

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

In re

Morgan Administration, Inc., *et al.* d/b/a Home Owners Bargain Outlet,¹

Debtors and Debtors in Possession.

Chapter 11

Case No. 18-30039

(Jointly administered)

Honorable Jacqueline P. Cox

JOINT CHAPTER 11 LIQUIDATING PLAN

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¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Morgan Administration, Inc. (4200); Belvidere Associates LLC (8559); FP Retail Associates LLC (0915); Hillcrest Enterprises, LLC (4581); Jular Media LLC (0805); KLS Acquisition Corp. (0925); Loomis Enterprises LLC (5451); North Avenue Associates LLC (3229); Oak Creek Distribution LLC (0634); OL Enterprises LLC (9401); and Deforab LLC (9348).

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JOINT CHAPTER 11 LIQUIDATING PLAN

MORGAN ADMINISTRATION, INC., BELVIDERE ASSOCIATES LLC, FP RETAIL ASSOCIATES LLC, ENTERPRISES, LLC, JULAR MEDIA LLC, KLS ACQUISITION CORP., LOOMIS ENTERPRISES LLC, NORTH AVENUE ASSOCIATES LLC, OAK CREEK DISTRIBUTION LLC, OL ENTERPRISES LLC, and DEFORAB LLC (collectively d/b/a Home Owners Bargain Outlet), the debtors and debtors-in-possession in the above-captioned bankruptcy cases (collectively, the “**Debtors**”), and the Official Committee of Unsecured Creditors (the “**Committee**”), through their respective undersigned counsel, propose the following Chapter 11 Liquidating Plan (along with any amendments, supplements and exhibits hereto, collectively, the “**Plan**”) pursuant to section 1121(a) of the Bankruptcy Code for resolution of all Claims against and Interests in the Debtors and their Estates.

The Disclosure Statement, which accompanies the Plan, discusses the Debtors’ history, businesses, and Chapter 11 Cases. It also provides estimates of the distributions of the Debtors’ remaining assets to creditors and contains a summary and discussion of the Plan. Holders of Claims are encouraged to read the Disclosure Statement before voting to accept or reject the Plan.

Following solicitation of acceptances for the Plan, the Debtors will seek the Bankruptcy Court’s Confirmation of the Plan. No solicitation materials other than the Disclosure Statement and any schedules, exhibits or other documents attached thereto or referenced therein have been authorized by the Debtors or the Bankruptcy Court for use in soliciting acceptances or rejections of the Plan.

I. DEFINITIONS AND RULES OF CONSTRUCTION

A. Defined Terms

As used herein, the following terms have the respective meanings specified below (such meanings to be equally applicable to both the singular and plural, and masculine and feminine forms of the terms defined).

1. “**Administrative Expense**” means any cost or expense of administration of the Chapter 11 Cases under sections 503(b) and 507(a)(2) of the Bankruptcy Code, including, without limitation, any actual and necessary post-Petition Date expenses of preserving the Estates, any actual and necessary post-Petition Date expenses of administering the Estates, all Professional Fee Claims to the extent allowed by the Bankruptcy Court under sections 330, 331, 363 or 503 of the Bankruptcy Code, and any fees or charges assessed against the Estates under section 1930 of title 28 of the United States Code.

2. “**Administrative Expense and Priority Claim Bar Date**” means the applicable date on which an Administrative Expense Claim, including but not limited to any Claim under section 503(b)(9) of the Bankruptcy Code, a Class 1 Employee PTO Priority Claim, or a Class 2 Employee Health Care Priority Claim must be filed, as established by Section VIII.B. of the Plan.

3. “**Allowed**” means with respect to any Claim or Interest: (i) a Claim or -Interest that is evidenced by a proof of Claim or proof of Interest, as applicable, filed by the applicable Claims Bar Date (or for which Claim or Interest under the Plan, the Bankruptcy Code, or a Final Order of the

Bankruptcy Court, a proof of Claim is not required to be filed); (ii) that has been listed by the Debtors in the Schedules as liquidated in amount and not disputed or contingent, and with respect to which no contrary proof of Claim or proof of Interest has been Filed; or (iii) a Claim or Interest allowed pursuant to the Plan or a Final Order of the Bankruptcy Court. However, with respect to a Claim or Interest described in clauses (i) and (ii) above, such Claim or Interest shall be considered Allowed only if and to the extent that with respect to such Claim or Interest no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim or Interest shall have been Allowed for voting purposes only by a Final Order. Any Claim or Interest that has been or is hereafter listed in the Schedules as contingent, unliquidated, or disputed, and for which no proof of Claim or proof of Interest is or has been timely filed shall be expunged on the Effective Date without further action by the Debtors and without further notice to any party or action, approval, or order of the Bankruptcy Court. Any portion of a Claim that is satisfied or released during the Chapter 11 Cases is not an Allowed Claim.

4. “**Allowed Class __ Claim**” means an Allowed Claim in the Class specified.

5. “**Assets**” means all assets of the Debtors’ Estates including “property of the estate” as described in section 541 of the Bankruptcy Code and shall, without limitation, include Cash, Estate Causes of Action, any and all claims and causes of action that may be asserted by the Debtors against any third party or third parties, proceeds of insurance and Insurance Policies, all rights and interests, all personal property, and all files, books and records of the Debtors’ Estates.

6. “**Avoidance Action**” means any claim or right under the following: sections 542, 544, 545, 547, 548, 549, 550, 551 and 553(b) of the Bankruptcy Code; all prevailing fraudulent conveyance and fraudulent transfer laws; all non-bankruptcy laws vesting in creditors’ rights to avoid, rescind, or recover on account of transfers, including, but not limited to, claims relating to illegal dividends; all preference laws; the Uniform Fraudulent Transfer Act, 740 ILCS 160/1, *et seq.*, and Wis. Stat. Ann. §§ 242.01, *et seq.*; and any other applicable federal, state, or common law, including fraudulent transfers, whether or not litigation has been commenced with respect to such Estate Causes of Action as of the Effective Date.

7. “**Ballot**” means the ballot upon which Holders of Impaired Claims shall indicate their acceptance or rejection of the Plan in accordance with the Plan and the Voting Instructions.

8. “**Bankruptcy Code**” means title 11 of the United States Code, 11 U.S.C. §§ 101, *et sec.*, as amended.

9. “**Bankruptcy Court**” means the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division or, in the event such court ceases to exercise jurisdiction over the Chapter 11 Cases, such other court that exercises jurisdiction over the Chapter 11 Cases.

10. “**Bankruptcy Rules**” means, collectively, (i) the Federal Rules of Bankruptcy Procedure, as amended from time to time, as applicable to the Chapter 11 Cases, and (ii) the Local Bankruptcy Rules applicable to cases pending before the Bankruptcy Court, as now in effect or hereafter amended.

11. “**Bar Date Order**” means the order entered by the Bankruptcy Court on December 7, 2018 [Dkt. No. 143], setting the Claims Bar Date and the Governmental Unit Bar Date.

12. “**Beneficiaries**” means the Holders of Allowed Claims, who are the beneficiaries of the Creditor Trust.

13. “**Business Day**” means any day that is not a Saturday, a Sunday, or a “legal holiday” as defined in Bankruptcy Rule 9006(a).

14. “**Cash**” means cash or cash equivalents.

15. “**Chapter 11 Cases**” means the cases under chapter 11 of the Bankruptcy Code, commenced by the Debtors on the Petition Date in the Bankruptcy Court, jointly administered as “*In re Morgan Administration, Inc.*” and assigned lead Case No. 18-30039.

16. “**Claim**” means (i) any right to payment from the Debtors’ Estates, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured, or (ii) any right to an equitable remedy for breach of performance if such breach gives rise to a right of payment from the Debtors’ Estates, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

17. “**Claims Agent**” means BMC Group, which was appointed as the Debtors’ claims, notice, and balloting agent.

18. “**Claims Bar Date**” means January 28, 2019, which is the general deadline set pursuant to the Bar Date Order for filing proofs of claim for any Claims against the Debtors that arose prior to the Petition Date.

19. “**Class**” means one of the Classes of Claims or Interests designated in the Plan.

20. “**Committee**” means the Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases on November 5, 2018, pursuant to section 1102 of the Bankruptcy Code.

21. “**Conditions Precedent**” shall have the meaning ascribed to such term in Section VI.A of the Plan.

22. “**Confirmation**” means the entry of the Final Order by the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

23. “**Confirmation Date**” means the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order on its docket.

24. “**Confirmation Hearing**” means, collectively, the hearing or hearings held by the Bankruptcy Court on Confirmation of the Plan, as such hearing or hearings may be continued from time to time.

25. “**Confirmation Order**” means the order of the Bankruptcy Court confirming the Plan in accordance with the provisions of chapter 11 of the Bankruptcy Code.

26. “**Creditor**” means all creditors of the Debtors holding Claims for debts, liabilities, demands or other Claims of any character whatsoever.

27. “**Creditor Trust**” means a common law trust to be established pursuant to the Plan, the Creditor Trust Agreement and the Confirmation Order for the sole and exclusive benefit of the Holders of Allowed Claims. The Creditor Trust shall liquidate and distribute the Creditor Trust Assets, in accordance with the Creditor Trust Agreement.

28. “**Creditor Trust Agreement**” means the agreement to be executed as soon as reasonably practicable after the Confirmation Date among the Debtors, the Committee and the Creditor Trustee, which shall govern the obligations of the Creditor Trustee with respect to oversight of the Distribution of the Net Proceeds of the Creditor Trust Assets, as further set forth in the Creditor Trust Agreement and the Plan.

29. “**Creditor Trust Assets**” means the Assets to be transferred to and vested in the Creditor Trust pursuant to this Plan and the Confirmation Order, plus all proceeds, earnings and replacements arising from or relating to those Creditor Trust Assets and all assets acquired by the Creditor Trust at any time. The Creditor Trust Assets shall include (but not be limited to): (i) all Cash held by the Debtors; (ii) any remaining personal property owned by the Debtors as of the Effective Date; (iii) all Estate Causes of Action, including the Avoidance Actions and any pending proceedings initiated by the Committee pursuant to Bankruptcy Rule 2004; (iv) the Insurance Policies; and (v) the Net Proceeds.

30. “**Creditor Trustee**” means the Person or entity, including any replacements thereof or successors thereto, as may be designated by the Committee at least twenty-one (21) days in advance of the Confirmation Hearing, and approved by the Bankruptcy Court, as necessary or appropriate to serve as custodian for the Creditor Trust and to oversee the liquidation and Distribution of the Creditor Trust Assets held therein for the benefit of the holders of Allowed Claims, pursuant to the Plan, the Confirmation Order and the Creditor Trust Agreement.

31. “**Disallowed Claim**” means a Claim or any portion thereof that (i) has been disallowed by agreement with the Creditor, (ii) has been disallowed by Final Order, (iii) is listed in the Schedules in an unknown amount, as zero, as contingent, disputed, or unliquidated, or is not listed in the Schedules, and as to which no proof of Claim or Administrative Expense Claim has been Filed, or (iv) has been withdrawn by the applicable Creditor.

32. “**Disclosure Statement**” means that certain document entitled “Disclosure Statement in Support of the Joint Chapter 11 Liquidating Plan” filed in the Chapter 11 Cases, including the exhibits attached thereto, either in its present form or as it may be amended, modified or supplemented from time to time.

33. “**Disputed Claim**” means any Claim (i) which is listed in any of the Schedules of the Debtors as unliquidated, disputed, contingent, and/or unknown and for which no proof of Claim has been filed; (ii) as to which a proof of Claim has been filed and the dollar amount of such Claim is not specified in a fixed amount; or (iii) as to which the Debtors, Creditor Trustee or any other party in

interest have interposed a timely objection or request for estimation in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Plan and/or any order of the Bankruptcy Court, which objection or request for estimation has not been withdrawn or determined by a Final Order.

34. **“Distribution(s)”** means any transfer under the Plan of Cash or other property or instruments to a Holder of an Allowed Claim.

35. **“Effective Date”** means the date selected by the Plan Proponents which is a Business Day after the Confirmation Order on which: (i) no stay of the Confirmation Order is in effect, and (ii) all conditions specified in Section VI.A. of the Plan have been satisfied, unless waived by the Plan Proponents.

36. **“Employee Health Care Priority Claim”** means any Claim held by a former employee of the Debtors against the Debtors for obligations under the Paradigm Healthcare Plan to the extent such claim is entitled to priority under section 507(a)(5) of the Bankruptcy Code.

37. **“Employee PTO Priority Claim”** means a claim for accrued, unpaid “paid time off” (“PTO”) on the books and records of the Debtors as of December 31, 2018, to the extent such claim is entitled to priority under section 507(a)(4) of the Bankruptcy Code.

38. **“Estate Cause of Action”** shall mean any and all manner of causes of action, claims, obligations, suits, debts, judgments, demands, rights of offset or recoupment, damages (actual, compensatory or punitive), counterclaims or affirmative defenses, whatsoever, whether in law or in equity of the Debtors and Estates, whether asserted or could be asserted by the Debtors, the Committee or any other Person on behalf of the Estates, including, but not limited to, Avoidance Actions and any and all claims against the Debtors’ pre-Petition Date managers, officers, directors, employees and/or agents of the Debtors (except as such claims may be subject to release or exculpation under Section V.A.-B. of the Plan).

39. **“Estates”** shall mean the estates created under section 541(a) of the Bankruptcy Code on the Petition Date.

40. **“Exculpated Parties”** means the following: (i) Michael Goldman, (ii) Sugar Felsenthal Grais & Helsing LLP, (iii) KCP Advisory Group, LLC, (iv) BMC Group, Inc., (v) Fuel Break Capital Partners LLC, and (vi) Freeborn & Peters LLP, and each of their respective members, directors, officers, agents, employees and professionals.

41. **“File,” “Filed,” “Files,” or “Filing”** means any document(s) properly and timely filed with the Bankruptcy Court in the Chapter 11 Cases, as reflected on the official docket of the Bankruptcy Court for the Chapter 11 Cases, and served on parties, as and to the extent that such filing and service are required pursuant to the Bankruptcy Code, Bankruptcy Rules and/or order of the Bankruptcy Court.

42. **“Final Distribution Date”** means the date of the last payment to Holders of Allowed Claims in accordance with the provisions of the Plan.

43. **“Final Order”** means an order or judgment of the Bankruptcy Court or other applicable court as to which the time to appeal, petition for certiorari, or move for reargument or

rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing shall then be pending; or as to which any right to appeal, reargue, rehear, or petition for certiorari shall have been waived in writing in form and substance satisfactory to the Plan Proponents prior to the Effective Date, or the Creditor Trustee after the Effective Date, or, in the event that an appeal, writ of certiorari, reargument or rehearing thereof has been sought, such order or judgment of the Bankruptcy Court or other applicable court shall have been affirmed by the highest court to which such order or judgment was appealed or from which reargument or rehearing was sought, or certiorari shall have been denied, and the time to take any further appeal, petition for certiorari or move for reargument or rehearing shall have expired.

44. “**General Unsecured Claim**” means any Claim that is not an Administrative Expense Claim, Priority Tax Claim, a Claim classified in Classes 1 through 4, or an Interest in the Debtors. General Unsecured Claims include, without limitation, Rejection Damage Claims.

45. “**Governmental Unit Bar Date**” means April 23, 2019, which is the deadline set pursuant to the Bar Date Order for filing proofs of Claim on behalf of any governmental unit, as defined in section 101(27) of the Bankruptcy Code, for any Claims against the Debtors that arose prior to the Petition Date.

46. “**Holder**” means the owner of a Claim or Interest.

47. “**Impaired**” has the meaning set forth in section 1124 of the Bankruptcy Code.

