

**EXHIBIT B**

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[DEBTORS' PROPOSED]

PLAN ADMINISTRATOR AGREEMENT

by and among

Trico Marine Services, Inc.  
and certain of its affiliated Debtors-in-Possession,

[The Official Committee of Unsecured Creditors,

U.S. Bank, N.A., in its capacity as Indenture Plan Administrator for the  
8.125% Secured Convertible Debentures due 2013,

Wells Fargo, N.A., in its capacity as Indenture Plan Administrator for the 3% Unsecured Debentures due  
2027]

and

[Plan Administrator]

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Dated as of [·], 2011

PLAN ADMINISTRATOR AGREEMENT  
PREAMBLE

This Plan Administrator Agreement (the “Agreement”) is made this [-] day of July 2011, by and among Trico Marine Services, Inc. and each of its subsidiaries that are debtors under the Debtors’ Second Amended Joint Plan of Liquidation (the “Plan”) (collectively, the “Debtors”), [the Official Committee of Unsecured Creditors appointed in the Debtors’ Chapter 11 cases (the “Creditors’ Committee”), U.S. Bank, N.A. in its capacity as Indenture Plan Administrator for the 8.125% Secured Convertible Debentures due 2013 (the “8.125% Notes Indenture”), Wells Fargo, N.A., in its capacity as Indenture Trustee for the 3% Unsecured Debentures due 2027] and [……………] (the “Plan Administrator”). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Plan.

RECITALS

WHEREAS, on the Petition Date, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”); and

WHEREAS, the Plan and Confirmation Order contemplate that a plan administrator will be appointed to perform its duties in accordance with the Plan, the Confirmation Order and this Agreement;

WHEREAS, the Plan provides that the Plan Administrator will, among other things, retain, preserve, liquidate and distribute the remaining assets of the Estates (the “Estate Assets”) for the benefit of the holders of Allowed Claims entitled to share in the Estate Assets in accordance with the terms of the Plan (the “Beneficiaries”); and

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

WHEREAS, on [-], 2011, the Bankruptcy Court entered the Confirmation Order;

WHEREAS, pursuant to the Plan, the Debtors, the Creditors’ Committee, the 8.125% Notes Indenture Trustee and the 3% Unsecured Debentures Indenture Trustee have jointly designated [……………] as the Plan Administrator, which designation was approved by entry of the Confirmation Order, and, effective upon the date hereof, [……………] is willing to serve as Plan Administrator pursuant to the Plan, the Confirmation Order and this Agreement;

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements set forth herein, the parties hereto agree as follows:

**ARTICLE I.**

**Acceptance of Positions; Fiduciary of the Estates**

Section 1.01 Acceptance. [……………] (a) hereby accepts appointment as the Plan Administrator; and (b) agrees to observe and perform all duties and obligations imposed upon the Plan Administrator under the Plan, the Confirmation Order, this Agreement, other orders of the Bankruptcy Court, and applicable law.

Section 1.02 Fiduciary. The Plan Administrator shall be a fiduciary of each of the Debtors and Beneficiaries and shall perform its obligations consistent with the Plan, this Agreement, the Confirmation Order and other applicable orders.

## **ARTICLE II.**

### **Plan Funding**

The Plan Administrator shall establish a Wind-down Reserve and shall pay, among other costs and expenses, wind-down costs and costs of holding and liquidating the Estates' assets, including, but not limited to, taxes, compensation of the Plan Administrator, and compensation of any professionals retained by the Plan Administrator from the Wind-down Reserve. The Plan Administrator or Plan Advisory Committee, as applicable, must file a notice with the Bankruptcy Court detailing the identity of any attorneys engaged for the purpose of representing the Liquidating Debtors in connection with any Cause of Action, including any D&O Litigation and any Avoidance Actions, and the terms of such engagement. To the extent that the Plan Administrator determines that funds so reserved are insufficient, the proceeds of the continuing liquidation of assets, the EMSL Proceeds and any other assets held by the Liquidating Debtors, to the extent necessary for such purposes, will be allocated to the Wind-down Reserve. The Opco Equity and Warrants may only be monetized in accordance with the terms of Section 4.11 of the Plan and utilized for the purposes contemplated by the Plan after notice to and an opportunity to object by the Plan Advisory Committee. After all costs associated with a Wind-down Reserve have been paid, and/or upon the reasonable determination by the Plan Administrator that the funds in the Wind-down Reserve exceed the amounts necessary to pay the expenses for which such fund is established, the remaining or excess funds shall constitute Residual Distribution Assets, and shall be distributed in accordance with the terms of the Plan.

## **ARTICLE III.**

### **Corporate Governance of Liquidating Debtors**

Section 3.01 Plan Administrator as Sole Officer and Director. The Plan Administrator shall be, as applicable, the sole manager, officer and sole member of any board of directors and/or board of managers of each of the Liquidating Debtors from and following the Effective Date without the need for board or shareholder or membership vote and without any requirement of further action by any members, stockholders, managers, officers, or boards of directors or managers of the Debtors and shall have all rights of a manager, officer and director of the Liquidating Debtors under applicable non-bankruptcy law, including, without limitation, the right and authority to appoint other officers or board members as deemed necessary or appropriate to assist in carrying out the provisions of the Plan, and all rights conferred under the Confirmation Order and the Plan.

Section 3.02 Corporate Authority. The Plan Administrator is authorized to execute and/or deliver on behalf of the Debtors and the Liquidating Debtors, as the case may be, the agreements, documents and instruments necessary or appropriate to effect the Plan or as otherwise contemplated by the Plan, the Plan Supplement, and any schedules, exhibits or other documents attached thereto or contemplated thereby, in the name and on behalf of the Debtors and the Liquidating Debtors. The Plan Administrator may employ one or more persons to assist it with performing its duties under the Plan as described in further detail in Section [-] hereof.

Section 3.03 Role of Plan Administrator. The Plan Administrator is appointed for the primary purposes of administering, liquidating and distributing the Estate Assets in accordance with the terms of

the Plan, including without limitation (1) resolving Disputed Claims, (2) asserting, prosecuting, settling, compromising, withdrawing or resolving objections to Disputed Claims, (3) making distributions of Estate Assets to the Beneficiaries, (4) establishing and administering any necessary reserves for Disputed Claims that may be required, all in accordance with the Plan and this Agreement, (4) asserting, prosecuting, settling, compromising, withdrawing or resolving Causes of Action and (5) taking other actions as may be necessary to effectuate the foregoing. Neither the Plan Administrator nor the Liquidating Debtors have any objective to engage in the conduct of a trade or business.

## **ARTICLE IV.**

### **Distribution of Estate Assets**

Section 4.01 Distributions for Claims and Interests Allowed as of Effective Date. Except as otherwise provided in the Plan or as ordered by the Bankruptcy Court, Distributions to be made on account of Allowed Claims and Interests as of the Effective Date shall be made on the Initial Distribution Date. For the avoidance of doubt, no Distributions, including any Distribution of the Opco Equity and Warrants, shall be made on account of any Allowed Claims in Class 5 and Class 6 unless and until all Priority Amounts have been reserved, funded, paid or satisfied in full, as applicable. The New TMS Equity Interests to be issued under the Plan shall be deemed issued as of the Effective Date. The Plan Administrator shall in its reasonable discretion designate additional Distribution Dates as soon as reasonably practicable as and when material additional assets become available for distribution.

