

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

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In re: :  
ALPART JAMAICA INC. and : Chapter 11 Case Nos.  
KAISER JAMAICA CORPORATION, : 03-10144 and 03-10151  
 : Jointly Administered Under  
 : Case No. 02-10429 (JKF)  
Debtors. :  
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**THIRD MODIFICATION TO THE  
THIRD AMENDED JOINT PLAN OF LIQUIDATION FOR  
ALPART JAMAICA INC. AND KAISER JAMAICA CORPORATION**

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ATTORNEYS FOR DEBTORS AND  
DEBTORS IN POSSESSION

Dated: December 19, 2005

Subject to approval by the Bankruptcy Court and pursuant to this Third Modification to the Third Amended Joint Plan of Liquidation for Alpart Jamaica Inc. and Kaiser Jamaica Corporation, the Debtors effect the following changes to the Third Amended Joint Plan of Liquidation for Alpart Jamaica Inc. and Kaiser Jamaica Corporation (as previously modified, the "Plan"):

***Modifications to the Plan***

Section 1.1(37) of the Plan is hereby amended in its entirety to read as follows:

"Contractual Subordination Disputes' means any or all of the disputes that are the subject of the following matters pending in the Kaiser Cases: (i) the 7-3/4% SWD Revenue Bond Dispute; (ii) the motion filed on August 14, 2004, by the Senior Subordinated Note Indenture Trustee to determine the classification of the Senior Subordinated Note Claims under any plan of reorganization filed by the Debtors or the Other Kaiser Debtors that guaranteed the Senior Subordinated Notes (including the Plan); (iii) the adversary proceeding filed August 16, 2004, and styled *U.S. Bank National Association v. Kaiser Aluminum & Chemical Corporation*, Adv. Pro. No. 04-55115 (JFK); (iv) the determination by the Bankruptcy Court, pursuant to Section 2.4(c)(i)(B) hereof, of the respective entitlement of the holders of Allowed 9-7/8% Senior Note Claims, Allowed 10-7/8% Senior Note Claims and Allowed Senior Subordinated Note Claims to the portion of the Public Note Percentage of Cash retained by the Distribution Trustee in the Unsecured Claims Trust Account pursuant to Sections 2.4(c)(i)(B) and 2.4(c)(ii)(B); (v) the objections to confirmation of the Plan filed by Law Debenture Trust Company of New York ("Law Debenture") and by The Liverpool Limited Partnership ("Liverpool") and the briefs (both in support of the Plan and in reply to the Law Debenture and Liverpool objections) filed by the Debtors, the Creditors' Committee, jointly by U.S. Bank National Association, as indenture trustee, and certain holders of the Senior Note Claims, and jointly by Bear Stearns & Company, Citadel Equity Fund Ltd, Citadel Credit Trading Ltd. and J.P. Morgan Trust Company, National Association, as indenture trustee, but, in the case of all the foregoing pleadings, only to the extent such pleadings addressed the relative priority of holders of Senior Note Claims and holders of Senior Subordinated Note Claims, including the indenture trustee fee issues raised by Law Debenture and the separate issues raised by Liverpool; and (vi) any further proceedings or appeals in respect of any of the foregoing."

Section 2.4(c)(i)(B) of the Plan is hereby amended in its entirety to read as follows:

*"Plan Rejected by Subclass 3A or Subclass 3B.* As a result of the failure of Subclass 3B to accept the Plan in accordance with section 1126(c) of the Bankruptcy Code, the obligations of holders of Senior Subordinated Note Claims relating to the contractual subordination provisions of the Senior Subordinated Note Indenture and the claims of holders of Senior Note Claims relating to the contractual subordination provisions of the Senior Subordinated Note Indenture, as such obligations and claims relate to AJI and KJC, will be preserved under the Plan to the extent enforceable under section 510(a) of the Bankruptcy Code. On the Effective Date, each holder of an Allowed Senior Note Claim will be entitled to receive Cash from the Unsecured Claims Trust Account equal to its Pro Rata Share of the amount equal to (i) 48.5% of the Public Note Percentage of the Cash deposited into the Unsecured Claims Trust Account on the Effective Date plus (ii) the amount determined pursuant to clause (b) of Section 1.1(90) less (iii) all amounts payable pursuant to Section 2.6(a). Pending entry of an order of the Bankruptcy Court pursuant to which the Bankruptcy Court will determine the respective entitlement of the holders of Allowed 9-7/8% Senior Note Claims, Allowed 10-7/8% Senior Note Claims and Allowed Senior Subordinated Note Claims, the Distribution Trustee will retain in the Unsecured Claims Trust Account an amount equal to 51.5% of the Public Note Percentage of Cash deposited into the Unsecured Claims Trust Account on the Effective Date, and any subsequent distributions to holders of Allowed Senior Note Claims will be made in accordance with such order of the Bankruptcy Court and giving effect to the payments made pursuant to the preceding sentence and after first providing for the payments to be made pursuant to Section 2.5(a) and 2.6."

The first sentence of Section 2.5(a) of the Plan is hereby amended to read as follows:

"If, unless the holders of Senior Note Claims otherwise agree pursuant to a settlement, all holders of Senior Note Claims are entitled under the Plan to identical treatment in respect of contractual subordination claims under the Senior Subordinated Note Indenture, then, in accordance with Section 2.4(c)(i)(B), an amount equal to the Settlement Percentage of the Cash in the Unsecured Claims Trust Account that would otherwise have been distributed in respect of the Senior Subordinated Note Claims but which, after giving effect to the contractual

subordination provisions of the Senior Subordinated Note Indenture and pursuant to Sections 2.4(c)(i) and 2.4(c)(ii) but prior to giving effect to any payments under this Section 2.5, is to be distributed to holders of Senior Note Claims will, in full and complete satisfaction of the claims of holders of 7-3/4% SWD Revenue Bonds asserted in the 7-3/4% SWD Revenue Bond Dispute in respect of the Debtors, be paid to the 7-3/4% SWD Revenue Bond Indenture Trustee for the benefit of holders of 7-3/4% SWD Revenue Bonds."

Section 2.6(a) of the Plan is hereby amended and restated in its entirety to read as follows:

"Senior Note Indenture Trustee and Ad Hoc Group Counsel Fees and Expenses. The fees and expenses of (a) the 9-7/8% Senior Note Indenture Trustee, (b) the 10-7/8% Senior Note Indenture Trustee, and (c) counsel for the Ad Hoc Group through the date on which the Bankruptcy Court's order determining, pursuant to Section 2.4(c)(i)(B) hereof, the respective entitlement of the holders of Allowed 9-7/8% Senior Note Claims, Allowed 10-7/8% Senior Note Claims and Allowed Senior Subordinated Note Claims to the portion of the Public Note Percentage of Cash retained by the Distribution Trustee in the Unsecured Claims Trust Account pursuant to Sections 2.4(c)(i)(B) and 2.4(c)(ii)(B) becomes a Final Order will be paid out of the Public Note Distributable Consideration otherwise payable to holders of Senior Note Claims. No later than two Business Days prior to the Effective Date, each of the entities to which reference is made in clauses (a), (b) and (c) of the first sentence of this Section 2.6(a) will furnish to the Creditors' Committee and the Debtors information in respect of such fees and expenses incurred and estimated to be incurred through the Effective Date, which will be paid as contemplated pursuant to Section 2.4(c)(i)(B) and the Distribution Trust Agreement. In addition, no later than two Business Days prior to the Effective Date, the Ad Hoc Group will furnish to the Creditors' Committee and the Debtors an estimate of fees and expenses to be incurred from the Effective Date through the entry of such Final Order, which will be paid as contemplated by Section 2.4(c)(i)(B) and the Distribution Trust Agreement."

Section 8.2(b) of the Plan is hereby amended in its entirety to read as follows:

"The rights, powers and privileges of the Distribution Trustee (to act on behalf of the Distribution Trust) will be specified in the Distribution Trust Agreement and will include, among others, the authority and responsibility to: (i) accept, preserve, receive, collect, manage, invest, supervise and protect the Distribution Trust Assets (directly or through one or more third-party Disbursing Agents), each in accordance with the Plan and the Distribution Trust Agreement; (ii) liquidate, transfer or otherwise dispose of the Distribution Trust Assets or any part thereof or any interest therein upon such terms as the Distribution Trustee determines to be necessary, appropriate or desirable, pursuant to the procedures for allowing Claims and making distributions prescribed in the Plan, and otherwise consistent with the terms of the Plan; (iii) calculate and make distributions of the Distribution Trust Assets to holders of Allowed Claims pursuant to the procedures for allowing Claims and making distributions prescribed in the Plan; (iv) review, reconcile, settle or object to Claims not allowed prior to the Effective Date and resolve any such objections as set forth in the Plan and the Distribution Trust Agreement; (v) comply with the Plan and exercise its rights and fulfill its obligations thereunder; (vi) investigate and pursue causes of action as contemplated by the Distribution Trust Agreement, and raise defenses in connection with any actions or claims adverse to the Distribution Trust as the Distribution Trustee determines, in its reasonable discretion, to be necessary, appropriate or desirable; (vii) retain and compensate, without further order of the Bankruptcy Court, the services of professionals or other persons or entities to represent, advise and assist the Distribution Trustee in the fulfillment of its responsibilities in connection with the Plan and the Distribution Trust Agreement all as it determines, in its reasonable discretion, to be necessary, appropriate or desirable; (viii) take such actions as are necessary, appropriate or desirable, to close the Chapter 11 Cases; (ix) file appropriate Tax returns on behalf of the Distribution Trust and Debtors and pay Taxes or other obligations owed by the Distribution Trust; (x) exercise the rights, and fulfill the obligations, of the Debtors under the Alpart Purchase Agreement; (xi) take such actions as are necessary, appropriate or desirable to terminate the existence of the Debtors under the laws of Jamaica; and (xii) terminate the Distribution Trust in accordance with the terms of the Plan and the Distribution Trust Agreement."

Section 9.4(e)(i) of the Plan is hereby amended in its entirety to read as follows:

*"Plan Accepted by Subclass 3A.* If, unless the holders of Senior Note Claims otherwise agree pursuant to a settlement, all holders of Senior Note Claims are entitled under the Plan to identical treatment in respect of contractual subordination claims under the Senior Subordinated Note Indenture, then, in accordance with Section 2.4(c)(i)(B), as promptly as practicable after the Effective Date, the Disbursing Agent will make the

payment, if any, to the 7-3/4% SWD Revenue Bond Indenture Trustee for the benefit of holders of 7-3/4% SWD Revenue Bonds pursuant to Section 2.5(a) and pay any amounts payable pursuant to Section 2.6(b)."

Section 11 of the Plan is hereby amended to delete the word "and" at the end of subsection (l) and to add "; and" and a new subsection (n) at the end of subsection (m) thereof as follows:

"(n) Decide or resolve the Contractual Subordination Disputes including, without limitation, the respective entitlements of the holders of Allowed 9-7/8% Senior Note Claims, Allowed 10-7/8% Senior Note Claims, Allowed Senior Subordinated Notes Claims, and the Senior Subordinated Note Indenture Trustee, to the portion of the Public Note Percentages of Cash retained by the Distribution Trustee in the Unsecured Claims Trust Account pursuant to Sections 2.4(c)(i)(B) and 2.4(c)(ii)(B)."

To the extent not otherwise modified, provisions of the Plan conditioned upon a voting outcome that did not occur shall be deemed to be inoperative.

The Distribution Trust Agreement previously filed with the Bankruptcy Court as Exhibit A to the Plan is hereby amended to read as set forth on the attached Exhibit A. A version of the Distribution Trust Agreement, blacklined to the version previously filed with the Court on April 7, 2005, is also attached hereto.

Dated: December 19, 2005

Respectfully submitted,

ALPART JAMAICA INC.

By: /s/ John M. Donnan

Name: John M. Donnan

Title: Vice President and General Counsel

KAISER JAMAICA CORPORATION

By: /s/ John M. Donnan

Name: John M. Donnan

Title: Vice President and General Counsel

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ATTORNEYS FOR DEBTORS AND  
DEBTORS IN POSSESSION

**(Clean Version of Distribution Trust Agreement)**

**DISTRIBUTION TRUST AGREEMENT**

**dated as of**

**December [ ], 2005**

**among**

**ALPART JAMAICA INC.,**

**KAISER JAMAICA CORPORATION**

**and**

**J.P. MORGAN TRUST COMPANY, NATIONAL ASSOCIATION,**

**as Distribution Trustee**

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## **DISTRIBUTION TRUST AGREEMENT**

This **DISTRIBUTION TRUST AGREEMENT**, dated as of December [\_\_\_], 2005 (this "Agreement"), is made by and among Alpart Jamaica Inc. ("AJI"), Kaiser Jamaica Corporation ("KJC" and collectively with AJI, the "Debtors") and J.P. Morgan Trust Company, National Association (or any successor trustee, the "Distribution Trustee"), as Distribution Trustee under the Third Amended Joint Plan of Liquidation for Alpart Jamaica Inc. and Kaiser Jamaica Corporation, dated February 25, 2005, as modified and confirmed by the Bankruptcy Court (the "Plan").

### **RECITALS**

A. The trust created hereby (the "Distribution Trust") is created pursuant to, and to effectuate, Article VIII of the Plan.

B. The Distribution Trustee was selected to serve as Distribution Trustee under the Plan by the official committee of unsecured creditors of the Debtors appointed by the United States Trustee on February 25, 2002, pursuant to section 1102 of the Bankruptcy Code (the "Creditors' Committee"), with the consent of the Debtors, pursuant to Section 8.2(a) of the Plan.

C. Pursuant to the Plan, the Distribution Trust is established for the purposes of resolving all Disputed Claims, making all distributions to holders of Allowed Claims in accordance with the terms of the Plan and otherwise implementing the Plan and finally administering the Estates, all in accordance with the terms of the Plan and this Agreement.

D. The Distribution Trust is intended to be treated, for U.S. federal income Tax purposes, in part as a liquidating trust within the meaning of Treasury Regulations

section 301.7701-4(d), for the benefit of the holders of Allowed Claims entitled to distributions of Pending Payments, and otherwise as one or more disputed ownership funds within the meaning of Proposed Treasury Regulations section 1.468B-9(a).

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants contained herein, the Debtors and the Distribution Trustee agree as follows:

### **ARTICLE I**

#### **DEFINITIONS AND INTERPRETATIONS**

1.1 Definitions. The following capitalized terms used in this Agreement will have the respective meanings ascribed to them in this Section 1.1:

(a) "Agreement" has the meaning set forth in the introductory paragraph to this Agreement.

(b) "AJI" has the meaning set forth in the introductory paragraph to this Agreement.

(c) "Alpart Purchase Agreement" means that certain Purchase Agreement, dated as of June 8, 2004, by and among KACC, Kaiser Aluminium International, Inc., Kaiser Bauxite Company, KJC and AJI and Quality Incorporations I Limited.

(d) "Annual Receipts/Disbursements Report" means an unaudited report Filed with the Bankruptcy Court by the Distribution Trustee, on behalf of the Distribution Trust, within 90 days after the end of each calendar year reflecting: (i) all Distribution Trust Assets received by the Distribution Trust during such calendar year; (ii) all Distribution Trust Assets held by the Distribution Trust at the end of such calendar year, and; (iii) all Distribution Trust Assets disbursed during such calendar year, in each case itemized for the individual Trust Accounts.

(e) "Beneficiaries" means the creditors and claimants of the Estates.

(f) "Claims Report" means, with respect to each Estate, a report certified by the claims agent for such Estate setting forth: (i) a listing, as of the Effective Date, of: (A) all Allowed Secured Claims of such Estate; (B) all Allowed Administrative Claims of such Estate; (C) all Allowed Priority Claims of such Estate; (D) all Allowed Priority Tax Claims of such Estate; (E) all Allowed Unsecured Claims of such Estate; and (F) all Disputed Claims of such Estate; and (ii) for each Claim so listed (A) the name, address

and federal taxpayer identification number or social security number (if known) of the holder thereof as of the Distribution Record Date and (B) the amount thereof, including the amount of unpaid principal and accrued interest (if known).

(g) "Creditors' Committee" has the meaning set forth in Recital B to this Agreement.

(h) "Current Report" means a report Filed with the Bankruptcy Court by the Distribution Trustee, on behalf of the Distribution Trust, describing developments affecting the Distribution Trust in any material respect (as determined by the Distribution Trustee in its reasonable discretion) in reasonable detail.

(i) "Debtor Parties" means, collectively, the Debtors and any directors, officers, employees, agents, professionals, principals and other representatives thereof.

(j) "Debtors" has the meaning set forth in the introductory paragraph to this Agreement.

(k) "Disbursing Agent" means the Distribution Trustee, in its capacity as a disbursing agent pursuant to the Plan, or any third party acting as disbursing agent at the direction of the Distribution Trustee.

(l) "Disputed Claims Reserves" means, with respect to each of the Trust Accounts, the reserve of Cash retained in such Trust Account to satisfy Disputed Claims against the Estate of AJI or the Estate of KJC, if, as and when they are allowed, or, to the extent such Disputed Claims are not allowed, to satisfy Claims that are allowed in accordance with the terms of the Plan.

(m) "Distribution Trust" has the meaning set forth in Recital A to this Agreement.

(n) "Distribution Trustee" has the meaning set forth in the introductory paragraph to this Agreement.

(o) "Distribution Trust Assets" means collectively: (i) the Trust Accounts and any Cash held by such Trust Accounts; (ii) the rights of the Debtors under or in respect of the Intercompany Claims Settlement, the Alpart Purchase Agreement or any causes of action not released by the Plan, including the Recovery Actions, and any proceeds thereof; and (iii) the Alpart Proceeds to the extent that such funds are not included in (i) or (ii).

(p) "Distribution Trust Expenses" means any and all reasonable fees, costs and expenses incurred by the Distribution Trustee (or any Disbursing Agent, person, entity or professional engaged by the Distribution Trustee) in connection with the performance by the Distribution Trustee of its duties under the Plan or this Agreement.

(q) "Distribution Trust Expenses Account" means the segregated trust account to be established and maintained pursuant to Sections 8.9 and 8.10 of the Plan to fund the payment of Distribution Trust Expenses.

(r) "Engagement Letter" means that certain Engagement Letter, dated as of December [\_\_\_], 2005, by and among the Debtors and the Distribution Trustee, attached hereto as Exhibit A.

(s) "Indemnified Parties" means, collectively, the Distribution Trustee and any directors, officers, employees, agents, professionals, principals and other representatives thereof and the members of the Steering Committee.

(t) "Intercompany Claims Settlement" means the settlement and release agreement among the debtors in the Kaiser Cases and the Creditors' Committee, dated as of October 5, 2004, in such form as approved by the Intercompany Claims Settlement Order.

(u) "KJC" has the meaning set forth in the introductory paragraph to this Agreement.

(v) "Pending Payments" means identified amounts (excluding undeliverable Cash) held by the Distribution Trust for distribution to holders of Allowed Claims in specific amounts as of the date the Distribution Trust receives the applicable Distribution Trust Assets.

(w) "Permitted Investments" means (i) the investments identified on Exhibit C hereto; (ii) the following investments so long as they have maturities of 90 days or less: (A) obligations issued or guaranteed by the United States or by any person controlled or supervised by or acting as an instrumentality of the United States pursuant to authority granted by the United States Congress; (B) obligations issued or guaranteed by any state or political subdivision thereof rated either AA or higher, or MIG 1 or higher, by Moody's Investors Service, Inc. or its successor or AA or higher, or an equivalent, by Standard & Poor's Ratings Services or its successor; (C) commercial or finance paper which is rated either P-1 or higher or an equivalent by Moody's Investors Service, Inc. or its successor or A-1 or higher or an equivalent by Standard & Poor's Ratings Services or its successor; (D) certificates of deposit or time deposits of banks or trust companies, organized under the laws of the United States, having a minimum equity of \$500,000,000; and (E) money market funds registered under the Investment Company Act of 1940, as amended, whose shares are registered under the Securities Act of 1933, as amended, which invests in securities of the type described in subsection (A) above; and (iii) such other investments as may be authorized by the Bankruptcy Court.

(x) "Plan" has the meaning set forth in the introductory paragraph to this Agreement.

(y) "Priority Claims Trust Account" means the segregated trust account to be established and maintained by the Distribution Trustee pursuant to Sections 8.9 and 8.11 of the Plan to satisfy Allowed Secured Claims, Allowed Administrative Claims, Allowed



Priority Claims and Allowed Priority Tax Claims against the Estate of AJI or the Estate of KJC in accordance with the terms of the Plan.

(z) "Quarterly Receipts/Disbursements Report" means an unaudited report Filed with the Bankruptcy Court by the Distribution Trustee, on behalf of the Distribution Trust, within 45 days after the end of each of the first three calendar quarters of each calendar year reflecting: (i) all Distribution Trust Assets received by the Distribution Trust during such calendar quarter; (ii) all Distribution Trust Assets held by the Distribution Trust at the end of such quarter; and (iii) all Distribution Trust Assets disbursed during such calendar quarter, in each case itemized for the individual Trust Accounts.

(aa) "Steering Committee" means a committee comprised of the members of the Alumina Creditor Subcommittee (as defined in the Intercompany Claims Settlement) other than any member thereof that is (i) a holder of a Senior Subordinated Note Claim or (ii) the Senior Subordinated Note Indenture Trustee.

(bb) "Subordination Dispute Order" means an order of the Bankruptcy Court pursuant to which the Bankruptcy Court determines the respective entitlement of the holders of Allowed 9-7/8% Senior Note Claims, Allowed 10-7/8% Senior Note Claims and Allowed Senior Subordinated Note Claims.

(cc) "Tax" means: (i) any net income, alternative or add-on minimum, gross income, gross receipts, sales, use, ad valorem, value added, transfer, franchise, profits, license, property, environmental or other tax, assessment or charge of any kind whatsoever (together in each instance with any interest, penalty, addition to tax or additional amount) imposed by any U.S. federal, state, local or foreign taxing authority; or (ii) any liability for payment of any amounts of the foregoing types as a result of being a member of an affiliated, consolidated, combined or unitary group, or being a party to any agreement or arrangement whereby liability for payment of any such amounts is determined by reference to the liability of any other entity.

(dd) "Trust Accounts" means, collectively, the Distribution Trust Expenses Account, the Priority Claims Trust Account, the Unsecured Claims Trust Account and the Undeliverable Cash Trust Account.

(ee) "Undeliverable Cash Trust Account" means the segregated trust account to be established and maintained by the Distribution Trustee pursuant to Sections 8.9 and 8.13 of the Plan to hold undeliverable Cash for the benefit of holders of Allowed Unsecured Claims against the Estate of AJI or the Estate of KJC otherwise entitled to such distributions.

(ff) "United States" means the United States of America.

(gg) "Unsecured Claims Trust Account" means the segregated trust account to be established and maintained by the Distribution Trustee pursuant to Sections 8.9 and 8.12 of the Plan to satisfy Allowed Unsecured Claims against the Estate of AJI or the Estate of KJC in accordance with the terms of the Plan.

