

**EXHIBIT A**

**LIQUIDATION TRUST AGREEMENT BY AND BETWEEN ALSET OWNERS, LLC,  
ALTES, LLC, SETLA, LLC AND CHECKERS MICHIGAN, LLC**

THIS LIQUIDATION TRUST AGREEMENT (this “Agreement”) by and between Alset Owners, LLC, Altes, LLC, Setla, LLC and Checkers Michigan, LLC (collectively, the “Debtors”) (this “Agreement”), is made as of the \_\_\_\_ day of February, 2010 by and between the Debtors and \_\_\_\_\_ as trustee (the “Trustee”) for the Beneficiaries (defined below) in connection with the Joint Plan of Liquidation of the Debtors and Debtors in Possession (the “Plan”) (as defined below). Capitalized terms used herein and not otherwise defined in Article I or when first used shall have the meanings set forth in the Plan.

**RECITALS:**

A. On June 5, 2009 the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

B. On \_\_\_\_\_, 2010 the Bankruptcy Court entered an order confirming the Plan.

C. The Plan provides for the creation of a post confirmation liquidation trust (the “Trust”) to hold and administer the Trust Assets, in accordance with the terms of this Agreement and the Plan. This Agreement is executed to establish the Trust and to facilitate the Plan.

D. The primary purpose of the Trust is to liquidate and administer the Trust Assets for the benefit of the Beneficiaries in accordance with Treasury Regulation Section 301.77014(d). The Trust will not be operated with the objective of continuing or engaging in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the purpose of the Trust.

E. The Trust is intended to qualify as a trust that is treated as a “grantor trust” for federal income tax purposes and the Trustee shall operate and maintain the Trust in compliance with Internal Revenue Service Revenue Procedure 94-45, 1994-2 C.B. 684, and Treasury Regulation Sections 1.671-4(a) and 301.7701-4(d) and all subsequent guidelines regarding grantor trusts issued by the Internal Revenue Service.

NOW, THEREFORE, in consideration of the premises and the mutual covenants agreements and undertakings contained herein:

## **ARTICLE I**

### **Definitions**

“Allowed Claims” shall have the meaning given to it in the Plan.

“Administrative Claim” shall have the meaning given to it in the Plan.

“Advisory Board” means up to three persons selected by the Committee which shall have general oversight powers over the Liquidation Trustee and the Liquidation Trust.

“Assets” means any and all real or personal property of any nature, including, without limitation, any real estate, buildings, structures, improvements, privileges, rights, easements, leases, subleases, licenses, goods, materials, supplies, furniture, fixtures, equipment, work in process, accounts, chattel paper, cash, deposit accounts, reserves, deposits, contractual rights, intellectual property rights, claims and Causes of Action.

“Bankruptcy Code” means United States Bankruptcy Code, 11 U.S.C. 101, et seq.

“Beneficiaries” means the holders of Allowed Claims.

“Cash” shall have the meaning given to it in the Plan.

“Causes of Action” shall have the meaning given to it in the Plan.

“Claim” shall have the meaning given to it in the Plan.

“Confirmation Order” means the order confirming the Plan, entered by the Bankruptcy Court on \_\_\_\_\_, 2010 and attached hereto as Schedule B.

“Disputed Claims” shall have the meaning given to it in the Plan.

“Distributions” shall have the meaning given to it in the Plan.

“Effective Date” means the effective date of the Plan.

“Estate” shall mean the bankruptcy estate of the Debtors created pursuant to Section 541 of the Bankruptcy Code.

“Liquidation Trust Assets” shall have the meaning given to it in the Plan.

“Plan” means the Joint Plan of Liquidation of the Debtors and Debtors in Possession which was confirmed on \_\_\_\_\_, 2010 and any amendments or modifications.

“Liquidation Trust Assets” shall have the meaning set forth in the Plan and in Section 3.1 of this Agreement.

For purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires: (a) references to “Articles”, “Sections”, and other subdivisions, without reference to a particular document, are to be designated Articles, Sections, and other subdivisions of this Agreement; (b) the use of the term “including” means “including but not limited to”; and (c) the words “herein”, “hereunder”, and other words of similar import refer to this Agreement as a whole and not to any particular provision (unless otherwise specified). The enumeration and headings contained in this Agreement are for convenience of reference only and are not intended to have any substantive significance in interpreting this Agreement. The singular shall include the plural and the plural the singular, when the context so requires, and the feminine, the masculine, and the neuter genders shall be mutually inclusive.

## ARTICLE II

### Organization

2.1 *Trust Name.* The trust created hereby shall be known as the Liquidation Trust of Alset Owners, LLC, *et al.* in which name the Trustee may, among other things, conduct the business of the Trust, make and execute contracts on behalf of the Trust, sue and be sued on behalf of the Trust, and take such other actions as the Trustee is authorized hereunder to take.

2.2 *Declaration of Trust.* For good and valuable consideration, the receipt of which is hereby acknowledged by the undersigned, and pursuant to the terms of the Plan and the Confirmation Order, the Debtors and the Trustee have executed this Agreement and, subject to the provisions of Section 2.5, the Debtors irrevocably and absolutely transfers, assigns, conveys, sets over and delivers free and clear of all liens, claims, encumbrances and interests, of any kind and nature the Liquidation Trust Assets to the Trustee, and such transfer is in trust pursuant to the provisions hereof, with such conveyance transferring all of the Debtors' right, title and interest in, to and under the Liquidation Trust Assets.

