

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re:	)	Chapter 11
	)	
MIDWEST BANC HOLDINGS, INC., <sup>1</sup>	)	Case No. 10-37319
	)	
Debtor.	)	Judge A. Benjamin Goldgar

**DISCLOSURE STATEMENT WITH RESPECT TO FIRST AMENDED JOINT PLAN  
OF LIQUIDATION OF MIDWEST BANC HOLDINGS, INC.**

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Dated: March 24, 2011

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<sup>1</sup> The Debtor in this chapter 11 case, along with the last four digits of the Debtor's tax identification number is Midwest Banc Holdings, Inc. (2484). The service address for the Debtor is 54 South Washington Street, Suite 1, Hinsdale, Illinois 60521-4161.

## I. INTRODUCTION

The Official Committee of Unsecured Creditors (the “*Committee*”) and Midwest Banc Holdings, Inc. (the “*Debtor*”) (the Debtor and the Committee will be referred to, together, as the “*Plan Proponents*”) submit this disclosure statement (the “*Disclosure Statement*”) to holders of Claims against and Interests in the Debtor in connection with the solicitation of acceptances of the First Amended Joint Plan of Liquidation dated March 24, 2011 (as the same may be amended, the “*Plan*”). Unless otherwise defined herein, all capitalized terms contained herein have the respective meanings assigned to them in the Plan.

This Disclosure Statement describes certain aspects of the Plan, the Debtor’s chapter 11 case (the “*Case*”), the Debtor’s liquidation and wind-down and the formation and operation of a Creditor Trust that will be charged with: (i) liquidating the Debtor’s remaining assets; (ii) pursuing claims and Causes of Action on behalf of the Debtor’s unsecured Creditors; (iii) analyzing and reconciling Claims that have been filed against the Debtor’s Estate; and (iv) making distributions on account of Allowed Claims in accordance with the Plan and the Creditor Trust Agreement entered into with respect thereto. For a complete understanding of the Plan, you should read the Disclosure Statement, the Plan and the exhibits and schedules thereto, in their entirety.

The Plan Proponents believe that confirmation of the Plan is in the best interests of all parties, including the Debtor’s Creditors and Estate. Accordingly, the Plan Proponents urge each Creditor that is Impaired hereunder, and entitled to vote with respect to the Plan, to vote to accept the Plan. Detailed voting instructions are set forth in Section III.A. of this Disclosure Statement. To be counted, ballots must be filed with the Clerk of Court by no later than 5:00 p.m. (Central Time) on April 22, 2011.

The Plan provides for the liquidation of the Debtor's assets in a manner designed to maximize recoveries to all Creditors. The Plan contemplates the formation of a Creditor Trust that will take title to and liquidate substantially all of the Debtor's property shortly after the Effective Date of the Plan, including, but not limited to, Cash, real estate, furniture, fixtures, investments, accounts, equipment, any other tangible or intangible personal property, Causes of Action, and any and all proceeds of the foregoing. The Creditor Trust will be charged with liquidating such assets and paying Allowed Claims pursuant to the Plan. The Debtor's existing Equity Securities will be cancelled under the Plan, and the Debtor's Equity Security Holders will receive no distributions on account of their existing Interests in the Debtor.

**NO REPRESENTATIONS CONCERNING THE DEBTOR ARE AUTHORIZED BY THE PLAN PROPONENTS OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT. ANY REPRESENTATIONS OR INDUCEMENTS MADE TO SECURE YOUR ACCEPTANCE THAT ARE OTHER THAN AS CONTAINED IN THIS DISCLOSURE STATEMENT SHOULD NOT BE RELIED UPON BY YOU IN ARRIVING AT YOUR DECISION. ANY NON-COMMITTEE OR NON-DEBTOR REPRESENTATIONS OR INDUCEMENTS SHOULD BE REPORTED TO COUNSEL FOR THE COMMITTEE OR THE DEBTOR, WHO IN TURN SHALL DELIVER SUCH INFORMATION TO THE COURT FOR SUCH ACTION AS MAY BE DEEMED APPROPRIATE.**

**THE INFORMATION CONTAINED HEREIN HAS NOT BEEN AUDITED BY AN INDEPENDENT REGISTERED PUBLIC ACCOUNTANT. HOWEVER, THE DATA IN THE PLAN PROPONENTS' POSSESSION WAS OBTAINED FROM SOURCES CONTAINED IN THE BOOKS AND RECORDS OF THE DEBTOR, WHICH THE**

**DEBTOR STIPULATES HAVE BEEN MAINTAINED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES, AS APPLIED TO INTERIM FINANCIAL STATEMENTS, IN ALL MATERIAL RESPECTS.**

**THE PLAN PROPONENTS ARE UNABLE TO WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED HEREIN IS WITHOUT ANY INACCURACY, ALTHOUGH DUE CARE HAS BEEN TAKEN TO PRESENT FAIRLY THE CURRENT FINANCIAL POSITION OF THE DEBTOR.**

**FOR THE CONVENIENCE OF HOLDERS OF CLAIMS AND INTERESTS, THIS DISCLOSURE STATEMENT SUMMARIZES THE TERMS OF THE PLAN, BUT THE PLAN ITSELF QUALIFIES ALL SUMMARIES. IF ANY INCONSISTENCY EXISTS BETWEEN THE PLAN AND THE DISCLOSURE STATEMENT, THE TERMS OF THE PLAN ARE CONTROLLING. SUMMARIES OF CERTAIN PROVISIONS OF AGREEMENTS REFERRED TO IN THIS DISCLOSURE STATEMENT DO NOT PURPORT TO BE COMPLETE, AND ARE SUBJECT TO AND QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO, THE FULL TEXT OF THE APPLICABLE AGREEMENTS.**

**THIS DISCLOSURE STATEMENT IS PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE SO AS TO PROVIDE “ADEQUATE INFORMATION” TO THE CREDITORS IN THIS PROCEEDING. ANY PLAN WILL BE COMPLEX, ESPECIALLY SINCE IT REPRESENTS A PROPOSED LEGALLY BINDING AGREEMENT, AND ANY INTELLIGENT JUDGMENT CONCERNING ANY PROPOSED PLAN CANNOT BE MADE WITHOUT FULLY UNDERSTANDING THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT AND THE**

**SPECIFIC TERMS OF THE PLAN PROPOSED HEREIN. THIS DISCLOSURE STATEMENT IS NOT INTENDED TO TAKE THE PLACE OF THE PLAN. EACH CREDITOR IS URGED TO STUDY THE PLAN IN FULL AND TO CONSULT WITH THEIR COUNSEL WITH RESPECT TO THE PLAN, ITS TAX IMPLICATION(S) AND ITS EFFECT ON HIS, HER OR ITS RIGHTS.**

**THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF STATEMENTS CONTAINED THEREIN.**

Any Creditor having questions regarding the Plan or the Disclosure Statement may contact counsel for either of the Plan Proponents:

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*Counsel to Debtor and Debtor-in-Possession*

The cost of distributing the Plan and Disclosure Statement as well as the costs, if any, of soliciting acceptances, will be paid from property of the Estate, as defined in the Plan and as allowed by the Bankruptcy Court. The Professional Fees of the Debtor's counsel and the Committee's counsel are not contingent upon the acceptance of the Plan, and are payable as a cost of administration, upon Bankruptcy Court approval.

Local Bankruptcy Rule 3016-1 requires the Plan Proponents to file a summary of the Plan (the "*Summary*") that sets forth the nature of the Plan and provides a description of the proposed treatment of each class, showing total dollar amounts and timing of payments to be made under the Plan and all sources and amounts of funding thereof. The Summary must also plainly identify all classes, the composition of each class (as to number and type of creditors), the amount of claims (specifying any that are known to be disputed and how they will be treated under the plan) and the amount (dollar and/or percentages) to go to each class. The Plan Proponents therefore, submit the following Summary.

## II. SUMMARY OF THE PLAN

<b><u>General Overview of the Plan</u></b>	
<b>Plan</b>	First Amended Joint Plan of Liquidation Dated March 24, 2011
<b>Plan Proponents</b>	The Committee and the Debtor. The Committee consists of the following holders of General Unsecured Claims: (i) Bowne & Co., Inc.; (ii) Daniel R. Kadolph; (iii) MBHI Capital Trust IV; and (iv) David Peck.
<b>General Purpose</b>	The Plan contemplates payment of the sum of \$785,000.00 to the holders of Class 3B Claims and the assignment of certain causes of action in satisfaction of the Class 3C Claim. Substantially all of the Debtor's remaining assets would be transferred to the Creditor Trust for the benefit of holders of Claims. The holders of Allowed Class 3A and 4 Claims shall share in the assets of the Creditor Trust, but only to the extent provided in the Plan. The provisions of

	the Creditor Trust and the Plan shall be implemented under the direction of the Creditor Trustee.
<b><u>Summary of Claims</u></b>	
<b>Administrative Claims</b>	<p>Administrative Claims consist of two subcategories: (i) Allowed Professional Fee Claims; and (ii) Allowed Other Administrative Expense Claims.</p> <p>Allowed Professional Fee Claims consist of the Allowed Administrative Expenses of Professional Persons, including attorneys and accountants retained by the Debtor or the Committee, or to be compensated pursuant to sections 327, 328, 330, 331, 363, 503 or 1103 of the Bankruptcy Code.</p> <p>Allowed Other Administrative Expense Claims consist of expenses which are or become allowed under section 503(b) of the Bankruptcy Code, other than Allowed Professional Fee Claims, which are entitled to priority under section 507(a)(2) of the Bankruptcy Code, and shall include: (i) any actual and necessary costs and expenses of preserving the Estate; (ii) all fees and charges properly assessed against the Estate pursuant to 28 U.S.C. § 1930; and (iii) the costs and expenses incurred by the indenture trustees appointed with respect to five statutory trusts that are included in Class 4.</p> <p>The holders of Allowed Professional Fee Claims will be paid in full within ten (10) days of such Claims becoming Allowed Professional Fee Claims.</p> <p>The holders of Allowed Other Administrative Expense Claims will be paid in full on the later of: (i) as soon as practicable following the Effective Date; (ii) thirty (30) days after such Claims become Allowed Other Administrative Expense Claims; (iii) the date upon which such Allowed Other Administrative Expense Claims become due in the ordinary course of business; and (iv) such other time as may be agreed to by the Distributing Party and the holder of the Allowed Other Administrative Expense Claim.</p> <p>The Plan Proponents estimate that unpaid Allowed Professional Fee Claims will not exceed \$522,500.00 for Professionals of both the Debtor and the Committee as of the Confirmation Date. This estimate consists of: (i) \$22,500.00 that will be owing to Crowe Horwath, an accounting firm retained to assist the Debtor with preparation of tax returns; (ii) \$250,000.00 that will be</p>

	<p>owing to the Debtor's attorneys; and (iii) \$250,000.00 that will be owing to the Committee's attorneys.</p> <p>The Plan Proponents estimate that unpaid Allowed Other Administrative Expense Claims will not exceed \$200,000.00 as of the Confirmation Date. The projected total consists primarily of claims that have been asserted by the trustees appointed with respect to the trust preferred securities that are included in Class 4.</p>
<b>Priority Tax Claims</b>	<p>Priority Tax Claims consist of Unsecured Claims of a governmental unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.</p> <p>The holders of Allowed Priority Tax Claims will be paid in full on the later of: (i) as soon as practicable following the Effective Date; (ii) thirty (30) days after such Claims become Allowed Priority Tax Claims; and (iii) such other time as may be agreed to by the Distributing Party and the holder of the Allowed Priority Tax Claim, in accordance with sections 507(a)(8) and 1129(a)(9)(C) of the Bankruptcy Code.</p> <p>The IRS has filed a proof of claim by which it has asserted a Priority Tax Claim in the amount of \$1,300.00, and the Delaware Secretary of State has filed a proof of claim asserting priority in the amount of \$114,410.96. Work is continuing on tax matters, but the Debtor does not believe that it owes any federal taxes and that the IRS claim was filed as a reservation of rights. The Plan Proponents do not believe that the Delaware Secretary of State's Claim is entitled to priority and estimate that Allowed Priority Tax Claims will not exceed \$1,300.00 as of the Confirmation Date.</p>
<b>Priority Claims</b>	<p>Priority Claims (<u>Class 1</u>) consist of Unsecured Claims, other than Administrative Claims or Priority Tax Claims, that are entitled to priority in payment under section 507(a) of the Bankruptcy Code. With respect to the Claims of employees or former employees, such Claims shall constitute Priority Claims only to the extent permissible under sections 507(a)(4) and (a)(5) of the Bankruptcy Code or prior order of the Bankruptcy Court.</p> <p>Allowed Priority Claims are unimpaired under the Plan. The holders of Allowed Priority Claims will be paid in full on the later of: (i) as soon as practicable following the Effective Date; (ii) thirty (30) days after such Claims</p>



	<p>become Allowed Priority Claims; and (iii) such other time as may be agreed to by the Distributing Party and the holder of the Allowed Class 1 Priority Claim.</p> <p>The Plan Proponents estimate Allowed Priority Claims will be \$0.00 as of the Confirmation Date.</p>
<b>Secured Claims</b>	<p>Secured Claims of M&amp;I (<u>Class 2</u>) consist of Claims of M&amp;I that are secured by M&amp;I's Lien on the M&amp;I Collateral.</p> <p>The Plan provides for the voluntary surrender of the M&amp;I Collateral in full and final satisfaction of the M&amp;I's Secured Claim, and Class 2 is Impaired under the Plan.</p> <p>M&amp;I shall have an Allowed Deficiency Claim to the extent that its Allowed Claim based on the M&amp;I Senior Notes is not and Allowed Secured Claim. As a General Unsecured Claim, M&amp;I's Allowed Deficiency Claim will be included in Class 3.</p> <p>The Plan Proponents believe that the M&amp;I Collateral is without value and that its entire Allowed Claim based on the M&amp;I Senior Notes will be an allowed Deficiency Claim. The Plan Proponents' conclusion is based upon the following considerations: (i) By reason of the FDIC receivership the MBTC stock is without value; and (ii) M&amp;I's Lien on the RAC Tax Refund is subject to avoidance and is therefore also without value.</p> <p>There are no other Secured Claims against the Debtor.</p>
<b>Class 3A - General Unsecured Claims</b>	<p>General Unsecured Claims (<u>Class 3A</u>) include any Unsecured Claim that is not a Professional Fee Claim, Other Administrative Expense Claim, Unsecured Priority Tax Claim, Class 1 Claim, Class 2 Claim, Class 3B Claim, Class 3C Claim, Class 4 Claim or Class 5 Interest. General Unsecured Claims shall include M&amp;I's Deficiency Claim with respect to the M&amp;I Notes.</p> <p>General Unsecured Claims are Impaired under the Plan. The holders of Allowed General Unsecured Claims will receive their Pro Rata share of Creditor Trust Assets in accordance with the Plan and the Creditor Trust Agreement.</p> <p>At this time, the Plan Proponents are unable to determine the amounts that will be distributed to holders of General Unsecured Claims with certainty.</p> <p>As of the January 31, 2011 deadline for non-governmental Creditors to file proofs of claim, Claims in excess of \$175</p>

	<p>million had been filed. The largest proof of claim is M&amp;I's, which is in the amount of \$83,493,662. M&amp;I's proof of claim is for all amounts alleged to be owing to M&amp;I, including \$15,767,122 that is attributable to the M&amp;I Subordinated Note and \$67,726,460 that is attributable to the M&amp;I Senior Notes. According to the Debtor's books and records, the balance owing on account of the M&amp;I Senior Notes as of the Petition Date was \$65,847,224.</p> <p>On the basis of the Debtor's books and records and the filed proofs of claim, the Plan Proponents believe that Class 3A Claims will be Allowed in an amount of not more than \$70 million. Although the Plan provides for the retention of substantially all Causes of Action belonging to the Estate or the Debtor, the Plan Proponents have not identified significant value in such rights and have therefore not assumed any recoveries for the purpose of estimating distributions. Based on the Debtor's estimates, the Creditor Trust Assets will be worth approximately \$8.5 million as of the Effective Date. Assuming costs of liquidation and administration of 15%, the Creditor Trustee will distribute approximately \$7,225,000.00 to the holders of Allowed Class 3A Claims for an estimated rate of return slightly in excess of 10%.</p>
<p><b>Class 3B – Unsecured Employee Claims</b></p>	<p>Class 3B consists of the Unsecured Claims of former employees, officers, and directors arising out of their prior relationship with the Debtor, including claims under the SERP and other employment-related contracts and claims for indemnification.</p> <p>After those of M&amp;I and the FDIC, the most significant proofs of claim are those filed by former executives and other employees. After discounting apparently duplicate claims, the total is approximately \$7,950,000.</p> <p>A number of these individuals' Claims are apparently based on the theory that the FDIC's actions resulted in a change in control for purposes of certain employment-related contracts. The Debtor has indicated that it does not agree with this interpretation, and Claims based on allegations of a change in control may be subject to objection. As of the Petition Date, the Debtor had identified a number of former executives whose Claims should be Allowed, and estimated the total of such Claims to be not more than \$5 million.</p> <p>Four of the timely filed proofs of claim asserted that the claims were entitled to priority in the amount of \$11,725.00. Two such forms were filed by the same</p>

	<p>individual and it is presumed that there was no intention to assert two separate bases for these priority amounts, bringing the total of employee priority claims timely filed to \$35,175.00. Additionally, a proof of claim filed on February 7, 2011 asserted priority status in the amount of \$750,000.00.</p> <p>The Debtor does not believe that any of the former executives' and other employees' claims are entitled to priority. In part, the Debtor does not believe that any of the proofs of claim were filed by individuals who might have been employed by the Debtor in the six months prior to the Petition Date, which is the relevant period for determining whether an employee's claim is entitled to priority. Furthermore, the Debtor asserts that it was current on all employment-related obligations as of the Petition Date. To the extent that any of these claims are allowable, therefore, they are not of the sort that might support a claim of priority.</p>
<b>Class 3C – FDIC Claims</b>	<p>Class 3C consists of all claims that may be asserted by the FDIC, including, but not limited to, such claims as the FDIC may have in its capacity as receiver of MBTC and any claims otherwise arising out of or related to any regulatory action with respect to MBTC. Without limiting the generality of the foregoing, Class 3C includes those claims arising out of or related to the North Roselle Property or any alleged rights regarding recovery of dividends declared and paid by MBTC to the Debtor at any time.</p> <p>The next largest filed proof of claim is in the amount of \$20 million and was filed by the FDIC on the grounds that the Debtor received unlawful dividends from MBTC. The Plan Proponents have not been able to evaluate whether or to what extent the FDIC Claim should be Allowed. The FDIC has also indicated that its investigation is ongoing and that it may assert additional Claims.</p>
<b>Class 4 – Subordinated Claims</b>	<p>Class 4 Claims include the: (i) Allowed Claims of the RCT Trustee with respect to the RCT Debt Securities; (ii) the Allowed Claims of the NST Trustee with respect to the NST Debt Securities; (iii) the Allowed Claims of the MBHI III Trustee with respect to the MBHI III Notes; (iv) the Allowed Claims of the MBHI IV Trustee with respect to the MBHI IV Securities; (v) the Allowed Claims of the</p>

	<p>MBHI V Trustee with respect to the MBHI V Debentures; and (vi) the Allowed Claims of M&amp;I with respect to the M&amp;I Subordinated Note.</p> <p>Claims in the aggregate amount of \$63,873,052 have been filed on account of Subordinated Trust Interests. Together with that portion of M&amp;I's Claim based on the M&amp;I Subordinated Note, Claims in an aggregate amount in excess \$79 million have been filed on account of Class 4 Claims. In addition to the filed Claims, the Debtor scheduled an additional Class 4 Claim in the amount of \$9,700,752.</p> <p>Class 4 Claims are Impaired under the Plan. The holders of Allowed Class 4 Claims will receive their Pro Rata share of Creditor Trust Assets in accordance with the Plan and the Creditor Trust Agreement.</p> <p>All of the Class 4 Claims are expressly subordinated to various other types of Claims, including those arising under the M&amp;I Senior Notes. By operation of the applicable subordination provisions and section 510 of the Bankruptcy Code, the Plan and the Creditor Trust Agreement provide for distributions on account of Class 4 Claims only after M&amp;I's Allowed Deficiency Claim has been paid in full. The Plan Proponents do not project that M&amp;I will receive recover the full amount of its Allowed Deficiency Claim and therefore do not project that any distributions will be made on account of Class 4 Claims.</p>
<p><b>Equity Securities</b></p>	<p>Equity Securities (<u>Class 5</u>) consist of Interests held by Equity Security Holders, which include:</p> <p>(i) Series A Preferred. As of the Petition Date, there were 310,059 depositary shares outstanding, each representing 1/100th of a Share of Series A Noncumulative Redeemable Convertible Preferred Stock. The depositary shares have a \$25.00 liquidation preference, for an aggregate of approximately \$7.8 million, and were registered under Section 12(b) of the Securities Exchange Act of 1934 (the "<i>Act</i>").</p> <p>(ii) Series G Preferred. On March 8, 2010, the U.S. Treasury exchanged the 84,784 shares of Series T preferred stock, having an aggregate approximate liquidation preference of \$84.8 million, plus approximately \$4.6 million in cumulative dividends not declared or paid on such preferred stock, for a new series of fixed rate cumulative mandatorily convertible preferred stock, Series G, with an aggregate liquidation preference of</p>

	<p>approximately \$89.4 million. The U.S. Treasury also holds a warrant to purchase 4,282,020 shares of common stock.</p> <p>(iii) Common. The Debtor has approximately 38 million shares of common stock issued and outstanding, together with all related rights, including, but not limited to rights under options and warrants not otherwise classified. The Debtor's common stock was registered under Section 12(g) of the Act.</p> <p>Equity Security Holders will neither receive nor retain any property under the Plan, and all Equity Securities will be cancelled on the Effective Date. Equity Security Holders, therefore, are an Impaired class of Interests.</p>
<b><u>Implementation of Plan</u></b>	
<b>Funding</b>	<p>The Plan will be funded by the orderly liquidation of all Creditor Trust Assets. Distributions will be made by the Distributing Party on the Effective Date or as soon as reasonably practicable thereafter pursuant to the terms of the Plan and the Creditor Trust Agreement.</p>
<b>Effective Date</b>	<p>The Effective Date will be a date after the occurrence of: (i) the Court entering the Confirmation Order, which shall be in full force and effect and shall not have been vacated, amended, modified or stayed, and if it is the subject of any appeal, reconsideration or other review, no stay of the Confirmation Order shall be in effect; (ii) the Creditor Trust Agreement, in form and substance satisfactory to the Plan Proponents, being executed and delivered, and all conditions precedent to the effectiveness thereof being satisfied; and (iii) the delivery or effectuation of all other documents or agreements necessary to consummate the Plan. The Plan Proponents or the Creditor Trustee, as the case may be, may waive any of these conditions to the occurrence of the Effective Date.</p> <p>The Effective Date will be a date not more than forty-five (45) days after the Confirmation Date, unless extended by the Creditor Trustee in his or her sole discretion; provided, however, that if a stay of the Confirmation Order is in effect on such day, then the Effective Date shall be the first day thereafter on which, if the Confirmation Order has not been vacated, no stay of the Confirmation Order is in effect and all other conditions precedent, as stated above, have occurred.</p>

The Plan Proponents submit that the above Summary meets the requirements of Local Bankruptcy Rule 3016-1.

### **III. VOTING AND CONFIRMATION PROCEDURES**

Under the Bankruptcy Code, classes of claims that are unimpaired under a chapter 11 plan are deemed to have accepted the plan and are not entitled to vote to accept or reject the plan. Classes of claims and interests that are not entitled to receive any distribution on account of their claims or interests are deemed to have rejected the plan and are not entitled to vote to accept or reject the plan.

Under the terms of the Plan, the holders of Claims in Class 2, Class 3A, Class 3B, Class 3C and Class 4 are Impaired and are entitled to vote to accept or reject the Plan.

Votes on the Plan are not being solicited from holders of Priority Claims (Class 1), which are unimpaired and deemed to have accepted the Plan. Votes on the Plan are also not being solicited from holders of Interests in Class 5. Holders of Interests in Class 5 will not receive or retain any property under the Plan and, therefore, are deemed to have rejected the Plan and are not entitled to vote to accept or reject the Plan.

#### **A. Voting Procedures**

A ballot is enclosed for the purpose of voting on the Plan. Parties entitled to vote should carefully follow the instructions set forth herein and on the ballot and vote and return your ballot(s), by first class mail, hand or overnight courier, to:

Clerk of Bankruptcy Court  
Everett McKinley Dirksen United States Courthouse  
219 South Dearborn Street, Rm. 713  
Chicago, Illinois 60604

**TO BE COUNTED, YOUR BALLOT INDICATING ACCEPTANCE OR REJECTION OF THE PLAN MUST BE RECEIVED NO LATER THAN 5:00 P.M. (CENTRAL TIME) ON APRIL 22, 2011 (THE “VOTING DEADLINE”).**

**ANY BALLOT: (I) THAT IS EXECUTED BUT DOES NOT INDICATE AN ACCEPTANCE OR REJECTION OF THE PLAN; (II) ON WHICH BOTH THE ACCEPTANCE AND REJECTION BOX IS CHECKED; OR (III) THAT IS EITHER UNRETURNED BY THE VOTING DEADLINE OR IS RETURNED BUT NOT EXECUTED WILL BE CONSIDERED NULL AND VOID AND WILL NOT BE COUNTED.**

If you are a holder of a Claim entitled to vote on the Plan and did not receive a ballot, received a damaged ballot or lost your ballot, or if you have any questions concerning the Disclosure Statement, the Plan or the procedures for voting on the Plan, please call counsel for the Committee, Freeborn & Peters LLP, Attention: Richard S. Lauter, Esq., 312-360-6641, or counsel for the Debtor, Hinshaw & Culbertson LLP, Attention: Thomas G. Wallrich, Esq., 612-334-2594.

**B. Joint Hearing on Sufficiency of Disclosure Statement and Plan Confirmation**

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing to determine whether the Disclosure Statement meets the adequacy requirements of section 1125 of the Bankruptcy Code and whether the Plan meets the requirements for confirmation established by section 1129 of the Bankruptcy Code. Section 105(d)(2)(B)(vi) of the Bankruptcy Code provides that “... the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan.”

Any party-in-interest may object to the adequacy of the Disclosure Statement or confirmation of the Plan. The Bankruptcy Court has scheduled a joint hearing with respect to the

sufficiency of this Disclosure Statement and confirmation of the Plan for 10:00 a.m. on May 4, 2011 (the “*Joint Hearing*”). Notice of the Joint Hearing has been, or will be, provided to all holders of Claims and Interests and other parties-in-interest (the “*Confirmation Notice*”).

Objections, if any, to the adequacy of the Disclosure Statement or confirmation of the Plan must: (i) be in writing; (ii) state the name and address of the objecting party and the nature of the Claim or Interest of such party; (iii) state with particularity the basis and nature of any objection; and (iv) in accordance with Bankruptcy Rule 3020(b)(1), be filed, together with proof of service, with the Bankruptcy Court and served on the following parties so that they are received no later than 5:00 p.m. (Central Time) on April 22, 2011 (the “*Objection Deadline*”), or such other date established by the Plan Proponents: (a) the Debtor, MIDWEST BANC HOLDINGS, INC., 54 South Washington Street, Suite 1, Hinsdale, Illinois 60521-4161 (Attn: Roberto R. Herencia); (b) counsel to the Debtor, HINSHAW & CULBERTSON LLP, 333 South Seventh Street, Suite 2000, Minneapolis, Minnesota 55402 (Attn: Thomas G. Wallrich, Esq.) and HINSHAW & CULBERTSON LLP, 222 North LaSalle Street, Suite 300, Chicago, Illinois 60601 (Attn: William J. Connelly, Esq.); (c) counsel to the Committee, FREEBORN & PETERS LLP, 311 S. Wacker Drive, Suite 3000, Chicago, Illinois 60606-6677 (Attn: Richard S. Lauter, Esq.); (d) OFFICE OF THE UNITED STATES TRUSTEE, 219 South Dearborn Street, Suite 873, Chicago, Illinois 60604 (Attn: M. Gretchen Silver, Esq.); (e) counsel to M&I, MICHAEL BEST & FRIEDRICH LLP, One South Pinckney Street, Suite 700, Madison, Wisconsin 53703 (Attn: Mary C. Turke, Esq.); (f) FEDERAL DEPOSIT INSURANCE CORPORATION, c/o UNGARETTI & HARRIS LLP, 3500 Three First National Plaza, Chicago, Illinois 60602-4283 (Attn: R. Scott Alsterda, Esq.); and (g) SECURITIES AND EXCHANGE COMMISSION, 175 West Jackson Boulevard, Suite 900, Chicago, Illinois 60604



(Attn: Jolene M. Wise). **UNLESS AN OBJECTION TO THE SUFFICIENCY OF THE DISCLOSURE STATEMENT AND/OR PLAN CONFIRMATION IS TIMELY SERVED AND FILED, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT.**

#### **IV. OVERVIEW OF THE PLAN**

The following is an overview of certain material provisions of the Plan, which is attached hereto as **Exhibit A**. The following summaries of the material provisions of the Plan do not purport to be complete and are qualified in their entirety by reference to all the provisions of the Plan, including all exhibits thereto. *Any capitalized terms referenced herein shall have the definitions ascribed to them in the Plan.*

##### **A. General Information Concerning Treatment of Claims and Interests**

The Plan provides for satisfaction in full of Priority Claims (Class 1), which are unimpaired and deemed to have accepted the Plan. Votes on the Plan are not being solicited from holders of Interests in Class 5. Holders of these Interests will neither receive nor retain any property under the Plan or on account of the Interests and, therefore, are deemed to have rejected the Plan and are not entitled to vote to accept or reject the Plan. Only those Creditors holding Claims in Classes 2, 3A, 3B, 3C and 4 shall be entitled to vote to accept or reject the Plan.

The Plan Proponents believe that the Plan provides distributions to all Classes of Claims and Interests that reflect an appropriate resolution of the Claims and Interests, taking into account the differing nature and priority of such Claims and Interests under the Bankruptcy Code and applicable law.

##### **B. Summary of Estimated Distributions**

The following table describes the treatment of Claims and Interests under the Plan.