48. “**Insurance Policies**” mean any insurance policies under which the Debtors may be a beneficiary, including all insurance policies that may have expired prior to the Petition Date, all insurance policies in existence on the Petition Date, all insurance policies entered into by the Debtors after the Petition Date, and all insurance policies under which the Debtors hold rights to make, amend, prosecute and benefit from claims.

49. “**Intercompany Claim**” means any and all Claims of any one Debtor against any one or more of another Debtor.

50. “**Interests**” means any equity interest in the Debtors, including, without limitation, the membership interest(s) in the Debtors held directly or indirectly by Julie M. Traub, Kathleen M. Schmidt as Trustee of the Kathleen M. Schmidt Trust dated 1/20/98, Laura S. Werner, and Leo G. Schmidt as Trustee of the Leo G. Schmidt Trust dated 1/20/98.

51. “**Lien**” has the meaning set forth in section 101(37) of the Bankruptcy Code.

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

53. “**Paradigm Health Plan**” means the health and welfare benefits plan provided by the Debtors to employees between November 1, 2017 and October 31, 2018.

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

55. “**Petition Date**” means October 25, 2018, the date on which the Debtors filed their voluntary petitions commencing the Chapter 11 Cases.

56. “**Plan**” means this chapter 11 liquidating plan, including all exhibits hereto, either in their present form or as they may be altered, amended, or modified from time to time.

57. “**Plan Objection Deadline**” means the deadline established by the Bankruptcy Court for filing and serving objections to Confirmation of the Plan.

58. “**Plan Proponents**” means the Debtors and the Committee.

59. “**Post-Effective Date Notice Party**” has the meaning set forth in Section VIII.J. of this Plan.

60. “**Priority Claim**” means any Claim, other than an Administrative Expense Claim or a Priority Tax Claim, to the extent entitled to priority under section 507(a) of the Bankruptcy Code.

61. “**Priority Tax Claim**” means a Claim of a governmental unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

62. “**Professional Fee Claim**” means Claims of Professionals for compensation for services rendered in these Chapter 11 Cases pursuant to sections 327, 328, 330, 331, 363, 503 or 1103 of the Bankruptcy Code

63. “**Professionals**” means Persons, including attorneys, accountants and financial advisors retained by the Debtors, the Committee or the Creditor Trustee, or to be compensated pursuant to sections 327, 328, 330, 331, 363, 503 or 1103 of the Bankruptcy Code.

64. “**Pro Rata**,” “**Pro Rata Share**,” and “**Pro Rata Basis**” means, at any time, the proportion that the face amount of a Claim in a particular Class bears to the aggregate face amount of all Claims (including Disputed Claims, but excluding Disallowed Claims) in such Class; and “face amount,” as used herein, means (i) when used in reference to a Disputed Claim, the full stated liquidated amount claimed by the Holder of the Claim in any proof of Claim timely filed with the Bankruptcy Court or otherwise deemed timely filed by any Final Order of the Bankruptcy Court or other applicable bankruptcy law; and (ii) when used in reference to an Allowed Claim, the allowed amount of such Claim.

65. “**Quarterly Reports**” means the periodic reports required by this Plan to be filed with the Bankruptcy Court.

66. “**Rejection Damage Claim**” means a Claim for any obligations or damages arising under an unexpired real-property or personal-property lease or executory contract that the Estates reject under section 365 of the Bankruptcy Code or pursuant to the terms of this Plan.

67. “**Released Parties**” shall have the same meaning as the Exculpated Parties.

68. “**Schedules**” means the schedules of assets and liabilities, list of equity security holders, and statement of financial affairs filed by the Debtors as required by section 521(a)(1) of the Bankruptcy Code, Bankruptcy Rules 1007(a)(1) and (3) and (b)(1), and Official Bankruptcy Form Nos. 6 and 7, as amended from time to time.

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

70. “**Secured Creditor**” means the Holder of a Secured Claim.

71. “**Substantive Consolidation Order**” means the order, or provision of the Confirmation Order, substantively consolidating the Chapter 11 Cases as provided in Section IV.A. of the Plan.

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

73. “**Unimpaired**” means with respect to a Claim or a Class, a Claim or Class that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

74. “**Voting Deadline**” means 4:00 p.m. (prevailing Pacific Time) on the date established by order of the Bankruptcy Court for receipt of Ballots voting to accept or reject the Plan.

75. “**Voting Instructions**” means the instructions provided in Section III.E. of the Plan with respect to voting to accept or reject the Plan.

B. Rules of Interpretation and Computation of Time.

For purposes of the Plan, unless otherwise provided: (i) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, will include both the singular and the plural; (ii) any reference to any entity as a Holder of a Claim or Interest includes the entity’s successors and assigns; (iii) captions and headings to articles and sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (iv) the rules of construction set forth in section 102 of the Bankruptcy Code will apply; and (v) in computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) will apply.

II. CLASSIFICATION AND TREATMENT OF CLAIMS

A. General Overview

The chart below summarizes the Classes of Claims and Interests for all purposes, including voting, confirmation, and distribution purposes pursuant to the Plan.

Class	Status	Voting Rights
Class 1 – Employee PTO Priority Claims	Unimpaired	Not Entitled to Vote
Class 2 – Employee Health Care Priority Claims	Unimpaired	Not Entitled to Vote
Class 3 – Priority Claims	Unimpaired	Not Entitled to Vote
Class 4 – Secured Claims	Unimpaired	Not Entitled to Vote
Class 5 – General Unsecured Claims	Impaired	Entitled to Vote
Class 6 – Interests	Impaired	Not Entitled to Vote

B. Unclassified Claims

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims and Priority Tax Claims have not been classified. Holders of such Claims are not entitled to vote on the Plan. All such Claims are instead treated separately in accordance herewith and in accordance with the requirements set forth in section 1129(a)(9) of the Bankruptcy Code.

1. Administrative Expense Claims

Subject to the allowance procedures and deadlines provided herein, the Creditor Trustee shall pay to each Holder of an Allowed Administrative Expense Claim, on account of the Allowed Administrative Expense Claim, and in full satisfaction thereof, Cash equal to the amount of such Allowed Administrative Expense Claim, unless the Holder agrees to other treatment. Except as otherwise provided herein or in a prior order of the Bankruptcy Court: (i) payment of an

Administrative Expense Claim that is an Allowed Claim as of the Effective Date shall be made on the later of the Effective Date or the date such payment would have become due for payment of such Allowed Administrative Expense Claim in the absence of the Chapter 11 Cases, whether pursuant to contract or applicable non-bankruptcy law; and (ii) payment of an Administrative Expense Claim that becomes an Allowed Claim following the Effective Date shall be made on or before the date that is thirty (30) days after an order deeming such Administrative Expense Claim an Allowed Claim becomes a Final Order. Any person or entity asserting to be a Holder of an Administrative Expense Claim, including for final allowance of Professional Fee Claims, shall have the time period set forth in Section VIII.B. of the Plan in which to file requests for payment of such Claims in the Chapter 11 Cases.

2. Priority Tax Claims

Except as otherwise agreed to by the parties, or ordered by the Bankruptcy Court, as soon as practicable after the Effective Date, each holder of an unpaid Allowed Priority Tax Claim shall receive payment in full in an amount equal to the Allowed Priority Tax Claim.

Except as otherwise provided in section 503(b)(1)(D) of the Bankruptcy Code and 28 U.S.C. § 960, all requests for payment of Claims by a governmental unit (as defined under section 101(27) of the Bankruptcy Code) for taxes (and for interest and/or penalties related to such taxes) for any tax year or period, all or any portion of which occurs or falls within the period from and including the Petition Date through and including the Effective Date must be Filed with the Bankruptcy Court on or before the Governmental Unit Bar Date.

Except as otherwise provided in section 503(b)(1)(D) of the Bankruptcy Code and 28 U.S.C. § 960, any Holder of a Claim for taxes which does not File such a Claim by the applicable bar date shall be forever barred from asserting any such Claim against the Debtors, the Estates, the Creditor Trust, the Creditor Trustee, or any of their respective property, whether any such Claim is deemed to arise prior to, on, or subsequent to the Effective Date, and shall receive no Distribution under the Plan or otherwise on account of such Claim

C. Classified Claims and Interests

The treatment of Claims and Interests under this Plan is in full and complete satisfaction of the legal, contractual, and equitable rights that each Holder of a Claim or Interest may have in or against the Debtors or their Estates. This treatment supersedes and replaces any agreements or rights that those entities have in or against the Debtors or their Estates.

1. Class 1 – Employee PTO Priority Claims

- a) **Classification:** Class 1 consists of the Employee PTO Priority Claims against the Debtors arising on account of monetary claims for “paid time off” (“PTO”) accrued by employees under the Debtors’ employment policies and/or employment contracts, to the extent such Claims are entitled to priority under section 507(a)(4) of the Bankruptcy Code.
- b) **Treatment:** Allowed Class 1 Employee PTO Priority Claims are Unimpaired by the Plan and, solely to the extent not already paid in full by the Debtors either prior to

or after the Petition Date, shall be paid by the Creditor Trustee in full in Cash as soon as practicable following the later of: (i) the Effective Date and (ii) the date such Class 1 Employee PTO Priority Claim becomes an Allowed Claim (or otherwise as permitted by law); *provided, however*, that any Person holding a Class 1 Employee PTO Priority Claim may be treated on such less favorable terms as may be agreed to in writing by such Person.

Any person or entity asserting to be a Holder of a Class 1 Employee PTO Priority Claim shall have the time period set forth in Section VIII.B. of the Plan in which to file requests for payment of such Claims in the Chapter 11 Cases.

To the extent an Employee PTO Priority Claim is Allowed but not entitled to priority under section 507(a)(4) of the Bankruptcy Code, such Claim shall be treated as a Class 5 Claim under this Plan.

- c) **Voting:** Class 1 is an Unimpaired Class and Holders of Class 1 Claims are not entitled to vote on the Plan.

2. Class 2 – Employee Health Care Priority Claims

- a) **Classification:** Class 2 consists of Employee Health Care Priority Claims against the Debtors, to the extent such Claims are entitled to priority under section 507(a)(5) of the Bankruptcy Code. Any person or entity asserting to be a Holder of a Class 2 Employee Health Care Priority Claim shall have the time period set forth in Section VIII.B. of the Plan in which to file requests for payment of such Claims in the Chapter 11 Cases. To the extent an Employee Health Care Priority Claim is Allowed but not entitled to priority under section 507(a)(5) of the Bankruptcy Code, such Claim shall be treated as a Class 5 Claim under this Plan.
- b) **Treatment:** Allowed Class 2 Employee Health Care Priority Claims are Unimpaired by the Plan and, solely to the extent not already satisfied in full, shall be paid by the Creditor Trustee in full in Cash as soon as practicable following the later of: (i) the Effective Date and (ii) the date such Class 2 Employee Health Care Priority Claim becomes an Allowed Claim (or otherwise as permitted by law); *provided, however*, that any Person holding a Class 2 Employee Health Care Priority Claim may be treated on such less favorable terms as may be agreed to in writing by such Person.
- c) **Voting:** Class 2 is an Unimpaired Class and Holders of Class 2 Claims are not entitled to vote on the Plan.

3. Class 3 – Other Priority Claims

- a) **Classification:** Class 3 consists of the Priority Claims against the Debtors, including those arising under sections 507(a)(4), (5), and (7) of the Bankruptcy Code, other than the Claims described in Class 1 and Class 2.

- b) **Treatment:** Allowed Class 3 Priority Claims are Unimpaired by the Plan and shall be paid by the Creditor Trustee in order of the priorities set forth in section 507 of the Bankruptcy Code in full in Cash as soon as practicable following the later of: (i) the Effective Date and (ii) the date such Class 3 Priority Claim becomes an Allowed Claim (or otherwise as permitted by law); *provided, however*, that any Person holding a Class 3 Priority Claim may be treated on such less favorable terms as may be agreed to in writing by such Person.
- c) **Voting:** Class 3 is an Unimpaired Class and Holders of Class 1 Claims are not entitled to vote on the Plan.

4. Class 4 – Secured Claims

- a) **Classification:** Class 4 consists of Secured Claims. Each Holder of a Class 4 Claim, if any, constitutes a separate subclass under the Plan.²
- b) **Treatment:** To the extent any Allowed Secured Claims exist, such Allowed Secured Claims shall be satisfied as follows (a) by the return of such creditor's collateral, or (b) paid by the Creditor Trustee in full in Cash of the Allowed Secured Claim as soon as practicable following the later of: (i) the Effective Date, or (ii) the date such Class 4 Claim becomes an Allowed Claim (or otherwise as permitted by law); *provided, however*, that any Person holding a Class 4 Secured Claim may be treated on such less favorable terms as may be agreed to in writing by such Person.
- c) **Voting:** Class 4 is an Unimpaired Class and Holders of Class 4 Claims are not entitled to vote on the Plan.

5. Class 5 – General Unsecured Claims

- a) **Classification:** Class 5 consists of the Claims of Holders of General Unsecured Claims.³
- b) **Treatment:** Holders of Allowed Class 5 Claims shall be paid Pro Rata from the Net Proceeds distributed by the Creditor Trustee in accordance with the Creditor Trust

² The Debtors' primary secured lender, MB Financial, N.A. ("MB"), was owed approximately \$5,510,440.90 as of the Petition Date. The Secured Claim owing to MB was paid down pursuant to the orders granting Debtors' Motion for Entry of Interim & Final Orders (I) Authorizing Use of Cash Collateral; (II) Granting Adequate Protection; (III) Modifying the Automatic Stay To Permit Implementation; (IV) Scheduling a Final Hearing; & (V) Granting Related Relief [Dkt. No. 123]. In addition, the Debtors conducted liquidation sales of all inventory and other assets as authorized by the orders granting Debtors' Motion For Entry of Interim & Final Orders (I) Authorizing the Debtors To Assume the Agency Agreement; (II) Authorizing & Approving the Conduct of Store Closing or Similar Themed Sales, With Such Sales To Be Free & Clear of All Liens, Claims & Encumbrances; & (III) Granting Related Relief [Dkt. No. 117].

³ There are numerous and substantive Intercompany Claims between the Debtors. As set forth herein, it would be forensically difficult and inordinately costly to fully reconcile all such Intercompany Claims, which is in large part why the Debtors are seeking to substantively consolidate these Chapter 11 Cases. As a result of such substantive consolidation, all Intercompany Claims will be extinguished under the Plan.

Agreement.

- c) **Voting:** Class 5 is an Impaired Class and Holders of Class 5 Claims are entitled to vote to accept or reject the Plan.

6. Class 6 – Interest Holders

- a) **Classification:** Class 6 consists of the Holders of the Debtors' Interests.
- b) **Treatment:** It is not anticipated there will be a Distribution of any amounts to Allowed Interest Holders. To the extent, however, any Cash remains after all Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Class 1 Claims, Allowed Class 2 Claims, Allowed Class 3 Claims, Allowed Class 4 Claims, and Allowed Class 5 Claims are paid in full, then in such event, and in full and final satisfaction, settlement, and release of and in exchange for such Allowed Interests, Holders of Class 6 Interests shall receive their share share of the Cash available for Distribution from the Creditor Trust to be distributed in accordance with the provisions of the corporate governance documents controlling disposition and treatment of such Equity Interests. The Creditor Trustee shall be permitted to distribute such funds to an escrowee (such as a title company) in favor of Class 6, with costs for such escrow to be paid from the distributed funds, and in full satisfaction of the Creditor Trustee's obligations to Class 6 under the Plan.
- c) **Voting:** Given that it is not anticipated that Class 6 Interest Holders will receive or retain any Distribution under the Plan on account of their Interests, pursuant to section 1126(g) of the Bankruptcy Code, Class 6 is an Impaired Class and Holders of Class 6 Interests are conclusively presumed to reject the Plan and are not entitled to vote on the Plan.