Section 4.02 Interest on Claims. Unless otherwise specifically provided by the Plan, the Confirmation Order, any other order of the Bankruptcy Court or by applicable bankruptcy law, postpetition interest, fees, costs and other charges shall not accrue and not be paid on Allowed Claims. To the extent postpetition interest is payable on an Allowed Claim, the amount of such interest shall be determined as provided (a) in any contract between the Holder of an Allowed Claim and any applicable Debtor, (b) any applicable non-bankruptcy law, or (c) in the absence of (a) or (b), the lower of (i) Federal Judgment Rate or (ii) Prime Rate as such rates in (a) through (c) may be limited by applicable bankruptcy law.

Section 4.03 Disbursing Agent. Except as otherwise provided in the Plan, including Section 3.03(e) thereof, the Plan Administrator shall make all Distributions required under the applicable provisions of the Plan. The Plan Administrator may employ or contract with other entities to assist in or make the Distributions required by the Plan. If the Disbursing Agent is an independent third party designated by the Plan Administrator to serve in such capacity or, in the case of Distributions related to or on account of the 8.125% Notes Secured Claims and the 8.125% Notes Deficiency Claims, the 8.125% Notes Indenture Trustee, such Disbursing Agent shall receive, without further Bankruptcy Court approval, reasonable compensation for Distribution services rendered pursuant to the Plan and reimbursement of reasonable out-of-pocket expenses incurred in connection with such services from the Liquidating Debtors on terms acceptable to the Plan Administrator. No Disbursing Agent shall be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court.

Notwithstanding anything to the contrary herein, all Distributions related to or on account of the 8.125% Notes Secured Claims and the 8.125% Notes Deficiency Claims shall be made to the 8.125% Notes Indenture Trustee and further Distributions on account of such Claims by the 8.125% Notes Indenture Trustee to the record Holders of the 8.125% Notes Secured Claims and the 8.125% Notes Deficiency Claims shall be accomplished in accordance with the 8.125% Notes Indenture and, if applicable, the policies and procedures of the Depository Trust Company. The 8.125% Notes Indenture

Trustee shall administer such Distributions in accordance with the Plan and the 8.125% Notes Indenture. The 8.125% Notes Indenture Trustee shall not be required to give any bond, surety, or other security for the performance of its duties with respect to the administration and implementation of Distributions.

Subject to the other provisions in this Plan, including Section 3.03(e) thereof, any and all Distributions related to or on account of 3% Unsecured Debentures Claims shall be subject to the terms and conditions of the 3% Unsecured Debentures Indenture, including the 3% Unsecured Debentures Indenture Trustee Charging Lien. Any and all Distributions on account of the 8.125% Notes Secured Claims and the 8.125% Notes Deficiency Claims shall be subject to the terms and conditions of the 8.125% Notes Indenture, including the 8.125% Notes Indenture Trustee Charging Lien.

**Section 4.04 Record Date for Distributions.** As of the close of business on the Distribution Record Date, the registers for Claims and Interests shall be closed, and there shall be no further changes in the Holder of record of any Claim or Interest. The Liquidating Debtors, the Disbursing Agent (including the 8.125% Notes Indenture Trustee) and the Plan Administrator, as applicable, shall have no obligation to recognize any transfer of Claim or Interest occurring after the Distribution Record Date, and shall instead be authorized and entitled to recognize and deal for all purposes under the Plan with only those Holders of record stated on the registers of Claims and/or Interests as of the close of business on the Distribution Record Date for Distributions under the Plan.

**Section 4.05 Means of Cash Payment.** Cash payments made pursuant to the Plan shall be by check, wire or ACH transfer in U.S. funds or such other currencies utilized in the ordinary course of business of the applicable Debtors or Liquidating Debtors in making such payment as determined by the Plan Administrator or by other means agreed to by the payor and payee or, absent agreement, such commercially reasonable manner as the payor determines in its sole discretion.

**Section 4.06 Delivery of Distributions.**

(a) Addresses for Delivery

Except as otherwise provided in the Plan, Distributions to Holders of Allowed Claims shall be made by the Disbursing Agent, the Plan Administrator, or the Liquidating Debtors, as the case may be, (i) at the addresses set forth on the proofs of Claim filed by such Holders (or at the last known addresses of such Holders if no proof of Claim is filed or if the Debtors or the Liquidating Debtors, as applicable, have been notified in writing of a change of address), (ii) at the addresses set forth in any written notices of address changes delivered to the Plan Administrator or Disbursing Agent after the date of any related proof of Claim, (iii) at the addresses reflected in the Bankruptcy Schedules if no proof of Claim has been filed and the Disbursing Agent, the Liquidating Debtors, or the Plan Administrator, as applicable, have not received a written notice of a change of address, (iv) in the case of the Holder of a Claim that is governed by an indenture or other agreement and is administered by an indenture trustee, agent, or servicer, at the addresses contained in the official records of such indenture trustee, agent, or servicer, or (v) at the addresses set forth in a properly completed letter of transmittal accompanying securities, if any, properly remitted to the Debtors or Liquidating Debtors, as applicable.

(b) Undeliverable Distributions

If any Holder's Distribution is returned as undeliverable, no further Distributions to such Holder shall be made unless and until the Disbursing Agent, the Plan Administrator, or the Liquidating Debtors, as applicable, or the appropriate indenture trustee, agent, or servicer is notified of such Holder's then current address, at which time all missed Distributions shall be made to such Holder without interest. Amounts in respect of undeliverable Distributions made through the Disbursing Agent, the Plan

Administrator, or the Liquidating Debtors, as applicable, or the indenture trustee, agent, or servicer, shall be returned to the Liquidating Debtors until such Distributions are claimed. All claims for undeliverable Distributions must be made on or before the first anniversary of the Effective Date, after which date all unclaimed property shall revert to the Liquidating Debtors free of any restrictions thereon for further Distributions under the Plan and the claim of any Holder or successor to such Holder with respect to such property shall be discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

(c) Non-Negotiated Checks

All Distributions made by check must be negotiated by the later of (i) 180 days from the date such check is (a) placed in the United States mail, postage prepaid; or (b) placed with a delivery or courier service for delivery; or (ii) on or before the first anniversary of the Effective Date. Checks that are not negotiated within this period will be voided and a stop payment placed on such check after which all unclaimed property shall revert to the Liquidating Debtors free of any restrictions thereon for further Distributions under the Plan and the Claim of any Holder or successor to such Holder with respect to such property shall be discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

Section 4.07 Claims Paid or Payable by Third Parties.

