

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re

KNOTEL, INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 21-10146 (MFW)

Jointly Administered

**Re: Docket Nos. 1138 & 1140**

**NOTICE OF FILING PLAN SUPPLEMENT**

**PLEASE TAKE NOTICE** that on May 12, 2021, Knotel, Inc, and certain affiliate debtors, (the “**Liquidating Debtors**”) and the Official Committee of Unsecured Creditors (the “**Committee**,” and along with the Liquidating Debtors, the “**Plan Proponents**”), filed the *Joint Combined Chapter 11 Plan of Liquidation and Disclosure Statement for Knotel, Inc. and Certain Affiliate Debtors* [D.I. 1138] (as further modified, supplemented, and amended, the “**Combined Plan and Disclosure Statement**”)<sup>2</sup>;

**PLEASE TAKE FURTHER NOTICE** that in connection with the Combined Plan and Disclosure Statement, the Plan Proponents hereby file the Plan Supplement, which is attached hereto as Schedule 1. Included within the Plan Supplement are (i) Exhibit D to the Combined Plan and Disclosure Statement consisting of the Liquidation Analysis, and (ii) Exhibit E to the Combined Plan and Disclosure Statement consisting of the form of Liquidating Trust Agreement, including identification of the proposed Liquidating Trustee, Entity Services (SPV), LLC, a subsidiary of CSC Global Financial Markets;

**PLEASE TAKE FURTHER NOTICE** that the Plan Proponents reserve the right, subject to the terms and conditions set forth in the Combined Plan and Disclosure Statement, to alter, amend, modify or supplement any document in the Combined Plan and Disclosure Statement or in the Plan Supplement at any time; and

**PLEASE TAKE FURTHER NOTICE** that copies of the Combined Plan and Disclosure Statement, this Plan Supplement and other documents filed in the Chapter 11 Cases are available free of charge by visiting <https://www.omniagentsolutions.com/knotel> or by calling Omni Agent Solutions at 866-771-0565 (US & Canada) or 818-581-2989 (International) or by e-mail at

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<sup>1</sup> A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://www.omniagentsolutions.com/knotel> or, alternatively, via the Bankruptcy Court at <https://ecf.deb.uscourts.gov/cgi-bin/login.pl> with a Public Access to Court Electronic Records (“PACER”) account, which may be obtained at <https://pacer.uscourts.gov>. The location of Debtor Knotel, Inc.’s principal place of business and the Debtors’ service address in these chapter 11 cases is 5-9 Union Square West, New York, NY 10003.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Combined Plan and Disclosure Statement. The rules of interpretation set forth in Article III of the Combined Plan and Disclosure Statement shall apply to the Plan Supplement.

[knotelballot@omniagenet.com](mailto:knotelballot@omniagenet.com). You may also obtain copies of any pleadings by visiting the Bankruptcy Court's website at <https://ecf.deb.uscourts.gov/cgi-bin/login.pl>. A PACER password is needed to access documents on the Bankruptcy Court's website.

Dated: June 11, 2021  
Wilmington, Delaware

**MORRIS, NICHOLS, ARSHT &  
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*/s/ Matthew O. Talmo*

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**SCHEDULE 1**  
**PLAN SUPPLEMENT**

## **EXHIBIT D**

### **Liquidation Analysis**

#### **General Assumptions**

Hypothetical recoveries under a chapter 7 scenario set forth in this analysis (the "Liquidation Analysis") were determined through multiple steps, as set forth below. The basis of the Liquidation Analysis is the Committee Settlement and the estimated costs to execute the administration and wind-down of the Debtors' estates in a chapter 7 liquidation. The Liquidation Analysis assumes that the Debtors would commence a chapter 7 liquidation on or about June 30, 2021 (the "Conversion Date") under the supervision of a court-appointed chapter 7 trustee. The Liquidation Analysis reflects the wind-down and liquidation of substantially all of the Debtors' remaining assets and the distribution of available proceeds to Holders of Allowed Claims after the Conversion Date over an 18-month period.

IT SHOULD BE NOTED THAT ANY ANALYSIS OF A HYPOTHETICAL LIQUIDATION IS NECESSARILY SPECULATIVE. THERE ARE A NUMBER OF ESTIMATES AND ASSUMPTIONS UNDERLYING THE LIQUIDATION ANALYSIS THAT ARE INHERENTLY SUBJECT TO SIGNIFICANT UNCERTAINTIES AND CONTINGENCIES BEYOND THE CONTROL OF THE DEBTORS OR A CHAPTER 7 TRUSTEE. NEITHER THE ANALYSIS, NOR THE FINANCIAL INFORMATION ON WHICH IT IS BASED, HAS BEEN EXAMINED OR REVIEWED BY INDEPENDENT ACCOUNTANTS IN ACCORDANCE WITH STANDARDS PROMULGATED BY THE AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS. THERE CAN BE NO ASSURANCE THAT ACTUAL RESULTS WOULD NOT VARY MATERIALLY FROM THE HYPOTHETICAL RESULTS PRESENTED IN THE LIQUIDATION ANALYSIS.

The Debtors have not completed their analysis of Claims in these Chapter 11 Cases, and objections to such Claims have not been filed and/or fully litigated and will continue following the Effective Date. Therefore, there can be no assurances of the amount of the Allowed Claims at this time, and the actual amount of the Allowed Claims may be greater or lower than estimated.

Capitalized terms which are not defined herein are defined by the Combined Plan and Disclosure Statement of Knotel, Inc. and certain Affiliate Debtors (the "Plan").

**Knotel, Inc. and certain Affiliate Debtors**  
**Liquidation Analysis**

(\$ in thousands)

<b>Summary of Recoveries Under the Proposed Plan and a Chapter 7 Liquidation</b>			
		<u>Chapter 11</u>	<u>Chapter 7</u>
<b>Distributable Value:</b>			
GUC Fund	(A)	\$ 6,200.0	\$ 6,200.0
Wind-Down Budget	(B)	500.0	500.0
Causes of Action	(C)	-	-
<b>Gross Proceeds Available for Distribution</b>		<b>\$ 6,700.0</b>	<b>\$ 6,700.0</b>
<b>Fees and Expenses:</b>			
Trustee Fees	(D)	\$ 250.0	\$ 350.0
Wind-Down Expenses	(E)	650.0	700.0
<b>Total Fees and Expenses</b>		<b>\$ 900.0</b>	<b>\$ 1,050.0</b>
<b>Administrative Claims</b>	(F)	\$ 2,350.0	\$ 2,350.0
<b>Net Distributable Value</b>		<b>\$ 3,450.0</b>	<b>\$ 3,300.0</b>
<b>Class 1 - First Lien Claims</b>			
First Lien Claims Recovery (\$)		\$ 18,550.0	\$ 18,550.0
First Lien Claims Recovery (%)		100.0%	100.0%
<b>Class 2 - Second Lien Claims</b>			
Second Lien Claims Recovery (\$)		\$ 51,169.2	\$ 51,169.2
Second Lien Claims Recovery (%)		100.0%	100.0%
<b>Class 3 - Other Secured Claims</b>			
Other Secured Claims Recovery (\$)		\$ 3,818.5	\$ 3,818.5
Other Secured Claims Recovery (%)		100.0%	100.0%
<b>Class 4 - Other Priority Claims</b>			
Other Priority Claims Recovery (\$)		\$ 1,700.0	\$ 3,950.0
Other Priority Claims Recovery (%)		100.0%	83.5%
<b>Class 5 - GUCS <sup>(1)</sup></b>			
<b>GUCS Recovery (\$)</b>		<b>\$ 1,750.0</b>	<b>\$ -</b>
<b>GUCS Recovery (%)</b>		<b>0.5%</b>	<b>0.0%</b>

<sup>(1)</sup> Includes Other Secured Claims (surety bonds) deficiency claim

**Note: The accompanying notes are an integral part of this Liquidation Analysis.**

## Summary Notes to the Liquidation Analysis

### Distributable Value

#### **(A) GUC Fund**

The sum of \$6.2M funded pursuant to the Committee Settlement.

#### **(B) Wind-Down Budget**

The sum of \$500K funded by Purchaser pursuant to the Committee Settlement for costs associated with the wind-down of the Estates (including related to the Plan process) from the Closing Date through the Effective Date.

#### **(C) Causes of Action**

Liquidating Trust Assets, including Estate Causes of Action listed in Exhibit C of the Plan, remain Assets of the Debtors pursuant to the Committee Settlement. Such Estate Causes of Action will be transferred to and vested in the Liquidating Trust pursuant to the Plan. The Estate Causes of Action include D&O Claims which are subject to D&O Policies that carry a maximum of \$5.0M in available insurance coverage. Although potential Estate Causes of Action exist, due to the uncertainty of recovery, no value has been assigned to them in this analysis. There are no assurances that any Estate Causes of Action would be pursued by the chapter 7 trustee or the Liquidating Trustee.

### Fees and Expenses

#### **(D) Trustee Fees**

Trustee Fees reflect fees for the chapter 7 trustee which are estimated as 3% of gross proceeds available for distribution to creditors. In the chapter 11 scenario, fees for the Liquidating Trustee are based on estimated monthly fees over the duration of the Liquidating Trust, which is assumed to be 18 months. Trustee Fees in either scenario may be higher or lower than the estimate utilized in the Liquidation Analysis.

#### **(E) Wind-Down Expenses**

Wind-Down Expenses include estimated post-Effective Date costs to wind-down the affairs of the Estates for the Liquidating Debtors, and for the chapter 7 trustee to wind-down the affairs of all Debtors. These costs include (i) professionals' fees, (ii) insurance, (iii) tax filing costs, and (iv) a contingency cushion for other potential Wind-Down costs such as maintenance and disposal of books and records.

### Administrative Claims

#### **(F) Administrative Claims**

These fees reflect estimated Professionals' fees, Responsible Officer fees, and US Trustee fees from the Closing Date through the Conversion Date.

Total Professionals' fees and Responsible Officer fees are estimated to be in aggregate \$2.2M, based on preliminary estimates from the Professionals and the Responsible Officer and are subject to change. Responsible Officer fees are based on the contractual fee arrangement with the Debtors. US Trustee Fees are estimated in accordance with The Bankruptcy Administration Improvement Act of 2020 and are estimated to be \$150K. Fees in excess of \$500K will be paid for with proceeds from the GUC Fund or other proceeds available for distribution.

### **Class 1 – First Lien Claims**

#### **(G) First Lien Claims**

The First Lien Claims were included as part of the Credit Bid and satisfied through the Sale. The First Lien Claims in this Liquidation Analysis reflect the satisfaction of the Prepetition Secured Debt in full, based on a fixed amount, without giving effect to any adjustment for Digiatech's Deficiency Claim, which has been waived for distribution purposes as part of the Committee Settlement.

### **Class 2 – Second Lien Claims**

#### **(H) Second Lien Claims**

The Second Lien Claims were included as part of the Credit Bid and satisfied through the Sale. The Second Lien Claims in this Liquidation Analysis reflect the satisfaction of the Prepetition Secured Debt in full, based on a fixed amount, without giving effect to any adjustment for Digiatech's Deficiency Claim, which has been waived for distribution purposes as part of the Committee Settlement.

### **Class 3 – Other Secured Claims**

#### **(I) Other Secured Claims**

Other Secured Claims consist of (i) \$2.8M of amounts outstanding under the JPM and Bridge Bank for letters of credit issued on behalf of the Debtors, (ii) \$1.0M of amounts outstanding under the Argonaut Insurance Company for surety bonds issued on behalf of the Debtors, and (iii) any Other Secured Claims. All outstanding letters of credit are fully cash collateralized, and recoveries are funded with the collateral. The surety bonds are partially cash collateralized by \$1.0M, and the cash collateralized portion is included in Class 3. To the extent that any Other Secured Claims are not fully collateralized, any deficiency claims will be included in the General Unsecured Claims pool and is subject to Class 5 treatment.

### **Class 4 – Other Priority Claims**

#### **(J) Other Priority Claims**

Under a chapter 7 scenario, Other Priority Claims consist of the Debtors' estimate of outstanding amounts for priority taxes. The current estimate for potential Other Priority Claims ranges from \$2.4M to \$5.5M consisting of i) estimated \$3.1M in commercial rent tax (CRT) claims that remain subject to further analysis, ii) \$1.4M for other taxes, including personal property, franchise, and other taxes, and iii) \$1.0M for potential unknown claims. The chapter 7 claims estimate factors in the commercial rent taxes against all Debtor entities, whereas, the chapter 11 scenario is based on potential claims against the three Liquidating Debtors under the Plan. For the purposes of the Liquidation Analysis, a midpoint of \$4.0M is included in the Other Priority Claims class.

Under a chapter 11 scenario, the current estimate for potential Other Priority Claims ranges from \$1.0M to \$2.4M, consisting of i) \$1.4M for other taxes, including personal property, franchise, and other taxes, and ii) \$1.0M for potential unknown claims. For the purposes of the Liquidation Analysis, a midpoint of \$1.7M is included in the Other Priority Claims class.

The Debtors believe there are no additional Other Priority Claims at the Liquidating Debtors under the Plan, however, this could change given the Governmental Bar Date, the Knotel Canada Amended Schedules Bar Date, and the Knotel Canada Amended Schedules Governmental Bar Date have not yet passed. Under a chapter 7 scenario, all of the Debtors would convert to chapter 7, leaving the estate subject to materially higher tax claims.

#### **Class 5 – Unsecured Claims**

##### **(K) General Unsecured Claims**

General Unsecured Claims reflect the midpoint of the estimated ranges of trade/accounts payable claims, lease rejection damage claims, customer retainers, unsecured notes, and deficiency claims. The Purchaser has a Deficiency Claim for voting purposes only, and is not entitled to any Distribution on account of the Deficiency Claim. The Claims against the Debtors have not been fully reconciled, and such process will continue post-Effective Date. As such, the actual Allowed General Unsecured Claim may be materially lower or higher than the estimate utilized in the Liquidation Analysis. Under a chapter 7 scenario, all of the Debtors would convert to chapter 7, leaving the estate subject to materially higher claims, primarily due to higher lease and lease rejection damage claims.



**EXHIBIT E**

**KNOTEL LIQUIDATING TRUST AGREEMENT**

This Knotel Liquidating Trust Agreement (this “Agreement”) dated as of [June 30, 2021], is by and between Knotel, Inc., Knotel Canada, Inc., and 42Floors, LLC (collectively, the “Liquidating Debtors” or “Settlors”), and Entity Services (SPV), LLC as the Liquidating Trustee (the “Trustee”) for the benefit of the Holders of Allowed Claims and certain other Beneficiaries under the terms of the *Joint Combined First Amended Chapter 11 Plan of Liquidation and Disclosure Statement for Knotel, Inc. and Certain Affiliate Debtors* (the “Plan”), confirmed by Order of the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) in the Liquidating Debtors’ Chapter 11 Cases, Case No. 21-10146 (MFW), on June [\*\*], 2021 (the “Confirmation Order”) [Docket No. \*\*].

**WITNESSETH**

**WHEREAS**, the Trust is created pursuant to, and to effectuate, the Plan;

**WHEREAS**, the Trust is created on behalf of, and for the sole benefit of, the Beneficiaries pursuant to the terms of this Agreement and the Plan;

**WHEREAS**, the Trust is established for the purpose of collecting, distributing and liquidating the Debtor’s Assets for the benefit of the Beneficiaries in accordance with the terms of this Agreement and the Plan with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Trust;

**WHEREAS**, pursuant to the Plan, the Settlor, the Trustee, and the Beneficiaries are required to treat, for all federal income tax purposes, the transfer of the Assets to the Trust as a transfer of the Assets by the Settlers to the Beneficiaries in satisfaction of their Allowed Claims, followed by a transfer of the Assets by the Beneficiaries to the Trust in exchange for the

beneficial interest herein, and to treat the Beneficiaries as the grantors and owners of the Trust in accordance with Treasury Regulation Section 301.7701-4;

**WHEREAS**, the Trust is intended to be treated as a grantor trust for federal income tax purposes;

**NOW, THEREFORE**, in consideration of the promises and the mutual covenants contained herein and in the Plan, the Settlor and the Trustee agree as follows:

## **ARTICLE I**

### **DEFINITIONS AND INTERPRETATIONS**

#### 1.1 **Definitions.**

1.1.1 “Assets” shall mean the term Liquidating Trust Assets as defined in the Plan.

1.1.2 “Available Trust Cash” shall mean the aggregate of the amounts remaining in the GUC Fund, Cash on the Effective Date, proceeds of the Causes of Action, including the Estate Causes of Action, plus all other Assets and the proceeds thereof after paying, funding, reserving against, or satisfying: (a) fees due to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6) that are incurred after the Effective Date of the Plan; and (b) operating and administrative expenses of the Trust, including but not limited to all reasonable costs, expenses, and obligations incurred by the Trustee and any professionals who may be employed by the Trustee in administering the Trust pursuant to the Plan and in carrying out the Trustee’s responsibilities under this Agreement, other than the fees and expenses of Contingency Counsel. Available Trust Cash shall exclude any funds deposited or to be deposited in the Professional Fee Escrow pursuant to the terms of the Plan.

1.1.3 “Beneficiaries” or “Liquidating Trust Beneficiaries” shall mean Liquidating Trust Beneficiary as defined in the Plan.

1.1.4 “Contingency Counsel” shall mean any other counsel engaged by the Trust and/or the Liquidating Trustee on a contingency fee basis to pursue any Estate Causes of Action.