(a) The Debtors shall, as needed and as reasonably requested by the Trustee, execute and deliver or cause to be executed and delivered to or upon the order of the Trustee all such further documents and instruments as may be reasonably necessary to carry out the purposes and intent of this Agreement; and the Debtors shall take or cause to be taken such other action as the Trustee may reasonably deem necessary or appropriate, in order to vest, perfect or confer title to and possession of all the Liquidation Trust Assets to the Trustee.

(b) The Trustee hereby accepts the trust created by this Agreement and agrees to hold the Liquidation Trust Assets in trust for the use and benefit of the Beneficiaries, subject to the conditions set forth in this Agreement, the Plan and the Confirmation Order. Effective as of the date hereof, the Trustee shall have all of the rights, powers and duties set forth herein, in the

Plan, in the Confirmation Order and in the Act with respect to accomplishing the purpose of the Trust.

2.3 *Tax Treatment of Grantor Trust.* For United States federal and applicable state income tax purposes, the transfer of the Liquidation Trust Assets to the Trust pursuant to and in accordance with the Plan and Confirmation Order shall be treated as a disposition of the Liquidation Trust Assets directly to and for the benefit of the Beneficiaries immediately followed by a contribution of the Liquidation Trust Assets by the Beneficiaries to the Trust for the benefit of the Beneficiaries. The Beneficiaries will be treated as the grantors and owners of the Trust. The Trust is intended to qualify as a liquidating trust that is treated as a “grantor trust” for federal income tax purposes, and the Trustee shall use his best efforts to operate and maintain the Trust in substantial compliance with Internal Revenue Service Revenue Procedure 94-45, 1994-2 C.B. 684, and Treasury Regulation Sections 1.671-4(a) and 301.770 1-4(d) and all subsequent guidelines regarding grantor trusts issued by the Internal Revenue Service. The Trust shall obtain a taxpayer ID number and file tax returns.

2.4 *Transfer to and Vesting of Liquidation Trust Assets in Trust.* On the Effective Date, all Liquidation Trust Assets shall be transferred to and vest in the Trust. The Liquidation Trust Assets shall be deposited with the Trust free and clear of all Claims, Liens and Equity Interests. The Liquidation Trust Assets shall be managed and used by the Trustee for the sole purpose of carrying out the Plan and effectuating the Distributions provided for in the Plan. The Trust shall be deemed the successor in interest to the Debtors solely for purposes of maintaining, preserving, collecting, liquidating and distributing the Liquidation Trust Assets vested in the Trust.

2.5 *Payment of Liabilities.* Payment of costs and expenses associated with the Trust shall be paid from the Liquidation Trust Assets.

2.6 *Office.* The principal office of the Trustee shall be located at \_\_\_\_\_, Attn: \_\_\_\_\_, or at such other address as the Trustee may designate by written notice to the parties hereto.

2.7 *Situs of the Trust.* The Trust shall be located in the State of Delaware.

2.8 *Appointment of Trustee.* \_\_\_\_\_ is hereby appointed Trustee, to have all of the rights, powers and duties set forth herein and in the Plan and Confirmation Order.

2.9 *Title to Trust Property.* From and after the Effective Date, legal title to all of the Trust property shall be vested at all times in the Trust as a separate legal entity except where applicable law in any jurisdiction in which the Trust property may be located requires title to any part of the Trust property to be vested in a trustee, in which case title shall be deemed vested in the Trustee. No Beneficiary shall have legal title to any part of the assets of the Trust.

2.10 *Incorporation of Plan.* The Plan is hereby incorporated into this Agreement and made a part hereof by this reference. To the extent of any conflict between the Plan and this Agreement, the Plan shall control.

2.11 *Purpose of the Trust.* The Trust is formed for the purpose of (i) holding and liquidating the Liquidation Trust Assets on behalf of the Beneficiaries, (ii) resolving any issues regarding the amount of the Claims of the Beneficiaries, (iii) prosecuting, abandoning, settling and/or defending any claims or Causes of Action (including, without limitation, avoidance actions and rights of action), (iv) enforcing the rights of the Beneficiaries, (v) collecting income on the Liquidation Trust Assets, (vi) providing for the orderly investment, conservation, and distribution of any and all of the Liquidation Trust Assets, (vii) making distributions to the

Beneficiaries pursuant to the Plan and this Agreement, (viii) filing final tax returns and dissolving the Debtors, and (ix) undertaking all actions required under this Agreement, the Plan and the Confirmation Order. The Trustee shall reduce to Cash or otherwise liquidate the Liquidation Trust Assets and distribute such liquidated Assets to the Beneficiaries in accordance with and subject to the terms and provisions of the Plan.

(a) As of the Effective Date, (A) the Trustee shall be responsible for (i) liquidating or otherwise reducing to Cash the Liquidation Trust Assets in accordance with this Agreement, (ii) filing, prosecuting, abandoning or settling the Causes of Action, (iii) making Distributions to holders of Allowed Claims, (iv) filing claim objections, settling, or otherwise resolving Disputed Claims, (v) complying with and carrying out the provisions of the Plan to the extent applicable to the Trust.

(b) In accordance with the Plan, the Trustee on behalf of the Trust and for the benefit of the Trust shall be authorized and empowered to pursue and prosecute, to settle, or to decline to pursue or abandon, the Causes of Action, including all pending adversary proceedings and contested matters involving assigned actions, whether or not such Causes of Action have been commenced prior to the Effective Date or after the Effective Date by the Trustee, and shall be substituted as the real party in interest in any such action, commenced by or against the Debtors, the Debtors' estate or the Creditors' Committee. The Trustee may settle, release, sell, assign, otherwise transfer or compromise such Causes of Action, in the Trustee's business judgment, subject to the provisions of the Plan, without Bankruptcy Court approval.