(a) Claims Paid by Third Parties

The Debtors, the Liquidating Debtors, the Disbursing Agent, or the Plan Administrator, as applicable, shall reduce a Claim, and such Claim shall be disallowed without a Claim objection having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment in full or in part on account of such Claim from a party that is not a Debtor or Liquidating Debtor.

(b) Claims Payable by Third Parties

No Distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to any applicable insurance policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the applicable insurers agrees to satisfy in full a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurers' agreement, such Claim may be expunged without a Claim objection having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

(c) Applicability of Insurance Policies

Except as otherwise provided in the Plan, Distributions to Holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Nothing contained in the Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtors or Liquidating Debtors or any Entity may hold against any other Entity, including insurers under any policies of insurance, nor shall anything contained in the Plan constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses. To the extent that one or more of the Liquidating Debtors' insurers pays a Claim in full, then immediately upon such payment, such Claim may be expunged without the necessity of filing a Claim objection and without any further notice to or action, order or approval of the Bankruptcy Court.

Section 4.08 Fractional Dollars; De Minimis Distributions. Any other provision of the Plan notwithstanding, payments of fractions of dollars shall not be made. Whenever any payment of a fraction of a dollar under the Plan would otherwise be called for, the actual payment made shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. The Disbursing Agent, the Liquidating Debtors, or the Plan Administrator, as applicable, or any indenture trustee, agent, or servicer, as the case may be, shall not make any payment of less than one hundred dollars (\$100.00) with respect to any Claim unless a request therefore is made in writing to such Disbursing Agent, the Liquidating Debtors, or the Plan Administrator, as applicable, indenture trustee, agent, or servicer, as the case may be.

Section 4.09 Withholding and Reporting Requirements. In connection with the Plan and all Distributions hereunder, the Disbursing Agent, the Liquidating Debtors, or the Plan Administrator, as applicable, shall comply, to the extent applicable, with all tax withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all Distributions hereunder shall be subject to any such withholding and reporting requirements. The Disbursing Agent, the Liquidating Debtors, or the Plan Administrator, as applicable, shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements.

## **ARTICLE V.**

### **Procedures for Resolving Disputed, Contingent and Unliquidated Claims**

#### Section 5.01 Objections to Claims.

##### (a) Authority

Subject to the express provisions of this Plan, the Debtors, the Liquidating Debtors, or the Plan Administrator (or their authorized representatives), as applicable, shall have the exclusive authority to file, settle, compromise, withdraw, or litigate to judgment any objections to Claims. Subject to Section 4.08 of the Plan, from and after the Effective Date, the Liquidating Debtors or the Plan Administrator (or their authorized representatives), as applicable, may settle or compromise any Disputed Claim without approval of the Bankruptcy Court. Subject to Section 4.08 of the Plan, the Liquidating Debtors or the Plan Administrator (or their authorized representatives), as applicable, also shall have the right to resolve any Disputed Claim outside the Bankruptcy Court under applicable governing law.

##### (b) Objection Deadline

As soon as practicable, but no later than the Claims Objection Deadline, the Liquidating Debtors or the Plan Administrator (or their authorized representatives), as applicable, may file objections with the Bankruptcy Court and serve such objections on the Creditors holding the Claims to which objections are made. Nothing contained herein, however, shall limit the right of the Liquidating Debtors or the Plan Administrator (or their authorized representatives), as applicable, to object to Claims, if any, filed or amended after the Claims Objection Deadline. The Claims Objection Deadline may be extended by the Bankruptcy Court upon motion by the applicable Liquidating Debtor or the Plan Administrator (or their authorized representatives), as applicable, without notice or hearing. Bankruptcy Rule 9006-2 shall apply to any motion to extend the Claims Objection Deadline.

Section 5.02 Estimation of Claims. Any Debtor, Liquidating Debtor, or the Plan Administrator (or their authorized representatives), as applicable, may at any time request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to Bankruptcy Code § 502(c), regardless of whether the Debtors, the Liquidating Debtors or the Plan Administrator, as applicable, have



previously objected to such Claim or whether the Bankruptcy Court has ruled on any objection, and the Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim or including during the pendency of any appeal related to any such objection. In the event the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount will constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Debtors, Liquidating Debtors, or the Plan Administrator, as applicable, may elect to pursue any supplemental proceedings to object to any ultimate payment on such Claim. All of the aforementioned objection, estimation and resolution procedures are cumulative and are not necessarily exclusive of one another. Claims may be estimated and thereafter resolved by any permitted mechanism.

**Section 5.03 No Distributions Pending Allowance.** Notwithstanding any other provision of the Plan, no payments or Distributions shall be made with respect to all or any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim, or some portion thereof, has become an Allowed Claim. The Plan Administrator shall maintain a reserve for distribution on account of Disputed Claims sufficient to cover such Claims in the event they become Allowed Claims in whole or in part.

**Section 5.04 Distributions After Allowance.** The Disbursing Agent shall make payments and Distributions to each Holder of a Disputed Claim that has become an Allowed Claim in accordance with the provisions of the Plan governing the Class of Claims to which such Holder belongs. As soon as reasonably practicable after the date that the order or judgment of the Bankruptcy Court allowing all or part of any Disputed Claim becomes a Final Order, the Disbursing Agent shall distribute to the Holder of such Claim the Distribution (if any) that would have been made to such Holder on the Distribution Date had such Allowed Claim been allowed on the Distribution Date.

**Section 5.05 Claims Already Satisfied.** Notwithstanding the contents of the Bankruptcy Schedules, Claims listed therein as undisputed, liquidated and not contingent shall be reduced by the amount, if any, that was paid by the Debtors prior to the Effective Date including pursuant to orders of the Bankruptcy Court. To the extent such payments are not reflected in the Bankruptcy Schedules, such Bankruptcy Schedules will be deemed amended and reduced to reflect that such payments were made. Nothing in the Plan shall preclude the Liquidating Debtors from paying Claims that the Liquidating Debtors were authorized to pay pursuant to any Final Order entered by the Bankruptcy Court prior to the Confirmation Date.

**Section 5.06 Compliance with Tax Requirements/Allocations.** In connection with the Plan, to the extent applicable, the Liquidating Debtors shall comply with all tax withholding and reporting requirements imposed on them by any governmental unit, and all Distributions pursuant hereto shall be subject to such withholding and reporting requirements. Distributions received by Holders of Claims in satisfaction of interest-bearing obligations shall be allocated first to the full satisfaction of principal of such interest-bearing obligations and second in satisfaction of any accrued and unpaid interest. Notwithstanding any provision in the Plan to the contrary, the Liquidating Debtors or the Plan Administrator, as applicable, (or their authorized representatives) and/or the Disbursing Agent shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the Distributions to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding Distributions pending receipt of information necessary to facilitate such Distributions, or establishing any other mechanisms they believe are reasonable and appropriate. The Liquidating Debtors or the Plan Administrator, as applicable, reserve the right to allocate all Distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, liens and encumbrances.