1.1.5 “Disputed Claims Reserve” shall mean such reserve fund established by the Liquidating Trustee to hold Cash, which may be necessary to make one or more distributions to a Beneficiary at the time a Disputed Claim becomes and Allowed Claim.

1.1.6 “Estate Causes of Action” shall mean those causes of action and/or claims identified in Exhibit C to the Plan.

1.1.7 “Liquidating Trust Committee” shall mean the oversight committee appointed as of the Effective Date of the Plan and comprised of members of the Official Committee of Unsecured Creditors (the “Committee”) so willing to serve in such capacity. The Liquidating Trust Committee should at all times be made up of at least [three (3) members].

1.1.8 “Liquidating Trustee” or “Trustee” shall mean (a) initially, Entity Services (SPV), LLC, and (b) any successors or replacements duly appointed under the terms of this Agreement.

1.1.9 “Permitted Investments” shall include (a) short-term direct obligations of, or obligations guaranteed by, the United States of America, (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 of America as an agency or instrumentality thereof, (c) money market funds that invest exclusively in short-term direct obligations of, or obligations guaranteed by, the United States of America, (d) such other investments as the Bankruptcy Court may

approve from time to time, if required, or (e) demand deposits or certificates of deposit at any bank or trust company that has, at the time of the deposit, a capital stock and surplus aggregating at least \$1,000,000,000, provided, however, that the scope of any Permitted Investments shall be limited to include only those investments that a liquidating trust, within the meaning of Treasury Regulation Section 301.7701-4(d), may be permitted to hold, pursuant to Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements, or otherwise.

1.1.10 “Plan” shall mean the *Joint Combined First Amended Chapter 11 Plan of Liquidation and Disclosure Statement for Knotel, Inc. and Certain Affiliate Debtors*, dated as of May 12, 2021 [Docket No. 1138], as may be further amended, modified or supplemented.

1.1.11 “Settlers” shall mean the Liquidating Debtors and their Estates.

1.1.12 “Trust” shall mean this Liquidating Trust established pursuant to the terms of this Agreement and the Plan.

1.2 Use of Plan Definitions. All capitalized terms that are used in this Agreement but not defined herein shall have the meaning set forth for such terms in the Plan.

1.3 Interpretation. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the provisions of this Agreement. Words denoting the singular number shall include the plural number and vice versa, and words denoting one gender shall include the other gender.

1.4 Particular Words. Reference in this Agreement to any Section or Article is, unless otherwise specified, to that such Section or Article under this Agreement. The words “hereof,” “herein,” “hereinafter,” and similar terms shall refer to this Agreement and not to any particular Section or Article of this Agreement.

## ARTICLE II

### DECLARATION OF TRUST

2.1 Creation and Name. There is hereby created the Trust, which shall be known as the “**Knotel Liquidating Trust**,” and is the Trust referred to as the “Liquidating Trust” in the Plan. The Trustee may conduct the affairs of the Trust under the name of the “Knotel Liquidating Trust.”

2.2 Purpose of Trust. The Settlers and the Trustee, pursuant to the Plan and in accordance with this Agreement and the Bankruptcy Code, hereby create the Trust for the purpose of collecting, distributing, and liquidating the Assets for the benefit of, and making distributions to, the Beneficiaries in accordance with the terms of this Agreement and the Plan. The activities of the Trust shall be limited to those activities set forth in this Agreement, as may be amended, and as otherwise contemplated by the Plan.

2.3 Transfer of Assets.

A. The Settlers hereby grant, assign, convey, transfer and deliver, on behalf of the Beneficiaries, all of the Settlers’ right, title and interest in the Assets to the Trustee as of the Effective Date to be held in trust for the benefit of the Beneficiaries, pursuant to §§ 1123(a)(5)(B) and 1123(b)(3)(B) of the Bankruptcy Code and in accordance with the Plan and Confirmation Order. As of the Effective Date, the Assets shall be free and clear of any and all liens, claims, encumbrances, and interests (legal, beneficial, or otherwise) of all other Persons and Governmental Units to the maximum extent contemplated by and permissible under § 1141(c) of the Bankruptcy Code for the uses and purposes as specified in this Agreement and the Plan. The Assets can be used to, among other things, satisfy the following liabilities: (a) all fees payable pursuant to 28 U.S.C. § 1930 that accrue after the Effective Date until such time as

the Bankruptcy Court enters a final decree closing the Settlor's Chapter 11 Cases; (b) any fees and expenses incurred and unpaid, or to be incurred by the Trustee and his/her respective agents and professionals, as further described in Section 3.8 herein, in the performance of their administrative duties in connection with winding up the Settlor's Estates after the Effective Date; and (c) any other obligations as may be specifically set forth in this Agreement, the Plan and/or Confirmation Order, as the case may be. Notwithstanding anything in this Agreement to the contrary, and subject to the Plan, the Trustee, with the consent of the Liquidating Trust Committee, which consent shall not be unreasonably withheld, or, in the absence of such consent, by order of the Bankruptcy Court, may abandon or otherwise not accept any Assets that the Trustee believes, in good faith, or has been advised by agents or professionals, have no value to the Trust. Any Assets that the Trust so abandons or otherwise does not accept shall not vest in the Trust.

B. The Trustee shall automatically, and without need for further notice or approval of the Bankruptcy Court or the Settlor's, be designated as the representative of the Estates pursuant to § 1123 of the Bankruptcy Code to enforce or pursue any Estate Causes of Action transferred to the Trust on or after the Effective Date in accordance with the terms of this Agreement, the Plan and/or the Confirmation Order. Any proceeds of an Estate Cause of Action shall be distributed pursuant to the terms of the Plan and this Agreement.

C. The Trustee shall, without need for further notice or approval of the Bankruptcy Court, be entitled to all rights and services provided to the Settlor's pursuant to the Transition Services Agreement.

2.4 Securities Law. Under § 1145 of the Bankruptcy Code, the issuance of beneficial interests in the Trust to the Beneficiaries under the Plan shall be exempt from registration under

the Securities Act of 1933, as amended, and all applicable state and local laws requiring registration of securities. If the Trustee determines, with the advice of counsel, that the Trust is required to comply with the registration and reporting requirements of the Securities and Exchange Act of 1934, as amended, or the Investment Company Act of 1940, as amended, then the Trustee shall take any and all actions at the expense of the Trust to comply with such reporting requirements and file necessary periodic reports with the Securities and Exchange Commission.

2.5 Appointment and Acceptance of Trustee. The Trustee shall be deemed to be appointed pursuant to § 1123(b)(3)(B) and all other applicable sections of the Bankruptcy Code. The Trustee accepts the Trust created by this Agreement and the grant, assignment, transfer, conveyance, and delivery to the Trustee, on behalf, and for the benefit, of the Beneficiaries, by the Settlers of all of their respective rights, title, and interest in the Assets, upon and subject to the terms and conditions set forth in this Agreement, the Plan, and the Confirmation Order.

2.6 No Reversion to Settlers. In no event shall any part of the Assets be distributed to the Settlers after the Effective Date. Rights to any reversionary interests in the Assets shall be controlled by the Plan.

### **ARTICLE III**

#### **ADMINISTRATION OF THE TRUST**

3.1 Liquidating Trust Committee.

A. On the Effective Date, the Liquidating Trust Committee shall be established to oversee certain aspects of the implementation of the Plan and the Liquidating Trust.

B. The Liquidating Trust Committee shall consist of members of the Committee so willing to serve in such capacity. The initial members of the Liquidating Trust Committee are: ARC NYC 570Seventh LLC, [\*\*].

C. The Liquidating Trust Committee shall have access to the Trustee and the right to consult with and, if and to the extent provided in the Plan and this Agreement, direct the Trustee in writing in connection with the administration and implementation of the Plan on and after the Effective Date as set forth in the Plan and this Agreement. The Trustee shall be fully protected and shall incur no liability for acting or not acting as directed by the Liquidating Trust Committee.