(c) Except as otherwise set forth In the Plan, the Trustee may, but shall not be required to, set-off against any Claim and the Distributions to be made pursuant to the Plan with respect to such Claim, any Causes of Action the Debtors' estate may have against the holder of



the Claim, but neither the failure to do so nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Trustee of any such Causes of Action, set-off or recoupment which the Debtors may have against such holder.

2.12 *Status of Trustee.* The Trustee shall be a “representative of the estate” as that phrase is used in Section 1123(b)(3)(B) of the Bankruptcy Code with respect to the rights and powers granted in this Agreement, the Plan and the Confirmation Order. Except as otherwise set forth in the Plan, the Trustee shall be the successor-in-interest to the (i) Debtors with respect to the Liquidation Trust Assets, including any Causes of Action which were or could have been commenced by the Debtors prior to the Effective Date and shall be deemed substituted for the same as the party in such action, and (ii) the Creditors Committee with respect to any Causes of Action which were or could have been commenced by the Creditors Committee prior to the Effective Date and shall be deemed substituted for the same as the party in such action. All actions, claims, rights or interests constituting Liquidation Trust Assets are preserved and retained and may be enforced by the Trustee as the representative of the Debtors’ estate pursuant to 11 U.S.C. § 1123(b)(3)(B).

### **Beneficiaries**

2.13 *Identification of Beneficiaries.* The Trust is created for the benefit of the Beneficiaries. The Beneficiaries shall each have an undivided beneficial interest in the assets of the Trust. The initial Beneficiaries are those parties holding Claims (other than Claims that have been disallowed, extinguished or expunged by Final Order) against the Debtors as of the Effective Date.

2.14 *Rights of Beneficiaries.* Each Beneficiary shall be entitled to participate in the rights due to a Beneficiary hereunder. Each Beneficiary shall take and hold its beneficial interest

in the Trust (“Beneficial Interest”) subject to all of the terms and provisions of this Agreement, the Plan and the Confirmation Order, and any Beneficial Interest shall only include interests that are identified in an Allowed Claim. The Beneficial Interests shall not be certificated. The interest of a Beneficiary of the Trust is in all respects personal property, and upon the death, insolvency or incapacity of an individual Beneficiary, such Beneficiary’s Beneficial Interest shall pass to the legal representative of such Beneficiary. A Beneficiary shall have no title to, or any right to possess, manage or control the Trust, the Liquidation Trust Assets or any portion thereof or interest therein, except as expressly provided herein or in the Plan. No surviving spouse, heir or devisee of any deceased Beneficiary shall have any right of dower, homestead or inheritance, or of partition, or any other right, statutory or otherwise, in the Trust, but the whole title to all the Liquidation Trust Assets shall be vested in the Trustee, and the sole interest of the Beneficiaries shall be the rights and benefits provided to such persons under this Agreement, the Plan and the Confirmation Order.

2.15 *Transfer of Interests of Beneficiaries.* The Beneficial Interest of a Beneficiary of the Trust may not be transferred or assigned in whole or in part except by applicable laws of descent and distribution (in the case of a deceased individual Beneficiary); by operation of law, in accordance with applicable Bankruptcy law; or as otherwise approved by the Bankruptcy Court. The Trust shall not be required to recognize any equitable or other claims to such interest by the transferee thereof, and the named Beneficiary shall remain as such for all purposes hereunder. No transfer of the right, title and interest of any Beneficiary in and to the Trust or hereunder, by operation of law or otherwise, shall operate to terminate this Trust or affect the validity of this Agreement or entitle any successor or transferee of such Beneficiary to an accounting or to the transfer to it of legal title to any part of the Trust.

2.16 *Standing of Beneficiary.* Except as expressly provided in this Agreement, the Plan or the Confirmation Order, a Beneficiary does not have standing to direct the Trustee to do or not to do any action or to institute any action or proceeding at law or in equity against any person (other than the Trustee) upon or with respect to the Trust Assets.

2.17 *Release of Liability Beneficiary.* A Beneficiary shall not relieve the Trustee from any duty, responsibility, restriction or liability as to such Beneficiary that would otherwise be imposed under this Agreement, Plan or Confirmation Order.

### **ARTICLE III**

#### **Distributions**

3.1 *Establishment of Trust Account.* The Trustee, for the benefit of the Beneficiaries, shall establish or cause to be established and maintained any accounts needed in connection with the purposes of the Trust (the "Trust Account"). Such accounts shall be maintained only at FDIC insured financial institutions and shall bear a designation clearly indicating that the funds deposited therein are held for the benefit of the Trust.

3.2 *Investment of Cash.* Cash in the Trust Account and any other amounts contemplated by this Agreement shall be maintained in United States dollars or shall be invested by the Trustee in (i) direct obligations of, or obligations guaranteed by, the United States of America, (ii) obligations of any agency or corporation that is or may hereafter be created by or pursuant to an act of Congress of the United States of America as an agency or instrumentality thereof, or (iii) such other obligations or instruments as may from time to time be permitted under section 345 of the Bankruptcy Code; *provided* that the Trustee may, to the extent necessary to implement the provisions of the Plan and this Agreement, deposit moneys in demand deposits at any banking institution or trust company having combined capital stock and surplus in excess of \$100,000,000 based upon its most recently available audited financial

statements, regardless of whether such investments and deposits are insured. Such investments shall mature in such amounts and at such times as the Trustee, in his discretion, shall deem appropriate to provide funds when needed to transfer funds in accordance with the Plan, make payments to the Trust Account or make Distributions in accordance with this Agreement, the Plan and the Confirmation Order.