## **ARTICLE VI.**

### **Liquidation of Causes of Action and Intervention**

Section 6.01 Liquidation of Causes of Action. Subject to the oversight of the Plan Advisory Committee as set forth in Article [-] hereof, the Plan Administrator shall take such steps as the Plan Administrator deems necessary to investigate, pursue, litigate, settle, compromise, transfer, sell, dispose of and/or abandon all or any of the Causes of Action, except the D&O Litigation, to reduce the Causes of Action to cash proceeds and to make distributions of the cash proceeds to the Class 5 Beneficiaries as required under the Plan and this Agreement.

Section 6.02 Intervention. On the Effective Date, and without having to obtain any further order of the Bankruptcy Court, the Plan Administrator is authorized to (i) intervene as plaintiff, movant or additional party, as appropriate, in any Causes of Action (whether asserted in actions, adversary proceedings, contested matters, avoidance actions or motions or otherwise which were filed prior to the Effective Date), where the subject matter of any such Cause of Action involves a Cause of Action, except to the extent the Plan Administrator is prohibited under the Plan from seeking affirmative recovery and, subject to the terms of the Plan (ii) intervene or seek to be substituted in place of the Debtors' estates in connection with the prosecution of any objections to Disputed Claims.

## **ARTICLE VII.**

### **General Powers, Rights and Obligations of the Plan Administrator**

Section 7.01 Appointment of Plan Administrator. Pursuant to Article IV of the Plan, the Plan Administrator shall become the Plan Administrator on the Effective Date.

Section 7.02 General Powers.

(a) Except as otherwise provided in the Plan or in this Agreement, but without prior or further authorization, the Plan Administrator may control and exercise authority over the Estate Assets, over the acquisition, management and disposition thereof and over the management and conduct of the affairs of the Liquidating Debtors, provided, however, that such control and authority over the Estate Assets shall be subject to the provisions of Section [-] of this Agreement and, at the sole discretion of the Plan Advisory Committee, the Plan Advisory Committee may, but is not required to designate a Person to serve as a co-signatory with the Plan Administrator on such bank and/or other investment accounts maintained from time to time by the Plan Administrator, as shall be determined by the Plan Advisory Committee. The Plan Administrator shall execute all agreements and other documents with the signature "as Plan Administrator."

(b) In connection with the management and use of the Estate Assets, and except as otherwise expressly limited in this Agreement, the Plan, or the Confirmation Order, subject to the rights of the Plan Advisory Committee as set forth in Section [-] hereof, the Plan Administrator shall have, in addition to any powers conferred on the Plan Administrator by any other provision of this Agreement, the power and authority to perform the following acts on behalf of the Liquidating Debtors, in addition to any powers granted by applicable non-bankruptcy law or conferred by any other provision of the Plan, the Plan Administrator Agreement or orders of the Bankruptcy Court:

(i) take all steps and execute all instruments and documents necessary to make Distributions to Holders of Allowed Claims;

(ii) object to Disputed Claims, Administrative Claims, Trustee Claims and Professional Fee Claims as provided in the Plan and prosecute such objections;

(iii) resolve, compromise and/or settle any objections to the amount, validity, priority, treatment, allowance or priority of Claims, including Administrative Claims, or Interests;

(iv) comply with the Plan and the obligations hereunder;

(v) if necessary, employ, retain or replace professionals to represent it with respect to its responsibilities;

(vi) establish, replenish or release reserves as provided in the Plan, as applicable;

(vii) take all actions necessary or appropriate to enforce the Debtors' or Liquidating Debtors' rights under any order authorizing a sale of assets, and any related document and to fulfill, comply with or otherwise satisfy the Debtors' or Liquidating Debtors' covenants, agreement and obligations under any such sale and any related document;

(viii) enter into transactions deemed necessary or appropriate to effect the sale, liquidation, dissolution, winding-up or other disposition of the Liquidating Debtors' non-Debtor subsidiaries other than the Opco Entities (or their assets), and may take any and all actions that may be necessary or appropriate to effect such transactions including (1) the execution and delivery of appropriate agreements or other documents of merger, consolidation, restructuring, conversion, disposition, transfer, dissolution or liquidation containing terms that are consistent with the terms of the Plan and that satisfy the applicable requirements of applicable non-bankruptcy law and any other terms to which the Plan Administrator, on behalf of the applicable Entities may agree; (2) the execution and delivery of appropriate instruments of transfer, assignment, assumption or delegation of any asset, property, right, liability, debt or obligation on terms consistent with the terms of the Plan and having other terms for which the applicable parties agree; (3) the filing of appropriate certificates or articles of incorporation, reincorporation, merger, consolidation, conversion or dissolution pursuant to applicable non-bankruptcy law; (4) filing of bankruptcy and insolvency proceedings in accordance with the provisions of applicable law; and (5) all other actions that the Plan Administrator, on behalf of the applicable Entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable law;

(ix) make all determinations on behalf of the Debtors or Liquidating Debtors under any sale;

(x) prepare and file applicable tax returns for any of the Debtors or Liquidating Debtors;

(xi) liquidate or administer through sale, prosecution, compromise or release any of the Estate Assets in accordance with Sections 3.03(a)(2), 3.03(e)(2), and 4.11 and

(xii) deposit funds of the Liquidating Debtors, draw checks and make disbursements consistent with the terms of the Plan;

(xiii) purchase or continue insurance protecting the Debtors, the Liquidating Debtors, the Plan Administrator, their respective representatives, agents, employees or independent contractors, and the property of the Liquidating Debtors;

(xiv) seek entry of a final decree in any of the Chapter 11 Cases at the appropriate time;

(xv) prosecute, resolve, compromise and/or settle any litigation, except the D&O Litigation;

(xvi) seek to resolve tax liability pursuant to Bankruptcy Code § 505;

(xvii) abandon in any commercially reasonable manner, including abandonment or donation to a charitable organization (as such term is described in the Internal Revenue Code § 501(c)(3) (whose contributions are deductible under Internal Revenue Code § 170)) of the Plan Administrator's choice, any assets that are of no material benefit, including distributable Cash hereunder;

(xviii) take all actions necessary or appropriate to pursue, defend, compromise, settle or otherwise resolve any and all Causes of Action, except Avoidance Actions and the D&O Litigation;

(xix) take such other action as the Plan Administrator may determine to be, necessary, desirable or appropriate to carry out the purpose of the Plan;

(xx) to perform such other acts and undertake such other conduct as the Plan Administrator believes is necessary to carry out the purposes and intent of the Plan; and

(xxi) to file periodic reports with the Bankruptcy Court.

(c) The Plan Administrator shall not at any time enter into or engage in any trade or business, and the Plan Administrator shall not use or dispose of any part of the Estate Assets in furtherance of any trade or business.

(d) The Plan Administrator shall have no duties, obligations or authority with respect to the pursuit, defense, settlement or any other aspect of the Avoidance Actions and the D&O Litigation, which litigation shall be entirely managed and controlled by the Creditors' Committee representative on the Plan Advisory Committee as set forth in Section 4.08 of the Plan.

