

**EXHIBIT B**

**Liquidating Trust Agreement**

**This Liquidating Trust Agreement is subject to all of the provisions of the Plan, including, without limitation Section 12.10, under which the Debtors have reserved the right to alter, amend, or modify the Plan, including any Exhibits thereto, under section 1127(a) of the Bankruptcy Code at any time prior to the Effective Date.**

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Draft

## LIQUIDATING TRUST AGREEMENT

This Liquidating Trust Agreement (the “Liquidating Trust Agreement”), dated as of \_\_\_\_\_, 2007, by and among Complete Retreats, LLC and certain of its affiliates and subsidiaries (collectively, the “Debtors”<sup>1</sup>), and \_\_\_\_\_, as the trustee (the “Original Trustee”), is executed in order to establish a liquidating trust (the “Liquidating Trust”) in connection with the Plan of Liquidation under Chapter 11 of the Bankruptcy Code of the Debtors, including, without limitation, any supplement to such Plan and the exhibits and schedules thereto (as the same may be amended, modified or supplemented from time to time in accordance with the terms and provisions thereof, the “Plan”). Capitalized terms used in this Liquidating Trust Agreement and not otherwise defined herein shall have the meanings ascribed to them in the Plan.

WITNESSETH:

WHEREAS, on July 23, 2006 (the “Petition Date”), the Debtors filed with the United States Bankruptcy Court for the District of Connecticut, Bridgeport Division (the “Bankruptcy Court”) separate, voluntary petitions under Chapter 11 of the Bankruptcy Code<sup>2</sup>, which cases (collectively, the “Chapter 11 Cases”) are being jointly administered by the Bankruptcy Court pursuant to Bankruptcy Rule 1015(b) and D. Conn. LBR 1015-1;

WHEREAS, on August 4, 2006, the Office of the United States Trustee for Region 2 appointed an Official Committee of Unsecured Creditors in the Chapter 11 Cases (the “Committee”);

<sup>1</sup> The Debtors are Preferred Retreats, LLC; Complete Retreats, LLC; T&H Villas, LLC; Town Clubs, LLC; Preferred Aviation, LLC; Preferred Retreats Travel Company, LLC; Preferred Retreats Design Group, LLC; P180, LLC; Private Retreats Steamboat, LLC; Private Retreats Telluride I, LLC; Private Retreats Kamalani, LLC; Private Retreats Summit, LLC; Private Retreats Tortuga, LLC; Private Retreats Whitewing, LLC; Private Retreats Belfair, LLC; Private Retreats Cabin 4, LLC; Private Retreats Cabin 8, LLC; Private Retreats Colinas, LLC; Private Retreats Yacht Club Tortola, LLC; Private Retreats Yacht Club Mediterranean, LLC; Private Retreats Casa Dorada, LLC; Private Retreats Teton I, LLC; Private Retreats Snake River I, LLC; Private Retreats Snake River II, LLC; Private Retreats Stowe II, LLC; Private Retreats Stowe III, LLC; Private Retreats Preserve Way, LLC; Private Retreats Highpoint, LLC; Private Retreats Tortola, LLC; Private Retreats Pinecone 305, LLC; Private Retreats Deer Valley I, LLC; Private Retreats Tahoe I, LLC; Private Retreats Tahoe II, LLC; Private Retreats Tahoe III, LLC; Private Retreats Belize, LLC; Preferred Retreats Hospitality, LLC; Private Retreats Powell II, LLC; Private Retreats Steamboat II, LLC; Private Retreats Powell III, LLC; Olde Cypress I PR, LLC; Olde Cypress II PR, LLC; PR Esperanza II, LLC; PR Esperanza III, LLC; Private Retreats Powell III, LLC; PR Vegas III, LLC; Private Retreats, LLC; Legendary Retreats, LLC; European Retreats, LLC; Distinctive Retreats, LLC; Distinctive Retreats II, LLC (a/k/a Distinctive Retreats 2, LLC); DR Abaco, LLC, DR MGMI, LLC; DR MGM II, LLC; DR MGM III, LLC; DR MGM IV, LLC; DR Cerezas, LLC; Private Retreats Nevis, LLC; A&K Destinations, LLC; A&K Luxury Automobiles, LLC; LR Management Company, LLC; New Retreats Holding Co., LLC; Private Retreats II, LLC (a/k/a Private Retreats 2, LLC); and Preferred Brokerage, LLC.

<sup>2</sup> The bankruptcy case of debtor DR Abaco, LLC, was filed on August 18, 2006.

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WHEREAS, on July 2, 2007 (as amended on August 16, 2007, and as modified on August 31, 2007), the Debtors filed the Plan and related Disclosure Statement;

WHEREAS, on August 31, 2007, the Bankruptcy Court entered an order approving the Disclosure Statement;

WHEREAS, (a) the members of the Debtors' boards of managers, (b) the proposed Liquidating Trustee, and (c) (i) Dechert LLP; (ii) XRoads Solutions, Group, LLC; (iii) Bingham McCutchen LLP; and (iv) Kramer Capital Partners LP (collectively, the "Estate Professionals") may in the future enter into a Term Sheet or other documents evidencing terms and conditions thereof ("Term Sheet") to facilitate the deferral, and provide security for the eventual payment, of accrued and unpaid professional fees as contemplated thereby, to allow for the Plan to become effective, and to enable the parties to any Term Sheet to enter into any documents including, without limitation, a secured note agreement, to evidence the agreement set forth in any Term Sheet;<sup>3</sup>

WHEREAS, on \_\_\_\_\_, 2007, the Bankruptcy Court entered the Confirmation Order approving the Plan;

WHEREAS, the Liquidating Trust is created pursuant to, and to effectuate certain provisions of, the Plan, and pursuant to the Plan, the Liquidating Trustee will hold the Liquidating Trust Assets (which Liquidating Trust Assets, prior to the transfer to the Liquidating Trust, are held by the Debtors, as debtors in possession, on behalf of the those Persons entitled to receive distributions under the Liquidating Trust (the "Liquidating Trust Beneficiaries" or "Beneficiaries")) pursuant to the terms of the Plan;

WHEREAS, the Liquidating Trustee was duly appointed as a representative of each of the Estates pursuant to section 1123(a)(5), (a)(7), and (b)(3)(B) of the Bankruptcy Code;

WHEREAS, the Liquidating Trust is organized for the primary purpose of liquidating and distributing assets transferred to the Liquidating Trustee 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 Liquidating Trust;

WHEREAS, the Liquidating Trust is established for the benefit of the Liquidating Trust Beneficiaries;

WHEREAS, the Liquidating Trust is intended to qualify as a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d); and

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<sup>3</sup> NONE OF THE ESTATE PROFESSIONALS HAS AGREED TO THE TERMS OF ANY TERM SHEET. ACCORDINGLY, NOTHING SET FORTH HEREIN SHALL BE DEEMED AN ADMISSION BY ANY OF THESE PROFESSIONALS, OR OTHERWISE REQUIRE THEM TO ACCEPT THE TERMS OF THIS AGREEMENT OR OF ANY PROPOSED TERM SHEET, OR BIND THEM TO ANY SPECIFIC TERMS THEREOF, UNLESS AND UNTIL THEY DEFINITELY AGREE TO DO SO, IN THEIR SOLE DISCRETION, SUBJECT TO THE TERMS AND CONDITIONS OF A FULLY EXECUTED TERM SHEET. If a Term Sheet is ever finalized, it will be attached hereto as Schedule C.

WHEREAS, the Liquidating Trust is established to liquidate or pursue, as appropriate, all Liquidating Trust Assets including, but not limited to, the Causes of Action.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein and in the Plan, the Debtors, the Committee, and the Liquidating Trustee agree as follows:

**ARTICLE 1**  
**ESTABLISHMENT OF THE LIQUIDATING TRUST**

1.1. Establishment of Liquidating Trust and Appointment of Original Trustee.

(a) Pursuant to the Plan, the Debtors hereby establish a trust that shall be known as the “Complete Retreats Liquidating Trust” on behalf of the Liquidating Trust Beneficiaries.

(b) The Original Trustee is hereby appointed as trustee of the Liquidating Trust effective as of the effective date of the Plan (the “Effective Date”) and the Original Trustee agrees to accept and hold the assets of the Liquidating Trust in trust for the Liquidating Trust Beneficiaries subject to the terms of the Plan and this Liquidating Trust Agreement. The Original Trustee and each successor trustee serving from time to time hereunder (collectively, the “Liquidating Trustee”) shall have all the rights, powers and duties set forth herein.

1.2. Transfer of Assets and Rights to the Liquidating Trustee.

(a) As of the Effective Date, (i) each of the Debtors, as authorized by the Plan, hereby transfers, assigns, and delivers to the Liquidating Trustee, without recourse, all of its respective rights, title, and interests in and to the Liquidating Trust Assets free and clear of any and all Liens, Claims (other than Claims in the nature of setoff or recoupment), encumbrances or interests of any kind in such property of any other Person or entity (including all Liens, Claims, encumbrances or interests of the Debtors’ creditors that were eliminated under the Plan) and (ii) to the extent legally permissible, the Debtors and the Committee hereby transfer, assign, and deliver to the Liquidating Trustee and the Plan Advisory Committee, without waiver, all of their respective rights, title and interests in and to any attorney-client privilege, work-product privilege, or other privilege or immunity attaching to any documents or communications (whether written or oral) associated with the Liquidating Trust Assets (collectively, “Privileges”), which shall vest in the Liquidating Trustee and the Plan Advisory Committee, in trust, and, consistent with section 1123(b)(3)(B) of the Bankruptcy Code, for the benefit of the Liquidating Trust Beneficiaries. None of the foregoing transfers to the Liquidating Trustee and the Plan Advisory Committee shall constitute a merger or consolidation of any of the Estates or any of their Causes of Action, each of which shall retain its separateness following the transfer for all purposes relevant to the prosecution thereof except as otherwise consolidated pursuant to the Plan or other action by the Debtors as contemplated and/or authorized by the Plan (including, without limitation, Section 6.6(e) thereof).

(b) On or as promptly as practicable after the Effective Date, the Debtors shall (i) deliver or cause to be delivered to the Liquidating Trustee any and all documents in connection with the Liquidating Trust Assets (including those maintained in electronic format and original documents) whether held by the Debtors, the Committee, their respective employees, agents, advisors, attorneys, accountants, or any other professionals and (ii) provide reasonable access to such employees of the Debtors, or their agents, advisors, attorneys, accountants or any other professionals hired by the Debtors or the Committee with knowledge of matters relevant to the Liquidating Trust Assets subject to these professionals’ rights to compensation. Upon the reasonable request of the Liquidating Trustee, to the extent permitted by law, the Debtors and the



Committee shall provide the Liquidating Trustee with a list of all documents in connection with the Liquidating Trust Assets known to it but not held by it or any of its employees, agents, advisors, attorneys, accountants or any other professionals. Such list shall contain a description of each document, to the extent feasible and permitted by law, as well as the name of the entity or Person holding such document.

(c) At any time and from time to time on and after the Effective Date, the Debtors and the Committee to the extent in existence, agree (i) at the reasonable request of the Liquidating Trustee to execute and/or deliver any instruments, documents, books, and records (including those maintained in electronic format and original documents as may be needed); (ii) to take, or cause to be taken, all such further actions as the Liquidating Trustee may reasonably request in order to evidence or effectuate the transfer of the Liquidating Trust Assets and the Privileges to the Liquidating Trustee (and, in the case of the Privileges, the Plan Advisory Committee) and the consummation of the transactions contemplated hereby and by the Plan and to otherwise carry out the intent of the parties hereunder and under the Plan; and (iii) to cooperate with the Liquidating Trustee in the prosecution of the Liquidating Trust Assets.

