

LIQUIDATING TRUST AGREEMENT

This Liquidating Trust Agreement (this “**Agreement**”), dated as of October ___, 2013, is by and between Chapter 11 Debtors Isaacson Steel, Inc. and Isaacson Structural Steel, Inc. (combined the “**Estate**”), the Official Committee of Unsecured Creditors of the Estate (the “**Committee**”), the New Hampshire Business Finance Authority (“**BFA**”), Passumpsic Savings Bank (together with and including its participating lenders, Woodsville Guaranty Savings Bank and Ledyard National Bank, “**PSB**”), and Turner Construction Company, Inc. (“**Turner**”) (together, the Estate, the Committee, BFA, PSB, and Turner are referred to in this Agreement as the “**Parties**”), and is created in order to establish a liquidating trust in collection with that certain Global Settlement Agreement, dated August ___ 2013, by and between the Parties and approved by the United States Bankruptcy Court for the District of New Hampshire (the “**Bankruptcy Court**”). Said Global Services Agreement, as the same may be amended, modified or supplemented from time to time in accordance with the terms and provisions thereof and/or as modified supplemented, or amended by further order of the Bankruptcy Court, is hereinafter referred to as the “**GSA**”.¹

WITNESSETH

WHEREAS, the Estates are debtors-in-possession in proceedings currently pending under Chapter 11 of the United States Bankruptcy Code (the “**Chapter 11 Case**”) in the Bankruptcy Court;

WHEREAS, the Committee was duly appointed by the United States Trustee for Region One in the Estate’s Chapter 11 Case.

WHEREAS, BFA is the holder of post-petition secured and administrative claims, including superpriority administrative claims against the Estate, such claims arising by virtue of post petition loans made to the Estate, and pursuant to orders of the Bankruptcy Court entered in the Chapter 11 Case; and

WHEREAS PSB holds secured, administrative, including superpriority administrative, and unsecured claims against the Estate, such claims arising from security agreements with the Estates entered into prior to the commencement of the Estate’s Chapter 11 Case, as well as post-petition agreements with the Estate, and pursuant to orders of the Bankruptcy Court entered in the Chapter 11 case; and

WHEREAS, Turner holds administrative, including super priority administrative claims against the Estate, arising from contracts entered into with the Estate, and pursuant to orders of the Bankruptcy Court entered in the Chapter 11 Case; and

WHEREAS, the Parties have all executed the GSA for the purpose of (a) settling and compromising conflicting claims among the Parties to the proceeds arising from

¹ Capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings ascribed to them in the GSA and the Plan. A copy of the GSA is attached as Exhibit A.

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the prosecution of certain claims against former officers and directors of the Estate (the “**D&O Claims**”), liability for which claims are or may be insured pursuant to Director and Officer liability insurance policies held by the Estate (the proceeds of such policies being referred to herein as the “**D&O Proceeds**”), and (b) settling and compromising certain disputes regarding the order and priority of distribution of proceeds of the prosecution of the D&O Claims and causes of action held by the Estate under Chapter 5 and other provisions of the U.S. Bankruptcy Code (the “**Chapter 5 Causes of Action**”); and

WHEREAS, by Order dated September 25, 2013 [Doc. #1186] (the “Approval Order”), the Bankruptcy Court approved the GSA and the terms of the settlement, distributions, and liquidating trust described therein, subject to confirmation of the Estate’s proposed Chapter 11 Plan (as and when confirmed by a final order of the Bankruptcy Court, the “Plan”); and

WHEREAS, pursuant to the GSA, all D&O Claims and the Net Estate Recoveries (as defined in ¶ 7 of the GSA) are to be transferred to a liquidating trust established to administer, prosecute, and distribute –the Net Estate Recoveries in accordance with the GSA and the Plan; and

WHEREAS, the liquidating trust established in accordance with the terms of the GSA will also continue to serve as a liquidating trust under and pursuant to the Plan; and

WHEREAS, the Parties, by this Agreement, wish to establish the liquidating trust called for by the GSA to receive the transfer of the D&O Claims and to administer, prosecute and distribute the proceeds thereof and the Net Estate Recoveries in accordance with the GSA, and upon confirmation of the Plan, in accordance with the Plan;

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements contained herein and in the GSA, the Parties agree as follows:

ARTICLE 1
ESTABLISHMENT OF THE LIQUIDATING TRUST

1.1 Establishment of the Isaacson Steel Liquidating Trust and Appointment of the Liquidating Trustees.

(a) The Parties hereby established a trust which shall be known as the “**Isaacson Steel Liquidating Trust**,” which shall also be referred to herein as the “Liquidating Trust” or the “**Trust**,” and which is established on behalf of and for the benefit of the Parties and the entities that they represent, respectively, and the creditors of the Estate, all of whom shall be the beneficiaries of the Trust created hereby (the “**Beneficiaries**”).