<b>Class</b>	<b>Treatment</b>	<b>Impairment</b>	<b>Estimated Allowed Amounts Due</b>	<b>Estimated Percentage Recovery</b>
Professional Fee Claims (Unclassified)	100% payment within ten (10) days of becoming an Allowed Claim	N/A	\$522,500.00	100%
Other Administrative Expense Claims (Unclassified)	100% payment on the later of: (i) the Effective Date; (ii) thirty (30) days after becoming an Allowed Claim; (iii) the date upon which such Claim becomes due in the ordinary course of business; and (iv) such other time as may be agreed to by the parties	N/A	\$200,000.00	100%
Priority Tax Claims (Unclassified)	100% payment on the later of: (i) the Effective Date; (ii) thirty (30) days after becoming an Allowed Claim; and (iii) such other time as may be agreed to by the parties	N/A	\$1,300.00	100%
Class 1 Priority Claims	100% payment on the later of: (i) the Effective Date; (ii) thirty (30) days after becoming an Allowed Claim; and (iii) such other time as may be agreed to by the parties	Unimpaired  Not entitled to vote and deemed to accept the Plan	\$0.00	100%
Class 2 Secured Claims of M&I	Surrender of all collateral	Impaired  Entitled to vote	\$0.00	100%
Class 3A General Unsecured Claims	Pro Rata pursuant to the Creditor Trust Agreement	Impaired  Entitled to vote	\$70,000,000.00	10%
Class 3B Employee Unsecured Claims	Pro Rata share of \$785,000.00 Employee Claim Fund	Impaired  Entitled to vote	\$7,950,000.00 (assumes allowance of claims based on change in control)	10%

Class 3C FDIC Unsecured Claim	Assignment of certain claims, causes of action and related rights	Impaired Entitled to vote	\$20,000,000.00	-
Class 4 Claims	Pro Rata pursuant to the Creditor Trust Agreement	Impaired Entitled to vote	\$80,000,000.00	0%
Class 5 Equity Security Interests	Holders of these Interests will not receive a distribution under the Plan	Impaired Not entitled to vote and deemed to reject the Plan	N/A	0%

## V. GENERAL INFORMATION

### A. Description and History of the Debtor's Business

The Debtor is a Delaware corporation founded in 1983, and has operated as a community-based bank holding company headquartered in Melrose Park, Illinois.

Until May 14, 2010, the Debtor's principal operating subsidiary had been Midwest Bank and Trust Company ("*MBTC*"). MBTC was an Illinois state bank that operated twenty-six (26) branches in the Chicago metropolitan area, primarily serving markets in Cook, DuPage, Kane, Lake and McHenry Counties.

MBTC was established in 1959 in Elmwood Park, Illinois to provide community and commercial banking services to individuals and businesses in the neighboring western suburbs of Chicago.

During the period before the economic downturn, the Debtor had expanded significantly through a number of mergers and acquisitions, the most recent of which were: (i) the October 2007 acquisition of Northwest Suburban Bancorp, Inc. ("*NSB*"); and (ii) the July 2006 merger with Royal American Corporation ("*RAC*").

MBTC has three (3) non-bank subsidiaries that were established to support and supplement its retail and commercial banking operations: (i) in August 2002, MBTC established

MBTC Investment Company to manage the Debtor's investment securities; (ii) in May 2006, MBTC Investment Company established Midwest Funding, L.L.C., which is a real estate holding company; and (iii) in July 2006, MBTC acquired Midwest Financial and Investment Services, Inc. ("*Midwest Financial*") through the acquisition of RAC. Midwest Financial is a registered bank-affiliated securities broker-dealer and registered investment advisor. It is registered with the Securities and Exchange Commission (the "*SEC*") as a broker-dealer and operates a general securities business as an introducing broker-dealer.

**B. M&I Secured Indebtedness**

Prior to the Petition Date, the Debtor incurred secured obligations to M&I pursuant to the M&I Notes. The M&I Term Note, dated September 28, 2007, was in the original principal amount of \$75,000,000 and the M&I Revolving Note, dated March 24, 2006, was in the original principal amount of \$50,000,000. As of the Petition Date, the total indebtedness owed to M&I pursuant to the M&I Notes was \$65,847,224 (consisting of \$56,801,548 with respect to the M&I Term Note and \$9,045,676 with respect to the M&I Revolving Note).

The Debtor's obligations under the M&I Notes were secured by the grant of a security interest in one hundred percent (100%) of the Debtor's stock in MBTC. On or about March 24, 2006, M&I's security interest in the MBTC stock was perfected by the Debtor's delivery of the stock certificates.

Under the terms of that certain Forbearance Agreement dated July 3, 2009, the Debtor agreed to a number of terms under which M&I would forbear from exercising its rights arising out of the Debtor's default under the terms of the various agreements related to the M&I Notes. Among other things, the Debtor agreed to enter into a Tax Refund Security Agreement, pursuant to which it would grant M&I a security interest in the RAC Tax Refund. On May 24, 2010, less

than 90 days before the Petition Date, M&I filed a UCC-1 financing statement with the Delaware Secretary of State to perfect its security interest in the RAC Tax Refund.

**C. M&I Subordinated Indebtedness**

The Debtor entered into a Subordinated Term Note dated March 31, 2008, in favor of M&I in the original principal amount of \$15,000,000. M&I's rights under the M&I Subordinated Note are expressly subordinated to "Senior Indebtedness" as defined in the M&I Subordinated Note. In relevant part, the M&I Subordinated Note provides that M&I's rights are subordinate to claims with respect to:

(a) borrowed and purchased money; (b) similar obligations arising from off-balance-sheet guaranties and direct-credit substitutes; and (c) obligations associated with derivative products such as interest-rate and foreign exchange-rate contracts, commodity contracts, and similar arrangements (clauses (a), (b) and (c) expressly exclude trade accounts payable and accrued liabilities under Trust Preferred Indebtedness of [the Debtor] . . . with respect to which the rights of [M&I] are not subordinate). Upon dissolution or liquidation of [the Debtor], no payment of principal, interest or premium (including post-default interest) shall be due and payable under the terms of this Note until all Senior Indebtedness (which expressly exclude trade accounts payable and accrued liabilities of Borrower) shall have been paid in full.

**D. Trust-Preferred Indebtedness**

The Debtor formed four statutory trusts between October 2002 and June 2005 to issue \$54.0 million in trust preferred securities. Through the Royal American merger in July 2006, the Debtor assumed obligations to a statutory trust that had issued \$10.0 million in trust preferred securities. Through the Northwest Suburban merger in October 2007, the Company assumed obligations to a statutory trust that issued \$10.0 million in trust preferred securities in May 2004. In November 2007, the Debtor redeemed \$15.0 million in trust preferred securities.

The Debtor's obligations with respect to the statutory trusts are expressly subordinated to all "Senior Indebtedness," which is broadly defined in the governing instruments. For purposes

of the Plan, all of the definitions of Senior Indebtedness include obligations for borrowed money.<sup>2</sup>

The structure and the terms governing the Debtor's obligations are substantially similar with respect to each of the five trusts. The Debtor (including pre-merger predecessors) issued subordinated debt instruments and the trust purchased such instruments. The Debtor's payments on account of those debt instruments were applied primarily to payment of dividends payable on account of preferred trust interests, which are owned by a third-party investor.

In addition to the obligations under the debt instruments themselves, in connection with each of the trusts the Debtor entered into guaranties under which it guarantied substantially all rights to payment associated with or appurtenant to the preferred trust interests. The Debtor's obligations under the various guaranties are subordinated to the same extent as, and are co-extensive with, those under the debt instruments.

All of the relevant documents provide that, so long as no event of default had occurred and was continuing, the Debtor was permitted to defer payments. In the second quarter of 2009, the Debtor exercised such rights to defer payments with respect to each of the trusts, and no further payments had been made as of the Petition Date. According to the Debtor's books and records, as of the Petition Date, the aggregate balance owing to the trusts was in excess of \$63 million.

Under the Debtor's reading of the subordination provisions, the obligations owing to the statutory trusts are junior to, among other claims, M&I's claims other than that under the Subordinated Note. Pursuant to the terms of the relevant contracts and instruments, the Plan

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<sup>2</sup> Senior Indebtedness under the RAC Indenture, for example, includes obligations for payment of "... (i) the principal, premium, if any, and interest in respect of (A) indebtedness of the [Debtor] for money borrowed and (B) indebtedness evidenced by securities, debentures, notes, bonds or other similar instruments issued by the [Debtor]..."

provides that no distributions will be made on account of Claims with respect to the statutory trusts unless and until M&I has received distributions in an aggregate amount equal to its Allowed Deficiency Claim.

**E. Events Leading to the Debtor's Filing for Chapter 11 Relief**

**1. The Effect of the Economic Downturn**

The Debtor's vulnerability to the effects of the recent economic downturn was exacerbated by two major factors: (i) an \$82.1 million loss in 2008 on investments in preferred stock of Federal National Mortgage Association (commonly known as Fannie Mae) and Federal Home Loan Mortgage Corporation (commonly known as Freddie Mac), substantially reducing the Debtor's capital position; and (ii) the fact that indebtedness incurred to fund the 2007 acquisition of NSB included bank loans secured by the Debtor's stock in MBTC, subordinated debt and a convertible preferred stock issue. As a consequence, the Debtor had substantially less tangible equity and financial flexibility when it turned out to be most needed.

The impact of the financial downturn on ordinary banking operations was severe, and the Debtor incurred net losses of \$248.8 million in calendar year 2009 and \$160.0 million in calendar year 2008.

While largely caused by credit losses, the Debtor's losses were aggravated by higher FDIC insurance costs, costs associated with analysis and planning, costs associated with management of impaired loans and carrying costs of foreclosed properties.

**2. The Capital Plan**

By early 2009, the Debtor was taking drastic steps to ensure that it would be able to weather the downturn.

On May 6, 2009, the Debtor announced that it was suspending the dividends accruing on account of two series of preferred stock and deferring interest payments on \$60.8 million in outstanding junior subordinated debt.

On May 15, 2009, Roberto R. Herencia assumed the role of president and chief executive officer and was appointed to the Debtor's board of directors. The Debtor immediately tightened its loan underwriting and pricing criteria, began aggressive balance sheet repositioning activities and developed a comprehensive capital plan.

In July 2009, the Debtor announced the development of a detailed capital plan and timeline for execution (the "*Capital Plan*"). The Capital Plan was adopted, in part to improve the Debtor's common equity capital and raise additional capital so it would better withstand the adverse market conditions.

The first steps that were completed under the Capital Plan included: (i) conversion of a substantial portion of preferred into common stock; (ii) exchange by the U.S. Treasury of the Debtor's outstanding Series T preferred stock for a new series of fixed rate cumulative mandatorily convertible preferred stock, Series G; (iii) cost reduction initiatives, including a reduction in force of over one hundred (100) employees, salary reductions, suspension of certain benefits, elimination of discretionary projects and initiatives and an increased focus on expense control; (iv) steps to refine cumulative credit loss projections; and (v) engaging investment banking support to assist with the efforts to raise equity investment.

After completing the first steps in the Capital Plan, the critical tasks to be completed consisted of: (i) restructuring outstanding senior debt and certain subordinated debt owing to M&I; and (ii) raising significant new equity capital. Both elements were essential, and while the



restructuring of indebtedness owing to M&I might have been feasible, attempts to raise equity capital were not successful.

### **3. Regulatory Actions**

As of December 31, 2009, MBTC was deemed undercapitalized under the regulatory framework for prompt corrective action. Also around this time, the Debtor's independent registered public accounting firm raised questions about the Debtor's ability to continue as a going concern.

The Debtor continued efforts to raise new equity, but ultimately was unable to do so before MBTC became subject to FDIC receivership.

On May 14, 2010, the Office of the Illinois Division of Banking ordered MBTC to cease operations, and the FDIC was appointed as receiver of MBTC's assets. Under a Purchase and Assumption Agreement dated as of May 14, 2010, the FDIC agreed to sell the majority of MBTC's assets to FirstMerit Bank, National Association.

On May 17, 2010, the Debtor received a staff determination letter from The Nasdaq Stock Market ("*Nasdaq*") notifying the Debtor that its common stock and its depositary shares, each representing 1/100th of a Share of Series A Noncumulative Redeemable Convertible Preferred Stock ("*Depositary Shares*"), would be delisted from Nasdaq. Trading in the Debtor's common stock and Depositary Shares was stopped on May 17, 2010.

On June 8, 2010, Nasdaq announced the delisting of the Debtor's common and preferred stock effective ten (10) days following the filing of Form 25 with the SEC.

On June 9, 2010, Nasdaq filed a Form 25 regarding the Debtor's common and preferred stock.

#### **4. Decision To File Chapter 11 Case**

Since the above-described events, the Debtor worked diligently to conserve assets, efficiently manage the consequences of the closure of MBTC and maximize enterprise value for the benefit of creditors.

Management finally determined that a chapter 11 reorganization would be in the best interests of creditors, in part, because it would offer the Debtor the most flexibility in restructuring while also offering a means of preserving potentially valuable tax attributes. To the extent that reorganization proved infeasible, liquidation under chapter 11 was considered preferable to any alternatives. In part, chapter 11 offered a mechanism by which the Debtor and creditors could cooperatively formulate a plan for orderly liquidation based on the Debtor's specific circumstances and debt structure. It has also promoted efficiency by minimizing disruption in administrative matters, including those associated with: (i) termination of the Debtor's 401(k) plan and distribution of plan assets; and (ii) the FDIC receivership and the orderly resolution of issues arising out of the historical interrelationship between the Debtor and MBTC.

The Debtor ceased all non-essential operations, and has incurred minimal costs while ensuring that it is able to address various parties' concerns arising out of the regulatory actions described above.

#### **VI. THE CHAPTER 11 CASE<sup>3</sup>**

As a consequence of the Debtor's commencement of the Case, all actions and proceedings against the Debtor and all acts to obtain property from the Debtor have been stayed

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<sup>3</sup> Section VI of the Disclosure Statement is only a summary of the Debtor's Case. For a full list of motions and pleadings filed, the Plan Proponents refer parties-in-interest to the docket of the Debtor's Case, which can be accessed through the Bankruptcy Court's PACER system (account required) at [ecf.ilnb.uscourts.gov](http://ecf.ilnb.uscourts.gov).

under section 362 of the Bankruptcy Code. Throughout the Case the Debtor has continued to manage its assets as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

**A. Relevant Chapter 11 Filings**

**1. Retention of Counsel.** On September 13, 2010, the Debtor filed an application requesting approval by the Bankruptcy Court of the Debtor's retention of Hinshaw & Culbertson LLP ("*H&C*"), as lead bankruptcy counsel. The Bankruptcy Court entered an order approving the retention of H&C on October 6, 2010.

**2. Schedules and Statements.** The Debtor's Schedules of Assets and Liabilities and Statement of Financial Affairs were submitted and filed with the Bankruptcy Court on August 20, 2010 (as may be amended, the "*Schedules and Statements*").

The meeting of creditors under section 341(a) of the Bankruptcy Code was held on September 28, 2010 in Chicago, Illinois, at which representatives of the Debtor were questioned by creditors, creditors' representatives and a representative from the Office of the United States Trustee. Creditors are expressly referred to the Debtor's Schedules and Statements, as amended from time to time as necessary, on file in these proceedings for the purpose of becoming fully informed as to the assets, liabilities and financial affairs of the Debtor as of the Petition Date. The Debtor reserves the right to further amend its Schedules and Statements as appropriate and necessary.

**3. Claim Bar Date.** By motion dated November 17, 2010, the Debtor requested establishment of deadlines by which Creditors would be required to file proofs of claim. On November 29, 2010, the Bankruptcy Court entered an order setting January 31, 2011 as the last day on which non-governmental creditors could timely file proofs of claim.

**B. Committee Participation in the Case.** Pursuant to section 1102(a) of the Bankruptcy Code, on September 28, 2010, the U.S. Trustee appointed the Committee, which was initially comprised of the following Creditors: (i) Bowne & Co., Inc., (ii) Daniel R. Kadolph; (iii) MBHI Capital Trust IV; (iv) M&I; and (v) David Peck. M&I subsequently resigned from the Committee, which now consists of the following Creditors: (i) Bowne & Co., Inc., (ii) Daniel R. Kadolph; (iii) MBHI Capital Trust IV; and (iv) David Peck. The Committee retained Freeborn & Peters LLP ("*F&P*") as its counsel.

## **VII. FINANCIAL INFORMATION**

**A. Assets.** The Plan Proponents believe that the following assets, each of which will be transferred to the Creditor Trust no later than seven (7) days after the Effective Date, will be available to fund distributions to Creditors in accordance with the Plan and the Creditor Trust Agreement:

**1. Cash Held by the Debtor.** The Debtor is currently holding Cash in the approximate amount of \$2,500,000.00.

**2. Real Estate.** The Debtor owns real property located at 505 North Roselle Road, Roselle, Illinois. Pursuant to the Debtor's Schedules and Statements, the current value of the North Roselle Property is \$2,940,000. There are no liens on the North Roselle Property.

**3. Stock.** The Debtor owns 40,000 shares of common stock in Western Illinois Bancshares, Inc., a private bank holding company. Pursuant to the Debtor's Schedules and Statements, the current value of these shares is \$740,000. Based on the anticipated commission associated with such a sale, the Debtor estimates that the Creditor Trust will be able to realize approximately \$700,000 on the sale of the stock.

**4. Other Investments.** The Debtor holds an interest in Stieven Financial Investors, L.P (the "*SFI Interest*"). The SFI Interest is a side pocket of a hedge fund investment.

By its nature, the SFI Interest is illiquid and not susceptible of valuation with a high degree of certainty in a liquidation scenario. According to the most recent statement, the value of the SFI Interest as of November 30, 2010 was \$95,316.00, but that value does not reflect anticipated discounts resulting from the need to liquidate the investment on an expedited basis. For purposes of this Disclosure Statement, the Plan Proponents have estimated the value of the SFI Interest to the Creditor Trust to be \$45,000.00

**5. Annuity Contracts.** The Debtor owns two annuity contracts providing for: (i) \$1,760.07 in monthly installments from January 1, 2005 through December 2, 2019; and (ii) \$7,470.30 in monthly installments from January 1, 2005 through December 2, 2019. These contracts were purchased to fund payments to a former executive under a settlement of all employment-related rights, including but not limited to those under the SERP. The estimated value of these contracts in liquidation is \$650,000.00.

**6. Insurance Contract.** Under an agreement with Robert L. Woods, the Debtor's former president and CEO, the Debtor has paid premiums on a life insurance policy held by a trust created by Mr. Woods. Upon Mr. Woods' death, the Debtor is entitled to payment of an amount equal to all of the premiums paid. As of the Petition Date, the Debtor had paid an aggregate of \$115,982.00 on account of the policy. The estimated value of these contracts in liquidation is \$70,000.00.

**7. Derivative and Fiduciary Claims.** On October 25, 2010, the Debtor received a copy of a notice served on all former officers and directors of MBTC by which the FDIC gave notice of potential claims based on alleged "wrongful acts." The notice from the FDIC was delivered to insurers as notice of facts and circumstances that might give rise to claims that are covered under policies insuring the Debtor and MBTC against fiduciary and similar

claims. On October 21, 2010, the Debtor had served notice of facts and circumstances giving rise to coverage under those same policies. The Plan Proponents have not estimated the value of claims against officers and directors. In addition to the question of whether any of the conduct described in the notices might constitute the sort of misconduct giving rise to coverage, evaluation of claims against officers and directors involves the weighing of the FDIC's competing claims to the finite coverage under the relevant policies.

**8. Avoidance Actions Against Non-Insiders.** The Committee believes that the Creditor Trustee may be able to pursue Avoidance Actions against recipients of preferential transfers made in the ninety (90) days prior to the commencement of this Case under section 547(b) of the Bankruptcy Code. Pursuant to the Debtor's Schedules and Statements, the Debtor made approximately \$135,551.54 in transfers in the ninety (90) days prior to the Petition Date, certain of which may be preferential transfers. While the Plan Proponents have not fully analyzed potential preference claims that may be brought by the Creditor Trustee, the proceeds of any recoveries with respect to claims would be earmarked for Creditor distributions under the Plan and the Creditor Trust Agreement.

**9. Tax Refund.** The RAC Tax Refund, a pending federal income tax refund in the amount of \$2,156,381.00, was pledged to secure payment of the M&I Senior Notes. The Plan Proponents contend that M&I's Lien is subject to avoidance as a preferential transfer and project that the full refund will be included in the Creditor Trust Assets.

**B. Liabilities.** The Plan Proponents believe that, as of the Confirmation Date of the Plan, the Debtor will have the following liabilities:

**1. Administrative Claims**

**a. Debtor's Professionals.** As of the anticipated Confirmation Date, the Debtor's Professionals estimate that they will be owed approximately \$272,500.00 with respect to accrued but unpaid Professional Fee Claims. The Plan Proponents expect that a portion of such Professional Fee Claims may be paid from Cash provided from retainers held by Professionals.

**b. Committee's Professionals.** As of the anticipated Confirmation Date, the Committee's Professionals estimate that they will be owed approximately \$250,000.00 with respect to accrued but unpaid Professional Fee Claims.

**c. Other Administrative Expense Claims.** The Debtor believes that unpaid Other Administrative Expense Claims in an amount not exceeding \$200,000.00 will ultimately be Allowed.

**2. Priority Claims**

**a. Claims of Governmental Unit Taxing Bodies.** The Debtor believes that Priority Tax Claims, if any, are insignificant, and likely not more than \$1,300.00, which is the amount of the Priority Tax Claim asserted by the IRS.

**b. Other Priority Claims.** The Debtor believes that there are no non-tax Priority Claims against the Debtor.

**3. Secured Claims.** The Plan Proponents believe that the M&I Collateral is without value, and that M&I's Secured Claim is equal to \$0.00. This determination relies primarily on the assumption that M&I's Lien on the RAC Tax Refund will be avoided pursuant to section 547 of the Bankruptcy Code. The Plan provides for the surrender of all collateral that is subject to any non-avoidable and otherwise enforceable Lien in full and final satisfaction of

M&I's Secured Claim. While this treatment fully satisfies M&I's Secured Claim in accordance with the applicable provisions of the Bankruptcy Code, its practical effect is to convert M&I's entire Claim under the M&I Senior Notes into a Deficiency Claim. The Debtor believes that there are no other Secured Claims.

**4. Unsecured Claims.** The Debtor estimates that Unsecured Claims in Class 3, including M&I's projected Deficiency Claim of more than \$65 million and the FDIC's filed Claim of \$20 million, will total approximately \$90 million.

**5. Class 4 Claims.** According to the Debtor's books and records, Claims in Class 4 total approximately \$78,567,309.00.

**6. Equity Security Holders.** This class of Interests consists of the Debtor's Equity Security Holders.<sup>4</sup>

## **VIII. PLAN OF REORGANIZATION**

### **A. Objectives of the Plan**

The primary objectives of the Plan are to: (i) transfer the Debtor's remaining assets to a Creditor Trust charged with liquidating them, reconciling Claims, prosecuting Avoidance Actions and Miscellaneous Causes of Action for the benefit of Creditors and making distributions to Creditors; and (ii) maximize value to all Creditor groups on a fair and equitable basis under the priorities established by the Bankruptcy Code and applicable law, and through the consensual settlement of potentially costly disputes involving various parties in interest.

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<sup>4</sup> Although separate classification might be warranted in certain cases, for the sake of convenience, the Plan Proponents have included all of the Equity Interests, including common and preferred stock, in a single class. As the class of Equity Interests is a deemed rejecting class and will therefore not vote on the Plan, the manner of classification is not material.



The Plan Proponents believe that the Plan provides holders of Allowed Claims with a substantially greater recovery than the recovery they would receive without approval of the Plan, or upon conversion of this Case to a chapter 7 liquidation.

The statements contained in this Disclosure Statement include summaries of the provisions contained in the Plan and in documents referred to therein. The statements contained in this Disclosure Statement do not purport to be precise or complete statements of all the terms and provisions of the Plan or documents referred to therein, and reference is made to the Plan and to such documents for the full and complete statements of such terms and provisions.

The Plan itself and the documents referred to therein control the actual treatment of Claims against and Interests in the Debtor, and will be binding upon all holders of Claims against and Interests in the Debtor upon the Confirmation Date. In the event of any conflict between this Disclosure Statement, on the one hand, and the Plan or any other operative document, on the other hand, the terms of the Plan and such other operative documents, including, without limitation, the Creditor Trust Agreement, are controlling.

## **B. Overview of Chapter 11**

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Under chapter 11, the debtor is authorized to reorganize its business for the benefit of itself, its creditors and its interest holders. Another goal of chapter 11 is to promote equality of treatment for similarly situated creditors and similarly situated interest holders with respect to the distribution of a debtor's assets.

In addition, chapter 11 may be used to effectuate an orderly liquidation of a debtor's business and assets. In contrast to a chapter 7 liquidation, in which a trustee is appointed to conduct the liquidation and wind down of the estate, in a chapter 11 liquidation, the debtor typically remains in possession of the estate.

The commencement of a chapter 11 case creates an estate that is comprised of all of the legal and equitable interests of the debtor as of the filing date. The Bankruptcy Code contemplates that a debtor, through its pre-bankruptcy management, will continue to operate its business in the ordinary course and remain in possession of its property during the case and while it seeks to negotiate and implement a plan. Any activities that are not within the ordinary course of the debtor's business must be approved by the bankruptcy court before they are undertaken.

The consummation of a plan is the principal objective of a chapter 11 case. A plan sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a plan by the bankruptcy court makes the plan binding upon the debtor, any person or entity acquiring property under the plan and any creditor of or equity security holder in the debtor, whether or not such creditor or equity security holder: (i) is impaired under or has accepted the plan; or (ii) receives or retains any property under the plan.

**C. The Division of Claims and Their Treatment Under the Plan**

The Plan provides for the division of claims and interests based upon the manner in which the claim arose.

**1. Allowed Administrative Claims of any Professional Person.** The Distributing Party shall pay Allowed Professional Fee Claims in full and in Cash within ten (10) days of such Claims becoming Allowed Professional Fee Claims pursuant to Section 5.1 of the Plan.

**2. Allowed Other Administrative Expense Claims.** The Distributing Party shall pay Allowed Other Administrative Expense Claims in full and in Cash by the later of: (i) as soon as practicable following the Effective Date; (ii) thirty (30) days after such Claims become Allowed Other Administrative Expense Claims; (iii) the date upon which such Allowed

Other Administrative Expense Claims become due in the ordinary course of business; and (iv) such other time as may be agreed to by the Distributing Party and the holder of the Allowed Other Administrative Expense Claim. Creditors seeking payment on Other Administrative Expense Claims shall have thirty (30) days from the Effective Date to file an application with the Bankruptcy Court with respect to Other Administrative Expense Claims, or such Claims will be forever barred.

**3. Priority Tax Claims.** The Distributing Party shall pay Allowed Priority Tax Claims in full and in Cash on the later of: (i) as soon as practicable following the Effective Date; (ii) thirty (30) days after such Claims become Allowed Priority Tax Claims; and (iii) such other time as may be agreed to by the Distributing Party and the holder of the Allowed Priority Tax Claim, in accordance with sections 507(a)(8) and 1129(a)(9)(C) of the Bankruptcy Code.

**4. Class 1 Claims.** The Distributing Party shall pay Allowed Class 1 Priority Claims in full and in Cash on the later of: (i) as soon as practicable following the Effective Date; (ii) thirty (30) days after such Claims become Allowed Priority Claims; and (iii) such other time as may be agreed to by the Distributing Party and the holder of the Allowed Class 1 Priority Claim.

**5. Class 2 Claims.** On or before the Effective Date, the Debtor will surrender the M&I Collateral in full and final satisfaction of the Class 2 Claim.

**6. Class 3 Claims.** Allowed Class 3 Claims shall be paid Pro Rata in accordance with the Creditor Trust Agreement and this Plan. In accordance with the Creditor Trust Agreement, on the Effective Date, each Allowed Class 3 Claim will be converted into a Senior Trust Interest representing such holder's Pro Rata share of the total Senior Trust Interests. The Debtor shall transfer the Creditor Trust Assets to the Creditor Trustee no later than seven (7)

days after the Effective Date. The Creditor Trustee shall liquidate the Creditor Trust Assets and distribute the Net Proceeds in accordance with this Plan and the Creditor Trust Agreement.

**7. Class 4 Claims.** Allowed Class 4 Claims shall be paid Pro Rata in accordance with the Creditor Trust Agreement and this Plan. In accordance with the Creditor Trust Agreement, on the Effective Date, each Allowed Class 4 Claim will be converted into a Subordinated Trust Interest, representing such holder's Pro Rata share of the total Subordinated Trust Interests. The Debtor shall transfer the Creditor Trust Assets to the Creditor Trustee no later than seven (7) days after the Effective Date. The Creditor Trustee shall liquidate the Creditor Trust Assets and distribute the Net Proceeds in accordance with this Plan and the Creditor Trust Agreement.

**8. Class 5 Interests** shall consist of the Interests of Equity Security Holders. Holders of Class 5 Interests shall not receive a distribution under the Plan. Upon the Confirmation Date of the Plan, all Equity Securities in the Debtor will be retired.

**D. Means of Implementation of the Plan**

**1. Vesting of Assets.** Subject to the terms of the Plan, upon entry of the Confirmation Order, the Debtor will be restored to full ownership of all property owned by the Debtor and all property of the Estate. Upon vesting, all such property will be free and clear of all Claims, Liens, encumbrances, charges and other interests, except as otherwise provided in the Plan. Within seven (7) days of the Effective Date, the Debtor will transfer the Creditor Trust Assets to the Creditor Trust, and whereupon all of the Debtor's right, title and interest shall vest in the Creditor Trust, subject to the terms of the Plan. All property held for distribution pursuant to the Plan shall be held by the Creditor Trust solely in trust for the holders of Allowed Class 3 and 4 Claims and shall not be deemed property of the Debtor. Nothing in the Plan, however, shall preclude payment of: (i) statutory fees under 28 U.S.C. § 1930 owed from and after the

Effective Date; and (ii) the Trustee's Expenses in accordance with the Plan and the Creditor Trust Agreement from any other assets held by the Creditor Trust. The Debtor is hereby authorized and directed to take such steps as may be necessary or appropriate to confirm such transfer and contribution of its property to the Creditor Trust, subject to oversight from the Creditor Trustee.

**2. Creditor Trust Asset Administration.** The Creditor Trustee shall administer the Creditor Trust Assets pursuant to the Plan and the Creditor Trust Agreement from and after the Effective Date. The Creditor Trustee shall be responsible for liquidating the Creditor Trust Assets, analyzing and reconciling Claims (including filing and pursuing objections to the extent required), pursuing the Avoidance Actions and Miscellaneous Causes of Action, making distributions of the Net Proceeds to the beneficiaries of the Creditor Trust and all other activities typically related to trust administration. The Plan Proponents have selected Barry A. Chatz as the proposed Creditor Trustee.

**3. Dissolution of the Debtor.** Promptly following the Effective Date, the Creditor Trustee will allow the Delaware Secretary of State to involuntarily dissolve the Debtor.

**4. Conditions to Confirmation.** It is a condition precedent to confirmation of the Plan that the Confirmation Order shall be reasonably acceptable in form and substance to the Plan Proponents.

**5. Conditions to Effective Date.** The following are conditions precedent to the occurrence of the Effective Date: (i) the Confirmation Order confirming the Plan, as such Plan may have been modified, shall have been entered by the Bankruptcy Court and be in full force and effect and shall not have been vacated, amended, modified or stayed, and if it is the subject of any appeal, reconsideration or other review, no stay of the Confirmation Order shall be

in effect; (ii) the Creditor Trust Agreement, in form and substance satisfactory to the Committee and the Debtor, shall be executed and delivered, and all conditions precedent to the effectiveness thereof shall have been satisfied; and (iii) all other documents or agreements necessary to consummate the Plan shall have been delivered or effectuated. The Plan Proponents or the Creditor Trustee, as the case may be, may waive any of the foregoing conditions precedent at any time.

**6. Administrative Claims Bar Date.** All Persons requesting payment of Administrative Claims (Professional Fee Claims or Other Administrative Expense Claims) shall file applications for payment no later than thirty (30) days after the Effective Date. Objections to such applications for payment, if any, must be written, filed with the Bankruptcy Court and served on the applicable parties within forty-five (45) days after such application is filed.

**7. Termination of Committee.** The Committee shall terminate automatically upon the Effective Date. Upon termination of the Committee, the Committee shall be dissolved and its members shall be deemed released of their duties and responsibilities in connection with the Case or the Plan and its implementation, and the retention or employment of the Committee's counsel shall terminate, except for ministerial duties or any duties imposed pursuant to the Plan (including, without limitation, filing applications for allowance and payment of Professional Fee Claims).

**8. Case Administration.** From and after the Effective Date and continuing through the date that a final decree closing the Case is entered pursuant to section 350 of the Bankruptcy Code and Bankruptcy Rule 3022, the Creditor Trustee shall possess the rights of the Debtor for all matters pertaining to the Case. Without limiting the generality of the foregoing, the Creditor Trustee shall: (i) have the right to appear and be heard on matters brought before

the Bankruptcy Court or other courts of competent jurisdiction; (ii) have the right to obtain records of, or related to, the Debtor (including, without limitation, bank statements and cancelled checks); (iii) be entitled to notice and opportunity for hearing; (iv) be entitled to participate in all matters brought before the Bankruptcy Court, including, but not limited to, adversary proceedings; (v) have exclusive standing to commence Avoidance Actions and Miscellaneous Causes of Action; (vi) be entitled to request the Bankruptcy Court to enter a final decree closing the Case; and (vii) be entitled to receive notice of all applications, motions and other papers and pleadings set before the Bankruptcy Court in this Case.

**9. Filing of Additional Documents.** On or before the Effective Date, the Plan Proponents shall file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan, including, without limitation, the final Creditor Trust Agreement.

**10. Creditor Trustee's Professionals.** Upon the Effective Date, the Creditor Trustee may retain such law firms, accounting firms, experts, advisors, consultants, investigators or other Professionals as it may deem necessary, in accordance with the Creditor Trust Agreement, to aid in the performance of its responsibilities, including, without limitation, the liquidation and distribution of assets of the Creditor Trust. The Professionals retained by the Creditor Trustee are not required to be "disinterested" as that term is defined in the Bankruptcy Code and may include, without limitation, counsel and financial advisors of any party in this Case, and the Creditor Trustee shall be permitted to retain any such Professional in light of the efficiencies implicit in continuity. The Creditor Trustee's retention of any such Professionals is deemed not to pose any conflict of interest, and no conflict shall exist by virtue of the filing of

applications by Professional Persons for allowance of Administrative Claims in accordance with Section 7.7 of this Plan.

**11. INJUNCTION.** EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR THE CONFIRMATION ORDER, ON AND AFTER THE CONFIRMATION DATE, ALL PERSONS AND ENTITIES WHO HAVE HELD, HOLD OR MAY HOLD LIENS, CLAIMS OR INTERESTS IN OR AGAINST THE DEBTOR ARE, WITH RESPECT TO ANY SUCH LIENS, CLAIMS OR INTERESTS, PERMANENTLY ENJOINED FROM: (I) COMMENCING, CONDUCTING OR CONTINUING IN ANY MANNER, DIRECTLY OR INDIRECTLY, ANY SUIT, ACTION OR OTHER PROCEEDING OF ANY KIND (INCLUDING, WITHOUT LIMITATION, ANY PROCEEDING IN A JUDICIAL, ARBITRAL, ADMINISTRATIVE OR OTHER FORUM) AGAINST OR AFFECTING THE CREDITOR TRUST OR ANY OF ITS PROPERTY, OR ANY DIRECT OR INDIRECT TRANSFEREE OF ANY PROPERTY OF, OR DIRECT OR INDIRECT SUCCESSOR IN INTEREST TO, THE DEBTOR OR THE FOREGOING CREDITOR TRUST, OR ANY PROPERTY OF ANY TRANSFEREE OR SUCCESSOR OF EITHER; (II) ENFORCING AGAINST, LEVYING UPON OR ATTACHING (INCLUDING, WITHOUT LIMITATION, ANY PRE-JUDGMENT ATTACHMENT) THE DEBTOR OR THE CREDITOR TRUST, OR ANY PROPERTY OF ANY SUCH TRANSFEREE OR SUCCESSOR; (III) ENFORCING, LEVYING, ATTACHING (INCLUDING, WITHOUT LIMITATION, ANY PRE-JUDGMENT ATTACHMENT), COLLECTING OR OTHERWISE RECOVERING BY ANY MANNER OR MEANS WHETHER DIRECTLY OR INDIRECTLY, OF ANY JUDGMENT, AWARD, DECREE, CLAIM OR ORDER AGAINST THE DEBTOR OR THE CREDITOR TRUST, ANY OF THEIR PROPERTY, OR ANY DIRECT OR INDIRECT TRANSFEREE OF ANY



PROPERTY OF, OR DIRECT OR INDIRECT SUCCESSOR IN INTEREST TO THE DEBTOR OR THE CREDITOR TRUST; (IV) CREATING, PERFECTING OR OTHERWISE ENFORCING IN ANY MANNER, DIRECTLY OR INDIRECTLY, ANY LIENS, CLAIMS OR INTERESTS OF ANY KIND AGAINST OR IN THE DEBTOR OR THE CREDITOR TRUST, ANY OF THEIR PROPERTY, OR ANY DIRECT OR INDIRECT TRANSFEREE OF ANY PROPERTY OF, OR DIRECT OR INDIRECT SUCCESSOR IN INTEREST TO, THE DEBTOR OR THE CREDITOR TRUST; (V) OTHER THAN AS OTHERWISE EXPRESSLY PROVIDED FOR IN THIS PLAN, ASSERTING ANY RIGHT OF SETOFF, SUBORDINATION OR RECOUPMENT OF ANY KIND, DIRECTLY OR INDIRECTLY, AGAINST ANY OBLIGATION DUE THE DEBTOR, THE CREDITOR TRUST, ANY OF THEIR PROPERTY, OR ANY DIRECT OR INDIRECT TRANSFEREE OF ANY PROPERTY OF, OR SUCCESSOR IN INTEREST TO, THE DEBTOR OR THE CREDITOR TRUST; AND (VI) TAKING ANY ACTIONS IN ANY PLACE AND IN ANY MANNER WHATSOEVER THAT DO NOT CONFORM TO OR COMPLY WITH THE PROVISIONS OF THIS PLAN. BY WAY OF LIMITATION, NOTHING HEREIN SHALL CONSTITUTE OR HAVE THE EFFECT OF A DISCHARGE OF INDEBTEDNESS OF THE DEBTOR.

**12. Term of Bankruptcy Injunction or Stays.** All injunctions or stays provided for in the Case under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect through the imposition of the injunction set forth in Section 7.13 of the Plan.

**13. Exculpation and Limitation of Liability.** Neither the Committee, the Creditor Trustee, the Debtor nor any of their respective present members, officers, directors, shareholders, employees, advisors, attorneys or agents acting in such capacity, shall have or

incur any liability to, or be subject to any right of action by, any person or entity, for any act or omission in connection with, relating to or arising out of, the Case or the pursuit of confirmation of the Plan, except to the extent arising out of fraud, willful misconduct or gross negligence, and in all respects shall be entitled to rely reasonably upon the advice of counsel with respect to their duties and responsibilities under the Plan.

**14. Quarterly Reports.** The Creditor Trustee shall prepare and file with the Bankruptcy Court a report within thirty (30) days after the conclusion of every calendar quarter setting forth: (i) all distributions to Creditors during the calendar quarter; (ii) a summary of the Creditor Trust deposits and disbursements during the calendar quarter; and (iii) a summary of the Creditor Trust Assets. As used in this section, “calendar quarter” shall correspond to the calendar quarters as defined by the U.S. Trustee.

## **IX. STATUS AND EXISTENCE OF EXECUTORY CONTRACTS AND OTHER LITIGATION**

### **A. Executory Contracts**

**1. Assumption and Assignment of Executory Contracts and Unexpired Leases.** On the Confirmation Date, each executory contract and unexpired lease entered into by the Debtor that is listed on Exhibit B to the Plan that has not previously expired or terminated pursuant to its own terms, will be assumed by the Debtor and assigned to the Creditor Trust pursuant to section 365 of the Bankruptcy Code. Each executory contract and unexpired lease listed in Exhibit B to the Plan will include any modifications, amendments, supplements, restatements or other agreements made directly or indirectly by any agreement, instrument or other document that in any manner affects such contract or agreement, irrespective of whether such agreement, instrument or other document is listed on Exhibit B to the Plan. Listing a contract or agreement on Exhibit B to the Plan shall not constitute an admission by the Debtor or

the Creditor Trust that such agreement is an executory contract or unexpired lease or that the Debtor or the Creditor Trust has any liability under the Plan.

At present, the Plan Proponents have not designated any executory contracts or unexpired leases that will be assumed, and does not anticipate that any substantial number of such contracts or leases will be assumed. The Plan Proponents, however, reserve the right to amend Exhibit B to the Plan at any time prior to the Confirmation Date. As of the Petition Date, the Debtor was current on substantially all obligations with respect to any contract or lease that may be characterized as executory or unexpired, and has remained current on all such obligations since the Petition Date. To the extent that Exhibit B is amended to include any executory contracts or unexpired leases, the Plan Proponents do not anticipate that the cure obligations with respect to such amendment would result in a material change to the treatment of any party as contemplated under the Plan.

**2. Payments Related to Assumption of Executory Contract or Unexpired Leases.** Any cure obligations related to any executory contract or unexpired lease to be assumed and assigned pursuant to the Plan will be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, at the option of the Debtor or the Creditor Trust, as applicable: (i) by payment of the Cure Amount Claim in Cash on the Confirmation Date; or (ii) on such other terms as are agreed to by the parties to such executory contract or unexpired lease. If there is a dispute regarding: (i) the amount of any Cure Amount Claim; (ii) the ability of the Creditor Trust to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under the executory contract or unexpired lease to be assumed; or (iii) any other matter pertaining to the assumption of such contract or lease, and the assumption and assignment is approved by the Bankruptcy Court, the payment of any Cure Amount Claim

required by section 365(b)(1) of the Bankruptcy Code will be made within thirty (30) days following the entry of a Final Order resolving the dispute.

**3. Contracts Deemed Rejected.** All other executory contracts or unexpired leases of the Debtor that have not expired by their own terms or been assumed prior to the Confirmation Date shall be deemed rejected pursuant to section 365 of the Bankruptcy Code on the Confirmation Date.

**4. Result of Rejection of Contracts.** Claims for damages as a result of the Debtor's rejection of its executory contracts shall be forever barred if they are not filed with the Bankruptcy Court no later than thirty (30) days after the Confirmation Date.

**5. Approval of Assumptions and Assignments and Rejections.** The Confirmation Order will constitute an order of the Bankruptcy Court approving, pursuant to section 365 of the Bankruptcy Code, as applicable: (i) the rejection of each executory contract or unexpired lease as set forth in Section 6.2 of the Plan, as of the Confirmation Date; or (ii) the assumption and assignment of each executory contract or unexpired lease set forth in Section 6.1 of the Plan, as of the Confirmation Date.

**6. Executory Contract and Unexpired Lease Notice Provisions.** The Debtor will provide:

- a. notice to each party to an executory contract or unexpired lease that is being assumed and assigned pursuant to the Plan of: (i) the contract or lease being assumed; (ii) the Cure Amount Claim, if any, that the Debtor believes it would be obligated to pay in connection with such assumption; and (iii) the right to object to the assumption of the applicable executory contract or unexpired lease in connection with Confirmation; and
- b. notice of any amendments to Exhibit B to the Plan.

**B. Litigation**

**1. Potential Non-Insider Preference Litigation.** During the ninety (90) days prior to the Petition Date, the Debtor paid approximately \$135,551.54 to their non-insider Creditors (the “*Non-Insider Preferential Transfers*”). The Creditor Trustee shall be authorized to analyze and, if appropriate, file adversary proceedings under, *inter alia*, sections 547 and 550 of the Bankruptcy Code to avoid and recover the Non-Insider Preferential Transfers.

**2. Possible Unknown Claims.** The Creditor Trustee may have additional Causes of Action against third parties that are unknown at this time. The Creditor Trustee shall be empowered to conduct such investigation as it deems appropriate for the purpose of evaluating potential additional litigation claims. The proceeds of any litigation against third parties, or any other beneficial result from the settlement of such litigation, would also be earmarked for Creditor distribution under the Plan and the Creditor Trust Agreement.

**C. Objections to Claims**

The Plan Proponents believe that objections to certain Claims will be warranted, and counsel for the Debtor (until the Effective Date) and the Creditor Trustee (after the Effective Date) will be authorized to file and pursue such objections.

**X. CONFIRMATION AND CONSUMMATION PROCEDURE**

The Bankruptcy Court may confirm the Plan only if it determines that the Plan complies with the requirements of chapter 11, including, among other things, that: (i) the Plan has properly classified Claims and Interests; (ii) the Plan complies with applicable provisions of the Bankruptcy Code; (iii) the Plan Proponents have complied with applicable provisions of the Bankruptcy Code; (iv) the Plan Proponents have proposed the Plan in good faith and not by any means forbidden by law; (v) the Plan has been accepted by the requisite votes of all Classes of Creditors (except to the extent that “cramdown” is available under section 1129(b) of the Bankruptcy Code); (vi) the Plan is in the “best interests” of all holders of Claims or Interests in

an Impaired Class; (vii) the Plan is “feasible” in that confirmation of the Plan is not likely to be followed by the liquidation or need for further restructuring of the Debtors, unless the Plan contemplates liquidation; and (viii) all fees and expenses payable under 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the Joint Hearing, have been paid or the Plan provides for the payment of such fees.

Under the Bankruptcy Code, the following steps must be taken to confirm the Plan:

**A. Solicitation of Votes**

Under the Bankruptcy Code, only classes of claims and interests that are impaired under the plan are entitled to vote to accept or reject a plan. A class is impaired if the legal, equitable or contractual rights to which the holders of claims or interests are entitled are modified, other than by curing defaults and reinstating the debt. Pursuant to sections 1126(f) and (g) of the Bankruptcy Code, classes of claims and interests that are not impaired are conclusively presumed to have accepted the plan and are not entitled to vote on a plan, and classes of claims and interests whose holders will receive or retain no property under the plan are deemed to have rejected a plan and are not entitled to vote on a plan. Creditors who hold disputed or disallowed claims are not entitled to vote to accept or reject the plan.

Under the Plan, the holders of Claims in Classes 2, 3A, 3B, 3C and 4 are entitled to vote to accept or reject the Plan. All other Classes of Claims or Interests are deemed under the Bankruptcy Code to have accepted or rejected the Plan. This Disclosure Statement and an appropriate ballot are being distributed to all holders of Claims who are entitled to vote on the Plan.

Under the Bankruptcy Code, a class of claims accepts a plan if holders of at least two-thirds in dollar amount and more than one-half in number of the claims properly voted in that class, voted to accept.

A vote may be disregarded if the Bankruptcy Court determines, after notice and a hearing, that acceptance or rejection was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code.

Any ballot that is properly completed, executed and timely filed but does not indicate an acceptance or rejection of the Plan, or indicates both an acceptance and a rejection of the Plan, will be disregarded. Whenever a Creditor casts more than one ballot voting the same Claim before the Voting Deadline, the last ballot received before the Voting Deadline is deemed to reflect the voter's intent and shall therefore supersede any prior ballots. Creditors must vote all of their Claims within a particular Class under the Plan either to accept or reject the Plan and may not split their vote, and thus a ballot that partially accepts and partially rejects the Plan will not be counted.

**B. The Joint Hearing**

The Joint Hearing is scheduled for May 4, 2011 at 10:00 a.m. before the Bankruptcy Court at the Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street Chicago, Illinois 60604. At the Joint Hearing, the Bankruptcy Court will consider whether the Plan satisfies the various requirements of section 1129 of the Bankruptcy Code. Prior to the Joint Hearing, the Plan Proponents will submit a report to the Bankruptcy Court reflecting the votes received with respect to the acceptance or rejection of the Plan by the parties entitled to vote thereon.

Section 1128(b) of the Bankruptcy Code provides that any party-in-interest may object to confirmation of the Plan. Any objection to confirmation of the Plan must be made in writing and filed with the Bankruptcy Court and served on all required parties no later than 5:00 p.m. prevailing Central Time on April 22, 2011. Unless an objection to confirmation is timely served and filed, it may not be considered by the Bankruptcy Court.

**C. Confirmation**

At the Joint Hearing, the Bankruptcy Court will confirm the Plan only if all of the applicable requirements of section 1129 of the Bankruptcy Code are met. Among the requirements for confirmation of a plan are that the plan: (i) has been accepted by all impaired classes of claims and equity interests or, if rejected by an impaired class, that the plan “does not discriminate unfairly” and is “fair and equitable” as to such class; (ii) is feasible; and (iii) is in the “best interests” of creditors and stockholders that are impaired under the plan and that vote, or are deemed, to reject the plan.

**1. Unfair Discrimination and Fair and Equitable Tests**

To obtain confirmation of a plan over the objection of a class of claims or interests that rejects such plan, it must be demonstrated that the plan “does not discriminate unfairly” and is “fair and equitable” with respect to each such non-accepting class. In order for a plan to be found to be “fair and equitable” and thus subject to confirmation by “cramdown” under section 1129(b) of the Bankruptcy Code, the Plan Proponents must demonstrate:

**a. For a Class of Unsecured Creditors:** That either: (i) each impaired unsecured creditor receives or retains, under the plan, property of a value equal to the amount of its allowed claim; or (ii) the holders of claims and interests that are junior to the claims of the dissenting class will not receive any property under the plan.

**b. For a Class of Interests:** That either: (i) each holder of an interest will receive or retain, under the plan, property of a value equal to the greatest of the fixed liquidation preference to which such holder is entitled, the fixed redemption price to which such holder is entitled or the value of the interest; or (ii) the holder of an interest that is junior to the non-accepting class will not receive or retain any property under the plan.



As described above, holders of Interests in Class 5 are presumed, under section 1126(g) of the Bankruptcy Code, to have rejected the Plan. The Plan Proponents request confirmation of the Plan under section 1129(b) of the Bankruptcy Code notwithstanding the deemed rejection of the Plan by Class 5. The cancellation of the Class 5 Interests satisfies the “fair and equitable” test because there are no junior classes that will receive or retain any property under the Plan. In addition, the Plan Proponents do not believe that there is any basis for an allegation that Plan unfairly discriminates against Class 5.

## **2. Best Interests Test**

With respect to each impaired class of claims and interests, confirmation of a plan requires that each holder of a claim or interest either: (i) accept the plan; or (ii) receive or retain under the plan property of a value, as of the effective date, that is not less than the value such holder would receive or retain if the debtor was liquidated under chapter 7 of the Bankruptcy Code. The Plan Proponents believe that holders of Impaired Claims and Interests in each Impaired Class under the Plan would receive significantly less under a chapter 7 liquidation than under the Plan. This difference is represented in the following liquidation analysis (the “*Liquidation Analysis*”).

For purposes of the Liquidation Analysis, the Plan Proponents have assumed that the proceeds realized upon liquidation of the Estate’s assets would not vary materially if the liquidation were conducted under chapter 7, but the difference in creditor recoveries would be the result of increased costs of administration. Estimates of additional fees of professionals upon conversion are based on an assumption that a chapter 7 trustee’s professionals would have to conduct an investigation that would be comparable to what the Committee has conducted thus far. In fact, the Plan Proponents believe that the Liquidation Analysis may understate the

difference in amounts available for distribution in that the Plan is intended to accommodate and facilitate settlement of potential disputes in an economical manner.

<b>Asset</b>	<b>Estimated Value in Liquidation</b>
Cash on deposit	\$2,000,000.00
North Roselle Property	\$2,940,000.00
WIB Stock	\$700,000.00
SFI Interest	\$45,000.00
Annuity Payments	\$650,000.00
Split Dollar Life Insurance	\$70,000.00
RAC Tax Refund	\$2,156,381.00
Other Claims and Causes of Action	Unknown
<b>Total</b>	<b>\$8,561,381.00</b>

**Chapter 7 Costs of Administration in Excess of Administration Under Plan:**

Trustee's Fees:	25% of first \$5,000.00 recovered = \$1,250.00
	10% of next \$45,000.00 recovered = \$4,500.00
	5% of next \$950,000.00 recovered = \$47,500.00
	<u>3% of remainder (\$7,561,381.00) = \$226,841.43</u>
Total Trustee's Fees:	\$280,091.43
Additional Fees of Professionals Employed:	\$300,000.00
<b>Total Additional Expense Under Chapter 7:</b>	<b>\$580,091.43</b>

In sum, the Plan will provide a significantly greater recovery than under chapter 7 due to:

- (i) the value the Plan Proponents believe that the Creditor Trustee will bring to the Estate in reconciling overstated and invalid Claims and from Avoidance Actions and Miscellaneous Causes of Action;
- (ii) the value the Plan Proponents believe that the Creditor Trustee will bring to the Estate by conducting orderly rather than forced sales of the Estate's several illiquid assets;
- (iii) the settlement of potential disputes under the Plan; and
- (iv) by avoiding the additional expenses associated with conversion to a chapter 7 case.

The Creditor Trust – which will be created if the Plan is confirmed – will be administered by the Creditor Trustee. The Creditor Trustee will receive compensation at an hourly rate of

\$500.00 for general trustee services and a blended hour rate of \$295.00 for distribution services; however, the Plan Proponents believe that the aggregate Creditor Trustee's fees will be far less than the \$280,091.43 estimated for a chapter 7 trustee's fees, as outlined above. The Creditor Trustee will retain Professionals, but it is anticipated that some of the Professionals will be among those who have played a role in administration of the Case and are already familiar with the issues relevant to administration of the Creditor Trust. Given the added expense of the chapter 7 trustee's Professionals to become generally familiar with the Debtor's Estate, the Plan Proponents submit that the fees of any Professionals of the Creditor Trustee should be less than the professional fees of a chapter 7 trustee. Accordingly, the Plan meets the "best interests" test.

### **3. Conclusion**

For the foregoing reasons, the Plan Proponents submit that the Plan, as proposed, meets each of the requirements for confirmation pursuant to section 1129 of the Bankruptcy Code.

## **XI. TAX CONSEQUENCES**

U.S. TREASURY CIRCULAR 230 DISCLOSURE: TO ENSURE COMPLIANCE WITH U.S. TREASURY CIRCULAR 230, EACH HOLDER OF A CLAIM OR AN INTEREST IS HEREBY NOTIFIED THAT: (I) ANY DISCUSSION OF U.S. FEDERAL TAX ISSUES IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE RELIED UPON, AND CANNOT BE RELIED UPON, BY ANY HOLDER OF A CLAIM OR AN INTEREST FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON A HOLDER OF A CLAIM OR AN INTEREST UNDER TITLE 26 OF THE UNITED STATES CODE (THE "*TAX CODE*"); (II) SUCH DISCUSSION IS WRITTEN IN CONNECTION WITH THE SOLICITATION OF VOTES ACCEPTING THE PLAN; AND (III) A HOLDER OF A CLAIM OR AN INTEREST SHOULD SEEK ADVICE BASED UPON ITS PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

**A. General**

The following discussion summarizes certain anticipated U.S. federal income tax consequences of the transactions proposed in the Plan for the Debtor and for the holders of Claims and Interests. The summary is provided for information purposes only and is based on the Tax Code, the Treasury regulations promulgated thereunder, judicial authority and current administrative rulings and practice, all as in effect as of the date hereof and all of which are subject to change, possibly with retroactive effects that could adversely affect the federal income tax consequences described below.

The summary does not address all aspects of federal income taxation that may be relevant to a particular holder of a Claim in light of its particular facts and circumstances or to certain types of holders of Claims subject to special treatment under the Tax Code (for example, non-U.S. taxpayers, financial institutions, broker-dealers, life insurance companies and tax-exempt organizations). The summary also does not discuss any aspects of state, local or foreign tax consequences.

In addition, a substantial amount of time may elapse between the Confirmation Date of the Plan and the receipt of a final distribution under the Plan and the Creditor Trust Agreement. Events subsequent to the date of this Disclosure Statement, such as additional tax legislation, court decisions or administrative changes, could affect the federal income tax consequences of the Plan and the transactions contemplated thereunder. No ruling will be sought from the IRS with respect to any of the tax aspects of the Plan and no opinion of counsel has heretofore been obtained by the Debtor with respect thereto. Accordingly, each holder of a Claim or Interest is strongly urged to consult with its own tax advisor regarding the federal, state, local and foreign tax consequences of the Plan to such holder.

**B. Federal Income Tax Consequences to the Debtor**

**1. Overview of Current Tax Year Position and NOLs.** In general, although the Debtor is still analyzing its results from operations, it expects to have substantial current year losses, adding to current net operating loss carryforwards (“NOLs”). As a result of these NOLs and the exclusion from taxation of any cancellation of indebtedness (“COD”) income in connection with a bankruptcy case, the Debtor does not expect to incur any substantial tax liability as a result of implementation of the Plan.

**2. Cancellation of Indebtedness.** Under the Plan, the Debtor’s outstanding indebtedness will be satisfied in exchange for Cash. The satisfaction of a debt obligation for an amount of Cash and other property having a fair market value less than the debt obligation generally gives rise to COD income to a debtor.

However, with the exception noted below, the Debtor will not recognize COD income because the debt discharge occurs in a bankruptcy case. The Debtor will instead, to the extent available, reduce its tax attributes to the extent of its COD income in the following order: (i) NOLs; (ii) general business credit carryforwards; (iii) minimum tax credit carryforwards; (iv) capital loss carryforwards; and (v) the tax basis of the Debtor’s depreciable and nondepreciable assets (but not below the amount of its liabilities immediately after the discharge).

The Debtor may elect to alter the preceding order of attribute reduction and, instead, first reduce the tax basis of their depreciable assets. The reduction in tax attributes occurs only after the tax for the year of the debt discharge has been determined (i.e., such attributes may be available to offset taxable income that accrues between the date of discharge and the end of the Debtor’s tax year). The Debtor does not recognize any COD income that exceeds the amount of

available tax attributes, and such excess COD income has no other U.S. federal income tax effect.

**3. Alternative Minimum Tax.** The Debtor believes that current year losses will be sufficient to eliminate all or substantially all alternative minimum taxable income of the Debtor. As a result, the Debtor does not anticipate having any alternative minimum tax liability for fiscal year 2010 as a result of the transactions that occur upon confirmation of the Plan.

**C. Federal Income Tax Consequences to Holders of Allowed Claims**

The federal income tax consequences of the implementation of the Plan to holders of Allowed Claims will depend on, among other things, the consideration to be received by the holder, whether the holder reports income on the accrual or cash method, whether the holder receives distributions under the Plan in more than one taxable year, whether the holder's Claim is an Allowed Claim or a Disputed Claim on the Confirmation Date and whether the holder has taken a bad debt deduction or a worthless security deduction with respect to its Claim.

**1. Recognition of Gain or Loss.** In general, a holder of an Allowed Claim should recognize gain or loss equal to the amount realized under the Plan in respect of its Claim less the holder's tax basis in the Claim. Any gain or loss recognized in the exchange may be long-term or short-term capital gain or loss or ordinary income or loss, depending upon the nature of the Allowed Claim and the holder, the length of time the holder held the Claim and whether the Claim was acquired at a market discount. If the holder realizes a capital loss, the holder's deduction of the loss may be subject to limitation. The holder's tax basis for any property received under the Plan generally will equal the amount realized. The holder's amount realized generally will equal the sum of the Cash and the fair market value of any other property received by the holder under the Plan on the Confirmation Date or a subsequent distribution date, less the amount (if any) treated as interest, as discussed below.

**2. Post-Confirmation Date Cash Distributions.** Because certain holders of Allowed Claims, including Disputed Claims that ultimately become Allowed Claims, may receive Cash distributions after the Confirmation Date, the imputed interest provisions of the Tax Code may apply and cause a portion of the subsequent distributions to be treated as interest. Additionally, because holders may receive distributions with respect to an Allowed Claim in a taxable year or years following the year of the initial distribution, any loss and a portion of any gain realized by the holder may be deferred. All holders of Allowed Claims are urged to consult their tax advisors regarding the possible application of (or ability to elect out of) the “installment method” of reporting with respect to their Claims.

**3. Receipt of Interest.** Holders of Allowed Claims will recognize ordinary income to the extent that they receive Cash or property, including beneficial interests in the Creditor Trust, that is allocable to accrued but unpaid interest that the holder has not yet included in its income. If an Allowed Claim includes interest, and if the holder receives less than the amount of the Allowed Claim pursuant to the Plan, the holder must allocate the Plan consideration between principal and interest. Holders of Allowed Claims are strongly urged to consult their own tax advisors in this regard. If the Plan consideration allocable to interest with respect to an Allowed Claim is less than the amount that the holder has previously included as interest income, the previously included but unpaid interest may be deducted, generally at a loss.

**4. Bad Debt or Worthless Securities Deduction.** A holder who receives in respect of an Allowed Claim an amount less than the holder’s tax basis in the Claim may be entitled in the year of receipt (or in an earlier or later year) to a bad debt deduction in some amount under section 166(a) of the Tax Code or a worthless securities deduction under section 165(g) of the Tax Code. The rules governing the character, timing and amount of bad debt and

worthless securities deductions place considerable emphasis on the facts and circumstances of the holder, the obligor and the instrument with respect to which a deduction is claimed. Holders of Allowed Claims, therefore, are urged to consult their tax advisors with respect to their ability to take such a deduction.

**D. Treatment of the Creditor Trust and Its Beneficial Owners**

The Creditor Trust is intended to be treated for U.S. federal income tax purposes: (i) in part as a liquidating trust within the meaning of section 301.7701-4(d) of the U.S. Treasury Regulations; and (ii) in part as one or more disputed claims or other reserves taxed either as discrete trusts pursuant to section 641, *et seq.*, of the Tax Code or as disputed ownership funds pursuant to section 1.468B-9(b)(1) of the U.S. Treasury Regulations, as determined by the Creditor Trustee in the manner specified in the Creditor Trust Agreement. The remainder of this Section XI.D. assumes that this treatment is correct. If the IRS succeeds in requiring a different characterization of the Creditor Trust, the Creditor Trust could be subject to tax on all of its net income and gains, with the result that the amounts received by holders of Allowed Claims could be reduced.

**1. Creditor Trust.** Except as discussed in Section XI.D.2. below (Disputed Claims and Other Reserves), the Creditor Trust will not be treated as a separate entity for U.S. federal income tax purposes. Instead, the holders of “beneficial interests” in the Creditor Trust will be treated as owning their respective Pro Rata shares of the applicable Creditor Trust Assets, subject to any liabilities of the Creditor Trust itself. Holders of “beneficial interests” in the Creditor Trust will include all holders of Allowed Claims that are entitled to receive a distribution from the Creditor Trust pursuant to the Plan.

For U.S. federal income tax purposes, the transfer of the Creditor Trust Assets (to the extent not distributed to holders of Allowed Claims as of the Confirmation Date) to the Creditor



Trust will be treated as a transfer of the Creditor Trust Assets from the Debtor to the holders of Allowed Claims, subject to any liabilities of the Debtor or the Creditor Trust payable from the proceeds of such assets, followed by such holders' transfer of such assets (subject to such liabilities) to the Creditor Trust in exchange for their respective beneficial interests in the Creditor Trust. Thus, each holder of an Allowed Claim on the Confirmation Date should be treated as transferring its Claim to the Debtor in exchange for the holder's Pro Rata share of the applicable Creditor Trust Assets (subject to any liabilities of the Creditor Trust) followed by the holder's transfer of such assets (subject to applicable liabilities) to the Creditor Trust. The "applicable Creditor Trust Assets" are the Creditor Trust Assets (or the proceeds thereof) from which a holder of an Allowed Claim is entitled to a distribution under the Plan. The holder should recognize gain or loss equal to the difference between the fair market value of the applicable Creditor Trust Assets (subject to any liabilities) and the holder's adjusted basis in its Allowed Claim. The tax basis of the applicable Creditor Trust Assets deemed received in the exchange will equal the amount realized by the holder and the holding period for such assets will begin on the day following the exchange. For the avoidance of doubt, the holders of Allowed Claims are not intended to be treated for federal income tax purposes as receiving Creditor Trust Assets that are contributed to any Disputed Claims reserve until such time as such Disputed Claims reserve makes distributions, in which case (and at which time) the holders of Allowed Claims are intended to be treated as receiving the distributions actually received from the Disputed Claims reserve, if any.

Each holder of an Allowed Claim will be required to include in its annual income, and pay tax to the extent due on, its allocable share of each item of income, gain, loss, deduction or credit recognized by the Creditor Trust (including interest or dividend income earned on bank

accounts and other investments) and the Creditor Trustee will allocate such items to the holders using any reasonable allocation method. If the Creditor Trust sells or otherwise disposes of a Creditor Trust Asset in a transaction in which gain or loss is recognized, each holder of an Allowed Claim that is entitled to a distribution from such Creditor Trust Asset (or the proceeds thereof) will be required to include in income gain or loss equal to the difference between: (i) the holder's Pro Rata share of the Cash or property received in exchange for the applicable Creditor Trust Asset sold or otherwise disposed of; and (ii) the holder's adjusted basis in the holder's Pro Rata share of the applicable Creditor Trust Asset. The character and amount of any gain or loss will be determined by reference to the character of the asset sold or otherwise disposed of. Each holder of an Allowed Claim will be required to report any income or gain recognized on the sale or other disposition of any applicable Creditor Trust Asset whether or not the Creditor Trust distributes the sale proceeds currently and may, as a result, incur a tax liability before the holder receives a distribution from the Creditor Trust.

Notwithstanding the foregoing, distributions made as of the Confirmation Date to holders of Allowed Claims are intended to be treated for U.S. federal income tax purposes as directly from the Debtor to the holders of such Allowed Claims, and such holders shall include in their taxable incomes any interest earned on such distributions from the Confirmation Date to the date on which the actual distribution is made.

**2. Disputed Claims and Other Reserves.** Any reserves for Disputed Claims or the other similar reserves that may be established by the Creditor Trustee will be treated as one or more reserves taxed either as discrete trusts pursuant to section 641, *et seq.*, of the Tax Code or as disputed ownership funds pursuant to section 1.468B-9(b)(1) of the U.S. Treasury Regulations, as determined by the Creditor Trustee in the manner specified in the

Creditor Trust Agreement. If treated as discrete trusts, income and gain recognized with respect to the Creditor Trust Assets in any Disputed Claims reserve will be subject to an entity-level tax to the extent the income or gain is not distributed to holders of Allowed Claims within the same taxable year. If treated as disputed ownership funds, income and gain recognized with respect to any Creditor Trust Assets in any Disputed Claims reserve will be subject to an entity-level tax regardless of whether income or gain is distributed to holders of Allowed Claims within the same taxable year.

**E. Income Reporting and Withholding**

Under the Tax Code's backup withholding rules, the holder of an Allowed Claim may be subject to backup withholding with respect to distributions or payments made pursuant to the Plan unless the holder comes within certain exempt categories (which generally include corporations) and, when required, demonstrates that fact, or provides a correct taxpayer identification number and certifies under penalty of perjury that the taxpayer identification number is correct and that the holder is not subject to backup withholding because of a failure to report all dividend and interest income. Backup withholding is not an additional tax, but merely an advance payment that may be refunded to the extent it results in an overpayment of tax. Holders of Allowed Claims may be required to establish exemption from backup withholding or to make arrangements with respect to the payment of backup withholding.

**F. Federal Income Tax Consequences to Holders of Interests**

Under the Plan, holders of Interests will not receive anything on account of such Interest. A holder of such Interest will recognize loss in an amount equal to such holder's adjusted tax basis in the Interest. The character of any recognized loss will depend upon several factors, including, but not limited to, the status of the holder, the nature of the Interest in the holder's hands, the purpose and circumstances of its acquisition, the holder's holding period and the

extent to which the holder had previously claimed a deduction for the worthlessness of all or a portion of the Interest.

There are many factors that will determine the tax consequences to each holder of an Interest. Furthermore, the tax consequences of the Plan are complex and, in some cases, uncertain. Therefore, it is important that each holder of an Interest obtain his, her or its own professional tax advice regarding the tax consequences to such holder of an Interest as a result of the Plan.

**G. Importance of Obtaining Professional Tax Assistance**

THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE ABOVE DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A HOLDER'S INDIVIDUAL CIRCUMSTANCES. ACCORDINGLY, HOLDERS ARE URGED TO CONSULT WITH THEIR TAX ADVISORS ABOUT THE FEDERAL, STATE, LOCAL, AND FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.

**XII. RISK FACTORS**

Holders of Claims and Interests against the Debtor should read and consider carefully the information set forth below, as well as other information set forth in this Disclosure Statement (and the documents delivered together herewith and/or incorporated by reference), prior to voting to accept or reject the Plan. This information, however, should not be regarded as necessarily setting forth the only potential risks involved in connection with the Plan and its implementation.

**A. Failure To Satisfy Vote Requirement**

In the event that sufficient votes accepting the Plan are not received and, as a result, the Plan Proponents are unable to confirm the Plan as proposed, the Plan Proponents will assess the alternatives available to them, including: (i) amending the Plan; or (ii) converting these cases to chapter 7 liquidation proceedings. There is substantial risk that either of these alternatives will result in less favorable treatment of Claims and Interests than that provided in the Plan.

**B. Non-Consensual Confirmation**

In the event any Impaired Class of Claims does not accept the Plan, the Bankruptcy Court may nevertheless confirm such Plan at the Plan Proponents' request if at least one Impaired Class of Claims has accepted the Plan (with such acceptances being determined without including the vote of any "insider" in such Class), and, as to each Impaired Class that has not accepted the Plan, the Bankruptcy Court determines that the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to such dissenting Impaired Class(es). Because the Plan deems Class 5 to have rejected the Plan, these requirements must be satisfied with respect to such Class. The Plan Proponents believe that the Plan satisfies these requirements, although there can be no assurances that the Bankruptcy Court will make the findings necessary to reach this result.

**C. Risk of Non-Occurrence of the Effective Date**

Although the Plan Proponents believe that if the Plan is confirmed, the Effective Date will occur soon after the Confirmation Date of the Plan, there can be no assurance that all conditions to the occurrence of the Effective Date will occur. In the event the Effective Date does not occur, the Plan Proponents will assess the alternatives available to them at that time.

**D. Classification and Treatment of Claims and Equity Interests**

Section 1122 of the Bankruptcy Code requires that the Plan classify Claims against, and Interests in, the Debtor. The Bankruptcy Code also provides that, except for certain Claims classified for administrative convenience, the Plan may place a Claim or Interest in a particular Class only if such Claim or Interest is substantially similar to the other Claims or Interests of such Class. The Plan Proponents believe that all Claims and Interests have been appropriately classified in the Plan.

The Bankruptcy Code also requires that the Plan provide the same treatment for each Claim or Interest of a particular Class unless the holder of a particular Claim or Interest agrees to a less favorable treatment of its Claim or Interest. The Plan Proponents believe that the Plan treats each Claim or Interest in a given Class equally, thus satisfying this requirement.

To the extent that the Bankruptcy Court finds that the Plan does not satisfy these requirements, the Bankruptcy Court could deny confirmation of the Plan. Issues or disputes relating to classification and/or treatment could result in a delay in the confirmation and consummation of the Plan and could increase the risk that the Plan will not be consummated.

**E. Amount of Allowed Claims**

The total amount of all Claims filed in the Cases may materially exceed the estimated amounts of Allowed Claims assumed in the development of the Plan, in the valuation estimates provided above. The actual amount of all Allowed Claims in any Class may differ significantly from the estimates provided in this Disclosure Statement. Accordingly, the amount and timing of the distributions that will ultimately be received by any particular holder of an Allowed Claim in any Class may be materially and adversely affected if the estimates are exceeded as to any Class.

### **XIII. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN**

The Plan Proponents believe that the Plan affords holders of Claims the potential for the greatest recovery and, therefore, is in the best interests of such holders. The Plan as presented is the result of considerable negotiations between the Debtor, the Committee and other parties-in-interest. If, however, the requisite acceptances are not received, or the Plan is not confirmed and/or consummated, the theoretical alternatives include: (i) formulation of an alternative plan of liquidation; or (ii) liquidation of the Debtor and its Estate under chapter 7 of the Bankruptcy Code.

#### **A. Alternative Plan(s) of Liquidation**

If the Plan is not confirmed, the Debtor, the Committee or another party may attempt to formulate and propose a different plan or plans of liquidation. The Plan Proponents have formulated the Plan with the intention of maximizing the amount available for distribution to holders of Claims and does not believe that any alternative plan formulation would result in greater recoveries. The delay associated with proposing and seeking confirmation of an alternative plan would increase administrative expense burdens, with the result that net recoveries for holders of General Unsecured Claims would diminish.

#### **B. Chapter 7 Liquidation of the Debtor**

If no plan is confirmed, the Debtor may be forced to liquidate under chapter 7 of the Bankruptcy Code, pursuant to which a trustee would be elected or appointed to liquidate the Debtor's assets for distribution to creditors in accordance with the priorities established by the Bankruptcy Code. The Debtor believes that in a liquidation under chapter 7, before Creditors received any distribution, additional administrative expenses related to the appointment of a trustee and the trustee's attorneys, accountants and other professionals would cause a substantial

diminution in the value of the Debtor's Estate. The assets available for distribution to Creditors would be reduced by such additional expenses and by claims, some of which would be entitled to priority.

#### **XIV. CONCLUSION**

The Plan Proponents submit that, under the Plan, holders of Unsecured Claims stand to receive a meaningful recovery on their Claims, while at the same time avoiding the additional fees and expenses that would be incurred upon conversion to chapter 7. Therefore, the Plan Proponents believe that the distributions provided for in the Plan are fair and equitable, and the Plan Proponents strongly recommend acceptance of the Plan.

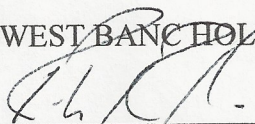
If you are eligible to vote on the Plan, please do so now by completing and returning the enclosed ballot.

***[Remainder of Page Intentionally Blank]***



Dated this 24<sup>th</sup> day of March, 2011.

MIDWEST BANC HOLDINGS, INC.

By:   
Roberto R. Herencia  
Its President and CEO

OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS

By: \_\_\_\_\_  
Its Chair

Aaron L. Hammer (ARDC No. 6243069)  
Richard S. Lauter (ARDC No. 6182859)  
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*Counsel to Debtor and Debtor-in-Possession*

Dated this 24<sup>th</sup> day of March, 2011.

MIDWEST BANC HOLDINGS, INC.

By: Roberto R. Herencia  
Its President and CEO

OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS

By: U. A.  
Its Chair

**Aaron L. Hammer (ARDC No. 6243069)**  
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### *Counsel to Debtor and Debtor-in-Possession*

**Exhibit A - First Amended Joint Plan of Liquidation Dated March 24, 2011**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re:	)	Chapter 11
	)	
MIDWEST BANC HOLDINGS, INC., <sup>1</sup>	)	Case No. 10-37319
	)	
Debtor.	)	Judge A. Benjamin Goldgar

**FIRST AMENDED JOINT PLAN OF LIQUIDATION DATED MARCH 24, 2011**

The above-captioned debtor and debtor-in-possession (the “*Debtor*”) and the Official Committee of Unsecured Creditors (the “*Committee*”), hereby submit this First Amended Joint Plan of Liquidation (the “*Plan*”) pursuant to section 1123 of the Bankruptcy Code:

**ARTICLE I**

**Definitions and Rules of Construction**

1.1 **Definitions.** The following terms, when used in the Plan shall, unless the context otherwise requires, have the following meanings, respectively:

1.1.1 “**Administrative Claim**” shall mean a Claim of a Creditor of the kind specified in section 503(b) of the Bankruptcy Code that is entitled to priority under section 507(a)(2) of the Bankruptcy Code, and shall include: (i) any actual and necessary costs and expenses incurred by the Debtor after the Petition Date with respect to preserving the Estate and operating the Debtor’s business; (ii) any Professional Fee Claims approved by the Bankruptcy Court pursuant to section 330 of the Bankruptcy Code; (iii) all fees and charges properly assessed against the Estate pursuant to 28 U.S.C. § 1930; and (iv) TOPrS Trustee Fees and Expenses incurred after the Petition Date.

1.1.2 “**Allowed Claim**” or “**Allowed . . . Claim**” shall mean a Claim, proof of which is filed within the time fixed by the Bankruptcy Court, or that has been, or is hereafter, scheduled by the Debtor as liquidated in amount and not disputed or contingent, and to which no objection to allowance thereof has been raised or filed within any applicable period fixed by the Bankruptcy Court, or as to which a Final Order allowing such Claim has been entered.

1.1.3 “**Avoidance Action**” shall mean causes of action against Persons arising under sections 502, 510, 541, 542, 544, 545, 547 through 551 and 553 of the Bankruptcy Code, or under related state or federal statutes and common law, including fraudulent transfer laws, whether or not litigation is commenced before or after the Effective Date to prosecute such Avoidance Actions.

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<sup>1</sup> The Debtor in this chapter 11 case, along with the last four digits of the Debtor’s tax identification number is Midwest Banc Holdings, Inc. (2484). The service address for the Debtor is 54 South Washington Street, Suite 1, Hinsdale, Illinois 60521-4161.

1.1.4 “**Bankruptcy Code**” shall mean Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*

1.1.5 “**Bankruptcy Court**” shall mean the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, located in Chicago, Illinois, or any court having jurisdiction over this Case or a proceeding arising in, or arising under or related to this Case.

1.1.6 “**Bankruptcy Rules**” shall mean the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, as now in effect.

1.1.7 “**Case**” shall mean the case commenced under chapter 11 of the Bankruptcy Code by the Debtor on the Petition Date, styled *In re Midwest Banc Holdings, Inc.*, Case No. 10-37319, currently pending before the Bankruptcy Court.

1.1.8 “**Cash**” shall mean legal tender of the United States of America and equivalents thereof.

1.1.9 “**Causes of Action**” shall mean all claims and causes of action now owned or hereafter acquired by the Debtor, whether arising under any contract, the Bankruptcy Code, or other federal or state law, including, but not limited to, all litigation pending as of the Confirmation Date in any jurisdiction in which the Debtor is a plaintiff, defendant or other party, and all other adversary proceedings and lawsuits. Without limiting the generality of the foregoing and for purposes of disclosure, the term includes all claims and causes of action against officers, directors and other agents, employees and professionals arising in either tort or contract.

1.1.10 “**Claim**” shall mean any right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured, as defined by section 101(5) of the Bankruptcy Code.

1.1.11 “**Class**” shall mean a class of holders of Claims or Interests as described in the Plan.

1.1.12 “**Committee**” shall mean the Official Committee of Unsecured Creditors appointed in this Case on September 28, 2010, pursuant to section 1102 of the Bankruptcy Code.

1.1.13 “**Confirmation Date**” shall mean the date of entry of the Confirmation Order.

1.1.14 “**Confirmation Order**” shall mean the order confirming this Plan.

1.1.15 “**Creditors**” shall mean all creditors of the Debtor holding Claims for debts, liabilities, demands or other Claims of any character whatsoever.

1.1.16 “**Creditor Trust**” shall mean a common law trust to be established pursuant to the Plan, the Creditor Trust Agreement and the Confirmation Order for the sole and

exclusive benefit of the holders of Allowed Class 3 and 4 Claims. The Creditor Trust shall liquidate and distribute the Creditor Trust Assets, in accordance with the Creditor Trust Agreement.

1.1.17 “**Creditor Trust Agreement**” shall mean the agreement to be executed as soon as reasonably practicable after the Confirmation Date, in a form substantially similar to the Creditor Trust Agreement attached hereto as **Exhibit A**, among the Debtor, the Committee and the Creditor Trustee, which shall govern the obligations of the Creditor Trustee with respect to oversight of the distribution of the Net Proceeds of the Creditor Trust Assets, as further set forth in the Creditor Trust Agreement and the Plan.

1.1.18 “**Creditor Trust Assets**” shall mean those assets to be transferred to and vested in the Creditor Trust pursuant to this Plan and the Confirmation Order, plus all proceeds, earnings and replacements arising from or relating to these assets and all assets acquired by the Creditor Trust at any time. Except to the extent specifically excluded, the Creditor Trust Assets shall include, without limitation: (i) all Cash held by the Debtor (less any Cash paid or to be paid on account of unpaid Administrative Claims or paid into the Employee Claim Fund); (ii) the North Roselle Property; (iii) 40,000 shares of common stock in Western Illinois Bancshares, Inc.; (iv) the Debtor’s interest in Stieven Financial Investors, L.P.; (v) the Debtor’s remaining property, including furniture, fixtures, investments, refunds, accounts, any other tangible or intangible personal property and any and all proceeds thereof; (vi) the Debtor’s outstanding accounts receivable; and (vii) all Avoidance Actions or Miscellaneous Causes of Action engaged in by the Creditor Trust. The Creditor Trust Assets do not include the M&I Collateral.

1.1.19 “**Creditor Trustee**” shall mean such Person or entity, including any replacements thereof or successors thereto, as may be designated by the Plan Proponents to serve as custodian for the Creditor Trust and to oversee the liquidation and distribution of the Creditor Trust Assets held therein for the benefit of the holders of Allowed Class 3 and 4 Claims pursuant to the Plan, the Confirmation Order and the Creditor Trust Agreement.

1.1.20 “**Cure Amount Claim**” shall mean a Claim in an amount necessary to cure the Debtor’s defaults under an executory contract or unexpired lease at the time such contract or lease is assumed by the Debtor under section 365 of the Bankruptcy Code to the extent required by section 365 of the Bankruptcy Code.

1.1.21 “**Debtor**” shall mean Midwest Banc Holdings, Inc.

1.1.22 “**Deficiency Claim**” shall mean any General Unsecured Claim of a Creditor against the Debtor equal to the excess of the Allowed amount of the Creditor’s asserted Claim over the value of such Creditor’s interest in the Debtor’s interest in the property securing such Claim, as determined pursuant to section 506(a) of the Bankruptcy Code.

1.1.23 “**Disclosure Statement**” shall mean the Disclosure Statement filed by the Plan Proponents and approved by the Bankruptcy Court.

1.1.24 “**Disputed Claim**” shall mean any Claim (other than an Allowed Claim) that is either a Claim that has been scheduled by the Debtor or a Claim which is the subject of a proof of claim which has been filed with the Bankruptcy Court, as to which the Debtor, the

Committee or the Creditor Trustee has indicated a dispute, or as to which scheduled or filed Claim a timely objection to the allowance thereof has been filed by a party entitled to make such an objection, but as to which the Bankruptcy Court has not yet entered a Final Order.

1.1.25 “**Distributing Party**” shall mean the party obligated to make any distribution permitted or required under the Plan, whether the Debtor or the Creditor Trustee.

1.1.26 “**Employee Claim Fund**” shall mean the sum of \$785,000.00, which shall be used to fund distributions on account of Allowed Class 3B Claims.

1.1.27 “**Effective Date**” shall mean a date not greater than forty-five (45) days after the Confirmation Date, unless extended by the Creditor Trustee in his or her sole discretion; provided, however, that if a stay of the Confirmation Order is in effect on such day, then the Effective Date shall be the first day thereafter on which, if the Confirmation Order has not been vacated, no stay of the Confirmation Order is in effect.

1.1.28 “**Equity Security**” shall have the meaning provided by section 101(16) of the Bankruptcy Code.

1.1.29 “**Equity Security Holder**” shall have the meaning provided by section 101(17) of the Bankruptcy Code.

1.1.30 “**Estate**” shall mean the estate of the Debtor created in this Case pursuant to section 541 of the Bankruptcy Code.

1.1.31 “**Final Order**” shall mean an order or judgment as to which the time to appeal or seek review or rehearing has expired and as to which no appeal or petition for review or rehearing is pending.

1.1.32 “**General Unsecured Claim**” shall mean any Unsecured Claim, arising prior to the Petition Date, that is not a Professional Fee Claim, Other Administrative Expense Claim, Unsecured Priority Tax Claim, Class 1 Claim, Class 2 Claim, Class 4 Claim or Class 5 Interest.

1.1.33 “**Impaired**” shall mean any Class, or any Claim or Interest in a Class, that is impaired within the meaning of section 1124 of the Bankruptcy Code, and shall include, without limitation, Classes 2, 3, 4 and 5.

1.1.34 “**Indentures**” shall mean, collectively, the MBHI III Indenture, the MBHI IV Indenture, the MBHI V Indenture, the NST Indenture and the RAC Indenture.

1.1.35 “**Interest**” shall mean the legal, equitable, contractual and other rights of the holders of any Equity Security in the Debtor, including the rights of any entity to purchase or demand the issuance of any Equity Securities, including: (i) conversion, exchange, voting, participation and dividend rights; (ii) liquidation preferences; (iii) stock options, warrants and put rights; and (iv) share-appreciation rights.

1.1.36 **“Joint Hearing”** shall mean the date on which the Bankruptcy Court holds a hearing to consider approval of the Disclosure Statement and confirmation of this Plan.

1.1.37 **“Lien”** shall have the meaning provided by section 101(37) of the Bankruptcy Code.

1.1.38 **“M&I”** shall mean M&I Marshall & Ilsley Bank and all of its affiliates and subsidiaries.

1.1.39 **“M&I Collateral”** shall mean any and all property of the Estate that is subject to any valid and enforceable Lien securing payment of any amounts owing to M&I, except to the extent that such Lien is subject to avoidance through an Avoidance Action.

1.1.40 **“M&I Senior Notes”** shall mean the M&I Revolving Note and the M&I Term Note, collectively.

1.1.41 **“M&I Revolving Note”** shall mean that certain Promissory Note dated March 24, 2006, in the original amount of \$50,000,000, as amended from time to time.

1.1.42 **“M&I Subordinated Note”** shall mean that certain Subordinated Term Note dated March 31, 2008, in the original amount of \$15,000,000.00.

1.1.43 **“M&I Term Note”** shall mean that certain Promissory Note dated September 28, 2007, in the original principal amount of \$75,000,000, as amended from time to time.

1.1.44 **“MBHI III”** shall mean MBHI Capital Trust III, a Delaware statutory trust sponsored by the Debtor pursuant to that certain Trust Agreement dated December 17, 2003.

1.1.45 **“MBHI III Indenture”** shall mean that certain Junior Subordinated Indenture dated December 19, 2003, pursuant to which the Debtor issued the MBHI III Notes.

1.1.46 **“MBHI III Indenture Trustee”** shall mean Deutsche Bank Trust Company Americas as indenture trustee for the MBHI III Notes.

1.1.47 **“MBHI III Notes”** shall mean those certain Floating Rate Junior Subordinated Notes in the face amount of \$9,279,000.00 issued pursuant to the MBHI III Indenture

1.1.48 **“MBHI III Trustee”** shall mean Deutsch Bank Trust Company Americas as a trustee with respect to MBHI III.

1.1.49 **“MBHI IV”** shall mean MBHI Capital Trust IV, a Delaware statutory trust sponsored by the Debtor pursuant to that certain Declaration of Trust dated December 12, 2003.



1.1.50 “**MBHI IV Indenture**” shall mean that certain Indenture dated December 19, 2003, pursuant to which the Debtor issued the MBHI IV Securities.

1.1.51 “**MBHI IV Indenture Trustee**” shall mean Wilmington Trust Company as indenture trustee for the MBHI IV Securities.

1.1.52 “**MBHI IV Securities**” shall mean those certain Floating Rate Junior Subordinated Debt Securities in the face amount of \$10,310,000.00 issued pursuant to the MBHI IV Indenture.

1.1.53 “**MBHI IV Trustee**” shall mean Wilmington Trust Company as a trustee with respect to MBHI IV.

1.1.54 “**MBHI V**” shall mean MBHI Capital Trust V, a Delaware statutory trust sponsored by the Debtor pursuant to that certain Declaration of Trust dated May 24, 2005.

1.1.55 “**MBHI V Indenture**” shall mean that certain Indenture dated June 7, 2005, pursuant to which the Debtor issued the MBHI V Debentures.

1.1.56 “**MBHI V Indenture Trustee**” shall mean Wilmington Trust Company as indenture trustee for the MBHI V Debentures.

1.1.57 “**MBHI V Debentures**” shall mean those certain Floating Rate Junior Subordinated Deferrable Interest Debentures in the face amount of \$20,620,000.00 issued pursuant to the MBHI V Indenture.

1.1.58 “**MBHI V Trustee**” shall mean Wilmington Trust Company as a trustee with respect to MBHI V.

1.1.59 “**MBTC**” shall mean the Debtor’s wholly-owned subsidiary, Midwest Bank and Trust Company.

1.1.60 “**Miscellaneous Causes of Action**” shall mean all Causes of Action other than Avoidance Actions.

1.1.61 “**Net Proceeds**” shall mean the Cash proceeds received by the Creditor Trustee from time to time from the sale or other disposition of the Creditor Trust Assets, net of the reasonable or necessary costs of such sale or other disposition, including reasonable fees and expenses of the Creditor Trustee’s legal counsel and other Professionals incurred in connection therewith.

1.1.62 “**North Roselle Property**” shall mean the Debtor’s real property located at 505 North Roselle Road, Roselle, Illinois.

1.1.63 “**NSB**” shall mean Northwest Suburban Bancorp, Inc., a Delaware corporation that merged with the Debtor through the NSB Merger.

1.1.64 “**NSB Merger**” shall mean the merger effected under the March 22, 2007 Agreement and Plan of Merger between the Debtor and NSB.

1.1.65 “**NST**” shall mean Northwest Suburban Capital Trust I, a Delaware statutory trust sponsored by NSB pursuant to that certain Declaration of Trust dated May 14, 2004.

1.1.66 “**NST Debt Securities**” shall mean those certain Junior Subordinated Debt Securities in the face amount of \$10,310,000.00 issued pursuant to the NST Indenture.

1.1.67 “**NST Indenture**” shall mean that certain Indenture dated May 18, 2004, pursuant to which NST issued the NST Debt Securities. In connection with the NSB Merger, the Debtor and the NST Trustee entered into a Supplemental Indenture dated October 1, 2007, pursuant to which the Debtor assumed substantially all of NST’s obligations to the NST Trustee.

1.1.68 “**NST Indenture Trustee**” shall mean Bank of New York Mellon, N.A., as successor in interest to JP Morgan Chase Bank, as indenture trustee for the NST Debt Securities.

1.1.69 “**NST Trustee**” shall mean The Bank of New York Mellon Trust Company, N.A. as a trustee with respect to NST.

1.1.70 “**Other Administrative Expense Claim**” shall mean an Administrative Claim that is not a Professional Fee Claim.

1.1.71 “**Person**” shall mean an individual, corporation, partnership, joint venture, association, joint stock company, limited liability company, limited liability partnership, trust, estate, unincorporated organization or other entity.

1.1.72 “**Petition Date**” shall mean the date of the filing of the Debtor’s Case, or August 20, 2010.

1.1.73 “**Plan**” shall mean this First Amended Joint Plan of Liquidation as set forth herein or as it may be modified or amended.

1.1.74 “**Plan Proponents**” shall mean the Debtor and the Committee.

1.1.75 “**Priority Claim**” shall mean a Claim, other than an Administrative Claim or Priority Tax Claim, to the extent entitled to priority in payment under section 507(a) of the Bankruptcy Code.

1.1.76 “**Priority Tax Claims**” shall mean a Claim of a governmental unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

1.1.77 “**Professional Fee Claims**” shall mean Claims of Professional Persons for compensation for services rendered in this Case prior to the Confirmation Date pursuant to sections 327, 328, 330, 331, 363, 503 or 1103 of the Bankruptcy Code.

1.1.78 “**Professional**” or “**Professional Persons**” shall mean Persons, including attorneys, accountants and financial advisors retained by the Debtor, the Committee or the Creditor Trustee, or to be compensated pursuant to sections 327, 328, 330, 331, 363, 503 or 1103 of the Bankruptcy Code.

1.1.79 “**Pro Rata**” shall mean proportionately so that the ratio of the amount of the distribution made on account of a particular Allowed Claim to the distribution made on account of all Allowed Claims of the Class in which the particular Allowed Claim is included is the same as the ratio of the amount of the particular Allowed Claim to the total amount of the Allowed Claims of the Class of which the particular Allowed Claim is included.

1.1.80 “**RAC**” shall mean Royal American Corporation, a Delaware corporation that merged with the Debtor through the RAC Merger.

1.1.81 “**RAC Merger**” shall mean the merger effected under the February 8, 2006 Agreement and Plan of Merger between the Debtor and RAC.

1.1.82 “**RAC Tax Refund**” shall mean the federal income tax refund owing on account of the amended 2004 federal income tax return filed with respect to the Debtor’s predecessor RAC.

1.1.83 “**RCT**” shall mean Royal Capital Trust I, a Delaware statutory trust sponsored by RAC pursuant to that certain Declaration of Trust dated April 20, 2004.

1.1.84 “**RCT Debt Securities**” shall mean those certain Junior Subordinated Debt Securities in the face amount of \$10,310,000.00 issued pursuant to the RAC Indenture.

1.1.85 “**RCT Indenture**” shall mean that certain Indenture dated April 30, 2004, pursuant to which RAC issued the RCT Debt Securities. In connection with the RAC Merger, the Debtor and RCT entered into a Supplemental Indenture dated June 30, 2006, pursuant to which the Debtor assumed substantially all of RAC’s obligations to the RCT Trustee.

1.1.86 “**RCT Indenture Trustee**” shall mean Bank of New York Mellon, N.A., as successor in interest to JP Morgan Chase Bank, as indenture trustee for the RCT Debt Securities under the RCT Indenture.

1.1.87 “**RCT Trustee**” shall mean The Bank of New York Mellon, N.A. as a trustee with respect to RCT.

1.1.88 “**Secured Claim**” shall mean a Claim of a Creditor secured by a lien on property of the Estate, or a Claim subject to set off under section 553 of the Bankruptcy Code, to the extent of the value of such Creditor’s interest in property of the Estate, or to the extent of the amount subject to set off, as the case may be.

1.1.89 “**Secured Creditor**” shall mean the holder of a Secured Claim.

1.1.90 **“Senior Indebtedness”** shall have the meaning assigned in the various instruments, agreements, and other documents entered into or otherwise executed with respect to the indebtedness that is included in Class 4.

1.1.91 **“TOPrS”** shall mean the trust preferred securities issued by the TOPrS Trusts.

1.1.92 **“TOPrS Debentures”** shall mean the RCT Debt Securities, NST Debt Securities, MBHI III Notes, MBHI IV Securities, and MBHI V Debentures.

1.1.93 **“TOPrS Trustee Fees and Expenses”** shall mean the fees and necessary out-of-pocket expenses incurred by the TOPrS Trustees, including the fees and expenses of counsel or other professionals in an amount not to exceed \$160,000.00 in the aggregate and as otherwise agreed to by the Plan Proponents, or, in the event that the Plan Proponents and any one or more of the TOPrS Trustees are unable to agree on the amount of any TOPrS Trustee Fees and Expenses, as Allowed by the Bankruptcy Court.

1.1.94 **“TOPrS Trustees”** shall mean the RCT Trustee, the RCT Indenture Trustee, the NST Trustee, the NST Indenture Trustee, the MBHI III Trustee, the MBHI III Indenture Trustee, the MBHI IV Trustee, the MBHI IV Indenture Trustee, the MBHI V Trustee and the MBHI V Indenture Trustee.

1.1.95 **“TOPrS Trusts”** shall mean RCT, NST, MBHI III, MBHI IV, and MBHI V.

1.1.96 **“TOPrS Unsecured Claims”** shall mean Claims on account of the TOPrS Debentures issued to the TOPrS Trusts and any guarantees related thereto.

1.1.97 **“Trust Interests”** shall mean all beneficial interests in the Creditor Trust..

1.1.98 **“Trustee’s Expenses”** shall mean the reasonable fees, costs and expenses incurred by the Creditor Trustee and any Professionals retained by it in connection with the performance of its duties and responsibilities under the Plan and Creditor Trust Agreement, as well as any other reasonable and necessary costs of administration of the Creditor Trust, including U.S. Trustee fees incurred during the post-Confirmation Date period, which may be paid from the Creditor Trust Assets.

1.1.99 **“Unsecured Claim”** shall mean a Claim of a Creditor not secured by a Lien on property of the Estate and not entitled to be classified as a Priority Claim pursuant to section 507 of the Bankruptcy Code.

1.1.100 **“U.S. Trustee”** shall mean the United States Trustee for the Northern District of Illinois.

1.2 **Rules of Interpretation and Computation of Time.** For purposes of this Plan, unless otherwise provided herein: (i) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, will include both the singular and the plural; (ii) unless otherwise provided in this Plan, any reference in this Plan to a contract, instrument,

release or other agreement or document being in a particular form or on particular terms and conditions means that such document will be substantially in such form or substantially on such terms and conditions; (iii) any reference in this Plan to an existing document or schedule filed or to be filed means such document or schedule, as it may have been or may be amended, modified or supplemented pursuant to this Plan; (iv) any reference to any entity as a holder of a Claim or Interest includes the entity's successors and assigns; (v) all references in this Plan to Sections, Articles and Exhibits are references to Sections, Articles and Exhibits of or to this Plan; (vi) the words "herein," "hereunder" and "hereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; (vii) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Plan; (viii) the rules of construction set forth in section 102 of the Bankruptcy Code will apply; and (ix) in computing any period of time prescribed or allowed by this Plan, the provisions of Bankruptcy Rule 9006(a) will apply.

## **ARTICLE II**

### **Designation of Unclassified Claims**

Pursuant to section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims are not classified under the Plan.

## **ARTICLE III**

### **Designation of Classified Claims and Interests**

Pursuant to section 1123(a)(1) of the Bankruptcy Code, Claims and Interests are classified as follows:

3.1 **Class 1** consists of all Allowed unsecured Priority Claims (other than unsecured Priority Tax Claims).

3.2 **Class 2** consists of the Allowed Secured Claims of M&I with respect to the M&I Senior Notes that are secured to the extent of the value in the underlying collateral securing the Class 2 Claims.

3.3 **Class 3A** consists of all Allowed General Unsecured Claims, including, but not limited to: (i) M&I's Deficiency Claim with respect to the M&I Senior Notes; and (ii) Claims arising under the TOPrS Debentures and related instruments that are not expressly subordinated to Senior Indebtedness.

3.4 **Class 3B** consists of the Allowed Unsecured Claims of former employees, officers, and directors arising out of their prior relationship with the Debtor, including claims under the SERP and other employment-related contracts and claims for indemnification; provided, however, that Class 3B does not include the Claims of Creditors who make an affirmative election to not be included in Class 3B.

3.5 **Class 3C** consists of the Allowed Unsecured Claims of the FDIC, including, but not limited to, those claims arising out of or related to the North Roselle Property, any alleged rights regarding recovery of dividends declared and paid by MBTC to the Debtor at any time, and any other claims that the FDIC may have in its capacity as receiver of MBTC and any claims otherwise arising out of or related to any regulatory action with respect to MBTC; provided, however, that the FDIC's Claims shall be included in Class 3A in the event that the FDIC makes an affirmative election to not be included in Class 3C.

3.6 **Class 4** consists of: (i) the Allowed Claims of the RCT Trustee with respect to the RCT Debt Securities; (ii) the Allowed Claims of the NST Trustee with respect to the NST Debt Securities; (iii) the Allowed Claims of the MBHI III Trustee with respect to the MBHI III Notes; (iv) the Allowed Claims of the MBHI IV Trustee with respect to the MBHI IV Securities; (v) the Allowed Claims of the MBHI V Trustee with respect to the MBHI V Debentures; and (vi) the Allowed Claims of M&I with respect to the M&I Subordinated Note.

3.7 **Class 5** consists of the Interests of Equity Security Holders.

## **ARTICLE IV**

### **Impairment of Classes**

4.1 **Impaired Classes of Claims Entitled To Vote.** Except as otherwise provided in order(s) of the Bankruptcy Court pertaining to solicitation of votes on this Plan, Class 2, Class

3A, Class 3B, Class 3C and Class 4 are Impaired, and holders of Claims in those Classes shall be entitled to vote to accept or reject this Plan.

**4.2 Classes Deemed To Accept the Plan.** Class 1 Claims are unimpaired by this Plan and holders of such Claims are conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. The votes of Creditors holding these Claims will therefore not be solicited.

**4.3 Classes Deemed To Reject the Plan.** Holders of Interests in Class 5 will not receive or retain any distribution under the Plan on account of their Interests. Pursuant to section 1126(g) of the Bankruptcy Code, Class 5 is Impaired and is conclusively presumed to have rejected this Plan, and the votes of holders of Class 5 Interests therefore will not be solicited.

**4.4 Cram Down.** The Plan Proponents will request confirmation of the Plan under section 1129(b) of the Bankruptcy Code with respect to any Class that rejects the Plan.

## **ARTICLE V**

### **Treatment of Claims and Interests**

**5.1 Allowed Professional Fee Claims.** The Distributing Party shall pay Allowed Professional Fee Claims in full and in Cash within ten (10) days of such Claims becoming Allowed Professional Fee Claims.

**5.2 Allowed Other Administrative Expense Claims.** The Distributing Party shall pay Allowed Other Administrative Expense Claims in full and in Cash by the later of: (i) as soon as practicable following the Effective Date; (ii) thirty (30) days after such Claims become Allowed Other Administrative Expense Claims; (iii) the date upon which such Allowed Other Administrative Expense Claims become due in the ordinary course of business; and (iv) such other time as may be agreed to by the Distributing Party and the holder of the Allowed Other Administrative Expense Claim. Creditors seeking payment on Other Administrative Expense

Claims shall have thirty (30) days from the Effective Date to file an application with the Bankruptcy Court with respect to Other Administrative Expense Claims, or such Claims will be forever barred.

**5.3 Priority Tax Claims.** The Distributing Party shall pay Allowed Priority Tax Claims in full and in Cash by the later of: (i) as soon as practicable following the Effective Date; (ii) thirty (30) days after such Claims become Allowed Priority Tax Claims; and (iii) such other time as may be agreed to by the Distributing Party and the holder of the Allowed Priority Tax Claim, in accordance with sections 507(a)(8) and 1129(a)(9)(C) of the Bankruptcy Code.

**5.4 Class 1 Claims.** The Distributing Party shall pay Allowed Class 1 Priority Claims in full and in Cash by the later of: (i) as soon as practicable following the Effective Date; (ii) thirty (30) days after such Claims become Allowed Priority Claims; and (iii) such other time as may be agreed to by the Distributing Party and the holder of the Allowed Class 1 Priority Claim.

**5.5 Class 2 Claims.**

5.5.1 Pursuant to section 506 of the Bankruptcy Code, M&I will have an Allowed Class 2 Claim in an amount equal to the value of the M&I Collateral. To the extent that M&I's Secured Claim is Allowed in an amount that is less than the balance owing under the M&I Senior Notes as of the Filing Date, M&I will have an Allowed Deficiency Claim that will be included in Class 3A.

5.5.2 On or before the Effective Date, the Debtor will surrender the M&I Collateral in full and final satisfaction of the Class 2 Claim.



**5.6 Class 3A Claims.**

5.6.1 Allowed Class 3A Claims shall be paid Pro Rata in accordance with the Creditor Trust Agreement and this Plan. In accordance with the Creditor Trust Agreement, on the Effective Date, each Allowed Class 3A Claim will be converted into a Trust Interest representing such holder's Pro Rata share of the total Trust Interests. The Debtor shall transfer the Creditor Trust Assets to the Creditor Trustee no later than seven (7) days after the Effective Date. The Creditor Trustee shall liquidate the Creditor Trust Assets and distribute the Net Proceeds in accordance with this Plan and the Creditor Trust Agreement.

5.6.2 Pro Rata distributions of the Net Proceeds from the Creditor Trust shall be made by the Creditor Trustee in accordance with the Creditor Trust Agreement to the holders of Trust Interests from time to time on dates determined by the Creditor Trustee, within a reasonable time after the creation of appropriate reserves as determined by the Creditor Trustee in an amount that would be sufficient to: (i) make a Pro Rata distribution on account of Disputed Claims that will be converted into Trust Interests if Allowed; and (ii) pay the Trustee's Expenses in full.

**5.7 Class 3B Claims.**

5.7.1 As soon as is practicable after the aggregate of Allowed Class 3B Claims has been determined, the Creditor Trustee will distribute to the holders of Allowed Class 3B Claims their Pro Rata Share of the Employee Claim Fund. Holders of Class 3B Claims entitled to distributions in accordance with the preceding sentence will be deemed to have waived any and all individual rights with respect to: (i) any claims giving rise to coverage under employment practices insurance; (ii) any property of the Debtor, the Estate or the Creditor Trust; and (iii) any rights to assert that any portion of their respective Claims is entitled to priority under section 507

of the Bankruptcy Code; and (iv) any rights to assert claims for damages based on the deemed rejection of any executory contract. Confirmation of the Plan will operate as approval of the compromise and settlement described above (the “Class 3B Settlement”) under Rule 9019.

5.7.2 Holders of Class 3B Claims may opt out of the treatment described above, and the Allowed Claim of Creditors so electing shall be treated in all respects as Class 3A Claims, except to the extent that any portion of such claim may be a Priority Claim. Any election to opt out of Class 3B shall be made in writing and shall be made at the same time that the electing Creditor submits a ballot with respect to the Plan, or, in the case of Creditors who do not submit ballots with respect to the Plan, not later than the Confirmation Date.

**5.8 Class 3C Claims.**

5.8.1 In full and final satisfaction of the Class 3C Claim, the FDIC will be entitled to an assignment of all of the Debtor’s and Estate’s interest in claims against officers and directors and all rights under insurance policies issued with respect to such claims; provided, however, that nothing in the Plan shall affect or impair the rights or interests of any third-parties with respect to such claims and insurance policies providing coverage for such claims.

5.8.2 In exchange for the treatment described above, the FDIC will be deemed to have waived any further Claim, including all Secured Claims, Unsecured Claims, and Priority Claims. Confirmation of the Plan will operate as approval of the compromise and settlement described above (the “FDIC Settlement”) under Rule 9019. An election to opt out of Class 3C shall be made in writing and shall be made at the same time that the FDIC submits a ballot with respect to the Plan, or, if the FDIC does not submit a ballot with respect to the Plan, not later than the Confirmation Date.

**5.9 Class 4 Claims.**

5.9.1 Allowed Class 4 Claims shall be paid Pro Rata in accordance with the Creditor Trust Agreement and this Plan. In accordance with the Creditor Trust Agreement, on the Effective Date, each Allowed Class 4 Claim will be converted into a Trust Interest, representing such holder's Pro Rata share of the total Trust Interests. The Debtor shall transfer the Creditor Trust Assets to the Creditor Trustee no later than seven (7) days after the Effective Date. The Creditor Trustee shall liquidate the Creditor Trust Assets and distribute the Net Proceeds in accordance with this Plan and the Creditor Trust Agreement.

5.9.2 Pro Rata distributions of the Net Proceeds from the Creditor Trust shall be made by the Creditor Trustee in accordance with the Creditor Trust Agreement to the holders of Trust Interests from time to time on dates determined by the Creditor Trustee, within a reasonable time after the creation of appropriate reserves as determined by the Creditor Trustee in an amount that would be sufficient to: (i) make a Pro Rata distribution on account of Disputed Claims that will be converted into Trust Interests if Allowed; and (ii) pay the Trustee's Expenses in full. By way of limitation, all distributions made on account of Class 4 Claims will be paid directly to the holders of Senior Indebtedness on a Pro Rata basis unless and until the holders of such Senior Indebtedness have received distributions in an aggregate amount equal to their Allowed Claims.

**5.10 Class 5 Interests.** Holders of Class 5 Interests shall not receive a distribution under the Plan. Upon the Confirmation Date of the Plan, all Equity Securities in the Debtor will be retired.

## ARTICLE VI

### Treatment of Executory Contracts

#### 6.1 Assumption and Assignment of Executory Contracts and Unexpired Leases.

6.1.1 On the Confirmation Date, each executory contract or unexpired lease entered into by the Debtor that is listed on **Exhibit B** to the Plan that has not previously expired or terminated pursuant to its own terms, will be assumed by the Debtor and assigned to the Creditor Trust pursuant to section 365 of the Bankruptcy Code. Each executory contract or unexpired lease listed on **Exhibit B** will include any modifications, amendments, supplements, restatements or other agreements made directly or indirectly by any agreement, instrument or other document that in any manner affects such contract or agreement, irrespective of whether such agreement, instrument or other document is listed on **Exhibit B**. Listing a contract or agreement on **Exhibit B** shall not constitute an admission by the Debtor or the Creditor Trust that such agreement is an executory contract or unexpired lease or that the Debtor or the Creditor Trust has any liability thereunder. The Plan Proponents may amend **Exhibit B** at any time prior to the Confirmation Date.

6.1.2 To the extent that Claims constitute monetary defaults, the Cure Amount Claims associated with each executory contract or unexpired lease (which is listed in **Exhibit B**) to be assumed pursuant to the Plan will be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, at the option of the Debtor or the Creditor Trustee, as applicable: (i) by payment of the Cure Amount Claim in cash on the Confirmation Date; or (ii) on such other terms as are agreed to by the parties to such executory contract or unexpired lease. If there is a dispute regarding: (i) the amount of any Cure Amount Claim; (ii) the ability of the Creditor Trust to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under the executory contract or unexpired lease to be assumed; or (iii) any

other matter pertaining to the assumption of such contract or lease, and the assumption and assignment is approved by the Bankruptcy Court, the payment of any Cure Amount Claim required by section 365(b)(1) of the Bankruptcy Code will be made within thirty (30) days following the entry of a Final Order resolving the dispute.

**6.2 Contracts Deemed Rejected.** All other executory contracts or unexpired leases of the Debtor that have not expired by their own terms or been assumed prior to the Confirmation Date shall be deemed rejected pursuant to section 365 of the Bankruptcy Code on the Confirmation Date.

**6.3 Bar Date for Rejection Damages.** All proofs of claim with respect to Claims arising from the rejection of executory contracts or unexpired leases pursuant to Section 6.2 of this Plan shall, unless another order of the Bankruptcy Court provides for a different date, be filed with the Bankruptcy Court no later than thirty (30) days after the Confirmation Date. The Claims of any Creditor arising from the rejection of executory contracts or unexpired leases pursuant to Section 6.2 of this Plan that fails to timely file a proof of claim shall be released, discharged and forever barred from assertion against the Debtor, the Creditor Trust or their property.

## **ARTICLE VII**

### **Means of Implementation of the Plan**

**7.1 Vesting of Assets.** Subject to the terms of the Plan, upon entry of the Confirmation Order, the Debtor will be restored to full ownership of all property owned by the Debtor and all property of the Estate. Without limiting the generality of the foregoing, the Debtor will retain all rights in and to all Causes of Action. Upon vesting, all such property will be free and clear of all Claims, Liens, encumbrances, charges and other interests, except as otherwise provided in the Plan. Within seven (7) days of the Effective Date, the Debtor will

transfer the Creditor Trust Assets to the Creditor Trust, and upon such transfer, title to the Creditor Trust Assets will vest in the Creditor Trust and be deemed contributed thereto, subject to the terms of the Plan. All property held for distribution pursuant to the Plan shall be held by the Creditor Trust solely in trust for the holders of Allowed Class 3A and 4 Claims and shall not be deemed property of the Debtor. Nothing in the Plan, however, shall preclude payment of: (i) statutory fees under 28 U.S.C. § 1930 to the extent unpaid on the Effective Date; and (ii) the Trustee's Expenses in accordance with this Plan and the Creditor Trust Agreement from the Creditor Trust Assets. The Debtor is hereby authorized and directed to take such steps as may be necessary or appropriate to confirm such transfer and contribution of the Creditor Trust Assets to the Creditor Trust, subject to oversight from the Creditor Trustee.

**7.2 Cancellation of Indentures and Debt Securities.** On the Effective Date, the indentures, debt securities, or other instruments or documents evidencing or creating any indebtedness or obligations of the Debtor, including the TOPrS Unsecured Claims, the Indentures, the TOPrS Debentures and the TOPrS, and any other obligations in respect thereof, shall be deemed automatically canceled and terminated, as permitted by section 1123(a)(5)(F) of the Bankruptcy Code, and the TOPrS Trustees shall be released from all duties thereunder. Notwithstanding the foregoing, the applicable provisions of the Indentures, the TOPrS, TOPrS Trusts and all related documents shall continue in effect solely for the purposes of permitting the TOPrS Trustees to: (i) make or direct the distributions contemplated by the Plan to the holders of the TOPrS Debentures and the TOPrS; (ii) maintain any rights the TOPrS Trustees may have for any charging liens, fees, costs, expenses, and indemnification under their respective Indentures or other agreements, until all TOPrS Trustees Fees and Expenses are paid in full; and (iii) exercise any and all such rights otherwise provided in the Plan; provided, however, that such

rights and liens are limited to the distributions, if any, to the holders or as otherwise provided in the Plan. The holders of or parties to such cancelled instruments, securities and other documentation will have no rights arising from or relating to such instruments, securities and other documentation or the cancellation thereof, except the rights provided pursuant to the Plan. Except as provided pursuant to the Plan, the TOPrS Trustees and their agents, successors and assigns shall be discharged of all of their obligations arising under or associated with the Indentures, the TOPrS Debentures, the TOPrS and the TOPrS Trusts, and shall be released from all claims related to such obligations. As of the Effective Date, the transfer registers or ledgers maintained by the TOPrS Trustees for the TOPrS Debentures and the TOPrS shall be closed, and there shall be no further changes in the record holders of any TOPrS Debentures or the TOPrS.

**7.3 Creditor Trust Asset Administration.** The Creditor Trustee shall administer the Creditor Trust Assets pursuant to the Plan and the Creditor Trust Agreement from and after the Effective Date. The Creditor Trustee shall be responsible for liquidating the Creditor Trust Assets, analyzing and reconciling Claims (including filing and pursuing objections to the extent required), pursuing Avoidance Actions and Miscellaneous Causes of Action, making distributions of the Net Proceeds to the beneficiaries of the Creditor Trust and all other activities typically related to trust administration.

**7.4 Dissolution of the Debtor.** Promptly following the Effective Date, the Creditor Trustee will allow the Delaware Secretary of State to involuntarily dissolve the Debtor.

**7.5 Conditions to Confirmation.** It is a condition precedent to confirmation of the Plan that the Confirmation Order shall be reasonably acceptable in form and substance to the Plan Proponents.

**7.6 Conditions to Effective Date.** The following are conditions precedent to the occurrence of the Effective Date: (i) the Confirmation Order confirming the Plan, as such Plan may have been modified, shall have been entered by the Bankruptcy Court and be in full force and effect and shall not have been vacated, amended, modified or stayed, and if it is the subject of any appeal, reconsideration or other review, no stay of the Confirmation Order shall be in effect; (ii) the Creditor Trust Agreement, in form and substance satisfactory to the Committee and the Debtor, shall be executed and delivered, and all conditions precedent to the effectiveness thereof shall have been satisfied; and (iii) all other documents or agreements necessary to consummate the Plan shall have been delivered or effectuated. The Plan Proponents or the Creditor Trustee, as the case may be, may waive any of the foregoing conditions precedent at any time.

**7.7 Administrative Claims Bar Date.** Except as otherwise provided in the Plan, all Persons requesting payment of Administrative Claims (Professional Fee Claims or Other Administrative Expense Claims) shall file applications for payment no later than thirty (30) days after the Effective Date. Objections to such applications for payment, if any, must be written, filed with the Bankruptcy Court and served within forty-five (45) days after such application is filed.

**7.8 Termination of Committee.** The Committee shall terminate automatically upon the Effective Date. Upon termination of the Committee, the Committee shall be dissolved and its members shall be deemed released of their duties and responsibilities in connection with the Case or the Plan and its implementation, and the retention or employment of the Committee's counsel shall terminate, except for ministerial duties or any duties imposed pursuant to the Plan



(including, without limitation, filing applications for allowance and payment of Professional Fee Claims).

**7.9 Case Administration.** From and after the Effective Date and continuing through the date that a final decree closing the Case is entered pursuant to section 350 of the Bankruptcy Code and Bankruptcy Rule 3022, the Creditor Trustee shall possess the rights of the Debtor for all matters pertaining to the Case. Without limiting the generality of the foregoing, the Creditor Trustee shall: (i) have the right to appear and be heard on matters brought before the Bankruptcy Court or other courts of competent jurisdiction; (ii) have the right to obtain records of, or related to, the Debtor (including, without limitation, bank statements and cancelled checks); (iii) be entitled to notice and opportunity for hearing; (iv) be entitled to participate in all matters brought before the Bankruptcy Court, including, but not limited to, adversary proceedings; (v) have exclusive standing to commence Avoidance Actions and Miscellaneous Causes of Action; (vi) be entitled to request entry of a final decree closing the Case; and (vii) be entitled to receive notice of all applications, motions and other papers and pleadings set before the Bankruptcy Court in this Case.

**7.10 Filing of Additional Documents.** On or before the Effective Date, the Plan Proponents shall file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan, including, without limitation, the final Creditor Trust Agreement.

**7.11 Creditor Trustee's Professionals.** Upon the Effective Date, the Creditor Trustee may retain such law firms, accounting firms, experts, advisors, consultants, investigators or other Professionals as it may deem necessary, in accordance with the Creditor Trust Agreement, to aid in the performance of its responsibilities, including, without limitation, the liquidation and

distribution of assets of the Creditor Trust. The Professionals retained by the Creditor Trustee are not required to be “disinterested” as that term is defined in the Bankruptcy Code and may include, without limitation, counsel and financial advisors of any party in this Case, and the Creditor Trustee shall be permitted to retain any such Professional in light of the efficiencies implicit in continuity. The Creditor Trustee’s retention of any such Professionals is deemed not to pose any conflict of interest, and no conflict shall exist by virtue of the filing of applications by Professional Persons for allowance of Administrative Claims in accordance with Section 7.7 of this Plan.

7.12 **Notices.** Any notice required or permitted to be provided under the Plan shall be in writing and served by: (i) certified mail, return receipt requested, postage prepaid; (ii) hand delivery; or (iii) reputable overnight delivery service, freight prepaid, addressed to the following:

The Debtor:

Thomas G. Wallrich, Esq.  
Hinshaw & Culbertson LLP  
333 South Seventh Street, Suite 2000  
Minneapolis, Minnesota 55402  
Telephone: 612-334-2594  
Facsimile: 612-334-8888  
E-Mail: twallrich@hinshawlaw.com

*Counsel for the Debtor*

The Committee:

Richard S. Lauter, Esq.  
Freeborn & Peters LLP  
311 South Wacker Drive, Suite 3000  
Chicago, Illinois 60606  
Telephone: 312-360-6000  
Facsimile: 312-360-6520  
E-Mail: rlauter@freebornpeters.com

*Counsel for the Committee*

The Creditor Trustee:

Barry A. Chatz  
Arnstein & Lehr LLP  
120 South Riverside Plaza  
Suite 1200  
Chicago, IL 60606  
Telephone: 312-876-6670  
Facsimile: 312-876-6241  
E-Mail: bachatz@arnstein.com

7.13 **INJUNCTION.** EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR THE CONFIRMATION ORDER, ON AND AFTER THE CONFIRMATION DATE, ALL PERSONS AND ENTITIES WHO HAVE HELD, HOLD OR MAY HOLD LIENS, CLAIMS OR INTERESTS IN OR AGAINST THE DEBTOR ARE, WITH RESPECT TO ANY SUCH LIENS, CLAIMS OR INTERESTS, PERMANENTLY ENJOINED FROM: (I) COMMENCING, CONDUCTING OR CONTINUING IN ANY MANNER, DIRECTLY OR INDIRECTLY, ANY SUIT, ACTION OR OTHER PROCEEDING OF ANY KIND (INCLUDING, WITHOUT LIMITATION, ANY PROCEEDING IN A JUDICIAL, ARBITRAL, ADMINISTRATIVE OR OTHER FORUM) AGAINST OR AFFECTING THE CREDITOR TRUST OR ANY OF ITS PROPERTY, OR ANY DIRECT OR INDIRECT TRANSFEREE OF ANY PROPERTY OF, OR DIRECT OR INDIRECT SUCCESSOR IN INTEREST TO, THE DEBTOR OR THE FOREGOING CREDITOR TRUST, OR ANY PROPERTY OF ANY TRANSFEREE OR SUCCESSOR OF EITHER; (II) ENFORCING AGAINST, LEVYING UPON OR ATTACHING (INCLUDING, WITHOUT LIMITATION, ANY PRE-JUDGMENT ATTACHMENT) THE DEBTOR OR THE CREDITOR TRUST, OR ANY PROPERTY OF ANY SUCH TRANSFEREE OR SUCCESSOR; (III) ENFORCING, LEVYING, ATTACHING (INCLUDING, WITHOUT LIMITATION, ANY PRE-JUDGMENT ATTACHMENT), COLLECTING OR OTHERWISE RECOVERING BY ANY MANNER OR

MEANS WHETHER DIRECTLY OR INDIRECTLY, OF ANY JUDGMENT, AWARD, DECREE, CLAIM OR ORDER AGAINST THE DEBTOR OR THE CREDITOR TRUST, ANY OF THEIR PROPERTY, OR ANY DIRECT OR INDIRECT TRANSFEREE OF ANY PROPERTY OF, OR DIRECT OR INDIRECT SUCCESSOR IN INTEREST TO THE DEBTOR OR THE CREDITOR TRUST; (IV) CREATING, PERFECTING OR OTHERWISE ENFORCING IN ANY MANNER, DIRECTLY OR INDIRECTLY, ANY LIENS, CLAIMS OR INTERESTS OF ANY KIND AGAINST OR IN THE DEBTOR OR THE CREDITOR TRUST, ANY OF THEIR PROPERTY, OR ANY DIRECT OR INDIRECT TRANSFEREE OF ANY PROPERTY OF, OR DIRECT OR INDIRECT SUCCESSOR IN INTEREST TO, THE DEBTOR OR THE CREDITOR TRUST; (V) OTHER THAN AS OTHERWISE EXPRESSLY PROVIDED FOR IN THIS PLAN, ASSERTING ANY RIGHT OF SETOFF, SUBORDINATION OR RECOUPMENT OF ANY KIND, DIRECTLY OR INDIRECTLY, AGAINST ANY OBLIGATION DUE THE DEBTOR, THE CREDITOR TRUST, ANY OF THEIR PROPERTY, OR ANY DIRECT OR INDIRECT TRANSFEREE OF ANY PROPERTY OF, OR SUCCESSOR IN INTEREST TO, THE DEBTOR OR THE CREDITOR TRUST; AND (VI) TAKING ANY ACTIONS IN ANY PLACE AND IN ANY MANNER WHATSOEVER THAT DO NOT CONFORM TO OR COMPLY WITH THE PROVISIONS OF THIS PLAN. BY WAY OF LIMITATION, NOTHING HEREIN SHALL CONSTITUTE OR HAVE THE EFFECT OF A DISCHARGE OF INDEBTEDNESS OF THE DEBTOR.

7.14 **Distributions to the Holders of Debt Securities.** Except to the extent that any Indenture requires that such distributions be delivered to the holders of Senior Indebtedness, the Creditor Trustee shall make all distributions required under the Plan on account of Class 4 Claims to or at the direction of the appropriate TOPrS Trustee. Notwithstanding the provisions

of Section 7.2 of the Plan regarding the cancellation of the Indentures, the TOPrS Debentures and the TOPrS, and any other obligations in respect thereof, the terms of such instruments shall continue in effect to the extent necessary to allow the Creditor Trustee to effectuate distributions pursuant to the Plan to the holders of the TOPrS Debentures and the TOPrS by delivering such distributions to the TOPrS Trustees, who shall then be responsible for distribution to the holders. The TOPrS Trustees providing services related to such distributions shall receive from the Creditor Trustee reasonable compensation for such services and reimbursement of reasonable out-of-pocket expenses incurred in connection with such services, not including fees and expenses of their counsel. These payments shall be made on terms agreed upon with the Creditor Trustee, and shall not be deducted from distributions to be made pursuant to this Plan to holders of Class 4 Claims.

**7.15 Term of Bankruptcy Injunction or Stays.** All injunctions or stays provided for in the Case under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect through the imposition of the injunction set forth in Section 7.13 of this Plan.

**7.16 Exculpation and Limitation of Liability.** Neither the Committee, the Creditor Trustee, the TOPrS Trustees, the Debtor nor any of their respective members, officers, directors, shareholders, employees, advisors, attorneys or agents acting in such capacity, shall have or incur any liability to, or be subject to any right of action by, any person or entity, for any act or omission in connection with, relating to or arising out of, the Case or matters related to formulation and confirmation of the Plan, except to the extent arising out of fraud, willful misconduct or gross negligence, and in all respects shall be entitled to rely reasonably upon the advice of counsel with respect to their duties and responsibilities under the Plan.

7.17 **Quarterly Reports.** The Creditor Trustee shall prepare and file with the Bankruptcy Court a report within thirty (30) days after the conclusion of every calendar quarter setting forth: (i) all distributions to Creditors during the calendar quarter; (ii) a summary of the Creditor Trust deposits and disbursements during the calendar quarter; and (iii) a summary of the Creditor Trust Assets. As used in this section, “calendar quarter” shall correspond to the calendar quarters as defined by the U.S. Trustee.

## **ARTICLE VIII**

### **Modification of the Plan**

The Plan and related documents may be altered, amended or modified, jointly, by the Plan Proponents, before or after the Confirmation Date, as provided in section 1127 of the Bankruptcy Code and the Bankruptcy Rules.

## **ARTICLE IX**

### **General Provisions**

9.1 **Headings for Convenience Only.** The headings in the Plan are for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan.

9.2 **U.S. Trustee Fees.** The Debtor shall continue to pay quarterly fees to the U.S. Trustee that become payable prior to the Effective Date. Following the Effective Date, the Creditor Trustee shall pay quarterly fees to the U.S. Trustee that become payable after the Effective Date.

### **9.3 Objections to Claims.**

9.3.1 Prior to the Effective Date, the Debtor shall have authority to file, settle, compromise, withdraw or litigate to judgment objections to Claims.

9.3.2 From and after the Effective Date, the Creditor Trustee shall have authority to file, settle, compromise, withdraw or litigate to judgment objections to Claims. The

Creditor Trustee shall have standing to file objections to Claims even if such Claims were scheduled by the Debtor as undisputed, liquidated and non-contingent. The Creditor Trustee shall file objections to Claims no later than 180 days after the Effective Date (unless extended by an order of the Bankruptcy Court); provided, however, that the Creditor Trustee may file objections to claims within ninety (90) days of the filing of an amended Claim.

9.3.3 If the Debtor or Creditor Trustee has objected to a Claim, payment will be withheld only with respect to the amount actually in dispute, and such objection shall not affect payments or distributions under the Plan on the undisputed portion of the Claim.

9.4 **Lapsed Distributions.** Any distribution that has not been cleared within ninety (90) days of the date of the distribution will lapse. With respect to any lapsed distributions, the lapsed distribution will revert to the Creditor Trust and be distributed Pro Rata to the remaining beneficiaries of the Creditor Trust in accordance with the Plan and the Creditor Trust Agreement.

9.5 **Undeliverable and Unclaimed Distributions.** If any distribution is returned as undeliverable, no further distributions to such Creditor will be made unless the Creditor Trustee is notified in writing of the Creditor's current address. Upon receipt of the notification, the Creditor Trustee will remit all missed distributions to the Creditor without interest. All claims for undeliverable distributions must be made on or before the first anniversary of the Confirmation Date of the Plan. If a claim is not made within that time, all unclaimed distributions will revert to the Creditor Trust and be distributed Pro Rata to the remaining beneficiaries of the Creditor Trust. Nothing in this Plan will require the Creditor Trustee to attempt to locate any holder of an Allowed Claim.

## **ARTICLE X**

### **Retention of Jurisdiction**

This Bankruptcy Court shall retain jurisdiction over this Case for the following purposes:

10.1 Resolution of any and all objections to Claims.

10.2 Determination of all questions and disputes regarding all Causes of Action, controversies, disputes or conflicts, whether or not subject to pending actions as of the Confirmation Date, between: (i) the Debtor and any other party; (ii) the Creditor Trustee and any other party; or (iii) otherwise under this Plan, the Confirmation Order or any other order issued by the Bankruptcy Court in connection with this Case.

10.3 The correction of any defect and the curing of any omission or inconsistency in the Plan or the Confirmation Order as may be necessary to carry out the purposes and intent of the Plan.

10.4 Modification of the Plan after confirmation pursuant to the Bankruptcy Code and the Bankruptcy Rules.

10.5 Allowance of all Claims and applications for payment of Administrative Claims and professional fees and expenses which may be paid by the Debtor or its Estate pursuant to the provisions of the Bankruptcy Code, and resolution of all disputes pertaining thereto.

10.6 Resolution of any disputes regarding the Creditor Trust or any claim or controversy related thereto.

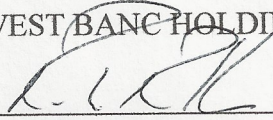
10.7 Entry of a final order confirming substantial consummation of the Plan and closing the Case.

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Dated this \_\_\_ day of March, 2011.

MIDWEST BANC HOLDINGS, INC.

By:   
Roberto R. Herencia  
Its President and CEO

OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS

By: \_\_\_\_\_  
Its Chair

Aaron L. Hammer (ARDC No. 6243069)  
Richard S. Lauter (ARDC No. 6182859)  
FREEBORN & PETERS LLP  
311 South Wacker Drive, Suite 3000  
Chicago, Illinois 60606  
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*Counsel to Official Committee  
of Unsecured Creditors*

Thomas G. Wallrich, Esq.  
Joel D. Nessel, Esq.  
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– and –

William J. Connelly (ARDC No. 6185201)  
HINSHAW & CULBERTSON LLP  
222 North LaSalle Street, Suite 300  
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Telephone: 312-704-3000  
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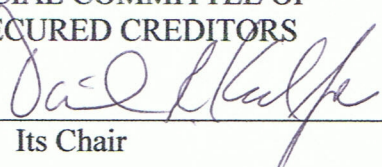
*Counsel to Debtor and Debtor-in-Possession*

Dated this \_\_\_ day of March, 2011.

MIDWEST BANC HOLDINGS, INC.

By: \_\_\_\_\_  
Roberto R. Herencia  
Its President and CEO

OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS

By:  \_\_\_\_\_  
Its Chair

Aaron L. Hammer (ARDC No. 6243069)  
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of Unsecured Creditors*

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– and –

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*Counsel to Debtor and Debtor-in-Possession*

**EXHIBIT A**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re:	)	Chapter 11
	)	
MIDWEST BANC HOLDINGS, INC., <sup>1</sup>	)	Case No. 10-37319
	)	
Debtor.	)	Judge A. Benjamin Goldgar

**MIDWEST BANC HOLDINGS, INC. CREDITOR TRUST AGREEMENT**

Dated: \_\_\_\_\_, 2011

Aaron L. Hammer (ARDC No. 6243069)  
Richard S. Lauter (ARDC No. 6182859)  
FREEBORN & PETERS LLP  
311 South Wacker Drive, Suite 3000  
Chicago, Illinois 60606  
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rlauter@freebornpeters.com

Thomas G. Wallrich, Esq.  
Joel D. Nessel, Esq.  
HINSHAW & CULBERTSON LLP  
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Telephone: 612-334-2594  
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E-Mail: twallrich@hinshawlaw.com  
jnesset@hinshawlaw.com

*Counsel to Official Committee  
of Unsecured Creditors*

– and –

William J. Connelly (ARDC No. 6185201)  
HINSHAW & CULBERTSON LLP  
222 North LaSalle Street, Suite 300  
Chicago, Illinois 60601  
Telephone: 312-704-3000  
Facsimile: 312-704-3001  
E-Mail: wconnelly@hinshawlaw.com

*Counsel to Debtor and Debtor-in-Possession*

---

<sup>1</sup> The Debtor in this chapter 11 case, along with the last four digits of the Debtor's tax identification number is Midwest Banc Holdings, Inc. (2484). The service address for the Debtor is 54 South Washington Street, Suite 1, Hinsdale, Illinois 60521-4161.



**MIDWEST BANC HOLDINGS, INC. CREDITOR TRUST AGREEMENT**

**PREAMBLE**

This Agreement (the “*Creditor Trust Agreement*”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and among Midwest Banc Holdings, Inc. (the “*Debtor*”), the Official Committee of Unsecured Creditors (the “*Committee*”), and \_\_\_\_\_, not individually, but solely as trustee of this Creditor Trust (the “*Creditor Trustee*” and, collectively with the Debtor and the Committee, the “*Parties*”) in accordance with the First Amended Joint Plan of Liquidation dated February \_\_, 2011 (the “*Plan*”), confirmed by the Bankruptcy Court (as defined *infra*) by the Order Confirming First Amended Joint Plan of Liquidation, dated \_\_\_\_\_, 2011 (the “*Confirmation Order*”).<sup>2</sup>

**RECITALS:**

A. On August 20, 2010, the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”) in the United States Bankruptcy Court for the Northern District of Illinois (the “*Bankruptcy Court*”) and commenced its chapter 11 case (the “*Case*”);

B. On September 28, 2010, the Office of the United States Trustee for the Northern District of Illinois (the “*U.S. Trustee*”) appointed the Committee, which was initially comprised of Bowne & Co., Inc., Daniel R. Kadolph, MBHI Capital Trust IV, M&I and David Peck. M&I subsequently resigned from the Committee, which now consists of Bowne & Co., Inc., Daniel R. Kadolph, MBHI Capital Trust IV and David Peck;

C. The Plan and the Confirmation Order provide, among other things, that the Creditor Trustee shall be empowered to make distributions, pursuant to the Plan, the Confirmation Order and this Creditor Trust Agreement, to holders of Allowed Class 3 Claims and Allowed Class 4 Claims (collectively, the “*Beneficiaries*”);

D. The Creditor Trust is created pursuant to, and to effectuate, the Plan and the Confirmation Order;

E. The Creditor Trust is created on behalf of, and for the sole benefit of, the Beneficiaries;

F. The powers, authority, responsibilities and duties of the Creditor Trustee shall be governed by this Creditor Trust Agreement, the Plan, applicable orders issued by the Bankruptcy Court (including the Confirmation Order), and general fiduciary obligations of trustees under Illinois law;

G. Pursuant to the terms and conditions of the Plan, the Confirmation Order and this Creditor Trust Agreement, the Creditor Trustee shall administer all assets of the Creditor Trust, including, without limitation: (a) all Cash held by the Debtor (less any Cash paid or to be paid

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<sup>2</sup> Capitalized terms not defined herein shall have the meanings ascribed to them in the Plan.

on account of unpaid Administrative Claims); (b) the North Roselle Property; (c) 40,000 shares of common stock in Western Illinois Bancshares, Inc.; (d) the Debtor's interest in Stieven Financial Investors, L.P.; (e) the Debtor's remaining property, including furniture, fixtures, investments, refunds (other than the RAC Tax Refund), accounts, any other tangible or intangible personal property and any and all proceeds thereof; (f) the Debtor's outstanding accounts receivable; and (g) the Net Proceeds from any Avoidance Actions or Miscellaneous Causes of Action engaged in by the Creditor Trust (collectively, the "*Creditor Trust Assets*"); provided, however, that the Creditor Trust Assets shall not include any assets that may be excluded by the Creditor Trustee from any transfer of assets from the Debtor and its Estate to the Creditor Trust;

H. This Creditor Trust Agreement is intended to supplement and complement the Plan and the Confirmation Order; provided, however, that if any of the terms and/or provisions of this Creditor Trust Agreement conflict with the terms and/or provisions of the Plan or the Confirmation Order, the Plan and the Confirmation Order shall govern; and

I. The Creditor Trust is intended to qualify as a "liquidating trust" under the Internal Revenue Code of 1986 and the regulations promulgated thereunder, specifically Treas. Reg. § 301.7701-4(d), and as such is a "grantor trust" for federal income tax purposes with the Beneficiaries treated as the grantors and owners of the Creditor Trust Assets. In particular:

- (i) The Creditor Trust is organized for the primary purpose of liquidating the Creditor Trust Assets, with no objective to conduct a trade or business except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Creditor Trust. The Creditor Trust shall not be deemed a successor of the Debtor;
- (ii) The Creditor Trust provides that the Beneficiaries of the Creditor Trust will be treated as the grantors of the Creditor Trust and deemed owners of the Creditor Trust Assets. This Creditor Trust Agreement requires the Creditor Trustee to file returns for the Creditor Trust as a grantor trust pursuant to Treas. Reg. § 1.6714(a);
- (iii) This Creditor Trust Agreement provides for consistent valuations of the transferred property by the Creditor Trustee and the Beneficiaries, and those valuations shall be used for federal income tax purposes;
- (iv) All of the Creditor Trust's income is to be treated as subject to tax on a current basis to the Beneficiaries who will be responsible for payment of any tax due;
- (v) This Creditor Trust contains a fixed or determinable termination date that is not more than thirty (30) years from the date of creation of the Creditor Trust and that is reasonably based on all the facts and circumstances;
- (vi) The investment powers of the Creditor Trustee, other than those reasonably necessary to maintain the value of the Creditor Trust Assets and to further the liquidating purpose of the Creditor Trust, are limited to

powers to invest in demand and time deposits, such as short-term certificates of deposit, in banks or other savings institutions, or other temporary, liquid investments, such as treasury bills; and

- (vii) The Creditor Trustee is required to make a distribution at least once per twelve-month period to the Beneficiaries in the order of priorities set forth in this Creditor Trust Agreement based on the Creditor Trust's net income, except that the Creditor Trustee, after consultation with the Oversight Committee (as defined *infra*) may retain an amount of net income reasonably necessary to maintain the value of the Creditor Trust Assets or to satisfy claims and contingent liabilities (including Disputed Claims).

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein and in the Plan and the Confirmation Order, the Parties agree as follows:

## **ARTICLE I ESTABLISHMENT OF THE CREDITOR TRUST**

### **1.1 Transfer of Assets to the Creditor Trust**

1.1.1 Pursuant to the Plan, the Debtor, the Committee and the Creditor Trustee hereby establish the Creditor Trust on behalf of the Beneficiaries, to be treated as the grantors and deemed owners of the Creditor Trust Assets, and the Debtor and its Estate hereby transfer, assign and deliver to the Creditor Trust, on behalf of the Beneficiaries, all of their right, title and interest in the Creditor Trust Assets, notwithstanding any prohibition of assignability under applicable non-bankruptcy law. The Creditor Trust agrees to accept and hold the Creditor Trust Assets in the Creditor Trust for the benefit of the Beneficiaries, subject to the terms of the Plan, the Confirmation Order and this Creditor Trust Agreement.

1.1.2 All rights in connection with the vesting and transfer of the Creditor Trust Assets, including the Causes of Action, and any attorney-client privileges, work-product protection or other privilege or immunity attaching to any documents or communications of the Debtor's or Committee's professionals (whether written or oral) related to the Creditor Trust Assets, will vest with the Creditor Trust. All bank accounts established by the Debtor will be transferred to and held in the Creditor Trust on behalf of the Beneficiaries, subject to the provisions of the Plan and this Creditor Trust Agreement. The Debtor, the Committee and the Creditor Trustee are authorized to take all necessary actions to effectuate the foregoing.

### **1.2 Title to Assets**

1.2.1 Within seven (7) days of the Effective Date, the Debtor and its Estate shall transfer the Creditor Trust Assets to the Creditor Trust for the benefit of the Beneficiaries. Notwithstanding any prohibition of assignability under applicable non-bankruptcy law, all assets and properties transferred to the Creditor Trust pursuant to the Plan shall vest in the Creditor Trust. Upon the transfer of the Creditor Trust Assets to the Creditor Trust, the Debtor shall have no interest in or with respect to such Creditor Trust Assets or the Creditor Trust.

1.2.2 For federal income tax purposes, all parties (including, without limitation, the Debtor, the Creditor Trustee and the Beneficiaries) shall treat the transfer of the Creditor Trust Assets by the Debtor and its Estate to the Creditor Trust as a transfer of such assets by the Debtor and its Estate to the holders of Allowed Class 3 Claims and Allowed Class 4 Claims entitled to distributions under the Plan and the Confirmation Order, followed by a transfer by such holders to the Creditor Trust. Thus, the Beneficiaries shall be treated as the grantors and owners of a grantor trust for federal income tax purposes.

1.2.3 To any extent not effectuated by the Confirmation Order, the Debtor and the Committee shall execute and deliver or cause to be executed and delivered all such documents (in recordable form where necessary or appropriate), and the Debtor and the Committee shall take or cause to be taken such further action as may reasonably be necessary or appropriate, to vest or perfect in or confirm to the Creditor Trust title to and possession of the Creditor Trust Assets.

### 1.3 Valuation of Assets

The Creditor Trust, to the extent that the Creditor Trustee deems it necessary or appropriate after consultation with the Oversight Committee, may conduct a good faith valuation of the Creditor Trust Assets, and shall make such valuation available to the Beneficiaries by filing a report of such valuation with the Bankruptcy Court promptly after its completion. The valuation shall be used consistently by all parties (including the Debtor, the Creditor Trustee and the Beneficiaries) for federal income tax purposes. Any dispute regarding the valuation of the Creditor Trust Assets shall be resolved by the Bankruptcy Court.

### 1.4 Claims Against the Creditor Trust Assets

The Creditor Trust Assets shall be subject to the claims of the Creditor Trustee, its Professionals (as defined *infra*) and Non-Professionals (as defined *infra*) and U.S. Trustee fees. The Creditor Trustee shall be entitled to reimburse such persons out of any available Cash in the Creditor Trust, for reasonable compensation and actual reasonable out-of-pocket expenses, and against and from any and all loss, liability, expense or damage, which each may sustain in good faith and without willful misconduct, gross negligence, fraud or, solely in the case of the Creditor Trustee, breach of fiduciary duty other than negligence, in the exercise and performance of any of the powers and duties of the Creditor Trustee.

## ARTICLE II APPOINTMENT OF THE CREDITOR TRUSTEE

Barry A. Chatz is hereby appointed to serve as the initial Creditor Trustee under the Plan and hereby accepts this appointment and agrees to serve in such capacity, effective upon the date of this Creditor Trust Agreement. Any successor Creditor Trustee shall be appointed as set forth in **Section 4.7** in the event any Creditor Trustee is removed or resigns pursuant to this Creditor Trust Agreement, or if such Creditor Trustee otherwise vacates the position.



### **ARTICLE III DUTIES AND POWERS OF THE CREDITOR TRUSTEE**

#### **3.1 Generally**

The Creditor Trustee shall be responsible for administering the Creditor Trust Assets and taking actions on behalf of, and representing, the Creditor Trust. The Creditor Trustee shall have the authority to bind the Creditor Trust within the limitations set forth herein, but shall for all purposes hereunder be acting in the capacity of Creditor Trustee and not individually.

#### **3.2 Scope of Authority**

The responsibilities and authority of the Creditor Trustee shall include, without limitation: (a) collecting and liquidating the Creditor Trust Assets and distributing the Creditor Trust Assets to the Beneficiaries in accordance with the Plan, the Confirmation Order and this Creditor Trust Agreement; (b) facilitating the prosecution or settlement of objections to, or estimations of, Claims in accordance with, but subject to the limitations set forth in, the Plan; (c) analyzing, prosecuting and settling Avoidance Actions and Miscellaneous Causes of Action; (d) in accordance with Section 12.1, filing all required tax returns and paying taxes and all other obligations on behalf of the Creditor Trust from funds held by the Creditor Trust; (e) filing Quarterly Reports; (f) providing periodic reports to the Oversight Committee, the Bankruptcy Court and other parties-in-interest on the status of the Claims resolution process, the status of the prosecution of Avoidance Actions and Miscellaneous Causes of Action, distributions to Beneficiaries and the financial status of the Creditor Trust; (g) performing such administrative, ministerial, and other functions reasonably appropriate to the Debtor's orderly liquidation, including but not limited to, such actions as may be associated with the termination of the Debtor's 401(k) plan, filing of all required tax returns and the dissolution of the Debtor under Delaware law; and (h) carrying out such other responsibilities not specifically set forth herein as may be vested in the Creditor Trustee pursuant to the Plan, this Creditor Trust Agreement, any Bankruptcy Court order or as may otherwise be necessary and proper to carry out the provisions of the Plan and the Confirmation Order.

#### **3.3 Fiduciary Obligations to the Creditor Trust and Beneficiaries**

The Creditor Trustee's actions as Creditor Trustee will be held to the same standard as a trustee of a trust under Illinois law. His or her fiduciary obligations to the Creditor Trust and its Beneficiaries are the same fiduciary obligations that the trustee of a trust owes to that trust and its beneficiaries under Illinois law.

#### **3.4 Powers**

In connection with the administration of the Creditor Trust, except as otherwise set forth in this Creditor Trust Agreement, the Plan or the Confirmation Order, the Creditor Trustee is hereby authorized to perform those acts necessary to accomplish the purposes of the Creditor Trust, without further authorization from the Bankruptcy Court. Without limiting, but subject to, the foregoing, the Creditor Trustee is expressly authorized, but not required, unless otherwise

provided in this Creditor Trust Agreement and subject to the limitations contained herein, in the Plan and in the Confirmation Order, to:

(a) hold legal title (on behalf of the Creditor Trust as Creditor Trustee, but not individually) to the Creditor Trust Assets;

(b) effect all actions and execute all agreements, instruments and other documents necessary to implement the Plan;

(c) protect and enforce the rights to the Creditor Trust Assets vested in the Creditor Trust by the Plan and the Confirmation Order by any method deemed appropriate, following consultation with, and subject to the approval of, the Oversight Committee, including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

(d) following consultation with, and subject to the approval of, the Oversight Committee, invest funds (in the manner set forth in **Section 3.8**), make distributions, and pay taxes and other obligations owed by the Creditor Trust from funds held by the Creditor Trustee and/or the Creditor Trust in accordance with the Plan and the Confirmation Order;

(e) following consultation with, and subject to the approval of, the Oversight Committee, prosecute, defend, compromise, adjust, arbitrate, abandon or otherwise deal with and settle, in accordance with the terms set forth herein and in the Plan and Confirmation Order, all actions arising under state law or the Bankruptcy Code, specifically, but not limited to, Avoidance Actions arising under or related to Chapter 5 of the Bankruptcy Code and the Miscellaneous Causes of Action; provided, however, that the Creditor Trustee shall not be required to consult with or obtain approval of the Oversight Committee, to the extent such matters are limited to a claim or cause of action where the amount demanded or claimed is, in the aggregate, less than or equal to \$50,000 (a "*De Minimis Claim or Cause of Action*");

(f) following consultation with, and subject to the approval of, the Oversight Committee, determine, compromise and satisfy any and all liabilities created, incurred or assumed by the Creditor Trust;

(g) following consultation with, and subject to the approval of, the Oversight Committee, file, if necessary, any and all tax and information returns with respect to the Creditor Trust and pay taxes properly payable by the Creditor Trust, if any, commensurate with the Creditor Trust's classification as a grantor trust pursuant to Treas. Reg. § 1.671-4(a);

(h) following consultation with, and subject to the approval of, the Oversight Committee, make all tax withholdings and make tax elections by and on behalf of the Creditor Trust;

(i) following consultation with, and subject to the approval of, the Oversight Committee, send annually to each Beneficiary a separate statement stating the Beneficiary's share of income, gain, loss, deduction or credit and instruct all such Beneficiaries to report such items on their federal tax returns;

(j) in reliance upon the Claims List (as defined *infra*) provided by the Debtor, maintain on the Creditor Trustee's books and records, a register evidencing the beneficial interest herein held by each Beneficiary;

(k) following consultation with, and subject to the approval of, the Oversight Committee, administer, reconcile, compromise, estimate and/or resolve Claims in accordance with, but subject to the limitations set forth in, the Plan (including the filing of any objections to such Claims as appropriate); provided, however, that the Creditor Trustee shall not be required to consult with or obtain approval of the Oversight Committee, to the extent such matters are limited to a De Minimis Claim or Cause of Action;

(l) following consultation with, and subject to the approval of, the Oversight Committee, establish such reserves for Disputed Claims, taxes, assessments, Professional fees and other expenses of administration of the Creditor Trust as may be necessary and appropriate for the proper operation of matters incident to the Creditor Trust;

(m) following consultation with, and subject to the approval of, the Oversight Committee, make distributions as provided for in this Creditor Trust Agreement, the Plan and the Confirmation Order;

(n) following consultation with, and subject to the approval of, the Oversight Committee, open and maintain bank accounts on behalf of or in the name of the Creditor Trust;

(o) following consultation with, and subject to the approval of, the Oversight Committee, pay expenses and make disbursements necessary to preserve, liquidate and enhance the Creditor Trust Assets;

(p) purchase such insurance coverage as the Creditor Trustee, following consultation with, and subject to the approval of, the Oversight Committee, deems necessary and appropriate with respect to the liabilities and obligations of the Creditor Trustee (in the form of an errors and omissions policy, fiduciary policy or otherwise);

(q) purchase such insurance coverage as the Creditor Trustee, following consultation with, and subject to the approval of, the Oversight Committee, deems necessary and appropriate with respect to real and personal property which may be or may become Creditor Trust Assets;

(r) following consultation with, and subject to the approval of, the Oversight Committee, retain and pay Professionals and Non-Professionals as provided for in **Article XI** of this Creditor Trust Agreement to assist the Creditor Trust and/or the Creditor Trustee with respect to its responsibilities to the extent permitted by this Creditor Trust Agreement, the Plan and the Confirmation Order;

(s) following consultation with, and subject to the approval of, the Oversight Committee, take such actions as are necessary, appropriate or desirable to close or dismiss the Case;

(t) following consultation with, and subject to the approval of, the Oversight Committee, take such actions as are necessary, appropriate or desirable to terminate the existence of the Debtor to the extent not already effectuated pursuant to the Plan;

(u) following consultation with, and subject to the approval of, the Oversight Committee, terminate and dissolve the Creditor Trust pursuant to and in accordance with the terms of the Plan and this Creditor Trust Agreement; and

(v) following consultation with, and subject to the approval of, the Oversight Committee, assume such other powers as may be vested in or assumed by the Creditor Trust pursuant to the Plan or Bankruptcy Court order, or as may be necessary and proper to carry out the provisions of the Plan, the Confirmation Order or this Creditor Trust Agreement.

### 3.5 General Authority of the Creditor Trustee

Unless specifically stated otherwise herein, the Creditor Trustee shall not be required to obtain Bankruptcy Court approval with respect to any proposed action or inaction authorized in this Creditor Trust Agreement or specifically contemplated in the Plan and the Confirmation Order.

### 3.6 Limitation of Creditor Trustee's Authority; No On-Going Business

The Creditor Trustee shall have no power or authority except as set forth in this Creditor Trust Agreement, in the Plan or in the Confirmation Order. For federal tax purposes, the Creditor Trustee shall not be authorized to engage in any trade or business with respect to the Creditor Trust Assets except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Creditor Trust. The Creditor Trustee shall take such actions consistent with the prompt orderly liquidation of the Creditor Trust Assets as required by applicable law and consistent with the treatment of the Creditor Trust as a liquidating trust under Treas. Reg. § 301.7701-4(d), to the extent such actions are permitted by this Creditor Trust Agreement.

### 3.7 Other Activities of the Creditor Trustee

The Creditor Trustee shall be entitled to be employed by third parties while serving as Creditor Trustee for the Creditor Trust; provided, however, that such employment shall not include actions or representations of parties that are adverse to the Creditor Trust.