(a) Any investments made by the Trustee with Cash that is part of the Liquidation Trust Assets shall remain a part of the Liquidation Trust Assets. All interest and income received by the Trustee with respect to investments of the Liquidation Trust Assets shall constitute part of the Liquidation Trust Assets.

3.3 *Liquidation of Trust Property.* The Trustee shall liquidate the Trust property pursuant to the Plan and Confirmation Order.

3.4 *No Payment to the Debtors.* In no event shall the Trustee or the Trust distribute any Trust property to the Debtors.

3.5 *Distributions.*

(a) Trust Administration Expenses.

(1) The cost and expenses of the Trust, including, without limitation, the compensation to and reimbursement of expense to the Trustee and the fees, costs and expenses of all professionals retained by the Trustee in connection with the performance of the Trustee's duties in connection with this Agreement, shall be paid in full. Any funds remaining after completion of the Trustee's activities and full payment of all costs and expenses of the Trust including, without limitation, the fees, costs and expenses of the Trustee and the professionals retained by the Trustee, shall be paid to the Beneficiaries under the terms of the Plan and this Agreement.

(b) Payments /Order of Priority. The Trustee shall first pay any unpaid Allowed Administrative Claims and Allowed Priority Claims in accordance with the provisions of the Plan (provided that Allowed Professional Fees payable to professionals holding retainers shall first be satisfied from such retainers) before any distributions are made from the Trust to the Beneficiaries. A schedule of Trustee's fees is attached as Schedule B.

(c) Distributions to the Beneficiaries shall be made at the discretion of the Trustee from all net cash derived from the Liquidation Trust Assets, including all net cash income and all other cash received by the Trust in accordance with the terms of the Plan and Confirmation Order, after making due provision for the payment of the costs, expenses, contingent liabilities, amounts necessary to maintain the value of the Liquidation Trust Assets and claims of the Trust, and, if proceeds of the Trust are insufficient to pay a class of Beneficial Interests in full, then Distributions shall be pro rata based on the amount of the Beneficial Interest of a holder compared with the aggregate amount of Beneficial Interests outstanding, and shall be governed by the terms of the Plan and this Agreement.

(d) Disputed Claims. Any Distribution to a holder of a Disputed Unsecured Claim that has not been resolved by Final Order as of the Effective Date shall be made by the Trustee as soon as reasonably practicable when and if an order resolving such claim has been entered and has become a Final Order, and such Claim, if allowed, shall be treated as if it had been an Allowed Claim as of the Effective Date.

(e) Method of Payment. All amounts payable to a Beneficiary pursuant to this Agreement shall be paid by the Trustee to or for the benefit of such Beneficiary in the manner provided in the Plan.

### 3.6 *Undeliverable Distributions.*

Any Distribution of Cash under the Plan to the holder of an Allowed Claim which remains unclaimed for a period of ninety (90) days after it has been delivered (or attempted to be delivered) in accordance with the Plan shall be transferred to and become property of the Trust, notwithstanding state or other escheat or similar laws to the contrary, and any and all entitlement by the holder of such an Allowed Claim to such Distribution shall be extinguished and forever barred.

## **ARTICLE IV**

### **The Trustee**

4.1 *Standard of Care.* The Trustee shall exercise the rights and powers vested in it by this Agreement and use reasonable business judgment in such exercise. Subject to applicable law, the Trustee shall not be liable to the Trust or any Beneficiary for any act or omission by the Trustee while acting in good faith and in the exercise of his reasonable business judgment.

4.2 Neither the Liquidation Trustee, nor any director, officer, affiliate, employee, employer, professional, attorney, agent or representative of the Liquidation Trust shall be personally liable, in connection with affairs of the Liquidation Trust, to any claimholder or Beneficiary of the Liquidation Trust, or any other Person, except for such acts or omissions which shall constitute willful misconduct or gross negligence. Persons dealing with the Liquidation Trustee, or seeking to assert claims against the Liquidation Trust, shall look only to the Liquidation Trust Assets to satisfy any liability incurred by the Liquidation Trust, the Liquidation Trustee, or other Persons employed or retained by the Liquidation Trust to carry out the terms of the Plan, the Confirmation Order, and the Liquidation Trust Agreement. The Liquidation Trustee is entitled to rely upon and shall have no liability in relying upon the advice of professionals retained by the Liquidation Trust.

4.3 *Bond.* The Trustee shall not be required to provide any bond, surety or security for the performance of his duties hereunder.

4.4 *Duties of the Trustee.*

(a) The Trustee accepts the trust hereby created and agrees to perform his duties hereunder with respect to the same, but only upon the terms of this Agreement, the Plan and the Confirmation Order. No implied covenants or obligations shall be read into this Agreement. The Trustee shall not be personally liable under any circumstances, except (x) as provided in Article 4.2 or (y) for taxes, fees or other charges on, based on or measured by any fees, commission or compensation received by the Trustee in connection with the provision of his services hereunder. In particular, but not by way of limitation:

(i) The Trustee shall not be personally liable for any error of judgment that does not constitute gross negligence and that was made in good faith;

(ii) The Trustee shall not be required to take any action that (A) is inconsistent with the purpose of the Trust as set forth herein, or (B) would, to the actual knowledge of the Trustee result in the Trust becoming an association taxable as a corporation for federal income tax purposes;

(iii) No provision of this Agreement shall require the Trustee to expend or risk his personal funds, or otherwise incur any financial liability in the performance of his rights or powers hereunder, if the Trustee shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured or provided to him;

(iv) Under no circumstances shall the Trustee be personally liable for any indebtedness or obligation of the Trust; and

(v) The Trustee shall not be liable for the default or misconduct of any other party and shall not be liable for any act or omission taken at the direction of the Advisory Board.

