

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

In re:

THE FAIRCHILD CORPORATION, et al.,¹

Debtors.

)
) Chapter 11
)
) Case No. 09-10899 (CSS)
)
) Jointly Administered
)

**FIRST~~SECOND~~ AMENDED JOINT PLAN OF LIQUIDATION OF
THE FAIRCHILD CORPORATION AND ITS DEBTOR
AFFILIATES UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

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¹ The last four digits of Fairchild's federal tax identification number are 8587. The mailing address for Fairchild is 1750 Tysons Boulevard, Suite 530, McLean, Virginia 22102. Due to the large number of Debtors in these jointly administered cases, a complete list of the Debtors, the last four digits of their federal tax identification numbers and their addresses is not provided herein. A complete list of such information may be obtained on the website of the Debtors' noticing and claims agent at <http://chapter11.epiqsystems.com/fairchild>.

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**JOINT PLAN OF LIQUIDATION OF
THE FAIRCHILD CORPORATION AND ITS DEBTOR
AFFILIATES UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

INTRODUCTION

The Debtors propose this joint Plan for the resolution of outstanding Creditor Claims against, and Interests in, the Debtors pursuant to the Bankruptcy Code. Capitalized terms used in the Plan and not otherwise defined shall have the meanings ascribed to such terms in the Glossary of Terms described in Article I of the Plan. Reference is made to the Disclosure Statement, filed contemporaneously with the Plan, for a discussion of the Debtors' history, businesses, assets, results of operations, and pro forma projections of results of future operations and proceeds from anticipated liquidations, as well as a summary and description of the Plan and certain related matters. The Debtors are the joint proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code.

ALL HOLDERS OF CLAIMS AND/OR INTERESTS ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE, IN THE CASE OF CREDITORS, VOTING TO ACCEPT OR REJECT THE PLAN. THE PLAN PROVIDES FOR SUBSTANTIVE CONSOLIDATION OF ALL OF THE DEBTORS FOR ALL PURPOSES ASSOCIATED WITH CONFIRMATION AND CONSUMMATION. THE VOTES TO ACCEPT OR REJECT THE PLAN BY HOLDERS OF CLAIMS SHALL BE TABULATED ON A CONSOLIDATED BASIS WITH CREDITORS ENTITLED TO ONE VOTE FOR EACH CLAIM AGAINST THE DEBTORS NOTWITHSTANDING THAT SUCH CLAIM MAY HAVE BEEN FILED OR ASSERTED AGAINST MORE THAN ONE DEBTOR; PROVIDED, HOWEVER, THAT IN THE EVENT THE BANKRUPTCY COURT DOES NOT AUTHORIZE SUBSTANTIVE CONSOLIDATION, THE PLAN MAY CONSTITUTE SEPARATE PLANS OF LIQUIDATION FOR EACH DEBTOR WHOSE ESTATE IS NOT CONSOLIDATED AND, SUBJECT TO THE PROVISIONS OF THE PLAN, THE VOTES TO ACCEPT OR REJECT THE PLAN BY HOLDERS OF CLAIMS, TO THE EXTENT APPLICABLE, SHALL BE TABULATED AS VOTES TO ACCEPT OR REJECT SUCH SEPARATE PLANS OF LIQUIDATION. AS DESCRIBED IN THE RISK FACTORS CONTAINED IN THE DISCLOSURE STATEMENT, SHOULD SUBSTANTIVE CONSOLIDATION NOT BE APPROVED, THE RESULTING RISE IN ADMINISTRATIVE COSTS MAY RESULT IN GENERAL UNSECURED CREDITORS RECEIVING LITTLE OR NO DISTRIBUTION.

ARTICLE I
DEFINED TERMS, RULES OF INTERPRETATION
AND COMPUTATION OF TIME

1.1 Defined Terms.

As used in the Plan, Disclosure Statement and any Plan Documents, unless otherwise defined or the context otherwise requires, capitalized terms shall have the following specified meanings:

- (1) “*Accrued Professional Compensation*” means, at any given moment, all accrued and/or unpaid fees and expenses (including, without limitation, (a) success and completion fees allowed or awarded by an order of the Bankruptcy Court or any other court of competent jurisdiction; and (b) fees or expenses allowed or awarded by an order of the Bankruptcy Court or any other court of competent jurisdiction) for legal, financial, advisory, accounting and other services and reimbursement of expenses that are awardable and allowable under section 328, 330(a) or 331 of the Bankruptcy Code or otherwise rendered prior to the Effective Date or thereafter in connection with (x) applications filed pursuant to section 330 and 331 of the Bankruptcy Code and (y) motions seeking the enforcement of the provisions of the Plan or Confirmation Order by all retained Professionals in the Chapter 11 Cases that the Bankruptcy Court has not denied by a Final Order, to the extent that any such fees and expenses have not previously been paid regardless of whether a fee application has been filed for any such amount. To the extent that the Bankruptcy Court or any higher court denies by a Final Order any amount of a retained Professional’s fees or expenses, then those amounts shall no longer be Accrued Professional Compensation.
- (2) “*Administrative Claim*” means a Claim for costs and expenses of administration pursuant to section 503(b), 507(a)(2), 507(b) or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred after the Petition Date of preserving the Debtors’ Estates and operating the Debtors’ businesses (such as wages, salaries or commissions for services, and payments for goods and other services and leased premises); (b) compensation for legal, financial advisory, accounting and other services and reimbursement of expenses awarded or Allowed pursuant to section 328, 330(a) or 331 of the Bankruptcy Code or otherwise for the period commencing on the Petition Date and ending on the Confirmation Date; (c) all fees and charges assessed against the Debtors’ Estates pursuant to chapter 123 of title 28 of the United States Code, 28 U.S.C. §§ 1911-1930; and (d) all requests for compensation or expense reimbursement for making a substantial contribution in the Chapter 11 Cases pursuant to sections 503(b)(3), (4) and (5) of the Bankruptcy Code.
- (3) “*Administrative Claim Bar Date*” means the deadline for Holders of Administrative Claims to file a request with the Bankruptcy Court for payment of an Administrative Claim, which date shall be the first Business Day that is at least

30 calendar days after the Confirmation Date or such other date as is set forth in the Confirmation Order as the Administrative Claim Bar Date.

- (4) “*Affiliate*” has the meaning set forth in section 101(2) of the Bankruptcy Code.
- (5) “*Allowed*” means, with respect to any Claim against any Debtor, except as otherwise provided herein, any Claim that has not previously been paid, released or otherwise settled or satisfied and which Claim is (i) listed by such Debtor in its Schedules as liquidated in amount and not disputed or contingent, or (ii) memorialized by a timely filed Proof of Claim and as to which there has been no objection filed or, if an objection has been filed, such Claim has been Allowed by a Final Order of the Bankruptcy Court. For the purpose of determining the amount in which a Claim is Allowed, the Debtors or the Liquidating Trust, as the case may be, may, at their option and without further order of the Bankruptcy Court, deduct therefrom an amount equal to the amount of any claim which the Debtors or Liquidating Trust, as the case may be, hold against the Holder thereof, to the extent such claim may be set off pursuant to applicable law. For the avoidance of doubt, any claim belonging to any of the Debtors that is released or waived pursuant to the Plan may nevertheless be used or applied by the Debtors or Liquidating Trust, as the case may be, as a set off or affirmative defense to any Claim in accordance with the immediately preceding sentence.
- (6) “*Avoidance Actions*” means any and all avoidance, recovery, subordination or other actions or remedies against Persons that may be brought by or on behalf of the Debtors or their Estates under the Bankruptcy Code or applicable non-bankruptcy law, including, without limitation, actions, settlements or remedies under sections 510, 542, 543, 544, 545, 547, 548, 549, 550, 551, 552 and 553 of the Bankruptcy Code.
- (7) “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time.
- (8) “*Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware or any other court having competent jurisdiction over the Chapter 11 Cases.
- (9) “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure, as amended from time to time.
- (10) “*Banner Debtors*” means Sheepdog in Liquidation 1, Inc. f/k/a Banner Aerospace Holding Company I, Inc. (“*Banner Holding*”), Sheepdog in Liquidation 2, LLC f/k/a Fairchild Realty, LLC (“*Fairchild Realty*”) and certain of their respective subsidiaries, as follows: (i) Sheepdog in Liquidation 3, Inc. f/k/a DAC International, Inc., (ii) Sheepdog in Liquidation 5, Inc. f/k/a Matrix Aviation, Inc., (iii) Sheepdog in Liquidation 6, Inc. f/k/a NASAM Incorporated, (iv) Sheepdog in Liquidation 4, Inc. f/k/a GCCUS, Inc., (v) Sheepdog in Liquidation 8, Inc. f/k/a Professional Aircraft Accessories, Inc. and (vi) Sheepdog in Liquidation 7, Inc.

f/k/a Professional Aviation Associates, Inc., each of which is wholly owned by either Banner Holding or Fairchild Realty, and each of which is a Debtor.

- (11) “*Banner Claims*” means any Claims arising out of or relating to any of the Banner Debtors that, as of the Effective Date, had not been either assumed and assigned to Greenwich or paid in full or otherwise provided for by Greenwich in connection with the Banner Sale.
- (12) “*Banner Sale*” means the sale of substantially all of the assets of the Banner Debtors used in or otherwise related to the distribution of aircraft parts to commercial airlines and air cargo carriers to Greenwich approved by the Bankruptcy Court in an initial order approving the sale [Docket No. 381] and related orders to facilitate implementation of the sale.
- (13) “*Beneficiaries*” means Holders of Allowed Claims and Allowed Interests who are entitled to any payment or Distribution from the Liquidating Trust in accordance with the Plan.
- (14) “*Business Day*” means any day, other than a Saturday, Sunday or “legal holiday” within the meaning of Bankruptcy Rule 9006(a).
- (15) “*Cash*” means cash and cash equivalents.
- (16) “*Chapter 11 Cases*” means the voluntary cases commenced by the Debtors in the Bankruptcy Court under chapter 11 of the Bankruptcy Code.
- (17) “*Claim*” means any claim as defined in section 101(5) of the Bankruptcy Code against a Debtor.
- (18) “*Claimant*” means the Holder of a Claim against or an Interest in Debtor.
- (19) “*Claims and Solicitation Agent*” means Epiq Bankruptcy Solutions, LLC, located at 757 Third Avenue, 3rd Floor, New York, NY 10017, retained as the Debtors’ claims and solicitation agent, or its successor, as may be appointed by the Liquidating Trust in the exercise of its discretion.
- (20) “*Claims Register*” means the official register of Claims maintained by the Claims and Solicitation Agent.
- (21) “*Class*” means a category of Holders of Claims and Interests as set forth in the Plan.
- (22) “*Confirmation*” means the entry of the Confirmation Order on the docket of the Chapter 11 Cases, subject to the conditions specified in Article XI hereof having been: (a) satisfied; or (b) waived.

- (23) “*Confirmation Date*” means the date upon which the Confirmation Order is entered by the Bankruptcy Court on its docket, within the meaning of Bankruptcy Rules 5003 and 9021.
- (24) “*Confirmation Hearing*” means the hearing at which the Confirmation Order is first considered by the Bankruptcy Court.
- (25) “*Confirmation Order*” means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.
- (26) “*Consummation*” means the occurrence of the Effective Date and the transactions contemplated to take place on or about the Effective Date.
- (27) “*Creditor*” means any creditor of a Debtor as defined in section 101(10) of the Bankruptcy Code.
- (28) “*Creditors’ Committee*” means the Official Committee of Unsecured Creditors in these Chapter 11 Cases.
- (29) “*Cure*” means, at the option of the Debtors or the Liquidating Trustee, as the case may be, and subject to any defenses that may be raised, (a) treatment that leaves unaltered the legal, equitable and contractual rights to which the Holder of a Claim entitles the Holder of such Claim, including payment in the ordinary course of business in accordance with the terms of the underlying obligation after resolution of any disputes concerning such payment or (b) following the later of (i) the Effective Date or (ii) the date on which an executory contract or unexpired lease is assumed, Cash or such other property as may be ordered by the Bankruptcy Court or agreed upon by the parties, in an amount equal to all unpaid monetary obligations under applicable law (including, to the extent provided for under the applicable executory contract or unexpired lease assumed pursuant to section 365 of the Bankruptcy Code, postpetition interest at the contract rate as agreed between the parties or determined by the Bankruptcy Court) or such lesser amount as may be agreed upon by the parties, under an executory contract or unexpired lease assumed pursuant to section 365 of the Bankruptcy Code, to the extent such obligations are enforceable under the Bankruptcy Code and applicable non-bankruptcy law.
- (30) “*Debtors*” means, collectively: A10 Inc.; Aero International Inc.; Aircraft Tire Corporation; Sheepdog in Liquidation 1, Inc. f/k/a Banner Aerospace Holding Company I, Inc.; Banner Aerospace Holding Company II, Inc.; Banner Aerospace Services, Inc.; Banner Aerospace-Singapore, Inc.; Banner Capital Ventures, Inc.; Banner Energy Corporation of Kentucky, Inc.; Banner Industrial Distribution, Inc.; Banner Industrial Products, Inc.; Bar DE, Inc.; Sheepdog in Liquidation 3, Inc. f/k/a DAC International, Inc.; Dallas Aerospace, Inc.; DEM Mairoll, LLC; Discontinued Aircraft, Inc.; Discontinued Services, Inc.; EURO MLS, Inc.; Fairchild Data Corporation; Fairchild Fasteners Corp.; Fairchild France, Inc.; Fairchild Holding Corp.; Fairchild International, Inc.; Sheepdog in Liquidation 2,

LLC f/k/a Fairchild Realty, LLC; Fairchild Retiree Medical Services, Inc.; Fairchild Sports USA, Inc.; Fairchild Sports, Inc.; Fairchild Switzerland, Inc.; Fairchild Technologies IP, Inc.; Fairchild Titanium Technologies, Inc.; Fairchild Trading Corp.; Faircraft Sales Ltd.; Sheepdog in Liquidation 4, Inc. f/k/a GCCUS, Inc.; Gobble Gobble, Inc.; Intersport Fashions West, Inc.; Jenkins Coal Dock Company, Inc.; Mairoll, Inc.; Marcliff Corporation; Marson Creative Fastener, Inc.; Sheepdog in Liquidation 5, Inc. f/k/a Matrix Aviation, Inc.; Meow, Inc.; Sheepdog in Liquidation 6, Inc. f/k/a NASAM Incorporated; PB Herndon Aerospace, Inc.; Plymouth Leasing Company; Sheepdog in Liquidation 8, Inc. f/k/a Professional Aircraft Accessories, Inc.; Sheepdog in Liquidation 7, Inc. f/k/a Professional Aviation Associates, Inc.; Recoil Australia Holdings, Inc.; Recoil Holdings, Inc.; Recoil Inc.; Recycling Investments II, Inc.; Recycling Investments III, Inc.; Republic Thunderbolt North LLC; Republic Thunderbolt West, LLC; Republic Thunderbolt, LLC; RHI Holdings, Inc.; Sheepdog, Inc.; Sovereign Air Limited; Suchomimous Terensis, Inc.; Swimming Upstream LLC; The Fairchild Corporation; and The Rooster, Inc.

- (31) “*DIP Facility*” means those certain debtor-in-possession senior, secured credit facilities entered into in connection with the Post Petition Financing.
- (32) “*Disallowed*” means (a) a Claim, or any portion thereof, that has been disallowed by a Final Order or (b) a Claim that was not scheduled by the Debtor as a fixed, liquidated, non-contingent and undisputed Claim and which has not been timely filed or deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order.
- (33) “*Disclosure Statement*” means the accompanying *Disclosure Statement for the Second Amended Joint Plan of Liquidation of The Fairchild Corporation and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code*, dated ~~October 7~~ November 9, 2009, as it may be amended, supplemented or modified from time to time, describing the Plan that is prepared and distributed in accordance with sections 1125, 1126(b) and 1145 of the Bankruptcy Code, Bankruptcy Rule 3018 and other applicable law.
- (34) “*Disclosure Statement Hearing*” means the date of the Bankruptcy Court’s hearing on the Debtors’ Motion to approve the Disclosure Statement as containing adequate information in accordance with section 1125 of the Bankruptcy Code.
- (35) “*Disputed*” means, with respect to any Claim or Interest, any Claim or Interest: (a) listed on the Schedules as unliquidated, disputed or contingent, unless a Proof of Claim has been timely filed; (b) as to which a Debtor or the Liquidating Trustee, as applicable, has interposed an objection or request for estimation in accordance; or (c) as otherwise disputed by a Debtor or the Liquidating Trust, as the case may be, in accordance with applicable law, an objection, request for extension or dispute that has not been withdrawn or determined by a Final Order.

- (36) “*Distributable Assets*” means all Trust Assets and proceeds thereon, including any distributions in kind as determined by the Trustees in the exercise of their business judgment to be in the best interests of the Beneficiaries, held or generated by the Liquidating Trust net of all costs and expenses of administering the Liquidating Trust, including, without limitation, the fees and expenses of the Liquidating Trust and its professionals and the professionals of the Plan Committee.
- (37) “*Distribution*” means any distribution to any Holder of a Claim or Interest, in respect of such Claim or Interest, pursuant to or in accordance with the Plan.
- (38) “*Distribution Date*” means the date of any Distribution from the Liquidating Trust in accordance with its terms.
- (39) “*Domestic Pre-Petition Revolving Credit Agreement*” means that certain DIP Financing Agreement by and among PNC Bank, National Association (as lender and as agent) with Banner Holding, DAC International, Inc., Matrix Aviation, Inc., NASAM Incorporated, GCCUS, Inc., Professional Aircraft Accessories, Inc. and Professional Aviation Associates, Inc. (as borrowers) dated as of March 24, 2009.
- (40) “*Effective Date*” means the first business day after the Confirmation Date on which the conditions specified in Article XI of the Plan have been satisfied or waived in accordance with such article.
- (41) “*Entity*” has the meaning set forth in section 101(15) of the Bankruptcy Code.
- (42) “*Environmental Claims*” means any Claims that have not previously been paid, released or otherwise settled for indemnification filed by any Creditors against any of the Debtors in connection with any environmental matters.
- (43) “*ERISA*” means the Employment Retirement Income Security Act of 1974, as amended.
- (44) “*Estate*” means the bankruptcy estate of any Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of such Debtors’ Chapter 11 Case.
- (45) “*Exculpated Parties*” means the Debtors, the Creditors’ Committee and all of their respective directors, officers, members, employees, advisors, attorneys, Professionals, accountants, investment bankers, consultants, agents and other representatives (including their respective officers, directors, employees, members and Professionals) in their capacities as such as of the Confirmation Date; *provided, however*, for the avoidance of doubt, that no exculpation granted under the Plan shall release, affect, curtail, limit or otherwise reduce any of the Retained Claims.