3.2 Rights, Powers, Privileges and Duties. The Trustee shall have only the rights, powers, privileges, and duties expressly provided in this Agreement, the Plan and the Confirmation Order. Subject to the terms of the Plan and this Agreement, including Section 3.11 of this Agreement, and in consultation with or approval (which consent shall not be unreasonably withheld) of the Liquidating Trust Committee, the Trustee shall have the power to take the actions granted in this Section 3.2, and any powers reasonably incidental thereto, which the Trustee reasonably determines to be necessary or appropriate to fulfill the purpose of the Trust, including but not limited to:

A. Prosecuting, settling, assigning, or otherwise compromising or abandoning for the benefit of the Trust any and all Estate Causes of Action transferred, assigned and conveyed to the Trust or arising in favor of the Trust, including, without limitation, taking any action with respect to appeals, counterclaims, and defenses of or with respect to such claims and causes of action, including retaining counsel to pursue the Estate Causes of Action as permitted by the Plan unless otherwise required or modified by this Agreement;



B. Exercising all powers provided to the Trustee or the Trust under the Plan or Confirmation Order, including, without limitation, the right to allow, object to, or reconcile all Claims, including Unsecured Claims, Priority Claims (both tax and non-tax), Administrative Expense Claims, and any other Claims asserted against the Estates;

C. Liquidating, selling or abandoning the Assets or any portion thereof;

D. Determining and satisfying any liabilities created, incurred or assumed by the Trust;

E. Executing any documents and taking any other actions related to, or in connection with, the liquidation of the Assets and the exercise of the Trustee's powers granted in this Agreement, the Plan, and Confirmation Order;

F. Holding legal title to any and all rights of the Beneficiaries in, to, or arising from the Assets;

G. Establishing the Disputed Claims Reserve, as well as any other required reserves, in an amount as may be necessary and appropriate for the proper operation of matters incident to the Trust (in the event the Trustee and/or the Liquidating Trust Committee do not agree on the amount of Cash to be maintained in the Disputed Claims Reserve, the Bankruptcy Court shall determine the appropriate amount of the Disputed Claims Reserve);

H. Protecting and enforcing the rights to the Assets vested in the Trust by this Agreement, the Plan and Confirmation Order by any method reasonably determined to be appropriate, including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium, or similar law and general principles of equity;

I. Making Distributions of the Assets to or on behalf of the Beneficiaries in accordance with this Agreement, the Plan, and the Confirmation Order;

J. Causing to be prepared and filing any and all tax and information returns with respect to the Settlers, the Dismissed Debtors, if necessary, and the Trust; paying any taxes properly payable by the Trust, if any; and filing and issuing any and all necessary information returns; and taking any and all action necessary to obtain payment of any tax refund(s) due to the Settlers, their Estates, the Dismissed Debtors, and/or the Trust;

K. Making all necessary filings on behalf of the Trust in accordance with any applicable law, statute, or regulation;

L. Determining and satisfying from the Assets any and all taxes and ordinary course liabilities, including reasonable professional fees and expenses, incurred by or on behalf of the Trust;

M. Investing the Assets received by the Trust or Trustee or otherwise held by the Trust or Trustee in accordance with Section 3.11 of this Agreement;

N. In the event that the Trustee determines that the Beneficiaries or the Trust may, will or have become subject to different tax consequences than those described herein or in the Plan, taking such actions that will, or are intended to, address such different tax consequences;

O. Creating sub-trusts or title vehicles of which the Trust or the Beneficiaries hold the beneficial or ownership interests, as applicable;

P. Opening and maintaining bank accounts or trust or agency accounts on behalf of or in the name of the Trust or the Liquidating Debtors;

Q. In reliance upon the official Claims Register maintained in the Settlers' Chapter 11 Cases and any applicable court order, maintaining a register on the Trustee's books and records evidencing the beneficial interest in the Trust held by each Beneficiary;

R. Performing such functions and taking such actions as are provided for or permitted in this Agreement, the Plan, the Confirmation Order, or any other agreement executed pursuant to this Agreement, the Plan, or the Confirmation Order;

S. Execute offsets against Claims as provided for in the Plan;

T. Pay all fees and expenses and make all other payments relating to the Trust's Assets;

U. Pay all U.S. Trustee fees incurred after the Effective Date of the Plan until such time as the Bankruptcy Court enters a final decree closing the Settlor's Chapter 11 Cases;

V. Execute any and all documents on behalf of the Liquidating Debtors and, as necessary and appropriate, the Dismissed Debtors;

W. Complete and file any outstanding monthly operating reports of the Settlor's which are not yet due or filed as of the Effective Date; and

X. Collect outstanding receivables of the Settlor's or the Liquidating Trust, including, but not limited to receivables and/or Estate Causes of Action.

3.3 Assets. Subject to the Plan and this Agreement, the Trustee shall be authorized to collect and liquidate all uncollected and unliquidated Assets, including tax refunds.

3.4 Claims Administration. Subject in all respects to the provisions hereof and the Plan, the Trustee, in consultation with the Liquidating Trust Committee as required herein, shall have the authority to allow, reconcile, and file objections to Claims, and to settle, compromise, withdraw, or litigate to judgment objections to any and all Claims, regardless of whether such Claims are in a Class or otherwise.

3.5 Subject to the foregoing and the provisions of this Agreement and the Plan, from and after the Effective Date, the Trustee (a) may settle or compromise any Disputed Claim, and

(b) shall succeed to the Settlor's rights with respect to any objections filed by the Settlor that remain pending as of the Effective Date. From and after the Effective Date, the Trustee shall have the sole authority to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval of the Bankruptcy Court.

3.6 Estimation. Subject to this Agreement and the Plan, the Trustee may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim pursuant to applicable law and (b) any contingent or unliquidated Claim pursuant to applicable law, including Section 502(c) of the Bankruptcy Code, regardless of whether the Settlor or the Trustee have previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court shall retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to the maximum extent permitted by law as determined by the Bankruptcy Court to estimate any Disputed Claim, contingent Claim, or unliquidated Claim, including during the litigation concerning any objection to any Claim or during the pendency of any appeal relating to any such objection.

3.7 Causes of Action. Subject to the Plan, on and after the Effective Date, the Trustee may pursue all Estate Causes of Action even if such action was previously commenced in the name of the Settlor or the Liquidating Debtors.

3.8 Agents and Professionals. Subject to the Plan and this Agreement, the Trustee may, but shall not be required to, consult with and retain attorneys, financial advisors, accountants, tax preparers or other agents (which may be affiliated with the Trustee), professionals and employees as the Trustee deems appropriate in the reasonable exercise of his or her discretion, and whom the Trustee reasonably determines to have qualifications necessary to assist the Trustee in the proper administration of the Trust. Subject to Section 7.8 of this

Agreement, the Trustee may pay the reasonable fees, costs and expenses of such persons (including himself/herself), together with the reasonable and if prudent costs incurred by the members of the Liquidating Trust Committee acting solely in their capacity as such, but excluding any attorney's fees of any individual member of the Liquidating Trust Committee, out of the Assets in the ordinary course of business pursuant to this Agreement, the Plan and/or the Confirmation Order. Subject to the terms and conditions of this Agreement, the Plan and Confirmation Order, the Trustee may retain professionals who previously were employed by the Committee and/or the Liquidating Debtors, including any Contingency Counsel.

3.9 Safekeeping of Assets. All Assets shall, until distributed or paid over as herein provided or as provided in the Plan, be held in trust for the benefit of the Beneficiaries in accordance with the Plan and this Agreement. The Trustee shall not have any liability for interest or producing income on any moneys received by him or her herein and held for distribution or payment to the Beneficiaries, except as such interest or income shall actually be received by the Trustee.

3.10 Limitations on Trustee. The Trustee shall not at any time, on behalf of the Trust or Beneficiaries, enter into or engage in any trade or business, and no part of the Assets or the proceeds, revenue, or income therefrom shall be used or disposed of by the Trust in furtherance of any trade or business. The Trustee shall take such actions consistent with the prompt orderly liquidation of the Trust Assets as required by applicable law, and, except as otherwise set forth in Section 4.2 herein, consistent with the treatment of the Trust as a liquidating trust under Treasury Regulation Section 301.7701-4(d) and Internal Revenue Service Revenue Procedure 94-45, 1994-2 C.B. 684, to the extent such actions are permitted by this Agreement. The Trustee shall, on behalf of the Trust, hold the Trust out as a trust in the process of liquidation and not as an

investment company. The Trustee shall not become a market-maker for the beneficial interests or otherwise attempt to create a secondary market for the beneficial interests. The Trustee shall be restricted to: (a) liquidating the Trust Assets on behalf of, and for the benefit of, the Holders of Allowed Claims, (b) distributing and applying the Trust Assets for the purposes set forth herein, and (c) conserving and protecting the Trust Assets and the administration thereof in accordance with the provisions of this Agreement, the Plan, and the Confirmation Order. Notwithstanding anything herein to the contrary, the Trustee shall at all times act in furtherance of the purposes of the Trust and, subject to Section 4.2 herein, shall not take any action inconsistent with the treatment of the Trust as a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d). The Trustee shall not serve on the board of directors of any subsidiary of the Trust, unless the subsidiary’s objective is consistent with that of the Trust.

The Trust shall not receive or retain cash in excess of a reasonable amount to meet claims and contingent liabilities. The Trustee shall also not incur indebtedness or commingle the Trust’s funds. The Trust shall not receive transfers of listed stocks or securities, any readily-marketable assets, any operating assets of a going business, any unlisted stock of a single issuer that represents 50 percent or more of the stock of such issuer, or any general or limited partnership interests.