Capitalized terms used but not defined in this Agreement will have the meanings ascribed to them in the Plan.

1.2 Interpretation.

1.2.1 Certain References. Unless the context otherwise requires, (a) all references in this Agreement to Sections, Articles or Schedules are to Sections, Articles or Schedules of or to this Agreement, (b) words in the singular include the plural and vice versa, and (c) the verb "will" will have a mandatory connotation, indicating the parties' respective obligations hereunder. Whenever the words "include," "includes" or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation." All references to "\$" or dollar amounts are to lawful currency of the United States.

1.2.2 Titles and Headings. Titles and headings to Sections, Articles and Schedules in or to this Agreement are inserted for convenience of reference only, and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

1.2.3 Inconsistencies with the Plan. In the event of any inconsistency between any provision of this Agreement, on the one hand, and any provision of the Plan, on the other hand, the provisions of the Plan will govern and control.

## **ARTICLE II**

### **ESTABLISHMENT OF THE DISTRIBUTION TRUST**

2.1 Creation and Purposes of the Distribution Trust. The Debtors and the Distribution Trustee, pursuant to the Plan and in accordance with the Bankruptcy Code, hereby create a trust, which is the Distribution Trust contemplated by the Plan. The Distribution Trust is established for the following purposes and no other: (a) collecting, maintaining and administering any Distribution Trust Assets for the benefit of Beneficiaries; (b) liquidating (including objecting to Claims and determining the proper recipients and amounts of

distributions to be made from the Distribution Trust) and distributing the Distribution Trust Assets for the benefit of the Beneficiaries who are determined to hold Allowed Claims as expeditiously as reasonably possible; (c) pursuing any available causes of action, including Recovery Actions; (d) closing the Chapter 11 Cases; and (e) otherwise implementing the Plan and completing the dissolution of the Debtors, all in accordance with the Plan and this Agreement. The Distribution Trust has no objective to, and will not, engage in the conduct of a trade or business and, subject to Section 11.3, will terminate upon the completion of its liquidation and distribution duties. The Distribution Trust will be a "representative of the estate" under section 1123(b)(3)(B) of the Bankruptcy Code.

2.2 Identification of Beneficiaries. On the Effective Date, (a) AJI will deliver to the Distribution Trustee the Claims Report with respect to AJI's Estate and (b) KJC will deliver to the Distribution Trustee the Claims Report with respect to KJC's Estate.

2.3 Transfer of Initial Distribution Trust Assets. On the Effective Date, the Debtors will transfer to the Distribution Trust the Distribution Trust Assets listed or described on Exhibit B, which is a complete and accurate listing of all Distribution Trust Assets owned by the Estates immediately prior to the Effective Date, whereupon title to such Distribution Trust Assets will irrevocably vest in the Distribution Trust, free and clear of Claims, Liens and Interests.

2.4 Tax Treatment. For all U.S. federal income Tax purposes, the Debtors, the Distribution Trustee and the Beneficiaries will treat the transfer of Distribution Trust Assets to the Distribution Trust pursuant to Section 2.3 as: (a) to the extent of Pending Payments, (i) a transfer of the Pending Payments directly from the Debtors to the holders of such Allowed Claims followed by (ii) the transfer of such Pending Payments by the holders of such Allowed Claims to the Distribution Trust in exchange for beneficial interests in the Distribution Trust; and

(b) to the extent of amounts that are not Pending Payments, as a transfer to one or more disputed ownership funds, as described in Section 3.6. Accordingly, the holders of Allowed Claims entitled to distribution of Pending Payments will be treated for federal income Tax purposes as the grantors and deemed owners of their respective shares of the Distribution Trust Assets in the amounts of the Pending Payments and any earnings thereon.

2.5 Distribution Trustee's Acceptance. The Distribution Trustee hereby accepts the duties as trustee imposed on it by this Agreement and agrees to observe and perform such duties, on and subject to the terms and conditions set forth in this Agreement. In connection with and in furtherance of the purposes of the Distribution Trust, the Distribution Trustee hereby expressly accepts the transfer of Distribution Trust Assets to the Distribution Trust pursuant to Section 2.3, subject to the provisions of the Plan, and the Distribution Trustee hereby further expressly agrees to establish and maintain the Trust Accounts and to distribute the Distribution Trust Assets in accordance with the Plan and this Agreement.

### **ARTICLE III**

#### **TRUST ACCOUNTS**

3.1 Creation of the Trust Accounts. On or prior to the Effective Date, the Distribution Trustee will establish in its own name with federally insured United States banks the Distribution Trust Expenses Account, the Priority Claims Trust Account, the Unsecured Claims Trust Account and the Undeliverable Cash Trust Account. On the Effective Date, the Trust Accounts and the contents thereof will be transferred to and irrevocably vest in the Distribution Trust.

3.2 Distribution Trust Expenses Account.

3.2.1 Initial Funding. On the Effective Date following the transfer of Distribution Trust Assets to the Distribution Trust pursuant to Section 2.3, the Distribution

Trustee will fund the Distribution Trust Expenses Account with \$1,000,000 in Cash from the Distribution Trust Assets so transferred.

3.2.2 Use of Funds. Except as otherwise ordered by the Bankruptcy Court, the Distribution Trustee, in its capacity as Disbursing Agent, will, in its reasonable discretion, pay Distribution Trust Expenses from the Distribution Trust Expenses Account, without the need for further Bankruptcy Court approval. Cash in the Distribution Trust Expenses Account will also be used to pay Taxes owing in respect of any amounts included in the Distribution Trust Expenses Account in accordance with Section 10.4.3. Subject to such exceptions as the Steering Committee, acting through a majority thereof, may establish, at least five Business Days prior to making any payment from the Distribution Trust Expenses Account the Distribution Trustee will provide the Steering Committee with a notice setting forth the amount and nature of such payment, with such notice to be accompanied by supporting documentation in reasonable detail.

3.2.3 Subsequent Funding. If, at any time after the initial funding of the Distribution Trust Expenses Account as contemplated by Section 3.2.1, the Distribution Trustee determines, in its reasonable discretion, that the Cash balance of the Distribution Trust Expenses Account will be insufficient to make all payments payable therefrom in accordance with the terms of the Plan and this Agreement, the Distribution Trustee may transfer from the Unsecured Claims Trust Account (to the extent Cash remains available therein) to the Distribution Trust Expenses Account Cash in an aggregate amount determined by the Distribution Trustee, in its reasonable discretion, to be necessary to ensure that the Cash balance of the Distribution Trust Expenses Account will be sufficient to make all such payments. To the fullest extent possible, any transfer pursuant to this Section 3.2.3 will be accomplished in a manner intended to avoid or

minimize any adverse impact on the ability to make full distributions to holders of Allowed Secured Claims, Allowed Administrative Claims, Allowed Priority Claims and Allowed Priority Tax Claims or distributions to holders of Allowed Unsecured Claims in accordance with the terms of the Plan.

3.2.4 Excess Funds. If, at any time after the initial funding of the Distribution Trust Expenses Account pursuant to Section 3.2.1, the Distribution Trustee determines that the Cash balance of the Distribution Trust Expenses Account is in excess of the amount that will be sufficient to make all payments payable therefrom in accordance with the terms of the Plan and this Agreement, the Distribution Trustee, with the consent of the Steering Committee, acting through a majority thereof, may transfer such excess Cash to the Unsecured Claims Trust Account.

### 3.3 Priority Claims Trust Accounts.

3.3.1 Initial Funding. On the Effective Date following the transfer of Distribution Trust Assets to the Distribution Trust pursuant to Section 2.3, the Distribution Trustee will fund the Priority Claims Trust Account with \$17,500,000 in Cash from the Distribution Trust Assets so transferred.

3.3.2 Use of Funds. Cash in the Priority Claims Trust Account will be used by the Distribution Trustee only to (a) satisfy Allowed Secured Claims, Allowed Administrative Claims, Allowed Priority Claims and Allowed Priority Tax Claims against the Estate of AJI or the Estate of KJC in accordance with the terms of the Plan and (b) pay Taxes owing in respect of any amounts included in the Priority Claims Trust Account in accordance with Section 10.4.3.

3.3.3 Subsequent Funding. If, at any time after the initial funding of the Priority Claims Trust Account pursuant to Section 3.3.1, the Distribution Trustee determines, in its reasonable discretion, that the Cash balance of the Priority Claims Trust Account is insufficient to make all payments payable therefrom in accordance with the terms of the Plan and this Agreement, the Distribution Trustee will transfer from the Unsecured Claims Trust Account (to the extent Cash remains available therein) to the Priority Claims Trust Account Cash in an amount determined by the Distribution Trustee, in its reasonable discretion, to be necessary to ensure that the Cash balance of the Priority Claims Trust Account will be sufficient to so make all such payments. To the fullest extent possible, any transfer pursuant to this Section 3.3.3 will be accomplished in a manner intended to avoid or minimize any adverse impact on the ability to make distributions to holders of Allowed Unsecured Claims in accordance with the terms of the Plan.

3.3.4 Excess Funds. If, at any time after the initial funding of the Priority Claims Trust Account pursuant to Section 3.3.1, the Distribution Trustee determines that the Cash balance of the Priority Claims Trust Account is in excess of the amount that will be sufficient to make all payments payable therefrom in accordance with the terms of the Plan and this Agreement, the Distribution Trustee, with the consent of the Steering Committee, acting through a majority thereof, may transfer such excess Cash to the Unsecured Claims Trust Account.

3.3.5 Disputed Claims Reserves. On the Effective Date, (a) in connection with the initial funding of the Priority Claims Trust Account pursuant to Section 3.3.1, the Distribution Trustee will designate, with the consent of the Creditors' Committee and KACC, a specified portion of such initial funding as a Disputed Claims Reserve

to be retained in such Trust Account to satisfy any Disputed Secured Claims, Disputed Administrative Claims, Disputed Priority Claims and Disputed Priority Tax Claims against the Estate of AJI or the Estate of KJC in accordance with the Plan, if, as and when they are allowed or, to the extent such Disputed Claims are not allowed, to satisfy Claims that are allowed in accordance with the terms of the Plan, and (b) in connection with any subsequent transfer of Cash to the Priority Claims Trust Account pursuant to Section 3.3.3, the Distribution Trustee will designate amounts so transferred, to the extent they are not identified as Pending Payments, as Disputed Claims Reserves to be retained in such Trust Account to satisfy Disputed Secured Claims, Disputed Administrative Claims, Disputed Priority Claim and Disputed Priority Tax Claims against the Estate of AJI or the Estate of KJC in accordance with the Plan, if, as and when they are allowed or, to the extent such Disputed Claims are not allowed, to satisfy Claims that are allowed in accordance with the terms of the Plan.

#### 3.4 Unsecured Claims Trust Account.

3.4.1 Initial Funding. On the Effective Date, after the initial funding of the Distribution Trust Expenses Account in accordance with Section 3.2.1 and the initial funding of the Priority Claims Trust Account in accordance with Section 3.3.1, the Distribution Trustee will (a) from the Distribution Trust Assets, (i) make allowance for the allocation to the Public Note Distributable Consideration of the amount contemplated by clause (b) of Section 1.1(90) of the Plan and (ii) make any payment required under the Intercompany Settlement Agreement and (b) thereafter fund the Unsecured Claims Trust Account with the remainder of the Distribution Trust Assets.

3.4.2 Use of Funds. Cash in the Unsecured Claims Trust Account will be used by the Distribution Trustee only to (a) fund the Distribution Trust Expense Account as



contemplated by Section 3.2.3 and the Priority Claims Trust Account as contemplated by Section 3.3.3, (b) satisfy Allowed Unsecured Claims against the Estate of AJI or the Estate of KJC in accordance with the terms of the Plan, (c) pay amounts to be deducted from the Public Note Distributable Consideration in accordance with the terms of the Plan (except to the extent allowance has been made therefor as provided in Section 3.4.1), and (d) pay Taxes owing in respect of any amounts included in the Unsecured Claims Trust Account in accordance with Section 10.4.3.

### 3.4.3 Disputed Claims Reserves.

(a) Initial Funding; Subsequent Funding From Other Trust Accounts. In connection with the initial funding of the Unsecured Claims Trust Account pursuant to Section 3.4.1, the Distribution Trustee will designate a specified portion of such initial funding as a Disputed Claims Reserve to be retained in such Trust Account to satisfy any Disputed Unsecured Claims against the Estate of AJI or the Estate of KJC in accordance with the terms of the Plan, if, as and when they are allowed or, to the extent such Disputed Claims are not allowed, to satisfy Claims that are allowed in accordance with the terms of the Plan. In connection with any subsequent transfers of Cash to the Unsecured Claims Trust Account pursuant to Section 3.2.4, 3.3.4, 3.4.3(b) or 5.2.3(b), the Distribution Trustee will designate amounts so transferred, to the extent they are not identified as Pending Payments, as Disputed Claims Reserves to be retained in such Trust Account to satisfy the Disputed Unsecured Claims against the Estate of AJI or the Estate of KJC in accordance with the terms of the Plan, if, as and when they are allowed or, to the extent such Disputed Claims are not allowed, to satisfy Claims that are allowed in accordance with the terms of the Plan.

(b) Deposit of New Cash Following the Effective Date. Any Cash that becomes available to the Distribution Trust following the Effective Date, including as a result of the receipt of any income or interest generated by the investment of Cash held in the Unsecured Claims Trust Account, will be deposited in the Unsecured Claims Trust Account.

3.5 Undeliverable Cash Trust Account. After the Effective Date, if any distribution to a holder of an Allowed Unsecured Claim is returned to the Distribution Trustee as undeliverable, the Distribution Trustee will deposit the undeliverable Cash in the Undeliverable Cash Trust Account. The Distribution Trustee will hold such funds, in a book-entry sub-account in the Undeliverable Cash Trust Account, for the benefit of such holder. Until such holder notifies the Distribution Trustee in writing of its then-current address, as contemplated by Section 5.2.3, no attempt will be made to deliver subsequent distributions to such holder and any such distributions that such holder would otherwise be entitled to receive instead will be transferred from the Unsecured Claims Trust Account to the Undeliverable Cash Trust Account and credited to such book-entry sub-account. All Cash held in such book-entry sub-account for the benefit of such holder will be invested by the Distribution Trustee in a manner consistent with the investment and deposit guidelines set forth in this Agreement. Any income or interest generated from such investment activities will be held in such book-entry sub-account for the benefit of such holder until such holder notifies the Distribution Trustee in writing of its then-current address as contemplated by Section 5.2.3. Subject to Section 5.2.3(b), when such holder notifies the Distribution Trustee in writing of its then-current address as contemplated by Section 5.2.3, the Distribution Trustee will deliver to such holder all Cash contained in such book-entry sub-account (net of provision for Taxes owing in respect of amounts included in such

book-entry sub-account in accordance with Section 10.4.3). In the event such holder's right to assert a claim for undeliverable distributions is forfeited as contemplated by Section 5.2.3(b), all Cash contained in such book-entry sub-account will be transferred from the Undeliverable Cash Trust Account to the Unsecured Claims Trust Account for redistribution to holders of Allowed Unsecured Claims entitled to distributions therefrom.

3.6 Tax Treatment. The Distribution Trust (which consists of the Distribution Trust Expenses Account, the Priority Claims Trust Account, the Unsecured Claims Trust Account and the Undeliverable Cash Trust Account) is intended to be treated, for U.S. federal income Tax purposes, in part as a liquidating trust within the meaning of Treasury Regulations section 301.7701-4(d), for the benefit of holders of Allowed Claims entitled to distributions of Pending Payments, and otherwise as one or more disputed ownership funds within the meaning of Proposed Treasury Regulations section 1.468B-9(a). The Distribution Trustee will act as the "administrator," within the meaning of Proposed Treasury Regulations section 1.468B-9(b)(1), of such funds. The Disputed Claims Reserves will be subject to the continuing jurisdiction of the Bankruptcy Court, and, as a result, no money or property can be paid or distributed from the Disputed Claims Reserves to, or on behalf of, a "claimant" or the "transferor" (as such terms are defined in Proposed Treasury Regulations section 1.468B-9(b)(2)) except if, as and when Claims become Allowed Claims (or Distribution Trust Expenses) pursuant to the procedures for allowing Claims (or incurring and paying Distribution Trust Expenses) and making distributions prescribed in the Plan.

## **ARTICLE IV**

### **ADMINISTRATION OF THE DISTRIBUTION TRUST**

4.1 Rights, Powers and Privileges. The Distribution Trustee will have only the rights, powers and privileges to act on behalf of the Distribution Trust expressly provided in

the Plan and this Agreement and as provided by law in the event that the Plan or this Agreement does not reference any such right, power or privilege. Unless otherwise expressly limited or restricted by the Plan or this Agreement, so long as such actions are, in the Distribution Trustee's best judgment, necessary to manage the affairs of the Distribution Trust and safeguard the interest of the Beneficiaries, the Distribution Trustee will have the right, power and privilege, and obligation, to:

- (a) execute all agreements, instruments and other documents and effect all other actions necessary to implement the Plan;
- (b) establish, maintain and administer the Trust Accounts;
- (c) accept, preserve, receive, collect, manage, invest, supervise and protect the Distribution Trust Assets (directly or through one or more third-party Disbursing Agents), each in accordance with the Plan and this Agreement;
- (d) liquidate, transfer or otherwise dispose of the Distribution Trust Assets or any part thereof or any interest therein upon such terms as the Distribution Trustee determines to be necessary, appropriate or desirable, pursuant to the procedures for allowing Claims and making distributions prescribed in the Plan, and otherwise consistent with the terms of the Plan;
- (e) calculate and make distributions of the Distribution Trust Assets to holders of Allowed Claims pursuant to the procedures for allowing Claims and making distributions prescribed in the Plan;
- (f) review, reconcile, settle or object to Claims not allowed prior to the Effective Date and resolve any such objections as set forth in the Plan and this Agreement;
- (g) comply with the Plan and exercise its rights and fulfill its obligations thereunder;
- (h) investigate and pursue causes of action as contemplated by Section 4.2, and raise defenses in connection with any actions or claims adverse to the Distribution Trust as the Distribution Trustee determines, in its reasonable discretion, to be necessary, appropriate or desirable;
- (i) retain and compensate, without further order of the Bankruptcy Court, the services of professionals or other persons or entities to represent, advise and assist the Distribution Trustee in the fulfillment of its responsibilities in connection with the Plan and this Agreement, all as it determines, in its reasonable discretion, to be necessary, appropriate or desirable;

(j) take such steps as are necessary, appropriate or desirable to coordinate with representatives of the estates of the Other Kaiser Debtors;

(k) take such actions as are necessary, appropriate or desirable to close the Chapter 11 Cases;

(l) file appropriate Tax returns on behalf of the Distribution Trust and the Debtors and pay Taxes or other obligations owed by the Distribution Trust;

(m) take such actions as are necessary, appropriate or desirable to cause the transfer of any attorney-client privilege, work-product privilege or other privilege or immunity of the Debtors attaching to any documents or communications (whether written or oral) to the Distribution Trust (which privileges and immunities are intended to be transferred to the Distribution Trust);

(n) purchase insurance with such coverage and limits as it determines, in its reasonable discretion, to be necessary, appropriate or desirable (including insurance covering the Indemnified Parties for liabilities incurred in connection with the performance of duties under the Plan and this Agreement);

(o) determine the manner of ascertainment of income and principal of the assets in the Distribution Trust, and the apportionment of income and principal among such assets;

(p) enforce, waive, assign or release rights, powers, privileges and immunities of any kind of the Debtors, except to the extent expressly limited by, or otherwise contrary to its duties established by, the Plan or this Agreement, as the Distribution Trustee determines, in its reasonable discretion, to be necessary, appropriate or desirable;

(q) exercise the rights, and fulfill the obligations, of the Debtors under the Alpart Purchase Agreement;

(r) appear and participate in any proceeding before the Bankruptcy Court with respect to any matter regarding or relating to the Plan, this Agreement, the Distribution Trust, the Distribution Trust Assets or the Debtors;

(s) sue, defend and participate, as a party or otherwise, in any judicial, administrative, arbitative or other proceeding relating to the Plan, this Agreement, the Distribution Trust, the Distribution Trust Assets or the Debtors;

(t) consult with the Beneficiaries at such times and with respect to such issues relating to the conduct of the Distribution Trust as the Distribution Trustee determines, in its reasonable discretion, to be necessary, appropriate or desirable;

(u) pay all Distribution Trust Expenses using the Distribution Trust Expenses Account;

(v) undertake any action or perform any obligation of the Distribution Trustee and the Debtors provided for or required by the Plan, including production of documents and providing of testimony, with respect to any investigation, subpoena or inquiry into the Debtors or the Debtors' financial affairs;

(w) execute, deliver and perform such other agreements and documents or exercise such other powers and duties as the Distribution Trustee determines, in its reasonable discretion, to be necessary, appropriate or desirable to accomplish and implement the purposes and provisions of the Distribution Trust as set forth in the Plan and this Agreement;

(x) take such actions as are necessary, appropriate or desirable to terminate the existence of the Debtors under the laws of Jamaica; and

(y) terminate the Distribution Trust in accordance with the terms of the Plan and this Agreement.

#### 4.2 Limitation on Investigations; Delivery of Documents and Related Matters.

The Distribution Trustee will be entitled to rely upon Exhibit B as a true and complete schedule of Distribution Trust Assets existing immediately prior to the Effective Date. The Distribution Trustee will have no obligation to investigate or to determine the existence of any Distribution Trust Asset other than those identified on Exhibit B. If, notwithstanding the foregoing, the Distribution Trustee becomes aware of a potential cause of action with apparent value to the Distribution Trust, it will take such reasonable steps as it determines, in its reasonable discretion, to be appropriate, and such other steps as the Steering Committee may direct, to investigate and pursue such cause of action. The Distribution Trustee may reasonably rely upon any document or record that the Debtors deliver to it and will be protected in acting or refraining from acting on any such document based upon such reasonable reliance. Prior to their dissolution as contemplated in Section 4.4, the Debtors will cooperate with the Distribution Trustee in providing it with pertinent documents and business records or access thereto. In fulfilling their obligations in the preceding sentence, the Debtors will undertake, in good faith, to locate and deliver to the Distribution Trustee documents currently in the Debtors' physical possession that

they believe, in their reasonable discretion, are relevant to any Claims currently in dispute or to any asset or liability being transferred to the Distribution Trust; provided, however, that (a) none of the Debtor Parties will have any liability if, despite their good faith efforts, the Debtors are unable to locate or deliver to the Distribution Trustee any such relevant documents referred to above or if any additional relevant documents are identified later that were not delivered by the Debtors to the Distribution Trustee and (b) no party (including the Distribution Trustee) will have recourse against the Debtor Parties or their respective assets with respect to such matters under any circumstances.

