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IT IS SO ORDERED.

Dated: January 28, 2019



John E. Hoffman, Jr.
John E. Hoffman, Jr.
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:)	
)	Chapter 11
ASPC Corp., f/k/a AcuSport Corporation,)	
)	Case No. 18-52736
Debtor.)	
)	Hon. John E. Hoffman, Jr.

ORDER CONFIRMING AGREED FIRST AMENDED PLAN OF LIQUIDATION OF DEBTOR AND OFFICIAL COMMITTEE OF UNSECURED CREDITORS
[REL. DOC. 422]

This matter came on for hearing on January 24, 2019, at 2:00 p.m. EST (the “Confirmation Hearing”) upon: (1) the *Agreed First Amended Plan of Liquidation of Debtor and Official Committee of Unsecured Creditors* [Dkt. No. 422] (together with all amendments and/or supplements thereto, and any modifications announced at the Confirmation Hearing or as set forth in this Confirmation Order, collectively, the “Plan”) filed on behalf of ASPC Corp., f/k/a

AcuSport Corporation (“Debtor”) with the support of the Official Committee of Unsecured Creditors (“Committee”) in the above captioned chapter 11 case (the “Chapter 11 Case”); (2) the *Declaration Of Jung W. Song On Behalf Of Donlin, Recano & Company, Inc. Regarding Voting And Tabulation Of Ballots Accepting And Rejecting Agreed First Amended Plan Of Liquidation Of Debtor And Official Committee Of Unsecured Creditors* [Dkt. No. 485] (the “Balloting Declaration”); and (3) the *Declaration of Lee Sweigart In Support Of Agreed First Amended Plan Of Liquidation Of Debtor And Official Committee Of Unsecured Creditors* [Dkt. No. 491] (the “Sweigart Declaration”); with all of these items being hereinafter collectively referred to as the “Plan Filings.”

On December 4, 2018, the Court entered its *Order (I) Approving Second Amended Disclosure Statement, (II) Fixing Time for Submitting Acceptances or Rejections of Agreed First Amended Plan of Liquidation of Debtor and Official Committee of Unsecured Creditors, and (III) Setting Hearing on Confirmation* [Dkt. No. 426] (the “Disclosure Statement Order”), wherein the Court approved, among other things, the form of the *Second Amended Disclosure Statement With Respect To The First Amended Plan Of Liquidation Of Debtor And Official Committee Of Unsecured Creditors* (the “Disclosure Statement”), and the solicitation and noticing procedures with respect to the Disclosure Statement and the Plan.

The Court, having (a) reviewed the Plan Filings, (b) conducted the Confirmation Hearing, and (c) heard the statements, representations and arguments of counsel for Debtor and Committee and evidence presented or proffered at the Confirmation Hearing, hereby FINDS as follows:

A. Defined Terms. Any capitalized term used in this Confirmation Order, unless otherwise defined herein, shall have the meaning ascribed to such term in the Plan.

B. Findings and Conclusions. The findings and conclusions set forth herein and on the record during the Confirmation Hearing constitute this Court's findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Bankruptcy Rules 7052 and 9014. To the extent any of the findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the conclusions of law constitute findings of fact, they are adopted as such.

C. Exclusive Jurisdiction; Venue; Core Proceeding (28 U.S.C. §§ 157(b)(2) and 1334(a)). This Court has jurisdiction over the Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and 1334. Venue in this judicial district was proper as of the Petition Date and continues to be proper pursuant to 28 U.S.C. §§ 1408 and 1409. Confirmation of the Plan is a core proceeding under 28 U.S.C. § 157(b)(2)(L), and this Court has the exclusive jurisdiction to consider confirmation of the Plan and enter a final order with respect thereto.

D. Judicial Notice. The Court takes judicial notice of the docket of the Chapter 11 Case maintained by the Clerk of the Court as well as the docket of the adversary proceeding filed by Debtor in this Chapter 11 Case, including, without limitation, all pleadings and other documents filed, and all orders entered therein. The Court considers all evidence and arguments made, proffered, or adduced at the various hearings held before this Court during the pendency of the Chapter 11 Case.

E. Transmittal and Mailing of Materials; Notice. As set forth in the Balloting Declaration, Debtor, through its balloting agent, transmitted and served the solicitation packages and Ballots in compliance with the Disclosure Statement Order and Bankruptcy Rules, and such transmittal and service was adequate and sufficient. Debtor, through its balloting agent, has provided due, proper, timely, adequate and sufficient notice to all parties required to be given

notice of the Confirmation Hearing (including the deadline for filing and serving objections to confirmation of the Plan), in accordance with the Disclosure Statement Order and the Bankruptcy Rules, and all creditors and parties-in-interest have had ample opportunity to appear and be heard with respect thereto, and no other or further notice is required.

F. Solicitation and Tabulation. Based on the Balloting Declaration, Debtor properly solicited the Plan and, as such, fully complied with Bankruptcy Code Sections 1125 and 1126, Bankruptcy Rules 2002, 3017, and 3018, the Local Rules of Bankruptcy Procedure, and applicable orders of this Court including, without limitation, the Disclosure Statement Order. Debtor, through its balloting agent, solicited and tabulated votes for acceptance or rejection of the Plan fairly, in good faith and in a manner consistent with Bankruptcy Code Sections 1125 and 1126, Bankruptcy Rules 3017 and 3018, the Disclosure Statement Order, and all other applicable laws and regulations. Debtor, Debtor's professionals, and all of their respective directors, officers, employees, members, participants, agents, representatives, partners, affiliates, advisors, and successors or assigns, have acted in good faith within the meaning of Bankruptcy Code Sections 1125(e) and 1129(a)(3) and are, thus, entitled to the protections afforded by Bankruptcy Code Section 1125(e).

G. Voting. The Court finds that Classes 3 and 4 are impaired under the Plan and, as evidenced by the Balloting Declaration, Class 3 voted to accept the Plan and Class 4 is deemed to have rejected the Plan pursuant to Bankruptcy Code Section 1126(g). The Court further finds that Classes 1 and 2 are unimpaired and deemed to have accepted the Plan.

H. Releases, Exculpations, and Injunctions. Pursuant to Bankruptcy Rule 3016(c), the Plan describes in specific and conspicuous language all acts to be enjoined by, and identifies the entities that are subject to releases and injunctions provided under, the Plan, including

without limitation, Sections 10.5 and 10.6 thereof. The Court finds that each release, exculpation, and injunction provision set forth in the Plan is: (i) within the jurisdiction of the Court under 28 U.S.C. §§ 1334; (ii) essential to the implementation of the Plan pursuant to Bankruptcy Code Section 1123(a)(5) and warranted by the circumstances of the Chapter 11 Case; (iii) an integral element of the Plan; (iv) the product of an arm's length transaction and a critical element of obtaining the support of the various constituencies for Plan support; (v) fair, equitable, and in the best interest of Debtor's estate and creditors; (vi) important to the overall objectives of the Plan, including without limitation, to finally resolve claims against or among key parties in the Chapter 11 Case; and (vii) consistent with Bankruptcy Code Sections 105, 1123, and 1129, and other applicable provisions of the Bankruptcy Code. The Court further finds that, pursuant to the Plan and the form of Ballot approved by the Disclosure Statement Order, each creditor that voted to accept the Plan is deemed to have consented to the releases, exculpations, and injunctions provided under the Plan.

I. Assumption and Rejection of Executory Contracts. In accordance with Bankruptcy Code Section 1123(b)(2), upon entry of the Confirmation Order, Debtor will be conclusively deemed to have assumed any insurance policies of Debtor in which Debtor is or was an insured party (including any policies covering directors' or officers' conduct), or any related insurance agreements issued prior to the Petition Date, to the extent any such policies or agreements are deemed to be Executory Contracts (the "Insurance Contracts"), pursuant to Section 6.1 of the Plan.¹ The Court finds that assumption of the Insurance Contracts is in the best interests of Debtor's estate and that no payments shall be required to cure any defaults of the

¹ For the avoidance of doubt, the Insurance Contracts do not include any insurance policies or agreements pursuant to which Debtor provides employee benefits, such as health, dental, short- and long-term disability insurance, to its current or former employees, all of which were terminated by Debtor on or prior to December 31, 2018.

Debtor with respect to any such Insurance Contract. In accordance with Bankruptcy Code Section 1123(b)(2), upon entry of the Confirmation Order, Debtor will be conclusively deemed to have rejected all Executory Contracts not expressly assumed pursuant to Section 6.1 of the Plan or another order of the Court. For the avoidance of doubt, the Executory Contracts rejected pursuant to Section 6.1 of the Plan shall not include that certain Smith & Wesson U.S. Distributor Agreement between Smith & Wesson Corp. and Debtor dated May 1, 2017 and amended on September 29, 2017 (the “S&W Distributor Agreement”), but only to the extent that the S&W Distributor Agreement: (i) is determined by the Court to be an executory contract; and (ii) is ordered by the Court to be assumed and assigned to Ellett Brothers, LLC (“Ellett”) over the objections of the Debtor, the Committee, and/or the Creditor Trustee.

J. Bankruptcy Code Section 1129(a). Other than Bankruptcy Code Section 1129(a)(8) and for the reasons set forth in the Sweigart Declaration, Debtor has satisfied, and the Plan complies with, all applicable subsections of Bankruptcy Code Section 1129(a), including, without limitation, the requirement that the Plan be proposed in good faith and not by any means forbidden by law under Bankruptcy Code Section 1129(a)(3), and the best interests of creditors requirement of Bankruptcy Code Section 1129(a)(7).

K. Bankruptcy Code Section 1129(b). For the reasons set forth in the Sweigart Declaration and despite the fact that the Plan does not satisfy Bankruptcy Code Section 1129(a)(8) (because while Class 3 has voted to accept the Plan, Class 4 is deemed to have rejected the Plan as a result of the impairment of their Interests thereunder), the Plan nevertheless satisfies and complies with Bankruptcy Code Sections 1129(b)(1) and (2)(A)-(C), including without limitation the fair and equitable requirement of Bankruptcy Code Section 1129(b)(2).