### 1.3. Title to Liquidating Trust Assets.

The transfer of the Liquidating Trust Assets to the Liquidating Trustee shall be made for the ratable benefit of the Liquidating Trust Beneficiaries to the extent such Liquidating Trust Beneficiaries are entitled to Liquidating Trust Interests under the Plan. In this regard, subject to the discussion in Section 6.1 below, the Liquidating Trust Assets will be treated for tax purposes as being (i) a deemed transfer to the Liquidating Trust Beneficiaries in partial satisfaction of Allowed Claims, to be held by the Debtors on their behalf; and (ii) immediately thereafter, a deemed transfer to the Liquidating Trustee in exchange for Liquidating Trust Interests for the ratable benefit of the Liquidating Trust Beneficiaries, in accordance with the Plan. Upon the transfer of the Liquidating Trust Assets, the Liquidating Trustee shall succeed to all of each of the Debtors' right, title and interest in and to the Liquidating Trust Assets and the Debtors will have no further interest in or with respect to the Liquidating Trust Assets or the Liquidating Trust.

### 1.4. Nature and Purpose of the Liquidating Trust.

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

(b) Actions of the Liquidating Trustee. The Liquidating Trustee, with advice of the Plan Advisory Committee, and in the exercise of the Liquidating Trustee's reasonable

business judgment, shall, in an expeditious but orderly manner, liquidate and convert to Cash the assets of the Liquidating Trust, grant liens, as necessary, make timely distributions as provided for in this Liquidating Trust Agreement, subject to the terms and conditions of any Term Sheet and/or any documents evidencing such terms and conditions (as they may be modified by agreement of the parties thereto) and any liens that may be granted in connection therewith, and in strict accordance thereto, and not unduly prolong the duration of the Liquidating Trust. The liquidation of the Liquidating Trust Assets may be accomplished through the prosecution, compromise and settlement, abandonment or dismissal of any or all claims, rights or causes of action, the sale or other disposition of Liquidating Trust Assets, or otherwise. The Liquidating Trustee, subject to any required approval of the Plan Advisory Committee and the Debtors, except as set forth in Section 3.12 herein and the Plan, shall have the absolute right to pursue, sell, settle and compromise or not pursue any and all Liquidating Trust Assets as it determines is in the best interests of the Liquidating Trust Beneficiaries, and consistent with the purposes of the Liquidating Trust, and the Liquidating Trustee shall have no liability for the outcome of any such decision except for any damages caused by recklessness, gross negligence, willful misconduct, or knowing violation of law.

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

#### 1.5. Incorporation of Plan.

The Plan and the Confirmation Order are each hereby incorporated into this Liquidating Trust Agreement and made a part hereof by this reference; provided, however, to the extent that there is conflict between the provisions of this Liquidating Trust Agreement, the provisions of the Plan, and/or the Confirmation Order, each such document shall have controlling effect in the following rank order: (1) the Confirmation Order; (2) the Plan; and (3) this Liquidating Trust Agreement.

#### 1.6. Appointment as Representative.

Pursuant to section 1123(b)(3) of the Bankruptcy Code, the Plan appointed the Liquidating Trustee as the duly appointed representative of each of the Estates, and, as such, the Liquidating Trustee succeeds to all of the rights and powers of a trustee in bankruptcy with respect to prosecution of the Liquidating Trust Assets for the ratable benefit of the Liquidating Trust Beneficiaries. To the extent that any Liquidating Trust Assets cannot be transferred to the Liquidating Trust because of a restriction on transferability under applicable non-bankruptcy law that is not superseded or preempted by section 1123 of the Bankruptcy Code or any other

provision of the Bankruptcy Code, such Liquidating Trust Assets shall be deemed to have been retained by the applicable Reorganized Debtor, as appropriate, and the Liquidating Trustee shall be deemed to have been designated as a representative of the applicable Estate pursuant to section 1123(b)(3)(B) of the Bankruptcy Code to enforce and pursue such Liquidating Trust Assets on behalf of such Estate. Notwithstanding the foregoing, all net proceeds of the Liquidating Trust Assets shall be transferred to the Liquidating Trust Beneficiaries consistent with the provisions of the Plan and this Liquidating Trust Agreement.

## **ARTICLE 2** **LIQUIDATING TRUST INTERESTS**

### 2.1. Allocation of Liquidating Trust Interests.

Allocation and distribution of the interests in the Liquidating Trust (“Liquidating Trust Interests”), if any, shall be accomplished as set forth in Section 6.2 of the Plan.

### 2.2. Interests Beneficial Only.

The ownership of a Liquidating Trust Interest shall not entitle any Liquidating Trust Beneficiary to any title in or to the assets of the Liquidating Trust as such (which title shall be vested in the Liquidating Trustee) or to any right to call for a partition or division of the assets of the Liquidating Trust or to require an accounting, and shall entitle holders of Liquidating Trust Interests to receive distributions from the Liquidating Trust only at the times, if any, and from the sources, set forth in Article 6 hereof.

### 2.3. Evidence of Beneficial Interests.

The Liquidating Trust Interests shall be represented by book entries on the books and records of the Liquidating Trust. The Liquidating Trustee shall cause to be kept a registry of such Liquidating Trust Interests and the Liquidating Trust Beneficiaries of the Liquidating Trust (the “Trust Register”) which shall be maintained pursuant to such reasonable regulations as the Liquidating Trustee may prescribe.

### 2.4. Securities Law Registration.

To the extent the Liquidating Trust Interests are deemed to be “securities”, the issuance of Liquidating Trust Interests, if any, to Holders of Allowed Class 3 Claims or the Disputed Claims Reserve under the Plan shall be exempt, pursuant to section 1145 of the Bankruptcy Code, from registration under the Securities Act of 1933, as amended, and any applicable state and local laws requiring registration of securities. If the Liquidating Trustee determines, with the advice of counsel, that the Liquidating Trust is required to comply with registration and reporting requirements of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or the Investment Company Act of 1940, as amended (the “Investment Company Act”), then the Liquidating Trustee shall, after consultation with the Plan Advisory Committee, take any and all actions to comply with such registration and reporting requirements, if any, and file periodic reports with the Securities and Exchange Commission (the “SEC”). Notwithstanding the foregoing procedure, nothing herein shall be deemed to preclude the Liquidating Trustee from amending this Liquidating Trust Agreement to make such changes as

are deemed necessary or appropriate by the Liquidating Trustee, with the advice of counsel and the Plan Advisory Committee, to ensure that the Liquidating Trust is not subject to registration or reporting requirements of the Exchange Act, or the Investment Company Act.

2.5. Transfer and Exchange.

No transfer, assignment, pledge, hypothecation or other disposition of a Liquidating Trust Interest, if any, may be effected unless notice is provided to the Liquidating Trustee and until either (i) the Liquidating Trustee has received such legal advice or other information that the Liquidating Trustee, in its sole discretion after consultation with the Plan Advisory Committee, deems necessary or appropriate to assure that any such disposition shall not require the Liquidating Trust to comply with the registration and reporting requirements of the Exchange Act or the Investment Company Act; or (ii) the Liquidating Trustee and the Plan Advisory Committee have determined to register and/or make periodic reports in order to enable such disposition to be made. In the event that any such disposition is allowed, the Plan Advisory Committee and the Liquidating Trustee may add such restrictions upon transfer and other terms to this Liquidating Trust Agreement as are deemed necessary or appropriate by the Liquidating Trustee, with the advice of counsel and the Plan Advisory Committee, to permit or facilitate such disposition under applicable securities and other laws.

2.6. Access to the Trust Register by the Liquidating Trust Beneficiaries.

Liquidating Trust Beneficiaries and their duly authorized representatives shall have the right, upon reasonable prior written notice to the Liquidating Trustee, and in accordance with the reasonable regulations prescribed by the Liquidating Trustee, to inspect and, at the sole expense of the Liquidating Trust Beneficiary seeking the same, make copies of any Trust Register, in each case for a purpose reasonably related to such Liquidating Trust Beneficiary's interest in the Liquidating Trust.

2.7. Absolute Owners.

The Liquidating Trustee may deem and treat the Liquidating Trust Beneficiary of record in the Trust Register as the absolute owner of any such Liquidating Trust Interests for the purpose of receiving distributions and payment thereon or on account thereof and for all other purposes whatsoever and the Liquidating Trustee shall not be charged with having received notice of any claim or demand to such Liquidating Trust Interests or the interest therein of any other Person.

2.8. Cash-Out Option.

The Liquidating Trustee, after consultation with the Plan Advisory Committee, may negotiate with one or more third parties one or more offers to purchase any Liquidating Trust Interests from the Liquidating Trust Beneficiaries, at the option of each Liquidating Trust Beneficiary.

**ARTICLE 3**  
**THE LIQUIDATING TRUSTEE**

3.1. Liquidating Trust Proceeds.

All Liquidating Trust Assets Recoveries shall be added to the assets of the Liquidating Trust (the “Liquidating Trust Proceeds”) and held as a part thereof (and which title shall be vested in the Liquidating Trustee).

### 3.2. Collection of Income.

The Liquidating Trustee shall collect all income earned with respect to the assets of the Liquidating Trust, which shall thereupon be added to the assets of the Liquidating Trust and held as a part thereof (and which title shall be vested in the Liquidating Trustee).

### 3.3. Payment of Liquidating Trust Expenses.

(a) Subject to the terms and conditions of any Term Sheet and/or any documents evidencing such terms and conditions (as they may be modified by agreement of the parties thereto) and any liens that may be granted in connection therewith, and in strict accordance thereto, the Liquidating Trustee shall expend the assets of the Liquidating Trust (i) as are reasonably necessary to meet contingent liabilities and to maintain the value of the assets of the Liquidating Trust during liquidation; (ii) to pay reasonable administrative costs (including, but not limited to, the costs and expenses of the Liquidating Trustee (including overhead for office storage space and secretarial assistance and reasonable fees, costs, and expenses of professionals or advisors, including, without limitation, a claims agent and a bookkeeper, as necessary, after the Effective Date), the reasonable expenses of members of the Plan Advisory Committee, any taxes imposed on the Liquidating Trust or fees and expenses in connection with, arising out of or related to the Liquidating Trust Assets; and (iii) to satisfy other liabilities incurred or assumed by the Liquidating Trust (or to which the Liquidating Trust Assets are otherwise subject) in accordance with the Plan or this Liquidating Trust Agreement.

(b) The Liquidating Trustee may retain from the Liquidating Trust Proceeds, at any time and from time to time, such amounts as the Liquidating Trustee deems reasonable and appropriate to ensure that the Liquidating Trust Proceeds will be adequate to meet the expenses and liabilities described in subsection (a) of this Section. Notwithstanding anything to the contrary herein, the Liquidating Trustee shall have the authority to expend all amounts reasonable and necessary, in its discretion, to discharge its duties and functions under this Liquidating Trust Agreement without limitation by the initial funding set forth in Section 3.3 hereof.

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

### 3.4. Distributions.

Subject to the terms and conditions of any Term Sheet and/or any documents evidencing such terms and conditions (as they may be modified by agreement of the parties thereto) and any liens that may be granted in connection therewith, and in strict accordance thereto, the Liquidating Trustee shall distribute the net distributable assets of the Liquidating Trust to the Liquidating Trust Beneficiaries in accordance with the provisions of Article 6.

### 3.5. Tenure, Removal, and Replacement of the Liquidating Trustee.

(a) Each Liquidating Trustee will serve until resignation and the appointment of a successor pursuant to subsection (b) below, removal pursuant to subsection (c) below, Disability (as defined in Section 3.17(c)(ii)), or death (if applicable).

(b) The Liquidating Trustee may resign by giving not less than ninety (90) days' prior written notice to the Plan Advisory Committee and the Debtors, if applicable, prior to their dissolutions. Such resignation will become effective on the later to occur of: (i) the day specified in such notice and (ii) the appointment of a successor trustee as provided herein and the acceptance by such successor trustee of such appointment. If a successor trustee is not appointed or does not accept his or her appointment within ninety (90) days following delivery of notice of resignation, the Liquidating Trustee may file a motion with the Bankruptcy Court, upon notice and hearing, for the appointment of a successor trustee.

(c) Subject to Section 3.17(b), upon the motion of the Plan Advisory Committee and/or a party in interest and after receipt of notice and an opportunity for a hearing, the Liquidating Trustee may be removed by the Bankruptcy Court for Cause shown.

(d) In the event of a vacancy in the position of the Liquidating Trustee (whether by removal, resignation, Disability, or death, if applicable), the vacancy will be filled by the appointment of a successor trustee by (i) majority vote and resolution of the Plan Advisory Committee upon consultation with the Debtors, if applicable, and by the acceptance of the Liquidating Trust by the successor trustee in accordance with Section 3.6 or (ii) an order of the Bankruptcy Court after an opportunity for a hearing (provided, however, that only the Plan Advisory Committee or the Debtors, if applicable, shall have standing to seek such an order, except as provided Section 3.5(b)). If a successor trustee is appointed by resolution, as provided in clause (i) of the preceding sentence, and such appointment is accepted by the successor trustee, the Plan Advisory Committee shall file notice of such appointment and acceptance with the Bankruptcy Court, which notice will include the name, address, and telephone number of the successor trustee; provided that the filing of such notice shall not be a condition precedent to the vesting in the successor Liquidating Trustee of all the estates, properties, rights, powers, trusts, and duties of his or her predecessor.

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

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

and documents relating to the Liquidating Trust, the Liquidating Trust Assets, or the Liquidating Trust Interests then in his or her possession and held hereunder.

(g) During any period in which there is a vacancy in the position of the Liquidating Trustee, the Plan Advisory Committee (in consultation with the Debtors prior to their dissolution) shall appoint one of its members to serve as interim Liquidating Trustee, (the “Interim Trustee”). The Interim Trustee shall be subject to all the terms and conditions applicable to a Liquidating Trustee hereunder. Such Interim Trustee shall not be limited in any manner from exercising any rights or powers as a member of the Plan Advisory Committee merely by his or her appointment as Interim Trustee.

3.6. Acceptance of Appointment by Successor Liquidating Trustee.

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

3.7. Regular Meetings of the Liquidating Trustee and the Plan Advisory Committee.

Meetings of the Liquidating Trustee and the Plan Advisory Committee are to be held with such frequency and at such place as the Liquidating Trustee may determine in its sole discretion (but, as to place, in consultation with the Plan Advisory Committee), but in no event shall such meetings be held less frequently than quarterly.

3.8. Special Meetings of the Liquidating Trustee and the Plan Advisory Committee.

Special meetings of the Liquidating Trustee and the Plan Advisory Committee may be held whenever and wherever called for either by the Liquidating Trustee or a majority of the members of the Plan Advisory Committee.

3.9. Notice of, and Waiver of Notice for, Liquidating Trustee and Plan Advisory Committee Meetings.

Reasonable prior 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 Liquidating Trustee and the members of the Plan Advisory Committee in person or by telephone, or via mail, electronic mail, or facsimile transmission. The Liquidating Trustee and any member of the Plan Advisory 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 Liquidating Trustee or the applicable member or members of the Plan Advisory Committee entitled to the notice, and filed with the minutes or records of the Liquidating Trust. The attendance of the Liquidating Trustee or a member of the Plan Advisory 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.

### 3.10. Manner of Acting.

The Liquidating Trustee or any member of the Plan Advisory Committee may participate in a regular or special meeting by, or conduct the meeting through the use of, conference telephone, 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 Liquidating Trustee or any member of the Plan Advisory Committee participating in a meeting by this means is deemed to be present in person at the meeting.

### 3.11. Role of the Liquidating Trustee.

In consultation with the Plan Advisory Committee and otherwise subject to the terms of the Plan (including, without limitation, Section 7.4 thereof), the Liquidating Trustee shall, in furtherance of and consistent with the purpose of the Plan and the Liquidating Trust, among other things, in its discretion: (A) hold, manage, transfer, abandon, and/or sell the Liquidating Trust Assets, (B) subject to the discussion in Section 6.1 hereof, hold, manage, receive, and distribute the proceeds of the Liquidating Trust Assets and all of the other Cash in the Liquidating Trust that is either deposited therein by the Debtors on the Effective Date or is obtained by the Liquidating Trustee thereafter either through the exercise of its power and authority under the Plan or the Liquidating Trust Agreement, (C) prosecute and resolve, in the names of the Debtors, the Estates, and/or the name of the Liquidating Trustee, the Avoidance Actions and all other Causes of Action, (D) prosecute and resolve objections to Disputed General Unsecured Claims (including, without limitation, all Tort Claims, all Disputed Member Bond Claim Portions, and all Disputed Down Payment Claim Portions) in the names of the Debtors, the Estates, and/or the name of the Liquidating Trustee, (E) perform such other functions as are provided in the Plan and the Liquidating Trust Agreement, (F) utilize the Liquidating Trustee Expense Fund to perform such functions as are provided in the Plan and the Liquidating Trust Agreement, and (G) administer the closure of the Case of Complete Retreats and the Case of any other Debtor that is not closed in accordance with Plan Section 6.1(a). In connection with exercising such responsibilities, and to provide for the timely occurrence of the Effective Date, the Liquidating Trustee may enter into all documents and agreements necessary, including, without limitation, a secured note agreement, to facilitate the deferral of accrued and unpaid professional fees contemplated by the Term Sheet and/or any documents evidencing such terms and conditions (as they may be modified by agreement of the parties thereto).

The Liquidating Trustee shall be responsible for all decisions and duties with respect to the Liquidating Trust and the Liquidating Trust Assets, in consultation with the Plan Advisory Committee. Without limiting the generality of the foregoing, the Liquidating Trustee shall, in its discretion, act on behalf of the Debtors and the Estates for all purposes with respect to the Ultimate Agreements. In all circumstances, the Liquidating Trustee shall act in the best interests of the holders of Allowed Class 3 Claims and in furtherance of the purpose of the Liquidating Trust.



3.12. Authority of Liquidating Trustee.

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

(a) hold legal title to any and all rights of the holders of the Liquidating Trust Interests in or arising from the Liquidating Trust Assets, including, without limitation, collecting, receiving any and all money and other property belonging to the Liquidating Trust and, after consultation with the Plan Advisory Committee, the right to vote any claim or interest relating to a Liquidating Trust Asset in any receivership or insolvency proceeding, including a case under the Bankruptcy Code and receive any distribution therein;

(b) in consultation with the Plan Advisory Committee, perform the duties, exercise the powers, and assert the rights of a trustee under sections 704 and 1106 of the Bankruptcy Code, including, without limitation, commencing, prosecuting or settling causes of action, enforcing contracts or asserting claims, defenses, offsets and privileges; provided, however, that the Liquidating Trustee shall not be required to consult with the Plan Advisory Committee, to the extent such matters are limited to a claim or cause of action against a Person or entity where the amount demanded from such Person or entity, in the aggregate, is less than or equal to \$500,000 (a "De Minimis Claim or Cause of Action");

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

(d) in consultation with the Plan Advisory Committee, liquidate the assets transferred to the Liquidating Trust;

(e) in consultation with the Plan Advisory Committee, obtain reasonable insurance coverage with respect to the liabilities and obligations of the Liquidating Trustee and the Plan Advisory Committee under this Liquidating Trust Agreement (in the form of an errors and omissions policy or otherwise);

(f) in consultation with the Plan Advisory Committee, obtain insurance coverage with respect to real and personal property that may become assets of the Liquidating Trust, if any;

(g) in consultation with the Plan Advisory Committee, retain and approve compensation arrangements of such counsel and other professionals, including, without limitation, any professionals previously retained by the Committee, or the Debtors, as the Liquidating Trustee shall select to assist the Liquidating Trustee in his or her duties, on such terms as the Liquidating Trustee, after consultation with the Plan Advisory Committee, deems reasonable and appropriate, without Bankruptcy Court approval; subject to the foregoing, the Liquidating Trustee may commit the Liquidating Trust to and shall pay such counsel and other professionals reasonable compensation for services rendered and reasonable and documented out-of-pocket expenses incurred;

(h) in consultation with the Plan Advisory Committee, retain and approve compensation arrangements of an independent public accounting firm to perform such reviews and/or audits of the financial books and records of the Liquidating Trust as may be required by the SEC and applicable securities laws and as may be reasonable and appropriate in the Liquidating Trustee's discretion and to prepare and file any tax returns, informational returns, or periodic or current reports as required by applicable securities laws, for the Liquidating Trust as may be required; subject to the foregoing, the Liquidating Trustee may commit the Liquidating Trust to and shall pay such independent public accounting firm reasonable compensation for services rendered and reasonable and documented out-of-pocket expenses incurred;

(i) in consultation with the Plan Advisory Committee, retain and approve compensation arrangements of such third parties to assist the Liquidating Trustee in carrying out his or her powers and duties under this Liquidating Trust Agreement; subject to the foregoing, the Liquidating Trustee may commit the Liquidating Trust to and shall pay all such persons or entities reasonable compensation for services rendered and reasonable and documented out-of-pocket expenses incurred, as well as commit the Liquidating Trust to indemnify any such parties in connection with the performance of services (provided that such indemnity shall not cover any losses, costs, damages, expenses or liabilities that result from the recklessness, gross negligence, willful misconduct, or knowing violation of law by such party);

(j) in consultation with the Plan Advisory Committee, waive any privilege (including the Privileges) or any defense on behalf of the Liquidating Trust or, with respect to the Liquidating Trust Assets or the Debtors, as applicable; provided, however, that the Liquidating Trustee shall not be required to consult with or obtain approval of the Plan Advisory Committee, to the extent such matters are limited to a De Minimis Claim or Cause of Action, as defined herein, and such waiver shall be effectively limited to such matters;

(k) in consultation with the Plan Advisory Committee, compromise, adjust, arbitrate, sue on or defend, pursue, prosecute, abandon, exercise rights, powers, and privileges with respect to, or otherwise deal with and settle, in accordance with the terms set forth herein, all causes of action in favor of or against the Liquidating Trust; provided, however, that the Liquidating Trustee shall not be required to consult with the Plan Advisory Committee, to the extent such matters are limited to a De Minimis Claim or Cause of Action;

(l) in consultation with the Plan Advisory Committee, avoid and recover transfers of any or all of the Debtor's property as provided for in the Plan, as may be permitted by the Bankruptcy Code or applicable state law;

(m) in consultation with the Plan Advisory Committee, coordinate with the Debtors, until the dissolution thereof, to execute offsets, assert counterclaims against holders of Claims, establish reserves for Disputed Claims, and make determinations as to Pro Rata calculations, as provided for in the Plan; provided, however, that the Liquidating Trustee shall defer to the Debtors to reconcile customer accounts, loan balances, and ordinary business transactions that may be required to do any of the foregoing, including any litigation relating thereto;

(n) invest any moneys held as part of the Liquidating Trust in accordance with the terms of Section 3.19 hereof, limited, however, to such investments that are consistent with the Liquidating Trust's status as a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d) and in accordance with Rev. Proc 94-45, 1994-2 C.B. 684;

(o) in consultation with the Plan Advisory Committee, request any appropriate tax determination with respect to the Liquidating Trust, including, without limitation, a determination pursuant to section 505 of the Bankruptcy Code;

(p) subject to applicable securities laws, if any, establish and maintain a website for the purpose of providing notice of Liquidating Trust activities in lieu of sending written notice to holders of Liquidating Trust Interests, subject to providing notice of such website to such holders;

(q) in consultation with the Plan Advisory Committee, seek the examination of any entity, subject to the provisions of Bankruptcy Rule 2004 or any other applicable law or rule or the terms and conditions of other agreements entered into prior to the Effective Date;

(r) in consultation with the Plan Advisory Committee, provide at least quarterly reports to the Liquidating Trust Beneficiaries;

(s) seek approval, as may be necessary, appropriate, or required, of the Bankruptcy Court for any decision of, or action(s) taken or to be taken by, the Liquidating Trustee pursuant to the terms of this Liquidating Trust Agreement or the Plan subject to a "best interest of the Liquidating Trust Beneficiaries" standard, as guided by the terms and purpose of the Liquidating Trust and in accordance with the terms of the Plan;

(t) comply with any duly issued and served subpoena upon the Liquidating Trust, the Plan Advisory Committee or the Liquidating Trustee;

(u) take or refrain from taking any and all other actions that the Liquidating Trustee, upon consultation with the Plan Advisory Committee, reasonably deems necessary or convenient for the continuation, protection and maximization of the Liquidating Trust Assets or to carry out the purposes hereof; provided, however, that the Liquidating Trustee shall not be required to (i) consult with the Plan Advisory Committee, to the extent such actions are limited to a De Minimis Claim or Cause of Action; or (ii) consult with the Plan Advisory Committee, to the extent such actions are ministerial in nature; and

(v) enter into all documents and agreements necessary, including, without limitation, a secured note agreement, and grant all applicable and required liens and/or security interests to comply with the terms and conditions of the Term Sheet and/or any documents evidencing such terms and conditions (as they may be modified by agreement of the parties thereto) and any liens that may be granted in connection therewith.

### 3.13. Limitation of Liquidating Trustee's Authority.

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

(b) The Liquidating Trust shall not hold 50% or more of the stock (in either vote or value) of any entity that is treated as a corporation for federal income tax purposes, nor be the sole member of a limited liability company, nor have any interest in an entity that is treated as a partnership for federal income tax purposes, unless such stock, membership interest, or partnership interest was obtained involuntarily or as a matter of practical economic necessity in order to preserve the value of the assets of the Liquidating Trust.

### 3.14. Books and Records.

(a) Pursuant to Section 6.7 of the Plan, upon the Effective Date, or as soon thereafter as is reasonably practicable, the Debtors shall transfer and assign to the Liquidating Trust full title to, and the Liquidating Trust shall be authorized to take possession of, all of the books and records of the Debtors. The Liquidating Trustee shall have the responsibility of storing and maintaining books and records transferred thereby until one year after the date Complete Retreats is dissolved in accordance with Section 6.6(e) of the Plan (or as otherwise ordered by the Bankruptcy Court), after which time such books and records may be abandoned or destroyed without further Bankruptcy Court order. The Debtors shall cooperate with the Liquidating Trustee to facilitate the delivery and storage of their books and records in accordance herewith. The Debtors shall be entitled to reasonable access to any books and records transferred to the Liquidating Trust for all necessary corporate purposes, including, without limitation, defending or prosecuting litigation, determining insurance coverage, filing tax returns, and addressing personnel matters. For purposes of this Section, books and records include computer generated or computer maintained books and records and computer data, as well as electronically generated or maintained books and records or data, along with books and records of the Debtors maintained by or in possession of third parties and all of the claims and rights of the Debtors in and to their books and records, wherever located.

(b) The Liquidating Trustee shall maintain books and records relating to the assets of the Liquidating Trust and income of the Liquidating Trust and the payment of expenses of, and liabilities of claims against or assumed by, the Liquidating Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Any ledger setting forth the assets of the Liquidating Trust shall measure value for purposes of distribution and compensation hereunder as of the date such assets are converted into Cash. Such books and records shall be maintained on a modified cash or other comprehensive basis of accounting necessary to facilitate compliance with the tax reporting and securities law requirements of the Liquidating Trust. Nothing in this Liquidating Trust Agreement requires the Liquidating Trustee to file any accounting or seek approval of any court with respect to the administration of the Liquidating Trust, or as a condition for managing any payment or distribution out of the assets of the Liquidating Trust.

(c) The Liquidating Trust Beneficiaries and their duly authorized representatives shall have the right, upon reasonable prior written notice to the Liquidating Trustee, to inspect and, at the sole expense of such Liquidating Trust Beneficiary seeking the same, make copies of the books and records relating to the Liquidating Trust on any business day and as often as may be reasonably be desired, in each case for a purpose reasonably related to such Liquidating Trust Beneficiary's interest in the Liquidating Trust.

3.15. Inquiries into Trustee's Authority.

Except as otherwise set forth in the Liquidating Trust or in the Plan, no Person dealing with the Liquidating Trust shall be obligated to inquire into the authority of the Liquidating Trustee in connection with the protection, conservation or disposition of the Liquidating Trust Assets.

3.16. Compliance with Laws.

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

3.17. Compensation of the Liquidating Trustee.

(a) The Original Trustee shall be compensated for his services, and reimbursed for his expenses, in accordance with Schedule A attached hereto, as a cost of administering the Liquidating Trust. In the event a successor trustee is appointed, such successor shall be compensated for his or her services, and reimbursed for his or her expenses, as a cost of administering the Liquidating Trust, in accordance with and pursuant to the terms of, a separate agreement to be negotiated and executed by the Plan Advisory Committee.

(b) In the event that the Liquidating Trustee's appointment terminates by reason of (i) the death of the Liquidating Trustee; (ii) resignation of the Liquidating Trustee by reason of the Liquidating Trustee's Disability; or (iii) the removal of the Liquidating Trustee by the Bankruptcy Court pursuant to Section 3.5(c) for Cause shown upon motion of a party in interest, the Liquidating Trustee, or his or her estate, as applicable, shall be entitled to payment of any earned but unpaid portion of compensation, any earned but unpaid bonus, and any unreimbursed business expenses incurred prior to such death, Disability, or effective date of removal.

(c) For purposes of Section 3.17(b), the following terms shall have the following meanings:

(i) "Cause" shall mean (a) commission of any act of fraud or dishonesty in connection with his or her appointment; (b) commission of misconduct that adversely affects the assets held by the Liquidating Trustee for the benefit of the Liquidating Trust Beneficiaries; (c) engaging in conduct constituting a misdemeanor involving moral turpitude or a felony or the indictment of the Liquidating Trustee for a felony; or (d) continued failure to perform his or her substantial job functions, after written notice has been delivered to the Liquidating Trustee if such failure is not cured within 10 days of such notice; provided,

however, no person or entity may deliver any such notice in respect of any failure to perform that is the result of absence from duties or incapacity due to a Disability.

(ii) “Disability” of the Liquidating Trustee shall have occurred if, as a result of the Liquidating Trustee’s incapacity due to physical or mental illness as determined by a physician selected by the Liquidating Trustee, the Liquidating Trustee shall have been substantially unable to perform his or her duties hereunder for three consecutive months, or for an aggregate of 180 days during any period of twelve consecutive months.

### 3.18. Reliance by Liquidating Trustee.

Except as otherwise provided herein:

(a) the Liquidating Trustee may rely, and shall be protected in acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by the Liquidating Trustee to be genuine and to have been signed or presented by the proper party or parties; and

(b) Persons dealing with the Liquidating Trustee shall look only to the assets of the Liquidating Trust to satisfy any liability incurred by the Liquidating Trustee to such Person in carrying out the terms of this Liquidating Trust Agreement, and neither the Liquidating Trustee nor any member of the Plan Advisory Committee shall have any personal obligation to satisfy any such liability.

### 3.19. Investment and Safekeeping of Liquidating Trust Assets.

Subject to the terms and conditions of any Term Sheet and/or any documents evidencing such terms and conditions (as they may be modified by agreement of the parties thereto) and any liens that may be granted in connection therewith, and in strict accordance thereto, the Liquidating Trustee shall invest all assets transferred to the Liquidating Trustee, all Liquidating Trust Proceeds, the Liquidation Expense Fund and all income earned by the Liquidating Trust (pending distributions in accordance with the provisions of the Plan) only in cash, cash equivalents, U.S. Treasury securities, money market investments, and similar investments; provided, however, that (a) the scope of any such permissible investments shall be limited to include only those investments, or shall be expanded to include any additional investments, as the case may be, that a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d) may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the guidelines of the United States Internal Revenue Service (the “IRS”) , whether set forth in IRS rulings, other IRS pronouncements or otherwise; (b) the Liquidating Trustee may retain any Liquidating Trust Proceeds received that are not Cash only for so long as may be required for the prompt and orderly liquidation of such assets in Cash or as otherwise required to further the purpose of the Liquidating Trust; and (c) under no circumstances, shall the Liquidating Trustee segregate the assets of the Liquidating Trust on the basis of classification of the holders of Liquidating Trust Interests, other than with respect to distributions to be made on account of Disputed Claims in accordance with the provisions of the Plan.

### 3.20. Standard of Care; Exculpation.

Neither the Liquidating Trustee nor any of his or her duly designated agents or representatives or professionals shall be liable for any act or omission taken or omitted to be taken by the Liquidating Trustee in good faith, other than acts or omissions solely resulting from the Liquidating Trustee's own gross negligence, recklessness, willful misconduct, or knowing violation of law. The Liquidating Trustee may, in connection with the performance of his or her functions, and in his or her sole and absolute discretion, consult with his or her attorneys, accountants, financial advisors and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such Persons. Notwithstanding such authority, the Liquidating Trustee shall be under no obligation to consult with his or her attorneys, accountants, financial advisors or agents, and his or her good faith determination not to do so shall not result in the imposition of liability on the Liquidating Trustee, unless such determination is based solely on gross negligence, recklessness, willful misconduct, or knowing violation of law.

3.21. Insurance and Bonding.

The Liquidating Trustee shall obtain a fiduciary bond and insurance coverage (in the form of an errors and omissions policy, directors and officers policy, comprehensive general liability policy, or otherwise) with respect to the liabilities and obligations of the Liquidating Trustee and the members of the Plan Advisory Committee under this Liquidating Trust Agreement, it being understood that such coverage shall constitute an expense of administration of the highest and first priority.

**ARTICLE 4**  
**PLAN ADVISORY COMMITTEE**

4.1. Plan Advisory Committee.

A liquidation trust committee (the "Plan Advisory Committee") shall be established and initially consist of, as set forth on Schedule B attached hereto, three (3) Persons that do not assert Claims against any Debtor that is a Disputed Claim. Such Plan Advisory Committee members shall serve in an advisory capacity to the Liquidating Trustee.

4.2. Authority of the Plan Advisory Committee.

The Plan Advisory Committee shall have the authority and responsibility to advise the Liquidating Trustee in the performance of the Liquidating Trustee's duties as set forth herein and in Plan Section 6.3(c) and to remove the Liquidating Trustee if the circumstances warrant in accordance with Section 3.5(c) herein. The Liquidating Trustee shall consult with and provide information to the Plan Advisory Committee in accordance with and pursuant to the terms of this Liquidating Trust Agreement and the Plan. The Plan Advisory Committee shall have the authority to select and engage such Persons, and select and engage such professional advisors, including, without limitation, any professional previously retained by the Committee or the Debtor in accordance with the terms of the Plan and this Liquidating Trust Agreement, as the Plan Advisory Committee deems necessary and desirable to assist the Plan Advisory Committee in seeking an order of the Bankruptcy Court under this Liquidating Trust Agreement and the Plan, and the Liquidating Trustee shall pay the reasonable fees of such Persons and reimburse

such Persons for their reasonable and documented out-of-pocket costs and expenses consistent with the terms of this Liquidating Trust Agreement from the Liquidating Expense Fund.

4.3. Regular Meetings of the Plan Advisory Committee.

Meetings of the Plan Advisory Committee are to be held with such frequency and at such place as the Liquidating Trustee and the members of the Plan Advisory Committee may determine in their reasonable discretion, but in no event shall such meetings be held less frequently than quarterly.

4.4. Special Meetings of the Plan Advisory Committee.

Special meetings of the Plan Advisory Committee with the Liquidating Trustee may be held whenever and wherever called for by the Liquidating Trustee or a majority of the members of the Plan Advisory Committee.

4.5. Manner of Acting.

(a) A majority of the members of the Plan Advisory Committee then in office shall constitute a quorum for the transaction of business at any meeting of the Plan Advisory Committee with the Liquidating Trustee. Any or all of the members of the Plan Advisory Committee may participate in a regular or special meeting with the Liquidating Trustee through the use of conference telephone 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. Any member of the Plan Advisory Committee participating in a meeting by this means is deemed to be present in person at the meeting.

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

4.6. Tenure, Removal, and Replacement of the Members of the Plan Advisory Committee.

The authority of the members of the Plan Advisory Committee will be effective as of the Effective Date and will remain and continue in full force and effect until the Liquidating Trust is terminated in accordance with Section 11.1 hereof. The service of the members of the Plan Advisory Committee will be subject to the following:



(a) The members of the Plan Advisory Committee will serve until death or resignation pursuant to subsection (b) below, or removal pursuant to subsection (c) below.

(b) A member of the Plan Advisory Committee may resign at any time by providing a written notice of resignation to the Liquidating Trustee and the remaining members of the Plan Advisory Committee. Such resignation will be effective upon the date received by the Liquidating Trustee or such later date specified in the written notice but, in no event, before the appointment of a successor Member and the acceptance of appointment by such successor Member.

(c) A member of the Plan Advisory Committee may be removed by the vote of a majority of the other members of the Plan Advisory Committee and the Liquidating Trustee, pursuant to a written resolution that shall be delivered to the removed Plan Advisory Committee member; provided, however, that such removal may only be made for Cause. For purposes of this Section 4.7(c), "Cause" shall be defined as: (a) commission of any act of fraud or dishonesty in connection with his or her appointment to serve on the Plan Advisory Committee; (b) commission of misconduct that adversely affects, as determined in good faith by the remaining members of the Plan Advisory Committee and the Liquidating Trustee, the assets held by the Liquidating Trustee for the benefit of the Liquidating Trust Beneficiaries; (c) engaging in conduct constituting a misdemeanor involving moral turpitude or a felony or the indictment of such member for a felony; or (d) continued failure to perform his or her substantial job functions, after written notice has been delivered by the Liquidating Trustee to such member if such failure is not cured within 10 days of such notice.

(d) In the event of a vacancy on the Plan Advisory Committee (whether by removal, death, or resignation), a new member shall be appointed to fill such position by the remaining members of the Plan Advisory Committee and the Liquidating Trustee. Any such appointment of a new member cannot alter the structure or power of the Plan Advisory Committee as set forth in Section 4.1. In the event that there are no remaining members of the Plan Advisory Committee, appointments to fill such vacancies that would have been made by the remaining members of the Plan Advisory Committee and the Liquidating Trustee shall be made upon an order entered after an opportunity for a hearing by the Bankruptcy Court, upon motion of the Liquidating Trustee. The appointment of a successor member of the Plan Advisory Committee will be evidenced by the Liquidating Trustee's filing with the Bankruptcy Court of a notice of appointment, which notice will include the name, address, and telephone number of the successor member of the Plan Advisory Committee.

(e) Immediately upon the appointment of any successor member of the Plan Advisory Committee, all rights, powers, duties, authority, and privileges of the predecessor member of the Plan Advisory Committee hereunder will be vested in and undertaken by the successor member of the Plan Advisory Committee without any further act; and the successor member of the Plan Advisory Committee will not be liable personally for any act or omission of the predecessor member of the Plan Advisory Committee.

#### 4.7. Compensation of the Plan Advisory Committee.

Each of the members of the Plan Advisory Committee shall not be paid by the Liquidating Trust or the Debtors except reasonable out-of-pocket expenses reimbursable hereunder on account of his or her services hereunder, (all such duties or services are referred to herein as the “Duties”). Additionally, except as set forth herein, all reasonable and documented out-of-pocket fees and expenses incurred by members of the Plan Advisory Committee in connection with the performance of the Duties shall be reimbursed, without duplication, by the Liquidating Trust upon demand for payment thereof.

4.8. Standard of Care; Exculpation.

None of the Plan Advisory Committee, its members, designees or professionals, nor any of their duly designated agents or representatives, shall be liable for the act or omission of any other member, agent or representative of the Plan Advisory Committee, nor shall the Plan Advisory Committee or any of its members be liable for any act or omission taken or omitted to be taken by the Plan Advisory Committee in good faith, other than damages solely caused by the acts or omissions resulting from the Plan Advisory Committee’s own willful misconduct or knowing violation of law. The Plan Advisory Committee and each of its members may, in connection with the performance of its functions, and in its sole and absolute discretion, consult with its attorneys, accountants, financial advisors and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in good faith in accordance with advice or opinions rendered by such Persons. Notwithstanding such authority, neither the Plan Advisory Committee nor any of its members shall be under any obligation to consult with its attorneys, accountants, financial advisors or agents, and its good faith determination not to do so shall not result in the imposition of liability on the Plan Advisory Committee or, as applicable, its members or designees, unless such determination is based solely on willful misconduct or knowing violation of law.

**ARTICLE 5**  
**TAX MATTERS**

5.1. Federal Income Tax Reporting.

(a) Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including receipt by the Liquidating Trustee of a private letter ruling if the Liquidating Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Liquidating Trustee), the Liquidating Trustee shall file returns for the Liquidating Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a) and in accordance with this Article 5, which returns shall reflect all of the earnings of the Liquidating Trust, including those retained for purposes of a reserve for Disputed Claims. The Liquidating Trustee shall also annually send to each Liquidating Trust Beneficiary a separate statement setting forth such Liquidating Trust Beneficiary’s share of items of income, gain, loss, deduction, or credit and will instruct all such holders to report such items on their federal income tax returns.

(b) The net fair market value, as of the Effective Date, of the Liquidating Trust Beneficiaries' interests in the Liquidating Trust, given the anticipated uses of the assets transferred to the Liquidating Trust, and the limitations in Section 6.1 hereof regarding the

sources and timing of potential distributions from the Liquidating Trust, if any, shall be determined in accordance with the Plan as soon as 10 days after the Effective Date, and is anticipated to be as low as \$0, reflecting the highly speculative and contingent nature of any distribution to the Liquidating Trust Beneficiaries hereunder, and such determined fair market value shall be used by the Debtors, the Liquidating Trust, the Liquidating Trustee, the Plan Advisory Committee and the Liquidating Trust Beneficiaries for all federal income tax purposes. The Liquidating Trustee shall also file (or cause to be filed) any other statements, returns or disclosures relating to the Liquidating Trust that are required by any governmental unit and pay taxes, if any, properly payable by the Liquidating Trust.

(c) The Liquidating Trustee may request an expedited determination of taxes of the Liquidating Trust under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Liquidating Trust for all taxable periods through the effective date of the dissolution of the Liquidating Trust.

(d) For federal income tax purposes, the Debtors, and subject to the discussion in Section 6.1 hereof, the Liquidating Trustee, and the Liquidating Trust Beneficiaries will treat the transfer of assets to the Liquidating Trustee and issuance of Liquidating Trust Interests as a deemed transfer by the Debtors of the assets to the Liquidating Trust Beneficiaries, followed by a deemed transfer of such assets by the Liquidating Trust Beneficiaries to the Liquidating Trustee in exchange for direct or indirect beneficial interests in the Liquidating Trust.

(e) For federal income tax purposes, the Liquidating Trust Beneficiaries will be treated as the grantors, deemed owners and beneficiaries of the Liquidating Trust.

## 5.2. Allocations of Liquidating Trust Taxable Income.

(a) Allocations of Liquidating Trust taxable income shall be determined by reference to the manner in which an amount of Cash equal to such taxable income would be distributed (without regard to any restrictions on distributions described in the Plan) if, immediately prior to such deemed distribution, the Liquidating Trust had distributed all of its other assets (valued for this purpose at their tax book value) to the Liquidating Trust Beneficiaries, taking into account all prior and concurrent distributions from the Liquidating Trust (including all distributions held in escrow pending the resolution of Disputed Claims). Similarly, taxable loss of the Liquidating Trust will be allocated by reference to the manner in which an economic loss would be borne immediately after a liquidating distribution of the remaining Liquidating Trust Assets. The tax book value of the Liquidating Trust Assets for this purpose shall equal their fair market value on the Effective Date, adjusted in either case in accordance with tax accounting principles prescribed by the United States Internal Revenue Code, the regulations and other applicable administrative and judicial authorities and pronouncements.

(b) To the extent of any transfers of Liquidating Trust Interests in accordance with Section 2.5(a) herein, the Liquidating Trustee shall promptly establish a standard convention for allocating and apportioning taxable income and loss between a transferor and its transferee and shall not be required to so allocate and apportion based on the actual Liquidating Trust activities prior and subsequent to the date of any transfer. The Liquidating Trustee shall

notify the Liquidating Trust Beneficiaries of the convention adopted promptly after such adoption. The Liquidating Trustee shall use his or her discretion to establish a fair and equitable convention to apply and may, but is not required to, adopt a monthly, quarterly or similar record date convention.

## **ARTICLE 6** **DISTRIBUTIONS**

### 6.1. Distribution; Withholding.

(a) Notwithstanding anything to the contrary contained herein, no distributions shall be made to Liquidating Trustee Beneficiaries until all terms and conditions of any Term Sheet and/or any documents evidencing such terms and conditions (as they may be modified by agreement of the parties thereto) and any liens that may be granted in connection therewith, have been complied with, including, without limitation, the payment in full of all obligations to the Estate Professionals.

(b) Subject to the terms and conditions of any Term Sheet and/or any documents evidencing such terms and conditions (as they may be modified by agreement of the parties thereto) and any liens that may be granted in connection therewith, and in strict accordance thereto, the Liquidating Trustee shall distribute to the Liquidating Trust Beneficiaries all net cash income plus all net cash proceeds from the liquidation of assets at the time or times set forth in subsection (b), below; provided, however, that the Liquidating Trust may retain such amounts (i) as are reasonably necessary to maintain reserves for distributions to holders of Disputed Claims that may be entitled to Liquidating Trust Interests upon allowance of such claims; (ii) as are reasonably necessary to meet contingent liabilities, to prosecute further Causes of Action and to maintain the value of the assets of the Liquidating Trust during liquidation; (iii) to pay or reserve for reasonable administrative expenses (including the costs and expenses of the Liquidating Trust, the Liquidating Trustee, and the Plan Advisory Committee and the fees, costs and expenses of all professionals retained by the Liquidating Trustee, and any taxes imposed on the Liquidating Trust or in respect of the assets of the Liquidating Trust); and (iv) to satisfy other liabilities incurred or assumed by the Liquidating Trust (or to which the assets are otherwise subject) in accordance with the Plan or this Liquidating Trust Agreement.

(c) Subject to the provisions of subsection (a) above and the discussion of sources and timing of distributions in subsections (b)(i) and (b)(ii) below, and subject to the terms and conditions of any Term Sheet and/or any documents evidencing such terms and conditions (as they may be modified by agreement of the parties thereto) and any liens that may be granted in connection therewith, and in strict accordance thereto, the Liquidating Trustee may distribute to the Liquidating Trust Beneficiaries: (i) all net cash proceeds, if any, realized as a result of the prosecution or settlement of Causes of Action, when such net cash proceeds are realized; plus (2) all net cash proceeds from the liquidation of assets, less the amounts described in subsection (a) above, if any, upon the resolution, dismissal, settlement, or abandonment of all Causes of Action and the dissolution of the Liquidating Trust. All such distributions shall be Pro Rata based on the number of Allowed Claims in Class 3 of the Plan, subject to the terms of the Plan and this Liquidating Trust Agreement. The Liquidating Trustee may withhold from amounts distributable to any Person any and all amounts, determined in the Liquidating

Trustee's reasonable sole discretion, to be required by any law, regulation, rule, ruling, directive or other governmental requirement.

6.2. Manner of Payment or Distribution.

(a) Subject to the terms and conditions of any Term Sheet and/or any documents evidencing such terms and conditions (as they may be modified by agreement of the parties thereto) and any liens that may be granted in connection therewith, and in strict accordance thereto, all distributions authorized under Section 6.1 hereof and made by the Liquidating Trustee to holders of Liquidating Trust Interests shall be payable to the holders of Liquidating Trust Interests of record as of the 20th day prior to the date scheduled for the distribution, unless such day is not a Business Day, then such day shall be the following Business Day. If the distribution shall be in Cash, the Liquidating Trustee shall distribute such Cash by wire, check, or such other method as the Liquidating Trustee deems appropriate under the circumstances.

(b) To the extent that the Debtors become liable for the payment of any Claims arising under section 502(h) of the Bankruptcy Code on account of Liquidating Trust Assets Recoveries, the Liquidating Trustee will be responsible for making distributions on account of such Claims pursuant to Section 8.2.

(c) Subject to the terms and conditions of any Term Sheet and/or any documents evidencing such terms and conditions (as they may be modified by agreement of the parties thereto) and any liens that may be granted in connection therewith, and in strict accordance thereto, all distributions authorized under Section 6.1 hereof shall be distributed Pro Rata to holders of Liquidating Trust Interests in accordance with the terms of the Plan.

(d) Holders of General Unsecured Claims shall share the Liquidating Trust Interests Pro Rata based on the amount of each such holder's Allowed Claim.

6.3. Delivery of Liquidating Trust Distributions.

6.3.1. All distributions under this Liquidating Trust Agreement to any holder of Liquidating Trust Interests shall be made at the address of such holder as set forth in the Trust Register (which shall be determined in the manner set forth in Plan Section 5.3(a)) or at such other address or in such other manner as such holder of Liquidating Trust Interests shall have specified for payment purposes in a written notice to the Liquidating Trustee at least 20 days prior to such distribution date. In the event that any distribution to any holder of a Claim is returned as undeliverable, no further distributions shall be made to such holder unless and until the Debtors or the Liquidating Trustee, as the case may be, are notified in writing of such holder's then-current address. Any holder of an Allowed Claim that does not assert a Claim pursuant to the Plan for an undeliverable or unclaimed distribution by 5:00 p.m. Eastern Time on the date that is 180 days after the issuance thereof shall be deemed to have forfeited its Claim for such undeliverable or unclaimed distribution and shall be forever barred and enjoined from asserting any such Claim against the Debtors, the Estates, the Liquidating Trust, the Liquidating Trustee, the Liquidating Trust Assets, the Liquidating Trust Claims Reserve, or the property or assets of any of the foregoing. In such case, any Cash and/or other property otherwise reserved for

undeliverable or unclaimed distributions shall become the property of the Liquidating Trust on behalf of the Estates free and clear of any restrictions thereon and notwithstanding any federal or state escheat laws to the contrary, and shall be distributed on a Pro Rata basis to the other holders of Allowed General Unsecured Claims in accordance with, and subject to, the terms and conditions of the Plan (including, without limitation, Section 4.3 thereof with respect to the Tranche A and Tranche B distributions, and Plan Section 5.6 with respect to minimum distributions) and the Liquidating Trust Agreement. Nothing contained in the Plan or the Liquidating Trust Agreement (except as may otherwise be expressly set forth therein) shall require any of the Debtors or the Liquidating Trustee to attempt to locate any holder of an Allowed Claim.

6.4. Cash Distributions.

No Cash distributions shall be required to be made to any Liquidating Trust Beneficiary in an amount less than \$10.00. Any funds so withheld and not distributed shall be held in reserve and distributed in subsequent distributions. Notwithstanding the foregoing, all Cash shall be distributed in the final distribution of the Liquidating Trust or, if the amount is too small to justify the cost of the final distribution, paid into the Bankruptcy Court, and the Liquidating Trust Beneficiary who will not receive a payment from the Liquidating Trustee as a result of this Section 6.4 may seek a recovery therefrom of any such amount in accordance with any applicable laws, rules, or procedures.

**ARTICLE 7**  
**INDEMNIFICATION**

7.1. Indemnification of Liquidating Trustee and the Plan Advisory Committee.

(a) To the fullest extent permitted by law, the Liquidating Trust, to the extent of its assets legally available for that purpose, shall indemnify and hold harmless the Liquidating Trustee and each of its respective directors, members, shareholders, partners, officers, agents, employees, attorneys and other professionals (collectively, the “Liquidating Trustee Indemnified Persons”) from and against any and all losses, costs, damages, reasonable and documented out-of-pocket expenses (including, without limitation, fees and expenses of attorneys and other advisors and any court costs incurred by any Liquidating Trustee Indemnified Person) or liability by reason of anything any Liquidating Trustee Indemnified Person did, does, or refrains from doing for the business or affairs of the Liquidating Trust, except to the extent not exculpated under Section 3.20 hereof. To the extent reasonable, the Liquidating Trust shall pay in advance or reimburse reasonable and documented out-of-pocket expenses (including advancing reasonable costs of defense) incurred by the Liquidating Trustee Indemnified Person who is or is threatened to be named or made a defendant or a respondent in a proceeding concerning the business and affairs of the Liquidating Trust.

(b) To the fullest extent permitted by law, the Liquidating Trust, to the extent of its assets legally available for that purpose, shall indemnify and hold harmless the Liquidating Trustee and each of the members of the Plan Advisory Committee and each of their respective directors, members, shareholders, partners, officers, agents, employees, attorneys and other professionals (collectively, the “Plan Advisory Committee Indemnified Persons” and together

with the Liquidating Trustee Indemnified Persons, the “Indemnified Persons”) from and against any and all losses, costs, damages, reasonable and documented out-of-pocket expenses (including, without limitation, fees and expenses of attorneys and other advisors and any court costs incurred by any Plan Advisory Committee Indemnified Person) or liability by reason of anything any Plan Advisory Committee Indemnified Person did, does, or refrains from doing for the business or affairs of the Liquidating Trust, except to the extent not exculpated under Section 4.8 hereof. To the extent reasonable, the Liquidating Trust shall pay in advance or reimburse reasonable and documented out-of-pocket expenses (including advancing reasonable costs of defense) incurred by the Plan Advisory Committee Indemnified Person who is or is threatened to be named or made a defendant or a respondent in a proceeding concerning the business and affairs of the Liquidating Trust.

(c) Any Indemnified Person may waive the benefits of indemnification under this Section 7.1, but only by an instrument in writing executed by such Indemnified Person.

(d) The rights to indemnification under this Section 7.1 are not exclusive of other rights which any Indemnified Person may otherwise have at law or in equity, including without limitation, common law rights to indemnification or contribution. Nothing in this Section 7.1 will affect the rights or obligations of any Person (or the limitations on those rights or obligations) under this Liquidating Trust Agreement, or any other agreement or instrument to which that Person is a party.

## **ARTICLE 8** **NET LIQUIDATING TRUST RECOVERY**

### 8.1. No Effect on Mutuality.

Notwithstanding anything contained in this Liquidating Trust Agreement to the contrary, nothing herein shall affect the mutuality of obligations, if any, of any holder of any Claim under section 553 of the Bankruptcy Code.

### 8.2. Section 502(h).

Notwithstanding anything contained in the Plan or this Liquidating Trust Agreement to the contrary, in the event that a compromise and settlement of a Cause of Action or a Final Order with respect to a Cause of Action provides for the allowance of a Claim pursuant to section 502(h) of the Bankruptcy Code against one or more of the Debtors, the distributions to be made on account of such Claim pursuant to the Plan shall be funded by the Liquidating Trust, in the amount(s), from time to time, that all similarly situated holders of Claims are entitled to receive under the Plan.

## **ARTICLE 9** **REPORTS TO LIQUIDATING TRUST BENEFICIARIES**

### 9.1. Reports.

(a) The Liquidating Trustee shall cause to be prepared, as applicable, either at such times as may be required by the Exchange Act, if applicable, or, not less than annually,

financial statements of the Liquidating Trust, to be delivered to the Liquidating Trust Beneficiaries together with any annual income tax reporting of the Liquidating Trust. To the extent required by law, the financial statements prepared as of the end of the fiscal year shall be audited by nationally recognized independent accountants in accordance with U.S. generally accepted accounting principles. The materiality and scope of audit determinations shall be established between the Liquidating Trustee (in consultation with the Plan Advisory Committee) and the appointed auditors with a view toward safeguarding the value of the assets of the Liquidating Trust, but nothing relating to the mutually agreed scope of work shall result in any limitation of audit scope that would cause the auditors to qualify their opinion as to scope of work with respect to such financial statements.

(b) Within ten (10) Business Days after the end of the relevant report preparation period, the Liquidating Trustee shall cause any information reported pursuant to Section 9.1(a) to be mailed to Liquidating Trust Beneficiaries and to be filed with the Bankruptcy Court.

(c) Any report required to be distributed by the Liquidating Trustee under Section 9.1(a) hereof shall also be distributed to the Persons listed in Section 12.6 hereof within ten (10) Business Days of his or her distribution to the Liquidating Trust Beneficiaries under Section 9.1(a) hereof. The Liquidating Trustee may post any report required to be provided under this Section 9.1 on a web site maintained by the Liquidating Trustee in lieu of actual notice to the Liquidating Trust Beneficiaries (unless otherwise required by law) subject to providing notice to the Persons listed in Section 12.6 herein.

## **ARTICLE 10**

### **TERM; TERMINATION OF THE LIQUIDATING TRUST**

#### 10.1. Term; Termination of the Liquidating Trust.

(a) The Liquidating Trust shall have an initial term of five (5) years, provided that if reasonably necessary to realize maximum value with respect to the assets in the Liquidating Trust and following Bankruptcy Court approval, the term of the Liquidating Trust may be extended for a period not to exceed three (3) years.

(b) The Liquidating Trust may be terminated earlier than its scheduled termination if (i) all Disputed General Unsecured Claims have been resolved, (ii) all Liquidating Trust Assets have been liquidated, and (iii) all distributions required to be made by the Liquidating Trustee under the Plan have been made.

(c) Notwithstanding the foregoing, the Bankruptcy Court, upon motion by the Liquidating Trustee (after consultation with the Plan Advisory Committee) and after a hearing held within six (6) months before the expiration of the original term or any extended term, may extend, for a fixed period, the term of the Liquidating Trust if it is necessary to facilitate or complete the liquidation of the assets of the Liquidating Trust. The Bankruptcy Court may approve multiple extensions of the term of the Liquidating Trust.

#### 10.2. Continuance of Trust for Winding Up.



After the termination of the Liquidating Trust and for the purpose of liquidating and winding up the affairs of the Liquidating Trust, the Liquidating Trustee shall continue to act as such until his or her duties have been fully performed. Prior to the final distribution of all of the remaining assets of the Liquidating Trust and upon consultation with the Plan Advisory Committee, the Liquidating Trustee shall be entitled to reserve from such assets any and all amounts required to provide for his or her own costs and expenses, in accordance with Section 3.17 herein, until such time as the winding up of the Liquidating Trust is completed. Upon termination of the Liquidating Trust, the Liquidating Trustee shall retain, until the expiration of the applicable statute of limitations in respect of the taxable years of the Liquidating Trust's existence unless otherwise ordered by the Bankruptcy Court, as a cost of administering the Liquidating Trust, the books, records, Liquidating Trust Beneficiary lists, the Trust Register, and certificates and other documents and files that have been delivered to or created by the Liquidating Trustee. At the Liquidating Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after the expiration of the applicable statute of limitations in respect of the taxable year in which the affairs of the Liquidating Trust were completed and wound up. Except as otherwise specifically provided herein, upon the termination of the Liquidating Trust, the Liquidating Trustee shall have no further duties or obligations hereunder.

## **ARTICLE 11** **AMENDMENT AND WAIVER**

### 11.1. Amendment and Waiver.

(a) The Liquidating Trustee, after consultation with the Plan Advisory Committee, may amend, supplement or waive any provision of this Liquidating Trust Agreement without notice to or the consent of any Liquidating Trust Beneficiary or the approval of the Bankruptcy Court: (i) to cure any ambiguity, omission, defect or inconsistency in this Liquidating Trust Agreement provided that such amendments, supplements or waivers shall not adversely affect the distributions to be made under this Liquidating Trust Agreement to any of the Liquidating Trust Beneficiaries, or adversely affect the U.S. federal income tax status of the Liquidating Trust as a "liquidating trust"; (ii) to comply with any requirements in connection with the U.S. Federal income tax status of the Liquidating Trust as a "liquidating trust"; (iii) to comply with any requirements in connection with maintaining that the Liquidating Trust is not subject to registration or reporting requirements of the Exchange Act, or the Investment Company Act; (iv) to make the Liquidating Trust a reporting entity and, in such event, to comply with or seek relief from any requirements in connection with satisfying the registration or reporting requirements of the Exchange Act or the Investment Company Act; and (v) to evidence and provide for the acceptance of appointment hereunder by a successor trustee in accordance with the terms of this Liquidating Trust Agreement and the Plan.

(b) Any substantive provision of this Liquidating Trust Agreement may be amended or waived by the Liquidating Trustee, subject to prior consultation with the Plan Advisory 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 Liquidating Trust Agreement that would adversely affect the distributions to be made under this Liquidating Trust Agreement to any of the Liquidating Trust Beneficiaries, or adversely affect the U.S. Federal income tax status

of the Liquidating Trust as a “liquidating trust.” Notwithstanding this Section 11.1, any amendments to this Liquidating Trust Agreement shall not be inconsistent with the purpose and intention of the Liquidating Trust to liquidate in an expeditious but orderly manner the Liquidating Trust Assets in accordance with Treasury Regulation Section 301.7701-4(d).

## **ARTICLE 12** **MISCELLANEOUS PROVISIONS**

### 12.1. Intention of Parties to Establish the Liquidating Trust.

This Liquidating Trust Agreement is intended to create a liquidating trust for federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a trust and any ambiguity herein shall be construed consistent herewith and, if necessary, this Liquidating Trust Agreement may be amended in accordance with Section 11.1 to comply with such federal income tax laws, which amendments may apply retroactively.

### 12.2. Reimbursement of Trust Litigation Costs.

If the Liquidating Trustee or the Liquidating Trust, as the case may be, is the prevailing party in a dispute with the parties hereto regarding the provisions of this Liquidating Trust Agreement or the enforcement thereof, the Liquidating Trustee, the Plan Advisory Committee or the Liquidating Trust, as the case may be, shall be entitled to collect any and all costs, reasonable and documented out-of-pocket expenses and fees, including attorneys’ fees, from the non-prevailing party incurred in connection with such dispute or enforcement action. To the extent that the Liquidating Trust has advanced such amounts, the Liquidating Trust may recover such amounts from the non-prevailing party. If, in connection with the reasonable exercise of their respective duties, litigation should arise between the Liquidating Trustee and the Plan Advisory Committee, the Liquidating Trust shall reimburse the parties for their reasonable costs incurred in connection with such litigation.

### 12.3. Laws as to Construction.

**THIS LIQUIDATING TRUST AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CONNECTICUT, WITHOUT REGARD TO ANY CONFLICTS OF LAW PROVISIONS THAT WOULD REQUIRE THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION. BY ITS EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH OF THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES FOR ITSELF THAT ANY LEGAL ACTION, SUIT, OR PROCEEDING AGAINST IT WITH RESPECT TO ANY MATTER UNDER OR ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT RENDERED IN ANY SUCH ACTION, SUIT, OR PROCEEDING, SHALL BE BROUGHT IN ANY FEDERAL OR STATE COURT IN CONNECTICUT AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH OF THE PARTIES HEREBY IRREVOCABLY ACCEPTS AND SUBMITS ITSELF TO THE NONEXCLUSIVE JURISDICTION OF EACH SUCH COURT, GENERALLY AND UNCONDITIONALLY, WITH RESPECT TO ANY SUCH ACTION,**

**SUIT, OR PROCEEDING AND AGREES THAT SERVICE OF PROCESS IN CONNECTION THEREWITH SHALL BE EFFECTIVE IF MADE BY FIRST CLASS MAIL AND SHALL NOT CONTEST THE FORM OF MANNER OF SUCH SERVICE.**

12.4. Jurisdiction.

Without limiting any Person or entity's right to appeal any order of the Bankruptcy Court or to seek withdrawal of the reference with regard to any matter, notwithstanding anything contained herein to the contrary, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Liquidating Trust Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Liquidating Trust Agreement, any breach or default hereunder, or the transactions contemplated hereby; and (ii) any and all actions related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the parties, including the Liquidating Trust Beneficiaries, and Holders of Claims and Equity Interests, hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court.

12.5. Dispute Resolution.

In the event of any material disagreement, dispute or other impasse between the Liquidating Trustee and the Plan Advisory Committee in connection with a proposed decision or action by the Liquidating Trustee in the exercise of its duties under the Liquidating Trust, the Liquidating Trustee's position shall govern and control unless, within five (5) Business Days, such member or members of the Plan Advisory Committee shall instruct counsel to seek (on an expedited basis if desired) Bankruptcy Court review and approval of such decision or action, in which case counsel shall file the appropriate motions as soon as practicable, and any such proposed decision of the Liquidating Trustee shall be held in abeyance (to the extent reasonable and practicable) until such time as Bankruptcy Court approval is obtained. In the event of any such review, the Bankruptcy Court review shall be conducted pursuant to a "best interests of the Liquidating Trust Beneficiaries" standard, as guided by the terms and purpose of the Liquidation Trust and in accordance with the terms of the Plan. Nothing contained herein shall preclude the Liquidating Trustee from seeking approval of the Bankruptcy Court at any time for any of its proposed decisions in accordance with Section 3.17(r), which proposed decisions and/or actions shall likewise be reviewed pursuant to the "best interests of the Liquidating Trust Beneficiaries" standard set forth herein. Any motion filed pursuant to this provision shall be filed under seal, to the extent permitted by the Bankruptcy Court, unless otherwise agreed by the Liquidating Trustee and the Plan Advisory Committee.

12.6. Severability.

If any provision of this Liquidating 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 Liquidating 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 such provision of this Liquidating Trust Agreement shall be valid and enforced to the fullest extent permitted by law.

12.7. Notices.

All notices, requests or other communications to the parties hereto shall be in writing and shall be sufficiently given only if (i) delivered in person; (ii) sent by electronic mail or facsimile communication (as evidenced by a confirmed fax transmission report); (iii) sent by registered or certified mail, return receipt requested; or (iv) sent by commercial delivery service or courier. Until a change of address is communicated, as provided below, all notices, requests and other communications shall be sent to the parties at the following addresses or facsimile numbers:

If to the Liquidating Trustee, to:

With a copy to:

If to the Plan Advisory Committee, to:

If to the Debtors, to:

With a copy to:

All notices shall be effective and shall be deemed delivered (i) if by personal delivery, delivery service or courier, on the date of delivery; (ii) if by electronic mail or facsimile communication, on the date of receipt or confirmed transmission of the communication; and (iii) if by mail, on the date of receipt. Any party from time to time may change its address, facsimile number, or other information for the purpose of notices to that party by giving notice specifying such change to the other party hereto.

12.8. Fiscal Year.

The fiscal year of the Liquidating Trust will begin on the first day of January and end on the last day of December of each year.

12.9. Headings.

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

12.10. Counterparts.

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

12.11. Confidentiality.

The Liquidating Trustee and each successor trustee and each member of the Plan Advisory Committee and each successor member of the Plan Advisory Committee (each a "Covered Person") shall, during the period that they serve in such capacity under this Liquidating Trust Agreement and following either the termination of this Liquidating Trust Agreement or such individual's removal, incapacity, or resignation hereunder, hold strictly confidential and not use for personal gain any material, nonpublic information of or pertaining to any entity to which any of the assets of the Liquidating Trust relates or of which it has become aware in its capacity (the "Information"), except to the extent disclosure is required by applicable law, order, regulation or legal process. In the event that any Covered Person is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigation, demand or similar legal process) to disclose any Information, such Covered Person shall notify the Liquidating Trustee reasonably promptly (unless prohibited by law) so that the Liquidating Trustee may seek an appropriate protective order or other appropriate remedy or, in its discretion, waive compliance with the terms of this Section (and if the Plan Advisory Committee seeks such an order, the relevant Covered Person will provide cooperation as the Plan Advisory Committee shall reasonably request). In the event that no such protective order or other remedy is obtained, or that the Liquidating Trustee waives compliance with the terms of this Section and that any Covered Person is nonetheless legally compelled to disclose the Information, the Covered Person will furnish only that portion of the Information, which the Covered Person, advised by counsel, is legally required and will give the Liquidating Trustee written notice (unless prohibited by law) of the Information to be disclosed as far in advance as practicable and exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Information.

12.12. Entire Agreement.

This Liquidating Trust Agreement (including the Recitals, Schedules and Exhibits), the Plan, and the Confirmation Order constitute the entire agreement by and among the parties hereto and there are no representations, warranties, covenants or obligations except as set

forth herein or therein. This Liquidating Trust Agreement, the Plan and the Confirmation Order supersede all prior and contemporaneous agreements, understandings, negotiations, discussions, written or oral, of the parties hereto, relating to any transaction contemplated hereunder. Except as otherwise specifically provided herein, in the Plan or in the Confirmation Order, nothing in this Liquidating Trust Agreement is intended or shall be construed to confer upon or to give any person other than the parties thereto and their respective heirs, administrators, executors, successors, or assigns any right to remedies under or by reason of this Liquidating Trust Agreement.

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IN WITNESS WHEREOF, the parties hereto have either executed and acknowledged this Litigation 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.