3.11 Investment. The Trustee may only invest funds held in the Trust in Permitted Investments, in a manner consistent with the requirements of the Bankruptcy Code or any order of the Bankruptcy Court modifying such requirements and, provided that the Trustee does so, he or she shall have no liability in the event of insolvency of any institution in which he or she has

invested any of the Assets or any proceeds, revenue, or income therefrom in accordance with this Agreement or the Plan.

3.12 Trustee Action. The Trustee shall hold, collect, conserve, protect, and administer the Trust in accordance with the provisions of this Agreement and the Plan, and pay and distribute amounts as set forth therein for the purposes set forth in the Plan, and this Agreement. Any good faith determination by the Trustee as to what actions are in the best interests of the Trust shall be determinative, subject to approval by the Liquidating Trust Committee which approval shall not be unreasonably withheld.

3.13 Bankruptcy Court Approval of Trustee Actions. Except as provided in the Plan or as otherwise specified in this Agreement, the Trustee need not obtain an order or approval of the Bankruptcy Court in the exercise of any power, rights, or discretion conferred hereunder to the Trustee. Except as provided in the Plan, the Confirmation Order or otherwise specified in this Agreement, the Trustee, in consultation with the Liquidating Trust Committee as set forth herein, shall exercise his or her reasonable business judgment for the benefit of the Beneficiaries in order to maximize the value of the Assets and distributions to the Beneficiaries, giving due regard to the cost, risk, and delay of any course of action. Notwithstanding the foregoing in this Section 3.13, the Trustee may seek Bankruptcy Court approval for authority to take a particular action which the Trustee may desire to have explicit approval of the Bankruptcy Court with respect to the Assets, the Trust, and the Settlers, and as provided in the Plan or this Agreement, including the administration and distribution of the Assets or resolution of any of the Estate Causes of Action. The Bankruptcy Court shall retain jurisdiction for such purposes and shall approve or disapprove any such proposed action upon motion with notice to the Rule 2002 service list (as modified by the Plan) which may be made by e-mail, where available.

3.14 Confidentiality. The Trustee shall, during the period that he or she serves as Trustee under this Agreement and for a period of twelve (12) months following the termination of this Agreement or his or her removal or resignation hereunder, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any entity to which any of the Assets and Estate Causes of Action, relates, or which he or she has become aware of in his or her capacity as Trustee.

3.15 Privileged Documents. Subject to the Plan (specifically, but not limited to, Article VIII.D.7 of the Plan), any disclosure or examination of any privileged documents shall be limited to the Trustee, the members of the Liquidating Trust Committee, and the agents and professionals that the Trustee has retained on behalf of the Trust for the purpose of pursuing Estate Causes of Action and Claims and claim objections, and those attorneys' administrative support personnel, and any consulting, non-testifying experts retained by the Trustee on behalf of the Trust for the purpose of assisting the Trust in pursuing such Estate Causes of Action and/or objecting to Claims. The Trustee may not disclose any of the privileged documents (or the contents of the privileged documents), or otherwise take any actions that may constitute a waiver of the attorney-client privilege, work product privilege, common interest privilege, or any other applicable privileges with respect to the privileged documents, without giving three (3) Business Days' notice to the applicable affected party and an opportunity to object. Nothing in the Plan or this Agreement shall constitute a waiver of any privilege claims over any of the documents, including the privileged documents that are produced to or received by the Trust or Trustee. For the avoidance of doubt, the Trust is a successor-in-interest to the Settlers and, therefore, the transfer of the privileged documents as provided herein does not impair or waive any privilege.



3.16 Reporting to Liquidating Trust Committee. Starting the month following the Effective Date, the Trustee shall provide the Liquidating Trust Committee with a quarterly statement of receipts and disbursements, if any, cash balances and a listing of all accounts payable. If no receipts are received and/or no disbursements are made in a given quarter, the Trustee will have no obligation to provide a quarterly statement to the Liquidating Trust Committee regarding the same. This reporting set forth in section 3.16 is in addition to and does not supersede the fee approval process set forth in section 7.8 of this Agreement.

#### **ARTICLE IV**

##### **DISTRIBUTIONS FROM THE TRUST**

4.1 Distributions. On and after the Effective Date, the Trustee shall make distributions as and when required under the terms of the Plan, and as applicable, solely in accordance with the Plan. However, distributions of net income plus all net proceeds from the sale of assets shall be made no less frequently than once annually, such period to be measured by the Effective Date; provided, that the Trust may retain an amount of net proceeds or net income or other Trust Assets (i) reasonably necessary to maintain the value of its assets or to meet claims and contingent liabilities (including Disputed Claims) and (ii) to meet reasonably incurred or anticipated expenses (including, but not limited to, any taxes imposed on or payable by the Trust or in respect of the Trust Assets), or (iii) to satisfy claims, contingent liabilities or other liabilities incurred or anticipated by the Trust or the Trustee in accordance with the Plan or this Agreement, and retention of such amount may preclude distributions to Holders.

4.2 Disputed Claims Reserve. On the initial distribution date, and in connection with making all distributions required to be made on any such date under the Plan, the Trustee shall establish a separate Disputed Claims Reserve on account of distributions of Cash or other

property as necessary pursuant to the Plan. The Trustee shall not make any distributions of Assets to the Beneficiaries unless the Trustee retains and reserves in the Disputed Claims Reserve such amounts as are reasonably necessary to satisfy amounts that would have been distributed in accordance with this Article IV in respect of Disputed Claims if the Disputed Claims were determined to be Allowed Claims immediately prior to such proposed distribution to the Beneficiaries. All Cash or other property allocable to Disputed Claims hereunder shall be contributed by the Trustee to the relevant Disputed Claims Reserve on the distribution date. Starting six (6) months after the Effective Date and every six (6) months thereafter, the Trustee shall provide the Liquidating Trust Committee with an update on the activity and current balance of the Disputed Claims Reserve (if any).

Subject to definitive guidance from the Internal Revenue Service or a court of competent jurisdiction to the contrary (including the receipt by the Trustee of a private letter ruling if the Trustee so requests one, or the receipt of an adverse determination by the Internal Revenue Service upon audit if not contested by the Trustee), the Trustee may, in the Trustee's sole discretion, timely elect to treat any Disputed Claims Reserve as a Disputed Ownership Fund ("DOF") within the meaning of Treasury Regulation Section 1.468B-9 for federal income tax purposes rather than to tax such reserve as a part of the Trust. If an election is made to report any reserve for Disputed Claims as a DOF, the Trust shall comply with all federal and state tax reporting and tax compliance requirements of the DOF, including, but not limited to, the filing of a separate federal tax return for the DOF and the payment of federal and/or state income tax due.

4.3 Distributions After Allowance or Disallowance of a Disputed Claim. Within thirty (30) days of a Disputed Claim becoming an Allowed Claim, the Trustee shall distribute to the Holder thereof, from the Disputed Claim Reserve, such amount of Available Trust Cash as

would have been distributed to such Holder if its Claim had been an Allowed Claim on the Initial Distribution date (less any taxes paid or to be paid with respect to the amounts held in the Disputed Claims Reserve). The Trustee shall no longer reserve for and shall distribute to the Beneficiaries, pursuant to this Agreement, their Pro Rata share of the funds held in the Disputed Claim Reserve on account of any Disputed Claim that becomes Disallowed (to the extent that the Holder of the Disputed Claim has not received prior distributions on account of that Claim and less any taxes paid or to be paid by the Disputed Claim Reserve with respect to the amounts held in the Disputed Claim Reserve).

4.4 Termination of Disputed Claims Reserves. Each Disputed Claim Reserve shall be closed and extinguished by the Trustee when all distributions and other dispositions of Cash or other property required to be made therefrom under the Plan and this Agreement have been made. Upon closure of a Disputed Claim Reserve, all Cash and other property held in the Disputed Claim Reserve shall revert in the Trust as a part of the Available Trust Cash and such cash and property shall be used to pay the fees and expenses of the Trust in accordance with this Agreement, and thereafter distributed to Holders of Allowed Claims in accordance with the Plan.

4.5 Undeliverable Property. If any distribution to or on behalf of a Beneficiary is returned to the Trustee or his or her agent as undeliverable, then the procedures set forth in Article VIII of the Plan shall control and govern. The Trustee shall have no obligation to determine the correct current address of such Beneficiary, and no distribution to such Beneficiary shall be made unless and until the Trustee is notified, in writing, by the Beneficiary of the current address of such Beneficiary within 90 days of such distribution, at which time a distribution shall be made to such Beneficiary without interest; provided that such distributions shall be deemed, without further order of the Bankruptcy Court, unclaimed property under Bankruptcy Code §

347(b) at the expiration of ninety (90) days from the date of the distribution. After such date, all unclaimed property or interest in property shall revert to the Trust to be distributed in accordance with the terms of this Agreement and the Plan, and the Claim of any other holder or Beneficiary to such property or interest in property shall be discharged and forever barred

4.6 Payments Limited to Assets. All payments to be made by the Trustee to or for the benefit of any Beneficiary shall be made only from the Assets or proceeds from Estate Causes of Action and in accordance with the Plan.