4.3 No Personal Liability. None of the provisions in the Plan or this Agreement will be construed to require the Distribution Trustee to expend or risk its own funds or otherwise incur personal liability in the performance of its duties or in the reasonable exercise of its rights, powers and privileges hereunder if there are reasonable grounds for the Distribution Trustee to believe that the repayment of any such validly expended funds or adequate indemnity against such risk of liability is not reasonably assured. Notwithstanding the foregoing, nothing in this Section 4.3 will relieve the Distribution Trustee of any liability for any action or omission resulting from bad faith, fraud, willful misconduct, gross negligence or breach of contract.

4.4 Dissolution of the Debtors. Notwithstanding anything to the contrary in this Agreement, the Distribution Trustee will take all such actions (including making necessary filings) and pay all such amounts (using funds available in the Distribution Trust Expenses Account) as are necessary, appropriate or desirable to complete the dissolution of the Debtors in accordance with applicable state law as expeditiously as possible.

4.5 Agents and Professionals. Except as otherwise provided in the Plan or this Agreement: (a) the Distribution Trustee may consult with independent legal counsel to be

selected by it and the advice or opinion of such counsel will be full and complete personal protection to the Distribution Trustee and agents of the Distribution Trustee in respect of any action taken or suffered by it in good faith and in reliance on, or in accordance with, such advice or opinion; and (b) persons (including any professionals retained by the Distribution Trustee) dealing with the Distribution Trustee will look only to the Distribution Trust Assets to satisfy any liability incurred by the Distribution Trustee to such person in carrying out the terms of the Plan or this Agreement, and (subject to Section 8.2 with respect to liabilities resulting from the Distribution Trustee's bad faith, fraud, willful misconduct, gross negligence or breach of contract) the Distribution Trustee will have no personal or individual obligation to satisfy any such liability.

4.6 Authentication of Documents. The Distribution Trustee will not be responsible for the title, validity or genuineness of any property or evidence of title thereto received by it or delivered by it pursuant to this Agreement and will be held harmless and will be fully indemnified (pursuant to Section 8.3) by the Distribution Trust in acting upon any document believed by it to be genuine and delivered by the proper party or parties.

4.7 Investment Guidelines. The Distribution Trustee will invest the Distribution Trust Assets only in Permitted Investments; provided, however, that, notwithstanding anything to the contrary in this Agreement, the scope of any such Permitted Investments will be limited to include only those investments that a liquidating trust, within the meaning of Treasury Regulations section 301.7701-4(d) and Internal Revenue Service Revenue Procedure 94-45 may be permitted to hold, pursuant to any amendment or addition to the Internal Revenue Code or to the Treasury Regulations, or any modification in Internal Revenue Service guidelines whether set forth in Internal Revenue Service rulings, other Internal Revenue Service



pronouncements or otherwise. Such investments will mature in such amounts and at such times as, in the reasonable discretion of the Distribution Trustee at the times such investments are made, are necessary, appropriate or desirable with a view to providing funds when needed to make payments from the Distribution Trust Assets. Notwithstanding the foregoing, if the Distribution Trustee determines, in its reasonable discretion, that the administrative costs associated with such investment will exceed the return on such investment, it may direct that such Cash not be invested. The Beneficiaries entitled to receive Pending Payments will be responsible for reporting their respective share of the income on investments of such amounts in the Trust Accounts and paying the applicable Taxes thereon in accordance with Section 10.4.2. The Distribution Trustee will be responsible for reporting all other income in each of the Trust Accounts and paying any applicable Taxes thereon in accordance with Section 10.4.3. The Distribution Trustee will be under no liability to accrue interest or produce income on any monies received by it hereunder and held for distribution or payment to the Beneficiaries, except as such interest is actually received by the Distribution Trustee.

4.8 Disputed Claims. Notwithstanding anything to the contrary in the Plan and this Agreement, no payments or distributions will be made on account of a Disputed Claim unless and until such Claim becomes an Allowed Claim. A holder of a Disputed Claim that ultimately becomes an Allowed Claim will have recourse only to the undistributed Cash held in the Disputed Claims Reserve of the applicable Trust Account (net of Taxes on such Disputed Claims Reserves) for the satisfaction of such Allowed Claim and not to any other Trust Account or any assets previously distributed on account of any Allowed Claim.

4.9 Trade or Business. The Distribution Trustee will not at any time, on behalf of the Distribution Trust or the Beneficiaries, operate as a business entity within the

meaning of Treasury Regulations section 301.7701-2, or engage in any trade or business as proscribed by Treasury Regulations section 301.7701-4(d), and the Distribution Trustee will not use or dispose of any part of the Distribution Trust Assets in furtherance of any trade or business. Notwithstanding the foregoing, the Distribution Trustee will not be prohibited from engaging in any trade or business for its own account, provided that such activity does not interfere with the Distribution Trustee's administration of the Distribution Trust.

#### 4.10 Court Approval of Distribution Trustee Actions.

4.10.1 Court Approval Generally Not Required. Except as otherwise provided in Plan or this Agreement, the Distribution Trustee will not be required to obtain the order or approval of the Bankruptcy Court or any other court of competent jurisdiction in, or account to the Bankruptcy Court or any other court of competent jurisdiction for, the exercise of any right, power or privilege conferred hereunder.

4.10.2 Right to Seek Court Approval. Notwithstanding the foregoing, where the Distribution Trustee determines, in its reasonable discretion, that it is necessary, appropriate or desirable, the Distribution Trustee will have the right to submit to the Bankruptcy Court or any other court of competent jurisdiction any question or questions regarding any specific action proposed to be taken by the Distribution Trustee with respect to the Plan, this Agreement, the Distribution Trust, the Distribution Trust Assets or the Debtors, including the administration and distribution of the Distribution Trust Assets. Pursuant to the Plan, the Bankruptcy Court has retained jurisdiction for such purposes and may approve or disapprove any such proposed action upon motion by the Distribution Trustee.

4.10.3 Court Direction Absent Express Procedures. For the avoidance of doubt, in the event that this Agreement does not expressly establish procedures governing the

obligations of the Distribution Trustee established by the Plan or this Agreement, the Distribution Trustee will take direction from the Bankruptcy Court or any other court of competent jurisdiction with respect to the fulfillment of such obligations, including management of the Distribution Trust Assets, the creation of reserves, the distribution of Distribution Trust Assets to satisfy Claims and the recognition of Beneficiaries.

4.10.4 No Liability. The Distribution Trustee will have no liability for taking any action approved by the Bankruptcy Court or any other court of competent jurisdiction or for otherwise complying with an order of the Bankruptcy Court or any other court of competent jurisdiction.

## **ARTICLE V**

### **DISTRIBUTIONS FROM THE DISTRIBUTION TRUST**

5.1 Method of Distributions to Holders of Allowed Claims. The Distribution Trustee will make all distributions of Cash required under the Plan. The Distribution Trustee will serve without bond and may employ or contract with other entities to assist in or make the distributions required by the Plan and this Agreement. Unless the context otherwise requires, all references to the Distribution Trustee contained in this Article V will be deemed to be references to the Distribution Trustee in its capacity as Disbursing Agent and, in the event it employs or contracts with one or more other entities to assist in or make the distributions required by the Plan and this Agreement as contemplated by the immediately preceding sentence, to any such third-party Disbursing Agent in its capacity as such. Notwithstanding anything to the contrary in this Agreement, the Distribution Trustee itself will act as the Disbursing Agent for the Distribution Trust Expenses Account.

5.2 Delivery of Distributions.

5.2.1 Generally. Except as otherwise provided in the Plan, distributions in respect of Allowed Claims will be made to holders of such Claims as of the Distribution Record Date at the addresses set forth in the applicable Claims Report. Prior to making any distribution to a Beneficiary, the Distribution Trustee may request written notification of the Beneficiary's federal taxpayer identification number or social security number if the Distribution Trustee determines, in its reasonable discretion, that such information (a) is necessary to fulfill its Tax reporting and withholding obligations and (b) has not been provided in the applicable Claims Report or otherwise. The Distribution Trustee, in its reasonable discretion, may suspend distributions to any Beneficiary that has not provided its federal taxpayer identification number or social security number, as the case may be, after a request is made pursuant to and in accordance with the terms of this Section 5.2.1.

5.2.2 Distributions to Holders of Public Note Claims. All distributions to holders of Allowed Public Note Claims will be made to the applicable Indenture Trustee for subsequent distribution to holders of the Allowed Public Note Claims as of the Distribution Record Date.

5.2.3 Undeliverable Distributions.

(a) No Further Attempts At Delivery. If any distribution to a holder of an Allowed Unsecured Claim is returned to the Distribution Trustee as undeliverable, then unless and until the Distribution Trustee is notified in writing of such holder's then-current address: (i) subject to Section 5.2.3(b), such undeliverable distribution will remain in the possession of the Distribution Trustee as provided in Section 3.5 and no further attempt will be made to deliver such distribution and (ii) no attempt will be made to deliver subsequent distributions to such holder and any such

distributions that such holder would otherwise be entitled to receive instead will be treated as provided in Section 3.5.

(b) Forfeiture and Redistribution. Any holder of an Allowed Unsecured Claim that does not assert a claim for an undeliverable distribution by delivering to the Distribution Trustee a written notice setting forth such holder's then-current address within 180 days after the later of (i) the Effective Date and (ii) the last date on which a distribution was deliverable to the holder will have its claim for undeliverable distributions discharged and will be forever barred from asserting such claim or any claim for subsequent distributions against the Debtors, the Distribution Trustee or the property of any of them, including the Trust Accounts, whereupon all Cash contained in the book-entry sub-account in the Undeliverable Cash Trust Account created for the benefit of such holder will be transferred to the Unsecured Claims Trust Account for redistribution to holders of Allowed Unsecured Claims entitled to distributions therefrom. For purposes of any such redistribution, each Allowed Claim in respect of which a claim for undeliverable distributions has been discharged as contemplated by this Section 5.2.3(b) will be deemed disallowed in its entirety.

(c) No Requirement to Attempt to Locate Holders. Nothing contained in the Plan will require the Debtors or the Distribution Trustee to attempt to locate any holder of an Allowed Claim.

5.2.4 Annual Distributions of Net Income. The Distribution Trustee will distribute at least annually to the Beneficiaries (as such may have been determined at such time) the net income of the Distribution Trust (net of any payment of or provisions for Taxes), except for amounts retained as reasonably necessary to maintain the value of the Distribution Trust

Assets, to pay Distribution Trust Expenses or to meet claims and contingent liabilities (including Disputed Claims).

5.3 Means of Cash Payments. Except as otherwise provided in the Plan or this Agreement, Cash payments made pursuant to the Plan will be in United States currency by checks drawn on the applicable Trust Accounts or, at the option of the Distribution Trustee, by wire transfer from a domestic bank; provided, however, that Cash payments to foreign holders of Allowed Claims may be made, at the option of the Distribution Trustee, in such funds and by such means as are necessary or customary in a particular foreign jurisdiction. If a check included in a distribution to a holder of an Allowed Unsecured Claim is not cashed within 180 days of the issuance thereof, the Distribution Trustee will void such check and such distribution will be treated as undeliverable in accordance with Section 5.2.3(a).

5.4 Timing and Calculation of Amounts to Be Distributed.

5.4.1 Allowed Claims Other Than Unsecured Claims. On or as promptly as practicable after the Effective Date, the Distribution Trustee will make distributions to holders of Secured Claims, Administrative Claims, Priority Claims and Priority Tax Claims allowed as of the Effective Date. On or as promptly as practicable after each Quarterly Distribution Date, the Distribution Trustee will make distributions to holders of Disputed Secured Claims, Disputed Administrative Claims, Disputed Priority Claims and Disputed Priority Tax Claims that have become Allowed Claims during the immediately preceding calendar quarter. Notwithstanding the foregoing, if the Distribution Trustee determines, in its reasonable discretion, that the amount of any quarterly distribution is too small to justify the administrative costs associated with such distribution, the Distribution Trustee may postpone such quarterly distribution until the next Quarterly Distribution Date. The Distribution Trustee

will have no obligation to notify Beneficiaries if it determines, in its reasonable discretion, that any quarterly distribution will be postponed.

5.4.2 Allowed Unsecured Claims in Subclass 3A; Certain Payments

From the Public Note Distributable Consideration.

(a) Effective Date Distributions. On or as promptly as practicable after the Effective Date, the Distribution Trustee will: (1) make distributions to holders of Allowed Claims in Subclass 3A in accordance with second sentence of Section 2.4(c)(i)(B) of the Plan; provided that the amount of such distributions will be calculated as if each Disputed Unsecured Claim in Subclass 3D were an Allowed Unsecured Claim in its Face Amount as of the Effective Date; (2) make the payments of the amounts invoiced and estimated by the 9-7/8% Senior Note Indenture Trustee, the 10-7/8% Senior Note Indenture Trustee and the Ad Hoc Group pursuant to the second sentence of Section 2.6(a) of the Plan; and (3) establish a reserve from the Public Note Distributable Consideration otherwise payable to holders of Senior Note Claims for the periodic future payment or payments of the amounts estimated by the Ad Hoc Group pursuant to the third sentence of Section 2.6(a) of the Plan (which future payments will be made upon presentation of reasonable evidence of the incurrence thereof).

(b) Distribution Upon Entry of Subordination Dispute Order. Upon entry of the Subordination Dispute Order or as promptly as practicable thereafter, but subject to any applicable stay of such Order, the Distribution Trustee will: (1) make distributions to holders of Allowed Claims in Subclass 3A in accordance with the third sentence of Section 2.4(c)(i)(B) of the Plan; provided that the amount of such distributions will be calculated as if each Disputed Unsecured Claim in Subclass D were

an Allowed Unsecured Claim in its Face Amount as of the Effective Date; and (2) make any payments contemplated by Section 2.5(a) and Section 2.6 of the Plan.

(c) Quarterly Distributions. On or as promptly as practicable after each Quarterly Distribution Date, the Distribution Trustee will distribute to each holder of an Allowed Claim in Subclass 3A a distribution from the Unsecured Claims Trust Account (net of provision for Taxes payable in accordance with Section 10.4.3) in an amount equal to: (i) the amount of Cash that such holder would have been entitled to receive pursuant to the Plan if such Claim and each other Unsecured Claim allowed prior to such Quarterly Distribution Date had been an Allowed Unsecured Claim as of the Effective Date (with such amount to be calculated in the manner provided in Section 5.4.2(a) or, after entry of the Subordination Dispute Order, Section 5.4.2(b)) minus (ii) the aggregate amount of Cash previously distributed on account of such Claim. Notwithstanding the foregoing, if the Distribution Trustee determines, in its reasonable discretion, that the amount of any quarterly distribution is too small to justify the administrative costs associated with such distribution, the Distribution Trustee may postpone such quarterly distribution until the next Quarterly Distribution Date. The Distribution Trustee will have no obligation to notify Beneficiaries if it determines, in its reasonable discretion, that any quarterly distribution will be postponed. In the event of the disallowance of a Disputed Unsecured Claim in Subclass 3D, any amounts held in respect thereof will be released from the Disputed Claims Reserve for distribution in accordance with this Section 5.4.2(c), Section 5.4.3(c) and Section 5.4.4.

#### 5.4.3 Allowed Unsecured Claims in Subclass 3B.



(a) No Effective Date Distributions. Pending entry of the Subordination Dispute Order, no distributions will be made to holders of Allowed Claims in Subclass 3B.

(b) Distributions Upon Entry of Subordination Dispute Order. Upon entry of the Subordination Dispute Order or as promptly as practicable thereafter, but subject to any applicable stay of such Order, the Distribution Trustee will make distributions to holders of Allowed Claims in Subclass 3B, if any, in accordance with the second sentence of Section 2.4(c)(ii)(B) of the Plan; provided that, if the Subordination Dispute Order provides that holders of Allowed Claims in Subclass 3B will receive a percentage of the Public Note Distributable Consideration, the amount of such distribution will be calculated as of each Disputed Unsecured Claim in Subclass D were an Allowed Claim in its Face Amount upon entry of the Subordination Dispute Order.

(c) Quarterly Distributions. On or as promptly as practicable after each Quarterly Distribution Date following entry of the Subordination Dispute Order, the Distribution Trustee will distribute to each holder of an Allowed Claim in Subclass 3B a distribution from the Unsecured Claims Trust Account (net of provision for Taxes payable in accordance with Section 10.4.3) in an amount equal to: (i) the amount of Cash that such holder would have been entitled to receive pursuant to the Plan if such Claim and each other Unsecured Claim allowed prior to such Quarterly Distribution Date had been an Allowed Unsecured Claim upon entry of the Subordination Dispute Order (with such amount to be calculated in the manner provided in Section 5.4.3(b)) minus (ii) the aggregate amount of Cash previously distributed on account of such Claim. Notwithstanding the foregoing, if the Distribution Trustee

determines, in its reasonable discretion, that the amount of any quarterly distribution is too small to justify the administrative costs associated with such distribution, the Distribution Trustee may postpone such quarterly distribution until the next Quarterly Distribution Date. The Distribution Trustee will have no obligation to notify Beneficiaries if it determines, in its reasonable discretion, that any quarterly distribution will be postponed. In the event of the disallowance of a Disputed Unsecured Claim in Subclass 3D, any amounts held in respect thereof will be released from the Disputed Claims Reserve for distribution in accordance with this Section 5.4.3(c), Section 5.4.2(c) and Section 5.4.4.

(d) Potential Reductions to Distributions. Any distributions ultimately made to a holder of an Allowed Claim in Subclass 3B may be reduced by such holder's proportional share of any and all fees and expenses payable to the Senior Subordinated Note Indenture Trustee pursuant to the Senior Subordinated Note Indenture, which will, subject to such Trustee's right to seek payment by the Debtors of such fees and expenses pursuant to section 503(b)(5) of the Bankruptcy Code, be payable solely from such distributions.

5.4.4 Allowed Unsecured Claims in Subclass 3C and Subclass 3D.

(a) Effective Date Distributions. On or as promptly as practicable after the Effective Date, the Distribution Trustee will make distributions to holders of Unsecured Claims in Subclass 3C and Subclass 3D allowed as of the Effective Date; provided that the amount of such distributions will be calculated as if each Disputed Unsecured Claim in Subclass 3D were an Allowed Unsecured Claim in its Face Amount as of the Effective Date; provided further, however, that no distribution will be

made on account of any Disputed Unsecured Claim in Subclass 3D unless and until it becomes an Allowed Unsecured Claim and amounts withheld for Disputed Unsecured Claims in Subclass 3D will remain in the Unsecured Claims Trust Account as part of the Disputed Claims Reserve.

(b) Quarterly Distributions. On or as promptly as practicable after each Quarterly Distribution Date, the Distribution Trustee will distribute to each holder of an Unsecured Claim in Subclass 3C or Subclass 3D allowed prior to such Quarterly Distribution Date a distribution from the Unsecured Claims Trust Account (net of provision for Taxes payable in accordance with Section 10.4.3) in an amount equal to: (i) the amount of Cash that such holder would have been entitled to receive pursuant to the Plan if such Claim and each other Unsecured Claim allowed prior to such Quarterly Distribution Date had been an Allowed Unsecured Claim as of the Effective Date (with such amount to be calculated in the manner provided in Section 5.4.4(a)) minus (ii) the aggregate amount of Cash previously distributed on account of such Claim.

Notwithstanding the foregoing, if the Distribution Trustee determines, in its reasonable discretion, that the amount of any quarterly distribution is too small to justify the administrative costs associated with such distribution, the Distribution Trustee may postpone such quarterly distribution until the next Quarterly Distribution Date. The Distribution Trustee will have no obligation to notify Beneficiaries if it determines, in its reasonable discretion, that any quarterly distribution will be postponed. In the event of the disallowance of a Disputed Unsecured Claim in Subclass 3D, any amounts held in respect thereof will be released from the Disputed Claims Reserve for distribution in accordance with Section 5.4.2(c), Section 5.4.3(c), and this Section 5.4.4.

5.4.5 7-3/4% SWD Revenue Bonds. Upon entry of the Subordination Dispute Order or as promptly as practicable thereafter, but subject to any applicable stay of such Order, the Distribution Trustee will make the payment, if any, to the 7-3/4% SWD Revenue Bond Indenture Trustee for the benefit of holders of 7-3/4% SWD Revenue Bonds pursuant to Section 2.5(a) of the Plan and pay any amounts payable pursuant to Section 2.6(b) of the Plan.

5.4.6 Application of Distributions to Holders of Public Note Claim and 7-3/4% SWD Revenue Bonds. All distributions to a holder of an Allowed Public Note Claim or a holder of a 7-3/4% SWD Revenue Bond will be deemed to apply first to the principal amount of such Claim or 7-3/4% SWD Revenue Bond until such principal amount is paid in full, and then the remaining portion of such distributions, if any, will be deemed to apply to any prepetition accrued interest included in such Claim or in respect of such 7-3/4% SWD Revenue Bond.

5.4.7 De Minimis Distributions. The Distribution Trustee will not be required to distribute Cash to the holder of an Allowed Unsecured Claim if the total aggregate amount of Cash to be distributed on account of such Claim is less than \$25. Any holder of an Allowed Unsecured Claim on account of which the total aggregate amount of Cash to be distributed is less than \$25 will have its claim for such distribution deemed satisfied, waived and released and will be forever barred from asserting any such Claim against the Debtors, the Distribution Trustee or the property of any of them, including the Trust Accounts. Any Cash not distributed with respect to Allowed Unsecured Claims as a result of this Section 5.4.7 will be retained in the Unsecured Claims Trust Account for redistribution to other holders of Allowed Unsecured Claims entitled to distributions from the Unsecured Claims Trust Account.

5.4.8 Compliance with Tax Requirements. To the extent applicable, the Distribution Trustee will comply with all Tax withholding and reporting requirements imposed on it by any governmental unit, and all distributions pursuant to the Plan will be subject to such withholding and reporting requirements. The Distribution Trustee will be authorized to take any actions that it determines, in its reasonable discretion, to be necessary, appropriate or desirable to comply with such withholding and reporting requirements. Notwithstanding any other provision of the Plan or this Agreement, each entity receiving a distribution of Cash pursuant to the Plan will have sole and exclusive responsibility for the satisfaction and payment of any Tax obligations imposed on it by any governmental unit on account of such distribution, including income, withholding and other Tax obligations.

5.4.9 Setoffs. Except with respect to claims of a Debtor released pursuant to the Plan or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, the Distribution Trustee may, pursuant to section 553 of the Bankruptcy Code or applicable nonbankruptcy law, set off against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Claim (before any distribution is made on account of such Claim) the claims, rights and causes of action of any nature that the applicable Debtor may hold against the holder of such Allowed Claim; provided, however, that neither the failure to effect a setoff nor the allowance of any Claim hereunder will constitute a waiver or release by the applicable Debtor of any claims, rights and causes of action that the Debtor or Debtors may possess against such a Claim holder, which are preserved under the Plan.