L. Bankruptcy Code Section 1129(c). Other than the Plan (including previous versions thereof), no other plan has been filed in this case. As a result, Debtor has satisfied the requirements of Bankruptcy Code Section 1129(c).

M. Bankruptcy Code Section 1129(d). As set forth in the Sweigart Declaration, Debtor has not proposed the Plan to avoid taxes or the application of section 5 of the Securities Act of 1933, as amended, and no governmental unit has filed any pleading asserting any attempted avoidance thereof. Therefore, Bankruptcy Code Section 1129(d) is inapplicable.

N. Notice of Transfer of Creditor Trust Assets to Creditor Trust. As described in the Balloting Declaration, Debtor has provided all required notice of the transfer of the Creditor Trust Assets to the Creditor Trust, including, without limitation, the transfer of all Causes of Action, including, without limitation, the Avoidance Actions, such that no party against which a Cause of Action is or may be asserted by the Creditor Trustee who received actual notice of the Confirmation Hearing may allege that Debtor failed to give notice of the transfer of such Cause of Action to the Creditor Trust as a defense to such Cause of Action. Without limiting the foregoing, for the avoidance of doubt, the entry of this Confirmation Order and the occurrence of the Effective Date shall not be deemed to limit the rights of Ellett or Smith & Wesson Corp. to allege that Causes of Action under or related to the S&W Distributor Agreement had been expressly transferred by Debtor to Ellett prior to the occurrence of the Effective Date, but only to the extent that the S&W Distributor Agreement: (i) is determined by the Court to be an executory contract; and (ii) is ordered by the Court to be assumed and assigned to Ellett over the objections of the Debtor, the Committee, and/or the Creditor Trustee.

O. Requirements for Confirmation Satisfied. Debtor has satisfied all of the requirements for confirmation of the Plan under Bankruptcy Code Section 1129. Confirmation

of the Plan is in the best interests of Debtor's estate, Debtor's creditors, and all other parties in interest.

Now, THEREFORE, in view of the foregoing FINDINGS, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. Incorporation of Findings. The foregoing findings are hereby incorporated into and form an integral part of this Confirmation Order.

2. Objections. For the reasons stated on the record, any objections to confirmation of the Plan that have not been withdrawn, resolved, waived or settled are overruled on the merits.

3. Notice and Balloting. The Court specifically finds and concludes that any modifications to the Plan set forth in this Confirmation Order or otherwise (collectively, the "Plan Modifications") do not have any material adverse impact on any interested party, may be implemented without further notice, hearing, or solicitation, and are appropriate under the circumstances. In accordance with Bankruptcy Code Section 1127 and Bankruptcy Rule 3019, all holders of Claims who voted to accept the Plan are deemed to have accepted the Plan as modified hereby.

4. Plan Confirmation. The Plan is hereby CONFIRMED in its entirety.

5. Payments to the U.S. Trustee. Debtor shall pay to the United States Trustee (the "U.S. Trustee") all fees required pursuant to 28 U.S.C. § 1930(a)(6) ("UST Fees") prior to or on the Effective Date. Any UST Fees accruing after the Effective Date shall be paid by the Creditor Trust. The Creditor Trustee shall continue to make timely payments to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6) for all periods up to the date the Chapter 11 Case is converted, dismissed, or closed by Final Order of the Court. The Creditor Trust and Creditor Trustee shall

also provide the U.S. Trustee with post-confirmation quarterly reports that shall include all of their respective quarterly disbursements.

6. Approval of Plan Releases, Exculpations, and Injunctions. Each release, exculpation, and injunction provision set forth in the Plan is hereby approved.

7. Assumption and Rejection of Executory Contracts. Debtor is hereby authorized to assume the Insurance Contracts pursuant to Article VI of the Plan, with respect to which Debtor has satisfied all requirements for assumption pursuant to Bankruptcy Code Section 365(b) and otherwise. Any and all Executory Contracts that Debtor has not assumed are hereby rejected as of the entry of this Confirmation Order pursuant to Section 6.1 of the Plan (all such Executory Contracts being hereinafter collectively referred to as the “Rejected Contracts”). For the avoidance of doubt, the Rejected Contracts shall not include the S&W Distributor Agreement, but only if: (i) the S&W Distributor Agreement is determined by the Court to be an executory contract; and (ii) the S&W Distributor Agreement is ordered by the Court to be assumed and assigned to Ellett over the objections of the Debtor, the Committee, and/or the Creditor Trustee.

8. Rejection Damage Claim and Related Claim Bar Date. A proof of claim arising from the rejection of a Rejected Contract (such claim, a “Rejection Damage Claim”) must be filed with the Bankruptcy Court within **thirty (30) days after the Effective Date** (the “Rejection Damage Claim Bar Date”). Any and all Rejection Damage Claims not filed on or before the Rejection Damage Claim Bar Date shall be automatically disallowed and forever barred in their entirety. For the avoidance of doubt, the Rejected Damage Claim Bar Date shall not apply to the S&W Distributor Agreement. Any bar date with respect thereto shall be established by a separate order of this Court.

9. Binding Effect. Effective as of the entry of this Confirmation Order, but subject to the occurrence of the Effective Date, to the fullest extent of applicable law including, without limitation, Bankruptcy Code Section 1141, the Plan and this Confirmation Order shall be binding on: (a) Debtor; (b) the Creditor Trust; (c) all creditors and holders of equity interests in Debtor, irrespective of whether they are impaired under the Plan and whether or not such creditors and holders accepted the Plan; and (d) each person acquiring property under the Plan. The Plan shall apply and be enforceable notwithstanding any otherwise applicable non-bankruptcy law. Additionally, entry of this Confirmation Order is deemed consent by any counterparty to a contract or lease to the assignment of Debtor's right, title and interest in such contract or lease. As evidence of such consent, a copy of this Confirmation Order may be filed with any and all applicable state, federal, or other governmental or regulatory authority and/or in any applicable governmental record.

10. Debtor's Authorization. Debtor is hereby authorized and fully empowered to take any and all actions as may be necessary and appropriate to consummate, effectuate and implement the Plan and all transactions contemplated thereby, including, without limitation, to effectuate or otherwise document the transfer of Creditor Trust Assets to the Creditor Trust, pursuant to the terms, and subject to the conditions, of the Plan.

11. Approval of Creditor Trust Agreement. The Creditor Trust Agreement attached hereto as Exhibit A is hereby approved in all respects.

12. Appointment of Creditor Trustee. Laurence V. Goddard of BDO USA, LLP is hereby appointed Creditor Trustee, effective as of the Effective Date, and vested with all power and authority to implement and administer the Creditor Trust pursuant to the terms, and subject to the conditions, of the Creditor Trust Agreement, the Plan, and this Confirmation Order.

13. Notice of Effective Date and Related Deadlines. Within five (5) days after the Effective Date, Debtor shall file a notice of occurrence of the Effective Date (the “Notice of Effective Date”) with the Court and serve it upon all known creditors and parties required to receive notice pursuant to Bankruptcy Rule 2002. The Notice of Effective Date shall further set forth the Rejection Damage Claim Bar Date, Administrative Claim Bar Date, and Professional Fee Claim Bar Date, each as set forth and defined herein.

14. Administrative Claim Bar Date. Within **thirty (30) days after the Effective Date** (the “Administrative Claim Bar Date”), all parties shall file any and all requests for allowance and payment of administrative expenses incurred on or before the day immediately preceding the Effective Date pursuant to Bankruptcy Code Section 503, other than Professional Fee Claims (defined below) (collectively, “Administrative Claims”). Administrative Claims filed after the Administrative Claim Bar Date shall be disallowed in their entirety. Nothing in the Plan or this Confirmation Order shall be deemed to impair the rights of Ellett to assert a claim by the Administrative Claim Bar Date against Debtor or the estate arising from or relating to Debtor’s actual, alleged or potential failure to assume and assign to it the S&W Distributor Agreement, and to seek administrative priority treatment for such claims as appropriate.

15. Professional Fee Claim Bar Date. Within **thirty (30) days after the Effective Date** (“Professional Fee Claim Bar Date”), all parties shall file any and all final applications for allowance and payment of fees, costs, and expenses incurred by any estate professionals through and including the day immediately preceding the Effective Date (collectively, “Professional Fee Claims”). Professional Fee Claims filed after the Professional Fee Claim Bar Date shall be disallowed in their entirety.

16. Amendments/Headings. This Confirmation Order may be amended or supplemented only upon further, Final Order of the Court. The headings used herein are for ease of reference only and shall not be used in interpreting this Confirmation Order.

17. Retention of Jurisdiction. Notwithstanding the entry of this Confirmation Order or the occurrence of the Effective Date, this Court shall retain jurisdiction over all matters arising in, arising under or related to the Chapter 11 Case to the fullest extent legally permissible.

18. Successors/Assigns. This Confirmation Order shall be binding upon, and inure to the benefit of, Debtor's heirs, successors, designees, assigns, beneficiaries, executors, administrators, and personal representatives including, without limitation, the Creditor Trust, the Creditor Trustee and any chapter 7 or chapter 11 trustees.

19. Conflicts Between this Confirmation Order and the Plan. The provisions of the Plan and this Confirmation Order shall be construed in a manner consistent with each other so as to effect the purpose of each; provided, however, that if there is determined to be any inconsistency between any Plan provision and any provision of this Confirmation Order that cannot be so reconciled, then solely to the extent of such inconsistency the provisions of 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 this Court.

20. Final Order. This Confirmation Order is a FINAL order and shall be immediately effective upon its entry.

21. Notice. Within five business days of the entry of this Order, Debtor shall transmit a copy of this Order via first class mail with postage prepaid to all of its known creditors

and parties-in-interest. Such notice shall be adequate under the circumstances and shall be sufficient to meet the requirements necessary for due process and Bankruptcy Rule 2002(f)(7).

IT IS SO ORDERED.

Respectfully Submitted By:

/s/ Thomas R. Allen

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Copies to Default List.