(b) The Trustee shall be vested with the rights, power and benefits set forth herein, which shall include, without limitation, all rights, powers, and benefits afforded to a “trustee” under section 704 and 1106 of the Bankruptcy Code.

(c) The Trustee shall incur no liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper believed by it to be genuine and believed by it to be signed by the proper party or parties. The Trustee may accept a certified copy of a resolution of the board of directors or other governing body of any corporate party as conclusive evidence that such resolution has been duly adopted by such body and that the same is in full force and effect.

(d) In the exercise or administration of the trust hereunder, the Trustee (i) may act directly or, at the expense of the Trust, through agents or attorneys pursuant to agreements entered into with any of them, and the Trustee shall not be liable for the default or misconduct of such agents or attorneys if such agents or attorneys shall have been selected by the Trustee with reasonable care and with the approval of the Advisory Board, as applicable; and (ii) may, at the expense of the Trust, consult with such counsel, accountants and other skilled persons selected with reasonable care and employed by it with the approval of the Advisory Board, as applicable, and he shall not be liable for anything done, suffered or omitted in good faith by him in accordance with the advice or opinion of any such counsel, accountants or other skilled persons.

(e) Except as expressly provided herein, in accepting the trust hereby created the Trustee acts solely as trustee hereunder and not in his individual capacity, and all persons having



any claim against the Trustee by reason of the transactions contemplated by this Agreement shall look only to the Trust property for payment or satisfaction thereof.

(f) The Trustee agrees that he will not manage, control, use, sell, dispose of or otherwise deal with the Trust property except as expressly permitted or required by the terms of this Agreement, the Plan or the Confirmation Order.

(g) The Trustee shall be permitted to hire any professional that has been previously retained in this case. The Trustee shall compensate such professionals as an expense of the Trust without requiring the professionals to file applications for compensation. The professionals shall only be removed for cause.

(h) The Trustee shall file all tax returns and other filings with governmental authorities on behalf of the Trust and the Trust Assets it held for time periods ending on or before termination of the Trust. Subject to definitive guidance from the Internal Revenue Service or a court of competent jurisdiction to the contrary (including the issuance of applicable Treasury Regulations, the receipt by the Trustee of a private letter ruling if the Trustee so requests one, or the receipt of an adverse determination by the Internal Revenue Service upon audit if not contested by the Trustee), the Trustee shall file a tax return for the Trust as a grantor trust pursuant to Treasury Regulations Section 1.671-4(a). The Trustee's filing shall also include requests for determination of tax under Section 505(b) of the Bankruptcy Code (to the extent applicable) and responses to any tax audits. The Trustee shall make available such information to the Beneficiaries as will enable them to properly file their separate tax returns and withhold and pay over any amounts required by tax law.

(i) The Trustee is authorized to act as agent for the Trust in withholding or paying over any amounts required by any law (including tax law), regulation, rule, ruling, directive or

other governmental requirement to be withheld or paid by the Trust in connection with the transfer and assignment of the Liquidation Trust Assets to the Trust pursuant to the Plan. The Trustee is further entitled to deduct any United States federal or applicable state withholding taxes from further payments or distributions made with respect to Allowed Claims, as appropriate, and shall otherwise comply with Section 346 of the Bankruptcy Code.

(j) All net income of the Trust and net proceeds from the disposition of the Liquidation Trust Assets shall be subject to United States federal and applicable state income taxation in the year such net income or net proceeds are realized and taxable to the Trust whether or not such amounts are immediately distributed to the Beneficiaries.

(k) The Trustee shall not have any duty or obligation to manage, control, use, sell, dispose of or otherwise deal with the Trust or Liquidation Trust Assets or to otherwise take or refrain from taking any action under this Agreement except as expressly required by the terms hereof or as expressly provided in written instructions as provided herein, and no implied duties or obligations shall be read into this Agreement against the Trustee. The Trustee shall not be required to take any action under this Agreement unless the Trustee shall have been indemnified, in manner and form reasonably satisfactory to such Trustee, against any liability, cost or expense (including counsel fees and disbursements) which may be incurred in connection therewith. The Trustee shall not be required to take any action under this Agreement if the Trustee shall reasonably determine or shall have been advised by counsel that such action is contrary to the terms of this Agreement or is otherwise contrary to law.

(l) The Trustee may fully rely upon and shall have no liability in connection with calculations or instructions forwarded to the Trustee by the Advisory Board.

(m) If the Trustee determines, in the exercise of the Trustee's discretion, that he has a material conflict of interest with respect to any matter, the Advisory Board shall at their option and in their discretion shall either (i) exercise the Trustee's rights and authorities with respect to such matter, or (ii) designate a person to act on behalf of the Trust solely with respect to such matter with such designee's authority to act on behalf of the Trust to terminate upon the matter's conclusion. If neither the Trustee nor the Advisory Board are able to act on behalf of the Trust (and the Advisory Board are unable to appoint a designee to act on behalf of the Trust) with respect to any matter, the Trustee, after notice to the U.S. Trustee and the Advisory Board, may request the Bankruptcy Court to approve the Trustee's choice of a designee to act on behalf of the Trust solely with respect to such matter, with such designee's authority to act on behalf of the Trust to terminate upon the matter's conclusion.

(n) The Trustee may purchase errors and omissions insurance for himself with regard to any liabilities, losses, damages, claims, costs and expenses he may incur, including, without limitation, attorney's fees, arising out of or due to his actions or omissions, or consequences of such actions or omissions, other than as a result of his gross negligence or willful misconduct, with respect to the implementation and administration of the Plan and this Agreement.

(o) The Trustee shall not have any responsibility or liability for or with respect to the genuineness, value, sufficiency or validity of the Trust Assets.