Section 7.03 Retention of Attorneys, Accountants and Other Professionals. The Plan Administrator and the Plan Advisory Committee may retain professionals (the "Professionals") to aid the Plan Administrator and/or the Plan Advisory Committee in the performance of their responsibilities pursuant to the terms of the Plan and this Agreement including, without limitation, the assertion of Causes of Action, reconciliation of Disputed and liquidating and distribution of Estate Assets. The Professionals retained by the Plan Administrator and/or the Plan Advisory Committee may include:

(a) law firm(s) as the Plan Administrator and the Plan Advisory Committee, as applicable, may deem advisable to aid the Plan Administrator and/or the Plan Advisory Committee in the performance of their respective duties and to perform such other functions as may be appropriate to carry out the primary purposes of the Plan. The Plan Administrator may commit the Liquidating Debtors to and shall pay such law firm(s) reasonable compensation from the Wind-down Reserve for services rendered and expenses incurred, which expenses may include, without limitation, the fees and expenses of Persons retained by such counsel to perform any services or otherwise assist in connection with the prosecution of Causes of Action, including, without limitation, expert witnesses and consultants. The Plan Administrator may also engage such law firm(s) on a contingent fee basis as permitted by applicable

law;

(b) An independent public accounting firm to, if necessary, audit the financial books and records of the Liquidating Debtors, to prepare and file all federal, state and local tax returns and related tax forms on behalf of the Liquidating Debtors that the Plan Administrator is obligated to prepare, provide and file pursuant to Section [-] below, and to perform such other reviews and/or audits as the Plan Administrator may deem advisable to carry out the obligations of the Liquidating Debtors. The Plan Administrator may commit the Liquidating Debtors to and shall pay such accounting firm reasonable compensation from the Wind-down Reserve for services rendered and expenses incurred; and

(c) Such other accountants, experts, advisors, consultants, investigators, appraisers, auctioneers or other professionals as are advisable to carry out the obligations of the Liquidating Debtors and effectuate the terms of the Plan. The Plan Administrator may commit the Liquidating Debtors to and shall pay all such Persons reasonable compensation from the Wind-down Reserve for services rendered and expenses incurred.

Section 7.04 Co-Plan Administrators or Separate Plan Administrators. In order to (and only to the extent necessary to) meet any legal requirements of any jurisdiction in which any of the Estate Assets may from time to time be located, the Plan Administrator shall have the power to appoint one or more Persons who have been expressly approved by the Plan Advisory Committee by its unanimous vote (subject to the right of any member of the Plan Advisory Committee to seek and obtain relief from the Bankruptcy Court if unanimous consent cannot be obtained), either to act as co-Plan Administrator jointly with the Plan Administrator of all or any part of the Estate Assets or to act as separate Plan Administrator of all or any part of the Estate Assets and to vest in such Person or Persons, in such capacity, such title to the Estate Assets or any part thereof, and such rights, powers, duties, trusts or obligations as the Plan Advisory Committee shall determine at any time may be necessary for the Plan Administrator to perform his duties under this Agreement, subject to such terms, conditions and limitations as shall be determined in any case by the Plan Advisory Committee.

#### Section 7.05 Compensation of Plan Administrator and Its Professionals.

(a) The Plan Advisory Committee shall negotiate with and authorize the payment of reasonable compensation from the Estate Assets to the Plan Administrator (and to any co-Plan Administrator that may be appointed pursuant to Section [-] above) for services rendered and expenses incurred in fulfilling its duties pursuant to this Agreement, including without limitation, any necessary services rendered and expenses incurred prior to the date that this Agreement becomes effective. The Plan Administrator shall receive compensation, to be determined by the Plan Advisory Committee. The compensation and reimbursement of expenses of the Plan Administrator shall be paid out of the Wind-down Reserve.

(b) On or before the last day of each month following the month for which compensation is sought, each Professional seeking compensation shall serve a monthly statement on the Plan Administrator and the Plan Advisory Committee; provided, however, that failure of any of the Professionals to serve a monthly statement on the Plan Administrator and Plan Advisory Committee for any one or more months shall not waive or impair the right of such Professionals to subsequently seek compensation for all or any number of such months in a later statement delivered to the Plan Administrator and the Plan Advisory Committee. The Plan Administrator and Plan Advisory Committee will have 15 days from the date such statement is received to review the statement and object to such statement by serving a written objection on the Plan Administrator's Professional setting forth the precise nature of the objection and the amount at issue. At the expiration of the 15 day period, the Plan

Administrator shall promptly pay out of the Wind-down Reserve 100% of the amounts requested, except for the portion of such fees and disbursements to which an objection has been made. The parties shall attempt to consensually resolve objections, if any, to any monthly statement. If the parties are unable to reach a consensual resolution of any such objection, the party which received an objection to its fees may seek payment of such fees by filing a motion with the Bankruptcy Court on proper notice to the Plan Administrator and the Plan Advisory Committee.

Section 7.06 Standard of Care; Indemnification; Exculpation. The Plan Administrator shall perform the duties and obligations imposed on the Plan Administrator by this Agreement with reasonable diligence and care under the circumstances. The Plan Administrator shall not be liable for any action it takes or omits to take that it believes in good faith to be authorized or within its rights or powers unless it is ultimately and finally determined by a court of competent jurisdiction that such action or inaction was the result of fraud, gross negligence or willful misconduct. The Liquidating Debtors shall indemnify and hold harmless (i) the Plan Administrator (in its capacity as such and as officer, director, or manager, as applicable, of the Liquidating Debtors and/or of the Liquidating Debtors' non-Debtor affiliates), (ii) such individuals that may serve as officers and directors and employees of the Liquidating Debtors, if any, and (iii) the professionals retained by the Plan Administrator (collectively, the "Plan Administrator Indemnified Parties"), from and against and with respect to any and all liabilities, losses, damages, claims, costs and expenses, including but not limited to attorneys' fees arising out of or due to their actions or omissions, or consequences of such actions or omissions, other than acts or omissions resulting from such Plan Administrator Indemnified Party's willful misconduct or gross negligence, with respect to the Liquidating Debtors and/or of the Liquidating Debtors' non-Debtor Affiliates or the implementation or administration of the Plan or Plan Administrator Agreement. To the extent a Plan Administrator Indemnified Party asserts a claim for indemnification as provided above, the legal fees and related costs incurred by counsel to such Plan Administrator Indemnified Party in monitoring and participating in the defense of such claims giving rise to the asserted right of indemnification shall be advanced to such Plan Administrator Indemnified Party (and such Plan Administrator Indemnified Party undertakes to repay such amounts if it ultimately shall be determined that such Plan Administrator Indemnified Party is not entitled to be indemnified therefore) out of the Wind-down Reserve or any insurance purchased using the Wind-down Reserve. The indemnification provisions of this Section shall remain available to and be binding upon the Plan Administrator or the estate and shall survive any termination of the Plan Administrator Agreement.

Section 7.07 Reliance by Plan Administrator. The Plan Administrator may rely, and shall be fully protected personally in acting upon any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order or other instrument or document that the Plan Administrator has no reasonable belief to be other than genuine and to have been signed or presented other than by the proper party or parties or, in the case of facsimile transmissions, to have been sent other than by the proper party or parties, in each case without obligation to satisfy itself that the same was given in good faith and without responsibility for errors in delivery, transmission or receipt. In the absence of the Plan Administrator's willful misconduct, gross negligence, willful disregard of the Plan Administrator's duties or material breach of this Agreement, the Plan Administrator may rely as to the truth of statements and correctness of the facts and opinions expressed therein and shall be fully protected personally in acting thereon. The Plan Administrator may consult with legal counsel and shall be fully protected in respect of any action taken or suffered by the Plan Administrator in accordance with the opinion of legal counsel (whether or not written). The Plan Administrator may at any time seek instructions from the Bankruptcy Court concerning the acquisition, management or disposition of the Estate Assets.

Section 7.08 Action Upon Instructions. If in performing the Plan Administrator's duties under this Agreement, the Plan Administrator is required to decide between alternative courses of action, or the

Plan Administrator is unsure of the application of any provision of this Agreement or the Plan, then the Plan Administrator may promptly deliver a notice to the Plan Advisory Committee requesting written instructions as to the course of action to be taken by the Plan Administrator. If the Plan Administrator does not receive such written directions within 10 Business Days after the Plan Administrator has delivered such notice, the Plan Administrator may, but shall be under no duty to, take or refrain from taking such action not inconsistent with this Agreement as the Plan Administrator shall deem advisable. If the Plan Administrator does not receive direction from the Plan Advisory Committee within such 10 Business Day period or the Plan Administrator believes that a court order is necessary or advisable to protect the interests of the Beneficiaries or to otherwise determine the Plan Administrator's rights or duties in any respect under this Agreement, then the Plan Administrator may apply to the Bankruptcy Court for a determination as to the course of action to be taken by the Plan Administrator.

Section 7.09 Investment Obligations. The Plan Administrator shall invest and reinvest the liquid Estate Assets consistent with the obligations of a Plan Administrator under Bankruptcy Code § 345 and otherwise pursuant to any Plan Advisory Committee authorization in accordance with Section [-]. The Plan Administrator shall not be liable in any way for any loss or other liability arising from any investment, or the sale or other disposition of any investment, made in accordance with this Section [-], except for any such loss or liability arising from the Plan Administrator's gross negligence, willful misconduct or bad faith.

Section 7.10 Reports. The Plan Administrator shall file periodic reports with the Bankruptcy Court in a manner approved by the Plan Advisory Committee and, upon concluding all activities of the Liquidating Debtors in accordance with the Plan, a final report listing all distributions, payments or disposition of Estate Assets.

Section 7.11 Tax Filings and Notices. The Plan Administrator 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 Debtors, as may be required under the 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"). To the extent required by applicable law and, if not so required, then when specifically requested by a Beneficiary in writing, the Plan Administrator shall provide such Beneficiary with such tax information as is necessary for the preparation by such Beneficiary of such Beneficiary's income tax return. If such 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 Plan Administrator, in an amount to be then determined by the Plan Administrator, together with all costs and expenses incurred by the Plan Administrator in providing such tax information to such Beneficiary. In connection with the Plan Administrator's performance of his duties pursuant to this Section [-], the Plan Administrator may require any Beneficiary to furnish to the Plan Administrator its employer or taxpayer identification number as assigned by the Internal Revenue Service, together with such other information, returns or forms as the Plan Administrator may determine are required, and the Plan Administrator may condition any distribution of Estate Assets to any Beneficiary upon such receipt of such identification number, any other information and returns and forms as are required for the Plan Administrator to comply with Internal Revenue Service requirements. The Plan Administrator may consult with the tax department of the Reorganized Debtors, in advance of issuing or filing any Tax Reports, and shall in good faith consider (but shall have no obligation to accept or comply with) all reasonable suggestions of such tax department.

Section 7.12 Compliance with Securities Laws. If and to the extent required by applicable federal and/or state securities laws, the Plan Administrator shall file with the Securities and Exchange

Commission and other applicable federal and state governmental agencies the reports and other documents and take any other actions necessary to comply with such federal or state securities laws.

Section 7.13 Timely Performance. The Plan Administrator will make continuing efforts to investigate, prosecute, abandon or settle the Causes of Action, object to and reconcile Disputed Claims, make timely distributions, and not unduly prolong the duration of the Liquidating Debtors' corporate existence.

Section 7.14 Consultation with the Plan Advisory Committee. The Plan Administrator shall consult with the Plan Advisory Committee regularly and at all such times when the Plan Administrator deems it necessary or appropriate in connection with carrying out the obligations of the Liquidating Debtors and effectuating the terms of the Plan and shall obtain approvals from the Plan Advisory Committee as required under the Plan and this Agreement.

## **ARTICLE VIII.**

### **The Plan Advisory Committee**

Section 8.01 Establishment of Plan Advisory Committee. On the Effective Date, the Plan Advisory Committee shall be established, using the procedures described in Section 4.08 of the Plan.

Section 8.02 Composition; Replacement. The Plan Advisory Committee shall initially be comprised of three representatives, one each appointed by (i) the 8.125% Notes Indenture Trustee; (ii) the Creditors' Committee; and (iii) the Liquidating Debtors, with the approval of the 8.125% Notes Indenture Trustee, the 3% Unsecured Debentures Indenture Trustee and the Creditors' Committee, *provided however*, that absent such approval, the Liquidating Debtors may seek approval from the Bankruptcy Court for such appointment with such approval binding on all Persons. Under no circumstances shall any representative on the Plan Advisory Committee, or the representative's agent, designee or person under control, be a person that the Liquidating Debtors' Estates potentially have a Cause of Action against or has been or may be named a defendant in any potential Cause of Action. In addition, a Plan Advisory Committee representative may not be an employee, creditor, agent, designee or person under the control of a party that voted against the Plan or otherwise acted to impede Confirmation. In the case of an inability or unwillingness of any member of the Plan Advisory Committee to serve subsequent to his or her original appointment and acceptance, such member shall be replaced by designation of the remaining members of the Plan Advisory Committee. If any position on the Plan Advisory Committee remains vacant for more than 60 days, the Plan Administrator may request the Bankruptcy Court to appoint a successor member. Each replacement member of the Plan Advisory Committee must be a Beneficiary. The Plan Advisory Committee will continue to fully function even while a position on the Plan Advisory Committee remains vacant.