Exhibit A

Creditor Trust Agreement

[attached]

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:)
) Chapter 11
)
ASPC Corp., f/k/a AcuSport Corporation,) Case No. 18-52736
)
Debtor.) Hon. John E. Hoffman, Jr.
)
_____)

ASPC CORP. CREDITOR TRUST AGREEMENT

Dated: [] [], 2019

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*Not Individually, but as Initial Trustee of the
ASCP Creditor Trust*

ASCP CORP. CREDITOR TRUST AGREEMENT

PREAMBLE

This Creditor Trust Agreement (the “*Creditor Trust Agreement*”) is made this [] day of [], 2019, by and among ASPC Corp. f/k/a AcuSport Corporation (“*Debtor*”), the Official Committee of Unsecured Creditors (the “*Committee*”), Laurence V. Goddard (“*Goddard*”) of BDO USA, LLP (“*BDO*”), not individually, but solely as trustee (“*Creditor Trustee*” and, collectively with Debtor and Committee, the “*Parties*”) of the trust (the “*Creditor Trust*”) established by this Creditor Trust Agreement in accordance with the Agreed First Amended Plan of Liquidation of Debtor and Official Committee of Unsecured Creditors dated December 4, 2018, 2018 [Docket No. 423] (attached hereto as Exhibit A and including any modifications set forth and/or incorporated into the Confirmation Order, the “*Plan*”).¹

RECITALS

(A) On May 1, 2018, Debtor filed its voluntary petition for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Ohio (the “*Bankruptcy Court*”) and commenced its chapter 11 case;

(B) On [] [], 2019, the Bankruptcy Court entered an order confirming the Plan (the “*Confirmation Order*”) [Docket No.];

(C) The Plan and the Confirmation Order generally provide for, among other things, the Creditor Trust to take possession of all of the Creditor Trust Assets. The Creditor Trust and Creditor Trustee will be tasked with distributing the Creditor Trust Assets in accordance with the terms of this Agreement and the Plan;

(C) The Creditor Trust is created pursuant to, and to effectuate, the Plan and the Confirmation Order;

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

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

(F) This Creditor Trust Agreement is intended to supplement and complement the Plan and the Confirmation Order; provided, however, that if any of the terms and/or

¹ Capitalized terms used, but not defined herein, shall have the meanings ascribed to such terms in the Plan.

provisions of this Creditor Trust Agreement conflict with the terms and/or provisions of the Plan or the Confirmation Order, the Plan and the Confirmation Order shall govern; and

(G) The Creditor Trustee has agreed to serve as such upon the terms and subject to the conditions set forth in this Agreement.

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

DECLARATION OF TRUST

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

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

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

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

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

ARTICLE I

ESTABLISHMENT OF CREDITOR TRUST AND APPOINTMENT OF CREDITOR TRUSTEE

1.1 Establishment of Creditor Trust.

Pursuant to the Plan, Debtor and Creditor Trustee hereby establish the Creditor Trust on behalf of, and for the sole benefit of, the Beneficiaries. The name of the Creditor Trust shall be the "ASPC Creditor Trust." The parties to this Agreement and the Beneficiaries intend for the Creditor Trust to be treated as a "liquidating trust" under the Internal Revenue Code of 1986 and the regulations promulgated thereunder, specifically Treas. Reg. § 301.7701-4(d), and as such is a "grantor trust" for federal income tax purposes under Internal Revenue Code Section 671 with the Beneficiaries treated as the grantors and owners of the Creditor Trust Assets;

1.2 Purpose of the Creditor Trust.

The Creditor Trust shall be established for the purpose of receiving the Creditor Trust Assets and, as appropriate, investigating, prosecuting, settling, selling, disposing and otherwise resolving the same, and distributing such funds to Beneficiaries in accordance with the Plan, the Creditor Trust Agreement, and pursuant to Treasury Regulations Section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

1.3 Transfer of Property and Rights to the Creditor Trust.

As of the Effective Date of the Plan, and in accordance with the Confirmation Order, the Debtor and the Estate hereby transfer, assign, and delivers to the Creditor Trust, any and all right, title, and interest in any and all of the Creditor Trust Assets. The Creditor Trustee agrees to accept and hold the Creditor Trust Assets in trust for the benefit of the Beneficiaries, subject to the terms of this Agreement and the Plan, and to sell and liquidate, and distribute the cash proceeds of, such Creditor Trust Assets to the Beneficiaries as provided in the Plan. At any time and from time to time after the Effective Date and prior to the Debtor's dissolution, Debtor, at the request of Creditor Trustee, shall execute and deliver any instruments or documents, and to take, or cause to be taken, all such further action as Creditor Trustee may reasonably request in order to evidence or effectuate the transfer of the Creditor Trust Assets to the Creditor Trust and consummation of the transactions contemplated hereby and by the Plan and to otherwise carry out the intent of the parties hereunder and under the Plan.

1.4 Title to Creditor Trust Assets.

(a) The Confirmation Order provides for, causes and orders, upon the Effective Date and the full execution of the Agreement, the transfer, assignment, and delivery from the Debtor and the Estate to the Creditor Trust, for the benefit of the Beneficiaries, of all of the Estate's right, title, and interest in the Creditor Trust Assets, as provided for in this Agreement and the Plan, all of which assets shall vest in the Creditor Trust on the Effective Date free and clear of all Claims, encumbrances, and interests to the maximum extent permissible under the Bankruptcy Code, but subject to the rights of Beneficiaries to obtain the distributions as provided for in this Agreement and the Plan. In this regard, the Creditor Trust Assets will be treated for tax purposes as being transferred by the Debtor and the Estate to the Beneficiaries, and then by the Beneficiaries to the Creditor Trust in exchange for their Creditor Trust Interests for the benefit of such Beneficiaries in accordance with the Plan. Upon the transfer of the Creditor Trust Assets, Creditor Trustee shall succeed to all of the Estate's right, title and interest in such assets, and the Estate shall have no further interest in or with respect to the Creditor Trust Assets or the Creditor Trust. Each of the Creditor Trust and Creditor Trustee shall be considered for all purposes in respect of the disposition of the Creditor Trust Assets as separate and distinct from, and independent of, Debtor and the Estate.

(b) The Creditor Trust shall be treated as a "liquidating trust" within the meaning of section 301.770 1-4(d) of the Treasury Regulations. For all federal and state income tax purposes, the transfer of the Creditor Trust Assets to the Creditor Trust shall be treated as a transfer to the Beneficiaries of the Creditor Trust for all purposes of the Internal Revenue Code (e.g., sections 61(a)(12), 483, 1001, 1012, and 1274) followed by a deemed transfer by such

Beneficiaries to the Creditor Trust. The Creditor Trust shall be considered a “grantor” trust, and the Beneficiaries shall be treated as the grantors and deemed owners of the Creditor Trust. The Creditor Trust shall not be deemed a successor of Debtor. To the extent valuation of the Creditor Trust Assets to the Creditor Trust is required under applicable law, Creditor Trustee shall value the transferred property and notify in writing the Beneficiaries of such valuations. The assets transferred to the Creditor Trust shall be valued consistently by Creditor Trustee and the Beneficiaries, and these valuations will be used for all federal income tax purposes.

1.5 Appointment of Creditor Trustee.

Laurence V. Goddard of BDO is hereby appointed to serve as the initial Creditor Trustee under the Plan and hereby accepts this appointment and agrees to serve in such capacity, effective upon the date of this Creditor Trust Agreement. A successor Creditor Trustee shall be appointed as set forth in Section 4.6 in the event Creditor Trustee is removed or resigns pursuant to this Creditor Trust Agreement or if Creditor Trustee otherwise vacates the position. The Creditor Trust shall be administered by Creditor Trustee in accordance with the provisions of Article IX of this Agreement and the Plan and Creditor Trustee shall have the duties and powers set forth in Article III of this Agreement.

1.6 Claims Against the Creditor Trust Assets.

The Creditor Trust Assets shall be subject to the claims of Creditor Trustee, and his Professionals and Non-Professionals, all Allowed Other Administrative Claims and Allowed Professional Fee Claims (as defined in the Plan), to the extent such claims are pending approval and/or payment on the Effective Date, other Trustee’s Expenses (as defined in the Plan) and U.S. Trustee Fees. The Creditor Trustee shall be entitled to reimburse persons or entities for Trustee’s Expenses out of any available cash in the Creditor Trust, for reasonable compensation and actual reasonable out-of-pocket expenses, including any insurance policy Creditor Trustee deems appropriate, and against and from any and all loss, liability, expense, or damage which each such may sustain in good faith and without willful misconduct, gross negligence, fraud, or, solely in the case of Creditor Trustee, breach of fiduciary duty other than negligence, in the exercise and performance of any of the powers and duties of Creditor Trustee.

1.7 Funding of the Creditor Trust.

(a) On the Effective Date, Debtor and the Estate shall be deemed to have transferred and/or assigned as of the Effective Date any and all assets of Debtor and the Estate constituting Creditor Trust Assets under the Plan including, without limitation: (i) all Cash held by Debtor (less any Cash paid or to be paid on account of unpaid Administrative Claims or Allowed Professional Fee Claims); (ii) Debtor’s remaining property, including accounts or any other tangible or intangible personal property and any and all proceeds thereof; (iii) Debtor’s outstanding accounts receivable; (iv) Debtor’s right, title and interest in and to all Causes of Action and any proceeds therefrom; and (v) all books and records related to Debtor or its Estate. All transferred assets shall be held by the Creditor Trust free and clear of all Claims, Liens, and contractually imposed restrictions, except for the rights to Distribution afforded to Beneficiaries and any orders of the Bankruptcy Court.

(b) The Distributions to be made pursuant to the Plan will be derived from (i) Cash proceeds received by Debtor from the liquidation of its assets as of the Effective Date and other funds then available, and (ii) any payments to be received by Creditor Trustee from the further liquidation of Creditor Trust Assets, including the prosecution and enforcement of Causes of Action, and other funds available after the Effective Date.

