

BLUE WATER AUTOMOTIVE SYSTEMS, INC. ET AL.
CREDITORS' TRUST AGREEMENT

This Creditors' Trust Agreement (this "Agreement") is entered into this ____ day of _____, 2008 to create the Blue Water Automotive Systems, Inc. Et Al. Creditors' Trust pursuant to the Amended Joint Plan of Liquidation (the "Plan") of: Blue Water Automotive Systems, Inc., Blue Water Automotive Systems Properties, LLC, Blue Water Plastics Mexico, Ltd., BWAS Holdings, Inc., and BWAS Mexico, LLC (the "Debtors"). The Plan was confirmed and approved by Order of the United States Bankruptcy Court for the Eastern District of Michigan (the "Bankruptcy Court") on _____. The Plan is comprised of separate chapter 11 plans for each of the Debtors.

NOW, THEREFORE, the Blue Water Trust is hereby established in accordance with the following provisions:

RECITALS

A. On the Petition Date, the Debtors filed their voluntary Chapter 11 petition in the Bankruptcy Court; Blue Water Automotive Systems, Inc., Case No. 08-43196 (the "Bankruptcy Proceeding"); Blue Water Automotive Systems Properties, LLC, Case Number 08-43198; Blue Water Plastics Mexico, Ltd., Case Number 08-43199; BWAS Holdings, Inc., Case Number 08-43200; and BWAS Mexico, LLC, Case Number 08-43201 (collectively the "Bankruptcy Cases"). The Committee was appointed by the United States Trustee on February 15, 2008.

B. The Court entered an order jointly administering the Bankruptcy Cases.

C. The Debtor proposed and filed the Plan.

D. The primary purpose of the Blue Water Trust is to (i) oversee and direct the liquidation of the Trust Property for the benefit of the Beneficiaries in accordance with Treasury Regulation Section 301.7701-4(d). The Trust shall not be operated with the objective of

continuing or engaging in the conduct of a trade or business, except to the extent reasonably necessary to preserve or enhance the liquidation value of the Trust Property, and consistent with the liquidating purpose of the Blue Water Trust.

E. The Trust is intended to qualify as a “grantor trust” for federal income tax purposes and the Trustee shall operate and maintain the Trust in compliance with the guidelines for liquidating trusts as set forth in the applicable provisions of Internal Revenue Service Revenue Procedure 94-45, 1994-2 C.B. 684, and Treasury Regulation Sections 1.671-4(a) and 301.7701-4(d) and all subsequent guidelines regarding liquidating trusts issued by the Internal Revenue Service, U.S. Treasury Department and other applicable legislative, administrative, regulatory and judicial agencies and departments.

F. This Blue Water Trust is subject to the jurisdiction of the Bankruptcy Court.

ARTICLE I

DEFINITIONS

All capitalized terms not defined in this Article or otherwise in this Agreement shall have the meanings ascribed to such terms in the Plan, unless the context suggests otherwise. In the event of a contradiction between the Plan and this Agreement, the provisions of the Plan shall govern.

1.1 “**Avoidance Actions**” shall have the meaning set forth in the Plan.

1.2 “**Beneficiaries**” shall have the meaning set forth in Section 3.1 of this Agreement.

1.3 “**Bankruptcy Code**” or “**Code**” means the Bankruptcy Reform Act of 1978, as amended (11 U.S.C. §§101, et seq.).

1.4 “**Bankruptcy Court**” means the United States Bankruptcy Court for the Eastern District of Michigan, Southern Division.

1.7. “**Case**” means the Bankruptcy Proceeding, and/or one, some or all of the Bankruptcy Cases filed together with the Bankruptcy Proceeding.

1.8. “**Causes of Action**” shall have the meaning set forth in the Plan.

1.9. “**Committee**” means the Official Committee of Unsecured Creditors appointed by the United States Trustee in the Case on or about February 15, 2008, Docket No. 53.

1.10. “**Debtors**” means any (one, some or all) of the Debtors that filed the Bankruptcy Cases.

1.11. “**Creditor’s Trustee**” means McTevia & Associates, Inc. or a person selected in accordance with Article IV of this Agreement.