5.5 Compensation and Reimbursement for Services Related to Distributions.  
If the Distribution Trustee employs or contracts with a third-party Disbursing Agent, such

Disbursing Agent will receive, without the need for further Bankruptcy Court approval, reasonable compensation for such services and reimbursement of reasonable out-of-pocket expenses incurred in connection with such services. These payments will be made on terms agreed to with Distribution Trustee and will be paid to such Disbursing Agent from funds in the Distribution Trust Expenses Account. To assist in making distributions under the Plan, notwithstanding any other provision of this Agreement, the applicable Trust Accounts (other than the Distribution Trust Expenses Account) may be held in the name of one or more such Disbursing Agents. Any such Disbursing Agent will invest the Cash in the Trust Accounts as directed by the Distribution Trustee, who will direct such Disbursing Agent to invest such Cash only in Permitted Investments; provided, however, that should the Distribution Trustee determine, in its reasonable discretion, that the administrative costs associated with such investment will exceed the return on such investment, it may direct such Disbursing Agent to not invest such Cash.

5.6 Payments Limited to Trust Accounts. All payments or other distributions to be made by the Distribution Trustee in accordance with the Plan or this Agreement will be made only from the Trust Accounts.

5.7 Insufficient Funds. Provided that the Distribution Trustee has not acted in bad faith, engaged in fraud, willful misconduct or gross negligence or breached its fiduciary duties, if the Distribution Trust Assets at any point prove insufficient to pay all Beneficiaries of the Priority Claims Trust Account in full or all Beneficiaries of the Unsecured Claims Trust Account in accordance with the terms of the Plan, the Distribution Trustee will have no obligation to seek disgorgement from any Beneficiary, but may seek the guidance of the Bankruptcy Court or another court of competent jurisdiction consistent with Section 4.10.2.

## ARTICLE VI

### BENEFICIARIES

6.1 Beneficial Interest. Ownership of a beneficial interest in the Distribution Trust will not be evidenced by any certificate, security or receipt or in any other form or manner whatsoever, except as maintained on the books and records of the Distribution Trust by the Distribution Trustee. No claimant will have a beneficial interest in the Distribution Trust Assets until such time as the claimant's related Claim becomes an Allowed Claim pursuant to the mechanism for determining Allowed Claims prescribed in the Plan. Except as expressly provided in Section 12.1, payments under this Agreement may not be assigned, alienated, pledged, encumbered or subjected to attachment, garnishment, levy, execution or other legal or equitable process.

6.2 Exemption From Registration. The parties hereto intend that the rights of the Beneficiaries arising under this Distribution Trust will not be "securities" under applicable laws, but none of the parties hereto represent or warrant that such rights will not be securities or that their issuance under the Plan will be entitled to exemption from registration under applicable securities laws. If such rights constitute securities, the parties hereto intend for the exemptions from registration provided by section 1145 of the Bankruptcy Code and by other applicable law to apply to their issuance under the Plan.

## ARTICLE VII

### CERTAIN RIGHTS OF THE DISTRIBUTION TRUSTEE

7.1 Causes of Action. Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, in accordance with section 1123(b) of the Bankruptcy Code, the Distribution Trustee will retain and may enforce any claims, demands, rights and causes of

action that either Debtor or Estate may hold against any entity, including the Recovery Actions, to the extent not expressly released under the Plan. Without intending to limit the generality of the foregoing, the Distribution Trustee will retain the right to File and pursue any adversary proceedings available to the Debtors in connection with the Alpart Purchase Agreement and the Intercompany Claims Settlement.

7.2 Objections to Claims. The Distribution Trustee, on behalf of the Distribution Trust, with the prior consent of the Steering Committee, acting through a majority thereof, will have the authority to File, settle, compromise, withdraw or litigate to judgment objections to Claims, including pursuant to any alternative dispute resolution or similar procedures approved by the Bankruptcy Court. The Distribution Trustee, with the prior consent of the Steering Committee, acting through a majority thereof, may settle or compromise any Disputed Claim without approval of the Bankruptcy Court in accordance with this Agreement.

## **ARTICLE VIII**

### **THIRD PARTY RIGHTS AND LIMITATION OF LIABILITY**

8.1 Parties Dealing With the Distribution Trustee. In the absence of actual knowledge to the contrary, any person dealing with the Distribution Trust or the Distribution Trustee will be entitled to rely on the authority of the Distribution Trustee or any of its agents to act in connection with the Distribution Trust Assets. There is no obligation on any person dealing with the Distribution Trustee to inquire into the validity or propriety of any transaction by the Distribution Trustee or any agent of the Distribution Trustee.

8.2 Limitation of Liability. Notwithstanding anything to the contrary in this Agreement, in exercising the rights granted hereunder, the Distribution Trustee will use the same degree of care and skill as an individual of ordinary prudence, discretion and judgment would exercise or use in such individual's own affairs. The Distribution Trustee will not be liable with



respect to any action it takes or omits to take in good faith with the consent, or at the direction, of the Steering Committee to the extent this Agreement expressly contemplates the Steering Committee may give such consent or direction. The Distribution Trustee will not be liable for punitive, exemplary, consequential or special damages for a breach of this Agreement under any circumstances or for any other act or omission not constituting bad faith, fraud, willful misconduct or gross negligence. The Debtors, the Distribution Trust, the Distribution Trustee and their respective directors, officers, employees, agents, professionals and other representatives, acting in such capacity, will neither have nor incur any liability to any entity for any act taken or omitted to be taken in connection with or related to the formulation, preparation, dissemination, implementation, confirmation or consummation of the Plan, the Disclosure Statement, this Agreement or any contract, instrument, release or other agreement or document created or entered into, or any other act taken or omitted to be taken, in connection with the Plan or this Agreement; provided, however, that the foregoing provisions of this paragraph will have no effect on (a) the liability of any entity that would otherwise result from the failure to perform or pay any obligation or liability under the Plan, this Agreement or any contract, instrument, release or other agreement or document to be entered into or delivered in connection with the Plan or (b) the liability of any such entity that otherwise would result from any such act or omission to the extent that such act or omission is determined in a Final Order to have constituted bad faith, fraud, willful misconduct or gross negligence.

8.3 Indemnification. The Indemnified Parties will be indemnified by the Distribution Trust from the Distribution Expenses Trust Account (taking into account transfers of Cash thereto as contemplated by Section 3.2.3) for any losses, claims, damages, liabilities or expenses, including reasonable attorneys' fees, disbursements and related expenses, that the

Indemnified Parties may incur or to which the Indemnified Parties may become subject in connection with any action, suit, proceeding or investigation brought by or threatened against one or more of the Indemnified Parties on account of any action or omission or breach of contract by the Distribution Trustee in its capacity as such, including actions or omissions with respect to the Disputed Claims; provided, however, that the Distribution Trust will not be liable to so indemnify any Indemnified Party for any losses, claims, damages, liabilities or expenses, including reasonable attorneys' fees, disbursements and related expenses, due to any action or omission or breach of contract by such Indemnified Party constituting bad faith, fraud, willful misconduct or gross negligence; provided further that (except as provided in the preceding proviso) nothing in this Section 8.3 will be deemed to restrict the Distribution Trustee's right to receive an indemnity based on any act or omission taken in accordance with the provisions of this Agreement. Notwithstanding anything to the contrary in this Agreement, the Indemnified Parties will be entitled to obtain advances from the Distribution Expenses Trust Account to cover their expenses of defending themselves in any action brought against them as a result of the acts or omissions, actual or alleged, of the Distribution Trustee in its capacity as such.

Without limiting the generality or effect of the foregoing, within five Business Days after written request by an Indemnified Party (including the Distribution Trustee) to the Distribution Trustee and the Steering Committee, the Distribution Trustee will, in accordance with such request (but without duplication), from the Distribution Trust Expenses Account (taking into account transfers of Cash thereto as contemplated in Section 3.2.3) (a) pay such expenses on behalf of the Indemnified Party, (b) advance to the Indemnified Party Cash in an amount sufficient to pay such expenses, or (c) reimburse the Indemnified Party for such expenses; provided, however, that the Indemnified Party provides an undertaking to repay the amount so paid, advanced or

reimbursed to the Distribution Expenses Trust Account upon the entry of a Final Order finding that such Indemnified Party was not entitled to indemnity under the provisions of this Section 8.3.

## **ARTICLE IX**

### **SELECTION, REMOVAL AND COMPENSATION OF THE DISTRIBUTION TRUSTEE**

9.1 Initial Distribution Trustee. The initial Distribution Trustee will be J.P. Morgan Trust Company, National Association.

9.2 Term of Service. The Distribution Trustee will serve until (a) termination of the Distribution Trust in accordance with this Agreement or (b) the Distribution Trustee's resignation or removal.

9.3 Removal of the Distribution Trustee. Any person serving as the Distribution Trustee may be removed at any time by a Final Order of the Bankruptcy Court. The removal will be effective on the date specified in such Final Order.

9.4 Resignation of the Distribution Trustee. The Distribution Trustee may resign at any time by giving the Bankruptcy Court at least 30 days' written notice of the Distribution Trustee's intention to do so. In the event of a resignation, the resigning Distribution Trustee (or the successor Distribution Trustee) will render to the Bankruptcy Court a full and complete accounting of monies and assets received, disbursed and held during the term of office of the resigning Distribution Trustee. The resignation will be effective on the latest of (a) the date specified in the notice; (b) the date that is 30 days after the date the notice is delivered; (c) the date the accounting described in the preceding sentence is delivered; and (d) the date the successor Distribution Trustee accepts its appointment as such. Notwithstanding the resignation of the Distribution Trustee pursuant to this Section 9.4, the rights of the resigning Distribution

Trustee under Sections 8.2 and 8.3 with respect to acts or omissions occurring prior to the effectiveness of such resignation will continue for the benefit of such resigning Distribution Trustee following the effectiveness of such resignation.

9.5 Appointment of Successor Distribution Trustee. Prior to the resignation or removal of the Distribution Trustee, the Indenture Trustees and the PBGC together will (a) identify a successor Distribution Trustee to fill the vacancy and (b) request the Bankruptcy Court's approval of the identity and terms of engagement of such successor Distribution Trustee. To the extent the Indenture Trustees and the PBGC cannot agree on a successor Distribution Trustee, each Indenture Trustee and the PBGC will submit a proposed successor Distribution Trustee to the Bankruptcy Court, and the Bankruptcy Court will select the successor Distribution Trustee from such proposals to fill the vacancy. Except as otherwise ordered by the Bankruptcy Court, any successor Distribution Trustee so appointed must consent to and accept in writing the terms of this Agreement and agree that the provisions of this Agreement are binding upon and inure to the benefit of the successor Distribution Trustee and all of such successor Distribution Trustee's heirs and legal and personal representatives, successors or assigns. If the Indenture Trustees and the PBGC do not make a request to appoint a successor Distribution Trustee within 30 days of the delivery of the notice of resignation to the Indenture Trustees and the PBGC, the resigning Distribution Trustee will have the right to request the Bankruptcy Court's approval of a successor Distribution Trustee.

9.6 Powers and Duties of Successor Distribution Trustee. A successor Distribution Trustee will have all the rights, powers, privileges and duties of its predecessor.

9.7 Trust Continuance. The resignation or removal of the Distribution Trustee will not terminate the Distribution Trust or revoke any existing agency created pursuant to this Agreement or invalidate any action theretofore taken by the Distribution Trustee.

9.8 Compensation and Costs of Administration. The Distribution Trustee will receive fair and reasonable compensation for its services, which will be a charge against and paid out of the Distribution Trust Expenses Account. The Distribution Trustee's fees are as set forth in the Engagement Letter. In addition, all reasonable costs, expenses and obligations incurred by the Distribution Trustee in administering the Distribution Trust, in carrying out its other responsibilities under this Agreement or in any manner connected, incidental or related thereto (including the cost of professionals that may, in accordance with this Agreement, be employed by the Distribution Trustee) will be paid, at the direction of the Distribution Trustee, from the Distribution Trust Expenses Account. The terms of the Engagement Letter are incorporated herein by reference and for all purposes are deemed to be an integral part of this Agreement to the same extent as if restated in full herein.

## **ARTICLE X**

### **MAINTENANCE OF RECORDS; REPORTING**

10.1 Books and Records. The Distribution Trustee will maintain books and records containing a description of all property from time to time constituting the Distribution Trust Assets (which assets will be valued consistently for all federal income Tax purposes), taking into account any changes to the Distribution Trust Assets existing immediately prior to the Effective Date and scheduled on Exhibit B, and an accounting of all receipts and disbursements. Such books and records will be open to inspection by any Beneficiary or the Bankruptcy Court at any reasonable time during normal business hours. The fiscal year of the Distribution Trust will be the calendar year.

10.2 Reports to be Filed with the Bankruptcy Court.

10.2.1 Quarterly Reports. Within 45 days after the end of each of the first three calendar quarters of each calendar year, the Distribution Trustee, on behalf of the Distribution Trust, will File a Quarterly Receipts/Disbursements Report with the Bankruptcy Court.

10.2.2 Annual Reports. Within 90 days after the end of each calendar year, the Distribution Trustee, on behalf of the Distribution Trust, will File an Annual Receipts/Disbursements Report with the Bankruptcy Court.

10.2.3 Current Reports. In the event of developments affecting the Distribution Trust in any material respect (as determined by the Distribution Trustee in its reasonable discretion), the Distribution Trustee, on behalf of the Distribution Trust, will File promptly with the Bankruptcy Court a Current Report.

10.2.4 Form of Reports. Any report required by this Section 10.2 will be in such form as required or approved by the United States Trustee.

10.2.5 Reports Available on Request. The Distribution Trustee will furnish or otherwise make available to any then-current Beneficiary, upon written request, a copy of: (a) the most recent Annual Receipts/Disbursements Report; (b) any Quarterly Receipts/Disbursements Report for any period subsequent to the period covered by the most recent Annual Receipts/Disbursements Report (or, if no Annual Receipts/Disbursements Report has yet been Filed, for any period subsequent to the Effective Date); or (c) any Current Report Filed subsequent to the period covered by the most recent Annual Receipts/Disbursements Report (or, if no Annual Receipts/Disbursements Report has yet been Filed, subsequent to the Effective Date).

10.3 Compliance with Federal Securities Laws. The parties hereto do not anticipate that the Distribution Trust will be required to comply with the registration and reporting requirements of the Securities Exchange Act of 1934, as amended, or the Investment Company Act of 1940, as amended. However, if following the Effective Date the Distribution Trustee determines, based on the advice of counsel, that the Distribution Trust is required to comply with the registration and reporting requirements of the Securities Exchange Act of 1934, as amended, or the Investment Company Act of 1940, as amended, then the Distribution Trustee will take any and all actions to comply with such requirements.

10.4 Tax Returns and Payments.

10.4.1 General. The Distribution Trustee will be responsible for filing all foreign, U.S. federal, state and local Tax returns for the Distribution Trust and the Debtors and for the timely preparation and distribution to the Beneficiaries of any necessary foreign, U.S. federal, state or local information returns. Notwithstanding anything to the contrary in this Agreement, the Distribution Trustee will not be obligated to deliver any such information returns to holders of Disputed Claims in their capacity as such.

10.4.2 Pending Payments. The Distribution Trustee will timely file Tax returns for the Trust Accounts as a grantor trust and/or a liquidating trust under Treasury Regulations section 1.671-1(a) and/or Treasury Regulations section 301.7701-4(d) and related regulations with respect to Pending Payments. Pursuant to such provisions, for federal income Tax purposes the Distribution Trustee will allocate to Beneficiaries entitled to receive Pending Payments, their pro rata shares of any income or loss of the Trust Accounts, and such Beneficiaries will be subject to Tax on the Trust Accounts' taxable income on a current basis.

10.4.3 Trust Accounts Exclusive of Pending Payments. With respect to the Trust Accounts (excluding amounts constituting Pending Payments), the Distribution Trustee will timely (a) file such income Tax and other returns and statements as are required to comply with (i) the applicable provisions of the Internal Revenue Code and the Treasury Regulations promulgated thereunder, including the requirements set forth in Proposed Treasury Regulations section 1.468B-9(c)(1), and (ii) any applicable state and local law and the regulations promulgated thereunder and (b) pay from the applicable Trust Account any Taxes reported as owing on such returns and statements.

## **ARTICLE XI**

### **DURATION OF THE DISTRIBUTION TRUST**

11.1 Duration. The Distribution Trust will become effective upon the Effective Date. Thereupon, the Distribution Trust and its provisions herein will remain and continue in full force and effect until the Distribution Trust is terminated as contemplated in this Article XI.

11.2 Termination Upon Distribution of All Distribution Trust Assets. The Distribution Trustee will liquidate (including objecting to Claims and determining the proper recipients and amounts of distributions to be made from the Distribution Trust) and distribute the Distribution Trust Assets to the Beneficiaries that are determined to hold Allowed Claims and take such steps as are necessary, appropriate or desirable to close the Bankruptcy Cases. Upon (a) the payment of all costs, expenses and obligations incurred in connection with administering the Distribution Trust; (b) the distribution of all remaining Distribution Trust Assets and/or proceeds therefrom in accordance with the provisions of the Plan, the Confirmation Order and this Agreement; (c) the closure of the Bankruptcy Cases; and (d) the completion of any necessary or appropriate reports, Tax returns or other documentation, the Distribution Trust will terminate and the Distribution Trustee will have no additional responsibility in connection therewith except



as may be required to effectuate such termination under relevant law and except as described in Section 11.4.

11.3 Termination After Two Years. If the Distribution Trust has not been previously terminated pursuant to Section 11.2, on the second anniversary of the Effective Date, unless otherwise extended by the Bankruptcy Court due to the Distribution Trust's necessity to complete its claims resolution and liquidating purpose, and provided such extension does not adversely affect the status of the Distribution Trust for federal income Tax or federal securities law purposes, the Distribution Trustee will distribute all of the Distribution Trust Assets to the Beneficiaries in accordance with the Plan and this Agreement. Immediately after (a) the payment of all costs, expenses and obligations incurred in connection with administering the Distribution Trust; (b) the distribution of all remaining Distribution Trust Assets and/or proceeds therefrom in accordance with the provisions of the Plan, the Confirmation Order and this Agreement; (c) the closure of the Bankruptcy Cases; and (d) the completion of any reports, Tax returns or other documentation determined by the Distribution Trustee, in its reasonable discretion, to be necessary, appropriate or desirable, the Distribution Trust will terminate and the Distribution Trustee will have no further responsibility in connection therewith except as may be required to effectuate such termination under relevant law and except as described in Section 11.4. The Distribution Trustee will have the right to apply to the Bankruptcy Court to extend the term of the Distribution Trust as contemplated above if the Distribution Trustee determines, in its reasonable discretion, that such extension is necessary to enable the Distribution Trust to complete its resolution and liquidating purpose.

11.4 Other Termination Procedures. The Distribution Trustee will at all times endeavor to liquidate expeditiously the Distribution Trust Assets, and in no event will the

Distribution Trustee unduly prolong the duration of the Distribution Trust. On termination of this Distribution Trust, the Distribution Trustee will advise the Bankruptcy Court in writing of the Distribution Trust's termination. Notwithstanding the foregoing, after the termination of the Distribution Trust, the Distribution Trustee will have the power to exercise all the powers, authorities and discretion herein conferred solely for the purpose of liquidating and winding up the affairs of the Distribution Trust. For a period of five years after the distribution of all of the Distribution Trust Assets, the Distribution Trustee will retain the books, records and files that have been delivered to or created by the Distribution Trustee, at which time the Distribution Trustee may dispose of such books, records and files in any manner that the Distribution Trustee deems appropriate.

11.5 No Reversions. Notwithstanding anything to the contrary in the Plan or this Agreement, in no event will any of the Distribution Trust Assets revert to the Debtors upon termination of the Distribution Trust.

## **ARTICLE XII**

### **MISCELLANEOUS**

#### 12.1 Limitation on Transferability.

12.1.1 No Transfer of Beneficial Interests. Except as otherwise expressly provided in the Plan, it is understood and agreed that the beneficial interests in the Distribution Trust will be non-transferable during the term of this Agreement except with respect to a transfer by will or under the laws of descent and distribution. Such transfers will not be effective until appropriate written notification and proof thereof is submitted to the Distribution Trustee, and the Distribution Trustee may continue to pay all amounts to or for the benefit of the Beneficiaries until receipt of proper written notification and proof of any such transfer. The Distribution Trustee may rely upon such written proof without the requirement of any further investigation.

12.1.2 No Assignment. Neither the Debtors nor the Distribution Trustee may assign this Agreement without the prior written consent of the other.

12.2 Notices. All notices to be given to Beneficiaries may be given by regular mail, electronic transmission or delivered personally, to the holders at the addresses appearing on the books kept by the Distribution Trustee. Any notice or other communication which may be or is required to be given, served or sent to the Debtors, the Distribution Trustee, the Creditors' Committee or United States Trustee will be in writing and will be sent by registered or certified mail, return receipt requested (postage prepaid), transmitted electronically, sent by hand delivery or sent by facsimile (if receipt is confirmed), addressed as follows:

1. The Debtors:

John Donnan, Esq.  
General Counsel  
KAISER ALUMINUM CORPORATION  
27442 Portola Parkway, Suite 350  
Foothill Ranch, California 92610  
Facsimile: (949) 614-1930

Daniel J. DeFranceschi, Esq.  
RICHARDS, LAYTON & FINGER, P.A.  
One Rodney Square  
P.O. Box 551  
Wilmington, Delaware 19899  
Facsimile: (302) 651-7701

Gregory M. Gordon, Esq.  
Henry L. Gompf, Esq.  
Daniel P. Winikka, Esq.  
JONES DAY  
2727 N. Harwood Street  
Dallas, Texas 75201  
Facsimile: (214) 969-5100

(Counsel to the Debtors)

2. The Distribution Trustee:

Jeffrey A. Ayres  
Vice President  
JPMORGAN INSTITUTIONAL TRUST SERVICES  
1111 Polaris Parkway  
Suite 1F Mail Code OH1-1234  
Columbus, Ohio 43240  
Facsimile: (614) 213-5384

Michael J. Small, Esq.  
FOLEY & LARDNER LLP  
321 North Clark  
Suite 2800  
Chicago, Illinois 60610  
Facsimile: (312) 832-4700

3. The Creditors' Committee:

Lisa G. Beckerman, Esq.  
AKIN GUMP STRAUSS HAUER & FELD LLP  
590 Madison Avenue  
New York, New York 10022  
Facsimile: (212) 872-1002

William P. Bowden, Esq.  
ASHBY & GEDDES  
222 Delaware Avenue  
P.O. Box 1150  
Wilmington, Delaware 19899  
Facsimile: (302) 654-2067

(Counsel to the Creditors' Committee)

4. The United States Trustee:

Frank J. Perch, Esq.  
OFFICE OF THE UNITED STATES TRUSTEE  
District of Delaware  
844 King Street, Suite 2313  
Lockbox 35  
Wilmington, Delaware 19801  
Facsimile: (302)543-6497

or to such other address as may from time to time be provided in a written notice to each party.

12.3 No Bond. Notwithstanding any state law to the contrary, the Distribution Trustee (including any successor) and the Disbursing Agent will be exempt from giving any bond or other security in any jurisdiction.

12.4 Governing Law; Submission to Jurisdiction; Service of Process. This Agreement will be construed in accordance with and governed by the internal substantive law of the State of Delaware regardless of the laws that might otherwise govern under principles of conflict of laws applicable thereto. The Bankruptcy Court will have exclusive jurisdiction over any dispute arising out of or in connection with the transactions contemplated by this Agreement. The parties to this Agreement consent to the exclusive jurisdiction of the Bankruptcy Court (and of the appropriate appellate courts therefrom) in any such dispute and irrevocably waive, to the fullest extent permitted by law, any objection that they may now or hereafter have to the laying of the venue of any such dispute in the Bankruptcy Court or that any such dispute brought in the Bankruptcy Court has been brought in an inconvenient forum. This Agreement is subject to any order or act of the Bankruptcy Court applicable hereto. Process may be served on any party anywhere in the world, whether within or without the jurisdiction of any court to which the parties have submitted herein. Without limiting the foregoing, each party to this Agreement agrees that service of process on that party may be made upon the designated Person at the

address provided in Section 12.2 and will be deemed to be effective service of process on that party.

12.5 Successors and Assigns. This Agreement will inure to the benefit of and will be binding upon the parties hereto and their respective successors and permitted assigns.

12.6 No Execution. All funds in the Distribution Trust will 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 Distribution Trust Assets or the Distribution Trust in any manner or compel payment from the Distribution Trust except by order of the Bankruptcy Court. Payment will be solely governed by the Plan and this Agreement.

12.7 Amendment. This Agreement may be amended only by order of the Bankruptcy Court.

12.8 Severability. If any term, provision, covenant or restriction contained in this Agreement is 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 will remain in full force and effect and will in no way be affected, impaired or invalidated.

[Remainder of page intentionally left blank]

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

**ALPART JAMAICA INC.**

---

By:  
Its:

**KAISER JAMAICA CORPORATION**

---

By:  
Its:

**J.P. MORGAN TRUST COMPANY, NATIONAL ASSOCIATION,**  
as Distribution Trustee

---

By:  
Its:

**ENGAGEMENT LETTER**

See attached engagement letter.



**LIST OF DISTRIBUTION TRUST ASSETS**

- (1) Cash: Cash in the amount of \$\_\_\_\_\_.
- (2) Certain Contractual Rights: Rights of the Debtors under the Intercompany Claims Settlement and the Alpart Purchase Agreement.
- (3) Unknown Causes of Action: Unknown causes of action of the Debtors not released by the Plan.

**CERTAIN PERMITTED INVESTMENTS**

**JPMORGAN'S Collateralized Money Market Account**

Financial transaction structures often require that the trustee or escrow agent hold cash for various purposes, e.g. reserve or collection accounts. Usually the escrow agent or trustee invests these funds in AAA-rated money market funds or certain other investments having the necessary liquidity, which are specified as permitted or eligible investments in the governing documents, and which are specifically selected by the party for whose benefit they are held.

JPMorgan offers a variation on these investments: its own Money Market Account product. JPMorgan establishes a money market account for each required account and agrees to pay a specified compensation for its maintenance of the balance of funds involved. This permits instant, seamless investment and liquidity without fees or expenses.

**Liquidity**

Funds are not held in a third party investment and are liquid. There is a restriction of six withdrawals per account each month.

**Safety**

The funds are recorded in a segregated money market account on the corporate trust ledger. They would share in the highest priority (after liquidation expenses) in the assets of JPMorgan (which exceed \$700 billion; money market account assets currently exceed \$60 billion) in the unlikely event of the Bank's liquidation. In addition, balances are 100% collateralized by full faith and credit obligations of the U.S. Government. Also, there is no operational risk of failed trades as there is in making and liquidating third party investments.

**Competitive Return**

Balances maintained are compensated at an attractive rate of return based upon the average monthly balance. They are not assessed maintenance fees or investment fees. While JPMorgan reserves the right to change the rate of return at any time, parties to financial transactions normally retain the right to redirect their funds to other investments if the return on JPMorgan's Money Market Account Product is deemed noncompetitive.

**Control**

Money market accounts are under the direct supervision of an administration officer assigned to the relationship.

**(Blacklined Version of Distribution Trust Agreement)**

**DISTRIBUTION TRUST AGREEMENT**

**dated as of**

**December** [\_\_\_\_\_], 2005

**among**

**ALPART JAMAICA INC.,**

**KAISER JAMAICA CORPORATION**

**and**

**J.P. MORGAN TRUST COMPANY, NATIONAL ASSOCIATION,**

**as Distribution Trustee**

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Exhibit A - Engagement Letter

Exhibit B - List of Distribution Trust Assets

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## DISTRIBUTION TRUST AGREEMENT

This **DISTRIBUTION TRUST AGREEMENT**, dated as of ~~\_\_\_\_\_~~ December 1, 2005 (this "Agreement"), is made by and among Alpart Jamaica Inc. ("AJI"), Kaiser Jamaica Corporation ("KJC" and collectively with AJI, the "Debtors") and J.P. Morgan Trust Company, National Association (or any successor trustee, the "Distribution Trustee"), as Distribution Trustee under the Third Amended Joint Plan of Liquidation for Alpart Jamaica Inc. and Kaiser Jamaica Corporation, dated February 25, ~~2005 (as the same may be amended or~~ 2005, as modified and ~~as~~ confirmed by the ~~Confirmation Order, Bankruptcy Court~~ (the "Plan").

### RECITALS

- A. The trust created hereby (the "Distribution Trust") is created pursuant to, and to effectuate, Article VIII of the Plan.
- B. The Distribution Trustee was selected to serve as Distribution Trustee under the Plan by the official committee of unsecured creditors of the Debtors appointed by the United States Trustee on February 25, 2002, pursuant to section 1102 of the Bankruptcy Code (the "Creditors' Committee"), with the consent of the Debtors, pursuant to Section 8.2(a) of the Plan.
- C. Pursuant to the Plan, the Distribution Trust is established for the purposes of resolving all Disputed Claims, making all distributions to holders of Allowed Claims in accordance with the terms of the Plan and otherwise implementing the Plan and finally administering the Estates, all in accordance with the terms of the Plan and this Agreement.
- D. The Distribution Trust is intended to be treated, for U.S. federal income Tax purposes, in part as a liquidating trust within the meaning of Treasury Regulations

section 301.7701-4(d), for the benefit of the holders of Allowed Claims entitled to distributions of Pending Payments, and otherwise as one or more disputed ownership funds within the meaning of Proposed Treasury Regulations section 1.468B-9(a).

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants contained herein, the Debtors and the Distribution Trustee agree as follows:

### **ARTICLE I**

#### **DEFINITIONS AND INTERPRETATIONS**

1.1 Definitions. The following capitalized terms used in this Agreement will have the respective meanings ascribed to them in this Section 1.1:

(a) "Agreement" has the meaning set forth in the introductory paragraph to this Agreement.

(b) "AJI" has the meaning set forth in the introductory paragraph to this Agreement.

(c) "Alpart Purchase Agreement" means that certain Purchase Agreement, dated as of June 8, 2004, by and among KACC, Kaiser Aluminium International, Inc., Kaiser Bauxite Company, KJC and AJI and Quality Incorporations I Limited.

(d) "Annual Receipts/Disbursements Report" means an unaudited report Filed with the Bankruptcy Court by the Distribution Trustee, on behalf of the Distribution Trust, within 90 days after the end of each calendar year reflecting: (i) all Distribution Trust Assets received by the Distribution Trust during such calendar year; (ii) all Distribution Trust Assets held by the Distribution Trust at the end of such calendar year, and; (iii) all Distribution Trust Assets disbursed during such calendar year, in each case itemized for the individual Trust Accounts.

(e) "Beneficiaries" means the creditors and claimants of the Estates.

(f) "Claims Report" means, with respect to each Estate, a report certified by the claims agent for such Estate setting forth: (i) a listing, as of the Effective Date, of: (A) all Allowed Secured Claims of such Estate; (B) all Allowed Administrative Claims of such Estate; (C) all Allowed Priority Claims of such Estate; (D) all Allowed Priority Tax Claims of such Estate; (E) all Allowed Unsecured Claims of such Estate; and (F) all Disputed Claims of such Estate; and (ii) for each Claim so listed (A) the name, address

and federal taxpayer identification number or social security number (if known) of the holder thereof as of the Distribution Record Date and (B) the amount thereof, including the amount of unpaid principal and accrued interest (if known).

(g) "Creditors' Committee" has the meaning set forth in Recital B to this Agreement.

(h) "Current Report" means a report Filed with the Bankruptcy Court by the Distribution Trustee, on behalf of the Distribution Trust, describing developments affecting the Distribution Trust in any material respect (as determined by the Distribution Trustee in its reasonable discretion) in reasonable detail.

(i) "Debtor Parties" means, collectively, the Debtors and any directors, officers, employees, agents, professionals, principals and other representatives thereof.

(j) "Debtors" has the meaning set forth in the introductory paragraph to this Agreement.

(k) "Disbursing Agent" means the Distribution Trustee, in its capacity as a disbursing agent pursuant to the Plan, or any third party acting as disbursing agent at the direction of the Distribution Trustee.

(l) "Disputed Claims Reserves" means, with respect to each of the Trust Accounts, the reserve of Cash retained in such Trust Account to satisfy Disputed Claims against the Estate of AJI or the Estate of KJC, if, as and when they are allowed, or, to the extent such Disputed Claims are not allowed, to satisfy Claims that are allowed in accordance with the terms of the Plan.

(m) "Distribution Trust" has the meaning set forth in Recital A to this Agreement.

(n) "Distribution Trustee" has the meaning set forth in the introductory paragraph to this Agreement.

(o) "Distribution Trust Assets" means collectively: (i) the Trust Accounts and any Cash held by such Trust Accounts; (ii) the rights of the Debtors under or in respect of the Intercompany Claims Settlement, the Alpart Purchase Agreement or any causes of action not released by the Plan, including the Recovery Actions, and any proceeds thereof; and (iii) the Alpart Proceeds to the extent that such funds are not included in (i) or (ii).

(p) "Distribution Trust Expenses" means any and all reasonable fees, costs and expenses incurred by the Distribution Trustee (or any Disbursing Agent, person, entity or professional engaged by the Distribution Trustee) in connection with the performance by the Distribution Trustee of its duties under the Plan or this Agreement.

(q) "Distribution Trust Expenses Account" means the segregated trust account to be established and maintained pursuant to Sections 8.9 and 8.10 of the Plan to fund the payment of Distribution Trust Expenses.

(r) "Engagement Letter" means that certain Engagement Letter, dated as of [December \[ \]](#), 2005, by and among the Debtors and the Distribution Trustee, attached hereto as Exhibit A.

(s) "Indemnified Parties" means, collectively, the Distribution Trustee and any directors, officers, employees, agents, professionals, principals and other representatives thereof and the members of the Steering Committee.

(t) "Intercompany Claims Settlement" means the settlement and release agreement among the debtors in the Kaiser Cases and the Creditors' Committee, dated as of October 5, 2004, in such form as approved by the Intercompany Claims Settlement Order.

(u) "KJC" has the meaning set forth in the introductory paragraph to this Agreement.

(v) "Pending Payments" means identified amounts (excluding undeliverable Cash) held by the Distribution Trust for distribution to holders of Allowed Claims in specific amounts as of the date the Distribution Trust receives the applicable Distribution Trust Assets.

(w) "Permitted Investments" means (i) the investments identified on Exhibit C hereto ~~and~~; (ii) the following investments so long as they have maturities of 90 days or less: (A) obligations issued or guaranteed by the United States or by any person controlled or supervised by or acting as an instrumentality of the United States pursuant to authority granted by the United States Congress; (B) obligations issued or guaranteed by any state or political subdivision thereof rated either AA or higher, or MIG 1 or higher, by Moody's Investors Service, Inc. or its successor or AA or higher, or an equivalent, by Standard & Poor's Ratings Services or its successor; (C) commercial or finance paper which is rated either P-1 or higher or an equivalent by Moody's Investors Service, Inc. or its successor or A-1 or higher or an equivalent by Standard & Poor's Ratings Services or its successor; (D) certificates of deposit or time deposits of banks or trust companies, organized under the laws of the United States, having a minimum equity of \$500,000,000; and (E) money market funds registered under the Investment Company Act of 1940, as amended, whose shares are registered under the Securities Act of 1933, as amended, which invests in securities of the type described in subsection (A) above; and (iii) such other investments as may be authorized by the Bankruptcy Court.

(x) "Plan" has the meaning set forth in the introductory paragraph to this Agreement.

(y) "Priority Claims Trust Account" means the segregated trust account to be established and maintained by the Distribution Trustee pursuant to Sections 8.9 and 8.11 of the Plan to satisfy Allowed Secured Claims, Allowed Administrative Claims, Allowed

Priority Claims and Allowed Priority Tax Claims against the Estate of AJI or the Estate of KJC in accordance with the terms of the Plan.

(z) "Quarterly Receipts/Disbursements Report" means an unaudited report Filed with the Bankruptcy Court by the Distribution Trustee, on behalf of the Distribution Trust, within 45 days after the end of each of the first three calendar quarters of each calendar year reflecting: (i) all Distribution Trust Assets received by the Distribution Trust during such calendar quarter; (ii) all Distribution Trust Assets held by the Distribution Trust at the end of such quarter; and (iii) all Distribution Trust Assets disbursed during such calendar quarter, in each case itemized for the individual Trust Accounts.

(aa) "Steering Committee" means a committee comprised of the members of the Alumina Creditor Subcommittee (as defined in the Intercompany Claims Settlement) other than any member thereof that is (i) a holder of a Senior Subordinated Note Claim or (ii) the Senior Subordinated Note Indenture Trustee.

(bb) "Subordination Dispute Order" means an order of the Bankruptcy Court pursuant to which the Bankruptcy Court determines the respective entitlement of the holders of Allowed 9-7/8% Senior Note Claims, Allowed 10-7/8% Senior Note Claims and Allowed Senior Subordinated Note Claims.

(cc) ~~(bb)~~ "Tax" means: (i) any net income, alternative or add-on minimum, gross income, gross receipts, sales, use, ad valorem, value added, transfer, franchise, profits, license, property, environmental or other tax, assessment or charge of any kind whatsoever (together in each instance with any interest, penalty, addition to tax or additional amount) imposed by any U.S. federal, state, local or foreign taxing authority; or (ii) any liability for payment of any amounts of the foregoing types as a result of being a member of an affiliated, consolidated, combined or unitary group, or being a party to any agreement or arrangement whereby liability for payment of any such amounts is determined by reference to the liability of any other entity.

(dd) ~~(ee)~~ "Trust Accounts" means, collectively, the Distribution Trust Expenses Account, the Priority Claims Trust Account, the Unsecured Claims Trust Account and the Undeliverable Cash Trust Account.

(ee) ~~(dd)~~ "Undeliverable Cash Trust Account" means the segregated trust account to be established and maintained by the Distribution Trustee pursuant to Sections 8.9 and 8.13 of the Plan to hold undeliverable Cash for the benefit of holders of Allowed Unsecured Claims against the Estate of AJI or the Estate of KJC otherwise entitled to such distributions.

(ff) ~~(ee)~~ "United States" means the United States of America.

(gg) ~~(ff)~~ "Unsecured Claims Trust Account" means the segregated trust account to be established and maintained by the Distribution Trustee pursuant to Sections 8.9 and 8.12 of the Plan to satisfy Allowed Unsecured Claims against the Estate of AJI or the Estate of KJC in accordance with the terms of the Plan.

Capitalized terms used but not defined in this Agreement will have the meanings ascribed to them in the Plan.

1.2 Interpretation.

1.2.1 Certain References. Unless the context otherwise requires, (a) all references in this Agreement to Sections, Articles or Schedules are to Sections, Articles or Schedules of or to this Agreement, (b) words in the singular include the plural and vice versa, and (c) the verb "will" will have a mandatory connotation, indicating the parties' respective obligations hereunder. Whenever the words "include," "includes" or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation." All references to "\$" or dollar amounts are to lawful currency of the United States.

1.2.2 Titles and Headings. Titles and headings to Sections, Articles and Schedules in or to this Agreement are inserted for convenience of reference only, and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

1.2.3 Inconsistencies with the Plan. In the event of any inconsistency between any provision of this Agreement, on the one hand, and any provision of the Plan, on the other hand, the provisions of the Plan will govern and control.

## **ARTICLE II**

### **ESTABLISHMENT OF THE DISTRIBUTION TRUST**

2.1 Creation and Purposes of the Distribution Trust. The Debtors and the Distribution Trustee, pursuant to the Plan and in accordance with the Bankruptcy Code, hereby create a trust, which is the Distribution Trust contemplated by the Plan. The Distribution Trust is established for the following purposes and no other: (a) collecting, maintaining and administering any Distribution Trust Assets for the benefit of Beneficiaries; (b) liquidating (including objecting to Claims and determining the proper recipients and amounts of

distributions to be made from the Distribution Trust) and distributing the Distribution Trust Assets for the benefit of the Beneficiaries who are determined to hold Allowed Claims as expeditiously as reasonably possible; (c) pursuing any available causes of action, including Recovery Actions; (d) closing the Chapter 11 Cases; and (e) otherwise implementing the Plan and completing the dissolution of the Debtors, all in accordance with the Plan and this Agreement. The Distribution Trust has no objective to, and will not, engage in the conduct of a trade or business and, subject to Section 11.3, will terminate upon the completion of its liquidation and distribution duties. The Distribution Trust will be a "representative of the estate" under section 1123(b)(3)(B) of the Bankruptcy Code.

2.2 Identification of Beneficiaries. On the Effective Date, (a) AJI will deliver to the Distribution Trustee the Claims Report with respect to AJI's Estate and (b) KJC will deliver to the Distribution Trustee the Claims Report with respect to KJC's Estate.

2.3 Transfer of Initial Distribution Trust Assets. On the Effective Date, the Debtors will transfer to the Distribution Trust the Distribution Trust Assets listed or described on Exhibit B, which is a complete and accurate listing of all Distribution Trust Assets owned by the Estates immediately prior to the Effective Date, whereupon title to such Distribution Trust Assets will irrevocably vest in the Distribution Trust, free and clear of Claims, Liens and Interests.

2.4 Tax Treatment. For all U.S. federal income Tax purposes, the Debtors, the Distribution Trustee and the Beneficiaries will treat the transfer of Distribution Trust Assets to the Distribution Trust pursuant to Section 2.3 as: (a) to the extent of Pending Payments, (i) a transfer of the Pending Payments directly from the Debtors to the holders of such Allowed Claims followed by (ii) the transfer of such Pending Payments by the holders of such Allowed Claims to the Distribution Trust in exchange for beneficial interests in the Distribution Trust; and



(b) to the extent of amounts that are not Pending Payments, as a transfer to one or more disputed ownership funds, as described in Section 3.6. Accordingly, the holders of Allowed Claims entitled to distribution of Pending Payments will be treated for federal income Tax purposes as the grantors and deemed owners of their respective shares of the Distribution Trust Assets in the amounts of the Pending Payments and any earnings thereon.

2.5 Distribution Trustee's Acceptance. The Distribution Trustee hereby accepts the duties as trustee imposed on it by this Agreement and agrees to observe and perform such duties, on and subject to the terms and conditions set forth in this Agreement. In connection with and in furtherance of the purposes of the Distribution Trust, the Distribution Trustee hereby expressly accepts the transfer of Distribution Trust Assets to the Distribution Trust pursuant to Section 2.3, subject to the provisions of the Plan, and the Distribution Trustee hereby further expressly agrees to establish and maintain the Trust Accounts and to distribute the Distribution Trust Assets in accordance with the Plan and this Agreement.

### **ARTICLE III**

#### **TRUST ACCOUNTS**

3.1 Creation of the Trust Accounts. On or prior to the Effective Date, the Distribution Trustee will establish in its own name with federally insured United States banks the Distribution Trust Expenses Account, the Priority Claims Trust Account, the Unsecured Claims Trust Account and the Undeliverable Cash Trust Account. On the Effective Date, the Trust Accounts and the contents thereof will be transferred to and irrevocably vest in the Distribution Trust.

3.2 Distribution Trust Expenses Account.

3.2.1 Initial Funding. On the Effective Date following the transfer of Distribution Trust Assets to the Distribution Trust pursuant to Section 2.3, the Distribution

Trustee will fund the Distribution Trust Expenses Account with \$1,000,000 in Cash from the Distribution Trust Assets so transferred.

3.2.2 Use of Funds. Except as otherwise ordered by the Bankruptcy Court, the Distribution Trustee, in its capacity as Disbursing Agent, will, in its reasonable discretion, pay Distribution Trust Expenses from the Distribution Trust Expenses Account, without the need for further Bankruptcy Court approval. Cash in the Distribution Trust Expenses Account will also be used to pay Taxes owing in respect of any amounts included in the Distribution Trust Expenses Account in accordance with Section 10.4.3. Subject to such exceptions as the Steering Committee, acting through a majority thereof, may establish, at least five Business Days prior to making any payment from the Distribution Trust Expenses Account the Distribution Trustee will provide the Steering Committee with a notice setting forth the amount and nature of such payment, with such notice to be accompanied by supporting documentation in reasonable detail.

3.2.3 Subsequent Funding. If, at any time after the initial funding of the Distribution Trust Expenses Account as contemplated by Section 3.2.1, the Distribution Trustee determines, in its reasonable discretion, that the Cash balance of the Distribution Trust Expenses Account will be insufficient to make all payments payable therefrom in accordance with the terms of the Plan and this Agreement, the Distribution Trustee may transfer from the Unsecured Claims Trust Account (to the extent Cash remains available therein) to the Distribution Trust Expenses Account Cash in an aggregate amount determined by the Distribution Trustee, in its reasonable discretion, to be necessary to ensure that the Cash balance of the Distribution Trust Expenses Account will be sufficient to make all such payments. To the fullest extent possible, any transfer pursuant to this Section 3.2.3 will be accomplished in a manner intended to avoid or

minimize any adverse impact on the ability to make full distributions to holders of Allowed Secured Claims, Allowed Administrative Claims, Allowed Priority Claims and Allowed Priority Tax Claims or distributions to holders of Allowed Unsecured Claims in accordance with the terms of the Plan.

3.2.4 Excess Funds. If, at any time after the initial funding of the Distribution Trust Expenses Account pursuant to Section 3.2.1, the Distribution Trustee determines that the Cash balance of the Distribution Trust Expenses Account is in excess of the amount that will be sufficient to make all payments payable therefrom in accordance with the terms of the Plan and this Agreement, the Distribution Trustee, with the consent of the Steering Committee, acting through a majority thereof, may transfer such excess Cash to the Unsecured Claims Trust Account.

### 3.3 Priority Claims Trust Accounts.

3.3.1 Initial Funding. On the Effective Date following the transfer of Distribution Trust Assets to the Distribution Trust pursuant to Section 2.3, the Distribution Trustee will fund the Priority Claims Trust Account with \$17,500,000 in Cash from the Distribution Trust Assets so transferred.

3.3.2 Use of Funds. Cash in the Priority Claims Trust Account will be used by the Distribution Trustee only to (a) satisfy Allowed Secured Claims, Allowed Administrative Claims, Allowed Priority Claims and Allowed Priority Tax Claims against the Estate of AJI or the Estate of KJC in accordance with the terms of the Plan and (b) pay Taxes owing in respect of any amounts included in the Priority Claims Trust Account in accordance with Section 10.4.3.

3.3.3 Subsequent Funding. If, at any time after the initial funding of the Priority Claims Trust Account pursuant to Section 3.3.1, the Distribution Trustee determines, in its reasonable discretion, that the Cash balance of the Priority Claims Trust Account is insufficient to make all payments payable therefrom in accordance with the terms of the Plan and this Agreement, the Distribution Trustee will transfer from the Unsecured Claims Trust Account (to the extent Cash remains available therein) to the Priority Claims Trust Account Cash in an amount determined by the Distribution Trustee, in its reasonable discretion, to be necessary to ensure that the Cash balance of the Priority Claims Trust Account will be sufficient to so make all such payments. To the fullest extent possible, any transfer pursuant to this Section 3.3.3 will be accomplished in a manner intended to avoid or minimize any adverse impact on the ability to make distributions to holders of Allowed Unsecured Claims in accordance with the terms of the Plan.

3.3.4 Excess Funds. If, at any time after the initial funding of the Priority Claims Trust Account pursuant to Section 3.3.1, the Distribution Trustee determines that the Cash balance of the Priority Claims Trust Account is in excess of the amount that will be sufficient to make all payments payable therefrom in accordance with the terms of the Plan and this Agreement, the Distribution Trustee, with the consent of the Steering Committee, acting through a majority thereof, may transfer such excess Cash to the Unsecured Claims Trust Account.

3.3.5 Disputed Claims Reserves. On the Effective Date, (a) in connection with the initial funding of the Priority Claims Trust Account pursuant to Section 3.3.1, the Distribution Trustee will designate, with the consent of the Creditors' Committee and KACC, a specified portion of such initial funding as a Disputed Claims Reserve

to be retained in such Trust Account to satisfy any Disputed Secured Claims, Disputed Administrative Claims, Disputed Priority Claims and Disputed Priority Tax Claims against the Estate of AJI or the Estate of KJC in accordance with the Plan, if, as and when they are allowed or, to the extent such Disputed Claims are not allowed, to satisfy Claims that are allowed in accordance with the terms of the Plan, and (b) in connection with any subsequent transfer of Cash to the Priority Claims Trust Account pursuant to Section 3.3.3, the Distribution Trustee will designate amounts so transferred, to the extent they are not identified as Pending Payments, as Disputed Claims Reserves to be retained in such Trust Account to satisfy Disputed Secured Claims, Disputed Administrative Claims, Disputed Priority Claim and Disputed Priority Tax Claims against the Estate of AJI or the Estate of KJC in accordance with the Plan, if, as and when they are allowed or, to the extent such Disputed Claims are not allowed, to satisfy Claims that are allowed in accordance with the terms of the Plan.

#### 3.4 Unsecured Claims Trust Account.

3.4.1 Initial Funding. On the Effective Date, after the initial funding of the Distribution Trust Expenses Account in accordance with Section 3.2.1 and the initial funding of the Priority Claims Trust Account in accordance with Section 3.3.1, the Distribution Trustee will (a) from the Distribution Trust Assets, (i) make allowance for the allocation to the Public Note Distributable Consideration of the amount contemplated by clause (b) of Section 1.1(90) of the Plan and (ii) make any payment required under the Intercompany Settlement Agreement and (b) thereafter fund the Unsecured Claims Trust Account with the remainder of the Distribution Trust Assets.

3.4.2 Use of Funds. Cash in the Unsecured Claims Trust Account will be used by the Distribution Trustee only to (a) fund the Distribution Trust Expense Account as

contemplated by Section 3.2.3 and the Priority Claims Trust Account as contemplated by Section 3.3.3, (b) satisfy Allowed Unsecured Claims against the Estate of AJI or the Estate of KJC in accordance with the terms of the Plan, (c) pay amounts to be deducted from the Public Note Distributable Consideration in accordance with the terms of the Plan (except to the extent allowance has been made therefor as provided in Section 3.4.1), and (d) pay Taxes owing in respect of any amounts included in the Unsecured Claims Trust Account in accordance with Section 10.4.3.

### 3.4.3 Disputed Claims Reserves.

(a) Initial Funding; Subsequent Funding From Other Trust Accounts. In connection with the initial funding of the Unsecured Claims Trust Account pursuant to Section 3.4.1, the Distribution Trustee will designate a specified portion of such initial funding as a Disputed Claims Reserve to be retained in such Trust Account to satisfy any Disputed Unsecured Claims against the Estate of AJI or the Estate of KJC in accordance with the terms of the Plan, if, as and when they are allowed or, to the extent such Disputed Claims are not allowed, to satisfy Claims that are allowed in accordance with the terms of the Plan. In connection with any subsequent transfers of Cash to the Unsecured Claims Trust Account pursuant to Section 3.2.4, 3.3.4, 3.4.3(b) or 5.2.3(b), the Distribution Trustee will designate amounts so transferred, to the extent they are not identified as Pending Payments, as Disputed Claims Reserves to be retained in such Trust Account to satisfy the Disputed Unsecured Claims against the Estate of AJI or the Estate of KJC in accordance with the terms of the Plan, if, as and when they are allowed or, to the extent such Disputed Claims are not allowed, to satisfy Claims that are allowed in accordance with the terms of the Plan.

(b) Deposit of New Cash Following the Effective Date. Any Cash that becomes available to the Distribution Trust following the Effective Date, including as a result of the receipt of any income or interest generated by the investment of Cash held in the Unsecured Claims Trust Account, will be deposited in the Unsecured Claims Trust Account.

3.5 Undeliverable Cash Trust Account. After the Effective Date, if any distribution to a holder of an Allowed Unsecured Claim is returned to the Distribution Trustee as undeliverable, the Distribution Trustee will deposit the undeliverable Cash in the Undeliverable Cash Trust Account. The Distribution Trustee will hold such funds, in a book-entry sub-account in the Undeliverable Cash Trust Account, for the benefit of such holder. Until such holder notifies the Distribution Trustee in writing of its then-current address, as contemplated by Section 5.2.3, no attempt will be made to deliver subsequent distributions to such holder and any such distributions that such holder would otherwise be entitled to receive instead will be transferred from the Unsecured Claims Trust Account to the Undeliverable Cash Trust Account and credited to such book-entry sub-account. All Cash held in such book-entry sub-account for the benefit of such holder will be invested by the Distribution Trustee in a manner consistent with the investment and deposit guidelines set forth in this Agreement. Any income or interest generated from such investment activities will be held in such book-entry sub-account for the benefit of such holder until such holder notifies the Distribution Trustee in writing of its then-current address as contemplated by Section 5.2.3. Subject to Section 5.2.3(b), when such holder notifies the Distribution Trustee in writing of its then-current address as contemplated by Section 5.2.3, the Distribution Trustee will deliver to such holder all Cash contained in such book-entry sub-account (net of provision for Taxes owing in respect of amounts included in such

book-entry sub-account in accordance with Section 10.4.3). In the event such holder's right to assert a claim for undeliverable distributions is forfeited as contemplated by Section 5.2.3(b), all Cash contained in such book-entry sub-account will be transferred from the Undeliverable Cash Trust Account to the Unsecured Claims Trust Account for redistribution to holders of Allowed Unsecured Claims entitled to distributions therefrom.

3.6 Tax Treatment. The Distribution Trust (which consists of the Distribution Trust Expenses Account, the Priority Claims Trust Account, the Unsecured Claims Trust Account and the Undeliverable Cash Trust Account) is intended to be treated, for U.S. federal income Tax purposes, in part as a liquidating trust within the meaning of Treasury Regulations section 301.7701-4(d), for the benefit of holders of Allowed Claims entitled to distributions of Pending Payments, and otherwise as one or more disputed ownership funds within the meaning of Proposed Treasury Regulations section 1.468B-9(a). The Distribution Trustee will act as the "administrator," within the meaning of Proposed Treasury Regulations section 1.468B-9(b)(1), of such funds. The Disputed Claims Reserves will be subject to the continuing jurisdiction of the Bankruptcy Court, and, as a result, no money or property can be paid or distributed from the Disputed Claims Reserves to, or on behalf of, a "claimant" or the "transferor" (as such terms are defined in Proposed Treasury Regulations section 1.468B-9(b)(2)) except if, as and when Claims become Allowed Claims (or Distribution Trust Expenses) pursuant to the procedures for allowing Claims (or incurring and paying Distribution Trust Expenses) and making distributions prescribed in the Plan.

## **ARTICLE IV**

### **ADMINISTRATION OF THE DISTRIBUTION TRUST**

4.1 Rights, Powers and Privileges. The Distribution Trustee will have only the rights, powers and privileges to act on behalf of the Distribution Trust expressly provided in



the Plan and this Agreement and as provided by law in the event that the Plan or this Agreement does not reference any such right, power or privilege. Unless otherwise expressly limited or restricted by the Plan or this Agreement, so long as such actions are, in the Distribution Trustee's best judgment, necessary to manage the affairs of the Distribution Trust and safeguard the interest of the Beneficiaries, the Distribution Trustee will have the right, power and privilege, and obligation, to:

- (a) execute all agreements, instruments and other documents and effect all other actions necessary to implement the Plan;
- (b) establish, maintain and administer the Trust Accounts;
- (c) accept, preserve, receive, collect, manage, invest, supervise and protect the Distribution Trust Assets (directly or through one or more third-party Disbursing Agents), each in accordance with the Plan and this Agreement;
- (d) liquidate, transfer or otherwise dispose of the Distribution Trust Assets or any part thereof or any interest therein upon such terms as the Distribution Trustee determines to be necessary, appropriate or desirable, pursuant to the procedures for allowing Claims and making distributions prescribed in the Plan, and otherwise consistent with the terms of the Plan;
- (e) calculate and make distributions of the Distribution Trust Assets to holders of Allowed Claims pursuant to the procedures for allowing Claims and making distributions prescribed in the Plan;
- (f) review, reconcile, settle or object to Claims not allowed prior to the Effective Date and resolve any such objections as set forth in the Plan and this Agreement;
- (g) comply with the Plan and exercise its rights and fulfill its obligations thereunder;
- (h) investigate and pursue causes of action as contemplated by Section 4.2, and raise defenses in connection with any actions or claims adverse to the Distribution Trust as the Distribution Trustee determines, in its reasonable discretion, to be necessary, appropriate or desirable;
- (i) retain and compensate, without further order of the Bankruptcy Court, the services of professionals or other persons or entities to represent, advise and assist the Distribution Trustee in the fulfillment of its responsibilities in connection with the Plan and this Agreement, all as it determines, in its reasonable discretion, to be necessary, appropriate or desirable;

(j) take such steps as are necessary, appropriate or desirable to coordinate with representatives of the estates of the Other Kaiser Debtors;

(k) take such actions as are necessary, appropriate or desirable to close the Chapter 11 Cases;

(l) file appropriate Tax returns on behalf of the Distribution Trust and the Debtors and pay Taxes or other obligations owed by the Distribution Trust;

(m) take such actions as are necessary, appropriate or desirable to cause the transfer of any attorney-client privilege, work-product privilege or other privilege or immunity of the Debtors attaching to any documents or communications (whether written or oral) to the Distribution Trust (which privileges and immunities are intended to be transferred to the Distribution Trust);

(n) purchase insurance with such coverage and limits as it determines, in its reasonable discretion, to be necessary, appropriate or desirable (including insurance covering the Indemnified Parties for liabilities incurred in connection with the performance of duties under the Plan and this Agreement);

(o) determine the manner of ascertainment of income and principal of the assets in the Distribution Trust, and the apportionment of income and principal among such assets;

(p) enforce, waive, assign or release rights, powers, privileges and immunities of any kind of the Debtors, except to the extent expressly limited by, or otherwise contrary to its duties established by, the Plan or this Agreement, as the Distribution Trustee determines, in its reasonable discretion, to be necessary, appropriate or desirable;

(q) exercise the rights, and fulfill the obligations, of the Debtors under the Alpart Purchase Agreement;

(r) appear and participate in any proceeding before the Bankruptcy Court with respect to any matter regarding or relating to the Plan, this Agreement, the Distribution Trust, the Distribution Trust Assets or the Debtors;

(s) sue, defend and participate, as a party or otherwise, in any judicial, administrative, arbitral or other proceeding relating to the Plan, this Agreement, the Distribution Trust, the Distribution Trust Assets or the Debtors;

(t) consult with the Beneficiaries at such times and with respect to such issues relating to the conduct of the Distribution Trust as the Distribution Trustee determines, in its reasonable discretion, to be necessary, appropriate or desirable;

(u) pay all Distribution Trust Expenses using the Distribution Trust Expenses Account;

(v) undertake any action or perform any obligation of the Distribution Trustee and the Debtors provided for or required by the Plan, including production of documents and providing of testimony, with respect to any investigation, subpoena or inquiry into the Debtors or the Debtors' financial affairs;

(w) execute, deliver and perform such other agreements and documents or exercise such other powers and duties as the Distribution Trustee determines, in its reasonable discretion, to be necessary, appropriate or desirable to accomplish and implement the purposes and provisions of the Distribution Trust as set forth in the Plan and this Agreement;

(x) take such actions as are necessary, appropriate or desirable to terminate the existence of the Debtors under the laws of Jamaica; and

(y) terminate ~~this~~the Distribution Trust in accordance with the terms of the Plan and this Agreement.

#### 4.2 Limitation on Investigations; Delivery of Documents and Related Matters.

The Distribution Trustee will be entitled to rely upon Exhibit B as a true and complete schedule of Distribution Trust Assets existing immediately prior to the Effective Date. The Distribution Trustee will have no obligation to investigate or to determine the existence of any Distribution Trust Asset other than those identified on Exhibit B. If, notwithstanding the foregoing, the Distribution Trustee becomes aware of a potential cause of action with apparent value to the Distribution Trust, it will take such reasonable steps as it determines, in its reasonable discretion, to be appropriate, and such other steps as the Steering Committee may direct, to investigate and pursue such cause of action. The Distribution Trustee may reasonably rely upon any document or record that the Debtors deliver to it and will be protected in acting or refraining from acting on any such document based upon such reasonable reliance. Prior to their dissolution as contemplated in Section 4.4, the Debtors will cooperate with the Distribution Trustee in providing it with pertinent documents and business records or access thereto. In fulfilling their obligations in the preceding sentence, the Debtors will undertake, in good faith, to locate and deliver to the Distribution Trustee documents currently in the Debtors' physical possession that

they believe, in their reasonable discretion, are relevant to any Claims currently in dispute or to any asset or liability being transferred to the Distribution Trust; provided, however, that (a) none of the Debtor Parties will have any liability if, despite their good faith efforts, the Debtors are unable to locate or deliver to the Distribution Trustee any such relevant documents referred to above or if any additional relevant documents are identified later that were not delivered by the Debtors to the Distribution Trustee and (b) no party (including the Distribution Trustee) will have recourse against the Debtor Parties or their respective assets with respect to such matters under any circumstances.

4.3 No Personal Liability. None of the provisions in the Plan or this Agreement will be construed to require the Distribution Trustee to expend or risk its own funds or otherwise incur personal liability in the performance of its duties or in the reasonable exercise of its rights, powers and privileges hereunder if there are reasonable grounds for the Distribution Trustee to believe that the repayment of any such validly expended funds or adequate indemnity against such risk of liability is not reasonably assured. Notwithstanding the foregoing, nothing in this Section 4.3 will relieve the Distribution Trustee of any liability for any action or omission resulting from bad faith, fraud, willful misconduct, gross negligence or breach of contract.

4.4 Dissolution of the Debtors. Notwithstanding anything to the contrary in this Agreement, the Distribution Trustee will take all such actions (including making necessary filings) and pay all such amounts (using funds available in the Distribution Trust Expenses Account) as are necessary, appropriate or desirable to complete the dissolution of the Debtors in accordance with applicable state law as expeditiously as possible.

4.5 Agents and Professionals. Except as otherwise provided in the Plan or this Agreement: (a) the Distribution Trustee may consult with independent legal counsel to be

selected by it and the advice or opinion of such counsel will be full and complete personal protection to the Distribution Trustee and agents of the Distribution Trustee in respect of any action taken or suffered by it in good faith and in reliance on, or in accordance with, such advice or opinion; and (b) persons (including any professionals retained by the Distribution Trustee) dealing with the Distribution Trustee will look only to the Distribution Trust Assets to satisfy any liability incurred by the Distribution Trustee to such person in carrying out the terms of the Plan or this Agreement, and (subject to Section 8.2 with respect to liabilities resulting from the Distribution Trustee's bad faith, fraud, willful misconduct, gross negligence or breach of contract) the Distribution Trustee will have no personal or individual obligation to satisfy any such liability.

4.6 Authentication of Documents. The Distribution Trustee will not be responsible for the title, validity or genuineness of any property or evidence of title thereto received by it or delivered by it pursuant to this Agreement and will be held harmless and will be fully indemnified (pursuant to Section 8.3) by the Distribution Trust in acting upon any document believed by it to be genuine and delivered by the proper party or parties.

4.7 Investment Guidelines. The Distribution Trustee will invest the Distribution Trust Assets only in Permitted Investments; provided, however, that, notwithstanding anything to the contrary in this Agreement, the scope of any such Permitted Investments will be limited to include only those investments that a liquidating trust, within the meaning of Treasury Regulations section 301.7701-4(d) and Internal Revenue Service Revenue Procedure 94-45 may be permitted to hold, pursuant to any amendment or addition to the Internal Revenue Code or to the Treasury Regulations, or any modification in Internal Revenue Service guidelines whether set forth in Internal Revenue Service rulings, other Internal Revenue Service

pronouncements or otherwise. Such investments will mature in such amounts and at such times as, in the reasonable discretion of the Distribution Trustee at the times such investments are made, are necessary, appropriate or desirable with a view to providing funds when needed to make payments from the Distribution Trust Assets. Notwithstanding the foregoing, if the Distribution Trustee determines, in its reasonable discretion, that the administrative costs associated with such investment will exceed the return on such investment, it may direct that such Cash not be invested. The Beneficiaries entitled to receive Pending Payments will be responsible for reporting their respective share of the income on investments of such amounts in the Trust Accounts and paying the applicable Taxes thereon in accordance with Section 10.4.2. The Distribution Trustee will be responsible for reporting all other income in each of the Trust Accounts and paying any applicable Taxes thereon in accordance with Section 10.4.3. The Distribution Trustee will be under no liability to accrue interest or produce income on any monies received by it hereunder and held for distribution or payment to the Beneficiaries, except as such interest is actually received by the Distribution Trustee.

4.8 Disputed Claims. Notwithstanding anything to the contrary in the Plan and this Agreement, no payments or distributions will be made on account of a Disputed Claim unless and until such Claim becomes an Allowed Claim. A holder of a Disputed Claim that ultimately becomes an Allowed Claim will have recourse only to the undistributed Cash held in the Disputed Claims Reserve of the applicable Trust Account (net of Taxes on such Disputed Claims Reserves) for the satisfaction of such Allowed Claim and not to any other Trust Account or any assets previously distributed on account of any Allowed Claim.

4.9 Trade or Business. The Distribution Trustee will not at any time, on behalf of the Distribution Trust or the Beneficiaries, operate as a business entity within the

meaning of Treasury Regulations section 301.7701-2, or engage in any trade or business as proscribed by Treasury Regulations section 301.7701-4(d), and the Distribution Trustee will not use or dispose of any part of the Distribution Trust Assets in furtherance of any trade or business. Notwithstanding the foregoing, the Distribution Trustee will not be prohibited from engaging in any trade or business for its own account, provided that such activity does not interfere with the Distribution Trustee's administration of the Distribution Trust.

#### 4.10 Court Approval of Distribution Trustee Actions.

4.10.1 Court Approval Generally Not Required. Except as otherwise provided in Plan or this Agreement, the Distribution Trustee will not be required to obtain the order or approval of the Bankruptcy Court or any other court of competent jurisdiction in, or account to the Bankruptcy Court or any other court of competent jurisdiction for, the exercise of any right, power or privilege conferred hereunder.

4.10.2 Right to Seek Court Approval. Notwithstanding the foregoing, where the Distribution Trustee determines, in its reasonable discretion, that it is necessary, appropriate or desirable, the Distribution Trustee will have the right to submit to the Bankruptcy Court or any other court of competent jurisdiction any question or questions regarding any specific action proposed to be taken by the Distribution Trustee with respect to the Plan, this Agreement, the Distribution Trust, the Distribution Trust Assets or the Debtors, including the administration and distribution of the Distribution Trust Assets. Pursuant to the Plan, the Bankruptcy Court has retained jurisdiction for such purposes and may approve or disapprove any such proposed action upon motion by the Distribution Trustee.

4.10.3 Court Direction Absent Express Procedures. For the avoidance of doubt, in the event that this Agreement does not expressly establish procedures governing the

obligations of the Distribution Trustee established by the Plan or this Agreement, the Distribution Trustee will take direction from the Bankruptcy Court or any other court of competent jurisdiction with respect to the fulfillment of such obligations, including management of the Distribution Trust Assets, the creation of reserves, the distribution of Distribution Trust Assets to satisfy Claims and the recognition of Beneficiaries.

4.10.4 No Liability. The Distribution Trustee will have no liability for taking any action approved by the Bankruptcy Court or any other court of competent jurisdiction or for otherwise complying with an order of the Bankruptcy Court or any other court of competent jurisdiction.

## **ARTICLE V**

### **DISTRIBUTIONS FROM THE DISTRIBUTION TRUST**

5.1 Method of Distributions to Holders of Allowed Claims. The Distribution Trustee will make all distributions of Cash required under the Plan. The Distribution Trustee will serve without bond and may employ or contract with other entities to assist in or make the distributions required by the Plan and this Agreement. Unless the context otherwise requires, all references to the Distribution Trustee contained in this Article V will be deemed to be references to the Distribution Trustee in its capacity as Disbursing Agent and, in the event it employs or contracts with one or more other entities to assist in or make the distributions required by the Plan and this Agreement as contemplated by the immediately preceding sentence, to any such third-party Disbursing Agent in its capacity as such. Notwithstanding anything to the contrary in this Agreement, the Distribution Trustee itself will act as the Disbursing Agent for the Distribution Trust Expenses Account.