1.8 Causes of Action.

Except as otherwise provided in the Plan, all claims, rights, defenses, offsets, recoupments, causes of action, actions in equity or otherwise, whether arising under the Bankruptcy Code or federal, state or common law, which constitute property of the Estate within the meaning of section 541 of the Bankruptcy Code (including, without limitation, the Causes of Action), as well as all claims, rights, defenses, offsets, recoupments, and causes of action arising under chapter 5 of the Bankruptcy Code with respect to Debtor or the Estate, are part of the Creditor Trust Assets transferred and assigned to the Creditor Trust as of the Effective Date in accordance with section 1123(b) of the Bankruptcy Code. Prosecution and settlement of such claims, rights, defenses, and Causes of Action shall be the responsibility of Creditor Trustee, and Creditor Trustee shall pursue those claims, rights, defenses, and Causes of Action, as appropriate, in accordance with Creditor Trustee's sole judgment of what is in the best interests, and for the benefit of, the Beneficiaries of the Creditor Trust.

1.9 Securities Laws.

Under section 1145 of the Bankruptcy Code, the issuance of Creditor Trust Interests under the Plan shall be exempt from registration under the Securities Act of 1933 and applicable state and local laws requiring registration of securities. If Creditor Trustee determines, with the advice of counsel, that the Creditor Trust is required to comply with the registration and reporting requirements of the Securities Exchange Act of 1934, as amended, or the Investment Company Act of 1940, as amended, then Creditor Trustee shall take any and all actions to comply with such reporting requirements and file periodic reports with the Securities and Exchange Commission.

**ARTICLE II
CREDITOR TRUST INTERESTS**

2.1 Identification of Holders of Creditor Trust Interests.

The names of the record holders of Creditor Trust interests ("*Creditor Trust Interests*"), and the amount of Creditor Trust Interests held by such record holders, shall be recorded and set forth in a register maintained by Creditor Trustee (or his designee) expressly for such purpose. The Creditor Trustee hereby establishes the close of business on the Effective Date as the record date for purposes of establishing the official registry of holders of the Creditor Trust Interests. The distribution of Creditor Trust Interests to the Beneficiaries shall be accomplished as set forth in the Plan and in this Agreement. No certificates evidencing the Creditor Trust Interests will be issued to any record or beneficial holder of such interests.

2.2 Transferability of Creditor Trust Interests.

The Beneficiaries shall have beneficial interests in the Creditor Trust Assets as provided in the Plan. Any Beneficiary's proportionate share as thus determined shall be transferable, subject, as applicable, to Bankruptcy Rule 3001(e) and any other provision of law, but shall not be binding on Creditor Trustee unless and until the transfer has been accepted by Creditor Trustee.

2.3 Interests Beneficial Only.

The ownership of a beneficial interest hereunder shall not entitle any Beneficiary to any title in or to the Creditor Trust Assets as such (which title shall be vested in Creditor Trustee) or to any right to call for a partition or division of the Creditor Trust Assets or to require an accounting.

**ARTICLE III
DUTIES AND POWERS OF THE CREDITOR TRUSTEE**

3.1 Generally.

The Creditor Trustee shall be responsible for administering the Creditor Trust Assets and taking actions on behalf of, and representing, the Creditor Trust. The Creditor Trustee shall have the authority to bind the Creditor Trust within the limitations set forth herein, but shall for all purposes hereunder be acting in the capacity of Creditor Trustee and not individually.

3.2 Scope of Authority.

Within the limitations set forth herein, the responsibilities and authority of Creditor Trustee shall include, without limitation: (a) liquidating, selling or abandoning the Creditor Trust Assets; (b) facilitating the prosecution or settlement of objections to or estimations of Claims in accordance with, but subject to the limitations set forth in, the Plan; (c) calculating and implementing all distributions of Net Proceeds in accordance with the Plan and the Confirmation Order; (d) maintaining and administering reserves for Disputed Claims and Claims of Creditors that may be the subject of Avoidance Actions; (e) paying all obligations on behalf of the Creditor Trust from funds held by the Creditor Trust (including Trustee's Expenses, U.S. Trustee fees, and those of Professionals and Non-Professionals); (f) providing any required periodic reports (including, without limitation, filing Quarterly Reports pursuant to Section 8.7 of the Plan) to the Bankruptcy Court and other parties-in-interest on the status of distributions on Allowed Claims, and the financial status of the Creditor Trust; (g) pursuing Causes of Action (including Avoidance Actions) or other post-confirmation litigation on behalf of the Creditor Trust as set forth in the Plan; and (h) carrying out such other responsibilities not specifically set forth herein as may be vested in Creditor Trustee pursuant to the Plan, this Creditor Trust Agreement, any Bankruptcy Court order, or as may be necessary and proper to carry out the provisions of the Plan and the Confirmation Order.

3.3 Taxes and Other Required Filings.

(a) Federal Income Tax. The Creditor Trustee shall treat the Creditor Trust as a grantor trust and shall report items of income, deduction, and credit attributable to the Creditor Trust in accordance with and pursuant to Treasury Regulations Section 1.671-4(a).

(b) Taxes. The Creditor Trust shall be responsible for payments of any taxes imposed on the Creditor Trust. The Creditor Trustee may request an expedited determination of taxes of the Creditor Trust under section 505(b) of the Bankruptcy Code for all returns filed by, for, or on behalf of, the Creditor Trust for all taxable periods through the dissolution of the Creditor Trust.

(c) Other. The Creditor Trustee shall file (or cause to be filed) any other statements, returns or disclosures relating to the Creditor Trust that are required by any governmental authority.

(d) Tax Returns for Pre-Effective Date Periods. For the avoidance of doubt, the Debtor shall be responsible for preparing and filing all of its pre-Effective Date tax returns, with the costs of any such returns to be paid by the Creditor Trust, to the extent not paid or pre-paid prior to the Effective Date.

3.4 Fiduciary Obligations to Creditor Trust and Beneficiaries.

The Creditor Trustee's actions as Creditor Trustee will be held to the same standard as the trustee of a trust under Title 58 of the Ohio Revised Code, as amended. His fiduciary obligations to the Creditor Trust and its Beneficiaries are the same fiduciary obligations that the trustee of a trust owes to that trust and its beneficiaries under Ohio law.

3.5 Powers.

In connection with the administration of the Creditor Trust, except as otherwise set forth in this Creditor Trust Agreement, the Plan, or the Confirmation Order, Creditor Trustee is hereby authorized to perform those acts necessary to accomplish the purposes of the Creditor Trust, without further authorization from the Bankruptcy Court. Without limiting, but subject to, the foregoing, Creditor Trustee is expressly authorized, unless otherwise provided in this Creditor Trust Agreement and subject to the limitations contained herein, in the Plan, and in the Confirmation Order to:

(1) hold legal title (on behalf of the Creditor Trust as Creditor Trustee, but not individually) to the Creditor Trust Assets, including, but not limited to the right to vote any Claim or Interest held by the Creditor Trust in any case or proceeding under the Bankruptcy Code or otherwise and to receive any distribution therein;

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

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

(4) invest funds (in the manner set forth in Section 3.9 of this Agreement), make distributions, and pay taxes and other obligations owed by the Creditor Trust from funds held by Creditor Trustee and/or the Creditor Trust in accordance with the Plan and the Confirmation Order;

(5) prosecute, defend, compromise, adjust, arbitrate, abandon, or otherwise deal with and settle, in accordance with the terms set forth herein and in the Plan and Confirmation Order, Claims in favor of or against the Creditor Trust as Creditor Trustee, in his sole discretion, shall deem necessary, subject to the limitations of the Plan, the Confirmation Order, and this Creditor Trust Agreement;

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

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

(8) file, if necessary, any and all tax and information returns with respect to the Creditor Trust and pay taxes properly payable by the Creditor Trust, if any;

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

(10) pay expenses and make disbursements necessary to preserve, liquidate, and enhance the Creditor Trust Assets, including Trustee's Expenses;

(11) purchase such insurance or trustee bond coverage as Creditor Trustee deems necessary and appropriate with respect to the liabilities and obligations of the Creditor Trust and Creditor Trustee (in the form of an errors and omissions policy, fiduciary policy, or otherwise);

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

(13) retain and pay Professionals as provided for in Article X of this Creditor Trust Agreement as Creditor Trustee may deem necessary or appropriate to assist the Creditor Trust and/or Creditor Trustee in carrying out his powers and duties under this Agreement to the extent permitted by this Creditor Trust Agreement, the Plan, and the Confirmation Order. Subject to Article X, Creditor Trustee may commit the Creditor Trust to, and the Creditor Trust shall, pay Professionals reasonable compensation for services rendered

thereto, and reasonable expenses incurred, as well as commit the Creditor Trust to indemnify any such parties in connection with the performance of services from the Creditor Trust Assets;

(14) retain and pay such Non-Professional third parties as provided for in Article X of this Creditor Trust Agreement as Creditor Trustee may deem necessary or appropriate to assist the Creditor Trust and/Creditor Trustee in carrying out his powers and duties under this Agreement to the extent permitted by this Creditor Trust Agreement, the Plan, and the Confirmation Order. Subject to Article X, Creditor Trustee may commit the Creditor Trust to, and the Creditor Trust shall, pay all such Non-Professionals reasonable compensation for services rendered thereto, and reasonable expenses incurred, as well as commit the Creditor Trust to indemnify any such parties in connection with the performance of services from the Creditor Trust Assets;

(15) settle, in his sole discretion, or litigate objections to, any and all Disputed Claims in accordance with, but subject to the limitations set forth in, the Plan and Section 7.1 of this Agreement;

(16) distribute Cash as set forth in this Creditor Trust Agreement, the Plan, and the Confirmation Order;

(17) within the limitations of the authority provided to Creditor Trustee in this Creditor Trust Agreement, the Plan, and the Confirmation Order, take any appropriate action with respect to the prosecution, settlement, or other resolution of Claims against the Creditor Trust Assets;

(18) terminate and dissolve the Creditor Trust pursuant to and in accordance with the terms of the Plan, the Confirmation Order and this Creditor Trust Agreement; and

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

3.6 General Authority of Creditor Trustee.

Unless specifically stated otherwise herein, Creditor Trustee shall not be required to obtain Bankruptcy Court approval with respect to any proposed action or inaction authorized in this Creditor Trust Agreement or specifically contemplated in the Plan and the Confirmation Order and except as otherwise set forth herein, Creditor Trustee is not required to submit a proposed settlement to the Bankruptcy Court or such other court of competent jurisdiction on any matter for approval; provided, however, that the Creditor Trustee may, in his sole discretion, seek Bankruptcy Court approval for certain actions upon motion, and the Bankruptcy Court shall retain jurisdiction to consider such motions.