4.7 United States Trustee Fees and Reports. After the Effective Date, the Trustee shall pay as an expense of the Trust all fees incurred under 28 U.S.C. § 1930(a)(6) by reason of the Trust's disbursements as required under the Plan and Confirmation Order until the Settlor's Chapter 11 Cases are closed. After the Effective Date, the Trust shall prepare, file and serve on the Office of the U.S. Trustee such quarterly disbursement reports for the Trust as required by the U.S. Trustee for as long as one of the Liquidating Debtors' Cases remain open provided, however, that nothing in this Agreement shall be interpreted to alter the obligations regarding Statutory Fees and reporting requirements set forth in Article V.E of the Plan.

4.8 Insurance. Subject to the Plan, the Trustee may use the Assets in the Trustee's reasonable business judgment to maintain customary insurance coverage, if available, for the protection of the Persons or Entities serving as Trustee or administrator of the Trust on and after the Effective Date.

## **ARTICLE V**

### **BENEFICIARIES**

5.1 Incidents of Ownership. The Beneficiaries shall be the sole beneficiaries of the Trust and the Assets, and the Trustee shall retain only such incidents of ownership as are

necessary to undertake the actions and transactions authorized in this Agreement, the Plan and the Confirmation Order.

5.2 Interest Beneficial Only. The ownership of a beneficial interest in the Trust shall not entitle any Beneficiary or the Settlers to any title in or to the Assets or to any right to call for a partition or division of such Assets or to require an accounting, except as specifically provided in this Agreement or in the Plan.

5.3 Evidence of Beneficial Interest. Ownership of a beneficial interest in the Assets shall not be evidenced by any certificate, security, or receipt, or in any other form or manner whatsoever, except as maintained on the books and records of the Trust by the Trustee. The Trustee may rely on the Claims Register maintained by the Claims and Noticing Agent or its successor.

5.4 Notice of Transfer of Beneficial Interest.

A. Notice(s) of transfer of a beneficial interest will only be recognized by the Trustee if given prior to the initial Distribution of Assets.

B. Any notice of a change of beneficial interest ownership shall be provided in accordance with Section 13.3 of this Agreement. The notice shall be executed by both the transferee and the transferor and as required by Bankruptcy Rule 3001(e). The notice must clearly describe the interest to be transferred. The Trustee may rely upon such signatures and acknowledgments as evidence of such transfer without the requirement of any further investigation.

## ARTICLE VI

### **THIRD PARTY RIGHTS AND LIMITATION OF LIABILITY**

6.1 Reliance. Except as otherwise provided in this Agreement, the Plan, or the Confirmation Order, the Trustee may rely upon and shall be protected in acting upon any resolution, statement, instrument, opinion, report, notice, request, consent, order, advice of professionals or agents or other paper or document reasonably believed to be genuine and to have been signed or presented to the Trustee.

6.2 Parties Dealing With the Trustee. In the absence of actual knowledge to the contrary, any person dealing with the Trust or the Trustee shall be entitled to rely on the authority of the Trustee or any of the Trustee's agents to act in connection with the Assets, the Liquidating Debtors and the Dismissed Debtors (as necessary and appropriate). There is no obligation on any Person dealing with the Trustee to inquire into the validity, expediency, or propriety of any transaction by the Trustee or any agent of the Trustee.

6.3 Limited Recourse. Except as otherwise provided in this Agreement, the Plan, or the Confirmation Order, Persons (including any agents and professionals retained by the Trustee in accordance with this Agreement) engaged in transactions with the Trust or the Trustee shall look only to the Assets to satisfy any liability incurred in connection with the carrying out of the terms of this Agreement, the Plan, or the Confirmation Order. No provision of this Agreement shall require the Trustee to expend or risk its personal funds or otherwise incur any financial liability in the performance of its rights or powers hereunder, if the Trustee shall have reasonable grounds for believing that the payment of such funds or adequate indemnity against such risk or liability is not reasonably assured or provided to it.

6.4 Limitation of Liability. The Trustee, the Liquidating Trust Committee and his, her or its agents, employees, officers, directors, members, managers, professionals, attorneys, accountants, advisors, and representatives shall not be subject to any personal liability whatsoever, in tort, contract, or otherwise, to any Person in connection with the Assets or the affairs of the Trust, except for their own gross negligence, willful misconduct, fraud, bad faith, self-dealing or breach of the duty of loyalty and shall not include indemnification or exculpation for breach of their own contracts with the Trust or Trustee. Other than as set forth in the Plan or Confirmation Order, nothing in this Agreement shall be deemed to release any Beneficiary from any actions or omissions occurring prior to the Effective Date.

6.5 Non-Liability for Acts of Others. Except as expressly set forth in the Plan or the Confirmation Order, nothing herein shall be deemed to be an assumption by the Trustee of any of the liabilities, obligations, or duties of the Settlers or Beneficiaries and shall not be deemed to be or contain a covenant or agreement by the Trustee to assume or accept any such liability, obligation, or duty. Any successor Trustee may accept and rely upon any accounting made by or on behalf of any predecessor Trustee hereunder, and any statement or representation made by a predecessor Trustee or his or her agents as to the assets comprising the Assets or as to any other fact bearing upon the prior administration of the Trust, so long as he or she has a good faith basis to do so. The Trustee shall not be liable for having accepted and relied in good faith upon any such accounting, statement, or representation if it is later proved to be incomplete, inaccurate, or untrue. The Trustee or successor Trustee shall not be liable for any act or omission of any predecessor Trustee, nor have a duty to enforce any claims against any predecessor Trustee on account of any such act or omission.

**ARTICLE VII**

**SELECTION, REMOVAL AND COMPENSATION OF TRUSTEE**

7.1 Initial Trustee. The initial Trustee shall be Entity Services (SPV), LLC.

7.2 Term of Service. The Trustee shall serve until (a) the completion of all the Trustee's duties, responsibilities and obligations under this Agreement and the Plan; (b) termination of the Trust in accordance with this Agreement and the Plan; or (c) the Trustee's death or dissolution, incapacitation, resignation, or removal, as set forth below or as provided for in the Plan.

7.3 Removal of a Trustee. Subject to the Plan, the Liquidating Trust Committee may remove and replace the Trustee for cause, including, without limitation, incapacity or failure or refusal to perform his/her duties under the Plan, this Agreement and the Confirmation Order or in the event of a conflict of interest. If removal of the Trustee is sought from the Bankruptcy Court by a motion for cause (or similar motion), then the Trustee is entitled to oppose such motion and to be reimbursed his or her reasonable attorneys' fees and expenses in connection with such objection from the Assets of the Trust if the Trustee is successful.

7.4 Resignation of Trustee. The Trustee may resign at any time by giving the Liquidating Trust Committee at least thirty (30) days' written notice of the Trustee's intention to do so. In the event of a resignation, the resigning Trustee shall render to the Liquidating Trust Committee a full and complete accounting of monies and assets received, disbursed, and held during the term of office of that Trustee. The resignation shall be effective on the later of (a) the date specified in the notice; (b) the date that is thirty days (30) after the date the notice is delivered; or (c) the date the accounting described in the preceding sentence is delivered.



7.5 Appointment of Successor Trustee. Subject to the Plan, upon the resignation, death, incapacity, or removal of a Trustee, the Liquidating Trust Committee shall appoint, by majority vote, a successor Trustee to fill the vacancy so created or, in the absence of majority vote, the Bankruptcy Court shall appoint a successor Trustee. Incapacitation for purposes of this Article VII shall mean that the Trustee is unable to perform the duties required of him/her under the Plan and this Agreement for a period of thirty (30) consecutive calendar days. If the Trustee becomes incapacitated, the Liquidating Trust Committee shall promptly appoint a successor Trustee. Any successor Trustee so appointed shall consent to and accept in writing the terms of this Agreement and agree that the provisions of this Agreement shall be binding upon and inure to the benefit of the successor Trustee and all of the successor Trustee's heirs and legal and personal representatives, successors or assigns. Notwithstanding anything in this Agreement, in the event that a successor Trustee is not appointed within sixty (60) days of the occurrence or effectiveness, as applicable, of the prior Trustee's resignation, death, incapacity, or removal, the Liquidating Trust Committee shall be authorized to request the Bankruptcy Court appoint a successor Trustee.

7.6 Powers and Duties of Successor Trustee. A successor Trustee shall have all the rights, privileges, powers, and duties of the predecessor Trustee under this Agreement and the Plan.

7.7 Trust Continuance. The death, incapacity, resignation or removal of the Trustee shall not terminate the Trust or revoke any existing agency created pursuant to this Agreement or invalidate any action theretofore taken by the Trustee.