(p) In no event whatsoever shall the Trustee be liable for any representation, warranty, covenant, agreement, indebtedness or other obligation of the Trust.

(q) The Trustee shall incur no liability if, by reason of any provision of any present or future law or regulation thereunder, or by any force majeure event, including but not limited to natural disaster, war or other circumstances beyond his control, the Trustee shall be prevented or

forbidden from doing or performing any act or thing which the terms of this Agreement provide shall or may be done or performed.

(r) The attorney-client privilege, work product doctrine or other privileges or immunities inuring to the benefit of the Debtors or attaching to documents or communications of the Debtors shall be transferred to the Trust. The Trustee is authorized to assert or waive any such privilege or doctrine, as necessary or appropriate for the administration of the Trust, provided that, to the extent any such privilege or doctrine is waived in connection with information requested of any professional previously employed by the Debtors, the Trustee agrees that such information request shall be made solely for the purpose of carrying out the Trustee's duties hereunder, that the Trustee shall act in good faith and shall use his best efforts to tailor as narrowly as possible any request so as not to be unduly invasive or burdensome to the professional upon whom the request is made, and that the restrictions set forth in this Agreement shall apply to such request.

(s) As soon as practicable, the Trustee shall move for the entry of a "final decree" and to close the Debtors' chapter 11 case, provided the case is not required to remain open to pursue and maintain any claim, objection or cause of action. The Trustee shall be responsible for filing all post-confirmation quarterly reports required by the US Trustee Operating Guidelines for chapter 11 cases and will pay all quarterly fees due to the United States Trustee.

4.5 *Compensation and Indemnity.* The Trustee shall be entitled to receive from the Trust compensation for his services hereunder, based on his firm's standard hourly rates for actual time spent, plus out of pocket expenses, which compensation shall not be limited by any provision of law in regard to compensation of a trustee of an express trust.

(a) With respect to the Trustee, the Trust shall (i) reimburse the Trustee for all reasonable expenses incurred by him in connection with the execution and performance of his rights and duties hereunder (including reasonable fees and expenses of counsel and other experts); (ii) indemnify, defend and hold harmless the Trustee (in both his individual and trustee capacities) and the officers, directors, employees and agents of the Trustee (collectively, including the Trustee in its individual capacity, the “Indemnified Persons”) from and against any and all losses, damages, liabilities, claims, actions, suits, costs, expenses, disbursements (including the reasonable fees and expenses of counsel), taxes and penalties of any kind and nature whatsoever, to the extent that such expenses arise out of or are imposed upon or asserted at any time against one or more Indemnified Persons with respect to the performance of this Agreement, the creation, operation, administration or termination of the Trust, or the transactions contemplated hereby (collectively, “Indemnified Expenses”); and (iii) advance to each Indemnified Person Indemnified Expenses (including reasonable legal fees) incurred by such Indemnified Person in defending any claim, demand, action, suit or proceeding, prior to the final disposition of such claim, demand, action, suit or proceeding, upon receipt by the Trust of a written request therefor and of an undertaking by or on behalf of the Indemnified Person to repay such amount if it shall ultimately be determined that the Indemnified Person is not entitled to be indemnified therefor under this Article IV; provided however, that notwithstanding anything in this Agreement to the contrary, the Trust shall not be required to reimburse the Trustee for any expenses, indemnify an Indemnified Person for Indemnified Expenses, or advance any Indemnified Expenses to an Indemnified Person, to the extent any such obligation arose or was the result of the bad faith, willful misconduct or gross negligence of such Indemnified Person as determined by a competent court of law.

(b) The Trustee and all professionals retained by the Trustee pursuant to this Agreement will be paid for their services and reimbursed for their expenses from the Trust by submitting a monthly statement describing with reasonable particularity the time expended and the nature, extent and value of the services provided during the period covered by such request to the Trustee. The Trustee shall have until the tenth calendar day after the submission of the statement to review it. If the Trustee does not object, 100% of the fees and 100% of the disbursements identified in each statement shall be paid.

4.6 *Tenure, Resignation, Removal and Replacement of Trustee.*

The authority of the Trustee shall be effective as of the Effective Date and shall remain in full force and effect, with respect to the Trustee, until all distributions have been made to the Beneficiaries.

(a) The Trustee may resign and be discharged by the Trust created by this Agreement upon not less than 30 days' prior written notice to the Advisory Board. The Trustee shall only be removed from his position for cause or breach of fiduciary duty. Upon receiving notice of resignation, the Advisory Board, as the case may be, shall use their best efforts promptly to appoint a successor Trustee by written instrument or instruments delivered to such resigning Trustee and the successor Trustee. Any resignation or removal of a Trustee and appointment of a successor Trustee shall become effective only upon acceptance of the appointment by the successor Trustee. If no successor Trustee shall have been appointed within 30 days after notice of such resignation or removal has been delivered, the Trustee may apply to the Bankruptcy Court for the appointment of a successor Trustee, and the Bankruptcy Court may, after such notice (if any) as it may deem proper, appoint a successor Trustee.

(b) In the event of the death or incapacity of a Trustee, the Advisory Board shall appoint a successor Trustee by written instrument delivered to the successor Trustee.

(c) No successor Trustee shall be in any way responsible or liable for the acts or omissions of any predecessor Trustee.

## **ARTICLE V**

### **Reports to Beneficiaries**

5.1 *Reports to Beneficiaries.* Approximately 120 days following the Effective Date, the Trustee shall serve on the Advisory Board, a status report and a summary financial update explaining what progress has been made toward entry of the Final Decree. Until entry of the Final Decree, further status reports shall be filed annually and served on the Advisory Board. Each status report shall generally include a description of assets sold or otherwise realized upon during the relevant period, gross and net proceeds received, Distributions and payments made, expenses incurred and paid, and cash on hand, as well as a summary of claims objections and the status of all contested matters and litigation.