3.7 Limitation of Creditor Trustee's Authority.

(1) Notwithstanding anything herein to the contrary, Creditor Trustee shall not be authorized to engage in any trade or business, provided, however, that to the extent the Creditor Trust holds certain Creditor Trust Assets that consist of interests in ongoing businesses, Creditor Trustee is not considered to be engaging in any trade or business in connection with its administration of such assets. Notwithstanding any other authority granted in Sections 3.2 and 3.5 herein, Creditor Trustee is not authorized to engage in any investments or activities inconsistent with the treatment of the Creditor Trust as a liquidating trust within the meaning of Treasury Regulations Section 301.7701-4(d).

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

(3) The Creditor Trust shall not incur secure or unsecured indebtedness (other than ordinary-course credit from providers of services or goods to the Creditor Trust) absent consultation with the Advisory Committee and approval by the Court.

(4) The Creditor Trustee shall not commingle Creditor Trust Assets, including Cash and deposit accounts, with non-Creditor Trust assets.

3.8 Other Activities of Creditor Trustee.

The Creditor Trustee shall be entitled to be employed by third parties or engage in non-conflicting activities while serving as Creditor Trustee for the Creditor Trust.

3.9 Investment and Safekeeping of Creditor Trust Assets.

All monies and other assets received by the Creditor Trust shall, until distributed or paid over as herein provided, be held in trust for the benefit of the Beneficiaries, but need not be segregated from other Creditor Trust Assets. Separate reserves and funds may be merely bookkeeping entries or accounting methodologies, which may be revised from time to time, to enable Creditor Trustee to determine Cash, reserves, and amounts to be paid to parties in interest. The Creditor Trustee shall promptly invest any such monies in the manner set forth in this Section 3.9, but shall otherwise be under no liability for interest or income on any monies received by the Creditor Trust hereunder and held for distribution or payment to the Beneficiaries, except as such interest shall actually be received by Creditor Trustee. Investment of any monies held by the Creditor Trust shall be administered in accordance with Creditor Trustee's general duties and obligations hereunder and in view of Creditor Trustee's general fiduciary duties under Ohio law. The right and power of Creditor Trustee to invest the Creditor Trust Assets transferred to the Creditor Trust, the proceeds thereof, or any income earned by the Creditor Trust, shall be limited to the right and power to (i) invest such Creditor Trust Assets (pending distributions in accordance with the Plan and the Confirmation Order) in (a) short-term

direct obligations of, or obligations guaranteed by, the United States of America or (b) short-term obligations of any agency or corporation which is or may hereafter be created by or pursuant to an act of the Congress of the United States as an agency or instrumentality thereof; or (ii) deposit such assets in demand deposits at any bank or trust company, which has, at the time of the deposit, a capital stock and surplus aggregating at least \$1,000,000,000.00 (collectively, the “*Permissible Investments*”) *provided, however*, that the scope of any such Permissible Investments shall be limited to include only those investments that a trust, within the meaning of Treas. Reg. § 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements or otherwise.

3.10 Authorization to Expend Creditor Trust Assets.

The Creditor Trustee may expend assets of the Creditor Trust to the extent necessary (i) to meet liabilities and to maintain the value of the Creditor Trust Assets during the existence of the Creditor Trust, up and until all creditors are paid in full, (ii) to pay Trustee’s Expenses (including, but not limited to, any taxes imposed on the Creditor Trust or fees and expenses in connection with litigation), (iii) to satisfy other liabilities incurred or assumed by the Creditor Trust (or to which the Creditor Trust Assets are otherwise subject) in accordance with this Creditor Trust Agreement, the Plan, or the Confirmation Order; and (iv) to make distributions to Beneficiaries on account of their Allowed Claims in accordance with this Creditor Trust Agreement, the Plan and Confirmation Order.

**ARTICLE IV
CREDITOR TRUSTEE**

4.1 Compensation of Creditor Trustee.

(a) The Creditor Trustee shall be entitled to receive reasonable compensation for services rendered on behalf of the Creditor Trust. The Creditor Trustee’s current hourly rate is \$485. The Creditor Trustee may assign certain projects related to this engagement to other Professionals associated with or retained by BDO consistent with the nature of the projects and experience of the other Professionals. The hourly rates for such other professionals are estimated to range from \$150 to \$795 based on their level of experience. These rates may be adjusted periodically to reflect market and other conditions. All travel time of Creditor Trustee and other Professionals associated with BDO shall be billed at half of their standard hourly rate.

(b) All compensation and other amounts payable to Creditor Trustee shall be paid out of the Creditor Trust Assets pursuant to the terms of this Creditor Trust Agreement and the Plan. The Creditor Trust shall receive its initial funding from the Cash on hand of Debtor as of the date the Court enters the Confirmation Order to fund the costs of administration of the Creditor Trust, as well as ongoing receipts post-confirmation, until all assets have been liquidated or disposed of otherwise.

(c) The Creditor Trust shall reimburse Creditor Trustee for his actual reasonable out-of-pocket expenses incurred including, without limitation, necessary travel, lodging, postage, telephone, and facsimile charges upon receipt of periodic billings. All

reimbursement for expenses payable to Creditor Trustee shall be paid from the Creditor Trust Assets in priority over any distributions to Beneficiaries to be made under the Plan. If the Creditor Trust Assets are insufficient to fully satisfy the amounts payable to, or other obligations owing to, Creditor Trustee, Creditor Trustee may, in his sole and complete discretion, withhold distributions of proceeds of the Creditor Trust Assets from the Beneficiaries until the earlier of: (i) appropriate reserves have been created by Creditor Trustee that would be sufficient to pay in full all fees, costs, and expenses rendered by Creditor Trustee for and on behalf of the Beneficiaries (including, without limitation, for the pursuit of Causes of Action); or (ii) all such amounts have been fully paid and all such obligations have been fully satisfied. This Section shall be construed consistent with the provisions of Rev. Proc. 94-45, at ¶ 10.

(d) If Creditor Trustee is removed pursuant to Section 4.4 hereof or Creditor Trustee dies or becomes disabled, then such former Creditor Trustee (or his employer, estate, successor, or assigns) shall be entitled to any remaining unpaid compensation and reimbursement due hereunder.

4.2 Termination.

The duties, responsibilities and powers of Creditor Trustee will terminate on the date the Creditor Trust is terminated in accordance with Article XI of this Agreement.

4.3 No Bond Required, But Optional.

The Creditor Trustee shall not be required to obtain a trustee or similar surety bond but may obtain one, in his sole discretion, to the extent he deems necessary, with the costs of such bond to be payable by the Creditor Trust as a Trustee's Expense.

4.4 Removal.

The Creditor Trustee may only be removed for cause by order of the Bankruptcy Court, after notice and a hearing. The Advisory Committee, for and on behalf of the Creditor Trust, shall designate a successor Creditor Trustee ("*Successor Creditor Trustee*") as soon as practicable following entry of an order removing Creditor Trustee for cause. "Cause" shall include, without limitation, fraud, defalcation, gross mismanagement, breaches of fiduciary duty other than negligence, and the undue prolongation of the duration of the Creditor Trust and of distributions of the Creditor Trust Assets to the Beneficiaries. If a Successor Creditor Trustee is not appointed or does not accept his or her appointment within thirty (30) days after the removal, the Advisory Committee or the Bankruptcy Court (or another court of competent jurisdiction), upon its own motion, shall appoint a Successor Creditor Trustee.

4.5 Resignation of Creditor Trustee.

The Creditor Trustee may resign by giving not less than thirty (30) days prior written notice thereof to the Advisory Committee or shall be deemed to have resigned due to death or incapacity. Such resignation shall become effective on the later to occur of: (i) the day specified in such notice or date of death or determination of incapacity; or (ii) the appointment of a Successor Creditor Trustee by the Advisory Committee and the acceptance by such Successor Creditor Trustee of such appointment. If a Successor Creditor Trustee is not appointed or does

not accept his or her appointment within thirty (30) days following delivery of a notice of resignation of Creditor Trustee, the Advisory Committee may petition any court of competent jurisdiction for the appointment of a Successor Creditor Trustee.

4.6 Appointment of Successor Creditor Trustee upon Removal, Resignation, Death, or Incapacity.

If Creditor Trustee is removed pursuant to Section 4.4 hereof, resigns pursuant to Section 4.5 hereof, or otherwise is incapable of serving as Creditor Trustee, a Successor Creditor Trustee shall be appointed by the Advisory Committee; *provided, however*, that no past or present holder of a Claim or Interest in Debtor or any representative thereof shall serve as Successor Creditor Trustee. No Successor Creditor Trustee shall in any event have any liability or responsibility for the acts or omissions of any of his or her predecessors.

4.7 Acceptance of Appointment by Successor Creditor Trustee.

Every Successor Creditor Trustee shall execute, acknowledge, and file with the Court an instrument in writing accepting such appointment hereunder, and thereupon such Successor Creditor Trustee, without any further act, shall become fully vested with all of the rights, powers, duties and obligations of his or her predecessor with like effect as if originally named herein; *provided, however*, that a removed, incapacitated, or resigning Creditor Trustee shall, nevertheless, when requested in writing by the Successor Creditor Trustee, execute and deliver an instrument or instruments conveying and transferring to such Successor Creditor Trustee under the Creditor Trust all the rights, powers, duties, and obligations of Creditor Trustee.

4.8 Creditor Trust Continuance

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

**ARTICLE V
ADVISORY COMMITTEE**

5.1 Appointment of the Advisory Committee Members.

An Advisory Committee, which shall provide advice and consultation to Creditor Trustee, shall be created as soon as practicable on or after the Effective Date. The Advisory Committee shall consist of three members: Roger Mustian, Catherine Maxwell, and Jim Hanus (each, an “*Advisory Committee Member*,” and collectively, the “*Advisory Committee Members*”), all of whom were members of Committee. Each of the Advisory Committee Members shall have one vote in connection with any matters that are subject to the determination of the Advisory Committee. Each Advisory Committee Member shall serve until the earlier of: (a) his or her death or resignation; (b) his or her removal pursuant to Section 5.5 of this Trust Agreement; and (c) the termination of the Creditor Trust. To any extent an Advisory Committee Member has a conflict of interest with respect to any matter being handled by the Liquidating Trustee, such

Advisory Committee Member shall recuse themselves and be recused from any such discussions in accordance herewith and any by-laws governing operation of the Advisory Committee approved by Creditor Trustee.

5.2 Compensation and Expenses of the Advisory Committee Members.

The Advisory Committee Members shall not be entitled to compensation but shall be reimbursed for their reasonable expenses, including travel expenses, reasonably required and incurred in the performance of their duties and preapproved in writing by Creditor Trustee.

5.3 Powers and Duties of the Advisory Committee.

(a) The Advisory Committee will consult with Creditor Trustee with respect to his or her actions in administering the Creditor Trust Assets. The Advisory Committee Members further agree to assist Creditor Trustee in administering the Creditor Trust in furtherance of the purposes detailed in Section 1.2 herein, pursuant to the terms of this Agreement and the Plan.

(b) The Creditor Trustee shall consult with the Advisory Committee prior to the following actions being taken by Creditor Trustee: (i) consummating any sale of Creditor Trust Assets in a transaction in which the value of such assets being sold exceeds \$100,000; (ii) the resolution of any Disputed Claim having a filed or scheduled amount exceeding \$100,000; (iii) consummating any settlement of a Cause of Action (including Avoidance Actions or Insider Causes of Action), to the extent such Cause of Action was asserted in an amount not less than \$100,000; or (iv) the termination of the Creditor Trust. The Creditor Trustee may take under consideration any actions based on recommendations made by the Advisory Committee; provided, however, that taking or failing to take any action with respect to such recommendations is solely at the discretion of Creditor Trustee. Without limiting the foregoing, neither the Advisory Committee nor any Advisory Committee Member shall exercise any control or authority over the Creditor Trust or the Creditor Trust Assets that is inconsistent with the provisions of this Creditor Trust Agreement.

5.4 Removal of Advisory Committee Member.

An Advisory Committee Member may be removed at any time by the written consent of a majority of the Advisory Committee Members. Any removal shall be effective on the date specified in such consent or approval pursuant to this Section 5.4.

5.5 Resignation of Advisory Committee Member.

An Advisory Committee Member may resign by giving not less than thirty (30) days prior written notice thereof to the other Advisory Committee Members and Creditor Trustee. Such resignation shall become effective on the later to occur of: (i) the day specified in such notice; or (ii) the appointment of a successor Advisory Committee Member (a “*Successor Advisory Committee Member*”) by the other Advisory Committee Members and the acceptance by such Successor Advisory Committee Member of such appointment.

5.6 Appointment of Successor Advisory Committee Member upon Removal, Resignation, or Incapacity.

If an Advisory Committee Member is removed pursuant to Section 5.4 hereof, resigns pursuant to Section 5.5 hereof, or otherwise is incapable of serving as an Advisory Committee Member, a Successor Advisory Committee Member shall be appointed by the other Advisory Committee Members. If a Successor Advisory Committee Member is not appointed or does not accept his or her appointment within thirty (30) days following (i) delivery of a notice of resignation of an Advisory Committee Member or (ii) the removal of an Advisory Committee Member, the Advisory Committee or Creditor Trustee may petition any court of competent jurisdiction for the appointment of a Successor Advisory Committee Member. Successor Advisory Committee Members shall be former members of Committee; *provided, however*, that if no former members of Committee are willing or able to accept appointment as a Successor Advisory Committee Member, any holder of an Allowed Class 3 General Unsecured Claim may be appointed.

5.7 Acceptance of Appointment by Successor Advisory Committee Member.

Any Successor Advisory Committee Member appointed hereunder shall execute an instrument accepting such appointment hereunder and shall deliver such acceptance to Creditor Trustee. Thereupon, such Successor Advisory Committee Member shall, without any further act, become vested with all the rights, powers, duties, and obligations of his or her predecessor in the Advisory Committee with like effect as if originally named herein.

**ARTICLE VI
PROVISIONS REGARDING DISTRIBUTIONS**

6.1 Timing and Methods of Distributions.

(a) Generally. The Creditor Trustee, on behalf of the Creditor Trust, or such other entity as may be designated by Creditor Trustee, on behalf of the Creditor Trust, will make all distributions to the Beneficiaries as set forth in, and as required by, this Creditor Trust Agreement, the Plan and the Confirmation Order.

(b) Initial Distribution. The Creditor Trustee shall use his reasonable efforts to make an initial distribution under the Plan as soon as reasonably possible after the Effective Date. Initial distributions made to Holders of Claims that are not Allowed Claims as of the Effective Date, but which later become Allowed Claims, shall be deemed to have been made on the Effective Date.

(c) Subsequent Distributions. Subsequent distributions may be made from time to time in the sole discretion of Creditor Trustee (upon consultation with the Advisory Committee).

(d) Method of Distributions to Holders of Claims. Distributions made pursuant to the Plan shall be in U.S. dollars and, at the option and in the sole discretion of

Creditor Trustee, be made by (a) checks drawn on or (b) wire transfers from a domestic bank selected by Creditor Trustee.

(e) Priority of Distributions. The Creditor Trustee in his good faith judgment and based on available Creditor Trust Assets, shall make distributions in the following order of priorities: (i) *first*, to the extent not paid by Debtor or its Estate, Allowed Other Administrative Claims and Allowed Professional Fee Claims; (ii) *second*, to place sufficient funds in the Creditor Trust's account to pay accrued and projected Trustee's Expenses (including, but not limited to, Creditor Trustee's compensation and fees and expenses of Professionals and Non-Professionals); (iii) *third*, to the extent not paid by Debtor or its Estate, to holders of Allowed Priority Tax Claims; (iv) *fourth*, to the extent not paid by Debtor or its Estate, to holders of Allowed Class 1 Claims; (v) *fifth*, to the extent not paid by Debtor or its Estate, to holders of Allowed Class 2 Claims; and (vi) *sixth*, to holders of Allowed Class 3 Claims.

(f) Withholding. The Creditor Trustee may withhold from amounts distributable to any entity any and all amounts, determined in Creditor Trustee's reasonable sole discretion, to be required by any law, regulation, rule, ruling, directive, or other government equivalent of the United States or of any political subdivision thereof.

(g) Reserves. The Creditor Trustee shall cause the Creditor Trust to retain an amount of Net Proceeds as set forth in and to effectuate the provisions of the Plan and the Confirmation Order, or to meet Claims and contingent liabilities, including, but not limited to, Professional Fee Claims and Disputed Claims.

6.2 Delivery of Distributions.

Subject to the provisions of Rule 2002(g) of the Bankruptcy Rules and any other applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and any order of the Bankruptcy Court, and except as otherwise provided herein, distributions and deliveries to Holders of Allowed Claims shall be made at the address (the "*Distribution Address*") of each such Holder as set forth on the Schedules filed with the Bankruptcy Court, unless superseded by the address set forth on a timely filed proof(s) of claim or some other writing filed with the Bankruptcy Court and served upon the Creditor Trust.

6.3 Tax Identification Numbers and OFAC Certifications.

Notwithstanding anything in the Plan to the contrary, prior to making Distributions hereunder, Creditor Trustee shall require all Holders to furnish to him: (a) its Employer or Taxpayer Identification Number as assigned by the Internal Revenue Service on a Form W-9; and (b) a certification that the Holder is not a person or entity with whom it is illegal for a U.S. person to do business under Office of Foreign Assets Control ("*OFAC*") sanctions regulations and/or the list of Specially Designated Nationals and Blocked Persons (collectively, the "*Pre-Distribution Certifications*"). Pre-Distribution Certification forms will be mailed to the Distribution Address for each Holder prior to Distributions being made, and Holders shall have forty-five (45) days from the date of mailing to return the executed Pre-Distribution Certifications. Any Holder that fails to return the executed Pre-Distribution Certifications within such forty-five (45) day period shall be deemed to have forfeited its right to receive Distributions

and shall be forever barred and enjoined from asserting any right to Distributions made prior to Creditor Trustee receiving its executed Pre-Distribution Certifications (such a Holder would only be entitled to a Pro-Rata Share of remaining future Distributions, if any); provided, however, that Creditor Trustee may extend the deadline to return executed Pre-Distribution Certification in his sole discretion. Any Distributions that are forfeited pursuant to this provision will be returned to Creditor Trustee and become property of the Creditor Trust.

6.4 Undeliverable Distributions.

(a) Holding of Undeliverable Distributions.

If any Distribution to any Holder of an Allowed Claim is returned to Creditor Trustee as undeliverable, no further Distributions shall be made to such Holder unless and until Creditor Trustee is notified by such Holder, in writing, of such Holder's then-current address. Upon such an occurrence, the appropriate Distribution shall be made as soon as reasonably practicable after such Distribution has become deliverable. All Creditors ultimately receiving previously undeliverable Cash shall not be entitled to any interest or other accruals of any kind. Creditor Trustee is not required to attempt to locate any Holder of an Allowed Claim. The Creditor Trustee may, but is under no obligation to, research any new address of a Holder and forward any Distribution to such new address.

(b) Failure to Claim Undeliverable Distributions.

Any Holder of an Allowed Claim entitled to an undeliverable or unclaimed Distribution that does not provide notice of such Holder's correct address to Creditor Trustee within ninety (90) days after the date of the initial Distribution made by Creditor Trustee to such Holder shall be deemed to have forfeited its claim for such undeliverable or unclaimed Distribution and shall be forever barred and enjoined from asserting any such claim for an undeliverable or unclaimed Distribution against Debtor, its Estate or the Creditor Trust. If, after ninety days, Distributions remain unclaimed, unclaimed Distributions will become Forfeited Distributions and such amounts shall be made available for distribution to other Beneficiaries or for Trustee's Expenses. With respect to a final Distribution, in the event that the aggregate amount of the Forfeited Distributions is not sufficient for Creditor Trustee to make an economically justifiable supplemental final Distribution (for example, a Distribution would result in De Minimis Distributions after cost) the Forfeited Distributions may be donated to The Legal Aid Society (or substantially similar charitable organization).

6.5 Withholding and Reporting Requirements.

In connection with the Plan and all Distributions thereunder, Creditor Trustee shall comply with all tax withholding and reporting requirements imposed by any U.S. federal, state or local or non-U.S. taxing authority, and all Distributions hereunder shall be subject to any such withholding and reporting requirements. The Creditor Trustee shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements. Notwithstanding any other provision of the Plan: (a) each Holder of an Allowed Claim that is to receive a Distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any

governmental unit, including income, withholding and other tax obligations, on account of such Distribution; and (b) Creditor Trustee reserves the option, in his discretion, to not make a Distribution to or on behalf of such Holder pursuant to the Plan unless and until such Holder has made arrangements satisfactory to Creditor Trustee for the payment and satisfaction of such tax obligations or has, to Creditor Trustee's satisfaction, established an exemption therefrom.

6.6 Time Bar to Cash Payments.

Checks issued by Creditor Trustee on account of Allowed Claims shall be null and void if not negotiated within ninety (90) days from and after the date of issuance thereof. Requests for reissuance of any check that has become null and void shall be made directly to Creditor Trustee by the Holder of the Allowed Claim within thirty (30) days of the check becoming null and void. After such thirty (30) day period has elapsed, all Claims relating to such voided checks shall be discharged and forever barred. In the case of checks issued on account of Allowed Claims but not negotiated within ninety (90) days of issuance and for which no request for reissuance is made before thirty (30) days after issuance, the amounts at issue shall be considered to be a Forfeited Distribution. Any creditor or claimant that fails to negotiate its check and seek reissuance shall be entitled to no further distributions on any Claim, regardless of Class.

6.7 Fractional Dollars; *De Minimis* Distributions.

Notwithstanding anything contained herein to the contrary, payments of fractions of dollars may not be made in the sole discretion of Creditor Trustee. To the extent that Creditor Trustee elects not to make payments in fractions of dollars, the actual payment made will reflect a rounding of such fraction to the nearest dollar (up or down), with half dollars being rounded down. The Creditor Trustee will not make any *De Minimis* Distributions, and reserves the right to reserve such *De Minimis* Distributions until such time as the Holder of such Claims is entitled to a Distribution of at least fifty dollars (\$50.00).

6.8 Interest.

Unless otherwise required by applicable bankruptcy law, or specifically provided for herein, post-petition interest shall not accrue or be paid on any Claims, and no holder of a Claim shall be entitled to interest or fees accruing on or after the Petition Date on any Claim.

In accordance with Section 502(b)(2) of the Bankruptcy Code, the amount of all prepetition Unsecured Claims against Debtor shall be calculated as of the Petition Date. Except as otherwise explicitly provided in the Plan, in section 506(b) of the Bankruptcy Code, or by Final Order, no Holder of a prepetition Claim shall be entitled to or receive interest or fees relating to such Claim.

6.9 Setoffs.

Consistent with the Plan, sections 502(d) or 553 of the Bankruptcy Code or applicable non-bankruptcy law, Creditor Trustee may, but shall not be required to, set off against any Allowed Claim and the Distributions to be made pursuant to the Plan on account thereof (before any distribution is made on account of such Claim), the claims, rights and causes of

action of any nature that Debtor, its Estate, or Creditor Trustee may hold against the Holder of such Allowed Claim; provided, however, that neither the failure to effect such a set off nor the allowance of any claim hereunder shall constitute a waiver or release by Debtor, its Estate, or Creditor Trustee of any such claims, rights, and Causes of Action that Debtor, its Estate, the Creditor Trust, or Creditor Trustee may possess against such Holder.

6.10 Preservation of Debtor's Subordination Rights.

All subordination rights and claims relating to the subordination by Debtor or its Estate of the Allowed Claims of any creditor shall remain valid and enforceable by Creditor Trust, unimpaired in accordance with section 510 of the Bankruptcy Code or otherwise, and may be asserted by Creditor Trustee as necessary or appropriate.

6.11 Waiver by Creditors of All Subordination Rights.

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

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

7.1 Objections to Claims; Prosecution of Disputed Claims.

(a) After the Effective Date (and as otherwise provided in the Plan), Creditor Trustee shall object (and shall take over, and continue prosecuting, any outstanding claims objections initiated by Debtor or Committee) to the allowance of any Disputed Claims as Creditor Trustee determines is reasonable, even if such claims were scheduled by Debtor as undisputed, liquidated and non-contingent. All objections shall be pursued to settlement or to Final Order; *provided, however*, that no Bankruptcy Court approval shall be required in order for Creditor Trustee to settle, withdraw and/or compromise any Claim, objection to Claim, Cause of Action, or right to payment of or against Debtor or its Estate.

(b) Any objections to Claims shall be resolved or litigated by Creditor Trustee, in his sole discretion, subject to consultation with the Advisory Committee with respect to the resolution of a Disputed Claim with a face or scheduled amount in excess of \$100,000. The Creditor Trustee shall have sole and complete discretion to not review and/or object to proofs of Claim, including, without limitation, to not object to claims to the extent Creditor Trustee believes that such review and/or objection would be uneconomical.

7.2 Estimation of Claims.

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

7.3 Payments and Distributions on Disputed Unsecured Claims.

No interest shall be paid on Disputed Claims that later become Allowed Claims or with respect to any distribution to such Holder. No distribution shall be made with respect to all or any portion of any Claim, a portion of which or all of which is a Disputed Claim, pending the entire resolution thereof.

**ARTICLE VIII
LIABILITY AND EXCULPATION PROVISIONS**

8.1 Standard of Liability.

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

8.2 Reliance by Creditor Trustee.

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

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

8.3 Exculpation.

(a) From and after the Effective Date, Creditor Trustee and his Professionals, Non-Professionals, and representatives (collectively, "Exculpated Parties") shall be and hereby are exculpated by all Persons, including, without limitation, Holders of Claims, other parties in interest and any Successor Creditor Trustee, from any and all claims, causes of action, and other assertions of liability arising out of the discharge of the powers and duties conferred upon said parties pursuant to or in furtherance of this Creditor Trust Agreement, the Plan, the Confirmation Order, any order of the Bankruptcy Court or applicable law; provided, however, that no Exculpated Party shall be exculpated for gross negligence, willful misconduct, or fraud, as determined by a final order of a court of competent jurisdiction (but in all respects such entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to this Creditor Trust Agreement).

(b) No Holder of a Claim, other party-in-interest or any Successor Creditor Trustee will have or be permitted to pursue any claim or cause of action against Creditor Trustee or his Professionals, Non-Professionals, or representatives for making payments in accordance with the Plan or the Confirmation Order or for implementing the provisions of the Plan or the Confirmation Order. Any act taken or not taken by Creditor Trustee with the approval of the Bankruptcy Court will be conclusively deemed not to constitute gross negligence, willful misconduct, or, solely in the case of Creditor Trustee, a breach of fiduciary duty other than negligence, unless such Bankruptcy Court approval was obtained as the result of gross negligence, willful misconduct, or fraud.

8.4 Indemnification.

The Creditor Trust shall indemnify, defend, and hold harmless Creditor Trustee and his respective Professionals, Non-Professionals, and representatives from and against any and all claims, causes of action, liabilities, obligations, losses, damages, or expenses (including attorneys' fees and expenses) occurring after the Effective Date, other than to the extent determined by a Final Order to be solely due to their own respective gross negligence, willful

misconduct, or breach of fiduciary duty other than negligence, to the fullest extent permitted by applicable law.

ARTICLE IX ADMINISTRATION

9.1 Books and Records.

The Creditor Trustee shall maintain, with respect to the Creditor Trust and the Beneficiaries, books and records relating to the assets and income of the Creditor Trust and the payment of expenses of and liabilities of, claims against or assumed by, the Creditor Trust in such detail and for such period of time as Creditor Trustee determines, in his sole discretion, may be necessary to make full and proper accounting in respect thereof in order to comply with applicable provisions of law. Except as otherwise provided herein, in the Plan, or in the Confirmation Order, nothing in this Agreement requires the Creditor Trust to file any accounting or seek approval of any court with respect to the administration of the Creditor Trust, or as a condition for making any payment or distribution out of the Creditor Trust Assets. Subject to all applicable privileges, the Beneficiaries shall, at their sole cost and expense, have the right, in addition to any other rights they may have pursuant to this Creditor Trust Agreement, under the Plan and the Confirmation Order, or otherwise, upon thirty (30) days prior written notice delivered to Creditor Trustee, to request a reasonable inspection (as determined by Creditor Trustee) of such books and records, *provided that*, if so requested, such Beneficiary shall (a) have entered into a confidentiality agreement satisfactory in form and substance to Creditor Trustee and (b) make such other arrangements as requested by Creditor Trustee.

9.2 Security Interests.

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

9.3 Compliance with Laws.

Any and all distributions of Creditor Trust Assets shall comply with all applicable laws and regulations.

ARTICLE X
PROFESSIONALS AND NON-PROFESSIONALS

10.1 Retention of Professionals and Non-Professionals.

(a) The Creditor Trustee shall have the right to retain his own Professionals without any further approval by the Bankruptcy Court including, without limitation, claims, disbursing and transfer agents, legal counsel, accountants, experts and other agents or advisors as Creditor Trustee deems appropriate. Such Professionals shall be compensated in accordance with Section 10.2 hereof. The Professionals so retained may be “interested” as that term is defined in the Bankruptcy Code and may include, without limitation, counsel and financial advisors of any party in Debtor’s chapter 11 case.

(b) The Creditor Trustee shall have the right to retain non-professionals without any further approval by any court or otherwise including, without limitation, employees, independent contractors, or other agents, including agents retained to make Distributions on Creditor Trustee’s behalf (the “*Non-Professionals*”) as Creditor Trustee deems appropriate. Such Non-Professionals shall be compensated in accordance with Section 10.2 hereof. The Non-Professionals so retained may be “interested” as that term is defined in the Bankruptcy Code and may include, without limitation, employees, independent contractors, and agents of Debtor or Committee.