1.12. “**Permitted Investments**” means any of the following: (i) marketable direct obligations issued or unconditionally guaranteed by the United States of America or any agency thereof maturing or redeemable within 180 days from the date of acquisition thereof; (ii) certificates of deposit, maturing no more than 180 days from the date of creation thereof, issued by commercial banks incorporated under the laws of the United States of America or any state thereof or the District of Columbia having membership in the Federal Deposit Insurance Corporation and in amounts not exceeding the maximum amounts insured thereunder; (iii) time deposits, maturing no more than 30 days from the date of creation thereof with commercial banks or savings banks each having membership in the Federal Deposit Insurance Corporation and in amounts not exceeding the maximum amounts insured thereunder; (iv) money market funds managed by nationally recognized firms and making only investments qualified under (i), (ii), (iii) or (v) herein; (v) variable rate demand notes with a rating from Standard & Poor's of "A-1" or better or from Moody's of "P-1" or better; (vi) demand deposits at any bank or savings institution organized under the laws of the United States of America or any state thereof or the

District of Columbia having membership in the Federal Deposit Insurance Corporation, provided, however, such demand deposits shall be in amounts not to exceed the maximum amounts insured by the Federal Deposit Insurance Corporation.

1.13. “**Plan**” means the Plan of Liquidation filed by the Committee in the Case, including any subsequent amendments or modifications filed thereto.

1.14. “**Trust Property**” means the remaining assets of the Debtors which were transferred to the Trust pursuant to the Plan as of the Effective Date, including without limitation any Claims, demands, rights and Causes of Action which the Debtors or the Estates may hold against any person or entity whatsoever, including Avoidance Actions, that were not expressly transferred to another person or entity or released or otherwise treated pursuant to a Bankruptcy Court order or the Plan.

1.15. “**Blue Water Trust**” or “**Trust**” means the Blue Water Automotive Systems, Inc. Et Al. Creditors’ Trust created by this Agreement. The parties hereto agree that the Trust shall be a “complex trust” as defined in the Internal Revenue Code of 1986 as amended, and the Creditor’s Trustee shall report distributions and pay tax, if any, according to those provisions.

ARTICLE II

DECLARATION OF BLUE WATER TRUST

2.1 **Declaration of Blue Water Trust:** Debtors, in their capacity as Debtors-in-possession, hereby absolutely and irrevocably assign and convey to the Creditor’s Trustee, and its successors and assigns, all right, title and interests of Debtors in the Trust Property.

2.2 **Purposes: Undertakings:** The principal purpose of the Blue Water Trust is to liquidate the Trust Property in the manner prescribed by the Plan and this Agreement as rapidly as market conditions and circumstances allow, consistent with the objective of maximizing value; distributing the net proceeds therefrom to the Beneficiaries in accordance with the terms of the

Plan; and engaging in any and all other activities which shall be incidental thereto. All activities of the Creditors' Trustee shall be reasonably necessary to, and consistent with the accomplishment of, these purposes

2.3 **Duties of Blue Water Trust:** Upon creation of the Blue Water Trust, the Creditor's Trustee agrees to undertake and assume the following duties:

- a. To collect, conserve, protect and liquidate the Trust Property;
- b. To collect and safely maintain amounts due to the Blue Water Trust in connection with its assets;
- c. To prosecute and resolve all Causes of Action for the benefit of the Blue Water Trust and the Beneficiaries;
- d. To manage the Blue Water Trust and file status reports with the Bankruptcy Court or other parties-in-interest on a quarterly basis including a summary of any disbursements or receipts;
- e. To proceed in an orderly and businesslike manner to dispose of the Trust Property through sale, lease, exchange, settlement or other manner for the purposes of converting such Trust Property to cash, for ultimate distribution in accordance with the terms of the Plan;
- f. To distribute proceeds as required by the Plan;
- g. Any duty of care, loyalty or other duty imposed or imputed by law;
- h. To prepare and file tax returns on behalf of the Debtors, the Estates, and the Creditors' Trust, including the right to request a determination of tax liability as set forth in section 505 of the Bankruptcy Code;
- i. To request and receive W-9 federal tax forms for any party who is entitled to receive distributions on account of a Claim or Equity Interest;
- j. Final administration of employee benefits, if any, and effecting the final administration and termination of all Compensation and Benefit Plans and collective bargaining agreements; and
- k. To pay any post-confirmation fees due to the Office of the United States Trustee.

2.4 **Appointment of Creditor's Trustee:** The Creditor's Trustee (as defined in Article IV) is hereby appointed as trustee of the Blue Water Trust on the Effective Date, to have all the rights, powers and duties set forth herein and in the Plan.