III. ACCEPTANCE OR REJECTION OF THE PLAN

A. Voting Classes

Each Holder of an Allowed Claim in Class 5 is entitled to vote either to accept or to reject the Plan. Only those votes cast by Holders of Allowed Claims shall be counted in determining whether acceptances have been received in sufficient number and amount to obtain Confirmation.

B. Acceptance by Impaired Classes

An Impaired Class of Claims shall have accepted the Plan if (i) the Holders (other than any Holder designated under section 1126(e) of the Bankruptcy Code) of at least two-thirds in amount of the Allowed Claims actually voting in such Class have voted to accept the Plan, and (ii) the Holders (other than any Holder designated under section 1126(e) of the Bankruptcy Code) of more than one-half in number of the Allowed Claims actually voting in such Class have voted to accept the Plan. Classes 1, 2 and 3 are each deemed to have accepted the Plan and are not entitled to vote thereon.

C. Presumed Rejection of the Plan

The Holders of Class 6 Interests are not expected to receive any Distribution under the Plan and are therefore deemed to reject the Plan and are not entitled to vote.

D. Nonconsensual Confirmation

Because Class 6 is deemed to reject the Plan by operation of law, the Debtors will request that the Bankruptcy Court confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code. Without limiting the foregoing, in the event that any Class of Claims entitled to vote on the Plan fails to accept the Plan as required by section 1129(a) of the Bankruptcy Code, the Plan may be amended and, in any event, the Debtors reserve the right to seek confirmation of the Plan over such rejection pursuant to section 1129(b) of the Bankruptcy Code.

E. How To Vote

A form of Ballot is being provided to Holders of Allowed Claims in Class 5, by which Creditors in such Class may vote their acceptance or rejection of the Plan. The Ballot for voting on the Plan gives Holders of Allowed Class 5 Claims one important choice to make with respect to the Plan to vote for or against this Plan.

To vote on the Plan, Holders of Allowed Claims in Class 5 shall complete the Ballot, as indicated thereon, by (i) indicating on the enclosed Ballot that (a) they accept the Plan or (b) reject the Plan, and (ii) signing their name and mailing the Ballot in the envelope provided for this purpose. The Claims Agent will count the Ballots.

IN ORDER TO BE COUNTED, BALLOTS MUST BE COMPLETED, SIGNED, AND RECEIVED NO LATER THAN 4:00 P.M. PREVAILING PACIFIC TIME ON [to be inserted upon approval of solicitation procedures] AT THE FOLLOWING ADDRESS:

If by first class mail:

BMC Group
Attn: Morgan/HOBO Ballot Processing
PO Box 90100
Los Angeles, CA 90009

If by overnight mail or hand delivery:

BMC Group
Attn: Morgan/HOBO Ballot Processing
3732 West 120th Street
Hawthorne, CA 90250

DO NOT SEND YOUR BALLOT BY FACSIMILE OR E-MAIL.

IF YOUR BALLOT IS NOT PROPERLY COMPLETED, SIGNED, AND RECEIVED AS DESCRIBED, IT WILL NOT BE COUNTED. IF YOUR BALLOT IS DAMAGED OR LOST, YOU MAY REQUEST A REPLACEMENT BY ADDRESSING A WRITTEN REQUEST TO THE ADDRESS SHOWN ABOVE. FACSIMILE OR ELECTRONICALLY SUBMITTED BALLOTS WILL NOT BE COUNTED.

IV. MEANS FOR IMPLEMENTATION OF THE PLAN

On or soon as practicable after the Effective Date, the following shall occur with respect to the implementation of the Plan: (i) all acts, documents and agreements appropriate to implement the Plan shall be executed; (ii) the Creditor Trustee under the Plan, shall make all Distributions required to be made on or about the Effective Date of the Plan in accordance with the terms and conditions of the Plan; and (iii) the Creditor Trustee shall make all Distributions pursuant to the terms of the Creditor Trust Agreement.

Upon the Effective Date, all transactions and matters provided for under the Plan shall be deemed to have been authorized and approved by the Debtors without any requirement of further action by the Debtors, or Holders of Interests in the Debtors.

A. Substantive Consolidation

1. Effect/Extent of Substantive Consolidation

The Estates of Morgan Administration, Inc., Belvidere Associates LLC, FP Retail Associates LLC, Enterprises, LLC, Jular Media LLC, KLS Acquisition Corp., Loomis Enterprises LLC, North Avenue Associates LLC, Oak Creek Distribution LLC, OL Enterprises LLC, and Deforab LLC shall be “substantively consolidated” as of the Effective Date. “Substantive consolidation” means: (i) all Assets (and all proceeds thereof) and all liabilities of each of the Debtors are deemed merged or treated as though they were merged into and with the assets and liabilities of each other; (ii) no Distributions shall be made under the Plan on account of Intercompany Claims among the Debtors and all such Claims shall be eliminated and extinguished; (iii) all guaranties of the Debtors of the obligations of any other Debtor shall be deemed eliminated and extinguished so that any Claim against any Debtor and any guarantee thereof executed by any Debtor and any joint or several liability of any of the Debtors shall be deemed to be one obligation of the consolidated Debtors; (iv) each and every Claim filed or to be filed in any of the Chapter 11 Cases shall be treated as filed against the consolidated Debtors, and shall be treated as one Claim against and as one obligation of the consolidated Debtors; and (v) for purposes of determining the availability of the right of setoff under section 553 of the Bankruptcy Code, the Debtors shall be treated as one entity so that, subject to the other provisions of section 553 of the Bankruptcy Code, debts due to any of the Debtors may be set off against the debts of any of the other Debtors.

In summary, all the Assets of the Debtors shall be combined into one pool of assets, and similarly, all of the liabilities of the Debtors shall be combined into one pool of liabilities for purposes of making Distributions to the Holders of Allowed Claims under the Plan. Accordingly, all of the Debtors’ Creditors shall be treated as if they are Creditors of one and the same entity, that being a consolidated Debtor entity.

Due to the single entity treatment and nature of the Debtors, substantive consolidation will achieve a fair result for all Creditors and Interest Holders of the Debtors and will enable the assets of the Debtors to be administered in an efficient manner. If the Estates are not substantively consolidated, the Debtors believe that significant administrative expenses will be incurred in order to allocate assets and liabilities between Estates.

Upon the substantive consolidation of each Estate into the Estate of Morgan Administration, Inc., the Chapter 11 Cases of all Debtors other than Morgan Administration, Inc. shall be closed. Upon such event, the Creditor Trustee may file all Estate Causes of Action and objections to Claim in the Morgan Administration, Inc. Chapter 11 Case, and not in any other individual Debtor Chapter 11 Case, notwithstanding the fact that the transferring Debtor (in an Avoidance Action) or the Debtor against whom the Claim was filed (in a Claim objection proceeding) may be a Debtor other than Morgan Administration, Inc.

2. Substantive Consolidation Order

The Plan shall serve as a motion seeking entry of an order substantively consolidating these Chapter 11 Cases for distribution and voting purposes. Unless an objection to substantive consolidation is made in writing by any Creditor affected by the Plan as herein provided on or before the Plan Objection Deadline, an order substantively consolidating these Chapter 11 Cases for distribution and voting purposes may be entered by the Bankruptcy Court, which order may be the Confirmation Order. In the event any such objections are timely Filed, a hearing with respect thereto shall be held by the Bankruptcy Court, which hearing may, but need not, coincide with the Confirmation Hearing.

3. Reservation of Rights

In the event that the Bankruptcy Court does not approve the substantive consolidation of all of the Estates, the Debtors reserve the right, pursuant to Section VII.B. of the Plan, to revoke or withdraw this Plan as to any Debtor(s) whose Estate(s) cannot be substantively consolidated. The Debtors further reserve the right at any time up to the conclusion of the Confirmation Hearing to withdraw their request for substantive consolidation of these Chapter 11 Cases, to seek Confirmation of the Plan as if there were no substantive consolidation, and to seek Confirmation of the Plan with respect to one Debtor even if Confirmation with respect to the other Debtors is denied.

B. Vesting of Assets in the Creditor Trust

As of the Effective Date, all remaining Assets of the Debtors and the Estates shall be transferred to and vest in the Creditor Trust and be deemed contributed thereto, subject to the terms of the Plan. The Assets include, without limitation, (i) all Cash held by the Debtors; (ii) any remaining personal property owned by the Debtors as of the Effective Date; (iii) all Estate Causes of Action, including Avoidance Actions and any pending proceedings initiated by the Committee pursuant to Bankruptcy Rule 2004; (iv) the Insurance Policies; and (v) the Net Proceeds. For the avoidance of doubt, all property held for distribution pursuant to the Plan shall be held by the Creditor Trust solely in trust for the holders of Allowed Claims and shall not be deemed property of the Debtors. Nothing in the Plan shall preclude payment of: (i) statutory fees under 28 U.S.C. §

1930 to the extent unpaid on the Confirmation Date; and (ii) the Trustee's Expenses in accordance with this Plan and the Creditor Trust Agreement from any other assets held by the Creditor Trust. The Debtors are hereby authorized and directed to take such steps as may be necessary or appropriate to confirm such transfer and contribution of their property to the Creditor Trust, subject to oversight from the Creditor Trustee.

C. Creditor Trust Administration

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

1. Case Administration

From and after the Effective Date and continuing through the date that a final decree closing the Chapter 11 Cases is entered pursuant to section 350 of the Bankruptcy Code and Bankruptcy Rule 3022, the Creditor Trustee shall possess the rights of a party in interest pursuant to section 1109(b) of the Bankruptcy Code for all matters arising in, arising under or related to the Chapter 11 Cases. In addition to the foregoing, for all matters arising in, arising under or related to the Chapter 11 Cases, the Creditor Trustee shall: (i) have the right to appear and be heard on matters brought before the Bankruptcy Court or other courts of competent jurisdiction; (ii) have the right to obtain records of, or related to, the Debtors (including, without limitation, bank statements and cancelled checks); (iii) be entitled to notice and opportunity for hearing; (iv) be entitled to participate in all matters brought before the Bankruptcy Court, including, but not limited to, adversary proceedings; (v) have exclusive standing (including derivative standing to pursue Estate Causes of Action on behalf of the Debtors) to commence Avoidance Actions and other Estate Causes of Action; (vi) have exclusive standing to pursue any proceedings initiated by the Committee pursuant to Bankruptcy Rule 2004; (vii) be entitled to request the Bankruptcy Court to enter a final decree closing the Chapter 11 Cases; and (viii) receive notice of all applications, motions and other papers and pleadings set before the Bankruptcy Court in these Chapter 11 Cases.

2. Creditor Trustee's Professionals

Upon the later to occur of the Confirmation Date and acceptance by the Creditor Trustee of its appointment in accordance with this Plan and the Creditor Trust Agreement, the Creditor Trustee may retain such law firms, accounting firms, experts, advisors, consultants, investigators or other Professionals as it may deem necessary, in accordance with the Creditor Trust Agreement, to aid in the performance of its responsibilities pursuant to the terms of the Plan, including, without limitation, the liquidation and Distribution of assets of the Creditor Trust. The Professionals retained by the Creditor Trustee are not required to be "disinterested" as that term is defined in the Bankruptcy Code and may include, without limitation, counsel and financial advisors of any party in these Chapter 11 Cases, and the Creditor Trustee shall be permitted to retain any such Professional in light of the efficiencies implicit in continuity. The Creditor Trustee's retention of

any such Professionals is deemed not to pose any conflict of interest, and no conflict shall exist by virtue of the filing of applications by Professionals for allowance of Administrative Expense Claims in accordance with the provisions of this Plan.

3. Quarterly Reports

The Creditor Trustee shall prepare and file with the Bankruptcy Court, a Quarterly Report within thirty (30) days after the conclusion of each calendar quarter setting forth: (i) all Distributions to Creditors during the calendar quarter; (ii) a summary of the Creditor Trust deposits and disbursements during the calendar quarter; and (iii) a summary of the Creditor Trust Assets. The Quarterly Reports shall be filed within thirty (30) days after March 31, June 30, September 30 and December 31 of each calendar year during the term of the Creditor Trust Agreement following the Effective Date. The first Quarterly Report shall be due within thirty (30) days of the passage of the first of the dates listed above to occur after the Effective Date.

4. United States Trustee Fees

All outstanding amounts due under 28 U.S.C. § 1930 that have not been paid shall be paid by the Debtors on or before the Effective Date. Thereafter, the Creditor Trustee shall pay any statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) and such fees shall be paid until entry of a Final Order or decree converting, dismissing, or closing the Chapter 11 Cases.

5. Dissolution of the Debtors

Promptly after completing their wind-down, the Creditor Trustee will allow the applicable Secretary of State to involuntarily dissolve each of the Debtors. The Creditor Trustee shall thereafter have standing to assert claims or pursue matters on behalf of the Debtors to the extent necessary to preserve, protect and liquidate the Creditor Trust Assets or otherwise necessary to administer the Creditor Trust.

D. Estate Causes of Action

Unless an Estate Cause of Action is expressly waived, relinquished, released, compromised, or settled in the Plan or in any Final Order, such Estate Cause of Action is expressly reserved for later adjudication by the Creditor Trustee (including, without limitation, claims covered by the Committee's demand on the Debtors' insurance carrier, any Estate Causes of Action of which the Debtors presently may be unaware, or which may arise or exist by reason of facts or circumstances unknown to the Debtors at this time, or facts or circumstances which may change or be different from those which the Debtors now believe to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable, or otherwise), or laches shall apply to the Creditor Trustee's prosecution of Estate Causes of Action based on the Disclosure Statement, the Plan, or the Confirmation Order. Without limiting the generality of the foregoing, any Person with respect to which the Debtors have incurred an obligation (whether on account of services, purchase or sale of property, or otherwise), or who has received services from the Debtors or a transfer of money or property of the Debtor, or who has transacted business with the Debtors, their pre-Petition Date managers, officers, directors, employees and/or agents, should assume that such obligation, transfer, or transaction may be evaluated by the Creditor Trustee

subsequent to the Effective Date and may be the subject of an Avoidance Action, other Estate Cause of Action or other action or proceeding filed after the Effective Date.

The Plan Proponents have not completed their investigation into the existence of Estate Causes of Action, and there may be Estate Causes of Actions that currently exist, or may subsequently arise, in addition to the matters identified in the Disclosure Statement and herein. Any existing or potential Estate Causes of Action that have not yet been pursued are not waived. Under the Plan, the Creditor Trust retains all rights to pursue any and all Estate Causes of Action to the extent the Creditor Trustee deems appropriate (under any theory of law or equity, including, without limitation, the Bankruptcy Code and any applicable local, state, or federal law, in any court or other tribunal, including, without limitation, in an adversary proceeding filed in the Chapter 11 Cases).

Existing or potential Estate Causes of Action that may be pursued by the Creditor Trustee after the Effective Date, include, without limitation, (i) any and all Estate Causes of Action pursuant to any applicable section of the Bankruptcy Code, including, but not limited to, (a) any claims of the Debtors arising under section 362 of the Bankruptcy Code; (b) turnover claims arising under section 542 or 543 of the Bankruptcy Code; and (c) any Avoidance Actions; (ii) objections to Claims; (iii) claims that the Estates are entitled to set off or recoup against parties with Claims against the Estates; and (iv) any action for equitable subordination of any Claim against the Estates pursuant to section 510 of the Bankruptcy Code.

Moreover, the Creditor Trustee may pursue existing or potential Estate Causes of Action related to any other litigation or Estate Causes of Action, whether legal, equitable, or statutory in nature, arising out of, or in connection with, the Debtors' business, assets, or operations, or otherwise affecting the Debtors, including without limitation, possible claims against the following types of parties for the following types of claims: (i) possible claims against vendors, customers, or suppliers for warranty, indemnity, charge-back/set-off issues, overpayment or duplicate payment issues, and collections/accounts receivable matters; (ii) possible claims against Persons or parties for wrongful or improper termination of services or goods to the Debtors; (iii) failure of any Persons or parties to fully perform under contracts with the Debtors before the assumption or rejection of such contracts; (iv) possible claims for deposits or other amounts owed by any creditor, lessor, supplier, vendor, factor, or other Person; (v) actions against insurance carriers relating to coverage, indemnity, or other matters; (vi) counterclaims and defenses relating to Claims against the Debtors; (vii) possible claims against local, state, and federal taxing authorities (including, without limitation, any claims for refunds of overpayments, challenges to audits, assessments, penalties, interest or any other obligations imposed by governmental agencies); (viii) possible claims against the Debtors' officers, directors, or insiders as defined by section 101(31) of the Bankruptcy Code; (ix) except as otherwise previously released or settled, possible claims against Secured Creditors, including, without limitation, claims relating to the inclusion of improper charges, fees, interest, penalties in any alleged Secured Claim and the nature, extent, priority and validity of any Lien; and (x) contract, tort, or equitable claims that may exist or subsequently arise.

THE CREDITOR TRUSTEE WILL DECIDE WHETHER TO PURSUE ESTATE CAUSES OF ACTION. THE CREDITOR TRUSTEE MAY SEEK TO RETAIN COUNSEL ON AN HOURLY OR CONTINGENCY BASIS TO PROSECUTE SOME OR ALL OF SUCH

ESTATE CAUSES OF ACTION OR MAY DECIDE NOT TO PURSUE THEM AT ALL. THE CREDITOR TRUSTEE, ITS PROFESSIONALS, EMPLOYEES, CONTRACTORS, OFFICERS, DIRECTORS, SUCCESSORS, AND ASSIGNS SHALL NOT HAVE ANY LIABILITY ARISING OUT OF THE CREDITOR TRUSTEE'S GOOD FAITH DETERMINATION OF WHETHER OR NOT TO PURSUE PROSECUTION OF ANY ESTATE CAUSE OF ACTION.

E. Distributions Under the Plan Made by the Creditor Trustee

1. In General

Except as otherwise provided herein, or as may be ordered by the Bankruptcy Court, Distributions to be made on account of Unclassified Claims and Allowed Priority Claims in Classes 1, 2, and 3, and Allowed Secured Claims in Class 4 shall be made on or soon as reasonably practicable after the Effective Date (or the date such Claims become Allowed Claims) by the Creditor Trustee. Distributions to be made on account of Allowed Class 5 Claims shall be made as set forth in the Creditor Trust Agreement.

2. Manner of Payment Under the Plan

Any payment of Cash made by the Creditor Trustee pursuant to the Plan may be made either by check drawn on a domestic bank or by wire transfer from a domestic bank, at the option of the Creditor Trustee.

3. Manner of Distribution of Other Property

Any Distribution under the Plan of property other than Cash, if any, shall be made by the Creditor Trustee in accordance with the terms of the Plan.

4. Set-offs

The Creditor Trustee may set off against any Claim and the payments to be made pursuant to the Plan in respect of such Claim, any claims of any nature whatsoever that the Debtors, Estates, or the Creditor Trust may have against the Holder of such Claim; *provided, however*, that neither the failure to effect such set-off nor the allowance of any Claim that otherwise would be subject to setoff, shall constitute a waiver or release by the Debtors, Estates, or Creditor Trust of any such claim that the Debtors, Estates, or Creditor Trust may have against such Holder.

5. Distribution of Unclaimed Property

Except as otherwise provided in the Plan, any Distribution of property (Cash or otherwise) under the Plan which is unclaimed after the later of (i) one hundred eighty (180) days following the Effective Date and (ii) ninety (90) days after such Distribution has been remitted to the Holder of the Allowed Claim, shall be remitted to the Creditor Trustee for Distribution to the Beneficiaries of the Creditor Trust pursuant to the Creditor Trust Agreement.

6. *De Minimus* Distributions; Unclaimed Funds

No cash payment of less than fifty dollars (\$50.00) shall be made by the Creditor Trustee to any Holder of an Allowed Claim, except for an Allowed Claim for pre-Petition Date wages less than fifty dollars (\$50.00), unless a request therefor is made in writing to the Creditor Trustee. Notwithstanding anything to the contrary herein, the Creditor Trustee shall not be required to make a Distribution to any Creditor if the dollar amount of the Distribution is so small that the cost of making that Distribution exceeds the dollar amount of such Distribution. At the Final Distribution Date, if, in the reasonable judgment of the Creditor Trustee, the cost of calculating and making the final Distribution of the remaining funds is excessive in relation to the benefits to the Creditors who would otherwise be entitled to such Distributions, the Creditor Trustee shall deposit such funds with the Clerk of the Bankruptcy Court as unclaimed funds pursuant to Bankruptcy Rule 3011.

7. Rounding

Whenever a payment of a fraction of a cent would otherwise be called for, the actual Distribution shall reflect a rounding of such fraction down to the nearest cent.

8. Saturday, Sunday, or Legal Holiday

If any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day but shall be deemed to have been completed as of the required date.

9. Delivery of Distributions/Address of Holder

For purposes of all notices and Distributions under the Plan, the Creditor Trustee shall be entitled to rely on, and Distributions to Holders of Unclassified Claims and Holders of Allowed Claims in Classes 1 through 6 shall be made by regular U.S. first class mail to, the following name and address for the Holder of each such Claim: (i) the address set forth in the proof of Claim Filed by such Holder; or (ii) the address set forth in any written notice of address change delivered by the Holder to the Debtors or the Creditor Trustee after the date on which any related proof of Claim was Filed. The Creditor Trustee shall be under no duty to attempt to locate Holders of Allowed Claims who are entitled to unclaimed Distributions.

10. Creditors' Payment Obligations/Turnover of Property to Creditor Trustee

As a condition to obtaining Distributions under the Plan, any Holder of a Claim from which property is recoverable pursuant to a Final Order of the Bankruptcy Court under sections 542, 543, 550 or 553 of the Bankruptcy Code, or otherwise, or that is a transferee of a transfer avoidable pursuant to a Final Order of the Bankruptcy Court under sections 522, 544, 545, 547, 548 or 549 of the Bankruptcy Code or otherwise, shall pay to the Creditor Trustee the amount, or turn over to the Creditor-Trustee any such property, for which such Holder of a Claim is liable to the Debtors.

11. Creditor Trustee Claim Objection Deadline

The Creditor Trustee shall have standing to file objections to Administrative Expenses and Claims even if such Administrative Expenses or Claims were scheduled by the Debtors as undisputed, liquidated and non-contingent. Notwithstanding any prior order of the Bankruptcy Court to the contrary, the Creditor Trustee shall have until one hundred eighty (180) days after the Effective Date (unless extended by an order of the Bankruptcy Court or by stipulation between the parties) to file objections to Claims and the time period set forth in Section VIII.B. of the Plan to file objections to Administrative Expenses, Class 1 Priority Claims or Class 2 Priority Claims. If the Creditor Trustee has objected to an Administrative Expense or Claim, payment will be withheld only with respect to the amount actually in dispute, and such objection shall not affect payments or Distributions under the Plan on the undisputed portion of the Administrative Expense or Claim. Notwithstanding the deadline to file objections to Claims provided under the Plan, the Creditor Trustee may file objections to Claims within ninety (90) days of the filing of an amended Claim.

12. No Distributions on Late-Filed Claims

Except as otherwise provided in a Final Order of the Bankruptcy Court or by agreement between the Debtors or the Creditor Trustee, and the affected Holder of such Claim, any Claim as to which a proof of claim was first Filed after the applicable Bar Date shall be a Disputed Claim, and the Creditor Trustee shall not make any Distribution to a Holder of such a Claim; *provided, however,* that to the extent such Claim was listed in the Schedules (other than as contingent, disputed, or unliquidated) and would be an Allowed Claim but for the lack of a timely proof of Claim, the Creditor Trustee shall treat such Claim as an Allowed Claim in the amount in which it was so listed.

V. RELEASES AND EXCULPATION

A. Releases by the Debtors

In consideration for services rendered to the Estates and for the consideration as more fully set forth herein, to the greatest extent permissible by law, and except as otherwise specifically provided in this Plan, as of the Effective Date, the Debtors shall be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever released and discharged each of the Released Parties of and from any and all past, present and future legal actions, causes of action, choses in action, rights, demands, suits, claims, liabilities, encumbrances, lawsuits, adverse consequences, amounts paid in settlement, costs, fees, damages, debts, deficiencies, diminution in value, disbursements, expenses, losses and other obligations of any kind, character or nature whatsoever, whether in law, equity or otherwise (including, without limitation, those arising under Chapter 5 of the Bankruptcy Code and applicable non-bankruptcy law, and any and all alter-ego, lender liability, indemnification or contribution theories of recovery, and interest or other costs, penalties, legal, accounting and other professional fees and expenses, and incidental, consequential and punitive damages payable to third parties), whether known or unknown, fixed or contingent, direct, indirect, or derivative, asserted or unasserted, foreseen or unforeseen, suspected or unsuspected, now existing, heretofore existing or which may heretofore accrue against the Debtors or the Released Parties

(in each case, solely in their capacities as such) occurring from the Petition Date to and including the Effective Date related in any way directly or indirectly, arising out of, and/or connected with any or all of the Debtors or the Estates; provided, however, that notwithstanding the foregoing or any other provision of this Plan, nothing in this Plan, or any order confirming this Plan shall affect any causes of action, claims, or counterclaims that may be asserted in connection with an objection to a Claim that has not been Allowed, in each case as determined by a court of competent jurisdiction; provided further, however, that the foregoing provisions shall not affect the liability of the Released Parties that would result solely from any such act or omission to the extent that act or omission is determined by a Final Order of the Bankruptcy Court or other court of competent jurisdiction to have constituted willful misconduct or gross negligence or breach of fiduciary duty. Notwithstanding anything to the contrary in this Plan, this paragraph does not release any post-Effective Date obligations of any party under this Plan or any document, instrument, or agreement executed to implement this Plan. Furthermore, nothing in this Plan shall affect the liability of any Claims held by any third party against any of the Released Parties.

B. Exculpation

None of the Exculpated Parties shall have or incur any liability for any act or omission in connection with, related to, or arising out of, the Chapter 11 Cases, the formulation, preparation, dissemination, implementation, confirmation, or approval of this Plan, the administration of this Plan, or any contract, instrument, release, or other agreement or document provided for or contemplated in connection with the consummation of the transactions set forth in this Plan; provided, however, that the foregoing provisions shall not affect the liability of any Person that would result solely from any such act or omission to the extent that act or omission is determined by a Final Order of the Bankruptcy Court to have constituted willful misconduct or gross negligence or breach of fiduciary duty; provided further, however, that this provision shall not limit the Debtors' obligations under this Plan; provided further, however, that notwithstanding the foregoing or any other provision of this Plan, nothing in this Plan, or any order confirming this Plan shall affect any causes of action, claims, or counterclaims that may be asserted in connection with an objection to a Claim that has not been Allowed, in each case as determined by a court of competent jurisdiction.

C. No Liability for Solicitation or Participation

As specified in section 1125(e) of the Bankruptcy Code, Persons that solicit acceptances or rejections of this Plan, in good faith and in compliance with the applicable provisions of the Bankruptcy Code, shall not be liable, on account of such solicitation or participation, for violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of this Plan.

D. Good Faith

Confirmation of this Plan shall constitute a finding that the Plan was proposed, and that acceptances of the Plan were solicited, in good faith and in compliance with applicable provisions of the Bankruptcy Code.

VI. EFFECTIVENESS OF THE PLAN

A. Conditions Precedent

The Effective Date shall not occur until the following conditions (the “**Conditions Precedent**”) have been satisfied or waived:

1. the Bankruptcy Court shall have entered an order granting approval of the Disclosure Statement and finding that it contains adequate information pursuant to section 1125 of the Bankruptcy Code and that order shall have become a Final Order;
2. the Bankruptcy Court shall have entered a Confirmation Order that is in form and substance satisfactory to the Debtors and the Committee;
3. the Creditor Trust Agreement, in form and substance satisfactory to the Committee, shall be executed and delivered, and all conditions precedent to the effectiveness thereof shall have been satisfied;
4. the Confirmation Order shall have become a Final Order; and
5. no stay of the Confirmation Order is in effect.

Notwithstanding the foregoing, the Conditions Precedent set forth herein may be waived by the Debtors and the Committee (such waiver shall not require any notice, Bankruptcy Court order, or any further action).

B. Effective Date

The Plan will not be consummated or become binding unless and until the Effective Date occurs. The Effective Date will be the date selected by the Plan Proponents which is a Business Day after the entry of the Confirmation Order on which: (i) no stay of the Confirmation Order is in effect, and (ii) all Conditions Precedent specified in Section VI.A. of the Plan have been satisfied, unless waived by the Plan Proponents. Any action to be taken on the Effective Date may be taken on or as soon as reasonably practicable after the Effective Date.

C. Confirmation Request

If necessary, the Plan Proponents will request that the Bankruptcy Court confirm the Plan under section 1129(b) of the Bankruptcy Code with respect to any Class that rejects the Plan.

D. Termination of Committee

The Committee shall terminate automatically upon the Effective Date. Upon its termination, the Committee shall be dissolved and its members shall be deemed released of their duties and responsibilities in connection with the Chapter 11 Cases and the Plan and its implementation, and the retention or employment of the Committee’s counsel shall terminate, except for ministerial duties or any duties imposed by the Plan (including filing applications for allowance and payment of Professional Fee Claims).

E. Officers and Directors of Debtors

Upon the Effective Date, all officers and directors of the Debtors, as the case may be, shall be automatically deemed to have resigned from such positions, without further act, notice, deed or court order and its implementation, and the retention or employment of the Debtors' Professionals shall terminate, except for ministerial duties or any duties imposed by the Plan (including filing applications for allowance and payment of Professional Fee Claims).

F. Notice of Effective Date

As soon as practicable after the Effective Date has occurred, the Creditor Trustee shall file with the Bankruptcy Court an informational notice specifying the Effective Date, as a matter of record.

VII. EFFECT OF CONFIRMATION

A. Discharge

1. Injunction Enjoining Holders of Claims Against Debtors

The Plan is the sole means for resolving, paying or otherwise dealing with Claims and Interests. To that end, except as expressly provided in the Plan, at all times on and after the Effective Date, all Persons who have been, are, or may be holders of Claims against or Interests in the Debtors, arising prior to the Effective Date, will be permanently enjoined from taking any of the following actions, on account of any such Claim or Interest, against the Debtors, the Estates, the Creditor Trust or the Creditor Trustee, their successors, or their respective property or assets (other than actions brought to enforce any rights or obligations under the Plan):

a. commencing, conducting or continuing in any manner, directly or indirectly any suit, action, or other proceeding of any kind against the Debtors and/or Estates, the Creditor Trust, or the Creditor Trustee, their successors, or their respective property or assets (including, without limitation, all suits, actions, and proceedings that are pending as of the Effective Date which will be deemed to be withdrawn or dismissed with prejudice);

b. enforcing, levying, attaching, executing, collecting, or otherwise recovering by any manner or means whether directly or indirectly any judgment, award, decree, or order against the Debtors, the Estates, the Creditor Trust, or the Creditor Trustee, their successors, or their respective property or assets;

c. creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any Lien, security interest or encumbrance against the Debtors, the Estates, the Creditor Trust, or the Creditor Trustee, their successors, or their respective property or assets; and

d. proceeding in any manner in any place whatsoever against the Debtors, the Estates, the Creditor Trust, or the Creditor Trustee, their successors, or their respective property or assets that does not conform to or comply with the provisions of the Plan.

2. Non-Discharge of Debtors

In accordance with section 1141(d)(3) of the Bankruptcy Code, the Confirmation Order will not discharge the Debtors. However, no Holder of a Claim may receive any payment from, or seek recourse against, any Assets that are to be distributed under the Plan other than Assets required to be distributed to that Holder pursuant to the Plan. As of the Confirmation Date, all Persons are enjoined from asserting against any property that is to be distributed under the Plan, any Claims, rights, causes of action, liabilities, or Interests based upon any act, omission, transaction, or other activity that occurred before the Confirmation Date except as expressly provided in the Plan or the Confirmation Order.

B. Withdrawal or Modification of Plan

Prior to the Effective Date, the Plan may be withdrawn as to one or more of the Debtors or may be altered, amended, or modified pursuant to section 1127 of the Bankruptcy Code by the Plan Proponents. After the Effective Date, the Creditor Trustee shall have, subject to Bankruptcy Court order, the sole authority and power to alter, amend, or modify the Plan pursuant to section 1127 of the Bankruptcy Code.

C. Final Decree

Pursuant to Bankruptcy Rule 3022, a final decree closing the Chapter 11 Cases may not be entered until a bankruptcy case is fully administered. The Bankruptcy Court may, however, allow a final decree to be entered on an earlier date for cause shown.

VIII. MISCELLANEOUS PROVISIONS

A. Executory Contracts and Unexpired Leases

1. Assumptions/Rejections

To the extent that any agreements executed by the Debtors before the Effective Date constitute executory contracts or unexpired leases under section 365 of the Bankruptcy Code, other than agreements that were previously either assumed and assigned or rejected either by a Final Order or under section 365 of the Bankruptcy Code, such agreements shall be deemed rejected on the Effective Date. The Confirmation Order shall constitute a Final Order approving this rejection. All Rejection Damage Claims shall be treated as Class 5 General Unsecured Claims under the Plan.

2. Bar Date for Rejection Damage Claims

Any Rejection Damage Claims arising from rejection under the Plan of an executory contract or unexpired lease must be filed with the Bankruptcy Court and served on the Creditor Trustee and its counsel within thirty (30) days after the Effective Date. Any Rejection Damage Claims that are not timely filed and served will be forever barred and unenforceable against the Debtors, the Estates, the Creditor Trust, the Creditor Trustee, and their property, and the entities holding these Claims will be barred from receiving any distributions under the Plan on account of their Rejection Damage Claims. The Creditor Trustee shall have the right to object to any such

Rejection Damage Claims; *provided, however*, that any such objections must be served and filed not later than one hundred eighty (180) days after the Effective Date.

3. Insurance Policies

For the avoidance of doubt, all of the Debtors' rights with respect to all Insurance Policies are retained according to their respective terms and will be transferred or assigned to the Creditor Trust pursuant to the Plan. Furthermore, all of the Debtors' rights with respect to Insurance Policies owed by the Debtors in which a third party is a beneficiary (including all Insurance Policies related to the liability of directors and officers) are retained according to their respective terms and will be transferred or assigned to the Creditor Trust pursuant to the Plan, so long as such transfer and assignment does not impair such policies, with the Creditor Trustee having authority to settle any such claims.

B. Administrative Expense and Priority Claim Bar Date

All Persons requesting payment of Administrative Expense Claims, including, but not limited to Claims under section 503(b)(9) of the Bankruptcy Code, Class 1 Priority Claims or Class 2 Priority Claims shall file a request for payment of Administrative Expense Claims, Class 1 Priority Claims or Class 2 Priority Claims with the Bankruptcy Court no later than the Administrative Expense and Priority Claim Bar Date, which shall be thirty (30) days after the Effective Date. The Administrative Expense and Priority Claim Bar Date shall not apply to Professionals requesting payment of Professional Fee Claims, who shall be entitled to file an application for allowance of such Professional Fee Claims until not later than sixty (60) days after the Effective Date. Nor shall the Administrative Expense and Priority Claim Bar Date apply to United States Trustee fees. Objections to such applications for payment (whether by Professionals requesting payment of Professional Fee Claims or Persons requesting payment of Administrative Expense Claims or Priority Claims in Class 1 or Class 2), if any, must be written, filed with the Bankruptcy Court and served on the applicable parties within twenty-one (21) days after such application is filed.

C. Preservation of Causes of Action

Except to the extent any rights, claims, defenses, and counterclaims are expressly and specifically released in connection with this Plan or in any settlement agreement approved during the Chapter 11 Cases: (i) any and all Estate Causes of Action accruing to the Debtors' Estates (including, without limitation, Avoidance Actions, pending proceedings pursuant to Bankruptcy Rule 2004 and claims covered by the Committee's demand on the Debtors' insurance carrier) shall vest in the Creditor Trust on the Effective Date, whether or not litigation relating thereto is pending on the Effective Date, and whether or not any such Estate Causes of Action have been listed or referred to in this Plan, the Disclosure Statement, or any other document filed with the Bankruptcy Court and (ii) the Debtors' Estates do not waive, release, relinquish, forfeit, or abandon (and it shall not be estopped or otherwise precluded or impaired from asserting) any Estate Cause of Action that constitutes property of the Debtors' Estates: (i) whether or not such Estate Cause of Action has been listed or referred to in this Plan, the Disclosure Statement, or any other document filed with the Bankruptcy Court, (ii) whether or not such Estate Cause of Action is currently known to the Debtors or the Creditor Trustee, and (iii) whether or not a defendant in any litigation

relating to such Estate Cause of Action filed a proof of Claim in the Chapter 11 Cases, filed a notice of appearance or any other pleading or notice in the Chapter 11 Cases, voted for or against this Plan, or received or retained any consideration under this Plan.

D. Exhibits

All exhibits attached to this Plan, the Disclosure Statement, or the Creditor Trust Agreement are, by this reference, hereby incorporated into the Plan, and the final version of all exhibits will be substantially in the form attached hereto or thereto. The Plan Proponents reserve the right to make non-substantive changes and corrections to such exhibits in advance of the Confirmation Hearing. If any exhibits are changed or corrected, the replacement exhibits will be Filed with the Bankruptcy Court prior to the commencement of the Confirmation Hearing.

E. Exemption from Stamp, Transfer, and Other Taxes

Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer, or exchange of assets under the Plan by the Debtors, the creation of any mortgage, deed of trust, or other security interest, the making or assignment of any lease or sublease, or the making or delivery of any deed or instrument of transfer under, in furtherance of, or in connection with the Plan, will not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax.

F. Headings

Headings are used in the Plan for convenience and reference only and shall not constitute a part of the Plan for any other purpose.

G. Binding Law

The Plan shall be binding upon and inure to the benefit of the Debtors' Estates, Holders of Claims, Holders of Interests, and their respective successors or assign.

H. Governing Law

Unless a rule of law or procedure is supplied by (i) federal law (including the Bankruptcy Code and Bankruptcy Rules), or (ii) an express choice of law provision in any agreement, contract, instrument or document provided for, or executed in connection with, this Plan, the rights and obligations arising under the Plan and any agreements, contracts, documents and instruments executed in connection with this Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Illinois without giving effect to the principles of conflict of laws thereof.

I. Other Documents and Actions

The Debtors on and prior to the Effective Date, and the Creditor Trustee after the Effective Date, may execute such other documents and take such other actions as may be necessary or appropriate to effectuate the transactions contemplated under this Plan.

J. Notices

Any notice to the Post-Effective Date Notice Parties required or permitted to be provided under the Plan shall be in writing and served by either (i) certified mail, return receipt requested, postage prepaid, (ii) hand delivery, or (iii) reputable overnight delivery service, freight prepaid, to be addressed as follows:

Debtors:

Michael Goldman
Chief Restructuring Officer
c/o KCP ADVISORY GROUP
655 Deerfield Rd, Ste. 100 pmb 325
Deerfield, IL 60015

With a copy to:

Jonathan P. Friedland
Elizabeth B. Vandesteeg
SUGAR FELSENTHAL GRAIS & HELSINGER LLP
30 N. LaSalle St., Ste. 3000
Chicago, IL 60602

Committee:

Devon J. Eggert
FREEBORN & PETERS LLP
311 S. Wacker Dr., Ste. 3000
Chicago, IL 60606

Creditor Trustee:

[To be identified under the terms of the Creditor Trust Agreement]

K. Severability of Plan Provisions

If, prior to Confirmation, any term or provision of the Plan is found by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

L. Successors and Assigns

The rights, benefits, and obligations of any entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of, the heirs, executors, administrators, successors, and assigns of such entity.

M. Effectiveness of Court Orders

All orders and judgments, including injunctions, entered by the Bankruptcy Court during the Chapter 11 Cases, and in existence on the Confirmation Date, shall remain in full force and effect from and after the Effective Date, to the extent not inconsistent with the provisions of this Plan or the Confirmation Order.

N. No Waiver

Neither the failure to list a Claim in the Schedules filed by the Debtors, the failure to object to any Claim for purposes of voting, the failure to object to a Claim or Administrative Expense Claim prior to the Effective Date, the failure to assert an Estate Cause of Action prior to the Effective Date, nor any action or inaction with respect to a Claim, Administrative Expense Claim, or Estate Cause of Action, other than a legally effective express waiver or release, shall be deemed to be a waiver or release of the right of the Creditor Trustee to object to or examine such Claim or Administrative Expense Claim, in whole or in part, or retain and assert, pursue, prosecute, litigate, or otherwise enforce any Estate Cause of Action.

O. Other Documents and Actions

The Plan Proponents and the Creditor Trustee may execute such other documents and take such other actions as may be necessary or appropriate to effectuate the transactions contemplated under this Plan.

P. Inconsistencies

In the event that any provisions of this Plan are inconsistent with the provisions of the Disclosure Statement, the provisions of this Plan shall control.

Q. Implementation of Section 1142 of the Bankruptcy Code

Pursuant to section 1142(a) of the Bankruptcy Code, the Plan Proponents and the Creditor Trustee are authorized to carry out the terms of this Plan. Pursuant to section 1142(b) of the Bankruptcy Code, all Holders of Claims and Interests shall execute and deliver, or join in the execution and delivery of, any instrument or document appropriate to effectuate this Plan, and perform any other act that is appropriate for the consummation of this Plan. To the extent that any Holder of a Claim or Interest fails to comply with these provisions, the Plan Proponents and the Creditor Trustee shall be entitled to obtain, on an expedited basis, an order of the Bankruptcy Court compelling such Holder's compliance with these provisions, and, during the time period encompassed by such Holder's non-compliance, no payment shall be made to such Holder under this Plan.

R. Setoffs and Recoupments

The Debtors may, but shall not be required to, set off against or recoup from the payments to be made pursuant to this Plan in respect of a Claim, any claim of any nature whatsoever that the Debtors may have against the Holder of such Claim, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release of any such claim by the Debtors against such Holder.

S. Retention of Jurisdiction

The Plan shall not in any way limit the Bankruptcy Court's post Confirmation jurisdiction as provided under the Bankruptcy Code. The Bankruptcy Court will retain and have exclusive jurisdiction to the fullest extent permissible over any proceeding (i) arising under the Bankruptcy Code or (ii) arising in or related to the Chapter 11 Cases or the Plan, including but not limited to the following:

- a. To hear and determine pending motions for the assumption, assumption and assignment, or rejection of executory contracts or unexpired leases, if any are pending as of the Effective Date, the determination of any cure payments related thereto, and the allowance or disallowance of Claims resulting therefrom;
- b. To determine any and all adversary proceedings, applications, motions, and contested matters instituted prior to the closing of the Chapter 11 Cases;
- c. To ensure that Distributions to holders of Allowed Claims are accomplished as provided in the Plan;
- d. To hear and determine any objections to Administrative Expense Claims and to proofs of Claim filed both before and after the Effective Date (including, without limitation, whether all or any part of any Claim set forth in any such proof of Claim or Administrative Expense Claim is subject to partial or complete subordination pursuant to applicable law), and to allow or disallow any Disputed Claim in whole or in part; *provided, however*, that, for the avoidance of doubt, the Creditor Trustee may settle or compromise (including by set-off) any Disputed Claim without further Order of the Bankruptcy Court;
- e. To hear and determine all applications for Professional Fee Claims under sections 330, 331, and 503(b) of the Bankruptcy Code;
- f. To hear and determine any disputes arising in connection with the interpretation, implementation, execution, or enforcement of the Plan, the Creditor Trust Agreement, the Confirmation Order, or any other order of the Bankruptcy Court;
- g. To hear or determine any action to recover Assets of the Estates, wherever located;
- h. To hear and determine any actions or matters related to Estate Causes of Action, whether or not such actions or matters are pending on the Effective Date;

- i. To hear and determine any matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;
- j. To hear and determine any objections to the allowance of Claims or Administrative Expense Claims, whether filed before or after the Confirmation Date, including any objections to the classification of any Claim, and any proceedings to allow, disallow, determine, liquidate, estimate, or establish the priority or the secured or unsecured status of any Claim, or to establish reserves pending the resolution of Disputed Claims;
- k. To hear and determine any proceeding to modify the Plan, after confirmation of the Plan, and, if in the best interests of Holders of Claims, modification of the Plan even after the Plan has been substantially consummated;
- l. To consider the issuance of injunctions or other orders as may be necessary or appropriate to aid in the implementation of the Plan or to restrain interference by any entity with the consummation or the enforcement of the Plan;
- m. To hear any other matter not inconsistent with the Bankruptcy Code;
- n. To hear any other matter deemed relevant by the Bankruptcy Court; and
- o. To enter a final decree closing the Chapter 11 Cases.

T. Waiver of Fourteen (14) Day Stay

The Plan Proponents request as a part of the Confirmation Order a waiver from the Bankruptcy Court of the fourteen (14) day stay under Bankruptcy Rule 3020(e).

U. Substantial Consummation

On the Effective Date, the Plan shall be deemed substantially consummated for voting and distribution purposes under sections 1101 and 1127(b) of the Bankruptcy Code.

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Dated: July 24, 2019

Respectfully Submitted,

Morgan Administration, Inc.

By: /s/ Michael Goldman
Its: Chief Restructuring Officer

FP Retail Associates LLC

By: /s/ Michael Goldman
Its: Chief Restructuring Officer

Jular Media LLC

By: /s/ Michael Goldman
Its: Chief Restructuring Officer

Loomis Enterprises LLC

By: /s/ Michael Goldman
Its: Chief Restructuring Officer

North Avenue Associates LLC

By: /s/ Michael Goldman
Its: Chief Restructuring Officer

Deforab LLC

By: /s/ Michael Goldman
Its: Chief Restructuring Officer

Belvidere Associates LLC

By: /s/ Michael Goldman
Its: Chief Restructuring Officer

Hillcrest Enterprises, LLC

By: /s/ Michael Goldman
Its: Chief Restructuring Officer

KLS Acquisition Corp.

By: /s/ Michael Goldman
Its: Chief Restructuring Officer

OL Enterprises LLC

By: /s/ Michael Goldman
Its: Chief Restructuring Officer

Oak Creek Distribution LLC

By: /s/ Michael Goldman
Its: Chief Restructuring Officer

**The Official Committee of Unsecured Creditors
of Morgan Administration Inc., et al.**

By: /s/ Devon Eggert
Its: One of its Attorneys

SUPPORTING EXHIBITS

Exhibit A..... Creditor Trust Agreement

Exhibit A

Creditor Trust Agreement

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

In re:) Chapter 11
)
Morgan Administration, Inc., *et al.* d/b/a) Case No. 18-30039
Home Owners Bargain Outlet,¹) (Jointly Administered)
)
Debtors and Debtors in Possession) Hon. Jacqueline P. Cox

MORGAN ADMINISTRATION, INC. ET AL. CREDITOR TRUST AGREEMENT

Dated: July __, 2019

Shelly A. DeRousse (IL No. 6274798)
Devon J. Eggert (IL No. 6289425)
Elizabeth L. Janczak (IL No. 6302864)
FREEBORN & PETERS LLP
311 South Wacker Drive, Suite 3000
Chicago, IL 60606
Telephone: (312) 360-6000
Facsimile: (312) 360-6520
E-Mail: sderousse@freeborn.com
deggert@freeborn.com
ejanczak@freeborn.com

*Counsel for Official Committee of Unsecured
Creditors of Morgan Administration, Inc. et al.
d/b/a Home Owners Bargain Outlet.*

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Morgan Administration, Inc. (4200); Belvidere Associates LLC (8559); FP Retail Associates LLC (0915); Hillcrest Enterprises, LLC (4581); Jular Media LLC (0805); KLS Acquisition Corp. (0925); Loomis Enterprises LLC (5451); North Avenue Associates LLC (3229); Oak Creek Distribution LLC (0634); OL Enterprises LLC (9401); and Deforab LLC (9348).

MORGAN ADMINISTRATION, INC. ET AL. CREDITOR TRUST AGREEMENT

PREAMBLE

This Agreement (the “*Creditor Trust Agreement*”) is made this ___ day of July, 2019, by and between Morgan Administration, Inc. d/b/a Home Owners Bargain Outlet and its affiliated debtor entities (collectively, the “*Debtors*”), the Official Committee of Unsecured Creditors (the “*Committee*”), and [TRUSTEE], not individually, but solely as trustee of this Creditor Trust (the “*Creditor Trustee*” and, together with the Debtor and the Committee, the “*Parties*”) in accordance with the Joint Chapter 11 Liquidating Plan dated July , 2019 (the “*Plan*”), confirmed by the Bankruptcy Court (as defined *infra*) by the [ORDER CONFIRMING PLAN] dated [DATE] (the “*Confirmation Order*”).²

RECITALS:

A. On October 25, 2018, the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”) in the United States Bankruptcy Court for the Northern District of Illinois (the “*Bankruptcy Court*”) and commenced their chapter 11 cases (the “*Cases*”);

B. On November 5, 2018, the Office of the United States Trustee (the “*U.S. Trustee*”) appointed the Committee, which is comprised of (i) Rohnex LLC; (ii) Supreme Construction, Inc.; (iii) L.W. Mountain, Inc.; (iv) All Title, Inc.; and (v) Kountry Wood Products, LLC;

C. The Plan and the Confirmation Order provide, among other things, that the Creditor Trustee shall be empowered to make distributions, pursuant to the Plan, the Confirmation Order and this Creditor Trust Agreement, to holders of Allowed Administrative Expenses, Allowed Priority Tax Claims, Allowed Class 1 Employee PTO Priority Claims, Allowed Class 2 Employee Health Care Priority Claims, Allowed Class 3 Priority Claims, Allowed Class 4 Secured Claims and Allowed Class 5 General Unsecured Claims (the “*Beneficiaries*”);

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

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

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

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

G. Pursuant to the terms and conditions of the Plan, the Confirmation Order and this Creditor Trust Agreement, the Creditor Trustee shall administer the Creditor Trust Assets;

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

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

- (i) The Creditor Trust is organized for the primary purpose of liquidating the Creditor Trust Assets, with no objective to conduct a trade or business except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Creditor Trust. The Creditor Trust shall not be deemed a successor of the Debtors;
- (ii) The Creditor Trust provides that the Beneficiaries of the Creditor Trust will be treated as the grantors of the Creditor Trust and deemed owners of the Creditor Trust Assets. This Creditor Trust Agreement requires the Creditor Trustee to file returns for the Creditor Trust as a grantor trust pursuant to Treas. Reg. § 1.6714(a);
- (iii) This Creditor Trust Agreement provides for consistent valuations of the transferred property by the Creditor Trustee and the Beneficiaries, and those valuations shall be used for federal income tax purposes;
- (iv) All of the Creditor Trust’s income is to be treated as subject to tax on a current basis to the Beneficiaries who will be responsible for payment of any tax due;
- (v) This Creditor Trust contains a fixed or determinable termination date that is not more than thirty (30) years from the date of creation of the Creditor Trust and that is reasonably based on all the facts and circumstances;
- (vi) The investment powers of the Creditor Trustee, other than those reasonably necessary to maintain the value of the Creditor Trust Assets and to further the liquidating purpose of the Creditor Trust, are limited to powers to invest in demand and time deposits, such as short-term certificates of deposit, in banks or other savings institutions, or other temporary, liquid investments, such as treasury bills; and
- (vii) The Creditor Trustee is required to make a distribution at least once per twelve-month period to the Beneficiaries in the order of priorities set forth in this Creditor Trust Agreement based on the Creditor Trust’s net income, except that the Creditor Trustee may retain an amount of net income

reasonably necessary to maintain the value of the Creditor Trust Assets or to satisfy claims and contingent liabilities (including Disputed Claims).

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

ARTICLE I ESTABLISHMENT OF THE CREDITOR TRUST

1.1 Transfer of Assets to the Creditor Trust

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

1.1.2 All rights in connection with the vesting and transfer of the Creditor Trust Assets, including the Estate Causes of Action, any pending proceedings initiated by the Committee pursuant to Bankruptcy Rule 2004, and any attorney-client privileges, work-product protection or other privilege or immunity attaching to any documents or communications of the Debtors' professionals (whether written or oral) will vest with the Creditor Trust. All bank accounts established by the Debtors will be transferred to and held in the Creditor Trust on behalf of the Beneficiaries, subject to the provisions of the Plan and this Creditor Trust Agreement. The Debtors, the Committee and the Creditor Trustee are authorized to take all necessary actions to effectuate the foregoing.

1.1.3 The Creditor Trust Assets shall mean all assets of the Debtors, plus all proceeds, earnings and replacements arising from or relating to these assets and all assets acquired by the Creditor Trust at any time. The Creditor Trust Assets shall include (but not be limited to): (i) all Cash held by the Debtors; (ii) any remaining personal property owned by the Debtors as of the Effective Date; (iii) all Estate Causes of Action, including the Avoidance Actions and any pending proceedings initiated by the Committee pursuant to Bankruptcy Rule 2004; (iv) the Insurance Policies; and (v) the Net Proceeds.

1.2 Title to Assets

1.2.1 Pursuant to the Confirmation Order, as of the Effective Date, the Debtors shall transfer the Creditor Trust Assets to the Creditor Trust for the benefit of the Beneficiaries. Notwithstanding any prohibition of assignability under applicable non-bankruptcy law, all assets and properties transferred to the Creditor Trust pursuant to the Plan shall vest in the Creditor Trust. Upon the transfer of the Creditor Trust Assets to the Creditor Trust, the Debtors shall have no interest in or with respect to such Creditor Trust Assets or the Creditor Trust.

1.2.2 For federal income tax purposes, all parties (including, without limitation, the Creditor Trustee and the Beneficiaries) shall treat the transfer of the Creditor Trust Assets by the Debtors to the Creditor Trust as a transfer of such assets by the Debtors to the Beneficiaries, followed by a transfer by the Beneficiaries to the Creditor Trust. Thus, the Beneficiaries shall be treated as the grantors and owners of a grantor trust for federal income tax purposes.

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

1.3 Valuation of Assets

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

1.4 Claims Against the Creditor Trust Assets

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

ARTICLE II APPOINTMENT OF THE CREDITOR TRUSTEE

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

ARTICLE III DUTIES AND POWERS OF THE CREDITOR TRUSTEE

3.1 Generally

The Creditor Trustee shall be responsible for administering the Creditor Trust Assets and taking actions on behalf of, and representing, the Creditor Trust. The Creditor Trustee shall have

the authority to bind the Creditor Trust within the limitations set forth herein, but shall for all purposes hereunder be acting in the capacity of Creditor Trustee and not individually.

3.2 Scope of Authority

The responsibilities and authority of the Creditor Trustee shall include, without limitation: (a) collecting and liquidating the Creditor Trust Assets and distributing the Creditor Trust Assets to the Beneficiaries in accordance with the Plan, the Confirmation Order and this Creditor Trust Agreement; (b) facilitating the prosecution or settlement of objections to, or estimations of, Claims in accordance with, but subject to the limitations set forth in, the Plan; (c) analyzing, prosecuting and settling Avoidance Actions and other Estate Causes of Action; (d) in accordance with **Section 11.1**, filing all required tax returns and paying taxes and all other obligations on behalf of the Creditor Trust from funds held by the Creditor Trust; (e) filing Quarterly Reports; (f) providing periodic reports to the Bankruptcy Court and other parties-in-interest on the status of the Claims resolution process, the status of the prosecution of Avoidance Actions and other Estate Causes of Action, distributions to Beneficiaries and the financial status of the Creditor Trust; (g) performing such administrative, ministerial, and other functions reasonably appropriate to the Debtors' orderly liquidation, including but not limited to, such actions as may be associated with the filing of all required tax returns and the dissolution of the Debtors under Illinois and Wisconsin law; and (h) carrying out such other responsibilities not specifically set forth herein as may be vested in the Creditor Trustee pursuant to the Plan, this Creditor Trust Agreement, any Bankruptcy Court order or as may otherwise be necessary and proper to carry out the provisions of the Plan and the Confirmation Order.

3.3 Fiduciary Obligations to the Creditor Trust and Beneficiaries

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

3.4 Powers

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

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

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

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

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

(e) prosecute, defend, compromise, adjust, arbitrate, abandon or otherwise deal with and settle, in accordance with the terms set forth herein and in the Plan and Confirmation Order, all actions arising under state law or the Bankruptcy Code, specifically, but not limited to, Avoidance Actions arising under or related to Chapter 5 of the Bankruptcy Code and other Estate Causes of Action;

(f) determine, compromise and satisfy any and all liabilities created, incurred or assumed by the Creditor Trust;

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

(h) make all tax withholdings and make tax elections by and on behalf of the Creditor Trust;

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

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

(k) administer, reconcile, compromise, estimate and/or resolve Claims (including Administrative Expense Claims, Priority Tax Claims, Class 1 Claims, Class 2 Claims, Class 3 Claims, Class 4 Claims and Class 5 Claims) in accordance with, but subject to the limitations set forth in, the Plan (including the filing of any objections to such Claims as appropriate);

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

(m) make distributions as provided for in this Creditor Trust Agreement, the Plan and the Confirmation Order;

(n) open and maintain bank accounts on behalf of or in the name of the Creditor Trust;

(o) pay expenses and make disbursements necessary to preserve, liquidate and enhance the Creditor Trust Assets;

(p) purchase such insurance coverage as the Creditor Trustee, in its sole discretion, deems necessary and appropriate with respect to the liabilities and obligations of the Creditor Trustee (in the form of an errors and omissions policy, fiduciary policy or otherwise);

(q) purchase such insurance coverage as the Creditor Trustee, in its sole discretion, deems necessary and appropriate with respect to real and personal property which may be or may become Creditor Trust Assets;

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

(s) take such actions as are necessary, appropriate or desirable to close or dismiss the Cases;

(t) take such actions as are necessary, appropriate or desirable to terminate the existence of the Debtors to the extent not already effectuated pursuant to the Plan;

(u) terminate and dissolve the Creditor Trust pursuant to and in accordance with the terms of the Plan and this Creditor Trust Agreement;

(v) sell, abandon, or otherwise dispose of Creditor Trust Assets; and

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

3.5 General Authority of the Creditor Trustee

Unless specifically stated otherwise herein, the Creditor Trustee shall not be required to obtain Bankruptcy Court approval with respect to any proposed action or inaction authorized in this Creditor Trust Agreement or specifically contemplated in the Plan and the Confirmation Order. The Creditor Trustee is not required to submit a proposed settlement agreement to the Bankruptcy Court or such other court of competent jurisdiction on any matter for approval.

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

The Creditor Trustee shall have no power or authority except as set forth in this Creditor Trust Agreement, in the Plan or in the Confirmation Order. For federal tax purposes, the Creditor Trustee shall not be authorized to engage in any trade or business with respect to the Creditor Trust Assets except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Creditor Trust. The Creditor Trustee shall take such actions consistent with the prompt orderly liquidation of the Creditor Trust Assets as required by applicable law

and consistent with the treatment of the Creditor Trust as a liquidating trust under Treas. Reg. § 301.7701-4(d), to the extent such actions are permitted by this Creditor Trust Agreement.

3.7 Other Activities of the Creditor Trustee

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

3.8 Investment and Safekeeping of Creditor Trust Assets

All monies and other assets received by the Creditor Trust shall, until distributed or paid over as herein provided, be held in trust for the benefit of the Beneficiaries, but need not be segregated from other Creditor Trust Assets. The Creditor Trustee shall promptly invest any such monies in the manner set forth in this **Section 3.8**, but shall otherwise be under no liability for interest or income on any monies received by the Creditor Trust hereunder and held for distribution or payment to the Beneficiaries, except as such interest shall actually be received by the Creditor Trustee. Investment of any monies held by the Creditor Trust shall be administered in accordance with the Creditor Trustee's general duties and obligations hereunder and in view of the Creditor Trustee's general fiduciary duties under Illinois law. The rights and powers of the Creditor Trustee to invest the Creditor Trust Assets transferred to the Creditor Trust, the proceeds thereof or any income earned by the Creditor Trust, shall be limited to the right and power to: (a) invest such Creditor Trust Assets (pending distributions in accordance with the Plan and the Confirmation Order) in (i) short-term direct obligations of, or obligations guaranteed by, the United States of America or (ii) short-term obligations of any agency or corporation which is or may hereafter be created by or pursuant to an act of the Congress of the United States as an agency or instrumentality thereof; or (b) deposit such assets in demand accounts at any bank or trust company, which has, at the time of the deposit, a capital stock and surplus aggregating at least \$1,000,000,000 (collectively, the "*Permissible Investments*"); provided, however, that the scope of any such Permissible Investments shall be limited to include only those investments that a liquidating trust, within the meaning of Treas. Reg. § 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the Internal Revenue Service ("*IRS*") guidelines, whether set forth in IRS rulings, other IRS pronouncements or otherwise.

3.9 Authorization to Expend Creditor Trust Assets

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

ARTICLE IV CREDITOR TRUSTEE

4.1 Compensation of the Creditor Trustee

The Creditor Trustee shall be entitled to receive, but is not required to accept, reasonable compensation for services rendered on behalf of the Creditor Trust. All compensation and other amounts payable to the Creditor Trustee shall be paid out of the Creditor Trust Assets. The Creditor Trust shall reimburse the Creditor Trustee for its actual reasonable out-of-pocket expenses incurred including, without limitation, postage, telephone and facsimile charges upon receipt of periodic billings. All reimbursement for expenses payable to the Creditor Trustee shall be paid from the Creditor Trust Assets in priority over any distributions to Beneficiaries to be made under the Plan. If the Creditor Trustee dies or becomes disabled, then such former Creditor Trustee (or his or her estate, successor or assigns) shall be entitled to any remaining unpaid compensation and reimbursement due hereunder.

4.2 Term of Service

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

4.3 No Bond

The Creditor Trustee shall serve without bond.

4.4 Removal

The Creditor Trustee may be removed for cause by order of the Bankruptcy Court following a noticed motion for removal served upon the Creditor Trustee (or his or her Professionals). Any person seeking removal through an order of the Bankruptcy Court must demonstrate to the Bankruptcy Court that such removal is appropriate for cause. The removal in this instance shall be effective on the date specified in the order. "Cause" shall include, without limitation: (a) the undue prolongation of the duration of the Creditor Trust and of distributions of the Creditor Trust Assets to the Beneficiaries; (b) gross negligence, fraud or willful misconduct (as determined by a Final Order) in connection with the affairs of the Creditor Trust; (c) a physical and/or mental disability that substantially prevents the Creditor Trustee from performing the duties of a Creditor Trustee hereunder; or (d) breach of fiduciary duty or an unresolved conflict of interest. Removal shall be effective on the date specified in the order approving the removal.

4.5 Resignation

The Creditor Trustee may resign by giving not less than thirty (30) days' prior written notice thereof to the parties entitled to notice under **Section 13.10** hereof. In the event of a resignation, the resigning Creditor Trustee shall render to the Bankruptcy Court and the successor Creditor Trustee a statement of discharge as described in **Section 4.6** below. The

resignation will be effective on the later of: (a) the date specified in the notice; (b) the date that is thirty (30) days after the date the notice is delivered; and (c) the date the successor Creditor Trustee accepts his or her appointment as such.

4.6 Discharge of Creditor Trustee

4.6.1 Statement of Discharge. The Creditor Trustee shall, upon termination of the Creditor Trust or upon the Creditor Trustee's resignation, removal or death (in which case the Creditor Trustee's estate or third-party employer, as may be appropriate, shall) render a statement of discharge containing the following information: (a) all assets and funds of the Creditor Trust originally charged under the Creditor Trustee's control; (b) a summarized accounting, in sufficient detail, of all purchases, sales, gains, losses and income of the Creditor Trust during the Creditor Trustee's term of service; and (c) the ending balance of all assets and funds of the Creditor Trust as of the date of discharge.

4.6.2 Approval of Statement of Discharge. The statement of discharge required by **Section 4.6.1** shall be presented to the Bankruptcy Court and the successor Creditor Trustee. The withdrawing Creditor Trustee shall then be discharged from all liability to the Creditor Trust or any Person who has had or may then or thereafter have an interest in the Creditor Trust for acts or omissions in the Creditor Trustee's capacity as the Creditor Trustee or in any other capacity contemplated by this Creditor Trust Agreement or the Plan.

4.6.3 Costs Relating to Statement of Discharge. The expenses of any accounting, including, but not limited to any statement of discharge, shall be paid by the Creditor Trust as an expense of the Creditor Trust.

4.7 Appointment of Successor Creditor Trustee

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

4.8 Creditor Trust Continuance

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

ARTICLE V CREDITOR TRUST BENEFICIARIES

5.1 Identification of Beneficiaries

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

5.2 Beneficial Interest Only

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

5.3 Ownership of Beneficial Interests Hereunder

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

5.4 Evidence of Beneficial Interest

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

5.5 Limitation on Transferability

It is understood and agreed that the beneficial interests in the Creditor Trust shall be non-assignable during the term of this Creditor Trust Agreement except by operation of law. An assignment by operation of law shall not be effective until appropriate notification and proof thereof is submitted to the Creditor Trustee, and the Creditor Trustee may continue to pay all amounts to or for the benefit of the assigning Beneficiary until receipt of proper notification and proof of assignment by operation of law. The Creditor Trustee may rely upon such proof without the requirement of any further investigation. Any notice of a change of beneficial interest ownership as permitted by operation of law shall be forwarded to the Creditor Trustee by registered or certified mail pursuant to the notice provisions set forth in **Section 13.10** hereof. The notice shall be executed by both the transferee and the transferor, and the signatures of the parties shall be acknowledged before a notary public and as required by Bankruptcy Rule 3001(e). The notice must clearly describe the interest to be transferred. The Creditor Trustee may conclusively rely upon such signatures and acknowledgments as evidence of such transfer without the requirement of any further investigation.

5.6 Conflicting Claims

If any conflicting claims or demands are made or asserted with respect to the Creditor Trust Assets, or if there is any disagreement between the assignees, transferees, heirs,

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

ARTICLE VI PROVISIONS REGARDING DISTRIBUTIONS

6.1 Timing and Methods of Distributions

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

6.1.2 Allocation and Priority of Distributions. After payment of all unpaid Creditor Trustee's Expenses, the Creditor Trustee in its good faith judgment and based on available Creditor Trust Assets, shall distribute the Net Proceeds in the order of priorities as follows: (a) first, to holders of Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Class 1 Employee PTO Priority Claims, Allowed Class 2 Employee Health Care Priority Claims, Allowed Class 3 Priority Claims and Allowed Class 4 Secured Claims, Pro Rata; and (b) second, to holders of Allowed Class 5 General Unsecured Claims, Pro Rata. The Creditor Trustee may withhold from amounts distributable to any entity any and all amounts, determined in the Creditor Trustee's reasonable discretion to be required by any law, regulation, rule, ruling, directive or other government equivalent of the United States or of any political subdivision thereof, or to otherwise facilitate the administration of the Creditor Trust.

6.1.3 Distributions by the Creditor Trustee. Subject to the provisions of this **Article VI**, the Creditor Trustee shall distribute to the holders of Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Class 1 Claims, Allowed Class 2 Claims, Allowed Class 3 Claims, Allowed Class 4 Claims and Allowed Class 5 Claims, in the priorities set forth in the Plan and in this Creditor Trust Agreement, all net Cash income (including as Cash for this purpose, all cash equivalents) from time to time at such time intervals as decided by the Creditor Trustee (but within a reasonable time after creation of a Disputed Claims Reserve (as defined *infra*) determined to be sufficient to make Pro Rata distributions on

Disputed Claims and to pay the Creditor Trustee's Expenses in full), pursuant to the terms of the Plan and the Confirmation Order. The Creditor Trustee may cause the Creditor Trust to retain an amount of net Cash proceeds or net Cash income reasonably necessary to maintain the value of its assets, as set forth in, and to effectuate the provisions of, the Plan and the Confirmation Order. The Creditor Trustee may withhold from the amount distributable from the Creditor Trust at any time to any Person (except with respect to the IRS) such sum or sums as may be sufficient to pay any tax or taxes or other charge or charges that have been or may be imposed on such Person or upon the Creditor Trust with respect to the amount distributable or to be distributed under the income tax laws of the United States or of any state or political subdivision or entity by reason of any distribution provided for in this Creditor Trust Agreement, whenever such withholding is required by any law, regulation, rule, ruling, directive or other governmental requirement, and the Creditor Trustee may enter into agreements with taxing or other authorities for the payment of such amounts as may be withheld in accordance with the provisions of this **Section 6.1.3**. Notwithstanding the foregoing, but without prejudice to the Creditor Trustee's rights hereunder, such Person shall have the right with respect to the United States, or any state, or any political subdivision of either, to contest the imposition of any tax or other charge by reason of any distribution hereunder.

6.1.4 Claims List. At least ten (10) days prior to the Effective Date, the Debtors will deliver to the Creditor Trustee a list of all Claims scheduled by the Debtors and/or filed against the Debtors as of such date, the addresses of all such holders as of a record date that is not more than fifteen (15) days prior to the date of the list, the designation and amount of each such Claim as disputed or not disputed, fixed or contingent and liquidated or unliquidated, and, to the extent ascertainable from the Debtors' books and records, the Employer or Taxpayer Identification Number as assigned by the IRS for each holder (the "*Claims List*"). The Creditor Trustee shall be entitled to rely upon the Claims List in calculating and making distributions from the Creditor Trust as provided herein; provided, however, that the Claims List shall be adjusted from time to time by the Creditor Trustee as necessary to maintain its accuracy. The Creditor Trustee shall also revise the Claims List from time to time upon receipt of notice from a Beneficiary notifying the Creditor Trustee of a change of address or stating that its Claim has been transferred to a new Beneficiary, that the new Beneficiary has complied with any applicable provisions of Bankruptcy Rule 3001(e) (and providing evidence thereof) and setting forth the name and address of such new Beneficiary. The Creditor Trustee shall establish the revised Claims List that is to be used in conjunction with any particular distribution no less than fourteen (14) days prior to the date of such distribution. Nothing herein shall impair or otherwise affect the Creditor Trustee's right to object to the allowance of Claims as provided in **Section 7.1**.

6.2 Delivery of Distributions

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

6.3 No Post-Petition Interest on Claims

Except as expressly provided in the Plan, the Confirmation Order or any contract, instrument, release, settlement or other agreement entered into in connection with the Plan, or as

required by applicable bankruptcy law, post-petition interest will not accrue on account of any Claim and the Creditor Trustee will not distribute post-petition interest on account of any Claim.

6.4 No Post-Confirmation Date Interest on Claims

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

6.5 Undeliverable Distributions

If any distribution with respect to a Beneficiary is returned to the Creditor Trustee as undeliverable or any statement sent to a Beneficiary pursuant to **Section 11.2** is returned to the Creditor Trustee as undeliverable, no further distributions shall be made to such holder, unless the Creditor Trustee is notified in writing of the Beneficiary's current address. Upon receipt of the notification, the Creditor Trustee will remit all missed distributions to the Creditor Trust Interest holder without interest. All claims for undeliverable distributions must be made on or before the later of (a) one hundred eighty (180) days following the Effective Date and (b) ninety (90) days after the distribution has been remitted to the Beneficiary. If a claim is not made within that time, all unclaimed distributions will revert to the Creditor Trust and be distributed Pro Rata to the remaining Beneficiaries of the Creditor Trust according to the priorities set forth in this Creditor Trust Agreement. Nothing contained in the Plan, the Confirmation Order or this Creditor Trust Agreement shall require the Creditor Trustee to attempt to locate any holder of an Allowed Administrative Expense, Allowed Priority Tax Claim, Allowed Class 1 Claim, Allowed Class 2 Claim, Allowed Class 3 Claim, Allowed Class 4 Claim or Allowed Class 5 Claim.

6.6 Lapsed Distributions

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

6.7 Compliance with Tax Requirements/Allocation

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

6.8 Fractional Dollars; *De Minimis* Distributions

Notwithstanding anything contained herein to the contrary, payments of fractions of dollars will not be made. Whenever any payment of a fraction of a dollar under this Creditor Trust Agreement, the Plan or the Confirmation Order would otherwise be called for, the actual payment made will reflect a rounding of such fraction down to the nearest cent. The Creditor Trustee shall not be required to make any interim distribution of less than Fifty Dollars (\$50.00),

except for an Allowed Claim for pre-petition wages less than fifty dollars (\$50.00), unless a request therefor is made in writing to the Creditor Trustee. Notwithstanding anything to the contrary herein, the Creditor Trustee shall not be required to make a distribution to any Beneficiary if the dollar amount of the distribution is so small that the cost of making the distribution exceeds the dollar amount of such distribution. To the extent that any interim distribution is not paid to a Beneficiary on the grounds that it amounts to less than Fifty Dollars (\$50.00), the amount of such withheld distribution shall be reserved for addition to any future distribution or as the final distribution to such Beneficiary, and may be made at that time if the total distribution is at least Fifty Dollars (\$50.00). At the final distribution date, if, in the reasonable judgment of the Creditor Trustee, the cost of calculating and making the final distribution of the remaining funds is excessive in relation to the benefits to the Beneficiaries who would otherwise be entitled to such distributions, the Creditor Trustee shall deposit such funds with the Clerk of the Bankruptcy Court as unclaimed funds pursuant to Bankruptcy Rule 3011.

6.9 Setoffs

The Creditor Trustee may set off against any Claim and the payments to be made pursuant to the Plan in respect of such Claim, any claims of any nature whatsoever that the Debtors, Estates or the Creditor Trust may have against the holder of such Claim; provided, however, that neither the failure to effect such setoff nor the allowance of any Claim that otherwise would be subject to setoff, shall constitute a waiver or release by the Creditor Trust of any such claims that the Debtors, Estates or Creditor Trust may have against such Beneficiary.

6.10 Preservation of Debtors' Subordination Rights

All subordination rights and claims relating to the subordination by the Debtors or their Estates of the Allowed Administrative Expenses, Allowed Priority Tax Claims, Allowed Class 1 Claims, Allowed Class 2 Claims, Allowed Class 3 Claims, Allowed Class 4 Claims and Allowed Class 5 Claims of any Creditor shall remain valid and enforceable by the Creditor Trust, unimpaired in accordance with section 510 of the Bankruptcy Code or otherwise, and may be asserted by the Creditor Trustee as necessary or appropriate.

ARTICLE VII PROCEDURES FOR RESOLUTION OF DISPUTED, CONTINGENT AND UNLIQUIDATED CLAIMS

7.1 Objections to Claims; Prosecution of Disputed Claims

The Creditor Trustee, on behalf of the Creditor Trust, may file objections to Claims (including Administrative Expense Claims, Priority Tax Claims, Class 1 Claims, Class 2 Claims, Class 3 Claims, Class 4 Claims and Class 5 Claims), even if such Claims were scheduled by the Debtors as undisputed, liquidated and non-contingent. The Creditor Trustee shall have the authority to file, settle, compromise or withdraw any objections to Claims, without approval of the Bankruptcy Court. The Creditor Trustee shall file objections to Claims no later than one hundred eighty (180) days after the Effective Date (unless extended by an order of the Bankruptcy Court or by stipulation between the parties) and the time period set forth in Section

VIII.B. of the Plan to file objections to Administrative Expenses, Class 1 Priority Claims or Class 2 Priority Claims. Notwithstanding the deadline to file objections to Claims provided in the Plan, the Creditor Trustee may file objections to Claims within ninety (90) days of the filing of an amended Claim. Nothing herein or in the Plan shall limit or otherwise affect the right of any party-in-interest under section 502(a) of the Bankruptcy Code to object to any Claim.

7.2 Estimation of Claims

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

7.3 Disputed Claims

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

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

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

ARTICLE VIII
LIABILITY AND EXCULPATION PROVISIONS

8.1 Standard of Liability

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

8.2 Reliance by Creditor Trustee

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

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

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

8.3 Exculpation

8.3.1 From and after the Effective Date, the Creditor Trustee and its Professionals, Non-Professionals and representatives shall be and hereby are exculpated by all Persons, including, without limitation, holders of Claims and other parties in interest, from any and all claims, causes of action and other assertions of liability arising out of the discharge of the powers and duties conferred upon said parties pursuant to or in furtherance of this Creditor Trust Agreement, the Plan, the Confirmation Order or any order of the Bankruptcy Court or applicable

law or otherwise, except only for actions taken or not taken, from and after the Effective Date only to the extent determined by a Final Order to be solely due to their own respective gross negligence, willful misconduct, fraud or, solely in the case of the Creditor Trustee, breach of fiduciary duty, other than negligence.

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

8.4 Indemnification

The Creditor Trust shall indemnify, defend and hold harmless the Creditor Trustee and its respective Professionals, Non-Professionals and representatives from and against any and all claims, causes of action, liabilities, obligations, losses, damages or expenses (including reasonable attorneys' fees and expenses) occurring after the Effective Date, other than to the extent determined by a Final Order to be solely due to their own respective gross negligence, willful misconduct or fraud or, solely in the case of the Creditor Trustee, breach of fiduciary duty, other than negligence, to the fullest extent permitted by applicable law.

ARTICLE IX ADMINISTRATION

9.1 Purpose of the Creditor Trust

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

9.2 Books and Records

9.2.1 Maintenance of Books and Records. The Creditor Trustee shall maintain, with respect to the Creditor Trust and the Beneficiaries, books and records relating to the assets and income of the Creditor Trust and the payment of expenses of and liabilities of, claims against or assumed by, the Creditor Trust in such detail and for such period of time as the Creditor Trustee determines may be necessary to make full and proper accounting in respect thereof in accordance with **Article IX** hereof and to comply with applicable provisions of law. Except as otherwise provided herein, in the Plan, or in the Confirmation Order, nothing in this Creditor Trust Agreement requires the Creditor Trust to file any accounting or seek approval of any court with respect to the administration of the Creditor Trust, or as a condition for making any payment or distribution out of the Creditor Trust Assets. Subject to all applicable privileges, the

Beneficiaries shall have the right, in addition to any other rights they may have pursuant to this Creditor Trust Agreement, under the Plan and the Confirmation Order, or otherwise, upon thirty (30) days' prior written notice delivered to the Creditor Trustee, to request a reasonable inspection (as determined by the Creditor Trustee) of such books and records; provided, however, that, if so requested, such Beneficiary shall: (a) first enter into a confidentiality agreement satisfactory in form and substance to the Creditor Trustee; (b) make such other reasonable arrangements as requested by the Creditor Trustee; and (c) bear all costs and expenses of such inspection.

9.2.2 Quarterly Reports. The Creditor Trustee shall prepare and file with the Bankruptcy Court, a Quarterly Report, in substantially the form attached hereto as Exhibit 1, within thirty (30) days after the conclusion of every calendar quarter setting forth: (a) all distributions to Beneficiaries during the calendar quarter; (b) a summary of the Creditor Trust deposits and disbursements during the calendar quarter; and (c) a summary of the Creditor Trust Assets. The Quarterly Reports shall be filed within thirty (30) days after March 31, June 30, September 30 and December 31 of each calendar year during the term of the Creditor Trust Agreement following the Effective Date. The first Quarterly Report shall be due within thirty (30) days of the passage of the first of the dates listed above to occur after the Effective Date.

9.2.3 The Creditor Trustee may post any report or records required to be provided under this **Section 9.2** on a website maintained by the Creditor Trustee in lieu of actual delivery of such reports or records (unless otherwise required by law), subject to the provisions of notice of such website and its purpose.

9.3 Security Interests

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

9.4 Compliance with Laws

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

ARTICLE X PROFESSIONALS AND NON-PROFESSIONALS

10.1 Retention of Professionals and Non-Professionals

10.1.1 Retention of Professionals. The Creditor Trustee, upon the later to occur of the Effective Date and acceptance by the Creditor Trustee of its appointment in accordance

with the Plan and this Creditor Trust Agreement, shall have the right to retain its own professionals without any further approval by any court or otherwise including, without limitation, legal counsel, accountants, experts, advisors, consultants, investigators, appraisers, real estate brokers, auctioneers and other professionals as the Creditor Trustee deems appropriate (collectively, the “*Professionals*”). Such Professionals shall be compensated in accordance with **Section 10.3** hereof. The Professionals so retained need not be “disinterested” as that term is defined in the Bankruptcy Code and may include, without limitation, counsel and financial advisors of any party in the Cases for efficiency.

10.1.2 Retention of Non-Professionals. The Creditor Trustee, upon the later to occur of the Effective Date and acceptance by the Creditor Trustee of its appointment in accordance with the Plan and this Creditor Trust Agreement, shall have the right to retain non-professionals without any further approval by any court or otherwise including, without limitation, employees, independent contractors or other agents as the Creditor Trustee deems appropriate (the “*Non-Professionals*”). Such Non-Professionals shall be compensated in accordance with **Section 10.3** hereof. The Non-Professionals so retained need not be “disinterested” as that term is defined in the Bankruptcy Code and may include, without limitation, employees, independent contractors and agents of the Debtors or the Committee.

10.2 Retention of Creditor Trustee’s Legal Counsel

The initial Creditor Trustee has chosen to retain _____ as its counsel. Such retention is made pursuant to this **Article X** without any further approval by any court. This counsel is a Professional as that term is used herein, and shall be compensated in accordance with **Section 10.3** hereof.

10.3 Compensation of Professionals and Non-Professionals

Each Professional and Non-Professional shall submit monthly invoices to the Creditor Trustee for its fees and expenses incurred in connection with services requested by, and provided to, the Creditor Trustee. The Creditor Trustee may pay the reasonable fees and expenses of such Professionals and Non-Professionals as an expense of the Creditor Trust without application to the Bankruptcy Court, subject to the following procedure: Each Professional and Non-Professional shall serve its fee invoice (which shall contain detailed time entries) upon the Creditor Trustee no more frequently than once a month. The Creditor Trustee shall have until fourteen (14) days after its receipt of an invoice (the “*Objection Deadline*”) to review such invoice and deliver to the applicable Professional or Non-Professional, any objections thereto. Any objection to an invoice (each an “*Objection*”) must: (a) be in writing; and (b) set forth the precise nature of the Objection and the amount of objectionable fees and expenses at issue. If no Objection is timely filed, served and received in respect of an invoice, then the Professional or Non-Professional shall be entitled to payment from the Creditor Trust on such invoice. If a timely Objection is made, the Professional or Non-Professional shall be entitled to payment from the Creditor Trust of only that portion of the invoice that is not the subject of the Objection, and the Creditor Trustee and the affected Professional or Non-Professional may attempt to resolve on a consensual basis that portion of the invoice that is the subject of the Objection. If the parties are unable to reach a resolution of the Objection, the affected Professional or Non-Professional may file a request for payment of the disputed amount with the Bankruptcy Court and serve such

request on the Creditor Trustee on regular notice, and the Creditor Trustee or the affected Professional or Non-Professional may request, by motion, that the Bankruptcy Court adjudicate and rule on the Objection.

ARTICLE XI TAXES

11.1 Tax Returns and Payments

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

11.2 Creditor Trust

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

11.3 Disputed Claims Reserve

The Creditor Trustee will file all applicable tax and other returns and statements for the Disputed Claims Reserve in accordance with the requirements for discrete trusts taxed pursuant to section 641, *et seq.* of the Internal Revenue Code or as “disputed ownership funds” within the meaning of Treas. Reg. § 1.468B-9(b)(1), as applicable. In addition, the Creditor Trustee will pay from the applicable Creditor Trust Assets on a current basis any taxes owed on any net income or gain of such Disputed Claims Reserve.

11.4 Tax Withholding and Reporting; Liability for Taxes

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

ARTICLE XII TERMINATION OF THE CREDITOR TRUST

12.1 Duration and Extension

The Creditor Trust will terminate no later than the fifth (5th) anniversary of the Effective Date; provided, however, that upon a finding that an extension is necessary to the liquidating purpose of the Creditor Trust and upon approval by the Bankruptcy Court, the term may be extended for a finite term based on the particular facts and circumstances. The Creditor Trust shall seek each such extension no more than six (6) months prior to the beginning of the extended term of the Creditor Trust.

12.2 Termination Upon Distribution of All Creditor Trust Assets

The Creditor Trust will terminate and the Creditor Trustee will have no additional responsibility in connection therewith except as may be required to effectuate such termination under relevant law and except as described in **Section 12.4** hereof, upon the latest of: (a) the payment of all costs, expenses and obligations incurred in connection with administering the Creditor Trust; (b) the distribution of all remaining Creditor Trust Assets; (c) the closure or dismissal of the Cases; and (d) the completion of any necessary or appropriate reports, tax returns or other documentation determined by the Creditor Trustee, in its reasonable discretion, to be necessary, appropriate or desirable, in each case pursuant to and in accordance with the Plan, the Confirmation Order and this Creditor Trust Agreement.

12.3 Diligent Administration

The Creditor Trustee shall: (a) not unduly prolong the duration of the Creditor Trust; (b) at all times endeavor to resolve, settle or otherwise dispose of all claims that constitute Creditor Trust Assets; (c) effect the distribution of the Creditor Trust Assets to the Beneficiaries in accordance with the terms hereof; and (d) endeavor to terminate the Creditor Trust as soon as practicable and without derogating from the Plan or this Creditor Trust Agreement. Prior to and

upon termination of the Creditor Trust, the Creditor Trustee shall distribute the Creditor Trust Assets to the Beneficiaries in accordance with their distribution rights under the Plan and the Confirmation Order, subject to the provisions set forth herein. If any distributions of the Creditor Trust are not duly claimed, the Creditor Trustee shall dispose of all such distributions in accordance with the Plan, the Confirmation Order and this Creditor Trust Agreement.

12.4 Other Termination Procedures

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

12.5 Continuance of Creditor Trust for Winding Up

After the termination of the Creditor Trust and for the purpose of liquidating and winding up the affairs of the Creditor Trust, the Creditor Trustee shall continue to act as such until its duties have been fully performed. Prior to the final distribution of all of the remaining assets of the Creditor Trust, the Creditor Trustee shall be entitled to reserve from such assets any and all amounts required to provide for its reasonable costs and expenses until such time as the winding up of the Creditor Trust is completed.

ARTICLE XIII MISCELLANEOUS PROVISIONS

13.1 Intention of Parties to Establish a Grantor Trust

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

13.2 Preservation of Privilege

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

13.3 Cooperation

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

13.4 Payment of Statutory Fees

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

13.5 Prevailing Party

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

13.6 Implied Authority of the Creditor Trustee

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

13.7 Confidentiality

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

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

13.8 Governing Law; Submission to Jurisdiction; Service of Process

This Creditor Trust Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without giving effect to rules governing the conflict of law. The Bankruptcy Court will have exclusive jurisdiction over any dispute arising out of or in connection with the transactions contemplated by this Creditor Trust Agreement. The parties to this Creditor Trust Agreement consent to the exclusive jurisdiction of the Bankruptcy Court (and of the appropriate appellate courts therefrom) and irrevocably waive, to the fullest extent permitted by law, any objection that they may now or hereafter have to the laying of the venue of any such dispute in the Bankruptcy Court or that any such dispute brought in the Bankruptcy Court has been brought in an inconvenient forum. This Creditor Trust Agreement is subject to any order or act of the Bankruptcy Court applicable hereto. Process may be served on any party anywhere in the world, whether within or without the jurisdiction of the Bankruptcy Court. Without limiting the foregoing, each party to this Creditor Trust Agreement agrees that service of process on that party may be made upon the designated Person or entity at the address provided in **Section 13.10** hereof and will be deemed to be effective service of process on that party.

13.9 Severability

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

13.10 Notices

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

Creditor Trustee:

Telephone: _____
Facsimile: _____

E-Mail: _____

with a copy to:

Telephone: _____

Facsimile: _____

E-Mail: _____

Debtors:

Michael Goldman
Chief Restructuring Officer
c/o KCP Advisory Group
655 Deerfield Rd., Ste. 100 pmb 325
Deerfield, IL 60015
Telephone: _____
Facsimile: _____
E-Mail: _____

with a copy to:

Jonathan P. Friedland, Esq.
Elizabeth B. Vandesteeg
Sugar Felsenthal Grais & Helsinger LLP
30 N. LaSalle St., Ste. 3000
Chicago, IL 60602
Telephone: (312) 704-9400
Facsimile: (312) 372-7951
E-Mail: jfriedland@SFGH.com
evandesteeg@SFGH.com

13.11 Notices if to a Beneficiary

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

13.12 Headings

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

13.13 Counterparts and Facsimile Signatures

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

13.14 Amendment or Waiver

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

13.15 Intervention

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

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

CREDITOR TRUSTEE

By: _____
_____, not individually, but
solely as trustee of the Creditor Trust

MORGAN ADMINISTRATION, INC.

By: _____

Title: _____

BELVIDERE ASSOCIATES LLC

By: _____

Title: _____

FP RETAIL ASSOCIATES LLC

By: _____

Title: _____

HILLCREST ENTERPRISES, LLC

By: _____

Title: _____

JULAR MEDIA LLC

By: _____

Title: _____

KLS ACQUISITION CORP.

By: _____

Title: _____

LOOMIS ENTERPRISES LLC

By: _____

Title: _____

NORTH AVENUE ASSOCIATES LLC

By: _____

Title: _____

OAK CREEK DISTRIBUTION LLC

By: _____

Title: _____

OL ENTERPRISES LLC

By: _____

Title: _____

DEFORAB LLC

By: _____

Title: _____

**THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS OF THE
DEBTORS**

By: _____

Title: _____

Prepared by:

Devon J. Eggert, Esq.
FREEBORN & PETERS LLP
311 South Wacker Drive, Suite 3000
Chicago, Illinois 60606-6677
Telephone: (312) 360-6000
Facsimile: (312) 360-6520

EXHIBIT 1

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

In re:) Chapter 11
)
 Morgan Administration, Inc., *et al.* d/b/a) Case No. 18-30039
 Home Owners Bargain Outlet,³) (Jointly Administered)
)
 Debtors and Debtors in Possession) Hon. Jacqueline P. Cox

**CHAPTER 11 POST-CONFIRMATION REPORT
 FOR THE QUARTER ENDED _____**

_____ (the “*Creditor Trustee*”), not individually, but solely as Creditor Trustee for the Morgan Administration, Inc. *et al.* Creditor Trust (the “*Creditor Trust*”),⁴ by and through his undersigned counsel, hereby submits this *Chapter 11 Post Confirmation Report for the Quarter Ended _____* (the “*Quarterly Report*”) pursuant to Section 9.2.2 of the Creditor Trust Agreement, and affirms as follows:

I. Summary of Distributions to Beneficiaries

Between _____ and _____, the Creditor Trust made the following distributions to Creditor Trust beneficiaries:

<u>Date</u>	<u>Amount</u>	<u>Name</u>	<u>Claim Type</u>

II. Summary of Deposits and Disbursements

a. Deposits

<u>Date</u>	<u>Amount</u>	<u>Source</u>

³ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Morgan Administration, Inc. (4200); Belvidere Associates LLC (8559); FP Retail Associates LLC (0915); Hillcrest Enterprises, LLC (4581); Jular Media LLC (0805); KLS Acquisition Corp. (0925); Loomis Enterprises LLC (5451); North Avenue Associates LLC (3229); Oak Creek Distribution LLC (0634); OL Enterprises LLC (9401); and Deforab LLC (9348).

⁴ Capitalized terms not defined herein shall have the meanings ascribed to them in the Creditor Trust Agreement and the Joint Chapter 11 Liquidating Plan dated July __, 2019 (the “*Plan*”), as applicable.

Total Deposits: \$ _____

b. Disbursements (Other than Payments to Creditor Trust Beneficiaries)

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Total Disbursements: \$ _____

III. Summary of Amounts Distributed Under the Plan:

	<u>Current Quarter</u>	<u>Paid to Date</u>	<u>Balance Due</u>
A. Fees and Expenses:			
1. Trustee Compensation	_____	_____	_____
2. Fees for Attorney for Trustee	_____	_____	_____
3. Fee for Attorney for Debtors	_____	_____	_____
4. Other professionals	_____	_____	_____
5. All expenses	_____	_____	_____
B. Distributions			
6. Administrative Expenses	_____	_____	_____
7. Priority Tax Claims	_____	_____	_____
8. Class 1 Claims	_____	_____	_____
9. Class 2 Claims	_____	_____	_____
10. Class 3 Claims	_____	_____	_____
11. Class 4 Claims	_____	_____	_____
12. Class 5 Claims	_____	_____	_____
13. Other Payments or Transfers	_____	_____	_____
Total Plan Payments (Sum of Lines 1-13)	_____	_____	_____

IV. Summary of Creditor Trust Assets

V. Additional Actions and Information

The Creditor Trustee has taken additional steps since the filing of the last Quarterly Report. The Creditor Trustee's additional and ongoing efforts include:

Dated:

_____, **NOT
INDIVIDUALLY, BUT SOLELY AS THE
CREDITOR TRUSTEE for the MORGAN
ADMINISTRATION, INC. *et al.*
CREDITOR TRUST**

By: ____ / _____
One of His Attorneys

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