7.8 Professional Compensation and Costs of Administration/Trust Expenses and Professional Fees. Unless otherwise agreed between the Trustee and the Liquidating Trust

Committee, the Trustee shall be compensated at the monthly rate of \$12,500.00 plus all reasonable and necessary expenses. The Trustee shall also be entitled to an acceptance fee in the amount of \$12,500.00 payable upon execution of this Agreement. In addition, subject to this Agreement and the Plan, the Trustee may retain and compensate professionals and agents (including himself/herself) as provided for in Section 3.8 of this Agreement. The reasonable fees and actual and necessary expenses of such professionals and the Trustee shall be paid by the Trust upon each monthly submission of a fee statement to the Trustee and the Liquidating Trust Committee, as applicable, in accordance with the following procedures. The Trustee shall deliver his or her invoices or fee statements to the Liquidating Trust Committee before payment from the Assets shall be allowed. Any professionals retained by the Trustee pursuant to this Agreement shall deliver their invoices or fee statements to the Trustee which shall further deliver them to the Liquidating Trust Committee before payment from the Trust Assets shall be allowed. The Trustee and Liquidating Trust Committee, as applicable, shall have fifteen (15) calendar days from the delivery of any invoice or fee statement to give notice of an objection to the fee statement to the professional seeking compensation or reimbursement (including the fees requested by the Trustee himself/herself). For an objection to be valid, it shall be in writing and in good faith and set forth in reasonable detail the specific fees objected to and the basis for the objection. The uncontested portion of each invoice shall be paid within twenty-five (25) calendar days after its original delivery to the Trustee and the Liquidating Trust Committee. Any objection that remains unresolved fifteen (15) calendar days after it is made shall be submitted to the Bankruptcy Court for resolution.

7.9 Reporting and Filing Requirements.

A. Within sixty (60) days after the last day of each calendar year in which the Trust shall remain in existence, the Trustee shall file a report with the Bankruptcy Court of all Assets held and received by the Trust, all Available Trust Cash disbursed to Beneficiaries, and all fees, income, and expenses related to the Trust during the preceding calendar year. The Trustee's report shall be provided to the Liquidating Trust Committee upon filing with the Bankruptcy Court, and shall be available to any Beneficiary upon written request.

B. The Trustee shall also timely prepare, file and distribute such additional statements, reports and submissions as may be necessary to cause the Trust and the Trustee to be in compliance with applicable law, such as the filing of tax or informational returns.

C. The Trustee shall provide such additional statements, reports, submissions and information to the Liquidating Trust Committee as may reasonably be requested, including without limitation, periodic updates on the status of the Trust, its Assets (including tax refunds), and the projected timing of future distributions (to the extent known by the Trustee).

**ARTICLE VIII**

**TRUST RIGHTS AND OBLIGATIONS**

8.1 The Trustee shall cause to be prepared and file tax returns for the Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a) and any other applicable laws or regulations.

8.2 Subject to section 3.2 of this Agreement, to the extent reasonably practicable and unless otherwise ordered by the Bankruptcy Court, the Trustee shall, promptly after the

preparation and filing of the tax returns for each calendar year in which the Trust is in existence, send to each qualifying Beneficiary that received a distribution during the previous calendar year, a statement setting forth the Beneficiary's share of items of income, gain, loss, deduction, or credit and will instruct all such Holders to report such items on their federal income tax returns. Such a statement shall also be sent to each Beneficiary within 120 days of the dissolution of the Trust and the filing of the Trust's final tax return. The Trust's taxable income, gain, loss, deduction, or credit will be allocated (subject to provisions of the Plan and Confirmation Order relating to Disputed Claims) to the Beneficiaries in accordance with their relative beneficial interests in the Trust, as determined pursuant to this Agreement.

8.3 In addition to the Trustee's rights and duties with respect to the Trust, and subject to the Plan, on and after the Effective Date, the Trustee is authorized to implement the Plan and any applicable orders of the Bankruptcy Court.

## **ARTICLE IX**

### **MAINTENANCE OF BOOKS AND RECORDS**

9.1 Subject to the Plan and unless otherwise provided therein, on the Effective Date, the Trust shall: (a) to the extent provided for in the Plan, take possession of all books, records, and files of the Settlers and their Estates, in all forms including electronic and hard copy, other than the documents of the Settlers' professionals; and (b) provide for the retention and storage of such books, records, and files until such time as the Trustee determines, in accordance with the Plan and this Agreement, that retention of same is no longer necessary or required.

9.2 The Trustee shall maintain books and records containing a description of all property from time to time constituting the Assets and an accounting of all receipts and disbursements. The Trustee shall furnish to any Beneficiary upon written request an annual

statement of receipts and disbursements, including a summary of all income and expenses of the Trust.

## **ARTICLE X**

### **DURATION OF TRUST**

10.1 Duration. The Trust shall become effective upon the Effective Date of the Plan, and the Trust and its provisions herein shall remain and continue in full force and effect until the Trust is terminated.

10.2 Termination. Subject to the Plan, the Trustee and members of the Liquidating Trust Committee shall be discharged and the Trust and Liquidating Trust Committee shall be terminated, at such time as (a) all Disputed Claims have been resolved, (b) all of the Assets have been liquidated, (c) all duties and obligations of the Trustee hereunder and the Plan have been fulfilled, (d) all distributions required to be made by the Trust under the Plan a have been made, and (e) the Chapter 11 Cases of the Liquidating Debtors have been closed, but in no event shall the Trust be dissolved later than five (5) years from the Effective Date unless the Bankruptcy Court, upon motion by the Trustee within the six-month period prior to the fifth anniversary, or the end of any extension period approved by the Bankruptcy Court, determines that a fixed period extension not to exceed three (3) years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service, to the extent required under applicable law at that time, that any further extension would not adversely affect the status of the Trust as a liquidating trust for federal income tax purposes, is necessary to facilitate or complete the liquidation, recovery and distribution of the Assets to the Beneficiaries. The Trustee may seek such an extension with the written consent of the Liquidating Trust Committee, which consent shall not be unreasonably withheld.

10.3 Continuance of Trust for Winding Up. After the termination of the Trust and for the purpose of liquidating and winding up the affairs of the Trust, the Trustee shall continue to act as such until the Trustee's duties have been fully performed, including, without limitation, such post-distribution tasks as necessary to windup the affairs of the Trust. The Trustee and Trust shall dispose of the books, records, Beneficiary lists, and certificates and other documents and files which shall have been delivered to or created by the Trustee as set forth in the Plan. Except as otherwise specifically provided herein, upon the discharge of all liabilities of the Trust and after final distributions of the Trust are made, the Trustee shall have no further duties or obligations hereunder. For the avoidance of doubt, the limitations on liability and indemnification rights contained in Article VI hereof shall apply to any actions taken by the Trustee and his professionals during the course of winding up the affairs of the Trust.

## **ARTICLE XI**

### **TAX TREATMENT OF THE TRUST**

11.1 Intention of Parties to Establish Grantor Trust. This 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. For all federal income tax purposes, the Beneficiaries of the Trust will be treated as grantors and owners thereof and it is intended that the Trust be classified as a liquidating Trust under Treasury Regulation Section 301.7701-4 and that the Trust is owned by the Beneficiaries. Accordingly, for federal income tax purposes, it is intended that the Beneficiaries be treated as if they had received a distribution of an undivided interest in the Assets and then contributed such interests to the Trust. Accordingly, the Trust shall, in an expeditious but orderly manner, and pursuant to the terms of this Agreement, the Plan and the Confirmation Order, liquidate and convert to Cash the Assets,

make timely distributions to the Beneficiaries pursuant to the Plan, and not unduly prolong the Trust's duration unnecessarily. The Trust shall not be deemed a successor in interest of the Settlers for any purpose other than as specifically set forth herein, the Plan and Confirmation Order.

11.2 Tax Returns. In accordance with the Plan and this Agreement, the Trustee shall cause the preparation and filing of tax returns for the Trust, except with respect to any Disputed Claims Reserve (see Section 4.2), as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a). The Trust's taxable income, gain, loss, deduction or credit will be allocated to each one of the Beneficiaries in accordance with their relative beneficial interests in the Trust.

11.3 Valuation of Assets. As soon as practicable after the Effective Date, the Trustee (to the extent that he or she deems it necessary or appropriate in the reasonable exercise of his or her discretion) shall, in good faith and in consultation with an investment advisor or other professional, value the Assets, and shall apprise the Beneficiaries of such valuation (but the Trust is not required to engage an expert to make such a valuation) for tax purposes. The valuation shall be used consistently by all parties (including the Settlers, the Trustee, and the Beneficiaries) for all purposes, including for federal income tax purposes. The Bankruptcy Court shall resolve any dispute regarding the valuation of the Assets.