**DEBTORS**

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

Name:

Title:

**LIQUIDATING TRUSTEE**

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

Name:

Title:

## SCHEDULE A

### COMPENSATION TERMS OF ORIGINAL TRUSTEE

The Original Trustee shall receive reasonable compensation for serving as Liquidating Trustee, and reimbursement of reasonable out-of-pocket costs, in accordance with the following schedule:

A retainer (the "Trustee Retainer") of \$60,000 for each twelve-month period during which the Liquidating Trust is in existence, payable in 12 equal monthly installments;

3% of aggregate Net Recoveries, applicable first against payment of the Trustee Retainer. "Net Recoveries" shall be defined to include (i) the initial amount of Cash comprising the Liquidating Trust Assets; (ii) all subsequent recoveries by the Liquidating Trust realized as proceeds of the Causes of Action or from the disposition of Liquidating Trust Assets; and (iii) interest, dividends, rents, profits and proceeds earned on, by or from all Liquidating Trust Assets.

Reimbursement of reasonable out-of-pocket expenses (including overhead for office/storage space and secretarial assistance) on a monthly basis. Significant costs may be advanced from the assets of the Liquidating Trust after consultation with the Plan Advisory Committee.

Any and all net recoveries actually received by the Liquidating Trust, whether by judgment or settlement, during the tenure of the Original Trustee or the Applicable Period (as defined below) following the Original Trustee's termination in accordance with Section 3.17(b) of the Liquidating Trust Agreement (a "Qualifying Termination") shall be deemed earned and unpaid compensation or bonus for purposes of such section. Any such actual recoveries shall also include any deferred payment recovery from defendant(s) or putative defendant(s) that is agreed to in writing within the Applicable Period by such defendant(s) or putative defendant(s), even if not paid or payable until after the Applicable Period, provided that such deferred payment recovery is in fact realized by the Liquidating Trust (collectively, "Qualifying Recoveries"); provided, however, that the Original Trustee will only receive his or her percentage of Qualifying Recoveries as, if, and when such deferred payment is actually received by the Liquidating Trust.

- "Applicable Period" shall mean a minimum period of six (6) months after a Qualifying Termination, and if the Liquidating Trustee has worked for more than six (6) months in that position, such period shall increase by one day for each day the Liquidating Trustee works as Liquidating Trustee after the initial six (6) months up to a maximum period of twenty-four (24) months; provided, however, that any fees payable to the Original Trustee on account of Qualifying Recoveries occurring after twelve (12) months following a Qualifying Termination shall be reduced by fifty percent (50%) of the calculation set forth above.

The compensation of the Original Trustee shall be payable in connection with each distribution made to the Liquidating Trust Beneficiaries and upon termination of the Liquidating Trust.



**SCHEDULE B**

**LIST OF INITIAL MEMBERS OF THE PLAN ADVISORY COMMITTEE**

Michael Freedman

Brian Anderson

Christopher Swann

**SCHEDULE C**

**TERM SHEET**

## **TERM SHEET**

The following is a summary of the terms proposed for the payment and treatment of the outstanding professional fees in the *Complete Retreats* (Tanner & Haley) cases and incurrence and payment of such fees going forward.

### **Parties**

Bankruptcy Court	United States Bankruptcy Court for the District of Connecticut (Bridgeport Division)
Bingham	Bingham McCutchen LLP, counsel to the Creditors Committee
Board	Board of Managers of the Debtors, comprised of Jim Mitchell and Michael L. Shelton
Creditors Committee	Official Committee of Unsecured Creditors appointed in the Debtors' bankruptcy cases
Debtors	Complete Retreats, LLC and affiliated entities in Chapter 11 bankruptcy proceedings before the Bankruptcy Court
Dechert	Dechert LLP, counsel to the Debtors
Estate Professionals	Collectively Bingham, Dechert, KCP, and XRoads, and separately, an Estate Professional
KCP	Kramer Capital Partners LP, financial advisor to the Creditors Committee
Liquidating Trust	Liquidating Trust to be set up under the Plan, as borrower
Plan	The Debtors' Modified First Amended Plan of Liquidation submitted for confirmation by the Bankruptcy Court, as it may be amended or modified, including all supplements and exhibits
Unrestricted Cash	Cash initially provided to the Liquidating Trust and other cash so delineated herein, subject to liens in favor of the Notes, which can be used without note-holder consent so long as there is no breach, default, or Note maturity
XRoads	XRoads Solutions Group LLC, Chief Restructuring Officer and financial advisor to the Debtors

## **XRoads Fees and Continuing Services**

### **New Fee Structure**

Monthly fees of XRoads reduced to floor of \$100,000 (from \$150,000), effective for August, September, and October, 2007 (excluding CMS and expenses).

XRoads will provide services in November and early December, 2007 at no additional fee for up to a total of 200 professional hours. It is not expected that more than 200 hours will be required, and XRoads will notify the parties if it reaches 150 hours and reasonably anticipates that more than an additional 50 hours will be required.

Expenses incurred would continue to be submitted for reimbursement.

XRoads will cease performing work as of the Effective Date, but will make their employees and records reasonably available as may be requested by the Liquidating Trust or the parties, on mutually-agreeable terms to be negotiated in good faith.

### **Services Provided by XRoads**

Continue to provide the services as provided for in XRoads' existing engagement letter on the terms provided therein (except for modifications as proposed herein), including, but not limited to:

Assist with the Plan confirmation (contemplated to be within the 200-hour process, including providing testimony and other work to hours referenced above)

Address confirmation requirements and substantive consolidation and other objections to confirmation.

Assist with gathering and preparing information required for the Debtors' responses to the subpoenas from certain governmental agencies.

Assist with resolving issues relative to the Hawaii tax and other disputed claims.

Processing of ordinary course payments to post-petition creditors.

Otherwise assist in the administration of the bankruptcy cases and in the performance of Chief Restructuring Officer role, as reasonably requested by Dechert and the Board, and by other parties, as appropriate.

## **Professional Fees**

### **Outstanding Professional Fees**

The Debtors owe the Estate Professionals approximately \$4.8 million for incurred and unpaid fees and expenses for services rendered as of September 30, 2007, which sum includes “holdbacks” of approximately \$300,000 attributable to this period.

The Debtors anticipate retaining a cash reserve of approximately \$1.1 million on December 15, 2007, designed to satisfy other post-petition expenses, Plan payment requirements (as currently contemplated) due on the Effective Date (assuming tax claims are paid over time) and allow the Plan to go effective. Although not a condition to this agreement, it is anticipated that approximately \$500,000 of Unrestricted Cash will be available for the Liquidation Trust upon the Effective Date if such Effective Date occurs by December 15, 2007.

The Plan shall be amended to, or the confirmation order shall, provide for the following treatment of unpaid fees and expenses of the Estate Professionals, and the Estate Professionals agree to accept this treatment of their unpaid administrative expense claims under the Plan so long as the Effective Date is on or before December 31, 2007.

The Estate Professionals each agree to take a note payable (the “Note”) for their respective portions of the remaining approximately \$4.8 million of professional fees and expenses (which amount includes the twenty percent “holdback” from the July, August and September fees on the schedule) as well as other fees and expenses incurred prior to the Effective Date.

The Note shall be secured by a first-priority security interest in and lien against all of the assets transferred to the Liquidating Trust under the Plan, including without limitation the Debtors’ unsold properties and fractional interests, proceeds thereof, preference and avoidance actions, litigation proceeds, and all after-acquired assets (collectively, the “Estate Assets”). This legal and equitable

lien shall apply both to the Estate Assets and to their proceeds such that should the lien anticipated under the Note not extend to Estate Assets located internationally (including in the Bahamas and in Belize) due to requirements under relevant law, the Note shall still be entitled to the proceeds received from the monetization of these Estate Assets as though the lien had been fully and properly perfected and otherwise been enforceable against these Estate Assets.

#### No Objections

The Debtors and the Estate Professionals understand and agree that the agreement of each other to the provisions contained within this term sheet is expressly conditioned upon there being customary levels of support for, and no anticipated objection to, professional fees incurred as of the date of this agreement. Without limiting the generality of the foregoing and solely for purposes of clarity, the Debtors, the members of the Board, the Creditors Committee, and the Estate Professionals either individually or in their capacity as Estate Professionals agree that the fees incurred to date are reasonable, that they do not currently contemplate or anticipate objecting to them, and that they are not aware of any facts or circumstances that would operate to reduce or offset the amounts requested.

Dechert, KCP, and XRoads release the members of the Board for past acts performed as members of the Board, which release shall not prevent the Estate Professionals from referencing and including past acts as appropriate and relevant when responding to future acts.

#### General Note Terms

The Note shall be payable from the Liquidating Trust, as borrower, which shall grant the security interests described above. This Note and security interest shall be noticed and recorded as appropriate. Each Estate Professional shall have the complete and unfettered right to pledge their portion of the Note as collateral without notice to the other Estate Professionals.

The Note shall bear interest at the four percent per annum commencing upon the Effective Date and payable upon maturity or final payoff, whichever is sooner.

The Note matures on June 30, 2008, requiring the liquidation of the Estate Assets and the distribution on or

before June 30, 2008, unless the Estate Professionals, by a majority vote of outstanding Note amounts determined relative to the percentage of aggregate unpaid fees of the Estate Professionals covered by the Note, agree to extend such maturity. Enforcement of remedies after default or maturity shall be determined by a majority in outstanding dollar amount of unpaid claims held with respect to the Note. Each Estate Professional shall have the complete and unfettered right to sell their portion of the Note at any time on or after July 1, 2008. No Estate Professional shall be permitted to sell its portion of the Note at any time prior to July 1, 2008.

Pre-payments on the Note must be made on a pro rata basis (relative to the percentage of aggregate unpaid fees of the Estate Professionals covered by the Note) directly from the incremental funds received after ordinary and customary collection or liquidation costs (for real property sales this is limited to taxes, commissions, and closing costs, and for litigation this is limited to contingency fee lawyers).

The trustee of the Liquidating Trust cannot, without prior consent from each of the Estate Professionals, accept an offer to sell the following Estate Assets that is less than the following values: \$0.9 million for the smaller Carnegie Abbey home; \$1.2 million for the larger Carnegie Abbey home; or \$2.0 million for any of the three lots at the Abaco Club.

So long as any portion of the Note is outstanding, any sale of Estate Assets must be for "all cash", and the Liquidating Trust cannot accept any offer to sell any Estate Assets that will result in the entire purchase price not being collected prior to June 30, 2008, except that the Liquidating Trust can accept structured settlements resolving avoidance actions or other litigation on a non-cash or partial cash basis so long as all value is received within one year of the date of the settlement.

Any change in the interest rate, amount of the Note, the minimum sale price threshold, or the agreement to accept any compensation other than an all cash offer that will be received prior to June 30, 2008 (except as set forth in the immediately preceding paragraph), must be approved by unanimous consent of the holders of the Note.

The first \$5.0 million of net proceeds received from the use, liquidation, or monetization of Estate Assets shall be allocated ninety-percent to the Note and ten percent to the Liquidating Trust as Unrestricted Funds. After the first \$5.0 million of net proceeds are received, all net proceeds shall be applied first to satisfy the Note, with the remaining funds property of the Liquidating Trust.

#### Extension Dispute

A majority in outstanding dollar amount of unpaid claims held with respect to the Note shall be permitted to agree to any proposed extension of the June 30, 2008 maturity of the Note on behalf of and to bind the Estate Professionals to an extension. In making such a decision with respect to any requested extension, the Estate Professionals shall not be required or expected to consider the interests of the Liquidating Trust, other than as it pertains to collecting under the Note. Any and all non-material changes to the Note, not otherwise addressed herein, shall require a majority (as determined in this paragraph) and not unanimous consent.

#### Post-Effective Date Fees

Professionals working after the Effective Date shall be paid only after the Note is paid and satisfied in full, except the trustee of the Liquidating Trust may use Unrestricted Funds prior to maturity or default without the consent of the holders of the Note, but subject to the lien of the Note, for reasonable costs and fees of professionals. Other litigation costs shall not be paid from the collateral for the Note unless and until the Note is paid in full.