- (46) *"Facilitating Companies"* means the certain Debtors and non-Debtor companies owned by any of the Debtors, identified in the schedule attached to the Plan as "Exhibit 1," whose corporate existence shall continue on after the Effective Date for the limited purpose of facilitating the Liquidating Trust's realization of their value, as provided in Section 13.7.4 of the Plan.
- (47) *"File"* means to file with the Bankruptcy Court in the Chapter 11 Cases or the Claims and Solicitation Agent, as applicable.
- (48) *"Final Distribution Date"* means the last date on which Distributable Cash is distributed pursuant to the Liquidation Trust Agreement and the Plan.
- (49) *"Final Order"* means an order or judgment of the Bankruptcy Court as entered on the docket that has not been reversed, stayed, modified or amended and as to which the time to appeal, petition for certiorari, or seek reargument or rehearing has expired and as to which no appeal, reargument, petition for certiorari, or rehearing is pending or as to which any right to appeal, reargue, petition for certiorari or seek rehearing has been waived in writing in a manner satisfactory to the Debtor, if an appeal, reargument, petition for certiorari, or rehearing thereof has been sought, the order or judgment of the Bankruptcy Court has been affirmed by the highest court to which the order was appealed or from which the reargument or rehearing was sought, or certiorari has been denied, and the time to take any further appeal or to seek certiorari, or further reargument or rehearing has expired.
- (50) *"General Unsecured Claim"* means any Claim against any of the Debtors that is not a/an: (a) Administrative Claim; (b) Priority Tax Claim; (c) Other Priority Claim; or (d) Other Secured Claim. For the avoidance of doubt, General Unsecured Claims shall include the PBGC Unsecured Claims, the Retiree Health Plan Unsecured Claim and the Retiree General Unsecured Claims.
- (51) *"Governmental Unit"* has the meaning set forth in section 101(27) of the Bankruptcy Code.
- (52) *"Greenwich"* means Greenwich AeroGroup Acquisition Corp, the purchaser in the Banner Sale.
- (53) *"Greenwich Super Priority Claim"* means Greenwich's Allowed Claim in the amount of \$250,000, which is payable by the Debtors pursuant to the terms of the Banner Sale.
- (54) *"Holder"* means an Entity holding a Claim or Interest, as applicable.
- (55) *"Impaired"* means, with respect to any Class of Claims or Interests, a Claim or Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

- (56) *"Insider"* has the meaning set forth in section 101(31) of the Bankruptcy Code.
- (57) *"Insurance Policies"* means all insurance policies maintained by the Debtors as of the Petition Date.
- (58) *"Intercompany Claims"* means the obligations under a contract solely between two or more Debtors.
- (59) *"Intercompany Interest"* means any equity security of a Debtor that is held by another Debtor, including (a) all issued, unissued, authorized or outstanding shares of stock together with any warrants, options or contractual rights to purchase or acquire such Equity Securities at any time and all rights arising with respect thereto and (b) partnership, limited liability company or similar interest in a Debtor.
- (60) *"Interest"* means any (a) equity security of a Debtor, including all issued, unissued, authorized, or outstanding shares of stock together with any warrants, options, or contractual rights to purchase or acquire such equity securities at any time and all rights arising with respect thereto and (b) partnership, limited liability company, or similar interest in a Debtor.
- (61) *"Interim Compensation Order"* means the Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals, as entered by the Bankruptcy Court, allowing Professionals to seek interim compensation in accordance with the compensation procedures approved therein, as may have been modified by a Final Order approving the retention of any particular Professional.
- (62) *"Lien"* has the meaning set forth in section 101(37) of the Bankruptcy Code.
- (63) *"Litigation Actions"* means any and all claims (within the meaning of section 101(5) of the Bankruptcy Code) held by any of the Debtors against any Persons or Entities arising out of any facts or circumstances giving rise to any legal and/or equitable claims under applicable law, including, without limitation, claims and cross claims against other parties to any litigation matters pending as of the Petition Date or thereafter filed or asserted in which any of the Debtors is a party, claims against any third parties arising out of any such litigation, and any and all other claims for legal or equitable relief of any nature, whether or not such claims are related to any extant litigation, including, without limitation, the claims and causes of action arising from any of the assets and/or liabilities described in the Debtors' Schedules. For purposes of illustration, and without limitation, the Litigation Actions include the Debtors' claims against (i) the State of New York or others arising out of or relating to the prospective development or taking of parcels of real property in Farmingdale, New York, near Republic Airport; (ii) Persons and Entities arising out of or related to the Estate's interest in Polo Express, including its equity owner(s) and/or its management, including Klaus Esser; (iii) indemnity and related claims, including claims against Alcoa and

claims for contribution, arising out of or relating to Claims against the Debtors asserted by the Orange County Water District; and (iv) claims for contribution and/or for interests in any insurance policies arising out of the Milacron and/or MDL Litigation (as defined in the Disclosure Statement).

- (64) “*Liquidating Trust*” means the Entity described in Article VIII of the Plan that will take title to all of the Trust Assets, and which acts through one or more Trustees, subject to the terms of the Plan and the Liquidating Trust Agreement.
- (65) “*Liquidating Trust Agreement*” means that certain agreement, substantially in the form attached to the Plan as “Exhibit 2,” establishing and delineating the terms and conditions of the Liquidating Trust, as such agreement may be amended from time to time in accordance with its terms.
- (66) “*Other Priority Claim*” means any Claim accorded priority in right of payment pursuant to section 507(a) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.
- (67) “*PBGC*” means the Pension Benefit Guaranty Corporation.
- (68) “*PBGC Secured Claim*” means filed claim number 342 in these Chapter 11 Cases, which was filed in case number 09-10899 by the PBGC and asserted by the PBGC against the Debtors, for an aggregate amount of \$1,956,670 plus any allowed interest.
- (69) “*PBGC Unsecured Claim*” means any Claim of the PBGC that, unless otherwise agreed by the Debtors and the PBGC and approved by the Bankruptcy Court, is not secured or entitled to administrative or priority treatment under the Bankruptcy Code.
- (70) “*Pension Plans*” means the two pension plans that Fairchild sponsors: (i) The Fairchild Corporation Master Retirement Plan and (ii) the Retirement Plan For Employees of Marson Corporation and Marson Fastener Corporation and their Domestic Subsidiaries. The Pension Plans are covered by Title IV of ERISA, 29 U.S.C. § 1301 *et seq.*
- (71) “*Person*” means an individual, corporation, partnership, joint venture, association, joint stock company, limited liability company, limited liability partnership, trust, estate, unincorporated organization, governmental unit (as defined in section 101(27) of the Bankruptcy Code) or Entity.
- (72) “*Petition Date*” means the date on which the Debtors commenced their respective voluntary Chapter 11 Cases in the Bankruptcy Court.
- (73) “*Plan*” means this Second Amended Joint Plan of Liquidation of The Fairchild Corporation and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code, dated ~~October 7~~ November 9, 2009, as it may be amended, supplemented or modified from time to time.

- (74) “*Plan Committee*” means one or more Persons designated by the Creditors’ Committee to serve on the Plan Committee described in Section 8.5.7 of the Plan from and after the Effective Date.
- (75) “*Plan Documents*” means the agreements, documents and instruments entered into on or as of the Effective Date as contemplated by, and in furtherance of, the Plan.
- (76) “*Plan Supplement*” means the compilation of documents and forms of documents, schedules and exhibits to the Plan that are Filed no less than three (3) calendar days prior to the Confirmation Hearing as such hearing may be adjourned.
- (77) “*Priority Tax Claim*” means any Claim of the kind specified in section 507(a)(8) of the Bankruptcy Code.
- (78) “*Pro Rata*” means the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of the Allowed Claims in that Class, or the proportion that an Allowed Claim in a particular Class and other Classes entitled to share in the same recovery as such Allowed Claim under the Plan bears to the aggregate amount of such Claims.
- (79) “*Professional*” means an Entity: (a) employed pursuant to a Final Order in accordance with section 327, 363 or 1103 of the Bankruptcy Code and to be compensated for services rendered prior to or on the Confirmation Date, pursuant to section 327, 328, 329, 330, 331 or 363 of the Bankruptcy Code; or (b) awarded compensation and reimbursement by a Final Order pursuant to section 503(b)(4) of the Bankruptcy Code.
- (80) “*Professional Fee*” means the costs and expenses of a Professional relating to services performed after the Petition Date and before and including the Effective Date.
- (81) “*Professional Fee Escrow Account*” means an interest-bearing account in an amount equal to any Professional Fee Reserve Amount funded and maintained by the Debtors on and after the Effective Date solely for the purpose of paying all Allowed and unpaid fees and expenses of Professionals in the Chapter 11 Cases.
- (82) “*Professional Fee Reserve Amount*” means the aggregate Accrued Professional Compensation through the Effective Date as estimated by the Professionals in accordance with Article VIII hereof.
- (83) “*Proof of Claim*” means a proof of Claim Filed against any of the Debtors in the Chapter 11 Cases.
- (84) “*Record Date*” means the Confirmation Date or such other date as is set forth in the Confirmation Order as the Record Date.

- (85) “*Reinstated*” means, with respect to the treatment of a Claim under this Plan, that the Claim will not be impaired, as that term is used in section 1124 of the Bankruptcy Code.
- (86) “*Released Party*” means each of the Debtors, the Creditors’ Committee and all of their respective current directors, officers, members, employees, advisors, attorneys, Professionals, accountants, investment bankers, consultants, agents and other representatives (including, for each of the foregoing parties, their respective officers, directors, employees, members, attorneys, advisors and other Professionals), each in their respective capacities as such as of the Petition Date and any of the prior capacities of those officers of the Debtors who were serving as of the Petition Date; provided, however, that nothing in the Plan shall release any Released Party from any claim (within the meaning of section 101(5) of the Bankruptcy Code) based on or arising out of any Retained Claims. For the avoidance of doubt, any claim that is released or waived pursuant to the Plan may be applied by the Debtors or Liquidating Trust, as the case may be, to defend against, setoff or reduce the Claim of any Released Party.
- (87) “*Representatives*” means, with regard to an Entity, officers, directors, employees, advisors, attorneys, professionals, accountants, investment bankers, financial advisors, consultants, agents and other representatives (including their respective officers, directors, employees, members and professionals) (each of the foregoing solely in its capacity as such).
- (88) “*Retained Causes of Action*” includes any and all claims which any of the Debtors may hold as of the Effective Date all of which shall be vested in the Liquidating Trust under the Plan, including, without limitation, (i) Avoidance Actions, Litigation Actions and Retained Claims, as well as (ii) all: (a) claims (within the meaning of section 101(5) of the Bankruptcy Code), causes of action, demands, rights, actions, suits, obligations, liabilities, accounts, defenses, offsets, powers, privileges, licenses and franchises; (b) rights of setoff, counterclaim or recoupment and claims on contracts or for breaches of duties imposed by law; (c) rights to object to Claims; (d) claims pursuant to section 362, 510, 542, 543, 544, 545, 546, 547, 548, 549, 550 or 553 of the Bankruptcy Code; and (e) claims and defenses as fraud, mistake, duress and usury and any other defenses set forth in section 558 of the Bankruptcy Code, of any kind or character whatsoever, known or unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, whether arising before, on or after the Petition Date, including through the Effective Date, in contract, in tort, in law or in equity, or pursuant to any other theory of law, but shall not include any claim (within the meaning of section 101(5) of the Bankruptcy Code) or any action or cause of action against any Person or Entity to the extent expressly released under the Plan.
- (89) “*Retained Claims*” means any and all claims (within the meaning of section 101(5) of the Bankruptcy Code) of any of the Debtors or their Affiliates, other than Jeffrey J. Steiner and/or Eric Steiner (individually and together, the

“Steiners”), arising out of or otherwise related to any actions and/or omissions of the Steiners, including but not limited to, any claim against direct or indirect transferees and/or successors of transferees of the Steiners, including, without limitation, the probate estate of Jeffrey J. Steiner and any trusts or other entities created by the Steiners or any Affiliate of the Steiners or of which either of them or their respective heirs is a beneficiary.

- (90) “*Retiree*” means a person who was formerly employed by any of the Debtors and who is eligible to receive health, pension, death or other benefits, from or through the Debtors on the basis of having been employed by the Debtors at a plant, facility or other workplace and having met any additional qualifications established by the Debtors.
- (91) “*Retiree Benefits*” has the meaning set forth in section 1114(a) of the Bankruptcy Code.
- (92) “*Retiree General Unsecured Claims*” means all Claims of the Retirees and their beneficiaries other than the Retiree Health Plan Unsecured Claim and the Retiree Health Plan Administrative Claim.
- (93) “*Retiree Health Plan*” means the *Retiree Health Plan For a Certain Class of Former Employees of Fairchild Republic Company* embodied in that certain court-approved settlement agreement in from the case known as *Dembksi v. Fairchild Indus. Inc.*, No. 88 Civ. 2953 (S.D.N.Y.). On behalf of all of the Retirees, the Retiree Health Plan shall receive all payments under the Plan in respect of the Retiree Health Plan Administrative Claim and the Retiree Health Plan Unsecured Claim. The Retiree Health Plan shall be administered by the Debtors until the Retire Plan Sponsorship Cutoff.
- (94) “*Retiree Health Plan Administrative Claim*” means collectively all Administrative Claims and Priority Claims of the Retirees and their beneficiaries for Retiree Benefits, arising out of or relating to the Retiree Health Plan, all of which for purposes of the Plan, shall be deemed for all purposes to be vested in, and held by, the Retiree Health Plan, which Administrative Claim is Allowed in the amount of \$3,777,000, of which \$2 million is the “Retiree Administrative Portion” and \$1,777,000 is the “Retiree Priority Portion.”
- (95) “*Retiree Health Plan Sponsorship Cutoff*” means the date at which the Debtors’ sponsorship and administration of the Retiree Health Plan shall end and the Retiree Health Plan shall be sponsored and administered by a trustee (or trustees) appointed by the Retirees’ representatives with the Debtors to pay the reasonable fees and costs associated with effecting this transition, effective December 31, 2009.
- (96) “*Retiree Health Plan Unsecured Claim*” means collectively all Claims of the Retirees and their beneficiaries, other than the Retiree Health Plan Administrative Claim, arising out of or relating to the Retiree Health Plan, to the extent not

previously paid, released or otherwise settled or satisfied by the Debtors, which General Unsecured Claim is Allowed in the aggregate amount of \$19,877,000.

- (97) “*Schedule of Assumed Contracts and Leases*” means the schedule of executory contracts to be assumed pursuant to section 365 of the Bankruptcy Code consistent with the terms and conditions of this Plan, which schedule will be included in the Plan Supplement.
- (98) “*Schedules*” means the schedules of assets and liabilities, schedules of executory contracts and unexpired leases, and statements of financial affairs as may be Filed by the Debtors pursuant to section 521 of the Bankruptcy Code, the official bankruptcy forms and the Bankruptcy Rules, as they may be amended, modified or supplemented from time to time.
- (99) “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the Debtors’ Estate has an interest, which Lien is valid, perfected and enforceable pursuant to applicable law or by reason of a Final Order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code and in accordance with the Plan, to the extent of the value of the Creditor’s interest in the Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined in accordance with section 506(a) of the Bankruptcy Code; or (b) Allowed pursuant to the Plan or a Final Order as a Secured Claim.
- (100) “*Trust Assets*” means the assets and property of the Debtors and assigned and transferred to the Liquidating Trust, as further described in Article 8 herein, and held pursuant to the Plan and the Liquidating Trust Agreement for the benefit of the Beneficiaries, including, without limitation, the Retained Causes of Action, cash, securities, real property, any of the Debtors’ rights or interests, including, without limitation, any of the Debtors’ rights or interests in any escrow accounts created for Environmental Claims or any other purposes, any and all rights, claims and/or interests held by any of the Debtors with respect to any Affiliates who are not Debtors, and all other assets held by the Debtors as of the Effective Date, including all interests in any insurance policies, unless otherwise specified in the Plan. For the avoidance of doubt, nothing in the Plan shall affect the Debtors’ rights or interests, or the rights of any third parties, in any (a) escrow accounts created for Environmental Claims or any other purposes or (b) insurance policies, other than to vest the Debtors’ rights or interests in such escrow accounts and insurance policies in the Liquidating Trust.
- (101) “*Trustees*” means the persons, individually or collectively, as the case may be, appointed pursuant to the Liquidating Trust Agreement to serve as a Trustee in accordance with the Liquidating Trust Agreement and the Plan while acting in such capacity on behalf of the Liquidating Trust.
- (102) “*Undeliverable Distributions*” means a distribution that is returned to the Liquidation Trustee as undeliverable as described in Section 9.4 of the Plan.

- (103) “*Unimpaired*” means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.
- (104) “*Voting Record Date*” means the date as of which the identity of Holders of Claims is set for purposes of determining the Entities entitled to receive and vote on the Plan. Pursuant to Bankruptcy Rules 3017(d) and 3018(a), this date is the date of entry of the Bankruptcy Court’s order approving the Disclosure Statement or such other date as the Bankruptcy Court may set.

1.2 Rules of Interpretation.

1.2.1 For purposes herein: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neutral gender shall include the masculine, feminine or neutral gender; (b) any reference herein to a contract, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been filed or to be filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented; (d) unless otherwise specified, all references herein to “Articles” or “Sections” are references to Articles or Sections hereof or hereto; (e) the words “herein,” “hereof” and “hereto” refer to this Plan in its entirety rather than to a particular portion of the Plan; (f) captions and headings of Articles and Sections are inserted for convenience of reference only and are not intended to be part of or to affect the interpretation hereof; and (g) the rules of construction set forth in Bankruptcy Code section 102 shall apply.

1.2.2 All references herein to a Debtor shall also refer to the applicable Debtor to the extent an event or action occurs after the Effective Date.

1.2.3 All references herein to monetary amounts shall refer to the currency of the United States of America, unless otherwise expressly provided.

1.3 Computation of Time.

The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

ARTICLE II

PROVISION FOR PAYMENT OF ADMINISTRATIVE CLAIMS AND PRIORITY TAX CLAIMS

2.1 Administrative Claims. Subject to the provisions of sections 330(a), 331 and 503(b) of the Bankruptcy Code, on the later of the Effective Date or the date on which an Administrative Claim becomes an Allowed Administrative Claim or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Claim, including claims by the Debtors’ and Creditors’ Committee’s Professionals, and amounts payable to the United States

Trustee, shall be paid in full in Cash for the unpaid portion of such Allowed Administrative Claim or receive such other such other treatment as to which the Debtors or the Liquidating Trustee, as the case may be, and the holder of such Administrative Claim have agreed upon in writing, in full, final and complete satisfaction of such Claim.

2.1.1 All requests for payment of an Administrative Claim (other than Claims by Professionals) must be Filed with the Claims and Solicitation Agent and served upon counsel to the Debtors and Creditors' Committee, as applicable, on or before the Administrative Claim Bar Date unless otherwise provided herein. Any request for payment of an Administrative Claim that is not timely Filed shall be disallowed automatically, forever barred from assertion, and shall not be enforceable against any Debtor or its Estate or the Liquidating Trust without the need for any objection by the Debtors and/or any other party or further notice to or action, order or approval of the Bankruptcy Court or other Entity. Notwithstanding the foregoing, no request for payment of an Administrative Claim need be Filed with respect to an Administrative Claim that the Plan specifies is to be Allowed or that was previously Allowed by Final Order or otherwise.

2.1.2 The Debtors, or, on and after the Effective Date, the Liquidating Trust, may settle and pay any Administrative Claim in the ordinary course of business without any further notice to or action, order or approval of the Bankruptcy Court or any other Entity. In the event that any party with standing objects to an Administrative Claim, the Bankruptcy Court shall determine the Allowed amount of such Administrative Claim.

2.1.3 The Retiree Health Plan Administrative Claim, by agreement of the Debtors and Retirees' representatives, shall be paid as follows: (1) the Debtors shall pay in cash to the Retiree Health Plan on the Effective Date in respect of the Retiree Administrative Portion, (a) \$2 million in cash plus (b) the Retirees' reasonable legal fees and costs, consisting of the fees and costs of their legal counsel and actuarial consultant, estimated in the aggregate amount of approximately forty-five thousand dollars, and (2) the Retiree Priority Portion of \$1,770,000 shall be paid from Distributable Assets that become available for distribution to Holders of Allowed General Unsecured Claims, with the first 10% of such Distributable Assets to be paid to the Retiree Health Plan in respect of the Retiree Priority Portion until satisfied (thus, the Retiree Priority Portion will be paid in full upon \$17,770,000 of Distributable Assets becoming available for distribution to Holders of Allowed General Unsecured Claims).

2.2 Bar Date for Filing Administrative Claims. All requests for payment or assertion of an Administrative Claim (other than Claims by Professionals) that have not been paid, released, satisfied or otherwise settled must be filed with the Bankruptcy Court no later than the first Business Day that is at least thirty (30) days after the Effective Date or such other date as is set forth in the Confirmation Order as the Administrative Claim Bar Date. Any request for payment of an Administrative Claim (other than Claims by Professionals) that is not timely filed, as set forth above, will be forever disallowed and barred without the need for any further action or order of the Bankruptcy Court. In such event, Claimants will not be able to assert such Claims, in any manner whatsoever, against any Debtor, the Trustees or the Liquidating Trust.

2.3 Treatment of Allowed Priority Claims. On the later of the Effective Date or the date on which a Priority Claim becomes an Allowed Priority Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Priority Claim due and payable on or

prior to the Effective Date, including any Priority Tax Claims, shall receive, in full, final and complete satisfaction of such Claims, either: (1) Cash in an amount equal to the amount of such Allowed Priority Tax Claim; (2) Cash in a lesser amount agreed to by the Debtors, as applicable, and such Holder, provided, however, such parties may further agree for the payment of such Allowed Priority Claim at a later date; (3) in the case of Allowed Priority Tax Claims, at the option of the Debtors, as applicable, and in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, Cash in an aggregate amount of such Allowed Priority Tax Claim payable in regular installment payments over a period ending not more than five (5) years after the Petition Date; or (4) such other treatment as the Debtors or the Liquidating Trust, as applicable, and the Holder of a Priority Claim may otherwise agree. The Debtors shall pay the Greenwich Super Priority Claim in Cash in full on the Effective Date to the extent such Claim has not been previously paid.

ARTICLE III CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

3.1 Creation of Classes. Administrative Claims and Priority Tax Claims have not been classified and are excluded from the following Classes pursuant to Bankruptcy Code section 1123(a)(1). The Classes created herein do not include any Intercompany Claims. To the extent that any Intercompany Claims remain property of the Debtors' Estates, those Intercompany Claims are hereby cancelled. This Plan constitutes a single plan of liquidation for all Debtors. A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim or Interest is also placed in a particular Class for the purpose of receiving Distributions pursuant to this Plan only to the extent that such Claim or Interest is an Allowed Claim or Interest in that Class and such Claim or Interest has not been paid, released or otherwise settled prior to the Effective Date. Pursuant to Bankruptcy Code section 1122, the Claims against and Interests in each of the respective Debtors are classified as follows:

3.1.1 Summary of Classification.

Class 1 – PBGC Secured Claim

Class 2 – Claims Secured by Real Property

Class 3 – Other Secured Claims

Class 4 – Other Priority Claims

Class 5 – General Unsecured Claims

Class 6 – Interests

3.2 Claims May be in More Than a Single Class. An Allowed Claim is placed in a particular Class only to the extent that such Claim meets the description of that Class and is part of a different Class to the extent that any other portion of the Claim or Interest falls within the description of such other Class.

ARTICLE IV
IDENTIFICATION OF IMPAIRED AND UNIMPAIRED
CLASSES UNDER THE PLAN

4.1 Unimpaired Classes. Classes 2, 3 and 4 are Unimpaired under the Plan. No votes will be solicited from any holders of Claims in any of these Classes.

4.2 Impaired Classes. Classes 1, 5 and 6 are Impaired. Votes will be solicited from holders of Claims in Classes 1 and 5; votes will not be solicited from holders of Class 6 Interests because Class 6 is conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code in light of the substantial probability that there will be no Distribution in respect of Class 6 Interests.

4.3 Impairment Controversies. If any controversy arises as to whether any Class of Claims or Interests is Impaired under the Plan, such Class shall be treated as set forth in the Plan unless otherwise ordered by a Final Order of the Bankruptcy Court.

ARTICLE V
TREATMENT OF CLASSES OF CLAIMS AND INTERESTS

5.1 Class 1 – PBGC Secured Claim. The PBGC Secured Claim shall be deemed to be an Allowed Claim. The Allowed PBGC Secured Claim's principal amount shall be deemed to have been satisfied by the contribution by the Debtors of the amount of \$1,956,670 to the Pension Plan which contribution occurred in September 2009. The PBGC Secured Claim is not entitled to any additional distributions under the Plan except for any interest as may be determined by the PBGC and either the Debtors or the Liquidating Trust, as the case may be, or by the Bankruptcy Court.

5.2 Class 2 – Claims Secured by Real Property. Unless otherwise explicitly stated in the Plan, any and all Allowed Claims that are secured by real property owned as of the Effective Date by the Debtors shall be Reinstated and continue to be the obligations of the Facilitating Companies or, where owned by a Debtor who is not a Facilitating Company, such Claims shall be deemed to have been assumed and assigned to the Liquidating Trust with title to the asset which constitutes the Holders' security for such Claims to be received by and vested in the Liquidating Trust subject to such Secured Claims. No such Allowed Claims will be deemed to have accelerated the mortgage as a consequence of such Reinstatement, transfer of the asset(s) to the Liquidating Trust or assumption and assignment of such Allowed Claims.

5.3 Class 3 – Other Secured Claims. At the option of the Liquidating Trustee, each Holder of an Allowed Secured Claim (other than the Claims included in Class 1 or Class 2) shall receive, in full satisfaction, settlement, release and discharge of and, in exchange for, such Allowed Secured Claim, one of the following treatments: (i) Reinstatement of the Claim, with such Claim to be assumed and assigned to the Liquidating Trust with title to the asset which constitutes the Holder's security for such Claim to be received by and vested in the Liquidating Trust subject to such Secured Claim; (ii) Cash equal to the value of the Allowed Secured Claimant's interest in the property of the Estate that constitutes collateral for such Allowed

Secured Claim, as described in section 506(a) of the Bankruptcy Code; (iii) Cash equal to the full amount of the Allowed Secured Claim; (iv) such other treatment as determined by the Liquidating Trust, and either agreed by the Claimant or adjudicated by the Bankruptcy Court to constitute the indubitable equivalent of such Claimant's Allowed Secured Claim, in accordance with section 1129(b)(2)(A)(iii) of the Bankruptcy Code; or (v) such other treatment as to which the Debtors or the Liquidating Trustee, as the case may be, and the Holder of such Allowed Secured Claim have agreed upon in writing. The Liquidating Trust's failure to object to any such Allowed Secured Claim shall be without prejudice to the Liquidating Trust's right to object to all or any portion of such Claim in the Bankruptcy Court or other appropriate non-bankruptcy forum (at the option of the Liquidating Trustee) when and if such Claim is sought to be enforced by the holder of such Allowed Secured Claim.

5.4 Class 4 – Other Priority Claims. On the later of the Effective Date or the date on which an Other Priority Claim becomes an Allowed Other Priority Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Other Priority Claim due and payable on or prior to the Effective Date shall, in full, final and complete satisfaction of such Claim, (i) be paid in full in Cash or (ii) receive such other treatment as the Debtors or the Liquidating Trust, as applicable, and the Holder of such Other Priority Claim may otherwise agree.

5.5 Class 5 – General Unsecured Claims. Each holder of an Allowed General Unsecured Claim, including all Claims relating to Environmental Claims, PBGC Unsecured Claims, the Retiree Health Plan Unsecured Claim, the Retiree General Unsecured Claims and Banner Claims, shall receive, in full and final satisfaction, settlement, release and discharge of, and in exchange for, such Allowed General Unsecured Claim, its Pro Rata share of the Distributable Assets, if any, available from the Liquidating Trust after full payment or other satisfaction in accordance with the Plan of all Allowed Administrative Claims, all Allowed Priority Tax Claims and all Claims of Classes 1 through 4.

5.6 Class 6 – Interests. On the Effective Date, all Interests held as of the Record Date shall be Allowed and the Holders of Allowed Interests shall receive their Pro Rata share, after giving effect to the relative rights of such Interests with respect to the other Interests of the Debtors under applicable non-bankruptcy law, of any amount of the Distributable Assets that is remaining, *in the highly unlikely event that any amount is remaining*, after full payment or other satisfaction in accordance with the Plan of all Allowed Administrative Claims, all Allowed Priority Tax Claims and all Claims of Classes 1 through 5.

5.7 Allowance of Unliquidated or Contingent Claims. Pursuant to Bankruptcy Code section 502(c), any party in interest, including the Liquidating Trust, may seek the estimation of any unliquidated Claim or contingent Claim. Any estimation of an unliquidated Claim or a contingent Claim shall constitute a final determination of such Claim for all purposes unless the subject order specifies otherwise. To the extent an unliquidated Claim or a contingent Claim is estimated by Final Order of the Bankruptcy Court, it shall receive the treatment for the particular type of Claim set forth in Article V of the Plan in the amount estimated by the Bankruptcy Court. If a Claimant fails to seek estimation of its unliquidated Claim or contingent Claim at any time prior to any Distribution Date, such Claim shall be treated as a Disallowed Claim without further Order of the Bankruptcy Court for the purposes of any such Distribution(s). Any unliquidated

Claim or contingent Claim shall be treated as a Disputed Claim and shall receive no Distribution until and unless it becomes an Allowed Claim pursuant to a Final Order of the Bankruptcy Court.

ARTICLE VI ACCEPTANCE OR REJECTION OF PLAN

6.1 Impaired Classes Entitled to Vote. Subject to Sections 6.3 and 6.4 of this Plan, Holders of Claims in (i) Class 1 and (ii) Class 5 are entitled to vote as a Class, respectively, to accept or reject this Plan.

6.2 Acceptance by an Impaired Class. In accordance with section 1126(c) of the Bankruptcy Code and except as provided in section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims shall have accepted this Plan if this Plan is accepted by the Holders of at least two thirds (2/3) in dollar amount and more than one half (1/2) in number of the Allowed Claims of such Class that have timely and properly voted to accept or reject this Plan.

6.3 Presumed Acceptances by Unimpaired Classes. Classes 2, 3 and 4 are Unimpaired by this Plan. Under section 1126(f) of the Bankruptcy Code, holders of such Claims are conclusively presumed to accept this Plan, and the votes of the Holders of such Claims will not be solicited.

6.4 Presumed Rejection by Impaired Class. Class 6 is Impaired by this Plan. Under section 1126(g) of the Bankruptcy Code, holders of such Interests are conclusively deemed to have rejected the Plan, and the votes of the Holders of such Interests will not be solicited.

6.5 Summary of Classes Voting on the Plan. As a result of the provisions of Sections 6.3 and 6.4 of this Plan, only the votes of Holders of Claims in Classes 1 and 5 will be solicited with respect to this Plan.

ARTICLE VII PROCEDURES FOR RESOLVING AND TREATING CONTESTED AND DISPUTED CLAIMS UNDER THE PLAN

7.1 Responsibility for Objecting to Claims. The Debtors, a Creditor or party-in-interest (as decided by the Bankruptcy Court upon dispute) may file objections to Claims prior to the Effective Date. From and after the Effective Date, only the Liquidating Trust may file objections to Claims.

7.2 Objections to Claims.

7.2.1 The Plan shall be deemed to constitute the Debtors' objection to any Claim listed on the Debtors' Schedules or stated in a Proof of Claim to the extent such Claim is for any amount that is unliquidated, disputed and/or contingent. Any Claim that is listed on the Debtors' Schedules as unliquidated, disputed and/or contingent, and for which no Proof of Claim was timely filed, shall be disallowed without any further objection or order of the Bankruptcy Court in accordance with Bankruptcy Rule 3003(c)(2).

7.2.2 To the extent any Proofs of Claim allege that any Creditor holds a Secured Claim as a result of any rights or interests of such Creditor in (i) any escrow accounts created for Environmental Claims or any other purposes or (ii) in any insurance policies, all such Claims shall be deemed to be General Unsecured Claims (whether or not Allowed) without any further objection or order of the Bankruptcy Court; provided, however, that nothing herein shall affect any Creditor's rights of setoff in accordance with section 553 of the Bankruptcy Code or any defenses thereto that the Debtors or the Liquidating Trust, as the case may be, have under applicable law.

7.2.3 From and after the Effective Date, the Trustees shall have the exclusive authority to object to Claims so that the Bankruptcy Court can determine the Allowed Amount, if any, of such Claims. The Liquidating Trust may file an objection at any time prior to the Final Distribution Date, and may reserve (in lieu of payment or Distribution of a Claim) for any Claim that the Liquidating Trust may, in good faith, dispute. A Claimant whose Claim is the subject of an objection must file with the Bankruptcy Court and serve upon the Debtors a timely response to the objection in accordance with the notice of such objection. Failure to file and serve a response within the applicable period required by the Bankruptcy Code and Bankruptcy Rules, as specified in the notice of objection, shall result in the entry of a default judgment against the non-responding Claimant and the granting of the relief requested in the objection, including the disallowance of the subject Claims.

7.3 Amendments to Claims; Claims Filed After the Confirmation Date. All Proofs of Claim, and the assertion of any Claim, must be filed and occur by the applicable Bar Date or such Claim shall otherwise be barred. Moreover, any Proofs of Claim filed after the Bar Date shall be deemed Disallowed in full and expunged without any action by the Debtors or the Liquidating Trust, or any further Order of the Bankruptcy Court other than entry of the Confirmation Order, unless the Claimant obtains an order of the Bankruptcy Court authorizing a late filing. Nothing herein shall affect, amend or modify the Bar Date in these Chapter 11 Cases.

7.4 No Distributions Until Claim Is an Allowed Claim. Notwithstanding any other provision of the Plan or the Liquidating Trust Agreement, and without any further order of the Bankruptcy Court, no payment or Distribution shall be made with respect to any Claim that has previously been paid, released or otherwise settled prior to the Effective Date or is a Disputed Claim as of the date such payment or Distribution would be made.

7.5 Voting. Holders of Disputed Claims shall not be entitled to vote with respect to this Plan unless such Claims are estimated, for voting purposes, by order of the Bankruptcy Court upon request that is timely made by any Holders of Disputed Claims. Only Holders as of the Voting Record Date of Allowed Claims, or Disputed Claims that have been estimated by the Bankruptcy Court, are entitled to vote on the Plan and have their votes counted.

ARTICLE VIII

MEANS FOR IMPLEMENTATION OF THE PLAN

8.1 Creation of the Liquidating Trust. The Liquidating Trust Agreement shall contain provisions customary to trust agreements utilized in comparable circumstances, including,

without limitation, any and all provisions necessary to ensure the continued treatment of the Liquidating Trust as a grantor trust and the Beneficiaries as the grantors and owners thereof for federal income tax purposes. The Liquidating Trust shall be established for the primary purpose of liquidating and distributing the Trust Assets for or on behalf of the Beneficiaries in accordance with Treasury Regulations Section 301.7701-4(d), with no objective to engage in the conduct of a trade or business. On the Effective Date, upon the execution of the Liquidating Trust Agreement by the Trustees, the Liquidating Trust shall thereby be established and become effective, and title to the Trust Assets shall automatically vest in the Liquidating Trust without the need for any further action of any kind, including, without limitation, the execution or recordation of any documents or issuance of any order by any court purporting to effect such transfer and vesting in the Liquidating Trust. Notwithstanding the generality of the foregoing, the Liquidating Trust may, but is not required to, file or record a notice of the vesting of any Trust Assets in the Liquidating Trust with any clerk or official for any federal, state, county or local governmental agency, and pursuant to section 1146 of the Bankruptcy Code, there shall be no stamp, transfer or recording tax or similar tax imposed in connection with any such filing or recordation.

8.2 Transfer of Assets to the Liquidating Trust.

8.2.1 On the Effective Date, the Trust Assets (including, without limitation, all Avoidance Actions and all Litigation Actions) will be reserved, preserved, assigned, transferred and conveyed, as the case may be, to the Liquidating Trust free and clear of liens, claims and encumbrances or interests except to the extent that any such Lien and Claim is Reinstated or otherwise retained pursuant to this Plan, including, without limitation, the Retained Causes of Action, cash, real property and other assets held by the Debtors as of the Effective Date.

8.2.2 As soon as possible after the Effective Date, but in no event later than sixty (60) days thereafter, (i) the Trustees shall determine and record in the books and records of the Liquidating Trust the fair market value of the Trust Assets as of the Effective Date, based on their good faith determination, and (ii) the Trustees shall establish appropriate means to apprise the Beneficiaries of such valuation. Such valuation shall be used consistently by all parties (including, without limitation, the Debtors, the Liquidating Trust, the Trustees and the Beneficiaries) for all income tax purposes.

8.3 Assumption of Liabilities. Except as otherwise provided herein, the Liquidating Trust shall assume liability for and incur the obligation to make the Distributions required to be made under this Plan and to handle all aspects of the claim contest and dispute process on and after the Effective Date, as described in Article VII of this Plan.

8.4 Federal Tax Classification of Liquidating Trust. It is intended that the Liquidating Trust qualify as a liquidating trust under Treasury Regulations Section 301.7701-4(d). Further, it is intended that the Liquidating Trust will be treated as a “grantor trust” for all income tax purposes and that the Beneficiaries will be treated as the grantors and owners of the Liquidating Trust. The Beneficiaries shall have the sole and exclusive responsibility to pay any and all taxes imposed on them by any taxing authority on account of the provisions of this Plan. The Debtors shall have no liability to the Beneficiaries or any taxing authority for any such taxes. The transfer by the Debtors of the Trust Assets to the Liquidating Trust will be treated for federal income tax

purposes as a transfer by the Debtors of the Trust Assets to the Beneficiaries followed by a transfer by the Beneficiaries of the Trust Assets to the Liquidating Trust. Upon the transfer of the Trust Assets, the Liquidating Trust shall succeed to all of the Debtors' right, title and interest in and to the Trust Assets and the Debtors will have no further interest in or with respect to the Trust Assets. Each of the Debtors, the Liquidating Trust, the Trustees and the Beneficiaries shall treat and report the transfer of the Trust Assets in the manner described in this Section 8.4 for all federal income tax purposes. The Trustees shall make continuing efforts to dispose of the Trust Assets and make timely Distributions to the Beneficiaries pursuant to the Plan and the Liquidating Trust Agreement, and shall not unduly prolong the duration of the Liquidating Trust, as determined by the Trustees in the exercise of their business judgment, consistent with the best interests of the Liquidating Trust and its Beneficiaries and to the extent the Liquidating Trust would continue to qualify as a liquidating trust under Treasury Regulations Section 301.7701-4(d) and Revenue Procedure 94-45.

8.5 Trustees. The Trustees shall be appointed, serve and be compensated pursuant to the terms of the Liquidating Trust Agreement.

8.5.1 Maintenance, Safekeeping and Distribution of Trust Assets. Subject to the provisions of the Liquidating Trust Agreement and the Plan, the Liquidating Trust will take possession of the Trust Assets and conserve, protect, collect and liquidate or otherwise convert into cash all assets that constitute part of the Trust Assets. The Liquidating Trust will make Distributions in accordance with the Plan. The Liquidating Trust may pursue or not pursue, in the exercise of the Trustees' business judgment and in accordance with the Plan and the Liquidating Trust Agreement, any and all Retained Causes of Action, file claim objections and set reserves, and shall have the sole right, power and discretion to manage the affairs of the Liquidating Trust in accordance with the Plan and the Liquidating Trust Agreement. On and after the Effective Date, the Trustees, pursuant to Bankruptcy Code section 1123(b)(3), shall have the power and authority to prosecute, in the name of the Liquidating Trust, any of the Debtors, the Debtors' Estates or otherwise any and all claims of the Debtors and the Debtors' Estates, including the Retained Causes of Action. Additionally, the Trustees will have the power to: (i) do all acts contemplated by the Plan to be done by the Liquidating Trust, and (ii) do all other acts that may be necessary or appropriate for the final Distribution of Distributable Assets, including the execution and delivery of appropriate agreements or other documents of disposition, liquidation or dissolution containing terms that are consistent with the terms of the Plan and that satisfy the applicable requirements of state law and such other terms to which the applicable Entity may agree. Notwithstanding anything to the contrary herein, the Liquidating Trust may not take any action that would be inconsistent with the status of the Liquidating Trust as a liquidating trust within the meaning of Treasury Regulations Section 301.7701-4(d) for federal income tax purposes.

8.5.2 The Role and Function of the Trustees. The duties and responsibilities of the Trustees shall be set forth in the Liquidating Trust Agreement. For the avoidance of doubt, the Trustees are empowered and authorized to amend any of the Debtors' Schedules; provided, however, that the Trustees shall provide notice and an opportunity to object, to affected parties in interest.

8.5.3 Reliance by Third Parties. Except as expressly set forth to the contrary in the Liquidating Trust Agreement, all third parties shall be entitled to rely upon any action taken, or direction provided, by the Trustees. Any third parties who act or refrain from acting in reliance upon the direction of any of the Trustees shall be free from any and all claims by any third parties arising from any such action or omission taken or made in good faith absent gross negligence or willful misconduct.

8.5.4 Proceeds of Litigation. Proceeds, if any, of litigation conducted on behalf of the Liquidating Trust will be added to the assets of the Liquidating Trust and administered pursuant to the Liquidating Trust Agreement and distributed pursuant to Article V of this Plan.

8.5.5 Avoidance Actions and Litigation Actions. On and after the Effective Date, the Debtors will not be responsible for any review of causes of action, including Avoidance Actions and Litigation Actions. The Liquidating Trust will have all responsibility for reviewing, analyzing and prosecuting Avoidance Actions and Litigation Actions pursuant to the Plan and Liquidating Trust Agreement. The Liquidating Trust shall have the sole authority to prosecute Avoidance Actions, which include preferences and fraudulent transfers, as defined by the Bankruptcy Code and as discussed in more detail in the Disclosure Statement accompanying this Plan. ALL CREDITORS AND RECIPIENTS OF PAYMENTS OR TRANSFERS WITHIN NINETY (90) DAYS OF THE PETITION DATE (OR WITHIN ONE YEAR FOR INSIDERS) OR WHO RECEIVED PAYMENTS OR TRANSFERS FOR LESS THAN REASONABLY EQUIVALENT VALUE WITHIN FOUR (4) YEARS OF THE PETITION DATE, WITH ACTUAL OR CONSTRUCTIVE NOTICE OF THESE BANKRUPTCY CASES, ARE HEREBY PUT ON NOTICE THAT SUCH TRANSACTIONS WILL BE REVIEWED FOR POTENTIAL RECOVERY. THIS PLAN IS NOT INTENDED AND DOES NOT WAIVE ANY OF THE DEBTORS' RETAINED CAUSES OF ACTION. The Liquidating Trust shall also have the sole authority to prosecute all Retained Causes of Action, including, without limitation, any claims and causes of action arising from the assets and/or the liabilities described in the Debtors' Schedules.

8.5.6 Trust Assets. Trust Assets include all Cash not required for payments due on the Effective Date (which payments include the funding of the Professional Fee Escrow Amount), and all other interests in assets that are property of the Debtors' estates within the meaning of section 541 of the Bankruptcy Code, of every type and nature, including the Retained Causes of Action and all claims against third parties that are not explicitly released under the Plan.

8.5.7 The Creditors' Committee and Plan Committee. The Creditors' Committee shall designate one or more persons to serve as the Plan Committee in the Chapter 11 Cases. The Creditors' Committee shall remain in existence for the limited purposes of filing fee applications for fees incurred in these Chapter 11 Cases. Upon the Effective Date, the Plan Committee shall thereby become the successor in fact and in law to the Creditors' Committee for all other purposes, including litigating any pending litigation or appeals to which the Creditors' Committee is a party and is ongoing as of the Effective Date. The Plan Committee shall perform those duties specified in, and be governed by, the Plan and Liquidating Trust Agreement.

8.6 Compensation of Trustees and Plan Committee. The Trustees and counsel for the Plan Committee (but not the members of the Plan Committee) shall be entitled to be paid from the Liquidating Trust reasonable compensation for services rendered, which compensation of the Trustees shall be described in the Liquidating Trust Agreement or accompanying documentation.

8.7 Reporting Duties. No less frequently than annually and until the Bankruptcy Court has issued a decree closing the Chapter 11 Cases, commencing on the one year anniversary of the Effective Date, the Liquidating Trust will file with the Bankruptcy Court a written report describing the assets and liabilities of the Liquidating Trust at the end of such year or upon termination and a brief status report on any material action taken by the Trustees in the performance of his, her or their duties under the Liquidating Trust and under the Plan. The Liquidating Trust shall file federal income tax returns as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a). In addition, within forty-five (45) days after the end of each calendar quarter, the Liquidating Trust shall provide to the Plan Committee and any Holder of an Allowed Claim or Interest who requests a copy in writing from the Liquidating Trust, a report of the activities of the Liquidating Trust for the preceding quarterly period that includes the information contained in the quarterly reports to be filed with the United States Trustee and any changes in the assets of the Liquidating Trust and the amount of any reserves or escrows of the Estates.

8.8 Indemnity for Trustees.

8.8.1 Grant of Indemnity. To the fullest extent permitted by applicable law, the Liquidating Trust shall indemnify and hold harmless each of the Trustees who is made or is threatened to be made a party or is otherwise involved in any threatened, pending or completed actions suit or proceedings whether civil, criminal, administrative or investigative (a "proceeding") by reason of the fact that such persons or the person for whom he is the legally representative, is or was a Trustee of the Liquidating Trust, against all claims (within the meaning of section 101(5) of the Bankruptcy Code), liabilities, losses, expenses (including attorney's fees), judgments, fines and amounts paid in settlement ("*expenses*") actually and reasonably incurred by such Person in connection with such proceeding; provided, however, that except as otherwise provided. The right to indemnification and prepayment of expenses conferred on the Trustees shall continue as to a Person who has ceased to be a Trustee and shall inure to the benefit of the heirs, executors and administrators of such Person.

8.8.2 Prepayment of Expenses. The Liquidating Trust shall pay the expenses incurred by a Trustee in defending any proceeding in advance of its final disposition, provided that, to the extent required by law, the payment of expenses in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by such person to repay all amounts advanced if it should be ultimately determined that such person is not entitled to be indemnified under this Article or otherwise. The Liquidating Trust may pay the expenses incurred by any other person in defending any proceeding in advance of its final disposition upon such terms and conditions as the Trustees deem appropriate.

8.8.3 Non-Exclusivity of Rights. The right to indemnification and advancement of expenses conferred on the Trustees shall not be exclusive of any other rights such Person may have or acquire under any other provision of the Plan or the Liquidating Trust Agreement.

8.9 Termination of Liquidating Trust.

8.9.1 The Liquidating Trust shall terminate as soon as practicable, but in no event later than the fifth anniversary of the Effective Date; provided that, on or after the date that is six months prior to such termination date, the Bankruptcy Court, upon motion by a party in interest, may extend the term of the Liquidating Trust for a finite period if such extension is necessary to complete any pending matters required under the Liquidating Trust Agreement and the Liquidating Trust receives an opinion of counsel or a favorable ruling from the Internal Revenue Service to the effect that any such extension would not adversely affect the status of the Liquidating Trust as a grantor trust for federal income tax purposes. Notwithstanding the foregoing, multiple extensions may be obtained so long as the conditions in the preceding sentence are met no more than six months prior to the expiration of the then-current termination date of the Liquidating Trust.

8.9.2 Upon the completion of the Trustees' duties and good faith allegation of such completion by the same, in the manner set forth in the Liquidating Trust Agreement, and any such other evidence as the Bankruptcy Court may direct, the Bankruptcy Court shall issue an order terminating the Liquidating Trust and discharging the Trustees (and any predecessors, as may be applicable) from any powers, duties, responsibilities, liabilities and claims of every nature resulting from any action or inaction by the Liquidating Trust and/or the Trustees in connection with the Plan and the Liquidating Trust Agreement made in good faith, which good faith shall conclusively be deemed to exist where the action or omission is based on the advice of counsel, except there shall be no release from any claims arising from the Trustees' willful misconduct or gross negligence. Notice of the termination of the Liquidating Trust upon approval by the Bankruptcy Court that is filed on the docket in the Chapter 11 Cases shall constitute sufficient notice for all purposes of the termination of the Liquidating Trust in accordance with the Plan.

8.10 Payment of Post-Confirmation Fees. The Liquidating Trust shall timely pay from the Trust Assets all fees incurred pursuant to 28 U.S.C. § 1930(a)(6) until the clerk of the Bankruptcy Court closes the Chapter 11 Cases.

8.11 Corporate Governance, Directors, Officers and Corporate Action. On the Effective Date, the Debtors' Boards of Directors will be disbanded, each of the Debtors, other than the Facilitating Companies, shall be deemed to be dissolved for all purposes and, except as otherwise provided in the Plan, all assets of all of the Debtors and their Estates shall be Trust Assets vested in the Liquidating Trust and all actions thereafter shall be authorized by the Liquidating Trust. Subject to section 13.7.4 of the Plan pertaining to the Facilitating Companies, all directors, officers, members and managers of the Debtors, including the Facilitating Companies, will be deemed to have resigned as of Effective Date with no further action required.

8.12 Cancellation of Notes, Instruments and Common Stock. On the Effective Date, except as otherwise provided for herein, (a) the Post Petition Financing, DIP Facility and Domestic Pre-Petition Revolving Credit Agreement and the Ex-Im Prepetition Revolving Credit Agreement and any other notes, bonds (with the exception of surety bonds outstanding), indentures or other instruments or documents evidencing or creating any indebtedness or obligations of a Debtor that are Impaired under this Plan shall be cancelled, and (b) the obligations of the Debtors under any agreements governing such Claims or any notes or other instruments or documents evidencing or creating any Claims against a Debtor that are Impaired under this Plan shall be enjoined. As of the Effective Date, any equity interests that have been authorized to be issued but that have not been issued shall be deemed extinguished without any further action of any party.

8.13 Sources of Cash for Plan Distributions. Except as otherwise provided in the Plan or the Confirmation Order, all Cash necessary for the Liquidating Trust to make Distributions pursuant to this Plan shall be obtained from existing Cash balances and from the Trust Assets and their proceeds.

ARTICLE IX PROVISIONS GOVERNING DISTRIBUTIONS

9.1 Payments. All payments under the Plan, other than payments due on the Effective Date, including United States Trustee fees and costs post-confirmation, shall be paid by the Liquidating Trust. The Liquidating Trust also to be responsible for paying all costs of administering the Liquidating Trust, including the fees and costs of the Trustees and Professionals and the Plan Committee's counsel.

9.2 Delivery of Distributions in General. Except as otherwise agreed to by the Holder of an Allowed Claim and the Liquidating Trust, the Liquidating Trust shall make Distributions to such Claimants as provided in the Plan at the address reflected in the books and records of Debtors or as otherwise reflected on any Proof of Claim or notice of address or change of address filed in these Chapter 11 Cases.

9.3 Limitations on Distributions. The Trustees shall not make any Distributions if the Trustees anticipates that such Distributions would be expected to result in insufficient Cash remaining in the Liquidating Trust to provide for the full payment of either (i) budgeted expenses of administering the Liquidating Trust or (ii) Disputed Claims to the extent such Claims are (a) ultimately Allowed or (b) estimated for purposes of Distributions pursuant to a Final Order of the Bankruptcy Court.

9.4 Undeliverable and Unclaimed Distributions. If any Holder's Distribution is returned as undeliverable, no further Distributions to that Holder shall be made, and any such Undeliverable Distribution will be added back to the Trust Assets for distribution to other parties in interest in accordance with the Plan as if the Claims or Interests in respect of the Undeliverable Distributions did not exist unless, within six (6) months of such Distribution initially being returned to the Liquidating Trust as undeliverable, the Liquidating Trust receives notice of the Holder's then-current address, thereby making such Distribution deliverable within such six (6)

month period. Any Holder of an Allowed Claim, irrespective of when a Claim becomes an Allowed Claim, that does not notify the Liquidating Trust of such Holder's then current address within sixty (60) days after the mailing or other delivery of a Distribution shall have its Claim for such Distribution discharged and expunged and shall be forever barred, estopped and enjoined from asserting any such Claim against the Liquidating Trust or its property. Nothing contained herein shall require the Liquidating Trust to attempt to locate any Holder of an Allowed Claim or Interest. No further order of the Bankruptcy Court is required to implement any provision of this Paragraph, including to expunge Claims and modify the Claims Register in accordance with this section.

9.5 Failure To Present Checks. Distribution checks issued on account of Allowed Claims or Interests shall be null and void if not negotiated within ninety (90) days after the issuance of such checks. Any claimant holding an un-negotiated check that does not negotiate, or request reissuance of, such un-negotiated check within ninety (90) days after the date of mailing or other delivery of such check shall have its Claim for such un-negotiated check discharged and expunged and be discharged and forever barred, estopped and enjoined from asserting any such Claim against the Liquidating Trust or Trust Assets. In such cases, any Cash held for payment on account of such Claims shall be deemed Undeliverable Distributions.

9.6 Minimum / De Minimis Distributions. Notwithstanding anything in the Plan to the contrary, Distributions or payments of less than one hundred dollars (\$100), whether in Cash or otherwise, in the aggregate including the Final Distribution, shall not be required to be made and no Holder of an Allowed Claim or Interest has a right to receive Distributions under the Plan if such Distributions would be less than \$100 in the aggregate. Additionally, the Liquidating Trust shall not make a Distribution if the Liquidating Trust determines, in the exercise of its business judgment, that the Trust Assets remaining after any Distributions have an economic value, in the aggregate, of less than fifty thousand dollars (\$50,000). Rather, the Liquidating Trust shall donate such remaining Trust Assets, if any, to a charitable organization (within the meaning of section 501(c)(3) of the Internal Revenue Code) of the Liquidating Trust's choosing; provided the Trustees shall have had no prior management position within, or received or expect to receive any compensation from, such charitable organization.

9.7 Abandonment of Property. The Liquidating Trust may abandon any Trust Assets that the Liquidating Trust determines, in the exercise of its business judgment, are burdensome to the Trust or of inconsequential value and benefit to the Trust within the meaning of section 554 of the Bankruptcy Code. The Liquidating Trust's abandonment of any Trust Assets shall be effective upon the later of (i) twenty (20) calendar days after the Liquidating Trust serves on the Plan Committee and the United States Trustee, and files on the docket of the Chapter 11 Cases, a "Notice of Intent to Abandon Assets," which describes the subject Trust Assets, summarizes the Liquidating Trust's relevant conclusions with respect to such property, and provides notice of the opportunity to object, without any further order of the Bankruptcy Court or other court, or further notice or approvals of any kind, and (ii) entry of an order of the Bankruptcy Court, in the event any objection to the Notice of Abandonment is filed on the docket of the Chapter 11 Cases and served on the Liquidating Trust within the twenty (20) calendar day period described in this section of the Plan.

9.8 Withholding and Reporting Requirements. In connection with the Plan and all Distributions hereunder, the Debtors and the Liquidating Trust shall, to the extent applicable, comply with all tax withholding and reporting requirements imposed by any federal, state, local or foreign taxing authority, including the payment of any such withholding to the appropriate taxing authority, and all Distributions hereunder shall be subject to such requirements. The Debtors and the Liquidating Trust shall be authorized and are hereby directed to take all actions necessary or appropriate to comply with those withholding and reporting requirements, including reducing the amount of any Distribution by the amount of such withholding and remitting such amount to the appropriate taxing authority. As a condition to receiving Distributions under the Plan, all Holders of Claims or Interests must provide to the Debtors or the Liquidating Trust, as the case may be, any tax reporting information forms or other documents reasonably requested by the Debtors or the Liquidating Trust, as the case may be, including the Holders' taxpayer identification numbers. Any Holder that fails to provide such information requested by the Debtors or the Liquidating Trust, as the case may be, within forty-five (45) days of receiving the Debtors' or the Liquidating Trust's written request for such information shall forfeit such Holders' right to receive any such Distribution and any future Distributions, which Distributions shall be treated under the Plan as Undeliverable Distributions.

9.9 Interest on Claims. Unless otherwise specifically provided for in the Plan, the Confirmation Order or other order of the Bankruptcy Court, or required by applicable law, and unless the full principal amounts of all Allowed General Unsecured Claims have been paid or satisfied, postpetition interest shall not accrue or be paid on any Claims, and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim.

9.10 Allocation of Plan Distributions Between Principal and Interest. To the extent that any Allowed Claim entitled to a Distribution under this Plan is comprised of indebtedness and accrued but unpaid interest thereon, such Distribution shall for all purposes, including without limitation all income tax purposes, be allocated to the principal amount of the Claim first and then, to the extent that the consideration exceeds the principal amount of the Claim, to the portion of such Claim representing accrued but unpaid interest.

9.11 Setoffs. In accordance with section 553 of the Bankruptcy Code or applicable non-bankruptcy law, the Liquidating Trust may, but shall not be required to, set off against any Claim the payments or other Distributions to be made pursuant to this Plan in respect of such Claim, or claims of any nature whatsoever that the Trustees or the Debtors may have against the Holder of such Claim; provided, however, that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors or the Liquidating Trust of any such claim that the Debtors or the Liquidating Trust may have against such Holder.

9.12 Professional Fees. All unpaid Professional Fees incurred prior to and including the Effective Date shall be subject to final allowance or disallowance upon application to the Bankruptcy Court pursuant to section 330 or 503(b)(4) of the Bankruptcy Code.

9.13 Creation of Professional Fee Escrow Account. On or before the Effective Date, the Debtors shall establish the Professional Fee Escrow Account and reserve an amount equal to

the Professional Fee Reserve Amount that is necessary to pay the Accrued Professional Compensation as of the Effective Date.

9.13.1 The Professional Fee Reserve Amount shall equal (1) the uncontested amounts billed by all Professionals that have not been paid as of the Effective Date, including any fees held in reserve pursuant to any order relating to Professionals' Compensation issued by the Bankruptcy Court, and (2) the uncontested amount of Accrued Professional Compensation. The Professionals shall estimate their respective Accrued Professional Compensation prior to and as of the Confirmation Date and shall deliver such estimate to the Debtors' Chief Restructuring Officer. If a Professional does not provide an estimate, the Debtors may estimate the unbilled fees and expenses that constitute such Professionals' Accrued Professional Compensation; provided, however, that such estimate shall not be considered an admission or acceptance with respect to the fees and expenses of such Professional.

9.13.2 On the Effective Date and prior to the funding of the Liquidating Trust, the Debtors shall fund the Professional Fee Escrow Account with Cash equal to the aggregate Professional Fee Reserve Amount for all Professionals. The Professional Fee Escrow Account shall be maintained by the Trustees as a segregated escrow account held in trust for the respective Professionals. As such Professionals' fees and expenses are Allowed, they shall be paid promptly from the Professional Fee Escrow Account; provided, however, that if the funds in the Professional Fee Escrow Account are insufficient to pay any Professionals' fees and expenses out of the Professional Fee Escrow Account, then the Trustees shall promptly pay any such unpaid and uncontested amounts from the Liquidating Trust which payments shall in any event be made first in time before any subsequent payments for any fees or costs of administering the Liquidating Trust or any Distributions. When all Professional Claims have been resolved, and the Allowed amounts of such Claims paid in full, then the amounts remaining in the Professional Fee Escrow Account, if any, shall be added to the Trust Assets and become property of the Liquidating Trust at that time.

9.14 Payment of Interim Amounts. Except as otherwise provided in the Plan, Professionals' fees and expenses shall be paid pursuant to the Interim Compensation Order or other order of the Bankruptcy Court governing the compensation of Professionals.

ARTICLE X

TREATMENT OF EXECUTORY CONTRACTS ~~AND~~, UNEXPIRED LEASES AND **INSURANCE POLICIES**

10.1 Executory Contracts and Unexpired Leases. All executory contracts and unexpired leases in the Debtors' Estates, other than those that have already been rejected or which are assumed and assigned as of the Effective Date in connection with the Banner Sale or as otherwise specified in the Plan, shall be deemed to be rejected as of the Effective Date except for those executory contracts and unexpired leases identified in the Schedule of Assumed Contracts and Leases to be included in the Plan Supplement. The Schedule of Assumed Contracts and Leases shall also state the Cure to which the counterparty is entitled. Entry of the Confirmation Order shall constitute a Final Order approving the assumption of any executory contracts or unexpired leases listed in the Schedule of Assumed Contracts and Leases pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Unless otherwise indicated in the Plan, all

assumptions of executory contracts and unexpired leases are effective on the later of the Effective Date and the resolution of any disputes concerning Cure amounts. With respect to each of the Debtors' executory contracts or unexpired leases that are assumed pursuant to the Plan, the Liquidating Trust shall Cure any monetary defaults without further notice to or action, order, or approval of the Bankruptcy Court or any other Person. Any counterparty to an executory contract or unexpired lease that fails to object timely to the proposed assumption of any executory contract or unexpired lease, or the Cure stated in the Schedule of Assumed Contracts and Leases, will be deemed to have consented to such assumption and assignment. Each such executory contract and unexpired lease assumed and assigned pursuant to the Plan shall be fully enforceable by the Liquidating Trust in accordance with the terms of such executory contracts or unexpired leases.

10.2 Insurance Policies. As of the Effective Date, all of the Insurance Policies of the Debtors shall be ~~assumed and assigned~~ **or otherwise transferred** to the Liquidating Trust ~~pursuant to section 365(a) of the Bankruptcy Code.~~ **The assignment and/or transfer of the Insurance Policies, shall neither expand nor contract the rights of any party to the Insurance Policies, with all rights, obligations, claims and defenses of all parties with respect to such Insurance Policies being expressly preserved, including, without limitation, the right to challenge such assignment or transfer.**

10.3 Bar Date for Rejection Damages Claims. Proofs of Claim for damages allegedly arising from the rejection pursuant to this Plan or the Confirmation Order of any executory contract or unexpired lease to which a Claimant is a party must be filed with the Bankruptcy Court and served on the Liquidating Trust not later than the first Business Day that is at least 30 calendar days after the Confirmation Date or such other date as is set forth in the Confirmation Order as the Rejection Damages Claims Bar Date. All Proofs of Claim for such damages not timely filed and properly served as set forth herein shall be forever barred and discharged and the Holder of such a Claim shall not be entitled to receive or otherwise participate in any Distribution under this Plan in respect of such Claim.

10.4 Objections to Proofs of Claim Based on Rejection Damages. An objection to any Proof of Claim based on the rejection of an executory contract or unexpired lease pursuant to this Plan will be pursuant to the procedures set forth in Article VII of the Plan.

ARTICLE XI CONFIRMATION AND CONSUMMATION OF THE PLAN

11.1 Conditions Precedent to Effective Date. This Plan shall not become effective unless and until each of the following conditions shall have been satisfied in full in accordance with the provisions specified below:

11.1.1 the Confirmation Order shall have been entered and become a Final Order in form and substance reasonably acceptable to the Debtors and the Creditors' Committee;

11.1.2 all other Plan Documents and agreements necessary to implement the Plan on the Effective Date, which documents, including the Trustees' compensation agreement, shall be

identified in the Plan Supplement and reasonably acceptable in form and substance to the Debtors and the Creditors' Committee, shall have been executed and delivered;

11.1.3 the Professional Fee Escrow Account shall have been created and funded; and

11.1.4 the Trustees shall have executed the Liquidating Trust Agreement.

11.2 Waiver of Conditions. The condition of a Final Order, set forth in subparagraph (i) of Article 11.1, may be waived in whole or in part by the Debtors with the Creditors' Committee's consent, which consent shall not be unreasonably withheld, without any other notice to parties in interest or the Bankruptcy Court and without a hearing.

11.3 Notice of Effective Date. Within ten (10) days after the occurrence of the Effective Date, the Liquidating Trust shall file with the Bankruptcy Court and cause to be mailed to all holders of Claims and Interests a notice of (i) the Effective Date; (ii) the Bar Date for the filing of Administrative Claims and rejection damages claims; and (iii) any other matters deemed appropriate by the Liquidating Trust.

ARTICLE XII MODIFICATION OR WITHDRAWAL OF THE PLAN

12.1 Modification. The Debtors reserve the right to modify the Plan either before or after Confirmation, to the fullest extent permitted under Bankruptcy Code section 1127 and Bankruptcy Rule 3019. After the Confirmation Date and prior to the substantial consummation of this Plan, any party in interest in these Chapter 11 Cases may, so long as the treatment of Holders of Claims or Interests under the Plan is not materially adversely affected, institute proceedings in the Bankruptcy Court to remedy any defect or omission or to reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order, and any other matters as may be necessary to carry out the purposes and effects of this Plan; provided, however, notice of such proceedings shall be served in accordance with the Bankruptcy Rules or order of the Bankruptcy Court, and any such amendments, if acceptable to the Creditors' Committee and the United States Trustee, may be presented by the Debtors or Liquidating Trust, as the case may be, to the Bankruptcy Court upon certificate of no objection without the need for a motion requesting approval, if the Debtors or Liquidating Trustee, as the case may be, anticipate such matters are likely to be uncontested by any parties in interest.

12.2 Revocation, Withdrawal or Non-Consummation. The Debtors reserve the right to revoke or withdraw this Plan as to any or all of the Debtors prior to the Confirmation Date and to file a subsequent plan or plans. If the Debtors revoke or withdraw this Plan as to any or all of the Debtors, or if confirmation or consummation as to any or all of the Debtors does not occur, then, with respect to such Debtors, (a) this Plan shall be null and void in all respects, (b) any settlement or compromise embodied in this Plan (including the fixing or limiting to an amount certain any Claim or Interest or Class of Claims or Interests), rejection of executory contracts or leases affected by this Plan, and any document or agreement executed pursuant to this Plan shall be deemed null and void *ab initio*, and (c) nothing contained in this Plan shall (i) constitute a waiver or release of any Claims by or against, or any Interests in, such Debtors or any other Person, (ii)

prejudice in any manner the rights of such Debtors or any other Person or
(iii) constitute an admission of any sort by any of the Debtors or any other Person.

ARTICLE XIII

EFFECT OF PLAN CONFIRMATION

13.1 Injunction. THIS PLAN PROPOSES AN INJUNCTION. Provided that the Effective Date occurs, and except to the extent any Retained Causes of Actions are prosecuted against such Persons, THE ENTRY OF THE CONFIRMATION ORDER SHALL BE DEEMED TO PERMANENTLY ENJOIN ALL PERSONS THAT HAVE HELD, CURRENTLY HOLD OR MAY HOLD A CLAIM AGAINST, OR BE OWED OBLIGATIONS BY, THE ESTATES, OR WHO HAVE HELD, CURRENTLY HOLD OR MAY HOLD AN INTEREST IN ANY DEBTOR, FROM TAKING ANY OF THE FOLLOWING ACTIONS ON ACCOUNT OF SUCH CLAIM OR INTEREST: (i) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind against any Debtor, any of their Representatives, or the Liquidating Trust; (ii) enforcing, levying, attaching, collecting or otherwise recovering in any manner or by any means, directly or indirectly, any judgment, award, decree or order against any Debtor, any of their Representatives or the Liquidating Trust; (iii) creating, perfecting or enforcing in any manner, directly or indirectly, any lien, charge, encumbrance or other Lien of any kind against any Debtor, their property, any of their Representatives or the Liquidating Trust; (iv) asserting any setoff, right of subrogation or recoupment of any kind, directly or indirectly, against any debt, liability or obligation due to any Debtor, any of their Representatives or the Liquidating Trust; and (v) proceeding in any manner, directly or indirectly, in any place whatsoever against any Debtor, any of their Representatives or the Liquidating Trust.

13.2 No Liability for Solicitation or Participation. In accordance with Bankruptcy Code section 1125, all Persons that solicit acceptances or rejections of this Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code, including but not limited to the Released Parties, shall not be liable, on account of such solicitation or participation, for violation of any applicable law, rule or regulation governing the solicitation of acceptances or rejections of this Plan.

13.3 Exculpation, Releases and Injunctions.

13.3.1 Exculpation. Except as otherwise specifically provided in the Plan or the Confirmation Order, no Exculpated Party shall have or incur, and each Exculpated Party is hereby released and exculpated from any claim (within the meaning of section 101(5) of the Bankruptcy Code), obligation or liability relating to or arising out of the Chapter 11 Cases except for Claims for gross negligence or willful misconduct, but in all respects such Persons shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities with respect to the Chapter 11 Cases. The Debtors, the Trustees (and each of their respective Affiliates, agents, directors, members, managers, partners, officers, employees, advisors and attorneys) have, and upon Confirmation of the Plan shall be deemed to have, participated in the Chapter 11 Cases in good faith and in compliance with the applicable provisions of the Bankruptcy Code.

13.3.2 Participants' Release. Notwithstanding anything contained herein to the contrary except as stated in this subsection, on the Effective Date and effective as of the Effective Date, each Holder of a Claim who receives a Distribution under the Plan shall be deemed to have provided a full discharge and release (and each Person so released shall be deemed released) to each of the Released Parties and their respective property from any and all causes of action, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, contingent or non-contingent, existing as of the Effective Date in law, at equity, whether for tort, fraud, contract, violations of federal or state securities laws or otherwise, arising from or related in any way to the Debtors, including, without limitation, those in any way related to the Chapter 11 Cases or the Plan; provided, however, that the foregoing release shall not operate to waive or release any of the Retained Claims, and the foregoing release shall not operate to waive or release any causes of action (a) arising from any written contractual obligations, or (b) expressly set forth in and preserved by the Plan, the Confirmation Order or related documents, or (c) arising from Claims for willful misconduct or gross negligence.

13.3.3 Release by the Debtors. Except as otherwise specifically provided in the Plan or the Confirmation Order, for good and valuable consideration, including the service of the Released Parties to facilitate the resolution of the Chapter 11 Cases and the implementation of the liquidation contemplated by the Plan, on and after the Effective Date, the Released Parties are conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtors, the Estates and the Liquidating Trust from any and all Claims, obligations, rights, suits, damages, Retained Causes of Action, remedies and liabilities whatsoever, including any derivative or representative Claims asserted on behalf the Debtors or the Estates, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that the Debtors, the Liquidating Trust, or the Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim or Interest or other Person, based on or relating to, in any manner arising from, in whole or in part, the Debtors, the Chapter 11 Cases, the purchase, sale or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in or discharged by the Plan, the business or contractual arrangements between any Debtors and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation or preparation the Plan and Disclosure Statement, or related agreements, instruments or other documents, or any other act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes a failure to perform the duty to act in good faith, with the care of an ordinarily prudent person and in a manner the Released Party reasonably believed to be in the best interests of the Debtors (to the extent such duty is imposed by applicable non-bankruptcy law) where such failure to perform is finally determined by a court of competent jurisdiction to have been proximately caused by the Released Party's willful misconduct or gross negligence. Notwithstanding anything in this sub-section 13.3.3 to the contrary, the provisions of this sub-section 13.3.3 shall not be deemed to release any of the defendants from the Retained Claims, but shall be deemed to release each other Released Party with respect to any claim, counterclaim, cross-claim, interpleaders or any other action with respect to the Retained Claims.

13.3.4 Injunction. Except as otherwise expressly provided in the Plan or for obligations issued pursuant to the Plan, all Persons who have held, hold, or may hold Claims or Interests that have been discharged, released or are subject to exculpation under the Plan, are permanently enjoined, from and after the Effective Date, from: (1) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (2) bringing any claim, counterclaim, cross-claim, interpleaders or any other action with respect to any such Claims or Interests; (3) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order on account of or in connection with or with respect to any such Claims or Interests; (4) creating, perfecting, or enforcing any encumbrance of any kind against such property or estates of the Debtors or Liquidating Trust on account of or in connection with or with respect to any such Claims or Interests; (5) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Persons or against the property or Estates of such Entities on account of or in connection with or with respect to any such Claims or Interests unless such Holder has filed a motion requesting the right to perform such setoff on or before the Confirmation Date, and notwithstanding an indication in a Proof of Claim, or interest or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to section 553 of the Bankruptcy Code or otherwise; and (6) commencing or continuing in any manner any action or other proceeding of any kind on account of, or in connection with, or with respect to any such Claims or Interests released or settled pursuant to the Plan.

13.3.5 Fiduciary Duty Under ERISA. Nothing in this Plan will release or discharge any fiduciary of the Pension Plans, within the meaning of 29 U.S.C. § 1002(3)(21), from any liability to the PBGC arising as a result of such fiduciary's breach of fiduciary duty under ERISA.}

13.4 Preservation of Rights of Action.

13.4.1 Except as otherwise provided in the Plan or the Confirmation Order, in accordance with Bankruptcy Code section 1123(b)(3), any Retained Causes of Action that any Debtor may hold against any Person or Entity shall vest upon the Effective Date in the Liquidating Trust. For the avoidance of doubt, any claim that is released or waived pursuant to the Plan may be applied by the Debtors or Liquidating Trust, as the case may be, to defend against, setoff or reduce the Claim of any Released Party. On and after the Effective Date, the Trustees shall have the exclusive right to institute, prosecute, abandon, settle or compromise any Retained Causes of Action in the Trustees' sole discretion and without further order of the Bankruptcy Court, in any court or other tribunal including, without limitation, an adversary proceeding filed in these Chapter 11 Cases. Retained Causes of Action and any recoveries therefrom shall remain the sole property of the Liquidating Trust and Holders of Allowed Claims or Interests shall have no direct right to any such recovery.

13.4.2 Unless any of the Retained Causes of Action against any Persons or Entities are expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including the Confirmation Order), the Debtors expressly reserve such Retained Causes of Action for later adjudication by the Trustees in accordance with the Plan and Liquidating Trust Agreement, therefore, no issue preclusion, including, without limitation, the doctrines of res

judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel or laches or any similar legal or equitable doctrine shall apply to any Retained Causes of Action upon or after the entry of the Confirmation Order, except where such Retained Causes of Action has been expressly released in the Plan or Confirmation Order. In addition, the Debtors expressly reserve the right to pursue or adopt any claims alleged in any lawsuit in which a Debtor is a defendant or an interested party, against any Person or Entity, including, any plaintiffs or co-defendants in such lawsuits. Subject to the foregoing, any Person or Entity to whom any Debtor has incurred an obligation or who has received services from a Debtor or a transfer of money or property of a Debtor, or who has transacted business with a Debtor, or leased equipment or property from a Debtor, should assume that any such obligation, transfer or transaction may be reviewed by the Trustees after the Effective Date and may be the subject of an action after the Effective Date, regardless of whether: (i) such Person or Entity has filed a Proof of Claim against any Debtor in these Chapter 11 Cases; (ii) a Debtor has objected to any such Person or Entity's Proof of Claim; (iii) any such Person or Entity's Proof of Claim was included in the Schedules; (iv) a Debtor has objected to any such Person or Entity's scheduled Claim; or (v) any such Person or Entity's scheduled Claim has been identified as disputed, contingent or unliquidated.

13.5 Term of Injunctions and Stays. Unless otherwise specifically provided in the Plan or the Confirmation Order, all injunctions or stays provided for in these Chapter 11 Cases pursuant to Bankruptcy Code section 105, 362 or 524 or otherwise and in effect on the Confirmation Date shall remain in full force and effect until the Effective Date.

13.6 Release of Liens. Except as otherwise specifically provided in the Plan or the Confirmation Order, all Liens, security interests, deeds of trust or mortgages against any Debtor or property of any of the Debtors' Estates shall and shall be deemed to be released, terminated and nullified as of the Effective Date. Pursuant to Bankruptcy Code section 1142(b), the Trustees are authorized to execute and file any release of Lien, in their sole business judgment, to assist in consummation of the Plan if the holder of such Lien fails to execute such a release of Lien at the Trustees' request.

13.7 Substantive Consolidation. The Plan shall serve as a motion by the Debtors seeking entry of an order substantively consolidating all of the Estates of all of the Debtors into a single consolidated Estate for all purposes associated with Confirmation and Consummation. Intercompany Claims and Intercompany Interests are deemed to be satisfied and resolved by the substantive consolidation provided for herein.

13.7.1 The entry of the Confirmation Order shall constitute approval by the Bankruptcy Court of the substantive consolidation of the Debtors and their respective Estates for all purposes relating to the Plan, including for purposes of voting, confirmation and Distributions. If this substantive consolidation is approved, then for all purposes associated with Confirmation and Consummation, all assets and liabilities of the Debtors shall be treated as though they were merged into a single economic unit, and all guarantees by any Debtor of the obligations of any other Debtor shall be considered eliminated so that any Claim and any guarantee thereof by any other Debtor, as well as any joint and several liability of any Debtor with respect to any other Debtor, shall be treated as one collective obligation of the Debtors. Moreover, (a) no Distribution shall be made under the Plan on account of any Claim held by any one of the Debtors against any of the other Debtors and such Intercompany Claims will be

extinguished; (b) no Distribution shall be made under the Plan on account of any Intercompany Interest held by any one of the Debtors in any of the other Debtors except to the extent necessary to effect the substantive consolidation provided for herein; (c) all guaranties of any one of the Debtors of the obligations of any of the other Debtors shall be eliminated so that any Claim against any one of the Debtors, and any guaranty thereof executed by any of the other Debtors, shall be one obligation of the consolidated Debtors' Estates; and (d) every Claim that is timely Filed or to be Filed in the Chapter 11 Cases of any of the Debtors shall be deemed Filed against the consolidated Estates and shall be one Claim against, and one obligation of, the Estates.

13.7.2 In addition, notwithstanding any provision of the Plan to the contrary, any Holder of multiple Allowed Claims against more than one Debtor that arise from the contractual, joint, joint and several, or several liability of such Debtors, the guaranty by one Debtor of another Debtor's obligation or other similar circumstances, shall be entitled to one Allowed Claim that, in the aggregate, does not exceed the amount of the underlying Claim giving rise to such multiple Claims. Claims against more than one of the Debtors arising from the same injury, damage, cause of action, or common facts shall be Allowed only once as if such Claim were against a single Debtor.

13.7.3 Any alleged defaults under any applicable agreement, including executory contracts and unexpired leases, with the Debtors arising from substantive consolidation under the Plan shall be deemed cured as of the Effective Date.

13.7.4 The Facilitating Companies. Notwithstanding anything to the contrary in the Plan, neither substantive consolidation nor anything else in the Plan shall affect the legal or organizational structure of the Facilitating Companies, each of whose separate corporate existence shall continue for the limited purpose of facilitating the Liquidating Trust's monetization of the Facilitating Companies' interests in their respective assets. All ownership and management authority for the Facilitating Companies that was vested in the Facilitating Companies' equity owners and management as of the Petition Date shall be terminated in the hands of such owners and management and shall be vested in the Liquidating Trust as of the Effective Date, and the Liquidating Trust shall thereby be vested with the power and authority to effect any permissible corporate action without any further order of the Bankruptcy Court or any other court or any other corporate action or approvals. Any alleged defaults under any agreements with the Facilitating Companies resulting from substantive consolidation under the Plan shall be deemed cured as of the Effective Date. Anytime after the Effective Date, the Liquidating Trust may deem any of the Facilitating Companies to be dissolved in accordance with this section by filing a "notice of dissolution" on the docket of the Chapter 11 Bankruptcy Cases and serving notice of same on the Plan Committee, the United States Trustee and each Secretary of State in which such Facilitating Companies are organized, upon which such Facilitating Companies shall thereby be immediately deemed for all purposes to be dissolved without the need for any further action, notice, filing, order of the Bankruptcy Court or other court or any other action.

ARTICLE XIV RETENTION OF JURISDICTION

14.1 Post Confirmation Date Jurisdiction of Bankruptcy Court. Pursuant to Bankruptcy Code sections 105(a) and 1142, and notwithstanding the Plan's Confirmation and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of or related to these Chapter 11 Cases and the Plan, to the fullest extent permitted by law, including jurisdiction to:

14.1.1 allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim or Priority Claim and the resolution of any objections to the allowance or priority of Claims or Interests;

14.1.2 grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan for periods ending on or before the Effective Date;

14.1.3 hear and determine all applications for compensation and reimbursement of expenses of Professionals under the Plan or under sections 330, 331, 503(b), 1103 and 1129(c)(9) of the Bankruptcy Code, which shall be payable by the Liquidating Trust only upon allowance thereof pursuant to an order of the Bankruptcy Court; provided, however, that the fees and expenses of the Debtors and the Liquidating Trust, as applicable, incurred after the Effective Date, including counsel fees, may be paid by the Liquidating Trust in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court;

14.1.4 resolve any matters related to the rejection, or assumption and assignment, of any executory contract or unexpired lease to which any Debtor is a party or with respect to which any Debtor may be liable and to hear, determine and, if necessary, liquidate any Claims arising therefrom;

14.1.5 ensure that Distributions are accomplished by the Liquidating Trust in accordance with the Plan and the Liquidating Trust Agreement;

14.1.6 decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters, and grant or deny any applications, involving the Debtors that may be pending on the Effective Date;

14.1.7 enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases and other agreements or documents created in connection with the Plan, the Disclosure Statement or the Confirmation Order;

14.1.8 resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation or enforcement of the Plan or any contract, instrument, release or other agreement or document that is executed or created, or assumed and assigned or

rejected, pursuant to this Plan, or any Person's rights arising from or obligations incurred in connection with the Plan or such documents;

14.1.9 approve any modification of the Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code or approve any modification of the Disclosure Statement, the Confirmation Order or any contract, lease, instrument, release or other agreement or document created in connection with this Plan, the Disclosure Statement or the Confirmation Order, or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, this Plan, the Disclosure Statement, the Confirmation Order or any contract, lease, instrument, release or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order, in such manner as may be necessary or appropriate to consummate the Plan;

14.1.10 issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Person with consummation, implementation or enforcement of the Plan or Confirmation Order;

14.1.11 hear and determine Retained Causes of Action brought by or on behalf of the Debtors or the Liquidating Trust for the benefit of the Liquidating Trust and its beneficiaries, including, but not limited to, the Retained Causes of Actions;

14.1.12 hear and determine matters concerning state, local and/or federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;

14.1.13 enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason or in any respect modified, stayed, reversed, revoked or vacated, or Distributions pursuant to this Plan are enjoined or stayed;

14.1.14 determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order;

14.1.15 enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Chapter 11 Cases;

14.1.16 hear and determine any matters related to (i) the property of the Liquidating Trust from and after the Effective Date and (ii) the activities of the Liquidating Trust;

14.1.17 hear and determine disputes with respect to compensation of the Plan Committee's counsel;

14.1.18 hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under the Bankruptcy Code; and

14.1.19 enter an order and issuing a final decree closing the Chapter 11 Cases.