(b) There shall be three (3) trustees of the Trust, ~~with~~ ~~– Within ten (10) days following the entry of an order of the Bankruptcy Court approving the GSA, each of~~ the Committee, BFA, and PSB shall each having appointed one person to serve as a

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trustee of the Trust, and together the three persons so appointed shall constitute and shall be referred to herein as the Liquidating Trustees (together, the “**Liquidating Trustees**”, and each a “**Liquidating Trustee**” or a “**Trustee**”), and they shall be the trustees of the Trust. Each Trustee and each successor trustee serving from time to time hereunder as a Liquidating Trustee shall have all the rights, powers and duties set forth herein. The initial Trustees of the Trust shall be:

PSB Appointee: Robert M. Bishop, Senior Vice President
BFA Appointee: Jack Donovan, Chief Executive Director Officer
Committee Appointee: Charles B. Fenderson, President

1.2 Transfer of Assets and Rights to the Isaacson Steel Liquidating Trust and the Liquidating Trustees.

(a) ~~Upon the entry of a final order of the Bankruptcy Court approving the GSA, and the appointment of the Liquidating Trustees, Upon confirmation of the Plan, the Parties shall cause to be transferred, assigned and delivered to the Trust all of their right, title, and interest in and to the D&O Claims, the Chapter 5 Causes of Action, and the Net Estate Recoveries, the Chapter 5 Causes of Action (the “Transfer”) including. In addition, the Estate shall transfer to the Trust the sum of \$ [REDACTED] (the “Estate Cash”), comprised of representing all cash assets of the Estate derived from the prosecution by the Estate of Chapter 5 Causes of Action and other sources, claims prior to the date of this Agreement less an amount sufficient to pay the Estate’s accountant and taxes² (the “Initial Cash Transfer”). Each of such the transfers shall be free and clear of all liens, claims, encumbrances and interests of any person or entity.~~

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(b) Upon and after such Transfer, the Trustees shall administer, prosecute, liquidate and distribute the proceeds of the D&O Claims, and the Chapter 5 Causes of Action and administer and distribute the Net Estate Recoveries in accordance with the terms and conditions of this Agreement, ~~and the GSA, and the Plan.~~

(c) Upon and after such Transfer, the Parties shall (i) cause to be delivered to the Trustees any and all documents or other information in their possession, that is, or may be, useful in connection with the prosecution of the D&O Claims and the Chapter 5 Causes of Action (including those maintained in electronic format and original documents), and (ii) shall provide access at reasonable times and under reasonable conditions to the Trustees as to all employees or agents of the Parties with knowledge of matters relevant to the D&O Claims and the Chapter 5 Causes of Action.

1.3 Title to D&O Claims and Chapter 5 Causes of Action.

Upon the Transfer of the D&O Claims and the Chapter 5 Causes of Action, ~~and subject to the terms of the Plan,~~ the Liquidating Trustees shall succeed to all of the Parties’ right, title and interest in and to the D&O Claims, the Chapter 5 Causes of

² For convenience sake, and subject to the Trustees’ approval the Estate has agreed to have its accountants complete and file the Estate tax returns for all periods through [REDACTED], 2013.

Action, and the Net Estate Recoveries, and the Parties, separately or individually, shall have no any further interest in or with respect to the same.

1.4 Nature and Purpose of the Isaacson Steel Liquidating Trust.

(a) Purpose. The Isaacson Steel Liquidating Trust is organized and established as a trust pursuant to which the Liquidating Trustees, subject to the terms and conditions contained herein, ~~and~~ in the GSA, and in the Plan, agree to (i) hold the assets of the Trust and dispose of the same in accordance with this Agreement, the GSA, the Plan, and ~~in accordance with~~ Treasury Regulation Section 301.7701-4(d); and (ii) oversee and direct the expeditious and orderly liquidation of the assets of the Trust and the distribution thereof in accordance with the GSA and the Plan. Accordingly, the primary purpose of the Trust is to liquidate and distribute the assets transferred to it with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to preserve or enhance the liquidation value of the assets of the Trust, and consistent with, the liquidating purpose of the Trust.