5.2 Delivery of Distributions.



5.2.1 Generally. Except as otherwise provided in the Plan, distributions in respect of Allowed Claims will be made to holders of such Claims as of the Distribution Record Date at the addresses set forth in the applicable Claims Report. Prior to making any distribution to a Beneficiary, the Distribution Trustee may request written notification of the Beneficiary's federal taxpayer identification number or social security number if the Distribution Trustee determines, in its reasonable discretion, that such information (a) is necessary to fulfill its Tax reporting and withholding obligations and (b) has not been provided in the applicable Claims Report or otherwise. The Distribution Trustee, in its reasonable discretion, may suspend distributions to any Beneficiary that has not provided its federal taxpayer identification number or social security number, as the case may be, after a request is made pursuant to and in accordance with the terms of this Section 5.2.1.

5.2.2 Distributions to Holders of Public Note Claims. All distributions to holders of Allowed Public Note Claims will be made to the applicable Indenture Trustee for subsequent distribution to holders of the Allowed Public Note Claims as of the Distribution Record Date.

5.2.3 Undeliverable Distributions.

(a) No Further Attempts At Delivery. If any distribution to a holder of an Allowed Unsecured Claim is returned to the Distribution Trustee as undeliverable, then unless and until the Distribution Trustee is notified in writing of such holder's then-current address: (i) subject to Section 5.2.3(b), such undeliverable distribution will remain in the possession of the Distribution Trustee as provided in Section 3.5 and no further attempt will be made to deliver such distribution and (ii) no attempt will be made to deliver subsequent distributions to such holder and any such

distributions that such holder would otherwise be entitled to receive instead will be treated as provided in Section 3.5.

(b) Forfeiture and Redistribution. Any holder of an Allowed Unsecured Claim that does not assert a claim for an undeliverable distribution by delivering to the Distribution Trustee a written notice setting forth such holder's then-current address within 180 days after the later of (i) the Effective Date and (ii) the last date on which a distribution was deliverable to the holder will have its claim for undeliverable distributions discharged and will be forever barred from asserting such claim or any claim for subsequent distributions against the Debtors, the Distribution Trustee or the property of any of them, including the Trust Accounts, whereupon all Cash contained in the book-entry sub-account in the Undeliverable Cash Trust Account created for the benefit of such holder will be transferred to the Unsecured Claims Trust Account for redistribution to holders of Allowed Unsecured Claims entitled to distributions therefrom. For purposes of any such redistribution, each Allowed Claim in respect of which a claim for undeliverable distributions has been discharged as contemplated by this Section 5.2.3(b) will be deemed disallowed in its entirety.

(c) No Requirement to Attempt to Locate Holders. Nothing contained in the Plan will require the Debtors or the Distribution Trustee to attempt to locate any holder of an Allowed Claim.

5.2.4 Annual Distributions of Net Income. The Distribution Trustee will distribute at least annually to the Beneficiaries (as such may have been determined at such time) the net income of the Distribution Trust (net of any payment of or provisions for Taxes), except for amounts retained as reasonably necessary to maintain the value of the Distribution Trust

Assets, to pay Distribution Trust Expenses or to meet claims and contingent liabilities (including Disputed Claims).

5.3 Means of Cash Payments. Except as otherwise provided in the Plan or this Agreement, Cash payments made pursuant to the Plan will be in United States currency by checks drawn on the applicable Trust Accounts or, at the option of the Distribution Trustee, by wire transfer from a domestic bank; provided, however, that Cash payments to foreign holders of Allowed Claims may be made, at the option of the Distribution Trustee, in such funds and by such means as are necessary or customary in a particular foreign jurisdiction. If a check included in a distribution to a holder of an Allowed Unsecured Claim is not cashed within 180 days of the issuance thereof, the Distribution Trustee will void such check and such distribution will be treated as undeliverable in accordance with Section 5.2.3(a).

5.4 Timing and Calculation of Amounts to Be Distributed.

5.4.1 Allowed Claims Other Than Unsecured Claims. On or as promptly as practicable after the Effective Date, the Distribution Trustee will make distributions to holders of Secured Claims, Administrative Claims, Priority Claims and Priority Tax Claims allowed as of the Effective Date. On or as promptly as practicable after each Quarterly Distribution Date, the Distribution Trustee will make distributions to holders of Disputed Secured Claims, Disputed Administrative Claims, Disputed Priority Claims and Disputed Priority Tax Claims that have become Allowed Claims during the immediately preceding calendar quarter. Notwithstanding the foregoing, if the Distribution Trustee determines, in its reasonable discretion, that the amount of any quarterly distribution is too small to justify the administrative costs associated with such distribution, the Distribution Trustee may postpone such quarterly distribution until the next Quarterly Distribution Date. The Distribution Trustee

will have no obligation to notify Beneficiaries if it determines, in its reasonable discretion, that any quarterly distribution will be postponed.

#### 5.4.2 Allowed Unsecured Claims in Subclass 3A; Certain Payments

From the Public Note Distributable Consideration.

~~(a) — Plan Accepted by Subclass 3A and Subclass 3B.~~

(a) (1) If both Subclass 3A and Subclass 3B vote to accept the Plan in accordance with section 1126(c) of the Bankruptcy Code, on Effective Date Distributions. On or as promptly as practicable after the Effective Date, the Distribution Trustee will: (a1) make distributions to holders of Allowed Claims in Subclass 3A in accordance with second sentence of Section 2.4(c)(i)(AB) of the Plan; provided that the amount of such distributions will be calculated as if each Disputed Unsecured Claim in Subclass 3D were an Allowed Unsecured Claim in its Face Amount as of the Effective Date; and (b) make the payments to be deducted (2) make the payments of the amounts invoiced and estimated by the 9-7/8% Senior Note Indenture Trustee, the 10-7/8% Senior Note Indenture Trustee and the Ad Hoc Group pursuant to the second sentence of Section 2.6(a) of the Plan; and (3) establish a reserve from the Public Note Distributable Consideration as contemplated by clauses (I) and (II) of the first sentence of Section 2.4(c)(i)(A) of the Plan. otherwise payable to holders of Senior Note Claims for the periodic future payment or payments of the amounts estimated by the Ad Hoc Group pursuant to the third sentence of Section 2.6(a) of the Plan (which future payments will be made upon presentation of reasonable evidence of the incurrence thereof).

(b) Distribution Upon Entry of Subordination Dispute Order.

Upon entry of the Subordination Dispute Order or as promptly as practicable thereafter.

but subject to any applicable stay of such Order, the Distribution Trustee will: (1) make distributions to holders of Allowed Claims in Subclass 3A in accordance with the third sentence of Section 2.4(c)(i)(B) of the Plan; provided that the amount of such distributions will be calculated as if each Disputed Unsecured Claim in Subclass D were an Allowed Unsecured Claim in its Face Amount as of the Effective Date; and (2) make any payments contemplated by Section 2.5(a) and Section 2.6 of the Plan.

(c) ~~(2) If both Subclass 3A and Subclass 3B vote to accept the Plan in accordance with section 1126(e) of the Bankruptcy Code, on~~Quarterly Distributions. On or as promptly as practicable after each Quarterly Distribution Date, the Distribution Trustee will distribute to each holder of an Allowed Claim in Subclass 3A a distribution from the Unsecured Claims Trust Account (net of provision for Taxes payable in accordance with Section 10.4.3) in an amount equal to: (i) the amount of Cash that such holder would have been entitled to receive pursuant to the Plan if such Claim and each other Unsecured Claim allowed prior to such Quarterly Distribution Date had been an Allowed Unsecured Claim as of the Effective Date (with such amount to be calculated in the manner provided in Section 5.4.2(a)~~(4~~ or, after entry of the Subordination Dispute Order, Section 5.4.2(b))) minus (ii) the aggregate amount of Cash previously distributed on account of such Claim. Notwithstanding the foregoing, if the Distribution Trustee determines, in its reasonable discretion, that the amount of any quarterly distribution is too small to justify the administrative costs associated with such distribution, the Distribution Trustee may postpone such quarterly distribution until the next Quarterly Distribution Date. The Distribution Trustee will have no obligation to notify Beneficiaries if it determines, in its reasonable discretion, that any quarterly

distribution will be postponed. In the event of the disallowance of a Disputed Unsecured Claim in Subclass 3D, any amounts held in respect thereof will be released from the Disputed Claims Reserve for distribution in accordance with this Section 5.4.2(~~ac~~), [Section 5.4.3\(c\)](#) and Section 5.4.4.

~~(b) — [Plan Rejected by Subclass 3A or Subclass 3B](#). If either Subclass 3A or Subclass 3B fails to accept the Plan in accordance with section 1126(c) of the Bankruptcy Code, the amount of the Public Note Distributable Consideration to which the Bankruptcy Court determines the holders of Allowed Claims in Subclass 3A are entitled in respect of such Claims will be distributed as provided in an order of the Bankruptcy Court and the Distribution Trustee will, contemporaneously or as promptly as practicable thereafter, make the payments (or reservations for payment) by which such distributions are to be reduced in accordance with Section 2.4(a)(i)(B) of the Plan.~~

#### 5.4.3 Allowed Unsecured Claims in Subclass 3B.

~~(a) [Plan Accepted by Subclass 3A and Subclass 3B](#). If both Subclass 3A and Subclass 3B vote to accept the Plan in accordance with section 1126(c) of the Bankruptcy Code, on or as promptly as practicable after the Effective Date, the [Distribution Trustee](#) will make the payment to the Senior Subordinated Note Indenture Trustee as contemplated by clause (III) of the first sentence of Section 2.4(c)(i)(A) of the Plan and Section 2.4(c)(ii)(A) of the Plan for subsequent distribution by the Senior Subordinated Note Indenture Trustee to the holders of Allowed Claims in Subclass ~~3B~~. [No Effective Date Distributions. Pending entry of the Subordination Dispute Order, no distributions will be made to holders of Allowed Claims in Subclass 3B.](#)~~

(b) Distributions Upon Entry of Subordination Dispute Order.

Upon entry of the Subordination Dispute Order or as promptly as practicable thereafter, but subject to any applicable stay of such Order, the Distribution Trustee will make distributions to holders of Allowed Claims in Subclass 3B, if any, in accordance with the second sentence of Section 2.4(c)(ii)(B) of the Plan; provided that, if the Subordination Dispute Order provides that holders of Allowed Claims in Subclass 3B will receive a percentage of the Public Note Distributable Consideration, the amount of such distribution will be calculated as of each Disputed Unsecured Claim in Subclass D were an Allowed Claim in its Face Amount upon entry of the Subordination Dispute Order.

(c) Quarterly Distributions. On or as promptly as practicable

after each Quarterly Distribution Date following entry of the Subordination Dispute Order, the Distribution Trustee will distribute to each holder of an Allowed Claim in Subclass 3B a distribution from the Unsecured Claims Trust Account (net of provision for Taxes payable in accordance with Section 10.4.3) in an amount equal to: (i) the amount of Cash that such holder would have been entitled to receive pursuant to the Plan if such Claim and each other Unsecured Claim allowed prior to such Quarterly Distribution Date had been an Allowed Unsecured Claim upon entry of the Subordination Dispute Order (with such amount to be calculated in the manner provided in Section 5.4.3(b)) minus (ii) the aggregate amount of Cash previously distributed on account of such Claim. Notwithstanding the foregoing, if the Distribution Trustee determines, in its reasonable discretion, that the amount of any quarterly distribution is too small to justify the administrative costs associated with such distribution, the Distribution Trustee may postpone such quarterly distribution until the next Quarterly

Distribution Date. The Distribution Trustee will have no obligation to notify Beneficiaries if it determines, in its reasonable discretion, that any quarterly distribution will be postponed. In the event of the disallowance of a Disputed Unsecured Claim in Subclass 3D, any amounts held in respect thereof will be released from the Disputed Claims Reserve for distribution in accordance with this Section 5.4.3(c), Section 5.4.2(c) and Section 5.4.4.

(d) ~~(b) Plan Rejected by Subclass 3A or Subclass 3B. If either Subclass 3A or Subclass 3B fails to accept the Plan in accordance with section 1126(e) of the Bankruptcy Code, the amount of the Public Note Distributable Consideration, if any, to which the Bankruptcy Court determines the holders of Allowed Claims in Subclass 3B are entitled in respect of such Claims will be distributed as provided in an order of the Bankruptcy Court and any~~ Potential Reductions to Distributions. Any distributions ultimately made to a holder of an Allowed Claim in Subclass 3B may be reduced by such holder's proportional share of any and all fees and expenses payable to the Senior Subordinated Note Indenture Trustee pursuant to the Senior Subordinated Note Indenture, which will, subject to such Trustee's right to seek payment by the Debtors of such fees and expenses pursuant to section 503(b)(5) of the Bankruptcy Code, be payable solely from such distributions.

#### 5.4.4 Allowed Unsecured Claims in Subclass 3C and Subclass 3D.

(a) Effective Date Distributions. On or as promptly as practicable after the Effective Date, the Distribution Trustee will make distributions to holders of Unsecured Claims in Subclass 3C and Subclass 3D allowed as of the Effective Date; provided that the amount of such distributions will be calculated as if each



Disputed Unsecured Claim in Subclass 3D were an Allowed Unsecured Claim in its Face Amount as of the Effective Date; provided further, however, that no distribution will be made on account of any Disputed Unsecured Claim in Subclass 3D unless and until it becomes an Allowed Unsecured Claim and amounts withheld for Disputed Unsecured Claims in Subclass 3D will remain in the Unsecured Claims Trust Account as part of the Disputed Claims Reserve.

(b) Quarterly Distributions. On or as promptly as practicable after each Quarterly Distribution Date, the Distribution Trustee will distribute to each holder of an Unsecured Claim in Subclass 3C or Subclass 3D allowed prior to such Quarterly Distribution Date a distribution from the Unsecured Claims Trust Account (net of provision for Taxes payable in accordance with Section 10.4.3) in an amount equal to: (i) the amount of Cash that such holder would have been entitled to receive pursuant to the Plan if such Claim and each other Unsecured Claim allowed prior to such Quarterly Distribution Date had been an Allowed Unsecured Claim as of the Effective Date (with such amount to be calculated in the manner provided in Section 5.4.4(a)) minus (ii) the aggregate amount of Cash previously distributed on account of such Claim.

Notwithstanding the foregoing, if the Distribution Trustee determines, in its reasonable discretion, that the amount of any quarterly distribution is too small to justify the administrative costs associated with such distribution, the Distribution Trustee may postpone such quarterly distribution until the next Quarterly Distribution Date. The Distribution Trustee will have no obligation to notify Beneficiaries if it determines, in its reasonable discretion, that any quarterly distribution will be postponed. In the event of the disallowance of a Disputed Unsecured Claim in Subclass 3D, any amounts held in

respect thereof will be released from the Disputed Claims Reserve for distribution in accordance with Section 5.4.2(a)(c), [Section 5.4.3\(c\)](#), and this Section 5.4.4.

~~5.4.5 7-3/4% SWD Revenue Bonds.~~

~~5.4.5 (a) Plan Accepted by Subclass 3A. If (i) Subclass 3A votes to accept the Plan in accordance with section 1126(c) of the Bankruptcy Code and (ii) unless the holders of Senior Note Claims otherwise agree pursuant to a settlement, all holders of Allowed Senior Note Claims are entitled under the Plan to identical treatment in respect of contractual subordination claims under the Senior Subordinated Note Indenture, then, on 7-3/4% SWD Revenue Bonds. Upon entry of the Subordination Dispute Order or as promptly as practicable ~~on the Effective Date~~ thereafter, but subject to any applicable stay of such Order, the Distribution Trustee will make the payment, if any, to the 7-3/4% SWD Revenue Bond Indenture Trustee for the benefit of holders of 7-3/4% SWD Revenue Bonds pursuant to Section 2.5(a) of the Plan and pay any amounts payable pursuant to Section 2.6(b) of the Plan.~~

~~(b) Plan Rejected by Subclass 3A. If Subclass 3A fails to accept the Plan in accordance with section 1126(c) of the Bankruptcy Code, the amount of the Public Note Distributable Consideration, if any, to which the Bankruptcy Court determines the holders of 7-3/4% SWD Revenue Bonds are entitled will be distributed as provided in an order of the Bankruptcy Court.~~

5.4.6 Application of Distributions to Holders of Public Note Claim and 7-3/4% SWD Revenue Bonds. All distributions to a holder of an Allowed Public Note Claim or a holder of a 7-3/4% SWD Revenue Bond will be deemed to apply first to the principal amount of such Claim or 7-3/4% SWD Revenue Bond until such principal amount is paid in full, and then the remaining portion of such distributions, if any, will be deemed to apply to any

prepetition accrued interest included in such Claim or in respect of such 7-3/4% SWD Revenue Bond.

5.4.7 De Minimis Distributions. The Distribution Trustee will not be required to distribute Cash to the holder of an Allowed Unsecured Claim if the total aggregate amount of Cash to be distributed on account of such Claim is less than \$25. Any holder of an Allowed Unsecured Claim on account of which the total aggregate amount of Cash to be distributed is less than \$25 will have its claim for such distribution deemed satisfied, waived and released and will be forever barred from asserting any such Claim against the Debtors, the Distribution Trustee or the property of any of them, including the Trust Accounts. Any Cash not distributed with respect to Allowed Unsecured Claims as a result of this Section 5.4.7 will be retained in the Unsecured Claims Trust Account for redistribution to other holders of Allowed Unsecured Claims entitled to distributions from the Unsecured Claims Trust Account.

5.4.8 Compliance with Tax Requirements. To the extent applicable, the Distribution Trustee will comply with all Tax withholding and reporting requirements imposed on it by any governmental unit, and all distributions pursuant to the Plan will be subject to such withholding and reporting requirements. The Distribution Trustee will be authorized to take any actions that it determines, in its reasonable discretion, to be necessary, appropriate or desirable to comply with such withholding and reporting requirements. Notwithstanding any other provision of the Plan or this Agreement, each entity receiving a distribution of Cash pursuant to the Plan will have sole and exclusive responsibility for the satisfaction and payment of any Tax obligations imposed on it by any governmental unit on account of such distribution, including income, withholding and other Tax obligations.

5.4.9 Setoffs. Except with respect to claims of a Debtor released pursuant to the Plan or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, the Distribution Trustee may, pursuant to section 553 of the Bankruptcy Code or applicable nonbankruptcy law, set off against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Claim (before any distribution is made on account of such Claim) the claims, rights and causes of action of any nature that the applicable Debtor may hold against the holder of such Allowed Claim; provided, however, that neither the failure to effect a setoff nor the allowance of any Claim hereunder will constitute a waiver or release by the applicable Debtor of any claims, rights and causes of action that the Debtor or Debtors may possess against such a Claim holder, which are preserved under the Plan.

5.5 Compensation and Reimbursement for Services Related to Distributions.

If the Distribution Trustee employs or contracts with a third-party Disbursing Agent, such Disbursing Agent will receive, without the need for further Bankruptcy Court approval, reasonable compensation for such services and reimbursement of reasonable out-of-pocket expenses incurred in connection with such services. These payments will be made on terms agreed to with Distribution Trustee and will be paid to such Disbursing Agent from funds in the Distribution Trust Expenses Account. To assist in making distributions under the Plan, notwithstanding any other provision of this Agreement, the applicable Trust Accounts (other than the Distribution Trust Expenses Account) may be held in the name of one or more such Disbursing Agents. Any such Disbursing Agent will invest the Cash in the Trust Accounts as directed by the Distribution Trustee, who will direct such Disbursing Agent to invest such Cash only in Permitted Investments; provided, however, that should the Distribution Trustee

determine, in its reasonable discretion, that the administrative costs associated with such investment will exceed the return on such investment, it may direct such Disbursing Agent to not invest such Cash.

5.6 Payments Limited to Trust Accounts. All payments or other distributions to be made by the Distribution Trustee in accordance with the Plan or this Agreement will be made only from the Trust Accounts.

5.7 Insufficient Funds. Provided that the Distribution Trustee has not acted in bad faith, engaged in fraud, willful misconduct or gross negligence or breached its fiduciary duties, if the Distribution Trust Assets at any point prove insufficient to pay all Beneficiaries of the Priority Claims Trust Account in full or all Beneficiaries of the Unsecured Claims Trust Account in accordance with the terms of the Plan, the Distribution Trustee will have no obligation to seek disgorgement from any Beneficiary, but may seek the guidance of the Bankruptcy Court or another court of competent jurisdiction consistent with Section 4.10.2.

## **ARTICLE VI**

### **BENEFICIARIES**

6.1 Beneficial Interest. Ownership of a beneficial interest in the Distribution Trust will not be evidenced by any certificate, security or receipt or in any other form or manner whatsoever, except as maintained on the books and records of the Distribution Trust by the Distribution Trustee. No claimant will have a beneficial interest in the Distribution Trust Assets until such time as the claimant's related Claim becomes an Allowed Claim pursuant to the mechanism for determining Allowed Claims prescribed in the Plan. Except as expressly provided in Section 12.1, payments under this Agreement may not be assigned, alienated, pledged, encumbered or subjected to attachment, garnishment, levy, execution or other legal or equitable process.

6.2 Exemption From Registration. The parties hereto intend that the rights of the Beneficiaries arising under this Distribution Trust will not be "securities" under applicable laws, but none of the parties hereto represent or warrant that such rights will not be securities or that their issuance under the Plan will be entitled to exemption from registration under applicable securities laws. If such rights constitute securities, the parties hereto intend for the exemptions from registration provided by section 1145 of the Bankruptcy Code and by other applicable law to apply to their issuance under the Plan.

## **ARTICLE VII**

### **CERTAIN RIGHTS OF THE DISTRIBUTION TRUSTEE**

7.1 Causes of Action. Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, in accordance with section 1123(b) of the Bankruptcy Code, the Distribution Trustee will retain and may enforce any claims, demands, rights and causes of action that either Debtor or Estate may hold against any entity, including the Recovery Actions, to the extent not expressly released under the Plan. Without intending to limit the generality of the foregoing, the Distribution Trustee will retain the right to File and pursue any adversary proceedings available to the Debtors in connection with the Alpart Purchase Agreement and the Intercompany Claims Settlement.

7.2 Objections to Claims. The Distribution Trustee, on behalf of the Distribution Trust, with the prior consent of the Steering Committee, acting through a majority thereof, will have the authority to File, settle, compromise, withdraw or litigate to judgment objections to Claims, including pursuant to any alternative dispute resolution or similar procedures approved by the Bankruptcy Court. The Distribution Trustee, with the prior consent

of the Steering Committee, acting through a majority thereof, may settle or compromise any Disputed Claim without approval of the Bankruptcy Court in accordance with this Agreement.

## **ARTICLE VIII**

### **THIRD PARTY RIGHTS AND LIMITATION OF LIABILITY**

8.1 Parties Dealing With the Distribution Trustee. In the absence of actual knowledge to the contrary, any person dealing with the Distribution Trust or the Distribution Trustee will be entitled to rely on the authority of the Distribution Trustee or any of its agents to act in connection with the Distribution Trust Assets. There is no obligation on any person dealing with the Distribution Trustee to inquire into the validity or propriety of any transaction by the Distribution Trustee or any agent of the Distribution Trustee.

8.2 Limitation of Liability. Notwithstanding anything to the contrary in this Agreement, in exercising the rights granted hereunder, the Distribution Trustee will use the same degree of care and skill as an individual of ordinary prudence, discretion and judgment would exercise or use in such individual's own affairs. The Distribution Trustee will not be liable with respect to any action it takes or omits to take in good faith with the consent, or at the direction, of the Steering Committee to the extent this Agreement expressly contemplates the Steering Committee may give such consent or direction. The Distribution Trustee will not be liable for punitive, exemplary, consequential or special damages for a breach of this Agreement under any circumstances or for any other act or omission not constituting bad faith, fraud, willful misconduct or gross negligence. The Debtors, the Distribution Trust, the Distribution Trustee and their respective directors, officers, employees, agents, professionals and other representatives, acting in such capacity, will neither have nor incur any liability to any entity for any act taken or omitted to be taken in connection with or related to the formulation, preparation, dissemination, implementation, confirmation or consummation of the Plan, the Disclosure

Statement, this Agreement or any contract, instrument, release or other agreement or document created or entered into, or any other act taken or omitted to be taken, in connection with the Plan or this Agreement; provided, however, that the foregoing provisions of this paragraph will have no effect on (a) the liability of any entity that would otherwise result from the failure to perform or pay any obligation or liability under the Plan, this Agreement or any contract, instrument, release or other agreement or document to be entered into or delivered in connection with the Plan or (b) the liability of any such entity that otherwise would result from any such act or omission to the extent that such act or omission is determined in a Final Order to have constituted bad faith, fraud, willful misconduct or gross negligence.

8.3 Indemnification. The Indemnified Parties will be indemnified by the Distribution Trust from the Distribution Expenses Trust Account (taking into account transfers of Cash thereto as contemplated by Section 3.2.3) for any losses, claims, damages, liabilities or expenses, including reasonable attorneys' fees, disbursements and related expenses, that the Indemnified Parties may incur or to which the Indemnified Parties may become subject in connection with any action, suit, proceeding or investigation brought by or threatened against one or more of the Indemnified Parties on account of any action or omission or breach of contract by the Distribution Trustee in its capacity as such, including actions or omissions with respect to the Disputed Claims; provided, however, that the Distribution Trust will not be liable to so indemnify any Indemnified Party for any losses, claims, damages, liabilities or expenses, including reasonable attorneys' fees, disbursements and related expenses, due to any action or omission or breach of contract by such Indemnified Party constituting bad faith, fraud, willful misconduct or gross negligence; provided further that (except as provided in the preceding proviso) nothing in this Section 8.3 will be deemed to restrict the Distribution Trustee's right to



receive an indemnity based on any act or omission taken in accordance with the provisions of this Agreement. Notwithstanding anything to the contrary in this Agreement, the Indemnified Parties will be entitled to obtain advances from the Distribution Expenses Trust Account to cover their expenses of defending themselves in any action brought against them as a result of the acts or omissions, actual or alleged, of the Distribution Trustee in its capacity as such.

Without limiting the generality or effect of the foregoing, within five Business Days after written request by an Indemnified Party (including the Distribution Trustee) to the Distribution Trustee and the Steering Committee, the Distribution Trustee will, in accordance with such request (but without duplication), from the Distribution Trust Expenses Account (taking into account transfers of Cash thereto as contemplated in Section 3.2.3) (a) pay such expenses on behalf of the Indemnified Party, (b) advance to the Indemnified Party Cash in an amount sufficient to pay such expenses, or (c) reimburse the Indemnified Party for such expenses; provided, however, that the Indemnified Party provides an undertaking to repay the amount so paid, advanced or reimbursed to the Distribution Expenses Trust Account upon the entry of a Final Order finding that such Indemnified Party was not entitled to indemnity under the provisions of this Section 8.3.

## **ARTICLE IX**

### **SELECTION, REMOVAL AND COMPENSATION OF THE DISTRIBUTION TRUSTEE**

9.1 Initial Distribution Trustee. The initial Distribution Trustee will be J.P. Morgan Trust Company, National Association.

9.2 Term of Service. The Distribution Trustee will serve until (a) termination of the Distribution Trust in accordance with this Agreement or (b) the Distribution Trustee's resignation or removal.

9.3 Removal of the Distribution Trustee. Any person serving as the Distribution Trustee may be removed at any time by a Final Order of the Bankruptcy Court. The removal will be effective on the date specified in such Final Order.

9.4 Resignation of the Distribution Trustee. The Distribution Trustee may resign at any time by giving the Bankruptcy Court at least 30 days' written notice of the Distribution Trustee's intention to do so. In the event of a resignation, the resigning Distribution Trustee (or the successor Distribution Trustee) will render to the Bankruptcy Court a full and complete accounting of monies and assets received, disbursed and held during the term of office of the resigning Distribution Trustee. The resignation will be effective on the latest of (a) the date specified in the notice; (b) the date that is 30 days after the date the notice is delivered; (c) the date the accounting described in the preceding sentence is delivered; and (d) the date the successor Distribution Trustee accepts its appointment as such. Notwithstanding the resignation of the Distribution Trustee pursuant to this Section 9.4, the rights of the resigning Distribution Trustee under Sections 8.2 and 8.3 with respect to acts or omissions occurring prior to the effectiveness of such resignation will continue for the benefit of such resigning Distribution Trustee following the effectiveness of such resignation.

9.5 Appointment of Successor Distribution Trustee. Prior to the resignation or removal of the Distribution Trustee, the Indenture Trustees and the PBGC together will (a) identify a successor Distribution Trustee to fill the vacancy and (b) request the Bankruptcy Court's approval of the identity and terms of engagement of such successor Distribution Trustee. To the extent the Indenture Trustees and the PBGC cannot agree on a successor Distribution Trustee, each Indenture Trustee and the PBGC will submit a proposed successor Distribution Trustee to the Bankruptcy Court, and the Bankruptcy Court will select the successor Distribution

Trustee from such proposals to fill the vacancy. Except as otherwise ordered by the Bankruptcy Court, any successor Distribution Trustee so appointed must consent to and accept in writing the terms of this Agreement and agree that the provisions of this Agreement are binding upon and inure to the benefit of the successor Distribution Trustee and all of such successor Distribution Trustee's heirs and legal and personal representatives, successors or assigns. If the Indenture Trustees and the PBGC do not make a request to appoint a successor Distribution Trustee within 30 days of the delivery of the notice of resignation to the Indenture Trustees and the PBGC, the resigning Distribution Trustee will have the right to request the Bankruptcy Court's approval of a successor Distribution Trustee.

9.6 Powers and Duties of Successor Distribution Trustee. A successor Distribution Trustee will have all the rights, powers, privileges and duties of its predecessor.

9.7 Trust Continuance. The resignation or removal of the Distribution Trustee will not terminate the Distribution Trust or revoke any existing agency created pursuant to this Agreement or invalidate any action theretofore taken by the Distribution Trustee.

9.8 Compensation and Costs of Administration. The Distribution Trustee will receive fair and reasonable compensation for its services, which will be a charge against and paid out of the Distribution Trust Expenses Account. The Distribution Trustee's fees are as set forth in the Engagement Letter. In addition, all reasonable costs, expenses and obligations incurred by the Distribution Trustee in administering the Distribution Trust, in carrying out its other responsibilities under this Agreement or in any manner connected, incidental or related thereto (including the cost of professionals that may, in accordance with this Agreement, be employed by the Distribution Trustee) will be paid, at the direction of the Distribution Trustee, from the Distribution Trust Expenses Account. The terms of the Engagement Letter are incorporated

herein by reference and for all purposes are deemed to be an integral part of this Agreement to the same extent as if restated in full herein.

## **ARTICLE X**

### **MAINTENANCE OF RECORDS; REPORTING**

10.1 Books and Records. The Distribution Trustee will maintain books and records containing a description of all property from time to time constituting the Distribution Trust Assets (which assets will be valued consistently for all federal income Tax purposes), taking into account any changes to the Distribution Trust Assets existing immediately prior to the Effective Date and scheduled on Exhibit B, and an accounting of all receipts and disbursements. Such books and records will be open to inspection by any Beneficiary or the Bankruptcy Court at any reasonable time during normal business hours. The fiscal year of the Distribution Trust will be the calendar year.

10.2 Reports to be Filed with the Bankruptcy Court.

10.2.1 Quarterly Reports. Within 45 days after the end of each of the first three calendar quarters of each calendar year, the Distribution Trustee, on behalf of the Distribution Trust, will File a Quarterly Receipts/Disbursements Report with the Bankruptcy Court.

10.2.2 Annual Reports. Within 90 days after the end of each calendar year, the Distribution Trustee, on behalf of the Distribution Trust, will File an Annual Receipts/Disbursements Report with the Bankruptcy Court.

10.2.3 Current Reports. In the event of developments affecting the Distribution Trust in any material respect (as determined by the Distribution Trustee in its reasonable discretion), the Distribution Trustee, on behalf of the Distribution Trust, will File promptly with the Bankruptcy Court a Current Report.

10.2.4 Form of Reports. Any report required by this Section 10.2 will be in such form as required or approved by the United States Trustee.

10.2.5 Reports Available on Request. The Distribution Trustee will furnish or otherwise make available to any then-current Beneficiary, upon written request, a copy of: (a) the most recent Annual Receipts/Disbursements Report; (b) any Quarterly Receipts/Disbursements Report for any period subsequent to the period covered by the most recent Annual Receipts/Disbursements Report (or, if no Annual Receipts/Disbursements Report has yet been Filed, for any period subsequent to the Effective Date); or (c) any Current Report Filed subsequent to the period covered by the most recent Annual Receipts/Disbursements Report (or, if no Annual Receipts/Disbursements Report has yet been Filed, subsequent to the Effective Date).

10.3 Compliance with Federal Securities Laws. The parties hereto do not anticipate that the Distribution Trust will be required to comply with the registration and reporting requirements of the Securities Exchange Act of 1934, as amended, or the Investment Company Act of 1940, as amended. However, if following the Effective Date the Distribution Trustee determines, based on the advice of counsel, that the Distribution Trust is required to comply with the registration and reporting requirements of the Securities Exchange Act of 1934, as amended, or the Investment Company Act of 1940, as amended, then the Distribution Trustee will take any and all actions to comply with such requirements.

10.4 Tax Returns and Payments.

10.4.1 General. The Distribution Trustee will be responsible for filing all foreign, U.S. federal, state and local Tax returns for the Distribution Trust and the Debtors and for the timely preparation and distribution to the Beneficiaries of any necessary foreign, U.S.

federal, state or local information returns. Notwithstanding anything to the contrary in this Agreement, the Distribution Trustee will not be obligated to deliver any such information returns to holders of Disputed Claims in their capacity as such.

10.4.2 Pending Payments. The Distribution Trustee will timely file Tax returns for the Trust Accounts as a grantor trust and/or a liquidating trust under Treasury Regulations section 1.671-1(a) and/or Treasury Regulations section 301.7701-4(d) and related regulations with respect to Pending Payments. Pursuant to such provisions, for federal income Tax purposes the Distribution Trustee will allocate to Beneficiaries entitled to receive Pending Payments, their pro rata shares of any income or loss of the Trust Accounts, and such Beneficiaries will be subject to Tax on the Trust Accounts' taxable income on a current basis.

10.4.3 Trust Accounts Exclusive of Pending Payments. With respect to the Trust Accounts (excluding amounts constituting Pending Payments), the Distribution Trustee will timely (a) file such income Tax and other returns and statements as are required to comply with (i) the applicable provisions of the Internal Revenue Code and the Treasury Regulations promulgated thereunder, including the requirements set forth in Proposed Treasury Regulations section 1.468B-9(c)(1), and (ii) any applicable state and local law and the regulations promulgated thereunder and (b) pay from the applicable Trust Account any Taxes reported as owing on such returns and statements.

## **ARTICLE XI**

### **DURATION OF THE DISTRIBUTION TRUST**

11.1 Duration. The Distribution Trust will become effective upon the Effective Date. Thereupon, the Distribution Trust and its provisions herein will remain and continue in full force and effect until the Distribution Trust is terminated as contemplated in this Article XI.

11.2 Termination Upon Distribution of All Distribution Trust Assets. The Distribution Trustee will liquidate (including objecting to Claims and determining the proper recipients and amounts of distributions to be made from the Distribution Trust) and distribute the Distribution Trust Assets to the Beneficiaries that are determined to hold Allowed Claims and take such steps as are necessary, appropriate or desirable to close the Bankruptcy Cases. Upon (a) the payment of all costs, expenses and obligations incurred in connection with administering the Distribution Trust; (b) the distribution of all remaining Distribution Trust Assets and/or proceeds therefrom in accordance with the provisions of the Plan, the Confirmation Order and this Agreement; (c) the closure of the Bankruptcy Cases; and (d) the completion of any necessary or appropriate reports, Tax returns or other documentation, the Distribution Trust will terminate and the Distribution Trustee will have no additional responsibility in connection therewith except as may be required to effectuate such termination under relevant law and except as described in Section 11.4.

11.3 Termination After Two Years. If the Distribution Trust has not been previously terminated pursuant to Section 11.2, on the second anniversary of the Effective Date, unless otherwise extended by the Bankruptcy Court due to the Distribution Trust's necessity to complete its claims resolution and liquidating purpose, and provided such extension does not adversely affect the status of the Distribution Trust for federal income Tax or federal securities law purposes, the Distribution Trustee will distribute all of the Distribution Trust Assets to the Beneficiaries in accordance with the Plan and this Agreement. Immediately after (a) the payment of all costs, expenses and obligations incurred in connection with administering the Distribution Trust; (b) the distribution of all remaining Distribution Trust Assets and/or proceeds therefrom in accordance with the provisions of the Plan, the Confirmation Order and this

Agreement; (c) the closure of the Bankruptcy Cases; and (d) the completion of any reports, Tax returns or other documentation determined by the Distribution Trustee, in its reasonable discretion, to be necessary, appropriate or desirable, the Distribution Trust will terminate and the Distribution Trustee will have no further responsibility in connection therewith except as may be required to effectuate such termination under relevant law and except as described in Section 11.4. The Distribution Trustee will have the right to apply to the Bankruptcy Court to extend the term of the Distribution Trust as contemplated above if the Distribution Trustee determines, in its reasonable discretion, that such extension is necessary to enable the Distribution Trust to complete its resolution and liquidating purpose.

11.4 Other Termination Procedures. The Distribution Trustee will at all times endeavor to liquidate expeditiously the Distribution Trust Assets, and in no event will the Distribution Trustee unduly prolong the duration of the Distribution Trust. On termination of this Distribution Trust, the Distribution Trustee will advise the Bankruptcy Court in writing of the Distribution Trust's termination. Notwithstanding the foregoing, after the termination of the Distribution Trust, the Distribution Trustee will have the power to exercise all the powers, authorities and discretion herein conferred solely for the purpose of liquidating and winding up the affairs of the Distribution Trust. For a period of five years after the distribution of all of the Distribution Trust Assets, the Distribution Trustee will retain the books, records and files that have been delivered to or created by the Distribution Trustee, at which time the Distribution Trustee may dispose of such books, records and files in any manner that the Distribution Trustee deems appropriate.



11.5 No Reversions. Notwithstanding anything to the contrary in the Plan or this Agreement, in no event will any of the Distribution Trust Assets revert to the Debtors upon termination of the Distribution Trust.

## **ARTICLE XII**

### **MISCELLANEOUS**

#### 12.1 Limitation on Transferability.

12.1.1 No Transfer of Beneficial Interests. Except as otherwise expressly provided in the Plan, it is understood and agreed that the beneficial interests in the Distribution Trust will be non-transferable during the term of this Agreement except with respect to a transfer by will or under the laws of descent and distribution. Such transfers will not be effective until appropriate written notification and proof thereof is submitted to the Distribution Trustee, and the Distribution Trustee may continue to pay all amounts to or for the benefit of the Beneficiaries until receipt of proper written notification and proof of any such transfer. The Distribution Trustee may rely upon such written proof without the requirement of any further investigation.

12.1.2 No Assignment. Neither the Debtors nor the Distribution Trustee may assign this Agreement without the prior written consent of the other.

12.2 Notices. All notices to be given to Beneficiaries may be given by regular mail, electronic transmission or delivered personally, to the holders at the addresses appearing on the books kept by the Distribution Trustee. Any notice or other communication which may be or is required to be given, served or sent to the Debtors, the Distribution Trustee, the Creditors' Committee or United States Trustee will be in writing and will be sent by registered or certified mail, return receipt requested (postage prepaid), transmitted electronically, sent by hand delivery or sent by facsimile (if receipt is confirmed), addressed as follows:

1. The Debtors:

John Donnan, Esq.  
General Counsel  
KAISER ALUMINUM CORPORATION  
~~5847 San Felipe~~27442 Portola Parkway, Suite  
~~2500~~350  
~~Houston, Texas 77057~~  
Foothill Ranch, California 92610  
Facsimile: ~~(713) 332-4605~~(949) 614-1930

Daniel J. DeFranceschi, Esq.  
RICHARDS, LAYTON & FINGER, P.A.  
One Rodney Square  
P.O. Box 551  
Wilmington, Delaware 19899  
Facsimile: (302) 651-7701

Gregory M. Gordon, Esq.  
Henry L. Gompf, Esq.  
Daniel P. Winikka, Esq.  
JONES DAY  
2727 N. Harwood Street  
Dallas, Texas 75201  
Facsimile: (214) 969-5100

(Counsel to the Debtors)

2. The Distribution Trustee:

Jeffrey A. Ayres  
Vice President  
JPMORGAN INSTITUTIONAL TRUST SERVICES  
1111 Polaris Parkway  
Suite 1F Mail Code OH1-1234  
Columbus, Ohio 43240  
Facsimile: (614) 213-5384

Michael J. Small, Esq.  
FOLEY & LARDNER LLP  
321 North Clark  
Suite 2800  
Chicago, Illinois 60610  
Facsimile: (312) 832-4700

3. The Creditors' Committee:

Lisa G. Beckerman, Esq.  
AKIN GUMP STRAUSS HAUER & FELD LLP  
590 Madison Avenue  
New York, New York 10022  
Facsimile: (212) 872-1002

William P. Bowden, Esq.  
ASHBY & GEDDES  
222 Delaware Avenue  
P.O. Box 1150  
Wilmington, Delaware 19899  
Facsimile: (302) 654-2067

(Counsel to the Creditors' Committee)

4. The United States Trustee:

Frank J. Perch, Esq.  
OFFICE OF THE UNITED STATES TRUSTEE  
District of Delaware  
844 King Street, Suite 2313  
Lockbox 35  
Wilmington, Delaware 19801  
Facsimile: (302)543-6497

or to such other address as may from time to time be provided in a written notice to each party.

12.3 No Bond. Notwithstanding any state law to the contrary, the Distribution Trustee (including any successor) and the Disbursing Agent will be exempt from giving any bond or other security in any jurisdiction.

12.4 Governing Law; Submission to Jurisdiction; Service of Process. This Agreement will be construed in accordance with and governed by the internal substantive law of

the State of Delaware regardless of the laws that might otherwise govern under principles of conflict of laws applicable thereto. The Bankruptcy Court will have exclusive jurisdiction over any dispute arising out of or in connection with the transactions contemplated by this Agreement. The parties to this Agreement consent to the exclusive jurisdiction of the Bankruptcy Court (and of the appropriate appellate courts therefrom) in any such dispute and irrevocably waive, to the fullest extent permitted by law, any objection that they may now or hereafter have to the laying of the venue of any such dispute in the Bankruptcy Court or that any such dispute brought in the Bankruptcy Court has been brought in an inconvenient forum. This Agreement is subject to any order or act of the Bankruptcy Court applicable hereto. Process may be served on any party anywhere in the world, whether within or without the jurisdiction of any court to which the parties have submitted herein. Without limiting the foregoing, each party to this Agreement agrees that service of process on that party may be made upon the designated Person at the address provided in Section 12.2 and will be deemed to be effective service of process on that party.

12.5 Successors and Assigns. This Agreement will inure to the benefit of and will be binding upon the parties hereto and their respective successors and permitted assigns.

12.6 No Execution. All funds in the Distribution Trust will 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 Distribution Trust Assets or the Distribution Trust in any manner or compel payment from the Distribution Trust except by order of the Bankruptcy Court. Payment will be solely governed by the Plan and this Agreement.

12.7 Amendment. This Agreement may be amended only by order of the Bankruptcy Court.

12.8 Severability. If any term, provision, covenant or restriction contained in this Agreement is 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 will remain in full force and effect and will in no way be affected, impaired or invalidated.

[Remainder of page intentionally left blank]

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

**ALPART JAMAICA INC.**

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By:  
Its:

**KAISER JAMAICA CORPORATION**

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By:  
Its:

**J.P. MORGAN TRUST COMPANY, NATIONAL ASSOCIATION,**  
as Distribution Trustee

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By:  
Its:

**ENGAGEMENT LETTER**

See attached engagement letter.

**LIST OF DISTRIBUTION TRUST ASSETS**

- (1) Cash: Cash in the amount of \$\_\_\_\_\_.
- (2) Certain Contractual Rights: Rights of the Debtors under the Intercompany Claims Settlement and the Alpart Purchase Agreement.
- (3) Unknown Causes of Action: Unknown causes of action of the Debtors not released by the Plan.



**CERTAIN PERMITTED INVESTMENTS**

**JPMORGAN'S Collateralized Money Market Account**

Financial transaction structures often require that the trustee or escrow agent hold cash for various purposes, e.g. reserve or collection accounts. Usually the escrow agent or trustee invests these funds in AAA-rated money market funds or certain other investments having the necessary liquidity, which are specified as permitted or eligible investments in the governing documents, and which are specifically selected by the party for whose benefit they are held.

JPMorgan offers a variation on these investments: its own Money Market Account product. JPMorgan establishes a money market account for each required account and agrees to pay a specified compensation for its maintenance of the balance of funds involved. This permits instant, seamless investment and liquidity without fees or expenses.

**Liquidity**

Funds are not held in a third party investment and are liquid. There is a restriction of six withdrawals per account each month.

**Safety**

The funds are recorded in a segregated money market account on the corporate trust ledger. They would share in the highest priority (after liquidation expenses) in the assets of JPMorgan (which exceed \$700 billion; money market account assets currently exceed \$60 billion) in the unlikely event of the Bank's liquidation. In addition, balances are 100% collateralized by full faith and credit obligations of the U.S. Government. Also, there is no operational risk of failed trades as there is in making and liquidating third party investments.

**Competitive Return**

Balances maintained are compensated at an attractive rate of return based upon the average monthly balance. They are not assessed maintenance fees or investment fees. While JPMorgan reserves the right to change the rate of return at any time, parties to financial transactions normally retain the right to redirect their funds to other investments if the return on JPMorgan's Money Market Account Product is deemed noncompetitive.

**Control**

Money market accounts are under the direct supervision of an administration officer assigned to the relationship.