## **ARTICLE VI**

### **Termination of Trust**

6.1 *Termination of Trust.* This Agreement shall terminate and the Trust shall dissolve and terminate and be of no further force or effect upon the earlier to occur of (i) the final distribution of all monies and other Trust property in accordance with the terms of this Agreement, the Plan and the Confirmation Order, or (ii) five (5) years after the Effective Date unless the Bankruptcy Court approves an extension upon a finding that such an extension is necessary for the Trust to complete its claims resolution and liquidating purpose.

(a) The bankruptcy, liquidation, dissolution, death or incapacity of any Beneficiary shall not (i) operate to terminate this Agreement or the Trust, (ii) entitle such Beneficiary's legal

representatives or heirs to claim an accounting or to take any action or proceeding in any court for a partition or winding up of all or any part of the Trust or the Liquidation Trust Assets or (iii) otherwise affect the rights, obligations and liabilities of the parties hereto.

(b) No Beneficiary shall be entitled to revoke or terminate the Trust.

(c) After the termination of the Trust and for the purpose of liquidating and winding up the affairs of the Trust, the Trustee shall continue to act as such until his duties have been fully performed. Upon distribution of the Trust Assets, and unless ordered otherwise by the Bankruptcy Court, the Trustee shall retain for a period of two (2) years the books, records, Beneficiary lists and certificates and other documents and files which shall have been delivered to or created by the Trustee. All of such records and documents may, but need not, be destroyed at any time after one (1) year from the completion and winding up of the affairs of the Trust. Except as otherwise specifically provided herein, upon the discharge of all liabilities of the Trust and final distribution of the Trust Assets, the Trustee shall have no further duties or obligations hereunder. Upon motion by the Trustee, the Bankruptcy Court may enter an order relieving the Trustee, his agents and employees and the Advisory Board, its agents and employees of any further duties.

## **ARTICLE VII**

### **Advisory Board**

7.1 On the Effective Date, members of the Creditors Committee who elect to serve on the Advisory Board shall commence serving as the Trust's Advisory Board. The identity of each Committee member who has elected to serve on the Advisory Board is set forth on Schedule A attached hereto. The Advisory Board shall have general oversight powers for the activities of the Trustee as well as those specific rights and powers set forth in other provisions of this Agreement and under the Plan.



7.2 Meetings of the Advisory Board are to be held with such frequency and at such place as the Trustee and the members may determine in their reasonable discretion. Special meetings of the Advisory Board may be held whenever and wherever called for by the Trustee or any two members.

7.3 Unless otherwise specified herein, all other rules of decorum and procedure governing the Advisory Board shall be identical those rules of decorum and procedure governing the Committee as set forth in the By-laws of the Committee (which are incorporated herein by referenced as if fully set forth herein).

7.4 The authority of the Advisory Board will be effective as of the Effective Date and will remain and continue in full force and effect until the Trust is terminated in accordance with this Agreement or applicable law. The members will serve until death, resignation or removal pursuant to this Agreement or applicable law.

7.5 A member may resign by giving not less than thirty (30) days' prior written notice thereof to the Trustee and the other members. Such resignation shall become effective on the later to occur of: (i) the day specified in such notice; and (ii) the appointment of a successor in accordance with this Agreement.

7.6 A member may be removed by the unanimous vote of the other members, written resolution of which shall be delivered to the removed member; provided, however that such removal may only be made for Cause.

7.7 None of the members of the Advisory Board shall incur any liability for any act or omission in his capacity as a member of the Advisory Board answerable or accountable under any circumstances, except for the willful misconduct or gross negligence.

7.8 With respect to the Advisory Board, the Trust shall indemnify, defend and hold harmless the Advisory Board (in their capacities as individuals and as members of the Advisory Board) and the officers, directors, employees and agents of each of such Advisory Board (collectively, the “Indemnified Advisory Board Members”) from and against any and all losses, damages, liabilities, claims, actions, suite, costs, expenses, disbursements (including the reasonable fees and expenses of counsel), taxes and penalties of any kind and nature whatsoever, to the extent that such expenses arise out of or are imposed upon or asserted at any time against one or more Indemnified Advisory Board Members with respect to the performance of this Agreement, the creation, operation, administration or termination of the Trust, or the transaction contemplated hereby (collectively, “Indemnified Member Expenses”); and (iii) advance to each Indemnified Advisory Board Members Indemnified Members Expenses (including reasonable legal fees) incurred by such Indemnified Advisory Board Members in defending any claim, demand, action, suit or proceeding, prior to the final disposition of such claim, demand, action, suite or proceeding, upon receipt by the Trust of a written request therefore and of an undertaking by or on behalf of the Indemnified Advisory Board Members to repay such amount if it shall ultimately be determined that the Indemnified Advisory Board Members are not entitled to be indemnified therefore under this Article; provided however, that notwithstanding anything in this Agreement to the contrary, the Trust shall not be required to reimburse any Advisory Board Members for any expenses, indemnify an Indemnified Advisory Board Members for Indemnified Member Expenses, or advance any Indemnified Member Expenses to an Indemnified Advisory Board Member, to the extent any such obligation arose or was the result of the bad faith, willful misconduct or gross negligence of such Indemnified Advisory Board Member.

7.9 It is expressly acknowledged that the Advisory Board and the Trustee share a joint interest in the successful prosecution of the Causes of Action and entry into an arrangement to share information based upon such joint interest will be deemed sufficient to preserve and protect privilege.

## **ARTICLE VIII**

### **Amendment**

8.1 *Method of Amendment.* This Agreement may only be amended by written instrument executed by the Trustee and approved by the Bankruptcy Court if such amendment materially affects the Trust generally.

8.2 Promptly after the execution of any amendment to the Certificate of Trust, the Trustee shall cause the filing of such amendment with the Delaware Secretary of State in accordance with Section 3810 of the Act.

## **ARTICLE IX**

### **Miscellaneous Provisions**

9.1 *Intention of Parties to Establish Trust.* This Agreement is not intended to create, and shall not be interpreted as creating, an association, partnership or joint venture of any kind. It is intended as a trust to be governed and construed in all respects as a trust.

9.2 *Filing Documents.* A copy of this Agreement and all amendments thereof shall be filed in an office or residence of the Trustee and shall be available at all times for inspection by the Beneficiaries or their duly authorized representative.

9.3 *Governing Law.* THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS, AND THE OBLIGATIONS,

RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

9.4 *Separability.* In the event any provision of this Agreement or the application thereof to any person or circumstances shall be finally determined by a court of proper jurisdiction to be invalid or unenforceable to any extent, the remainder of this 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 each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

9.5 *Notices.* Unless otherwise expressly specified or permitted by the terms hereof, all notices shall be in writing and shall be deemed given upon receipt by the intended recipient or three Business Days after mailing if mailed by certified mail, postage prepaid, if to the Trustee, addressed to \_\_\_\_\_ with copies to Joanne B. Wills, at Klehr Harrison Harvey Branzburg LLP, 919 Market Street, Suite 1000, Wilmington, DE 19801-3062.

9.6 *Further Assurances.* Each party hereto (and his respective successors and assigns) shall, upon any Trustee's reasonable request, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further instruments, and do or cause to be done, such further acts, as may be necessary to carry out the purposes of this Agreement and to vest in the Trustee the powers and duties contemplated hereunder.

9.7 *Exculpatory Provisions and Survival Thereof.* Whether or not expressly provided, any and all exculpatory provisions, immunities and indemnities, and any limitations and negations of liability contained in this Agreement, in each case inuring to the benefit of the Trustee, shall survive (i) the termination or revocation of this Agreement, and (ii) as to any person who has served as Trustee, the resignation or removal of such person as Trustee.

9.8 *Separate Counterparts.* This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

9.9 *Successors and Assigns.* All covenants and agreements contained herein shall, as applicable, be binding upon, and inure to the benefit of, each of the Beneficiaries and its permitted assignees, the Trustee and his successors and the Debtors and its successors, all as herein provided.

9.10 *Headings.* The headings of the various Articles and Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

9.11 *Books and Records.* On the date hereof, the Debtors shall transfer to the Trust all of the books and records of the Debtors in the Debtors' possession, and shall instruct any third parties or professionals possessing such books and records (including computer generated or computer maintained books, records and data, legal and accounting files maintained by any professional of the Debtors and other of the Debtors' books and records maintained by or in the possession of third parties), to turn over or permit access to (at the election of the party to whom the request is made) such books and records as may be reasonably requested by the Trustee, provided that the Trustee shall only request such books and records or access thereto to the extent reasonably necessary to the Trustee's performance of his duties hereunder, provided further that the out of pocket expenses of complying with any such request shall not be borne by the party upon whom the request is made, absent agreement to the contrary.

9.12 *Tax Identification Numbers.* The Trustee may require any Beneficiary to furnish (i) its employer or taxpayer identification number as assigned by the Internal Revenue Service, and (ii) such other information, records or documents necessary to satisfy the Trustee's tax

reporting obligations (including certificates of non-foreign status). The Trustee may condition the payment of any distribution to any Beneficiary upon receipt of such identification number and requested documents.

9.13 *Jurisdiction.* Notwithstanding the Effective Date and to the fullest extent permitted by the law, the Bankruptcy Court shall retain exclusive jurisdiction over the Trust after the Effective Date, including, without limitation, jurisdiction to resolve any and all controversies, suite and issues that may arise in connection therewith, including, without limitation, this Agreement, or any entity's obligations incurred in connection herewith, including without limitation, any action against the Trustee or any professional retained by the Trustee or the Trust, in each case in its capacity as such. Each party to this Trust Agreement hereby irrevocably consents to the exclusive jurisdiction of the Bankruptcy Court in any action to enforce, interpret or construe any provision of this Agreement or of any other agreement or document delivered in connection with this Agreement, and also hereby irrevocably waives any defense of improper venue, forum non conveniens or lack of personal jurisdiction to any such action brought in the Bankruptcy Court. Each party further irrevocably agrees that (i) any action to enforce, interpret or construe any provision of this Agreement will be brought only in the Bankruptcy Court and (ii) all determinations, decisions, rulings and holdings of the Bankruptcy Court shall be final and non-appealable and not subject to reargument or reconsideration. Each party hereby irrevocable consents to the service by certified or registered mail, return receipt requested, to be sent to its address set forth in this Agreement may designate from time to time by notice give in the manner provided above, of any process in any action to enforce, interpret or construe any provision of this Agreement.

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

Dated: February \_\_\_\_, 2010

**ALSET OWNERS, LLC, ALTES, LLC, SETLA,  
LLC AND CHECKERS MICHIGAN, LLC**

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

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

\_\_\_\_\_, LIQUIDATION TRUSTEE

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

Title: \_\_\_\_\_

**SCHEDULE A**  
**ADVISORY BOARD**



**SCHEDULE B**  
**TRUSTEE'S FEES**