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(b) Actions of the Liquidating Trust. The Liquidating Trustees, subject to the exercise of their reasonable business judgment, and on behalf of the Trust, shall, in an expeditious and orderly manner, liquidate and convert the D&O Claims and the Chapter 5 Causes of Actions to Cash, and make timely disbursements under this Agreement, in accordance with ~~and~~ the GSA and the Plan. The liquidation of the D&O Claims and the Chapter 5 Causes of Action and the distribution of the proceeds thereof, may be accomplished by the Liquidation Trustees, in the exercise of their sole judgment and discretion, and, except as provided in ¶ 3 of the GSA and the Plan, without the necessity of Bankruptcy Court approval, and through the prosecution, compromise and settlement, abandonment or dismissal of any or all claims, rights or causes of action, or otherwise. Without limiting the generality of the foregoing:

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(i) All actions of the Trust shall be upon the consent, authorization and/or approval of the Liquidating Trustees acting by a majority vote of the Trustees. Such consent, authorization and/or approval by majority vote of the Liquidating Trustees shall be obtained in one or more meetings thereof duly noticed and held pursuant to this Agreement, or upon one or more written consents, authorizations and/or approvals executed by a majority of the Liquidating Trustees, and obtained in accordance with the terms of this Agreement.

(ii) A meeting of the Liquidating Trustees may be held at any location within the State of New Hampshire or by telephonic conference call in which all Trustees are invited to participate in the same conference call. A meeting in person or by telephonic conference call may be called upon ~~three (3)~~ two (2) days written (mail or electronic) notice delivered by any Trustee to the other Trustees, which notice shall specify the time and place and/or dial in instructions for the meeting or conference call, as the case may be. A Trustee may appear in person at any such meeting of the Trustees, or may participate by telephone in such meeting. A majority of the Trustees shall

constitute a quorum of the Trustees, which shall be necessary for the conduct of any business at any such meeting.

(iii) A Trustee may propose that any consent, authorization and/or approval be provided by written agreement of the Trustees. Notice of any such proposed consent, authorization and/or approval shall be provided to the Trustees by any one or more or more Trustees by written notice, and specifying the consent, authorization and/or approval to be sought. After three days following the delivery of such notice, any such consent, approval or authorization shall be effective if executed by a majority of the Trustees.

(c) Nothing in this Agreement requires the Liquidating Trustees to file any accounting or seek approval of any court with respect to the administration of the Trust, or as a condition for managing any payment or distribution out of the assets of the Trust, provided that such payment or distribution is made in accordance with the provisions of this Agreement, ~~and~~ the GSA, ~~and~~ the Plan.

(d) Prosecutorial Discretion of Liquidating Trustees. Subject to such Bankruptcy Court approval as may be required by the GSA or the Plan. ~~The~~ Liquidating Trustees shall have the absolute right to pursue, settle and compromise or not pursue any and all D&O Claims and/or Chapter 5 Causes of Action as they may, in their sole judgment, determine to be in the best interests of the Beneficiaries. The Liquidating Trustees shall have no liability for the outcome of any such decision except for any damages caused by recklessness, gross negligence, willful misconduct, or knowing violation of law.

(e) Relationship. This Agreement is intended to create a trust and a trust relationship and to be governed and construed in all respects as a trust. The Trust is not intended to be, and shall not be deemed to be or treated as, a general partnership, limited partnership, joint venture, corporation, joint stock company or association, nor shall the Liquidating Trustee or the Beneficiaries, or any of them, for any purpose be, or be deemed to be or treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The relationship of the Beneficiaries to the Liquidating Trustees shall be solely that of beneficiaries of a trust and shall not be deemed a principal or agency relationship, and the Beneficiaries' rights shall be limited to those conferred upon them by this Agreement.

1.5 Incorporation of GSA; ~~Plan Controls.~~

The GSA, the Approval Order, and the Plan (if confirmed) ~~and the order of the Bankruptcy Court approving the same;~~ are hereby incorporated into this Agreement and made a part hereof by this reference; provided, however, to the extent that there is conflict between the provisions of this Agreement, the Plan, and/or the provisions of the GSA, ~~and/or the Plan, such Order,~~ the terms of the Approval Order ~~Plansuch Order,~~ and to the extent consistent therewith, the GSA, shall govern.

1.6 Funding of the Trust.

~~(a) Initial Funding.~~ The Trust shall be initially funded by the Estate Cash included with the Transfer, Initial Cash Transfer.

~~(b) Subsequent Funding.~~ ~~And, thereafter, the Trust shall be funded by~~ with the proceeds from the liquidation of the D&O Claims and the Chapter 5 Causes of Action and any other Net Estate Recoveries.

ARTICLE 2
ISAACSON STEEL LIQUIDATING TRUST INTERESTS

2.1 Interests Beneficial Only.

The ownership of a beneficial interest in the Trust shall not entitle any Beneficiary to any title in or to the assets of the Trust as such (which title shall be vested in the Liquidating Trustees) or to any right to call for a partition or division of the assets of the Trust or to require an accounting or give standing to direct the Liquidating Trustees to do or not to do any act or to institute any action or proceeding upon or with respect to the assets of the Trust, except as expressly provided in this Agreement ~~or~~ the GSA, or the Plan.

ARTICLE 3
THE LIQUIDATING TRUSTEES

3.1 Trust ~~Proceeds~~Assets.

The Estate Cash and All of the rights to and proceeds of the prosecution, compromise and settlement of D&O Claims and Chapter 5 Causes of Action and any other Net Estate Revenues shall ~~comprise~~ be added to the assets of the Trust (the "Trust AssetsProceeds") and held as a part thereof, ~~(and which~~ title to which shall be vested in the Liquidating Trustees).

3.2 Payment of Trust Expenses.

(a) The Liquidating Trustees shall maintain a litigation expense fund (the "**Litigation Expense Fund**") and expend the assets of the Litigation Expense Fund (i) as reasonably necessary to meet contingent liabilities and to maintain the value of the ~~a~~ Assets of the Trust during its duration; (ii) to pay reasonable administrative costs (including but not limited to, the costs and expenses of the Liquidating Trustees (including reasonable fees, costs, and expenses of professionals employed by the Liquidating Trustees), any taxes imposed on the Trust or fees and expenses in connection

with, arising out of or related to the D & O Claims and the Chapter 5 Causes of Action; and (iii) to satisfy other liabilities incurred or assumed by the Trust (or to which the Trust Assets are otherwise subject) in accordance with this Agreement.

(b) The Liquidating Trustees may retain from the Trust ~~Proceeds~~Assets and add to the Litigation Expense Fund, at any time and from time to time, such amounts as the Liquidating Trustees deem reasonable and appropriate to ensure that the Litigation Expense Fund will be adequate to meet the expenses and liabilities described in this Section 3.2.

(c) Notwithstanding any other provision of this Agreement to the contrary, the Liquidating Trustees shall not be required to take any action or enter into or maintain any claim, demand, action or proceeding relating to the Trust unless it shall have sufficient funds in the Litigation Expense Fund for that purpose.

3.3 Distributions.

The Liquidating Trustees shall distribute the net distributable ~~assets of the Trust Assets~~ to the Parties and/or the Beneficiaries in accordance with the provisions of the ~~GSA~~ and the Plan.

3.4 Tenure, Removal, and Replacement of the Liquidating Trustee.

(a) Each Liquidating Trustee will serve until resignation and the appointment of a successor pursuant to subsection (b) below, disability or death (if applicable)).

(b) A Liquidating Trustee may resign by giving not less than sixty (60) days' prior written notice to the remaining Liquidating Trustees. Such resignation will become effective on the later to occur of (i) the day specified in such notice and (ii) the appointment of a successor trustee as provided herein and the acceptance by such successor trustee of such appointment; provided, however, that if a successor trustee is not appointed or does not accept his or her appointment within sixty (60) days following delivery of notice of resignation, the resignation shall become effective on the 60th day following the delivery of notice of resignation.

(c) In the event of a vacancy in any Trustee position, (whether by removal, resignation, disability, or death, if applicable), the vacancy will be filled by the Party who appointed the Trustee who has ceased service as Trustee.