### 3.8 Investment and Safekeeping of Creditor Trust Assets

All monies and other assets received by the Creditor Trust shall, until distributed or paid over as herein provided, be held in trust for the benefit of the Beneficiaries, but need not be segregated from other Creditor Trust Assets. The Creditor Trustee shall promptly invest any such monies in the manner set forth in this **Section 3.8**, but shall otherwise be under no liability for interest or income on any monies received by the Creditor Trust hereunder and held for distribution or payment to the Beneficiaries, except as such interest shall actually be received by the Creditor Trustee. Investment of any monies held by the Creditor Trust shall be administered in accordance with the Creditor Trustee's general duties and obligations hereunder and in view of the Creditor Trustee's general fiduciary duties under Illinois law. The rights and powers of

the Creditor Trustee to invest the Creditor Trust Assets transferred to the Creditor Trust, the proceeds thereof or any income earned by the Creditor Trust, shall be limited to the right and power to: (a) invest such Creditor Trust Assets (pending distributions in accordance with the Plan and the Confirmation Order) in (i) short-term direct obligations of, or obligations guaranteed by, the United States of America or (ii) short-term obligations of any agency or corporation which is or may hereafter be created by or pursuant to an act of the Congress of the United States as an agency or instrumentality thereof; or (b) deposit such assets in demand accounts at any bank or trust company, which has, at the time of the deposit, a capital stock and surplus aggregating at least \$1,000,000,000 (collectively, the "*Permissible Investments*"); provided, however, that the scope of any such Permissible Investments shall be limited to include only those investments that a liquidating trust, within the meaning of Treas. Reg. § 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the Internal Revenue Service ("*IRS*") guidelines, whether set forth in IRS rulings, other IRS pronouncements or otherwise.

### 3.9 Authorization to Expend Creditor Trust Assets

Upon consultation with the Oversight Committee, the Creditor Trustee may expend assets of the Creditor Trust to the extent necessary to: (a) satisfy and discharge liabilities and to maintain the value of the Creditor Trust Assets during liquidation; (b) pay Trustee Expenses (including, but not limited to, any taxes imposed on the Creditor Trust, and fees and expenses in connection with litigation or compensation of the Creditor Trustee in accordance with **Section 4.1** below); (c) satisfy other liabilities incurred or assumed by the Creditor Trust (or to which the Creditor Trust Assets are otherwise subject) in accordance with this Creditor Trust Agreement, the Plan or the Confirmation Order; and (d) make distributions to Beneficiaries on account of their Trust Interests in accordance with this Creditor Trust Agreement, the Plan and the Confirmation Order.

## ARTICLE IV CREDITOR TRUSTEE

### 4.1 Compensation of the Creditor Trustee

The Creditor Trustee shall be entitled to receive, but is not required to accept, reasonable compensation for services rendered on behalf of the Creditor Trust. All compensation and other amounts payable to the Creditor Trustee shall be paid out of the Creditor Trust Assets. The Creditor Trust shall reimburse the Creditor Trustee for its actual reasonable out-of-pocket expenses incurred including, without limitation, postage, telephone and facsimile charges upon receipt of periodic billings. All reimbursement for expenses payable to the Creditor Trustee shall be paid from the Creditor Trust Assets in priority over any distributions to Beneficiaries to be made under the Plan. If the Creditor Trust Assets are insufficient to fully satisfy the amounts payable to, or other obligations owing to, the Creditor Trustee, the Beneficiaries shall be required to disgorge their Pro Rata share of any interim distributions received from the Creditor Trust, until all such amounts have been fully paid and all such obligations have been fully satisfied. If the Creditor Trustee dies or becomes disabled, then such former Creditor Trustee (or his or her

estate, successor or assigns) shall be entitled to any remaining unpaid compensation and reimbursement due hereunder.

#### 4.2 Term of Service

The Creditor Trustee shall serve until the earliest of: (a) the completion of all the Creditor Trustee's duties, responsibilities and obligations under this Creditor Trust Agreement and the Plan; (b) termination of the Creditor Trust in accordance with this Creditor Trust Agreement; and (c) the Creditor Trustee's death, resignation or removal.

#### 4.3 No Bond

The Creditor Trustee shall serve without bond.

#### 4.4 Removal

The Creditor Trustee may be removed for cause by the Oversight Committee; provided, however, that the Creditor Trustee may not be removed until a successor Creditor Trustee has been named. "Cause" shall include, without limitation: (a) the undue prolongation of the duration of the Creditor Trust and of distributions of the Creditor Trust Assets to the Beneficiaries; (b) gross negligence, fraud or willful misconduct (as determined by a Final Order) in connection with the affairs of the Creditor Trust; (c) a physical and/or mental disability that substantially prevents the Creditor Trustee from performing the duties of a Creditor Trustee hereunder; or (d) breach of fiduciary duty or an unresolved conflict of interest. In addition, the Creditor Trustee may be removed for cause at any time by any other person upon entry of an order of the Bankruptcy Court following a noticed motion for removal served upon the Creditor Trustee (and his or her Professionals) and the Oversight Committee. Any person seeking removal through an order of the Bankruptcy Court must demonstrate to the Bankruptcy Court that such removal is appropriate for cause. The removal in this instance shall be effective on the date specified in the order.

#### 4.5 Resignation

The Creditor Trustee may resign by giving not less than thirty (30) days' prior written notice thereof to the parties entitled to notice under **Section 14.10** hereof. In the event of a resignation, the resigning Creditor Trustee shall render to the Oversight Committee a statement of discharge as described in **Section 4.6** below. The resignation will be effective on the later of: (a) the date specified in the notice; (b) the date that is thirty (30) days after the date the notice is delivered; (c) the date the statement of discharge is delivered; and (d) the date the successor Creditor Trustee accepts his or her appointment as such.

#### 4.6 Discharge of Creditor Trustee

4.6.1 Statement of Discharge. The Creditor Trustee shall, upon termination of the Creditor Trust or upon the Creditor Trustee's resignation, removal or death (in which case the Creditor Trustee's estate or third-party employer, as may be appropriate, shall) render a statement of discharge containing the following information: (a) all assets and funds of the

Creditor Trust originally charged under the Creditor Trustee's control; (b) a summarized accounting, in sufficient detail, of all purchases, sales, gains, losses and income of the Creditor Trust during the Creditor Trustee's term of service; and (c) the ending balance of all assets and funds of the Creditor Trust as of the date of discharge. At the discretion of the Oversight Committee, such statement may be audited by independent accountants in accordance with generally accepted auditing standards.

4.6.2 Approval of Statement of Discharge. The statement of discharge required by **Section 4.6.1** shall be presented to the Oversight Committee. Unless the Oversight Committee requests that such statement of discharge not be approved within thirty (30) days after the date on which such statement of discharge was presented to the Oversight Committee, the withdrawing Creditor Trustee shall be discharged from all liability to the Creditor Trust or any Person who has had or may then or thereafter have an interest in the Creditor Trust for acts or omissions in the Creditor Trustee's capacity as the Creditor Trustee or in any other capacity contemplated by this Creditor Trust Agreement or the Plan.

4.6.3 Costs Relating to Statement of Discharge. The expenses of any accounting, including, but not limited to those incurred in the preparation of any statement of discharge any audit conducted under Section 4.6.1, shall be paid by the Creditor Trust as an expense of the Creditor Trust.

#### 4.7 Appointment of Successor Trustee

4.7.1 In the event the Creditor Trustee is removed or resigns pursuant to this Creditor Trust Agreement or the Creditor Trustee otherwise vacates his or her position, the Oversight Committee shall designate a successor Creditor Trustee. Any successor Creditor Trustee appointed hereunder shall execute an instrument accepting such appointment and shall deliver such acceptance to the Bankruptcy Court. Thereupon, such successor Creditor Trustee shall, without any further act, become vested with all of the properties, rights, powers, trusts and duties of his or her predecessor in the Creditor Trust with like effect as if originally named herein; provided, however, that the removed or resigning Creditor Trustee shall, nevertheless, when requested in writing by the successor Creditor Trustee, execute and deliver any reasonable instrument or instruments conveying and transferring to such successor Creditor Trustee all the estates, properties, rights, powers and trusts of the removed or resigning Creditor Trustee.

4.7.2 The Oversight Committee shall appoint a successor Creditor Trustee as soon as practicable, but in any event within thirty (30) days after the occurrence of the vacancy or, in the case of resignation, at least fifteen (15) days before the proposed resignation is to take effect. If the Oversight Committee fails to appoint a successor Creditor Trustee within the prescribed period, any Member (as defined *infra*) of the Oversight Committee or any Beneficiary may petition the Bankruptcy Court to appoint a proposed successor Creditor Trustee. If the Oversight Committee, or if any Member of the Oversight Committee or any Beneficiary, fails to appoint a successor Creditor Trustee, then: (a) if the Creditor Trustee is resigning, the Creditor Trustee may appoint a qualified successor; or (b) if the Creditor Trustee is removed or upon the Creditor Trustee's death, the Bankruptcy Court may appoint a successor Creditor Trustee.

#### 4.8 Creditor Trust Continuance

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

### ARTICLE V OVERSIGHT COMMITTEE

#### 5.1 Creation of the Oversight Committee

Simultaneously with the creation of the Creditor Trust, a committee (the "*Oversight Committee*") comprised of three (3) members (the "*Members*"), at least two (2) of which shall be representatives selected by the Committee and at least one (1) of which shall be a representative selected by the Debtor (subject to the approval of the Committee, which shall not be unreasonably withheld or delayed), shall be established. The Oversight Committee shall perform an advisory role in the administration of the Creditor Trust and shall carry out such other responsibilities as may be required or permitted under this Creditor Trust Agreement or under the Plan. The initial Members of the Oversight Committee are \_\_\_\_\_ (Committee's representative), \_\_\_\_\_ (Committee's representative) and \_\_\_\_\_ (Debtor's representative). These Members of the Oversight Committee will serve, not as individuals, but as representatives of their respective organizations. Each Member of the Oversight Committee shall serve until the earlier of: (a) his or her death or resignation; (b) his or her removal pursuant to **Section 5.5** of the Creditor Trust Agreement; and (c) the termination of the Creditor Trust. To any extent a Member of the Oversight Committee has a conflict of interest with respect to any matter being handled by the Creditor Trustee, such Member of the Oversight Committee shall recuse themselves and be recused from any such discussions in accordance herewith and any by-laws governing operation of the Oversight Committee approved by the Creditor Trustee.

#### 5.2 Role of the Oversight Committee

The Oversight Committee shall monitor, and the Creditor Trustee shall consult with the Oversight Committee in connection with, the administration of the Creditor Trust by the Creditor Trustee. The Oversight Committee may provide advice or recommendations with respect to any action to be taken by the Creditor Trustee in connection therewith, including, without limitation: (a) the arrangement of any sale, transfer or other disposition of Creditor Trust Assets; (b) the investment of any proceeds of Creditor Trust Assets in Permitted Investments; (c) the conduct and settlement of litigation with respect to any Disputed Claims and any Cause of Action (other than with respect to a De Minimis Claim or Cause of Action), or otherwise; and (d) the making of any distributions in respect of Allowed Claims. Further, the Oversight Committee may from time to time issue written directives to the Creditor Trustee with respect to any of the foregoing, which shall be complied with by the Creditor Trustee. All decisions of the Oversight Committee, and all actions, directives, approvals and consents of the Oversight Committee required or contemplated hereunder, shall be effective upon a majority vote of the Members thereof. In taking or failing to take any action hereunder, the Creditor Trustee may rely upon a written statement (including signatures by counterpart facsimile or approval by electronic transmission) by such majority of the Oversight Committee. The Oversight Committee will have



the authority to remove and/or replace the Creditor Trustee as set forth in **Sections 4.4** and **4.7** hereof. Neither the Oversight Committee nor its Members shall exercise any control or authority over the Creditor Trust or the Creditor Trust Assets that is inconsistent with the purposes or provisions of this Creditor Trust Agreement.

### 5.3 Compensation of the Oversight Committee

The Oversight Committee shall not be compensated for services rendered to the Creditor Trust. However, the Oversight Committee Members shall be reimbursed from the Creditor Trust Assets for all reasonable out-of-pocket expenses incurred by serving on the Oversight Committee, except fees and expenses of professionals retained by individual Oversight Committee Members.

### 5.4 Resignation of Member

An Oversight Committee Member may resign by giving not less than fifteen (15) days' prior written notice thereof to the parties entitled to notice under **Section 14.10** hereof. From and after the date of its resignation from the Oversight Committee, the resigning Oversight Committee member shall have no further rights or obligations under this Creditor Trust Agreement.

### 5.5 Removal of Member

5.5.1 Removal for Disability. Subject to Bankruptcy Court approval, a Member of the Oversight Committee may be removed by a unanimous vote of all other Members of the Oversight Committee upon a finding that such Member is unable to perform his or her duties due to illness or other physical or mental disability.

5.5.2 Removal for Cause. Subject to Bankruptcy Court approval, a Member of the Oversight Committee may be removed for cause by a unanimous vote of all other Members of the Oversight Committee. "Cause" shall include, without limitation: (a) fraud or willful misconduct in connection with the affairs of the Creditor Trust; or (b) breach of fiduciary duty or an unresolved conflict of interest.

### 5.6 Replacement of Member

In the event that an Oversight Committee Member resigns or is removed as an Oversight Committee Member in accordance with this **Article V**, the entity that designated the removed or resigning Member (i.e., the Committee or the Debtor) may designate a successor Member.

### 5.7 Reliance by Oversight Committee Members

The Oversight Committee Members may rely, and shall be fully protected in acting or refraining from acting, on any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order or other instrument or document that the Oversight Committee Member has no reason to believe to be other than genuine and to have been signed or presented by the proper party or parties or, in the case of facsimiles, to have been sent by the proper party or parties, and the Oversight Committee Members may conclusively rely as to the truth of the

statements and correctness of the opinions expressed therein. The Oversight Committee Members may consult with any counsel employed by the Creditor Trust or by the Oversight Committee.

#### 5.8 Meetings of the Creditor Trustee and the Oversight Committee

5.8.1 Regular Meetings of the Creditor Trustee and the Oversight Committee. Meetings of the Creditor Trustee and the Oversight Committee are to be held with such frequency and at such place as the Oversight Committee may determine in its sole discretion, but in no event shall meetings be held less frequently than quarterly.

5.8.2 Special Meetings of the Creditor Trustee and the Oversight Committee. Special meetings of the Creditor Trustee and the Oversight Committee may be held whenever and wherever called for either by the Creditor Trustee or at least two Members of the Oversight Committee.

5.8.3 Notice of, and Waiver of Notice for, Creditor Trustee and Oversight Committee Meetings. Notice of the time and place (but not necessarily the purpose or all of the purposes) of any regular or special meeting will be given to the Creditor Trustee and/or the Members of the Oversight Committee in person or by telephone, mail, electronic mail or facsimile transmission. Notice to the Creditor Trustee and the Members of the Oversight Committee of any such meeting will be deemed given sufficiently in advance when: (a) if given by mail, the same is deposited in the United States mail at least ten (10) calendar days before the meeting date, with postage thereon prepaid; (b) if given by electronic mail or facsimile transmission, the same is transmitted at least one (1) business day prior to the convening of the meeting; or (c) if personally delivered (including by overnight courier) or given by telephone, the same is handed, or the substance thereof is communicated over the telephone to the Creditor Trustee and/or the Members of the Oversight Committee or to an adult member of his/her office staff or household, at least one (1) business day prior to the convening of the meeting. The Creditor Trustee and any Member of the Oversight Committee may waive notice of any meeting and any adjournment thereof at any time before, during or after it is held, as provided by law. Except as provided in the next sentence below, the waiver must be in writing, signed by the Creditor Trustee or the applicable Member or Members of the Oversight Committee entitled to the notice and filed with the minutes or records of the Creditor Trust. The attendance of the Creditor Trustee or a Member of the Oversight Committee at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

5.8.4 Manner of Participation in Creditor Trustee and Oversight Committee Meetings. The Creditor Trustee or any Member of the Oversight Committee may participate in a regular or special meeting by, or conduct the meeting in person or through the use of conference telephone, videoconference or similar communications equipment by means of which all persons participating in the meeting may hear each other, in which case any required notice of such meeting may generally describe the arrangements (rather than or in addition to the place) for the holding thereof. The Creditor Trustee or any Member of the Oversight Committee participating in a meeting by this means is deemed to be present in person at the meeting.

5.8.5 Manner of Acting. Any Member of the Oversight Committee who is present and entitled to vote at a meeting of the Oversight Committee when action is taken is deemed to have assented to the action taken, subject to the requisite vote of the Oversight Committee, unless: (a) such member of the Oversight Committee objects at the beginning of the meeting (or promptly upon his/her arrival) to holding it or to the transaction of any business at the meeting; (b) his/her dissent or abstention from the action taken is entered in the minutes of the meeting; or (c) he/she delivers written notice (including by electronic or facsimile transmission) of his/her dissent or abstention before the adjournment of the meeting. The right of dissent or abstention is not available to any member of the Oversight Committee who votes in favor of the action taken.

#### 5.9 Oversight Committee Action Without a Meeting

Any action required or permitted to be taken by the Oversight Committee at a meeting may be taken without a meeting if the action is taken by unanimous written consent of the Oversight Committee as evidenced by one or more written consents describing the action taken, signed by all Members of the Oversight Committee and recorded in the minutes or other transcript of proceedings of the Oversight Committee and the Creditor Trustee.

#### 5.10 Dispute Resolution

In the event of a dispute between the Creditor Trustee and the Oversight Committee, or between Members of the Oversight Committee, involving an allegation that either party has failed to act in a manner consistent with the Plan or this Creditor Trust Agreement, the parties shall meet and confer and attempt to reach a consensual resolution of the dispute. Should a consensual resolution not be reached, the Creditor Trustee or the Oversight Committee or any of its Members may seek appropriate relief from the Bankruptcy Court, and the Bankruptcy Court shall retain jurisdiction to resolve such disputes. This **Section 5.10** shall also apply to any disputes relating to recusal pursuant to **Section 5.1** of this Agreement.

#### 5.11 Confidentiality of Information and Conflicts of Interest

The Creditor Trustee shall have authority to exclude any Oversight Committee Member from any deliberations, or withhold any information from any Oversight Committee Member, regarding matters affecting the Creditor Trust or Creditor Trust Assets in which such excluded Member is encumbered by a conflict of interest that has been disclosed or otherwise becomes known to the Creditor Trustee. The non-conflicted Oversight Committee Members may overrule the Creditor Trustee's decision to exclude or withhold information from a conflicted Oversight Committee Member by unanimous vote of any non-conflicted Oversight Committee Members; provided, however, that the Creditor Trustee shall not be liable to the Oversight Committee or the Creditor Trust in any way for any statements made or actions taken by such conflicted Oversight Committee Member following such overruling by the Oversight Committee, and the Creditor Trust shall hold the Creditor Trustee harmless for any claims that may arise as a result of such conflicted Oversight Committee Member's statements and actions. Any Oversight Committee Member that is excluded from deliberations or denied access to information under this **Section 5.11** may challenge the Creditor Trustee's determination in accordance with the dispute resolution procedure set forth in **Section 5.10** of this Creditor Trust Agreement.

5.12 Limitation of Liability and Indemnification of the Oversight Committee

5.12.1 The Members of the Oversight Committee shall not be personally liable to the Creditor Trust or to any Beneficiary (or any successor of such entities) except for such of their own respective acts as shall constitute willful misconduct or fraud as determined by a Final Order. The Members of the Oversight Committee and any officers, employees, professionals and agents of any Member of the Oversight Committee, shall be defended, held harmless and indemnified and shall be entitled to advancement of their expenses; provided, however, that such Member shall be obligated to repay any amounts advanced hereunder if a court of competent jurisdiction shall determine by a Final Order that such Member violated its standard of care hereunder.

5.12.2 The obligation of the Creditor Trust to indemnify the Members of the Oversight Committee and their respective officers, employees, professionals and agents hereunder, and any such Person's rights to be compensated and to be reimbursed for its reasonable out-of-pocket expenses and disbursements, shall constitute indebtedness of the Creditor Trust. In acting hereunder, any Member of the Oversight Committee acts in its representative and not individual capacity. All Persons having any claim against any Member of the Oversight Committee or their agents by reason of the transactions contemplated hereby shall look only to the Creditor Trust Assets for payment or satisfaction thereof.

5.12.3 The indemnification and exculpation provisions hereunder shall supplement and augment those provisions set forth in the Plan.

**ARTICLE VI**  
**CREDITOR TRUST BENEFICIARIES**

6.1 Identification of Beneficiaries

The beneficial interests of each Beneficiary in the Creditor Trust shall be recorded and set forth in the Claims List maintained by the Creditor Trustee.

6.2 Beneficial Interest Only

The ownership of a beneficial interest in the Creditor Trust shall not entitle any Beneficiary or the Debtor to any title in or to the Creditor Trust Assets or to any right to call for a partition or division of such Creditor Trust Assets or to require an accounting, except as specifically provided herein.

6.3 Ownership of Beneficial Interests Hereunder

Each Beneficiary shall own a beneficial interest in the Creditor Trust Assets equal in proportion to the Pro Rata share of such Beneficiary's Allowed Claim in accordance with the Plan.

#### 6.4 Evidence of Beneficial Interest

Ownership of a beneficial interest in the Creditor Trust Assets shall not be evidenced by any certificate, security or receipt or in any other form or manner whatsoever, except as maintained on the Claims List.

#### 6.5 Limitation on Transferability

It is understood and agreed that the beneficial interests in the Creditor Trust shall be non-assignable during the term of this Creditor Trust Agreement except by operation of law. An assignment by operation of law shall not be effective until appropriate notification and proof thereof is submitted to the Creditor Trustee, and the Creditor Trustee may continue to pay all amounts to or for the benefit of the assigning Beneficiary until receipt of proper notification and proof of assignment by operation of law. The Creditor Trustee may rely upon such proof without the requirement of any further investigation. Any notice of a change of beneficial interest ownership as permitted by operation of law shall be forwarded to the Creditor Trustee by registered or certified mail pursuant to the notice provisions set forth in **Section 14.10** hereof. The notice shall be executed by both the transferee and the transferor, and the signatures of the parties shall be acknowledged before a notary public and as required by Bankruptcy Rule 3001(e). The notice must clearly describe the interest to be transferred. The Creditor Trustee may conclusively rely upon such signatures and acknowledgments as evidence of such transfer without the requirement of any further investigation.

#### 6.6 Conflicting Claims

If any conflicting claims or demands are made or asserted with respect to the Creditor Trust Assets, or if there is any disagreement between the assignees, transferees, heirs, representatives or legatees succeeding to all or a part of the Creditor Trust Assets resulting in adverse claims or demands being made in connection with such assets, then, in any of such events, the Creditor Trustee, following consultation with the Oversight Committee, shall be entitled to refuse to comply with any such conflicting claims or demands. In so refusing, the Creditor Trustee may elect to make no payment or distribution with respect to the Creditor Trust Assets that are the subject of the claims or demands involved, or any part thereof, and to refer such conflicting claims or demands to the Bankruptcy Court, which shall retain jurisdiction over resolution of such conflicting claims or demands. In so doing, the Creditor Trustee shall not be or become liable to any of such parties for its refusal to comply with any of such conflicting claims or demands, nor shall the Creditor Trustee be liable for interest on any funds that it may so withhold. The Creditor Trustee shall be entitled to refuse to act until either: (a) the rights of the adverse claimants have been adjudicated by a Final Order of the Bankruptcy Court; or (b) all differences have been resolved by a valid written agreement among all of such parties and the Creditor Trustee.

## ARTICLE VII PROVISIONS REGARDING DISTRIBUTIONS

### 7.1 Timing and Methods of Distributions

7.1.1 Generally. The Creditor Trustee, on behalf of the Creditor Trust, or such other entity as may be designated by the Creditor Trustee, on behalf of the Creditor Trust, will make all distributions to the Beneficiaries as set forth in, and as required by, this Creditor Trust Agreement, the Plan and the Confirmation Order. Unless the entity or Person receiving a payment agrees otherwise, the Creditor Trustee, in its sole discretion, will make any payment in Cash to be made by the Creditor Trust by check drawn on a domestic bank or by wire transfer from a domestic bank.

7.1.2 Priority of Distributions. After payment of all unpaid Trustee Expenses, the Creditor Trustee in its good faith judgment and based on available Creditor Trust Assets, shall distribute all remaining Cash to holders of Trust Interests, Pro Rata and otherwise as provided in the Plan. The Creditor Trustee may withhold from amounts distributable to any entity any and all amounts, determined in the Creditor Trustee's reasonable discretion, following consultation with the Oversight Committee, to be required by any law, regulation, rule, ruling, directive or other government equivalent of the United States or of any political subdivision thereof, or to otherwise facilitate the administration of the Creditor Trust.

7.1.3 Distributions by the Creditor Trustee. Subject to the provisions of this **Article VII**, the Creditor Trustee shall distribute to the holders of Allowed Class 3 Claims and Allowed Class 4 Claims, all net Cash income (including as Cash for this purpose, all cash equivalents) from time to time at such time intervals as decided by the Creditor Trustee following consultation with, and subject to the approval of, the Oversight Committee (but within a reasonable time after creation of a Disputed Claims Reserve (as defined *infra*) determined to be sufficient to make Pro Rata distributions on Disputed Claims and to pay the Trustee Expenses in full), pursuant to the terms of the Plan and the Confirmation Order. The Creditor Trustee may, following consultation with, and subject to the approval of, the Oversight Committee, cause the Creditor Trust to retain an amount of net Cash proceeds or net Cash income reasonably necessary to maintain the value of its assets, as set forth in, and to effectuate the provisions of, the Plan and the Confirmation Order. The Creditor Trustee may withhold from the amount distributable from the Creditor Trust at any time to any Person (except with respect to the IRS) such sum or sums as may be sufficient to pay any tax or taxes or other charge or charges that have been or may be imposed on such Person or upon the Creditor Trust with respect to the amount distributable or to be distributed under the income tax laws of the United States or of any state or political subdivision or entity by reason of any distribution provided for in this Creditor Trust Agreement, whenever such withholding is required by any law, regulation, rule, ruling, directive or other governmental requirement, and the Creditor Trustee may enter into agreements with taxing or other authorities for the payment of such amounts as may be withheld in accordance with the provisions of this **Section 7.1.3**. Notwithstanding the foregoing, but without prejudice to the Creditor Trustee's rights hereunder, such Person shall have the right with respect to the United States, or any state, or any political subdivision of either, to contest the imposition of any tax or other charge by reason of any distribution hereunder.

7.1.4 Claims List. At least ten (10) days prior to the Effective Date, the Debtor will deliver to the Creditor Trustee a list of all Claims scheduled by the Debtor and/or filed against the Debtor as of such date, the addresses of all such holders as of a record date that is not more than fifteen (15) days prior to the date of the list, the designation and amount of each such Claim as disputed or not disputed, fixed or contingent and liquidated or unliquidated, and, to the extent ascertainable from the Debtor's books and records, the Employer or Taxpayer Identification Number as assigned by the IRS for each holder (the "*Claims List*"). The Creditor Trustee shall be entitled to rely upon the Claims List in calculating and making distributions from the Creditor Trust as provided herein; provided, however, that the Claims List shall be adjusted from time to time by the Creditor Trustee as necessary to maintain its accuracy. The Creditor Trustee shall also revise the Claims List from time to time upon receipt of notice from a Beneficiary notifying the Creditor Trustee of a change of address or stating that its Claim has been transferred to a new Beneficiary, that the new Beneficiary has complied with any applicable provisions of Bankruptcy Rule 3001(e) (and providing evidence thereof) and setting forth the name and address of such new Beneficiary. The Creditor Trustee shall establish the revised Claims List that is to be used in conjunction with any particular distribution no less than fourteen (14) days prior to the date of such distribution. Nothing herein shall impair or otherwise affect the Creditor Trustee's right to object to the Allowance of Claims as provided in Section 8.1.

## 7.2 Delivery of Distributions

Subject to the provisions of Bankruptcy Rule 2002(g), and except as otherwise provided herein, distributions and deliveries to holders of record of Trust Interests shall be made at the address of each such holder set forth on the Claims List.

## 7.3 No Post-Petition Interest on Claims

Except as expressly provided in the Plan, the Confirmation Order or any contract, instrument, release, settlement or other agreement entered into in connection with the Plan, or as required by applicable bankruptcy law, post-petition interest will not accrue on account of any Claim and the Creditor Trustee will not distribute post-petition interest on account of any Claim.

## 7.4 No Post-Confirmation Date Interest on Claims

Post-Confirmation Date interest will not accrue on account of any Claim, and the Creditor Trustee will not distribute post-Confirmation Date interest on account of any Claim.

## 7.5 Undeliverable Distributions

If any distribution with respect to a Trust Interest is returned to the Creditor Trustee as undeliverable, no further distributions shall be made to such holder, unless the Creditor Trustee is notified in writing of the Trust Interest holder's current address. Upon receipt of the notification, the Creditor Trustee will remit all missed distributions to the Trust Interest holder without interest. All claims for undeliverable distributions must be made on or before the first anniversary of the Confirmation Date of the Plan. If a claim is not made within that time, all unclaimed distributions will revert to the Creditor Trust and be distributed Pro Rata to the remaining Beneficiaries of the Creditor Trust. Nothing contained in the Plan, the Confirmation

Order or this Creditor Trust Agreement shall require the Creditor Trustee to attempt to locate any holder of an Allowed Class 3 Claim or an Allowed Class 4 Claim.

#### 7.6 Lapsed Distributions

Any distribution that has not cleared within ninety (90) days of the date of the distribution will lapse. With respect to any lapsed distributions, the lapsed distribution will revert to the Creditor Trust and be distributed to the remaining Beneficiaries of the Creditor Trust.

#### 7.7 Compliance with Tax Requirements/Allocation

To the extent applicable, the Creditor Trust shall comply with all tax withholding and reporting requirements imposed on it by any governmental unit, and all distributions pursuant to the Plan and the Confirmation Order shall be subject to such withholding and reporting requirements. For tax purposes, distributions received in respect of Trust Interests will be allocated first to the principal amount of such Claims, with any excess allocated to unpaid accrued interest.

#### 7.8 Fractional Dollars; *De Minimis* Distributions

Notwithstanding anything contained herein to the contrary, payments of fractions of dollars will not be made. Whenever any payment of a fraction of a dollar under this Creditor Trust Agreement, the Plan or the Confirmation Order would otherwise be called for, the actual payment made will reflect a rounding of such fraction to the nearest dollar (up or down), with half dollars being rounded down. The Creditor Trustee shall not be required to make any interim distribution of less than Fifty Dollars (\$50) with respect to any Trust Interest. To the extent that any interim distribution is not paid to a Beneficiary on the grounds that it amounts to less than Fifty Dollars (\$50), the amount of such withheld distribution shall be reserved for addition to any future distribution or as the final distribution to such Beneficiary, and may be made at that time if the total distribution is at least Fifty Dollars (\$50).

#### 7.9 Setoffs

The Creditor Trustee may, pursuant to sections 502(d) or 553 of the Bankruptcy Code or applicable non-bankruptcy law, set off against any Allowed Class 3 Claim or Allowed Class 4 Claim and the distributions to be made pursuant to the Plan and the Confirmation Order on account thereof (before any distribution is made on account of such Claim), the claims, rights and causes of action of any nature that the Creditor Trust may hold against the holder of such Allowed Class 3 Claim or Allowed Class 4 Claim; provided, however, that neither the failure to effect such a setoff nor the allowance of any Claim shall constitute a waiver or release by the Creditor Trust or the Estate of any such claims, rights and causes of action that they may possess against such holder.

#### 7.10 Preservation of Debtor's Subordination Rights

All subordination rights and claims relating to the subordination by the Debtor or its Estate of the Allowed Class 3 Claims and Allowed Class 4 Claims of any Creditor shall remain



valid and enforceable by the Creditor Trust, unimpaired in accordance with section 510 of the Bankruptcy Code or otherwise, and may be asserted by the Creditor Trustee as necessary or appropriate.

**7.11 Waiver by Creditors of All Subordination Rights**

Except as otherwise ordered by the Bankruptcy Court, each holder of an Allowed Class 3 Claim or Allowed Class 4 Claim shall be deemed to have waived all contractual, legal and equitable subordination rights that they may have, whether arising under general principles of equitable subordination, section 510(c) of the Bankruptcy Code or otherwise, with respect to any and all distributions to be made under the Plan and the Confirmation Order, and all such contractual, legal or equitable subordination rights that each holder of a Claim has individually and collectively, with respect to any such distribution, made pursuant to the Plan and the Confirmation Order shall be discharged and terminated, and all actions related to the enforcement of such subordination rights will be permanently enjoined.

**ARTICLE VIII  
PROCEDURES FOR RESOLUTION OF DISPUTED,  
CONTINGENT AND UNLIQUIDATED CLAIMS**

**8.1 Objections to Claims; Prosecution of Disputed Claims**

The Creditor Trustee, following consultation with, and subject to the approval of, the Oversight Committee, and on behalf of the Creditor Trust, may file objections to Claims, even if such Claims were scheduled by the Debtor as undisputed, liquidated and non-contingent. The Creditor Trustee shall have the authority to file, settle, compromise or withdraw any objections to Claims, without approval of the Bankruptcy Court. The Creditor Trustee shall file objections to Claims no later than 180 days after the Effective Date (unless extended by an order of the Bankruptcy Court). Notwithstanding the deadline to file objections to Claims provided in the Plan, the Creditor Trustee may file objections to Claims within ninety (90) days of the filing of an amended Claim.

**8.2 Estimation of Claims**

The Creditor Trustee, on behalf of the Creditor Trust, may at any time request that the Bankruptcy Court estimate any contingent or Disputed Claim pursuant to section 502(c) of the Bankruptcy Code, regardless of whether the Debtor, the Committee or the Creditor Trustee previously have objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to such Claim, including, without limitation, during the pendency of any appeal relating to any such objection. Subject to the provisions of section 502(j) of the Bankruptcy Code, in the event that the Bankruptcy Court estimates any contingent or Disputed Claim, the amount so estimated shall constitute the maximum allowed amount of such Claim. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Creditor Trust may pursue supplementary proceedings to object to the allowance of such Claim. All of the aforementioned objection, estimation and resolution procedures are intended to be cumulative and not exclusive of one another. Claims may be estimated and

subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

### 8.3 Disputed Claims

8.3.1 If the Creditor Trustee has objected to a Claim, distributions will be withheld only with respect to the amount actually in dispute, and such objection shall not affect payments or distributions under the Plan on the undisputed portion of the Claim.

8.3.2 The Creditor Trustee shall maintain, in accordance with the Creditor Trustee's powers and responsibilities under the Plan, the Confirmation Order and this Creditor Trust Agreement, a reserve for any distributable amounts required to be set aside on account of Disputed Claims (the "*Disputed Claims Reserve*").

8.3.3 Once a Disputed Claim becomes an Allowed Claim, the Creditor Trustee shall, as soon as practicable following the entry of a Final Order regarding the allowance of such Claim, and to the extent of the allowance of such Claim, distribute to the holder thereof, from the Disputed Claims Reserve, such amount of Creditor Trust Assets as would have been distributed to such holder if the allowed portion of its Claim had been an Allowed Claim on the Confirmation Date, less such holder's share of any taxes paid or payable by the Disputed Claims Reserve. If a Disputed Claim becomes disallowed, in whole or part, the Creditor Trustee shall reallocate the disallowed amount previously set aside in the Disputed Claims Reserve in connection with such Disputed Claim among the Beneficiaries and the Disputed Claims Reserve on behalf of the Disputed Claims not yet resolved, as applicable, all to be distributed pursuant to **Article VII** of this Creditor Trust Agreement.

## **ARTICLE IX LIABILITY AND EXCULPATION PROVISIONS**

### 9.1 Standard of Liability

In no event shall the Creditor Trustee or the Creditor Trust, or their respective Professionals, Non-Professionals or representatives, be held personally liable for any claim asserted against the Creditor Trust or the Creditor Trustee, or any of their Professionals, Non-Professionals or representatives. Specifically, the Creditor Trustee, the Creditor Trust and their respective Professionals, Non-Professionals or representatives shall not be liable for any negligence or any error of judgment made in good faith with respect to any action taken or omitted to be taken in good faith. Notwithstanding the foregoing, the Creditor Trust or the Creditor Trustee, or any of their Professionals, Non-Professionals or representatives may be held personally liable to the extent that the action taken or omitted to be taken by each of the same or their respective Professionals, Non-Professionals or representatives is determined by a Final Order to be solely due to their own respective gross negligence, willful misconduct, fraud or, solely in the case of the Creditor Trustee, breach of fiduciary duty other than negligence. Any act or omission taken with the approval of the Bankruptcy Court will be conclusively deemed not to constitute gross negligence, willful misconduct, fraud or a breach of fiduciary duty.

## 9.2 Reliance by Creditor Trustee

Except as otherwise provided in **Article III** hereof:

(a) the Creditor Trustee may rely, and shall be protected in acting upon, any resolution, certificate, statement, installment, opinion, report, notice, request, consent, order or other paper or document reasonably believed by him or her to be genuine and to have been signed or presented by the proper party or parties except as otherwise provided in the Plan or the Confirmation Order; and

(b) the Creditor Trustee shall not be liable for any action reasonably taken or not taken by him or her in accordance with the advice of a Professional retained pursuant to **Article XI**, and persons dealing with the Creditor Trustee shall look only to the Creditor Trust Assets to satisfy any liability incurred by the Creditor Trustee to such person in carrying out the terms of this Creditor Trust Agreement, and the Creditor Trustee shall have no personal obligation to satisfy any such liability, except to the extent that actions taken or not taken after the Effective Date by the Creditor Trustee are determined by a Final Order to be solely due to the Creditor Trustee's own gross negligence, willful misconduct, fraud or breach of fiduciary duty, other than negligence.

## 9.3 Exculpation

9.3.1 From and after the Effective Date, the Creditor Trustee and its Professionals, Non-Professionals and representatives shall be and hereby are exculpated by all Persons, including, without limitation, holders of Claims and other parties in interest, from any and all claims, causes of action and other assertions of liability arising out of the discharge of the powers and duties conferred upon said parties pursuant to or in furtherance of this Creditor Trust Agreement, the Plan, the Confirmation Order or any order of the Bankruptcy Court or applicable law or otherwise, except only for actions taken or not taken, from and after the Effective Date only to the extent determined by a Final Order to be solely due to their own respective gross negligence, willful misconduct, fraud or, solely in the case of the Creditor Trustee, breach of fiduciary duty, other than negligence.

9.3.2 No holder of a Claim or other party-in-interest will be permitted to pursue any claim or cause of action against the Creditor Trustee or its Professionals, Non-Professionals or representatives for making payments in accordance with the Plan or the Confirmation Order or for implementing the provisions of the Plan or the Confirmation Order. Any act taken or not taken by the Creditor Trustee with the approval of the Bankruptcy Court will be conclusively deemed not to constitute gross negligence, willful misconduct or fraud or, solely in the case of the Creditor Trustee, a breach of fiduciary duty, other than negligence.

## 9.4 Indemnification

The Creditor Trust shall indemnify, defend and hold harmless the Creditor Trustee and its respective Professionals, Non-Professionals and representatives from and against any and all claims, causes of action, liabilities, obligations, losses, damages or expenses (including reasonable attorneys' fees and expenses) occurring after the Effective Date, other than to the

extent determined by a Final Order to be solely due to their own respective gross negligence, willful misconduct or fraud or, solely in the case of the Creditor Trustee, breach of fiduciary duty, other than negligence, to the fullest extent permitted by applicable law.

## **ARTICLE X ADMINISTRATION**

### **10.1 Purpose of the Creditor Trust**

The Creditor Trust shall be established for the primary purpose of liquidating its assets, in accordance with Treas. Reg. § 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Creditor Trust. Accordingly, the Creditor Trust shall, in an expeditious but orderly manner, liquidate and convert to Cash the Creditor Trust Assets, make timely distributions to the Beneficiaries and not unduly prolong the duration of the Creditor Trust.

### **10.2 Books and Records**

10.2.1 Maintenance of Books and Records. The Creditor Trustee shall maintain, with respect to the Creditor Trust and the Beneficiaries, books and records relating to the assets and income of the Creditor Trust and the payment of expenses of and liabilities of, claims against or assumed by, the Creditor Trust in such detail and for such period of time as the Creditor Trustee determines, after consultation with the Oversight Committee, may be necessary to make full and proper accounting in respect thereof in accordance with **Article X** hereof and to comply with applicable provisions of law. Except as otherwise provided herein, in the Plan, or in the Confirmation Order, nothing in this Creditor Trust Agreement requires the Creditor Trust to file any accounting or seek approval of any court with respect to the administration of the Creditor Trust, or as a condition for making any payment or distribution out of the Creditor Trust Assets. Subject to all applicable privileges, the Beneficiaries shall have the right, in addition to any other rights they may have pursuant to this Creditor Trust Agreement, under the Plan and the Confirmation Order, or otherwise, upon thirty (30) days' prior written notice delivered to the Creditor Trustee, to request a reasonable inspection (as determined by the Creditor Trustee, following consultation with the Oversight Committee) of such books and records; provided, however, that, if so requested, such Beneficiary shall: (a) first enter into a confidentiality agreement satisfactory in form and substance to the Creditor Trustee and the Oversight Committee; (b) make such other reasonable arrangements as requested by the Creditor Trustee and the Oversight Committee; and (c) bear all costs and expenses of such inspection.

10.2.2 Consultation. The Creditor Trustee shall consult with the Oversight Committee in good faith regarding all material issues affecting the Creditor Trust, including, without limitation, the resolution of objections to Disputed Claims and the disposition of Creditor Trust Assets, and seek the prior approval (written, as applicable) from the Oversight Committee as may be required by this Creditor Trust Agreement, except to the extent: (a) the Oversight Committee or any individual Oversight Committee Member is encumbered by a conflict of interest that has been disclosed or otherwise becomes known to the Creditor Trustee, in which event the Creditor Trustee shall seek the advice and approval, as may be required, of

the Oversight Committee without such Member, except as provided in **Section 5.11** hereof; and (b) the Oversight Committee instructs the Creditor Trustee, in writing, that the Creditor Trustee need not consult it with respect to one or more particular issues. In addition, the Creditor Trustee, at the written request of the Oversight Committee, shall present one or more budgets for the Creditor Trust that set forth expected disbursements for litigation, operations and other purposes.

10.2.3 Quarterly Reports. Within thirty (30) days after the conclusion of every calendar quarter during the term of this Creditor Trust Agreement following the Effective Date, the Creditor Trustee shall provide a Quarterly Report to the Oversight Committee and shall file it with the Bankruptcy Court. The Quarterly Report shall set forth: (a) all distributions to Beneficiaries during the calendar quarter; (b) a summary of the Creditor Trust deposits and disbursements during the calendar quarter; and (c) a summary of the Creditor Trust Assets.

10.2.4 Distribution of Reports. Within ten (10) business days after the end of the relevant Quarterly Report preparation period, the Creditor Trustee shall make available any information listed in **Section 10.2.3** above to the Oversight Committee and (if requested) to the U.S. Trustee, and, to the extent required under the Bankruptcy Rules or other local rules, shall file the same with the Bankruptcy Court.

10.2.5 The Creditor Trustee may post any report or records required to be provided under this **Section 10.2** on a website maintained by the Creditor Trustee in lieu of actual delivery of such reports or records to the Oversight Committee (unless otherwise required by law), subject to the provisions of notice of such website and its purpose to the Oversight Committee.

### 10.3 Security Interests

The Creditor Trustee, its respective Professionals and Non-Professionals and the U.S. Trustee are hereby granted a first-priority lien on, and security interest in, the Creditor Trust Assets to secure the payment of all amounts owed to, accrued or reserved on account of, to be retained by or otherwise due hereunder to each of the above. The Creditor Trustee shall cause the Creditor Trust to take such actions and execute such documents as the Creditor Trustee, its respective Professionals and Non-Professionals and the U.S. Trustee deem appropriate to perfect the security interests granted hereunder. The Creditor Trustee is authorized to execute and deliver all documents on behalf of the Creditor Trust to accomplish the purposes of this Creditor Trust Agreement, the Plan and the Confirmation Order.

### 10.4 Compliance with Laws

Any and all distributions of Creditor Trust Assets shall comply with all applicable laws and regulations, including, but not limited to, applicable federal and state tax and securities laws.

## **ARTICLE XI PROFESSIONALS AND NON-PROFESSIONALS**

### **11.1 Retention of Professionals and Non-Professionals**

11.1.1 Retention of Professionals. Subject to the approval of the Oversight Committee, the Creditor Trustee, upon the later to occur of the Effective Date and acceptance by the Creditor Trustee of its appointment in accordance with the Plan and this Creditor Trust Agreement, shall have the right to retain its own professionals without any further approval by any court or otherwise including, without limitation, legal counsel, accountants, experts, advisors, consultants, investigators, appraisers, real estate brokers, auctioneers and other professionals as the Creditor Trustee deems appropriate (collectively, the “*Professionals*”). Such Professionals shall be compensated in accordance with **Section 11.3** hereof. The Professionals so retained need not be “disinterested” as that term is defined in the Bankruptcy Code and may include, without limitation, counsel and financial advisors of any party in the Case for efficiency.

11.1.2 Retention of Non-Professionals. Subject to the approval of the Oversight Committee, the Creditor Trustee, upon the later to occur of the Effective Date and acceptance by the Creditor Trustee of its appointment in accordance with the Plan and this Creditor Trust Agreement, shall have the right to retain non-professionals without any further approval by any court or otherwise including, without limitation, employees, independent contractors or other agents as the Creditor Trustee deems appropriate (the “*Non-Professionals*”). Such Non-Professionals shall be compensated in accordance with **Section 11.3** hereof. The Non-Professionals so retained need not be “disinterested” as that term is defined in the Bankruptcy Code and may include, without limitation, employees, independent contractors and agents of the Debtor or the Committee.

### **11.2 Retention of Creditor Trustee’s Legal Counsel**

The initial Creditor Trustee has chosen to retain \_\_\_\_\_ as its counsel. Such retention is made pursuant to this **Article XI** without any further approval by any court. \_\_\_\_\_ is a Professional as that term is used herein, and shall be compensated in accordance with **Section 11.3** hereof.

### **11.3 Compensation of Professionals and Non-Professionals**

Each Professional and Non-Professional shall submit monthly invoices to the Creditor Trustee for its fees and expenses incurred in connection with services requested by, and provided to, the Creditor Trustee. The Creditor Trustee may pay the reasonable fees and expenses of such Professionals and Non-Professionals as an expense of the Creditor Trust without application to the Bankruptcy Court, subject to the following procedure: Each Professional and Non-Professional shall serve its fee invoice (which shall contain detailed time entries) upon the Creditor Trustee no more frequently than once a month. The Creditor Trustee shall have until fourteen (14) days after its receipt of an invoice (the “*Objection Deadline*”) to review such invoice and deliver to the applicable Professional or Non-Professional, any objections thereto. Any objection to an invoice (each an “*Objection*”) must: (a) be in writing; and (b) set forth the precise nature of the Objection and the amount of objectionable fees and expenses at issue. If no

Objection is timely filed, served and received in respect of an invoice, then the Professional or Non-Professional shall be entitled to payment from the Creditor Trust on such invoice. If a timely Objection is filed, the Professional or Non-Professional shall be entitled to payment from the Creditor Trust of only that portion of the invoice that is not the subject of the Objection, and the Creditor Trustee and the affected Professional or Non-Professional may attempt to resolve on a consensual basis that portion of the invoice that is the subject of the Objection. If the parties are unable to reach a resolution of the Objection, the affected Professional or Non-Professional may file a request for payment of the disputed amount with the Bankruptcy Court and serve such request on the Creditor Trustee on regular notice, and the Creditor Trustee or the affected Professional or Non-Professional may request, by motion, that the Bankruptcy Court adjudicate and rule on the Objection.

## **ARTICLE XII TAXES**

### **12.1 Tax Returns and Payments**

The Creditor Trustee will be responsible for: (a) the preparation and timely filing of all required federal, state and local tax returns for the Creditor Trust and the Debtor; (b) the timely payment of any taxes shown on such returns as owing by the Creditor Trust or the Debtor (as applicable) from the applicable Creditor Trust Assets; and (c) the preparation and timely distribution to the Beneficiaries of any necessary federal, state or local information returns. The Creditor Trustee will retain all tax returns and supporting documentation until the expiration of the applicable statute of limitations. The Creditor Trustee may request an expedited determination of the taxes owed by the Debtor, the Creditor Trust or any Disputed Claims Reserve under section 505(b) of the Bankruptcy Code for any tax return for which such determination may be requested.

### **12.2 Creditor Trust**

The Creditor Trustee will file tax returns pursuant to Treas. Reg. § 1.671-4(a) on the basis that the Creditor Trust is a grantor trust that is a “liquidating trust” within the meaning of Treas. Reg. § 301.7701-4(d) and related regulations. Pursuant to such provisions, for federal income tax purposes, the Creditor Trustee will allocate to the Beneficiaries their applicable shares of any income or loss of the Creditor Trust Assets, and such Beneficiaries will be subject to tax on the Creditor Trust Assets’ taxable income on a current basis. As soon as reasonably practicable after the close of each calendar year, the Creditor Trustee will send each affected Beneficiary a statement setting forth such Beneficiary’s share of the Creditor Trust’s income, gain, deduction, loss and credit for the year and will instruct the Beneficiary to report all such items on his, her or its tax return for such year and pay any tax due with respect thereto.

### **12.3 Disputed Claims Reserve**

The Creditor Trustee will file all applicable tax and other returns and statements for the Disputed Claims Reserve in accordance with the requirements for discrete trusts taxed pursuant to section 641, *et seq.* of the Internal Revenue Code or as “disputed ownership funds” within the meaning of Treas. Reg. § 1.468B-9(b)(1), as applicable. In addition, the Creditor Trustee will

pay from the applicable Creditor Trust Assets on a current basis any taxes owed on any net income or gain of such Disputed Claims Reserve.

#### 12.4 Tax Withholding and Reporting; Liability for Taxes

The Creditor Trustee (and its designees) will comply with all applicable tax withholding and reporting requirements imposed on it or on the Creditor Trust by any governmental unit, and all distributions pursuant to the Plan will be subject to applicable withholding and reporting requirements. The Creditor Trustee (and its designees) will be authorized to take any actions that may be necessary or appropriate to comply with such tax withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes or establishing any other mechanism the Creditor Trustee believes is reasonable and appropriate following consultation with the Oversight Committee, including requiring holders of Claims to submit appropriate tax and withholding certifications. To the extent any Claim holder fails to submit appropriate tax and withholding certifications as required by the Creditor Trustee, such Claim holder's distribution may, in the Creditor Trustee's reasonable discretion, be deemed undeliverable and be subject to the provisions of the Plan and this Creditor Trust Agreement with respect to undeliverable distributions. Each Person or entity receiving (or deemed to receive) a distribution pursuant to the Plan will have sole responsibility for the payment of any taxes imposed on it.

### **ARTICLE XIII TERMINATION OF THE CREDITOR TRUST**

#### 13.1 Duration and Extension

The Creditor Trust will terminate no later than the fifth (5th) anniversary of the Effective Date; provided, however, that on or prior to the date six (6) months prior to such termination, the Bankruptcy Court, upon motion by a party in interest, may extend the term of the Creditor Trust for a finite period if it is necessary to the liquidating purpose thereof. Multiple extensions may be obtained so long as Bankruptcy Court approval is obtained at least six (6) months prior to the expiration of such extended term; provided, however, that prior to requesting any such extension, the Creditor Trustee must receive an opinion of counsel or a favorable ruling from the IRS that any further extension would not adversely affect the status of the trust as a grantor trust for federal income tax purposes.

#### 13.2 Termination Upon Distribution of All Creditor Trust Assets

The Creditor Trust will terminate and the Creditor 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 13.4** hereof, upon the latest of: (a) the payment of all costs, expenses and obligations incurred in connection with administering the Creditor Trust; (b) the distribution of all remaining Creditor Trust Assets; (c) the closure or dismissal of the Case; and (d) the completion of any necessary or appropriate reports, tax returns or other documentation determined by the Creditor Trustee, in its reasonable discretion, to be necessary, appropriate or desirable, in each case pursuant to and in accordance with the Plan, the Confirmation Order and this Creditor Trust Agreement.



### 13.3 Diligent Administration

The Creditor Trustee shall: (a) not unduly prolong the duration of the Creditor Trust; (b) at all times endeavor to resolve, settle or otherwise dispose of all claims that constitute Creditor Trust Assets; (c) effect the distribution of the Creditor Trust Assets to the Beneficiaries in accordance with the terms hereof; and (d) endeavor to terminate the Creditor Trust as soon as practicable and without derogating from the Plan or this Creditor Trust Agreement. Prior to and upon termination of the Creditor Trust, the Creditor Trustee shall distribute the Creditor Trust Assets to the Beneficiaries in accordance with their distribution rights under the Plan and the Confirmation Order, subject to the provisions set forth herein. If any distributions of the Creditor Trust are not duly claimed, the Creditor Trustee shall dispose of all such distributions in accordance with the Plan, the Confirmation Order and this Creditor Trust Agreement.

### 13.4 Other Termination Procedures

Upon termination of this Creditor Trust, the Creditor Trustee will file a written notice with the Bankruptcy Court disclosing the Creditor Trust's termination. Notwithstanding the foregoing, after the termination of the Creditor Trust, the Creditor Trustee will have the power to exercise all the rights, powers and privileges herein conferred solely for the purpose of liquidating and winding up the affairs of the Creditor Trust. Except as otherwise provided under the Plan or this Creditor Trust Agreement, for a period of five (5) years after the distribution of all of the Creditor Trust Assets, the Creditor Trustee will retain the books, records and files that have been delivered to or created by the Creditor Trustee, at which time the Creditor Trustee may dispose of such books, records and files in any manner that the Creditor Trustee deems appropriate. Except as otherwise specifically provided herein, after termination of this Creditor Trust Agreement, the Creditor Trustee shall have no further duties or obligations hereunder.

## **ARTICLE XIV MISCELLANEOUS PROVISIONS**

### 14.1 Intention of Parties to Establish a Grantor Trust

This Creditor Trust Agreement is intended to create a grantor trust for United States federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as a grantor trust.

### 14.2 Preservation of Privilege

In connection with the rights, claims and Causes of Action that constitute the Creditor Trust Assets, any attorney-client privilege, work-product privilege or other privilege or immunity attaching to any documents or communications (whether written or oral) transferred to the Creditor Trust shall vest in the Creditor Trust and its representatives, and the Debtor and the Committee, on the one hand, and the Creditor Trustee, on the other hand, are authorized to take all necessary actions to effectuate the transfer of such privileges. For the avoidance of doubt, neither the Creditor Trustee nor the Creditor Trust shall be treated as a successor to the Debtor or its Estate for any purpose.

#### 14.3 Cooperation

The Debtor shall provide the Creditor Trustee with access to or copies of such of its books and records as the Creditor Trustee shall reasonably require for the purpose of performing its duties and exercising its powers under this Creditor Trust Agreement, the Plan or the Confirmation Order. All third parties in possession of the Debtor's books and records shall provide the Creditor Trustee with similar cooperation, and the Creditor Trustee shall have the right to seek appropriate relief from the Bankruptcy Court or any other court with jurisdiction over the matter to the extent that a third party unreasonably refuses to cooperate with the Creditor Trustee's requests.

#### 14.4 Payment of Statutory Fees

Following the transfer of all Creditor Trust Assets to the Creditor Trust on and after the Effective Date and through the date that a final decree is entered in the Case, the Creditor Trust shall be obligated to pay any U.S. Trustee fees associated with the Case pursuant to 28 U.S.C. § 1930(a)(6).

#### 14.5 Prevailing Party

In the event of a dispute regarding the provisions of this Creditor Trust Agreement or the enforcement thereof, the prevailing party shall be entitled to collect any and all costs, expenses and fees, including attorneys' fees, from the non-prevailing party incurred in connection with such dispute or enforcement action.

#### 14.6 Implied Authority of the Creditor Trustee

No person dealing with the Creditor Trust shall be obligated to inquire into the authority of the Creditor Trustee in connection with the protection, conservation or disposition of Creditor Trust Assets.

#### 14.7 Confidentiality

The Creditor Trustee, its employees, Professionals and Non-Professionals, and each Member of the Oversight Committee (each a "*Confidential Party*" and collectively the "*Confidential Parties*") shall hold strictly confidential and not use for personal gain any material, non-public information of which they have become aware in their capacity as a Confidential Party, of or pertaining to any entity to which any of the Creditor Trust Assets relate; provided, however, that such information may be disclosed if: (a) it is now or in the future becomes generally available to the public other than as a result of a disclosure by the Confidential Parties; (b) was available to the Confidential Parties on a non-confidential basis prior to its disclosure to the Confidential Parties pursuant to this Creditor Trust Agreement; (c) becomes available to the Confidential Parties on a non-confidential basis from a source other than their work in connection with the Debtor or the Creditor Trust, provided that the source is not also bound by a confidentiality agreement with the Debtor or the Creditor Trust; or (d) such disclosure is required of the Confidential Parties pursuant to legal process including but not limited to subpoena or other court order or other applicable laws or regulations. In the event that any Confidential Party is requested to divulge confidential information pursuant to subparagraph (d), such Confidential

Party shall promptly, in advance of making such disclosure, provide reasonable notice of such required disclosure to the Creditor Trustee to allow the Creditor Trustee sufficient time to object to or prevent such disclosure through judicial or other means and shall cooperate reasonably with the Creditor Trustee in making any such objection, including, but not limited to, appearing in any judicial or administrative proceeding in support of the Creditor Trustee's objection to such disclosure.

14.8 Governing Law; Submission to Jurisdiction; Service of Process

This Creditor Trust Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without giving effect to rules governing the conflict of law. The Bankruptcy Court will have exclusive jurisdiction over any dispute arising out of or in connection with the transactions contemplated by this Creditor Trust Agreement. The parties to this Creditor Trust Agreement consent to the exclusive jurisdiction of the Bankruptcy Court (and of the appropriate appellate courts therefrom) 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 Creditor Trust 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 the Bankruptcy Court. Without limiting the foregoing, each party to this Creditor Trust Agreement agrees that service of process on that party may be made upon the designated Person or entity at the address provided in **Section 14.10** hereof and will be deemed to be effective service of process on that party.

14.9 Severability

If any provision of this Creditor Trust Agreement or the application thereof to any Person or circumstance shall be finally determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Creditor Trust Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

14.10 Notices

Any notice or other communication hereunder shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if delivered via personal delivery, first-class mail (unless registered or certified mail is required), facsimile or electronic mail to the addresses as set forth below, or such other addresses as may be filed with the Bankruptcy Court:

**Creditor Trustee:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

**Debtor:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

with a copy to:

Thomas G. Wallrich, Esq.  
Hinshaw & Culbertson LLP  
333 South Seventh Street, Suite 2000  
Minneapolis, Minnesota 55402  
Telephone: 612-334-2594  
Facsimile: 612-334-8888  
E-Mail: twallrich@hinshawlaw.com

**Oversight Committee:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

E-Mail: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

E-Mail: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

E-Mail: \_\_\_\_\_

**14.11 Notices if to a Beneficiary**

Any notice or other communication hereunder shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if deposited, postage prepaid, in a post office or letter box addressed to the person for whom such notice is intended to the name and address set forth on the Claims List.

**14.12 Headings**

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

**14.13 Counterparts and Facsimile Signatures**

This Creditor Trust Agreement may be executed in counterparts and a facsimile or other electronic form of signature shall be of the same force and effect as an original.

14.14 Amendment or Waiver

Any substantive provision of this Creditor Trust Agreement may be materially amended or waived by the Creditor Trustee, subject to the prior approval of a two-thirds vote of the Members of the Oversight Committee, with the approval of the Bankruptcy Court upon notice and an opportunity for a hearing; provided, however, that no change may be made to this Creditor Trust Agreement that would adversely affect the federal income tax status of the Creditor Trust as a “grantor trust,” if applicable. Technical or non-material amendments to or waivers of portions of this Agreement may be made by the Creditor Trustee without the approval of the Bankruptcy Court, as necessary, to clarify this Creditor Trust Agreement or to enable the Creditor Trust to effectuate the terms of this Creditor Trust Agreement; provided, however, that such amendments are subject to the prior approval of a two-thirds vote of the Members of the Oversight Committee.

14.15 Intervention

On the Effective Date, and without requirement of obtaining any order of the Bankruptcy Court, the Creditor Trustee shall be deemed to have intervened or substituted as plaintiff, moving, defendant or additional party, as appropriate, in any adversary proceeding, contested matter, Claim objection or other motion that was filed prior to the Effective Date, where the subject matter of such action involves any Disputed Claim, any Creditor Trust Asset or any Claim, to the extent such Claim impacts the Creditor Trust Assets.

***[Remainder of Page Intentionally Blank]***

IN WITNESS WHEREOF, the Parties hereto have either executed and acknowledged this Creditor Trust Agreement, or caused it to be executed and acknowledged on their behalf by their duly authorized officers all as of the date first above written.

**CREDITOR TRUSTEE**

By: \_\_\_\_\_  
Barry A. Chatz, not individually, but solely  
as trustee of the Creditor Trust

**MIDWEST BANC HOLDINGS, INC.**

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

**OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS**

By: \_\_\_\_\_  
Its Chair

**EXHIBIT B – EXECUTORY CONTRACTS AND UNEXPIRED LEASES TO BE  
ASSUMED AND ASSIGNED**

**-None as of March 24, 2011. (Note: Remains subject to revision.)**