Section 8.03 Plan Advisory Committee Action and By-Laws. The Plan Advisory Committee shall govern its proceedings through the adoption of by-laws ("By-Laws"). No provision of such By-Laws shall supersede any express provision of the Plan or of this Agreement. Except as is otherwise set forth in the Plan or in this Agreement, all authorizations, approvals, directions, advice and decisions of the Plan Advisory Committee shall be decided by majority vote, and the Plan Advisory Committee By-Laws shall so provide, and such By-Laws shall further provide that except as otherwise set forth in the Plan or in this Agreement, at least 2 members of the Plan Advisory Committee shall constitute a necessary quorum required to vote on any matter to be voted upon by the Plan Advisory Committee, except for those matters for which unanimous vote by the Plan Advisory Committee is required under the Plan or this Agreement, for which all members of the Plan Advisory Committee shall constitute a necessary



quorum. Nothing in this Agreement is intended or shall be deemed to limit or restrict the right of any Plan Advisory Committee member from seeking Court review of any act or omission on the part of the Plan Administrator or of any other member of the Plan Advisory Committee.

Section 8.04 Rights and Duties of the Plan Advisory Committee.

The Plan Advisory Committee shall:

- 1) have the right to review and object to settlements and proposed releases or abandonment of objections to Claims, Avoidance Actions or Causes of Action by the Plan Administrator or Liquidating Debtors, as applicable, in accordance with the Plan, provided, however, that such right to review and object shall apply only to Claims, Avoidance Actions or Causes of Action that were asserted in an amount in excess of \$250,000.00.
- 2) have the right to remove or replace the Plan Administrator, with or without cause, upon the unanimous written consent of all Plan Advisory Committee members; and
- 3) perform such additional functions and have such other rights, duties, powers and obligations as (i) may be agreed to by the Liquidating Debtors, (ii) are provided for in the Confirmation Order, or (iii) are provided for by further order of the Bankruptcy Court entered after the Effective Date.

In addition, the representative appointed by the Creditors' Committee on the Plan Advisory Committee shall have the exclusive power and authority to take all actions necessary or appropriate to prosecute, pursue, defend, compromise, settle or otherwise resolve any Avoidance Actions or the D&O Litigation; provided, however, that the Plan Advisory Committee representative appointed by the Creditors' Committee must obtain the consent of the Plan Advisory Committee representative appointed by the 8.125% Notes Indenture Trustee on any decision to commence or not commence or to compromise, settle or otherwise resolve an Avoidance Action or the D&O Litigation. To the extent reasonably practicable, the Creditors' Committee representative will inform the other Plan Advisory Committee representatives prior to commencing any Avoidance Actions or the D&O Litigation and will provide such other representatives periodic updates of the status of those proceedings.

Section 8.05 Advice and Direction to Plan Administrator. The Plan Advisory Committee shall provide advice, instruction and direction on matters arising in the administration and in the disposition and distribution of Estate Assets, and in the pursuit of Causes of Action, as requested by the Plan Administrator, or as otherwise specifically provided herein.

Section 8.06 Resolution of Disputes Between the Plan Advisory Committee and the Plan Administrator. To the extent the Plan Administrator and the Plan Advisory Committee cannot resolve any dispute that may arise between them, either party may file appropriate pleadings with the Bankruptcy Court seeking resolution of the dispute by the Bankruptcy Court.

Section 8.07 Resignation, Death or Removal of Plan Administrator; Removal of Plan Advisory Committee Member. The Plan Administrator or any member of the Plan Advisory Committee may be removed by the Bankruptcy Court for cause shown on a motion by any member of the Plan Advisory Committee or by the Plan Administrator. The Plan Administrator may resign as Plan Administrator by giving written notice of his resignation to the Plan Advisory Committee. The Plan Administrator shall continue to serve as Plan Administrator for the shorter of (a) 90 days following the

tender of the notice of resignation and (b) until the appointment of a successor Plan Administrator shall become effective in accordance with Section [.] of this Agreement.

Section 8.08 Appointment of Successor Plan Administrator. In the event of the death (in the case of a Plan Administrator that is a natural person), dissolution (in the case of a Plan Administrator that is not a natural person), resignation, incompetency or removal of the Plan Administrator, the members of the Plan Advisory Committee shall designate a successor Plan Administrator in accordance with Section 4.07(f) of the Plan and thereupon the successor Plan Administrator, without any further act, shall become fully vested with all of the rights, powers, duties and obligations of its predecessor. To the extent the Plan Advisory Committee cannot agree on a successor Plan Administrator, any party in interest may request the Bankruptcy Court to appoint a successor Plan Administrator.

Section 8.09 Investments. The Plan Advisory Committee may authorize the Plan Administrator to invest the Estate Assets in prudent investments other than those described in § 345 of the Bankruptcy Code.

Section 8.10 Expenses.

(a) Each member of the Plan Advisory Committee shall be entitled to the reimbursement of the member's reasonable and necessary expenses in carrying out his or her duties pursuant to this Agreement, including without limitation, any necessary services rendered and expenses incurred prior to the date that this Agreement becomes effective. The reimbursement of expenses of the Plan Advisory Committee members shall be paid out of the Wind-down Reserve.

(b) On or before the last date of each month following the month for which reimbursement is sought, each member of the Plan Advisory Committee shall serve upon the Plan Administrator, his counsel and the other members of the Plan Advisory Committee a monthly statement of expenses incurred in carrying out the member's duties. The Plan Administrator, his counsel and the other members of the Plan Advisory Committee will have 15 days from the date such statement is received to review the statement and object to such statement by serving a written objection on the member of the Plan Advisory Committee making the request, which objection shall set forth the precise nature of the objection and the amount at issue. At the expiration of the 15 day period, the Plan Administrator shall promptly pay out of Estate Assets 100% of the amounts requested, except for the portion of such fees and disbursements to which an objection has been made. The parties shall attempt to consensually resolve objections, if any, to any monthly statement. If the parties are unable to reach a consensual resolution of any such objection, the party which received an objection to its fees may seek payment of such fees by filing a motion with the Bankruptcy Court on proper notice to the Plan Administrator and his counsel.

Section 8.11 Standard of Care; Exculpation. The Plan Advisory Committee shall not be liable for any action it takes or omits to take that it believes in good faith to be authorized or within its rights or powers unless it is ultimately and finally determined by a court of competent jurisdiction that such action or inaction was the result of fraud, gross negligence or willful misconduct. The Liquidating Debtors shall indemnify and hold harmless (i) the Plan Advisory Committee; and (ii) such individuals that may serve as a member of the Plan Advisory Committee (collectively, the "Plan Advisory Committee Indemnified Parties"), from and against and with respect to any and all liabilities, losses, damages, claims, costs and expenses, including but not limited to attorneys' fees arising out of or due to their actions or omissions, or consequences of such actions or omissions, other than acts or omissions resulting from such Plan Advisory Committee Indemnified Party's willful misconduct or gross negligence, with respect to the Liquidating Debtors or the implementation or administration of the Plan or Plan Administrator

Agreement, as applicable. The Plan Advisory Committee may, in connection with the performance of its duties, and in its sole and absolute discretion, consult with the Plan Administrator's counsel and any other of the Plan Administrator's Professionals and/or with counsel and other professional advisors directly retained by the Plan Advisory Committee, and the Plan Advisory Committee shall not be liable for anything done or omitted or suffered to be done in accordance with the advice or opinions of such professionals. The Plan Advisory Committee shall not be liable for not requiring the Plan Administrator to give a bond or surety or any other security for the performance of the Plan Administrator's duties. If the Plan Advisory Committee determines not to consult with counsel, accountants or other professionals, it shall not be deemed to impose any liability on the Plan Advisory Committee, or its members and/or designees.

Section 8.12 Reliance by Plan Advisory Committee. The Plan Advisory Committee may rely, and shall be fully protected personally in acting upon any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order or other instrument or document that the Plan Advisory Committee has no reasonable belief to be other than genuine and to have been signed or presented other than by the proper party or parties or, in the case of facsimile transmissions, to have been sent other than by the proper party or parties, in each case without obligation to satisfy itself that the same was given in good faith and without responsibility for errors in delivery, transmission or receipt.

Section 8.13 Termination of the Plan Advisory Committee. Upon notice by the Plan Administrator that all Estate Assets have been distributed, abandoned or otherwise disposed of, and the Liquidating Debtors dissolved, the members of the Plan Advisory Committee shall resign their positions, whereon they shall be discharged from further duties and responsibilities.

## **ARTICLE IX.**

### **Retention of Jurisdiction**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, pursuant to the Plan and Confirmation Order, except as otherwise set forth in the Plan, in the Confirmation Order and herein, the Bankruptcy Court shall retain such jurisdiction over all matters arising out of or related to, the Chapter 11 Cases and the Plan pursuant to §§ 105(a) and 1142 of the Bankruptcy Code to the fullest extent legally permissible, including but not limited to jurisdiction to:

- (a) Allow, disallow, determine, liquidate, classify, or estimate a Class 4 Claim or Class 6 Claim;
- (b) Ensure that distributions to Beneficiaries are accomplished pursuant to the provisions of the Plan;
- (c) Adjudicate any and all disputes arising from or relating to distributions to Beneficiaries under the Plan;
- (d) Adjudicate, decide or resolve any and all matters relating to Causes of Action by or on behalf of the Plan Administrator; and
- (e) Adjudicate, decide or resolve any disputes arising in connection with the interpretation, implementation or enforcement of the Plan, the Agreement or actions involving the Plan Administrator or the Plan Advisory Committee.

## **ARTICLE X.**

### **Dissolution**

Within the time determined by the Plan Administrator as necessary or appropriate under the circumstances, each Liquidating Debtor shall be dissolved without any further action by its former stockholders, officers, members, or directors. The Plan Administrator may, in his or her discretion, file all necessary certificates of dissolution and take any other actions necessary or appropriate to effect such dissolution under applicable non-bankruptcy law. All applicable regulatory or governmental agencies shall accept any certificates of dissolution or other papers filed by the Plan Administrator on behalf of each Liquidating Debtor and shall take all steps necessary to allow and effect the prompt dissolution as provided herein, without the payment of any fee, tax, or charge and without need for the filing of reports or certificates, except as the Plan Administrator may determine in his or her sole discretion. Upon entry of a final decree in each Chapter 11 Case, if not previously dissolved, the applicable Liquidating Debtor shall be deemed automatically dissolved and wound up without any further action or formality which might otherwise be required under applicable non-bankruptcy laws.

## **ARTICLE XI.**

### **Miscellaneous**

Section 11.01 Notices. All notices, requests or other communications required or permitted to be made in accordance with this Agreement shall be in writing and shall be delivered personally or by facsimile transmission or electronic mail or mailed by first class mail or by overnight delivery service:

If to the Plan Administrator, at:

[·]

with copies to:

If, to the Liquidating Debtors:

**TRICO MARINE SERVICES, INC.**

Trio Marine Services, Inc.

3200 Southwest Freeway, Suite2950

Houston, TX 77027

with a copy to (which shall not constitute notice):

**VINSON & ELKINS L.L.P.**

Attn: John E. Mitchell

Trammell Crow Center  
2001 Ross Avenue, Suite 3700  
Dallas, TX 75201-2975  
Phone: (214) 220-7700  
Facsimile: (214) 220-7716

**MORRIS, NICHOLS, ARSHT & TUNNELL LLP**

Attn: Robert J. Dehney  
1201 N. Market Street  
P.O. Box 1347  
Wilmington, Delaware 19899-1347  
Phone: (302) 658-9200  
Facsimile: (302) 658-3989

Notices sent out by electronic or facsimile transmission shall be deemed delivered when actually received, and notices sent by first-class mail shall be deemed delivered 3 Business Days after mailing and notices sent by overnight delivery service shall be deemed delivered the next Business Day after mailing.

Section 11.02 Effectiveness. This Agreement shall become effective on the Effective Date.

Section 11.03 Counterparts. This Agreement may be executed in one or more counterparts (via facsimile e-mail or otherwise), each of which shall be deemed an original but which together shall constitute but one and the same instrument.

Section 11.04 Governing Law. This Agreement shall be governed by, construed under and interpreted in accordance with the laws of the State of Delaware.

Section 11.05 Headings. Sections, subheadings and other headings used in this Agreement are for convenience only and shall not affect the construction of this Agreement.

Section 11.06 Interpretative Provisions.

(a) All references to the plural herein shall also mean the singular and to the singular shall also mean the plural unless the context otherwise requires.

(b) All references to the Debtors, the Liquidating Debtors and the Plan Administrator pursuant to the definitions set forth in the Recitals hereto, or to any other Person herein, shall include their respective successors and assigns.

(c) The words “hereof”, “herein”, “hereunder”, “this Agreement” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not any particular provision of this Agreement and as this Agreement now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

(d) The word “including” when used in this Agreement shall mean “including, without limitation”.

Section 11.07 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions of this Agreement, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable any such provision in any other jurisdiction.

Section 11.08 Amendments. This Agreement may be amended from time to time by written instrument executed by the Plan Administrator, upon authorization by the Plan Advisory Committee, except that, no such Plan Advisory Committee authorization shall be required if the Plan Administrator’s counsel advises the Plan Administrator that any such amendment is required pursuant to Bankruptcy Court Order.

Section 11.09 Interests Beneficial Only; No Voting Rights; Successors.

(a) The rights to a beneficial interest hereunder shall not entitle any Beneficiary to (i) any title in or to the Estate Assets as such or to any right to call for a partition or division of Estate Assets or to require an accounting, or (ii) any voting rights with respect to the administration of the Liquidating Debtors’ Estates and the actions of the Plan Administrator in connection therewith.

(b) This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns hereunder.

Section 11.10 No Suits by Creditors. No creditor of the Debtors’ estates shall have any right by virtue of any provision of this Agreement to institute any action or proceeding in law or in equity against any party other than the Plan Administrator on or under or with respect to the Estate Assets.

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

[SIGNATURE PAGE FOLLOWS]

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

TRICO MARINE SERVICES, INC.

THE DEBTOR AFFILIATES AND

THE LIQUIDATING DEBTORS

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title:

[.....], AS PLAN ADMINISTRATOR

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: