the Liquidating Trust as provided in Section 6.4 of this Agreement.

8.2 **Right to Receive Distributions from the Liquidating Trust.** The amount of each Beneficiary's Allowed Claim shall represent such person's right to receive distributions from the Liquidating Trust in accordance with the priorities set forth in the Plan and this Agreement.

Prior to distribution of any portion of the Liquidating Trust Assets to any Beneficiary, the Liquidating Trustee shall first

- (a) reserve for or pay to any taxing authorities, as necessary, any taxes of the Liquidating Trust;
- (b) reserve for or pay to the Office of the U.S. Trustee any statutory fees incurred for the Debtor's Estate after the Effective Date, as may be required;

- (c) reserve for or pay to the Liquidating Trustee's professionals for services rendered and expenses incurred;
- (d) reserve for or pay to the Liquidating Trustee's compensation and reasonable and necessary expenses incurred in fulfilling the Liquidating Trustee's obligations set forth in the Plan and in this Agreement;
- (e) reserve for or pay any additional expenses incurred in fulfilling the obligations of the Liquidating Trustee set forth in the Plan and in this Agreement and not specifically identified in this Section 8.2; and
- (f) establish a Disputed Claims Reserve and a sufficient Cash Reserve.

8.3 Priority of Payment from the Liquidating Trust. After providing for the reserves set forth in Section 8.2 hereof, all proceeds from assets of the Liquidating Trust shall be distributed according to the priorities set forth in the Plan. Generally, Allowed priority and administrative claims will be paid in full, Convenience Class Claims will be paid 62 cents on the dollar, and Allowed General Unsecured Claims will receive a Pro Rata share of remaining funds. Disputed NewKey Claims will be reserved for with a separate Cash reserve and treated pursuant to the Plan and under the terms of the escrow agreement filed with the Plan Supplement.

8.4 Distribution Dates. Distributions will be made by the Liquidating Trustee or a Third Party Disbursing Agent pursuant to the terms of the Plan.

8.5 Interim Distributions. On each applicable Distribution Date, the Liquidating Trustee will distribute the Net Available Cash in accordance with the Plan and this Agreement. A Distribution Date must occur at least once every six (6) months after the Initial Distribution Date, if any amounts are available for distribution on such date.

8.6 Final Distribution. Upon liquidating the Liquidating Trust, and after payment of all fees, costs, and expenses of administration of the Liquidating Trust, the Liquidating Trustee shall make a final distribution of funds to the Beneficiaries (the "Final Distribution") in accordance with the Plan and this Agreement. The Liquidating Trustee shall have no obligation to invest funds of the Liquidating Trust from and after the date of Final Distribution.

8.7 Disputed Claims. Prior to making any distributions under the Plan, the Liquidating Trustee shall establish a reserve for the benefit of holders of Disputed Claims (the "Disputed Claims Reserve"). The Liquidating Trustee shall distribute to and maintain in the Disputed Claims Reserve cash that would otherwise be distributable to holders of Disputed Claims, assuming such Disputed Claims would be allowed in the Face Amount of such Claims. In determining the Face Amount of Disputed Claims in accordance with the Plan, the Liquidating Trustee may rely on the Debtor's estimates as to Disputed Claims and will have no liability therefore in the absence of bad faith or gross negligence. As Disputed Claims are resolved, the Liquidating Trustee shall make adjustments to the Disputed Claims Reserve. Except as otherwise agreed by the relevant parties, the Liquidating Trustee shall not be required to (a) make any partial payments or partial distributions on account of a Disputed Claim until all such disputes in connection with such Disputed Claim have been resolved by settlement or Final Order or (b) make any distributions on account of an Allowed Claim of any Beneficiary that

holds both an Allowed Claim and a Disputed Claim, unless and until all objections to the Disputed Claim have been resolved by settlement or Final Order.

The distributions held or received by the Liquidating Trustee on account of the Disputed Claims Reserve, along with any Cash Investment Yield held in the Disputed Claims Reserve, shall (a) be deposited in a segregated bank account in the name of the Liquidating Trustee for the benefit of holders of Allowed Claims and Disputed Claims that become Allowed Claims, (b) be accounted for separately, and (c) not constitute property of the Debtor. The Liquidating Trustee shall invest Cash held in the Disputed Claims Reserve in a manner consistent with this Agreement.

On the first Distribution Date that is at least thirty (30) days after a Disputed Claim becomes an Allowed Claim, the Liquidating Trustee shall (a) distribute to the holder of such Allowed Claim any property in the Disputed Claims Reserve that would have been distributed to such holder on the Distribution Dates on which distributions previously were made to holders if the Allowed Claim in issue had been an Allowed Claim on such earlier Distribution Dates; and (b) distribute any remaining property held in the Disputed Claim Reserve on account of any resolved Disputed Claim in accordance with the Plan and this Agreement.

After Final Orders have been entered as to all Disputed Claims, or other final resolution has been reached with respect to all Disputed Claims, any remaining property held in the Disputed Claims Reserve will return to the Liquidating Trust and be distributed in accordance with the Plan and this Agreement.

8.8 Unclaimed and Undeliverable Distributions. Subject to Article V hereof, the Liquidating Trustee shall treat unclaimed and undeliverable distributions in accordance with Article VI of the Plan.

8.9 Delivery of Distributions.

(a) Distribution Record Date. The Liquidating Trustee shall not have any obligation to recognize any transfer of any Claim until the record holder of such claim has provided notice to the Liquidating Trustee of such transfer.

(b) De Minimis Distributions. The Liquidating Trustee shall not be required to make any interim distributions in an amount less than \$100 provided that any such payments shall be withheld until the Final Distribution. Notwithstanding anything herein to the contrary, the Liquidating Trustee shall not be required to make any final distributions in an amount less than \$25.

(c) Provision of Tax Identification Number. If the Liquidating Trustee requests a tax identification number or other necessary tax information from any Beneficiary and does not receive such information, then the Liquidating Trustee may withhold payment of distributions to such Beneficiary unless and until the Liquidating Trustee is provided such information in writing, in which case all currently due missed distributions shall be made to such Beneficiary on the next Distribution Date (but shall not be supplemented with any interest, dividends or other accruals of any kind). If the Liquidating Trustee does not receive notice of a Beneficiary's tax identification number prior to the Final Distribution Date, then all distributions that would have

been made to the Beneficiary shall be treated as undeliverable or unclaimed property in accordance with Section 8.8.

8.10 **Third Party Disbursing Agent.** The Liquidating Trustee may employ, in his/her sole discretion, a Third Party Disbursing Agent to make all distributions, and to otherwise perform all necessary action related to such distributions, required under the Plan and this Agreement.

**ARTICLE IX:
RESIGNATION AND REMOVAL OF THE LIQUIDATING TRUSTEE**

9.1 **Resignation.** The Liquidating Trustee may resign by giving not less than thirty (30) days' prior written notice thereof to the Bankruptcy Court and the Advisory Committee. The Advisory Committee through counsel for the Liquidating Trustee may petition the Bankruptcy Court for the appointment of a successor Liquidating Trustee. In either case, the resignation shall be effective upon the earlier of (a) the successor Liquidating Trustee accepting his/her appointment as Liquidating Trustee under this Agreement or (b) thirty (30) days from the date of the noticed of described above.

9.2 **Successor Liquidating Trustee.** Any successor Liquidating Trustee, however appointed, shall execute and deliver to the resigning Liquidating Trustee a written instrument accepting such appointment, and thereafter, such successor Liquidating Trustee, without further act, shall become vested with all the estates, properties, rights, powers, and duties of the resigning or removed Liquidating Trustee.

**ARTICLE X:
TERMINATION AND DISCHARGE**

10.1 **Termination.** The Liquidating Trust shall terminate on the earliest of the following dates:

- (a) the date that the Liquidating Trust Assets have been liquidated and the proceeds distributed to the Beneficiaries as provided in the Plan and this Agreement;
- (b) the date that the Bankruptcy Court or another court of competent jurisdiction enters a Final Order authorizing the termination of such Liquidating Trust; and
- (c) five (5) years after the Effective Date.

Notwithstanding the foregoing, in the event the Liquidating Trustee shall have been unable, after reasonable efforts, to liquidate or otherwise dispose of the assets of the Liquidating Trust within the initial five (5) year term of this Agreement, then the Liquidating Trustee shall have the right to extend the term of such Liquidating Trust, subject to the Bankruptcy Court entering an order approving such extension within six (6) months from the beginning of such extended term, until the assets of such Liquidating Trust have been sold or otherwise disposed of in fulfillment of the purpose of such Liquidating Trust. The term of the Liquidating Trust shall in no event exceed fifteen (15) years after the Effective Date.

10.2 **Discharge.** The Liquidating Trustee shall be discharged of his/her duties under this Agreement on the earlier of: (a) the date of termination as provided in Section 10.1, or (b) the date that a successor Liquidating Trustee accepts his/her appointment.

**ARTICLE XI:
MISCELLANEOUS**

11.1 **No Third-Party Beneficiaries.** Notwithstanding anything to the contrary in the Plan or this Agreement, neither the Liquidating Trustee nor any member of the Advisory Committee, nor any of their officers, directors, employees, members, agents, counsel, or affiliates shall have any duties or responsibilities to, or fiduciary or third-party relationships with, any other person or entity, except as expressly provided in this Agreement or the Plan. Without limiting the generality of the foregoing, the Liquidating Trustee and the Advisory Committee shall have no obligation to:

- (a) provide information to any person, except as provided in this Agreement or the Plan;
- (b) preserve any right or interest of any other person; or
- (c) collect or realize upon any asset or property distributed under the Plan on account of any claim. The Liquidating Trustee shall attempt to collect or realize upon such assets in any manner that the Liquidating Trustee and the Advisory Committee, in their sole and absolute discretion, shall deem appropriate, and shall not incur any liability to the Debtor or any claimant of the Debtor in so doing.

11.2 **Notices.** All communications and notices provided to the Trustee under this Agreement shall be in writing and addressed to counsel for the Liquidating Trustee or, if no such counsel is then retained, the Liquidating Trustee. Any notice, if properly addressed, shall be deemed given upon the first business day after placement in the U.S. mail, first class postage prepaid.

11.3 **Execution of Documents.** The Liquidating Trustee may execute any and all documents necessary and appropriate to effectuate the purpose of this Agreement.

11.4 **Modification.** This Agreement shall not be modified without further order of the Bankruptcy Court after notice to the Beneficiaries and a hearing. Upon a motion of the Liquidating Trustee, the Bankruptcy Court or other court of competent jurisdiction may approve, without notice to the Beneficiaries, technical modifications to this Agreement which do not adversely affect the rights or interests of the Beneficiaries or which conform the terms of this Agreement to the terms of the Plan.

11.5 **Severability.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent such provision is unenforceable without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

11.6 **Headings.** The various headings of this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement.

11.7 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

11.8 **Conflict with the Plan.** In the event that there is any conflict between the terms of this Agreement and the Plan, the terms of the Plan shall govern.

11.9 **Counterparts.** This Agreement may be executed in any number of counterparts. Each counterpart of this Agreement shall, for all purposes, constitute an original, and all of such counterparts, taken together, shall constitute one and the same agreement.

11.10 **Enforcement and Administration.** The Bankruptcy Court shall retain jurisdiction to enforce and administer the provisions of this Agreement, as set forth in the Plan and herein.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

By: _____
David A. Agay (ARDC No. 6244314)
Sean D. Malloy (ARDC No. 6217401)
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of Unsecured Creditors of SGK Ventures,
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*Counsel to SGK Ventures, LLC (f/k/a
Keywell L.L.C.)*

By: _____

Kelly Beaudin Stapleton

LIQUIDATING TRUSTEE

EXHIBIT A

[PLAN OF LIQUIDATION]

EXHIBIT B
[CONFIRMATION ORDER]

EXHIBIT B

AMENDED AND RESTATED **SGK VENTURES, LLC LIQUIDATING TRUST
AGREEMENT**

Dated as of ~~October 21,~~ _____, 2014

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Annex A	[Proposed] Amended and Restated SGK Ventures, LLC Liquidating Trust Agreement
Exhibit A	Plan of Liquidation
Exhibit B	Confirmation Order

SGK VENTURES, LLC LIQUIDATING TRUST AGREEMENT

This Amended and Restated Liquidating Trust Agreement (this “Agreement”) amends and restates that certain Liquidating Trust Agreement is executed as of ~~October 21,~~ 2014, by and among Kelly ~~Beaudin~~-Stapleton (a Managing Director with Alvarez & Marsal North America, LLC), as initial liquidating trustee under this Agreement (the initial liquidating trustee or any successor, the “Liquidating Trustee”); the Official Committee of Unsecured Creditors duly appointed for the Chapter 11 Case (as defined below) (the “Committee”); and SGK Ventures, LLC (f/k/a Keywell L.L.C.) (the “Debtor”). Except as otherwise defined in this Agreement, and except as the context requires otherwise, the capitalized terms in this Agreement shall have the meaning ascribed to them in the Second Amended Plan of Liquidation of the Official Committee of Unsecured Creditors of SGK Ventures, LLC, dated as of August 27, 2014 (as amended, modified or supplemented, the “Plan”). This trust may also be referred to as the “SGK Ventures Liquidating Trust” or by employing words of similar meaning.

RECITALS

WHEREAS, on September 24, 2013 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in United States Bankruptcy Court for the Northern District of Illinois (the “Bankruptcy Court”), thereby commencing Case No. 13-37603 (the “Chapter 11 Case”);

WHEREAS, on October 3, 2013, the Committee was appointed and authorized to act as a representative of the unsecured creditors. The Committee is the proponent of the Plan;

WHEREAS, this Agreement is entered into in accordance with, and to facilitate the implementation and execution of, the Plan;

WHEREAS, on September 3, 2014, the Bankruptcy Court entered an order confirming the Plan (the “Confirmation Order”). A copy of the Plan and the Confirmation Order are attached hereto as **Exhibits A** and **B**, respectively;

WHEREAS, on the Effective Date, the Plan provides that all rights, title, and interests of the Debtor and the Debtor’s Estate in and to the Liquidating Trust Assets shall become and comprise the liquidating estate of the Debtor subject to a liquidating trust. The Plan further provides that the Liquidating Trust Assets shall be administered through a liquidating trust established pursuant to the Plan. The Plan authorizes and appoints the Liquidating Trustee to receive, hold, administer, and distribute the Liquidating Trust Assets for the benefit of the Beneficiaries (as defined below) and their successors and assigns as permitted for under the Plan and this Agreement;

WHEREAS, the Liquidating Trust Assets include all of the Debtor’s Assets as of the Effective Date of the Plan other than the Frewsburg Assets. The Plan provides that the Frewsburg Assets shall be liquidated by the Frewsburg Administrator and the proceeds of such liquidation, if any, shall be transferred to the Liquidating Trust and thereafter become Liquidating Trust Assets; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Debtor, the Committee and the Liquidating Trustee agree as follows:

ARTICLE I: CREATION AND PURPOSE

1.1 **Creation.** The Debtor and the Committee, pursuant to the terms of the Plan, hereby establish a liquidating trust (the "Liquidating Trust") to hold, administer, liquidate, and distribute Liquidating Trust Assets and all proceeds and profits therefrom, which are hereby granted to and deposited with the Liquidating Trustee. The Liquidating Trustee accepts the Liquidating Trust Assets and shall hold the same in trust and shall administer such assets as provided under the Plan and this Agreement.

1.2 **Purpose.** The Liquidating Trust shall be established solely for the purpose of holding, administering, and liquidating the Liquidating Trust Assets in accordance with Treasury Regulation Section 301.7701-4(d), all pursuant to the provisions of the Plan, with no objective to continue to or engage in the conduct of a trade or business. The purpose of this Agreement is to set forth the rights, powers, and duties of the Liquidating Trustee in receiving, holding, liquidating, and administering the Liquidating Trust Assets as provided in this Agreement and in the Plan. This Agreement also will set forth the rights, powers, and duties of the Advisory Committee, as defined below, in providing guidance to the Liquidating Trustee with respect to certain aspects of the Liquidating Trust.

1.3 **Beneficiaries.** All holders of Allowed General Unsecured Claims and, until such Claims are satisfied, the holders of other Allowed Claims to be paid by the Liquidating Trust under the Plan, are the beneficiaries of the Liquidating Trust (each is referred to as a "Beneficiary" and together the "Beneficiaries"). The interest and priority of each Beneficiary shall be as provided in the Plan.

ARTICLE II: LIQUIDATING TRUSTEE

2.1 **Appointment.** On the Effective Date of the Plan, pursuant to the Confirmation Order, the Liquidating Trustee shall be appointed and authorized to act as the Liquidating Trustee under this Agreement, and by signing this Agreement, the Liquidating Trustee accepts such appointment all in accordance with the terms of this Agreement and the Plan.

2.2 ~~2.2~~ **Duties and Powers of the Liquidating Trustee.** The Liquidating Trustee shall have the following duties and powers with respect to the Liquidating Trust:

- (a) employ and pay professionals to assist in administration of the Liquidating Trust;
- (b) receive, hold, deposit, and invest funds of the Liquidating Trust;
- (c) open any accounts necessary to maintain and distribute funds in the Liquidating Trust;

- (d) pay any fees, costs, and expenses of administering the Liquidating Trust;
- (e) establish and maintain the Disputed Claims Reserve and the Cash Reserve;
- (f) liquidate and administer assets of the Liquidating Trust, including, but not limited to, enforcing Causes of Action of the Liquidating Trust and collecting amounts due with respect to such Causes of Action;
- (g) compromise, settle or abandon any Causes of Action of the Liquidating Trust as authorized under the Plan and this Agreement;
- (h) liquidate and administer claims against the Liquidating Trust;
- (i) calculate and implement distributions from the Liquidating Trust in accordance with the Plan and this Agreement;
- (j) maintain a list of holders of Allowed General Unsecured Claims;
- (k) report to the Beneficiaries of the Liquidating Trust by filing the reports required in Section 4.3.5 of the Plan;
- (l) utilize Liquidating Trust Assets to pay premiums for any insurance policies that the Liquidating Trustee deems necessary, in his/her sole discretion, to insure the assets of the Liquidating Trust against loss and/or to insure the Liquidating Trustee and Advisory Committee against liability with respect to third persons;
- (m) file any necessary tax returns and utilize Liquidating Trust Assets to pay any necessary taxes;
- (n) take such actions that are necessary to dissolve the Liquidating Trust in accordance with Article X of this Agreement; and
- (o) such other powers that are necessary and appropriate to administer the Liquidating Trust as contemplated under the Plan and this Agreement.

2.3 Consent of Advisory Committee. The Liquidating Trustee shall obtain the approval of the Advisory Committee before doing any of the following:

- (a) selling or liquidating non-Cash Liquidating Trust Assets for greater than \$250,000;
- (b) settling, compromising, abandoning, or withdrawing any Cause of Action with face value greater than \$100,000; and
- (c) settling or compromising any Disputed Claims with face value greater than \$50,000 for an Administrative Claim, Priority Tax Claim or Other Priority Claim, or greater than \$100,000 for a General Unsecured Claim.

2.4 ~~2.4~~ **Compensation; Retention of Trustee Professionals.** The Liquidating Trustee shall be compensated at a rate of \$725 per hour, without further order of the Bankruptcy Court, for services rendered to or on behalf of the Liquidating Trust. The Liquidating Trustee also shall be reimbursed, without further order of the Bankruptcy Court, for all reasonable out-of-pocket fees, costs, and expenses in acting under the Plan and this Agreement, including, but not limited to, reimbursement of its reasonable attorneys' and other professionals' fees. ~~Notwithstanding the foregoing, the~~ subject to the provisions below.

The Liquidating Trustee is empowered from available funds (as set forth in Article VIII hereof): (a) to elect, appoint, engage, retain and employ any persons as professionals and advisors ("Trustee Professionals") in one or more capacities as is reasonably necessary to enable the Liquidating Trustee to implement this Agreement and the Plan or to assist the Liquidating Trustee in performing its duties hereunder; (b) to pay fees to and to reimburse the expenses of those employees, agents or independent contractors elected, appointed, engaged, retained or employed by the Liquidating Trustee; (c) to indemnify the Liquidating Trustee's agents, professionals and employees from any loss (including reasonable attorneys' fees) incurred in connection with the execution and implementation of the Plan or their duties to the Liquidating Trust and/or the Liquidating Trustee other than a loss due to the indemnified party's willful misconduct, gross negligence, or fraud; and (d) to prescribe the titles, powers and duties, terms of service and other terms and conditions of the election, appointment, engagement, retention, or employment of such persons as are reasonable and appropriate. The Liquidating Trustee shall not be responsible for the misconduct of those appointed, engaged, retained, or employed by the Liquidating Trustee with due care.

Such persons so retained need not be "disinterested" as that term is defined in the Bankruptcy Code and may include, without limitation, A&M, counsel, interim management and financial advisors of the Debtors and of the Committee as well as employees, independent contractors or agents of the Debtors, the Committee or A&M.

The Liquidating Trustee is hereby expressly directed to utilize A&M, its affiliates and personnel as Trustee Professionals (rather than utilizing other similarly situated or available personnel or professional services firms) notwithstanding that (a) the Liquidating Trustee may benefit (directly or indirectly) from the compensation paid to such A&M related parties and (b) other persons or entities may be available to provide the same or similar work at similar or more competitive prices. The terms of A&M's engagement by the Liquidating Trustee, on behalf of the Trust, shall be subject to approval by the Advisory Committee. In no event shall the Liquidating Trustee, A&M or its Affiliates be subject to a claim of a conflict of interest or breach of fiduciary duty or any other claim arising as a result of the appointment of any such person in accordance with this provision.

The Liquidating Trustee shall file quarterly reports with the Bankruptcy Court identifying payments made by the Liquidating Trust to ~~its~~ the Trustee Professionals. Any Beneficiary of the Liquidating Trust may, in its capacity as unsecured creditor under applicable law, request from the Liquidating Trustee copies of any non-privileged legal bills of the ~~Liquidating Trust's~~ Trustee Professionals and may file a motion with the Bankruptcy Court seeking review of the ~~Liquidating Trust's~~ Trustee Professionals' fees to the extent the Beneficiary believes an abuse is occurring.

- 2.5 **Liquidating Trustee's Lien.** The Liquidating Trustee shall have a first priority lien on all assets of the Liquidating Trust to secure payment of his/her compensation and reimbursement of his/her fees, costs, and expenses. The lien also shall secure the indemnification obligation of the Liquidating Trust to the Liquidating Trustee as set forth in Section 4.3 of this Agreement. The Liquidating Trustee's lien shall be *parri passu* with the first priority lien of the Advisory Committee granted under Section 3.5 of this Agreement.
- 2.6 **Co-Liquidating Trustees or Separate Liquidating Trustees.** To meet any legal requirements of any jurisdiction in which any of the Liquidating Trust Assets may from time to time be located, the Liquidating Trustee shall have the power to appoint and remove, subject to the approval of the Advisory Committee, one or more Persons either to act as co-trustee(s) jointly with the Liquidating Trustee of all or any part of the Liquidating Trust Assets or to act as separate trustee(s) of all or any part of the Liquidating Trust Assets and to vest in such Person or Persons, in such capacity, such title to the Liquidating Trust Assets or any part thereof, and such rights, powers, duties, trusts or obligations as the Liquidating Trustee determines may be necessary for the Liquidating Trustee to perform his/her duties under this Agreement.

**ARTICLE III:
ADVISORY COMMITTEE**

3.1 **Appointment; Composition.** As of the Effective Date, pursuant to the Confirmation Order, the following are appointed and authorized under Section 4.3.3 of the Plan to act as the advisory committee for the Liquidating Trust (the "Advisory Committee"):

- Omnisource Corporation, Attn: Marlene Sloat
- Schupan & Sons, Inc., Attn: Andrew Knowlton
- Ferrous Processing & Trading Co., Attn: Howard Sherman
- Schnitzer Steel Industries, Inc., Attn: Richard Josephson and Debora Diamond-Burt
- SA Recycling LLC, Attn: Dan Navabpour

The Advisory Committee shall have no more than five (5) and no less than three (3) members. If any member resigns, a replacement shall be appointed pursuant to the procedures set forth in this Agreement.

3.2 **Duties and Powers of the Advisory Committee.** The Advisory Committee shall have the following duties and powers with respect to the Liquidating Trust:

- (a) approve certain actions of the Liquidating Trustee as set forth in Section 2.3 of this Agreement;
- (b) in the Liquidating Trustee's discretion, consult with and advise the Liquidating Trustee on the administration of the Liquidating Trust;
- (c) authorize the appointment of successor Liquidating Trustees and members of the Advisory Committee as provided in the Plan and this Agreement; and
- (d) such other powers as are necessary to fulfill its duties as set forth in this Agreement.

Except as otherwise authorized under this Agreement, an affirmative vote (which may be by written consent on notice to all members) from a majority of total Advisory Committee members present is necessary for the Advisory Committee to take any action authorized under the Plan and this Agreement.

3.3 ~~3.3~~ **Resignation and Successors.** The members of the Advisory Committee may resign at any time by giving thirty (30) days' written notice to the Liquidating Trustee and other members of the Advisory Committee. In the event of a resignation, the remaining members of the Advisory Committee shall appoint a successor member. To qualify for appointment on the Advisory Committee, a successor must hold an Allowed General Unsecured Claim and must not have voted to reject the Plan. A successor member shall be appointed and authorized to act on the Advisory Committee upon accepting such appointment.

3.4 ~~3.4~~ **Compensation and Expenses.** The members of the Advisory Committee shall be reimbursed, without further order of the Bankruptcy Court, for all actual and necessary reasonable expenses in acting as a member of the Advisory Committee.

3.5 **Lien.** The members of the Advisory Committee shall have a first priority lien on all assets of the Liquidating Trust to secure reimbursement of their expenses. The lien also shall secure the indemnification obligation of the Liquidating Trust to the members of the Advisory Committee as set forth in Section 4.3 of this Agreement. The lien shall be *pari passu* with the first priority lien of the Liquidating Trustee granted under Section 2.5 of this Agreement.

ARTICLE IV: CONDUCT OF THE LIQUIDATING TRUSTEE AND ADVISORY COMMITTEE

4.1 **Exercise of Duties and Responsibilities.** The Liquidating Trustee and the Advisory Committee shall exercise the rights and powers vested in them under the Plan and this Agreement, and use the same degree of care and skill in their exercise of such rights and powers as a prudent person would exercise or use under such circumstances in the administration of such person's own affairs, provided, however, that

- (a) the duties and obligations of the Liquidating Trustee and the Advisory Committee shall be determined solely by the express provisions of the Plan and this Agreement, and they shall not be liable except for the performance of such duties and obligations as are specifically set forth in the Plan and this Agreement, and no implied covenants or obligations shall be read into the Plan or this Agreement against the Liquidating Trustee or the Advisory Committee;
- ~~(b) the Liquidating Trustee and the Advisory Committee shall not be liable for any negligence or error of judgment made in good faith by them or any of their officers or employees, unless the Liquidating Trustee or the Advisory Committee is grossly negligent or engages in willful misconduct;~~
- (b) the Liquidating Trustee shall not be liable for any right, duty, or conduct of the Advisory Committee; and

- (c) the Advisory Committee shall not be liable for any right, duty, or conduct of the Liquidating Trustee.

The provisions of this Section shall apply to any right, conduct, power, duty, or responsibility of the Liquidating Trustee or the Advisory Committee, as the case may be, under the Plan or this Agreement. None of the provisions in the Plan or this Agreement shall be construed to require the Liquidating Trustee or any member of the Advisory Committee to expend or risk their own funds or otherwise incur personal financial liability in the performance of their duties or in the exercise of their rights and powers.

4.2 ~~4.2~~ **Reliance on Documents, Statements, etc.** The Liquidating Trustee and the Advisory Committee:

- (a) may rely upon, and shall be protected in acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other document believed by them to be genuine and to have been signed or presented by the proper party or parties;
- (b) may consult with their legal counsel, and any ~~written~~ advice or opinion of their or the Liquidating Trust's legal counsel, accountants or other professional advisors shall be full and complete authorization and protection in respect of any action taken or not taken by them in good faith and in accordance with such advice or opinion of counsel. Notwithstanding such authority, the Liquidating Trustee and the Advisory Committee shall not be under any obligation to consult with their attorneys, accountants, financial advisors, and agents, and their determination not to do so shall not result in the imposition of liability on the Liquidating Trustee or the Advisory Committee, except to the extent such determination is based on willful misconduct, gross negligence, or fraud;
- (c) shall not be liable for any action taken or not taken if in good faith and believed by them to be authorized or within their discretion or rights or powers under the Plan and this Agreement; ~~and~~
- (d) may exercise any of the rights and powers, or perform any of the duties under the Plan and this Agreement either directly or through agents or attorneys, and they shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care; and
- (e) the Liquidating Trustee shall have no liability for any act or omission taken which has been approved or directed by the Advisory Committee.

4.3 Indemnification of the Liquidating Trustee and the Advisory Committee
Exculpation; Limitations on Liability. ~~Subject to Section 4.1, the~~ The Liquidating Trustee and the Advisory Committee and A&M and their respective affiliates and their and their affiliates respective officers, employees and agents (the "Indemnified Parties") shall not be personally liable to the Liquidating Trust, to any Beneficiary or any other Person (or any predecessor or successor thereto) for any reason whatsoever, except for such ~~of~~ liability arising primarily and directly from their own acts as shall constitute such Indemnified Party's own willful misconduct, fraud or gross negligence, ~~willful disregard of the Indemnified Parties' duties, or material breach~~

~~of this Agreement.~~ Except as aforesaid, the Indemnified Parties shall be defended, held harmless, and indemnified from time to time, but solely from the Liquidating Trust Assets, against any and all losses, claims, costs, expenses, and liabilities to which the Indemnified Parties may be subject by reason of ~~the Indemnified Parties' execution in good faith or arising out of the Indemnified Parties' duties under this Agreement. The Indemnified Parties' officers, employees, agents, if any (including, without limitation, the Indemnified Parties' professionals), and any co-trustee(s) appointed pursuant to Section 2.6 of this Agreement, shall be likewise defended, held harmless, and indemnified~~acts or omissions or consequences of such acts or omissions, with respect to the implementation or administration of the Liquidating Trust or the Plan or the discharge of the duties hereunder or under any agreement between such Indemnified Parties and the Liquidating Trust and/or Liquidating Trustee. Without limiting the generality of the foregoing, the Liquidating Trustee shall have no liability to any Beneficiary on account of the Liquidating Trustee's investment or non-investment of any Liquidating Trust Assets or any losses with respect to any such investments of Liquidating Trust Assets, provided that such investments are made, or the Liquidating Trustee's decision not to invest any Liquidating Trust Assets in any case is made, in accordance with Section 6.4 or otherwise in accordance with the terms of this Agreement. The Indemnified Parties shall not be obligated to give any bond or surety or other security for the performance of any of their duties, unless otherwise ordered by the Bankruptcy Court and, if so ordered, all costs and expenses of procuring any such bond shall be deemed Liquidating Trust Expenses.

**ARTICLE V:
NON-TRANSFERABILITY OF BENEFICIAL INTERESTS; INTERESTS BENEFICIAL
ONLY; NO VOTING RIGHTS; SUCCESSORS**

All interests of the Beneficiaries of this Liquidating Trust shall be uncertificated and non-transferable, except by will, intestate succession, or operation of law. The rights to a beneficial interest hereunder shall not entitle any Beneficiary to (a) any title in or to the Liquidating Trust Assets as such (which title is vested in the Liquidating Trustee) or to any right to call for a partition or division of Liquidating Trust Assets or to require an accounting, other than as set forth in Section 6.7 of this Agreement, or (b) any voting rights with respect to the administration of the Liquidating Trust and the actions of the Liquidating Trustee in connection therewith. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns hereunder.

**ARTICLE VI:
ADMINISTRATION OF THE LIQUIDATING TRUST**

6.1 **Right to Bring Causes of Action.** The Liquidating Trustee shall be deemed a party in interest for all purposes under the Plan and Bankruptcy Code, including, but not limited to, filing objections to Claims. The Liquidating Trustee shall have the right to bring or assert any Cause of Action of the Liquidating Trust. The Liquidating Trustee also shall have the right to continue to defend or prosecute or commence any case commenced or that could have been commenced prior to the Effective Date. In any Cause of Action brought by the Liquidating Trustee, the Liquidating Trustee shall be deemed to represent all of the Beneficiaries of the Liquidating Trust, and it shall not be necessary to make any Beneficiary a party to such action.

Except as expressly provided in the Plan, no Beneficiary shall have any right to take any action, in law or equity, on account of the property of the Liquidating Trust.

6.2 Settlement of Causes of Action and Disputed Claims. Confirmation of the Plan shall constitute authority for the Liquidating Trustee, without further action or order of the Bankruptcy Court, to settle, compromise, abandon, or dismiss any Cause of Action or Disputed Claim; provided, however, that the Liquidating Trustee shall first obtain approval of the Advisory Committee if such approval is required under Section 2.3 of this Agreement. Nothing in the Plan or this Agreement shall prohibit the Liquidating Trustee from: (a) seeking an order of the Bankruptcy Court regarding the compromise, settlement, abandonment, or dismissal of any Cause of Action or Disputed Claim, or (b) dismissing or abandoning any Cause of Action that the Liquidating Trustee, in his/her sole and absolute discretion, determines may result in personal liability for the Liquidating Trustee.

In considering whether to compromise, dismiss, abandon, or settle a Cause of Action or Disputed Claim (or give approval with respect to such action), the Liquidating Trustee or the Advisory Committee, as the case may be, shall consider the following factors:

- (a) the probability of success in the litigation;
- (b) the complexity of litigation;
- (c) the expense, inconvenience, and delay necessarily attending the litigation;
- (d) the time value of money; and
- (e) the difficulties, if any, to be encountered in collecting any judgment.

6.3 Right to File Claims. The Liquidating Trustee may file such proofs of claim and other papers or take such other actions as may be necessary or appropriate to have the Causes of Action or other rights of the Liquidating Trust allowed in any judicial proceeding.

6.4 Investment of Moneys. Except as otherwise provided in this Agreement, the Liquidating Trustee shall hold all moneys of the Liquidating Trust in segregated accounts established on the books of the Liquidating Trustee (the "Trust Accounts"), and shall invest moneys in the Trust Accounts in: (a) demand and time deposits (such as certificates of deposit), (b) other temporary liquid investments (such as U.S. treasury bills), and (c) shares of any investment company registered under the Federal Investment Company Act of 1940 whose shares are registered under the Securities Act of 1933 and whose only investments comprise: (i) obligations issued or guaranteed as to principal and interest by the U.S. government, and thus constitute direct obligations of the U.S. government, or (ii) obligations issued by state or municipal governmental bodies, the interest of which is exempt from federal income taxation and which are rated in the two highest rating categories published by Standard & Poor's Corporation.

6.5 Fees and Expenses. Subject to the priority of payment established under Section 8.3 of this Agreement and Article II of the Plan, the Liquidating Trustee shall pay all fees, costs, and expenses of administering the Liquidating Trust (including, without limitation, fees and expenses reimbursed to members of the Advisory Committee and any statutory fees)

from the Cash Reserve or other available moneys of the Liquidating Trust, as and when such fees, costs, and expenses become due and owing.

6.6 Reports to Beneficiaries. As soon as practicable after June 30 and December 31 of each calendar year, the Liquidating Trustee, on behalf of the Liquidating Trust, shall File with the Bankruptcy Court (and provide to any other party entitled to receive any such report pursuant to this Agreement) a semi-annual report regarding the administration of property subject to its ownership and control pursuant to the Plan and this Agreement, distributions made by it, and other matters relating to the implementation of the Plan; *provided, however*, that the filing of any such report is solely to provide centralized access to information and there is no implication or suggestion that the Bankruptcy Court is supervising the Liquidating Trustee.

6.7 Books and Records. The Liquidating Trustee shall maintain complete and accurate records concerning all receipts and distributions to and from the Liquidating Trust, including, but not limited to, the date and amount of each distribution to the Beneficiaries. The Beneficiaries shall, upon reasonable notice to the Liquidating Trustee and only during reasonable business hours, have the right to audit the books, records and accounts relating to the Liquidating Trust within one (1) year following the end of each calendar year. Any such audit will be completed within twelve (12) months after its commencement. The auditing Beneficiary shall be responsible for reimbursing the Liquidating Trustee for any of the Liquidating Trustee's out-of-pocket expenses incurred during such audit.

6.8 Compliance with Securities Laws. Under Bankruptcy Code section 1145, the issuance of interests in a liquidating trust pursuant to a chapter 11 plan is exempt from registration under the Securities Act of 1933, as amended, and applicable state and local laws requiring registration or qualification of securities. If the Liquidating Trustee determines, with the advice of counsel, that the Liquidating Trust is required to comply with the reporting requirements of the Securities Exchange Act of 1934, as amended, or the Investment Company Act of 1940, as amended, then the Liquidating Trustee shall take any and all actions to comply with such reporting requirements and file periodic, current, and other reports in compliance therewith with the Securities and Exchange Commission.

ARTICLE VII: TAX MATTERS

7.1 Purpose and Intent of Liquidating Trust. The primary purpose of the Liquidating Trust is to liquidate the Liquidating Trust Assets in an expeditious and commercially prudent manner, and all activities of the Liquidating Trustee will be limited to those activities reasonably necessary to, and consistent with, the accomplishment of that purpose. The Liquidating Trustee shall make continuing efforts to dispose of the Liquidating Trust Assets and shall value the Liquidating Trust Assets using consistent standards. There is no intention on the part of any party in interest to carry on a profit-making business or to unreasonably prolong the liquidation process.

7.2 Tax Characterization. The Liquidating Trustee shall take or cause to be taken all reasonable and necessary actions, including without limitation, timely preparation and filing of required Tax Returns for the Liquidating Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a), to carry into effect the intent that the Liquidating Trust created by

the Plan and this Agreement qualify as a liquidating trust within the meaning of section 301.7701-4(d) of the Treasury Regulations, and to treat the Beneficiaries of the Liquidating Trust as the grantor-owners of the Liquidating Trust within the meaning of sections 671 through 678 of the Internal Revenue Code. In the event the Liquidating Trust shall fail or cease to qualify as a liquidating trust in accordance with Treasury Regulations Section 301.7701-4(d), the parties to this Agreement intend that the Liquidating Trustee take such action as he/she shall deem appropriate to have the Liquidating Trust classified as a partnership for federal tax purposes under Treasury Regulations Section 301.7701-3 (but not a publicly traded partnership under Internal Revenue Code Section 7704), including, if necessary, creating or converting it into an Illinois limited liability partnership or limited liability company. All of the Liquidating Trust's income shall be subject to tax on a current basis.

For all U.S. federal income tax purposes, all parties (including, without limitation, the Debtor, the Liquidating Trustee, and the Beneficiaries) shall treat the transfer of the Liquidating Trust Assets to the Liquidating Trust as (a) a deemed transfer by the Debtor of the Liquidating Trust Assets directly to the Beneficiaries in full satisfaction of the Beneficiaries' claims against and interests in the Debtor and, to the extent Liquidating Trust Assets are allocable to Disputed Claims, to the Disputed Claims Reserve, followed by (b) the deemed transfer by such Beneficiaries to the Liquidating Trust of the Liquidating Trust Assets (other than the Liquidating Trust Assets allocable to the Disputed Claims Reserve) in exchange for interests in the Liquidating Trust. Accordingly, the Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Liquidating Trust Assets (other than Liquidating Trust Assets allocable to the Disputed Claims Reserve). The foregoing treatment shall also apply, to the extent permitted by applicable law, for all state, provincial, territorial, and local income tax purposes.

7.3 Tax Reporting. The Liquidating Trustee shall prepare and provide to, or file with, the appropriate taxing authorities and other parties such notices, tax returns, and other filings, including all federal, state, and local tax returns for the Liquidating Trust, as may be required under the Internal Revenue Code, the Plan, or as may be required by applicable law of other jurisdictions including, if required under applicable law, notices required to report interest or dividend income ("Tax Reports"). The Liquidating Trustee shall treat the Liquidating Trust as a grantor trust for U.S. federal income tax purposes pursuant to Treasury Regulation section 1.671-4(a) and in accordance with the Plan. The Liquidating Trustee also will annually send to each Beneficiary a separate statement regarding the receipts and expenditures of the Liquidating Trust as relevant for all U.S. federal income tax purposes and will instruct all such Beneficiaries to use such information in preparing their U.S. federal income tax returns or to forward the appropriate information to such Beneficiary's underlying beneficial holders with instructions to utilize such information in preparing their U.S. federal income tax returns. If additional tax information is provided at the specific request of a Beneficiary (and not as required by applicable law), then such Beneficiary shall pay a reasonable fee to the Liquidating Trustee, in an amount to be then determined by the Liquidating Trustee, together with all costs and expenses incurred by the Liquidating Trustee in providing such tax information to such Beneficiary. The Liquidating Trustee shall also file (or cause to be filed) any other statement, return, or disclosure relating to the Liquidating Trust that is required by any governmental units in the U.S. and elsewhere.

In connection with the Liquidating Trustee's performance of his/her duties pursuant to this Section, the Liquidating Trustee may require any Beneficiary to furnish to the Liquidating

Trustee its employer or taxpayer identification number as assigned by the Internal Revenue Service, together with such other information, returns, or forms as the Liquidating Trustee may determine are required, and the Liquidating Trustee may condition any distribution of Liquidating Trust Assets to any Beneficiary upon such receipt of such identification number, any other information and returns and forms as are required for the Liquidating Trustee to comply with Internal Revenue Service requirements.

The Liquidating Trustee will, in good faith, value all Liquidating Trust Assets, and shall make all such values available from time to time, to the extent relevant, and such values shall be used consistently by all parties to the Liquidating Trust (including, without limitation, the Debtor, the Liquidating Trustee, and the Beneficiaries) for all U.S. federal income tax purposes.

Allocations of Liquidating Trust taxable income among the Beneficiaries (other than taxable income allocable to the Disputed Claims Reserve) shall be determined by reference to the manner in which an amount of cash representing such taxable income would be distributed (were such cash permitted to be distributed at such time) if, immediately prior to such deemed distribution, the Liquidating Trust had distributed all of the Liquidating Trust Assets (valued at their tax book value, and other than assets allocable to the Disputed Claims Reserve) to the holders of the interests in the Liquidating Trust, adjusted for prior taxable income and loss and taking into account all prior and concurrent distributions from the Liquidating Trust. Similarly, taxable loss of the Liquidating Trust shall be allocated by reference to the manner in which an economic loss would be borne immediately after a hypothetical liquidating distribution of the remaining Liquidating Trust Assets. The tax book value of the Liquidating Trust Assets for purpose of this paragraph shall equal their fair market value on the Effective Date, adjusted in accordance with tax accounting principles prescribed by the Internal Revenue Code, the applicable Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements.

Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the receipt by the Liquidating Trustee of a private letter ruling if the Liquidating Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Liquidating Trustee), the Liquidating Trustee shall (a) timely elect to treat any Disputed Claims Reserve as a “disputed ownership fund” governed by Treasury Regulation section 1.468B-9, and (b) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes. All parties (including the Liquidating Trustee, the Debtor, and the Beneficiaries) shall report for U.S. federal, state, and local income tax purposes consistently with the foregoing.

The Liquidating Trustee shall be responsible for payment, out of the Liquidating Trust Assets, of any U.S., local, or foreign taxes imposed on the Liquidating Trust or the Liquidating Trust Assets, including the Disputed Claims Reserve. In the event, and to the extent, any Cash retained on account of Disputed Claims in the Disputed Claims Reserve is insufficient to pay the portion of any such U.S., local, or foreign taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims, such U.S., local, or foreign taxes shall be (a) reimbursed from any subsequent Cash amounts retained on account of Disputed Claims, or (b) to the extent such Disputed Claims have subsequently been resolved, deducted from any amounts otherwise distributable by the Liquidating Trustee as a result of the resolution of such Disputed Claims.

The Liquidating Trustee may request an expedited determination of taxes of the Liquidating Trust, including the Disputed Claims Reserve, or the Debtor under Bankruptcy Code section 505(b) for all tax returns filed for, or on behalf of, the Liquidating Trust or the Debtor for all taxable periods through the dissolution of the Liquidating Trust.

7.4 Compliance with Tax Withholding Requirements. In connection with making distributions under the Plan and this Agreement, the Liquidating Trustee shall comply with all tax withholding and reporting requirements imposed on him/her by any governmental unit, and all distributions pursuant to the Plan and this Agreement shall be subject to such withholding and reporting requirements. Any property so withheld will then be paid by the Liquidating Trust to the appropriate authority. The Liquidating Trustee may withhold the entire distribution due any Beneficiary until such time as such Beneficiary provides the necessary information to comply with any withholding requirements of any governmental unit, including an IRS Form W-9 containing its, his, or her employer or taxpayer identification number as assigned by the Internal Revenue Service, or, in the case of Beneficiaries that are not U.S. persons for federal income tax purposes, certification of foreign status on IRS Form W-8BEN, W-81MY or W-8ECI. If the Liquidating Trustee requests information necessary to comply with any tax withholding or reporting requirements of any governmental unit of any Beneficiary by certified mail and (i) does not receive a response to such request within sixty (60) days, sends a second request by certified mail and again receives no response within sixty (60) days or (ii) the request is returned to the Liquidating Trustee as undeliverable and the Liquidating Trustee is unable to determine a correct address after reasonable efforts, then no further distributions shall be made to such Beneficiary unless the Liquidating Trustee is notified in writing within six (6) months after the date that the initial request was sent of such Beneficiary's necessary information (subject to the Liquidating Trustee's right to require supporting documents evidencing that the necessary information is that of the rightful Beneficiary), in which case all currently due missed distributions shall be made to such Beneficiary on the next Periodic Distribution Date (as defined below) subject to such withholding and reporting requirements, and shall not be supplemented with any interest, dividends or other accruals of any kind. If the Liquidating Trustee does not receive notice of a Beneficiary's necessary information within six (6) months after the date of the initial request, then all distributions to the Beneficiary that has not provided the information necessary to comply with any tax withholding and reporting requirements of any governmental unit may be treated as an unclaimed distribution in accordance with Section 8.8 below or the amount required to be withheld may be so withheld and turned over to the applicable authority.

**ARTICLE VIII:
APPLICATION AND PRIORITY OF DISTRIBUTION OF LIQUIDATING TRUST
FUNDS**

8.1 Money Held in Trust. All moneys and other assets that the Liquidating Trustee receives under this Agreement, until used or applied as provided in this Agreement, shall be held in trust for the purposes for which they were received. The Liquidating Trustee shall not be obligated to pay interest on any moneys that it receives under this Agreement. However, except as otherwise provided in this Agreement, the Liquidating Trustee shall promptly invest moneys of the Liquidating Trust as provided in Section 6.4 of this Agreement.

8.2 Right to Receive Distributions from the Liquidating Trust. The amount of each Beneficiary's Allowed Claim shall represent such person's right to receive distributions

from the Liquidating Trust in accordance with the priorities set forth in the Plan and this Agreement.

Prior to distribution of any portion of the Liquidating Trust Assets to any Beneficiary, the Liquidating Trustee shall first

- (a) reserve for or pay to any taxing authorities, as necessary, any taxes of the Liquidating Trust;
- (b) reserve for or pay to the Office of the U.S. Trustee any statutory fees incurred for the Debtor's Estate after the Effective Date, as may be required;
- (c) reserve for or pay to the Liquidating Trustee's professionals for services rendered and expenses incurred;
- (d) reserve for or pay to the Liquidating Trustee's compensation and reasonable and necessary expenses incurred in fulfilling the Liquidating Trustee's obligations set forth in the Plan and in this Agreement;
- (e) reserve for or pay any additional expenses incurred in fulfilling the obligations of the Liquidating Trustee set forth in the Plan and in this Agreement and not specifically identified in this Section 8.2; and
- (f) establish a Disputed Claims Reserve and a sufficient Cash Reserve.

8.3 Priority of Payment from the Liquidating Trust. After providing for the reserves set forth in Section 8.2 hereof, all proceeds from assets of the Liquidating Trust shall be distributed according to the priorities set forth in the Plan. Generally, Allowed priority and administrative claims will be paid in full, Convenience Class Claims will be paid 62 cents on the dollar, and Allowed General Unsecured Claims will receive a Pro Rata share of remaining funds. Disputed NewKey Claims will be reserved for with a separate Cash reserve and treated pursuant to the Plan and under the terms of the escrow agreement filed with the Plan Supplement.

8.4 Distribution Dates. Distributions will be made by the Liquidating Trustee or a Third Party Disbursing Agent pursuant to the terms of the Plan.

8.5 Interim Distributions. On each applicable Distribution Date, the Liquidating Trustee will distribute the Net Available Cash in accordance with the Plan and this Agreement. A Distribution Date must occur at least once every six (6) months after the Initial Distribution Date, if any amounts are available for distribution on such date.

8.6 Final Distribution. Upon liquidating the Liquidating Trust, and after payment of all fees, costs, and expenses of administration of the Liquidating Trust, the Liquidating Trustee shall make a final distribution of funds to the Beneficiaries (the "Final Distribution") in accordance with the Plan and this Agreement. The Liquidating Trustee shall have no obligation to invest funds of the Liquidating Trust from and after the date of Final Distribution.

8.7 ~~8.7~~ Disputed Claims. Prior to making any distributions under the Plan, the Liquidating Trustee shall establish a reserve for the benefit of holders of Disputed Claims (the

“Disputed Claims Reserve”). The Liquidating Trustee shall distribute to and maintain in the Disputed Claims Reserve cash that would otherwise be distributable to holders of Disputed Claims, assuming such Disputed Claims would be allowed in the Face Amount of such Claims. In determining the Face Amount of Disputed Claims in accordance with the Plan, the Liquidating Trustee may rely on the Debtor’s estimates as to Disputed Claims and will have no liability therefore in the absence of bad faith or gross negligence. As Disputed Claims are resolved, the Liquidating Trustee shall make adjustments to the Disputed Claims Reserve. Except as otherwise agreed by the relevant parties, the Liquidating Trustee shall not be required to (a) make any partial payments or partial distributions on account of a Disputed Claim until all such disputes in connection with such Disputed Claim have been resolved by settlement or Final Order or (b) make any distributions on account of an Allowed Claim of any Beneficiary that holds both an Allowed Claim and a Disputed Claim, unless and until all objections to the Disputed Claim have been resolved by settlement or Final Order.

The distributions held or received by the Liquidating Trustee on account of the Disputed Claims Reserve, along with any Cash Investment Yield held in the Disputed Claims Reserve, shall (a) be deposited in a segregated bank account in the name of the Liquidating Trustee for the benefit of holders of Allowed Claims and Disputed Claims that become Allowed Claims, (b) be accounted for separately, and (c) not constitute property of the Debtor. The Liquidating Trustee shall invest Cash held in the Disputed Claims Reserve in a manner consistent with this Agreement.

On the first Distribution Date that is at least thirty (30) days after a Disputed Claim becomes an Allowed Claim, the Liquidating Trustee shall (a) distribute to the holder of such Allowed Claim any property in the Disputed Claims Reserve that would have been distributed to such holder on the Distribution Dates on which distributions previously were made to holders if the Allowed Claim in issue had been an Allowed Claim on such earlier Distribution Dates; and (b) distribute any remaining property held in the Disputed Claim Reserve on account of any resolved Disputed Claim in accordance with the Plan and this Agreement.

After Final Orders have been entered as to all Disputed Claims, or other final resolution has been reached with respect to all Disputed Claims, any remaining property held in the Disputed Claims Reserve will return to the Liquidating Trust and be distributed in accordance with the Plan and this Agreement.

8.8 Unclaimed and Undeliverable Distributions. Subject to Article V hereof, the Liquidating Trustee shall treat unclaimed and undeliverable distributions in accordance with Article VI of the Plan.

8.9 Delivery of Distributions.

(a) Distribution Record Date. The Liquidating Trustee shall not have any obligation to recognize any transfer of any Claim until the record holder of such claim has provided notice to the Liquidating Trustee of such transfer.

(b) De Minimis Distributions. The Liquidating Trustee shall not be required to make any interim distributions in an amount less than \$100 provided that any such payments shall be withheld until the Final Distribution. Notwithstanding anything herein to the contrary,

the Liquidating Trustee shall not be required to make any final distributions in an amount less than \$25.

(c) Provision of Tax Identification Number. If the Liquidating Trustee requests a tax identification number or other necessary tax information from any Beneficiary and does not receive such information, then the Liquidating Trustee may withhold payment of distributions to such Beneficiary unless and until the Liquidating Trustee is provided such information in writing, in which case all currently due missed distributions shall be made to such Beneficiary on the next Distribution Date (but shall not be supplemented with any interest, dividends or other accruals of any kind). If the Liquidating Trustee does not receive notice of a Beneficiary's tax identification number prior to the Final Distribution Date, then all distributions that would have been made to the Beneficiary shall be treated as undeliverable or unclaimed property in accordance with Section 8.8.

8.10 Third Party Disbursing Agent. The Liquidating Trustee may employ, in his/her sole discretion, a Third Party Disbursing Agent to make all distributions, and to otherwise perform all necessary action related to such distributions, required under the Plan and this Agreement.

ARTICLE IX: RESIGNATION AND REMOVAL OF THE LIQUIDATING TRUSTEE

9.1 Resignation. ~~At any time after his/her appointment, the Liquidating Trustee may petition the Bankruptcy Court for an order authorizing his/her resignation. The petition shall identify a proposed successor Liquidating Trustee approved by the Advisory Committee, and generally describe the qualifications of the person to act as Liquidating Trustee under this Agreement. If the resignation is due to the death or incapacity of the Liquidating Trustee, the~~ The Liquidating Trustee may resign by giving not less than thirty (30) days' prior written notice thereof to the Bankruptcy Court and the Advisory Committee. The Advisory Committee through counsel for the Liquidating Trustee may petition the Bankruptcy Court for the appointment of a successor Liquidating Trustee. In either case, the resignation shall be effective upon the earlier of (a) the successor Liquidating Trustee accepting his/her appointment as Liquidating Trustee under this Agreement or (b) thirty (30) days from the date of the noticed of described above.

9.2 Successor Liquidating Trustee. Any successor Liquidating Trustee, however appointed, shall execute and deliver to the resigning Liquidating Trustee a written instrument accepting such appointment, and thereafter, such successor Liquidating Trustee, without further act, shall become vested with all the estates, properties, rights, powers, and duties of the resigning or removed Liquidating Trustee.

ARTICLE X: TERMINATION AND DISCHARGE

10.1 Termination. The Liquidating Trust shall terminate on the earliest of the following dates:

- (a) the date that the Liquidating Trust Assets have been liquidated and the proceeds distributed to the Beneficiaries as provided in the Plan and this Agreement;
- (b) the date that the Bankruptcy Court or another court of competent jurisdiction enters a Final Order authorizing the termination of such Liquidating Trust; and
- (c) five (5) years after the Effective Date.

Notwithstanding the foregoing, in the event the Liquidating Trustee shall have been unable, after reasonable efforts, to liquidate or otherwise dispose of the assets of the Liquidating Trust within the initial five (5) year term of this Agreement, then the Liquidating Trustee shall have the right to extend the term of such Liquidating Trust, subject to the Bankruptcy Court entering an order approving such extension within six (6) months from the beginning of such extended term, until the assets of such Liquidating Trust have been sold or otherwise disposed of in fulfillment of the purpose of such Liquidating Trust. The term of the Liquidating Trust shall in no event exceed fifteen (15) years after the Effective Date.

10.2 **Discharge.** The Liquidating Trustee shall be discharged of his/her duties under this Agreement on the earlier of: (a) the date of termination as provided in Section 10.1, or (b) the date that a successor Liquidating Trustee accepts his/her appointment.

ARTICLE XI: MISCELLANEOUS

~~11.1 **Initial Amendment.** Within seven (7) days following the Effective Date, the Liquidating Trust's counsel shall file a motion with the Bankruptcy Court seeking approval for the amendments to this Liquidating Trust Agreement set forth on Annex A hereto (the "Proposed Amendments"). Should the Bankruptcy Court fail to issue an order approving the Proposed Amendments within twenty-one (21) days following the filing of the related motion, for any reason, the Liquidating Trustee may resign upon thirty (30) days written notice to the Advisory Committee and the Advisory Committee shall immediately petition the Bankruptcy Court with a proposed replacement.~~

11.1 **No Third-Party Beneficiaries.** Notwithstanding anything to the contrary in the Plan or this Agreement, neither the Liquidating Trustee nor any member of the Advisory Committee, nor any of their officers, directors, employees, members, agents, counsel, or affiliates shall have any duties or responsibilities to, or fiduciary or third-party relationships with, any other person or entity, except as expressly provided in this Agreement or the Plan. Without limiting the generality of the foregoing, the Liquidating Trustee and the Advisory Committee shall have no obligation to:

- (a) provide information to any person, except as provided in this Agreement or the Plan;
- (b) preserve any right or interest of any other person; or
- (c) collect or realize upon any asset or property distributed under the Plan on account of any claim. The Liquidating Trustee shall attempt to collect or realize upon such assets in any manner that the Liquidating Trustee and the Advisory

Committee, in their sole and absolute discretion, shall deem appropriate, and shall not incur any liability to the Debtor or any claimant of the Debtor in so doing.

11.2 **Notices.** All communications and notices provided to the Trustee under this Agreement shall be in writing and addressed to counsel for the Liquidating Trustee or, if no such counsel is then retained, the Liquidating Trustee. Any notice, if properly addressed, shall be deemed given upon the first business day after placement in the U.S. mail, first class postage prepaid.

11.3 **Execution of Documents.** The Liquidating Trustee may execute any and all documents necessary and appropriate to effectuate the purpose of this Agreement.

11.4 **Modification.** This Agreement shall not be modified without further order of the Bankruptcy Court after notice to the Beneficiaries and a hearing. Upon a motion of the Liquidating Trustee, the Bankruptcy Court or other court of competent jurisdiction may approve, without notice to the Beneficiaries, technical modifications to this Agreement which do not adversely affect the rights or interests of the Beneficiaries or which conform the terms of this Agreement to the terms of the Plan.

11.5 **Severability.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent such provision is unenforceable without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

11.6 **Headings.** The various headings of this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement.

11.7 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

11.8 **Conflict with the Plan.** In the event that there is any conflict between the terms of this Agreement and the Plan, the terms of the Plan shall govern.

11.9 **Counterparts.** This Agreement may be executed in any number of counterparts. Each counterpart of this Agreement shall, for all purposes, constitute an original, and all of such counterparts, taken together, shall constitute one and the same agreement.

11.10 **Enforcement and Administration.** The Bankruptcy Court shall retain jurisdiction to enforce and administer the provisions of this Agreement, as set forth in the Plan and herein.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

By: _____
David A. Agay (ARDC No. 6244314)
Sean D. Malloy (ARDC No. 6217401)
Micah E. Marcus (ARDC No. 6257569)
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of Unsecured Creditors of SGK Ventures,
LLC (f/k/a Keywell L.L.C.)*

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*Counsel to SGK Ventures, LLC (f/k/a
Keywell L.L.C.)*

By: _____

Kelly Beaudin Stapleton

LIQUIDATING TRUSTEE

EXHIBIT C

SGK VENTURES, LLC LIQUIDATING TRUST AGREEMENT

Dated as of October 21, 2014

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Exhibit A Plan of Liquidation

Exhibit B Confirmation Order

SGK VENTURES, LLC LIQUIDATING TRUST AGREEMENT

This Liquidating Trust Agreement (this "Agreement") is executed as of October 21, 2014, by and among Kelly Beaudin Stapleton, as initial liquidating trustee under this Agreement (the initial liquidating trustee or any successor, the "Liquidating Trustee"); the Official Committee of Unsecured Creditors duly appointed for the Chapter 11 Case (as defined below) (the "Committee"); and SGK Ventures, LLC (f/k/a Keywell L.L.C.) (the "Debtor"). Except as otherwise defined in this Agreement, and except as the context requires otherwise, the capitalized terms in this Agreement shall have the meaning ascribed to them in the Second Amended Plan of Liquidation of the Official Committee of Unsecured Creditors of SGK Ventures, LLC, dated as of August 27, 2014 (as amended, modified or supplemented, the "Plan"). This trust may also be referred to as the "SGK Ventures Liquidating Trust" or by employing words of similar meaning.

RECITALS

WHEREAS, on September 24, 2013 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in United States Bankruptcy Court for the Northern District of Illinois (the "Bankruptcy Court"), thereby commencing Case No. 13-37603 (the "Chapter 11 Case");

WHEREAS, on October 3, 2013, the Committee was appointed and authorized to act as a representative of the unsecured creditors. The Committee is the proponent of the Plan;

WHEREAS, this Agreement is entered into in accordance with, and to facilitate the implementation and execution of, the Plan;

WHEREAS, on September 3, 2014, the Bankruptcy Court entered an order confirming the Plan (the "Confirmation Order"). A copy of the Plan and the Confirmation Order are attached hereto as Exhibits A and B, respectively;

WHEREAS, on the Effective Date, the Plan provides that all rights, title, and interests of the Debtor and the Debtor's Estate in and to the Liquidating Trust Assets shall become and comprise the liquidating estate of the Debtor subject to a liquidating trust. The Plan further provides that the Liquidating Trust Assets shall be administered through a liquidating trust established pursuant to the Plan. The Plan authorizes and appoints the Liquidating Trustee to receive, hold, administer, and distribute the Liquidating Trust Assets for the benefit of the Beneficiaries (as defined below) and their successors and assigns as permitted for under the Plan and this Agreement;

WHEREAS, the Liquidating Trust Assets include all of the Debtor's Assets as of the Effective Date of the Plan other than the Frewsburg Assets. The Plan provides that the Frewsburg Assets shall be liquidated by the Frewsburg Administrator and the proceeds of such liquidation, if any, shall be transferred to the Liquidating Trust and thereafter become Liquidating Trust Assets; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Debtor, the Committee and the Liquidating Trustee agree as follows:

**ARTICLE I:
CREATION AND PURPOSE**

1.1 **Creation.** The Debtor and the Committee, pursuant to the terms of the Plan, hereby establish a liquidating trust (the "Liquidating Trust") to hold, administer, liquidate, and distribute Liquidating Trust Assets and all proceeds and profits therefrom, which are hereby granted to and deposited with the Liquidating Trustee. The Liquidating Trustee accepts the Liquidating Trust Assets and shall hold the same in trust and shall administer such assets as provided under the Plan and this Agreement.

1.2 **Purpose.** The Liquidating Trust shall be established solely for the purpose of holding, administering, and liquidating the Liquidating Trust Assets in accordance with Treasury Regulation Section 301.7701-4(d), all pursuant to the provisions of the Plan, with no objective to continue to or engage in the conduct of a trade or business. The purpose of this Agreement is to set forth the rights, powers, and duties of the Liquidating Trustee in receiving, holding, liquidating, and administering the Liquidating Trust Assets as provided in this Agreement and in the Plan. This Agreement also will set forth the rights, powers, and duties of the Advisory Committee, as defined below, in providing guidance to the Liquidating Trustee with respect to certain aspects of the Liquidating Trust.

1.3 **Beneficiaries.** All holders of Allowed General Unsecured Claims and, until such Claims are satisfied, the holders of other Allowed Claims to be paid by the Liquidating Trust under the Plan, are the beneficiaries of the Liquidating Trust (each is referred to as a "Beneficiary" and together the "Beneficiaries"). The interest and priority of each Beneficiary shall be as provided in the Plan.

**ARTICLE II:
LIQUIDATING TRUSTEE**

2.1 **Appointment.** On the Effective Date of the Plan, pursuant to the Confirmation Order, the Liquidating Trustee shall be appointed and authorized to act as the Liquidating Trustee under this Agreement, and by signing this Agreement, the Liquidating Trustee accepts such appointment all in accordance with the terms of this Agreement and the Plan.

2.2 **Duties and Powers of the Liquidating Trustee.** The Liquidating Trustee shall have the following duties and powers with respect to the Liquidating Trust:

- (a) employ and pay professionals to assist in administration of the Liquidating Trust;
- (b) receive, hold, deposit, and invest funds of the Liquidating Trust;
- (c) open any accounts necessary to maintain and distribute funds in the Liquidating Trust;
- (d) pay any fees, costs, and expenses of administering the Liquidating Trust;
- (e) establish and maintain the Disputed Claims Reserve and the Cash Reserve;

(f) liquidate and administer assets of the Liquidating Trust, including, but not limited to, enforcing Causes of Action of the Liquidating Trust and collecting amounts due with respect to such Causes of Action;

(g) compromise, settle or abandon any Causes of Action of the Liquidating Trust as authorized under the Plan and this Agreement;

(h) liquidate and administer claims against the Liquidating Trust;

(i) calculate and implement distributions from the Liquidating Trust in accordance with the Plan and this Agreement;

(j) maintain a list of holders of Allowed General-Unsecured Claims;

(k) report to the Beneficiaries of the Liquidating Trust by filing the reports required in Section 4.3.5 of the Plan;

(l) utilize Liquidating Trust Assets to pay premiums for any insurance policies that the Liquidating Trustee deems necessary, in his/her sole discretion, to insure the assets of the Liquidating Trust against loss and/or to insure the Liquidating Trustee and Advisory Committee against liability with respect to third persons;

(m) file any necessary tax returns and utilize Liquidating Trust Assets to pay any necessary taxes;

(n) take such actions that are necessary to dissolve the Liquidating Trust in accordance with Article X of this Agreement; and

(o) such other powers that are necessary and appropriate to administer the Liquidating Trust as contemplated under the Plan and this Agreement.

2.3 Consent of Advisory Committee. The Liquidating Trustee shall obtain the approval of the Advisory Committee before doing any of the following:

(a) selling or liquidating non-Cash Liquidating Trust Assets for greater than \$250,000;

(b) settling, compromising, abandoning, or withdrawing any Cause of Action with face value greater than \$100,000; and

(c) settling or compromising any Disputed Claims with face value greater than \$50,000 for an Administrative Claim, Priority Tax Claim or Other Priority Claim, or greater than \$100,000 for a General Unsecured Claim.

2.4 Compensation. The Liquidating Trustee shall be compensated at a rate of \$725 per hour, without further order of the Bankruptcy Court, for services rendered to or on behalf of the Liquidating Trust. The Liquidating Trustee also shall be reimbursed, without further order of the Bankruptcy Court, for all reasonable out-of-pocket fees, costs, and expenses in acting under the Plan and this Agreement, including, but not limited to, reimbursement of its reasonable

attorneys' and other professionals' fees. Notwithstanding the foregoing, the Liquidating Trustee shall file quarterly reports with the Bankruptcy Court identifying payments made by the Liquidating Trust to its Professionals. Any Beneficiary of the Liquidating Trust may, in its capacity as unsecured creditor under applicable law, request from the Liquidating Trustee copies of any non-privileged legal bills of the Liquidating Trust's Professionals and may file a motion with the Bankruptcy Court seeking review of the Liquidating Trust's Professionals' fees to the extent the Beneficiary believes an abuse is occurring.

2.5 Liquidating Trustee's Lien. The Liquidating Trustee shall have a first priority lien on all assets of the Liquidating Trust to secure payment of his/her compensation and reimbursement of his/her fees, costs, and expenses. The lien also shall secure the indemnification obligation of the Liquidating Trust to the Liquidating Trustee as set forth in Section 4.3 of this Agreement. The Liquidating Trustee's lien shall be *parri passu* with the first priority lien of the Advisory Committee granted under Section 3.5 of this Agreement.

2.6 Co-Liquidating Trustees or Separate Liquidating Trustees. To meet any legal requirements of any jurisdiction in which any of the Liquidating Trust Assets may from time to time be located, the Liquidating Trustee shall have the power to appoint and remove, subject to the approval of the Advisory Committee, one or more Persons either to act as co-trustee(s) jointly with the Liquidating Trustee of all or any part of the Liquidating Trust Assets or to act as separate trustee(s) of all or any part of the Liquidating Trust Assets and to vest in such Person or Persons, in such capacity, such title to the Liquidating Trust Assets or any part thereof, and such rights, powers, duties, trusts or obligations as the Liquidating Trustee determines may be necessary for the Liquidating Trustee to perform his/her duties under this Agreement.

ARTICLE III: ADVISORY COMMITTEE

3.1 Appointment; Composition. As of the Effective Date, pursuant to the Confirmation Order, the following are appointed and authorized under Section 4.3.3 of the Plan to act as the advisory committee for the Liquidating Trust (the "Advisory Committee"):

- Omnisource Corporation, Attn: Marlene Sloat
- Schupan & Sons, Inc., Attn: Andrew Knowlton
- Ferrous Processing & Trading Co., Attn: Howard Sherman
- Schmitzer Steel Industries, Inc., Attn: Richard Josephson and Debora Diamond-Burt
- SA Recycling LLC, Attn: Dan Navabpour

The Advisory Committee shall have no more than five (5) and no less than three (3) members. If any member resigns, a replacement shall be appointed pursuant to the procedures set forth in this Agreement.

3.2 Duties and Powers of the Advisory Committee. The Advisory Committee shall have the following duties and powers with respect to the Liquidating Trust:

- (a) approve certain actions of the Liquidating Trustee as set forth in Section 2.3 of this Agreement;

(b) in the Liquidating Trustee's discretion, consult with and advise the Liquidating Trustee on the administration of the Liquidating Trust;

(c) authorize the appointment of successor Liquidating Trustees and members of the Advisory Committee as provided in the Plan and this Agreement; and

(d) such other powers as are necessary to fulfill its duties as set forth in this Agreement.

Except as otherwise authorized under this Agreement, an affirmative vote (which may be by written consent on notice to all members) from a majority of total Advisory Committee members present is necessary for the Advisory Committee to take any action authorized under the Plan and this Agreement.

3.3 Resignation and Successors. The members of the Advisory Committee may resign at any time by giving thirty (30) days' written notice to the Liquidating Trustee and other members of the Advisory Committee. In the event of a resignation, the remaining members of the Advisory Committee shall appoint a successor member. To qualify for appointment on the Advisory Committee, a successor must hold an Allowed General Unsecured Claim and must not have voted to reject the Plan. A successor member shall be appointed and authorized to act on the Advisory Committee upon accepting such appointment.

3.4 Compensation and Expenses. The members of the Advisory Committee shall be reimbursed, without further order of the Bankruptcy Court, for all actual and necessary reasonable expenses in acting as a member of the Advisory Committee.

3.5 Lien. The members of the Advisory Committee shall have a first priority lien on all assets of the Liquidating Trust to secure reimbursement of their expenses. The lien also shall secure the indemnification obligation of the Liquidating Trust to the members of the Advisory Committee as set forth in Section 4.3 of this Agreement. The lien shall be *pari passu* with the first priority lien of the Liquidating Trustee granted under Section 2.5 of this Agreement.

ARTICLE IV: CONDUCT OF THE LIQUIDATING TRUSTEE AND ADVISORY COMMITTEE

4.1 Exercise of Duties and Responsibilities. The Liquidating Trustee and the Advisory Committee shall exercise the rights and powers vested in them under the Plan and this Agreement, and use the same degree of care and skill in their exercise of such rights and powers as a prudent person would exercise or use under such circumstances in the administration of such person's own affairs, provided, however, that

- (a) the duties and obligations of the Liquidating Trustee and the Advisory Committee shall be determined solely by the express provisions of the Plan and this Agreement, and they shall not be liable except for the performance of such duties and obligations as are specifically set forth in the Plan and this Agreement, and no implied covenants or obligations shall be read into the Plan or this Agreement against the Liquidating Trustee or the Advisory Committee;

- (b) the Liquidating Trustee and the Advisory Committee shall not be liable for any negligence or error of judgment made in good faith by them or any of their officers or employees, unless the Liquidating Trustee or the Advisory Committee is grossly negligent or engages in willful misconduct;
- (c) the Liquidating Trustee shall not be liable for any right, duty, or conduct of the Advisory Committee; and
- (d) the Advisory Committee shall not be liable for any right, duty, or conduct of the Liquidating Trustee.

The provisions of this Section shall apply to any right, conduct, power, duty, or responsibility of the Liquidating Trustee or the Advisory Committee, as the case may be, under the Plan or this Agreement. None of the provisions in the Plan or this Agreement shall be construed to require the Liquidating Trustee or any member of the Advisory Committee to expend or risk their own funds or otherwise incur personal financial liability in the performance of their duties or in the exercise of their rights and powers.

4.2 Reliance on Documents, Statements, etc. The Liquidating Trustee and the Advisory Committee:

- (a) may rely upon, and shall be protected in acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other document believed by them to be genuine and to have been signed or presented by the proper party or parties;
- (b) may consult with their legal counsel, and any written advice or opinion of their legal counsel shall be full and complete authorization and protection in respect of any action taken or not taken by them in good faith and in accordance with such advice or opinion of counsel;
- (c) shall not be liable for any action taken or not taken if in good faith and believed by them to be authorized or within their discretion or rights or powers under the Plan and this Agreement; and
- (d) may exercise any of the rights and powers, or perform any of the duties under the Plan and this Agreement either directly or through agents or attorneys, and they shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care.

4.3 Indemnification of the Liquidating Trustee and the Advisory Committee. Subject to Section 4.1, the Liquidating Trustee and the Advisory Committee (the "Indemnified Parties") shall not be personally liable to the Liquidating Trust, to any Beneficiary or any other Person (or any predecessor or successor thereto) for any reason whatsoever, except for such of their own acts as shall constitute willful misconduct, gross negligence, willful disregard of the Indemnified Parties' duties, or material breach of this Agreement. Except as aforesaid, the Indemnified Parties shall be defended, held harmless, and indemnified from time to time, but solely from the Liquidating Trust Assets, against any and all losses, claims, costs, expenses, and liabilities to which the Indemnified Parties may be subject by reason of the Indemnified Parties'

execution in good faith of the Indemnified Parties' duties under this Agreement. The Indemnified Parties' officers, employees, agents, if any (including, without limitation, the Indemnified Parties' professionals), and any co-trustee(s) appointed pursuant to Section 2.6 of this Agreement, shall be likewise defended, held harmless, and indemnified. Without limiting the generality of the foregoing, the Liquidating Trustee shall have no liability to any Beneficiary on account of the Liquidating Trustee's investment or non-investment of any Liquidating Trust Assets or any losses with respect to any such investments of Liquidating Trust Assets, provided that such investments are made, or the Liquidating Trustee's decision not to invest any Liquidating Trust Assets in any case is made, in accordance with the terms of this Agreement. The Indemnified Parties shall not be obligated to give any bond or surety or other security for the performance of any of their duties, unless otherwise ordered by the Bankruptcy Court and, if so ordered, all costs and expenses of procuring any such bond shall be deemed Liquidating Trust Expenses.

**ARTICLE V:
NON-TRANSFERABILITY OF BENEFICIAL INTERESTS; INTERESTS BENEFICIAL
ONLY; NO VOTING RIGHTS; SUCCESSORS**

All interests of the Beneficiaries of this Liquidating Trust shall be uncertificated and non-transferable, except by will, intestate succession, or operation of law. The rights to a beneficial interest hereunder shall not entitle any Beneficiary to (a) any title in or to the Liquidating Trust Assets as such (which title is vested in the Liquidating Trustee) or to any right to call for a partition or division of Liquidating Trust Assets or to require an accounting, other than as set forth in Section 6.7 of this Agreement, or (b) any voting rights with respect to the administration of the Liquidating Trust and the actions of the Liquidating Trustee in connection therewith. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns hereunder.

**ARTICLE VI:
ADMINISTRATION OF THE LIQUIDATING TRUST**

6.1 Right to Bring Causes of Action. The Liquidating Trustee shall be deemed a party in interest for all purposes under the Plan and Bankruptcy Code, including, but not limited to, filing objections to Claims. The Liquidating Trustee shall have the right to bring or assert any Cause of Action of the Liquidating Trust. The Liquidating Trustee also shall have the right to continue to defend or prosecute or commence any case commenced or that could have been commenced prior to the Effective Date. In any Cause of Action brought by the Liquidating Trustee, the Liquidating Trustee shall be deemed to represent all of the Beneficiaries of the Liquidating Trust, and it shall not be necessary to make any Beneficiary a party to such action.

Except as expressly provided in the Plan, no Beneficiary shall have any right to take any action, in law or equity, on account of the property of the Liquidating Trust.

6.2 Settlement of Causes of Action and Disputed Claims. Confirmation of the Plan shall constitute authority for the Liquidating Trustee, without further action or order of the Bankruptcy Court, to settle, compromise, abandon, or dismiss any Cause of Action or Disputed Claim; provided, however, that the Liquidating Trustee shall first obtain approval of the Advisory Committee if such approval is required under Section 2.3 of this Agreement. Nothing

in the Plan or this Agreement shall prohibit the Liquidating Trustee from: (a) seeking an order of the Bankruptcy Court regarding the compromise, settlement, abandonment, or dismissal of any Cause of Action or Disputed Claim, or (b) dismissing or abandoning any Cause of Action that the Liquidating Trustee, in his/her sole and absolute discretion, determines may result in personal liability for the Liquidating Trustee.

In considering whether to compromise, dismiss, abandon, or settle a Cause of Action or Disputed Claim (or give approval with respect to such action), the Liquidating Trustee or the Advisory Committee, as the case may be, shall consider the following factors:

- (a) the probability of success in the litigation;
- (b) the complexity of litigation;
- (c) the expense, inconvenience, and delay necessarily attending the litigation;
- (d) the time value of money; and
- (e) the difficulties, if any, to be encountered in collecting any judgment.

6.3 Right to File Claims. The Liquidating Trustee may file such proofs of claim and other papers or take such other actions as may be necessary or appropriate to have the Causes of Action or other rights of the Liquidating Trust allowed in any judicial proceeding.

6.4 Investment of Moneys. Except as otherwise provided in this Agreement, the Liquidating Trustee shall hold all moneys of the Liquidating Trust in segregated accounts established on the books of the Liquidating Trustee (the "Trust Accounts"), and shall invest moneys in the Trust Accounts in: (a) demand and time deposits (such as certificates of deposit), (b) other temporary liquid investments (such as U.S. treasury bills), and (c) shares of any investment company registered under the Federal Investment Company Act of 1940 whose shares are registered under the Securities Act of 1933 and whose only investments comprise: (i) obligations issued or guaranteed as to principal and interest by the U.S. government, and thus constitute direct obligations of the U.S. government, or (ii) obligations issued by state or municipal governmental bodies, the interest of which is exempt from federal income taxation and which are rated in the two highest rating categories published by Standard & Poor's Corporation.

6.5 Fees and Expenses. Subject to the priority of payment established under Section 8.3 of this Agreement and Article II of the Plan, the Liquidating Trustee shall pay all fees, costs, and expenses of administering the Liquidating Trust (including, without limitation, fees and expenses reimbursed to members of the Advisory Committee and any statutory fees) from the Cash Reserve or other available moneys of the Liquidating Trust, as and when such fees, costs, and expenses become due and owing.

6.6 Reports to Beneficiaries. As soon as practicable after June 30 and December 31 of each calendar year, the Liquidating Trustee, on behalf of the Liquidating Trust, shall File with the Bankruptcy Court (and provide to any other party entitled to receive any such report pursuant to this Agreement) a semi-annual report regarding the administration of property subject to its ownership and control pursuant to the Plan and this Agreement, distributions made by it, and other matters relating to the implementation of the Plan; *provided, however*, that the

filing of any such report is solely to provide centralized access to information and there is no implication or suggestion that the Bankruptcy Court is supervising the Liquidating Trustee.

6.7 Books and Records. The Liquidating Trustee shall maintain complete and accurate records concerning all receipts and distributions to and from the Liquidating Trust, including, but not limited to, the date and amount of each distribution to the Beneficiaries. The Beneficiaries shall, upon reasonable notice to the Liquidating Trustee and only during reasonable business hours, have the right to audit the books, records and accounts relating to the Liquidating Trust within one (1) year following the end of each calendar year. Any such audit will be completed within twelve (12) months after its commencement. The auditing Beneficiary shall be responsible for reimbursing the Liquidating Trustee for any of the Liquidating Trustee's out-of-pocket expenses incurred during such audit.

6.8 Compliance with Securities Laws. Under Bankruptcy Code section 1145, the issuance of interests in a liquidating trust pursuant to a chapter 11 plan is exempt from registration under the Securities Act of 1933, as amended, and applicable state and local laws requiring registration or qualification of securities. If the Liquidating Trustee determines, with the advice of counsel, that the Liquidating Trust is required to comply with the reporting requirements of the Securities Exchange Act of 1934, as amended, or the Investment Company Act of 1940, as amended, then the Liquidating Trustee shall take any and all actions to comply with such reporting requirements and file periodic, current, and other reports in compliance therewith with the Securities and Exchange Commission.

ARTICLE VII: TAX MATTERS

7.1 Purpose and Intent of Liquidating Trust. The primary purpose of the Liquidating Trust is to liquidate the Liquidating Trust Assets in an expeditious and commercially prudent manner, and all activities of the Liquidating Trustee will be limited to those activities reasonably necessary to, and consistent with, the accomplishment of that purpose. The Liquidating Trustee shall make continuing efforts to dispose of the Liquidating Trust Assets and shall value the Liquidating Trust Assets using consistent standards. There is no intention on the part of any party in interest to carry on a profit-making business or to unreasonably prolong the liquidation process.

7.2 Tax Characterization. The Liquidating Trustee shall take or cause to be taken all reasonable and necessary actions, including without limitation, timely preparation and filing of required Tax Returns for the Liquidating Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a), to carry into effect the intent that the Liquidating Trust created by the Plan and this Agreement qualify as a liquidating trust within the meaning of section 301.7701-4(d) of the Treasury Regulations, and to treat the Beneficiaries of the Liquidating Trust as the grantor-owners of the Liquidating Trust within the meaning of sections 671 through 678 of the Internal Revenue Code. In the event the Liquidating Trust shall fail or cease to qualify as a liquidating trust in accordance with Treasury Regulations Section 301.7701-4(d), the parties to this Agreement intend that the Liquidating Trustee take such action as he/she shall deem appropriate to have the Liquidating Trust classified as a partnership for federal tax purposes under Treasury Regulations Section 301.7701-3 (but not a publicly traded partnership under Internal Revenue Code Section 7704), including, if necessary, creating or converting it into an

Illinois limited liability partnership or limited liability company. All of the Liquidating Trust's income shall be subject to tax on a current basis.

For all U.S. federal income tax purposes, all parties (including, without limitation, the Debtor, the Liquidating Trustee, and the Beneficiaries) shall treat the transfer of the Liquidating Trust Assets to the Liquidating Trust as (a) a deemed transfer by the Debtor of the Liquidating Trust Assets directly to the Beneficiaries in full satisfaction of the Beneficiaries' claims against and interests in the Debtor and, to the extent Liquidating Trust Assets are allocable to Disputed Claims, to the Disputed Claims Reserve, followed by (b) the deemed transfer by such Beneficiaries to the Liquidating Trust of the Liquidating Trust Assets (other than the Liquidating Trust Assets allocable to the Disputed Claims Reserve) in exchange for interests in the Liquidating Trust. Accordingly, the Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Liquidating Trust Assets (other than Liquidating Trust Assets allocable to the Disputed Claims Reserve). The foregoing treatment shall also apply, to the extent permitted by applicable law, for all state, provincial, territorial, and local income tax purposes.

7.3 Tax Reporting. The Liquidating Trustee shall prepare and provide to, or file with, the appropriate taxing authorities and other parties such notices, tax returns, and other filings, including all federal, state, and local tax returns for the Liquidating Trust, as may be required under the Internal Revenue Code, the Plan, or as may be required by applicable law of other jurisdictions including, if required under applicable law, notices required to report interest or dividend income ("Tax Reports"). The Liquidating Trustee shall treat the Liquidating Trust as a grantor trust for U.S. federal income tax purposes pursuant to Treasury Regulation section 1.671-4(a) and in accordance with the Plan. The Liquidating Trustee also will annually send to each Beneficiary a separate statement regarding the receipts and expenditures of the Liquidating Trust as relevant for all U.S. federal income tax purposes and will instruct all such Beneficiaries to use such information in preparing their U.S. federal income tax returns or to forward the appropriate information to such Beneficiary's underlying beneficial holders with instructions to utilize such information in preparing their U.S. federal income tax returns. If additional tax information is provided at the specific request of a Beneficiary (and not as required by applicable law), then such Beneficiary shall pay a reasonable fee to the Liquidating Trustee, in an amount to be then determined by the Liquidating Trustee, together with all costs and expenses incurred by the Liquidating Trustee in providing such tax information to such Beneficiary. The Liquidating Trustee shall also file (or cause to be filed) any other statement, return, or disclosure relating to the Liquidating Trust that is required by any governmental units in the U.S. and elsewhere.

In connection with the Liquidating Trustee's performance of his/her duties pursuant to this Section, the Liquidating Trustee may require any Beneficiary to furnish to the Liquidating Trustee its employer or taxpayer identification number as assigned by the Internal Revenue Service, together with such other information, returns, or forms as the Liquidating Trustee may determine are required, and the Liquidating Trustee may condition any distribution of Liquidating Trust Assets to any Beneficiary upon such receipt of such identification number, any other information and returns and forms as are required for the Liquidating Trustee to comply with Internal Revenue Service requirements.

The Liquidating Trustee will, in good faith, value all Liquidating Trust Assets, and shall make all such values available from time to time, to the extent relevant, and such values shall be

used consistently by all parties to the Liquidating Trust (including, without limitation, the Debtor, the Liquidating Trustee, and the Beneficiaries) for all U.S. federal income tax purposes.

Allocations of Liquidating Trust taxable income among the Beneficiaries (other than taxable income allocable to the Disputed Claims Reserve) shall be determined by reference to the manner in which an amount of cash representing such taxable income would be distributed (were such cash permitted to be distributed at such time) if, immediately prior to such deemed distribution, the Liquidating Trust had distributed all of the Liquidating Trust Assets (valued at their tax book value, and other than assets allocable to the Disputed Claims Reserve) to the holders of the interests in the Liquidating Trust, adjusted for prior taxable income and loss and taking into account all prior and concurrent distributions from the Liquidating Trust. Similarly, taxable loss of the Liquidating Trust shall be allocated by reference to the manner in which an economic loss would be borne immediately after a hypothetical liquidating distribution of the remaining Liquidating Trust Assets. The tax book value of the Liquidating Trust Assets for purpose of this paragraph shall equal their fair market value on the Effective Date, adjusted in accordance with tax accounting principles prescribed by the Internal Revenue Code, the applicable Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements.

Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the receipt by the Liquidating Trustee of a private letter ruling if the Liquidating Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Liquidating Trustee), the Liquidating Trustee shall (a) timely elect to treat any Disputed Claims Reserve as a "disputed ownership fund" governed by Treasury Regulation section 1.468B-9, and (b) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes. All parties (including the Liquidating Trustee, the Debtor, and the Beneficiaries) shall report for U.S. federal, state, and local income tax purposes consistently with the foregoing.

The Liquidating Trustee shall be responsible for payment, out of the Liquidating Trust Assets, of any U.S., local, or foreign taxes imposed on the Liquidating Trust or the Liquidating Trust Assets, including the Disputed Claims Reserve. In the event, and to the extent, any Cash retained on account of Disputed Claims in the Disputed Claims Reserve is insufficient to pay the portion of any such U.S., local, or foreign taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims, such U.S., local, or foreign taxes shall be (a) reimbursed from any subsequent Cash amounts retained on account of Disputed Claims, or (b) to the extent such Disputed Claims have subsequently been resolved, deducted from any amounts otherwise distributable by the Liquidating Trustee as a result of the resolution of such Disputed Claims.

The Liquidating Trustee may request an expedited determination of taxes of the Liquidating Trust, including the Disputed Claims Reserve, or the Debtor under Bankruptcy Code section 505(b) for all tax returns filed for, or on behalf of, the Liquidating Trust or the Debtor for all taxable periods through the dissolution of the Liquidating Trust.

7.4 Compliance with Tax Withholding Requirements. In connection with making distributions under the Plan and this Agreement, the Liquidating Trustee shall comply with all tax withholding and reporting requirements imposed on him/her by any governmental unit, and

all distributions pursuant to the Plan and this Agreement shall be subject to such withholding and reporting requirements. Any property so withheld will then be paid by the Liquidating Trust to the appropriate authority. The Liquidating Trustee may withhold the entire distribution due any Beneficiary until such time as such Beneficiary provides the necessary information to comply with any withholding requirements of any governmental unit, including an IRS Form W-9 containing its, his, or her employer or taxpayer identification number as assigned by the Internal Revenue Service, or, in the case of Beneficiaries that are not U.S. persons for federal income tax purposes, certification of foreign status on IRS Form W-8BEN, W-81MY or W-8ECI. If the Liquidating Trustee requests information necessary to comply with any tax withholding or reporting requirements of any governmental unit of any Beneficiary by certified mail and (i) does not receive a response to such request within sixty (60) days, sends a second request by certified mail and again receives no response within sixty (60) days or (ii) the request is returned to the Liquidating Trustee as undeliverable and the Liquidating Trustee is unable to determine a correct address after reasonable efforts, then no further distributions shall be made to such Beneficiary unless the Liquidating Trustee is notified in writing within six (6) months after the date that the initial request was sent of such Beneficiary's necessary information (subject to the Liquidating Trustee's right to require supporting documents evidencing that the necessary information is that of the rightful Beneficiary), in which case all currently due missed distributions shall be made to such Beneficiary on the next Periodic Distribution Date (as defined below) subject to such withholding and reporting requirements, and shall not be supplemented with any interest, dividends or other accruals of any kind. If the Liquidating Trustee does not receive notice of a Beneficiary's necessary information within six (6) months after the date of the initial request, then all distributions to the Beneficiary that has not provided the information necessary to comply with any tax withholding and reporting requirements of any governmental unit may be treated as an unclaimed distribution in accordance with Section 8.8 below or the amount required to be withheld may be so withheld and turned over to the applicable authority.

**ARTICLE VIII:
APPLICATION AND PRIORITY OF DISTRIBUTION OF LIQUIDATING TRUST
FUNDS**

8.1 Money Held in Trust. All moneys and other assets that the Liquidating Trustee receives under this Agreement, until used or applied as provided in this Agreement, shall be held in trust for the purposes for which they were received. The Liquidating Trustee shall not be obligated to pay interest on any moneys that it receives under this Agreement. However, except as otherwise provided in this Agreement, the Liquidating Trustee shall promptly invest moneys of the Liquidating Trust as provided in Section 6.4 of this Agreement.

8.2 Right to Receive Distributions from the Liquidating Trust. The amount of each Beneficiary's Allowed Claim shall represent such person's right to receive distributions from the Liquidating Trust in accordance with the priorities set forth in the Plan and this Agreement.

Prior to distribution of any portion of the Liquidating Trust Assets to any Beneficiary, the Liquidating Trustee shall first

- (a) reserve for or pay to any taxing authorities, as necessary, any taxes of the Liquidating Trust;

- (b) reserve for or pay to the Office of the U.S. Trustee any statutory fees incurred for the Debtor's Estate after the Effective Date, as may be required;
- (c) reserve for or pay to the Liquidating Trustee's professionals for services rendered and expenses incurred;
- (d) reserve for or pay to the Liquidating Trustee's compensation and reasonable and necessary expenses incurred in fulfilling the Liquidating Trustee's obligations set forth in the Plan and in this Agreement;
- (e) reserve for or pay any additional expenses incurred in fulfilling the obligations of the Liquidating Trustee set forth in the Plan and in this Agreement and not specifically identified in this Section 8.2; and
- (f) establish a Disputed Claims Reserve and a sufficient Cash Reserve.

8.3 Priority of Payment from the Liquidating Trust. After providing for the reserves set forth in Section 8.2 hereof, all proceeds from assets of the Liquidating Trust shall be distributed according to the priorities set forth in the Plan. Generally, Allowed priority and administrative claims will be paid in full, Convenience Class Claims will be paid 62 cents on the dollar, and Allowed General Unsecured Claims will receive a Pro Rata share of remaining funds. Disputed NewKey Claims will be reserved for with a separate Cash reserve and treated pursuant to the Plan and under the terms of the escrow agreement filed with the Plan Supplement.

8.4 Distribution Dates. Distributions will be made by the Liquidating Trustee or a Third Party Disbursing Agent pursuant to the terms of the Plan.

8.5 Interim Distributions. On each applicable Distribution Date, the Liquidating Trustee will distribute the Net Available Cash in accordance with the Plan and this Agreement. A Distribution Date must occur at least once every six (6) months after the Initial Distribution Date, if any amounts are available for distribution on such date.

8.6 Final Distribution. Upon liquidating the Liquidating Trust, and after payment of all fees, costs, and expenses of administration of the Liquidating Trust, the Liquidating Trustee shall make a final distribution of funds to the Beneficiaries (the "Final Distribution") in accordance with the Plan and this Agreement. The Liquidating Trustee shall have no obligation to invest funds of the Liquidating Trust from and after the date of Final Distribution.

8.7 Disputed Claims. Prior to making any distributions under the Plan, the Liquidating Trustee shall establish a reserve for the benefit of holders of Disputed Claims (the "Disputed Claims Reserve"). The Liquidating Trustee shall distribute to and maintain in the Disputed Claims Reserve cash that would otherwise be distributable to holders of Disputed Claims, assuming such Disputed Claims would be allowed in the Face Amount of such Claims. In determining the Face Amount of Disputed Claims in accordance with the Plan, the Liquidating Trustee may rely on the Debtor's estimates as to Disputed Claims and will have no liability therefore in the absence of bad faith or gross negligence. As Disputed Claims are resolved, the Liquidating Trustee shall make adjustments to the Disputed Claims Reserve. Except as otherwise agreed by the relevant parties, the Liquidating Trustee shall not be required to (a) make any partial payments or partial distributions on account of a Disputed Claim until all

such disputes in connection with such Disputed Claim have been resolved by settlement or Final Order or (b) make any distributions on account of an Allowed Claim of any Beneficiary that holds both an Allowed Claim and a Disputed Claim, unless and until all objections to the Disputed Claim have been resolved by settlement or Final Order.

The distributions held or received by the Liquidating Trustee on account of the Disputed Claims Reserve, along with any Cash Investment Yield held in the Disputed Claims Reserve, shall (a) be deposited in a segregated bank account in the name of the Liquidating Trustee for the benefit of holders of Allowed Claims and Disputed Claims that become Allowed Claims, (b) be accounted for separately, and (c) not constitute property of the Debtor. The Liquidating Trustee shall invest Cash held in the Disputed Claims Reserve in a manner consistent with this Agreement.

On the first Distribution Date that is at least thirty (30) days after a Disputed Claim becomes an Allowed Claim, the Liquidating Trustee shall (a) distribute to the holder of such Allowed Claim any property in the Disputed Claims Reserve that would have been distributed to such holder on the Distribution Dates on which distributions previously were made to holders if the Allowed Claim in issue had been an Allowed Claim on such earlier Distribution Dates; and (b) distribute any remaining property held in the Disputed Claim Reserve on account of any resolved Disputed Claim in accordance with the Plan and this Agreement.

After Final Orders have been entered as to all Disputed Claims, or other final resolution has been reached with respect to all Disputed Claims, any remaining property held in the Disputed Claims Reserve will return to the Liquidating Trust and be distributed in accordance with the Plan and this Agreement.

8.8 Unclaimed and Undeliverable Distributions. Subject to Article V hereof, the Liquidating Trustee shall treat unclaimed and undeliverable distributions in accordance with Article VI of the Plan.

8.9 Delivery of Distributions.

(a) **Distribution Record Date.** The Liquidating Trustee shall not have any obligation to recognize any transfer of any Claim until the record holder of such claim has provided notice to the Liquidating Trustee of such transfer.

(b) **De Minimis Distributions.** The Liquidating Trustee shall not be required to make any interim distributions in an amount less than \$100 provided that any such payments shall be withheld until the Final Distribution. Notwithstanding anything herein to the contrary, the Liquidating Trustee shall not be required to make any final distributions in an amount less than \$25.

(c) **Provision of Tax Identification Number.** If the Liquidating Trustee requests a tax identification number or other necessary tax information from any Beneficiary and does not receive such information, then the Liquidating Trustee may withhold payment of distributions to such Beneficiary unless and until the Liquidating Trustee is provided such information in writing, in which case all currently due missed distributions shall be made to such Beneficiary on the next Distribution Date (but shall not be supplemented with any interest, dividends or other accruals of any kind). If the Liquidating Trustee does not receive notice of a Beneficiary's tax

identification number prior to the Final Distribution Date, then all distributions that would have been made to the Beneficiary shall be treated as undeliverable or unclaimed property in accordance with Section 8.8.

8.10 **Third Party Disbursing Agent.** The Liquidating Trustee may employ, in his/her sole discretion, a Third Party Disbursing Agent to make all distributions, and to otherwise perform all necessary action related to such distributions, required under the Plan and this Agreement.

**ARTICLE IX:
RESIGNATION AND REMOVAL OF THE LIQUIDATING TRUSTEE**

9.1 **Resignation.** At any time after his/her appointment, the Liquidating Trustee may petition the Bankruptcy Court for an order authorizing his/her resignation. The petition shall identify a proposed successor Liquidating Trustee approved by the Advisory Committee, and generally describe the qualifications of the person to act as Liquidating Trustee under this Agreement. If the resignation is due to the death or incapacity of the Liquidating Trustee, the Advisory Committee through counsel for the Liquidating Trustee may petition the Bankruptcy Court for the appointment of a successor Liquidating Trustee. In either case, the resignation shall be effective upon the successor Liquidating Trustee accepting his/her appointment as Liquidating Trustee under this Agreement.

9.2 **Successor Liquidating Trustee.** Any successor Liquidating Trustee, however appointed, shall execute and deliver to the resigning Liquidating Trustee a written instrument accepting such appointment, and thereafter, such successor Liquidating Trustee, without further act, shall become vested with all the estates, properties, rights, powers, and duties of the resigning or removed Liquidating Trustee.

**ARTICLE X:
TERMINATION AND DISCHARGE**

10.1 **Termination.** The Liquidating Trust shall terminate on the earliest of the following dates:

- (a) the date that the Liquidating Trust Assets have been liquidated and the proceeds distributed to the Beneficiaries as provided in the Plan and this Agreement;
- (b) the date that the Bankruptcy Court or another court of competent jurisdiction enters a Final Order authorizing the termination of such Liquidating Trust; and
- (c) five (5) years after the Effective Date.

Notwithstanding the foregoing, in the event the Liquidating Trustee shall have been unable, after reasonable efforts, to liquidate or otherwise dispose of the assets of the Liquidating Trust within the initial five (5) year term of this Agreement, then the Liquidating Trustee shall have the right to extend the term of such Liquidating Trust, subject to the Bankruptcy Court entering an order approving such extension within six (6) months from the beginning of such extended term, until the assets of such Liquidating Trust have been sold or otherwise disposed of in fulfillment of the

purpose of such Liquidating Trust. The term of the Liquidating Trust shall in no event exceed fifteen (15) years after the Effective Date.

10.2 **Discharge.** The Liquidating Trustee shall be discharged of his/her duties under this Agreement on the earlier of: (a) the date of termination as provided in Section 10.1, or (b) the date that a successor Liquidating Trustee accepts his/her appointment.

**ARTICLE XI:
MISCELLANEOUS**

11.1 **Initial Amendment.** Within seven (7) days following the Effective Date, the Liquidating Trust's counsel shall file a motion with the Bankruptcy Court seeking approval for the amendments to this Liquidating Trust Agreement set forth on Annex A hereto (the "Proposed Amendments"). Should the Bankruptcy Court fail to issue an order approving the Proposed Amendments within twenty-one (21) days following the filing of the related motion, for any reason, the Liquidating Trustee may resign upon thirty (30) days written notice to the Advisory Committee and the Advisory Committee shall immediately petition the Bankruptcy Court with a proposed replacement.

11.2 **No Third-Party Beneficiaries.** Notwithstanding anything to the contrary in the Plan or this Agreement, neither the Liquidating Trustee nor any member of the Advisory Committee, nor any of their officers, directors, employees, members, agents, counsel, or affiliates shall have any duties or responsibilities to, or fiduciary or third-party relationships with, any other person or entity, except as expressly provided in this Agreement or the Plan. Without limiting the generality of the foregoing, the Liquidating Trustee and the Advisory Committee shall have no obligation to:

- (a) provide information to any person, except as provided in this Agreement or the Plan;
- (b) preserve any right or interest of any other person; or
- (c) collect or realize upon any asset or property distributed under the Plan on account of any claim. The Liquidating Trustee shall attempt to collect or realize upon such assets in any manner that the Liquidating Trustee and the Advisory Committee, in their sole and absolute discretion, shall deem appropriate, and shall not incur any liability to the Debtor or any claimant of the Debtor in so doing.

11.3 **Notices.** All communications and notices provided to the Trustee under this Agreement shall be in writing and addressed to counsel for the Liquidating Trustee or, if no such counsel is then retained, the Liquidating Trustee. Any notice, if properly addressed, shall be deemed given upon the first business day after placement in the U.S. mail, first class postage prepaid.

11.4 **Execution of Documents.** The Liquidating Trustee may execute any and all documents necessary and appropriate to effectuate the purpose of this Agreement.

11.5 **Modification.** This Agreement shall not be modified without further order of the Bankruptcy Court after notice to the Beneficiaries and a hearing. Upon a motion of the

Liquidating Trustee, the Bankruptcy Court or other court of competent jurisdiction may approve, without notice to the Beneficiaries, technical modifications to this Agreement which do not adversely affect the rights or interests of the Beneficiaries or which conform the terms of this Agreement to the terms of the Plan.

11.6 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent such provision is unenforceable without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

11.7 Headings. The various headings of this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement.

11.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

11.9 Conflict with the Plan. In the event that there is any conflict between the terms of this Agreement and the Plan, the terms of the Plan shall govern.

11.10 Counterparts. This Agreement may be executed in any number of counterparts. Each counterpart of this Agreement shall, for all purposes, constitute an original, and all of such counterparts, taken together, shall constitute one and the same agreement.


11.11 Enforcement and Administration. The Bankruptcy Court shall retain jurisdiction to enforce and administer the provisions of this Agreement, as set forth in the Plan and herein.

[Remainder of Page, Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

By: _____
David A. Agay (ARDC No. 6244314)
Sean D. Malloy (ARDC No. 6217401)
Micah E. Marcus (ARDC No. 6257569)
Joshua A. Gadharf (ARDC No. 6296543)
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*Counsel to the Official Committee
of Unsecured Creditors of SGK Ventures,
LLC (f/k/a Keywell L.L.C.)*


By:  _____
Kelly Beaudin Stapleton

LIQUIDATING TRUSTEE

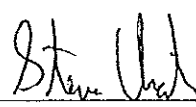
By: _____
Howard L. Adelman (ARDC No. 0015458)
Erich S. Buck (ARDC No. 6274635)
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*Counsel to SGK Ventures, LLC (f/k/a
Keywell L.L.C.)*

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*Counsel to SGK Ventures, LLC (f/k/a
Keywell L.L.C.)*

By: _____
Kelly Beaudin Stapleton

LIQUIDATING TRUSTEE

AMENDED AND RESTATED SGK VENTURES, LLC LIQUIDATING TRUST
AGREEMENT

Dated as of ~~October 21,~~ _____, 2014

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TABLE OF EXHIBITS

Annex A	[Proposed] Amended and Restated SGK Ventures, LLC Liquidating Trust Agreement
Exhibit A	Plan of Liquidation
Exhibit B	Confirmation Order

SGK VENTURES, LLC LIQUIDATING TRUST AGREEMENT

This Amended and Restated Liquidating Trust Agreement (this “Agreement”) amends and restates that certain Liquidating Trust Agreement is executed as of October 21, _____, 2014, by and among Kelly Beaudin-Stapleton (a Managing Director with Alvarez & Marsal North America, LLC, as initial liquidating trustee under this Agreement (the initial liquidating trustee or any successor, the “Liquidating Trustee”); the Official Committee of Unsecured Creditors duly appointed for the Chapter 11 Case (as defined below) (the “Committee”); and SGK Ventures, LLC (f/k/a Keywell L.L.C.) (the “Debtor”). Except as otherwise defined in this Agreement, and except as the context requires otherwise, the capitalized terms in this Agreement shall have the meaning ascribed to them in the Second Amended Plan of Liquidation of the Official Committee of Unsecured Creditors of SGK Ventures, LLC, dated as of August 27, 2014 (as amended, modified or supplemented, the “Plan”). This trust may also be referred to as the “SGK Ventures Liquidating Trust” or by employing words of similar meaning.

RECITALS

WHEREAS, on September 24, 2013 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in United States Bankruptcy Court for the Northern District of Illinois (the “Bankruptcy Court”), thereby commencing Case No. 13-37603 (the “Chapter 11 Case”);

WHEREAS, on October 3, 2013, the Committee was appointed and authorized to act as a representative of the unsecured creditors. The Committee is the proponent of the Plan;

WHEREAS, this Agreement is entered into in accordance with, and to facilitate the implementation and execution of, the Plan;

WHEREAS, on September 3, 2014, the Bankruptcy Court entered an order confirming the Plan (the “Confirmation Order”). A copy of the Plan and the Confirmation Order are attached hereto as Exhibits A and B, respectively;

WHEREAS, on the Effective Date, the Plan provides that all rights, title, and interests of the Debtor and the Debtor’s Estate in and to the Liquidating Trust Assets shall become and comprise the liquidating estate of the Debtor subject to a liquidating trust. The Plan further provides that the Liquidating Trust Assets shall be administered through a liquidating trust established pursuant to the Plan. The Plan authorizes and appoints the Liquidating Trustee to receive, hold, administer, and distribute the Liquidating Trust Assets for the benefit of the Beneficiaries (as defined below) and their successors and assigns as permitted for under the Plan and this Agreement;

WHEREAS, the Liquidating Trust Assets include all of the Debtor’s Assets as of the Effective Date of the Plan other than the Frewsburg Assets. The Plan provides that the Frewsburg Assets shall be liquidated by the Frewsburg Administrator and the proceeds of such liquidation, if any, shall be transferred to the Liquidating Trust and thereafter become Liquidating Trust Assets; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Debtor, the Committee and the Liquidating Trustee agree as follows:

**ARTICLE I:
CREATION AND PURPOSE**

1.1 **Creation.** The Debtor and the Committee, pursuant to the terms of the Plan, hereby establish a liquidating trust (the "Liquidating Trust") to hold, administer, liquidate, and distribute Liquidating Trust Assets and all proceeds and profits therefrom, which are hereby granted to and deposited with the Liquidating Trustee. The Liquidating Trustee accepts the Liquidating Trust Assets and shall hold the same in trust and shall administer such assets as provided under the Plan and this Agreement.

1.2 **Purpose.** The Liquidating Trust shall be established solely for the purpose of holding, administering, and liquidating the Liquidating Trust Assets in accordance with Treasury Regulation Section 301.7701-4(d), all pursuant to the provisions of the Plan, with no objective to continue to or engage in the conduct of a trade or business. The purpose of this Agreement is to set forth the rights, powers, and duties of the Liquidating Trustee in receiving, holding, liquidating, and administering the Liquidating Trust Assets as provided in this Agreement and in the Plan. This Agreement also will set forth the rights, powers, and duties of the Advisory Committee, as defined below, in providing guidance to the Liquidating Trustee with respect to certain aspects of the Liquidating Trust.

1.3 **Beneficiaries.** All holders of Allowed General Unsecured Claims and, until such Claims are satisfied, the holders of other Allowed Claims to be paid by the Liquidating Trust under the Plan, are the beneficiaries of the Liquidating Trust (each is referred to as a "Beneficiary" and together the "Beneficiaries"). The interest and priority of each Beneficiary shall be as provided in the Plan.

**ARTICLE II:
LIQUIDATING TRUSTEE**

2.1 **Appointment.** On the Effective Date of the Plan, pursuant to the Confirmation Order, the Liquidating Trustee shall be appointed and authorized to act as the Liquidating Trustee under this Agreement, and by signing this Agreement, the Liquidating Trustee accepts such appointment all in accordance with the terms of this Agreement and the Plan.

2.2 ~~2.2~~ **Duties and Powers of the Liquidating Trustee.** The Liquidating Trustee shall have the following duties and powers with respect to the Liquidating Trust:

- (a) employ and pay professionals to assist in administration of the Liquidating Trust;
- (b) receive, hold, deposit, and invest funds of the Liquidating Trust;
- (c) open any accounts necessary to maintain and distribute funds in the Liquidating Trust;

- (d) pay any fees, costs, and expenses of administering the Liquidating Trust;
- (e) establish and maintain the Disputed Claims Reserve and the Cash Reserve;
- (f) liquidate and administer assets of the Liquidating Trust, including, but not limited to, enforcing Causes of Action of the Liquidating Trust and collecting amounts due with respect to such Causes of Action;
- (g) compromise, settle or abandon any Causes of Action of the Liquidating Trust as authorized under the Plan and this Agreement;
- (h) liquidate and administer claims against the Liquidating Trust;
- (i) calculate and implement distributions from the Liquidating Trust in accordance with the Plan and this Agreement;
- (j) maintain a list of holders of Allowed General Unsecured Claims;
- (k) report to the Beneficiaries of the Liquidating Trust by filing the reports required in Section 4.3.5 of the Plan;
- (l) utilize Liquidating Trust Assets to pay premiums for any insurance policies that the Liquidating Trustee deems necessary, in his/her sole discretion, to insure the assets of the Liquidating Trust against loss and/or to insure the Liquidating Trustee and Advisory Committee against liability with respect to third persons;
- (m) file any necessary tax returns and utilize Liquidating Trust Assets to pay any necessary taxes;
- (n) take such actions that are necessary to dissolve the Liquidating Trust in accordance with Article X of this Agreement; and
- (o) such other powers that are necessary and appropriate to administer the Liquidating Trust as contemplated under the Plan and this Agreement.

2.3 Consent of Advisory Committee. The Liquidating Trustee shall obtain the approval of the Advisory Committee before doing any of the following:

- (a) selling or liquidating non-Cash Liquidating Trust Assets for greater than \$250,000;
- (b) settling, compromising, abandoning, or withdrawing any Cause of Action with face value greater than \$100,000; and
- (c) settling or compromising any Disputed Claims with face value greater than \$50,000 for an Administrative Claim, Priority Tax Claim or Other Priority Claim, or greater than \$100,000 for a General Unsecured Claim.

2.4 2.4 **Compensation; Retention of Trustee Professionals.** The Liquidating Trustee shall be compensated at a rate of \$725 per hour, without further order of the Bankruptcy Court, for services rendered to or on behalf of the Liquidating Trust. The Liquidating Trustee also shall be reimbursed, without further order of the Bankruptcy Court, for all reasonable out-of-pocket fees, costs, and expenses in acting under the Plan and this Agreement, including, but not limited to, reimbursement of its reasonable attorneys' and other professionals' fees. ~~Notwithstanding the foregoing, the~~ subject to the provisions below.

The Liquidating Trustee is empowered from available funds (as set forth in Article VIII hereof): (a) to elect, appoint, engage, retain and employ any persons as professionals and advisors ("Trustee Professionals") in one or more capacities as is reasonably necessary to enable the Liquidating Trustee to implement this Agreement and the Plan or to assist the Liquidating Trustee in performing its duties hereunder; (b) to pay fees to and to reimburse the expenses of those employees, agents or independent contractors elected, appointed, engaged, retained or employed by the Liquidating Trustee; (c) to indemnify the Liquidating Trustee's agents, professionals and employees from any loss (including reasonable attorneys' fees) incurred in connection with the execution and implementation of the Plan or their duties to the Liquidating Trust and/or the Liquidating Trustee other than a loss due to the indemnified party's willful misconduct, gross negligence, or fraud; and (d) to prescribe the titles, powers and duties, terms of service and other terms and conditions of the election, appointment, engagement, retention, or employment of such persons as are reasonable and appropriate. The Liquidating Trustee shall not be responsible for the misconduct of those appointed, engaged, retained, or employed by the Liquidating Trustee with due care.

Such persons so retained need not be "disinterested" as that term is defined in the Bankruptcy Code and may include, without limitation, A&M, counsel, interim management and financial advisors of the Debtors and of the Committee as well as employees, independent contractors or agents of the Debtors, the Committee or A&M.

The Liquidating Trustee is hereby expressly directed to utilize A&M, its affiliates and personnel as Trustee Professionals (rather than utilizing other similarly situated or available personnel or professional services firms) notwithstanding that (a) the Liquidating Trustee may benefit (directly or indirectly) from the compensation paid to such A&M related parties and (b) other persons or entities may be available to provide the same or similar work at similar or more competitive prices. The terms of A&M's engagement by the Liquidating Trustee, on behalf of the Trust, shall be subject to approval by the Advisory Committee. In no event shall the Liquidating Trustee, A&M or its Affiliates be subject to a claim of a conflict of interest or breach of fiduciary duty or any other claim arising as a result of the appointment of any such person in accordance with this provision.

The Liquidating Trustee shall file quarterly reports with the Bankruptcy Court identifying payments made by the Liquidating Trust to its the Trustee Professionals. Any Beneficiary of the Liquidating Trust may, in its capacity as unsecured creditor under applicable law, request from the Liquidating Trustee copies of any non-privileged legal bills of the Liquidating Trust's Trustee Professionals and may file a motion with the Bankruptcy Court seeking review of the Liquidating Trust's Trustee Professionals' fees to the extent the Beneficiary believes an abuse is occurring.

- 2.5 **Liquidating Trustee's Lien.** The Liquidating Trustee shall have a first priority lien on all assets of the Liquidating Trust to secure payment of his/her compensation and reimbursement of his/her fees, costs, and expenses. The lien also shall secure the indemnification obligation of the Liquidating Trust to the Liquidating Trustee as set forth in Section 4.3 of this Agreement. The Liquidating Trustee's lien shall be *parri passu* with the first priority lien of the Advisory Committee granted under Section 3.5 of this Agreement.
- 2.6 **Co-Liquidating Trustees or Separate Liquidating Trustees.** To meet any legal requirements of any jurisdiction in which any of the Liquidating Trust Assets may from time to time be located, the Liquidating Trustee shall have the power to appoint and remove, subject to the approval of the Advisory Committee, one or more Persons either to act as co-trustee(s) jointly with the Liquidating Trustee of all or any part of the Liquidating Trust Assets or to act as separate trustee(s) of all or any part of the Liquidating Trust Assets and to vest in such Person or Persons, in such capacity, such title to the Liquidating Trust Assets or any part thereof, and such rights, powers, duties, trusts or obligations as the Liquidating Trustee determines may be necessary for the Liquidating Trustee to perform his/her duties under this Agreement.

**ARTICLE III:
ADVISORY COMMITTEE**

3.1 **Appointment; Composition.** As of the Effective Date, pursuant to the Confirmation Order, the following are appointed and authorized under Section 4.3.3 of the Plan to act as the advisory committee for the Liquidating Trust (the "Advisory Committee"):

- Omnisource Corporation, Attn: Marlene Sloat
- Schupan & Sons, Inc., Attn: Andrew Knowlton
- Ferrous Processing & Trading Co., Attn: Howard Sherman
- Schnitzer Steel Industries, Inc., Attn: Richard Josephson and Debora Diamond-Burt
- SA Recycling LLC, Attn: Dan Navabpour

The Advisory Committee shall have no more than five (5) and no less than three (3) members. If any member resigns, a replacement shall be appointed pursuant to the procedures set forth in this Agreement.

3.2 **Duties and Powers of the Advisory Committee.** The Advisory Committee shall have the following duties and powers with respect to the Liquidating Trust:

- (a) approve certain actions of the Liquidating Trustee as set forth in Section 2.3 of this Agreement;
- (b) in the Liquidating Trustee's discretion, consult with and advise the Liquidating Trustee on the administration of the Liquidating Trust;
- (c) authorize the appointment of successor Liquidating Trustees and members of the Advisory Committee as provided in the Plan and this Agreement; and
- (d) such other powers as are necessary to fulfill its duties as set forth in this Agreement.

Except as otherwise authorized under this Agreement, an affirmative vote (which may be by written consent on notice to all members) from a majority of total Advisory Committee members present is necessary for the Advisory Committee to take any action authorized under the Plan and this Agreement.

3.3 ~~3.3~~ **Resignation and Successors.** The members of the Advisory Committee may resign at any time by giving thirty (30) days' written notice to the Liquidating Trustee and other members of the Advisory Committee. In the event of a resignation, the remaining members of the Advisory Committee shall appoint a successor member. To qualify for appointment on the Advisory Committee, a successor must hold an Allowed General Unsecured Claim and must not have voted to reject the Plan. A successor member shall be appointed and authorized to act on the Advisory Committee upon accepting such appointment.

3.4 ~~3.4~~ **Compensation and Expenses.** The members of the Advisory Committee shall be reimbursed, without further order of the Bankruptcy Court, for all actual and necessary reasonable expenses in acting as a member of the Advisory Committee.

3.5 **Lien.** The members of the Advisory Committee shall have a first priority lien on all assets of the Liquidating Trust to secure reimbursement of their expenses. The lien also shall secure the indemnification obligation of the Liquidating Trust to the members of the Advisory Committee as set forth in Section 4.3 of this Agreement. The lien shall be *pari passu* with the first priority lien of the Liquidating Trustee granted under Section 2.5 of this Agreement.

ARTICLE IV: CONDUCT OF THE LIQUIDATING TRUSTEE AND ADVISORY COMMITTEE

4.1 **Exercise of Duties and Responsibilities.** The Liquidating Trustee and the Advisory Committee shall exercise the rights and powers vested in them under the Plan and this Agreement, and use the same degree of care and skill in their exercise of such rights and powers as a prudent person would exercise or use under such circumstances in the administration of such person's own affairs, provided, however, that

- (a) the duties and obligations of the Liquidating Trustee and the Advisory Committee shall be determined solely by the express provisions of the Plan and this Agreement, and they shall not be liable except for the performance of such duties and obligations as are specifically set forth in the Plan and this Agreement, and no implied covenants or obligations shall be read into the Plan or this Agreement against the Liquidating Trustee or the Advisory Committee;
- (b) ~~the Liquidating Trustee and the Advisory Committee shall not be liable for any negligence or error of judgment made in good faith by them or any of their officers or employees, unless the Liquidating Trustee or the Advisory Committee is grossly negligent or engages in willful misconduct;~~
- (b) the Liquidating Trustee shall not be liable for any right, duty, or conduct of the Advisory Committee; and

- (c) the Advisory Committee shall not be liable for any right, duty, or conduct of the Liquidating Trustee.

The provisions of this Section shall apply to any right, conduct, power, duty, or responsibility of the Liquidating Trustee or the Advisory Committee, as the case may be, under the Plan or this Agreement. None of the provisions in the Plan or this Agreement shall be construed to require the Liquidating Trustee or any member of the Advisory Committee to expend or risk their own funds or otherwise incur personal financial liability in the performance of their duties or in the exercise of their rights and powers.

4.2 ~~4.2~~ **Reliance on Documents, Statements, etc.** The Liquidating Trustee and the Advisory Committee:

- (a) may rely upon, and shall be protected in acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other document believed by them to be genuine and to have been signed or presented by the proper party or parties;
- (b) may consult with their legal counsel, and any ~~written~~ advice or opinion of their or the Liquidating Trust's legal counsel, accountants or other professional advisors shall be full and complete authorization and protection in respect of any action taken or not taken by them in good faith and in accordance with such advice or opinion of counsel. Notwithstanding such authority, the Liquidating Trustee and the Advisory Committee shall not be under any obligation to consult with their attorneys, accountants, financial advisors, and agents, and their determination not to do so shall not result in the imposition of liability on the Liquidating Trustee or the Advisory Committee, except to the extent such determination is based on willful misconduct, gross negligence, or fraud;
- (c) shall not be liable for any action taken or not taken if in good faith and believed by them to be authorized or within their discretion or rights or powers under the Plan and this Agreement; ~~and~~
- (d) may exercise any of the rights and powers, or perform any of the duties under the Plan and this Agreement either directly or through agents or attorneys, and they shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care; and
- (e) the Liquidating Trustee shall have no liability for any act or omission taken which has been approved or directed by the Advisory Committee.

4.3 Indemnification of the Liquidating Trustee and the Advisory Committee.

Exculpation: Limitations on Liability. ~~Subject to Section 4.1, the~~ The Liquidating Trustee and the Advisory Committee and A&M and their respective affiliates and their and their affiliates respective officers, employees and agents (the "Indemnified Parties") shall not be personally liable to the Liquidating Trust, to any Beneficiary or any other Person (or any predecessor or successor thereto) for any reason whatsoever, except for such ~~liability arising primarily and directly from their own acts as shall constitute such Indemnified Party's own willful misconduct, fraud or gross negligence, willful disregard of the Indemnified Parties' duties, or material breach~~

~~of this Agreement. Except as aforesaid, the Indemnified Parties shall be defended, held harmless, and indemnified from time to time, but solely from the Liquidating Trust Assets, against any and all losses, claims, costs, expenses, and liabilities to which the Indemnified Parties may be subject by reason of the Indemnified Parties' execution in good faith arising out of the Indemnified Parties' duties under this Agreement. The Indemnified Parties' officers, employees, agents, if any (including, without limitation, the Indemnified Parties' professionals), and any co-trustee(s) appointed pursuant to Section 2.6 of this Agreement, shall be likewise defended, held harmless, and indemnified acts or omissions or consequences of such acts or omissions, with respect to the implementation or administration of the Liquidating Trust or the Plan or the discharge of the duties hereunder or under any agreement between such Indemnified Parties and the Liquidating Trust and/or Liquidating Trustee. Without limiting the generality of the foregoing, the Liquidating Trustee shall have no liability to any Beneficiary on account of the Liquidating Trustee's investment or non-investment of any Liquidating Trust Assets or any losses with respect to any such investments of Liquidating Trust Assets, provided that such investments are made, or the Liquidating Trustee's decision not to invest any Liquidating Trust Assets in any case is made, in accordance with Section 6.4 or otherwise in accordance with the terms of this Agreement. The Indemnified Parties shall not be obligated to give any bond or surety or other security for the performance of any of their duties, unless otherwise ordered by the Bankruptcy Court and, if so ordered, all costs and expenses of procuring any such bond shall be deemed Liquidating Trust Expenses.~~

**ARTICLE V:
NON-TRANSFERABILITY OF BENEFICIAL INTERESTS; INTERESTS BENEFICIAL
ONLY; NO VOTING RIGHTS; SUCCESSORS**

All interests of the Beneficiaries of this Liquidating Trust shall be uncertificated and non-transferable, except by will, intestate succession, or operation of law. The rights to a beneficial interest hereunder shall not entitle any Beneficiary to (a) any title in or to the Liquidating Trust Assets as such (which title is vested in the Liquidating Trustee) or to any right to call for a partition or division of Liquidating Trust Assets or to require an accounting, other than as set forth in Section 6.7 of this Agreement, or (b) any voting rights with respect to the administration of the Liquidating Trust and the actions of the Liquidating Trustee in connection therewith. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns hereunder.

**ARTICLE VI:
ADMINISTRATION OF THE LIQUIDATING TRUST**

6.1 **Right to Bring Causes of Action.** The Liquidating Trustee shall be deemed a party in interest for all purposes under the Plan and Bankruptcy Code, including, but not limited to, filing objections to Claims. The Liquidating Trustee shall have the right to bring or assert any Cause of Action of the Liquidating Trust. The Liquidating Trustee also shall have the right to continue to defend or prosecute or commence any case commenced or that could have been commenced prior to the Effective Date. In any Cause of Action brought by the Liquidating Trustee, the Liquidating Trustee shall be deemed to represent all of the Beneficiaries of the Liquidating Trust, and it shall not be necessary to make any Beneficiary a party to such action.

Except as expressly provided in the Plan, no Beneficiary shall have any right to take any action, in law or equity, on account of the property of the Liquidating Trust.

6.2 Settlement of Causes of Action and Disputed Claims. Confirmation of the Plan shall constitute authority for the Liquidating Trustee, without further action or order of the Bankruptcy Court, to settle, compromise, abandon, or dismiss any Cause of Action or Disputed Claim; provided, however, that the Liquidating Trustee shall first obtain approval of the Advisory Committee if such approval is required under Section 2.3 of this Agreement. Nothing in the Plan or this Agreement shall prohibit the Liquidating Trustee from: (a) seeking an order of the Bankruptcy Court regarding the compromise, settlement, abandonment, or dismissal of any Cause of Action or Disputed Claim, or (b) dismissing or abandoning any Cause of Action that the Liquidating Trustee, in his/her sole and absolute discretion, determines may result in personal liability for the Liquidating Trustee.

In considering whether to compromise, dismiss, abandon, or settle a Cause of Action or Disputed Claim (or give approval with respect to such action), the Liquidating Trustee or the Advisory Committee, as the case may be, shall consider the following factors:

- (a) the probability of success in the litigation;
- (b) the complexity of litigation;
- (c) the expense, inconvenience, and delay necessarily attending the litigation;
- (d) the time value of money; and
- (e) the difficulties, if any, to be encountered in collecting any judgment.

6.3 Right to File Claims. The Liquidating Trustee may file such proofs of claim and other papers or take such other actions as may be necessary or appropriate to have the Causes of Action or other rights of the Liquidating Trust allowed in any judicial proceeding.

6.4 Investment of Moneys. Except as otherwise provided in this Agreement, the Liquidating Trustee shall hold all moneys of the Liquidating Trust in segregated accounts established on the books of the Liquidating Trustee (the "Trust Accounts"), and shall invest moneys in the Trust Accounts in: (a) demand and time deposits (such as certificates of deposit), (b) other temporary liquid investments (such as U.S. treasury bills), and (c) shares of any investment company registered under the Federal Investment Company Act of 1940 whose shares are registered under the Securities Act of 1933 and whose only investments comprise: (i) obligations issued or guaranteed as to principal and interest by the U.S. government, and thus constitute direct obligations of the U.S. government, or (ii) obligations issued by state or municipal governmental bodies, the interest of which is exempt from federal income taxation and which are rated in the two highest rating categories published by Standard & Poor's Corporation.

6.5 Fees and Expenses. Subject to the priority of payment established under Section 8.3 of this Agreement and Article II of the Plan, the Liquidating Trustee shall pay all fees, costs, and expenses of administering the Liquidating Trust (including, without limitation, fees and expenses reimbursed to members of the Advisory Committee and any statutory fees)

from the Cash Reserve or other available moneys of the Liquidating Trust, as and when such fees, costs, and expenses become due and owing.

6.6 Reports to Beneficiaries. As soon as practicable after June 30 and December 31 of each calendar year, the Liquidating Trustee, on behalf of the Liquidating Trust, shall File with the Bankruptcy Court (and provide to any other party entitled to receive any such report pursuant to this Agreement) a semi-annual report regarding the administration of property subject to its ownership and control pursuant to the Plan and this Agreement, distributions made by it, and other matters relating to the implementation of the Plan; *provided, however*, that the filing of any such report is solely to provide centralized access to information and there is no implication or suggestion that the Bankruptcy Court is supervising the Liquidating Trustee.

6.7 Books and Records. The Liquidating Trustee shall maintain complete and accurate records concerning all receipts and distributions to and from the Liquidating Trust, including, but not limited to, the date and amount of each distribution to the Beneficiaries. The Beneficiaries shall, upon reasonable notice to the Liquidating Trustee and only during reasonable business hours, have the right to audit the books, records and accounts relating to the Liquidating Trust within one (1) year following the end of each calendar year. Any such audit will be completed within twelve (12) months after its commencement. The auditing Beneficiary shall be responsible for reimbursing the Liquidating Trustee for any of the Liquidating Trustee's out-of-pocket expenses incurred during such audit.

6.8 Compliance with Securities Laws. Under Bankruptcy Code section 1145, the issuance of interests in a liquidating trust pursuant to a chapter 11 plan is exempt from registration under the Securities Act of 1933, as amended, and applicable state and local laws requiring registration or qualification of securities. If the Liquidating Trustee determines, with the advice of counsel, that the Liquidating Trust is required to comply with the reporting requirements of the Securities Exchange Act of 1934, as amended, or the Investment Company Act of 1940, as amended, then the Liquidating Trustee shall take any and all actions to comply with such reporting requirements and file periodic, current, and other reports in compliance therewith with the Securities and Exchange Commission.

ARTICLE VII: TAX MATTERS

7.1 Purpose and Intent of Liquidating Trust. The primary purpose of the Liquidating Trust is to liquidate the Liquidating Trust Assets in an expeditious and commercially prudent manner, and all activities of the Liquidating Trustee will be limited to those activities reasonably necessary to, and consistent with, the accomplishment of that purpose. The Liquidating Trustee shall make continuing efforts to dispose of the Liquidating Trust Assets and shall value the Liquidating Trust Assets using consistent standards. There is no intention on the part of any party in interest to carry on a profit-making business or to unreasonably prolong the liquidation process.

7.2 Tax Characterization. The Liquidating Trustee shall take or cause to be taken all reasonable and necessary actions, including without limitation, timely preparation and filing of required Tax Returns for the Liquidating Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a), to carry into effect the intent that the Liquidating Trust created by

the Plan and this Agreement qualify as a liquidating trust within the meaning of section 301.7701-4(d) of the Treasury Regulations, and to treat the Beneficiaries of the Liquidating Trust as the grantor-owners of the Liquidating Trust within the meaning of sections 671 through 678 of the Internal Revenue Code. In the event the Liquidating Trust shall fail or cease to qualify as a liquidating trust in accordance with Treasury Regulations Section 301.7701-4(d), the parties to this Agreement intend that the Liquidating Trustee take such action as he/she shall deem appropriate to have the Liquidating Trust classified as a partnership for federal tax purposes under Treasury Regulations Section 301.7701-3 (but not a publicly traded partnership under Internal Revenue Code Section 7704), including, if necessary, creating or converting it into an Illinois limited liability partnership or limited liability company. All of the Liquidating Trust's income shall be subject to tax on a current basis.

For all U.S. federal income tax purposes, all parties (including, without limitation, the Debtor, the Liquidating Trustee, and the Beneficiaries) shall treat the transfer of the Liquidating Trust Assets to the Liquidating Trust as (a) a deemed transfer by the Debtor of the Liquidating Trust Assets directly to the Beneficiaries in full satisfaction of the Beneficiaries' claims against and interests in the Debtor and, to the extent Liquidating Trust Assets are allocable to Disputed Claims, to the Disputed Claims Reserve, followed by (b) the deemed transfer by such Beneficiaries to the Liquidating Trust of the Liquidating Trust Assets (other than the Liquidating Trust Assets allocable to the Disputed Claims Reserve) in exchange for interests in the Liquidating Trust. Accordingly, the Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Liquidating Trust Assets (other than Liquidating Trust Assets allocable to the Disputed Claims Reserve). The foregoing treatment shall also apply, to the extent permitted by applicable law, for all state, provincial, territorial, and local income tax purposes.

7.3 Tax Reporting. The Liquidating Trustee shall prepare and provide to, or file with, the appropriate taxing authorities and other parties such notices, tax returns, and other filings, including all federal, state, and local tax returns for the Liquidating Trust, as may be required under the Internal Revenue Code, the Plan, or as may be required by applicable law of other jurisdictions including, if required under applicable law, notices required to report interest or dividend income ("Tax Reports"). The Liquidating Trustee shall treat the Liquidating Trust as a grantor trust for U.S. federal income tax purposes pursuant to Treasury Regulation section 1.671-4(a) and in accordance with the Plan. The Liquidating Trustee also will annually send to each Beneficiary a separate statement regarding the receipts and expenditures of the Liquidating Trust as relevant for all U.S. federal income tax purposes and will instruct all such Beneficiaries to use such information in preparing their U.S. federal income tax returns or to forward the appropriate information to such Beneficiary's underlying beneficial holders with instructions to utilize such information in preparing their U.S. federal income tax returns. If additional tax information is provided at the specific request of a Beneficiary (and not as required by applicable law), then such Beneficiary shall pay a reasonable fee to the Liquidating Trustee, in an amount to be then determined by the Liquidating Trustee, together with all costs and expenses incurred by the Liquidating Trustee in providing such tax information to such Beneficiary. The Liquidating Trustee shall also file (or cause to be filed) any other statement, return, or disclosure relating to the Liquidating Trust that is required by any governmental units in the U.S. and elsewhere.

In connection with the Liquidating Trustee's performance of his/her duties pursuant to this Section, the Liquidating Trustee may require any Beneficiary to furnish to the Liquidating

Trustee its employer or taxpayer identification number as assigned by the Internal Revenue Service, together with such other information, returns, or forms as the Liquidating Trustee may determine are required, and the Liquidating Trustee may condition any distribution of Liquidating Trust Assets to any Beneficiary upon such receipt of such identification number, any other information and returns and forms as are required for the Liquidating Trustee to comply with Internal Revenue Service requirements.

The Liquidating Trustee will, in good faith, value all Liquidating Trust Assets, and shall make all such values available from time to time, to the extent relevant, and such values shall be used consistently by all parties to the Liquidating Trust (including, without limitation, the Debtor, the Liquidating Trustee, and the Beneficiaries) for all U.S. federal income tax purposes.

Allocations of Liquidating Trust taxable income among the Beneficiaries (other than taxable income allocable to the Disputed Claims Reserve) shall be determined by reference to the manner in which an amount of cash representing such taxable income would be distributed (were such cash permitted to be distributed at such time) if, immediately prior to such deemed distribution, the Liquidating Trust had distributed all of the Liquidating Trust Assets (valued at their tax book value, and other than assets allocable to the Disputed Claims Reserve) to the holders of the interests in the Liquidating Trust, adjusted for prior taxable income and loss and taking into account all prior and concurrent distributions from the Liquidating Trust. Similarly, taxable loss of the Liquidating Trust shall be allocated by reference to the manner in which an economic loss would be borne immediately after a hypothetical liquidating distribution of the remaining Liquidating Trust Assets. The tax book value of the Liquidating Trust Assets for purpose of this paragraph shall equal their fair market value on the Effective Date, adjusted in accordance with tax accounting principles prescribed by the Internal Revenue Code, the applicable Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements.

Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the receipt by the Liquidating Trustee of a private letter ruling if the Liquidating Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Liquidating Trustee), the Liquidating Trustee shall (a) timely elect to treat any Disputed Claims Reserve as a "disputed ownership fund" governed by Treasury Regulation section 1.468B-9, and (b) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes. All parties (including the Liquidating Trustee, the Debtor, and the Beneficiaries) shall report for U.S. federal, state, and local income tax purposes consistently with the foregoing.

The Liquidating Trustee shall be responsible for payment, out of the Liquidating Trust Assets, of any U.S., local, or foreign taxes imposed on the Liquidating Trust or the Liquidating Trust Assets, including the Disputed Claims Reserve. In the event, and to the extent, any Cash retained on account of Disputed Claims in the Disputed Claims Reserve is insufficient to pay the portion of any such U.S., local, or foreign taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims, such U.S., local, or foreign taxes shall be (a) reimbursed from any subsequent Cash amounts retained on account of Disputed Claims, or (b) to the extent such Disputed Claims have subsequently been resolved, deducted from any amounts otherwise distributable by the Liquidating Trustee as a result of the resolution of such Disputed Claims.

The Liquidating Trustee may request an expedited determination of taxes of the Liquidating Trust, including the Disputed Claims Reserve, or the Debtor under Bankruptcy Code section 505(b) for all tax returns filed for, or on behalf of, the Liquidating Trust or the Debtor for all taxable periods through the dissolution of the Liquidating Trust.

7.4 Compliance with Tax Withholding Requirements. In connection with making distributions under the Plan and this Agreement, the Liquidating Trustee shall comply with all tax withholding and reporting requirements imposed on him/her by any governmental unit, and all distributions pursuant to the Plan and this Agreement shall be subject to such withholding and reporting requirements. Any property so withheld will then be paid by the Liquidating Trust to the appropriate authority. The Liquidating Trustee may withhold the entire distribution due any Beneficiary until such time as such Beneficiary provides the necessary information to comply with any withholding requirements of any governmental unit, including an IRS Form W-9 containing its, his, or her employer or taxpayer identification number as assigned by the Internal Revenue Service, or, in the case of Beneficiaries that are not U.S. persons for federal income tax purposes, certification of foreign status on IRS Form W-8BEN, W-8IMY or W-8ECI. If the Liquidating Trustee requests information necessary to comply with any tax withholding or reporting requirements of any governmental unit of any Beneficiary by certified mail and (i) does not receive a response to such request within sixty (60) days, sends a second request by certified mail and again receives no response within sixty (60) days or (ii) the request is returned to the Liquidating Trustee as undeliverable and the Liquidating Trustee is unable to determine a correct address after reasonable efforts, then no further distributions shall be made to such Beneficiary unless the Liquidating Trustee is notified in writing within six (6) months after the date that the initial request was sent of such Beneficiary's necessary information (subject to the Liquidating Trustee's right to require supporting documents evidencing that the necessary information is that of the rightful Beneficiary), in which case all currently due missed distributions shall be made to such Beneficiary on the next Periodic Distribution Date (as defined below) subject to such withholding and reporting requirements, and shall not be supplemented with any interest, dividends or other accruals of any kind. If the Liquidating Trustee does not receive notice of a Beneficiary's necessary information within six (6) months after the date of the initial request, then all distributions to the Beneficiary that has not provided the information necessary to comply with any tax withholding and reporting requirements of any governmental unit may be treated as an unclaimed distribution in accordance with Section 8.8 below or the amount required to be withheld may be so withheld and turned over to the applicable authority.

**ARTICLE VIII:
APPLICATION AND PRIORITY OF DISTRIBUTION OF LIQUIDATING TRUST
FUNDS**

8.1 Money Held in Trust. All moneys and other assets that the Liquidating Trustee receives under this Agreement, until used or applied as provided in this Agreement, shall be held in trust for the purposes for which they were received. The Liquidating Trustee shall not be obligated to pay interest on any moneys that it receives under this Agreement. However, except as otherwise provided in this Agreement, the Liquidating Trustee shall promptly invest moneys of the Liquidating Trust as provided in Section 6.4 of this Agreement.

8.2 Right to Receive Distributions from the Liquidating Trust. The amount of each Beneficiary's Allowed Claim shall represent such person's right to receive distributions

from the Liquidating Trust in accordance with the priorities set forth in the Plan and this Agreement.

Prior to distribution of any portion of the Liquidating Trust Assets to any Beneficiary, the Liquidating Trustee shall first

- (a) reserve for or pay to any taxing authorities, as necessary, any taxes of the Liquidating Trust;
- (b) reserve for or pay to the Office of the U.S. Trustee any statutory fees incurred for the Debtor's Estate after the Effective Date, as may be required;
- (c) reserve for or pay to the Liquidating Trustee's professionals for services rendered and expenses incurred;
- (d) reserve for or pay to the Liquidating Trustee's compensation and reasonable and necessary expenses incurred in fulfilling the Liquidating Trustee's obligations set forth in the Plan and in this Agreement;
- (e) reserve for or pay any additional expenses incurred in fulfilling the obligations of the Liquidating Trustee set forth in the Plan and in this Agreement and not specifically identified in this Section 8.2; and
- (f) establish a Disputed Claims Reserve and a sufficient Cash Reserve.

8.3 Priority of Payment from the Liquidating Trust. After providing for the reserves set forth in Section 8.2 hereof, all proceeds from assets of the Liquidating Trust shall be distributed according to the priorities set forth in the Plan. Generally, Allowed priority and administrative claims will be paid in full, Convenience Class Claims will be paid 62 cents on the dollar, and Allowed General Unsecured Claims will receive a Pro Rata share of remaining funds. Disputed NewKey Claims will be reserved for with a separate Cash reserve and treated pursuant to the Plan and under the terms of the escrow agreement filed with the Plan Supplement.

8.4 Distribution Dates. Distributions will be made by the Liquidating Trustee or a Third Party Disbursing Agent pursuant to the terms of the Plan.

8.5 Interim Distributions. On each applicable Distribution Date, the Liquidating Trustee will distribute the Net Available Cash in accordance with the Plan and this Agreement. A Distribution Date must occur at least once every six (6) months after the Initial Distribution Date, if any amounts are available for distribution on such date.

8.6 Final Distribution. Upon liquidating the Liquidating Trust, and after payment of all fees, costs, and expenses of administration of the Liquidating Trust, the Liquidating Trustee shall make a final distribution of funds to the Beneficiaries (the "Final Distribution") in accordance with the Plan and this Agreement. The Liquidating Trustee shall have no obligation to invest funds of the Liquidating Trust from and after the date of Final Distribution.

8.7 ~~8.7~~ Disputed Claims. Prior to making any distributions under the Plan, the Liquidating Trustee shall establish a reserve for the benefit of holders of Disputed Claims (the

“Disputed Claims Reserve”). The Liquidating Trustee shall distribute to and maintain in the Disputed Claims Reserve cash that would otherwise be distributable to holders of Disputed Claims, assuming such Disputed Claims would be allowed in the Face Amount of such Claims. In determining the Face Amount of Disputed Claims in accordance with the Plan, the Liquidating Trustee may rely on the Debtor’s estimates as to Disputed Claims and will have no liability therefore in the absence of bad faith or gross negligence. As Disputed Claims are resolved, the Liquidating Trustee shall make adjustments to the Disputed Claims Reserve. Except as otherwise agreed by the relevant parties, the Liquidating Trustee shall not be required to (a) make any partial payments or partial distributions on account of a Disputed Claim until all such disputes in connection with such Disputed Claim have been resolved by settlement or Final Order or (b) make any distributions on account of an Allowed Claim of any Beneficiary that holds both an Allowed Claim and a Disputed Claim, unless and until all objections to the Disputed Claim have been resolved by settlement or Final Order.

The distributions held or received by the Liquidating Trustee on account of the Disputed Claims Reserve, along with any Cash Investment Yield held in the Disputed Claims Reserve, shall (a) be deposited in a segregated bank account in the name of the Liquidating Trustee for the benefit of holders of Allowed Claims and Disputed Claims that become Allowed Claims, (b) be accounted for separately, and (c) not constitute property of the Debtor. The Liquidating Trustee shall invest Cash held in the Disputed Claims Reserve in a manner consistent with this Agreement.

On the first Distribution Date that is at least thirty (30) days after a Disputed Claim becomes an Allowed Claim, the Liquidating Trustee shall (a) distribute to the holder of such Allowed Claim any property in the Disputed Claims Reserve that would have been distributed to such holder on the Distribution Dates on which distributions previously were made to holders if the Allowed Claim in issue had been an Allowed Claim on such earlier Distribution Dates; and (b) distribute any remaining property held in the Disputed Claim Reserve on account of any resolved Disputed Claim in accordance with the Plan and this Agreement.

After Final Orders have been entered as to all Disputed Claims, or other final resolution has been reached with respect to all Disputed Claims, any remaining property held in the Disputed Claims Reserve will return to the Liquidating Trust and be distributed in accordance with the Plan and this Agreement.

8.8 Unclaimed and Undeliverable Distributions. Subject to Article V hereof, the Liquidating Trustee shall treat unclaimed and undeliverable distributions in accordance with Article VI of the Plan.

8.9 Delivery of Distributions.

(a) **Distribution Record Date.** The Liquidating Trustee shall not have any obligation to recognize any transfer of any Claim until the record holder of such claim has provided notice to the Liquidating Trustee of such transfer.

(b) **De Minimis Distributions.** The Liquidating Trustee shall not be required to make any interim distributions in an amount less than \$100 provided that any such payments shall be withheld until the Final Distribution. Notwithstanding anything herein to the contrary,

the Liquidating Trustee shall not be required to make any final distributions in an amount less than \$25.

(c) **Provision of Tax Identification Number.** If the Liquidating Trustee requests a tax identification number or other necessary tax information from any Beneficiary and does not receive such information, then the Liquidating Trustee may withhold payment of distributions to such Beneficiary unless and until the Liquidating Trustee is provided such information in writing, in which case all currently due missed distributions shall be made to such Beneficiary on the next Distribution Date (but shall not be supplemented with any interest, dividends or other accruals of any kind). If the Liquidating Trustee does not receive notice of a Beneficiary's tax identification number prior to the Final Distribution Date, then all distributions that would have been made to the Beneficiary shall be treated as undeliverable or unclaimed property in accordance with Section 8.8.

8.10 **Third Party Disbursing Agent.** The Liquidating Trustee may employ, in his/her sole discretion, a Third Party Disbursing Agent to make all distributions, and to otherwise perform all necessary action related to such distributions, required under the Plan and this Agreement.

ARTICLE IX: RESIGNATION AND REMOVAL OF THE LIQUIDATING TRUSTEE

9.1 **Resignation.** ~~At any time after his/her appointment, the Liquidating Trustee may petition the Bankruptcy Court for an order authorizing his/her resignation. The petition shall identify a proposed successor Liquidating Trustee approved by the Advisory Committee, and generally describe the qualifications of the person to act as Liquidating Trustee under this Agreement. If the resignation is due to the death or incapacity of the Liquidating Trustee,~~ The Liquidating Trustee may resign by giving not less than thirty (30) days' prior written notice thereof to the Bankruptcy Court and the Advisory Committee. The Advisory Committee through counsel for the Liquidating Trustee may petition the Bankruptcy Court for the appointment of a successor Liquidating Trustee. In either case, the resignation shall be effective upon the earlier of (a) the successor Liquidating Trustee accepting his/her appointment as Liquidating Trustee under this Agreement or (b) thirty (30) days from the date of the noticed of described above.

9.2 **Successor Liquidating Trustee.** Any successor Liquidating Trustee, however appointed, shall execute and deliver to the resigning Liquidating Trustee a written instrument accepting such appointment, and thereafter, such successor Liquidating Trustee, without further act, shall become vested with all the estates, properties, rights, powers, and duties of the resigning or removed Liquidating Trustee.

ARTICLE X: TERMINATION AND DISCHARGE

10.1 **Termination.** The Liquidating Trust shall terminate on the earliest of the following dates:

- (a) the date that the Liquidating Trust Assets have been liquidated and the proceeds distributed to the Beneficiaries as provided in the Plan and this Agreement;
- (b) the date that the Bankruptcy Court or another court of competent jurisdiction enters a Final Order authorizing the termination of such Liquidating Trust; and
- (c) five (5) years after the Effective Date.

Notwithstanding the foregoing, in the event the Liquidating Trustee shall have been unable, after reasonable efforts, to liquidate or otherwise dispose of the assets of the Liquidating Trust within the initial five (5) year term of this Agreement, then the Liquidating Trustee shall have the right to extend the term of such Liquidating Trust, subject to the Bankruptcy Court entering an order approving such extension within six (6) months from the beginning of such extended term, until the assets of such Liquidating Trust have been sold or otherwise disposed of in fulfillment of the purpose of such Liquidating Trust. The term of the Liquidating Trust shall in no event exceed fifteen (15) years after the Effective Date.

10.2 **Discharge.** The Liquidating Trustee shall be discharged of his/her duties under this Agreement on the earlier of: (a) the date of termination as provided in Section 10.1, or (b) the date that a successor Liquidating Trustee accepts his/her appointment.

ARTICLE XI: MISCELLANEOUS

~~11.1 **Initial Amendment.** Within seven (7) days following the Effective Date, the Liquidating Trust's counsel shall file a motion with the Bankruptcy Court seeking approval for the amendments to this Liquidating Trust Agreement set forth on Annex A hereto (the "Proposed Amendments"). Should the Bankruptcy Court fail to issue an order approving the Proposed Amendments within twenty one (21) days following the filing of the related motion, for any reason, the Liquidating Trustee may resign upon thirty (30) days written notice to the Advisory Committee and the Advisory Committee shall immediately petition the Bankruptcy Court with a proposed replacement.~~

11.1 **No Third-Party Beneficiaries.** Notwithstanding anything to the contrary in the Plan or this Agreement, neither the Liquidating Trustee nor any member of the Advisory Committee, nor any of their officers, directors, employees, members, agents, counsel, or affiliates shall have any duties or responsibilities to, or fiduciary or third-party relationships with, any other person or entity, except as expressly provided in this Agreement or the Plan. Without limiting the generality of the foregoing, the Liquidating Trustee and the Advisory Committee shall have no obligation to:

- (a) provide information to any person, except as provided in this Agreement or the Plan;
- (b) preserve any right or interest of any other person; or
- (c) collect or realize upon any asset or property distributed under the Plan on account of any claim. The Liquidating Trustee shall attempt to collect or realize upon such assets in any manner that the Liquidating Trustee and the Advisory

Committee, in their sole and absolute discretion, shall deem appropriate, and shall not incur any liability to the Debtor or any claimant of the Debtor in so doing.

11.2 Notices. All communications and notices provided to the Trustee under this Agreement shall be in writing and addressed to counsel for the Liquidating Trustee or, if no such counsel is then retained, the Liquidating Trustee. Any notice, if properly addressed, shall be deemed given upon the first business day after placement in the U.S. mail, first class postage prepaid.

11.3 Execution of Documents. The Liquidating Trustee may execute any and all documents necessary and appropriate to effectuate the purpose of this Agreement.

11.4 Modification. This Agreement shall not be modified without further order of the Bankruptcy Court after notice to the Beneficiaries and a hearing. Upon a motion of the Liquidating Trustee, the Bankruptcy Court or other court of competent jurisdiction may approve, without notice to the Beneficiaries, technical modifications to this Agreement which do not adversely affect the rights or interests of the Beneficiaries or which conform the terms of this Agreement to the terms of the Plan.

11.5 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent such provision is unenforceable without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

11.6 Headings. The various headings of this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement.

11.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

11.8 Conflict with the Plan. In the event that there is any conflict between the terms of this Agreement and the Plan, the terms of the Plan shall govern.

11.9 Counterparts. This Agreement may be executed in any number of counterparts. Each counterpart of this Agreement shall, for all purposes, constitute an original, and all of such counterparts, taken together, shall constitute one and the same agreement.

11.10 Enforcement and Administration. The Bankruptcy Court shall retain jurisdiction to enforce and administer the provisions of this Agreement, as set forth in the Plan and herein.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

By: _____
David A. Agay (ARDC No. 6244314)
Sean D. Malloy (ARDC No. 6217401)
Micah E. Marcus (ARDC No. 6257569)
Joshua A. Gadharf (ARDC No. 6296543)
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*Counsel to the Official Committee
of Unsecured Creditors of SGK Ventures,
LLC (f/k/a Keywell L.L.C.)*

By: _____
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*Counsel to SGK Ventures, LLC (f/k/a
Keywell L.L.C.)*

By: _____
Kelly Beaudin Stapleton

LIQUIDATING TRUSTEE

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
Eastern Division

In Re:)
SGK VENTURES, LLC)
(f/k/a Keywell L.L.C.),)
)
)
)
)
Debtor(s))

BK No.: 13-37603

Chapter: 11
Honorable Eugene R. Wedoff

**ORDER GRANTING SGK VENTURES, LLC LIQUIDATING TRUST'S
MOTION TO AMEND LIQUIDATING TRUST AGREEMENT**

Upon the motion (the "Motion") of the SGK Ventures, LLC Liquidating Trust (the "Trust") for entry of an order permitting the Trust to enter into the Amended and Restated SGK Ventures, LLC Liquidating Trust Agreement (the "Amended Trust Agreement"); the Court having reviewed the Motion; sufficient cause appearing therefore; this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, the Confirmation Order, and the Plan; this proceeding being a core proceeding pursuant to 28 U.S.C. § 157(b); and after due deliberation and cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED in its entirety.
2. The Trust is hereby authorized to enter into the Amended Trust Agreement, as attached to the Motion as Exhibit A.

Enter:

Dated:

United States Bankruptcy Judge

Prepared by:

David A. Agay (ARDC No. 6244314)
Sean D. Malloy (ARDC No. 6217401)
Micah E. Marcus (ARDC No. 6257569)
Joshua A. Gadharf (ARDC No. 6296543)
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Counsel to the SGK Ventures, LLC Liquidating Trust