(d) Immediately upon the appointment of any successor trustee, all rights, powers, duties, authority, and privileges of the predecessor Liquidating Trustee will be vested in and undertaken by the successor trustee without any further act; and the successor trustee will not be liable personally for any act or omission of the predecessor Liquidating Trustee;

(e) Upon the appointment of a successor trustee, the predecessor Liquidating Trustee (or the duly appointed legal representative of a deceased Liquidating Trustee) shall, if applicable, when requested in writing by the successor trustee, execute and deliver an instrument or instruments conveying and transferring to such successor trustee upon the trust herein expressed, without recourse to the predecessor Liquidating Trustee, all properties, rights, powers and trusts of such predecessor Liquidating Trustee, and shall duly assign, transfer, and deliver to such successor trustee all property and money held hereunder, and all other assets and documents relating to the Trust; and

3.5 Acceptance of Appointment by Successor Liquidating Trustee.

Any successor trustee appointed hereunder shall execute an instrument accepting such appointment and assuming all of the obligations of the predecessor Liquidating Trustee hereunder and thereupon the successor trustee shall, without any further act, become vested with all the estates, properties, rights, powers, trusts, and duties of his or her predecessor in the Trust with like effect as if originally appointed as Liquidating Trustee.

3.6 Role of the Liquidating Trustees.

In furtherance of and consistent with the purpose of the Trust, the Liquidating Trustees, subject to the terms and conditions contained herein and in the Plan, shall have the power to (i) prosecute, compromise and settle, abandon or dismiss for the benefit of the Beneficiaries all claims, rights and causes of action transferred to the Liquidating Trustees and the Trust, including the D&O Claims and the Chapter 5 Causes of Action; and (ii) ~~subject to the terms of the Plan,~~ to otherwise perform the functions and take the actions provided or permitted in the GSA or in this Agreement. In all circumstances, the Liquidating Trustees shall act in the best interests of all the Beneficiaries and in furtherance of the purpose of the Trust.

3.7 Authority of Liquidating Trustees.

Subject to any limitations contained herein (including, without limitation, Article 4 hereof) or in the GSA or the Plan, the Liquidating Trustees shall have the following powers and authorities:

(a) hold legal title to any and all rights of the Trust, including, without limitation, collecting, receiving any and all money and other property belonging to the Trust;

(b) prosecute, compromise, settle, adjust, arbitrate, sue on or defend, pursue, abandon, exercise rights, powers, and privileges with respect to, or otherwise deal with and settle, in accordance with the terms set forth herein, all D&O Claims and all Chapter 5 Causes of Action or other causes of action in favor of the Trust;

(c) protect and enforce the Trust's rights of ownership to D&O Claims and Chapter 5 Causes of Action by any method deemed appropriate including, without

limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

(d) obtain reasonable insurance coverage with respect to the liabilities and obligations of the Liquidating Trustees under this Agreement (in the form of an errors and omissions policy or otherwise);

(e) subject to the provisions of the GSA and the Plan, select counsel and other professionals, who will be entitled to reasonable compensation for services rendered upon such terms as the Liquidating Trustees, in their sole discretion, shall deem fair and reasonable;

(f) waive any privilege or any defense held by the Trust, on behalf of the Trust; and

(g) take or refrain from taking any and all other actions (apart from those listed above) that the Liquidating Trustees, in their sole discretion, deem necessary or convenient for the continuation, protection and maximization of the assets of the Trust and to carry out the purposes hereof; and

(h) make payments and distributions as contemplated by this Agreement, the Plan and the GSA.

3.8 Limitation of Liquidating Trustee's Authority.

Notwithstanding anything herein to the contrary, and subject to the terms of the Plan, the Liquidating Trustees shall not, in their capacities as Liquidating Trustees, (i) be authorized to engage in any trade or business, (ii) take such actions inconsistent with the orderly liquidation of the assets of the Trust as are required or contemplated by applicable law, the GSA and this Agreement, or (iii) be authorized to engage in any investments or activities inconsistent with the treatment of the Trust as a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d) and in accordance with Rev. Proc. 94-45, 1994-2 C.B. 684.

3.9 Books and Records.

(a) The Liquidating Trustees shall maintain books and records relating to the assets of the Trust and collections of the Trust and the payment of expenses of, and liabilities of claims against or assumed by, the Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained on a cash or other comprehensive basis of accounting necessary to facilitate compliance with the tax reporting requirements of the Trust.

(b) The Parties and their duly authorized representatives shall have the right, upon reasonable prior written notice to the Liquidating Trustees, to inspect and, at the sole

expense of the Party seeking the same, make copies of the books and records referenced in Section 3.9(a) on any business day and as often as may be reasonably be desired.

3.10 Inquiries into Trustee's Authority.

Except as otherwise set forth in this Agreement or in the GSA ~~or in the Plan~~, no person dealing with the Trust shall be obligated to inquire into the authority of the Liquidating Trustees in connection with the protection, conservation or disposition of the assets of the Trust or the making of disbursements by the Trust.

3.11 Compliance with Laws.

Any and all distributions of assets of the Trust and proceeds of borrowings, if any, shall be in compliance with applicable laws, including, without limitation, applicable federal and state securities laws, and the provisions of the Bankruptcy Code.

3.12 Compensation of the Liquidating Trustee.

The Liquidating Trustees shall not be compensated for their service to the Trust. The Liquidating Trustees shall, however, be entitled to reimbursement for their reasonable out of pocket expenses incurred on behalf of the Trust.

3.13 Reliance by Liquidating Trustee.

Except as otherwise provided herein: (a) the Liquidating Trustee may rely, and shall be protected in acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by the Liquidating Trustee to be genuine and to have been signed or presented by the proper party or parties; and (b) persons dealing with the Liquidating Trustee shall look only to the assets of the Trust to satisfy any liability incurred by the Liquidating Trustee to such ~~P~~person in carrying out the terms of this Agreement, and the Liquidating Trustee shall not have any personal obligation to satisfy any such liability.

3.14 Standard of Care: Exculpation.

(a) Neither the Liquidating Trustee nor any of his or her duly designated agents or representatives or professionals shall be liable for any act or omission taken or omitted to be taken by the Liquidating Trustee in good faith, other than acts or omissions resulting from the Liquidating Trustee's own gross negligence, recklessness, willful misconduct, knowing and material violation of law, or fraud.

(b) Neither the Liquidating Trustee nor any of his or her duly designated agents or representatives or professionals shall be liable to the ~~Estate~~debtor or any Beneficiaries for the impairment, waiver, lapse or bar of any Chapter 5 Causes of Action (including, without limitation, the expiration of the applicable statute of limitations or repose) related to a failure by the Liquidating Trustee to prosecute the Chapter 5 Causes of Action,

unless the failure to prosecute the Chapter 5 Causes of Action was the result of gross negligence, recklessness, willful misconduct, or knowing violation of law.

(c) The Liquidating Trustee may, in connection with the performance of his or her functions, and in his or her sole and absolute discretion, consult with his or her attorneys, accountants, financial advisors and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such ~~P~~persons. Notwithstanding such authority, the Liquidating Trustee shall be under no obligation to consult with his or her attorneys, accountants, financial advisors or agents, and his or her good faith determination not to do so shall not result in the imposition of liability on the Liquidating Trustee, unless such determination is based on gross negligence, recklessness, willful misconduct, knowing and material violation of law, or fraud.

3.15 Conflicts of Interest.

If a Liquidating Trustee determines, in the exercise of his or her reasonable discretion, that he or she has a material conflict of interest with respect to the settlement, resolution or prosecution of the D&O Claims or the Chapter 5 Causes of Action, or any other matter (including, but not limited to, issues related to disbursements under the GSA), such Liquidating Trustee, with the written approval of the party appointing him or her, may select a designee to act on behalf of the Trust solely with respect to such matter (the “**Designated Liquidating Trustee**”), with such designee’s authority to act on behalf of the Trust to terminate upon the matter’s conclusion.

3.16 No Implied Obligations.

No covenants or obligations shall be implied into this Agreement, or the GSA. The Liquidating Trustees shall not be responsible in any manner whatsoever for the correctness of any recital, statement, representation, or warranty herein, or in any documents or instrument evidencing or otherwise constituting a part of the ~~Liquidating~~ Trust ~~A~~assets.

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ARTICLE 4 **TAX MATTERS**

4.1 Federal Income Tax Reporting.

Subject to definitive guidance from the IRS, the terms of the Plan, or an order of the Bankruptcy Court or other court of competent jurisdiction to the contrary (including receipt by the Liquidating Trustees of a private letter ruling if the Liquidating Trustees so request one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Liquidating Trustees, the Liquidating Trustees shall file returns for the Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a) and in accordance with this Article 4.

ARTICLE 5
INDEMNIFICATION

5.1 Indemnification of Liquidating Trustees and Others.

(a) To the fullest extent permitted by law, the Liquidating Trust, to the extent of its assets legally available for that purpose, shall indemnify and hold harmless the Liquidating Trustees and each of its respective officers, agents, employees, attorneys and other professionals (collectively, the “**Indemnified Persons**”) from and against any and all losses, costs, damages, reasonable and documented out-of-pocket expenses (including, without limitation, fees and expenses of attorneys and other advisors and any court costs incurred by any Indemnified Person) or liability by reason of anything any Indemnified Person did, does, or refrains from doing for the business or affairs of the Trust, except to the extent that the loss, cost, damage, expense or liability resulted primarily from the Indemnified Person’s recklessness, gross negligence, willful misconduct, knowing and material violation of law, or fraud. To the extent reasonable, the Trust shall pay in advance or reimburse reasonable and documented out-of-pocket expenses (including advancing reasonable costs of defense) incurred by the Indemnified Person who is or is threatened to be named or made a defendant or a respondent in a proceeding concerning the business and affairs of the Trust.

(b) The fact that an act or omission of an Indemnified Person was based upon advice of ~~counsel~~ will conclusively be deemed not to constitute recklessness, gross negligence, willful misconduct, knowing and material violation of law, or fraud. Each Indemnified Person may rely, and shall be protected in acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties, and any order of the Bankruptcy Court.

(c) The Liquidating Trust may purchase indemnification insurance to satisfy any potential indemnification claims that may arise under this Section 5.1, in conjunction with any insurance obtained pursuant to Section 3.7(e), for the benefit of the Trust, the Liquidating Trustee, and any agents, representatives, attorneys, accountants, advisors or other professionals employed by any of them.

(d) The rights to indemnification under this Section 5.1 are not exclusive of other rights which any Indemnified Person may otherwise have at law or in equity, including without limitation common law rights to indemnification or contribution. Nothing in this Article 5.1 will affect the rights or obligations of any person (or the limitations on those rights or obligations) under this Agreement, or any other agreement or instrument to which that Person is a party.

5.2 Limited Recourse.

No recourse shall ever be had, directly or indirectly, against a Liquidating Trustee personally, or against any employee, contractor, agent, attorney, accountant or other professional retained in accordance with the terms of this Agreement by the Liquidating Trustees, by legal or equitable proceedings or by virtue of any statute or otherwise, nor upon any promise, contract, instrument, undertaking, obligation, covenant or agreement whatsoever executed by the Liquidating Trustees in implementation of this Agreement, or by reason of the creation of any indebtedness by the Trust for any purpose authorized by this Agreement, it being expressly understood and agreed that all such liabilities, covenants, and agreements of the Trust, whether in writing or otherwise, shall be enforceable only against and be satisfied only out of the Trust ~~Assets~~ or such part thereof as shall under the term of any such agreement be liable therefore or shall be evidence only of a right of payment out of the Trust ~~Assets~~.

Notwithstanding the foregoing, a Liquidating Trustee may be held liable for his or her recklessness, gross negligence, willful misconduct, knowing and material violation of law, or fraud, in each case, as determined by a final order of a court of competent jurisdiction not subject to appeal; and if liability on such grounds is established, recourse may be had against (a) the Liquidating Trustee's bond or applicable insurance coverage, and, (b) to the extent not covered by such bond or insurance, subject to Section 5.3, directly against the Liquidating Trustee, provided, however, in no event shall the liability of the Liquidating Trustee based upon recklessness or gross negligence be any more than the fees to which the Liquidating Trustee is entitled to hereunder that are paid to, or are received by way of set off or otherwise by, the Liquidating Trustee.

5.3 No Liability for Acts of Predecessor.

No successor Liquidating Trustee shall be in any way responsible or liable for the acts or omissions of any predecessor Liquidating Trustee in office prior to the date on which such person becomes the Liquidating Trustee, nor shall such successor Liquidating Trustee be obligated to inquire into the validity or propriety of any such act or omission unless such successor Liquidating Trustee expressly assumes such responsibility. Any successor Liquidating Trustee shall be entitled to accept as conclusive any final accounting and statement of Trust ~~Assets~~ furnished to such successor Liquidating Trustee by the predecessor Liquidating Trustee and shall further be responsible only for those Trust ~~Assets~~ properly includable in such statement.

5.4 Express Exculpatory Clauses in Instruments

As far as practicable, the Liquidating Trustee shall cause any written instrument creating an obligation of the Trust to include a reference to this Agreement and the Plan and to provide that none of the Liquidating Trustees shall be liable thereunder and that the other parties to such instrument shall look solely to the Trust ~~Assets~~ for the payment of any claim thereunder or the performance thereof; provided, however, that the omission of such provision from any such instrument shall not render any Liquidating Trustee liable nor shall a Liquidating Trustee be liable to anyone for such omission.

ARTICLE 6
TERM; TERMINATION OF THE TRUST

Term: Termination of the Trust.

(a) The Trust shall remain in existence until all Trust assets have been fully administered and distributed in accordance with this Agreement, the GSA, and to the extent applicable, the Plan, and a final report and accounting of the Liquidating Trustees shall have been issued to the Parties and accepted by the Parties, in writing.

(b) The Trust may be terminated prior to the occurrence of the events described in Section 6(a) only upon either (i) the express written agreement of the Parties, or (ii) a final order of the Bankruptcy Court terminating the Trust.

ARTICLE 7
AMENDMENT AND WAIVER

7.1 Amendment and Waiver.

(a) The Liquidating Trustees, acting unanimously, may (i) amend, supplement or waive any provision of this Agreement, without notice to or the consent of any Party, any Beneficiary or the approval of the Bankruptcy Court: (ii) cure any ambiguity, omission, defect or inconsistency in this Agreement provided, however, that no such amendment or cure shall be inconsistent with the terms of the Plan or adversely affect the U.S. federal income tax status of the Trust as a “liquidating trust”.

ARTICLE 8
MISCELLANEOUS PROVISIONS

8.1 Intention of Parties to Establish the Trust.

This Agreement is intended to create a liquidating trust for federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a trust and any ambiguity herein shall be construed consistent herewith and, if necessary, this Agreement may be amended in accordance with Article 7 to comply with such federal income tax laws, which amendments may apply retroactively.

8.2 Laws as to Construction.

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW HAMPSHIRE, WITHOUT REGARD TO WHETHER ANY CONFLICTS OF LAW WOULD REQUIRE THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION.

JackD@nhbfa.com

With a copy to:

George J. Marcus, Esq.
Marcus, Clegg & Mistretta, P.A
One Canal Plaza, Suite 600
Portland, ME 04101
Tel: (207) 828-8000
Fax: (207) 773-3210
gjm@mcm-law.com

If to the Committee:

Charles B. Fenderson, President
Charles Leonard Construction Company, Inc.
183 Pembroke Road
Concord NH 03301
charles@charlesleonardinc.com

Formatted: Font: Italic

With a copy to:


Daniel S. Sklar, Esq.
Nixon Peabody
900 Elm Street
Manchester, NH 03101
Tel: (603) 628-4000
Fax: (603) 628-4040
dsklar@nixonpeabody.com

If to PSB:

Passumpsic Savings Bank, Attn: Senior Loan Officer
497 Railroad St
PO Box 38
St Johnsbury VT 05819.

With a copy to:

Daniel P. Luker, Esq.
Preti Flaherty
P.O. Box 1318
Concord, NH 03302-1318
Tel: (603) 410-1500
Fax: (603) 410-1501
dluker@preti.com

If to Turner:


With a copy to:

D. Ethan Jeffery, Esq.
Murphy & King, PC
One Beacon Street, 21st Floor
Boston, MA 02108
Tel: (617) 423-0400
dej@murphyking.com

Any party from time to time may change its address, facsimile number, or other information for the purpose of notices to that party by giving notice specifying such change to the other party hereto.

8.6 Fiscal Year.

The fiscal year of the Trust shall be the calendar year, January 1 to December 31.

8.7 Headings.

The section headings contained in this Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Agreement or of any term or provision hereof.

8.8 Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original instrument, but all together shall constitute one agreement.

8.9 Entire Agreement.

This Agreement (including the Recitals), constitutes the entire agreement by and among the Parties hereto and there are no representations, warranties, covenants or obligations except as set forth herein or therein. This Agreement supersedes all prior and contemporaneous agreements, understandings, negotiations, discussions, written or oral, of the parties hereto, relating to any transaction contemplated hereunder. Except as otherwise specifically provided herein, nothing in this Agreement is intended or shall be

construed to confer upon or to give any person other than the parties thereto and their respective heirs, administrators, executors, successors, or assigns any right to remedies under or by reason of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and delivered on their behalf by their duly authorized agents, all as of the date first above written.

[signatures on following page]

WITNESS:

**ISAACSON STEEL, INC.
ISAACSON STRUCTURAL STEEL,
INC.**

By:
Print Name:
Title:

**NEW HAMPSHIRE BUSINESS
FINANCE AUTHORITY**

By:
Print Name:
Title:

**OFFICIAL COMMITTEE OF
UNSECURED CREDITORS**

By:
Print Name:
Title:

PASSUMPSIC SAVINGS BANK

By:
Print Name:
Title:

**TURNER CONSTRUCTION
COMPANY, INC.**

By:
Print Name:

|

Title:

