

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

In re:) Chapter 11
)
) Case No. 19-35238
HC OLDSCO, INC. f/k/a ARRO CORPORATION,)
) Hon. Janet S. Baer
)
Debtor.)
_____)

**AGREED PLAN OF LIQUIDATION OF
DEBTOR AND OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

Dated: June 25, 2020

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**AGREED PLAN OF LIQUIDATION OF DEBTOR AND
OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

HC OldCo, Inc. f/k/a Arro Corporation, as debtor and debtor-in-possession (the “*Debtor*”) and the Official Committee of Unsecured Creditors (the “*Committee*”), hereby submit this Agreed Plan of Liquidation of Debtor and Official Committee of Unsecured Creditors (the “*Plan*”) pursuant to section 1123 of the Bankruptcy Code:

ARTICLE I

Definitions

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

1.1 “**503(b)(9) Claims**” shall mean any claims for the sale of goods to the Debtor that were received by the Debtor in the 20-day period prior to the Petition Date that are entitled to Administrative Claim treatment under section 503(b)(9) of the Bankruptcy Code, each of which were subject to the Bar Date Order and the General Bar Date.

1.2 “**Administrative Claim**” shall mean a Claim of a Creditor of the kind specified in section 503(b) of the Bankruptcy Code that is entitled to priority under section 507(a)(2) of the Bankruptcy Code, and shall include: (i) any actual and necessary costs and expenses incurred by the Debtor after the Petition Date with respect to preserving the Estate and operating the Debtor’s business; (ii) any Professional Fee Claims approved by the Bankruptcy Court pursuant to section 330 of the Bankruptcy Code, or in a manner approved by prior Order of the Bankruptcy Court, including without limitation fees of the CRO; (iii) all UST Fees; and (v) 503(b)(9) Claims.

1.3 “**Administrative Claims Bar Date**” shall have the meaning set forth in Section 5.1.2 of the Plan.

1.4 “**Administrative / Priority Savings**” shall mean the extent to which the aggregate amounts of Allowed Administrative Claims (excluding Allowed Professional Fee Claims), Allowed Priority Tax Claims and Allowed Other Priority Claims are less than the aggregate amounts allocated in the Plan Budget (excluding Allowed Professional Fee Claims), if any.

1.5 “**Advisory Committee**” shall mean the committee created pursuant to the Creditor Trust Agreement, which shall provide advice and consultation to the Creditor Trustee in the manner set forth in the Creditor Trust Agreement.

1.6 “**Allowed Claim**” or “**Allowed . . . Claim**” shall mean: (i) a Claim, proof of which is filed by the General Bar Date or the Governmental Bar Date, as applicable, pursuant to the procedures established pursuant to the Bar Date Order, or that has been, or is hereafter, scheduled by the Debtor as liquidated in amount and not disputed or contingent, and to which no objection to allowance thereof has been raised by the Debtor or Creditor Trustee, or filed within any applicable period fixed by the Bankruptcy Court, or as to which a Final Order allowing such

Claim has been entered; or (ii) with respect to an Administrative Claim, an Order entered by the Bankruptcy Court approving such Administrative Claim, to the extent thereof.

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

1.8 “**Ballot**” shall mean the form distributed to each Holder of an impaired Claim on which is to be indicated acceptance or rejection of the Plan.

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

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

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

1.12 “**Bar Date Order**” shall mean that certain Order Establishing Bar Dates for Filing (A) Proofs of Prepetition Unsecured and Secured Claims and (B) Requests for Allowance of § 503(b)(9) Administrative Expenses (Docket No. 193).

1.13 “**Beneficiaries**” shall mean the beneficiaries of the Creditor Trust; specifically, Holders of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Class 1 Claims (to the extent of the BMO Additional Trust Recovery), Allowed Class 2 Claims (to the extent of the Allowed Unsecured Claim), Allowed Class 3 Claims, Allowed Class 4 Claims and Allowed Class 5 General Unsecured Claims that are entitled to receive a Distribution from the Creditor Trust under the terms of the Plan and the Creditor Trust Agreement.

1.14 “**BMO**” shall mean BMO Harris Bank N.A., the Debtor’s senior secured lender.

1.15 “**BMO Additional Trust Recovery**” shall mean the Net Trust Proceeds to be distributed by the Creditor Trust to BMO on account of its Allowed Unsecured Claim pursuant to the following schedule: (i) ten percent (10%) of the first \$250,000 of Distributions; (ii) fifteen percent (15%) of the next \$500,000 of Distributions; and (iii) twenty percent (20%) of Distributions in excess of \$750,000.

1.16 “**BMO Administrative / Priority Savings Split**” shall mean fifty percent (50%) of the Administrative / Priority Savings, after the Preferred Administrative / Priority Claim Refund, which shall be distributed to BMO on or after the Effective Date.

1.17 “**BMO Cash Contribution**” shall mean \$50,000, payable to the Creditor Trust by BMO on the Effective Date.

1.18 “**BMO Pre-Petition Loan Documents**” shall mean all promissory notes and loan and security agreements, and any related agreements, governing the lending relationship between BMO and the Debtor, in all cases, existing prior to the Petition Date, including, but not limited to, that certain Credit Agreement dated June 14, 2017 by and among the Debtor and BMO (as amended, modified or supplemented from time to time).

1.19 “**Buyer**” shall mean Mount Franklin Foods, LLC or its affiliated assignee, Element Food Solutions, LLC, as purchaser of substantially all of the Debtor’s assets as approved pursuant to the Sale Order.

1.20 “**Case**” shall mean the case commenced under chapter 11 of the Bankruptcy Code by the Debtor on the Petition Date, styled *In re HC OldCo, Inc. f/k/a Arro Corporation*, Case No. 19-35238, currently pending before the Bankruptcy Court.

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

1.22 “**Causes of Action**” shall mean, to the extent not released under the Plan (including without limitation, and after giving effect to, those releases set forth in section 10.8 of this Plan), or any Confirmation Order, any claim, cause of action, chose in action, action, suit, demand, and any other debt, obligation, right, damage, remedy, controversy, agreement, promise, lien, variance, trespass, power, privilege, license, franchise, judgment, third-party claim, subrogation claim, guaranty claim, contribution claim, reimbursement claim, indemnity claim, counterclaim, right of setoff or recoupment, crossclaim, claim objection, defense to claim, and liability whatsoever of any kind or character relating to any act, omission, transaction, event, or other occurrence taking place on or prior to the Effective Date, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, secured or unsecured, assertable directly or derivatively, existing or hereafter arising, in law, equity, or otherwise. Cause of Action also includes, to the extent not released under the Plan or any Confirmation Order: (a) any right of setoff, counterclaim, or recoupment and any claim on contracts or for breaches of duties imposed by law or in equity belonging to the Estate; (b) any claim pursuant to sections 362, 502, and 510 of the Bankruptcy Code and any analogous provisions of applicable state law belonging to the Estate; (c) any claim, right or cause of action related to any and all Avoidance Actions; (d) any claim or defense including, but not limited to fraud, mistake, duress, and usury and any other defenses belonging to the Estate pursuant to section 558 of the Bankruptcy Code; and (e) any claim, right, or cause of action against any Insiders, officers, directors, recipient of a fraudulent transfer, and/or related entities.

1.23 “**Claim**” shall have the meaning set forth in section 101(5) of the Bankruptcy Code.

1.24 “**Class**” shall mean a class of Holders of Claims as described in the Plan.

1.25 “**Committee**” shall mean the Official Committee of Unsecured Creditors appointed in this Case on December 23, 2019, pursuant to section 1102 of the Bankruptcy Code,

as amended by the *Amended Notice of Appointment of Unsecured Creditors' Committee* filed on February 4, 2020 [Dkt. No. 118].

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

1.27 “**Confirmation Hearing**” shall mean the date on which the Bankruptcy Court holds a hearing pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan in accordance with section 1129 of the Bankruptcy Code, as the same may be adjourned from time to time.

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

1.29 “**Creditor**” shall have the meaning set forth in section 101(10) of the Bankruptcy Code .

1.30 “**Creditor Trust**” shall mean a common law grantor trust to be established pursuant to the Plan, the Creditor Trust Agreement and the Confirmation Order for the sole and exclusive benefit of the Beneficiaries. The Creditor Trust shall liquidate and distribute the Creditor Trust Assets, in accordance with the Creditor Trust Agreement.

1.31 “**Creditor Trust Agreement**” shall mean the agreement to be executed by no later than the Effective Date among the Debtor, the Committee and the Creditor Trustee, a copy of which is attached as Exhibit A to the Plan and incorporated herein by reference, which shall govern the obligations of the Creditor Trustee with respect to oversight of the distribution of the Net Trust Proceeds of the Creditor Trust Assets and the completion of certain administrative tasks on behalf of the Debtor, as further set forth in the Creditor Trust Agreement and the Plan.

1.32 “**Creditor Trust Assets**” shall mean those assets to be transferred to and vested in the Creditor Trust pursuant to this Plan and the Confirmation Order, plus all proceeds, earnings and replacements arising from or relating to these assets and all assets acquired by the Creditor Trust at any time. The Creditor Trust Assets shall include (but not be limited to): (i) all Cash held by the Debtor, including the Reserved Cash and any Estate Administrative / Priority Savings Split remaining as of the Effective Date; (ii) the Debtor’s remaining property, including accounts or any other tangible or intangible personal property and any and all proceeds thereof; (iii) the BMO Cash Contribution; (iv) the Debtor’s right, title and interest in and to all Causes of Action and any proceeds therefrom; and (v) all books and records related to the Debtor or its Estate not otherwise sold to the Buyer. Notwithstanding that the Reserved Cash shall be transferred to the Creditor Trust as a Creditor Trust Asset, the Creditor Trustee shall not use the Reserved Cash for any purpose other than as set forth in the Plan Budget.

1.33 “**Creditor Trustee**” shall mean John B. Pidcock of Oxford Restructuring Advisors, or any successor designated by the Advisory Committee, subject to approval by the Bankruptcy Court, 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 Beneficiaries, pursuant to the Plan, the Confirmation Order and the Creditor Trust Agreement.

1.34 “**CRO**” shall mean Vladimir Kasparov, as the Debtor’s Bankruptcy Court-approved Chief Restructuring Officer.

1.35 “**De Minimis Distribution**” shall mean any Distribution in an amount less than fifty dollars (\$50.00).

1.36 “**Debtor**” shall mean HC OldCo, Inc. f/k/a Arro Corporation, an Illinois corporation.

1.37 “**DIP Financing Order**” shall mean that certain Final Order Authorizing (A) Secured Post-Petition Financing on a Super Priority Basis Pursuant to 11 U.S.C. § 364, (B) Use of Cash Collateral Pursuant to 11 U.S.C. § 363 and (C) Grant of Adequate Protection Pursuant to U.S.C. §§ 363 and 364 (Docket No. 65).

1.38 “**Disclosure Statement**” shall mean the Disclosure Statement filed by the Debtor and the Committee and approved by the Bankruptcy Court.

1.39 “**Disputed Claim**” or “**Disputed . . . Claim**” shall mean:

(a) a Claim that has not been listed by the Debtor in its Schedules or has been listed in the Schedules at zero or for an unknown amount, or has been listed in the Schedules as contingent, unliquidated or disputed and for which no proof of Claim has been timely filed with the Bankruptcy Court;

(b) if a proof of Claim or request for payment of an Administrative Claim has been filed: (i) a Claim for which no corresponding Claim is listed on the Debtor’s books and records or in its Schedules or (ii) a Claim for which a corresponding Claim is listed in the Debtor’s books and records, but the nature or amount of the Claim as asserted in the filed proof of Claim varies from the nature and amount of such Claim as it is listed on in the Debtor’s books and records or its Schedules;

(c) a Claim for which the Debtor has received a written notice advising it that the Holder of such Claim disagrees with the Debtor’s books and records or its Schedules with respect to the Allowed amount of such Holder’s Claim; or

(d) a Claim otherwise subject to a formal objection filed in the Case, a request for estimation filed in the Case, or otherwise disputed (in writing delivered to the Holder of such Claim) by the Debtor or any party-in-interest, in accordance with applicable law; and (ii) which such written objection has not been withdrawn, resolved or overruled by a Final Order of the Bankruptcy Court.

For the avoidance of doubt, the Debtor, the Committee and the Creditor Trustee reserve the right to object to any Claim not otherwise constituting an Allowed Claim by Final Order of the Court in accordance with the Plan, the Creditor Trust Agreement, the Bankruptcy Code and the Bankruptcy Rules.

1.40 “**Distribution**” shall mean the Cash or other value distributed to Holders of Allowed Claims or Beneficiaries, as applicable, pursuant to the Plan and/or the Creditor Trust Agreement.

1.41 “**Effective Date**” shall mean a date selected by the Plan Proponents, which shall be a Business Day after the Confirmation Date on which all conditions specified in Section 9.3 herein have been satisfied (or waived in accordance therewith); provided, however, that if a stay of the Confirmation Order is in effect on such day, then the Effective Date shall be the first day thereafter on which, if the Confirmation Order has not been vacated, no stay of the Confirmation Order is in effect.

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

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

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

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

1.46 “**Estate Administrative / Priority Savings Split**” shall mean fifty percent (50%) of the Administrative / Priority Savings after the Preferred Administrative / Priority Claim Refund, which shall be retained by the Estate or, after the Effective Date, the Creditor Trust; and used to pay any Allowed Administrative Claims (including Allowed Professional Fee Claims), and thereafter, any Allowed Other Priority Claims and Allowed Priority Tax Claims, and thereafter, to pay Trustee’s Expenses or any other Beneficiaries, as the case may be.

1.47 “**Exculpated Party**” shall mean, collectively, and in each case in its capacity as such: (a) the Debtor and its Estate; (b) the Committee and its individual members; (c) the Debtor’s and the Committee’s respective Professionals; (d) with respect to each of the foregoing entities in clauses (a) through (c), each such entity’s current and former affiliates, direct and indirect subsidiaries, and direct and indirect equity holders and/or partners; and (e) with respect to each of the foregoing entities in clauses (a) through (e), each of their respective current and former directors, officers (including the CRO), equity holders, employees, partners, managers, independent contractors, agents, representatives, principals, professionals, consultants, financial advisors, attorneys, accountants, trustees, investment bankers, and other professional advisors (with respect to clause (e), each solely in their capacity as such vis-à-vis the Debtor).

1.48 “**Executory Contract**” shall mean an executory contract or unexpired lease, the assumption, rejection and assignment of which are governed by, *inter alia*, section 365 of the Bankruptcy Code.

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

1.50 “**General Bar Date**” shall mean May 26, 2020, the bar date by which a proof of Claim must have been filed to be deemed timely, except for: (a) claims of governmental units; (b) claims resulting from a subsequent amendment to the Schedules; and (c) claims based on the Debtor’s rejection of an Executory Contract, as established by the Bar Date Order.

1.51 “**General Unsecured Claim**” shall mean any Unsecured Claim, arising prior to the Petition Date, that is not an Administrative Claim, Priority Tax Claim, Class 1 Claim (BMO), Class 2 Claim (SBA), Class 3 Claim (Other Secured Claims), Class 4 Claim (Allowed Other Priority Claims), or Class 6 Equity Interests.

1.52 “**Governmental Bar Date**” shall mean June 11, 2020, the bar date by which a proof of Claim of a governmental unit must have been filed to be deemed timely, as established by the Bar Date Order.

1.53 “**Holder**” shall mean any Person owning or holding a Claim or Equity Interest.

1.54 “**Impaired**” shall mean any Class, or any Claim or Interest in a Class, that is impaired within the meaning of section 1124 of the Bankruptcy Code, and shall include, without limitation, Class 1, 2 and 5 Claims and Class 6 Equity Security Interests.

1.55 “**Insider**” shall have the meaning provided by section 101(31) of the Bankruptcy Code.

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

1.57 “**Net Sale Proceeds**” shall mean the Sale Proceeds, less: (i) the SBA Agreed Distribution; and (ii) any amounts which have not been funded by BMO for payment as allocated in and pursuant to the Plan Budget as of the Effective Date (including the BMO Cash Contribution).

1.58 “**Net Trust Proceeds**” shall mean the Cash proceeds received by the Creditor Trustee from time to time from the liquidation or other disposition of the Creditor Trust Assets, net of the reasonable or necessary costs of such sale or other disposition, including reasonable fees and expenses of the Creditor Trustee’s legal counsel and other Professionals incurred in connection therewith. For clarity, except for the BMO Cash Contribution, the term Net Trust Proceeds shall not include any Cash proceeds allocated in the Plan Budget for payment of Allowed Administrative Claims, Allowed Priority Tax Claims or Allowed Other Priority Claims pursuant to the Plan Budget or the Estate Administrative / Priority Savings Split, which are transferred to the Creditor Trustee for disposition pursuant to this Plan and the Creditor Trust Agreement.

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

1.60 “**Other Priority Claim**” shall mean a Claim, other than an Administrative Claim or Priority Tax Claim, that is entitled to priority in payment under section 507(a) of the Bankruptcy Code. With respect to the Claims of employees or former employees, such Claims

shall constitute Other Priority Claims only to the extent permissible under sections 507(a)(4) and (a)(5) of the Bankruptcy Code or prior order of the Bankruptcy Court.

1.61 “**Other Secured Claims**” shall mean Claims of Creditors asserting a Lien other than BMO and the SBA.

1.62 “**Person**” means a “person” as defined in Bankruptcy Code section 101(41) and shall include, *inter alia*, any individual, corporation, general partnership, limited partnership, limited liability partnership, limited liability company, association, joint stock company, joint venture, government or political subdivision, official committee appointed by the United States Trustee, unofficial committee of creditors or equity holders, or other entity (as defined in section 101(15) of the Bankruptcy Code).

1.63 “**Petition Date**” shall mean December 13, 2019, the date of the filing of the Debtor’s Case.

1.64 “**Plan**” shall mean this Agreed Plan of Liquidation of Debtor and the Official Committee of Unsecured Creditors as set forth herein or as it may be modified or amended.

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

1.66 “**Preferred Administrative / Priority Claim Refund**” shall mean the first \$25,000 of the Administrative / Priority Savings.

1.67 “**Plan Budget**” shall mean the amount of Cash to be provided by BMO up to and not exceeding \$1,355,332.00, for funding and payment of (i) Allowed Administrative Claims, excluding Professional Fee Claims and UST Fees, in an amount not to exceed \$418,967; (ii) Allowed Administrative Claims consisting of Professional Fee Claims and UST Fees in an amount not to exceed \$721,642; (iii) Allowed Other Priority Claims, in an amount not to exceed \$164,723; and (iv) the BMO Cash Contribution (i.e., \$50,000), as agreed to by the Debtor, the Committee, BMO, and SBA on or about June 5, 2020.

1.68 “**Pre-July Administrative Claim**” shall mean an Administrative Claim, other than a 503(b)(9) Claim or a Professional Fee Claim, for goods and/or services supplied to the Debtor on or before June 30, 2020.

1.69 “**Pre-Petition Date Professionals**” shall mean those professional firms employed by the Debtor pre-Petition Date to provide restructuring advisory and/or legal services, and shall include Adelman & Gettleman Ltd. and Andrews Advisory Group, LLC.

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

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

1.72 “**Professional Fee Carve Out Funds**” shall mean such Cash held by the Debtor or to be funded by BMO to compensate Professionals for the Debtor and the Committee, as described more fully in the DIP Financing Order and the Plan Budget, for such Professionals’ Allowed Professional Fee Claims.

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

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

1.75 “**Released Party**” shall mean, collectively, and in each case in its capacity as such: (a) the Debtor, its Estate, and its Professionals; (b) the Pre-Petition Professionals; (c) Dan Dooley and Rob Novak in their capacity as the president and independent director of the Debtor, respectively; (d) the Committee, its individual members, and its Professionals; (e) the Creditor Trust, the Creditor Trustee, and the Creditor Trustee’s Professionals; (f) BMO, its affiliates, subsidiaries, representatives, attorneys, agents, and professional advisors; and (g) SBA, its representatives, attorneys, agents, and its professional advisors.

1.76 “**Releases**” shall mean the mutual releases more fully described in Section 10.8 of the Plan.

1.77 “**Reserved Cash**” shall have the meaning ascribed to it in Section 8.3 of the Plan.

1.78 “**Sale**” shall mean the sale of substantially all of the Debtor’s assets to Buyer as more fully described in that certain Asset Purchase Agreement by and between Debtor and Buyer dated as of March 13, 2020 and approved pursuant to the Sale Order.

1.79 “**Sale Order**” shall mean that certain Order (A) Approving the Sale of Substantially All of the Debtor’s Assets Free and Clear of Interests Including Liens, Claims, and Encumbrances; (B) Authorizing the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (C) Granting Related Relief (Docket No. 169) entered by the Bankruptcy Court on March 5, 2020.

1.80 “**Sale Proceeds**” shall mean the proceeds of the Sale in the amount of \$9,088,309.90, which consists of the cash purchase price, plus or minus various adjustments, and less the commissions previously paid to Livingstone Partners, LLC upon consummation of the Sale.

1.81 “**SBA**” shall mean the United States Small Business Administration.

1.82 “**SBA Agreed Distribution**” shall mean Cash in the amount of \$700,000 from the Sale Proceeds.

1.83 “**SBA Pre-Petition Loan Documents**” shall mean all promissory notes and loan and security agreements, and any related agreements, governing the lending relationship between SBA and the Debtor, in all cases, existing prior to the Petition Date (as amended, modified or supplemented from time to time).

1.84 “**Schedules**” shall mean the schedules of assets and liabilities (filed at Docket No. 87 and amended in part at Docket No. 197) and the statement of financial affairs (filed at Docket No. 88 and amended at Docket No. 209) filed by the Debtor in accordance with section 521 of the Bankruptcy Code and the Official Bankruptcy Forms of the Bankruptcy Rules as such schedules and statements have been or may be supplemented or amended.

1.85 “**Secured Claim**” shall mean: (a) any Claim that is secured by a Lien on property in which the Estate has an interest, which Liens are valid, perfected and enforceable under applicable law or by reason of a Final Order, or that is subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code; and (b) any Claim which is Allowed under the Plan as a Secured Claim.

1.86 “**Secured Creditor**” shall mean the Holder of a Secured Claim.

1.87 “**Supplemental Administrative Claims Bar Date**” shall mean July 27, 2020, the deadline for Holders of Pre-July Administrative Claims to file with the Bankruptcy Court an application, in accordance with section 503(a) of the Bankruptcy Code, for allowance of such Pre-July Administrative Claim, along with all documentation supporting such claim.

1.88 “**Trustee’s Expenses**” shall mean the reasonable fees, costs and expenses incurred by the Creditor Trustee and any Professionals retained by him or her in connection with the performance of his or her duties and responsibilities under the Plan and Creditor Trust Agreement, as well as any other reasonable and necessary costs of administration of the Creditor Trust, including UST Fees incurred during the post-Confirmation Date period and the reasonable fees, costs and expenses of Debtor and its Professionals for work performed at the direction of the Creditor Trustee in furtherance of the Plan or to support the efforts of the Creditor Trustee, all of which may be paid from the Creditor Trust Assets.

1.89 “**Unimpaired**” shall mean any Class, or any Claim or Interest in a Class, that is not Impaired, or unimpaired within the meaning of section 1124 of the Bankruptcy Code, and shall include, without limitation, Class 3 and 4 Claims,

1.90 “**Unsecured Claim**” or “**Unsecured ... Claim**” shall mean a Claim of a Creditor not secured by a Lien on property of the Estate or which is otherwise not a Secured Claim (including any Claim that is not subject to a right of setoff against Debtor or its Estate under section 553 of the Bankruptcy Code).

1.91 “**U.S. Trustee**” shall mean the United States Trustee.

1.92 “**UST Fees**” shall mean all fees and charges properly assessed against the Estate pursuant to 28 U.S.C. § 1930.

1.93 **Rules of Interpretation and Computation of Time.** For purposes of this Plan, unless otherwise provided herein: (i) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, will include both the singular and the plural; (ii) unless otherwise provided in this Plan, any reference in this Plan to a contract, instrument, release or other agreement or document being in a particular form or on particular terms and conditions means that such document will be substantially in such form or substantially on such terms and conditions; (iii) any reference in this Plan to an existing document or schedule filed or to be filed means such document or schedule, as it may have been or may be amended, modified or supplemented pursuant to this Plan; (iv) any reference to any entity as a Holder of a Claim or Interest includes the entity’s successors and assigns; (v) all references in this Plan to Sections, Articles and Exhibits are references to Sections, Articles and Exhibits of or to this Plan; (vi) the words “herein,” “hereunder” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan; (vii) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Plan; (viii) the rules of construction set forth in section 102 of the Bankruptcy Code will apply; and (ix) in computing any period of time prescribed or allowed by this Plan, the provisions of Bankruptcy Rule 9006(a) will apply.

ARTICLE II

Unclassified Claims

Section 1123(a)(1) of the Bankruptcy Code provides that Administrative Claims and Priority Tax Claims are not to be classified under the Plan. Accordingly, the following shall not be classified under the Plan and shall not be entitled to vote on the Plan: (i) Allowed Administrative Claims, consisting of Allowed Professional Fee Claims and Allowed Other Administrative Claims; and (ii) Allowed Priority Tax Claims.

ARTICLE III

Designation of Classified Claims and Interests

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

3.1 **Class 1 Claims** shall consist of the Allowed Claims of BMO.

3.2 **Class 2 Claims** shall consist of the Allowed Claims of SBA.

3.3 **Class 3 Claims** shall consist of Other Secured Claims.

3.4 **Class 4 Claims** shall consist of all Allowed Other Priority Claims.

3.5 **Class 5 Claims** shall consist of all Allowed General Unsecured Claims (other than the deficiency portions of Classes 1 and 2).

3.6 **Class 6 Equity Interests** shall consist of the Equity Interests of Equity Security Holders.

ARTICLE IV

Impairment of Classes

4.1 **Impaired Classes of Claims Entitled To Vote.** Except as otherwise provided in order(s) of the Bankruptcy Court pertaining to solicitation of votes on this Plan, Classes 1, 2 and 5 are Impaired and Holders of Allowed Claims in those particular Classes shall be entitled to vote to accept or reject this Plan.

4.2 **Classes Deemed To Accept the Plan.** Class 3 and 4 Claims are Unimpaired by this Plan and Holders of such Allowed Claims are conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. The votes of Creditors holding these Claims will therefore not be solicited.

4.3 **Classes Deemed To Reject the Plan.** Holders of Equity Interests in Class 6 will not receive or retain any Distribution under the Plan on account of their Equity Interests. Pursuant to section 1126(g) of the Bankruptcy Code, Class 6 is Impaired and is conclusively presumed to have rejected this Plan, and the votes of Equity Security Holders holding Class 6 Equity Interests therefore will not be solicited.

4.4 **Cram Down.** The Plan Proponents will request confirmation of the Plan, as it may be modified from time to time, under section 1129(b) of the Bankruptcy Code with respect to Class 6 Equity Interests, which is deemed to have rejected the Plan.

4.5 **Elimination of Vacant Classes.** Any Class of Claims that does not have a Holder of an Allowed Claim or a Claim temporarily Allowed by the Court for voting purposes as of the date of the Confirmation Hearing shall be deemed eliminated from this Plan for purposes of voting to accept or reject this Plan and for purposes of determining acceptance or rejection of this Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

ARTICLE V

Treatment of Claims and Interests

5.1 **Allowed Professional Fee Claims and Allowed Other Administrative Claims.**

5.1.1 Each Allowed Other Administrative Claim and each Allowed Professional Fee Claim (to the extent not paid from Professional Fee Carve Out Funds, or otherwise payable pursuant to the Plan Budget) shall be paid by the Debtor (prior to the Effective Date) or the Creditor Trustee (on and after the Effective Date) (i) in full, in Cash, in such amounts as such Administrative Claim is Allowed by the Bankruptcy Court as soon as practicable after the Effective Date or the date upon which such Administrative Claim is Allowed or (ii) upon such other terms as may be agreed upon between the Holder of such Administrative Claim and the Debtor or the Creditor Trustee (as applicable). Any application for the payment of any Other

Administrative Claim or any Professional Fee Claim shall be filed with the Bankruptcy Court no later than the Administrative Claims Bar Date. All UST Fees accruing prior to the Effective Date shall be paid by the Debtor prior to the Effective Date, or the Debtor shall reserve for and transfer to the Creditor Trust Cash sufficient for the Creditor Trustee to pay such fees after the Effective Date. The Creditor Trust and Creditor Trustee shall be liable for the payment of all quarterly fees due pursuant to section 1930 of Title 28 after the Effective Date. The Creditor Trust and Creditor Trustee shall provide the United States Trustee with post-confirmation quarterly reports that shall include all of their respective disbursements for that quarter.

5.1.2 Administrative Claims Bar Date. All Persons requesting allowance and payment of Other Administrative Claims (other than 503(b)(9) Claims, which were subject to the General Bar Date, and Pre-July Administrative Claims, which are subject to the Supplemental Administrative Bar Date) shall file with the Bankruptcy Court an application, in accordance with section 503(a) of the Bankruptcy Code, for allowance of such Other Administrative Claim, along with all documentation supporting such claim, no later than thirty (30) days after the Effective Date. Professional Persons requesting allowance and payment of Professional Fee Claims shall be entitled to file a final application for allowance of such claims until not later than thirty (30) days after the Effective Date. Objections to such applications for payment (whether by Professional Persons requesting payment of Professional Fee Claims or Persons requesting payment of Other Administrative Claims), 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. Failure by the Holder of an Other Administrative Claim to timely file a request for allowance of an Other Administrative Claim shall result in such Other Administrative Claim being disallowed and expunged in its entirety, with the affected Creditor having been deemed to waive its right to a distribution from the Estate and the Creditor Trust. Failure by a Professional to timely file a request for allowance of a Professional Fee Claim shall result in such Professional Fee Claim being disallowed and expunged in its entirety, with the affected Professional having been deemed to waive its right to a distribution from the Estate and the Creditor Trust.

5.2 Priority Tax Claims.

5.2.1 Allowed Priority Tax Claims shall be paid in accordance with the Creditor Trust Agreement and the Plan. In accordance with the Creditor Trust Agreement, all property of the Estate shall be deposited in the Creditor Trust on the Effective Date, or as otherwise provided in the Confirmation Order. The Creditor Trustee shall liquidate the Creditor Trust Assets, as applicable, and distribute the Net Trust Proceeds in accordance with the Plan, the Confirmation Order and the Creditor Trust Agreement.

5.2.2 Distributions of the Net Trust Proceeds from the Creditor Trust shall be made by the Creditor Trustee in accordance with the Creditor Trust Agreement (and in accordance with sections 507(a)(8) and 1129(a)(9)(C) of the Bankruptcy Code), either: (i) in full, in Cash, within forty-five (45) days of the Effective Date; or (ii) over time in accordance with section 1129(a)(9)(C)(ii) of the Bankruptcy Code, in the Creditor Trustee's discretion.

5.3 Class 1 Claims.

(a) Classification: Class 1 consists of all Allowed Claims of BMO against the Debtor. For purposes of this Plan, the Claims of BMO shall be deemed Allowed in the amount of \$27,342,344.70.

(b) Treatment: On or as soon as practicable after the Effective Date, BMO shall receive: (i) the Net Sale Proceeds; (ii) the Preferred Administrative / Priority Claim Refund, if any; (iii) the BMO Administrative / Priority Savings Split, if any; and (iv) the BMO Additional Trust Recovery in lieu of Distributions on account of any Allowed Unsecured Claim. In addition to the mutual Releases set forth in Section 10.8 of the Plan, BMO agrees to waive all appeal or other challenge rights related to its or SBA's Lien rights, the allocation of the Sale Proceeds, and the Sale Order. Notwithstanding the foregoing, BMO shall not be entitled to receive any of the foregoing unless and until it has funded the Plan Budget, or there is a reserve against the Sale Proceeds to satisfy such unfunded amount(s).

(c) Voting: Class 1 is impaired. Holders of Class 1 Claims are entitled to vote to accept or reject the Plan.

5.4 Class 2 Claims.

(a) Classification: Class 2 consists of all Allowed Claims of the SBA against the Debtor. For purposes of this Plan, the Claims of SBA shall be deemed Allowed in the amount of \$5,363,052.

(b) Treatment: On or as soon as practicable after the Effective Date, SBA shall receive the SBA Agreed Distribution from the Sale Proceeds. In addition, SBA shall have an Allowed Unsecured Claim in the amount of \$4,663,052 and shall be entitled to Pro Rata distributions with Class 5 General Unsecured Claims of Net Trust Proceeds from the Creditor Trust. In addition to the mutual Releases set forth in Section 10.8 of the Plan, in consideration for the SBA Agreed Distribution, SBA agrees to waive all appeal or other challenge rights related to its or BMO's Lien rights, the allocation of the Sale Proceeds, and the Sale Order.

(c) Voting: Class 2 is impaired. Holders of Class 2 Claims are entitled to vote to accept or reject the Plan.

5.5 Class 3 Claims.

(a) Classification: Class 3 consists of all Allowed Other Secured Claims against the Debtor.

(b) Treatment: On or as soon as practicable after the Effective Date or the date on which an Other Secured Claim becomes an Allowed Other Secured Claim, each Holder of an Allowed Other Secured Claim shall receive, in the Debtor's or Creditor Trustee's discretion (as applicable): (i) Cash in an amount equal to the Allowed Other Secured Claim, including, to the extent applicable, postpetition interest under section

506(b) of the Bankruptcy Code; or (ii) the collateral securing such Allowed Other Secured Claim; or (iii) such other treatment as may be agreed to by the Holder of such Allowed Other Secured Claim and the Debtor and/or the Creditor Trustee.

(c) Voting: Class 3 is unimpaired and is deemed to accept the Plan. Holders of Class 3 Claims are not entitled to vote to accept or reject the Plan.

5.6 Class 4 Claims.

(a) Classification: Class 4 consists of all Allowed Other Priority Claims against the Debtor.

(b) Treatment: On or as soon as practicable after the Effective Date or the date on which an Other Priority Claim becomes an Allowed Other Priority Claim or is otherwise payable, each Holder of an Allowed Other Priority Claim shall receive (i) Cash in an amount equal to the unpaid portion of the Allowed Other Priority Claim, or (ii) such other treatment as may be agreed to between the Holder and the Debtor and/or the Creditor Trustee.

(c) Voting: Class 4 is unimpaired and is deemed to accept the Plan. Holders of Class 4 Claims are not entitled to vote to accept or reject the Plan.

5.7 Class 5 Claims.

(a) Classification: Class 5 consists of all Allowed General Unsecured Claims against the Debtor (other than the deficiency portions of the Class 1 Claims and Class 2 Claims).

(b) Treatment: Allowed Class 5 Claims shall be paid Pro Rata with the Allowed Unsecured Claim of the SBA, and in accordance with the BMO Additional Trust Recovery, pursuant to the Creditor Trust Agreement and this Plan. In accordance with the Creditor Trust Agreement, all property of the Estate, after satisfaction of Allowed Administrative Claims, Allowed Priority Tax Claims, and Allowed Class 3 and 4 Claims, shall be deposited in the Creditor Trust on or as soon as practicable following the Effective Date. The Creditor Trustee shall liquidate the Creditor Trust Assets, as applicable, and distribute the Net Trust Proceeds to Holders of Allowed Class 5 Claims and SBA's Allowed Unsecured Claim from time to time on dates determined by the Creditor Trustee, following consultation with the Advisory Committee, within a reasonable time after the creation of appropriate reserves as determined by the Creditor Trustee in an amount that would be sufficient to: (i) make a Pro Rata distribution on account of Disputed Claims that are Class 5 General Unsecured Claims; and (ii) pay the Trustee's Expenses in full.

(c) Voting: Class 5 is impaired. Holders of Class 5 Claims are entitled to vote to accept or reject the Plan.

5.8 Class 6 Interests.

- (a) Classification: Class 6 consists of all Equity Securities held in the Debtor.
- (b) Treatment: Holders of Class 6 Equity Interests shall not receive a Distribution under the Plan, and their Equity Securities shall be canceled and extinguished as of the Effective Date.
- (c) Voting: Class 6 is impaired and deemed to reject the Plan. Holders of Class 6 Equity Interests are not entitled to vote to accept or reject the Plan.

ARTICLE VI

Treatment of Executory Contracts

6.1 **Contracts Deemed Rejected.** Other than as explicitly set forth herein, each Executory Contract of the Debtor that has not been rejected, expired by its own terms, or been assumed (or assumed and assigned to Buyer) prior to the Confirmation Date is hereby rejected pursuant to section 365 of the Bankruptcy Code on the Confirmation Date.

6.2 **Bar Date for Rejection Damages.** All proofs of Claim with respect to Claims arising from the rejection of Executory Contracts pursuant to Section 6.1 of this Plan shall, unless the Bar Date Order or another order of the Bankruptcy Court provides for a different date, be filed with the Bankruptcy Court by no later than thirty (30) days after the Effective Date. The Claims of any Creditor arising from the rejection of Executory Contracts pursuant to Section 6.1 of this Plan that fails to timely file a proof of Claim shall be released, discharged and forever barred from assertion against the Debtor, its Estate or its property, the Creditor Trust, or the Creditor Trust Assets.

6.3 **Insurance Policies.** Notwithstanding anything to the contrary in this Plan, unless any insurance policies have been expressly rejected, or assumed and assigned to Buyer, pursuant to a separate order of the Bankruptcy Court (or through the Confirmation Order), any insurance policies of the Debtor in which the Debtor is or was an insured party (including any policies covering directors' or officers' conduct), or any related insurance agreement issued prior to the Petition Date, shall continue in effect after the Effective Date pursuant to the respective terms and conditions and shall be treated as if assumed. All rights of the Debtor under any insurance policies shall automatically become vested in the Creditor Trust without necessity for further approvals or orders. To the extent that any insurance policies or related insurance agreements are deemed executory contracts, then, unless such policies have been rejected pursuant to a separate order of the Bankruptcy Court (or through the Confirmation Order), notwithstanding anything to the contrary in this Plan, this Plan shall constitute a motion to assume, assume and assign, permit "ride through," or ratify such insurance policies or insurance agreements. Subject to the occurrence of the Effective Date, the entry of the Confirmation Order shall constitute both approval of such assumption pursuant to section 365 of the Bankruptcy Code and a finding by the Bankruptcy Court that such assumption is in the best interests of the Estate. Unless otherwise determined by the Bankruptcy Court pursuant to a Final Order or agreed upon by the parties prior to the Effective Date, no payments shall be required to cure any defaults of the Debtor existing as of the Confirmation Date with respect to any insurance policy or insurance agreement assumed, or assumed and assigned, pursuant to this Section 6.3. Each insurance

company is prohibited from, and the Confirmation Order shall include an injunction against, denying, refusing, altering or delaying coverage on any basis regarding or related to this Case, this Plan, or any provision within this Plan, including the treatment or means of liquidation set out within this Plan for any insured Claims or Causes of Action. Without limiting the generality of the foregoing, all directors' and officers' liability insurance policies in effect as of the Confirmation Date shall be deemed assumed and shall not be rejected.

ARTICLE VII

Objections to Claims; Provisions Governing Distributions

7.1 **Objections to Claims.** The Creditor Trustee shall have standing to file objections to Claims, even if such Claims were scheduled by the Debtor as undisputed, liquidated and non-contingent. If the Creditor Trustee has objected to a Claim, distributions to the affected Creditor 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.

7.2 **Beneficiaries Subject to Avoidance Actions.** Except as otherwise provided by order of the Bankruptcy Court, the Creditor Trustee may, as otherwise allowed pursuant to section 502(d) and (h) of the Bankruptcy Code in his or her discretion, withhold Distributions to Beneficiaries who are the subject of a potential or filed Avoidance Action until such time as the Avoidance Action has been fully and finally resolved.

7.3 **Estimation.** The Creditor Trustee may at any time request that the Bankruptcy Court estimate any contingent or Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether the Debtor, Committee, or the Creditor Trustee previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any 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 allowable amount of such Claim. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Creditor Trustee 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.

7.4 **Means of Cash Payment.** Cash payments, made pursuant to the Plan and the Creditor Trust Agreement, shall be in U.S. dollars and, at the option and in the sole discretion of the Creditor Trustee, be made by (a) checks drawn on or (b) wire transfers from a domestic bank selected by the Creditor Trustee.

7.5 **Delivery of Distributions.** Subject to the provisions of Bankruptcy Rule 2002(g), and except as otherwise provided herein, distributions and deliveries to Holders of Allowed Claims shall be made at the address of each such Holder as set forth on the Schedules,

unless superseded by the address set forth on a timely filed proof of Claim or some other writing filed with the Bankruptcy Court and served upon the Creditor Trustee and/or the Debtor.

7.6 Tax Identification Numbers and OFAC Certifications. Notwithstanding anything in the Plan to the contrary, prior to making Distributions hereunder, the Creditor Trustee shall require all Holders to furnish to him or her: (a) their Employer or Taxpayer Identification Number as assigned by the Internal Revenue Service on a Form W-9 and (b) a certification that the Holder is not a person or entity with whom it is illegal for a U.S. person to do business under Office of Foreign Assets Control (“OFAC”) sanctions regulations and/or the list of Specially Designated Nationals and Blocked Persons (collectively, the “**Pre-Distribution Certifications**”). Pre-Distribution Certification forms will be mailed to the Distribution Address for each Holder prior to Distributions being made, and Holders shall have forty-five (45) days from the date of mailing to return the executed Pre-Distribution Certifications. Any Holder that fails to return the executed Pre-Distribution Certifications within such forty-five (45) day period shall be deemed to have forfeited its right to receive Distributions and shall be forever barred and enjoined from asserting any right to Distributions made prior to the Creditor Trustee receiving its executed Pre-Distribution Certifications (such a Holder, if a Holder of an Allowed Class 5 General Unsecured Claim, would only be entitled to a Pro Rata share of remaining future Distributions, if any). Any Distributions that are forfeited pursuant to this provision will be returned to the Creditor Trustee and become property of the Creditor Trust.

7.7 Undeliverable Distributions

7.7.1 Holding of Undeliverable Distributions. If any Distribution to any Holder of an Allowed Claim is returned to the Creditor Trustee as undeliverable, no further Distributions shall be made to such Holder unless and until the Creditor Trustee is notified by such Holder, in writing, of such Holder’s then-current address. Upon such an occurrence, the appropriate Distribution shall be made as soon as reasonably practicable after such Distribution has become deliverable. All Creditors ultimately receiving previously undeliverable Cash shall not be entitled to any interest or other accruals of any kind. Nothing contained in the Plan shall require the Debtor or the Creditor Trustee to attempt to locate any Holder of an Allowed Claim.

7.7.2 Failure to Claim Undeliverable Distributions. Any Holder of an Allowed Claim entitled to an undeliverable or unclaimed Distribution that does not provide notice of such Holder’s correct address to the Creditor Trustee within ninety (90) days after the date of the initial Distribution made by the Creditor Trustee to such Holder, shall be deemed to have forfeited its claim for such undeliverable or unclaimed Distribution and shall be forever barred and enjoined from asserting any such claim for an undeliverable or unclaimed Distribution against the Debtor, its Estate or the Creditor Trust. If, after ninety days, Distributions remain unclaimed, unclaimed Distributions will become forfeited Distributions and such amounts shall be made available for distribution to other Beneficiaries or for Trustee’s Expenses.

7.8 Withholding and Reporting Requirements. In connection with the Plan, the Creditor Trust Agreement and all Distributions thereunder, the Debtor and the Creditor Trustee, as applicable, shall comply with all tax withholding and reporting requirements imposed by any U.S. federal, state or local or non-U.S. taxing authority, and all Distributions hereunder shall be

subject to any such withholding and reporting requirements. The Debtor and the Creditor Trustee, as applicable, shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements. Notwithstanding any other provision of the Plan, (a) each Holder of an Allowed Claim that is to receive a Distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding and other tax obligations, on account of such Distribution, and (b) the Creditor Trustee reserves the option, in his or her discretion, to not make a Distribution to or on behalf of such Holder pursuant to the Plan unless and until such Holder has made arrangements satisfactory to the Creditor Trustee for the payment and satisfaction of such tax obligations or has, to the Creditor Trustee's satisfaction, established an exemption therefrom.

7.9 Time Bar to Cash Payments. Checks issued by the Creditor Trust on account of Allowed Claims shall be null and void if not negotiated within forty-five (45) days from and after the date of issuance thereof. Requests for reissuance of any check that has become null and void shall be made directly to the Creditor Trustee by the Holder of the Allowed Claim within sixty (60) days of the check becoming null and void. After such sixty (60) day period has elapsed, all Claims relating to such voided checks shall be discharged and forever barred. In the case of checks issued on account of Allowed Claims but not negotiated within forty-five (45) days of issuance and for which no request for reissuance is made before sixty (60) days after issuance, the amounts at issue shall be considered to be a forfeited Distribution.

7.10 Interest. Unless otherwise required by applicable bankruptcy law (or under this Plan), or specifically provided for herein, postpetition interest shall not accrue or be paid on any Claims, and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim. In accordance with section 502(b)(2) of the Bankruptcy Code, the amount of all prepetition Unsecured Claims against the Debtor shall be calculated as of the Petition Date. Except as otherwise explicitly provided in the Plan, in section 506(b) of the Bankruptcy Code, or by Final Order, no Holder of a prepetition Claim shall be entitled to or receive interest or fees relating to such Claim.

7.11 De Minimis Distributions. The Creditor Trustee will not make any De Minimis Distributions, and reserves the right to reserve such De Minimis Distributions until such time as the Holder of such Claim is entitled to a Distribution of at least fifty dollars (\$50.00).

7.12 Setoffs. Consistent with applicable law, the Creditor Trustee may, but shall not be required to, set off against any Allowed Claim and the Distributions to be made pursuant to the Plan on account thereof (before any distribution is made on account of such Claim), the claims, rights and Causes of Action of any nature that the Debtor or its Estate may hold against the Holder of such Allowed Claim; provided, however, that neither the failure to effect such a setoff nor the allowance of any claim hereunder shall constitute a waiver or release by the Debtor, its Estate, or the Creditor Trust of any such claims, rights, and Causes of Action that the Debtor, its Estate, or the Creditor Trustee may possess against such Holder.

7.13 Intentionally Deleted.

ARTICLE VIII

Means of Implementation of the Plan

8.1 **Creditor Trust.** The Creditor Trust shall be established as of the Effective Date for the benefit of all creditors of the Estate holding Allowed Claims and shall be governed by the Creditor Trust Agreement. John B. Pidcock shall be designated as Creditor Trustee. The Creditor Trustee will owe a fiduciary duty, consistent with the duties of trustees under Illinois law, to Beneficiaries of the Creditor Trust.

8.2 **Vesting of Assets.** On the Effective Date, all assets of the Debtor and its Estate (including the Creditor Trust Assets) shall be transferred to and vest in the Creditor Trust and be deemed contributed thereto, subject to the terms of the Plan and the Plan Budget. The assets include, without limitation, all Cash in the possession of the Debtor (after payment of, or reserving for, the Net Sale Proceeds, the SBA Agreed Distribution, Allowed Administrative Claims, Allowed Priority Tax Claims, and Allowed Class 3 and 4 Claims): (i) all Cash remaining in the Estate (including, to the extent applicable, the Estate Administrative / Priority Savings Split); (ii) the BMO Cash Contribution; (iii) all Causes of Action; (iv) all pending litigation claims, regardless of venue, in which the Debtor is a plaintiff; (v) all other remaining personal property of the Debtor; (vi) all rights of the Debtor under the Plan, the Confirmation Order and all other orders entered by the Bankruptcy Court in the Case on or prior to the Confirmation Date; and (vii) all books and records related to the Estate that are in the Debtor's possession, custody and control as of the Confirmation Date. For the avoidance of doubt, all Creditor Trust Assets shall be held by the Creditor Trust solely in trust for the Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Class 1 Claims (to the extent of the BMO Additional Trust Recovery), Allowed Class 2 Claims (to the extent of the Allowed Unsecured Claim), Allowed Class 4 Claims and Allowed Class 5 General Unsecured Claims and shall not be deemed property of the Debtor. Nothing in the Plan, however, shall preclude payment of: (i) UST Fees to the extent unpaid on the Effective Date; and (ii) the Trustee's Expenses in accordance with this Plan and the Creditor Trust Agreement from any other assets held by the Creditor Trust. The Debtor is hereby authorized and directed to take such steps as may be necessary or appropriate to confirm such transfer and contribution of its property to the Creditor Trust, subject to oversight from the Creditor Trustee, as applicable.

8.3 **Additional Transfers to Creditor Trust.** In addition to the Creditor Trust Assets, all Cash remaining in the Estate on the Effective Date that is reserved for payment of Allowed Administrative Claims (including Allowed Professional Fee Claims), Allowed Priority Tax Claims, and Allowed Class 3 and 4 Claims (collectively, the "**Reserved Cash**") shall be transferred to the Creditor Trust and held in trust for the benefit of the foregoing Creditors pending Allowance of such Claims. As soon as practicable following the Allowance of any such Claims, the Creditor Trust shall make a Cash distribution to the Holder of such Claim. To the extent any Reserved Cash remains after payment in full of all Allowed Administrative Claims (including Allowed Professional Fee Claims), Allowed Priority Tax Claims, and Allowed Class 3 and 4 Claims, such Cash shall be deemed a Creditor Trust Asset and available for distribution to Beneficiaries or for payment of Trustee's Expenses. Notwithstanding the foregoing, the extent that Allowed Professional Fee Claims are less than the amount allocated for Professional Fees in

the Plan Budget and BMO has funded all such amount, the Creditor Trustee shall refund said difference to BMO.

8.4 Creditor Trust Asset Administration. The Creditor Trustee, with advice and consultation from the Advisory Committee, shall administer the Creditor Trust Assets pursuant to the Plan and the Creditor Trust Agreement from and after the Effective Date. As more fully set forth in the Creditor Trust Agreement, the Creditor Trustee shall be responsible for, *inter alia*, liquidating the Creditor Trust Assets, analyzing and reconciling Claims (including filing and pursuing objections to the extent required), pursuing the Causes of Action, making distributions of the Net Trust Proceeds to the Beneficiaries of the Creditor Trust, maintaining and administering reserves for Disputed Claims and Claims of Creditors that may be the subject of Avoidance Actions, administering the termination and wind-up of the Debtor's 401(k) plan, administering the preparation and filing of the Debtor's 2019 and 2020 tax returns, paying Trustee's Expenses, preparing and filing post-Effective Date operating reports, filing post-Effective Date tax returns (with all funding required for the preparation and filing of such returns to be pre-paid by the Debtor prior to the Effective Date) and all other activities typically related to trust administration.

8.5 Case Administration. From and after the Effective Date and continuing through the date that a final decree closing the Case is entered pursuant to section 350 of the Bankruptcy Code and Bankruptcy Rule 3022, the Creditor Trustee shall possess the rights of a party in interest pursuant to section 1109(b) of the Bankruptcy Code for all matters arising in, arising under or related to the Case. In addition to the foregoing, for all matters arising in, arising under or related to the Case, the Creditor Trustee shall: (i) have the right to appear and be heard on matters brought before the Bankruptcy Court or other courts of competent jurisdiction; (ii) have the right to obtain records of, or related to, the Debtor (including, without limitation, bank statements, cancelled checks, invoices, proofs of delivery, and other documents necessary to conduct due diligence on, and prosecute, Avoidance Actions); (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 Causes of Action on behalf of the Debtor) to commence Causes of Action, and to continue litigating, as successor-in-interest to the Debtor, any other litigation Causes of Action that were pending as of the Effective Date, regardless of venue; (vi) be entitled to request the Bankruptcy Court to enter a final decree closing the Case; and (vii) be entitled to receive notice of all applications, motions and other papers and pleadings set before the Bankruptcy Court in this Case.

8.6 Advisory Committee. For purposes of implementation of the Plan, the Advisory Committee shall be created on the Confirmation Date and be comprised of three (3) members, which shall be former members of the Committee (or if three (3) former members of the Committee do not wish to serve, other unsecured creditors of the Debtor), and the membership of which shall be subject to the approval of the Committee. The Advisory Committee shall exercise such rights and duties as are set forth in the Creditor Trust Agreement. Each member of the Advisory Committee shall serve until the earlier of: (i) his or her death or resignation; (ii) his or her removal pursuant to the Creditor Trust Agreement; and (iii) the termination of the Creditor Trust.

8.7 Creditor Trustee's Professionals. Upon the acceptance by the Creditor Trustee of his or her appointment in accordance with this Plan and the Creditor Trust Agreement, the Creditor Trustee may, without the need for Bankruptcy Court approval, retain such law firms, accounting firms, experts, advisors, consultants, investigators or other Professionals as it may deem necessary, with advice and consultation with the Advisory Committee, in accordance with the Creditor Trust Agreement, to aid in the performance of his or her 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 this Case, and the Creditor Trustee shall be permitted to retain any such Professional in light of the efficiencies implicit in continuity.

8.8 Quarterly Reports. The Creditor Trustee shall prepare and provide to the Advisory Committee and file with the Bankruptcy Court a report within thirty (30) days after the conclusion of every calendar quarter setting forth: (i) all distributions to Creditors during the calendar quarter; (ii) a summary of the Creditor Trust deposits and disbursements during the calendar quarter; and (iii) a summary of the Creditor Trust Assets. As used in this section, "calendar quarter" shall mean a three-month period of time, and the first calendar quarter shall commence on the first day of the first quarter immediately following the occurrence of the Effective Date.

8.9 Transfer, Prosecution, Preservation, and Resolution of Causes of Action.

8.9.1 Transfer of Causes of Action. On the Effective Date, the Debtor shall transfer and be deemed to have transferred to the Creditor Trust, and the Creditor Trustee shall hold and retain, all rights of the Debtor to commence and pursue any and all Causes of Action (under any theory of law, including, without limitation, the Bankruptcy Code, and in any court or other tribunal including, without limitation, in an adversary proceeding filed in the Debtor's Case) discovered in such investigation to the extent the Creditor Trustee deems appropriate. Potential Causes of Action may, but need not be, pursued by the Debtor prior to the Effective Date and by the Creditor Trustee after the Effective Date. All Causes of Action, defenses, and counterclaims not expressly and specifically released in connection with the Plan, the Confirmation Order, or in any settlement agreement approved during the Case, or as otherwise provided in the Confirmation Order or in any contract, instrument, release, indenture or other agreement entered into in connection with the Plan, in accordance with section 1123(b) of the Bankruptcy Code, shall be transferred to and vest with the Creditor Trust, whether or not litigation relating thereto is pending on the Effective Date, and whether or not any such Causes of Action, defenses and counterclaims have been listed or referred to in the Plan, the Schedules, or any other document filed with the Bankruptcy Court, and prior to the Effective Date, the Debtor shall not waive, relinquish, or abandon (nor shall it be estopped or otherwise precluded from asserting) any right, Claim, Cause of Action, defense, or counterclaim that constitutes property of the Estate, except those Claims and Causes of Action expressly released in this Plan: (a) whether or not such right, Claim, Cause of Action, defense, or counterclaim has been listed or referred to in the Plan or the Schedules, or any other document filed with the Bankruptcy Court, (b) whether or not such right, Claim, Cause of Action, defense, or counterclaim is currently known to the Debtor, and (c) whether or not a defendant in any litigation relating to such right, Claim, cause of action, defense or counterclaim filed a proof of Claim in the Case, filed a notice

of appearance or any other pleading or notice in the Case, voted for or against the Plan, or received or retained any consideration under the Plan. Without in any manner limiting the generality of the foregoing preservation of rights, notwithstanding any otherwise applicable principal of law or equity, without limitation, any principals of judicial estoppel, res judicata, collateral estoppel, issue preclusion, or any similar doctrine, the failure to list, disclose, describe, identify, or refer to a Cause of Action, defense, or counterclaim, or potential Cause of Action, defense, or counterclaim, in the Plan, the Disclosure Statement, the Schedules, or any other document filed with the Bankruptcy Court shall in no manner waive, eliminate, modify, release, or alter the Creditor Trustee's right to commence, prosecute, defend against, settle, and realize upon any Causes of Action, defenses, or counterclaims that the Debtor had immediately prior to the Effective Date, or that the Creditor Trust has as of the Effective Date. The Creditor Trustee may commence, prosecute, defend against, settle, and realize upon any rights, Claims, Causes of Action, defenses, and counterclaims in his or her sole discretion, upon consultation with the Advisory Committee, in accordance with what is in the best interests, and for the benefit, of the Beneficiaries of the Creditor Trust.

8.9.2 Preservation of Right to Conduct Investigations. The preservation for the Creditor Trust of any and all rights to conduct investigations pursuant to Bankruptcy Rule 2004 is necessary and relevant to the liquidation and administration of the Creditor Trust Assets. Accordingly, any and all rights to conduct investigations pursuant to Bankruptcy Rule 2004 held by the Debtor prior to the Effective Date shall vest with the Creditor Trust and shall continue until dissolution of the Creditor Trust.

8.9.3 Preservation of Causes of Action. Unless any Causes of Action against a Person are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan, or by a Final Order, in accordance with section 1123(b) of the Bankruptcy Code, the Creditor Trust: (i) shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action of the Debtor or the Debtor's Estate, whether arising before or after the Petition Date, including, but not limited to, any Causes of Action specifically enumerated in Appendix C to the Disclosure Statement, and the Creditor Trust's right to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date; and (ii) expressly reserves all Causes of Action for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation of the Plan or the occurrence of the Effective Date. The Creditor Trust may pursue Causes of Action, as appropriate, in accordance with the best interests of the Creditor Trust. No Person may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any Cause of Action against such Entity as any indication that the Creditor Trust will not pursue any and all available Causes of Action against such Person. The Creditor Trust expressly reserves all rights to prosecute any and all Causes of Action against any Person, except as otherwise expressly provided in the Plan or in a Bankruptcy Court order. For the avoidance of doubt, the Plan does not release any Causes of Action that the Plan Proponents or the Creditor Trust have or may have now or in the future against any Person.

Except as otherwise provided in the Plan or in a Final Order, the Creditor Trust reserves and shall retain Causes of Action notwithstanding the assumption or rejection of

any Executory Contract during the Case or pursuant to the Plan to the fullest extent permitted by law. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Causes of Action that the Debtor may hold against any Person that is not released under the Plan or a separate settlement approved by Final Order shall vest in the Creditor Trust, which shall retain and may exclusively enforce any and all such Causes of Action. The Creditor Trust has the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any Causes of Action, or to decline to do any of the foregoing, without the consent or approval of any third party or any further notice to or action, order, or approval of the Bankruptcy Court.

8.10 Officers and Directors of the Debtor. Upon the Effective Date, all officers and directors of the Debtor shall be automatically deemed to have resigned from such positions, without further act, notice, deed or court order. To the extent required under applicable non-bankruptcy law, the Creditor Trustee shall be deemed an officer and/or director of the Debtor upon the Effective Date.

8.11 Dissolution of the Debtor. Upon the Effective Date, the Creditor Trustee shall be authorized and empowered, in his or her reasonable discretion, to file a certificate of dissolution or other documents, if any, memorializing the Debtor's dissolution with the office of the secretary of state of Illinois, or may allow the secretary of state to involuntarily dissolve the Debtor. In the event of a dissolution (whether voluntary or involuntary), the Creditor Trustee shall thereafter have and retain standing to assert claims or pursue matters on behalf of the Debtor to the extent necessary to preserve, protect and liquidate the Creditor Trust Assets or otherwise necessary to administer the Creditor Trust.

8.12 Termination of Committee. The Committee shall terminate automatically upon the acceptance by the Creditor Trustee of his or her appointment in accordance with this Plan and the Creditor Trust Agreement following the Confirmation Date. Upon termination of the Committee, the Committee shall be dissolved and its members shall be deemed released of their duties and responsibilities in connection with the Case or the Plan and its implementation, and the retention or employment of the Committee's counsel shall terminate, except for ministerial duties or any duties imposed pursuant to the Plan (including, without limitation, filing applications for allowance and payment of Professional Fee Claims).

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

8.14 Notices. Any notice 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, addressed to the following:

The Debtor:

HC OldCo, Inc. f/k/a Arro Corporation

c/o Vladimir Kasparov
Andrews Advisory Group
190 S. LaSalle St., Suite 500
Chicago, Illinois 60603
Phone: (312) 578-1400
E-mail: vkasparov@andrewsadvisorygroup.com

With a copy to:

Adam P. Silverman
Erich S. Buck
Adelman & Gettleman, Ltd.
53 W. Jackson Blvd., Suite 1050
Chicago, Illinois 60604
Phone: (312) 435-1050
E-mail: asilverman@ag-ltd.com
ebuck@ag-ltd.com

Counsel for the Debtor

The Committee:

Thomas R. Fawkes
Brian J. Jackiw
Tucker Ellis LLP
233 S. Wacker Dr., Suite 6950
Chicago, Illinois 60606
Phone: (312) 624-6300
E-mail: thomas.fawkes@tuckerellis.com
brian.jackiw@tuckerellis.com

Counsel for the Committee

The Creditor Trustee:

John B. Pidcock
Oxford Restructuring Advisors
16781 Chagrin Blvd., Suite 503
Shaker Heights, Ohio 44120
Phone: (513) 235-0164
E-mail: jpidcock@oxfordrestructuring.com

8.15 Cancellation of Notes, Instruments, and Debentures. On the Effective Date, except to the extent provided otherwise in the Plan, all notes, instruments, debentures, certificates, and other documents evidencing Claims against the Debtor shall be deemed canceled, terminated, and surrendered (regardless of whether such notes, instruments, debentures, certificates or other documents are in fact surrendered for cancellation to the

appropriate indenture trustee or other such Person). On the Effective Date, any indentures to which the Debtor is a party shall be deemed canceled as permitted by section 1123(a)(5) of the Bankruptcy Code.

8.16 Insurance Preservation. Nothing in the Plan, including any Releases, shall diminish or impair the enforceability of any policies of insurance that may cover any claims against the Debtor or any other Person.

8.17 Restructuring Transactions. Debtor and the Creditor Trustee, as appropriate, will be authorized to execute, deliver, file, or record such contracts, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of the Plan.

ARTICLE IX

Conditions Precedent to Confirmation and Effective Date

9.1 Acceptance or Rejection of the Plan

9.1.1 Acceptance by Impaired Classes. Classes 1, 2 and 5 each will have accepted the Plan if the Holders of at least two-thirds in amount and more than one-half in number of the Allowed Claims in the Class actually voting have voted to accept the Plan, in each case not counting the vote of any Holder designated under section 1126(e) of the Bankruptcy Code.

9.1.2 Elimination of Classes. Any Class that does not contain any Allowed Claims or any Claims temporarily allowed for voting purposes under Bankruptcy Rule 3018, as of the date of the commencement of the Confirmation Hearing, will be deemed not included in the Plan for purposes of (i) voting to accept or reject the Plan and (ii) determining whether such Class has accepted or rejected the Plan under section 1129(a)(8) of the Bankruptcy Code.

9.1.3 Nonconsensual Confirmation. The Bankruptcy Court may confirm the Plan over the dissent of any Impaired Class if all of the requirements for consensual confirmation under subsection 1129(a), other than subsection 1129(a)(8), of the Bankruptcy Code and for nonconsensual confirmation under subsection 1129(b) of the Bankruptcy Code have been satisfied. Since Class 6, the impaired Class of Equity Interests, is deemed to reject the Plan, the Plan Proponents request that the Bankruptcy Court confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code.

9.2 Conditions Precedent to Confirmation Date of the Plan. The occurrence of the Confirmation Date shall be subject to satisfaction of the following conditions precedent:

9.2.1 The entry of the Confirmation Order in form and substance satisfactory to the Plan Proponents, BMO and SBA; and

9.2.2 The Debtor being authorized to take all actions necessary or appropriate to enter into, implement, and consummate the Plan and other agreements or documents created in connection with the Plan.

9.3 **Conditions Precedent to the Effective Date of the Plan.** The occurrence of the Effective Date and the consummation of the Plan are subject to satisfaction of the following conditions precedent:

9.3.1 **Confirmation Order.** The Confirmation Order as entered by the Bankruptcy Court shall be a Final Order in full force and effect, in form and substance reasonably satisfactory to the Plan Proponents, BMO, and SBA.

9.3.2 **Creditor Trust Agreement.** The Creditor Trust Agreement shall be acceptable to the Plan Proponents, BMO, and SBA in form and substance, and shall have been executed by the Debtor, the Committee and the Creditor Trustee.

9.3.3 **UST Fees.** All UST Fees owed to the U.S. Trustee through the Effective Date shall either have been paid in their entirety, or Cash sufficient to pay such UST Fees shall have been reserved and transferred to the Creditor Trust.

9.4 **The Confirmation Order.** If the Confirmation Order is vacated for whatever reason, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (i) constitute a waiver or release of any Claims by or against, or any Equity Interests in the Debtor; (ii) prejudice in any manner the rights of the Debtor; or (iii) constitute an admission, acknowledgment, offer or undertaking by the Debtor.

ARTICLE X

Effect of Plan Confirmation

10.1 **Binding Effect.** From and after the Confirmation Date, but subject to the occurrence of the Effective Date, this Plan shall be binding and inure to the benefit of the Debtor, all present and former holders of Claims and Equity Interests, and their respective assigns. The provisions of the Plan, the Confirmation Order, and any associated findings of fact or conclusions of law shall bind the Debtor, any entity acquiring property under the Plan, and any Creditor of the Debtor, whether or not the Claim of such creditor is Impaired under the Plan and whether or not such creditor has accepted the Plan.

10.2 **Discharge of Claims.** The Debtor will not receive a discharge under the Plan in accordance with section 1141 of the Bankruptcy Code.

10.3 Injunction

10.3.1 **Except as otherwise expressly provided in the Plan, all Persons that receive Distributions under the Plan or the Sale Order and that have held, hold, or may hold Claims against or Equity Interests in the Debtor are permanently enjoined, from and after the Effective Date, from taking any of the following actions against any of the Debtor, its Estate, the Creditor Trust, the Creditor Trustee, or any of their respective property on account of any Claims, Equity Interests or Causes of Action arising from events prior to the Effective Date: (i) commencing or continuing in any manner any action or other proceeding of any kind; (ii) enforcing, attaching, collecting or recovering by any manner or**

in any place or means any judgment, award, decree or order; (iii) creating, perfecting, or enforcing any Lien or encumbrance of any kind; (iv) asserting any defense or right of setoff, subrogation, or recoupment of any kind against any obligation, debt or liability due to the Debtor; and (v) commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the provisions of the Plan.

10.3.2 By accepting Distributions pursuant to the Plan or the Sale Order, each Holder of an Allowed Claim receiving Distributions pursuant to the Plan will be deemed to have specifically consented to the injunctions set forth herein.

10.3.3 Unless otherwise provided in the Plan or the Confirmation Order, all injunctions or stays provided for under this Plan and ordered in the Confirmation Order or pursuant to sections 105 or 362 of the Bankruptcy Code arising under or entered during the Case, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Case is closed.

10.4 **Terms of Existing Injunctions or Stays.** Unless otherwise provided, all injunctions or stays provided for in the Case pursuant to sections 105, 362, or 525 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Case has been closed. The Confirmation Order will permanently enjoin the commencement or prosecution by any Person, whether directly, derivatively or otherwise, of any Claims, Equity Interests, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities released pursuant to the Plan.

10.5 **Termination of Challenge Period.** The Challenge Period, as that term is defined in the DIP Financing Order, shall be extended to the Effective Date, whereupon it shall automatically terminate.

10.6 **Exculpation.** No Exculpated Party shall have, be subject to or incur, and each Exculpated Party is hereby released and exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, loss, or liability for any claim in connection with or arising out of: (i) the administration of the Case; (ii) the negotiation and pursuit of the transactions approved by the Sale Order, the Disclosure Statement, or this Plan, or the solicitation of votes for, or confirmation of, this Plan; (iii) the occurrence of the Effective Date; (iv) the administration of this Plan; (v) the distribution of property under the Plan; (vi) any contract, instrument, release, or other agreement or document created or entered into in connection with the Plan or the Case; or (vii) the transactions in furtherance of any of the foregoing; provided, however, that no Exculpated Party shall be released and exculpated for willful misconduct or gross negligence (but in all respects such entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to this Plan). Notwithstanding the foregoing, no Exculpated Party shall have liability for willful misconduct or gross negligence except as determined by a final order of a court of competent jurisdiction. The Exculpated Parties have acted in compliance with the applicable provisions of the Bankruptcy Code with regard to the solicitation of this Plan and, therefore, are not, and on account of such solicitations shall not be, liable at any time for the violation of any applicable law, rule, or

regulation governing the solicitation of acceptances or rejections of this Plan or distributions made pursuant to this Plan. Nothing in this Section 10.6 shall be construed as a release of any Causes of Action against the Debtor's former or current Insiders or management for events occurring prior to the Petition Date.

10.7 Injunction Related to Exculpation. The Confirmation Order shall permanently enjoin the commencement or prosecution by any Person, whether directly, derivatively or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action or liabilities enjoined, exculpated, or otherwise limited or prohibited pursuant to this Plan, including the claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action against the Debtor or the Committee that are described in Section 10.5 of this Plan.

10.8 Mutual Releases. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, INCLUDING BUT NOT LIMITED TO SECTION 10.6 OF THIS PLAN, AS OF THE EFFECTIVE DATE, AND TO THE FULLEST EXTENT AUTHORIZED BY APPLICABLE LAW, FOR GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, THE RELEASED PARTIES ARE HEREBY DEEMED TO RELEASE AND DISCHARGE ONE ANOTHER FROM ANY AND ALL CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, DEMANDS, DEBTS, REMEDIES, CAUSES OF ACTION, RIGHTS OF SETOFF, AND OTHER RIGHTS AND LIABILITIES WHATSOEVER, WHETHER FOR TORT, CONTRACT, VIOLATIONS OF FEDERAL OR STATE SECURITIES LAWS, OR AVOIDANCE ACTIONS, INCLUDING ANY DERIVATIVE CLAIMS, ASSERTED, OR THAT COULD POSSIBLY HAVE BEEN ASSERTED DIRECTLY OR INDIRECTLY ON BEHALF OF THE DEBTOR OR ITS ESTATE, WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREAFTER ARISING, IN LAW, EQUITY, OR OTHERWISE, INCLUDING ANY AND ALL CAUSES OF ACTION ASSERTED OR THAT COULD POSSIBLY HAVE BEEN ASSERTED ON BEHALF OF THE DEBTOR OR THE ESTATE, OR ON BEHALF OF THE HOLDER OF ANY CLAIM OR EQUITY INTEREST OR OTHER ENTITY, BASED ON OR IN ANY WAY RELATING TO, OR IN ANY MANNER ARISING FROM, IN WHOLE OR IN PART: (I) THE DEBTOR OR THE ESTATE; (II) THE CONDUCT OF THE DEBTOR'S BUSINESS; AND/OR (III) THE CONDUCT OF THE RELEASED PARTIES, AND IN ALL INSTANCES, INCLUDING BUT NOT LIMITED TO: (A) THE FORMULATION, PREPARATION, SOLICITATION, DISSEMINATION, NEGOTIATION, OR FILING OF THE PLAN AND DISCLOSURE STATEMENT, OR ANY CONTRACT, INSTRUMENT, RELEASE, OR OTHER AGREEMENT OR DOCUMENT CREATED OR ENTERED INTO IN CONNECTION WITH OR PURSUANT TO THE PLAN OR THE DISCLOSURE STATEMENT; (B) THE FILING AND PROSECUTION OF THE CHAPTER 11 CASE; (C) THE PURSUIT OF CONFIRMATION OF THE PLAN; (D) THE PURSUIT OF CONSUMMATION OF THE PLAN; (E) THE SUBJECT MATTER OF, OR THE TRANSACTIONS OR EVENTS GIVING RISE TO, ANY CLAIM OR EQUITY INTEREST THAT IS TREATED IN THIS PLAN; (F) THE BUSINESS OR CONTRACTUAL ARRANGEMENTS BETWEEN THE DEBTOR OR THE ESTATE,

ON THE ONE HAND, AND ANY RELEASED PARTY, ON THE OTHER HAND; OR (G) ANY OTHER ACT OR OMISSION, TRANSACTION, AGREEMENT, EVENT, OR OTHER OCCURRENCE TAKING PLACE BEFORE THE EFFECTIVE DATE, INCLUDING PRIOR TO THE PETITION DATE; PROVIDED, HOWEVER, THAT THE FOREGOING PROVISIONS OF THESE RELEASES SHALL NOT OPERATE TO WAIVE OR RELEASE: (X) ANY CAUSES OF ACTION EXPRESSLY SET FORTH IN AND PRESERVED BY THIS PLAN AND THE DISCLOSURE STATEMENT; (Y) ANY CAUSES OF ACTION AGAINST ANY PERSON OR ENTITY THAT IS NOT A RELEASED PERSON; OR (Z) THE RIGHT OF THE DEBTOR OR THE CREDITOR TRUSTEE TO ENFORCE THIS PLAN AND THE CONTRACTS, INSTRUMENTS, RELEASES, AND OTHER AGREEMENTS OR DOCUMENTS DELIVERED UNDER OR IN CONNECTION WITH THIS PLAN OR ASSUMED PURSUANT TO THIS PLAN OR ASSUMED PURSUANT TO A FINAL ORDER.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE RELEASES SET FORTH IN THIS SECTION 10.8, WHICH INCLUDES BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS CONTAINED HEREIN, AND FURTHER, SHALL CONSTITUTE THE BANKRUPTCY COURT'S FINDING THAT SUCH RELEASES ARE: (A) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE RELEASED PARTIES; (B) A GOOD FAITH SETTLEMENT AND COMPROMISE OF THE CLAIMS RELEASED BY THIS SECTION 10.8; (C) IN THE BEST INTERESTS OF THE DEBTOR AND ITS ESTATE; (D) FAIR, EQUITABLE, AND REASONABLE; (E) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; AND (F) A BAR TO ANY ENTITY SUBJECT TO SUCH RELEASES ASSERTING ANY CLAIM OR CAUSE OF ACTION RELEASED BY THIS SECTION 10.8.

ARTICLE XI

Modification, Revocation or Withdrawal of the Plan

11.1 Modification of Plan. The Plan Proponents reserve the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, in their discretion, to amend or modify the Plan at any time prior to the entry of the Confirmation Order. Upon entry of the Confirmation Order, the Plan Proponents may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan. A Holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan as modified if the proposed modification does not materially and adversely change the treatment of the Claim of such Holder and the votes of each Class for or against the Plan shall be counted and used in connection with the modified plan of reorganization.

11.2 Revocation, Withdrawal, or Non-Consummation. The Plan Proponents reserve the right to revoke or withdraw the Plan prior to the Confirmation Date and to file subsequent plans of liquidation. If the Plan Proponents revoke or withdraw the Plan, or if the

Confirmation Order confirming the Plan shall not be entered or become a Final Order, then (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan, assumption or rejection of Executory Contracts affected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void, and (c) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, shall (1) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor, (2) prejudice in any manner the rights of the Debtor or the Committee, (3) constitute an admission of any sort by the Debtor or the Committee, or (4) constitute a release of any Causes of Action possessed or maintained by the Debtor.

ARTICLE XII

Miscellaneous Provisions

12.1 **Payment of Statutory Fees.** All fees payable pursuant to 28 U.S.C. § 1930, shall be paid by the Debtor or Creditor Trustee to the extent required by applicable law.

12.2 **Section 1146 Exemption.** Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under this Plan, may not be taxed under any law imposing a stamp tax or similar tax.

12.3 **Business Day.** 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.

12.4 **Severability.** The provisions of this Plan shall not be severable unless such severance is agreed to by the Plan Proponents and such severance would constitute a permissible modification of the Plan pursuant to section 1127 of the Bankruptcy Code.

12.5 **Conflicts.** To the extent that any provision of the Disclosure Statement, the Creditor Trust Agreement, or any exhibits or schedules thereto, conflict with or are in any way inconsistent with the terms of the Plan, the Plan shall govern and control.

12.6 **Further Assurances.** The Debtor, the Committee, the Creditor Trustee, all Holders of Claims receiving Distributions under the Plan, and all other parties in interest shall, from time to time, prepare, execute, and deliver agreements or documents and take other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

12.7 **Filing of Additional Documents.** On or before the Effective Date, the Plan Proponents may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

12.8 **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, any heir, executor, administrator, successor or assign of such entity.

12.9 **Section Headings.** The section headings contained in this Plan are for reference purposes only and shall not affect in any way the meaning or interpretation of the Plan.

12.10 **Further Information.** Requests for further information regarding the Debtor's Case or the Plan may be directed to counsel to the Debtor or the Committee, at the contact information set forth in Section 8.14 above.

12.11 **Governing Law.** Except to the extent that the Bankruptcy Code or Bankruptcy Rules are applicable, the rights and obligations arising under this Disclosure Statement and the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Illinois, without giving effect to any conflicts of law principles.

ARTICLE XIII

Jurisdiction

13.1 **Retention of Jurisdiction.** Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, unless explicitly set forth herein to the contrary, the Bankruptcy Court shall retain and have exclusive jurisdiction after the Effective Date over any matter arising under the Bankruptcy Code, arising in or related to the Case, the Plan or the Creditor Trust, or that relates to the following, in each case to the greatest extent permitted by applicable law:

13.1.1 to enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan;

13.1.2 to determine any and all motions, adversary proceedings, applications and contested or litigated matters that may be pending on the Effective Date or that, pursuant to the Plan, may be instituted by the Creditor Trustee after the Effective Date; provided, however, that the Creditor Trustee shall reserve the right to commence collection actions, actions to recover receivables, adversary proceedings against any Holder of a Claim, and other similar actions in all appropriate jurisdictions, and the jurisdiction of the Bankruptcy Court over such matters shall be nonexclusive;

13.1.3 to hear and determine any timely objections to Administrative Claims, Priority Tax Claims, Other Priority Claims, General Unsecured Claims, or to Proofs of Claim and Equity Interests filed, both before and after the Confirmation Date, including any objections to the classification of any Claim or Equity Interest, and to allow, disallow, determine, liquidate, classify, estimate or establish the priority of or secured or unsecured status of any Claim, in whole or in part;

13.1.4 to enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, reversed or vacated;

13.1.5 to issue such orders in aid of execution of the Plan, to the extent authorized by section 1142 of the Bankruptcy Code;

13.1.6 to consider any modifications of the Plan, to cure any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including the Confirmation Order;

13.1.7 to hear and determine all applications for awards of compensation for services rendered and reimbursement of expenses filed by Professionals;

13.1.8 to hear and determine disputes arising in connection with or relating to the Plan or the interpretation, implementation, or enforcement of the Plan, or the extent of any Person's obligations incurred in connection with or released or exculpated under the Plan;

13.1.9 to issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Person with consummation or enforcement of the Plan;

13.1.10 to determine any other matters that may arise in connection with or are related to the Plan, the Disclosure Statement, the Confirmation Order, the Creditor Trust Agreement, or any other contract, instrument, release or other agreement or document created in connection with the Plan or the Disclosure Statement to be executed in connection with the Plan;

13.1.11 to hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

13.1.12 to hear any other matter or for any purpose specified in the Confirmation Order that is not inconsistent with the Bankruptcy Code; and

13.1.13 to enter a Final Decree closing the Case.

Dated this 25th day of June, 2020.

**HC OLDSCO, INC. f/k/a ARRO
CORPORATION**

By: /s/ Adam P. Silverman
One of its attorneys

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ebuck@ag-ltd.com

--and---

**OFFICIAL COMMITTEE OF
UNSECURED CREDITORS OF HC**

**OLDSCO, INC. f/k/a ARRO
CORPORATION**

By: /s/ Thomas R. Fawkes
One of Its Attorneys

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Exhibit A to

*Agreed Plan of Liquidation of Debtor and
Official Committee of Unsecured Creditors:*

Creditor Trust Agreement

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

In re:)	Chapter 11
)	
HC OLDSCO, INC. f/k/a ARRO CORPORATION,)	Case No. 19-35238
)	
Debtor.)	Hon. Janet S. Baer
_____)	

HC OLDSCO, INC. CREDITOR TRUST AGREEMENT

Dated: _____, 2020

ADELMAN & GETTLEMAN, LTD.

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*Counsel for Debtor and Debtor in Possession,
HC OldCo, Inc. f/k/a Arro Corporation*

*Counsel to the Official Committee of
Unsecured Creditors*

HC OLD CO, INC. CREDITOR TRUST AGREEMENT

PREAMBLE

This Agreement (the “*Creditor Trust Agreement*”) is made this ___ day of _____, 2020, by and among HC OldCo, Inc. f/k/a Arro Corporation, debtor and debtor-in-possession (the “*Debtor*”), the Official Committee of Unsecured Creditors (the “*Committee*”), and John B. Pidcock, not individually, but solely as trustee of this Creditor Trust (the “*Creditor Trustee*” and, collectively with the Debtor and the Committee, the “*Parties*”) in accordance with the Agreed Plan of Liquidation of Debtor and Official Committee of Unsecured Creditors (the “*Plan*”), confirmed by the Bankruptcy Court (as defined *infra*) by the Order Confirming Agreed Plan of Liquidation of Debtor and Official Committee of Unsecured Creditors, dated August __, 2020 (the “*Confirmation Order*”).¹

RECITALS:

A. On December 13, 2019, the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”) in the United States Bankruptcy Court for the Northern District of Illinois (the “*Bankruptcy Court*”) and commenced its chapter 11 case (the “*Case*”);

B. On December 23, 2019, the Office of the United States Trustee (the “*U.S. Trustee*”) appointed the Committee pursuant to section 1102 of the Bankruptcy Code, as amended by the *Amended Notice of Appointment of Unsecured Creditors’ Committee* filed on February 4, 2020;

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 Claims, Allowed Priority Tax Claims, Allowed Class 1 Claims (to the extent of the BMO Additional Trust Recovery), Allowed Class 2 Claims (to the extent of the SBA’s Allowed Unsecured Claim), Allowed Class 3 Claims, Allowed Class 4 Claims and Allowed Class 5 General Unsecured Claims (collectively, the “*Beneficiaries*”);

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

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

¹ 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 all assets of the Creditor Trust, including, without limitation: (i) all Cash held by the Debtor, including the Reserved Cash and any Estate Administrative / Priority Savings Split remaining as of the Effective Date; (ii) the Debtor's remaining property, including accounts or any other tangible or intangible personal property and any and all proceeds thereof; (iii) the BMO Cash Contribution; (iv) the Debtor's right, title and interest in and to all Causes of Action and any proceeds therefrom; and (v) all books and records related to the Debtor or its Estate not otherwise sold to the Buyer (collectively, the "*Creditor Trust Assets*"); provided, however, that the Creditor Trust Assets shall not include any assets that may be excluded by the Creditor Trustee from any transfer of assets from the Debtor and its Estate to the Creditor Trust;

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

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

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

and to further the liquidating purpose of the Creditor Trust, are limited to powers to invest in demand and time deposits, such as short-term certificates of deposit, in banks or other savings institutions, or other temporary, liquid investments, such as treasury bills; and

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

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

DECLARATION OF TRUST

The Debtor hereby absolutely assigns to the Creditor Trust, and to its successors in trust and its successors and assigns, all right, title, and interest of Debtor in and to the Creditor Trust Assets;

TO HAVE AND TO HOLD in trust by the Creditor Trust and its successors and assigns forever;

IN TRUST NEVERTHELESS upon the terms and subject to the conditions set forth herein and for the benefit of the Beneficiaries, as and to the extent provided in the Plan, and for the performance of and compliance with the terms hereof and of the Plan;

PROVIDED, HOWEVER, that upon termination of the Creditor Trust in accordance with Article XI hereof, this Agreement shall cease, terminate, and be of no further force and effect; and

IT IS HEREBY FURTHER COVENANTED AND DECLARED that the Creditor Trust Assets are to be held and applied by the Creditor Trustee upon the further covenants and terms and subject to the conditions herein set forth, as and to the extent provided in the Plan.

ARTICLE I ESTABLISHMENT OF THE CREDITOR TRUST

1.1 Transfer of Assets to the Creditor Trust

1.1.1 Pursuant to the Plan, the Debtor, the Committee and the Creditor Trustee hereby establish the Creditor Trust on behalf of the Beneficiaries, to be treated as the grantors and deemed owners of the Creditor Trust Assets, and the Debtor and its Estate hereby transfers, assigns and delivers to the Creditor Trust, on behalf of the Beneficiaries, all of its right, title and interest in the Creditor Trust Assets, other than any claims and causes of action waived, exculpated or released in accordance with the provisions of the Plan and the Confirmation Order,

notwithstanding any prohibition of assignability under applicable non-bankruptcy law. The Creditor Trust agrees to accept and hold the Creditor Trust Assets in the Creditor Trust for the benefit of the Beneficiaries, subject to the terms of the Plan, the Confirmation Order and this Creditor Trust Agreement.

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

1.2 Title to Assets

1.2.1 On or as soon as practicable after the Effective Date, the Debtor and its Estate shall transfer the Creditor Trust Assets to the Creditor Trust for the benefit of the Beneficiaries. Notwithstanding any prohibition of assignability under applicable non-bankruptcy law, all assets and properties transferred to the Creditor Trust pursuant to the Plan shall vest in the Creditor Trust in accordance with section 1141 of the Bankruptcy Code. Upon the transfer of the Creditor Trust Assets to the Creditor Trust, the Debtor shall have no interest in or with respect to such Creditor Trust Assets or the Creditor Trust.

1.2.2 For federal income tax purposes, all parties (including, without limitation, the Debtor, the Creditor Trustee and the Beneficiaries) shall treat the transfer of the Creditor Trust Assets by the Debtor and its Estate to the Creditor Trust as a transfer of such assets by the Debtor and its Estate to the Beneficiaries, followed by a transfer by such 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 Debtor and the Committee shall execute and deliver or cause to be executed and delivered all such documents (in recordable form where necessary or appropriate), and the Debtor and the Committee shall take or cause to be taken such further action as may reasonably be necessary or appropriate, to vest or perfect in or confirm to the Creditor Trust title to and possession of the Creditor Trust Assets.

1.3 Valuation of Assets

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

the Beneficiaries) for federal income tax purposes. Any dispute regarding the valuation of the Creditor Trust Assets shall be resolved by the Bankruptcy Court.

1.4 Claims Against the Creditor Trust Assets

The Creditor Trust Assets, except the Reserved Cash, 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 (except the Reserved Cash), 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, 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

John B. Pidcock 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

Within the limitations set forth herein, 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 Causes of Action; (d) 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 (commencing upon the occurrence of the Effective Date of the Plan); (f) providing periodic reports to the Advisory Committee, the Bankruptcy Court and other parties-in-interest on the status of the Claims resolution process, the status of the prosecution of Causes of Action, distributions to

Beneficiaries and the financial status of the Creditor Trust; (g) administering the termination and wind-up of the Debtor's 401(k) plan; (h) administering the preparation and filing of the Debtor's 2019 and 2020 tax returns; and (i) 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 and Duties

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

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

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

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

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

(e) distribute the Reserved Cash (as defined in the Plan) to holders of Allowed Administrative Claims (including Allowed Professional Fee Claims), Allowed Priority Tax Claims, and Allowed Class 3 and 4 Claims in accordance with the Plan, the Confirmation Order, and other orders of the Bankruptcy Court;

(f) following consultation with, and subject to the approval of, the Advisory Committee, prosecute, defend, compromise, adjust, arbitrate, abandon or otherwise deal with and

settle, in accordance with the terms set forth herein and in the Plan and Confirmation Order, all actions arising under state law or the Bankruptcy Code, specifically, but not limited to, the Causes of Action; provided, however, that the Creditor Trustee shall not be required to consult with the Advisory Committee, to the extent such matters are limited to a claim or cause of action where the amount demanded or claimed is, in the aggregate, less than or equal to \$50,000 (a “*De Minimis Cause of Action*”);

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

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

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

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

(k) maintain on the Creditor Trustee’s books and records, a register evidencing the beneficial interest herein held by each Beneficiary;

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

(m) following consultation with the Advisory Committee, establish such reserves for Disputed Claims, taxes, assessments, Professional and Non-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;

(n) following consultation with the Advisory Committee, make distributions as provided for in this Creditor Trust Agreement, the Plan and the Confirmation Order;

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

(p) following consultation with the Advisory Committee, pay expenses and make disbursements necessary to preserve, liquidate and enhance the Creditor Trust Assets;

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

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

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

(t) following consultation with the Advisory Committee, take such actions as are necessary, appropriate or desirable to close or dismiss the Case;

(u) following consultation with the Advisory Committee, take such actions as are necessary, appropriate or desirable to terminate the existence of the Debtor and to wind up the Debtor's affairs, including, but not limited to, preparing and filing tax returns on behalf of the Debtor and winding-up the Debtor's defined contribution and other employee benefit plans (including preparing any required audits and making all required disbursements of plan assets);

(v) following consultation with the Advisory Committee, terminate and dissolve the Creditor Trust pursuant to and in accordance with the terms of the Plan and this Creditor Trust Agreement; and

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

3.5 General Authority of the Creditor Trustee

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

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

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

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

3.7 Other Activities of the Creditor Trustee

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

3.8 Investment and Safekeeping of Creditor Trust Assets

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

3.9 Authorization to Expend Creditor Trust Assets

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

Allowed Administrative Claims (including Allowed Professional Fee Claims), Allowed Priority Tax Claims, and Allowed Class 3 and 4 Claims in accordance with the Plan, the Confirmation Order, and other orders of the Bankruptcy Court. Notwithstanding that the Reserved Cash shall be transferred to the Creditor Trust as a Creditor Trust Asset, the Creditor Trustee shall not use the Reserved Cash for any purpose other than as set forth in the Plan.

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 (other than the Reserved Cash). 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 (other than the Reserved Cash) in priority over any distributions to Beneficiaries to be made under the Plan. If the Creditor Trust Assets are insufficient to fully satisfy the amounts payable to, or other obligations owing to, the Creditor Trustee, the holders of Allowed Class 1 Claims (to the extent of the BMO Additional Trust Recovery), Allowed Class 2 Claims (to the extent of the SBA's Allowed Unsecured Claim), and Allowed Class 5 General Unsecured Claims shall be required to disgorge their Pro Rata share of any interim distributions received from the Creditor Trust, until all such amounts have been fully paid and all such obligations have been fully satisfied. If the Creditor Trustee dies or becomes disabled, then such former Creditor Trustee (or his or her estate, successor or assigns) shall be entitled to any remaining unpaid compensation and reimbursement due hereunder.

4.2 Term of Service

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

4.3 No Bond

The Creditor Trustee shall serve without bond.

4.4 Removal

The Creditor Trustee may be removed for cause by the Advisory Committee; provided, however, that the Creditor Trustee may not be removed until a successor Creditor Trustee has been named. "Cause" shall include, without limitation: (a) the undue prolongation of the duration of the Creditor Trust and of distributions of the Creditor Trust Assets to the

Beneficiaries; (b) fraud or willful misconduct (as determined by a Final Order) in connection with the affairs of the Creditor Trust; (c) a physical and/or mental disability that substantially prevents the Creditor Trustee from performing the duties of a Creditor Trustee hereunder; or (d) breach of fiduciary duty or an unresolved conflict of interest. In addition, the Creditor Trustee may be removed for cause at any time by any other person upon entry of an order of the Bankruptcy Court following a noticed motion for removal served upon the Creditor Trustee (and his or her Professionals) and the Advisory Committee. Any person seeking removal through an order of the Bankruptcy Court must demonstrate to the Bankruptcy Court that such removal is appropriate for cause. The removal in this instance shall be effective on the date specified in the order.

4.5 Resignation

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

4.6 Appointment of Successor Trustee

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

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

4.7 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 ADVISORY COMMITTEE

5.1 Creation of the Advisory Committee

Simultaneously with the creation of the Creditor Trust, a committee (the “*Advisory Committee*”) comprised of three (3) members (the “*Members*”), which shall consist of holders of Class 5 General Unsecured Claims, shall be established. The Advisory Committee shall perform an advisory role in the administration of the Creditor Trust and shall carry out such other responsibilities as may be required or permitted under this Creditor Trust Agreement or under the Plan. The initial Members of the Advisory Committee are [NAME], [NAME], and [NAME]. These Members of the Advisory Committee will serve, not as individuals, but as representatives of their respective organizations. Each Member of the Advisory Committee shall serve until the earlier of: (a) his or her death or resignation; (b) his or her removal pursuant to **Section 5.5** of the Creditor Trust Agreement; and (c) the termination of the Creditor Trust. To any extent a Member of the Advisory Committee has a conflict of interest with respect to any matter being handled by the Creditor Trustee, such Member of the Advisory Committee shall recuse themselves and be recused from any such discussions in accordance herewith and any by-laws governing operation of the Advisory Committee approved by the Creditor Trustee.

5.2 Role of the Advisory Committee

The Advisory Committee shall monitor, and the Creditor Trustee shall consult with the Advisory Committee in connection with, the administration of the Creditor Trust by the Creditor Trustee. The Advisory Committee may provide advice or recommendations with respect to any action to be taken by the Creditor Trustee in connection therewith, including, without limitation: (a) the arrangement of any sale, transfer or other disposition of Creditor Trust Assets; (b) the investment of any proceeds of Creditor Trust Assets in Permitted Investments; (c) the conduct and settlement of litigation with respect to any Disputed Claims and any Cause of Action (other than with respect to a De Minimis Claim or Cause of Action), or otherwise; and (d) the making of any distributions in respect of Allowed Claims. In taking or failing to take any action hereunder, the Creditor Trustee may rely upon a written statement (including signatures by counterpart facsimile or approval by electronic transmission) by such majority of the Advisory Committee. The Advisory Committee will have the authority to remove and/or replace the Creditor Trustee as set forth in **Sections 4.4** and **4.7** hereof. Without limiting the foregoing, neither the Advisory Committee nor its Members shall exercise any control or authority over the Creditor Trust or the Creditor Trust Assets that is inconsistent with the provisions of this Creditor Trust Agreement.

5.3 Compensation of the Advisory Committee

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

5.4 Resignation of Member

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

5.5 Removal of Member

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

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

5.6 Replacement of Member

In the event that an Advisory Committee Member resigns or is removed as an Advisory Committee Member in accordance with this **Article V**, the other Members may designate a successor Member, or may request that the Creditor Trustee designate a successor Member.

5.7 Reliance by Advisory Committee Members

The Advisory Committee Members may rely, and shall be fully protected in acting or refraining from acting, on any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order or other instrument or document that the Advisory Committee Member has no reason to believe to be other than genuine and to have been signed or presented by the proper party or parties or, in the case of facsimiles, to have been sent by the proper party or parties, and the Advisory Committee Members may conclusively rely as to the truth of the statements and correctness of the opinions expressed therein. The Advisory Committee Members may consult with any counsel or other Professionals employed by the Creditor Trust.

5.8 Meetings of the Creditor Trustee and the Advisory Committee

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

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

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

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

5.9 Advisory Committee Action Without a Meeting

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

5.10 Dispute Resolution

In the event of a dispute between the Creditor Trustee and the Advisory Committee, or between Members of the Advisory Committee, involving an allegation that either party has failed to act in a manner consistent with the Plan or this Creditor Trust Agreement, the parties shall meet and confer and attempt to reach a consensual resolution of the dispute. Should a consensual resolution not be reached, the Creditor Trustee or the Advisory Committee or any of its Members may seek appropriate relief from the Bankruptcy Court, and the Bankruptcy Court

shall retain jurisdiction to resolve such disputes. This **Section 5.10** shall also apply to any disputes relating to recusal pursuant to **Section 5.1** of this Agreement.

5.11 Confidentiality of Information and Conflicts of Interest

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

5.12 Limitation of Liability and Indemnification of the Advisory Committee

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

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

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

ARTICLE VI CREDITOR TRUST BENEFICIARIES

6.1 Identification of Beneficiaries

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

6.2 Beneficial Interest Only

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

6.3 Ownership of Beneficial Interests Hereunder

Each Beneficiary shall own a beneficial interest in the Creditor Trust Assets equal in proportion to the Pro Rata share of such Beneficiary's Allowed Claim in accordance with the Plan; provided, however, that holders of Allowed Class 1 Claims (to the extent of the BMO Additional Trust Recovery), Allowed Class 2 Claims (to the extent of the SBA's Allowed Unsecured Claim), or Allowed Class 5 General Unsecured Claims shall not have a beneficial interest in the Reserved Cash; and further provided, however, that upon payment in full of its Allowed Claim, a Beneficiary's beneficial interest in the Creditor Trust Assets shall be deemed to have been extinguished and surrendered.

6.4 Evidence of Beneficial Interest

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

6.5 Limitation on Transferability

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

6.6 Conflicting Claims

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

ARTICLE VII PROVISIONS REGARDING DISTRIBUTIONS

7.1 Timing and Methods of Distributions

7.1.1 Reserved Cash. Solely with respect to the Reserved Cash, the Creditor Trustee, or such other entity as may be designated by the Creditor Trustee, shall make all distributions of Reserved Cash to holders of Allowed Administrative Claims (including Allowed Professional Fee Claims), Allowed Priority Tax Claims, and Allowed Class 3 and 4 Claims, on the later of: (i) on or as soon as practicable following the Effective Date; or (ii) on or as soon as practicable following the date on which any such Claims become Allowed by order of the Bankruptcy Court.

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

7.1.3 Distributions by the Creditor Trustee. Subject to the provisions of this **Article VII**, the Creditor Trustee shall distribute to the holders of Allowed Class 1 Claims (to the extent of the BMO Additional Trust Recovery), Allowed Class 2 Claims (to the extent of the SBA's Allowed Unsecured Claim), and Allowed Class 5 Claims, all net Cash income (including as Cash for this purpose, all cash equivalents) from time to time at such time intervals as decided by the Creditor Trustee following consultation with the Advisory Committee (but within a reasonable time after creation of a Disputed Claims Reserve (as defined *infra*) determined to be

sufficient to make Pro Rata distributions on Disputed Claims and to pay the Trustee Expenses in full), pursuant to the terms of the Plan and the Confirmation Order. The Creditor Trustee may, following consultation with the Advisory Committee, cause the Creditor Trust to retain an amount of net Cash proceeds or net Cash income reasonably necessary to maintain the value of its assets, as set forth in, and to effectuate the provisions of, the Plan and the Confirmation Order. The Creditor Trustee may withhold from the amount distributable from the Creditor Trust at any time to any Person such sum or sums as may be sufficient to pay any tax or taxes or other charge or charges that have been or may be imposed on such Person or upon the Creditor Trust with respect to the amount distributable or to be distributed under the income tax laws of the United States or of any state or political subdivision or entity by reason of any distribution provided for in this Creditor Trust Agreement, whenever such withholding is required by any law, regulation, rule, ruling, directive or other governmental requirement, and the Creditor Trustee may enter into agreements with taxing or other authorities for the payment of such amounts as may be withheld in accordance with the provisions of this **Section 7.1.3**. Notwithstanding the foregoing, but without prejudice to the Creditor Trustee's rights hereunder, such Person shall have the right with respect to the United States, or any state, or any political subdivision of either, to contest the imposition of any tax or other charge by reason of any distribution hereunder.

7.1.4 Claims List. On or as soon as practicable after the Effective Date, the Debtor will deliver to the Creditor Trustee a list of all Claims scheduled by the Debtor and/or filed against the Debtor as of such date, the addresses of all such holders as of such date, the designation and amount of each such Claim as disputed or not disputed, fixed or contingent and liquidated or unliquidated, and the Employer or Taxpayer Identification Number as assigned by the IRS for each holder, to the extent known by the Debtor (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.

7.2 Delivery of Distributions

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

7.3 No Post-Petition Interest on Claims

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

7.4 No Post-Confirmation Date Interest on Claims

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

7.5 Tax Identification Numbers and OFAC Certifications

Prior to making Distributions to Beneficiaries, the Creditor Trustee shall require all Beneficiaries to furnish to him or her: (a) their Employer or Taxpayer Identification Number as assigned by the Internal Revenue Service on a Form W-9 and (b) a certification that the Holder is not a person or entity with whom it is illegal for a U.S. person to do business under Office of Foreign Assets Control (“*OFAC*”) sanctions regulations and/or the list of Specially Designated Nationals and Blocked Persons (collectively, the “*Pre-Distribution Certifications*”). Pre-Distribution Certification forms will be mailed to the Distribution Address for each Holder prior to Distributions being made, and Holders shall have forty-five (45) days from the date of mailing to return the executed Pre-Distribution Certifications. Any Holder that fails to return the executed Pre-Distribution Certifications within such forty-five (45) day period shall be deemed to have forfeited its right to receive Distributions and shall be forever barred and enjoined from asserting any right to Distributions made prior to the Creditor Trustee receiving its executed Pre-Distribution Certifications (such a Holder, if a Holder of an Allowed Class 5 General Unsecured Claim, would only be entitled to a Pro Rata share of remaining future Distributions, if any). Any Distributions that are forfeited pursuant to this provision will be returned to the Creditor Trustee and become property of the Creditor Trust.

7.6 Undeliverable Distributions

7.6.1 Holding of Undeliverable Distributions. If any Distribution to any Holder of an Allowed Claim is returned to the Creditor Trustee as undeliverable, no further Distributions shall be made to such Holder unless and until the Creditor Trustee is notified by such Holder, in writing, of such Holder’s then-current address. Upon such an occurrence, the appropriate Distribution shall be made as soon as reasonably practicable after such Distribution has become deliverable. All Creditors ultimately receiving previously undeliverable Cash shall not be entitled to any interest or other accruals of any kind. Nothing contained in the Plan shall require the Debtor or the Creditor Trustee to attempt to locate any Holder of an Allowed Claim.

7.6.2 Failure to Claim Undeliverable Distributions. Any Holder of an Allowed Claim entitled to an undeliverable or unclaimed Distribution that does not provide notice of such Holder’s correct address to the Creditor Trustee within ninety (90) days after the date of the initial Distribution made by the Creditor Trustee to such Holder, shall be deemed to have forfeited its claim for such undeliverable or unclaimed Distribution and shall be forever barred and enjoined from asserting any such claim for an undeliverable or unclaimed Distribution against the Debtor, its Estate or the Creditor Trust. If, after ninety days, Distributions remain unclaimed, unclaimed Distributions will become forfeited Distributions and such amounts shall be made available for distribution to other Creditor Trust Beneficiaries or for Trustee’s Expenses.

7.7 Lapsed Distributions

Checks issued by the Creditor Trust on account of Allowed Claims shall be null and void if not negotiated within forty-five (45) days from and after the date of issuance thereof. Requests for reissuance of any check that has become null and void shall be made directly to the Creditor Trustee by the Holder of the Allowed Claim within sixty (60) days of the check becoming null and void. After such sixty (60) day period has elapsed, all Claims relating to such voided checks shall be discharged and forever barred. In the case of checks issued on account of Allowed Claims but not negotiated within forty-five (45) days of issuance and for which no request for reissuance is made before sixty (60) days after issuance, the amounts at issue shall be considered to be a forfeited Distribution.

7.8 Compliance with Tax Requirements/Allocation

To the extent applicable, the Creditor Trust shall comply with all tax withholding and reporting requirements imposed on it by any governmental unit, and all distributions pursuant to the Plan and the Confirmation Order shall be subject to such withholding and reporting requirements. For tax purposes, distributions received in respect of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Class 1 Claims (to the extent of the BMO Additional Trust Recovery), Allowed Class 2 Claims (to the extent of the SBA's Allowed Unsecured Claim), Allowed Class 4 Claims and Allowed Class 5 General Unsecured Claims will be allocated first to the principal amount of such Claims, with any excess allocated to unpaid accrued interest.

7.9 De Minimis Distributions

The Creditor Trustee will not make any De Minimis Distributions, and reserves the right to reserve such De Minimis Distributions until such time as the Holder of such Claim is entitled to a Distribution of at least fifty dollars (\$50.00).

7.10 Setoffs

Consistent with applicable law, the Creditor Trustee may, but shall not be required to, set off against any Allowed Claim and the Distributions to be made pursuant to the Plan on account thereof (before any distribution is made on account of such Claim), the claims, rights and Causes of Action of any nature that the Debtor or its Estate may hold against the Holder of such Allowed Claim; provided, however, that neither the failure to effect such a setoff nor the allowance of any claim hereunder shall constitute a waiver or release by the Debtor, its Estate, or the Creditor Trust of any such claims, rights, and Causes of Action that the Debtor, its Estate, or the Creditor Trustee may possess against such Holder.

7.11 Preservation of Debtor's Subordination Rights

All subordination rights and claims relating to the subordination by the Debtor or its Estate of the Claims of any Creditor (except to the extent expressly waived pursuant to an Order of the Bankruptcy Court) shall be unimpaired in accordance with section 510 of the Bankruptcy Code or otherwise, and may be asserted by the Creditor Trustee as necessary or appropriate.

7.12 Waiver by Creditors of All Subordination Rights

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

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

8.1 Objections to Claims; Prosecution of Disputed Claims

The Creditor Trustee, following consultation with the Advisory Committee, and on behalf of the Creditor Trust, may file objections to Claims, even if such Claims were scheduled by the Debtor as undisputed, liquidated and non-contingent. The Creditor Trustee shall have the authority to file, settle, compromise or withdraw any objections to Claims, without approval of the Bankruptcy Court.

8.2 Estimation of Claims

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

8.3 Disputed Claims

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

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

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

8.4 Beneficiaries Subject to Avoidance Actions

Except as otherwise provided by order of the Bankruptcy Court, the Creditor Trustee may, as otherwise allowed pursuant to section 502(d) and (h) of the Bankruptcy Code in his or her discretion, withhold Distributions to Beneficiaries who are the subject of a potential or filed Avoidance Action until such time as the Avoidance Action has been fully and finally resolved.

ARTICLE IX LIABILITY AND EXCULPATION PROVISIONS

9.1 Standard of Liability

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

9.2 Reliance by Creditor Trustee

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

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

(b) the Creditor Trustee shall not be liable for any action reasonably taken or not taken by him or her in accordance with the advice of a Professional retained pursuant to **Article XI**, and persons dealing with the Creditor Trustee shall look only to the Creditor Trust Assets (other than Reserved Cash) 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 on or after the Effective Date by the Creditor Trustee are determined by a Final Order to be solely due to the Creditor Trustee's own willful misconduct, fraud or breach of fiduciary duty, other than negligence.

9.3 Exculpation

9.3.1 From and after the Effective Date, the Creditor Trustee and his or her 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 willful misconduct, fraud or, solely in the case of the Creditor Trustee, breach of fiduciary duty, other than negligence.

9.3.2 No holder of a Claim or other party-in-interest will be permitted to pursue any claim or cause of action against the Creditor Trustee or his or her 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 willful misconduct or fraud or, solely in the case of the Creditor Trustee, a breach of fiduciary duty, other than negligence.

9.4 Indemnification

The Creditor Trust shall indemnify, defend and hold harmless the Creditor Trustee and his or her 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 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; provided, however, Reserved Cash shall not be available for the payment of any obligations hereunder.

ARTICLE X ADMINISTRATION

10.1 Purpose of the Creditor Trust

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

10.2 Books and Records

10.2.1 Maintenance of Books and Records. The Creditor Trustee shall maintain, with respect to the Creditor Trust and the Beneficiaries, books and records relating to the assets and income of the Creditor Trust and the payment of expenses of and liabilities of, claims against or assumed by, the Creditor Trust in such detail and for such period of time as the Creditor Trustee determines, after consultation with the Advisory Committee, may be necessary to make full and proper accounting in respect thereof in accordance with **Article X** hereof and to comply with applicable provisions of law. Except as otherwise provided herein, in the Plan, or in the Confirmation Order, nothing in this Creditor Trust Agreement requires the Creditor Trust to file any accounting or seek approval of any court with respect to the administration of the Creditor Trust, or as a condition for making any payment or distribution out of the Creditor Trust Assets. Subject to all applicable privileges, the Beneficiaries shall have the right, in addition to any other rights they may have pursuant to this Creditor Trust Agreement, under the Plan and the Confirmation Order, or otherwise, upon fourteen (14) days' prior written notice delivered to the Creditor Trustee, to request a reasonable inspection (as determined by the Creditor Trustee, following consultation with the Advisory Committee) of such books and records; provided, however, that, if so requested, such Beneficiary shall: (a) first enter into a confidentiality agreement satisfactory in form and substance to the Creditor Trustee; and (b) make such other reasonable arrangements as requested by the Creditor Trustee and the Advisory Committee.

10.2.2 Consultation. The Creditor Trustee shall consult with the Advisory Committee in good faith regarding all material issues affecting the Creditor Trust, including, without limitation, the resolution of objections to Disputed Claims, the prosecution and settlement of the Causes of Action, and the disposition of Creditor Trust Assets. In addition, the Creditor Trustee, at the written request of the Advisory Committee, shall present one or more budgets for the Creditor Trust that set forth expected disbursements for litigation, operations and other purposes.

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

Beneficiaries during the calendar quarter; (b) a summary of the Creditor Trust deposits and disbursements during the calendar quarter; and (c) a status of the liquidation of the Creditor Trust Assets. The initial Quarterly Report filed by the Creditor Trustee shall also include the last month (or portion of a month) preceding the Effective Date, to the extent the Debtor does not file a monthly operating report for such period.

10.3 Reserved Cash Reports. Within thirty (30) days after the conclusion of every month following the Effective Date, the Creditor Trustee shall submit to the Debtor a written report detailing all disbursements of Reserved Cash from the Creditor Trust for such prior month. The Creditor Trustee's reporting requirements hereunder shall terminate upon the submission of a final report following the last disbursement of all Reserved Cash.

10.4 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 (other than Reserved Cash) to secure the payment of all amounts owed to, accrued or reserved on account of, to be retained by or otherwise due hereunder to each of the above. The Creditor Trustee shall cause the Creditor Trust to take such actions and execute such documents as the Creditor Trustee, its respective Professionals and Non-Professionals and the U.S. Trustee deem appropriate to perfect the security interests granted hereunder. The Creditor Trustee is authorized to execute and deliver all documents on behalf of the Creditor Trust to accomplish the purposes of this Creditor Trust Agreement, the Plan and the Confirmation Order.

10.5 Compliance with Laws

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

ARTICLE XI PROFESSIONALS AND NON-PROFESSIONALS

11.1 Retention of Professionals and Non-Professionals

11.1.1 Retention of Professionals. The Creditor Trustee shall have the right to retain his own professionals without any further approval by any court or otherwise including, without limitation, legal counsel, accountants, experts, advisors, consultants, investigators, appraisers, real estate brokers, auctioneers and other professionals as the Creditor Trustee deems appropriate (collectively, the "*Professionals*"). Such Professionals shall be compensated in accordance with **Section 11.3** hereof. The Professionals so retained may be "interested" as that term is defined in the Bankruptcy Code and may include, without limitation, counsel and financial advisors of any party in the Case for efficiency.

11.1.2 Professionals Employed by Debtor. The Creditor Trustee shall have the right to continue the employment of professionals retained by the Debtor in the Case, including Professionals retained by the Debtor to prepare and file tax returns and to conduct wind-up activities related to the Debtor's employee benefits plans. Any such professionals shall be

deemed Professionals and shall be subject to this Agreement, including the compensation procedures set forth in **Section 11.2** hereof.

11.1.3 Retention of Non-Professionals. The Creditor Trustee shall have the right to retain non-professionals without any further approval by any court or otherwise including, without limitation, employees, independent contractors or other agents as the Creditor Trustee deems appropriate (the “*Non-Professionals*”). Such Non-Professionals shall be compensated in accordance with **Section 11.3** hereof. The Non-Professionals so retained may be “interested” as that term is defined in the Bankruptcy Code and may include, without limitation, employees, independent contractors and agents of the Debtor or the Committee.

11.2 Compensation of Professionals and Non-Professionals

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

ARTICLE XII TAXES

12.1 Tax Returns and Payments

The Creditor Trustee will be responsible for: (a) the preparation and timely filing of all required federal, state and local tax returns for the Creditor Trust and the Debtor (to the extent not filed by the Debtor prior to the Effective Date); (b) the timely payment of any taxes shown on such returns as owing by the Creditor Trust or the Debtor (as applicable) from the applicable

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

12.2 Creditor Trust

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

12.3 Disputed Claims Reserve

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

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

ARTICLE XIII
TERMINATION OF THE CREDITOR TRUST

13.1 Duration and Extension

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

13.2 Termination Upon Distribution of All Creditor Trust Assets

The Creditor Trust will terminate and the Creditor Trustee will have no additional responsibility in connection therewith except as may be required to effectuate such termination under relevant law and except as described in **Section 13.4** hereof, upon the latest of: (a) the payment of all costs, expenses and obligations incurred in connection with administering the Creditor Trust; (b) the distribution of all remaining Creditor Trust Assets; (c) the closure or dismissal of the Case; and (d) the completion of any necessary or appropriate reports, tax returns or other documentation determined by the Creditor Trustee, in its reasonable discretion, to be necessary, appropriate or desirable, in each case pursuant to and in accordance with the Plan, the Confirmation Order and this Creditor Trust Agreement.

13.3 Diligent Administration

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

13.4 Other Termination Procedures

Upon termination of this Creditor Trust, the Creditor Trustee will file a written notice with the Bankruptcy Court disclosing the Creditor Trust's termination. Notwithstanding the foregoing, after the termination of the Creditor Trust, the Creditor Trustee will have the power to exercise all the rights, powers and privileges herein conferred solely for the purpose of liquidating and winding up the affairs of the Creditor Trust. Except as otherwise provided under

the Plan or this Creditor Trust Agreement, for a period of five (5) years after the distribution of all of the Creditor Trust Assets, the Creditor Trustee will retain the books, records and files that have been delivered to or created by the Creditor Trustee, at which time the Creditor Trustee may dispose of such books, records and files in any manner that the Creditor Trustee deems appropriate. Except as otherwise specifically provided herein, after termination of this Creditor Trust Agreement, the Creditor Trustee shall have no further duties or obligations hereunder.

ARTICLE XIV MISCELLANEOUS PROVISIONS

14.1 Intention of Parties to Establish a Grantor Trust

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

14.2 Preservation of Privilege

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

14.3 Cooperation

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

14.4 Payment of Statutory Fees

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

14.5 Prevailing Party

In the event of a dispute regarding the provisions of this Creditor Trust Agreement or the enforcement thereof, the prevailing party shall be entitled to collect any and all costs, expenses

and fees, including attorneys' fees, from the non-prevailing party incurred in connection with such dispute or enforcement action.

14.6 Implied Authority of the Creditor Trustee

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

14.7 Confidentiality

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

14.8 Governing Law; Submission to Jurisdiction; Service of Process

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

of process on that party may be made upon the designated Person or entity at the address provided in **Section 14.10** hereof and will be deemed to be effective service of process on that party.

14.9 Severability

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

14.10 Notices

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

Creditor Trustee:

John B. Pidcock
Oxford Restructuring Advisors
16781 Chagrin Blvd., Suite 503
Shaker Heights, Ohio 44120
Phone: (513) 235-0164
E-mail: jpidcock@oxfordrestructuring.com

with a copy to:

[COUNSEL]

Debtor:

Vladimir Kasparov
Chief Restructuring Officer
c/o Andrews Advisory Group, LLC
190 S. LaSalle St., Suite 500
Chicago, Illinois 60603
Phone: (312) 578-1436
E-mail: vkasparov@andrewsadvisorygroup.com

with a copy to:

Adam P. Silverman
Erich S. Buck

Adelman & Gettleman, Ltd.
53 W. Jackson Blvd., Suite 1050
Chicago, Illinois 60604
Phone: (312) 435-1050
E-mail: asilverman@ag-ltd.com
ebuck@ag-ltd.com

Committee:

Thomas R. Fawkes
Brian J. Jackiw
Tucker Ellis LLP
233 S. Wacker Dr., Suite 6950
Chicago, Illinois 60606
Phone: (312) 624-6300
E-mail: thomas.fawkes@tuckerellis.com
brian.jackiw@tuckerellis.com

14.11 Notices if to a Beneficiary

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

14.12 Headings

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

14.13 Counterparts and Facsimile Signatures

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

14.14 Amendment or Waiver

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

14.15 Intervention

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

[Remainder of Page Intentionally Blank]

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

CREDITOR TRUSTEE

By: _____
John B. Pidcock, not individually, but solely
as trustee of the Creditor Trust

**HC OLDSCO, INC. f/k/a ARRO
CORPORATION**

By: _____
Vladimir Kasparov, Chief Restructuring
Officer

**OFFICIAL COMMITTEE OF
UNSECURED CREDITORS**

By: _____
Committee Chair