2.5 **Acceptance of Trust.** The Creditor's Trustee, on behalf of the Trust, accepts the Trust Property and agrees to hold and administer the Trust Property for the benefit of the Beneficiaries subject to the terms and conditions of this Agreement and the Plan.

2.6 **Transfer of Assets:** The Trust Property shall be deemed transferred and assigned to the Blue Water Trust effective as of the Effective Date pursuant and subject to the terms of the Plan.

2.7 **Beneficiaries of Blue Water Trust:** The Trust Property shall be held in trust for the benefit of the Beneficiaries.

2.8 **Term:** The Blue Water Trust shall be effective as of the Confirmation Date and shall remain and continue in full force and effect until the earlier of the conversion to cash of all Trust Property and all costs, expenses and obligations incurred in administering the Blue Water Trust have been fully paid and discharged, and all remaining income proceeds and products of the Trust Property have been distributed to the Beneficiaries, or, subject to Court approval, five years after the date of the creation of the Blue Water Trust, unless the Creditor's Trustee shall determine that the Blue Water Trust shall continue in which case the Creditor's Trustee shall disclose in writing such extension. If the Case has not been administratively closed, the Creditor's Trustee shall obtain permission from the Bankruptcy Court to extend the Blue Water Trust.

2.9 **Relationship:** This Agreement is intended to create a trust and a trust relationship and to be governed and construed in all respects as a trust. The Blue Water Trust is

not intended to be, and shall not be deemed to be or treated as, a general partnership, limited partnership, joint venture, corporation, joint stock company or association, nor shall the Trustee or the Beneficiaries, or any of them, for any purpose be, or be deemed to be or treated in any way whatsoever to be, liable or responsible hereunder as partners or joint ventures. The relationship of the Beneficiaries to the Trustee shall be solely that of beneficiaries of a trust and shall not be deemed a principal or agency relationship, and their rights shall be limited to those conferred upon them by this Agreement.

2.10 **Exemption from Registration:** The rights of the Beneficiaries arising under the Blue Water Trust may be deemed “securities” under applicable law. However, such rights have not been defined as “securities” under the Plan because (i) the parties hereto intend that such rights shall not be securities, and (ii) if the rights arising under the Blue Water Trust in favor of the Beneficiaries are deemed to be “securities”, the exemption from registration under Section 1145 of the Bankruptcy Code is intended to be applicable to such securities. No party to this Agreement shall make a contrary or different contention.

2.11 **Tax Treatment of Trust.**

(a) For United States federal income tax purposes, the transfer of the Trust Property pursuant to the Plan shall be reported as a disposition of the Trust Property directly to and for the benefit of the Beneficiaries immediately following the contribution of the Trust Property by the Debtors to the Blue Water Trust. The Debtors shall be treated as grantors of the Blue Water Trust and the Beneficiaries shall be treated as owners of the Blue Water Trust.

(b) It is intended that the Blue Water Trust qualify as a “grantor trust” for federal income tax purposes, and the Trustee shall operate and maintain the trust in compliance with the guidelines for liquidating trusts as set forth in Internal Revenue Procedure 94-45, 1994-

2 C.B. 684, and Treasury Regulation Section 1.671-4(a) and all subsequent guidelines regarding liquidating trusts issued by the Internal Revenue Service.

2.12 **Subtrusts:** The Trust Property from each Debtor shall be deemed to be held in a separate subtrust (“Subtrust”) for the benefit of those Beneficiaries who are the holders of Allowed Claims against such Debtor in Classes 5 and 6 under the Plan.

ARTICLE III

BENEFICIARIES

3.1 **Beneficiaries:** The Beneficiaries of the Blue Water Trust shall be the holders of Allowed Claims in Classes 5 and 6 of the Plan, in accordance with the Plan, in the Chapter 11 Case. In the event that a Proof of Claim, or a Scheduled Claim, or a portion thereof has been objected to, or in any other way contested, no portion of the Claim shall be deemed Allowed until the objection has been finally determined. The Creditor’s Trustee may be a Beneficiary and shall have no liability for any conflict of interest represented thereby. The Creditor’s Trustee shall have standing to object to any claim that has not been Allowed, whether filed or scheduled, and whether the claim relates to the period of time before or after the establishment of the Blue Water Trust.

3.2 **Beneficiary Representatives:** Two (2) representatives who are Beneficiaries of this Blue Water Trust or who are representatives of the Beneficiaries (“Beneficiary Representatives”) shall be selected by the Committee to represent the interests of the Beneficiaries under this Agreement, and to serve hereunder as Beneficiary Representatives.

ARTICLE IV

CREDITOR’S TRUSTEE

4.1 **Designation of Creditor’s Trustee:** The Creditor’s Trustee of the Blue Water Trust shall be approved upon its execution of this Agreement and approval of the Bankruptcy

Court through the order confirming the Plan and shall be designated by the Committee. The Creditor's Trustee, if not a person, may designate an individual in its employ to carry out the duties of the Creditor's Trustee (the "Designated Agent").

4.2 **Number:** There shall be only one Creditor's Trustee of the Blue Water Trust at all times.

4.3 **Qualifications:** Any Creditor's Trustee, if a person, or Designated Agent, must be of good moral character and must have attained the age of 30 years and must have experience and background appropriate to the responsibilities of a Creditor's Trustee hereunder. Any successor Creditor's Trustee shall be selected by the Beneficiaries. Any disputes over the selection of the Creditor's Trustee or Designated Agent shall be resolved by the Bankruptcy Court.

4.4 **Term of Service:**

- a. The Creditor's Trustee shall serve for the duration of the Blue Water Trust subject to its, his or her earlier death, incapacity, resignation or removal.
- b. The Creditor's Trustee may resign at any time by sending written notice by email or facsimile transmission to the Beneficiary Representatives (with a copy to: _____, email address: _____ and _____, Fax No. _____, email address: _____) specifying the date when such resignation shall take effect. The Creditor's Trustee shall attempt, where possible, to give notice of resignation of not less than seven (7) days before such resignation is to take effect.
- c. The Creditor's Trustee may be removed only for cause upon motion to the Bankruptcy Court by a party-in-interest. If the Creditors' Trustee is removed for cause, such Creditors' Trustee shall not be entitled to any accrued but unpaid fees, reimbursements or other compensation under this Agreement or otherwise. The term "cause" shall mean (a) the Creditors' Trustee's gross negligence or willful failure to perform his duties under this Agreement pursuant to the Plan; or (b) the Creditors' Trustee's misappropriation or embezzlement of any assets belonging to the Creditors' Trust or the proceeds thereof. If a Creditor's Trustee is removed other than for "cause", such Creditors' Trustee shall be entitled to all accrued and unpaid fees, reimbursement, and other compensation, to

the extent incurred or arising or relating to events occurring before such removal, and to any out-of-pocket expenses reasonably incurred in connection with the transfer of all powers and duties and all rights to any successor Creditor's Trustee.

4.5 **Appointment of Successor Creditor's Trustee:**

- a. In the event of the death, resignation, incapacity to serve or removal of the Creditor's Trustee prior to the termination of the Blue Water Trust, a successor Creditor's Trustee shall be selected by the Beneficiary Representatives within seven (7) days after such vacancy shall occur;
- b. Upon the acceptance of office by any successor Creditor's Trustee, all rights, title, duties, powers and authority of the predecessor Creditor's Trustee under this Agreement shall be vested in and undertaken by the successor Creditor's Trustee without any further act being required. No successor Creditor's Trustee shall be liable personally for any act or omission of its, his or her predecessor.

4.6 **Liability of Creditor's Trustee and Beneficiary Representatives; Standard of**

Care: No Creditor's Trustee or Beneficiary Representative shall be liable to the Blue Water Trust or to any Beneficiary for any action taken or omitted to be taken by him in good faith and in the exercise of reasonable judgment, except for such Creditor's Trustee's or Beneficiary Representative's own gross negligence, bad faith or willful misconduct. All actions taken and determinations made by the Creditor's Trustee or Beneficiary Representatives shall, unless otherwise provided in (or unless contrary to the provisions of) this Agreement or the Plan, a final order of the Bankruptcy Court, be final and binding upon persons having any interest in the Blue Water Trust.

4.7 **Compensation of Creditor's Trustee and Reimbursement of Expenses of Creditor's Trustee and Beneficiary Representatives:** The Creditor's Trustee and any professional retained by the Creditor's Trustee shall receive compensation for its/his/her services at their standard, hourly rates. The Creditor's Trustee may also employ professionals on a contingency or commission basis. In the event of a dispute, the Bankruptcy Court shall retain

jurisdiction to hear and resolve the dispute. The Beneficiary Representatives shall be reimbursed for the costs of expenses reasonably incurred in connection with their duties hereunder. To the fullest extent practicable, all expenses incurred by the Creditors' Trustee, including without limitation professional fees, shall be ratably charged against the Subtrusts, each Subtrust to be allocated and charged a percentage of the total expenses equal to the total liquidated value of the Trust Property in that Subtrust divided by the total liquidated value of the Trust Property in all of the Subtrusts.

4.8 **Indemnification of Creditor's Trustee and Beneficiary Representatives:**

- a. The Creditor's Trustee, Beneficiary Representatives or any former Creditor's Trustee or Beneficiary Representative (collectively the "Indemnified Parties") who was or is a party, or is threatened to be made a party to any threatened, pending, or completed action, suit or proceeding of any kind, whether civil, administrative or arbitrative, and whether brought by, or against, the Blue Water Trust by reason of such Indemnified Party being, or having been, Creditor's Trustee, or Beneficiary Representative shall be indemnified by the Blue Water Trust against expenses, costs and fees (including reasonable attorneys fees), judgments, fines, penalties, awards, costs, amounts paid in settlement, and liabilities of all kind incurred by such Indemnified Party in connection with, or resulting from, such action, suit, or proceeding, if such Indemnified Party acted in a manner which such Indemnified Party reasonably believed to be in the best interests of the Blue Water Trust, and otherwise met the standard of care set forth in Section 4.6.
- b. The indemnification provided in Section 4.8(a) is expressly limited to the Trust Property at the time at which such expenses, costs and fees, judgments, fines, penalties, awards, costs, amounts paid in settlement, and liabilities are incurred.
- c. Any indemnification under Section 4.8(a) of this Blue Water Trust shall be made by the Blue Water Trust upon a determination that indemnification is proper under the circumstances. Such determination shall be subject to approval of the Bankruptcy Court.
- d. Reasonable expenses, costs and fees (including reasonable attorneys fees) incurred by, or on behalf of, the Indemnified Party in connection any such action, suit or proceeding, whether civil, administrative, or arbitrative, may be paid by the Blue Water Trust in advance of the final disposition thereof upon receipt of an undertaking by, or on behalf of, the Indemnified

Party to repay such amount unless it shall be determined ultimately that he or she is entitled to be indemnified by the Blue Water Trust.

- e. The Creditor's Trustee shall have the power, generally, or in specific cases, to cause the Blue Water Trust to indemnify the employees and agents of the Blue Water Trust to the same extent that is provided in this Section 4.8 with respect to the Creditor's Trustee, subject to approval by the Beneficiary Representatives.
- f. The indemnification provided in Section 4.8(a) shall be junior to and subject to existing liens and superpriority administrative expense claims.

4.9 **Reliance by Persons Dealing with Blue Water Trust:** Any person dealing with the Blue Water Trust may rely in good faith upon any certificate or other instrument signed by the Creditor's Trustee, or upon any certificate or other instrument signed by any officer or agent of the Blue Water Trust whose authority is evidenced by a certificate or other instrument signed by the Creditor's Trustee, without the necessity of further inquiry by such person into the authority of such Creditor's Trustee, officer or agent to act on behalf of the Blue Water Trust.

4.10 **Bond:** Neither the Creditor's Trustee nor the Beneficiary Representatives shall be required to post any bond or other form of surety, unless otherwise ordered by the Bankruptcy Court.

ARTICLE V

COURT APPROVAL

5.1 **Alienation of Assets:** No Blue Water Trust asset with a fair market value in excess of \$25,000.00 shall be sold, leased or disposed of without prior approval of the Beneficiary Representatives, except that a distribution to beneficiaries of the Blue Water Trust shall not be precluded thereby.

5.2 **Reporting:** The Creditor's Trustee shall report to the Beneficiary Representatives no less frequently than quarterly and file post-confirmation reports with the Bankruptcy Court as required by applicable law.

5.3 **Management of Claims:** The Creditor's Trustee shall not compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims (including without limitation, any Causes of Action) in favor of, or against, the Blue Water Trust or the Trust Property when such Claims exceed the amount of \$25,000.00 without the prior approval of the Beneficiary Representatives.

5.4 **Liability of Beneficiary:** No Beneficiary shall be liable to the Blue Water Trust, nor shall any Beneficiary and their beneficial interests in the Trust Property be charged, except for such Beneficiary's own gross negligence or willful misconduct.

5.5 **Retention of Jurisdiction:** The Bankruptcy Court shall retain original exclusive jurisdiction over the Blue Water Trust, the Creditor's Trustee, and the Trust Property including, without limitation, the determination of all controversies and disputes arising under or in connection with the Blue Water Trust and the settlement of all Avoidance Actions, which are not approved by the Beneficiary Representatives.

ARTICLE VI

FINANCIAL MANAGEMENT

6.1 **Accounts:** The Creditor's Trustee shall establish such funds and accounts as he or she shall, in their discretion, deem necessary or advisable for carrying out the purposes of the Blue Water Trust.

6.2 **Cash Assets:** The Creditors' Trustee shall not invest or reinvest any Trust Property in a security or instrument that does not constitute a Permitted Investment. The Creditors' Trustee shall not be responsible, and shall have no liability whatsoever, to any person for any loss to the Debtors or the amount of interest thereon resulting from the investment thereof in any Permitted Investments. The Creditors' Trustee shall not have any liability to any

retirement, employee benefit or pension plan of the Debtors in excess of the amounts available to be distributed from such Plans.

6.3 Blue Water Trust Powers:

- a. Subject to the provisions and limitations of this Agreement and the Plan, the Creditor's Trustee shall have the power to take any and all actions as, in its sole judgment and discretion, are necessary or advisable to effectuate the purposes of the Blue Water Trust, including (without limitation) each power expressly granted in Section 6.3(b) of this Agreement and any power reasonably incidental thereto.
- b. Without limiting the generality of Section 6.3(a) of this Agreement, and subject to the other provisions of this Agreement, the Creditor's Trustee shall have the powers set forth in the Plan and the power:
 - i. To hold the funds of the Blue Water Trust as provided in Section 6.2 of this Agreement;
 - ii. To compromise, adjust, arbitrate, sue on or defend, abandon or otherwise deal with and settle Claims in favor of or against the Blue Water Trust or the Trust Property, as the Creditor's Trustee shall deem necessary or advisable in connection therewith, including (without limitation) intervening in or assuming the defense of any action against any person that, in the reasonable opinion of the Creditor's Trustee, could reasonably be expected to result in the assertion of a Claim for or against the Blue Water Trust or the payment of any funds from the Trust Property or the incurrence by the Blue Water Trust of any other liability in respect thereof; provided however, that this provision shall not in any manner limit the obligations of the Blue Water Trust to indemnify certain persons as provided in this Agreement;
 - iii. To sell, assign, lease or transfer, in exchange for fair and equivalent consideration and subject to the limitation in Section 5.1, the Trust Property and to undertake any actions in accordance therewith, including execution of document of any nature, and to retain for reasonable compensation any professional person to assist therein;
 - iv. To employ and compensate counsel, accountants, appraisers, and other parties deemed by the Creditor's Trustee to be qualified as experts on such matters as may arise before them, and the opinion of such parties on any matters submitted to the Creditor's Trustee shall be full and complete protection to the Creditor's Trustee with respect to any action taken by the Creditor's Trustee hereunder in

good faith and in accord with such opinion. The provisions of the Code relating to disinterestedness or compensation of professionals, including but not limited to §§ 327 through 331 of the Code and Fed. R. Bankr. P. 2016, shall not be applicable to the Blue Water Trust or to any professional retained by the Creditor's Trustee. In that regard, the Creditor's Trustee is expressly authorized to retain any professional who was employed during the administration of the Chapter 11 Case including, without limitation, any professional retained by the Debtors or the Committee.

- v. To rely upon any affidavit, certificate, letter, notice, electronic transmission, or other paper or communication and/or upon any telephone conversation or other communication, believed by the Creditor's Trustee to be genuine and sufficient and upon any other evidence believed by the Creditor's Trustee to be genuine and sufficient, and to be protected and saved harmless in all payments or distributions required to be made hereunder if made in good faith and without actual notice or knowledge of the changed condition or status of any person receiving payments or other distributions upon a condition;
- vi. Subject to Section 4.8, to indemnify those persons to be indemnified as provided in this Agreement, subject to the terms of this Agreement;
- vii. To appoint such officers, hire such employees, and engage such legal, financial and other advisors and agents as are deemed necessary by the Creditor's Trustee for the proper administration of the Blue Water Trust (subject in all respects to the provisions and limitations of this Agreement), and to compensate such officers, employees, advisors and agents for their services;
- viii. To enter into such other arrangements with third parties as are deemed by the Creditor's Trustee to be useful in carrying out the purposes of the Blue Water Trust;
- ix. To make periodic payments of the Trust Property to the Beneficiaries in accordance with this Agreement;
- x. To institute any action or proceeding at law or in equity for the collection of the sums due the Blue Water Trust, the Debtors, the Debtors-in-Possession or the Liquidating Debtors, or to otherwise advance the interests of the Blue Water Trust, prosecute any such action or proceeding to judgment or final decree, enforce any such judgment or final decree, and collect in the manner provided by law the monies adjudged or decreed to be payable; and

- xi. To do all other acts and things not inconsistent with this Agreement or the Plan which the Creditor's Trustee may deem necessary or desirable for the proper management of the Blue Water Trust, in the same manner and to the same extent as an individual might or could do with respect to his own property, subject to the limitations of applicable law governing the conduct of fiduciaries.
- c. The Creditor's Trustee shall have and is hereby granted standing to pursue any Claims, Avoidance Actions, rights of set-off, or other Causes of Action not otherwise waived or released under the Plan, in the name of Debtors or the Debtors-in-Possession.

6.4 **Accounting and Reporting:**

- a. The Creditors' Trustee shall account separately for the proceeds from the liquidation of Trust Property in each of the Subtrusts. Beneficiaries shall be entitled to distributions only from the Subtrust for the Trust Property of the Debtor against which such Beneficiary holds an Allowed Claim.
- b. Upon receipt of Trust Property, the Creditor's Trustee shall immediately establish and maintain a separate operating account, or accounts in accordance with Section 6.2 of this Agreement. At a minimum, said operating account shall at all times contain funds sufficient to cover the ordinary and reasonable costs, expenses and obligations incurred by the Creditor's Trustee in administering the Blue Water Trust, including (without limitation) those described in Section 6.3 hereof.
- c. In the event the Creditor's Trustee directs a cash distribution from the Blue Water Trust, all payments shall be on a pro rata basis to Beneficiaries in the given class, and the Beneficiaries shall be paid as provided in Section 7.1 hereof.
- d. The Creditor's Trustee shall keep, or cause to be kept, books containing a description of all property that, from time to time, constitutes the Trust Property, and an accounting of receipts and disbursements, which shall be open to inspection by Beneficiaries at reasonable times. The Creditor's Trustee shall otherwise keep the Beneficiaries fully informed in the matters of the Blue Water Trust by furnishing to the Beneficiaries annually a statement of receipts and disbursements for the Blue Water Trust for the period since the last statement and including a listing and description of each of the assets of the Blue Water Trust as of the date of such report.
- e. All costs, expenses and obligations incurred by the Creditor's Trustee in accordance with the provisions of this Agreement in administering this Blue Water Trust or in any other manner connected, incidental or related

thereto, including those of attorneys, accountants and other persons employed by the Creditor's Trustee to assist in the administration of the Trust Property, shall be a charge against the Trust Property. The Creditor's Trustee shall maintain adequate reserves for such payment prior to making distribution to the Beneficiaries.

6.5 **Tax Returns; Tax and Other Payments:** The Creditor's Trustee shall timely file such income tax and other returns and statements as are required to comply with applicable provisions of the Internal Revenue Code and of any state law and the regulations promulgated thereunder. The Blue Water Trust shall be responsible for paying taxes and any other obligations or liabilities of any and all kinds whatsoever which at any time are lawfully levied, assessed upon or become payable with respect to the Blue Water Trust or the Trust Property, from assets of the Trust Property.

6.6 **Assessments Against Blue Water Trust Property:** The Trust Property shall be subject to assessment for and payment of such additional funds as are necessary to pay and discharge the following:

- a. All payments due to the United States Trustee for fees in connection with the Case that relate to the Blue Water Trust; and
- b. Payment of all Creditor's Trustee and Creditor's Trustee's professional fees and expenses incurred in connection with the Blue Water Trust.

ARTICLE VII

DISTRIBUTIONS

7.1 **Required Distributions:**

- a. All Distributions made by the Creditor's Trustee shall be made in the order of the priorities of the Beneficiaries who are entitled to receive a distribution which priority is set forth in the Plan and the Bankruptcy Code.
- b. No distributions shall be made to a subordinate Class, unless and until, there are sufficient funds to fully pay the group (in the case of those Beneficiaries whose claims are set forth in Article II of the Plan) or the Class whose Claims have a higher priority.

- c. The Creditor's Trustee shall distribute to each holder of an Allowed Claim in a Class in accordance with the terms of the Plan. In the event there are not sufficient funds to fully pay all of the Allowed Claims in a particular Class, then all payments shall be made on a Pro Rata basis.
- d. Distributions shall be made as and when the Creditor's Trustee determines there are adequate funds on hand in the Blue Water Trust to permit a distribution to Beneficiaries. The Creditor's Trustee shall maintain a reasonable cash reserve as shall be determined by the Creditor's Trustee in its sole and complete discretion.
- e. At such time as all Trust Property has been liquidated, the remaining funds on hand shall be distributed to Beneficiaries after payment of permitted fees and expenses.

7.2 **Special Distribution Provisions:**

- a. Unless otherwise agreed to, distributions shall be made to Beneficiaries (i) at their addresses set forth in the Proof of Claim filed by such Beneficiaries (or last known addresses of such Beneficiaries if no Proof of Claim is filed or Debtors was notified of a change of address); (ii) at the addresses set forth in any written notices of address change delivered to Debtors (or to the Creditor's Trustee) after the date of the Proof of Claim; or (iii) at the addresses reflected in Debtors' books and records or schedules if no Proof of Claim has been filed and no written notice of address change has been received by Debtors. Delivery of distributions to Beneficiaries shall be deemed effective and proper upon the deposit of such distribution with the United States Postal Service, in a properly addressed envelope, first class mail, postage prepaid.
- b. If any distribution to a holder of an Allowed Claim is returned to the Creditors' Trustee as undeliverable, no further distributions shall be made to such holder unless and until the Creditors' Trustee is notified in writing of such holder's then-current address. Undeliverable distributions shall remain in the possession of the Creditors' Trustee until such time as any such distributions become deliverable. Undeliverable cash shall not be entitled to any interest, dividends or other accruals of any kind. As soon as reasonably practicable, the Creditors' Trustee shall make all distributions that become deliverable.
- c. Any other provision of the Plan notwithstanding, no payments of fractional cents will be made to any Beneficiary as holder of an Allowed Claim. Whenever any payment of a fraction of a cent to any holder of an Allowed Claim would otherwise be called for, the actual payment made will reflect a rounding downward of such fraction to the nearest whole cent. In addition, notwithstanding any other provision of the Plan, no payments of less than twenty-five dollars (\$25) shall be required to be

made to any Beneficiary as holder of an Allowed Claim. Whenever any payment of less than twenty-five dollars (\$25) would otherwise be called for under the Blue Water Trust or the Plan, the Creditor's Trustee may, but shall not be obligated to make any payment whatsoever.

ARTICLE VIII

GENERAL PROVISIONS

8.1 **Irrevocability:** The Blue Water Trust is irrevocable, but may be amended only upon order of the Bankruptcy Court.

8.2 **Recordation:** This Agreement may be recorded in such places the Creditor's Trustee deems advisable.

8.3 **Waiver:** No failure or delay of any party to exercise any right or remedy pursuant to this Agreement shall affect such right or remedy or constitute a waiver by such party of any right or remedy pursuant thereto. Resort to one form of remedy shall not constitute a waiver of alternative remedies.

8.4 **Execution in Counterparts:** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all such counterparts together shall constitute one and the same instrument. This Agreement may be executed by facsimile.

8.5 **Severability:** Should any provision of this Agreement be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of this Agreement.

8.6 **Headings:** The headings used in this Agreement are inserted for convenience only and shall not affect the construction of any provisions of this Agreement.

8.7 **Governing Law:** The laws of Michigan shall govern the interpretation and validity of the provisions of this Agreement and all questions relating to management, administration and investment of the Blue Water Trust and the Trust Property.

8.8 **Blue Water Trust Location:** The offices of the Blue Water Trust shall be maintained at the office of the Creditor's Trustee.

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SIGNATURES ON FOLLOWING PAGE.]