14.2 Bankruptcy Court Does Not Exercise Jurisdiction. If the Bankruptcy Court abstains from exercising or declines to exercise jurisdiction, or is otherwise without jurisdiction, over any matter arising under, arising in or related to these Chapter 11 Cases, including with respect to any of the matters set forth above in Section 14.1 of the Plan, this Article XIV shall not prohibit or limit the exercise of jurisdiction by any other tribunal that has competent jurisdiction with respect to any such subject matter.

ARTICLE XV MISCELLANEOUS PROVISIONS

15.1 Effectuating Documents and Further Transactions. Each of the Debtors is authorized to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement and further evidence the terms and conditions of the Plan.

15.2 Corporate Action. Prior to, on or after the Effective Date (as appropriate), all matters expressly provided for under the Plan that would otherwise require approval of the stockholders or directors of one (1) or more of the Debtors shall be deemed to have occurred and shall be in effect prior to, on or after the Effective Date (as appropriate) pursuant to the applicable general corporation law of the states in which the Debtors are incorporated without any requirement of further action by the stockholders or directors of the Debtors.

15.3 Payment of Statutory Fees. All fees payable pursuant to section 1930 of Title 28 of the United States Code shall be paid on or before the Effective Date or when otherwise due.

15.4 No Admissions. Notwithstanding anything herein to the contrary, nothing contained in the Plan shall be deemed an admission by any Debtor or be used as the basis of a waiver or estoppel, or for any other purpose, against any Debtor with respect to any matter set forth herein including, without limitation, liability on any Claim or Interest or the propriety of any classification of any Claim or Interest.

15.5 Plan and Confirmation Order Are Controlling. To the extent there is an inconsistency or ambiguity between any term or provision in the Disclosure Statement and the Plan, the terms and provisions of the Plan shall control. To the extent there is an inconsistency or ambiguity between any term or provision in the Plan and the Confirmation Order, the terms and provisions of the Confirmation Order shall control.

15.6 Substantial Consummation of Plan. This Plan shall be deemed to be substantially consummated on the Effective Date.

15.7 Successors and Assigns. This Plan shall be binding upon and inure to the benefit of the Debtors, and their respective successors and assigns, including, without limitation, the Liquidating Trust. The rights, benefits and obligations of any Person named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such Person.

15.8 Severability of Plan Provisions. If, prior to the Confirmation Date, any term or provision of the Plan is determined by the Bankruptcy Court to be invalid, void or unenforceable, and subject to the reasonable approval of the Debtors and the Creditors' Committee, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable.

15.9 Notices and Distributions. All notices, requests and Distributions to any Holder of a Claim or Interest as of the Record Date shall be sent (i) to the last known address of the Holder or its attorney of record as reflected in any Proof of Claim or Administrative Claim filed by or on behalf of such Holder; or (ii) if there is no such evidence of a last known address, to the last known address of the Holder as reflected in the books and records of the Debtors as of a date that is on or about the Record Date. Any holder of a Claim or Interest may designate another address for the purposes of the Plan by providing the Trustees written notice of such address which notice will be effective upon the date specified in such notice or, if none, the date such notice is received by the Trustees. Notices and requests may also be sent to a holder of a Claim at the fax number or email address provided on the Ballot. Notices and requests shall be deemed received by a Holder of a Claim or Interest (a) if sent by mail, on the second Business Day after deposit in the United States mail, postage prepaid, (b) if sent by overnight courier, on the first Business Day after delivery to such courier, (c) if sent by fax or email on a Business Day (y) prior to 5:00 p.m. (Eastern time), on such Business Day or (z) if after 5:00 p.m. (Eastern time), on the next Business Day.

15.10 Suspense Funds and Funds Subject to Escheat. Any benefit or obligation owing by a Debtor of funds which may be in suspense and attributable to a public or private entity, of which no party has asserted a Proof of Claim in this proceeding, shall be considered an Undeliverable Distribution, as provided above, and such property shall revert to the Liquidating Trust.

15.11 Responsible Party Injunction. The Confirmation Order shall constitute and provide for an injunction by the Bankruptcy Court as of the Effective Date against any Holder of a Tax Claim from commencing or continuing any action against any responsible person or officer or director of any Debtor or any of its Debtor Affiliates.

15.12 Pre-petition Lawsuits. On the Effective Date, all lawsuits, litigation, administrative actions or other proceedings, judicial or administrative, relating to pre-petition events or conduct of the Debtors, in connection with the assertion of a Claim, shall be dismissed as to the Debtors. Such dismissal shall be with prejudice to the assertion of such Claim, or any related Claim, by any of the parties to any such litigations, actions or proceedings in any manner other than as prescribed by this Plan.

15.13 Disallowance and Subordination of Claims for Any Fine, Penalty or Forfeiture, or Multiple, Exemplary or Punitive Damages. The filing of this Plan and its submission to the Holders of Claims which assert any fine, penalty or forfeiture, or multiple, exemplary or punitive damages as referenced in Bankruptcy Code section 726(a)(4) shall constitute an action seeking to subordinate all such Claims pursuant to section 510 of the Bankruptcy Code. The Confirmation Order, except as provided herein, shall constitute an order subordinating such Claims to all other Claims pursuant to section 510 of the Bankruptcy Code.

15.14 Governing Law. Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and the Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of Delaware, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction and implementation of the Plan, any agreements, documents, instruments or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control), and corporate governance matters.

15.15 Defaults. Any act or omission by a party in interest in contravention of a provision of the Plan shall be deemed an event of default under this Plan. Upon an event of default, the Debtors or the Liquidating Trustee, as applicable, may seek to hold the defaulting party in contempt of the Confirmation Order. If such party in interest is found to be in default under the Plan, such party shall pay the reasonable attorneys' fees and costs of the Debtors or the Liquidating Trustee, as applicable, in pursuing such matter. Furthermore, upon the finding of such a default by a party in interest, the Bankruptcy Court may (i) designate a party to appear, sign and/or accept the documents required under this Plan on behalf of the defaulting party, in accordance with Rule 70 of the Federal Rules of Civil Procedure; or (ii) make such other order as may be equitable which does not materially alter the terms of the Plan.

15.16 Binding Effect. This Plan shall be binding on and inure to the benefit of the Debtors, the holders of Claims or Interests (whether or not they have accepted this Plan) and their respective heirs, executors, administrators, representatives, successors and assigns. The Debtors or Liquidating Trust, as the case may be, may treat as the "Holder" of a Claim the Person who filed a Proof of Claim with respect thereto and any subsequent transferee of such Person who had complied with the provisions of Rule 3001 of the Bankruptcy Rules, and the Debtors or Trustees shall have no obligation to treat or deal with as a "Holder" any other Person.

15.17 Notices to Debtors. Any notice, request or demand required or permitted to be made or provided to or upon the Debtors under the Plan shall be (i) in writing, (ii) served by (a) certified mail, return receipt requested, (b) hand delivery, (c) overnight delivery service, (d) first class mail, (e) electronic transmission or (f) facsimile transmission, and (iii) deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile or e-mail transmission, when received and telephonically confirmed, addressed as follows:

[Remainder of page intentionally left blank.]

THE FAIRCHILD CORPORATION
Attn.: Donald E. Miller, CRO
1700 Tysons Boulevard
Suite 530
McLean, VA 22102
E-mail: dmiller@fairchild.com

with a copy to Debtors' counsel:

CURTIS, MALLET-PREVOST,
COLT & MOSLE LLP
Attn.: Timothy A. Barnes and
Jerrold L. Bregman
101 Park Avenue
New York, New York 10178-0061
E-mail: tbarnes@curtis.com; and
jlbregman@curtis.com

15.18 Filing of Additional Documents. On or before the Effective Date, the Debtors may File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan, including the Schedule of Assumed Contracts and Leases.

Dated: ~~October 30~~ November 9, 2009
Wilmington, Delaware

The Fairchild Corporation
(for itself and its affiliated Debtors)

By: /s/ Donald E. Miller
Name: Donald E. Miller
Title: Chief Restructuring Officer

EXHIBIT 1

Schedule of Facilitating Companies

The “Facilitating Companies” consist of the following Entities:²

A. Debtors:

1. The Fairchild Corporation
2. Banner Capital Ventures, Inc.
3. Fairchild Holding Corp.
4. Fairchild Sports USA
5. Fairchild Technologies IP, Inc.
6. Fairchild Trading Corp.
7. Intersport Fashions West
8. Recycling Investments III, Inc.
9. Republic Thunderbolt, LLC
10. Republic Thunderbolt North, LLC
11. Republic Thunderbolt West, LLC
12. Sheepdog in Liquidation 1, Inc.

B. Non-Debtors (Not Among the 61 Debtors in the Chapter 11 Cases):

13. Eagle Environmental III, L.P.
14. Aviation One Company Ltd.
15. Banner Investments (U.K.) Limited [U.K.]
16. Fairchild Arms International Limited [Ontario]
17. Fairchild Corporation of Canada, Ltd. (The) [Ontario]
18. Fairchild Holding GmbH [Germany] (f/k/a Polo Holding GmbH)
19. Fairchild Sports France SARL
20. Fairchild Sports GmbH
21. Fairchild Technologies Semiconductor Equipment Group GmbH [Germany]
22. Fairchild Verwaltungs GmbH
23. Hein Gericke France SARL
24. JJS Limited
25. WIS LP, Ltd.
26. WIS Partners, LP

² The Debtors reserve the right to amend, supplement and change the Entities included on this schedule.

EXHIBIT 2

Liquidating Trust Agreement

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

In re:

THE FAIRCHILD CORPORATION, et al.,¹

Debtors.

)
) Chapter 11
)

) Case No. 09-10899 (CSS)

)
) Jointly Administered
)
)

FAIRCHILD LIQUIDATING TRUST AGREEMENT

This agreement creating the Fairchild Liquidating Trust (the "Agreement"), dated as of ~~October~~ **November** __, 2009, is by and between The Fairchild Corporation, et al., (collectively, the "Settlor"), and Donald E. Miller (the "Full-Time Operational Trustee"), Jerry R. Lirette (the "Part-Time Operational Trustee"), and Pierre Benoit (the "Consulting Trustee" and, together with the Full-Time Operational Trustee and the Part-Time Operational Trustee, the "Trustees"), as trustees for the benefit of the Beneficiaries, under the terms of the Plan of Liquidation confirmed by the Bankruptcy Court in Settlor's Chapter 11 Cases, by Confirmation Order entered December __, 2009.

WHEREAS, the Liquidating Trust is created pursuant to, and to effectuate, the Plan;

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

WHEREAS, the Liquidating Trust is established for the purpose of taking possession of the Trust Assets and conserving, protecting, collecting and liquidating or otherwise taking such actions as are necessary, advisable or in the best interests of the Beneficiaries to convert into cash all assets that constitute part of the Trust Assets (hereinafter the "Assets") for the benefit of the Beneficiaries in accordance with the terms of this Agreement and the Plan;

WHEREAS, the Liquidating Trust shall not continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust;

¹ The last four digits of Fairchild's federal tax identification number are 8587. The mailing address for Fairchild is 1750 Tysons Boulevard, Suite 530, McLean, Virginia 22102. Due to the large number of Debtors in these jointly administered cases, a complete list of the Debtors, the last four digits of their federal tax identification numbers and their addresses is not provided herein. A complete list of such information may be obtained on the website of the Debtors' Solicitation and Claims Agent at <http://chapter11.epiqsystems.com/fairchild>

WHEREAS, pursuant to the Plan, the Settlor, the Trustees and the Beneficiaries are required to treat, for all U.S. federal income tax purposes, the transfer of the Trust Assets to the Liquidating Trust as a transfer of the Trust Assets by the Settlor to the Beneficiaries in satisfaction of their Claims and Interests, followed by a transfer of the Trust Assets by the Beneficiaries to the Liquidating Trust in exchange for the beneficial interests in the Liquidating Trust (the "Beneficial Interests") herein, and to treat the Beneficiaries as the grantors and owners of the Liquidating Trust in accordance with Treasury Regulation Section 301.7701-4(d);

WHEREAS, the Liquidating Trust is intended to be treated as a grantor trust of which the Beneficiaries are treated as the grantors and owners for U.S. federal income tax purposes;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and in the Plan, the Settlor and the Trustees hereby agree as follows:

ARTICLE I.

DEFINITIONS AND INTERPRETATIONS

1.1 Definitions. Unless otherwise defined herein, capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Plan.

1.2 Rules of Interpretation.

A. For purposes herein: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neutral gender shall include the masculine, feminine or neutral gender; (b) any reference herein to a contract, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been filed or to be filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with this Agreement; (d) unless otherwise specified, all references herein to "Articles" or "Sections" are references to Articles or Sections hereof, herein or hereto; (e) the words "herein", "hereof", and "hereto" refer to this Liquidating Trust in its entirety rather than to a particular portion of the Liquidating Trust; (f) captions and headings of Articles and Sections are inserted for convenience of reference only and are not intended to be part of or affect the interpretation hereof; and (g) the word "including" shall be deemed to have the same meaning as the words "including, but not limited to" or words of similar import; and (h) the rules of construction set forth in Bankruptcy Code section 102 shall apply.

B. All references herein to a Debtor shall also refer to the applicable Debtor to the extent an event or action occurs after the Effective Date.

C. All references herein to monetary amounts shall refer to the currency of the United States of America, unless otherwise expressly provided.

ARTICLE II.
DECLARATION OF LIQUIDATING TRUST

2.1 Creation and Name. On the Effective Date, upon the execution of this Agreement by the Settlor and the Trustees, the Liquidating Trust shall be thereby created, established and become effective. The Liquidating Trust shall be known as the “Fairchild Liquidating” Trust, and is the Liquidating Trust referred to as the “Liquidating Trust” or the “Trust” in the Plan. The Trustees may conduct the affairs of the Liquidating Trust under the name “Fairchild Liquidating Trust” or such variation thereof as the Trustees see fit.

2.2 Purpose of Trust. On the Effective Date, the Settlor and the Trustees, on behalf of the Beneficiaries, and by their execution hereof, created the Liquidating Trust for the purpose of collecting, distributing and liquidating the Assets for the benefit of the Beneficiaries in accordance with the terms of this Agreement and the Plan. The activities of the Liquidating Trust shall be limited to those activities set forth herein and as contemplated by the Plan. The Trustees understand and agree that the Liquidating Trust will not continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to carry out, and consistent with, the liquidating purpose of the Liquidating Trust. In selling or otherwise monetizing the Assets, the Trustees shall use their reasonable best efforts, within a reasonable time frame, to maximize the amount of proceeds derived therefrom, subject to the limitation in the preceding sentence.

2.3 Transfer of Assets.

A. The Settlor hereby grants, releases, assigns, conveys, transfers and delivers, on behalf of the Beneficiaries, the Trust Assets (including all Avoidance Actions and all Litigation Actions) to the Liquidating Trust as of the Effective Date to be held in trust for the benefit of the Beneficiaries for the uses and purposes specified in this Agreement and the Plan. The Settlor shall, from time to time as and when reasonably requested by the Trustees, execute and deliver or cause to be executed and delivered all such documents (in recordable form where necessary or appropriate) and the Settlor shall take or cause to be taken all such further action as the Trustees deem necessary or appropriate, in the exercise of the Trustees’ business judgment, to vest or perfect in or confirm to the Trustees, acting on behalf of the Liquidating Trust, title to and possession of the Trust Assets (including all Avoidance Actions and all Litigation Actions).

B. For all federal, state and local income tax purposes, the Settlor, the Beneficiaries, and the Trustees shall treat the transfer of the Trust Assets (including all Avoidance Actions and all Litigation Actions) to the Liquidating Trust as a transfer of the Trust Assets (including all Retained Causes of Action) by the Settlor to the Beneficiaries in satisfaction of their Allowed Claims or Interests, followed by a transfer of the Trust Assets (including all Avoidance Actions and all Litigation Actions) by the Beneficiaries to the Liquidating Trust in exchange for their Beneficial Interests. The Beneficiaries shall be treated as the grantors and owners of the Liquidating Trust and the Liquidating Trust shall be treated as a Creditor grantor trust for U.S. federal income tax purposes.

C. The Trustees, in reliance upon such professionals as the Liquidating Trust shall retain, shall make a good faith determination of the fair market value of the Trust Assets as of the Effective Date, as soon as possible after the Effective Date, but in no event later than one hundred eighty (180) days thereafter. Such valuation shall be made available from time to time to the extent necessary or appropriate as reasonably determined by the Trustees in reliance on its professionals or as directed by the Plan Committee (which may include posting such valuation on the website established by the Liquidating Trust). Such valuation shall be used consistently by all parties (including Debtors, the Trustees and Beneficiaries) for all federal and other income tax purposes.

D. In no event shall any part of the Trust Assets revert, or be distributed, to any of the Debtors.

E. The Beneficiaries shall be the sole beneficiaries of the Liquidating Trust, the Trust Assets and the Assets and the Liquidating Trust shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein, in the Plan and in the Confirmation Order, including, but not limited to, those powers of the Trustees set forth in Section 4.19 hereof.

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

ARTICLE III.

ROLE OF THE PLAN COMMITTEE

3.1 Responsibilities, Duties and Powers of the Plan Committee. To the extent authorized by the Plan and allowed by applicable law, the Plan Committee shall act, as if by analogy under Delaware corporate law, as the board of directors of the Liquidating Trust and shall supervise and direct the Trustees.

3.2 Plan Committee's Standard of Care; Exculpation. Neither the Plan Committee nor any officer, director, member, affiliate, employee, employer, Professional, agent or representative of the Plan Committee shall have or incur any liability to, or be subject to any right of action by, any person or entity, for any act or omission on or subsequent to the execution of this Agreement in connection with, relating to, or arising out of, the Chapter 11 Cases, the pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for their fraud or willful misconduct.

3.3 Dissolution. ~~Once~~Subject to Article X herein, in the unlikely event that all Allowed Claims in Classes 2, 3, 4 and 5 have been paid in full or otherwise satisfied in accordance with the Plan, the Plan Committee shall be deemed to have transferred all of its rights and powers granted under the Plan to the Trustees, at which time the Plan Committee shall dissolve and shall have no further rights, powers and duties.

ARTICLE IV.

TRUSTEES; ADMINISTRATION OF THE LIQUIDATING TRUST

4.1 Appointment and Acceptance of Trustees. There shall be at least three Trustees. Donald E. Miller is hereby appointed as the Full-Time Operational Trustee. Jerry R. Lirette is hereby appointed as the Part-Time Operational Trustee. Pierre Benoit is hereby appointed as the Consulting Trustee. By his execution and delivery of this Agreement, each of the Trustees hereby duly accepts such appointment, pursuant to the terms and conditions of this Agreement.

4.2 Term. Each Trustee shall remain a Trustees until the earlier of his/her resignation, removal, death or the occurrence of the Termination Date.

4.3 Resignation. ~~The~~Each of the Trustees may resign as Trustee hereunder by executing a written letter of resignation and filing the same with the Bankruptcy Court. Such resignation shall become effective upon the earlier of (i) thirty (30) days following the filing of such resignation letter with the Bankruptcy Court, and (ii) the appointment of a successor Trustee in accordance with the provisions hereof.

4.4 Removal by the Plan Committee. The Plan Committee, by a simple majority of those members voting on the proposed removal, may remove a Trustee or any successor Trustee in the Plan Committee's sole and absolute discretion, for any reason or for no reason at all. The removal of a Trustee under these circumstances shall be effective immediately upon the Plan Committee's notice to the subject Trustee that the Plan Committee had voted to authorize such removal.

4.5 Appointment of Successor Trustee.

A. In the event of the (i) removal of a Trustee by the Plan Committee, (ii) death of a Trustee, or (iii) resignation of a Trustee, the Plan Committee shall appoint a successor Trustee. Written notice of such appointment shall be filed with the Bankruptcy Court and served upon the United States Trustee and the remaining Trustees immediately upon such appointment.

B. Any successor Trustee appointed hereunder shall execute, acknowledge and file with the Bankruptcy Court an instrument duly accepting such appointment and agreeing to be bound by the terms of this Agreement. The successor Trustee shall concurrently serve copies of the same upon the remaining Trustees, the Plan Committee, and the United States Trustee. Thereupon, such successor Trustee, without further act, deed or conveyance, shall become vested with all the rights, powers and duties of a Trustee under this Agreement and the Plan.

4.6 Continuance. In the event of the resignation or removal of a Trustee, such Trustee shall (i) promptly execute and deliver such documents, instruments and other writings as may be reasonably requested by the successor Trustee to effect or reflect the termination of the Trustee's capacity under this Agreement and the transfer of the rights, duties and obligations previously held by the Trustee to such Trustee's successor, (ii) deliver to the successor Trustee all documents, instruments, records and other writings as may be in the possession of the Trustee, and (iii) otherwise assist and cooperate in effecting the assignment of its rights, duties, obligations and functions to such successor Trustee. In the event that there shall not have been appointed a successor Trustee pursuant to the terms hereof on or before the effective date of the resignation or removal of a Trustee, the Plan Committee shall serve as the interim Trustee hereunder until a successor Trustee shall have been appointed and shall have taken office in accordance with the provisions hereof.

4.7 Release of Claims by Trustees. In the event of the resignation, removal or death of a Trustee, such Trustee shall be deemed to have forever waived and released any and all claims such Trustee has or may have had at the time of the resignation, removal or death, against the Liquidating Trust or the other present and former Trustees of the Liquidating Trust, except for claims for unpaid compensation, benefits and claims for indemnity under Section 7.2 of this Agreement.

4.8 Confidentiality. The Trustees agree that they shall not publish or disseminate in any way or manner the affairs of the Liquidating Trust and shall keep such information confidential, except as may be required to comply with any law, Bankruptcy Court order or reporting requirement under the terms of this Agreement and the Plan, or to effectively perform their duties under this Agreement. In the event of removal or resignation of a Trustee, such Trustee shall promptly return all documents, instruments and other writings held by the Trustee in connection with the affairs or business of the Liquidating Trust. In the event of a removal or resignation of a Trustee, such Trustee shall have a continuing obligation to keep the affairs of the Liquidating Trust confidential, except as may be required to comply with any law or Bankruptcy Court order. If a Trustee who has formerly been removed or has resigned receives a subpoena, notice of deposition, or other discovery request relating to the affairs, property, or business of the Liquidating Trust, he or she shall promptly (and, in no event later than two business days after receipt) notify the Liquidating Trust, Plan Committee, and counsel for the Plan Committee of such receipt and shall promptly furnish the Liquidating Trust, Plan Committee, and counsel for the Plan Committee with the subject discovery document(s) in its possession.

4.9 Corporate Officer Analogy. To the extent authorized by the Plan and allowed by applicable law, the Trustees shall act, as if by analogy under Delaware corporate law, as officers of the Liquidating Trust, each under the direction and supervision of the Plan Committee.

4.10 Reliance by Trustees. A Trustee 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 which the Trustee has no reason to believe to be other than genuine and to have been signed or presented other than

by the proper parties or, in the case of facsimile transmission, to have been sent other than by the proper party or parties, in each case without obligation to satisfy himself or herself that the same was given in good faith and without responsibility for errors in delivery, transmission, or receipt. In the absence of fraud or willful misconduct by the Trustee, a Trustee may rely on the truth of statements and correctness of the facts and opinions expressed therein and shall be fully protected personally in acting thereon.

4.11 Trustees' Standard of Care; Exculpation. Neither the Trustees, nor any director, officer, member, affiliate, employee, employer, Professional, agent or representative of any or all of the Trustees shall have or incur any liability to, or be subject to any right of action by, any person or entity, for any act or omission on or subsequent to the execution of this Agreement in connection with, relating to, or arising out of, the Chapter 11 Cases, the pursuit of confirmation of the Plan, the consummation of the Plan, the administration of the Plan or the property to be distributed under the Plan, or the performance of their duties hereunder, except in the case of acts or omissions of such persons amounting to fraud or willful misconduct.

4.12 Insurance. The Trustees shall have the authority to purchase, at the expense of the Liquidating Trust, errors and omissions insurance (or similar insurance coverage) for the Liquidating Trust, the Trustees and the Members of the Plan Committee in accordance with the following:

A. The Trustees may, without further authority, purchase errors and omissions insurance (or similar insurance) from the assets of the Liquidating Trust in the amount of \$_____ Million for the Liquidating Trust and \$_____ **Million for each of** the Trustees annually. In the event that the Trustees elect to purchase such insurance for the Liquidating Trust and the Trustees, the Trustees shall purchase errors and omissions insurance (or similar insurance) for the Plan Committee and its Members in the amount of \$_____ Million per Plan Committee Member.

B. In the event that the Trustees elect to purchase additional errors and omissions insurance (or similar insurance) for the Liquidating Trust and Trustees, the Trustees must either (i) obtain prior written consent from the Plan Committee authorizing the Liquidating Trust to use additional Trust Assets for such additional insurance or (ii) the Trustees must pay for the portion of additional insurance from a source other than the Liquidating Trust.

C. In the event that the Trustees ~~purchases~~ **purchase additional** errors and omissions insurance (or similar insurance) for the Liquidating Trust and the Trustees pursuant to the clause (i) of the preceding subsection, the Trustees ~~shall~~ **may**, in their discretion, purchase **additional** errors and omissions insurance (or similar insurance) for the Plan Committee and its Members having coverage similar to that which the Trustees purchased for the Liquidating Trust and the Trustees.

D. In the event that the Plan Committee or its Members wish to purchase additional errors and omissions insurance (or similar insurance) for the Members of the Plan Committee beyond that which the Trustees may purchase in accordance with the previous

subsections, the Plan Committee Members must pay for the additional insurance with funds from a source other than the Liquidating Trust.

E. In the event that any Trustee or Plan Committee Member elects to establish a separate LLC for the purpose of his/her participation in this liquidation process and for limiting his/her exposure as a result of such participation, the Liquidating Trust will pay for the establishment of such LCC and for the associated fees during the period such Trustees or Plan Committee Members serve in such capacity, **and for the additional period of one year thereafter.**

4.13 No Liability for Acts of Predecessors. No successor Trustee shall be in any way responsible for the acts or omissions of the Debtors, the officer, directors, agents, predecessors or successors thereof. Moreover, no successor Trustee shall be responsible for the acts or omissions of the Trustees before such successor became a Trustee.

4.14 No Implied Obligations. No Trustee shall be responsible for the performance of any duties and obligations other than those duties and obligations as are specifically set forth herein or in the Plan.

4.15 Bond Requirement; Exercise of Powers. The Trustees shall not be required to furnish a bond to secure the proper performance of their duties hereunder. Except as otherwise provided in this Agreement or the Plan, the Trustees shall not be required to procure authorization by any court for the exercise of any power conferred upon the Liquidating Trust or Trustees by this Agreement or the Plan; provided, however, that the Trustees shall be entitled to seek orders from the Bankruptcy Court with respect to certain matters for which the Bankruptcy Court has retained jurisdiction.

4.16 Maintenance, Safekeeping and Distribution of Assets. Subject to the provisions of this Agreement and the Plan, the Liquidating Trust will take possession of the Trust Assets and the Trustees shall conserve, protect, collect and liquidate or otherwise convert into cash all assets that constitute part of the Trust Assets. The Trustees will make periodic Distributions in accordance with the Plan. The Trustees may pursue or choose not to pursue, in the exercise of their business judgment and in accordance with the Plan and this Agreement, any and all causes of action, file claim objections and set reserves, and shall have the sole right, power and discretion to manage the affairs of the Liquidating Trust in accordance with the Plan and this Agreement. On and after the Effective Date, pursuant to Bankruptcy Code section 1123(b)(3), the Trustees shall have the power and authority to prosecute, in the name of the Liquidating Trust, any and all claims of the Debtors' Estates, including Avoidance Actions and the Litigation Actions. Additionally, the Trustees will have the power and authority to: (i) do all acts contemplated by the Plan to be done by the Trustees, and (ii) do all other acts and things that may be necessary or appropriate for the final Distribution of Assets, including the execution and delivery of appropriate agreements or other documents of disposition, liquidation or dissolution containing terms that are consistent with the terms of this Agreement and the Plan and that satisfy the applicable requirements of state law and such other terms to which the applicable entities may agree. Proceeds, if any, of any litigation conducted on behalf of the Liquidating Trust will automatically and without any further action by the Trustees or

otherwise, automatically become Assets of the Liquidating Trust, administered in accordance with this Agreement and the Plan.

4.17 The Role and Function of the Trustees. The duties and responsibilities of the Trustees shall be in accordance with the rights, powers and privileges expressly provided in this Agreement and the Plan. The Full-Time Operational Trustee shall be primarily responsible for the day to day management and operations of the Liquidating Trust and shall keep the Part-Time Operational Trustee advised of all material aspects of the operations of the Liquidating Trust **before any action or actions are taken thereon.** The Trustees, acting as a group, shall be responsible for all material matters effecting the Liquidating Trust. The Consulting Trustee shall be provided with copies of all reports generated under Section 4.6 and Section 8.1 of this Agreement, as well as any reports, summaries or other analyses prepared by the Full-Time and Part-Time Operational Trustees in connection with the daily management and operations of the Liquidating Trust. The Full-Time Operational Trustee and Part-Time Operational Trustee shall work together to resolve all material matters; provided, however, that in the event they are unable to agree, the Trustees shall act as a group with respect to such matters. When required to act as a group, the Trustees shall act by simple majority unless otherwise expressly set forth herein. The Consulting Trustee and the Part-Time Operational Trustees shall be provided with any materials, records, documents or information that either of them deems relevant before such Trustee is required to cast any vote. Notwithstanding any provision of the Plan or this Agreement that may specify otherwise, all of the Trustees shall be entitled to all information, documents, data and reports in the possession and control of the Liquidating Trust. ~~Notwithstanding any provision of the Plan or this Agreement that may specify otherwise, the Plan Committee acting, as if by analogy under Delaware corporate law, as the board of directors of the Liquidating Trust, shall have the right to define materiality, define the roles and duties of the Trustees, and to limit or expand the responsibilities of any of the Trustees.~~

4.18 Reliance by Third Parties. Notwithstanding any provision of the Plan or this Agreement that may specify or suggest otherwise, all third parties shall be entitled to rely upon any action taken, or direction provided, by the Trust or Trustees who shall not be required to obtain a court order for the purpose of assuring such reliance.

4.19 Additional Rights, Powers and Privileges. The Trustees shall have only the rights, powers and privileges expressly provided in this Agreement and the Plan. The Trustees shall have the power to take the actions granted in the subsections below (as may be further detailed herein) and any powers reasonably incidental thereto, which the Trustees, in the exercise of their business judgment, deem necessary or appropriate to fulfill the purpose of the Liquidating Trust, unless otherwise specifically limited or restricted by the Plan or this Agreement:

A. Hold legal title to any and all rights of the Settlor and the Beneficiaries in or arising from the Assets;

B. In reliance upon the official claims register maintained in the Chapter 11 Cases, maintain on the Liquidating Trust's books and records, a register evidencing the Beneficial Interests held by each Beneficiary;

C. Protect and enforce the rights to the Assets vested in the Liquidating Trust by this Agreement by any method deemed appropriate including, without limitation, by judicial proceedings or otherwise;

D. To institute, pursue and try or settle litigation in accordance with the terms of the Plan and this Agreement, and to pursue and conduct Rule 2004 discovery concerning the Assets, including Retained Causes of Action;

E. Make Distributions to Beneficiaries as provided for in, or contemplated by, the Plan and this Agreement;

F. Open and maintain bank accounts on behalf of or in the name of the Liquidating Trust, including the Debtors' interests in bank accounts transferred to the Liquidating Trust on the Effective Date;

G. On a current basis, file any and all tax and information returns, make tax elections by and on behalf of the Liquidating Trust and pay any taxes properly payable as well as withhold any taxes required to be withheld by the Liquidating Trust;

H. Establish such reserves for Disputed Claims, taxes, assessments, Trustees' fees and Professional Fees and other expenses of administration of the Liquidating Trust as may be necessary and appropriate for the proper operation of the Liquidating Trust; provided such retention does not disqualify the Liquidating Trust as a liquidating trust under Treasury Regulation Section 301.7701-4(a);

I. Pay all expenses and make all other payments relating to the Assets;

J. Retain and pay third parties pursuant to Article IV, Section 4.20 hereof;

K. Pursue or not to pursue, or settle, assign, transfer or sell, any Assets as the Trustees determine is in the best interests of the Beneficiaries and consistent with the purposes of the Liquidating Trust;

L. All powers provided under the Plan to the Trustees, including, without limitation, to allow, object to and/or reconcile Claims, marshal, liquidate, sell, assign, transfer, abandon and/or distribute the Assets;

M. Invest any moneys held as part of the Trust Assets in accordance with the terms of Article IV, Section 4.21 hereof; provided, however, that all short and long term investments shall be approved by a simple majority of the Trustees.

N. Pay from the Assets all fees incurred pursuant to 28 U.S.C. § 1930(a)(6) until the clerk of the Court closes the Debtors' cases; and

O. Terminate this Liquidating Trust and seek to close the Chapter 11 Cases pursuant to Section 350(a) of the Bankruptcy Code and the Plan.

4.20 Agents and Professionals. The Trustees shall retain attorneys and Professionals to the extent reasonably necessary to assist them with the performance of their rights, duties and obligations, to prosecute Litigation Actions and Avoidance Actions, to represent the Liquidating Trust in all matters in the Bankruptcy Court, and with respect to any issues arising from the sale of Trust Assets or for any other purpose reasonably required. The Liquidating Trust may pay the reasonable fees and expenses of any such retained attorney or Professional, including contingency fees, out of the Trust Assets in the ordinary course of business without any further order of the Bankruptcy Court.

4.21 Investment and Safekeeping of Assets. All moneys and other Assets received by the Liquidating Trust shall, until distributed or applied as herein provided, be held in trust for the benefit of the Beneficiaries, unless and to the extent required by law or the Plan. The Trustees shall not be liable for interest or producing income on any moneys, except as such interest or income shall actually be received by the Liquidating Trust. When investing any moneys held on behalf of the Liquidating Trust, the Trustees shall act in a manner in which individuals of ordinary prudence, discretion and judgment would act in the management of their own affairs; provided, however, that the right and power of the Trustees to invest moneys held by the Liquidating Trust, the proceeds from any sale of shares of stock, or any income earned by the Liquidating Trust, shall be limited to the right and power to invest such moneys, pending periodic Distributions, in accordance with this Agreement and the Plan. For avoidance of doubt, the investment powers of the Liquidating Trustees, other than those reasonably necessary to maintain the value of the Assets and to effectuate the liquidating purpose of the Liquidating Trust, are limited to powers to invest in demand and time deposits, such as short-term certificates of deposit, in banks or other savings institutions, or other temporary, liquid investments, such as Treasury bills, to the extent not prohibited under the Bankruptcy Code.

4.22 Limitations on Trustees. Except as provided herein or in the Plan, the Trustees shall not at any time, on behalf of the Liquidating Trust or Beneficiaries: (i) enter into or engage in any trade or business, and no part of the Liquidating Trust's Trust Assets or the proceeds, revenue or income therefrom shall be used or disposed of by the Liquidating Trust in furtherance of any trade or business, or (ii) except as provided in this Agreement, reinvest any Trust Assets.

A. The Trustees may only invest funds held in the Liquidating Trust consistent with this Agreement and, provided that the Trustees do so, he or she shall have no liability in the event of insolvency of any institution in which he or she has invested any funds of the Liquidating Trust.

B. The Trustees shall hold, collect, conserve, protect and administer the Liquidating Trust in accordance with the provisions of this Agreement and the Plan, and pay and Distributable Assets as set forth herein or in the Plan for the purposes set forth herein and therein. The Trustees shall, in an expeditious but orderly manner, make timely periodic Distributions to

Beneficiaries pursuant to the Plan and this Agreement and shall not unduly prolong the duration of the Liquidating Trust. Any determination by the Trustees made in good faith as to what actions are in the best interests of the Liquidating Trust shall be determinative.

C. Except as is necessary in connection with the liquidating purpose of the Liquidating Trust with respect to stock or partnership interests included in the Trust Assets, the Liquidating Trust shall not hold 50% or more of the stock (in either vote or value) of any entity that is treated as a corporation for federal income tax purposes, nor have any interest in an entity that is treated as a partnership for federal income tax purposes, unless such stock or partnership interest was obtained involuntarily or as a matter of practical economic necessity in order to preserve the value of the Trust Assets.

4.23 Retained Causes of Action. On and after the Effective Date, the Debtors will not be responsible for any review of Retained Causes of Action, including Avoidance Actions and Litigation Actions. The Trustees, will have all responsibility for reviewing, analyzing and prosecuting Retained Causes of Action under the Plan and this Agreement. The Trustees shall have the sole authority to cause the prosecution of Retained Causes of Action, which include Avoidance Actions, Litigation Actions and Retained Claims and fraudulent transfers, as defined by the Bankruptcy Code and as described in more detail in the Disclosure Statement accompanying the Plan.

4.24 Bankruptcy Court Approval of Trustee Actions. Except as expressly specified in the Plan or this Agreement, the Trustees need not obtain an order or approval of the Bankruptcy Court, or account to the Bankruptcy Court, concerning the taking of or declining to take any action or exercise any power, rights or discretion conferred hereunder, and the Trustees' actions and exercise of power, rights and discretion shall be immediately effective without any order or approval of, or accounting to, the Bankruptcy Court. The Trustees may, but shall not be required, to seek the Bankruptcy Court's adjudication of any matter that is within the Bankruptcy Court's jurisdiction.

4.25 Compensation of Trustees. The Trustees shall be entitled to be paid from the Liquidating Trust in accordance with Compensation Agreements reasonably acceptable to the Committee and substantially in the form of Exhibits A, B and C annexed hereto, as such agreements may be amended from time-to-time in accordance with their terms. The Trustees will also be reimbursed for reasonable, duly documented expenses incurred in carrying out the terms and conditions of this Agreement and the Plan.

4.26 Reporting Obligations of the Trustees. In addition to those reports to be prepared and delivered pursuant to Section 8.1, the Trustees shall prepare and provide the following reports to the Plan Committee and any Holder of a Claim or Interest who requests a copy in writing from the Liquidating Trust. Within forty-five (45) days after the end of each calendar quarter, a report of activities of the Liquidating Trust for the preceding quarterly period that includes the information contained in the quarterly report to be filed with the United States Trustee and any changes in the assets in the Liquidating Trust and the amount of any reserves or escrows of the Estates. No less frequently than annually and until the Bankruptcy Court has issued a decree closing the Chapter 11 Cases, commencing on the one year anniversary of the Effective Date, the Trustees will file with the Bankruptcy

Court a written report describing the Assets and liabilities of the Liquidating Trust at the end of such year or upon termination and a status report on any material action taken by the Trustees in the performance of his or her duties under the Liquidating Trust and under the Plan.