11.4 Disputed Claims Reserve. In the event there is a Disputed Claim Reserve, the Trustee shall file any required income tax returns with respect to any income attributable to the Disputed Claims Reserve, consistent with its treatment as a DOF (see Section 4.2) and shall pay any federal, state and local income taxes attributable to the Disputed Claims Reserve, based on the items of income, deduction, credit or loss allocable thereto.

11.5 Determination of Taxes. The Trustee may request an expedited determination of any local, state and/or federal taxes of the Liquidating Debtors and/or Dismissed Debtors, the Settlers or of the Trust, including the Disputed Claims Reserve, under Bankruptcy Code § 505(b) for all returns filed for, or on behalf of, the Liquidating Debtors and/or the Dismissed Debtors (to the extent necessary and appropriate), the Settlers and the Trust for all taxable periods through the dissolution of the Trust, and to take any and all action necessary to obtain payment of any tax refund(s) due to the Liquidating Debtors, the Dismissed Debtors (to the extent necessary and appropriate), the Settlers, their Estate and/or the Trust. All earnings of the Trust shall be currently taxable to the Beneficiaries in the year in which such earnings are realized, including earnings retained in any established reserves (except with respect to the Disputed Claims Reserve, to the extent provided otherwise herein), in accordance with their respective rights to such earnings. Subject to Section 4.2 herein, the Trust is intended to qualify as a liquidating trust that is a “grantor trust” for federal and applicable state income tax purposes, and the Trustee shall use his or her best efforts to operate and maintain the Trust in compliance with the Internal Revenue Service Revenue Procedure 94-45, 1994-2 C.B. 684, Treasury Regulation Sections 1.671-4(a) and 301.7701-4(d) and all subsequent guidelines regarding liquidating trusts issued by the Internal Revenue Service.

11.6 Filing, Reporting, Withholding. The Trust shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority regarding the Trust’s tax obligations, if any, and all distributions made by the Trust shall be subject to any such withholding and reporting requirements. The Trust is also authorized to make tax elections on behalf of the Trust. The Trustee may require any Beneficiary to furnish to the Trustee in writing his/her or its Employer or Taxpayer Identification Number as assigned by the IRS or an



executed IRS Form W-9 or similar tax form, such as IRS Form W-8, and the Trustee may condition any distribution upon receipt of such identification number or document.

Notwithstanding anything herein to the contrary, each holder of an Allowed Claim that has received a Distribution of cash under the Plan will have sole and exclusive responsibility for the satisfaction or payment of any tax obligation imposed by any governmental unit, including income, withholding and other tax obligation, on account of such Distribution. All such amounts withheld and paid to the appropriate tax authority (or placed in escrow pending resolution of the need to withhold) shall be treated as amounts distributed to such holders of Claims for all purposes of this Agreement.

## **ARTICLE XII**

### **WIND-DOWN**

12.1 Wind-Down of Settlor. In addition to the Trustee's rights and duties with respect to the Trust as set forth herein, on and after the Effective Date, the Trustee shall also have the power and authority to take any action necessary to wind down the Liquidating Debtors' and the Settlers' Estates. Notwithstanding the foregoing, the Trustee shall be the authorized signatory on behalf of the Dismissed Debtors and, to the extent necessary and appropriate, execute any documents and take any action as necessary on behalf of the Dismissed Debtors.

## **ARTICLE XIII**

### **MISCELLANEOUS**

13.1 Jurisdiction. The Bankruptcy Court shall have exclusive jurisdiction over (a) the Trust, the Trustee and the Liquidating Trust Committee with respect to the administration of and activities relating to the Trust, as well as (b) any issues or disputes arising out of this Agreement;

provided, however, that notwithstanding the foregoing, the Trustee shall have the power and authority to bring any action in any court of competent jurisdiction to prosecute any Estate Causes of Action assigned to the Trust, subject to the consultation and consent requirements set forth in this Agreement, the Plan and the Confirmation Order.

13.2 Limitation on Transferability. A beneficial interest in the Trust shall be non-assignable and non-transferable except upon death of the interest holder or by operation of law. An assignment or transfer shall not be effective until appropriate notification consistent with this Agreement and proof thereof is submitted to the Trustee, and the Trustee may continue to pay all amounts to or for the benefit of the assigning or transferring Beneficiary until receipt of proper notification and proof of assignment or transfer. The Trustee may rely upon such proof without the requirement of any further investigation.

13.3 Notices. All notices to be given to Beneficiaries may be given by ordinary mail, or may be delivered personally, to the holders at the addresses appearing on the books kept by Trustee or the Claims and Noticing Agent. Any notice or other communication which may be or is required to be given, served, or sent to the Trustee shall be in writing and shall be sent by registered or certified United States mail, return receipt requested, postage prepaid, or transmitted by hand delivery or facsimile or e-mail (if receipt is confirmed) addressed as follows:

If to the Trust/Trustee/Settlors:

Entity Services (SPV), LLC  
c/o Michelle Dreyer  
251 Little Falls Drive  
Wilmington, DE 19808-1674  
Telephone: (302) 636-5806  
E-mail: Michelle.dreyer@cscgm.com

With a copy to:

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If to the Liquidating Trust Committee:

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or to such other address as may from time to time be provided in written notice by the Trustee or the Liquidating Trust Committee.

13.4 No Bond. Notwithstanding any state law to the contrary, the Trustee (including any successor) shall be exempt from giving any bond or other security in any jurisdiction.

13.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to conflicts of law principles, except to the extent that the law of the United States, including the Bankruptcy Code, governs any matter set forth in this Agreement, in which case such federal law shall govern.

13.6 Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

13.7 Headings. The various headings of this Agreement are inserted for convenience only and shall not affect the meaning or understanding of this Agreement or any provision hereof.

13.8 No Execution. All funds in the Trust shall be deemed *in custodia legis* until such times as the funds have actually been paid to or for the benefit of a Beneficiary, and no Beneficiary or any other Person can bind, pledge, encumber, execute upon, garnish, or attach the Assets or the Trustee in any manner or compel payment from the Trust except by final order of the Bankruptcy Court.

13.9 Plan and Confirmation Order. To the extent that the terms of this Agreement are inconsistent with the terms set forth in the Plan, then the terms of the Plan shall govern and control. To the extent that the terms of this Agreement are inconsistent with the terms set forth

in the Confirmation Order, then the terms of the Confirmation Order shall govern and control. For the avoidance of doubt, nothing in this Agreement is intended to expand any rights of any party or limit any obligations arising under the Plan or Confirmation Order.

13.10 Amendment. This Agreement may only be amended with the consent of each member of the Liquidating Trust Committee (which consent shall not be unreasonably withheld) or, in the absence of such agreement, by order of the Bankruptcy Court. This Agreement may not be amended in a way that would make it inconsistent with the Plan or Confirmation Order absent Bankruptcy Court order.

13.11 Severability. If any term, provision, covenant, or restriction contained in this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable, or against its regulatory policy, the remainder of the terms, provisions, covenants, and restrictions contained in this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

13.12 Counterparts. This Agreement may be executed in one or more counterparts, including by email, pdf and/or facsimile, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

13.13 Further Assurances. The Settlers and Trustee shall execute and deliver such additional documents and take such additional action as may be necessary or desirable to effectuate the provisions and purposes of this Agreement without the need for further order of the Bankruptcy Court.

13.14 Jurisdiction and Venue. The Settlers and Trustee submit and consent to the jurisdiction (both personal and subject matter) of the Bankruptcy Court to adjudicate any dispute or claim arising from or related to this Agreement. In the event the Bankruptcy Court declines to

or cannot exercise jurisdiction over any such disputes, then the Settlers and Trustee agree to the jurisdiction (both personal and subject matter) of the State or Federal Courts located in Wilmington, Delaware. THE SETTLORS AND TRUSTEE EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY DISPUTE ARISING UNDER OR RELATED TO THIS AGREEMENT.

13.15 Jointly Drafted. The Settlers and Trustee acknowledge and stipulate that this Agreement has been drafted through a joint effort of the Settlers and Trustee and, therefore, shall not be construed in favor of or against any of the parties. The terms of this Agreement shall be deemed to have been jointly negotiated and drafted by the Settlers and Trustee.

13.16 Effective Date. This Agreement shall become effective on the Effective Date of the Plan.

**IN WITNESS WHEREOF**, the parties have executed this Agreement (or are deemed to have so executed this Agreement) as of the day and year written above.

**Liquidating Trustee**

By: \_\_\_\_\_  
Name: Entity Services (SPV), LLC  
Title: Liquidating Trustee of the  
Knotel Liquidating Trust

**Settlers  
Knotel, Inc.**

By: \_\_\_\_\_  
Name:  
Title:

**Knotel Canada, Inc.**

By: \_\_\_\_\_  
Name:  
Title:

**42Floors, LLC**

By: \_\_\_\_\_  
Name:  
Title: