

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
)	
MIAMI METALS I, INC., <i>et al.</i> ¹)	Case No. 18-13359 (SHL)
)	
)	(Jointly Administered)
Debtors.)	
)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER PURSUANT TO
SECTIONS 1129(A) AND (B) OF THE BANKRUPTCY CODE AND RULE 3020
OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE CONFIRMING
DEBTORS' SECOND AMENDED JOINT CHAPTER 11 PLAN OF LIQUIDATION**

THIS MATTER came before the Court for hearing on December 12, 2019 at 11:00 a.m. Eastern Time (the "Confirmation Hearing") to consider confirmation of the Amended Joint Chapter 11 Plan of Liquidation filed on September 13, 2019 at ECF No. 1409, as amended at ECF No. 1491-2 and by this Order (the "Plan"),² filed by Miami Metals I, Inc. (f/k/a Republic Metals Refining Corporation) and its affiliated debtors and debtors-in-possession (collectively, the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases"). The Court, having considered the Order Authorizing Debtors' Entry into and Performance under Amended Plan Support Agreement [ECF No. 1488], the Final Cash Collateral Order [ECF No. 1487], the Plan, the Debtors' Court-approved Second Amended Disclosure Statement [ECF No. 1491-1] (the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Miami Metals I, Inc. (f/k/a Republic Metals Refining Corporation), 15 West 47th Street, Suites 206 and 209, New York, NY 10036 (3194); Miami Metals II, Inc. (f/k/a Republic Metals Corporation), 12900 NW 38th Avenue, Miami, FL 33054 (4378); Miami Metals III LLC (f/k/a Republic Carbon Company), 5295 Northwest 163rd Street, Miami Gardens, FL 33014 (5833); Miami Metals IV LLC (f/k/a J & L Republic LLC), 12900 NW 38th Avenue, Miami, FL 33054 (7604); Miami Metals V LLC (f/k/a R & R Metals, LLC), 12900 NW 38th Avenue, Miami, FL 33054 (7848); Miami Metals VI (f/k/a RMC Diamonds, LLC), 12900 NW 38th Avenue, Miami, FL 33054 (1507); Miami Metals VII (f/k/a RMC2, LLC), 12900 NW 38th Avenue, Miami, FL 33054 (4696); Miami Metals VIII (f/k/a Republic High Tech Metals, LLC), 13001 NW 38 Avenue, Miami, FL 33054 (6102), 12900 NW 38th Avenue, Miami, FL 33054 (1507); Republic Metals Trading (Shanghai) Co., Ltd., 276 Ningbo Road, Huangpu District, Shanghai, P.R. 200001 China (1639); and Republic Trans Mexico Metals, S.R.L., Francisco I. Madero No. 55 Piso 5, Local 409, Centro Joyero Edificio Central, Delegación Cuauhtémoc, Mexico DF 6000 (2942).

² Unless otherwise noted, capitalized terms shall have the meanings ascribed to them in the Plan.

"Disclosure Statement"), the declarations introduced into evidence at the Confirmation Hearing, including the testimony of the Debtors' Chief Restructuring Officer Scott Avila (the "Avila Declaration") [ECF No. 1639] and the Debtors' Noticing Agent and Balloting Agent [ECF No. 1616, Ex. A], the Debtors' Memorandum in support of Confirmation of the Plan (the "Confirmation Brief") [ECF No. 1629], the objections to the Plan (the "Objections") and the responses thereto, the Plan Supplement [ECF No. 1555] (as may be amended, the "Plan Supplement"), the statements and representations of counsel, the modifications, amendments, and additions to the Plan announced on the record by counsel for the Debtors, and the entire record of the Chapter 11 Cases (as defined herein), the Court makes the following findings of fact and conclusions of law:

Findings of Fact and Conclusions of Law

A. Findings of Fact and Conclusions of Law. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052, made applicable to this proceeding pursuant to Fed. R. Bankr. P. 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. Oral Findings Incorporated by Reference. The Court's oral findings of fact and conclusions of law announced on the record at the Confirmation Hearing are incorporated by reference herein.

C. Chapter 11 Petitions. On November 2, 2018 or November 21, 2018 (as applicable), each of the Debtors commenced with this Court a voluntary case (the "Chapter 11 Cases") under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors were authorized to continue to operate their businesses and manage their properties as debtors in

possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed pursuant to section 1104 of the Bankruptcy Code.

D. The Creditors' Committee. On November 19, 2018, the Office of the United States Trustee (the "UST") appointed the statutory committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the "Committee") [ECF No. 113].

E. Plan Support Agreement. On September 13, 2019, the Debtors filed a motion for entry of an order authorizing their entry into and performance under an Amended Plan Support Agreement (the "PSA") [ECF No. 1413], which was approved pursuant to the Court's order signed on October 10, 2019 [ECF No. 1488]. The PSA was supported by the Supporting Parties, and contemplated, *inter alia*, that the Debtors would promulgate and seek approval of a plan of liquidation that is consistent with the Plan.

F. Final Cash Collateral Order. On October 10, 2019, the Court also entered the Final Cash Collateral Order [ECF No. 1487], pursuant to which, *inter alia*, the Ownership Reserve was established and funded.

G. Jurisdiction and Venue. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper under 28 U.S.C. §§ 1408 and 1409. Confirmation of the Plan is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L), and the Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed.

H. Judicial Notice. The Court takes judicial notice of the docket of the Chapter 11 Cases maintained by the Clerk or Court and/or its duly-appointed agent, including, without limitation, all pleadings and other documents filed, orders entered, and the evidence and arguments made, proffered, or adduced at the hearings held before the Court during the pendency of the

Chapter 11 Cases, including, but not limited to, the hearing to consider the adequacy of the Disclosure Statement.

I. Burden of Proof. The Debtors have satisfied the burden of proving the elements of section 1129(a) and (b) of the Bankruptcy Code by a preponderance of the evidence.

J. Transmittal and Mailing of Materials; Notice. The Disclosure Statement, Plan, *Order Approving (I) the Adequacy of the Second Amended Disclosure Statement; (II) Solicitation and Notice Procedures; (III) Forms of Ballots and Notices in Connection Therewith; and (IV) Certain Dates with Respect Thereto* (the "Order Approving Disclosure Statement") [ECF No. 1490], the ballots transmitted to voting claimants (the "Ballots"), and notice of the Confirmation Hearing (the "Confirmation Hearing Notice") have been transmitted and served in compliance with the Order Approving Disclosure Statement, the Bankruptcy Rules, and the Local Bankruptcy Rules for the Southern District of New York (the "Local Rules"), and such transmittal and service were adequate and sufficient, and no other or further notice is or shall be required.

K. Voting. Votes to accept or reject the Plan have been solicited and tabulated fairly, in good faith, and in a manner consistent with the Bankruptcy Code, Bankruptcy Rules, and the Order Approving Disclosure Statement.

L. Bankruptcy Rule 3016(a). In accordance with Bankruptcy Rule 3016(a), the Plan is dated and identifies the Debtors as proponents of the Plan.

M. Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)). The Plan complies with the applicable provisions of the Bankruptcy Code, satisfying section 1129(a)(1) of the Bankruptcy Code.

- a. Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1)). In addition to Administrative Claims, Priority Tax Claims, Other Priority Claims, 503(b)(9)

Claims, and Title Property Claims, which need not be designated, the Plan designates eight (8) Classes of Claims and Interests. The Claims or Interests placed in each Class are substantially similar to other Claims or Interests, as the case may be, in each such Class. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims or Interests created under the Plan, and such classification does not unfairly discriminate between holders of Claims and Interests. Accordingly, the Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

- b. Specified Treatment of Unimpaired Classes (11 U.S.C. § 1123(a)(2)). Article 4 of the Plan designates Class 1 (Miscellaneous Secured Claims) and Class 2 (Priority Non-Tax Claims) as unimpaired, and Article 5 of the Plan specifies the treatment of Claims and Interests in such Classes, thereby satisfying section 1123(a)(2) of the Bankruptcy Code.
- c. Specified Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)). Article 4 of the Plan designates Class 3 (Secured Party Claims), Class 4 (General Unsecured Claims), Class 5 (Convenience Class Claims), Class 6 (Intercompany Claims), Class 7 (Subordinated Claims), and Class 8 (Intercompany Interests in Miami Metals I, Inc. and Miami Metals II, Inc.) as impaired, and Article 5 of the Plan specifies the treatment of Claims and Interests in such Classes, thereby satisfying section 1123(a)(3) of the Bankruptcy Code.
- d. No Discrimination (11 U.S.C. § 1123(a)(4)). The Plan provides for the same treatment by the Debtors for each Claim or Interest in each respective Class unless the holder of a particular Claim or Interest has agreed to a less favorable treatment

of such Claim or Interest, thereby satisfying section 1123(a)(4) of the Bankruptcy Code.

- e. Implementation of the Plan (11 U.S.C. § 1123(a)(5)). The Plan provides adequate and proper means for the Plan's implementation, thereby satisfying section 1123(a)(5) of the Bankruptcy Code.
- f. Impairment/Unimpairment of Claims (11 U.S.C. § 1123(b)(1)). As contemplated by section 1123(b)(1) of the Bankruptcy Code, Class 1 (Miscellaneous Secured Claims) and Class 2 (Priority Non-Tax Claims) are unimpaired under the Plan. Further, Class 3 (Secured Party Claims), Class 4 (General Unsecured Claims), Class 5 (Convenience Class Claims), Class 6 (Intercompany Claims), Class 7 (Subordinated Claims), and Class 8 (Intercompany Interests in Miami Metals I, Inc. and Miami Metals II, Inc.) are impaired under the Plan.
- g. Assumption and Rejection of Executory Contracts and Unexpired Leases (11 U.S.C. § 1123(b)(2)). Article 6 of the Plan, governing the assumption and rejection of executory contracts and unexpired leases, satisfies the requirements of section 365(b) of the Bankruptcy Code, and accordingly, satisfies the requirements of section 1123(b) of the Bankruptcy Code.
- h. Settlement of Claims and Causes of Action (11 U.S.C. § 1123(b)(3)). Article 8 of the Plan, which provides for the retention and enforcement by the Litigation Trustee of certain Causes of Action, complies with applicable bankruptcy law and accordingly, with the provisions of section 1123(b)(3) of the Bankruptcy Code.
- i. Modification of Rights (11 U.S.C. § 1123(b)(5)). In accordance and in compliance with section 1123(b)(5) of the Bankruptcy Code, the Plan properly modifies the

rights of holders of Claims in Class 3 (Secured Party Claims), Class 4 (General Unsecured Claims), Class 5 (Convenience Class Claims), Class 6 (Intercompany Claims), Class 7 (Subordinated Claims), and Class 8 (Intercompany Interests in Miami Metals I, Inc. and Miami Metals II, Inc.).

- j. Additional Plan Provisions (11 U.S.C. § 1123(b)(6)). The provisions of the Plan are appropriate and not inconsistent with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1123(b)(6) of the Bankruptcy Code. The failure to specifically address a provision of the Bankruptcy Code in this Confirmation Order shall not diminish or impair the effectiveness of this Confirmation Order.

N. Plan Proponents' Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)). The Debtors, as proponents of the Plan, have complied with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(2) of the Bankruptcy Code. Specifically:

- a. The Debtors are proper debtors under section 109 of the Bankruptcy Code;
- b. The Debtors have complied with applicable provisions of the Bankruptcy Code, except as otherwise provided or permitted by orders of the Court; and
- c. The Debtors have complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the Disclosure Statement Order in transmitting the Disclosure Statement, the Plan, the Ballots, and related documents and notices and in soliciting and tabulating votes on the Plan.

O. Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)). The Debtors have proposed the Plan in good faith and not by any means forbidden by law, satisfying section 1129(a)(3) of the Bankruptcy Code. The Debtors' good faith is evidenced from the facts and record of these Chapter

11 Cases, the Disclosure Statement and hearings thereon, the Confirmation Brief, and the record of the Confirmation Hearing and other proceedings held in these Chapter 11 Cases. The Plan was proposed with the legitimate and honest business purpose of maximizing the value of the Debtors' estates and effectuating an orderly liquidation of the Debtors. The Plan incorporates an agreement by the Secured Parties to waive certain rights and claims, assign certain rights and claims to the Litigation Trust, to fund both the Litigation Trust so it can retain and compensate professionals and others, and to likewise fund the 503(b)(9) Fund for the benefit of holders of Allowed 503(b)(9) claims receiving the cash distribution they are entitled to receive under the Plan, and the Plan provides for the distribution of Litigation Recoveries to holders of 503(b)(9) Claims (subject to the GUC Sharing Formula), allowing holders of 503(b)(9) Claims to receive greater and more expeditious distributions under the Plan than they would receive through a chapter 7 liquidation. Absent this agreement, which depends on confirmation of the Plan, holders of 503(b)(9) Claims may not receive any recovery in a chapter 7 liquidation. Further, the Plan's classification, indemnification, exculpation, release, and injunction provisions, including, without limitation, Sections 12.3, 12.4, 12.5, 12.6, and 12.7 are proposed in good faith and are consistent with sections 1123(b)(3)(A), 1123(b)(6), 1129, and 1142 of the Bankruptcy Code.

P. Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)). Any payment made or to be made by any of the Debtors for services or for costs and expenses in or in connection with the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases has been approved by, or is subject to the approval of, the Court as reasonable, satisfying section 1129(a)(4) of the Bankruptcy Code.

Q. Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)). The Debtors have complied with section 1129(a)(5) of the Bankruptcy Code. The Debtors disclosed the identity and

affiliations of the person proposed to serve as a successor of the Debtors under the Plan, to wit, Donna Lieberman as litigation trustee (the "Litigation Trustee"). The appointment of the Litigation Trustee is consistent with the interests of creditors and equity security holders and with public policy. No insider will be employed or retained by the Debtors or the Litigation Trustee after entry of this Order, provided that the Litigation Trustee may, in her discretion, retain David Comite, the Debtors' CFO, or Scott Avila, the Debtors' Chief Restructuring Officer, post-Confirmation to assist with administering the Litigation Trust.

R. No Rate Changes (11 U.S.C. § 1129(a)(6)). The Plan does not provide for any changes in any regulated rates, and therefore, section 1129(a)(6) of the Bankruptcy Code is inapplicable to these Chapter 11 Cases.

S. Best Interests of Creditors (11 U.S.C. § 1129(a)(7)). The Plan satisfies section 1129(a)(7) of the Bankruptcy Code. The Plan, the Disclosure Statement, the Avila Declaration, and the other evidence proffered or adduced at the Confirmation Hearing (i) are persuasive and credible, (ii) have not been controverted by other evidence, and (iii) establish that each holder of an impaired Claim or Interest either has accepted the Plan or will receive or retain under the Plan, on account of such Claim or Interest, property of a value, as of the Effective Date, that is not less than the amount such holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on such date.

T. Acceptance of Plan by Certain Classes (11 U.S.C. § 1129(a)(8)). Classes 1 (Miscellaneous Secured Claims) and 2 (Priority Non-Tax Claims) are Unimpaired by the Plan, and therefore, pursuant to 11 U.S.C. § 1126(f), are conclusively presumed to have accepted the Plan. Classes 3 (Secured Party Claims), 4 (General Unsecured Claims), and 5 (Convenience Claims) voted to accept the Plan. Classes 7 (Subordinated Claims) and 8 (Intercompany Interests in Miami

Metals I, Inc. and Miami Metals II, Inc.) are deemed to reject the Plan. Accordingly, the requirements of section 1129(a)(8) of the Bankruptcy Code have been met.

U. Treatment of Administrative and Priority Claims – (11 U.S.C. § 1129(a)(9)). As set forth below, the requirements of 11 U.S.C. § 1129(a)(9) have been met with respect to each category of Administrative and Priority Claims.

- a. Administrative Claims. The Plan provides that all Allowed Administrative Claims, except all Allowed 503(b)(9) Claims, are to be paid by the Debtors or Litigation Trustee in full, in cash, on the latest of (i) one (1) day following the Effective Date or as soon as practicable thereafter, (ii) within ten (10) Business Days after the date such Administrative Claim becomes an Allowed Administrative Expense, and (iii) the date such Allowed Administrative Claim becomes due according to its terms. Accordingly, the requirements of 11 U.S.C. § 1129(a)(9) have been satisfied with respect to Administrative Claims.
- b. Priority Tax Claims. The Plan provides the Debtors shall pay each holder of an Allowed Priority Tax Claim the amount of such Allowed Priority Tax Claim in full, in Cash, on the Effective Date, or the Litigation Trustee shall pay each holder of an Allowed Priority Tax Claim in full, in Cash, no later than ten (10) Business Days after the date such Priority Tax Claim becomes Allowed. Accordingly, the requirements of 11 U.S.C. § 1129(a)(9) have been satisfied with respect to Priority Tax Claims.
- c. Other Priority Claims. The Plan provides that the Debtors shall pay each holder of an Allowed Priority Claim the amount of such Allowed Priority Claim in full, in Cash, on the Effective Date, or the Litigation Trustee shall pay each holder of an

Allowed Priority Claim the amount of such Allowed Priority Claim in full, in Cash, no later than ten (10) Business Days after the date such Priority Claim becomes an Allowed Priority Claim. Accordingly, the requirements of 11 U.S.C. § 1129(a)(9) have been satisfied with respect to Other Priority Claims.

- d. 503(b)(9) Claims. The Plan provides that on or as soon as reasonably practicable after the later of (i) the Effective Date or (ii) the date such 503(b)(9) Claim becomes an Allowed 503(b)(9) Claim, a Holder of an Allowed 503(b)(9) Claim shall receive, in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed 503(b)(9) Claim, (i) a *pro rata* distribution from the 503(b)(9) Fund and (ii) subject to the GUC Sharing Formula and retention of reasonable reserves pursuant to the Litigation Trust Agreement, a *pro rata* distribution of Litigation Recoveries. The GUC Sharing Formula provides that once holders of Allowed 503(b)(9) Claims recover 75% on account of their Allowed 503(b)(9) Claim(s), then until all Allowed 503(b)(9) Claims are paid in full, 75% of Litigation Recoveries shall be made available for distribution to Holders of Allowed 503(b)(9) Claims and 25% of Litigation Recoveries shall be made available for distribution to Holders of Allowed General Unsecured Claims. Following certain agreements with individual Holders of 503(b)(9) Claims and the Debtors' solicitation of consent to such treatment from holders of 503(b)(9) Claims pursuant to the Order Approving Disclosure Statement, 100% of the Holders of 503(b)(9) Claims consented to the treatment of their claims as set forth ~~above~~ ***in this Confirmation Order*** either affirmatively or by deciding not to object, and accordingly, the

requirements of 11 U.S.C. § 1129(a)(9) have been satisfied with respect to 503(b)(9) Claims.

V. Acceptance by Impaired Classes (11 U.S.C. § 1129(a)(10)). Class 3 (Secured Party Claims), Class 4 (General Unsecured Claims), Class 5 (Convenience Class Claims), Class 6 (Intercompany Claims), Class 7 (Subordinated Claims), and Class 8 (Intercompany Interests in Miami Metals I, Inc. and Miami Metals II, Inc.) are Impaired under the Plan. Classes 3, 4, and 5 voted to accept the Plan. Classes 6, 7, and 8 did not vote. Because at least one Impaired Class voted to accept the Plan, the requirements of 11 U.S.C. § 1129(a)(10) have been satisfied.

W. Feasibility (11 U.S.C. § 1129(a)(11)). The Plan is a liquidating Plan. The establishment of the Litigation Trust and the vesting of the Debtors' assets therein, as governed by the Plan and Litigation Trust Agreement, will enable the Litigation Trustee to liquidate the assets of the Litigation Trust for distribution to holders of Allowed Claims in accordance with the terms of the Plan. The Ownership Reserve, which initially totaled \$77,656,507.00, as of the date hereof held \$68,003,409, was funded in accordance with the Final Cash Collateral Order. Thus, confirmation of the Plan is not likely to be followed by any further liquidation or the need for further financial reorganization of the Debtors, except to the extent proposed in the Plan. Accordingly, the requirements of 11 U.S.C. § 1129(a)(11) have been satisfied.

X. Payment of Fees (11 U.S.C. § 1129(a)(12)). The Plan provides for payment in full of all U.S. Trustee fees payable under 28 U.S.C. § 1930(a)(6). The Debtors or the Litigation Trustee, on behalf of the Debtors, shall pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6). The Litigation Trustee shall further pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6) based upon disbursements

of the Litigation Trust for post-Effective Date periods within the time period set forth in 28 U.S.C. 1930(a)(6). Accordingly, the requirements of 11 U.S.C. § 1129(a)(12) have been satisfied.

Y. Continuation of Retiree Benefits (11 U.S.C. § 1129(a)(13)). The Debtors have no obligation to provide retiree benefits. Accordingly, 11 U.S.C. § 1129(a)(13) is not applicable.

Z. Domestic Support Obligations (11 U.S.C. § 1129(a)(14)). The Debtors are not required by a judicial or administrative order, or by statute, to pay any domestic support obligation. Accordingly, 11 U.S.C. § 1129(a)(14) is not applicable.

AA. Non-Individual Debtor (11 U.S.C. § 1129(a)(15)). The Debtors are not individuals. Accordingly, 11 U.S.C. § 1129(a)(15) is not applicable.

BB. Moneyed Business or Commercial Corporation or Trust (11 U.S.C. § 1129(a)(16)). The Plan does not involve the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust. Accordingly, 11 U.S.C. § 1129(a)(16) is not applicable.

CC. Fair and Equitable; No Unfair Discrimination (11 U.S.C. § 1129(b)). Based on the Disclosure Statement, the Debtors' Confirmation Brief, the Avila Declaration, and the evidence proffered, adduced, or presented by the Debtors at the Confirmation Hearing, the Plan does not discriminate unfairly and is fair and equitable with respect to all impaired classes of Claims and Interests.

DD. Only One Plan (11 U.S.C. § 1129(c)). The Plan is the only plan filed in the Chapter 11 Cases and, therefore, section 1129(c) of the Bankruptcy Code is not applicable to the Chapter 11 Cases.

EE. Principal Purpose of Plan (11 U.S.C. § 1129(d)). Neither the avoidance of taxes nor the avoidance of Section 5 of the Securities Act of 1933 is a principal purpose of the Plan.

FF. Good Faith Solicitation (11 U.S.C. §1125(e)). Based on the record before the Court in these Chapter 11 Cases, the Debtors and their directors, officers, employees, members, agents, advisors, and professionals have acted in "good faith" within the meaning of section 1125(e) of the Bankruptcy Code in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the Disclosure Statement Order in connection with all their respective activities relating to the solicitation of acceptance or rejection of the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code, and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and the exculpation provisions set forth in Section 12.3 of the Plan, as modified below.

GG. Injunction, Exculpation, and Releases. The Court has jurisdiction under sections 1334(a) and (b) of the United States Code to approve the injunctions, releases, and exculpation provisions set forth in the Plan, including those set forth in Sections 12.3, 12.4, 12.5, 12.6, and 12.7 of the Plan, and as provided for herein. The injunctions, releases, and exculpations set forth in the Plan and implemented by this Confirmation Order are fair and reasonable and in the best interests of the Debtors and their estates, creditors, and equity holders. The record of the Confirmation Hearing and the Chapter 11 Cases is sufficient to support the injunctions, releases, and exculpations provided for in the Plan and this Confirmation Order and the failure to implement the injunctions, exculpations, and releases would seriously impair the Debtors' ability to confirm the Plan. Accordingly, based upon the record of the Chapter 11 Cases, the representations of the parties, and/or the evidence proffered, adduced, and/or presented at the Confirmation Hearing, the Court finds that the injunctions, exculpations, and releases set forth in the Plan, including those set forth in Sections 12.3, 12.4, 12.5, 12.6, and 12.7 of the Plan, are appropriate and consistent with the Bankruptcy Code and applicable law.

HH. Substantive Consolidation. The Debtors demonstrated that substantive consolidation of the Debtors for distribution purposes is appropriate pursuant to *Union Sav. Ban v. Augie/Restivo Baking Co., Ltd. (In re Augie/Restivo Baking Co., Ltd.)*, 860 F.2d 515 (2d Cir. 1988) and *In re Republic Airways Holdings, Inc.*, 565 B.R. 710 (Bankr. S.D.N.Y. 2017). The Court finds that the limited substantive consolidation provided for in the Plan is in the best interest of creditors.

II. Executory Contracts and Unexpired Leases. Article 6 of the Plan, governing the assumption and rejection of executory contracts and unexpired leases, satisfies the requirements of section 365(b) of the Bankruptcy Code. The Debtors have exercised reasonable business judgment in determining to reject any remaining executory contract and unexpired lease that is not (a) listed on the Plan Supplement as an Assumed Executory Contract, (b) has not been previously assumed by the Debtors by Final Order of the Bankruptcy Court, or (c) is otherwise assumed pursuant to the Plan.

JJ. Conditions Precedent. The conditions precedent to the Effective Date set forth in Section 11.2 of the Plan may be waived or modified by the Debtors as provided therein, without notice or leave or order of the Court, and without any other formal action other than proceeding to consummate the Plan.

KK. Objections. All parties have had a full and fair opportunity to litigate all issues raised in the Objections, or which might have been raised, and the Objections have been fully considered by the Court, or resolved and withdrawn as stated on the record at the Confirmation Hearing and confirmed by the objecting parties on the record of the Confirmation Hearing.

LL. Retention of Jurisdiction. The Court may, and upon the Effective Date shall, retain exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases, including

jurisdiction over the matters set forth in Article 13 of the Plan and section 1142 of the Bankruptcy Code.

MM. Requirements for Confirmation Satisfied. All of the requirements for confirmation under 11 U.S.C. § 1129 have been satisfied. Confirmation of the Plan is in the best interests of the Debtors' estates, creditors, and all other parties in interest.

ORDER

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. Confirmation. The Plan, annexed hereto as **Exhibit A**, including all exhibits attached thereto or included as in the Plan Supplement, is approved and confirmed under section 1129 of the Bankruptcy Code. The terms of the Plan and Plan Supplement, as each may be modified, are incorporated by reference into and are an integral part of the Plan and this Confirmation Order. The Debtors are authorized to implement the provisions and consummate the Plan and Plan Supplement without any further authorization. No further solicitation or voting is required on the Plan.

2. Plan Modifications and Amendments. Subject to any restrictions in the Plan, the Plan and Plan Supplement may be amended, modified, or supplemented by the Debtors or the Litigation Trustee, as applicable, in the manner provided for by section 1127 of the Bankruptcy Code or as otherwise permitted by law without additional disclosure pursuant to section 1125 of the Bankruptcy Code, except as the Court may otherwise direct. After the Confirmation Date, so long as such action does not materially and adversely affect the treatment or rights of holders of Claims or Interests hereunder or under the Plan, the Debtors or the Litigation Trustee, as applicable, may institute proceedings in the Court to remedy any defect or omission or reconcile any inconsistencies in the Plan or this Confirmation Order with respect to such matters as may be

necessary to carry out the purposes and effects of the Plan. Subject to any restrictions in the Plan, prior to the Effective Date, the Debtors, and after the Effective Date, the Litigation Trustee, may make appropriate technical adjustments and modifications to the Plan without further order or approval of the Court; *provided, however*, that such technical adjustments and modifications shall be filed with the Court and shall not affect the treatment or rights of holders of Claims or Interests as they existed hereunder or under the Plan prior to any such proposed technical adjustments or modifications.

3. Objections. All Objections that have not been withdrawn, waived, or settled, and all reservations of rights pertaining to confirmation of the Plan, are overruled on the merits for the reasons stated in the Court's bench ruling on December 12, 2019.

4. Binding Effect. The Plan shall be binding on the Debtors, any entity acquiring or receiving property or a distribution under the Plan, any holder of a Title Property Claim, and any holder of a Claim against or Interest in the Debtors, including all governmental entities, whether or not the Claim or Interest of such holder is impaired under the Plan and whether or not the holder of such Claim or Interest has accepted the Plan.

5. Solicitation and Notice. Notice of the Confirmation Hearing complied with the terms of the Disclosure Statement Order, was appropriate and satisfactory based on the circumstances of the Chapter 11 Cases, and was in compliance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules. The solicitation of the votes on the Plan complied with the solicitation procedures in the Disclosure Statement Order, was appropriate and satisfactory based upon the circumstances of the Chapter 11 Cases, and was in compliance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules.

6. Plan Classification Controlling. The classification of Claims and Interests for purposes of the distributions to be made under the Plan shall be governed solely by the terms of the Plan.

7. Treatment of Allowed Claims and Interests. In consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a holder of a Claim or Interest may have with respect to any Allowed Claim or Interest, or any distribution to be made on account of such Allowed Claim or Interest. The entry of this Confirmation Order constitutes this Court's approval of the treatment of all such Claims and Interests, as well as a finding by this Court that such treatment is in the best interests of the Debtors, their estates, and holders of Claims and Interests, and is fair, equitable, and reasonable.

8. Escrow of Ownership Reserve. Notwithstanding anything to the contrary in the Plan (including without limitation Section 1.102 thereof), the Final Cash Collateral Order, or the Litigation Trust Agreement, the Ownership Reserve³ shall not be a Trust Asset but instead, prior to the Effective Date, shall be transferred to Bank Leumi USA (the "Escrow Agent") pursuant to an escrow agreement, such escrow agreement and the Escrow Agent being reasonably agreeable to the Supporting Parties, to hold for the benefit of the Secured Parties and Holders of Allowed Title Property Claims, as applicable. The Escrow Agent shall maintain control of the Ownership Reserve and shall make distributions from the Ownership Reserve only in accordance with subparagraphs 4 and 6 of Section 2.8 of the Plan and further order of the Court. The Ownership Reserve shall be transferred to the Escrow Agent free and clear of all Claims, Liens, charges,

³ \$68,003,409.

encumbrances, rights, and interests, except for Title Property Claims and Claims and Liens of the Secured Parties.

9. The Litigation Trust. The formation, rights, powers, duties, structure, obligations and other matters pertaining to the Litigation Trust shall be governed by the Litigation Trust Agreement, the Plan, and this Confirmation Order. The Litigation Trust Agreement is approved substantially in the form attached hereto as Exhibit B, subject to (a) such agreement being reasonably acceptable to the Supporting Parties and (b) any amendments permitted under the Plan, Litigation Trust Agreement, and this Order. Donna Lieberman is hereby appointed as the Litigation Trustee.

10. Transfer of Trust Assets. On the Effective Date, pursuant to section 1123(b)(3) of the Bankruptcy Code, the Trust Assets shall be transferred (and deemed transferred) by the Debtors (and, where applicable, the Secured Parties) to the Litigation Trust free and clear of all Claims, Liens, charges, encumbrances, rights, and interests, except as explicitly set forth in the Plan and Litigation Trust Agreement, without the need for any Entity to take any further action or obtain any approval. Thereupon, the Debtors shall have no interest in the Trust Assets or the Litigation Trust. On the Effective Date, the Litigation Trust shall be authorized as the representative of the Estates of the United States Debtors to investigate, sue, settle, and otherwise administer the Litigation Trust in accordance with the Litigation Trust Agreement and the Plan. Pursuant to Section 8.1.5 of the Plan, the Litigation Trust shall have authority under Bankruptcy Rule 2004 to issue subpoenas for documents and testimony in connection with the Trust Assets.

11. The transfer of the Trust Assets shall be exempt from any stamp, real estate, transfer, reporting, sales, use or other similar tax.

12. Authorization of the Litigation Trustee. The Litigation Trustee is authorized and empowered, without further approval of this Court or any other party, to take such actions and to perform such acts as may be necessary, desirable, or appropriate to administer the Litigation Trust in accordance with the Litigation Trust Agreement and Plan and to execute and deliver all agreements, documents, instruments, and certificates relating thereto. The Litigation Trustee and/or the Litigation Trust, as applicable, may employ and compensate, without further order of the Bankruptcy Court, professionals (including professionals previously retained by the Debtors or the Committee).

13. Preservation of Privilege. In connection with the Retained Causes of Action, any applicable privilege or immunity of the Debtors, including, but not limited to, any attorney-client privilege or work-product privilege attaching to any documents or communications (whether written or oral), shall vest in the Litigation Trust and may be asserted or waived by the Litigation Trustee in his or her sole discretion. No action taken by the Debtors in connection with establishing the Litigation Trust shall be (or shall be deemed to be) a waiver of any privilege or immunity of the Debtors, including any attorney-client privilege or work-product privilege attaching to any documents or communications (whether written or oral). Notwithstanding the Debtors providing any privileged information to the Litigation Trustee, the Litigation Trust, or any party or person associated with or retained by the Litigation Trust, such privileged information shall remain privileged unless waived by the Litigation Trustee.

14. Setoff. Pursuant to Section 15.8 of the Plan, the Litigation Trustee may, but shall not be required to, set off against any Claim (but not any Title Property Claim), any Claims of any nature whatsoever that the Litigation Trustee may have against the holder of such Claim; *provided, however,* that neither the failure to do so nor the allowance of any Claim under the Plan shall

constitute a waiver or release by the Litigation Trustee, as applicable, of any such claims the Litigation Trustee, as applicable, may have against the holder of such Claim.

15. Objections to Claims. Pursuant to Section 9.2 of the Plan, the Litigation Trustee shall be entitled to object to Claims or Interests. The deadline for the Litigation Trustee to file objections shall be one (1) year following the Effective Date, or such other later date as ordered by the Court upon application of the Litigation Trustee.

16. Assumption or Rejection of Executory Contracts and Unexpired Leases. As of the Effective Date, all executory contracts and unexpired leases to which the Debtors are a party and which have not expired by their own terms on or prior to the Confirmation Date, shall be deemed automatically rejected, except for the executory contracts and unexpired leases (a) listed on the Plan Supplement as an Assumed Executory Contract, (b) previously assumed by the Debtors by Final Order of the Bankruptcy Court, or (c) otherwise assumed pursuant to the Plan. This Confirmation Order constitutes an order of the Bankruptcy Court approving such rejections pursuant to sections 365 and 1123 of the Bankruptcy Code. On the Effective Date, each executory contract or unexpired lease listed on the Schedule of “Assumed Executory Contracts and Unexpired Leases” in Schedule 2 to the Plan shall be assumed, or assumed and assigned, as applicable, and shall vest in and fully enforceable by the Litigation Trustee or the other authorized representative in accordance with its terms. Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any cure amounts or defaults, whether monetary or nonmonetary, arising under any assumed executory contract or unexpired lease at any time prior to the effective date of assumption. The deadline to file proofs of claim for any damages arising from the rejection of any executory contract or unexpired lease under this Plan shall be 30 days from the Effective Date.

17. Special Provisions for Governmental Units. As to any Governmental Unit (as defined in section 101(27) of the Bankruptcy Code) of the United States or any State thereof, any U.S. Territory, or any local government within the United States (for purposes of this Section 17, each, a "Domestic Governmental Unit"), nothing in the Plan or Confirmation Order shall limit or expand the scope of release or injunction to which the Debtors or Litigation Trust are entitled to under the Bankruptcy Code, if any. Nothing in the Plan or Confirmation Order provides a discharge from any liability to a Domestic Governmental Unit. The release and injunction provisions contained in the Plan and Confirmation Order are not intended and shall not be construed to bar any Governmental Unit from, subsequent to the Confirmation Order, pursuing any police or regulatory action.

18. Notwithstanding anything contained in the Plan or Confirmation Order to the contrary, nothing in the Plan or Confirmation Order shall release, impair or otherwise preclude: (1) any liability to any Domestic Governmental Unit that is not a "claim" within the meaning of section 101(5) of the Bankruptcy Code; (2) any Claim of any Domestic Governmental Unit arising on or after the Effective Date; (3) any valid right of setoff or recoupment of any Domestic Governmental Unit against any of the Debtors; or (4) any liability of the Debtors or Litigation Trust under police or regulatory statutes or regulations to any Domestic Governmental Unit as the owner, lessor, lessee, or operator of property that such entity owns, operates, or leases after the Effective Date. Nor shall anything in this Confirmation Order or the Plan: (i) enjoin or otherwise bar any Domestic Governmental Unit from asserting or enforcing, outside the Bankruptcy Court, any liability described in the preceding sentence; or (ii) divest any court, commission, or tribunal of jurisdiction to determine whether any liabilities asserted by any Domestic Governmental Unit are discharged or otherwise barred by this Confirmation Order, the Plan, or the Bankruptcy Code.

19. Moreover, nothing in the Confirmation Order or the Plan shall release or exculpate any non-debtor, including any Released Parties and/or Exculpated Parties, from any liability to any Domestic Governmental Unit, including but not limited to any liabilities arising under the Internal Revenue Code, the environmental laws, or the criminal laws against the Released Parties and/or Exculpated Parties, nor shall anything in this Confirmation Order or the Plan enjoin any Domestic Governmental Unit from bringing any claim, suit, action or other proceeding against any non-debtor for any liability to any Domestic Governmental Unit; provided however, that this paragraph shall not diminish the scope of any exculpation to which any party, including the Exculpated Parties, is entitled under section 1125(e) of the Bankruptcy Code.

20. Nothing contained in the Plan or Confirmation Order shall be deemed to determine the tax liability of any person or entity, including but not limited to the Debtors and the Litigation Trust, nor shall the Plan or Confirmation Order be deemed to have determined the federal tax treatment of any item, distribution, or entity, including the federal tax consequences of this Plan, nor shall any language in the Plan or Confirmation Order be deemed to expressly expand or diminish the jurisdiction of the Bankruptcy Court to make determinations as to federal tax liability and federal tax treatment under the Bankruptcy Code and 28 U.S.C. §§157, 1334.

21. Releases, Exculpations, and Injunctions. The release, exculpation, and injunction provisions contained in the Plan are fair and equitable, are given for valuable consideration, and are in the best interests of the Debtors and their chapter 11 estates, and such provisions are approved by this Court as appropriate pursuant to applicable law and shall be effective and binding on all persons and entities. The Secured Party Releasees have made substantial contributions to the Chapter 11 Cases, in each case justifying the release of claims against them as set forth in Article 12.6 of the Plan on a nonconsensual basis by each Releasor and Supporting Party. Such

compromises and settlements are made in exchange for consideration and are fair, equitable, reasonable, and are integral elements of the Chapter 11 Cases in accordance with the Plan. Each of the release, injunction and exculpation provisions set forth in the Plan: (a) is within the jurisdiction of the Court under 28 U.S.C. §§ 1334(a), (b), and (d); (b) is an essential means of implementing the Plan pursuant to section 1123(a)(5) of the Bankruptcy Code; (c) is an integral and non-severable element of the settlements and transactions incorporated into the Plan; (d) is, under the unique circumstances of the Chapter 11 Cases, appropriate, fair, equitable, reasonable, supported by adequate consideration, and in the best interests of, the Debtors, their Estates, and the Holders of Claims; (e) is consistent with the Bankruptcy Code, including sections 105, 1123, and 1129 of the Bankruptcy Code, and other applicable law, as well as the prevailing standard for such releases, exculpations, and injunctions in the Second Circuit and this District; and (f) is expressly incorporated into this Confirmation Order. The failure to give effect to the release, injunction and exculpation provisions set forth in the Plan, as approved by this Confirmation Order, would impair the Debtors' ability to confirm and implement the Plan.

22. *Based on the objection to confirmation by Fundación Rafael Dondé, I.A.P. ("Dondé") and the Court's rulings on that objection at the Confirmation Hearing, Dondé reserves all of its rights to seek to modify the RTMM Injunction (and related relief) for cause shown following notice to Debtors, the Secured Parties, and the Litigation Trustee, and a hearing. Section 13.1 of the Plan shall be deemed amended to provide the Court's jurisdiction to modify the RTMM Injunction upon request by Dondé for cause shown following appropriate notice and a hearing. Nothing herein shall prevent Dondé or its representatives from informing the appropriate Mexican Authorities of this Confirmation Order or any subsequent Order of this Court or any U.S. Court with competent jurisdiction. ~~Foundation Rafael Donde, I.A.P.~~*

~~("Donde") reserves all of its rights to seek to modify the RTMM Injunction, for cause shown upon notice and a hearing, and Section 13.1 of the Plan shall be deemed amended to provide that the Court's jurisdiction to modify the RTMM Injunction upon request by Donde for cause shown following notice and a hearing.~~

23. Notwithstanding paragraph 8 hereof, the provisions and protections of Section 12.4 of the Plan shall apply to the Ownership Reserve.

24. Nothing in the Plan or Confirmation Order shall release or modify any rights, claims, or causes of action of the Debtors' estates (i) arising under Chapter 5 of the Bankruptcy Code or comparable state laws against any Exculpated Parties (or any other Entities) other than the Secured Parties or their professionals or (ii) against Insiders (as defined in the Bankruptcy Code) of the Debtors or any affiliates thereof, other than the CRO and Paladin Management Group, LLC ("Paladin").

25. Substantive Consolidation. Upon the Effective Date and without further order of the Court, except as expressly provided herein or in the Plan, (i) all assets and liabilities of the substantively consolidated Debtors will be deemed to be merged solely for purposes of the Plan and Distributions to be made thereunder, (ii) the obligations of each Debtor will be deemed to be the obligation of the substantively consolidated Debtors solely for purposes of the Plan and Distributions to be made thereunder, (iii) any Claims filed or to be filed in connection with any such obligations will be deemed Claims against the substantively consolidated Debtors, (iv) each Claim filed in the Chapter 11 Case of any Debtor will be deemed filed against the Debtors in the consolidated Chapter 11 Cases in accordance with the substantive consolidation of the assets and liabilities of the Debtors, (v) all transfers, disbursements and distributions made by any Debtor hereunder will be deemed to be made by the substantively consolidated Debtors, and (vi) all

guarantees of the Debtors of the obligations of any other Debtors shall be deemed eliminated so that any Claim against any Debtor and any guarantee thereof executed by any other Debtor and any joint or several liability of any of the Debtors shall be deemed to be one obligation of the substantively consolidated Debtors. Holders of Allowed Claims in each Class shall be entitled to their share of assets available for distribution to such Class without regard to which Debtor was originally liable for such Claim.

26. The limited substantive consolidation of the Debtors' estates approved herein shall not affect: (i) the legal and corporate structures of the Debtors, (ii) the vesting of their assets in the Litigation Trust, (iii) the rights of the Debtors or the Litigation Trustee to contest setoff or recoupment rights alleged by creditors on the grounds of mutuality under section 553 of the Bankruptcy Code or other applicable law, (iv) distributions out of any insurance policies or proceeds of such policies, (v) Retained Causes of Action, or (vi) the Title Property Claims and any defenses thereto.

27. For the avoidance of doubt, any findings of fact or conclusions of law set forth herein and any oral findings of fact and conclusions of law announced on the record at the Confirmation Hearing related to the Court's findings on substantive consolidation are limited solely for the purpose of the Court's findings on substantive consolidation and shall not influence or predetermine any of the factual or legal issues to be determined by the Court in connection with its adjudication of the Title Property Claims or any of the parties' rights or remedies in the Title Property Claims or the Third-Party Claims.

28. Preservation of Rights of Action/Reservation of Rights.

(a) Pursuant to Section 15.8 of the Plan, other than Causes of Action against an Entity that are explicitly and specifically waived, relinquished, exculpated, released, compromised, or settled in the Plan or by a Court order, the Litigation Trustee reserves any and all Causes of Action.

(b) Pursuant to Section 6.1 of the Plan, neither the exclusion nor inclusion of any contract or lease in the Notice of Assumption and Cure, nor anything contained in the Plan, shall constitute an admission by the Debtors that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that the Debtors' Estates have any liability thereunder.

29. Post-Effective Date Responsibilities. Notwithstanding anything to the contrary in the Plan, the Debtors shall have sole responsibility for preparing and filing any estate tax returns required for the tax year 2019 and 2020 (the "2019 and 2020 Tax Returns"). Maria Machado ("Machado") shall be the responsible party for such preparation and filing, and Scott Avila, in his capacity as CRO, shall have the authority to sign the 2019 and 2020 Tax Returns, as well (i) as any subsequent or related returns (if any), (ii) any final reporting and noticing required to winddown the Debtors' 401(k) plan, and (iii) any documents ancillary to foregoing. On the Effective Date, Paladin shall escrow (i) \$25,000, which shall be paid to Machado upon her completion and timely filing of the 2019 and 2020 Tax Returns in a form acceptable to the CRO, and (ii) \$150,000, to be paid to the CRO in the event he is required to address issues related to the 2019 and 2020 Tax Returns or the Debtors' 401(k) plan after the post-Effective Date, any unused portion of which shall be paid to the Secured Parties. Scott Avila shall also be the responsible party for completing and signing the Debtors' quarterly report for the period ending on the Effective Date.

30. Republic Shanghai. Zachary Shair shall be the party responsible for assisting with the wind down of Debtor Republic Metals Trading (Shanghai) Co., Ltd ("Republic Shanghai"), and shall have the authority to execute such documents as he deems appropriate to, without limitation, deregister Republic Shanghai in China, terminate any agreement with the Debtors' former accountants in Shanghai, file final tax returns, and close any remaining bank accounts of Republic Shanghai.

31. Techemet. Techemet Metal Trading LLC ("Techemet") shall be the party responsible for managing the collection of the Debtors' outstanding sweeps and shall have the authority to execute such documents and take such actions as it deems reasonably appropriate to confirm assay results, participate in any umpire proceedings and collect receivables. Techemet shall have all rights of the Debtors under any existing contracts and agreements with Umicore and Advanced Chemical Precious Metals and Refining. Techemet shall distribute all such collections to the Secured Parties pursuant to the Plan and prior to the Effective Date, the Debtors shall provide directions to Techemet regarding the disbursement of such collections to the Secured Parties in accordance with the Plan.

32. Brink's Global Services USA, Inc. ("Brink's"). Notwithstanding the foregoing or anything else to the contrary contained in the Plan or this Order, the proceeds of the "Metals" (as defined in Brink's Limited Objection filed at Docket 1181) shall continue to be held in the Ownership Reserve subject to any and all of Brink's' rights, claims, and interests therein. The priority of Brink's' rights, claims, and interests in the proceeds of the Metals (the "Proceeds") relative to any rights of the Secured Parties therein is not altered by the Plan or this Order and will be determined and resolved, to the extent necessary, either by agreement of the parties or pursuant to a protocol to be agreed upon by Brink's, the Debtors (or, after the Effective Date, the Litigation

Trust), and the Secured Parties and approved by the Court. All of Brink's rights, claims and defenses with respect to the Proceeds are reserved. Likewise, any rights, claims and defenses of the Debtors, the Litigation Trust, and/or the Secured Parties with respect to the Proceeds are reserved.

33. Administrative Claims Bar Date. Except as otherwise provided herein or in the Plan and as set forth in Article 2.4 of the Plan, all requests for payment of Administrative Claim must be filed with the Bankruptcy Court and served on the Litigation Trustee, her counsel, and United States Trustee by the Administrative Claims Bar Date, which shall be thirty (30) days after the Effective Date of the Plan. Holders of Administrative Claims that are required to, but do not, file and request payment of such Administrative Claim(s) by the Administrative Claims Bar Date shall be forever barred, estopped, and enjoined from asserting such Administrative Claim against the Debtors, the Litigation Trust, or their property and such Administrative Claims shall be deemed disallowed in full as of the Effective Date.

34. Queen of Pawns.

(a) On the Effective Date, Queen of Pawns & Jewellery, Inc. ("QP") shall be granted an allowed claim pursuant to 11 U.S.C. § 503(b)(9) in the amount of \$150,000 (the "QP Allowed 503(b)(9) Claim"). The QP Allowed 503(b)(9) Claim shall be treated *pari passu* with other Allowed 503(b)(9) Claims pursuant to the Plan.

(b) On the Effective Date or promptly thereafter, (i) QP shall be paid \$35,000 on account of its ownership claim filed pursuant to the Uniform Procedures Order [ECF. No. 405] (the "QP Ownership Claim") from the Ownership Reserve and (ii) the Secured Parties shall be paid \$173,029 from the Ownership Reserve on account of the balance of the QP Ownership Claim.

No portion of such payment to QP shall be credited against, or otherwise applied on account of any portion of the QP Allowed 503(b)(9) Claim. Upon QP's receipt and clearance of the foregoing funds, the QP Ownership Claim shall be deemed immediately withdrawn with prejudice.

(c) Upon the Effective Date, each Debtor, each Debtors' estate and each Secured Party, each on behalf of itself, its respective successors and assigns and each of their respective affiliates, subsidiaries, employees, directors, officers, members, agents, advisors or counsel (each in their capacity as such) (collectively, the "Debtor/Lender Entities"), hereby irrevocably waives, releases and discharges all claims, obligations, suits, judgments, remedies, damages, demands, debts, rights, causes of action, and liabilities that the Debtor/Lender Entities have, may have or are or may be entitled to assert, whether known or unknown, liquidated or unliquidated, fixed or contingent, foreseen or unforeseen, matured or unmatured, in law, equity, or otherwise, including, without limitation, all claims under chapter 5 of the Bankruptcy Code and state fraudulent conveyance, fraudulent transfer, avoidance and other similar state laws (each, a "Released Claim"), against QP, and each of its affiliates, subsidiaries, employees, directors, officers, members, agents, advisors and counsel (each in their capacity as such) (collectively, the "QP Entities"), based in whole or in part upon any act or omission, transaction, or occurrence with respect to any precious metals QP delivered to the Debtors or any other transactions between QP and any of the Debtors; provided, however, that the foregoing shall not release or discharge (i) any obligations arising under and pursuant to this Order, or (ii) any claims relating to any breach of the obligations arising under and pursuant to this Order.

(d) Upon the Effective Date, QP, on behalf of itself and each QP Entity, hereby irrevocably waives, releases and discharges all Claims against each Debtor/Lender Entity based in whole or in part upon any act or omission, transaction, or occurrence with respect to any precious

metals QP delivered to the Debtors or any other transactions between QP and any of the Debtors, the Secured Credit/Lease Documents, the Prepetition Obligations, the Prepetition Liens and the Cash Collateral Motion; provided, however, that the foregoing shall not release or discharge (i) any obligations arising under and pursuant to this Order, (ii) the QP Allowed 503(b)(9) Claim or (iii) any claims relating to any breach of the obligations arising under and pursuant to this Order.

35. Ara Gold LLC. On the Effective Date, Ara Gold LLC ("Ara Gold") shall have an allowed claim pursuant to 11 U.S.C. § 503(b)(9) in the amount of \$280,020 (the "Ara Gold Allowed 503(b)(9) Claim"). On the Effective Date or promptly thereafter, Ara Gold shall be paid \$140,010 on account of the Ara Gold Allowed 503(b)(9) Claim from a Priority Reserve established for such purpose. The \$140,010 balance of the Ara Gold Allowed 503(b)(9) Claim shall be treated parri passu with other Allowed 503(b)(9) Claims pursuant to the Plan.

(a) Upon the Effective Date, each Debtor/Lender Entity, hereby irrevocably waives, releases and discharges all Released Claims against Ara Gold, and each of its affiliates, subsidiaries, employees, directors, officers, members, agents, advisors and counsel (each in their capacity as such) (collectively, the "Ara Gold Entities"), based in whole or in part upon any act or omission, transaction, or occurrence with respect to any precious metals Ara Gold delivered to the Debtors; provided, however, that the foregoing shall not release or discharge (i) any obligations arising under and pursuant to this Order, or (ii) any claims relating to any breach of the obligations arising under and pursuant to this Order.

(b) Upon the Effective Date, Ara Gold, on behalf of itself and each Ara Gold Entity, hereby irrevocably waives, releases and discharges all Claims against each Debtor/Lender Entity based in whole or in part upon any act or omission, transaction, or occurrence with respect to any precious metals Ara Gold delivered to the Debtors, the Secured Credit/Lease Documents, the

Prepetition Obligations, the Prepetition Liens and the Cash Collateral Motion; provided, however, that the foregoing shall not release or discharge (i) any obligations arising under and pursuant to this Order, (ii) the Ara Gold Allowed 503(b)(9) Claim or (iii) any claims relating to any breach of the obligations arising under and pursuant to this Order.

36. Midwest Refineries, LLC. Midwest Refineries, LLC ("Midwest") shall have an allowed claim pursuant to 11 U.S.C. § 503(b)(9) in the amount of \$42,613.87 (the "Midwest Allowed 503(b)(9) Claim"), which shall be paid on the Effective Date or promptly thereafter from a Priority Reserve established for such purpose. Midwest shall withdraw with prejudice its Claim No. 205 in the amount of \$3,551,905 asserted against Miami Metals II, Inc. The parties reserve all of their rights with respect to all other claims and causes of action.

37. Final Fee Applications. Pursuant to Section 2.3 of the Plan, on or prior to the Administrative Claims Bar Date, each Professional shall file with the Court its final fee application seeking final approval of all fees and expenses from the Petition Date through the Effective Date, except that the UST shall not be required to file its claims by the Administrative Claims Bar Date. Notwithstanding anything to the contrary in Section 2.3 of the Plan, Allowed Professional Fee Claims shall be paid out of the Priority Reserve set up for that purpose (the "Fee Reserve") and the Fee Reserve may be (i) established after entry of this Order but prior to the Effective Date and (ii) maintained and administered by Paladin.

38. Secured Party Distribution Agent. A reserve may be established after entry of this Order but prior to the Effective Date for the funds that will be transferred to the Secured Parties upon the Effective Date under the Plan (the "Secured Party Plan Distribution Reserve"). The Secured Party Plan Distribution Reserve may be maintained and administered by Paladin.

39. Dissolution of Creditors' Committee. Effective on the Effective Date, the Creditors' Committee shall dissolve automatically, and the members thereof (solely in their capacities as Creditors' Committee members) shall be released, exculpated and discharged from all their duties relating to the Chapter 11 Cases in accordance with Article 11 of the Plan; provided, however, that (A) the Creditors' Committee shall continue to exist and its Professionals shall continue to be retained and entitled to reasonable compensation, without further order of the Court, with respect to: (1) the preparation and prosecution of any final fee applications of the Creditors' Committee's Court approved Professionals and (2) all final fee applications filed with the Bankruptcy Court; and (B) the Creditors' Committee shall continue to exist and its professionals shall continue to be retained and shall continue to be entitled to reasonable compensation by the Debtors without the need for further application to the Court with respect to any appeals of this Confirmation Order (and the Court shall retain jurisdiction with respect to any disputes over the reasonableness of such fees).

40. Dismissal of RTMM and Republic Shanghai Cases. Upon this Order becoming a Final Order, the Chapter 11 Cases of Debtors RTMM and Republic Shanghai shall be dismissed, and the equity interests in those entities shall be deemed abandoned.

41. Payment of Statutory Fees. On the Effective Date, and thereafter as may be required by law, the Debtors or the Litigation Trustee shall pay all fees incurred pursuant to § 1930 of title 28 of the United States Code, together with interest, if any, pursuant to § 3717 of title 31 of the United States Code for each Debtor's case.

42. Termination of United States Debtors. Notwithstanding anything to the contrary in the Plan, the Litigation Trustee shall only be required to cause the United States Debtors to be dissolved to the extent practicable.

43. Effect of Failure of Conditions to Effective Date. Unless otherwise extended by the Debtors, if the Effective Date does not occur on or before January 15, 2020, or if this Confirmation Order is vacated, (i) no distributions under the Plan shall be made, (ii) the Debtors and all holders of Claims and Interests shall be restored to the status quo ante as of the day immediately preceding the Confirmation Date as though the Confirmation Date never occurred, and (iii) all the Debtors' obligations with respect to the Claims and the Interests shall remain unchanged and nothing contained herein or in the Plan shall be deemed to constitute a waiver or release of any Claims by or against the Debtors or any other entity or to prejudice in any manner the rights of the Debtors or any other entity in any further proceedings involving the Debtors or otherwise.

44. Notice of Confirmation Order and Effective Date. As soon as practicable, but not later than ten (10) Business Days following the Effective Date, the Debtors shall file and serve notice of entry of this Confirmation Order and the Effective Date pursuant to Bankruptcy Rules 2002(f)(7), 2002(k), and 3020(c) on all creditors and Interest holders, the UST, and other parties in interest, by causing notice of entry of this Confirmation Order (the "Notice of Confirmation"), to be delivered to such parties by first-class mail, postage prepaid; *provided, however*, that the Rule 2002 Parties (as defined in the Order Pursuant to 11 U.S.C. §§ 105(a) and (d) and Fed. R. Bankr. 1015(c), 2002(m), and the Order Establishing Certain Notice, Case Management, and Administrative Procedures [ECF No. 55] may be served with the Notice of Confirmation by e-mail. The notice may include information about the Administrative Claims Bar Date and the deadline to file any Claims arising from the rejection of any executory contracts or unexpired leases pursuant to the Plan. The notice described herein is adequate under the particular circumstances, and no other or further notice is necessary.

45. Asahi Sale Order and Asset Purchase Agreement. Nothing in this Confirmation Order shall affect or modify the Asahi Sale Order or Asahi's obligations to the Debtors or the Litigation Trust as the successor to the Debtors pursuant to asset purchase agreement approved by the Asahi Sale Order.

46. Binding Effect. Pursuant to sections 1123(a), 1141, and 1142(a) of the Bankruptcy Code, the provisions of this Confirmation Order and the Plan shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

47. Immediate Effectiveness. Notwithstanding the possible applicability of Bankruptcy Rules 3020(e), 6004(h), 6006(d), 7062, and 9014, the terms and provisions of this Confirmation Order shall be immediately effective and enforceable upon its entry.

48. Retention of Jurisdiction. Pursuant to sections 105(a) and 1142 of the Bankruptcy Code, this Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the Chapter 11 Cases, the Plan, and the implementation of this Confirmation Order, including, without limitation, those matters set forth in Article 13 of the Plan.

49. Reference. The failure specifically to include or reference any particular provision of the Plan or any related document or agreement in this Confirmation Order shall not diminish or impair the efficacy of such provision or related document or agreement, it being the intent of the Court that the Plan is confirmed in its entirety, the Plan and such related documents or agreements are approved in their entirety, and the Plan is incorporated herein by reference.

50. Conflicts Between Order and Plan. To the extent of any inconsistency between the provisions of the Plan and this Confirmation Order, the terms and provisions contained in this Confirmation Order shall govern. The provisions of this Confirmation Order are integrated with

each other and are non-severable and mutually dependent unless expressly stated by further order of the Court.

51. Post-Effective Date Notice. Except as otherwise may be provided in the Plan or herein, notice of all subsequent pleadings in the Chapter 11 Cases after the Effective Date shall be limited to the following parties: (i) the U.S. Trustee; (ii) the Litigation Trust; (iii) any party known to be directly affected by the relief sought; and (iv) any party who requests service post-Effective Date. In addition, Bankruptcy Rule 9036, as amended on December 1, 2019, will apply on the Effective Date.

52. Final Order. This Confirmation Order is a Final Order and the period in which an appeal must be filed shall commence upon the entry hereof.

Dated: New York, York
December 23, 2019

/s/ Sean H. Lane
THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
)	
MIAMI METALS I, INC., <i>et al.</i> ¹)	Case No. 18-13359 (shl)
)	
)	(Jointly Administered)
Debtors.)	
)	

SECOND AMENDED JOINT CHAPTER 11 PLAN OF LIQUIDATION OF DEBTORS

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¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Miami Metals I, Inc. (f/k/a Republic Metals Refining Corporation), 15 West 47th Street, Suites 206 and 209, New York, NY 10036 (3194); Miami Metals II, Inc. (f/k/a Republic Metals Corporation), 12900 NW 38th Avenue, Miami, FL 33054 (4378); Miami Metals III LLC (f/k/a Republic Carbon Company), 5295 Northwest 163rd Street, Miami Gardens, FL 33014 (5833); Miami Metals IV LLC (f/k/a J & L Republic LLC), 12900 NW 38th Avenue, Miami, FL 33054 (7604); Miami Metals V LLC (f/k/a R & R Metals, LLC), 12900 NW 38th Avenue, Miami, FL 33054 (7848); Miami Metals VI LLC (f/k/a RMC Diamonds, LLC), 12900 NW 38th Avenue, Miami, FL 33054 (1507); Miami Metals VII LLC (f/k/a RMC2, LLC), 12900 NW 38th Avenue, Miami, FL 33054 (4696); Miami Metals VIII LLC (f/k/a Republic High Tech Metals, LLC), 13001 NW 38 Avenue, Miami, FL 33054 (6102), 12900 NW 38th Avenue, Miami, FL 33054 (1507); Republic Metals Trading (Shanghai) Co., Ltd., 276 Ningbo Road, Huangpu District, Shanghai, P.R. 200001 China (1639); and Republic Trans Mexico Metals, S.R.L., Francisco I. Madero No. 55 Piso 5, Local 409, Centro Joyero Edificio Central, Delegación Cuauhtémoc, Mexico DF 6000 (2942).

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SCHEDULES

The Debtors will file a supplement to the Plan (the "Plan Supplement") no later than ten (10) days prior to the deadline to vote to accept or reject the Plan. The Plan Supplement will include the Schedules listed below. The Debtors reserve the right to add or remove any Schedule to or from the Plan Supplement.

- Schedule 1 Litigation Trust Agreement for the Miami Metals I, Inc. (f/k/a Republic Metals Refining Corporation), Miami Metals II, Inc. (f/k/a Republic Metals Corporation), Miami Metals III LLC (f/k/a Republic Carbon Company), Miami Metals IV LLC (f/k/a J & L Republic LLC), Miami Metals V LLC (f/k/a R & R Metals, LLC), Miami Metals VI LLC (f/k/a RMC Diamonds, LLC), Miami Metals VII LLC (f/k/a RMC2, LLC), and Miami Metals VIII LLC (f/k/a Republic High Tech Metals, LLC).
- Schedule 2 Assumed Executory Contracts and Unexpired Leases
- Schedule 3 Retained Causes of Action

INTRODUCTION

Miami Metals I, Inc. (f/k/a Republic Metals Refining Corporation), Miami Metals II, Inc. (f/k/a Republic Metals Corporation), Miami Metals III LLC (f/k/a Republic Carbon Company), Miami Metals IV LLC (f/k/a J & L Republic LLC), Miami Metals V LLC (f/k/a R & R Metals, LLC), Miami Metals VI LLC (f/k/a RMC Diamonds, LLC), Miami Metals VII LLC (f/k/a RMC2, LLC), Miami Metals VIII LLC (f/k/a Republic High Tech Metals, LLC), Republic Metals Trading (Shanghai) Co., Ltd., and Republic Trans Mexico Metals, S.R.L., as debtors and debtors-in-possession (collectively, the "Debtors") in the above-referenced jointly-administered Chapter 11 Cases, propose this Second Amended Joint Chapter 11 Plan of Liquidation (the "Plan") for the resolution and satisfaction of all Claims against and Interests in the Debtors. The Debtors are the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code. All capitalized terms not defined in this introduction have the meanings ascribed to them in Article 1 of this Plan. Reference is made to the Joint Disclosure Statement, distributed contemporaneously herewith, for a discussion of the Debtors' history, businesses, resolution of material disputes, significant asset sales, financial projections for the liquidation and distribution of the Debtors' remaining assets and a summary and analysis of the Plan and certain related matters.

Under section 1125(b) of the Bankruptcy Code, a vote to accept or reject this Plan cannot be solicited from holders of claims and/or interests until such time as the Disclosure Statement has been approved by the Bankruptcy Court. The Debtors urge all holders of Claims and Interests entitled to vote on this Plan to read this Plan and the Disclosure Statement in their entirety before voting to accept or reject this Plan. To the extent, if any, that the Disclosure Statement is inconsistent with this Plan, this Plan will govern. No solicitation materials other than the Disclosure Statement and any schedules and exhibits attached thereto or referenced therein, or otherwise enclosed with the Disclosure Statement served by the Debtors on interested parties, or as otherwise ordered by the Bankruptcy Court, have been authorized by the Debtors or the Bankruptcy Court for use in soliciting acceptances of this Plan. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code, Federal Bankruptcy Rule 3019 and Article 15 of this Plan, the Debtors expressly reserve the right to alter, amend, modify, revoke, or withdraw this Plan prior to its substantial consummation.

ARTICLE 1

DEFINITIONS, INTERPRETATION AND RULES OF CONSTRUCTION

A. Scope of Definitions. For the purposes of this Plan, except as expressly provided or unless the context otherwise requires, all capitalized terms not otherwise defined shall have the meanings ascribed to them in Article 1 of this Plan. Any term used in this Plan that is not defined herein, but is defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules, respectively. Whenever the context requires, capitalized terms shall include the plural as well as the singular number, the masculine gender shall include the feminine, and the feminine gender shall include the masculine.

B. Definitions. In addition to such other terms as are defined in other Sections of this Plan, the following terms (which appear in this Plan as capitalized terms) shall have the meanings ascribed to them in this Article 1 of this Plan.

1.1. 503(b)(9) Claim. A claim asserted pursuant to section 503(b)(9) of the Bankruptcy Code.

1.2. 503(b)(9) Fund. The \$4,000,000 reserve for Allowed 503(b)(9) Claims funded by the Secured Parties on the Plan Effective Date.

1.3. Administrative Claim. A Claim for any cost or expense of administration (including Professional Claims) of the Chapter 11 Cases asserted or arising under sections 503, 507(a)(1), or 507(b) of the Bankruptcy Code, including any (i) actual and necessary cost or expense of preserving the Debtors' Estates arising on or after the Petition Date, (ii) compensation or reimbursement of expenses of Professionals arising on or after the Petition Date, to the extent allowed by the Bankruptcy Court under section 330(a) or section 331 of the Bankruptcy Code, (iii) compensation or reimbursement for actual, necessary expenses in making a substantial contribution in the Chapter 11 Cases, and (iv) fees or charges assessed against the Debtors' Estates under section 1930 of title 28 of the United States Code; **provided, however, that Administrative Claims shall not include 503(b)(9) Claims.**

1.4. Administrative Claims Bar Date. The Administrative Claims Bar Date shall be the date that is thirty (30) days after the Effective Date.

1.5. Adequate Protection Liens. The meaning set forth in the Cash Collateral Order.

1.6. Adequate Protection Superpriority Claims. The meaning set forth in the Cash Collateral Order.

1.7. Advance. Has the meaning set forth in section 8.5.3.

1.8. Allowed _____ Claim or Allowed Class _____ Claim. A Claim of the type specified or in the Class specified that is also an Allowed Claim (*e.g.*, an Allowed Class 3 Claim is a Claim classified in Class 3 that is also an Allowed Claim).

1.9. Allowed Claim or Allowed Interest. A Claim against or Interest in the Debtors or any portion thereof (a) that has been allowed by a Final Order, or (b) as to which, on or by the Effective Date, (i) no Proof of Claim or Interest has been filed with the Bankruptcy Court and (ii) the liquidated amount of which is Scheduled, other than a Claim that is Scheduled at zero or marked as contingent or disputed, or (c) for which a Proof of Claim in a liquidated amount has been timely filed with the Bankruptcy Court pursuant to the Bankruptcy Code, any Final Order of the Bankruptcy Court, or other applicable bankruptcy law, and as to which either (i) no objection to its allowance has been filed within the applicable periods of limitation fixed by this Plan, the Bankruptcy Code, or by any order of the Bankruptcy Court sought pursuant to Article 9.2 of this Plan or otherwise entered by the Bankruptcy Court or (ii) any objection to its allowance has been settled or withdrawn, or has been denied by a Final Order, or (d) that is expressly allowed in a liquidated amount in this Plan. Unless otherwise specified herein or by order of the Bankruptcy Court, "Allowed Claim" or "Allowed Interest" shall not include interest, fees (including but not limited to late charges and attorneys' fees), or penalties on such Claim or Interest accruing after the Petition Date; provided that, no Claim shall be an Allowed Claim if it is subject to disallowance in accordance with section 502(d) of the Bankruptcy Code and this Plan.

1.10. Asahi. Asahi Refining Florida Inc., a Delaware corporation.

1.11. Asahi Sale Order. The Order (A) Approving Sale of Substantially All of Debtors' Assets "Free and Clear" of All Liens, Claims, Encumbrances and Other Interests, (B) Approving Assumption and Assignment of Executory Contracts and Unexpired Leases, and (C) Granting Related Relief [Doc. No. 658].

1.12. Assets. All legal or equitable pre-petition and post-petition interests of the Debtors in any and all real or personal property of any nature, including any real estate, buildings, structures, improvements, privileges, rights, easements, leases, subleases, licenses, goods, materials, supplies, furniture, fixtures, equipment, work in process, accounts, chattel paper, cash, deposit accounts, reserves, deposits, contractual rights, intellectual property rights, claims, causes of actions, and any other general intangibles, and the proceeds, product, offspring, rents or profits thereof.

1.13. Assigned Claims. All Causes of Action that any Secured Party may have against any employee, director, officer, agent, auditor, accountant, "insider" (as defined in Section 101(31) of the Bankruptcy Code) or any other person or entity that was employed by or provided professional services to the Debtors, arising out of or relating in any way to the Secured Parties' relationship or transactions with the Debtors, including without limitation, the Secured Parties' respective claims asserted in the complaint dated February 1, 2019 filed in the US District Court for the Southern District of Florida, Case No. 19-20429-cv-Williams, against Lindsey Rubin, but not including (x) any claims of the Secured Parties against Rose Rubin under (i) that certain Limited Guaranty Agreement, dated as of August 31, 2018, made by Rose Rubin in favor of the Secured Parties or (ii) that certain Forbearance Agreement, dated as of August 7, 2018, among the Secured Parties and Republic Metals Corporation, as amended, and (y) the Auditor/Lender Claims.

1.14. Assigned Proceeds of Auditor Claims. The Litigation Trust's portion of the net proceeds of any Auditor/Lender Claim pursuant to the Auditor Claim Waterfall.

1.15. Auditor/Lender Claim. Any rights, claims, and causes of action that Secured Parties have or may have against Maria I. Machado, P.A., Crowe LLP and EisnerAmper LLP that arise out of or relate in any way to the Secured Parties' relationship or transactions with the Debtors, including, without limitation, the action captioned *Cooperative Rabobank U.A., New York Branch, et al. v. Crowe LLP*, Case No. 2019-018945-CA-01 pending in the 11th Judicial Circuit Court for Miami-Dade County, Florida.

1.16. Auditor Claim Waterfall. Subject to any reasonable agreement with respect to a contingency fee, the net proceeds of any Auditor/Lender Claim shall be distributed (i) first, 100% to the Secured Parties until the Secured Parties receive \$3,000,000; (ii) second, 50% to the Secured Parties and 50% to the Litigation Trust until the Secured Parties receive an additional \$5,500,000; and (iii) third, 100% to the Litigation Trust.

1.17. Ballot. The form or forms distributed to each holder of an impaired Claim or Interest entitled to vote on this Plan, on which the holder indicates acceptance or rejection of this Plan and, where applicable, any election for treatment of such Claim or Interest under this Plan.

1.18. Bankruptcy Code. Title 11 of the United States Code, as in effect on the Petition Date and as thereafter amended, as applicable in the Chapter 11 Cases.

1.19. Bankruptcy Court. The United States Bankruptcy Court for the Southern District of New York and, to the extent it may exercise jurisdiction in the Chapter 11 Cases, the United States District Court for the Southern District of New York, or if either such court ceases to exercise jurisdiction over the Chapter 11 Cases, such court or adjunct thereof that properly exercises jurisdiction over the Chapter 11 Cases.

1.20. Bankruptcy Rules. The Federal Bankruptcy Rules, the Local Rules of the Bankruptcy Court for the Southern District of New York, as in effect on the Petition Date and as thereafter amended, as applicable from time to time in the Chapter 11 Cases.

1.21. Bar Date. The deadline for filing and serving upon the Debtors all Proofs of Claim established by the Bankruptcy Court pursuant to the March 1, 2019 Order [Doc. No. 694] granting the Debtors' Motion for Order Setting Deadlines for Filing Proofs of Claim filed on January 31, 2019 [Doc No. 554].

1.22. Bankruptcy Estates or Estates. The estates created pursuant to section 541 of the Bankruptcy Code by the commencement of the Chapter 11 Cases of the Debtors.

1.23. Business Day. Any day other than a Saturday, Sunday, or a "legal holiday" in the State of New York (as such term is defined in Bankruptcy Rule 9006(a)).

1.24. Carbon Orders. The orders at Doc. Nos. 576, 574, 599 and 632.

1.25. Cash. Legal tender accepted in the United States of America for the payment of public and private debts, currently denominated in United States Dollars, including but not limited to, checks, bank deposits, or other similar items.

1.26. Cash Collateral Order. Any order authorizing the use of cash collateral in the Chapter 11 Cases, including but not limited to the Orders at Doc. Nos. 54, 277, 372, 538, 675, 864, 987, 1160, 1237 and 1356.

1.27. Cause of Action. All claims, choses in action and causes of action, suits, debts, sums of money, damages, demands, and judgments, whether known or unknown, as well as any Cash and non-Cash proceeds thereof.

1.28. Chapter 11 Cases. The Chapter 11 bankruptcy cases of the Debtors pending in the United States Bankruptcy Court for the Southern District of New York.

1.29. Claim. A right of a Creditor or Investor against the Debtors, whether or not asserted or allowed, of the type described in Bankruptcy Code section 101(5), as construed by Bankruptcy Code section 102(2).

1.30. Class. A group of Claims or Interests as classified in a particular class under this Plan pursuant to Bankruptcy Code section 1122.

1.31. Collateral. Any property or interest in property of the Debtors subject to a Lien to secure payment or performance of a Claim, which Lien is not subject to avoidance under the Bankruptcy Code or otherwise invalid under the Bankruptcy Code or applicable law.

1.32. Committee. The Official Committee of Unsecured Creditors.

1.33. Committee Members. Bayside Metal Exchange, Coeur Rochester, Inc. c/o Coeur Mining, Inc., Cyber-Fox Trading, Inc., Minera Real de Ora S.A. de C.V., Minera Triton Argentina S.A., Pyropure Inc., and So Accurate Group Inc.

1.34. Confirmation. Entry of the Confirmation Order by the Bankruptcy Court.

1.35. Confirmation Date. The date on which the Bankruptcy Court enters the Confirmation Order on its docket, within the meaning of Bankruptcy Rules 5003 and 9021.

1.36. Confirmation Hearing. The duly noticed hearing held by the Bankruptcy Court to consider Confirmation of this Plan pursuant to Bankruptcy Code section 1128, including any continuances thereof.

1.37. Confirmation Order. The order of the Bankruptcy Court confirming this Plan pursuant to Bankruptcy Code section 1129 in form and substance acceptable to the Debtors.

1.38. Convenience Claim. Any Claim (i) in an amount no greater than \$2,500, or (ii) in an amount no greater than \$20,000 which has been voluntarily reduced to \$2,500 by the holder thereof pursuant to an election made on such holder's Ballot or any other agreement in writing.

1.39. Creditor. Any Entity who holds a Claim against any of the Debtors.

1.40. CRO. Scott Avila, in his capacity as Chief Restructuring Officer of the Debtors, whose appointment was approved by the Bankruptcy Court on December 4, 2018 at Doc. No. 245, as expanded by the Order entered on May 2, 2019 at Doc. No. 984.

1.41. Debtors. Miami Metals I, Inc. (f/k/a Republic Metals Refining Corporation), Miami Metals II, Inc. (f/k/a Republic Metals Corporation), Miami Metals III LLC (f/k/a Republic Carbon Company), Miami Metals IV LLC (f/k/a J & L Republic LLC), Miami Metals V LLC (f/k/a R & R Metals, LLC), Miami Metals VI LLC (f/k/a RMC Diamonds, LLC), Miami Metals VII LLC (f/k/a RMC2, LLC), Miami Metals VIII LLC (f/k/a Republic High Tech Metals, LLC), Republic Metals Trading (Shanghai) Co., Ltd., and Republic Trans Mexico Metals, S.R.L.

1.42. Disclosure Statement. That certain joint disclosure statement that relates to this Plan approved by the Bankruptcy Court in the Chapter 11 Cases.

1.43. Disputed Claim or Disputed Interest. A Claim or Interest, respectively, that the Debtors have Scheduled as "disputed," "contingent" or "unliquidated," or as to which a proof of Claim or Interest has been Filed or deemed Filed as contingent or as to which an objection has been or may be timely Filed by the Debtors, the CRO, the Secured Parties, the Official Committee of Unsecured Creditors, the Litigation Trustee, or any other party in interest entitled to do so, which objection has not been withdrawn or has not been overruled or denied by a Final Order. A

Non-Title Property Claim shall be deemed a Disputed Claim until its associated Title Property Claim is (a) withdrawn, (b) adjudicated by Final Order of the Bankruptcy Court, or (c) resolved by the agreement of the Litigation Trustee, the Secured Parties and such Holder, with such agreement subject to approval by the Bankruptcy Court.

1.44. Disputed Claims Reserve. Shall have the meaning set forth in the Litigation Trust Agreement.

1.45. Distribution. Payment to a Creditor or Interest Holder on account of an Allowed Claim.

1.46. Distribution Record Date. The record date for the purposes of making distributions under this Plan on account of Allowed Claims or Interests, which date shall be designated in the Confirmation Order.

1.47. Effective Date. A date selected by the CRO that is no more than five (5) Business Days following the first date on which no stay of the Confirmation Order is in effect and all conditions to the Effective Date set forth in Article 11 of this Plan have been satisfied or, if waivable, waived pursuant to Section 11.4 hereof.

1.48. Entity. A Person, an estate, a trust, the United States Trustee, a “governmental unit” as that term is defined in Bankruptcy Code section 101(27), or any other entity as defined in section 101(15) of the Bankruptcy Code.

1.49. Estate Litigation Fund. The funds provided by the Secured Parties for the funding of the Litigation Trust for the prosecution of claims against the Debtors' insiders, auditors and other third parties and the administration of the Litigation Trust pursuant to the Cash Collateral Order.

1.50. Exculpated Parties. The (i) Debtors and their past or present employees (including, without limitation, the CRO, but specifically excluding any and all other current or former officers or directors of the Debtors); (ii) Akerman LLP and its partners, counsel, associates, and employees; (iii) Armory Strategic Services and its affiliates, agents, officers, directors, employees, successors, and assigns; (iv) Paladin Management Group, LLC and its affiliates, agents, officers, directors, employees, successors, and assigns; (v) the Committee; (vi) the Committee Members and their respective affiliates, managers, members, employees, attorneys, successors and assigns; (vii) Cooley LLP and its partners, counsel, associates, and employees; (viii) CBIZ, Inc. and CBIZ Accounting, Tax, and Advisory of New York, LLC, and their affiliates, agents, officers, directors, employees, successors, and assigns; (ix) Luskin, Stern & Eisler LLP and its partners, counsel, associates, and employees; (x) the Secured Parties and their respective affiliates, managers, and members (and any trustees, partners, affiliates, agents, managers and members of any of the Secured Parties), agents, employees, attorneys, successors and assigns; (xi) RPA Advisors, and its affiliates, agents, officers, directors, employees, successors, and assigns, and (xii) each of the Supporting Parties and its affiliates, agents, officers, directors, employees, successors, and assigns.

1.51. File or Filed. To file, or to have been filed, with the Clerk of the Bankruptcy Court in the Chapter 11 Cases.

1.52. Final Cash Collateral Order. The Final Order authorizing the use of cash collateral in the Chapter 11 Cases entered at Doc. No. [___].

1.53. Final Distribution. Shall be the distributions described in Section 10.8 hereof.

1.54. Final Distribution Date. Shall be the date upon which the Final Distribution is made. The Final Distribution Date shall be a date determined by the Litigation Trustee of the Litigation Trust, (a) which is after the liquidation into Cash of all assets of the Litigation Trust (other than those assets abandoned by the Litigation Trust) and collection of other sums due or otherwise remitted or returned to the Estates, and (b) on or after which the Litigation Trust makes a Final Distribution from the Disputed Claims Reserve.

1.55. Final Order. An order or judgment of the Bankruptcy Court or other court of competent jurisdiction, as entered on its docket, that has not been reversed, stayed, modified or amended, and as to which (a) the time to appeal, petition for certiorari or move for reargument, rehearing or a new trial has expired and no appeal, petition for certiorari or motion for reargument, rehearing or a new trial, respectively, has been timely filed (which time period shall mean, with respect to motions to correct such order under Rule 9024 of the Bankruptcy Rules, Rule 60 of the Federal Rules of Civil Procedure or otherwise, 14 days after the entry of such order), or (b) any appeal, any petition for certiorari or any motion for reargument, rehearing or a new trial that has been or may be filed has been resolved by the highest court (or any other tribunal having appellate jurisdiction over the order or judgment) to which the order or judgment was appealed or from which certiorari or reargument, rehearing or a new trial was sought, and the time to take any further appeal, petition for certiorari or move for reargument, rehearing or a new trial shall have expired without such actions having been taken.

1.56. Final Tax Day. The last day in the taxable year of the Litigation Trust which includes the Termination Date (as defined in the Litigation Trust Agreement).

1.57. General Unsecured Claim. Any Claim against the Debtors that is not an Administrative Claim, 503(b)(9) Claim, Secured Claim, Professional Claim, Priority Tax Claim, or Priority Claim.

1.58. GUC Sharing Formula. Has the meaning set forth in Section 2.7 hereof.

1.59. Impaired. When used with reference to a Claim or an Interest, "Impaired" shall have the meaning ascribed to it in Bankruptcy Code section 1124.

1.60. Initial Distribution Date. The first date upon which the Litigation Trustee makes a Distribution from the Litigation Trust.

1.61. Interest. An issued or authorized outstanding membership unit or other equity interest in the Debtors or the Litigation Trust.

1.62. Interest Holder. A holder of an Interest.

1.63. IRC. The Internal Revenue Code of 1986, as amended from time to time.

1.64. Lien. A charge against, interest in or other encumbrance upon property to secure payment of a debt or performance of an obligation.

1.65. Litigation Claims. Except as provided otherwise herein or in the Confirmation Order, or any document, instrument, release or other agreement entered into in connection with this Plan, all claims, demands, actions, choses in action, Causes of Action, suits, debts, dues, sums of money, accounts, rights to payment, reckonings, bonds, bills, specialties, controversies, variances, trespasses, damages, judgments, third-party claims, counterclaims and cross claims (including, but not limited to, any Chapter 5 avoidance or recovery actions under the Bankruptcy Code or avoidance or recovery claims recognized under any applicable state law) whether known or unknown, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured and whether assertable directly or derivatively in law, equity, or otherwise, that are or may be pending on the Effective Date or instituted after the Effective Date based on law or equity by the Debtors or their estates. Litigation Claims include, without limitation, those which are: (i) property of the Bankruptcy Estates under and pursuant to section 541 of the Bankruptcy Code; (ii) for subrogation and contribution; (iii) for turnover including pursuant to section 542 of the Bankruptcy Code; (iv) for avoidable transfers and preferences under and pursuant to sections 542 through 550 and 553 of the Bankruptcy Code or any applicable state law; (v) to determine the extent, validity and priority of liens and encumbrances; (vi) for surcharge under section 506(c) of the Bankruptcy Code; (vii) for subordination under section 510 of the Bankruptcy Code; (viii) related to federal or state securities laws; (ix) direct or derivative claims or causes of action of any type or kind; (x) for breach of fiduciary duty or aiding and abetting breach of fiduciary duty; (xi) for theft of corporate opportunity; (xii) for collection on accounts, accounts receivables, loans, notes receivables or other rights to payment; (xiii) for the right to seek a determination by the Bankruptcy Court of any tax, fine or penalty relating to a tax, or any addition to a tax, under section 505 of the Bankruptcy Code; (xiv) which arise under or as a result of any section of the Bankruptcy Code; (xv) for common law torts or aiding and abetting common law torts; (xvi) contract or quasi contract; (xvii) derivative based; (xviii) statutory claims; (xix) arise out of or are related in any way to actions or claims pending as of the Effective Date; (xx) for negligence including professional negligence; (xxi) for unjust enrichment; (xxii) to disallow or subordinate any proof of claim filed in the Chapter 11 Cases; (xxiii) to recover an avoidable transfer from any mediate or subsequent transferee; or (xxiv) any claim held or assertable by either the Debtors' estates or Litigation Trustee.

1.66. Litigation Recoveries. The Assigned Proceeds of Auditor Claims plus the net proceeds, other than the Secured Party Litigation Recovery Right, of (a) the Assigned Claims and (b) Retained Causes of Action.

1.67. Litigation Trust. The liquidating trust established pursuant to the Litigation Trust Agreement.

1.68. Litigation Trust Agreement. The Miami Metals Litigation Trust Agreement, the form of which will be filed with the Plan Supplement as Schedule 1.

1.69. Litigation Trustee. The trustee of the Litigation Trust.

1.70. Non-Title Property Claims. Has the meaning set forth in Section 2.8(1).

1.71. Ownership Reserve. Has the meaning set forth in the Final Cash Collateral Order.

1.72. Oversight Committee. Shall have the meaning set forth in Section 8.1.4 hereof.

1.73. Person. An individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a joint venture, an unincorporated organization, or a governmental unit as defined in Bankruptcy Code section 101(41).

1.74. Petition Date. November 2, 2018 or November 21, 2018, as applicable.

1.75. Plan. This plan of liquidation, and all schedules annexed hereto or referenced herein, as it may be amended, modified or supplemented from time to time in accordance with the provisions of this Plan or the Bankruptcy Code and Bankruptcy Rules.

1.76. Plan Documents. All documents related to the Plan.

1.77. Plan Support Agreement. That certain agreement dated on or about October 4, 2019 by and among the Debtors, Secured Parties, Committee, Committee Members and other Supporting Parties, and attached as Schedule 1 to Exhibit A to the Debtors' Motion for Entry of an Order Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Debtors to Enter Into and Perform Under Plan Support Agreement [ECF No. 1413].

1.78. Prepetition Obligations. The obligations under the Secured Credit/Lease Documents.

1.79. Priority Claim. Any pre-petition claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code other than Administrative Claims, Priority Tax Claims, and 503(b)(9) Claims.

1.80. Priority Tax Claim. Any pre-petition claim entitled to priority under section 507(a)(8) of the Bankruptcy Code.

1.81. Priority Reserves. Has the meaning set forth in Section 8.1.4.

1.82. Professional. A Person (a) employed in the Chapter 11 Cases pursuant to a Final Order in accordance with section 156, 327, 328, or 363 of the Bankruptcy Code and to be compensated for services rendered prior to the Effective Date pursuant to sections 156, 327, 328, 329, 330, 331 and 363 of the Bankruptcy Code, or (b) for which compensation and reimbursement has been allowed by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.

1.83. Professional Claim. A Claim of (a) a Professional retained in the Chapter 11 Cases pursuant to a Final Order in accordance with section 156, 327, 328, or 363 of the Bankruptcy Code or otherwise, for compensation or reimbursement of actual and necessary costs and expenses relating to services incurred after the Petition Date and prior to and including the Effective Date or (b) a Professional which seeks compensation and reimbursement pursuant to section 503(b)(4) of the Bankruptcy Code.

1.84. Proof of Claim. Any proof of claim filed with the Bankruptcy Court with respect to the Debtors pursuant to Bankruptcy Rules 3001 or 3002.

1.85. Proof of Interest. Any proof of interest filed with the Bankruptcy Court with respect to the Debtors pursuant to Bankruptcy Rule 3002.

1.86. Releasers. Each Creditor and Interest Holder, including such entities' predecessors, successors and assigns, subsidiaries, affiliates, current and former officers, directors, principals, shareholders, members, partners, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals.

1.87. Retained Causes of Action. Any Cause of Action not released by Debtors, including but not limited to all Litigation Claims and any Cause of Action listed on Schedule of Retained Causes of Action included in the Plan Supplement.

1.88. Scheduled. Set forth on the Schedules.

1.89. Schedules. The Schedules of Assets and Liabilities Filed by the Debtors in accordance with Bankruptcy Code section 521 and Bankruptcy Rule 1007, as the same may be amended from time to time prior to the Effective Date in accordance with Bankruptcy Rule 1009.

1.90. Secured Claim. A Claim secured by a Lien on Collateral which is perfected and enforceable under applicable law, and which is not subject to avoidance under the Bankruptcy Code or other applicable non-bankruptcy laws. A Secured Claim which is challenged by the Litigation Trustee shall only be an Allowed Secured Claim to the extent that such Claim is deemed to be an Allowed Secured Claim in this Plan or the underlying Security Interest is recognized as valid by the Bankruptcy Court and the difference in amount between such a Creditor's Allowed Claim and its Allowed Secured Claim shall be an Allowed Unsecured Claim.

1.91. Secured Credit/Lease Documents. The Credit and Lease Agreements and any and all related collateral and security documents, guarantees and other loan documents.

1.92. Secured Parties. Coöperatieve Rabobank U.A., New York Branch, Brown Brothers Harriman & Co., Bank Hapoalim B.M., Mitsubishi International Corporation, ICBC Standard Bank Plc, Techemet Metal Trading LLC, Woodforest National Bank, Bank Leumi USA, and including their transferees and successors in interest, including but not limited to Hain Capital Investors Master Fund, Ltd., Merced Partners Limited Partnership and Athilon Capital Corp. LLC.

1.93. Secured Party Claims. The pre-Petition Date Claims of the Secured Parties against the Debtors, which were not less than \$177,354,662.88 as of the Petition Date.

1.94. Secured Party Litigation Recovery Right. The first \$1 million in net proceeds generated from either the Assigned Claims against the Debtors' current or former officers and/or the Retained Causes of Action against the Debtors' current or former officers.

1.95. Secured Party Releasees. The Secured Parties and their respective predecessors, successors and assigns, subsidiaries, affiliates, current and former officers, directors, principals,

shareholders, members, partners, employees, agents, financial advisors, attorneys, accountants, consultants, representatives and other professionals (in their respective capacities as such).

1.96. Solicitation Materials. The materials related to the solicitation of votes to accept or reject the Plan, as approved by the Bankruptcy Court.

1.97. Solicitation Motion. The motion to approve the Disclosure Statement and the Solicitation Materials.

1.98. Supporting Parties. All parties to the Plan Support Agreement, other than the Secured Parties.

1.99. Title Property. The “Assets” as such term is defined in the Uniform Procedures Order.

1.100. Title Property Claims. Claims by entities to ownership of Title Property asserted pursuant to the Uniform Procedures Order.

1.101. Transfer. To sell, use, assign, transfer or otherwise dispose of.

1.102. Trust Assets. The Estate Litigation Fund, 503(b)(9) Fund, the Retained Causes of Action, the Assigned Claims, the Assigned Proceeds of Auditor Claims, the Ownership Reserve, and the Priority Reserve, Disputed Claims Reserve, together with any and all income earned on and proceeds of such assets, and any and all other Assets of the Debtors that have not been abandoned.

1.103. Uniform Procedures Order. That certain Second Amended Order Approving Uniform Procedures for the Resolution of Ownership Disputes, as amended from time to time [Doc. No. 1056].

1.104. Unimpaired. When used with reference to a Claim or an Interest, “Unimpaired” shall have the meaning ascribed to it in Bankruptcy Code section 1124.

1.105. United States Trustee. The United States Trustee appointed under section 581 (a)(3) of title 28 of the United States Code to serve in the Southern District of New York.

C. Rules of Interpretation.

1. In the event of an inconsistency, the provisions of this Plan shall control over the contents of the Disclosure Statement or the Litigation Trust Agreement. The provisions of the Confirmation Order shall control over the contents of this Plan.

2. For the purposes of this Plan.

(a) 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 shall be substantially in such form or substantially on such terms and conditions; provided, however, that any change to such form, terms or conditions that is material to a party to

such document shall not be modified without (i) such party's consent or (ii) upon order of the Bankruptcy Court, unless such document expressly provides otherwise;

(b) any reference in this Plan to an existing document, exhibit or schedule Filed or to be Filed means such document, exhibit or schedule, as it may have been or may be amended, modified or supplemented as of the Effective Date;

(c) unless otherwise specified, all references in this Plan to "Sections," "Articles," and "Schedules" are references to Sections, Articles, and Schedules of or to this Plan;

(d) the words "herein," "hereof," "hereto," "hereunder" and others of similar import refer to this Plan in its entirety rather than to only a particular portion of this Plan;

(e) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be part of or to affect interpretations of this Plan;

(f) the rules of construction set forth in Bankruptcy Code section 102 shall apply, except to the extent inconsistent with the provisions of this Article of this Plan; and

(g) the word "including" means "including without limitation."

3. Whenever a distribution of property is required to be made on a particular date, the distribution shall be made on such date or as soon as reasonably practicable thereafter.

4. All Schedules to this Plan are incorporated into this Plan and shall be deemed to be included in this Plan, regardless of when they are Filed.

5. Subject to the provisions of any contract, certificate, bylaws, instrument, release or other agreement or document entered into in connection with this Plan, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, federal law, including the Bankruptcy Code and Bankruptcy Rules.

D. Computation of Time.

In computing any period of time prescribed or allowed by this Plan, unless otherwise expressly provided, the provisions of Bankruptcy Rule 9006(a) shall apply.

ARTICLE 2 **TREATMENT OF UNCLASSIFIED CLAIMS**

2.1. Administrative Claims. No Administrative Claim shall receive a distribution under this Plan except to the extent that it is an Allowed Administrative Claim. Except to the extent that the holder of an Allowed Administrative Expense agrees to a different treatment, or as otherwise set forth in this Plan, and subject to the Administrative Claim Bar Date set forth in the Section 2.4, the Litigation Trustee shall pay each Allowed Administrative Expense in full, in Cash, on the later of (i) one (1) day following the Effective Date or a soon as practicable thereafter, (ii) within ten (10) Business Days after the date such Administrative Claim becomes an Allowed Administrative Expense, and (iii) the date such Allowed Administrative Claim becomes due

according to its terms; *provided, however*, that Professional Claims shall be paid in accordance with Section 2.3. Notwithstanding the foregoing, any Allowed Administrative Expenses representing obligations incurred in the ordinary course of post-petition operation of the Litigation Trust (including without limitation post-petition trade obligations and post-petition payroll obligations, but excluding any post-petition tax obligations), or that have been expressly authorized by the Bankruptcy Court or this Plan, shall be paid in full or performed by the Litigation Trustee in the ordinary course of business, in accordance with the terms of the particular obligation.

Claims asserted pursuant to 11 U.S.C. § 503(b)(9) are subject to the alternative treatment set forth in Section 2.7.

The Secured Parties' Adequate Protection Superpriority Claims shall be waived as of the Effective Date. The Adequate Protection Liens shall be automatically cancelled as of the Effective Date.

2.2. Statutory Fees. The Debtors or the Litigation Trustee, on behalf of the Debtors, shall pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6) within ten (10) days after the entry of the Effective Date for pre-confirmation periods and simultaneously provide to the United States Trustee an appropriate affidavit indicating the Cash disbursements for the relevant period. The Litigation Trustee shall further pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. 1930(a)(6) based upon all disbursements of the Litigation Trust for post-confirmation periods within the time period set forth in 28 U.S.C. 1930(a)(6), until the earlier of the closing of the Chapter 11 Cases, or upon the entry of an order by the Bankruptcy Court dismissing the Chapter 11 Cases or converting the Chapter 11 Cases to another chapter under the Bankruptcy Code, and the party responsible for paying the post-confirmation United States Trustee fees shall provide to the United States Trustee upon the payment of each post-confirmation payment an appropriate affidavit indicating all the Cash disbursements for the relevant period.

2.3. Professional Claims. Immediately prior to the Effective Date, the Debtors shall pay all amounts owing to the Professionals for all outstanding Professional Claims, as approved by the Bankruptcy Court. On or prior to the Administrative Claims Bar Date, each Professional shall file with the Bankruptcy Court its final fee application seeking final approval of all fees and expenses from the Petition Date through the Effective Date, except that the United States Trustee shall not be required to file its claims by the Administrative Claims Bar Date. Professional Claims due for periods that have not been billed as of the Effective Date, shall be paid by the Litigation Trustee in the ordinary course of business.

2.4. Deadline for Filing Administrative Claims. Other than with respect to Administrative Claims for which the Bankruptcy Court may have previously established a Bar Date, any and all requests for payment or proofs of Administrative Claims, including Claims of all Professionals or other Entities requesting compensation or reimbursement of expenses pursuant to Bankruptcy Code sections 327, 328, 330, 331, 503(b), or 363 for services rendered on or before the Effective Date, must be Filed and served on the Litigation Trustee, his counsel, and the United States Trustee no later than the Administrative Claims Bar Date. Except for with respect to Professional Claims, objections to any Administrative Claims must be Filed and served on the claimant no later than sixty (60) days after the Administrative Claims Bar Date, subject to further

extensions by the Bankruptcy Court. The Litigation Trustee shall use reasonable efforts to promptly and diligently pursue resolution of any and all disputed Administrative Claims. In the event the Litigation Trustee is unable to resolve any of the disputed Administrative Claims, such unresolved disputes will be heard and determined by the Bankruptcy Court.

Objections to Professional Fee Claims must be filed no later than thirty (30) days after the Administrative Claims Bar Date.

The deadline for filing 503(b)(9) Claims was April 11, 2019, pursuant to the Bankruptcy Court's Order at ECF No. 690.

Holders of Administrative Claims, including all Professionals or other Entities requesting compensation or reimbursement of expenses pursuant to Bankruptcy Code sections 327, 328, 330, 331, 363, or 503(b) for services rendered on or before the Effective Date, that are required to File a request for payment or proof of such Claims and that do not File such requests or proofs of Claim on or before the Administrative Claims Bar Date shall be forever barred from asserting such Claims against the Debtors, their Estates, the Litigation Trust, the Litigation Trustee, any other Person or Entity, or any of their respective property.

2.5. Priority Tax Claims. Except to the extent that the holder of an Allowed Priority Tax Claim agrees to a different treatment, the Debtors shall pay each holder of an Allowed Priority Tax Claim the amount of such Allowed Priority Tax Claim in full, in Cash, on the Effective Date, or the Litigation Trustee shall pay each holder of an Allowed Priority Tax Claim in full, in Cash, no later than ten (10) Business Days after the date such Priority Tax Claim becomes Allowed. Allowed Priority Tax Claims shall not include any interest or penalties accruing subsequent to the Petition Date unless otherwise required by applicable law. No Priority Tax Claim shall receive a distribution under this Plan except to the extent that it is an Allowed Priority Tax Claim.

2.6. Other Priority Claims. Except to the extent that the holder of an Allowed Priority Claim agrees to a different treatment, the Debtors shall pay each holder of an Allowed Priority Claim the amount of such Allowed Priority Claim in full, in Cash, on the Effective Date or Litigation Trustee shall pay each holder of an Allowed Priority Claim the amount of such Allowed Priority Claim in full, in Cash, no later than ten (10) Business Days after the date such Priority Claim becomes an Allowed Priority Claim. No Priority Claim shall receive a distribution under this Plan except to the extent that it is an Allowed Priority Claim.

2.7. 503(b)(9) Claims. On or as soon as reasonably practicable after the later of (i) the Effective Date or (ii) the date such 503(b)(9) Claim becomes an Allowed 503(b)(9) Claim, a Holder of an Allowed 503(b)(9) Claim shall receive, in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed 503(b)(9) Claim, (i) a *pro rata* distribution from the 503(b)(9) Fund and (ii) subject to the GUC Sharing Formula, a *pro rata* distribution of Litigation Recoveries.

Once holders of Allowed 503(b)(9) Claims recover 75% on account of their Allowed 503(b)(9) Claim(s), then until all Allowed 503(b)(9) Claims are paid in full, 75% of Litigation Recoveries shall be made available for distribution to Holders of Allowed 503(b)(9) claims and

25% of Litigation Recoveries shall be made available for distribution to Holders of Allowed General Unsecured Claims (the "GUC Sharing Formula").

The failure to object to confirmation of the Plan by a Holder of an Allowed 503(b)(9) Claim shall be deemed to be such Holder's consent to receive treatment for such Claim that is different from that set forth in section 1129(a)(9) of the Bankruptcy Code.

2.8. Title Property Claims. Title Property Claims will be treated as follows:

1) When a Holder of a Title Property Claim has also filed a Proof of Claim against the Debtors' Estates based on the same conduct or transaction(s) underlying their Title Property Claim(s) (a "Non-Title Property Claim"), no distribution will be made on account of such Holder's Non-Title Property Claim(s) until the Title Property Claim is (a) withdrawn, (b) adjudicated by Final Order of the Bankruptcy Court, or (c) resolved by the agreement of the Litigation Trustee, the Secured Parties and such Holder, with such agreement subject to approval by the Bankruptcy Court, and the Non-Title Property Claim becomes an Allowed Claim.

2) Until such time as a Holder's Title Property Claim is withdrawn, adjudicated or otherwise resolved, the Holder of a Title Property Claim that also holds a Non-Title Property Claim shall be entitled to vote in Class 4 in respect of such Non-Title Property Claim notwithstanding such Non-Title Property Claim's designation under the Plan as a Disputed Claim.

3) To the extent a Holder of a Title Property Claim has waived or withdrawn its Title Property Claim(s) at any time prior to the Effective Date, it will recover on account of its Allowed Non-Title Property Claim(s), including any Allowed 503(b)(9) claim or general unsecured claim, in the same manner and at the same time as other Holders of similarly-situated Allowed Claims.

4) Upon entry of a Final Order determining that a Holder of a Title Property Claim holds title to an amount of the Title Property, or a Final Order approving the agreement of the Litigation Trustee, the Secured Parties and a Holder of a Title Property Claim settling a Title Property Claim (in each case, with respect to the amount of the Title Property to which such entity is determined or agreed upon to hold title, an "Allowed Title Property Claim"), the Allowed Title Property Claim Holder shall receive payment from the Ownership Reserve in an amount equal to the Allowed Title Property Claim.

5) Upon entry of a Final Order determining that a Holder of a Title Property Claim does not hold title to an amount of the Title Property, or if a Holder of a Title Property Claim elects at any time after the Effective Date to waive or withdraw its Title Property Claim, such Holder will recover on account of any Allowed Non-Title Property Claim in the same manner as other Holders of similarly-situated Allowed Claims (retroactive to the Effective Date).

6) Following the withdrawal, adjudication or other resolution of a Title Property Claim pursuant to this Section 2.8, an amount of the Ownership Reserve equal to

the amount of such Title Property Claim not distributed to the Holder thereof shall be distributed to the Secured Parties.

ARTICLE 3

CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND INTERESTS

3.1. General. Pursuant to section 1122 of the Bankruptcy Code, set forth below is a designation of the Classes of Claims and Interests in the Debtors. A Claim or Interest is placed in a particular Class only to the extent that such Claim or Interest falls within the description of that Class. A Claim or Interest is also placed in a particular Class for purposes of receiving a distribution under this Plan, but only to the extent such Claim or Interest is an Allowed Claim or Interest and has not been paid, released, or otherwise settled prior to the Effective Date. Except as otherwise expressly set forth in this Plan, a Claim or Interest which is not an Allowed Claim shall not receive any payments, rights or distributions under this Plan. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and 503(b)(9) Claims have not been classified and are treated as set forth in Article 2 above.

3.2. Classification.

Class of Claim	Type of Claim	Impaired / Unimpaired	Voting / Non-Voting
1	Miscellaneous Secured Claims	Unimpaired	Non-Voting
2	Priority Non-Tax Claims	Unimpaired	Non-Voting
3	Secured Party Claims	Impaired	Voting
4	General Unsecured Claims	Impaired	Voting
5	Convenience Claims	Impaired	Voting
6	Intercompany Claims	Impaired	Non-Voting (presumed to reject)
7	Subordinated Claims	Impaired	Non-Voting (presumed to reject)
8	Intercompany Interests and Interests in Miami Metals I, Inc. and Miami Metals II, Inc.	Impaired	Non-Voting (presumed to reject)

ARTICLE 4
IDENTIFICATION OF CLASSES OF CLAIMS AND
INTERESTS IMPAIRED AND NOT IMPAIRED BY THE PLAN

4.1. Unimpaired Classes of Claims and Interests. Claims in Classes 1 and 2 are Unimpaired under the Plan. Therefore, Classes 1 and 2 are conclusively deemed to accept the Plan and, thus, are not entitled to vote on it.

4.2. Impaired Classes of Claims and Interests. Classes 3, 4, and 5 are Impaired by virtue of section 1124 of the Bankruptcy Code. Votes from holders of Class 3 Secured Party Claims, Class 4 General Unsecured Claims, and Class 5 Convenience Claims will be solicited. Votes of holders of Class 6, 7, and 8 will not be solicited because there will be no distribution to holders of such Claims (unless all prior Classes of Claims are paid in full), and holders of claims in Classes 6, 7, and 8 are deemed to have rejected the Plan.

ARTICLE 5
PROVISIONS FOR THE TREATMENT OF IMPAIRED CLAIMS AND INTERESTS

A. Summary.

The categories of Claims and Interests listed below classify Claims and Interests for all purposes, including voting, confirmation, and distribution pursuant to this Plan. Administrative Claims, 503(b)(9) Claims, and Priority Claims have not been classified and are excluded from the following Classes, in accordance with section 1123(a)(1) of the Bankruptcy Code. A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in a different Class to the extent that any remainder of the Claim or Interest qualifies within the description of such different Class.

B. Classification and Treatment.

5.1. Class 1 (Miscellaneous Secured Claims). Class 1 consists of Miscellaneous Secured Claims. On or as soon as reasonably practicable after the later of (i) the Effective Date or (ii) the date such Miscellaneous Secured Claim becomes an allowed Miscellaneous Secured Claim, a holder of an allowed Miscellaneous Secured Claim shall receive, in full satisfaction, settlement, release and discharge of, and in exchange for, such allowed Miscellaneous Secured Claim, (a) cash equal to the value of such Allowed Miscellaneous Secured Claim, (b) a return of the holder's collateral securing the Miscellaneous Secured Claim, (c) such treatment required under section 1124(2) of the Bankruptcy Code for such Claim to be rendered unimpaired or (d) such other treatment as to which such Holder and the Debtors or the Litigation Trust, as applicable, shall have agreed upon in writing.

5.1.1. Voting. Class 1 is Unimpaired and not entitled to vote to accept or reject the Plan.

5.2. Class 2 (Priority Non-Tax Claims). On or as soon after the Effective Date as practicable, unless otherwise agreed to by the Debtors and the holder of an Allowed Priority Non-Tax Claim (in which event such other agreement will govern), each holder of an allowed Priority Non-Tax Claim against the Debtors shall receive on account of and in full and complete settlement,

release and discharge of such claim, at the Debtors' or Litigation Trust's election, as applicable, (i) cash in the amount of such Allowed Priority Non-Tax Claim in accordance with section 1129(a)(9) of the Bankruptcy Code and/or (ii) such other treatment required to render such claim unimpaired pursuant to section 1124 of the Bankruptcy Code.

5.2.1. Voting. Class 2 is Unimpaired and not entitled to vote to accept or reject the Plan.

5.3. Class 3 (Secured Party Claims). Class 3 consists of Secured Party Claims. On or as soon after the Effective Date as practicable, the Secured Parties shall receive on account of and in full and complete settlement, release and discharge of, their Allowed Secured Party Claim, their pro rata share of (i) funds previously provided under the Cash Collateral Orders, (ii) funds in the Ownership Reserve that exceed the aggregate face amount of outstanding Title Property Claims, (iii) any unused portion of the Priority Reserves, (iv) the Secured Party Litigation Recovery Right and (v) the Secured Parties' portion of the net proceeds of any Auditor/Lender Claim pursuant to the Auditor Claim Waterfall.

After giving effect to the foregoing distributions, any Allowed deficiency claim of the Secured Parties shall be treated as an Allowed General Unsecured Claim.

5.3.1. Voting. Class 3 is Impaired and entitled to vote to accept or reject the Plan.

5.4. Class 4 (General Unsecured Claims). Class 4 consists of General Unsecured Claims. On the Effective Date, each holder of an allowed General Unsecured Claim shall receive, in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed General Unsecured Claim, interests in the Litigation Trust ("Trust Units") commensurate with the dollar value of their Allowed General Unsecured Claims on a 1 Trust Unit per \$1,000 in General Unsecured Claim amount. Fractional Trust Units shall not be issued, and allowed General Unsecured Claims will be rounded up or down to the nearest whole Trust Unit.

Holders of Allowed General Unsecured Claims shall receive their *pro rata* share of Litigation Recoveries available after the payment in full of all costs of administering the Litigation Trust and all Allowed 503(b)(9) Claims, except as provided for in the GUC Sharing Formula.

5.4.1. Voting. Class 4 is Impaired and is entitled to vote to accept or reject the Plan.

5.5. Class 5 (Convenience Claims). Class 5 consists of Convenience Claims (Claims (i) in an amount no greater than \$2,500, or (ii) in an amount no greater than \$20,000 which has been voluntarily reduced to \$2,500 by the holder thereof pursuant to an election made on such holder's Ballot or any other agreement in writing). Each Holder of an Allowed Convenience Claim shall receive, in full and final satisfaction of such Claim a distribution in cash equal to the lesser of (i) the amount of the Holder's Allowed Convenience Claim or (ii) \$2,500, on the Initial Distribution Date for the Litigation Trust.

5.5.1. Voting. Class 5 is Impaired and is entitled to vote to accept or reject the Plan.

5.6. Class 6 (Intercompany). Class 6 consists of all Intercompany Claims. On the Effective Date, all Intercompany claims shall be deemed eliminated, cancelled and/or extinguished, except as otherwise provided for in the Plan.

5.6.1. Voting. Votes of holders of Class 6 Intercompany Claims will not be solicited because there will be no distribution to holders of such Claims, and holders of Class 6 claims are deemed to have rejected the Plan.

5.7. Class 7 (Subordinated Claims). Class 7 consists of all Subordinated Claims. On the Effective Date, all Subordinated claims shall be deemed eliminated, cancelled and/or extinguished and each holder thereof shall not be entitled to, and shall not receive or retain, any property under the Plan on account of such Subordinated Claims.

5.7.1. Voting. Votes of holders of Class 7 Subordinated Claims will not be solicited because there will be no distribution to holders of such Claims, and holders of Class 7 claims are deemed to have rejected the Plan.

5.8. Class 8 (Intercompany Interests and Interests in Miami Metals I, Inc. and Miami Metals II, Inc.). Class 8 consists of all Intercompany Interests and Interests in Miami Metals I, Inc. and Miami Metals II, Inc. On the Effective Date, all intercompany interests shall be cancelled except as otherwise provided in the Plan. On the Effective Date, all Interests in Miami Metals I, Inc. and Miami Metals II, Inc. shall be cancelled and each holder thereof shall not be entitled to, and shall not receive or retain, any property or interest in property under the Plan on account of such interests.

5.8.1. Voting. Votes of holders of Class 8 Intercompany Interests and Interests in Miami Metals I, Inc. and Miami Metals II, Inc. will not be solicited because there will be no distribution to holders of such Claims, and holders of Class 8 claims are deemed to have rejected the Plan.

5.9. Reservation of Right to Cramdown Objecting Classes. The Debtors reserve the right to seek to cramdown any Class of Claims that does not vote to confirm the Plan, pursuant to 11 U.S.C. § 1129(b).

5.10. Reservation of Rights to Object to Claims or Interests. Neither the Debtors nor the Litigation Trustee has reviewed the validity or amount of the Claims and Interests for which a Proof of Claim has been filed. Accordingly, except as otherwise set forth herein, all rights to amend the Debtors' Schedules and to object to such Claims or Interests are reserved in favor of the Debtors and the Litigation Trustee, notwithstanding the right of the holder of such Claim or Interest to vote on this Plan. The Litigation Trustee intends to file objections to filed proofs of claim within 90 days of the Effective Date of this Plan, but reserves the right to request a reasonable extension of that deadline from the Bankruptcy Court.

5.11. No Interference with Intercreditor Agreements. Nothing in this Plan is intended or shall be deemed to modify or alter the rights of any party relative to any other party under any

intercreditor, subordination, or similar agreement governing their relative rights and priorities with respect to the Debtors or their assets, including, without limitation, the Intercreditor Agreement (as defined in the Cash Collateral Order).

ARTICLE 6

TREATMENT OF EXECUTORY CONTRACTS

6.1. Rejection. Except for those executory contracts set forth on Schedule 2 that are assumed pursuant to this Plan, if any, all executory contracts and unexpired leases of the Debtors shall be rejected pursuant to section 365 of Bankruptcy Code; *provided, however*, that neither the inclusion of a contract or lease on Schedule 2 hereto nor anything contained in this Article 6 shall constitute an admission by the Debtors that such contract or lease is an executory contract or that the Debtors or their successors and assigns, including, but not limited to, the Litigation Trust, has any liability thereunder. For the avoidance of any doubt, this Section 6.1 shall apply to any and all contracts or engagements the Debtors may have with professionals retained prepetition, including, but not limited to, attorneys, auditors, and financial advisors.

6.2. Approval of Rejection; Rejection Damages Claims Bar Date. The Confirmation Order shall constitute an Order of the Bankruptcy Court approving the rejection of executory contracts under Section 6.1 above pursuant to Bankruptcy Code section 365 as of the Effective Date. Any Claim for damages arising from any such rejection must be Filed within thirty (30) days after the mailing of notice of the entry of the Confirmation Order, or such Claim shall be forever barred, shall not be enforceable against the Debtors, their Estates, the Litigation Trust, the Litigation Trustee, or any of their respective properties and shall receive no distribution under the Plan or otherwise on account of such Claim.

6.3. Insurance. The Debtors do not believe that the insurance policies issued to, or insurance agreements entered into by, any Debtor prior to the Petition Date constitute executory contracts. To the extent that such insurance policies or agreements are considered to be executory contracts, then, notwithstanding anything contained in this Section 6.3 to the contrary, the Plan will constitute a motion to assume such insurance policies and agreements, and, subject to the occurrence of the Effective Date, the entry of the Confirmation Order will constitute approval of such assumption pursuant to section 365(a) of the Bankruptcy Code and a finding by the Bankruptcy Court that each such assumption is in the best interest of the Debtors, their respective estates and all parties in interest in the Bankruptcy Cases. Unless otherwise determined by the Bankruptcy Court pursuant to a Final Order or agreed to by the parties thereto prior to the Effective Date, no payments are required to cure any defaults of any Debtor existing as of the Confirmation Date with respect to each such insurance policy or agreement.

ARTICLE 7

SUBSTANTIVE CONSOLIDATION OF THE DEBTORS

Solely in connection with Distributions to be made to the holders of Allowed Claims, the Plan is predicated upon, and it is a condition precedent to confirmation of the Plan, that the Bankruptcy Court provide in the Confirmation Order for the substantive consolidation of the Estates of the Debtors into a single Estate for purposes of this Plan and the Distributions hereunder.

To the extent a Claim (including any Disputed Claim) becomes an Allowed Claim, such Claim shall be satisfied in accordance with the provisions of the Plan.

Pursuant to the Confirmation Order, upon the Effective Date and without further order of the Bankruptcy Court, except as expressly provided herein, (i) all assets and liabilities of the substantively consolidated Debtors will be deemed to be merged solely for purposes of this Plan and Distributions to be made hereunder, (ii) the obligations of each Debtor will be deemed to be the obligation of the substantively consolidated Debtors solely for purposes of this Plan and Distributions hereunder, (iii) any Claims filed or to be filed in connection with any such obligations will be deemed Claims against the substantively consolidated Debtors, (iv) each Claim filed in the Chapter 11 Case of any Debtor will be deemed filed against the Debtors in the consolidated Chapter 11 Cases in accordance with the substantive consolidation of the assets and liabilities of the Debtors, (v) all transfers, disbursements and distributions made by any Debtor hereunder will be deemed to be made by the substantively consolidated Debtors, and (vi) all guarantees of the Debtors of the obligations of any other Debtors shall be deemed eliminated so that any Claim against any Debtor and any guarantee thereof executed by any other Debtor and any joint or several liability of any of the Debtors shall be deemed to be one obligation of the substantively consolidated Debtors. Holders of Allowed Claims in each Class shall be entitled to their share of assets available for distribution to such Class without regard to which Debtor was originally liable for such Claim.

The substantive consolidation effected pursuant to this article of the Plan shall not affect (other than for purposes related to funding distributions under the Plan), among other things, (i) the legal and organizational structure of the Debtors, (ii) any Litigation Claims, (iii) defenses to any Litigation Claims or requirements for any third party to establish mutuality to assert a right of setoff, (iv) distributions out of any insurance policies or proceeds of such policies, or (v) the Title Property Claims and any defenses thereto.

Unless the Bankruptcy Court has approved the substantive consolidation of the Estates by a prior order, the Plan shall serve as, and shall be deemed to be, a motion for entry of an order substantively consolidating the Estates as set forth in this Plan. If no objection to substantive consolidation under this Plan is timely filed and served, then the holders of Claims will be deemed to have consented to substantive consolidation for the purpose of this Plan only and the Bankruptcy Court may approve substantive consolidation of the Debtors' Estates in the Confirmation Order. If such objection to the substantive consolidation provided for in this Plan is timely filed and served, a hearing with respect to the substantive consolidation of the Estates and the objections thereto shall be scheduled by the Bankruptcy Court, which hearing may coincide with the Confirmation Hearing.

In the event that the Debtors cannot substantively consolidate for distribution purposes in accordance with the foregoing, the Debtors may proceed to confirmation on a debtor-by-debtor basis.

ARTICLE 8
MEANS FOR EXECUTION AND IMPLEMENTATION OF THE PLAN

8.1. The Litigation Trust.

- 8.1.1. Establishment of the Litigation Trust.** On the Effective Date, Scott Avila (on behalf of the Debtors and their beneficiaries), shall execute the Litigation Trust Agreement and take all steps necessary to establish the Litigation Trust. The Trust Assets will be transferred to the litigation Trust on the Effective Date.
- 8.1.2. Purpose of Litigation Trust.** The Litigation Trust is being established for the purpose of liquidating and distributing cash and other property held by the Litigation Trust in accordance with this Plan and the Litigation Trust Agreement. The Litigation Trust shall not continue or engage in any trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Litigation Trust. Unless otherwise required by law, it is intended that all parties shall treat the Litigation Trust as a liquidating trust for all federal income tax purposes.
- 8.1.3. Litigation Trustee.** The trustee of the Litigation Trust will be appointed by the Committee, in consultation with the Secured Parties. The identity of the trustee of the Litigation Trust will be included in the Plan Supplement.
- 8.1.4. Oversight.** The material determinations of the Litigation Trust will be overseen by a committee (the “Oversight Committee”), which shall be comprised of members of the Committee and the Secured Parties (in their capacity as unsecured creditors), with the members of the Committee representing not less than 51% of the members of the Oversight Committee.
- 8.1.5. Assignment of Claims to Litigation Trust.** On the Effective Date, the Debtors shall assign the Retained Causes of Action to the Litigation Trust and the Secured Parties shall assign and be deemed to have assigned the Assigned Claims and the Assigned Proceeds of Auditor Claims to the Litigation Trust. The Litigation Trust shall have authority under Bankruptcy Rule 2004 to issue subpoenas for documents and testimony in connection with the Retained Causes of Action.
- 8.1.6. Priority Reserves.** On the Effective Date of the Plan, reasonable reserves shall be established from Cash Collateral for Administrative Claims (including Professional Fee Claims), Priority Tax Claims, Miscellaneous Secured Claims, Allowed Claims in Class 5, Priority Non-Tax Claims and fees required to be paid pursuant to Section 2.2 of the Plan arising in connection with disbursements made (a) prior to the Effective Date, (b) in connection with the Effective Date, or (c) out of the Ownership Reserve (collectively, the “Priority Reserves”).

8.1.7. Ownership Reserve. On the Effective Date of the Plan, the Ownership Reserve shall be segregated and administered in accordance with the Final Cash Collateral Order, this Plan and the Liquidating Trust Agreement. Nothing in the Plan, nor any actions taken pursuant to or in furtherance of the Plan, shall prejudice any Title Property Claims, provided that recovery on account of Allowed Title Property Claims shall be limited to the Ownership Reserve.

8.1.8. Replacement of Automatic Stay with Continuing Plan Injunction. In furtherance of the implementation of the Plan, all injunctions or stays provided for in the Chapter 11 Cases and in existence on the Confirmation Date, shall remain in full force and effect and apply to all Creditors, Interests, and beneficiaries holding Claims or Interests against the Debtors, the Estates, the Assets, the Litigation Trustee, the Litigation Trust and the Trust Assets.

8.2. Dismissal of RTMM and Republic Shanghai Chapter 11 Cases. Upon the Confirmation Order becoming a Final Order, the Chapter 11 Cases of Debtors RTMM and Republic Shanghai shall be dismissed, and the equity interests in those entities shall be deemed abandoned. In the event that either the RTMM Injunction (as defined below) is not approved by the Court or the requirements of section 1129 cannot be met with respect to RTMM, then (a) the RTMM Injunction will be automatically stricken from this Amended Plan, (b) holders of claims against RTMM will not recover under this Amended Plan from either the remaining Debtors or the Litigation Trust, except to the extent ordered by the Court through the Ownership Reserve, (c) the equity interests of RTMM will be abandoned, (d) RTMM will not be substantively consolidated with the other Debtors for distribution (or any other) purposes, (e) the RTMM chapter 11 case will be dismissed, and (f) the automatic stay will be terminated with respect to RTMM and the assets of RTMM, if any, will revert to RTMM.

8.3. Termination of the Debtors. As soon as practicable after the Effective Date, the Litigation Trustee shall cause the Debtors, except Debtors RTMM and Shanghai (collectively, the "United States Debtors") to be dissolved in accordance with applicable state law; *provided, however,* that pursuant to section 1124(b) of the Bankruptcy Code, the Litigation Trustee shall be authorized to file the United States Debtors' final tax returns, if any, and shall be authorized to file and shall file with the official public office for keeping corporate records in the each of the United States Debtors' state of incorporation a certificate of dissolution or equivalent document. Such a certificate of dissolution may be executed by the Litigation Trustee without the need for any action or approval by any other party. From and after the Effective Date, the United States Debtors (i) for all purposes shall be deemed to have withdrawn their business operations from any state in which they were previously conducting, or are registered or licensed to conduct, their business operations, and shall not be required to file any document, pay any sum or take any other action, in order to effectuate such withdrawal, and (ii) shall not be liable in any manner to any taxing authority for franchise, business, license or similar taxes accruing on or after the Effective Date.

8.4. Closing of the Chapter 11 Cases. Notwithstanding anything to the contrary in the Bankruptcy Rules providing for earlier closure of the Chapter 11 Cases, when all Assets contributed to the Litigation Trust have been liquidated and converted into Cash or other property,

and such Cash and/or other property has been distributed in accordance with the Litigation Trust Agreement and this Plan, and the Final Distribution made, the Litigation Trustee shall seek authority from the Bankruptcy Court to all the Chapter 11 Cases, except the Lead Case, in accordance with the Bankruptcy Code and the Bankruptcy Rules.

8.5. Auditor/Lender Claims.

- 8.5.1.** The Secured Parties, in consultation with the Litigation Trustee, will commence any Auditor/Lender Claims that have not been commenced by the Effective Date on a schedule to be agreed to by the Secured Parties and the Litigation Trustee.
- 8.5.2.** The Secured Parties shall not terminate or withdraw from any Auditor/Lender Claims, except as provided for under this Section 8.5 or upon the consent of the Litigation Trustee, which consent shall not be unreasonably withheld. The Secured Parties shall not settle any Auditor/Lender Claims without the prior approval of the Litigation Trustee, which approval shall not be unreasonably withheld.
- 8.5.3.** The Litigation Trustee may, in its sole discretion, cause \$100,000 to be pre-funded to cover the costs and expenses of prosecuting the Auditor/Lender Claims (an “**Advance**”). Upon the depletion of an Advance, the Litigation Trustee may, but shall have no obligation to cause an additional Advance to be made. Any amount funded by the Litigation Trustee is not a loan. The Litigation Trustee is not acquiring ownership of any Auditor/Lender Claims and is not a party to any Auditor/lender Claims. Except as expressly set forth herein, the Secured Parties will continue to control the prosecution of the Auditor/Lender Claims.
- 8.5.4.** To the extent that any Advance has been exhausted in pursuit of the Auditor/Lender Claims or is not sufficient to continue covering the costs and expenses needed to pursue the Auditor/Lender Claims, and the Litigation Trustee has declined or is unable to make any further Advances, the Secured Parties shall have the right, in their sole discretion and without the need to obtain the prior approval of the Litigation Trustee, to terminate, abandon, settle, or otherwise resolve the Auditor/Lender Claims; provided, however, that before any such actions are taken, the Secured Parties shall inform the Litigation Trustee that the funds have been exhausted or are insufficient and the Litigation Trustee shall have twenty (20) business days to make an additional Advance and shall have the opportunity to consult with Secured Parties regarding the intended resolution of the dispute.
- 8.5.5.** The Secured Parties shall consult with the Litigation Trustee on any significant matters relating to the prosecution of the Auditor Claims.

8.6. Assigned Claims. The Secured Parties shall provide reasonable cooperation with respect to the investigation and prosecution of the Assigned Claims, including with respect to requests for information or making potential witnesses available.

8.7. 2004 Examinations. The Litigation Trust shall have authority under Bankruptcy Rule 2004 to issue subpoenas for documents and testimony in connection with any Trust Assets.

ARTICLE 9

POST-CONFIRMATION LITIGATION

9.1. Transfer and Enforcement of Causes of Action. Pursuant to section 1123(b)(3) of the Bankruptcy Code, except as otherwise provided in this Plan or the Confirmation Order, all Retained Causes of Action are expressly preserved, reserved and retained by the Litigation Trust and, after transfer of the Assets to the Litigation Trust pursuant to Section 8.2.3 hereof, the Litigation Trustee or other appropriate party in interest including any designee or successor of the Litigation Trustee, will have the exclusive right to enforce any and all Retained Causes of Action and rights of the Debtors that arose before or after the Petition Date (including, but not limited to, the rights and powers of a trustee and debtor-in-possession) against potential targets of the Retained Causes of Action or Assigned Claims. The right to bring all Retained Causes of Action against any targets is expressly and entirely preserved and retained.

9.2. Objections to Claims. Subject to applicable law, and except as otherwise set forth herein, from and after the Effective Date, the Litigation Trustee shall have the authority to litigate to Final Order objections to Claims or Interests pursuant to applicable procedures established by, or grounds set forth in, the Bankruptcy Code, the Bankruptcy Rules, the Litigation Trust Agreement and this Plan. The deadline within which objections to Claims or Interests may be filed shall be one (1) year from the Effective Date; *provided, however*, that such deadline may be extended from time to time upon application to and approval by the Bankruptcy Court.

9.3. Disallowance of Claims. Except to the extent otherwise agreed to by the Debtors or the Litigation Trustee, as applicable, any Claims held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, as determined by a Final Order, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims may not receive any distributions on account of such Claims until such time as such Retained Cause of Action against that Entity have been settled or a Final Order with respect thereto has been entered and all sums due, if any, to the Debtors or Litigation Trust by that Entity have been turned over or paid to the Debtors or Liquidating Trust, as applicable.

9.4. Compromise and Settlement of Claims and Retained Causes of Action. Pursuant to Bankruptcy Rule 9019(b), the Liquidating Trustee may settle any Disputed Claims (or aggregate of Claims if held by a single creditor), without notice, a hearing or Bankruptcy Court approval unless the amount in controversy for such Disputed Claim exceeds five hundred thousand dollars (\$500,000). Pursuant to Bankruptcy Rule 9019(b), the Liquidating Trustee may settle any Retained Causes of Action without notice, a hearing or Bankruptcy Court approval unless the amount in controversy for such Retained Cause of Action exceeds five hundred thousand dollars

(\$500,000). Notwithstanding the foregoing, all settlements of Title Property Claims shall be subject to approval of the Bankruptcy Court, on motion and following notice and a hearing pursuant to Bankruptcy Rule 9019(a).

ARTICLE 10 **DISTRIBUTIONS**

10.1. Delivery of Distributions in General. Distributions to holders of Allowed Claims shall be made: (a) at the addresses set forth in the Proofs of Claim Filed by such holders; (b) at the addresses set forth in any written notices of address change Filed with the Bankruptcy Court or delivered to the Litigation Trustee after the date on which any related Proof of Claim was Filed; or (c) at the addresses reflected in the Schedules relating to the applicable Allowed Claim if no Proof of Claim has been Filed and the Litigation Trustee has not received a written notice of a change of address.

10.2. Cash Payments. Except as otherwise provided in the Litigation Trust Agreement or the Confirmation Order, Cash payments to be made pursuant to the Plan shall be made by checks drawn on a domestic bank or by wire transfer from a domestic bank, at the option of the Litigation Trustee.

10.3. Interest on Claims. Post-petition interest shall not accrue or be paid on Claims, and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim. Interest shall not accrue or be paid upon any Disputed Claim in respect of the period from the Petition Date to the date a Final Distribution is made thereon if and after such Disputed Claim becomes an Allowed Claim. To the extent that any Allowed Claim entitled to a distribution under the Plan is composed of indebtedness and accrued but unpaid interest thereon, such distribution shall, to the extent permitted by applicable law, be allocated for federal income tax purposes to the principal amount of the Allowed Claim first and then, to the extent the consideration exceeds the principal amount of the Allowed Claim, to the portion of such Allowed Claim representing accrued but unpaid interest.

10.4. No *De Minimis* Distributions. Other than in the Final Distribution, no payment of Cash in an amount of less than \$250.00 shall be required to be made on account of any Allowed Claim or Interest.

10.5. Face Amount. Unless otherwise expressly set forth herein with respect to a specific Claim or Class of Claims, for the purpose of the provisions of this Article, the “Face Amount” of a Disputed Claim means the amount set forth on the Proof of Claim, unless no Proof of Claim has been timely Filed or deemed Filed, in which case the Face Amount shall be zero.

10.6. Undeliverable Distributions. If the distribution check to any Holder of an Allowed Claim is not cashed within ninety (90) days after issuance by the Litigation Trustee, a stop payment order shall be given with respect to the check and no further distributions shall be made to such holder on account of such Allowed Claim. Such Allowed Claim or Interest shall be discharged and the holder of such Allowed Claim shall be forever barred from asserting such Claim against the Litigation Trust, the Litigation Trustee, the Debtors, their Estates or their respective property. In such cases, any Cash held for distribution on account of such Claim shall remain

property of the Litigation Trust and be distributed to other Creditors in accordance with the terms of this Plan and the Litigation Trust Agreement.

10.7. Interim Distributions. Unless otherwise provided in the Plan, the Litigation Trustee in his discretion may make periodic distributions to the beneficiaries entitled thereto in accordance with the Litigation Trust Agreement.

10.8. Final Distribution. The Litigation Trustee shall make a final distribution in accordance with the Litigation Trust Agreement.

10.9. Disputed Claims Reserves. The Litigation Trustee shall establish reserves for Disputed Claims in accordance with the terms of the Litigation Trust Agreement.

10.10. Compliance with Tax Requirements. In connection with the Plan and the distributions made in accordance thereto, to the extent applicable, the Litigation Trust shall comply with all tax withholding and reporting requirements imposed by any governmental unit, if any, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. The Litigation Trustee shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements. If any Holder of an Allowed Claim fails to provide the Litigation Trustee with information reasonably requested by the Litigation Trustee for purposes of withholding and reporting requirements, the Litigation Trustee may elect to treat such Holder's distribution as an Undeliverable Distribution in accordance with 9.6 hereof.

ARTICLE 11 **CONDITIONS PRECEDENT**

11.1. Conditions to Confirmation. As a condition to entry of the Confirmation Order:

The Confirmation Order shall be in form and substance satisfactory to the Debtors, Committee, the Secured Parties and the Supporting Parties.

11.2. Conditions to the Effective Date. The Plan shall not become effective and the Effective Date shall not occur unless and until:

The Bankruptcy Court shall have entered the Confirmation Order in form and substance satisfactory to the Debtors, Secured Parties, the Committee and the Supporting Parties;

No stay of the Confirmation Order shall be in effect at the time the other conditions set forth in this Section 11.2 are satisfied, or, if permitted, waived; and

All documents, instruments and agreements, in form and substance satisfactory to Scott Avila (as the CRO for the Debtors), the Secured Parties, the Committee and the Supporting Parties provided for under this Plan or necessary to implement this Plan, including, without limitation, the Litigation Trust Agreement, shall have been executed and delivered by the parties thereto, unless such execution or delivery has been waived by the parties benefited thereby.

11.3. Termination of Plan for Failure to Become Effective. If the Effective Date shall not have occurred on or prior to the date that is forty-five (45) days after the Confirmation Date, then this Plan shall terminate and be of no further force or effect unless the provisions of this Section are waived in writing by the Debtors, Secured Parties, the Committee and the Supporting Parties.

11.4. Waiver of Conditions. The Debtors, Secured Parties, and/or the Committee may waive any or all of the conditions set forth in Sections 11.1 and/or 11.2 this Plan.

11.5. Notice of Effective Date. On the Effective Date, or as soon thereafter as is reasonably practicable, the Debtors shall file with the Bankruptcy Court a "Notice of Effective Date," which notice shall constitute appropriate and adequate notice that this Plan has become effective; *provided, however*, that the neither the Debtors nor the Litigation Trustee shall have any obligation to notify any Person of such fact. This Plan shall be deemed to be effective as of 12:01 a.m., prevailing Eastern time, on the Effective Date specified in such filing. A courtesy copy of the Notice of Effective Date may be sent by first class mail, postage prepaid (or at the Debtors' option, by courier or facsimile) to those Persons who have filed with the Bankruptcy Court requests for notices pursuant to Bankruptcy Rule 2002.

ARTICLE 12

EFFECT OF CONFIRMATION

12.1. Jurisdiction of Court. Pursuant to sections 105(a) and 1142 of the Bankruptcy Code, and notwithstanding entry of the Confirmation Order and occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases and this Plan to the fullest extent permitted by law, including among other things, jurisdiction over the subject matters set forth in Article 13 of this Plan.

12.2. Binding Effect. Except as otherwise provided in section 1141(d) of the Bankruptcy Code, on and after the Confirmation Date, the provisions of this Plan shall bind any holder of a Claim against or Interest in the Debtors and their respective successors and assigns, whether or not the Claim or Interest of such holder is Impaired under this Plan and whether or not such holder has accepted this Plan.

12.3. Exculpation. Except as otherwise specifically provided in this Plan, none of the Exculpated Parties shall have or incur, and all such parties are hereby released from, any Claim, obligation, cause of action or liability to one another or to any holder of a Claim or an Interest, or any other party in interest, for any act or omission in connection with, relating to, or arising out of, the Chapter 11 Cases, the negotiation and pursuit of confirmation of this Plan, the consummation of this Plan, or the administration of this Plan or the property to be distributed under this Plan, except for (i) professional liability claims, and (ii) their fraud, gross negligence or willful misconduct, and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities (if any) under this Plan.

Notwithstanding any other provision of the Plan, neither any holder of a Claim or Interest, or other party in interest, shall have any right of action against the Exculpated Parties for any act or omission in connection with, relating to, or arising out of, the Chapter 11 Cases, the negotiation

and pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for such Persons' fraud, gross negligence or willful misconduct.

12.4. Injunction; Bar Order. Except as otherwise specifically provided in this Plan or the Confirmation Order, all Entities who have held, hold or may hold Claims, rights, causes of action, liabilities or any Interests based upon any act or omission, transaction or other activity of any kind or nature related to the Debtors or the Chapter 11 Cases that occurred prior to the Effective Date, other than as expressly provided in this Plan or the Confirmation Order, regardless of the filing, lack of filing, allowance or disallowance of such a Claim, Interest or any other right or claim against the Estates, the Litigation Trust or the Trust Assets, and regardless of whether such Entity has voted to accept this Plan, and any successors, assigns or representatives of such Entities shall be precluded and permanently enjoined on and after the Effective Date from (a) the commencement or continuation in any manner of any claim, action or other proceeding of any kind with respect to any Claim, Interest or any other right or claim against the Estates, the Litigation Trust or the Trust Assets, which it possessed or may possess prior to the Effective Date, (b) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or order with respect to any Claim, Interest or any other right or claim against the Debtors, their estates, the Litigation Trust or the Trust Assets, which such Entity possessed or may possess prior to the Effective Date, (c) the creation, perfection or enforcement of any encumbrance of any kind with respect to any Claim, Interest or any other right or claim against the Estates, the Litigation Trust or the Trust Assets, which it possessed or may possess prior to the Effective Date, and (d) the assertion of any Claims that are released, exculpated, settled or otherwise discharged hereby.

12.5. RTMM Injunction.

In addition to the foregoing, except as otherwise specifically provided in this Plan or the Confirmation Order, all Entities who have held, hold, or may hold Claims, rights, causes of action, liabilities, or any interests based on any act or omission, transaction or other activity of any kind or nature related to RTMM or any officer, director, or employee thereof in their respective capacities as such shall be precluded and permanently enjoined on and after the Effective Date from (a) the commencement or continuation in any manner of any claim, action, or other proceeding of any kind under any law other than the Bankruptcy Code, including without limitation (i) the Mexican Political Constitution of the United Mexican States, (ii) the Mexican Criminal Code for Mexico City, and (iii) Private Aid Entities for the Federal District Act (collectively, "Mexican Laws") with respect to any Claim, Interest or any other right or claim against RTMM which is possessed or may possess prior to the Effective Date, (b) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or other with respect to any Claim, Interest or any other right or claim against RTMM under any law other than the Bankruptcy Code, including without limitation the Mexican Laws, which such entity possessed or may possess prior to the Effective Date, (c) the creation, perfection or enforcement of any encumbrances of any kind with respect to any Claim, Interest or any other right or claim against RTMM under any law other than the Bankruptcy Code, including without limitation the Mexican Laws, which it possessed or may possess prior to the Effective Date, and (d) the assertion of

any Claims under any law other than the Bankruptcy Code, including without limitation the Mexican Laws that are released, exculpated, settled or otherwise discharged hereby.

12.6. Secured Party Release.

(a) Effective as of the Effective Date, the Releasors and the Supporting Parties shall be deemed to provide a full release to the Secured Party Releasees and their respective property from any and all claims, causes of action and any other debts, obligations, rights, suits, damages, actions, derivative claims, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing as of the Effective Date, in law, at equity, or otherwise, whether for tort, contract, or otherwise, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstances existing or taking place prior to or on the Effective Date, in each case arising from or related in any way to the Debtors, the Chapter 11 Cases, the Debtors' liquidation, any postpetition financing, any sale of the Debtors' interests in property, the Plan or the subject matter of, or the transactions or events giving rise to, any Claim that is treated in the Plan, including those that the Debtors would have been legally entitled to assert or that any Holder of a Claim against or Interest in the Debtors or any other entity could have been legally entitled to assert derivatively or on behalf of the Debtors or their estates, other than claims or causes of action arising out of or related to any act or omission of a Secured Party Releasee that constitutes fraud, gross negligence, or willful misconduct. For the avoidance of doubt, the foregoing shall not limit recourse to the Ownership Reserve pursuant to this Plan and the Ownership Procedures Order. Notwithstanding the foregoing, to the extent that a Holder of a Title Property Claim establishes pursuant to a Final Order (1) that it has a valid Title Property Claim to Title Property which has been transferred to a Secured Party Releasee and (2) that it has a right under applicable law to recover such Title Property from such Secured Party Releasee, such Holder shall not be able to recover on account of such Title Property from the Secured Party Releasee directly and instead shall recover on account of such Title Property Claim from the Ownership Reserve, provided that nothing in this Plan creates or modifies any right or remedy concerning the foregoing clauses (1) and (2) and all parties reserve all rights and defenses with respect thereto.

(b) 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 11.5, which includes by reference each of the related provisions and definitions contained in the Plan, and, further, shall constitute the Bankruptcy Court's finding that such releases are: (1) in exchange for the good and valuable consideration and substantial contributions provided by the Secured Party Releasees; (2) a good faith settlement and compromise of the claims released by such releases; (3) in the best interests of the Debtors and all holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any of the Releasors asserting any claim released pursuant to such releases.

12.7. Cancellation and Release of Existing Indebtedness and Liens. Except as may otherwise be provided in this Plan, on the Effective Date, all credit agreements, promissory notes, mortgages, security agreements, guaranties, invoices, contracts, agreements, and any other documents or instruments evidencing Claims against the Debtors, together with any and all Liens

securing same, shall be cancelled, discharged, and released without further act or action by any Person under any applicable agreement, law, regulation, order, or rule, and the obligations of the Debtors thereunder shall be deemed cancelled, discharged, and released. To the extent deemed necessary or advisable by the Litigation Trustee, any holder of a Claim shall promptly provide the Litigation Trustee with an appropriate instrument of cancellation, discharge, or release, as the case may be, in suitable form for recording wherever necessary to evidence such cancellation, discharge, or release, including the cancellation, discharge, or release of any Lien securing such Claim.

IRS CIRCULAR 230 NOTICE. TO COMPLY WITH INTERNAL REVENUE SERVICE CIRCULAR 230, TAXPAYERS ARE HEREBY NOTIFIED THAT (A) ANY DISCUSSION OF U.S. FEDERAL TAX ISSUES CONTAINED OR REFERRED TO IN THIS PLAN (INCLUDING ANY EXHIBITS OR ATTACHMENTS) IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY ANY TAXPAYER FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON A TAXPAYER UNDER THE INTERNAL REVENUE CODE, (B) ANY DISCUSSION OF U.S. FEDERAL TAX ISSUES IS WRITTEN IN CONNECTION WITH THE SOLICITATION OF VOTES ON THIS PLAN AND (C) TAXPAYERS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

ARTICLE 13
RETENTION OF JURISDICTION

13.1. Ongoing Bankruptcy Court Jurisdiction. Notwithstanding the entry of the Confirmation Order, the occurrence of the Effective Date and the transfer of the Assets to the Litigation Trust, the Bankruptcy Court shall retain jurisdiction over the Chapter 11 Cases after the Effective Date to the fullest extent legally permissible, including but not limited to jurisdiction to, among other things:

- a) Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of, or subordinate for any purposes pursuant to section 510 of the Bankruptcy Code, any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the allowance or priority of all Claims and Interests;
- b) Hear and determine any and all causes of action and rights of the Debtors that arose before or after the Petition Date that are expressly preserved pursuant to, among other things, section 1123(b)(3) of the Bankruptcy Code, are yet to be liquidated and are preserved for prosecution by the Litigation Trustee or other appropriate party in interest, including any designee or successor, against any Person whatsoever, on account of any and all Litigation Claims defined in Section 1.52 herein (including, but not limited to, all avoidance powers granted to the Debtors under the Bankruptcy Code and all causes of action and remedies granted pursuant to sections 502, 506, 510, 541, 542, 543, 544, 545, 547 through 551 and 553 of the Bankruptcy Code, and all non-avoidance actions owned by the Debtors' Estates including, but not limited to, claims of tort, breach of contract and claims lying in

law or in equity, whether based in common law, Florida state law, another state's law, Federal law or otherwise);

- c) Hear and determine litigation or settlement regarding Title Property Claims pursuant to the Uniform Procedures Order and approve distributions from, and resolve any matters relating to, the Ownership Reserve;
- d) Grant or deny any applications for allowance of compensation for Professionals authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date;
- e) Resolve any matters relating to the assumption, assumption and assignment or rejection of any executory contract to which either Debtor is a party or with respect to which the Debtors may be liable, including without limitation the determination of whether such contract is executory for the purposes of section 365 of the Bankruptcy Code, and hear, determine and, if necessary, liquidate any Claims arising therefrom;
- f) Ensure that distributions to holders of Allowed Claims and Interests are accomplished pursuant to the provisions of this Plan and the Litigation Trust Agreement;
- g) Decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and grant or deny any applications involving the Debtors that may be pending in the Chapter 11 Cases on the Effective Date;
- h) Hear and determine matters concerning state, local or federal taxes in accordance with sections 346, 505 or 1146 of the Bankruptcy Code;
- i) Consider any motion brought under or in connection with Bankruptcy Rule 2004;
- j) Enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Litigation Trust Agreement, this Plan and the Confirmation Order;
- k) Hear and determine any applications by the Litigation Trustee to retain one or more professionals to assist the Litigation Trustee in carrying out his duties and obligations under the Litigation Trust Agreement;
- l) Resolve any disputes relating to monthly fee invoices for allowance of compensation submitted by the Litigation Trustee or his professionals;
- m) Hear and determine any matters concerning the enforcement of the provisions of Article 11 of this Plan and any other exculpations, limitations of liability or injunctions contemplated by this Plan;

- n) Resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation or enforcement of the Litigation Trust Agreements, this Plan or the Confirmation Order;
- o) Permit the Litigation Trustee to the extent authorized pursuant to section 1127 of the Bankruptcy Code, to modify this Plan or any agreement or document created in connection with this Plan or remedy any defect or omission or reconcile any inconsistency in this Plan or any agreement or document created in connection with this Plan;
- p) Issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any entity with consummation, implementation or enforcement of the Litigation Trust Agreement, this Plan or the Confirmation Order;
- q) Enforce any injunctions entered in connection with Chapter 11 Cases, or relating to this Plan or the Confirmation Order;
- r) Enter and enforce such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated, or distributions pursuant to the Litigation Trust Agreement or this Plan are enjoined or stayed;
- s) Determine any other matters that may arise in connection with or relating to this Plan or any agreement or the Confirmation Order;
- t) Order the complete or partial substantive consolidation of any non-Debtor Entity with or into the Litigation Trust *nunc pro tunc* to the Petition Date or otherwise;
- u) Enter any orders in aid or in extension of prior orders of the Bankruptcy Court;
- v) Enter a final decree closing the Chapter 11 Cases; and
- w) Consider any motion brought under or in connection with Bankruptcy Rule 2004.

ARTICLE 14

ACCEPTANCE OR REJECTION OF THE PLAN

14.1. Persons Entitled to Vote. Classes 1 and 2 are Unimpaired and therefore votes of such Classes will not be solicited. Classes 3, 4, and 5 are Impaired and votes of Classes 3, 4 and 5 will be solicited.

14.2. Acceptance by Impaired Classes. An Impaired Class of Claims shall have accepted the Plan if (i) the holders (other than any holder designated under section 1126(e) of the Bankruptcy Code) of at least two-thirds in amount of the Allowed Claims actually voting in such Class have voted to accept the Plan and (ii) the holders (other than any holder designated under section 1126(e) of the Bankruptcy Code) of at least one-half in number of the Allowed Claims actually voting in such Class have voted to accept the Plan.

14.3. Acceptance by Impaired Interests. An Impaired Class of Interests shall have accepted the Plan if the holders (other than any holder designated under section 1126(e) of the Bankruptcy Code) of at least two-thirds in amount of the Allowed Interests actually voting in such Class have voted to accept the Plan.

14.4. Presumed Acceptances by Unimpaired Classes. Classes 1 and 2 are Unimpaired by the Plan. Under section 1126(f) of the Bankruptcy Code, such Claim holders are conclusively presumed to accept the Plan, and the votes of such Claim holders will not be solicited.

14.5. Summary of Classes Voting on the Plan. As a result of the provisions of Section Article 5 of this Plan, the votes of holders of Claims in Classes 3, 4, and 5 will be solicited with respect to this Plan.

14.6. Impaired Classes. Classes 3, 4, and 5 are impaired and votes of holders of Claims in Classes 3, 4, and 5 will be solicited with respect to this Plan.

ARTICLE 15

MISCELLANEOUS PROVISIONS

15.1. Modification of Plan. Subject to the restrictions on Plan modifications set forth in section 1127 of the Bankruptcy Code, the Debtors reserve the right to alter, amend or modify this Plan before its substantial consummation.

15.2. GUC Sharing Formula. In the event the GUC Sharing Formula is not approved for any reason, the Debtors reserve the right to strike all references to the GUC Sharing Formula from the Amended Plan and immediately seek confirmation of the Amended Plan with that modification.

15.3. Revocation of the Plan. The Debtors reserve the right to revoke or withdraw this Plan prior to the Confirmation Date. If the Debtors revoke or withdraw this Plan, or if Confirmation does not occur or if the Plan does not become effective, then this Plan shall be null and void, and nothing contained in this Plan or Disclosure Statement shall: (a) constitute a waiver or release of any Claims by or against, or any Interests in, the Debtors; (b) constitute an admission of any fact or legal conclusion by the Debtors or any other Entity; or (c) prejudice in any manner the rights of the Debtors in any further proceedings involving the Debtors.

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

15.5. No Admissions. If Confirmation or the Effective Date does not occur, nothing contained in this Plan or Disclosure Statement shall be deemed as an admission by the Debtors or any other party with respect to any matter set forth therein or herein including, without limitation, liability on any Claim or the propriety of any Claims classification. If the Effective Date does not

occur within thirty (30) days following entry of the Confirmation Order, this Plan will be null and void and of no further effect.

15.6. Severability of Plan Provisions. If prior to Confirmation any term or provision of this Plan that does not govern the treatment of Claims or Interests is held by the Bankruptcy Court to be invalid, void or unenforceable, at the request of the Debtors, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

15.7. Successors and Assigns. The rights, benefits and obligations of any Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such Entity.

15.8. Preservation of Rights of Setoffs. The Litigation Trustee may, but shall not be required to, set off against any Claim against the Debtors, and the payments or other distributions to be made pursuant to this Plan in respect of such Claim, claims of any nature whatsoever that the Debtors may have against the holder of such Claims; but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors of any such claim that the Debtors may have against such holder.

15.9. Preservation of Rights And Defenses. Except to the extent such rights, Claims, causes of action, defenses, and counterclaims are expressly and specifically released in connection with this Plan or in any settlement agreement approved during the Chapter 11 Cases, (i) any and all rights, Claims, causes of action, defenses, and counterclaims accruing to the Debtors or the Estates (including, without limitation, any and all Litigation Claims) shall remain assets of and vest in the Litigation Trust, whether or not litigation relating thereto is pending on the Effective Date and whether or not any such rights, Claims, causes of action, defenses, and counterclaims have been listed in the Schedules or otherwise listed or referred to in this Plan, the Disclosure Statement, or any other document filed with the Bankruptcy Court, and (ii) neither the Debtors, nor the Estates, nor the Litigation Trustee waive, relinquish, or abandon (nor shall they be estopped or otherwise precluded from asserting) any right, Claim, cause of action, defense, or counterclaim that constitutes property of the Estates, (a) whether or not such right, Claim, cause of action, defense or counterclaim has been listed or referred to in the Schedules, this Plan, the Disclosure Statement, 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 Debtors, or the Estates, or the Litigation Trustee, 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 Chapter 11 Cases, filed a notice of appearance or any other pleading or notice in the Chapter 11 Cases, voted for or against this Plan, or received or retained any consideration under this Plan. Without in any manner limiting the scope of the foregoing, notwithstanding any otherwise applicable principle of law or

equity, including, without limitation, any principles of judicial estoppel, res judicata, collateral estoppel, issue preclusion, or any similar doctrine, the failure to list, disclose, describe, identify, or refer to a right, Claim, cause of action, defense, or counterclaim, or potential right, Claim, cause of action, defense, or counterclaim in the Schedules, this Plan, the Disclosure Statement, or any other document filed with the Bankruptcy Court, shall in no manner waive, eliminate, modify, release, or alter the Litigation Trustee's right to commence, prosecute, defend against, settle, and realize upon any rights, Claims, causes of action, defenses, or counterclaims that the Debtors, the Estates, or the Litigation Trust have or may have as of the Confirmation Date. The Litigation Trustee may commence, prosecute, defend against, recover on account of, and settle all rights, Claims, causes of action, defenses, and counterclaims in its sole discretion in accordance with what is in the best interests, and for the benefit, of the Litigation Trust, including through use of Federal Rule of Bankruptcy Procedure 2004. The Litigation Trustee's right to recover against former directors and/or officers of the Debtors shall not be limited to the proceeds of the D&O Policies.

15.10. No Injunctive Relief. Except as otherwise provided in this Plan or Confirmation Order, no Claim or Interest shall under any circumstances be entitled to specific performance or other injunctive, equitable, or other prospective relief.

15.11. Non-Business Day. If any payment or act under this 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.

15.12. Entire Agreement. This Plan (together with the Litigation Trust Agreement) sets forth the entire agreement and undertaking relating to the subject matter hereof and supersedes all prior discussions and documents. The Debtors' Estates shall not be bound by any terms, conditions, definitions, warranties, understandings, or representations with respect to the subject matter hereof, other than as expressly provided for herein.

15.13. Notices. Any notice required or permitted to be provided under this Plan shall be in writing and served by either (a) certified mail, return receipt requested, postage prepaid, (b) hand delivery, or (c) reputable overnight delivery service, freight prepaid, to be addressed as follows:

To the Debtors:

Scott Avila
c/o Akerman LLP
Andrea S. Hartley, Esq.
John E. Mitchell, Esq.
Katherine C. Fackler, Esq.
98 Southeast Seventh Street, Suite 1100
Miami, FL 3313

To the Litigation Trustee:

c/o Cooley LLP
Seth Van Aalten Esq.
Robert Winning, Esq.
1114 Avenue of the Americas
New York, NY 10036

Dated: October [], 2019

MIAMI METALS I, INC.

By: Scott Avila
Title: Chief Restructuring Officer

Dated: October [], 2019

MIAMI METALS II, INC.

By: Scott Avila
Title: Chief Restructuring Officer

Dated: October [], 2019

MIAMI METALS III LLC

By: Scott Avila
Title: Chief Restructuring Officer

Dated: October [], 2019

MIAMI METALS IV LLC

By: Scott Avila
Title: Chief Restructuring Officer

Dated: October [], 2019

MIAMI METALS V LLC

By: Scott Avila
Title: Chief Restructuring Officer

Dated: October [], 2019

MIAMI METALS VI LLC

By: Scott Avila
Title: Chief Restructuring Officer

Dated: October [], 2019

MIAMI METALS VII LLC

By: Scott Avila
Title: Chief Restructuring Officer

Dated: October [], 2019

MIAMI METALS VIII LLC

By: Scott Avila
Title: Chief Restructuring Officer

Dated: October [], 2019

REPUBLIC METALS TRADING
(SHANGHAI) CO., LTD.

By: Scott Avila
Title: Chief Restructuring Officer

Dated: October [], 2019

REPUBLIC TRANS MEXICO METALS,
S.R.L.

By: Scott Avila
Title: Chief Restructuring Officer

EXHIBIT B

LITIGATION TRUST AGREEMENT

This Litigation Trust Agreement (the “**Litigation Trust Agreement**” or this “**Agreement**”), dated as of January 2, 2019 the “**Effective Date**”), by and among the Debtors (as defined below), Donna H. Lieberman, in her capacity as the trustee (the “**Original Trustee**”) of the Miami Metals Litigation Trust, and the Committee (as defined herein) is executed in order to establish a litigation trust (the “**Litigation Trust**”) in connection with the *Second Amended Joint Chapter 11 Plan of Liquidation of Debtors* (as amended, the “**Plan**”) [ECF No. 1491-2]. The “Debtors” as used herein shall mean the U.S. debtors in the chapter 11 cases (the “**Chapter 11 Cases**”) pending in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”) that are jointly administered as *In re Miami Metals I, Inc. (f/k/a Republic Metals Refining Corporation), et al.*, Case No. 18-13359-(SHL). The “Debtors” are Miami Metals I, Inc. (f/k/a Republic Metals Refining Corporation); Miami Metals II, Inc. (f/k/a Republic Metals Corporation); Miami Metals III LLC (f/k/a Republic Carbon Company); Miami Metals IV LLC (f/k/a J & L Republic LLC); Miami Metals V LLC (f/k/a R & R Metals, LLC); Miami Metals VI (f/k/a RMC Diamonds, LLC); Miami Metals VII (f/k/a RMC2, LLC); Miami Metals VIII (f/k/a Republic High Tech Metals, LLC). Capitalized terms used in this Litigation Trust Agreement and not otherwise defined shall have the meanings ascribed to them in the Plan.

WITNESSETH

WHEREAS, on November 2, 2018, Miami Metals I, II, and III filed petitions for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the Bankruptcy Court, and on November 21, 2018, Miami Metals IV, V, VI, VII, and VIII filed voluntary petitions for relief under the Bankruptcy Code in the Bankruptcy Court;

WHEREAS, on November 19, 2019, the United States Trustee for the Southern District of New York appointed an official committee of unsecured creditors (the “**Committee**”) in the Chapter 11 Cases;

WHEREAS, on October 10, 2019, the Bankruptcy Court entered the Final Cash Collateral Order [ECF No. 1487] and the Order Authorizing Debtors’ Entry Into and Performance Under Plan Support Agreement [ECF No. 1488];

WHEREAS, on or about October 10, 2019, the Debtors funded the Ownership Reserve and Estate Litigation Fund into segregated accounts in accordance with the terms of the Final Cash Collateral Order;

WHEREAS, on October 11, 2019, the Debtors filed the Plan;

WHEREAS, on November 9, 2019, the Debtors filed the Plan Supplement [ECF No. 1555];

WHEREAS, on [●, 2019], the Bankruptcy Court entered an order confirming the Plan [ECF No. ●] (the “**Confirmation Order**”);

WHEREAS, pursuant to the Confirmation Order, the Ownership Reserve shall not be and shall not be deemed to be a Trust Asset and the Trust Beneficiaries, in their capacity as

such, shall have no interest in the Ownership Reserve; the Ownership Reserve shall be subject to the procedures set forth the Confirmation Order and such other applicable documents as expressly provided therein;

WHEREAS, on January 2, 2019, the conditions for effectiveness of the Plan were satisfied and the Effective Date occurred;

WHEREAS, under the terms of the Plan, on the Effective Date, certain assets and other property of the Debtors will be transferred to and held by the Litigation Trust created by this Litigation Trust Agreement so that, among other things: (i) the Trust Assets can be pursued and/or disposed of in an orderly and expeditious manner; (ii) objections to Claims can be pursued and/or resolved by the Litigation Trust; and (iii) distributions can be made in accordance with the Plan and this Agreement;

WHEREAS, the Litigation Trust is organized for the purpose of liquidating certain Trust Assets in an expeditious but orderly manner for the benefit of the holders of Allowed 503(b)(9) Claims and Allowed General Unsecured Claims (it being understood that Allowed General Unsecured Claims shall include the Allowed deficiency Claims of the Secured Parties) (together, the "**Litigation Trust Beneficiaries**") pursuant to the Plan, including the investigation and prosecution of the Retained Causes of Action and Assigned Claims, to resolve Claims, and to wind-down the estates of the Debtors, with no objective to continue or engage in the conduct of a trade or business, except, to the extent reasonably necessary to effectuate, and consistent with, the liquidating purpose of the Litigation Trust;

WHEREAS, the Litigation Trust is intended to be classified for U.S. federal income tax purposes as a "liquidating trust" within the meaning of Treasury Regulation Section 301.7701-4(d) and thus as a "grantor trust" within the meaning of Sections 671 through 677 of the Internal Revenue Code of 1986, as amended (the "**IRC**"), with the Litigation Trust Beneficiaries treated for U.S. federal income tax purposes as the grantors and owners of their respective shares of the Trust Assets other than with respect to (i) any assets for which the Litigation Trustee is serving as a distribution agent on behalf of the Debtors pursuant to the Plan or (ii) any assets that are allocable to, or retained on account of, an IRC Disputed Ownership Fund (as defined herein); and

NOW, THEREFORE, in consideration of the promises and mutual covenants and agreements contained in this Litigation Trust Agreement and in the Plan, the Debtors, the Committee, and the Litigation Trustee:

ARTICLE 1

ESTABLISHMENT OF LITIGATION TRUST

1.1 Establishment of Litigation Trust; Appointment of Original Trustee and Oversight Committee.

(a) Pursuant to the Plan, the Debtors hereby establish a trust which shall be known as the "Miami Metals Litigation Trust" on behalf of the Litigation Trust Beneficiaries in accordance with the Litigation Trust Agreement and the Plan.

(b) The Original Trustee is hereby appointed as trustee of the Litigation Trust and agrees to accept and hold the Trust Assets subject to the terms of this Litigation Trust Agreement, the Plan, and the Confirmation Order. The Original Trustee and any successor trustee serving from time to time duly appointed hereunder (the “**Litigation Trustee**”) shall have all the rights, powers, and duties set forth herein.

(c) An oversight committee (the “**Oversight Committee**”) is hereby appointed to oversee the Litigation Trust and the activities of the Litigation Trustee. The initial members of the Oversight Committee are identified in **Exhibit A** attached hereto.

1.2 Transfer of Assets and Rights to Litigation Trustee.

(a) To the extent provided in the Plan, all of the Debtors’ right, title and interest in and to the Trust Assets are automatically vested in the Litigation Trust on the Effective Date, free and clear of all Liens, charges, Claims, encumbrances, and interests, in accordance with Section 1141 of the Bankruptcy Code, except as explicitly provided in this Agreement, the Plan or the Confirmation Order.

(b) Pursuant to the Plan, on the Effective Date, the Debtors shall assign, and shall be deemed to have assigned, the Retained Causes of Action to the Litigation Trust and the Secured Parties shall assign, and shall be deemed to have assigned, without any recourse, representation or warranty, express or implied, of any type, kind, character or nature, the Assigned Claims and the Assigned Proceeds of Auditor Claims to the Litigation Trust.

(c) The Litigation Trustee shall be the exclusive administrator of the Trust Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representatives of the Estate of each of the Debtors appointed pursuant to Section 1123(b)(3)(B) of the Bankruptcy Code, solely for purposes of carrying out the Litigation Trustee’s duties under the Litigation Trust Agreement. On the Effective Date, the Litigation Trust shall stand in the shoes of (i) the Debtors for all purposes with respect to the Trust Assets (other than with respect to the Assigned Claims), and (ii) the Secured Parties, solely with respect to the Assigned Claims.

(d) To the extent any Trust Assets cannot be transferred to the Litigation Trust because of a restriction on transferability under applicable non-bankruptcy law that is not superseded or preempted by Section 1123 of the Bankruptcy Code or any other provision of the Bankruptcy Code, such Trust Assets shall be deemed to have been retained by the Debtors and the Litigation Trustee shall be deemed to have been designated as a representative of the Debtors pursuant to Section 1123(b)(3)(B) of the Bankruptcy Code to enforce and pursue such Trust Assets on behalf of the Debtors’ estates.

(e) The transfer of the Trust Assets shall be exempt from any stamp, real estate transfer, mortgage reporting, sales, use, or other tax, pursuant to Section 1146(a) of the Bankruptcy Code.

1.3 Title to Trust Assets.

Transfer of the Trust Assets to the Litigation Trust shall be made for the benefit of the Litigation Trust Beneficiaries to the extent provided herein and under the Plan, including, *inter*

alia, the limitations set forth herein and in the Plan, Confirmation Order and related documents concerning: (i) the Secured Party Litigation Recovery Right, (ii) Priority Reserves and (iii) assets held in or distributed from an IRC Disputed Ownership Fund (as defined herein). Upon the transfer of the Trust Assets, the Litigation Trust shall succeed to all of the right, title, and interest of the Debtors in and to the Trust Assets and the Debtors shall not have any further interest in or with respect to the Trust Assets or the Litigation Trust, whether direct, residual, contingent or otherwise. In no event shall any part of the Trust Assets revert to or be distributed to any of the Debtors. Upon the transfer of the Assigned Claims and the Assigned Proceeds of Auditor Claims, the Litigation Trust shall succeed to all of the right, title, and interest of the Secured Parties in such assets and the proceeds thereof, and the Secured Parties shall not have any further interest in or with respect to such assets, whether direct, residual, contingent or otherwise except for the Secured Party Litigation Recovery Right and subject to Section 12.12. In no event shall any part of the Assigned Claims and the Assigned Proceeds of Auditor Claims revert to or be distributed to any of the Secured Parties (provided that the Litigation Trustee may, in her sole discretion, further alienate the Assigned Claims to any party, including a Secured Party).

1.4 Nature and Purpose of Litigation Trust.

(a) Purpose. The purposes of the Litigation Trust are to hold and effectuate an orderly disposition of the Trust Assets, to resolve Claims and prosecute Retained Causes of Action and Assigned Claims, to attend to matters concerning the Auditor/Lender Claims pursuant to Section 8.5 of the Plan, to distribute or pay over the Trust Assets, or proceeds thereof, in accordance with this Agreement and the Plan, and to wind-down the Estates of the Debtors, with no objective or authority to engage in any trade or business.

(b) Actions of Litigation Trustee. Subject to Section 3.6 hereof, the Litigation Trustee shall, in an expeditious but orderly manner, liquidate and convert to cash the Trust Assets, make timely distributions in accordance with Article 6 of this Litigation Trust Agreement and the Plan, and not unduly prolong the duration of the Litigation Trust. The liquidation of the Trust Assets may be accomplished through the prosecution, compromise and settlement, abandonment, dismissal or assignment of any or all Claims, rights, or Causes of Action, or otherwise. As set forth in Article 8 herein, neither the Litigation Trustee nor the Oversight Committee nor its members shall have any liability for the outcome of any such decision except for any damages caused by, respectively, either willful misconduct, fraud, or knowing violation of law.

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

1.5 Reservation of Rights Regarding Retained Causes of Action and Assigned Claims.

No Entity may rely on the absence of a specific reference in the Plan or the Plan Supplement to any Retained Cause of Action or Assigned Claim against them as any indication that the Litigation Trust will not pursue any and all available Retained Causes of Action and Assigned Claims against them. The Litigation Trust expressly reserves all rights to prosecute any and all Retained Causes of Action and Assigned Claims against any Entity, except as otherwise provided in the Plan or an order of the Bankruptcy Court (including, without limitation, Paragraph G of the Final Cash Collateral Order). Unless a specific Retained Cause of Action or Assigned Claim against an Entity is expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or an order of the Bankruptcy Court, the Litigation Trust expressly reserves such Retained Cause of Action or Assigned Claim for later adjudication.

ARTICLE 2

LITIGATION TRUST INTERESTS

2.1 Beneficial Interests in the Trust Assets.

The allocation and distribution of beneficial interests in the Trust Assets shall be accomplished as set forth herein and in the Plan.

2.2 Interests Beneficial Only.

The ownership of a beneficial interest in the Trust Assets shall not entitle any such holder to any title in or right to, or possession, management or control of, Trust Assets (which title shall be vested in the Litigation Trust pursuant to Section 1.2 hereof) or to any right to call for a partition or division of the assets of the Litigation Trust or to require an accounting, except as expressly provided herein. The interest of a Litigation Trust Beneficiary in the Litigation Trust is in all respect personal property, and the death, insolvency, or incapacity of an individual Litigation Trust Beneficiary shall not terminate or affect the validity of this Litigation Trust Agreement. No surviving spouse, heir, or devisee of any deceased Litigation Trust Beneficiary shall have any right of dower, homestead, inheritance, partition or any other right, statutory or otherwise in the Trust Assets, and their sole interest shall be the rights and benefits given to the Litigation Trust Beneficiaries under this Litigation Trust Agreement.

2.3 No Right to Accounting.

None of the Litigation Trust Beneficiaries, their successors, assigns, or creditors, or any other Entity shall have any right to an accounting by the Litigation Trust or Litigation Trustee, and the Litigation Trustee shall not be obligated to provide any accounting to any Entity. Nothing in this Agreement is intended to require the Litigation Trustee at any time or for any purpose to file any accounting or seek approval of any court with respect to the administration of

the Litigation Trust or as a condition for making any advance, payment, or distribution out of the Trust Assets.

For the avoidance of doubt, the Litigation Trustee shall file with the Bankruptcy Court and serve on the U.S. Trustee quarterly post-confirmation financial reports for the Litigation Trust. The Litigation Trustee may, in her reasonable discretion, also respond to reasonable requests for information about the Litigation Trust from Litigation Trust Beneficiaries.

2.4 Limit on Transfers

(a) The interests of the Litigation Trust Beneficiaries in the Litigation Trust are not negotiable and not transferable except (i) pursuant to applicable laws of descent and distribution (in the case of a deceased individual Litigation Trust Beneficiary), (ii) by operation of law, and (iii) pursuant to paragraph (b) of this Section 2.4. Any such transfer or assignment by operation of law shall not be effective until appropriate notification and proof thereof (as determined by the Litigation Trustee) is submitted to the Litigation Trustee, and the Litigation Trustee may rely upon such proof without the requirement of any further investigation. The Litigation Trustee shall not be required to record any transfer which, in the Litigation Trustees' sole discretion, may be construed to create any uncertainty or ambiguity as to the identity of the holder of the interest in the Litigation Trust. Until a transfer is, in fact, recorded on the books and records maintained by the Litigation Trustees for the purpose of identifying Litigation Trust Beneficiaries, the Litigation Trustee, whether or not in receipt of documents of transfer or other documents relating to the transfer, may nevertheless make distributions and send communications as though he or she has no notice of any such transfer, and in so doing the Litigation Trustee shall be fully protected and incur no liability to any purported transferee or any other Entity. Neither the Litigation Trust nor the Litigation Trustee shall incur any liability from relying on the claims register (or information regarding reserves) previously maintained and provided by the Debtors to determine the interests of the Litigation Trust Beneficiaries in the Litigation Trust and the size of any reserve..

(b) The interests of any Secured Parties in the Litigation Trust may be assigned and transferred when such assignment and transfer is part of an assignment and transfer of all such Secured Parties' rights and obligations under the Final Cash Collateral Order, Plan, Confirmation Order, this Agreement, and all related agreements. Any such transfer shall not be effective unless and until appropriate notification and proof thereof (as determined by the Litigation Trustee) is submitted to the Litigation Trustee such transfer is acknowledged and accepted by the Litigation Trustee.

2.5 No Standing.

A Litigation Trust Beneficiary shall not have standing to direct or to seek to direct the Litigation Trust or Litigation Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any person upon or with respect to the Trust Assets.

2.6 Evidence of Beneficial Interest.

Ownership of an interest in the Trust Assets shall not be evidenced by any certificate, security, receipt, or in any other form or manner whatsoever, except as maintained on

the books and records of the Litigation Trust by the Litigation Trustee or an agent of the Litigation Trustee.

2.7 Securities Law Registration.

It is intended that the interests in the Trust Assets shall not constitute “securities” and none of the Litigation Trust Interests shall be certificated. If the Litigation Trustee determines, with the advice of counsel, that the Litigation Trust is required to comply with registration and reporting requirements of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), or the Investment Company Act of 1940, as amended (the “**Investment Company Act**”), then the Litigation Trustee shall take any and all actions to comply with such registration and reporting requirements, if any, and file periodic reports with the Securities and Exchange Commission (the “**SEC**”). Notwithstanding the foregoing procedure, nothing herein shall be deemed to preclude the Litigation Trustee from amending this Litigation Trust Agreement to make such changes as are deemed necessary or appropriate by the Litigation Trustee, with the advice of counsel, to ensure that the Litigation Trust is not subject to registration or reporting requirements of the Exchange Act, or the Investment Company Act.

ARTICLE 3

LITIGATION TRUSTEE

3.1 Funding and Payment of Litigation Trust Expenses.

(a) The Litigation Trustee shall maintain a reserve (the “**Litigation Trust Expense Fund**”) in an amount as is reasonably necessary to pay the costs and expenses incurred or expected to be incurred by the Litigation Trust and Litigation Trustee in connection with administering the Trust Assets and performing the duties set forth in this agreement, including, without limitation, paying the fees and expenses of the Litigation Trustee, and attorneys, advisors, and professionals retained by the Litigation Trust and/or Litigation Trustee (the “**Litigation Trust Expenses**”). The amounts held in the Litigation Trust Expense Fund shall be subject to periodic review by the Oversight Committee.

(b) The Litigation Trust Expense Fund shall be funded from (i) reserves funded with Cash Collateral in accordance with the Plan (or as otherwise agreed by the Litigation Trustee and the Secured Parties) for the payment of specific Litigation Trust Expenses, (ii) the Estate Litigation Fund, and (iii) Litigation Recoveries.

3.2 Distributions to Litigation Trust Beneficiaries.

The Litigation Trustee shall distribute the net distributable assets of the Litigation Trust to the Litigation Trust Beneficiaries in accordance with the provisions of Article 6 hereof and the Plan.

3.3 Tenure, Removal, and Replacement of Litigation Trustee.

(a) The Litigation Trustee shall serve until (i) resignation and the appointment of a successor pursuant to subsection (b) below, (ii) removal pursuant to subsection (c) below, or

(iii) death (in the case of a Litigation Trustee that is a natural Person) or dissolution (in the case of a Litigation Trustee that is not a natural Person).

(b) The Litigation Trustee may resign by giving not less than sixty (60) days' prior written notice to the members of the Oversight Committee. Such resignation shall become effective on the earlier to occur of: (i) the day specified in such notice and (ii) the appointment of a successor Litigation Trustee as provided herein and the acceptance by such successor of the appointment. If a successor Litigation Trustee is not appointed pursuant to this Agreement or does not accept the appointment within sixty (60) days following delivery of notice of resignation, the Oversight Committee may file a motion with the Bankruptcy Court, upon ten business days' notice, for the appointment of a successor Litigation Trustee.

(c) The Litigation Trustee may be removed for Cause (as defined in Section 4.8(c) hereof) by the affirmative vote of a majority of the members of the Oversight Committee, which votes may be obtained in writing or at a meeting called for the purpose of removing the Litigation Trustee. Such removal shall become effective on the date that notice of the Oversight Committee's vote to remove the Litigation Trustee is received by the Litigation Trustee.

(d) In the event of the death or dissolution (as applicable), resignation pursuant to Section 3.3(b) hereof, or removal of the Litigation Trustee pursuant to Section 3.3(c) hereof, the Oversight Committee may appoint a successor Litigation Trustee, subject to the requirement that any successor Litigation Trustee be a "United States person" within the meaning of Section 7701(a)(30) of the IRC. Such appointment shall specify the date on which such appointment shall be effective. In the event the Oversight Committee cannot agree on a replacement Litigation Trustee within sixty (60) days of the Litigation Trustee's death, dissolution, resignation, or removal, any member of the Oversight Committee may seek appointment of a replacement Litigation Trustee by motion, upon ten (10) business days' notice, before the Bankruptcy Court.

(e) Immediately upon the appointment of any successor Litigation Trustee, all rights, powers, duties, authority, and privileges of the predecessor Litigation Trustee under this Agreement and the Plan shall be vested in and undertaken by the successor Litigation Trustee without any further act. The successor Litigation Trustee shall not be responsible for any act or omission of the predecessor Litigation Trustee.

(f) The appointment of a successor Litigation Trustee will be evidenced by the filing with the Bankruptcy Court of a notice of appointment, which notice will include the name, address, and telephone number of the successor Litigation Trustee.

3.4 Acceptance of Appointment by Successor Litigation Trustee.

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

3.5 Role of the Litigation Trustee.

In furtherance of and consistent with the purpose of the Litigation Trust, the Litigation Trustee shall have the power to (i) prosecute, compromise and settle, abandon, assign, or dismiss all Claims, rights, and Causes of Action transferred to the Litigation Trust (whether such suits are brought in the name of the Litigation Trustee or otherwise), and (ii) otherwise perform the functions and take the actions provided or permitted in this Litigation Trust Agreement and the Plan, subject to the terms and conditions contained herein or therein, as applicable. In all circumstances, the Litigation Trustee shall act in the best interests of the Litigation Trust Beneficiaries and in furtherance of the purpose of the Litigation Trust.

3.6 Authority of Litigation Trustee.

Subject to any limitations contained in the Confirmation Order or this Agreement, including, but not limited to, the required Oversight Committee approvals set forth in Section 4.2 herein, the Litigation Trustee shall have the following powers and authorities on behalf of the Litigation Trust:

(a) hold legal title to any and all rights from the Trust Assets, including, without limitation, collecting and receiving any and all money and other property belonging to the Litigation Trust and the right to vote any claim or interest relating to a Trust Asset in a case under the Bankruptcy Code and receive any distribution thereon;

(b) hold, manage, sell, invest, and distribute (including, without limitation and where applicable, as a distribution agent) the Trust Assets as expressly set forth in the Plan and herein;

(c) segregate, hold, manage, administer, and distribute amounts in the 503(b)(9) Fund and Priority Reserves as expressly set forth in the Plan and herein;

(d) subject to Section 4.3, investigate, commence, prosecute, abandon, compromise or settle the Retained Causes of Action and Assigned Claims and enforce contracts or assert claims, defenses, offsets and privileges of the Debtors or, solely in the case of the Assigned Claims and subject to Section 11.12 hereof, the Secured Parties, as applicable; provided, however, that the settlement of any Retained Causes of Action or Assigned Claims where a stated face amount in controversy exceeds \$500,000 shall be subject to approval of the Bankruptcy Court, on motion and following notice and a hearing pursuant to Bankruptcy Rule 9019(a), it being agreed and understood that if such claims have a face amount of \$500,000 or less, the approval of the Bankruptcy Court shall not be necessary;

(e) subject to Section 4.3, investigate, object to (or otherwise seek to challenge, subordinate, or estimate), allow, compromise or settle any and all Claims against the Debtors without the need for Bankruptcy Court approval; *provided, however*, that the settlement of (i) any Claim where the stated face amount in controversy exceeds \$500,000 and (ii) any Title Property Claim shall be subject to approval of the Bankruptcy Court, on motion and following notice and a hearing pursuant to Bankruptcy Rule 9019(a), with the non-Litigation Trust party or parties to the Title Property Claim settlement and not the Litigation Trust being responsible for the filing of such motion with respect to any Title Property Claim settlement;

(f) fund, in the Litigation Trustee's sole discretion, an Advance to cover the costs and expenses of litigating the Auditor Lender Claims, and make additional Advances, in the Litigation Trustee's sole discretion, as set forth in Section 8.5 of the Plan, and to exercise such other rights set forth in Section 8.5 of the Plan; *provided, however*, that Advance(s) shall solely be made from the Estate Litigation Fund and any Litigation Recoveries;

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

(h) obtain reasonable insurance coverage with respect to the liabilities and obligations of the Litigation Trustee and the Oversight Committee under this Litigation Trust Agreement (in the form of an errors and omissions policy or otherwise), if the Litigation Trustee determines that such insurance coverage is appropriate;

(i) obtain insurance coverage with respect to real and personal property that may become assets of the Litigation Trust, if any, if the Litigation Trustee determines in good faith that such insurance coverage is appropriate;

(j) subject to Section 11.12 hereof, assert or waive any privilege or any defense on behalf of the Litigation Trust, the Debtors, and, solely with respect to the Assigned Claims, the Secured Parties, as applicable.

(k) establish and maintain one or more reserves for Disputed Claims in accordance with this Agreement or the Plan (the "**Disputed Claims Reserves**");

(l) for U.S. federal income tax purposes (and, to the extent permitted by law, for state and local income tax purposes), if the Litigation Trustee deems it appropriate, (i) make an election pursuant to United States Treasury Regulation section 1.468B-9 to treat any of the Disputed Claims Reserves or any other reserve of Trust Assets established by the Litigation Trustee as a "disputed ownership fund" within the meaning of that section (an "**IRC Disputed Ownership Fund**"), (ii) allocate taxable income or loss to any such IRC Disputed Ownership Fund with respect to any given taxable year, and (iii) distribute assets from the applicable IRC Disputed Ownership Fund as, when, and to the extent the ownership of the subject property has been determined in accordance with the Plan;

(m) open and maintain bank and other deposit accounts, escrows and other accounts necessary to administer the Trust Assets, calculate and implement distributions to the Litigation Trust Beneficiaries as provided for or contemplated by the Plan, and take other actions consistent with the Plan and the implementation thereof, including the establishment, re-evaluation, adjustment and maintenance of appropriate reserves (including, but not limited to, the Litigation Trust Expense Fund and the Disputed Claims Reserves);

(n) invest the Trust Assets in accordance with Section 3.13 hereof, incur obligations for reasonable and necessary expenses in liquidating and converting the Trust Assets to Cash, file appropriate tax returns and other reports on behalf of the Litigation Trust, and pay taxes and other obligations owed by the Litigation Trust (including, without limitation, paying taxes and other obligations incurred as a result of an IRC Disputed Ownership Fund out of the

assets comprising such IRC Disputed Ownership Fund); *provided, however*, that such actions are consistent with the Litigation Trust's status as a liquidating trust within the meaning of United States Treasury Regulation section 301.7701- 4(d).

(o) examine any Entity, pursuant to the provisions of the Federal Rules of Evidence, the Federal Rules of Bankruptcy Procedure, or any other applicable law or rule, including to issue subpoenas for documents and testimony in connection with the Trust Assets, including the Retained Causes of Action and Assigned Claims, under Bankruptcy Rule 2004;

(p) take or refrain from taking any and all other actions that the Litigation Trustee, reasonably deems necessary or convenient for the continuation, protection and maximization of the Trust Assets or to carry out the purposes hereof;

(q) in reliance upon the claims registers maintained in the Debtors' cases (which the Litigation Trustee shall have the absolute right to rely on as accurate) maintain appropriate books and records (including financial books and records) to govern the liquidation and distribution of the Trust Assets;

(r) pay fees incurred pursuant to 28 U.S.C. § 1930(a)(6) and to file with the Bankruptcy Court and serve on the U.S. Trustee quarterly post-confirmation financial reports for the Litigation Trust;

(s) with the approval of the Oversight Committee, obtain litigation financing on terms acceptable to the Litigation Trustee and take any actions necessary in connection with such litigation financing (including without limitation granting liens on Retained Causes of Action, Assigned Claims, Assigned Proceeds of Auditor Claims, or the proceeds of any of the foregoing other than the Secured Party Litigation Recovery Right);

(t) take such actions as are necessary or appropriate to close or dismiss all of the Debtors' cases;

(u) seek a final decree closing any or all of the Chapter 11 cases and when appropriate and to the extent practicable, cause one or more of the Debtors to be dissolved;

(v) dissolve the Litigation Trust in accordance with the terms of the Litigation Trust Agreement; and

(w) take all other actions consistent with the provisions of the Plan and this Agreement that the Litigation Trustee deems reasonably necessary or desirable with respect to implementing the Plan.

In addition to the foregoing, the Litigation Trustee is authorized to make decisions regarding the retention or engagement of professionals (including, without limitation, hourly or contingency counsel), employees and consultants by the Litigation Trust, in consultation with the Oversight Committee, to assist with the administration of the Litigation Trust, review and objection to Claims, maintenance of Trust Assets and investigation and prosecution of Retained Causes of Action and Assigned Claims, preparation of tax returns and other filings, and to pay the reasonable and documented fees and reimburse the reasonable and documented expenses of such

Entities for the charges incurred by the Litigation Trust or Litigation Trustee on or after the Effective Date, in each case without any supervision of, or approval by, the Bankruptcy Court or the United States Trustee; provided, that (i) the Oversight Committee's prior consent shall be required for the retention by the Litigation Trustee of any professional or advisor whose fees are reasonably expected to exceed \$100,000 in the aggregate or who is retained pursuant to a contingency fee agreement and (ii) the Litigation Trustee shall use his or her best efforts to ensure there is no unnecessary duplication of services among any of the professionals retained by the Litigation Trustee and/or the Litigation Trust. For the avoidance of doubt, the Litigation Trustee and/or Litigation Trust may retain professionals and advisors previously retained by the Debtors, the Committee, or any other party in interest in the Debtors' Chapter 11 Cases; *provided that* the retention of any such professionals or advisors shall be subject to any applicable state law rules governing professional conduct. The Litigation Trustee may delegate the performance of services and the fulfillment of responsibilities under this Trust Agreement to other persons reasonably acceptable to the Oversight Committee. Such persons shall be entitled to be compensated and reimbursed for out-of-pocket disbursements in the same manner as the Litigation Trustee.

3.7 Special Provisions Regarding Title Property Claims.

Notwithstanding anything in this Agreement to the contrary, the Litigation Trustee shall reasonably cooperate in the reconciliation, allowance, compromise or settlement, or other resolution of Title Property Claims; provided that Litigation Trustee shall not be required to reasonably cooperate where such cooperation would result in a material financial expenditure by the Litigation Trust absent mutual agreement among the Litigation Trustee and the party seeking such cooperation. The Litigation Trustee, in his or her sole discretion, may, but shall not be required to, affirmatively participate in any judicial proceeding involving Title Property Claims, *provided that* the Litigation Trustee shall not terminate or withdraw from any proceeding pending under the Uniform Procedures Order absent the prior written consent of the Secured Parties (it being acknowledged and understood that the Litigation Trustee may, in his or her sole discretion, act solely as a nominal party in any such proceeding). The foregoing shall not affect the Ownership Reserve, which shall be administered in accordance with the Plan, Confirmation Order, and such other orders as may be entered by the Bankruptcy Court concerning the Ownership Reserve. Nothing herein shall relieve any party to the Ownership Disputes from their obligations under the Uniform Procedures Order and the Federal Rules of Civil Procedure as applicable therein, including without limitation such parties' obligation to (i) comply with pending or future discovery requests in connection with the Ownership Disputes (as defined in the Uniform Procedures Order), and (ii) subject to further order of the Court, preserve and maintain documents; provided, however, that all parties' rights to object to any pending or future discovery requests on any and all grounds are preserved and reserved. For the avoidance of doubt, the Litigation Trust shall not be required to maintain live access to any data room established by the Debtors in connection with the Uniform Procedures Order.

3.8 Limitation of Litigation Trustee's Authority.

The Litigation Trustee shall, on behalf of the Litigation Trust, hold the Litigation Trust out as a trust in the process of liquidation and not as an investment company. Notwithstanding anything herein to the contrary, the Litigation Trustee shall not (i) be authorized to engage in any trade or business, (ii) take such actions inconsistent with the orderly liquidation

of the assets of the Litigation Trust as are required or contemplated by applicable law, the Plan, the Confirmation Order, and this Litigation Trust Agreement, or (iii) be authorized to engage in any investments or activities inconsistent with the treatment of the Litigation Trust as a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d) and in accordance with Rev. Proc. 94-45, 1994-2 C.B. 684.

3.9 Books and Records.

On the Effective Date, the Debtors shall transfer to the Litigation Trust and/or such representative of the Litigation Trust as the Litigation Trustee may designate in writing, all of the Debtors' books and records and all other documents, data, and communications related to (i) the Trust Assets and Claims and (ii) the Ownership Disputes and Title Property Claims, including those maintained in electronic format and original documents (collectively, the "**Subject Books and Records**"), it being understood that the Subject Books and Records shall include a complete claims register or registers. In addition, to the extent not prohibited by applicable law, the Debtors shall provide or cause to be provided to the Litigation Trustee a general, summary description of the Subject Books and Records that the Debtors are turning over to the Litigation Trustee, and any existing index thereof.

3.10 Inquiries into Litigation Trustee's Authority.

In the absence of actual knowledge to the contrary, no Entity dealing with the Litigation Trust or the Litigation Trustee shall be obligated to inquire into the authority of the Litigation Trustee in connection with the protection, conservation, or disposition of the Trust Assets and they shall be entitled to rely on the authority of the Litigation Trustee or any of the Litigation Trustee's agents to act in connection with the Trust Assets. There is no obligation on any Entity dealing the Litigation Trustee to inquire into the validity, expediency or propriety of any transaction by the Litigation Trustee or any agent of the Litigation Trustee.

3.11 Compensation of Litigation Trustee.

The Litigation Trustee shall be reimbursed for reasonable costs and expenses incurred in accordance with her duties and compensated in accordance with the compensation schedule attached hereto as **Exhibit B** (as may be amended from time to time, the "**Trustee Compensation Schedule**"). For the avoidance of doubt, the Trustee Compensation Schedule may be modified and amended by the affirmative vote of the Oversight Committee and agreement of the Litigation Trustee, as set forth in Section 4.3 herein.

3.12 Reliance by Litigation Trustee.

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

(b) The Litigation Trustee may absolutely and unconditionally presume that any other parties purporting to give any notice of instructions in writing has been duly authorized to do so, and may rely on such notice;

(c) The Litigation Trustee may consult with legal counsel, financial or accounting advisors, and other professionals to be selected by her and may rely, in good faith, on the advice thereof, and shall not be liable for any action taken or omitted to be taken in accordance with the advice thereof; and

(d) Entities dealing with the Litigation Trustee or Litigation Trust shall look only to the Trust Assets to satisfy any liability incurred by the Litigation Trust or the Litigation Trustee to such Entities in carrying out the terms of this Litigation Trust Agreement, and the Litigation Trustee shall not have any personal obligation to satisfy any such liability.

3.13 Investment and Safekeeping of Certain Trust Assets.

The Litigation Trustee may invest the Trust Assets, only in cash, cash equivalents, U.S. Treasury securities, money market investments, and similar investments; *provided, however*, that the scope of any such permissible investments shall be limited to include only those investments, or shall be expanded to include any additional investments, as the case may be, that a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d) may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the guidelines of the IRS, whether set forth in IRS rulings, other IRS pronouncements or otherwise.

ARTICLE 4

OVERSIGHT COMMITTEE

4.1 Oversight Committee.

There shall be an initial seven (7) member Oversight Committee. Upon appointment, the Oversight Committee and its members shall have the rights, powers, and duties described herein. In all circumstances, the members of the Oversight Committee shall act in the best interests of all the Litigation Trust Beneficiaries and in furtherance of the purpose of the Litigation Trust.

4.2 Authority of Oversight Committee.

The Oversight Committee shall have the authority and responsibility to oversee, review, and guide the activities and performance of the Litigation Trustee as set forth in Section 4.3 of this Litigation Trust Agreement. The Litigation Trustee shall consult with and provide information to the Oversight Committee in accordance with and pursuant to the terms of this Litigation Trust Agreement, the Plan, and the Confirmation Order.

4.3 Required Approval of Oversight Committee.

(a) Subject to section 4.3(b), the Litigation Trustee shall obtain the approval of a majority of the members of the Oversight Committee prior to taking any action regarding any of the following matters:

- (i) the abandonment of any non-Cash Trust Assets having a valuation of at least \$50,000;

(ii) the settlement, compromise, or other resolution of any Disputed Claim or Title Property Claim, wherein the stated amount in controversy exceeds \$200,000;

(iii) the settlement, compromise, or other resolution of any Retained Cause of Action or Assigned Claim, wherein the stated amount in controversy exceeds \$200,000;

(iv) the adjustment of the minimum threshold values referenced in clauses (i)-(iii) above;

(v) the modification or amendment of the Trustee Compensation Schedule, other than annual ordinary course increases in the Litigation Trustee's hourly rate; and

(vi) the exercise of any right or action set forth in this Litigation Trust Agreement that expressly requires approval of the Oversight Committee.

(b) Notwithstanding anything to the contrary in this Agreement, in the event the majority of the Oversight Committee objects to an action proposed by the Litigation Trustee for which the approval of the Oversight Committee is required under this Agreement, or in the event that the Litigation Trustee objects to an action proposed by the Oversight Committee pursuant to this Agreement, the Litigation Trustee and the Oversight Committee shall attempt to consensually resolve such dispute and, if they are unable to do so, the matter may be resolved by the Bankruptcy Court pursuant to a motion by any party (which motion, with respect to any settlement, compromise or other resolution of a Disputed Claim, Title Property Claim, Retained Cause of Action, or Assigned Claim, shall be brought and adjudicated pursuant to Bankruptcy Rule 9019).

4.4 Regular Meetings of Litigation Trustee and Oversight Committee.

Meetings of the Oversight Committee are to be held with such frequency and at such place as the Oversight Committee and the Litigation Trustee may jointly agree, but in no event shall such meetings be held less frequently than quarterly.

4.5 Special Meetings of Litigation Trustee and Oversight Committee.

Special meetings of the Oversight Committee may be held whenever and wherever called for by the Litigation Trustee or at least three (3) members of the Oversight Committee.

4.6 Notice of, and Waiver of Notice for, Litigation Trustee and Oversight Committee.

Notice of the time and place (but not necessarily the purpose or all of the purposes) of any regular or special meeting shall be given to the members of the Oversight Committee in person or by telephone, or via email or electronic mail. Notice to the members of the Oversight Committee of any such special meeting shall be deemed given sufficiently in advance when (i) if given by mail, the same is deposited in the United States mail at least ten (10) calendar days before the meeting date, with postage thereon prepaid, (ii) if given by electronic mail, the same is

transmitted at least three (3) Business Days prior to the convening of the meeting (to the extent reasonably possible), or (iii) if personally delivered (including by overnight courier) or given by telephone, the same is handed, or the substance thereof is communicated over the telephone to the members of the Oversight Committee or to an adult member of his/her office staff or household, at least one (1) Business Day prior to the convening of the meeting. Any member of the Oversight Committee may waive notice of any meeting and any adjournment thereof at any time before, during, or after it is held. Except as provided in the next sentence below, the waiver must be in writing and retained with the records of the Litigation Trust. The attendance of the Litigation Trustee or a member of the Oversight Committee at a meeting shall constitute a waiver of notice of such meeting. In the event that Litigation Trustee, in the exercise of his or her reasonable discretion, determines that an emergency meeting of the Oversight Committee is necessary, such meeting may be convened upon such notice as is feasible under the circumstances.

4.7 Manner of Acting.

(a) A majority of the total number of members of the Oversight Committee then in office shall constitute a quorum for the transaction of business at any meeting of the Oversight Committee. The affirmative vote of a majority of the members of the Oversight Committee present and entitled to vote at a meeting at which a quorum is present shall be the act of the Oversight Committee except as provided otherwise in this Litigation Trust Agreement. In the event that a vote of the Oversight Committee taken at a meeting at which a quorum is present results in a tie, the vote of the Litigation Trustee shall determine whether the proposed action is approved by the Oversight Committee. The Oversight Committee may take action by written consent and votes may be provided by electronic mail.

(b) Any or all of the members of the Oversight Committee may participate in a regular or special meeting by, or conduct the meeting through the use of, conference telephone or similar communications equipment by means of which 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 Litigation Trustee or any member of the Oversight Committee participating in a meeting by this means is deemed to be present in person at the meeting. Voting may be conducted by electronic mail or individual electronic or other written communications.

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

(d) Prior to the taking of a vote on any matter or issue or the taking of any action with respect to any matter or issue, each member of the Oversight Committee shall report to the Oversight Committee any conflict of interest such member has or may have with respect to the matter or issue at hand and fully disclose the nature of such conflict or potential conflict (including,

without limitation, disclosing any and all financial or other pecuniary interests that such member might have with respect to or in connection with such matter or issue), other than in their capacity as a Litigation Trust Beneficiary. A member who has or who may have a conflict of interest shall be deemed to be a “conflicted member” who shall not be entitled to vote or take part in any action with respect to such matter or issue (however such member shall be counted for purposes of determining the existence of a quorum); the vote or action with respect to such matter or issue shall be undertaken only by members of the Oversight Committee who are not “conflicted members.”

4.8 Oversight Committee’s Action without a Meeting.

Any action required or permitted to be taken by the Oversight Committee at a meeting may be taken without a meeting if the action is taken by written consent of the Oversight Committee. Written consent may be obtained via email, and the Litigation Trustee’s failure to receive objections from members of the Oversight Committee within three Business Days after written (including facsimile or electronic) notice is provided to the Oversight Committee of a proposed action shall be deemed an approval of such member of the Oversight Committee for purposes of this Section 4.8.

4.9 Tenure, Removal, and Replacement of Oversight Committee Members.

The authority of the Oversight Committee members shall be effective as of the Effective Date and shall remain and continue in full force and effect until the Litigation Trust is terminated in accordance with Article 9 hereof. The service of the Oversight Committee members shall be subject to the following:

(a) The Oversight Committee members will serve until (i) death (in the case of a member that is a natural Person) or dissolution (in the case of a member that is not a natural Person), (ii) resignation pursuant to subsection (b) below, or (iii) removal pursuant to subsection (c) below.

(b) An Oversight Committee member may resign at any time by providing a written notice of resignation to the remaining members of the Oversight Committee. Any Oversight Committee member who resigns shall continue to serve until the earlier of (i) the appointment of his or her successor, and (ii) sixty (60) days after the delivery of such written notice.

(c) An Oversight Committee Member may be removed by the majority vote of the other members of the Oversight Committee, written resolution of which shall be delivered to the removed member; *provided, however*, that such removal may only be made for Cause. For purposes of this Section 4.9(c), “Cause” shall be defined as: (i) such member’s theft or embezzlement or attempted theft or embezzlement of money or tangible or intangible assets or property; (ii) such member’s violation of any law (whether foreign or domestic), which results in a felony indictment or similar judicial proceeding; (iii) such member’s willful misconduct, fraud, or knowing violation of law in the performance of his or her duties; or (iv) such member’s failure or inability to perform any of his or her other material duties under this Litigation Trust Agreement (including the regular attendance at meetings).

(d) In the event of a vacancy on the Oversight Committee due to the removal, resignation, death or dissolution of an Oversight Committee member, a new member may be, but shall not be required to be, appointed to fill such position by a majority of the remaining members of the Oversight Committee, provided that only the Secured Party Oversight Committee members shall have the right to appoint a successor for any Secured Party Oversight Committee member, and only the Committee Oversight Committee members shall have the right to appoint a successor for any Committee Oversight Committee member. The Oversight Committee shall use reasonable best efforts to ensure that there are no fewer than three (3) members on the Oversight Committee at any given time.

(e) Immediately upon the appointment of any successor member of the Oversight Committee, all rights, powers, duties, authority, and privileges of the predecessor member of the Oversight Committee under this Agreement and the Plan shall be vested in and undertaken by the successor member of the Oversight Committee without any further act. In addition, the successor member of the Oversight Committee shall not be responsible for any act or omission of the predecessor member of the Oversight Committee. Any successor member of the Oversight Committee appointed hereunder shall execute an instrument accepting such appointment and assuming all of the obligations set forth herein.

(f) The resignation, death, dissolution, removal, or appointment of a new member of the Oversight Committee shall be evidenced by the filing with the Bankruptcy Court of a notice of appointment, which notice shall include the name, address, and telephone number of the successor member of the Oversight Committee.

4.10 Reimbursement for Expenses of Oversight Committee.

Each member of the Oversight Committee shall be entitled to receive reimbursement by the Litigation Trust for any reasonable, out-of-pocket expenses incurred by such member in fulfilling his/her duties hereunder. The Oversight Committee members shall not be entitled to (i) reimbursement of expenses incurred relating to their own attorneys or professionals or (ii) compensation for the performance of such member's duties hereunder.

4.11 Limitation of Oversight Committee's Authority.

Notwithstanding anything herein to the contrary, the Oversight Committee members shall not (i) be authorized to engage in any trade or business in their capacity as Oversight Committee members (it being understood that members of the Oversight Committee may be businesses and not individuals); (ii) take any action inconsistent with the orderly liquidation of the assets of the Litigation Trust as is required or contemplated by applicable law, this Litigation Trust Agreement, the Confirmation Order, or the Plan; or (iii) be authorized to engage in any investments or activities inconsistent with the treatment of the Litigation Trust as a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d) and in accordance with Rev. Proc. 94-45, 1994-2 C.B. 684.

ARTICLE 5

TAX MATTERS

5.1 Tax Reporting.

(a) Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including receipt by the Litigation Trustee of a private letter ruling if the Litigation Trustee requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Litigation Trustee) and this Article 5.1, the Litigation Trust shall be treated as a “liquidating trust” within the meaning of Treasury Regulation Section 301.7701-4(d) and thus as a “grantor trust” within the meaning of Sections 671 through 679 of the IRC, and all parties to the Litigation Trust (including, without limitation, the Litigation Trustee, the Debtors, and the Litigation Trust Beneficiaries) shall report consistently therewith for U.S. federal income tax purposes. Accordingly, for U.S. federal income tax purposes, the Trust Assets shall be treated by all parties as having been distributed (subject to any obligations or limitations relating to such assets) by the Debtors to the Litigation Trust Beneficiaries (other than any assets allocable to any IRC Disputed Ownership Fund) pursuant to the Plan. Accordingly, the Litigation Trust Beneficiaries shall be treated for U.S. federal income tax purposes as the grantors and owners of their respective share of the Trust Assets (subject to any obligations or limitations relating to such assets, and other than any assets allocable to any IRC Disputed Ownership Fund). The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local tax purposes.

(b) As soon as practicable after the Effective Date, (i) the Litigation Trustee shall make a good faith valuation as of the Effective Date of all Trust Assets, which shall be used consistently by all parties to the Litigation Trust Agreement and Litigation Trust Beneficiaries for all U.S. federal income tax purposes, and (ii) the Litigation Trustee shall make such valuation available from time to time to all parties to the Litigation Trust Agreement, to the extent relevant to such parties for tax purposes.

(c) The Litigation Trustee shall file returns for the Litigation Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a) and in accordance with this Article 5. The Litigation Trustee shall, in its discretion, make any applicable tax elections on behalf of the Litigation Trust. The Litigation Trustee shall annually send to each Litigation Trust Beneficiary a separate statement setting forth such Litigation Trust Beneficiary’s share of items of income, gain, loss, deduction, or credit, in accordance with applicable Treasury Regulations and Rev. Proc. 94-45, 1994-2 C. B. 684, file (or cause to be filed) any other statements, returns (including any information returns) or disclosures relating to the Litigation Trust that is required by any governmental authority or applicable law, and pay taxes, if any, properly payable by the Litigation Trust.

(d) Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the receipt by the Litigation Trustee of a private letter ruling if the Litigation Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Litigation Trustee), the Litigation Trustee may (i) timely elect to treat any Trust Assets allocable to, or retained on account of, any reserve of Trust Assets

established by the Litigation Trustee, as a “disputed ownership fund” governed by Treasury Regulation Section 1.468B-9, and (ii) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes. All parties to the Litigation Trust Agreement shall report for U.S. federal, state and local income tax purposes consistently with the foregoing.

(e) The Litigation Trustee may request an expedited determination of taxes of the Litigation Trust, including, but not limited to, any IRC Disputed Ownership Fund, under Section 505(b) of the Bankruptcy Code for all tax returns filed for, or on behalf of, the Litigation Trust for all taxable periods through the dissolution of the Litigation Trust.

5.2 Trust Taxable Income; Allocations.

(a) Subject to Section 5.2(c) hereof, all Litigation Trust earnings shall be taxable to the Litigation Trust Beneficiaries.

(b) Subject to Section 5.2(c) hereof, allocations of Litigation Trust taxable income shall be determined by reference to the manner in which an amount of cash equal to such taxable income would be distributed if, immediately prior to such deemed distribution, the Litigation Trust had distributed all of its other assets (valued for this purpose at their tax book value) to the Litigation Trust Beneficiaries, taking into account all prior and concurrent distributions from the Litigation Trust (including all distributions held in any IRC Disputed Ownership Fund). Similarly, taxable loss of the Litigation Trust will be allocated by reference to the manner in which an economic loss would be borne immediately after a liquidating distribution of the Litigation Trust. The tax book value of the Trust Assets for this purpose shall equal their fair market value upon the Effective Date, adjusted in either case in accordance with tax accounting principles prescribed by the IRC, the regulations and other applicable administrative and judicial authorities and pronouncements.

(c) The Litigation Trustee shall be responsible for causing the Litigation Trust to pay, out of the Trust Assets, any taxes imposed on the Litigation Trust or its assets, including any IRC Disputed Ownership Fund (in the latter instance, first out of any Cash allocable to, or retained on account of, the IRC Disputed Ownership Fund to which such tax relates), including any income that may arise upon the distribution of the assets from the applicable IRC Disputed Ownership Fund. In the event, and to the extent, any Cash retained on account of a Disputed Claim or Title Property Claim is insufficient to pay the portion of any such taxes attributable to the taxable income arising from the assets allocable to, or retained on account of such claim such that such portion of the taxes is paid (in whole or in part) from other available Cash, such other cash sources shall be (i) reimbursed from any subsequent Cash amounts retained on account of such claim, or (ii) to the extent such claim has subsequently been resolved, deducted from any amounts otherwise distributable by the Litigation Trustee as a result of the resolution of such claim.

5.3 Withholding.

The Litigation Trustee may withhold and pay to the appropriate taxing authority all amounts required to be withheld pursuant to the IRC or any provision of any foreign, state, or local tax law with respect to any payment or distribution by the Litigation Trust to or any amounts

received or earned by the Litigation Trust distributable or allocable to the Litigation Trust Beneficiaries (including beneficiaries that are not “United States persons” within the meaning of the IRC). The Litigation Trustee may effect any withholding with respect to a Litigation Trust Beneficiary by reducing the amount currently or subsequently distributable to such beneficiary by the amount withheld. All such amounts withheld from distributions and paid to the appropriate taxing authority shall be treated as amounts distributed to such Litigation Trust Beneficiaries for all purposes of this Litigation Trust Agreement.

ARTICLE 6

DISTRIBUTIONS

6.1 Distributions from the Priority Reserves.

Pursuant to the Plan and this Agreement (including without limitation Article 5), on the Effective Date, the Debtors shall transfer the Priority Reserves to the Litigation Trust, and thereafter the Litigation Trustee shall hold, segregate, and administer the Priority Reserves in accordance the Plan and this Agreement. The Litigation Trustee (i) shall segregate and shall not commingle the Cash held in each of the Priority Reserves, and (ii) subject to the terms and conditions of the Plan, shall satisfy any Administrative Claims, Priority Tax Claims, Miscellaneous Secured Claims, Class 5 Convenience Claims, and Priority Non-Tax Claims after the date such Claims become Allowed in accordance with the Plan, to the extent such Allowed Claims were not previously satisfied by the Debtors. For the avoidance of doubt, the Litigation Trust Beneficiaries shall have no interest in Cash held in the Priority Reserves except as provided for in the Plan or this Agreement. The Litigation Trustee may withhold from amounts distributable to any holder of an Allowed Claim entitled to payment from one or more of the Priority Reserves any and all amounts, determined in the Litigation Trustee’s reasonable sole discretion, to be required by any law, regulation, rule, ruling, directive or other governmental requirement.

6.2 Reserved.

6.3 Distributions to Holders of Allowed 503(b)(9) Claims.

Pursuant to the Plan and this Agreement (including without limitation Article 5), after reserving for amounts necessary to maintain the Disputed Claims Reserves, the Litigation Trustee shall distribute to each holder of an Allowed 503(b)(9) Claims, (i) its *pro rata* share from the 503(b)(9) Fund and (ii) and, after funding the Litigation Trust Expense Fund and subject to the GUC Sharing Formula set forth in the Plan, its *pro rata* share of net Litigation Recoveries. Distributions from the 503(b)(9) Fund shall be made as soon as practicable after the Effective Date. Distributions from net Litigation Recoveries shall be made from time to time in accordance with this Article 6. The Litigation Trustee may withhold from amounts distributable to any holder of an Allowed 503(b)(9) Claim any and all amounts, determined in the Litigation Trustee’s reasonable sole discretion, to be required by any law, regulation, rule, ruling, directive or other governmental requirement.

6.4 Distributions to Holders of Allowed Secured Party Claims.

Pursuant to the Plan and this Agreement (including without limitation Article 5), the Litigation Trustee shall distribute to each holder of an Allowed Secured Party Claim its *pro rata* share of (i) funds previously authorized to be paid under the Cash Collateral Orders (to the extent not previously distributed by the Debtors, (ii) any unused portion of the Priority Reserves and (iii) the Secured Party Litigation Recovery Right. The Litigation Trustee may withhold from amounts distributable to any holder of an Allowed Secured Party Claim any and all amounts, determined in the Litigation Trustee's reasonable sole discretion, to be required by any law, regulation, rule, ruling, directive or other governmental requirement.

6.5 Distributions to Holders of Allowed General Unsecured Claims.

Pursuant to the Plan and this Agreement (including without limitation Article 5), after reserving for amounts necessary to maintain the Disputed Claims Reserve and the Litigation Trust Expense Fund, the Litigation Trustee shall distribute to each holder of an Allowed General Unsecured Claims its *pro rata* share of net Litigation Recoveries available after the payment in full of all Allowed 503(b)(9) Claims, except as provided for in the GUC Sharing Formula, it being understood that Litigation Recoveries shall be net of the Secured Party Litigation Recovery Right. The Litigation Trustee may withhold from amounts distributable to any holder of an Allowed General Unsecured Claim any and all amounts, determined in the Litigation Trustee's reasonable sole discretion, to be required by any law, regulation, rule, ruling, directive or other governmental requirement.

6.6 Delivery of Distributions in General.

Distributions to holders of Allowed Claims shall be made: (i) at the addresses set forth in the Proofs of Claim Filed by such holders, (ii) at the addresses set forth in any written notices of address change Filed with the Bankruptcy Court and delivered to the Litigation Trustee, (iii) the addresses set forth in any transfer of Claim properly filed with the Bankruptcy Court prior to the Distribution Record Date, or (iv) at the addresses reflected in the Schedules relating to the applicable Allowed Claim if no Proof of Claim has been Filed and the Litigation Trustee has not received a written notice of a change of address.

6.7 No De Minimis Distributions.

Other than in the Final Distribution, no payment of Cash in an amount of less than \$250.00 shall be required to be made on account of any Allowed Claim.

6.8 Undeliverable Distributions.

If the distribution check to any holder of an Allowed Claim is not cashed within ninety days (90) days after issuance by the Litigation Trustee, a stop payment order may be given with respect to the check and no further distributions shall be made to such holder on account of such Allowed Claim, unless the claimant has previously notified the Litigation Trustee in writing that the check was lost or stolen. Such Allowed Claim or Interest shall be discharged and the holder of such Allowed Claim shall be forever barred from asserting such Claim against the Litigation Trust, the Litigation Trustee, the Debtors, their Estates or their respective property. In such cases, any Cash held for distribution on account of such Claim shall remain property of the

Litigation Trust and be distributed to other Creditors in accordance with the terms of the Plan and this Agreement.

6.9 Distribution Record Date.

As of the close of business on the Distribution Record Date, the various transfer registers for each of the Classes of Claims or Interests as maintained by the Debtors or their respective agents shall be deemed closed for purposes of determining whether a holder of such a Claim or Interest is a record holder entitled to distributions under the Plan, and there shall be no further changes in the record holders or the permitted designees of any such Claims or Interests. The Litigation Trust shall have no obligation to recognize any transfer or designation of such Claims or Interests occurring after the close of business on the Distribution Record Date.

6.10 Date of Distributions.

The Litigation Trustee, after consultation with the Oversight Committee, shall from time to time determine distribution dates of Trust Assets; *provided, however*, that the Litigation Trust shall retain such amounts as necessary or appropriate to maintain the Disputed Claims Reserve and the Litigation Trust Expense Fund. Subject to and in accordance with Section 5.3 hereof, the Litigation Trustee may withhold from amounts distributable to any Entity any and all amounts, determined in the Litigation Trustee's reasonable sole discretion, to be required by any law, regulation, rule, ruling, directive or other governmental requirement; *provided that* the Litigation Trustee shall not be required to make a distribution if the aggregate, net amount of unrestricted Cash available for distribution is sufficiently small in amount as to make the distribution impracticable as reasonably determined by the Litigation Trustee, after consultation with the Oversight Committee.

6.11 Disbursing Agent.

The Litigation Trust, or its duly appointed agent or designee, shall be the Disbursing Agent for all distributions to made under this Litigation Trust Agreement.

6.12 Delivery of Distributions

In the event that any distribution to any Litigation Trust Beneficiary is returned as undeliverable, no further distributions shall be made to such holder or such permitted designee unless and until the Litigation Trustee is notified in writing of such holder's or permitted designee's, as applicable, then-current address, at which time all currently-due, missed distributions shall be made to such holder as soon as reasonably practicable thereafter without interest. Nothing herein shall require the Litigation Trustee to attempt to locate holders or permitted designees, as applicable, of undeliverable distributions and, if located, assist such holders or permitted designees, as applicable, in complying with the Plan.

6.13 Time Bar to Cash Payments.

Checks issued by the Litigation Trust to the Litigation Trust Beneficiaries shall be null and void if not negotiated within ninety (90) days after the date of issuance thereof. Thereafter, the amount represented by such voided check shall irrevocably revert to the Litigation Trust and

any Claim on account of the Litigation Trust Interest in respect of such voided check shall be discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary. Requests for re-issuance of any check shall be made to the Litigation Trustee by the Litigation Trust Beneficiary to whom such check was originally issued, subject to Section 6.7 hereof.

6.14 Manner of Payment or Distribution.

All payments made by the Litigation Trust shall be payable in Cash, and the Litigation Trustee shall distribute such Cash by wire, check, or such other method as the Litigation Trustee deems appropriate under the circumstances.

6.15 Setoffs and Recoupments.

The Litigation Trust may, but shall not be required to, set off or recoup against any Allowed Claim, and any distribution to be made on account of such Allowed Claim, any and all claims, rights, and causes of action of any nature whatsoever that the Debtors or the Litigation Trust may have (as successor to the Debtors) against the holder of such Allowed Claim pursuant to the Bankruptcy Code or applicable non-bankruptcy law; *provided that* neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Litigation Trust of any claims, rights, or causes of action the Litigation Trust may possess against the holder of such Claim.

6.16 Withholding and Reporting Requirements.

(a) In connection with the Plan, any party issuing any instrument or making any distribution described in the Plan shall comply with all applicable withholding and reporting requirements imposed by any federal, state, or local taxing authority, and all distributions pursuant to the Plan and all related agreements shall be subject to any such withholding or reporting requirements. In the case of a non-Cash distribution that is subject to withholding, the distributing party may withhold an appropriate portion of such distributed property and either (i) sell such withheld property to generate Cash necessary to pay over the withholding tax (or reimburse the distributing party for any advance payment of the withholding tax), or (ii) pay the withholding tax using its own funds and retain such withheld property. Any amounts withheld pursuant to the preceding sentence shall be deemed to have been distributed to and received by the applicable recipient for all purposes of the Plan. Notwithstanding the foregoing, any Entity that receives a distribution hereunder shall have responsibility for any taxes imposed by any governmental unit, including, without limitation, income, withholding, and other taxes, on account of such distribution. The Litigation Trustee shall have the right, but not the obligation, to not make a distribution until such recipient has made arrangements satisfactory to such issuing or disbursing party for payment of any such tax obligations.

(b) Any party entitled to receive any property as an issuance or distribution hereunder shall, upon request, deliver to the Litigation Trust an appropriate Form W-9 or (if the payee is a foreign Entity) Form W-8. If such request is made by the Litigation Trustee and the holder fails to comply before the date that is one hundred and twenty (120) days after the request is made the amount of such distribution shall irrevocably revert to the applicable Litigation Trust

and any Claim or Litigation Trust Interest in respect of such distribution shall be discharged and forever barred from assertion against the Litigation Trust or the Trust Assets.

ARTICLE 7

PROCEDURES FOR DISPUTED CLAIMS

7.1 Objections to Claims.

Except as otherwise set forth in the Plan or this Agreement, from and after the Effective Date, the Litigation Trustee shall have the authority to litigate to Final Order objections to Claims or Interests pursuant to applicable procedures established by, or grounds set forth in, the Bankruptcy Code, the Bankruptcy Rules, the Litigation Trust Agreement and the Plan. The deadline within which objections to Claims or Interests may be filed shall be one (1) year from the Effective Date; *provided, however*, that such deadline may be extended from time to time upon application to and approval by the Bankruptcy Court.

7.2 Resolution of Disputed Claims.

Except as otherwise set forth in the Plan or this Agreement, on and after the Effective Date, the Litigation Trust shall have the exclusive authority to object to, compromise, settle, otherwise resolve, or withdraw any objections to Claims (exclusive, for the avoidance of doubt, of Title Property Claims). Pursuant to Bankruptcy Rule 9019(b), the Litigation Trustee may settle any Disputed Claims (or aggregate of Claims if held by a single creditor), without notice, a hearing or Bankruptcy Court approval unless the amount in controversy for such Disputed Claim exceeds five hundred thousand dollars (\$500,000).

7.3 Estimation of Claims.

The Litigation Trustee may (a) determine, resolve and otherwise adjudicate all contingent, unliquidated, and Disputed Claims in the Bankruptcy Court and (b) at any time request that the Bankruptcy Court estimate any contingent, unliquidated, or Disputed Claim pursuant to Section 502(c) of the Bankruptcy Code regardless of whether the Debtors previously objected to such Claim. The Bankruptcy Court will 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. In the event that the Bankruptcy Court estimates any contingent, unliquidated, or Disputed Claim, the amount so estimated shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Litigation Trustee may pursue supplementary proceedings to object to the allowance of such Claim.

7.4 No Distributions Pending Allowance.

No payment or distribution provided under the Plan or hereunder shall be made on account of such Claim unless and until (and only to the extent that) such Claim becomes an Allowed Claim.

7.5 Interest.

To the extent that a Disputed Claim becomes an Allowed Claim after the Effective Date, the holder of such Claim shall not be entitled to any interest that accrued thereon from and after the Effective Date.

7.6 Reserved.

7.7 Disputed Claims Reserves.

(a) From and after the Effective Date, the Litigation Trustee shall establish and maintain one or more Disputed Claims Reserves for the benefit of the holders of such Disputed Claims, including any Cash and any other Trust Assets allocable to such Disputed Claim, determined based on (i) the asserted amount of such Disputed Claim, (ii) such other amount as may be agreed upon by the holder of such Disputed Claim and the Litigation Trustee, (iii) such other amount as may be determined by the Court, or (iv) with respect to an unliquidated claim, such amount deemed appropriate by the Litigation Trustee in her reasonable discretion (in each case, net of any taxes imposed on, or with respect to, the applicable Disputed Claims Reserve as relates to such Disputed Claim, including in connection with such distributions). The Litigation Trustee shall remove funds from the applicable Disputed Claims Reserve as such Disputed Claims are resolved, which funds shall be distributed as set forth in the Plan.

(b) Any taxes incurred by the Litigation Trust with respect to assets allocable to, or retained on account of, a Disputed Claim (including any taxes that would be incurred upon a distribution of such assets as a result of the resolution of the Disputed Claim) will be netted against the amounts otherwise distributable from the applicable Disputed Claim Reserve in respect of, or as a result of the resolution of, such Claim. No assets allocable to, or retained on account of, a Disputed Claim will be released from the applicable Disputed Claim Reserve until such time as the Cash otherwise distributable as a result of the resolution of such Claim is sufficient to pay any taxes incurred or that would be incurred upon the distribution.

ARTICLE 8

STANDARD OF CARE; EXCULPATION; INDEMNIFICATION

8.1 Standard of Care; Exculpation.

(a) To the fullest extent permitted by applicable law, none of the Litigation Trustee, the Oversight Committee members, or their respective members, officers, employees, directors, advisors or professionals (collectively, the “**Covered Parties**”), shall be liable for any damages arising out of the creation, operation or termination of the Litigation Trust, including actions taken or omitted in fulfillment of duties with respect to the Litigation Trust or arising out of the discharge of the powers and duties conferred upon them by the Plan, this Trust Agreement or any Order of the Bankruptcy Court entered pursuant to or in furtherance of the Plan, or by applicable law, except to the extent such actions or omissions are determined by a Final Order to have arisen out of willful misconduct, intentional fraud, or knowing violation of law as determined by a Final Order; *provided, that* in no event will any such party be liable for indirect, punitive, incidental, exemplary, consequential or special damages (including but not limited to lost profits)

under any circumstances. In performing duties under this Agreement, the Litigation Trustee and the Oversight Committee members shall have no liability for any action taken in accordance with the advice of counsel, accountants, appraisers and other professionals retained by the Oversight Committee (or its members), the Litigation Trustee, or the Litigation Trust; *provided*, that, none of the Litigation Trustee, or the Oversight Committee members shall be under any obligation to consult with attorneys, accountants, financial advisors, or agents, and a good faith determination not to consult with attorneys, accountants, financial advisors, or other agents shall not result in the imposition of liability on the Litigation Trustee, or the Oversight Committee members. None of the provisions of this Litigation Trust Agreement shall require the Litigation Trustee or the members of the Oversight Committee to expend or risk their own funds or otherwise incur personal financial liability in the performance of any of their duties hereunder or in the exercise of any of their rights and powers. Notwithstanding the foregoing, nothing in this Section shall relieve the Covered Parties from any liability for any actions or omissions arising out of their willful misconduct, fraud, or knowing violation of law; *provided that* in no event will any such Entity be liable for punitive, exemplary, consequential, or special damages under any circumstances.

(b) All of the Covered Parties shall be, and hereby are, exculpated by all Entities, including but not limited to the Litigation Trust Beneficiaries and any other holders of Allowed Claims, 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 them by the Plan, this Trust Agreement or any Order of the Bankruptcy Court entered pursuant to or in furtherance of the Plan, or by applicable law, except for actions or omissions that are determined by a Final Order to have arisen out of willful misconduct, intentional fraud, or knowing violation of law. No Entity shall have, or be permitted to pursue, any claim or cause of action against any of the Covered Parties for making payments in accordance with the Trust Agreement, the Plan, or any Order of the Bankruptcy Court entered pursuant to or in furtherance of the Plan or for implementing any other provision of the Plan. The Covered Parties shall not be subject to any personal liability whatsoever, whether in tort, contract, or otherwise, to any Entity in connection with the creation, operation, or termination of the Litigation Trust to the fullest extent permitted by law, and all Entities claiming against the Litigation Trustee or the Oversight Committee members, or otherwise asserting claims of any nature in connection with affairs of the Litigation Trust, shall look solely to the Trust Assets for satisfaction of any such claims, except to the extent of such party's willful misconduct, intentional fraud, or knowing violation of law as determined by a Final Order.

(c) Except as specifically provided herein, nothing contained in this Litigation Trust Agreement, the Plan or the Confirmation Order shall be deemed to be an assumption by the Litigation Trustee or the Oversight Committee members of any of the liabilities, obligations or duties of the Debtors or shall be deemed to be or contain a covenant or agreement by the Litigation Trustee or the Oversight Committee members to assume or accept any such liability, obligation or duty.

8.2 Fiduciary Duties.

To the extent that, at law or in equity, the Litigation Trustee or any member of Oversight Committee has duties (including fiduciary duties) and liabilities relating hereto, to the Litigation Trust, to the Litigation Trust Beneficiaries, or to any other party in interest, it is hereby understood and agreed by the parties that such duties and liabilities are eliminated to the fullest

extent permitted by applicable law, and replaced by the duties and liabilities expressly set forth in this Litigation Trust Agreement with respect to the Litigation Trustee and the Oversight Committee.

8.3 Indemnification of Litigation Trustee and Oversight Committee.

(a) To the fullest extent permitted by law, the Litigation Trust, to the extent of its assets legally available for that purpose, shall defend, indemnify and hold harmless the Litigation Trustee and the Oversight Committee members and each of their directors, members, employers, affiliates, shareholders, partners, officers, agents, employees, attorneys, advisors, and other professionals (collectively, the “**Indemnified Persons**”) from and against any and all losses, costs, reasonable and documented out-of-pocket expenses (including, without limitation, fees and expenses of attorneys and other advisors and any court costs incurred by any Indemnified Person) or damages of any kind, type or nature, whether arising in tort, contract or otherwise or liability by reason of anything any Indemnified Person did, does, or refrains from doing for the business or affairs of the Litigation Trust, except to the extent that the loss, cost, damage, expense or liability resulted primarily and directly from the Indemnified Person’s willful misconduct, intentional fraud, or knowing violation of law as determined by a Final Order. The Litigation Trust shall pay in advance or reimburse reasonable and documented out-of-pocket expenses (including, without limitation, the costs of investigating, preparing, defending or settling such action) incurred by the Indemnified Person who is or is threatened to be named or made a defendant or a respondent in a proceeding concerning the business and affairs of the Litigation Trust. Any action taken, or omitted to be taken by the Litigation Trustee with the express approval of the Bankruptcy Court or the Oversight Committee will conclusively be deemed not to constitute willful misconduct, intentional fraud, or knowing violation of law, provided, however, that the Litigation Trustee shall not be obligated to comply with a direction of the Oversight Committee, whether or not express, which would result in a change of the distribution or any other material provisions of the Plan.

(b) Any Indemnified Person may waive the benefits of indemnification under this Section 8.3, but only by an instrument in writing executed by such Indemnified Person.

(c) The rights to indemnification under this Section 8.3 are not exclusive of other rights which any Indemnified Person may otherwise have at law or in equity. Nothing in this Section 8.3 will affect the rights or obligations of any Entity (or the limitations on those rights or obligations) under this Litigation Trust Agreement, or any other agreement or instrument to which that Entity is a party.

8.4 Other Activities

The Entities serving as the Litigation Trustee, other than in her capacity as such, shall be entitled to perform services for and be employed by third parties.

8.5 No Liability for Acts of Others

Except as expressly provided in this Agreement, the Plan or the Confirmation Order, neither the Litigation Trust nor the Litigation Trustee shall assume any of the liabilities, obligations or duties of the Debtors or the Litigation Trust Beneficiaries. The Litigation Trustee

may accept and rely upon any accounting made by or on behalf of the Debtors and any statement or representation made by the Debtors or its agents and professionals as to the assets comprising the Trust Assets or the Disputed Claims Reserve or as to any other fact bearing upon the creation of the Litigation Trust, so long as it has a good faith basis to do so. Any successor Litigation Trustee may accept and rely upon any accounting made by or on behalf of any predecessor Litigation Trustee, and any statement or representation made by a predecessor Litigation Trustee or its agents as to the assets comprising the Trust Assets, the Disputed Claims Reserves or as to any other fact bearing upon the prior administration of the Litigation Trust, so long as it has a good faith basis to do so. The Litigation Trustee shall not be liable for having accepted and relied in good faith upon any such accounting, statement or representation if it is later proved to be incomplete, inaccurate or untrue. The Litigation Trustee or successor Litigation Trustee shall not be liable for any act or omission of any predecessor Litigation Trustee, nor have a duty to enforce any claims against any predecessor Litigation Trustee on account of any such act or omission.

The foregoing exculpation and indemnity in respect of any Covered Party or Indemnified Person shall survive the termination of such Entity from the capacity for which they are indemnified and/or exculpated and shall inure to the benefit of their heirs and assigns.

ARTICLE 9

TERM; TERMINATION OF LITIGATION TRUST

9.1 Term; Termination of Litigation Trust.

(a) The Litigation Trustee shall be discharged, the Litigation Trust shall be dissolved, and the Allowed Claims and beneficial interests in the Litigation Trust shall be cancelled or terminated, as applicable, at such time as (x) the Litigation Trustee, in consultation with the Oversight Committee, determines that the administration of the Litigation Trust is not likely to yield sufficient additional proceeds to justify further pursuit of the Retained Causes of Action, and (y) all distributions required to be made by the Litigation Trustee under the Plan and this Agreement have been made. The Litigation Trustee may apply to the Bankruptcy Court for authority to (i) reserve any amount necessary to dissolve the Litigation Trust, (ii) donate any balance to a charitable organization (A) described in Section 501(c)(3) of the IRC, (B) exempt from U.S. federal income tax under Section 501(a) of the IRC, and (C) that is not a “private foundation”, as defined in Section 509(a) of the IRC, and (iii) dissolve the Litigation Trust. Upon receipt of such authority from the Bankruptcy Court, the Litigation Trustee shall notify each Litigation Trust Beneficiary.

(b) The term of the Litigation Trust shall end no later than the fifth (5th) anniversary of the Effective Date (the “**Initial Litigation Trust Term**”); *provided, however*, that the Litigation Trustee may, subject to the further provisions of this Section, extend the term of the Litigation Trust for such additional period of time as is necessary to facilitate or complete the recovery and liquidation of the Trust Assets as follows: within the six (6) month period prior to the termination of the Initial Litigation Trust Term, the Litigation Trustee may file a notice of intent to extend the term of the Litigation Trust with the Bankruptcy Court and, upon approval of the Bankruptcy Court of such extension request following notice and a hearing, the term of the Litigation Trust shall be so extended. The Litigation Trust may file one or more such extension

notices, each notice to be filed within the six (6) month period prior to the termination of the extended term of the Litigation Trust (all such extensions, collectively, are referred to herein as the “**Supplemental Litigation Trust Term**”).

9.2 Continuance of Trust for Winding Up.

After the termination of the Litigation Trust and for the purpose of litigation and winding up the affairs of the Litigation Trust, the Litigation Trustee shall continue to act as such until its duties have been fully performed. Prior to the final distribution of all of the remaining assets of the Litigation Trust, the Litigation Trustee shall be entitled to reserve from such assets any and all amounts required to provide for the Litigation Trust Expenses, until such time as the winding up of the Litigation Trust is completed. Except as otherwise specifically provided herein, upon the termination of the Litigation Trust, the Oversight Committee shall have no further duties or obligations hereunder. After the dissolution of the Litigation Trust, the Litigation Trustee shall retain the books, records and files that shall have been created by the Litigation Trustee for a period of six months and thereafter may in her sole discretion, destroy all of such records and documents as the Litigation Trustee deems appropriate (unless such records and documents are necessary to fulfill any of the Litigation Trustee’s residual obligations, if any pursuant to this Agreement). The Litigation Trustee may allocate and reserve (or pre-pay) sufficient funds to cover the costs of storage and destruction of such records. The Litigation Trustee may, but shall not be required, to seek and obtain Bankruptcy Court approval to destroy records at or about the time of dissolution.

ARTICLE 10

AMENDMENT AND WAIVER

10.1 Amendment and Waiver.

(a) Subject to approval of the Oversight Committee upon majority vote, the Litigation Trustee may amend, supplement or waive any provision of, this Litigation Trust Agreement, without approval of the Bankruptcy Court or the consent of any Litigation Trust Beneficiary or any other party: (i) to cure any ambiguity, omission, defect or inconsistency in this Litigation Trust Agreement provided that such amendments, supplements or waivers shall not contravene or otherwise be inconsistent with the terms of the Plan, Plan Support Agreement, Final Cash Collateral Order or the Confirmation Order, adversely affect the distributions to be made or other rights under this Litigation Trust Agreement to any of the Litigation Trust Beneficiaries, or adversely affect the U.S. federal income tax status of the Litigation Trust as a “liquidating trust”; (ii) to comply with any requirements in connection with the U.S. federal income tax status of the Litigation Trust as a “liquidating trust”; (iii) to comply with any requirements in connection with maintaining that the Litigation Trust is not subject to registration or reporting requirements of the Exchange Act or the Investment Company Act; (iv) to make the Litigation Trust a reporting entity and, in such event, to comply with any requirements of the Exchange Act or the Investment Company Act; and (v) to evidence and provide for the acceptance of appointment hereunder by a successor trustee in accordance with the terms of this Litigation Trust Agreement.

(b) Any substantive provision of this Litigation Trust Agreement may be amended or waived by the Litigation Trustee, subject to approval of the Oversight Committee,

without approval of the Bankruptcy Court or the consent of any Litigation Trust Beneficiary; *provided, however*, that no change may be made to this Litigation Trust Agreement that contravenes or is otherwise inconsistent with the terms of the Plan, Plan Support Agreement, the Final Cash Collateral Order, or the Confirmation Order, or would adversely affect the distributions to be made under this Litigation Trust Agreement to any of the Litigation Trust Beneficiaries, the Secured Parties, or the holders of Allowed Title Property Claims in any material respect, or adversely affect the U.S. federal income tax status of the Litigation Trust as a “liquidating trust”. Notwithstanding this Section 10.1, any amendments to this Litigation Trust Agreement shall not be inconsistent with the purpose and intention of the Litigation Trust to liquidate in an expeditious but orderly manner the Trust Assets in accordance with Treasury Regulation Section 301.7701-4(d).

ARTICLE 11

MISCELLANEOUS PROVISIONS

11.1 Intention of Parties to Establish a Liquidating Trust.

This Litigation Trust Agreement is intended to create a “liquidating trust” for U.S. federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a trust and any ambiguity herein shall be construed consistent herewith and, if necessary, this Litigation Trust Agreement may be amended in accordance with Section 10.1 hereof to comply with such U.S. federal income tax laws, which amendments may apply retroactively.

11.2 Reimbursement of Trust Litigation Costs.

If the Litigation Trustee or the Litigation Trust, as the case may be, is the prevailing party in a dispute regarding the provisions of this Litigation Trust Agreement or the enforcement thereof, the Litigation Trustee or the Litigation Trust, as the case may be, shall be entitled to collect any and all costs, reasonable and documented out-of-pocket expenses and fees, including attorneys’ fees, from the non-prevailing party incurred in connection with such dispute or enforcement action. To the extent that the Litigation Trust has advanced such amounts, the Litigation Trust may recover such amounts from the non-prevailing party.

11.3 No Bond.

The Litigation Trustee shall not be required to post any bond or surety or other security for the performance of her duties unless otherwise ordered by the Bankruptcy Court and, in the event the Litigation Trustee is so otherwise ordered, all reasonable costs and expenses of procuring any such bond or surety shall be borne by the Litigation Trust.

11.4 Laws as to Construction.

This Litigation Trust Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to whether any conflicts of law would require the application of the law of another jurisdiction.

11.5 Jurisdiction.

Without limiting any Entity's right to appeal any order of the Bankruptcy Court or to seek withdrawal of the reference with regard to any matter, (i) the Bankruptcy Court shall have jurisdiction to enforce the terms of this Litigation Trust Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Litigation Trust Agreement, any breach or default hereunder, or the transactions contemplated hereby, and (ii) any and all actions related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the parties, including the Litigation Trust Beneficiaries and any holders of Claims hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court.

11.6 Severability.

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

11.7 Notices.

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

If to the Litigation Trustee to:

Halperin Battaglia Benzija, LLP
40 Wall Street - 37th Floor
New York, NY 10005
Attn: Donna H. Lieberman, Esq.
Tel: (212) 765-9100
Fax: (212) 765-0964
Email: dlieberman@halperinlaw.net

With a copy to:

Cooley LLP
1114 Avenue of the Americas
New York, NY 10036
Attn: Seth Van Aalten, Esq.
Robert Winning, Esq.
Tel: (212) 479-6000
Fax: (212) 504-2803

Email: svanaalten@cooley.com
rwinning@cooley.com

If to the Secured Parties, to:

Luskin, Stern & Eisler LLP
Eleven Times Square
New York, NY 10036
Attn: Richard Stern, Esq.
Michael Luskin, Esq.
Alex Talesnick, Esq.
Tel: (212) 597-8235
Email: stern@lsellp.com
luskin@lsellp.com
talesnick@lsellp.com

If to a Trust Beneficiary, to:

The address indicated on the Proof of Claim(s) filed by such Trust Beneficiary or on the Schedules, if such Trust Beneficiary did not file a Proof of Claim.

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

11.8 Fiscal Year.

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

11.9 Headings.

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

11.10 Counterparts.

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

11.11 Confidentiality.

The Litigation Trustee and each successor trustee and any member of the Oversight Committee (each a "**Covered Person**") shall, during the period that they serve in such capacity

under this Litigation Trust Agreement and following either the termination of this Litigation Trust Agreement or such individual's removal, incapacity, or resignation hereunder, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any entity to which any of the assets of the Litigation Trust relates or of which it has become aware in its capacity (the "**Information**"), except to the extent disclosure is required by applicable law, order, regulation or legal process. In the event that any Covered Person is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigation, demand or similar legal process) to disclose any Information, such Covered Person will furnish only that portion of the Information, which the Covered Person, advised by counsel, is legally required to and exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Information.

11.12 Preservation of Privilege.

In connection with the Retained Causes of Action, any applicable privilege or immunity of the Debtors, including, but not limited to, any attorney-client privilege or work-product privilege attaching to any documents or communications (whether written or oral), and all defenses, claims, counterclaims, and rights of setoff or recoupment shall vest in the Litigation Trust and may be asserted by the Litigation Trustee. Nothing herein nor any action taken by the Debtors in connection with this Agreement shall be (or shall be deemed to be) a waiver of any privilege or immunity of the Debtors, including any attorney-client privilege or work-product privilege attaching to any documents or communications (whether written or oral). Notwithstanding the Debtors' providing any privileged information to the Litigation Trustee, the Litigation Trust, or any party or person associated with the Litigation Trust, such privileged information shall remain privileged. Notwithstanding the foregoing, the Litigation Trustee may waive any privilege on behalf of the Litigation Trust or the Debtors, as applicable.

The Litigation Trustee will seek to preserve and protect all applicable privileges and work-product relating to the Assigned Claims, including but not limited to, any attorney-client privilege, work-product privilege, or common interest privilege attaching to any documents or communications (whether written or oral). The Litigation Trustee's receipt of such information from the Secured Parties, shall not waive any privileges and all such privileges are preserved. In the event the Litigation Trustee desires to waive any privilege on behalf of the Secured Parties with respect to the Assigned Claims, he or she shall obtain the prior written consent from the applicable Secured Parties.

11.13 Plan and Confirmation Order.

The terms of this Agreement are intended to supplement the terms provided by the Plan and the Confirmation Order. In the event of any direct conflict or inconsistency between any provision of this Agreement, on the one hand, and the provisions of the Confirmation Order, on the other hand, the provisions of the Confirmation Order shall govern and control. In the event of any direct conflict or inconsistency between any provision of this Agreement, on the one hand, and the provisions of the Plan, on the other hand, the provisions of the Plan shall govern and control, except with respect to the administration and structure of the Litigation Trust, for which the Litigation Trust Agreement shall govern and control.

11.14 Actions Taken on a Day Other than a Business Day.

In the event that any payment or act hereunder or 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.

11.15 Meanings of Other Terms.

Except where the context otherwise requires, words importing the masculine gender include the feminine and the neuter, if appropriate, words importing the singular number shall include the plural number and vice versa and words importing persons shall include firms, associations, corporations and other entities. All references herein to Articles, Sections and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code, the Bankruptcy Rules, or other law, statute or regulation, refer to the corresponding Articles, Sections and other subdivisions of this Agreement, and the words herein and words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision of this Agreement. The use in this Agreement of the word “include” or “including,” when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not no limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter.

11.16 Entire Agreement.

This Litigation Trust Agreement (including the Recitals), the Confirmation Order, the Plan, the Plan Support Agreement and the Final Cash Collateral Order constitute the entire agreement by and among the parties hereto with respect to the subject matter hereof, and there are no representations, warranties, covenants or obligations except as set forth herein or therein. This Litigation Trust Agreement, the Plan, the Plan Support Agreement and the Final Cash Collateral Order supersede all prior and contemporaneous agreements, understandings, negotiations, discussions, written or oral, of the parties hereto, relating to any transaction contemplated hereunder or thereunder. Except as otherwise specifically provided herein, in the Confirmation Order, or in the Plan, nothing in this Litigation Trust Agreement is intended or shall be construed to confer upon or to give any person other than the parties thereto and their respective heirs, administrators, executors, successors, or assigns any right to remedies under or by reason of this Litigation Trust Agreement.

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

DEBTORS:

By:
Title:

LITIGATION TRUSTEE:

By:
Title:

Exhibit A

Initial Members of Oversight Committee

Mitsubishi International Corporation

Hain Capital Investors Master Fund, Ltd.

Brown Brothers Harriman & Co.

Minera Triton Argentina SA

Pyropure, Inc., d/b/a Pyromet

Bayside Metals Exchange

So Accurate Group Inc. d/b/a So Accurate Refining Services

Exhibit B

Trustee Compensation Schedule

- 1.) In consideration for the services of the Litigation Trustee under this Agreement, the Litigation Trustee shall receive the following compensation: an hourly fee of \$535 or such other standard rate in effect for the Litigation Trustee as of the date when services are rendered. The Litigation Trustee shall also be entitled to fees incurred drafting, reviewing, revising, negotiating, and executing of this Agreement, the Confirmation Order, and any related documents prior to the Effective Date. The Litigation Trustee's fees, together with reimbursement of any expenses, shall be payable beginning on the Effective Date and continuing thereafter on a monthly basis until the Litigation Trustee is discharged.
- 2.) In the event of the resignation, termination or death of the Litigation Trustee, compensation accrued through the effective date of such resignation, termination or death shall be promptly paid.