4.27 Corporate Governance, Directors, Officers, and Corporate Action. Except as otherwise provided in Section 13.7.4 of the Plan pertaining to Liquidating Debtors, on the Effective Date, the Debtors' Boards of Directors will be disbanded, each of the Debtors shall be deemed to be dissolved for all purposes, and except as otherwise provided in the Plan, all assets of all of the Debtors shall be Trust Assets vested in the Liquidating Trust and all actions thereafter shall be authorized by the Trustees. Subject to Section 13.7.4 of the Plan pertaining to Liquidating Debtors, all directors, officers, members and managers of the Debtors will be deemed to have resigned as of Effective Date with no further action required.

4.28 Professional Fee Escrow Account. On the Effective Date and prior to the funding of the Liquidating Trust, the Debtors shall fund the Professional Fee Escrow Account with Cash equal to the aggregate Professional Fee Reserve Amount for all Professionals. The Professional Fee Escrow Account shall be maintained by the Trustees as a segregated escrow account held in trust for the respective Professionals. As such Professionals' fees and expenses are Allowed, they shall be paid promptly from the Professional Fee Escrow Account; provided, however, that if the funds in the Professional Fee Escrow Account are insufficient to pay any Professionals' fees and expenses out of the Professional Fee Escrow Account, then the Trustee shall promptly pay any such unpaid amounts from the Liquidating Trust which payments shall in any event be made first in time before any subsequent payments for any fees or costs of administering the Liquidating Trust or any Distributions. When all Professional Claims have been resolved, and the Allowed amounts of such Claims paid in full, then the amounts remaining in the Professional Fee Escrow Account, if any, shall be added to the Trust Assets and become property of the Liquidating Trust at that time.

4.29 Sources of Cash for Plan Distributions. Except as otherwise provided in the Plan or the Confirmation Order, all Cash necessary for the Liquidating Trust to make Distributions pursuant to this Plan shall be obtained from existing Cash balances, including the Sale Proceeds, and from the Assets and their proceeds.

ARTICLE V.

DISTRIBUTIONS FROM THE TRUST

5.1 Distributions. Except to the extent that the Plan specifies otherwise, as soon as possible consistent with the best interests of all parties as determined by the Trustees in the exercise of the Trustees' business judgment, the Trustees shall make Distributions as set forth in the Plan.

5.2 Priorities of Distribution. Subject to the limitations set forth in the Plan and this Agreement, the Trustees must pay the administrative expenses of the Liquidating Trust before making Distributions to or for the benefit of Beneficiaries.

5.3 Timing and Frequency of Distributions. Notwithstanding any provision herein to the contrary, the Liquidating Trust shall make distributions to the Beneficiaries at such times as are required in order for the Liquidating Trust to qualify as a “liquidating trust” within the meaning of Treasury Regulations Section 301.7701-4(d) and any comparable provision of state or local law. In accordance with the distribution provisions of this Agreement and the Plan, the Liquidating Trust shall make periodic Distributions and shall distribute at least annually to the Beneficiaries the net income of the Liquidating Trust plus all net proceeds from the disposition of Assets, except that the Liquidating Trust may retain an amount of net proceeds or net income reasonably necessary to maintain the value of the Assets or to meet claims and contingent liabilities and to pay projected expenses of the Liquidating Trust.

5.4 Disputed Claims; Establishment of Disputed Claims Reserve. The Trustees shall have the right to cause the Liquidating Trust to object, in accordance with the Plan and applicable law, to any Claim or Interest if and to the extent the Trustees believe that such Claim is not allowable; provided that in making decisions as to the objection and reconciliation of Claims and Interests, the Trustees shall consider the cost of such objection and reconciliation and the likely distribution in respect of such Claim or Interest. Notwithstanding anything to the contrary contained in this Agreement, no payments or distributions will be made from the Liquidating Trust on account of a Disputed Claim until such Claim becomes an Allowed Claim. Any amount that would have been paid or distributed on a Disputed Claim had it been an Allowed Claim shall be deposited by the Liquidating Trust in a Disputed Claims Reserve, which shall be a segregated interest-bearing account maintained by the Liquidating Trust with a United States financial institution. Interest accruing on the funds in such accounts shall be for the benefit of Disputed Claims that become Allowed, and otherwise such interest will accrue for the benefit of the Liquidating Trust. The Trustees will, in their sole discretion, distribute amounts from the Disputed Claims Reserve (net of any expenses, including any taxes relating thereto), as provided herein and in the Plan, as such Disputed Claims are resolved by Final Order, and such amounts will be distributable in respect of such Disputed Claims as such amounts would have been distributable had the Disputed Claims been Allowed Claims as of the Effective Date. The Liquidating Trust will treat the Disputed Claims Reserve as a separate taxable trust (the “Separate Trust”) and as such shall pay taxes on the taxable net income or gain allocable to Holders of Disputed Claims on behalf of such Holders and, when such Disputed Claims are ultimately resolved, Holders whose Disputed Claims are determined to be Allowed Claims will receive distributions from the Liquidating Trust as Beneficiaries net of the taxes that the Liquidating Trust previously paid on their behalf.

5.5 United States Trustee Fees and Reports. After the Effective Date, the Trustees shall pay out of the Assets as an expense of the Liquidating Trust any fees that become due under 28 U.S.C. § 1930(a)(6) until the Debtors’ Chapter 11 Cases are closed. In addition to those reporting requirements set forth in Section 4.26 of this Agreement, after the Confirmation Date, the Trustees shall prepare and serve on the U.S. Trustee such quarterly disbursement reports for the Liquidating Trust as required by the U.S. Trustee for as long as the Chapter 11 Cases remain open.

ARTICLE VI.

BENEFICIARIES

6.1 Beneficial Interest Only. A Beneficial Interest shall not entitle any Beneficiary or the Settlor to any title in or to the Assets or to any right to call for a partition or division of such Assets or to require an accounting, except as specifically provided herein.

6.2 Evidence of Beneficial Interest. Ownership of a Beneficial Interest shall not be evidenced by any certificate, security, or receipt or in any other form or manner whatsoever, except as recorded on the books and records of the Liquidating Trust by the Trustees.

6.3 Limitation on Transferability. A Beneficiary's Beneficial Interest herein shall be non-assignable during the term of this Agreement except by operation of law. An assignment by operation of law shall not be effective until appropriate notification and proof thereof is submitted to the Trustees in accordance with Section 6.4, and the Liquidating Trust may continue to pay all amounts to or for the benefit of the assigning Beneficiary until receipt of proper notification and proof of assignment by operation of law. The Trustees may rely upon such notification and proof without the requirement of any investigation.

6.4 Notice of Transfer of Beneficial Interest. Any notice of a change of Beneficial Interest ownership shall be sent to the Trustees by registered or certified mail as described in Section 11.1 of this Agreement. The notice shall be executed by both the transferee and the transferor where possible, and the signatures of the parties shall be acknowledged before a notary public. The notice shall clearly describe the interest to be transferred. The Trustees may rely upon such signatures and acknowledgments that appear on their face valid as evidence of such transfer without the requirement of any investigation.

ARTICLE VII.

INDEMNIFICATION

7.1 Limitation of Trustees' Liability. Anything herein to the contrary notwithstanding, in exercising the rights granted herein, the Trustees shall exercise their business judgment, to the end that the affairs of the Liquidating Trust shall be properly managed and the interests of all the Beneficiaries are safeguarded; but no Trustee shall incur any responsibility or liability by reason of any error of law or of any matter or thing done or suffered or omitted to be done by such Trustee under this Agreement, except for fraud or willful misconduct by such Trustee.

7.2 Indemnification. The Liquidating Trust shall, to the fullest extent permitted by law, indemnify and hold harmless the Trustees (in their capacity as such), the Plan Committee and each of their respective agents, attorneys, representatives, professionals, members and employees (collectively the "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, with respect to the Debtors and the Estates or the implementation or administration of the Plan and the Liquidating Trust Agreement if the Indemnified Party acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the Estates and, with respect to any criminal action or proceeding, had no reasonable cause to believe its conduct was unlawful. To the extent the Liquidating Trust indemnifies and holds harmless the Indemnified Parties as provided above, the Liquidating Trust shall advance the expenses (including attorneys fees) incurred by an Indemnified Party in defending any action, suit or proceeding; provided, that, the payment of expenses (including attorneys fees) in advance of the final disposition of such action, suit or proceeding shall be made only upon receipt of an undertaking by such person to repay all amounts advanced if it is finally determined that such Person is not entitled to be indemnified under Delaware law. The indemnification provisions of this Agreement shall remain available to and be binding upon any former Trustee or the estate of any decedent Trustee and shall survive the termination of this Agreement. **The Liquidating Trust shall in no event indemnify any Indemnified Party for fraud or willful misconduct by such Indemnified Party.**

7.3 **Non-Exclusivity of Rights.** The right to indemnification and advancement of expenses conferred on the Trustees shall not be exclusive of any other rights such Person may have or acquire under any other provision of the Plan or the Liquidating Trust Agreement

ARTICLE VIII. MAINTENANCE OF RECORDS

8.1 The Trustees shall maintain books and records containing a description of all property from time to time constituting the Assets and an accounting of all receipts and disbursements. Said books shall be open to inspection by any Beneficiary at any reasonable time during normal business hours upon reasonable notice to the Full-Time Operational Trustee. The Trustees shall furnish to any Beneficiary upon written request the most recent annual statement of receipts and disbursements of the Liquidating Trust, if any. Records of the Liquidating Trust may be disposed of in accordance with Section 10.3.

ARTICLE IX. TAX MATTERS

9.1 **Tax Treatment.** The Debtors, the Trustees, and the Beneficiaries will treat the Liquidating Trust as a "liquidating trust" within the meaning of Treasury Regulation Section 301.7701-4(d) and any comparable provision of state or local law. The Plan and this Agreement are intended to comply with the advance-ruling guidelines contained in Rev. Proc. 94-45, 1994-2 C.B. 684. Consistent with this treatment, for all federal, state, and local income tax purposes, each Holder of an Allowed Claim or Interest shall be treated as transferring such Allowed Claim or Interest to the Debtors in exchange for the Holder's *pro rata* share of the Trust Assets and then as transferring the Holder's *pro rata* share of the Trust Assets to the Liquidating Trust in exchange for the Holder's Beneficial Interest. The holders of Beneficial Interests in the Liquidating Trust will be treated for tax purposes as

the grantors and deemed owners of the Liquidating Trust; and the Debtors, the Trustee, and the Beneficiaries will use consistent valuations for the Trust Assets for tax purposes as set forth herein. The Trustees shall be authorized to take any action necessary to maintain compliance with this regulation or its successor that does not contradict the terms of this Agreement, the Plan, or the Confirmation Order.

9.2 Tax Reporting. The “taxable year” of the Liquidating Trust shall be the “calendar year” as those terms are defined in Section 441 of the Internal Revenue Code of 1986, as amended (the “Internal Revenue Code”). The Trustees shall file returns for the Liquidating Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a). The Trustees shall annually (within seventy-five (75) days after the end of each calendar year) send to each record holder of a Beneficial Interest a separate statement setting forth such holder’s share of items of income, gain, loss, deduction, or credit and instruct all such holders to report such items on their federal income tax returns. Such reporting shall also occur within sixty (60) days of the dissolution of the Liquidating Trust. The Liquidating Trust’s taxable income, gain, loss, deduction, or credit will be allocated (subject to provisions of the Plan relating to Disputed Claims) to the Beneficiaries in accordance with their relative Beneficial Interests in the Liquidating Trust.

9.3 Separate Trust. From and after the Effective Date and until such time as all Disputed Claims or Claims or Interests for which property is held in the Disputed Claims Reserve are resolved, a portion of the Trust Assets will be retained on account of such claims and will be treated for federal income tax purposes as if held in the Separate Trust. Absent definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the issuance of applicable Treasury regulations, the receipt by the Trustees of a private letter ruling if the Trustee so requests one or the receipt of an adverse determination by the IRS upon audit if not contested by the Trustees), the Trustees will

A. treat all assets of the Liquidating Trust allocable to, or retained on account of, the Disputed Claims, as held in the Separate Trust for federal income tax purposes, consisting of separate and independent shares to be established in respect of each Disputed Claim, in accordance with the trust provisions of the Internal Revenue Code (section 641 et seq. of the Internal Revenue Code);

B. treat as taxable income or loss of the Separate Trust with respect to any given taxable year the portion of the taxable income or loss of the Liquidating Trust that would have allocated to the Holders of such Disputed Claims had such claims been Allowed Claims (but only for the portion of the taxable year such claims are unresolved);

C. treat as a distribution from the Separate Trust any amounts distributed by the Liquidating Trust as a result of any Disputed Claim against any of the Debtors being resolved earlier in the taxable year to the extent such distribution related to taxable income or loss of the Separate Trust determined in accordance with the provisions hereof; and

D. to the extent permitted by applicable law, report consistently for state and local income tax purposes.

9.4 Tax Withholdings. The Trustees shall withhold and pay to the appropriate taxing authority all amounts required to be withheld pursuant to the Internal Revenue Code or any provision of any foreign, state, or local tax law with respect to any payment or distribution to the Beneficiaries. All such amounts withheld and paid to the appropriate taxing authority shall be treated as amounts distributed to such Beneficiaries for all purposes of this Agreement. The Trustees shall be authorized to collect such tax information from the Beneficiaries (including, without limitation, social security numbers or other tax identification numbers) as is necessary to effectuate the Plan, the Confirmation Order, and this Agreement. The Trustees may refuse to make a distribution to any Beneficiary that fails to furnish such information in a timely fashion, until such information is delivered; provided, however, that upon the Beneficiary's delivery of such information, the Trustees shall make such distribution to which the Beneficiary is entitled, together with any interest and income actually earned thereon, subject to the provisions of the Plan.

ARTICLE X.

DURATION OF TRUST

10.1 Duration. The Liquidating Trust shall become effective upon the Effective Date of the Plan. Thereupon, the Liquidating Trust and its provisions herein shall remain and continue in full force and effect until the Liquidating Trust is terminated in accordance with the terms hereof and the Plan.

10.2 Termination of Liquidating Trust. The Liquidating Trust shall terminate as soon as practicable, but in no event later than the fifth anniversary of the Effective Date; provided that, on or after the date that is six months prior to such termination date, the Bankruptcy Court, upon motion by a party in interest, may extend the term of the Liquidating Trust for a finite period if such extension is necessary to complete any pending matters required under this Agreement and the Trustees receive an opinion of counsel or a favorable ruling from the Internal Revenue Service to the effect that any such extension would not adversely affect the status of the Liquidating Trust as a grantor trust for federal income tax purposes. Notwithstanding the foregoing, multiple extensions may be obtained so long as the conditions in the preceding sentence are met no more than six months prior to the expiration of the then-current termination date of the Liquidating Trust. Upon the completion of the Trustees' duties and any such other evidence as the Bankruptcy Court may direct, the Bankruptcy Court shall issue an order terminating the Liquidating Trust and discharging the Trustees (and any predecessors, as may be applicable) from any powers, duties, responsibilities, liabilities and claims of every nature resulting from any action or inaction by the Trustees in connection with the Plan and this Agreement absent gross negligence and willful misconduct. Notice of the termination of the Liquidating Trust upon approval by the Bankruptcy Court, that is filed on the docket in the Chapter 11 Cases, shall constitute sufficient notice for all purposes of the termination of the Liquidating Trust in accordance with the Plan. The Trustees will make continuing efforts to dispose of the Assets, make timely Distributions, and not unduly prolong the duration of the Liquidating Trust.

10.3 Continuance of Liquidating Trust for Winding-Up. After the termination of the Liquidating Trust and solely for the purpose of liquidating and winding up the Liquidation Trust, the Trustees shall retain for a period of six (6) years the books, records, Beneficiary lists, and certificates and other documents and files which shall have been delivered to or created by the Trustees. At the Trustees' discretion, all of such records and documents may, but need not, be destroyed at any time after six (6) years from the completion and winding up of the affairs of the Liquidating Trust. Except as otherwise specifically provided herein, after the final Distribution of the Liquidating Trust, the Trustees shall have no further duties or obligations hereunder.

10.4 Right to Abandon. ~~The~~In accordance with Bankruptcy Code §554, the Trustees shall have the right to abandon the Assets of the Liquidating Trust ~~in accordance with Bankruptcy Code §554~~ without further Bankruptcy Court order, if the Trustees determine that the Asset(s) is(are) burdensome to the Estate or that it(they) is(are) of inconsequential value and benefit to the Estate.

ARTICLE XI.

MISCELLANEOUS

11.1 Notices. All notices to be given to Beneficiaries may be given by ordinary mail, e-mail, or may be delivered personally, to the Beneficiaries at the addresses appearing on the books received from the Debtor, if any, and/or maintained at the Trustees' direction. Any notice or other communication which may be or is required to be given, served, or sent to the Trustees shall be in writing and shall be sent by registered or certified United States mail, return receipt requested, postage prepaid, or transmitted by hand delivery or facsimile (if receipt is confirmed) addressed as follows:

TO THE LIQUIDATING TRUST:

Donald E. Miller, Full-Time Operational Trustee
c/o Fairchild Corporation
1700 Tysons Boulevard
Suite 350
McLean, Virginia 22101
Telephone: (703)
Telefax: (703)

With copies to:

Jerry R. Lirette, Part-Time Operational Trustee
~~[Address]~~765 North Wagner Road
Ann Arbor, MI 48103
Telephone: (248) 622-0077

Pierre Benoit
11080 East Honey Mesquite Drive

Scottsdale, AZ 85262

Telephone:

Telefax:

Neal L. Wolf

Butler Rubin Saltarelli & Boyd

70 W. Madison Avenue

Suite 1800

Chicago, Illinois 60602

Telephone: (312) 696-4447

Telefax: (312) 444-9018

or to such other address as may from time to time be provided in written notice by the Trustees. Any notice or other communication which may be or is required to be given, served or sent to the Plan Committee shall be in writing and shall be sent by registered or certified United States mail, return receipt requested, postage prepaid, or transmitted by hand delivery or facsimile (if receipt is confirmed) addressed as follows:

TO THE PLAN COMMITTEE:

Neal L. Wolf

Butler Rubin Saltarelli & Boyd

70 W. Madison Avenue

Suite 1800

Chicago, Illinois 60602

11.2 No Bond. Notwithstanding any state law to the contrary, the Trustees (including any successor) shall be exempt from giving any bond or other security in any jurisdiction.

11.3 Governing Law; Dispute Resolution. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware for contracts that are entered into and to be fully performed within the State of Delaware. Notwithstanding the Plan's confirmation and the occurrence of the Effective Date, Settlor and the Trustees agree that the Bankruptcy Court shall retain exclusive jurisdiction over all disputes and other matters arising out of or related to the Liquidating Trust, to the extent permitted by applicable law.

11.4 Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto, the Beneficiaries, and their respective representatives, successors and permitted assigns.

11.5 Headings. The various headings of this Agreement are inserted for convenience only and shall not affect the meaning, interpretation or understanding of this Agreement or any provision hereof.

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

11.7 Amendment. Any substantive provision of this Agreement may be amended or waived only upon the agreement of the Trustees and the Plan Committee and approval of the Bankruptcy Court, upon notice to the of Beneficiaries. Technical amendments to this Agreement may be made as necessary in the business judgment of the Trustees to clarify this Agreement or enable the Trustees to effectuate the terms of this Agreement, by a simple majority of the Trustees without Bankruptcy Court approval but with notice to the Plan Committee. Any amendments to this Agreement pursuant to this section shall not be inconsistent with the purpose and intention of the Liquidating Trust to liquidate in an expeditious but orderly manner the Assets in accordance with Treasury Regulations Section 301.7701-4(d) and Section 3.1 hereof.

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

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

FAIRCHILD CORPORATION
(for itself and its Debtor affiliates)

By: _____
Name: Donald E. Miller
Title: Chief Restructuring Officer

Donald E. Miller
Full-Time Operational Trustee

Jerry R. Lirette
Part-Time Operational Trustee

Pierre Benoit
Consulting Trustee

Form of Compensation Agreement of Full-Time Operational Trustee

Form of Compensation Agreement of Part-Time Operational Trustee

Form of Compensation Agreement for Consulting Trustee

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Moved cell	
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Statistics:	
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Format changed	0
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