(c) The Creditor Trustee has agreed to retain Goldstein & McClintock LLLP as his lead counsel and Frost Brown Todd LLC as his Ohio counsel. Such retention is made pursuant to this Article without any further approval by any Court.

10.2 Compensation of Professionals and Non-Professionals.

Each Professional and Non-Professional retained by Creditor Trustee shall submit monthly invoices to Creditor Trustee, for their fees and expenses incurred in connection with services requested by, and provided to, Creditor Trustee. The Creditor Trustee is authorized to pay such monthly invoices in the ordinary course without Court approval, subject only to any reserve set by Creditor Trustee in his sole discretion in accordance with this Creditor Trust Agreement. All travel time of Professionals and Non-Professionals shall be billed at half of their standard hourly rate.

The Creditor Trustee shall pay all fees and expenses requested in a monthly invoice within 21 days of receipt, provided, however, that Creditor Trustee may withhold payment as to any fees and expenses subject to an objection. To the extent that Creditor Trustee identifies an objection to a monthly invoice, he shall provide the affected Professional or Non-Professional with written notice of the objection, setting forth the reasons for the objection and the amounts to which he objects. The Creditor Trustee and the affected Professional or Non-Professional shall cooperate in good faith to resolve any such objections informally. If, after 30 days of written notice of the objection, the objection has not been consensually resolved, either party may file a motion with the Bankruptcy Court for an adjudication of the objection.

For the avoidance of doubt, to the extent that employees of BDO are engaged by Creditor Trustee to render services pursuant to Section 4.1, BDO shall be subject to the invoice procedures set forth in this Section 10.2.

ARTICLE XI TERMINATION OF CREDITOR TRUST

11.1 Termination of Creditor Trust.

The Creditor Trustee shall be discharged of his duties, and the Creditor Trust and the Advisory Committee shall be dissolved and terminated on the date on which both (i) the Creditor Trust Assets have been liquidated and (ii) all distributions required to be made by Creditor Trustee to Beneficiaries under this Agreement have been made.

11.2 Five Year Term.

If, after five (5) years from the Effective Date of the Plan, the dissolution and termination of the Creditor Trust has not occurred pursuant to Section 11.1, and Creditor Trustee determines that the facts and circumstances necessitate an extension of the duration of the Creditor Trust in order to effectuate its purpose, the Creditor Trust may be extended for a period of twelve (12) months. The Creditor Trustee may, upon the expiration of the extended term, seek additional extensions of twelve (12) months if warranted by the facts and circumstances. Any extension of the duration of the Creditor Trust, as provided for herein, shall be subject to approval by the Bankruptcy Court, provided, however, that prior to requesting such extension, Creditor Trustee must retain an opinion of counsel or a favorable ruling from the IRS that any further extension would not adversely affect the status of the Trust as a Grantor Trust for Federal income tax purposes.. The Creditor Trustee shall seek approval of any such extension within sixty (60) days of the expiration of the initial five (5) year term or any extension thereof.

11.3 Diligent Administration.

The Creditor Trustee shall: (a) not unduly prolong the duration of the Creditor Trust; (b) at all times endeavor to resolve, settle, or otherwise dispose of all claims that constitute Creditor Trust Assets; (c) effect the distribution of the Creditor Trust Assets to the Beneficiaries in accordance with the terms hereof; and (d) endeavor to terminate the Creditor Trust as soon as practicable. Prior to and upon termination of the Creditor Trust, Creditor Trustee shall distribute the Creditor Trust Assets to the Beneficiaries in accordance with their distribution rights under the Plan and the Confirmation Order, subject to the provisions set forth herein. If any distributions of the Creditor Trust are not duly claimed, Creditor Trustee shall dispose of all such distributions in accordance with the Plan and the Confirmation Order.

**ARTICLE XII
MISCELLANEOUS PROVISIONS**

12.1 Intention of Parties to Establish Grantor Trust.

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

12.2 Preservation of Privilege.

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

12.3 Cooperation.

The Debtor shall provide Creditor Trustee with access to or copies of such of its books and records as Creditor Trustee shall reasonably require for the purpose of performing his duties and exercising his powers under this Creditor Trust Agreement, the Plan or the Confirmation Order, including as provided for under the Plan, until such time as the Debtor has dissolved in accordance with the Plan and applicable law. All third parties in possession of Debtor's books and records shall provide Creditor Trustee with similar cooperation, and Creditor Trustee shall have the right to seek appropriate relief from the Bankruptcy Court to the extent that a third party unreasonably refuses to cooperate with Creditor Trustee requests. Creditor Trustee shall pay the reasonable out-of-pocket costs and/or expenses of Debtor or any such third parties related to requests for assistance hereunder, including, but not limited to, any fees and expenses of counsel reasonably necessary to Creditor Trustee's requests to such parties.

12.4 Payment of Statutory Fees.

All fees payable pursuant to 28 U.S.C. § 1930 shall be paid on and after the Effective Date by the Creditor Trust until the bankruptcy case is closed.

12.5 Implied Authority of Creditor Trustee.

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

12.6 Confidentiality.

The Creditor Trustee, his employees, any Professionals, and any Non-Professionals hired by such parties (each a "*Confidential Party*" and collectively the

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

12.7 Governing Law.

This Creditor Trust Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to rules governing the conflict of law.

12.8 Jurisdiction.

The Bankruptcy Court shall have exclusive jurisdiction to implement and enforce the terms and provisions of this Agreement.

12.9 Severability.

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

12.10 Notices.

Except as otherwise provided in the Plan, any notice or other communication hereunder shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if delivered via personal delivery, facsimile or e-mail to the address as set forth below, or such other addresses as may be filed with the Bankruptcy Court:

Creditor Trustee:

BDO USA, LLP
32125 Solon Road, Suite #200
Cleveland, OH 44139
Phone: (440) 394-6151
Email: lgoddard@bdo.com
Attn: Laurence V. Goddard

with a copy to:

BDO USA, LLP
Office of the General Counsel
330 N. Wabash Ave., Suite 3300
Chicago, IL 60611

with a copy to:

GOLDSTEIN & MCCLINTOCK LLLP
111 W. Washington St., Suite 1221
Chicago, IL 60602
Phone: (312) 337-7700
Fax: (312) 277-2305
Email: tomf@goldmclaw.com
haroldi@goldmclaw.com
brianj@goldmclaw.com
Attn: Thomas R. Fawkes, Esq.
Harold D. Israel, Esq.
Brian J. Jackiw, Esq.

12.11 Notices if to a Beneficiary.

Except as otherwise provided in the Plan, any notice or other communication hereunder shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if deposited, postage prepaid, in a post office or letter box addressed to the person for whom such notice is intended to the name and address set forth on such Beneficiary's proof of claim or such other notice filed with the Bankruptcy Court and the Creditor Trust, or if none of the above has been filed, to the address set forth in Debtor's Schedules.

12.12 Headings.

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

12.13 Amendment or Waiver.

Any substantive provision of this Creditor Trust Agreement may be materially amended or waived with the approval of the Bankruptcy Court; *provided, however*, that no change may be made to this Creditor Trust Agreement that would adversely affect the federal income tax status of the Creditor Trust as a “grantor trust” (in accordance with Section 1.1 hereof), if applicable. Technical or non-material amendments to or waivers of portions of this Agreement may be made as necessary, to clarify this Creditor Trust Agreement or to enable the Creditor Trust to effectuate the terms of this Creditor Trust Agreement, with the consent of Creditor Trustee. Notwithstanding this Section 12.13, any amendments to this Agreement shall not be inconsistent with the purpose and intention of the Creditor Trust to liquidate in a reasonable and orderly manner the Creditor Trust Assets in accordance with Treasury Regulations Section 301.7701-4(d) and the Plan.

12.14 Savings Clause.

If any clause or provision of this Agreement shall for any reason be held invalid or unenforceable by the Court, such invalidity or unenforceability shall not affect any other clause or provision hereof, but this Agreement shall be construed, insofar as reasonable to effectuate the purpose hereof, as if such invalid or unenforceable provision had never been contained herein.

12.15 Counterparts.

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

12.16 Waiver.

No failure or delay of any party to exercise any right or remedy pursuant to this Agreement shall affect such right or remedy or constitute a waiver thereof.

12.17 Entire Agreement.

This Agreement and the Plan, as approved by the Confirmation Order, constitute the entire agreement by and among the parties and there are no representations, warranties, covenants or obligations with respect to the subject matter hereof except as set forth herein or therein. This Agreement, together with the Plan and Confirmation Order, supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, written or oral, of the parties hereto, relating to such subject matter. Except as otherwise authorized by the Court or specifically provided in this Agreement or in the Plan, nothing in this Agreement is intended or shall be construed to confer upon or to give any Person other than the parties hereto, the Advisory Committee, and the Beneficiaries any rights or remedies under or by reason of this Agreement.

12.18 Relationship to the Plan.

The principal purpose of this Agreement is to aid in the implementation of the Plan, and therefore the Plan is hereby incorporated into this Agreement. To that end, Creditor Trustee shall have full power and authority to take any action consistent with the purpose and provisions of the Plan and the Confirmation Order, and to seek any orders from the Court in furtherance of implementation of the Plan and this Agreement. If any provisions of this Agreement are found to be inconsistent with the provisions of the Plan, the provisions of the Plan shall control.

12.19 Effective Date.

This Agreement shall become effective as of the Plan Effective Date.

[Remainder of Page Intentionally Left Blank]

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

CREDITOR TRUSTEE

By: _____

Name: _____

**OFFICIAL COMMITTEE OF
UNSECURED CREDITORS OF ASCP
CORP. F/K/A ACUSPORT
CORPORATION**

By: _____

Name: Jim Hanus

Its: Chairperson

**ASCP CORP. F/K/A ACUSPORT
CORPORATION**

By: _____

Name: Lee Sweigart

Its: Chief Restructuring Officer