

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

-----	X	
<i>In re</i>	:	Chapter 11
	:	
THE McCLATCHY COMPANY, et al.,	:	Case No. 20-10418 (MEW)
	:	
Debtors.¹	:	(Jointly Administered)
	:	
-----	X	Related Docket Nos. 780, 781 & 782

NOTICE OF FILING OF PLAN SUPPLEMENT

PLEASE TAKE NOTICE THAT:

1. On August 21, 2020, the debtors in the above-captioned cases (the “**Debtors**”) filed (a) a proposed plan of distribution [ECF No. 780] (as amended from time to time and including all exhibits thereto, the “**Plan**”), and (b) a disclosure statement with respect thereto [ECF No. 781] (the “**Disclosure Statement**”).²

2. On August 21, 2020, the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”) entered an order (a) approving the Debtors’ proposed confirmation and solicitation timeline and (b) scheduling a combined hearing to consider confirmation of the Plan and approval of the Disclosure Statement [ECF No. 782] (the “**Scheduling Order**”).

3. On September 9, 2020, as contemplated by the Plan and the Scheduling Order, the Debtors filed the Plan Supplement, attached hereto, with the Bankruptcy Court. The Plan Supplement includes the following materials in connection with confirmation (each as defined in the Plan):

- Exhibit A: Administrative Claim Request Form
- Exhibit B: Sale Transaction Documents
- Exhibit C: GUC Recovery Trust Agreement
- Exhibit D: Plan Administration Trust Agreement
- Exhibit E: Stipulation Regarding Mediated Sale and Plan Settlement

¹ The last four digits of Debtor The McClatchy Company’s tax identification number are 0478. Due to the large number of debtor entities in these jointly administered chapter 11 cases, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ claims and noticing agent at <http://www.kccllc.net/McClatchy>. The location of the Debtors’ service address for purposes of these chapter 11 cases is: 2100 Q Street, Sacramento, California 95816.

² Capitalized terms not otherwise defined herein shall have the same meanings set forth in the Plan or Disclosure Statement, as applicable.



4. Pursuant to General Order M-543 dated March 20, 2020 and the Scheduling Order, a telephonic hearing will commence on **September 23, 2020 at 11:00 a.m. (prevailing Eastern Time)** before the Honorable Michael E. Wiles, United States Bankruptcy Judge for the Southern District of New York, One Bowling Green, New York, NY 10004 (the “**Court**”) to consider the confirmation of the Plan and approval of the Disclosure Statement (the “**Confirmation Hearing**”).

5. **Any party wishing to appear at the Confirmation Hearing must make arrangements with Court Solutions LLC, www.court-solutions.com to sign up for an account and to register for a live line. Registration for the Confirmation Hearing must occur no later than 12:00 p.m. on the business day prior to the hearing date.**

6. **Plan Objection Deadline.** All objections to the relief sought at the Confirmation Hearing **must:** (a) be in writing; (b) conform to the Bankruptcy Rules, the Local Bankruptcy Rules for the Southern District of New York, and any orders of the Bankruptcy Court; (c) state, with particularity, the legal and factual basis for the objection and, if practicable, a proposed modification to the Plan (or related materials) that would resolve such objection; and (d) be filed with the Bankruptcy Court (contemporaneously with a proof of service) and served upon the following parties so as to be **actually received** on or before **September 18, 2020 at 4:00 p.m., prevailing Eastern Time** (the “**Plan Objection Deadline**”):

- (a) **Counsel to the Debtors.** Skadden, Arps, Slate, Meagher & Flom LLP, One Manhattan West, New York, New York 10001, Attention: Van C. Durrer, II (van.durrer@skadden.com) and Bram Strohlic (bram.strohlic@skaden.com);
- (b) **Co-counsel for the Debtors.** Togut, Segal & Segal LLP, One Penn Plaza, Suite 3335, New York, NY 10119, Attn: Kyle J. Ortiz (kortiz@teamtogut.com) and Amy Oden (aoden@teamtogut.com);
- (c) **Counsel to Chatham Asset Management.** Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, Attn.: Andrew Rosenberg (arosenberg.paulweiss.com) and John Weber (jweber@paulweiss.com);
- (d) **Counsel to Brigade Capital Management.** Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036, Attn: Thomas M. Mayer (tmayer@kramerlevin.com), Douglas Mannal (dmannal@kramerlevin.com), and David Braun (dbraun@kramerlevin.com);
- (e) **Counsel to the Official Committee of Unsecured Creditors.** Stroock & Stroock & Lavan LLP, 180 Maiden Lane, New York, New York 10038, Attn: Kristopher Hansen (khansen@stroock.com), Frank Merola (fmerola@stroock.com) and Samantha Martin (smartin@stroock.com); and
- (f) **U.S. Trustee.** William K. Harrington, United States Trustee For Region 2, United States Department of Justice, Office of the United States Trustee,

201 Varick Street, Room 1006, New York, NY 10014, Attention: Ben Higgins and Brian Masumoto.

7. Objections or responses not timely filed, served and received in the manner set forth above will not be considered, and will be deemed overruled.

8. The documents in the Plan Supplement remain subject to further review and the Debtors, with the consent of the Consent Parties, reserve the right, subject to the terms and conditions set forth in the Plan, to alter, amend, modify, or supplement any document in the Plan Supplement; provided that if any document in the Plan Supplement is altered, amended, modified or supplemented in any material respect prior to the Confirmation Hearing, the Debtors will file a redline of such document with the Court.

9. If you would like to obtain a copy of the Disclosure Statement, the Plan, the Plan Supplement, or related documents, you should contact Kurtzman Carson Consultants LLC, the claims and noticing agent retained by the Debtors in the Chapter 11 Cases, by: (a) at the Debtors' restructuring website at <https://www.kccllc.net/mcclatchy>, (b) upon request by mail or electronic mail to the address set forth below, or (c) upon request by telephone at 866-810-6898 or 424-236-7215 if outside the United States: **McClatchy Ballot Processing Center, c/o Kurtzman Carson Consultants, LLC, 222 N. Pacific Coast Highway Suite 300, El Segundo, CA 90245, Email: McClatchyInfo@kccllc.com**. You may also obtain copies of any pleadings filed in the Chapter 11 Cases for a fee via PACER (the Court's Public Access to Court Electronic Records) at: <https://ecf.nysb.uscourts.gov/>. A login identification and password to PACER are required to access this information and such credentials can be obtained through the PACER Service Center at <http://www.pacer.psc.uscourts.gov>.

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Dated: New York, New York
September 9, 2020

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/s/ Van C. Durrer, II

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Counsel for Debtors and Debtors in Possession

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PLAN SUPPLEMENT WITH RESPECT TO PLAN OF DISTRIBUTION

TABLE OF EXHIBITS

<u>Exhibit</u>	<u>Title</u>
Exhibit A	Administrative Claim Request Form
Exhibit B	Sale Transaction Documents
Exhibit C	GUC Recovery Trust Agreement
Exhibit D	Plan Administration Trust Agreement
Exhibit E	Stipulation Regarding Mediated Sale and Plan Settlement

THE DOCUMENTS IN THE PLAN SUPPLEMENT REMAIN SUBJECT TO FURTHER REVIEW AND THE DEBTORS, WITH THE CONSENT OF THE CONSENT PARTIES, RESERVE THE RIGHT, SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN THE PLAN, TO ALTER, AMEND, MODIFY, OR SUPPLEMENT ANY DOCUMENT IN THE PLAN SUPPLEMENT.

EXHIBIT A

Administrative Claim Request Form

UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK	ADMINISTRATIVE CLAIM REQUEST FORM
<p>Name of Debtor:</p> <ul style="list-style-type: none"> <input type="checkbox"/> The McClatchy Company (Case No. 10418) <input type="checkbox"/> Aboard Publishing, Inc. (Case No. 10419) <input type="checkbox"/> Bellingham Herald Publishing, LLC (Case No. 10420) <input type="checkbox"/> Belton Publishing Company, Inc. (Case No. 10421) <input type="checkbox"/> Biscayne Bay Publishing, Inc. (Case No. 10422) <input type="checkbox"/> Cass County Publishing Company (Case No. 10423) <input type="checkbox"/> Columbus-Ledger Enquirer, Inc. (Case No. 10424) <input type="checkbox"/> Cypress Media, Inc. (Case No. 10425) <input type="checkbox"/> East Coast Newspapers, Inc. (Case No. 10426) <input type="checkbox"/> El Dorado Newspapers (Case No. 10427) <input type="checkbox"/> Gulf Publishing Company, Inc. (Case No. 10428) <input type="checkbox"/> Herald Custom Publishing of Mexico, S. de R.L. de C.V. (Case No. 10429) <input type="checkbox"/> HLB Newspapers, Inc. (Case No. 10430) <input type="checkbox"/> Idaho Statesman Publishing, LLC (Case No. 10431) <input type="checkbox"/> Keltatim Publishing Company, Inc. (Case No. 10432) <input type="checkbox"/> Keynoter Publishing Company, Inc. (Case No. 10433) <input type="checkbox"/> Lee's Summit Journal, Incorporated (Case No. 10434) <input type="checkbox"/> Lexington H-L Services, Inc. (Case No. 10435) <input type="checkbox"/> Macon Telegraph Publishing Company (Case No. 10436) <input type="checkbox"/> Mail Advertising Corporation (Case No. 10437) <input type="checkbox"/> McClatchy Big Valley, Inc. (Case No. 10438) <input type="checkbox"/> McClatchy Interactive LLC (Case No. 10439) <input type="checkbox"/> McClatchy Interactive West (Case No. 10440) <input type="checkbox"/> McClatchy International Inc. (Case No. 20-10441) <input type="checkbox"/> McClatchy Investment Company (Case No. 20-10442) <input type="checkbox"/> McClatchy Management Services, Inc. (Case No. 20-10443) <input type="checkbox"/> McClatchy News Services, Inc. (Case No. 20-10445) <input type="checkbox"/> McClatchy Newspapers, Inc. (Case No. 20-10444) <input type="checkbox"/> McClatchy Property, Inc. (Case No. 20-10446) <input type="checkbox"/> McClatchy Resources, Inc. (Case No. 20-10447) <input type="checkbox"/> McClatchy Shared Services, Inc. (Case No. 20-10448) <input type="checkbox"/> McClatchy U.S.A., Inc. (Case No. 20-10449) <input type="checkbox"/> Miami Herald Media Company (Case No. 20-10450) <input type="checkbox"/> N & O Holdings, Inc. (Case No. 20-10451) <input type="checkbox"/> Newsprint Ventures, Inc. (Case No. 20-10452) <input type="checkbox"/> Nittany Printing and Publishing Company (Case No. 20-10453) <input type="checkbox"/> Nor-Tex Publishing, Inc. (Case No. 20-10454) <input type="checkbox"/> Oak Street Redevelopment Corporation (Case No. 20-10888) <input type="checkbox"/> Olympian Publishing, LLC (Case No. 20-10455) <input type="checkbox"/> Olympic-Cascade Publishing, Inc. (Case No. 20-10456) <input type="checkbox"/> Pacific Northwest Publishing Company, Inc. (Case No. 20-10457) <input type="checkbox"/> Quad County Publishing, Inc. (Case No. 20-10458) 	<p>ADMINISTRATIVE CLAIM</p>

<p>6. Credits and Setoffs: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. In filing this claim, claimant has deducted all amounts that claimant owes to debtor.</p> <p>7. Supporting Documents: Attach copies of supporting document, such as promissory notes, contracts, security agreements, and evidence of perfection of liens. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary. Any attachment must be 8-1/2" by 11".</p> <p>8. DATE-STAMPED COPY: To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.</p>		<p>THIS SPACE IS FOR COURT USE ONLY</p>
<p>9. Assignment: <input type="checkbox"/> If the Claimant has obtained this claim by Assignment, a copy is attached hereto</p>		
<p>Date</p>	<p>Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any):</p>	
<p><i>Penalty for presenting fraudulent claim:</i> Fine up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.</p>		

INSTRUCTIONS FOR ADMINISTRATIVE CLAIM REQUEST FORM

The instructions and definitions below are general explanations of the law. In particular types of cases or circumstances, such as bankruptcy cases that are not filed voluntarily by a debtor, there may be exceptions to these general rules.

---DEFINITIONS---

<p><u>DEBTOR</u> The person, corporation, or other entity that has filed a bankruptcy case is called the debtor.</p> <p><u>CREDITOR</u> A creditor is any person, corporation, or other entity to whom the debtor owes a debt.</p>	<p><u>ADMINISTRATIVE CLAIM</u> A Claim for costs and expenses of administration of the Debtors' Estates pursuant to sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (i) the actual and necessary costs and expenses incurred on or after the Petition Date until and including the Effective Date of preserving the Estates and operating the business of the Debtors; (ii) Allowed Professional Claims, subject to the Professional Fee Caps; (iii) all Allowed requests for compensation or expense reimbursement for making a substantial contribution in the Chapter 11 Cases pursuant to sections 503(b)(3), (4), and (5) of the Bankruptcy Code; and (iv) fees and charges assessed against the Estates pursuant to section 1930 of chapter 123 of title 28 of the United States Code.</p> <p><u>PARTIES REQUIRED TO FILE ADMINISTRATIVE CLAIM REQUEST FORM</u> Pursuant to Sections 2.1 of the Plan, any entity asserting an Administrative Claim must file an Administrative Claim Request Form by the Administrative Claims Bar Date, except for any Holder of (a) a Deferred Amounts Claim, (b) a Professional Claim, (c) an Administrative Claim Allowed by a final order of the Bankruptcy Court on or before the Effective Date, (d) an Administrative Claim that is not disputed and arose in the ordinary course of business and was paid or is to be paid in accordance with the terms and conditions of the particular transaction giving rise to such Administrative Claim, or (e) an Administrative Claim arising under chapter 123 of title 28 of the United States Code.</p>	<p><u>ADMINISTRATIVE CLAIMS BAR DATE</u> Pursuant to Sections 1.10 and 2.1 of the Plan, any request for payment of an Administrative Claim (other than (i) Professional Claims, (ii) Administrative Claims Allowed by an order of the Bankruptcy Court on or before the Effective Date, or (iii) Administrative Claims that are not Disputed and arose in the ordinary course of business and were paid or are to be paid in accordance with the terms and conditions of the particular transactions giving rise to such Administrative Claims), must be filed no later than 30 days after the Effective Date.</p>
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Items to be completed in Administrative Claim Request Form (if not already filled in)

Name of Debtor and Case Number:

If your claim form is not preprinted with the name of the Debtor and the case number, fill in the name of the Debtor in the bankruptcy case and the bankruptcy case number. If you previously received a notice of the case from the Court, your name and address is near the top of the notice.

Information about Creditor:

Complete the section giving the name, address, and telephone number of the creditor to whom the Debtor owes money or property, and the Debtor's account number, if any. If anyone else has already filed an administrative proof of claim relating to this debt, if you never received notices from the bankruptcy court about this case, if your address differs from that to which the court sent notice, or if this administrative proof of claim replaces or amends an administrative proof of claim that was already filed, check the appropriate box on the form.

1. Basis for Claim:

Check the type of debt for which the proof of claim is being filed. If the type of debt is not listed, check "Other" and briefly describe the type of debt. If you were an employee of the debtor, fill in the last four digits of your social security number and the dates of work for which you were not paid.

2. Date Debt Incurred:

Fill in the date when the debt first was owed by the Debtor.

3. Court Judgments:

If you have a court judgment for this debt, state the date the court entered the judgment.

4. Total Amount of Claim:

Fill in the total amount of the entire Administrative Claim. If interest or other charges in addition to the principal amount of the claim are included, check the appropriate boxes on the form and attach an itemization of the interest and charges.

5. Brief Description of Administrative Claim:

Describe the Administrative Claim including, but not limited to, the actual and necessary costs and expenses of operating the Debtor's Estate or any actual and necessary costs and expenses of operating the Debtor's businesses.

6. Offsets, Credits and Setoffs:

By signing this administrative proof of claim, you are stating under oath that in calculating the amount of your claim you have given the debtor credit for all payments received from the debtor.

7. Supporting Documents:

You must attach to this administrative proof of claim form copies of documents that show the debtor owes the debt claimed or, if the documents are too lengthy, a summary of those documents. If documents are not available, you must attach an explanation of why they are not available.

8. Date-Stamped Copy:

To receive an acknowledgement of the filing of your Administrative Claim, enclose a stamped, self-addressed envelope and copy of this Administrative Claim Request Form.

Please send original, completed administrative proof of claim as follows:

By Mail, Hand, or Overnight Courier:

McClatchy Claims Processing Center
c/o Kurtzman Carson Consultants, LLC
222 N. Pacific Coast Highway
Suite 300
El Segundo, CA 90245

Any proof of claim submitted by facsimile or email will not be accepted.

All claims must be received on or before [●], 2020 at 5:00 p.m. Prevailing Eastern Time.

EXHIBIT B

Sale Transaction Documents

[Filed under separate cover at ECF No. 731]

EXHIBIT C

GUC Recovery Trust Agreement

GUC RECOVERY TRUST AGREEMENT

by and among The McClatchy Company,
and William A. Brandt, Jr., as GUC Recovery Trustee

Dated as of [], 2020

THIS DOCUMENT IS IN DRAFT FORM, REMAINS SUBJECT TO
ONGOING REVIEW AND COMMENT BY THE DEBTORS, THE
COMMITTEE, AND CERTAIN PARTIES IN INTEREST, AND IS
THEREFORE SUBJECT TO MATERIAL CHANGE

TABLE OF CONTENTS

This McClatchy GUC Recovery Trust Agreement (the “GUC Recovery Trust Agreement” or “Agreement”), dated as of September [__], 2020, is entered into by The McClatchy Company, a corporation organized under the laws of the state of Delaware, and certain of its affiliates, as debtors and debtors-in-possession (the “Debtors”) in the chapter 11 cases jointly administered under the caption *In re The McClatchy Company, et al.*, Case No. 20-10418 (MEW) (the “Chapter 11 Cases”) and William A. Brandt, Jr., as trustee (together with any successor appointed under the terms hereof, the “GUC Recovery Trustee”) for the benefit of each owner of a GUC Recovery Trust Interest granted to each holder of an Allowed Class 5 Claim (the “Beneficiaries”) and, solely to the extent provided in the Plan and Section 5.1(b) hereof, each holder of an Allowed Class 3 Claim (the “Contingent Beneficiaries”) under the terms of the *Joint Chapter 11 Plan of Distribution of The McClatchy Company and its Affiliated Debtors and Debtors in Possession*, dated August 21, 2020 (as may be amended, modified or supplemented, the “Plan”) [Docket No. 780], confirmed by the United States Bankruptcy Court, Southern District of New York (the “Bankruptcy Court”) in the Chapter 11 Cases by Order dated September [__], 2020 [Docket No. [__]] (the “Confirmation Order”).¹

RECITALS

WHEREAS, on February 13, 2020, the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code with the Bankruptcy Court;

WHEREAS, the Debtors filed the *Supplemental Disclosure Statement with Respect to the Joint Chapter 11 Plan of Distribution of The McClatchy Company and its Affiliated Debtors and Debtors in Possession* on August 21, 2020 [Docket No. 781];

WHEREAS, the Debtors filed the Plan on August 21, 2020;

WHEREAS, the Bankruptcy Court entered the Confirmation Order on [__], 2020 and the Plan became effective on [__], 2020 (the “Effective Date”);

WHEREAS, the GUC Recovery Trust (defined below) established pursuant to the terms of this Agreement is intended to qualify as a “liquidating trust” and be treated as one or more “grantor trusts” for federal income tax purposes and the GUC Recovery Trustee shall operate and maintain the GUC Recovery Trust in compliance with Internal Revenue Service Revenue Procedure 94-45, 1994-2 C.B. 684, and 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;

WHEREAS, the Plan contemplates, among other things, (a) the creation of a GUC Recovery Trust (the “GUC Recovery Trust”) on the Effective Date, and (b) the GUC Recovery Trust will be vested with (a) Cash in the amount of \$1,000,000 in the aggregate, comprised of (i) \$400,000 in Cash, which shall be transferred from the GUC Recovery Trust Escrow to the GUC Recovery Trust on the Effective Date, and (ii) \$600,000 in Cash funded by the proceeds of the Tax Refund (prior to the distribution of any Net Tax Refund) in accordance with Article 2.3 of the Plan,

¹ All capitalized terms used but not otherwise defined herein shall have the meaning as set forth in the Plan and such definitions are incorporated herein by reference.

(b) 77.5% of the Net Tax Refund, (c) an undivided interest in the GUC Recovery Trust Causes of Action and the proceeds thereof, (d) the Debtors' rights with respect to the D&O Insurance and any rights to assert claims with respect to such insurance policies, (e) the New Parent Equity; and (f) any additional assets required to be transferred to the GUC Recovery Trust in connection with the Restructuring Transactions (collectively, the "GUC Recovery Trust Assets"); and

WHEREAS, pursuant to the Plan, the GUC Recovery Trust shall be established to, among other things, administer the GUC Recovery Trust Assets, and make distributions to the Holders of Allowed Class 5 Claims (and solely to the extent provided for in the Plan and Section 5.1(b) hereof, Holders of Allowed Class 3 Claims), as provided in the Plan and Confirmation Order, 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 purpose of the GUC Recovery Trust and the Plan.

NOW, THEREFORE, pursuant to the Plan and the Confirmation Order, in consideration of the promises, the mutual agreements of the parties contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and affirmed, it is hereby agreed as follows:

ARTICLE I. AGREEMENT OF TRUST

1.1 Creation. The Debtors, each on its own behalf and on behalf of the Beneficiaries, and the GUC Recovery Trustee hereby constitute and create the GUC Recovery Trust, which is the trust provided for and referred to in Article 6.20 of the Plan. The GUC Recovery Trust shall be organized and established as a grantor trust, and this Agreement, together with the Plan, constitute the governing instrument of the GUC Recovery Trust. Effective as of the date hereof, the GUC Recovery Trustee shall have all the rights, powers, and duties set forth in this Agreement and the Plan, as applicable, and to the extent not inconsistent with this Agreement and the Plan with respect to accomplishing the purpose of the GUC Recovery Trust as set forth below.

1.2 Name. The GUC Recovery Trustee may conduct the affairs of the GUC Recovery Trust in the name of the "McClatchy GUC Recovery Trust."

1.3 Purpose. The purpose of the GUC Recovery Trust is to implement the provisions of the Plan and the Confirmation Order as specified as being applicable to the GUC Recovery Trust, and to take such lawful actions incident thereto and not in violation of the Plan, the Confirmation Order, or this Agreement. Accordingly, the primary purpose of the GUC Recovery Trust is to administer the GUC Recovery Trust Assets and make distributions to Holders of Allowed Class 5 Claims (and solely to the extent provided for in the Plan and Section 5.1(b) hereof, Holders of Allowed Class 3 Claims) in accordance with the Plan, Confirmation Order, and the GUC Recovery Trust Agreement, 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 GUC Recovery Trust.

1.4 Transfer of Assets. Pursuant to Article 6.20 of the Plan, upon the Effective Date, the Debtors shall irrevocably transfer, assign, and deliver to the GUC Recovery Trust, on behalf

of the Beneficiaries, all of their rights, title, and interests in the GUC Recovery Trust Assets notwithstanding any prohibition on assignment under nonbankruptcy law; provided, however, that proceeds of the Tax Refund cannot and will not be transferred to the GUC Recovery Trust on the Effective Date, but the proceeds of the Tax Refund and the Net Tax Refund, as applicable, to which the GUC Recovery Trust is entitled under the Plan will be transferred to the GUC Recovery Trust as soon as possible. The GUC Recovery Trust will accept and hold the GUC Recovery Trust Assets in the GUC Recovery Trust for the benefit of the Beneficiaries (and with respect to the D&O Insurance, subject to the rights of the third party beneficiaries thereof), subject to the terms of the Plan and this Agreement. On the Effective Date, all GUC Recovery Trust Assets shall vest and be deemed to vest in the GUC Recovery Trust in accordance with section 1141 of the Bankruptcy Code; provided, however, that all rights, title and interest in and to the Tax Refund and claims therefor shall remain an asset of the Debtors or the Wind-Down Debtors, as applicable, until the Tax Refund is received and distributed in accordance with Article 2.3 of the Plan; provided further, however, that the GUC Recovery Trustee may abandon or otherwise not accept any GUC Recovery Trust Assets that the GUC Recovery Trustee believes, in good faith, have no value to the GUC Recovery Trust. Any assets the GUC Recovery Trustee so abandons or otherwise does not accept shall not vest in the GUC Recovery Trust. As of the Effective Date, all GUC Recovery Trust Assets vested in the GUC Recovery Trust shall be free and clear of all Liens, Claims, and Interests, except as otherwise specifically provided in the Plan or in the Confirmation Order. Upon the transfer by the Debtors of the GUC Recovery Trust Assets to the GUC Recovery Trust or abandonment of GUC Recovery Trust Assets by the GUC Recovery Trustee, the Debtors will have no reversionary or further interest in or with respect to any GUC Recovery Trust Assets or the GUC Recovery Trust.

1.5 Privilege. Following the Debtors' emergence from chapter 11, in connection with the GUC Recovery Trust Assets, any attorney-client privilege, work-product privilege, joint interest privilege or other privilege or immunity (collectively, the "Privileges") attaching to any documents or communications (in any form, including, without limitation, written, electronic or oral) shall be transferred to and shall vest in the GUC Recovery Trustee and his representatives. The GUC Recovery Trust's receipt of the Privileges associated with the GUC Recovery Trust Assets shall not operate as a waiver of other privileges possessed or retained by the Debtors, nor shall it operate to eliminate the rights of any codefendant to any applicable joint privilege.

1.6 Funding of the GUC Recovery Trust. The GUC Recovery Trust shall be funded on and after the Effective Date with the GUC Recovery Trust Assets, as provided for in the Plan and Confirmation Order.

1.7 Acceptance by the GUC Recovery Trustee. The GUC Recovery Trustee hereby accepts the trust imposed upon it by this Agreement and agrees to observe and perform that trust on and subject to the terms and conditions set forth in this Agreement, the Plan, and the Confirmation Order. In connection with and in furtherance of the purposes of the GUC Recovery Trust, the GUC Recovery Trustee hereby accepts the transfer of the GUC Recovery Trust Assets.

ARTICLE II. THE GUC RECOVERY TRUSTEE

2.1 Appointment. The GUC Recovery Trustee has been selected pursuant to the provisions of the Plan and has been appointed as of the Effective Date. The GUC Recovery Trustee's appointment shall continue until the earlier of (i) the date that the GUC Recovery Trust is dissolved in accordance with this Agreement and (ii) the date of the GUC Recovery Trustee's resignation, death, dissolution, removal or liquidation.

2.2 General Powers. Except as otherwise provided in this Agreement, the Plan, or the Confirmation Order, the GUC Recovery Trustee may control and exercise authority over the GUC Recovery Trust Assets, and the acquisition, management, and disposition thereof. Nothing in this Agreement shall be deemed to prevent the GUC Recovery Trustee from taking, or failing to take, any action that, based upon the advice of counsel, it determines it is obligated to take (or fail to take) in the performance of any fiduciary or similar duty that the GUC Recovery Trustee owes to the Beneficiaries or any other Person or Entity. Any distributions to be made under the Plan from the GUC Recovery Trust Assets shall be made by the GUC Recovery Trust. The GUC Recovery Trustee shall have the authority to bind the GUC Recovery Trust within the limitations set forth herein, but shall for all purposes hereunder be acting in the capacity of GUC Recovery Trustee and not individually. No Person dealing with the GUC Recovery Trust shall be obligated to inquire into the GUC Recovery Trustee's authority in connection with the acquisition, management, or disposition of GUC Recovery Trust Assets. Without limiting the foregoing, but subject to the Plan, the Confirmation Order, and other provisions of this Agreement, the GUC Recovery Trustee shall be expressly authorized to, with respect to the GUC Recovery Trust and the GUC Recovery Trust Assets:

(a) Act as the GUC Recovery Trustee for the GUC Recovery Trust and administer the GUC Recovery Trust;

(b) Take any action necessary to transfer the GUC Recovery Trust Assets to the GUC Recovery Trust;

(c) Retain and compensate attorneys, advisors, and other professionals (including, without limitation, any professionals previously retained in the Chapter 11 Cases) as may be necessary and appropriate to perform the duties required of, and the obligations assumed by, the GUC Recovery Trust under the Plan and this Agreement without Bankruptcy Court approval, including in connection with the commencement, prosecution and/or settlement of the GUC Recovery Trust Causes of Action;

(d) Act for the GUC Recovery Trust with the fiduciary duties imposed under applicable law, subject to and limited by the provisions of the Plan and the GUC Recovery Trust Agreement (and all certificates of formation, membership agreements, and related documents are deemed amended by the Plan to permit and authorize the same);

(e) Exercise all power and authority that may be or could have been exercised and take all actions that may be or could have been taken solely with respect to the GUC Recovery Trust Assets by any officer, director, shareholder or other party acting in the name of the Debtors or their Estates with like effect as if duly authorized, exercised, and taken by action of such officers, directors, shareholders, or other party;

(f) Open, maintain, and administer bank accounts on behalf of or in the name of the GUC Recovery Trust;

(g) Administer, sell, liquidate, or otherwise dispose of GUC Recovery Trust Assets in accordance with the Plan;

(h) Receive, manage, invest, supervise, and protect the GUC Recovery Trust Assets, subject to the limitations provided herein;

(i) Coordinate with the Plan Administration Trustee on the Plan Administration Trust's analysis and prosecution of any objections to or settlements or compromises of Claims in Class 5, and to the extent the GUC Recovery Trustee in its sole discretion deems necessary or appropriate, object to, compromise, settle, otherwise resolve, or withdraw any objections to Claims in Class 5;

(j) Assist, to the extent necessary or appropriate or as reasonably requested by, the Wind-Down Debtors or the Plan Administration Trustee with the filing and pursuit of the claim for the Tax Refund, and to the extent Purchaser determines that it shall no longer incur fees, costs, or expenses in connection with the Wind-Down Debtors' claim for the Tax Refund, the GUC Recovery Trustee may determine to facilitate the claim for the Tax Refund, may pursue the Tax Refund (upon an appropriate assignment of the Wind-Down Debtors' Rights solely for purposes of prosecuting the claim), and/or may utilize the GUC Recovery Trust Assets in connection with the Wind-Down Debtors' pursuit of the claim for the Tax Refund;

(k) Calculate and make the distributions on behalf of the Debtors, the Estates, and the GUC Recovery Trust to the Holders of Allowed Claims in Class 5 (and solely to the extent provided in the Plan and Section 5.1(b) hereof, Holders of Allowed Claims in Class 3), in accordance with this Agreement, the Plan, and the Confirmation Order, and take other actions consistent with the Plan and the implementation thereof;

(l) To the extent necessary, (i) seek a determination of tax liability of the GUC Recovery Trust under Section 505 of the Bankruptcy Code; (ii) prepare and file any and all tax and information returns required with respect to the GUC Recovery Trust; (iii) make any tax elections for and on behalf of the GUC Recovery Trust; (iv) settle or compromise any tax liability, or consent to any claim or assessment relating to taxes, on behalf of the GUC Recovery Trust; (v) pay taxes, if any, payable for and on behalf of the GUC Recovery Trust; (vi) cause the GUC Recovery Trust to withhold from the amount distributable to any Person or Entity such amount as may be sufficient to pay any tax or other charge that the GUC Recovery Trustee has determined, based upon the advice of any one or more of its agents and professionals, may be required to be withheld therefrom under the income tax laws of the United States or of any state or political subdivision thereof, and (vii) file and prosecute any tax refund claims of the GUC Recovery Trust;

(m) Represent the Debtors' Estates before the Bankruptcy Court and other courts of competent jurisdiction solely with respect to matters concerning the GUC Recovery Trust and/or the GUC Recovery Trust Assets;

(n) Pay all lawful expenses, debts, charges, taxes, and liabilities of the GUC Recovery Trust;

(o) Purchase and carry customary insurance policies (“GUC Recovery Trust Insurance Policies”), pay all insurance premiums and costs as the GUC Recovery Trustee deems reasonably necessary or advisable (including insurance for the protection of Entities serving as administrators and overseers of the GUC Recovery Trust), and request and receive reports from any insurer under the GUC Recovery Trust Insurance Policies regarding the payment of any proceeds of such policies;

(p) Implement, enforce, or discharge all of the terms, conditions, and all other provisions of, and all duties and obligations under, the Plan, the Confirmation Order, and this Agreement;

(q) Maintain the books and records of the GUC Recovery Trust;

(r) Investigate, commence, prosecute, settle, assign, or otherwise compromise, release, dismiss, or abandon for the benefit of the GUC Recovery Trust any and all GUC Recovery Trust Causes of Action, 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 or other advisors to pursue the GUC Recovery Trust Causes of Action; provided, however, that notwithstanding the foregoing, in pursuing the GUC Recovery Trust Causes of Action, the GUC Recovery Trust shall (i) expressly forgo enforcement of any final judgment against any Ds&Os to the extent such judgment is not fully covered by and payable exclusively from insurance maintained by the Debtors for the benefit of any current or former director or officer and (ii) minimize discovery with respect to any Transferred Employees that accept employment from the Purchaser by seeking relevant information from other parties prior to seeking such information from any such Transferred Employees;

(s) Enter into, or cause to be entered into, litigation financing arrangements, including for the funding of counsel fees, expert fees, and court costs, in connection with the commencement, prosecution, appeal, settlement or other compromise of any and all GUC Recovery Trust Causes of Action;

(t) Invest the GUC Recovery Trust Assets transferred to the GUC Recovery Trust (including any earnings thereon or income therefrom) in United States Treasury bills and notes, institutional money market funds, commercial paper, time deposits and certificates of deposit with commercial banks, in each case, with a maturity of twelve (12) months or less; provided, however, that the scope of any such investments shall be limited to include only those investments permitted to be made by a “liquidating trust” within the meaning of Treas. Reg. section 301.7701-4(d) or under applicable Internal Revenue Service (“IRS”) guidelines, whether set forth in IRS rulings, revenue procedures, other IRS pronouncements, or otherwise;

(u) Enter into any agreement or execute any document or instrument required by or consistent with the Plan, the Confirmation Order or this Agreement and perform all obligations thereunder;

(v) Establish reserves as may be necessary or appropriate for distributions and/or the operation of matters incident to the GUC Recovery Trust;

(w) Enforce, waive, assign or release any rights, privileges or immunities of any kind;

(x) Send annually to each Beneficiary (i) a report on the status of the GUC Recovery Trust Assets, and (ii) a separate statement stating the Beneficiary's share of income, gain, loss, deduction or credit and instructing all such Beneficiaries to report such items on their federal tax returns;

(y) Communicate periodically with Beneficiaries regarding the GUC Recovery Trust operations and GUC Recovery Trust Assets;

(z) Comply with the applicable Orders of the Bankruptcy Court and any other court of competent jurisdiction over the matters set forth in the Plan, and all applicable laws and regulations concerning the matters set forth in the Plan; and

(aa) Take all other actions consistent with the provisions of the Plan that the GUC Recovery Trustee deems reasonably necessary or desirable to administer the GUC Recovery Trust and the Plan.

2.3 Valuation. [The GUC Recovery Trustee and the holders of GUC Recovery Trust Interests shall report consistently with the valuation of the GUC Recovery Trust Assets transferred to the GUC Recovery Trust as determined by the Plan Administration Trustee (or its designee), with the consent of the GUC Recovery Trustee, for all U.S. federal income tax purposes. Such valuation shall be made available from time to time, to the extent relevant.]

2.4 Limitation of GUC Recovery Trustee's Authority.

(a) All power or authority of the GUC Recovery Trustee shall be as set forth in this Agreement, the Plan, and the Confirmation Order. Notwithstanding anything herein to the contrary, the GUC Recovery Trustee shall have no authority to take any action in contravention of this Agreement, the Plan, the Confirmation Order, or applicable law, or any action that would make it impossible to carry on the activities of the GUC Recovery Trust.

(b) The GUC Recovery Trustee shall (i) minimize discovery with respect to any Transferred Employees that accept employment from the Purchaser by seeking relevant information from other parties prior to seeking such information from any such Transferred Employees; and (ii) forgo enforcement of any final judgment against any Ds&Os to the extent such judgment is not fully covered by and payable exclusively from insurance maintained by the Debtors for the benefit of any current or former director or officer.

(c) For federal tax purposes, the GUC Recovery Trustee shall not be authorized to engage in any trade or business with respect to the GUC Recovery Trust Assets or any proceeds therefrom except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the GUC Recovery Trust. The GUC Recovery Trustee shall take such actions consistent with the prompt orderly liquidation of the GUC Recovery Trust Assets as

required by applicable law and consistent with the treatment of the GUC Recovery Trust as a liquidating trust under Treas. Reg. section 301.7701-4(d), to the extent such actions are permitted by this Agreement. The GUC Recovery Trustee shall not take, or fail to take, any action that would jeopardize treatment of the GUC Recovery Trust as a “liquidating trust” for federal income tax purposes.

2.5 Compensation of GUC Recovery Trustee.

(a) From and after the Effective Date, the GUC Recovery Trustee, on behalf of the GUC Recovery Trust, shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable expenses (including professional fees) incurred by the GUC Recovery Trust, the GUC Recovery Trustee, and any professionals retained by the GUC Recovery Trust from the GUC Recovery Trust Assets, except as otherwise provided herein.

(b) The GUC Recovery Trustee understands and agrees that, at times, it may temporarily delay making compensation payments to itself and the GUC Recovery Trust’s professionals solely to the extent it determines, in its reasonable discretion, that such delay is necessary to preserve the GUC Recovery Trust Assets to prolong the life of the GUC Recovery Trust. Any payments owed to the GUC Recovery Trustee and the GUC Recovery Trust’s professionals and delayed in accordance with this Section 2.5(b) shall be reimbursed in full from the GUC Recovery Trust Assets, including from the Deferred Amounts Claims, the proceeds of the Tax Refund, and/or the proceeds of the GUC Recovery Trust Causes of Action.

2.6 Retention of Professionals.

(a) The GUC Recovery Trustee, on behalf of the GUC Recovery Trust, may, but shall not be required to, from time to time enter into contracts with, consult with and retain any professional on such terms as the GUC Recovery Trustee deems appropriate in accordance with the terms hereof. None of the professionals that represented parties in interest in the Chapter 11 Case shall be precluded from being engaged by the GUC Recovery Trustee solely on account of their service as a professional for such parties in interest prior to the Effective Date.

(b) Upon the Effective Date, the GUC Recovery Trust may employ and pay any professional (each, a “GUC Recovery Trust Professional”) in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court. The GUC Recovery Trust Professionals shall not be required to comply with sections 327 through 331 of the Bankruptcy Code in seeking retention or compensation for services rendered after the Effective Date.

2.7 General Duties, Obligations, Rights, and Benefits of the GUC Recovery Trustee. The GUC Recovery Trustee shall have all duties, obligations, rights, and benefits assumed by, assigned to, or vested in the GUC Recovery Trust under the Plan, the Confirmation Order, this Agreement and any other agreement entered into pursuant to or in connection with the Plan or this Agreement. Such duties, obligations, rights, and benefits include, without limitation, all duties, obligations, rights, and benefits relating to the administration of the GUC Recovery Trust Assets, administration and satisfaction of the Claims of Beneficiaries, distributions to Holders of

Allowed Claims in Class 5 (and solely to the extent provided for in the Plan and Section 5.1(b) hereof, the Holders of Allowed Claims in Class 3), administration of the GUC Recovery Trust and any other duties, obligations, rights, and benefits reasonably necessary to accomplish the purpose of the GUC Recovery Trust under the Plan, the Confirmation Order, this Agreement, and any other agreement entered into pursuant to or in connection with the Plan or this Agreement.

2.8 Resignation/ Removal/ Replacement of the GUC Recovery Trustee. The GUC Recovery Trustee may resign at any time upon thirty (30) days' written notice delivered to the Bankruptcy Court, provided that such resignation shall only become effective upon the appointment of a permanent or interim successor GUC Recovery Trustee. The GUC Recovery Trustee may also be removed by the Bankruptcy Court upon application by any interested party (including a Beneficiary) and after notice and a hearing. In the event of the resignation or removal of the GUC Recovery Trustee, or in the event that the GUC Recovery Trustee dies or becomes incapacitated, the Bankruptcy Court shall appoint a successor GUC Recovery Trustee based upon submissions by interested parties (including any Beneficiary or counsel or advisor to the GUC Recovery Trust). Upon its appointment, the successor GUC Recovery Trustee, without any further act, shall become fully vested with all of the rights, powers, duties, and obligations of its predecessor, except as provided herein, and all responsibilities of the predecessor GUC Recovery Trustee relating to the GUC Recovery Trust shall be terminated. In the event the GUC Recovery Trustee's appointment terminates by reason of death, dissolution, liquidation, resignation, or removal, such GUC Recovery Trustee shall be compensated for all reasonable fees and expenses accrued through the effective date of termination, whether or not previously invoiced; *provided* that the provisions of Sections 3.1, 3.2, 3.3, 3.4 and 4.2 shall continue to apply following the date of such termination.

2.9 GUC Recovery Trust Continuance. The death, dissolution, liquidation, resignation, or removal of the GUC Recovery Trustee shall not terminate the GUC Recovery Trust or revoke any existing agency created by the GUC Recovery Trustee pursuant to this Agreement or invalidate any action theretofore taken by the GUC Recovery Trustee, and the provisions of this Agreement shall be binding upon and inure to the benefit of the successor GUC Recovery Trustee and all of its successors or assigns.

ARTICLE III. LIABILITY OF TRUSTEE

3.1 Standard of Care; Exculpation. None of the GUC Recovery Trustee or any director, officer, affiliate, employee, employer, professional, successor, assign, agent, or representative of the GUC Recovery Trustee (each, an "Exculpated Party" and collectively, the "Exculpated Parties") shall be liable for any losses, claims, damages, liabilities, obligations settlements, proceedings, suits, judgments, causes of action, litigation, actions, or investigations (whether civil or administrative and whether sounding in tort, contract, or otherwise), penalties, costs, and expenses, including reasonable fees and disbursements (collectively referred to herein as "Losses"), whether or not in connection with litigation in which any Exculpated Party is a party, or enforcing this Agreement (including these exculpation provisions), as and when imposed on the Exculpated Parties, incurred, caused by, relating to, based upon, or arising out of (directly or indirectly) the Exculpated Parties' execution, delivery, and acceptance of, or the

performance or nonperformance of its powers, duties, and obligations under, this Agreement, the Plan, or the Confirmation Order or as may arise by reason of any action, omission, or error of an Exculpated Party; provided, however, that the foregoing limitation shall not apply to any Losses suffered or incurred directly or indirectly by the GUC Recovery Trust or any Beneficiary that are found in a final judgment by a court of competent jurisdiction (not subject to further appeal) to have resulted from the fraud, gross negligence, or willful misconduct of such Exculpated Party. Every act taken or omitted, power exercised, or obligation assumed by the GUC Recovery Trust or any Exculpated Party pursuant to the provisions of this Agreement shall be held to be taken or omitted, exercised, or assumed, as the case may be, by the GUC Recovery Trustee or any Exculpated Party acting for and on behalf of the GUC Recovery Trust and not otherwise; provided, however, that none of the foregoing Entities or Persons are deemed to be responsible for any other such Entities' or Persons' actions or inactions. Except as provided in the first proviso of the first sentence of this Section 3.1, every Person, firm, corporation, or other Entity contracting or otherwise dealing with or having any relationship with the GUC Recovery Trust or any Exculpated Party shall have recourse only to the GUC Recovery Trust Assets for payment of any liabilities or other obligations arising in connection with such contracts, dealings, or relationships and the GUC Recovery Trust and the Exculpated Parties shall not be individually liable therefor. Except as provided in the first proviso of the first sentence of this Section 3.1, in no event shall an Exculpated Party be liable for indirect, punitive, special, incidental, or consequential damage or loss (including but not limited to lost profits) whatsoever, even if the Exculpated Parties have been informed of the likelihood of such loss or damages and regardless of the form of action.

3.2 Indemnification. The GUC Recovery Trustee and any director, officer, affiliate, employee, employer, professional, successor, assign, agent, or representative of the GUC Recovery Trustee (each, an "Indemnified Party" and collectively, the "Indemnified Parties") shall be defended, held harmless, and indemnified from time to time by the GUC Recovery Trust against any and all Losses, including, without limitation, the costs for counsel or others in investigating, preparing, defending, or settling any action or Claim, whether or not in connection with litigation in which any Indemnified Party is a party, or enforcing this Agreement (including these indemnity provisions), as and when imposed on the Indemnified Parties, incurred, caused by, relating to, based upon or arising out of (directly or indirectly) the Indemnified Parties' execution, delivery, and acceptance of or the performance or nonperformance of its powers, duties, and obligations under this Agreement, the Plan, or the Confirmation Order or as may arise by reason of any action, omission, or error of an Indemnified Party; provided, however, such indemnity shall not apply to any such Losses suffered or incurred directly or indirectly by the GUC Recovery Trust or any Beneficiary to the extent it is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) to have resulted from the fraud, gross negligence, or willful misconduct of such Indemnified Party. Notwithstanding anything to the contrary in this Agreement, any Indemnified Party shall be entitled to obtain advances from the GUC Recovery Trust to cover its reasonably anticipated expenses of defending itself in any action threatened against or brought against it as a result of any act or omission, actual or alleged, of the GUC Recovery Trustee in its capacities as such. Without limiting the generality or effect of the foregoing, within five (5) Business Days after a written request by an Indemnified Party to the GUC Recovery Trustee, the GUC Recovery Trustee shall, in accordance with such request, but without duplication, from the GUC Recovery Trust, (a) pay such expenses on behalf of the Indemnified Party, (b) advance to the Indemnified Party Cash in amount sufficient to pay

such expenses, or (c) reimburse the Indemnified Party for such expenses; provided that the Indemnified Party shall provide an undertaking to repay promptly any amounts so paid, advanced, or reimbursed from the GUC Recovery Trust upon the entry of a Final Order finding that such Indemnified Party was not entitled to indemnity under this Section 3.2. To the extent the GUC Recovery Trustee delays payment to itself in accordance with Section 2.5(b) hereof, the indemnification payments provided for in this Section 3.2 may be delayed solely to the extent the GUC Recovery Trustee determines, in its reasonable discretion, that such delay is necessary to preserve the GUC Recovery Trust Assets to prolong the life of the GUC Recovery Trust. Any payments owed to an Indemnified Party and delayed in accordance with this Section 3.2 shall be reimbursed in full from the GUC Recovery Trust Assets, including from the Deferred Amounts Claims, the proceeds of the Tax Refund, and/or the proceeds of the GUC Recovery Trust Causes of Action.

3.3 No Liability for Acts of Successor/Predecessor GUC Recovery Trustee. Upon the appointment of a successor GUC Recovery Trustee and the delivery of the GUC Recovery Trust Assets to the successor GUC Recovery Trustee, the predecessor GUC Recovery Trustee, and any director, officer, affiliate, employee, employer, professional, agent, or representative of the predecessor Trustee shall have no further liability or responsibility with respect to such assets. A successor Trustee shall have no duty to examine or inquire into the acts or omissions of its immediate or remote predecessor and no successor Trustee shall be in any way liable for the acts or omissions of any predecessor Trustee unless a successor Trustee expressly assumes such responsibility. A predecessor Trustee shall have no liability for the acts or omissions of any immediate or subsequent successor Trustee for any events or occurrences subsequent to the cessation of its role as Trustee.

3.4 Reliance by Trustee on Documents or Advice of Counsel. Except as otherwise provided in this Agreement, the GUC Recovery Trustee, and any director, officer, affiliate, employee, employer, professional, agent, or representative of the GUC Recovery Trustee may rely, and shall be protected from liability for acting or failing to act, in each case upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document reasonably believed in good faith by such Trustee to be genuine and to have been presented by an authorized party. None of the GUC Recovery Trustee or any director, officer, affiliate, employee, employer, professional, agent, or representative of the GUC Recovery Trustee shall be liable for any action taken or omitted or suffered by the GUC Recovery Trustee in each case in reasonable reliance upon the advice of counsel or other professionals engaged by the GUC Recovery Trustee in accordance with this Agreement.

3.5 Insurance. The GUC Recovery Trustee may purchase (using Cash from the GUC Recovery Trust) and carry customary insurance policies, and pay from the GUC Recovery Trust all insurance premiums and costs the GUC Recovery Trustee deems reasonably necessary or advisable, including, without limitation, purchasing any errors and omissions insurance with regard to any Losses the GUC Recovery Trustee may incur, arising out of or due to their actions or omissions, or consequences of such actions or omissions, with respect to the implementation and administration of the Plan or this Agreement. The GUC Recovery Trustee may also carry and pay from the GUC Recovery Trust all insurance premiums and costs the GUC Recovery Trustee deems reasonably necessary or advisable with respect to the GUC Recovery Trust Insurance Policies; provided, however, that with respect to the GUC Recovery Trust Insurance

Policies, the GUC Recovery Trustee shall have the discretion to cease the payment of premiums and to abandon any GUC Recovery Trustee Insurance Policies the GUC Recovery Trustee determines to be burdensome or of no value to the GUC Recovery Trust. For the avoidance of doubt, notwithstanding anything to the contrary herein, nothing shall affect the rights of any party other than the GUC Recovery Trustee under any of the GUC Recovery Trust Insurance Policies, including, without limitation, the D&O Insurance.

ARTICLE IV.
GENERAL PROVISIONS CONCERNING
ADMINISTRATION OF THE GUC RECOVERY TRUST

4.1 Books and Records. The GUC Recovery Trustee or its designated agent shall maintain the books and records of the GUC Recovery Trust (including the Debtors' books and records to the extent applicable) relating to the Claims of the Beneficiaries and Contingent Beneficiaries, the GUC Recovery Trust Assets, the income of the GUC Recovery Trust, and the payment of expenses of, and liabilities or claims against or assumed by, the GUC Recovery Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained on a modified cash or other comprehensive basis of accounting necessary to facilitate compliance with the tax reporting requirements of the GUC Recovery Trust.

4.2 Confidentiality. The GUC Recovery Trustee shall, during the period that it serves as Trustee under this Agreement and thereafter, 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 GUC Recovery Trust Assets relates or of which the GUC Recovery Trustee has become aware in its capacity as such; *provided, however*, that this Section 4.2 shall not apply to information disclosed in compliance with a court order.

4.3 Cooperation Among Parties. Each of the Wind-Down Debtors, the Plan Administration Trust, the GUC Recovery Trust, and the Purchaser shall reasonably cooperate with one another and shall use commercially reasonable efforts to provide or grant access to (a) readily available documents and information from the Debtors' books and records (including the books and records acquired by the Purchaser from the Debtors under the Asset Purchase Agreement) related to the period prior to the Petition Date, and (b) such personnel having knowledge of the location or contents of such documents, relating to or concerning, (i) with respect to the Wind-Down Debtors, the tax filings, the Tax Refund, or the Deferred Amounts Claims; (ii) with respect to the Plan Administration Trust, the Administrative Claims, Professional Claims, Priority Tax Claims, Other Priority Claims, Other Secured Claims, Second Lien Term Loan Claims, Third Lien Notes Claims, Intercompany Claims, Subordinated Claims, or the Deferred Amounts Claims, (iii) with respect to the GUC Recovery Trust, the General Unsecured Claims and the GUC Recovery Trust Assets, and (iv) with respect to the Purchaser, for legitimate business reasons as may be determined by the Purchaser in its reasonable discretion. In addition, the Wind-Down Debtors, the Plan Administration Trust, the GUC Recovery Trust, and the Purchaser shall coordinate to develop a document sharing, retention, and maintenance policy with respect to the Debtors' books and records related to the period prior to the Petition Date, the terms of which shall be agreed upon among the Wind-Down Debtors, the Plan Administration Trust, the GUC Recovery Trust, and the Purchaser.

4.4 Covenant Regarding GUC Recovery Trust Causes of Action. In accordance with the Committee Settlement and Section 6.3 of the Plan, the GUC Recovery Trust hereby absolutely, unconditionally, and irrevocably covenants and agrees that it will not sue on or otherwise assert in any proceeding (at law, in equity, in any regulatory proceeding, or otherwise) any claims or Causes of Action against any of the Limited Non-Released Parties who are also Transferred Employees. If the GUC Recovery Trust violates this covenant, the GUC Recovery Trust shall pay, in addition to such other monetary damages such Transferred Employees may sustain as a result of such violation, all reasonable and documented attorneys' and other advisors' fees and costs incurred by the Transferred Employees as a result of such violation.

4.5 Abandonment; Donation. If, in the GUC Recovery Trustee's reasonable judgment, any GUC Recovery Trust Assets cannot be sold or distributed in a commercially reasonable manner or the GUC Recovery Trustee believes in good faith that such property has inconsequential value to the GUC Recovery Trust or its Beneficiaries or is insufficient to render a further Distribution practicable, the GUC Recovery Trustee shall have the right, for GUC Recovery Trust Assets with an aggregate value of up to \$50,000, to cause the GUC Recovery Trust to abandon or otherwise dispose of such property, including by donation of such remaining funds to a charitable institution qualified as a not-for-profit corporation, under applicable federal and state laws selected by the GUC Recovery Trustee.

ARTICLE V. BENEFICIAL INTERESTS AND BENEFICIARIES

5.1 Identification of Beneficiaries.

(a) The record Beneficiaries shall be recorded and set forth in a register (the "Beneficiary Register") maintained by the GUC Recovery Trustee. The GUC Recovery Trustee shall update the Beneficiary Register periodically as Disputed Claims become Allowed Claims and the holder of such Allowed Claim is granted a GUC Recovery Trust Interest. All references in this Agreement to Beneficiaries shall be read to mean Beneficiaries of record as set forth in the official register maintained by the GUC Recovery Trustee on such official registry (including any permitted successors or assigns, as applicable). The GUC Recovery Trustee may deem and treat the Beneficiary reflected as the owner of a GUC Recovery Trust Interest on the Register and as the absolute owner thereof for the purposes of receiving distributions and payments on account thereof for federal and state income tax purposes and for all other purposes whatsoever.

(b) Solely to the extent the Allowed Class 5 Claims of the Beneficiaries are satisfied in full (the date on which all Allowed Class 5 Claims are satisfied in full, the "Satisfaction Date"), the Contingent Beneficiaries shall become beneficiaries of the GUC Recovery Trust and shall be permitted to receive distribution(s) on account of their Allowed Class 3 Claims. The interests of the Contingent Beneficiaries shall be treated as a separate class of interests than the interests held by the Beneficiaries receiving their interests with respect to their Allowed Class 5 Claims. Following the Satisfaction Date, the record Contingent Beneficiaries shall be recorded and set forth in the Beneficiary Register, and all references in this Agreement to Beneficiaries shall be read to mean Contingent Beneficiaries of record as set forth in the official register maintained by the GUC Recovery Trustee on such official registry (including any permitted successors or assigns, as applicable).

5.2 Rights of Beneficiaries. Each Beneficiary shall be entitled to (i) participate in the rights due to such Beneficiary under the Plan and this Agreement, (ii) take and hold its uncertificated GUC Recovery Trust Interest subject to all of the terms and provisions of this Agreement, the Confirmation Order, the Plan, and any other Order of the Bankruptcy Court, and (iii) receive distributions as set forth in the Plan.

5.3 Interest Beneficial Only. Ownership of GUC Recovery Trust Interest shall not entitle any Beneficiary to any title in or to the GUC Recovery Trust Assets or to any right to call for a partition or division of the GUC Recovery Trust Assets or to require an accounting.

5.4 Evidence of Beneficial Interest. Ownership of a GUC Recovery Trust Interest 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 GUC Recovery Trust by the GUC Recovery Trustee. In the absence of manifest error, the ownership of GUC Recovery Trust Interests as reflected on the books and records of the GUC Recovery Trust maintained by the GUC Recovery Trustee shall be conclusive and binding on all owners of GUC Recovery Trust Interests.

5.5 Exemption from Registration. The issuance of GUC Recovery Trust Interests under the Plan are exempt from registration pursuant to section 1145 of the Bankruptcy Code, as amended, and by other applicable state and local laws requiring registration of securities.

5.6 Transfer of Beneficial Interests. GUC Recovery Trust Interests shall not be transferrable except upon death of the interest holder or by operation of law.

(a) Beneficiary's Address; Notice of Change of Address. Distributions to Holders of Allowed Claims shall be made by the Distribution Agent or the appropriate Servicer (i) at the addresses set forth on the proofs of Claim filed by such Holders of Claims (or at the last known addresses of such Holders of Claims if no proof of Claim is filed or if the Debtors or the Distribution Agent were notified in writing of a change of address), (ii) at the addresses set forth in any written notices of address changes delivered to the Debtors or the Distribution Agent after the date of any related proof of Claim, (iii) at the addresses reflected in the Schedules if no proof of Claim has been filed and the Debtors and Distribution Agent have not received a written notice of a change of address, or (iv) in the case of a Holder of a Claim whose Claim is governed by an agreement and administered by a Servicer, at the addresses contained in the official records of such Servicer. A Beneficiary may, after the Effective Date, select an alternative distribution address by mailing a notice to the GUC Recovery Trustee in accordance with Section 10.11 hereof identifying such alternative distribution address. Absent such notice, the GUC Recovery Trustee shall not be obligated to recognize any such change of distribution address. Such notification shall be effective only upon receipt by the GUC Recovery Trustee. The GUC Recovery Trustee may, in its sole discretion, attempt to determine a Beneficiary's current address or otherwise locate a Beneficiary, but nothing in this Agreement or the Plan shall require the GUC Recovery Trustee to do so. For the avoidance of doubt, the GUC Recovery Trustee shall be entitled to rely on the Beneficiary Register provided to them by the Debtors, the Plan Administration Trustee, or the claims agent, as the case may be, following the Effective Date as current and wholly accurate (including, without limitation, with respect to the most current address, among other things), and shall have not any obligation to conduct diligence with respect

to any change of address notices provided to the Debtors, the Plan Administration Trustee, or the claims agent prior to the GUC Recovery Trustee's receipt thereof.

5.7 Effect of Death, Dissolution, Incapacity, or Bankruptcy of Beneficiary. The death, dissolution, incapacity, or bankruptcy of a Beneficiary during the term of the GUC Recovery Trust shall not (i) operate to terminate the GUC Recovery Trust during the term of the GUC Recovery Trust; (ii) entitle any representative or creditors of the deceased, incapacitated, or bankrupt Beneficiary (a) to an accounting, (b) to take any action in any court or elsewhere for the distribution of the GUC Recovery Trust Assets, or (c) to a partition of the GUC Recovery Trust Assets; or (iii) otherwise affect the rights and obligations of the Beneficiary under this Agreement or in the GUC Recovery Trust.

5.8 Limited Beneficiary Rights. Except as expressly provided in this Agreement, the Plan, or the Confirmation Order, a Beneficiary may not direct the GUC Recovery Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any party upon or with respect to the GUC Recovery Trust Assets.

ARTICLE VI. PROCEDURES FOR RESOLVING AND TREATING DISPUTED CLAIMS

6.1 Prosecution of Objections to Claims and Claims Procedures. The GUC Recovery Trustee shall have and shall retain any and all rights and defenses that the Debtors had with respect to any Claim in Classes 3 and 5 against, or assumed by, the GUC Recovery Trust, except with respect to any Claim in Classes 3 and 5 deemed Allowed as of the Effective Date. The GUC Recovery Trustee shall have the authority, but not the obligation, to (a) file objections to Claims in Classes 3 and 5; (b) settle, compromise, withdraw, or litigate to judgment objections on behalf of the Debtors' Estates to any and all such Claims. The GUC Recovery Trustee shall have the authority to administer and adjust the Beneficiary Register and Claims Register, as applicable, with respect to Claims in Classes 3 and 5 to reflect any such settlements or compromises and no further notice to or action, Order, or approval of the Bankruptcy Court with respect to such settlements or compromises shall be required.

6.2 Distributions Regarding Disputed Claims. No payments or distributions shall be made with respect to all or any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by a Final Order of the Bankruptcy Court, and the Disputed Claim has become an Allowed Claim. Any Distribution made after the Effective Date pursuant to the Plan on account of a Disputed Claim that is later deemed an Allowed Claim by the Bankruptcy Court shall be made together with any dividends, payments, or other distributions made on account of, as well as any obligations arising from, the distributed property as if such Allowed Claim had been an Allowed Claim on the dates distributions were previously made to Holders of Allowed Claims included in the applicable Class; provided, however, that no interest shall be paid on account to such Allowed Claims unless required under applicable bankruptcy law.

6.3 Claims Estimation.

(a) On and after the Effective Date, the GUC Recovery Trustee (solely with respect to Class 3 and Class 5 Claims) may (but is not required to) at any time request that the

Bankruptcy Court estimate a Disputed Claim pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or Interest or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any Disputed Claim, including during the litigation of any objection to any Disputed Claim or during the pendency of any appeal relating to such objection. Notwithstanding any provision otherwise in the Plan, a Claim in Class 3 or Class 5 that has been expunged from the Claims Register, but that has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim in Class 3 or Class 5, that estimated amount shall constitute a maximum limitation on such Claim for all purposes under the Plan (including for purposes of distributions), without prejudice to the Holder of such Claim's right to request that estimation should be for the purpose of determining the Allowed amount of such Claim, and the GUC Recovery Trustee may elect to pursue any supplemental proceedings to object to any ultimate distribution on account of such Claim. Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any Holder of a Claim in Class 3 or Class 5 that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation unless such Holder has Filed a motion requesting the right to seek such reconsideration on or before 21 days after the date on which such Claim is estimated. All of the objection, estimation, settlement, and resolution procedures set forth in the Plan are cumulative and not necessarily exclusive of one another. Disputed Claims in Class 3 and Class 5 may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Plan or the Bankruptcy Court.

6.4 Expungement or Adjustment to Claims Without Objection. Any Claim in Class 3 or 5 that has been paid, satisfied, or superseded may be expunged on the Claims Register by the GUC Recovery Trustee or the Claims and Solicitation Agent, as applicable, and any Claim in Class 3 or 5 that has been amended may be adjusted thereon by the GUC Recovery Trustee without a Claims objection having to be filed and without any further notice to or action, Order, or approval of the Bankruptcy Court.

ARTICLE VII. DISTRIBUTIONS

7.1 Distribution Agent. Except as otherwise provided in the Plan, all distributions shall be made by the Distribution Agent. The GUC Recovery Trustee shall be the, or shall designate a, Distribution Agent with respect to Allowed Claims in Classes 3 and 5, and the Distribution Agent shall make all distributions on account of Allowed Claims in Classes 3 and 5.

7.2 Distributions from GUC Recovery Trust Assets. All payments to be made by the GUC Recovery Trust to any Beneficiary shall be made only in accordance with the Plan, the Confirmation Order, and this Agreement and out of the GUC Recovery Trust Assets (or from the income and proceeds realized from the GUC Recovery Trust Assets). The GUC Recovery Trustee shall make continuing efforts to collect and dispose of the GUC Recovery Trust Assets, make timely distributions, and not unduly prolong the duration of the GUC Recovery Trust.

7.3 Distribution Record Date. On the Distribution Record Date, the Claims Register shall be closed and the GUC Recovery Trustee shall be authorized and entitled to recognize only those record Holders listed on the Claims Register as of the close of business on the Distribution Record Date.

7.4 Distributions; Withholding. The Distribution Agent shall make distributions to Holders of Allowed Claims in Classes 3 and 5 as provided in the Plan. The GUC Recovery Trust and the Distribution Agent, as applicable, shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. The GUC Recovery Trustee and the Distribution Agent shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distributions to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms they believe are reasonable and appropriate. The GUC Recovery Trustee and Distribution Agent reserve the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, Liens, and encumbrances. Amounts so withheld or allocated and paid over to the applicable Governmental Unit in accordance with applicable law shall be treated for all purposes of this Plan as having been paid to the person in respect of whom such withholding or allocation was made.

7.5 Undeliverable/Unclaimed Distributions. If any distribution to a Holder of an Allowed Claim in Class 3 or Class 5 is returned as undeliverable, no further distributions to such Holder of such Claim shall be made unless and until the Distribution Agent or the appropriate Servicer is notified of then-current address of such Holder of the Claim, at which time all missed distributions shall be made to such Holder of such Claim without interest, dividends, or accruals of any kind on the next Periodic Distribution Date. Amounts in respect of undeliverable distributions shall be returned to the GUC Recovery Trust until such distributions are claimed. Any distribution under the Plan that is an Unclaimed Distribution for a period of six months after such distribution shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and such Unclaimed Distribution shall revert to and vest in the GUC Recovery Trust, as applicable, free of any restrictions thereon. Upon vesting, the Claim of any Holder or successor to such Holder with respect to such property shall be cancelled, discharged and forever barred, notwithstanding federal or state escheat, abandoned, or unclaimed property laws to the contrary.

7.6 Expenses of Distribution. All distributions to be made by the GUC Recovery Trust under the Plan shall be net of the actual and reasonable costs of making such distributions.

7.7 Minimum; De Minimis Distributions. The Distribution Agent, in its reasonable discretion, shall not be required to make a distribution on account of an Allowed Claim if (i) the aggregate amount of all distributions authorized to be made on the Periodic Distribution Date in question is or has a value less than \$50,000, or (ii) the distribution will result in a payment of less than \$50.00 to the Holder of such Claim. If (i) the aggregate amount of all distributions authorized to be made as of the time of a particular distribution would have a value less than \$50,000, but would have a value of greater than \$50,000 in combination with later distributions, and (ii) if a Holder of an Allowed Claim would be entitled to receive less than \$50.00 as of the

time of a particular distribution, but would be entitled to receive more than \$50.00 in combination with later distributions, the GUC Recovery Trustee will combine such distributions with later distributions so that the aggregate amount of each distribution is not less than \$50,000 and that Holders of such Claims may eventually be entitled to a distribution of at least \$50.00 in value. To the extent that the aggregate distributions to any individual Holder of such a Claim never exceeds \$50.00, such funds shall remain with and vest in the GUC Recovery Trust for distribution to other Holders of Allowed Claims.

7.8 Manner of Payment Under the Plan. Unless the Distribution Agent and the Entity receiving a payment agrees otherwise, any payment in Cash to be made by the Distribution Agent under the Plan shall be made either by check drawn on a domestic bank or by wire transfer from a domestic bank, at the option of the Distribution Agent, except that Cash payments made to foreign creditors may be made in such funds and by such means as are necessary or customary in a particular foreign jurisdiction.

7.9 Setoffs. Except as otherwise provided in the Plan, the GUC Recovery Trustee pursuant to the Bankruptcy Code (including sections 553 and 558 of the Bankruptcy Code), applicable nonbankruptcy law, or as may be agreed to by the Holder of a Claim in Class 5 under the Plan, may set off against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Allowed Claim, any Claims, rights, and Causes of Action of any nature that the Debtors, the Plan Administration Trust, or the GUC Recovery Trust, as applicable, may hold against the Holder of such Allowed Claim, to the extent such Claims, rights, or Causes of Action against such Holder have not been otherwise compromised or settled on or prior to the Effective Date (whether pursuant to the Plan or otherwise); *provided, however*, that neither the failure to effect such a setoff nor the allowance of any Claim pursuant to the Plan shall constitute a waiver or release by the Plan Administration Trust or the GUC Recovery Trust of any such Claims, rights, and Causes of Action that the Plan Administration Trust or the GUC Recovery Trust may possess against such Holder. In no event shall any Holder of Claims be entitled to set off any Claim against any Claim, right, or Cause of Action of the Debtors, the Wind-Down Debtors, the Plan Administration Trust, or the GUC Recovery Trust, as applicable, unless such Holder has filed a motion with the Bankruptcy Court requesting the authority to perform such setoff on or before the Confirmation Date, and notwithstanding any indication in any proof of Claim or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to section 553 or otherwise.

7.10 Single Satisfaction of Claims. Holders of Allowed Claims may assert such Claims against each Debtor obligated with respect to such Claims, and such Holders shall be entitled to share in the recovery provided for the applicable Class of Claims against each obligated Debtor based upon the full Allowed amount of such Claims. Notwithstanding the foregoing, in no case shall the aggregate value of all property received or retained under the Plan on account of any Allowed Claim exceed 100 percent of the underlying Allowed Claim plus applicable interest, if any.

ARTICLE VIII. TAXES

8.1 Income Tax Status. The GUC Recovery Trust is intended to qualify as a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d) and in compliance with Revenue Procedure 94-45, 1994-2 C.B. 684, and, thus, as a “grantor trust” within the meaning of sections 671 through 679 of the Tax Code to the holders of General Unsecured Claims, consistent with the terms of the Plan. As such, the Beneficiaries will be treated as both the grantors and the deemed owners of the GUC Recovery Trust. Any items of income, deduction, credit, and loss of the GUC Recovery Trust shall be allocated for federal income tax purposes to the Beneficiaries. The sole purpose of the GUC Recovery Trust shall be the liquidation and distribution of the GUC Recovery Trust Assets in accordance with Treasury Regulation section 301.7701-4(d), including the resolution of General Unsecured Claims in accordance with this Plan, with no objective to continue or engage in the conduct of a trade or business

8.2 Tax Returns. The GUC Recovery Trust shall annually file Form 1041 in a timely manner with the IRS and furnish the information provided on Form 1041 to GUC Recovery Trust Beneficiaries that are “United States persons” as defined in the Tax Code. In addition, the GUC Recovery Trust shall file in a timely manner such other tax returns, including any federal, state, local or non-U.S. (including the U.S. Virgin Islands) tax returns, as are required by applicable law (including for the avoidance of doubt, Treasury Regulation 1.671-4(a)) and pay any taxes shown as due thereon out of the GUC Recovery Trust (or the income or proceeds thereof). Within a reasonable time following the end of the taxable year, the GUC Recovery Trust shall send to each Beneficiary a separate statement regarding the receipts and expenditures of the GUC Recovery Trust and setting forth the Beneficiary’s share of items of income, gain, loss, deduction or credit and informing each such Beneficiary that such items should be reported on such Beneficiary’s federal, state, local, non-U.S. (including the U.S. Virgin Islands) and other income tax returns, as applicable. The GUC Recovery Trustee shall allocate the taxable income, gain, loss, deduction, or credit of the GUC Recovery Trust with respect to each Beneficiary.

8.3 Withholding of Taxes and Reporting Related to GUC Recovery Trust Operations. The GUC Recovery Trust shall comply with all withholding and reporting requirements imposed by any federal, state, local, or non-U.S. (including the U.S. Virgin Islands) taxing authority, and all distributions made by the GUC Recovery Trust shall be subject to any such withholding and reporting requirements. To the extent that the operation of the GUC Recovery Trust or the liquidation of the GUC Recovery Trust Assets creates a tax liability, the GUC Recovery Trust shall promptly pay such tax liability out of the GUC Recovery Trust and any such payment shall be considered a cost and expense of the operation of the GUC Recovery Trust payable without Order of the Bankruptcy Court. The GUC Recovery Trust may reserve a sum, the amount of which shall be determined by the GUC Recovery Trustee, from the GUC Recovery Trust sufficient to pay the accrued or potential tax liability arising out of the operations of the GUC Recovery Trust or the administration of the GUC Recovery Trust Assets. The GUC Recovery Trustee, on behalf of the GUC Recovery Trust, may enter into agreements with taxing authorities or other governmental units for the payment of such amounts as may be withheld. Any federal, state, local or non-U.S. (including the U.S. Virgin Islands) withholding taxes or other amounts required to be withheld under applicable law shall be deducted from distributions hereunder.

8.4 Tax Identification Numbers. The GUC Recovery Trustee may require any Beneficiary to furnish to the GUC Recovery Trustee its social security number or employer or

taxpayer identification number as assigned by the IRS and the GUC Recovery Trustee may condition any distribution to any Beneficiary upon the receipt of such identification number.

**ARTICLE IX.
TERMINATION OF THE GUC RECOVERY TRUST**

9.1 Termination of GUC Recovery Trust. The GUC Recovery Trustee shall be discharged and the GUC Recovery Trust shall be dissolved, wound up, and terminated at such time as (i) all Disputed Claims in Classes 3 and 5 have been resolved, (ii) all of the GUC Recovery Trust Assets have been liquidated, (iii) all duties and obligations of the GUC Recovery Trustee hereunder have been fulfilled, and (iv) all distributions required to be made by the GUC Recovery Trust under the Plan and the GUC Recovery Trust Agreement have been made.

9.2 Maximum Term. In no event shall the GUC Recovery Trust be dissolved later than five (5) years from the Effective Date unless the Bankruptcy Court, upon motion by the GUC Recovery Trustee within the six-month period prior to the third anniversary [(or within the six-month period prior to the end of any extension period approved by the Bankruptcy Court),] determines that a fixed period extension (not to exceed five (5) years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the GUC Recovery Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the liquidation, recovery and distribution of the GUC Recovery Trust Assets. The duties, responsibilities, and powers of the GUC Recovery Trustee will terminate in accordance with the terms of the GUC Recovery Trust Agreement.

9.3 Events Upon Termination. At the conclusion of the term of the GUC Recovery Trust, the GUC Recovery Trustee shall distribute the remaining GUC Recovery Trust Assets, if any, in its reasonable discretion, including to a charitable organization, in accordance with the Plan, the Confirmation Order, and this Agreement.

9.4 Winding Up, Discharge, and Release of the GUC Recovery Trustee. The GUC Recovery Trustee shall seek authority from the Bankruptcy Court to close the Chapter 11 Case in accordance with the Bankruptcy Code and the Bankruptcy Rules once (i) all Disputed Claims have become Allowed or disallowed, (ii) the Reorganized Debtors have terminated in accordance with the Plan, (iii) the GUC Recovery Trust has terminated in accordance with the Plan, (iv) all remaining GUC Recovery Trust Assets have been distributed in accordance with the Plan, and (v) the business and affairs of the Debtors have been otherwise wound down. For the purposes of winding up the affairs of the GUC Recovery Trust at the conclusion of its term, the GUC Recovery Trustee shall continue to act as GUC Recovery Trustee until its duties under this Agreement have been fully discharged or its role as GUC Recovery Trustee is otherwise terminated under this Agreement and the Plan. Upon a motion by the GUC Recovery Trustee, the Bankruptcy Court may enter an Order relieving the GUC Recovery Trustee, its agents and employees of any further duties, discharging, and releasing the GUC Recovery Trustee and releasing its bond, if any.

**ARTICLE X.
MISCELLANEOUS PROVISIONS**

10.1 Amendments. The GUC Recovery Trustee may modify, supplement, or amend this Agreement in any way that is not inconsistent with the Plan or the Confirmation Order. The GUC Recovery Trustee shall seek Bankruptcy Court approval of any material modification, supplement, or amendment.

10.2 Waiver. No failure by the GUC Recovery Trust, the GUC Recovery Trustee, or its agents, professionals and employees to exercise or delay in exercising any right, power, or privilege hereunder shall operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any further exercise thereof, or of any other right, power, or privilege.

10.3 Cumulative Rights and Remedies. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights under law or in equity.

10.4 No Bond Required. Notwithstanding any state law to the contrary, the GUC Recovery Trustee (including any successor GUC Recovery Trustee) shall be exempt from giving any bond or other security in any jurisdiction. In the event that the GUC Recovery Trustee is otherwise ordered by the Bankruptcy Court, all costs and expenses of the GUC Recovery Trustee in procuring any such bond or surety shall be paid for with Cash derived from the GUC Recovery Trust.

10.5 Irrevocability. This Agreement and the GUC Recovery Trust created hereunder shall be irrevocable, except as otherwise expressly provided in this Agreement.

10.6 Relationship to the Plan. The principal purpose of this Agreement is to aid in the implementation of the Plan and, therefore, this Agreement incorporates and is subject to, and the GUC Recovery Trust and GUC Recovery Trustee is bound by, the provisions of the Plan and the Confirmation Order, including, for the avoidance of doubt, the Chatham/Brigade Release provided in Article X of the Plan and approved by the Confirmation Order. In the event that any provision of this Agreement is found to be inconsistent with a provision of the Plan, the provisions of this Agreement shall control. In the event that any provision of the Plan is found to be inconsistent with a provision of the Confirmation Order, the Confirmation Order shall control.

10.7 Applicable Law. This GUC Recovery Trust shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to rules governing the conflict of laws.

10.8 Retention of Jurisdiction. Notwithstanding the Effective Date, and to the fullest extent permitted by law, the Bankruptcy Court shall retain exclusive jurisdiction over the GUC Recovery Trust after the Effective Date, including, without limitation, jurisdiction to resolve any and all controversies, suits and issues that may arise in connection therewith, including, without limitation, this Agreement, or any Entity's obligations incurred in connection herewith, including without limitation, any action against the GUC Recovery Trustee or any professional retained by the GUC Recovery Trustee, in each case in its capacity as such. Each party to this Agreement hereby irrevocably consents to the exclusive jurisdiction of the Bankruptcy Court in any action to enforce, interpret or construe any provision of this Agreement or of any other agreement or document delivered in connection with this Agreement, and also hereby irrevocably waives any

defense of improper venue, forum non conveniens or lack of personal jurisdiction to any such action brought in the Bankruptcy Court. Each party further irrevocably agrees that any action to enforce, interpret, or construe any provision of this Agreement will be brought only in the Bankruptcy Court. Each party hereby irrevocably consents to the service by certified or registered mail, return receipt requested, of any process in any action to enforce, interpret or construe any provision of this Agreement.

10.9 Severability. In the event that any provision of this Agreement or the application thereof to any person or circumstance shall be determined by the Bankruptcy Court to be invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such provision to persons or circumstance, other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

10.10 Limitation of Benefits. Except as otherwise specifically provided in this Agreement, the Plan or the Confirmation Order, nothing herein is intended or shall be construed to confer upon or to give any person other than the parties hereto and the Beneficiaries any rights or remedies under or by reason of this Agreement.

10.11 Notices. Notices to Beneficiaries shall be given by first class mail, postage prepaid, at the Beneficiary's address as set forth on the Beneficiary Register and/or the Claims Register. Any notices or other communications required or permitted hereunder to the following parties shall be in writing and delivered at the addresses designated below, or sent by e-mail or facsimile pursuant to the instructions listed below, or mailed by registered or certified mail, return receipt requested, postage prepaid, addressed as follows, or to such other address or addresses as may hereafter be furnished in writing to each of the other parties listed below in compliance with the terms hereof.

To the GUC Recovery Trust: GUC Recovery Trust
Attn: William A. Brandt, Jr.
C/O Development Specialists, Inc.
110 East 42 Street
Suite 1818
New York, NY 10017

with a copy to:

[Trustee Counsel]

To the GUC Recovery Trustee: GUC Recovery Trustee
Attn: William A. Brandt, Jr.
C/O Development Specialists, Inc.
110 East 42 Street
Suite 1818
New York, NY 10017

with a copy to:

[Trustee Counsel]

All such notices and communications if mailed shall be effective when physically delivered at the designated addresses or, if electronically transmitted, when the communication is received at the designated addresses and confirmed by the recipient by return transmission.

10.12 Entire Agreement; No Waiver. The entire agreement of the parties relating to the subject matter of this Agreement is contained herein and in the Plan and Confirmation Order referred to herein, and this Agreement and such documents supersede any prior oral or written agreements concerning the subject matter hereof. No failure to exercise or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any further exercise thereof or of any other right, power or privilege. The rights and remedies herein provided are cumulative and are not exclusive of rights under law or in equity.

10.13 Headings. The headings used in this Agreement are inserted for convenience only and do not constitute a portion of this Agreement, nor in any manner affect the construction of the provisions of this Agreement.

10.14 Effectiveness. This Agreement shall not become effective until it has been executed and delivered by all the parties hereto.

10.15 Counterpart Signatures. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but such counterparts shall together constitute but one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement this [] day of
September, 2020.

The McClatchy Company

By: _____
Name:
Title:

GUC RECOVERY TRUSTEE

[NAME]

By: _____
Name:
Title:

Expiration Date of Initial Term: Fifth
Anniversary of the date of this Agreement

EXHIBIT D

Plan Administration Trust Agreement

THIS DOCUMENT IS IN DRAFT FORM, REMAINS SUBJECT TO
ONGOING REVIEW AND COMMENT BY THE DEBTORS, THE
COMMITTEE, AND CERTAIN PARTIES IN INTEREST, AND IS
THEREFORE SUBJECT TO MATERIAL CHANGE

PLAN ADMINISTRATION TRUST AGREEMENT

This Plan Administration Trust Agreement (as hereinafter amended or modified from time to time in accordance with the terms hereof, this "Agreement"), dated as of [●], is by and between The McClatchy Company, the Herald Custom Publishing of Mexico, S. de R.L. de C.V. (together with The McClatchy Company, the "Wind-Down Debtors"), and the Plan Administration Trustee (the "Trustee") of the Plan Administration Trust (the "Trust"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the *Joint Chapter 11 Plan of Distribution of the McClatchy Company and Its Affiliated Debtors and Debtors in Possession*, dated August 21, 2020 [Docket No. 780] (as may be further amended, supplemented, or modified from time to time, the "Plan").

RECITALS

WHEREAS, on February 13, 2020, the Debtors filed voluntary petitions for relief under Chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101- 1532 (as amended, the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court");

WHEREAS, on August 21, 2020, the Debtors filed the Plan;

WHEREAS, on [●], the Bankruptcy Court entered an order confirming the Plan (the "Confirmation Order");

WHEREAS, the Plan provides for the establishment of the Trust pursuant to the terms of the Plan and this Agreement;

WHEREAS, the Plan contemplates the transfer of the Trust Assets (as defined below) to the Trust;

WHEREAS, this Agreement is executed to establish the Trust and to facilitate implementation of the Plan;

WHEREAS, the Trust is established for the purpose of distributing the Trust Assets to certain professionals and winding down the Debtors' estates;

WHEREAS, the powers, rights, and responsibilities of the Trustee shall be governed by this Agreement, and shall include the authority and responsibility to, among other things, take the actions set forth in § 6.6 of the Plan;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein and in the Plan, the Wind-Down Debtors and the Trustee agree as follows:

ARTICLE I

ESTABLISHMENT OF THE LIQUIDATING TRUST

1.1 Establishment of Trust.

(a) Trustee. Sean M. Harding hereby accepts his appointment as Trustee and agrees to assume the role and duties of the Trustee as provided in this Agreement and the Plan.

(b) Trust Assets. The Trustee hereby establishes the Trust and agrees to accept and hold in trust the following assets (together, the "Trust Assets"): (i) the Committee Retained Professional Fees Escrow, (ii) the Seller Retained Professional Fees Escrow, (iii) the Wind-Down Budget Escrow, (iv) the Deferred Amounts, (v) any Estate non-Cash assets (which, for the avoidance of doubt, excludes the GUC Trust Recovery Assets, the Wind-Down Debtors' Rights, and the Acquired Assets (as defined in the Asset Purchase Agreement)), and (vi) the operating accounts and residual cash not acquired by the Purchaser or transferred to the Escrows (as defined below).

(c) Trust Beneficiaries. The Trustee shall hold the Trust Assets for the Wind-Down Debtors (together, the "Trust Beneficiaries").

1.2 Purpose of the Trust. The Trust is established for the sole purposes of administering the Trust Assets, including pursuant to the terms of the Committee Retained Professional Fees Escrow Agreement, the Seller Retained Professional Fees Escrow Agreement, the Wind-Down Budget Escrow Agreement to which the Committee Retained Professional Fees Escrow, the Seller Retained Professional Fees Escrow, and the Wind-Down Budget Escrow (collectively, the "Escrows") are subject, resolving any Disputed Claims, making distributions to Holders of Allowed Claims (other than General Unsecured Claims), assisting the Wind-Down Debtors in connection with the Wind-Down Debtors' efforts to file appropriate tax returns and claims for the Tax Refund, and ultimately distributing any remaining Trust Assets to the Trust Beneficiaries.

1.3 Title to Assets of the Debtors. Upon the transfer of the Trust Assets to the Trust, the Trust shall succeed to all of the Debtors' right, title and interest in the Trust Assets.

1.4 Transfer Free and Clear of Claims. The Debtors hereby transfer to the Trust all of their rights, title and interest in and to all of the Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, and except as otherwise provided in the Plan, the Trust Assets shall automatically vest in the Trust free and clear of all Claims and Liens. To the maximum extent permitted by law, including the Bankruptcy Code, such transfer shall be exempt from any stamp, real estate transfer, sales, use or other similar tax.

1.5 Reliance. The Trustee and the Distribution Agent may rely upon the Admin Liability Schedule attached to the Stipulation Regarding Mediated Sale and Plan Settlement and all other information provided by the Wind-Down Debtors or their representatives to the Trustee concerning the distribution of Trust Assets to Trust Beneficiaries and the payment of the proceeds in the Escrows to the payees thereof.

1.6 Governance of the Trust. The Trust shall be governed by the Trustee, subject to the provisions set forth in this Agreement.

1.7 Bond. The Trustee and Distribution Agent shall serve without bond or other security in any jurisdiction.

ARTICLE II

THE TRUSTEE

2.1 Authority of Trustee. The Trustee shall retain and have all the rights, powers, and duties necessary to carry out his responsibilities under the Plan and the Confirmation Order. The powers of the Trustee shall include any and all powers and authority to implement the Plan and to make certain distributions thereunder and Wind Down the businesses and affairs of the Debtors and the Wind-Down Debtors, as applicable, including:

(a) act for the Trust with the fiduciary duties imposed under applicable law, subject to and limited by the provisions of the Plan and this Agreement (and all certificates of formation, membership agreements, and related documents are deemed amended by the Plan to permit and authorize the same);

(b) exercise all power and authority that may be or could have been exercised and take all actions that may be or could have been taken solely with respect to the Trust Assets by any officer, director, shareholder or other party acting in the name of the Debtors or their Estates with like effect as if duly authorized, exercised, and taken by action of such officers, directors, shareholders, or other party;

(c) to the extent necessary, liquidating, receiving, holding, investing, supervising, and protecting the assets of the Debtors remaining after consummation of the Sale Transaction;

(d) performing the Wind-Down Debtors' obligations under the Asset Purchase Agreement or any transition services agreement entered into on or after the Effective Date by and between the Debtors, the Purchaser, and/or the Chatham Parties;

(e) resolving any Disputed Claims;

(f) taking all steps to execute all instruments and documents necessary to effectuate the distributions to be made under the Plan to Holders of Allowed Claims (other than General Unsecured Claims);

(g) making, or hiring a Distribution Agent to make, distributions as contemplated under the Plan to Holders of Allowed Claims (other than General Unsecured Claims);

(h) maintaining, and ultimately closing, bank accounts in the name of the Debtors and the Wind-Down Debtors;

(i) in consultation with the GUC Recovery Trustee and the Purchaser, employing, retaining, terminating, or replacing a tax advisor and/or return preparer to represent the Debtors and their successors in connection with the Wind Down Debtors' filing of their final tax returns and pursuit of the Tax Refund, and to represent the Trust in connection with the filing of any tax returns of the Trust;

(j) paying all reasonable fees, expenses, debts, charges, and liabilities of the Wind-Down Debtors;

(k) coordinating with the Wind-Down Debtors and facilitating the Wind-Down Debtors' efforts to file, or acting on behalf of the Wind-Down Debtors to file, appropriate tax returns and claims for the Tax Refund, and representing the Wind-Down Debtors in connection with any audits, contests, controversies or other interactions with any taxing authority;

(l) making appropriate distributions on the Wind-Down Debtors' behalf, as necessary, in accordance with the Committee Settlement;

(m) at the appropriate time, dissolving the Debtors and the Wind-Down Debtors in, and withdrawing the Debtors and the Wind-Down Debtors from, applicable states, in each case, in accordance with Article 6.10 of the Plan;

(n) administering the Plan in an efficacious manner;

(o) administering the escrow agreements for the Escrows and making payments of Escrow proceeds pursuant thereto;

(p) retain and compensate attorneys, advisors, and other professionals (including, without limitation, any professionals previously retained in the Chapter 11 Cases) as may be necessary and appropriate to perform the duties required of, and the obligations assumed by, the Trust under the Plan and this Agreement without Bankruptcy Court approval;

(q) maintain the books and records of the Trust;

(r) exercising such other powers as may be vested in it pursuant to an order of the Bankruptcy Court or pursuant to the Plan, or as it reasonably deems to be necessary and proper to carry out the provisions of the Plan.

2.2 Books and Records. The Trustee shall maintain books and records relating to the Trust Assets and the payment of expenses of the Trust and the Trustee, in such detail and for such period of time as may be necessary to enable it to make full and proper reports in respect thereof in accordance with the provisions of this Agreement and the applicable provisions of law.

2.3 Additional Powers. Except as otherwise set forth in this Agreement or in the Plan, the Trustee may control and exercise authority over the Trust Assets and over the protection, conservation, and disposition thereof to the extent permitted by applicable law.

2.4 Tax and Reporting Duties of the Trustee. The Trustee shall file all tax returns for the Trust as required by applicable law, pay all taxes due and payable by the Trust, and comply with all withholding and reporting requirements imposed by any federal, state, local or foreign taxing authority, including, without limitation, any requirements imposed with respect to distributions hereunder and under the Plan. All such amounts withheld, and paid to the appropriate taxing authority, shall be treated as amounts distributed to the Trust Beneficiaries for all purposes of this Agreement. The Trustee shall be authorized to collect such tax information from the Trust Beneficiaries (including, without limitation, social security numbers or other tax identification numbers) as it in its sole discretion deems necessary to effectuate the Plan and this Agreement. The Trustee may refuse to make a distribution to any Trust Beneficiary that fails to furnish such information in a timely fashion, until such information is delivered; *provided, however*, that upon the Trust Beneficiary's delivery of such information, the Trustee shall make such Distribution to which the Trust Beneficiary is entitled, without any interest thereon. The Trustee shall also file (or cause to be filed) any other statements, returns, reports or disclosures relating to the Trust that are required by any governmental authority, and all such statements, returns, reports or disclosures shall be prepared in reasonable detail in accordance with all applicable laws.

2.5 Costs and Expenses of the Trustee. All costs and expenses of the Trustee and all professionals employed by the Trustee shall be paid out of the Wind-Down Budget.

2.6 Compensation of the Trustee. The Trustee's compensation, on a post-Effective Date basis, shall be described in the Wind-Down Budget.

2.7 Investment and Safekeeping of Trust Assets. The right and power of the Trustee to invest Trust Assets, the proceeds thereof, or any income earned by the Trust, shall be limited to []¹. The Trustee may expend the cash of the Trust (a) as reasonably necessary to meet contingent liabilities and to maintain the value of the respective assets of the Trust during liquidation, (b) to pay the reasonable costs and expenses, and (c) to satisfy other respective liabilities incurred by the Trust in accordance with this Agreement and the Plan.

2.8 Termination. The duties, responsibilities and powers of the Trustee will terminate in accordance with this Agreement or an order of the Bankruptcy Court.

2.9 Reliance. Any Person dealing with the Trustee shall be fully protected in relying upon an document signed by the Trustee that he has authority to take any action under this Agreement.

¹ TBD.

ARTICLE III

SUCCESSOR TRUSTEE

3.1 Removal of Trustee. After notice and a hearing, the Bankruptcy Court may remove the Trustee upon a determination that the Trustee has acted in bad faith.

3.2 Resignation of Trustee. The Trustee may resign upon 30 days' written notice delivered to the Clerk of the Bankruptcy Court. Such resignation shall only become effective upon the appointment of a permanent or interim successor Trustee.

3.3 Appointment of Successor Trustee upon Removal or Resignation. If the Trustee is removed pursuant to Section 3.1 or resigns pursuant to Section 3.2, the Bankruptcy Court shall appoint a successor Trustee based upon submissions by interested parties (including any beneficiary of the GUC Recovery Trust, or any counsel or advisor to the Trust or the GUC Recovery Trust). Upon its appointment, the successor Trustee, without any further act, shall become fully vested with all of the rights, powers, duties, and obligations of its predecessor and all responsibilities of the predecessor Trustee relating to the Wind-Down Debtors shall be terminated.

ARTICLE IV

DISTRIBUTION AGENT

4.1 Authority of the Distribution Agent. At the direction of the Trustee, the Distribution Agent shall be authorized to make distributions to the Trust Beneficiaries in accordance with this Agreement and the Plan.

4.2 Recording. The Distribution Agent shall maintain records relating to all disbursements made to Trust Beneficiaries made in accordance with this Agreement and the Plan.

4.3 Costs and Expenses of the Distribution Agent. All costs and expenses of the Distribution Agent shall be paid out of the Wind-Down Budget.

4.4 Compensation of the Distribution Agent. The Distribution Agent's compensation shall be paid out of the Wind-Down Budget.

4.5 Termination. The duties, responsibilities and powers of the Distribution Agent will terminate upon the earliest to occur of: (i) the date that is 10 days after the Trustee provides the Distribution Agent with notice of its termination, (ii) the dissolution of the Trust, or (iii) an order of the Bankruptcy Court terminating the Distribution Agent. The Distribution Agent may resign by providing the Trustee with 30 days' written notice thereof.

4.6 Appointment of Successor Distribution Agent. If the Distribution Agent is removed or resigns pursuant to Section 4.5, the Trustee shall appoint a successor Distribution Agent. Any successor Distribution Agent appointed hereunder shall execute and file a statement accepting such appointment and agreeing to be bound by the terms of the Plan and this Agreement and upon such

filing, the successor Distribution Agent shall immediately become vested with all the rights, powers and duties of the Distribution Agent.

ARTICLE V

DISTRIBUTIONS

5.1 Distributions and Payments from the Escrows.

(a) Estate Professionals. Except as otherwise provided for in the Plan or ordered by the Bankruptcy Court, payments from the Escrows to Professionals retained by the Debtors and the Committee Advisors shall be made within seven (7) days of entry of a final order by the Bankruptcy Court approving such fees and expenses, subject to the Professional Fee Caps set forth in the Admin Liability Schedule.

(b) Non-Estate Professionals. Except as otherwise provided for in the Plan or ordered by the Bankruptcy Court, distributions under this Agreement, and payments from the Escrows, as applicable, for the professional fees and expenses of (i) the Chatham Parties, other than the Deferred Amounts Claims, (ii) the Brigade Parties, (iii) the 2027 Debentures Trustee and the 2029 Debentures Trustee, and (iv) Seward & Kissel LLP shall be paid on the Effective Date subject to the Professional Fee Caps set forth in the Admin Liability Schedule.

(c) Wind-Down Costs. Except as otherwise provided for in the Plan or ordered by the Bankruptcy Court, distributions under this Agreement, and payments from the Escrows, on account of post-Effective Date Wind Down and dissolution costs, including the payment of any fees and expenses of Ernst & Young LLP, as tax services provider to the Debtors, shall be made by the Trustee in the ordinary course.

(d) Other Distributions, Deferred Amounts. Except as otherwise provided for in the Plan or ordered by the Bankruptcy Court, distributions under this Agreement or payments from the Escrows other than those made pursuant to §5.1(a)-(c) of this Agreement shall be made on the later of (a) the Initial Distribution Date or (b) on the first Periodic Distribution Date occurring after the later of, (i) thirty (30) days after the date when a Claim is Allowed or (ii) thirty (30) days after the date when a Claim becomes payable pursuant to any agreement between the Debtors and the Holder of such Claim; *provided, however,* that with respect to Deferred Amounts Claims, the Trustee may, in its sole discretion, make a one-time distribution on a date that is not a Periodic Distribution Date; *provided, further, however,* that the payment of Deferred Amounts Claims shall be made as soon as reasonably practicable after the Wind-Down Debtors' receipt of the Tax Refund and in no event later than five (5) business days after the Wind-Down Debtors' receipt of the Tax Refund.

5.2 Objections to Claims; Prosecution of Disputed Claims. In accordance with § 8.2 of the Plan, after the Effective Date, the Plan Administration Trustee shall retain responsibility for (a) administering, disputing, objecting to, compromising, or otherwise resolving all Claims against, and Interests in, the Debtors, including (i) filing, withdrawing, or litigating to judgment objections to Claims or Interests, (ii) settling or compromising any Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court, and (iii) administering and adjusting the

claims register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court, and (b) making distributions (if any) with respect to all Claims and Interests; *provided, however*, that upon the creation of the GUC Recovery Trust, the GUC Recovery Trustee, on behalf of the GUC Recovery Trust, shall have the authority, but not the obligation, to object to, compromise, settle, otherwise resolve, or withdraw any objections to all General Unsecured Claims.

5.3 Estimation of Claims. The Trustee may at any time request that the Bankruptcy Court estimate a Disputed Claim pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or Interest or whether the Bankruptcy Court has ruled on any such objection, pursuant to Section 8.5 of the Plan.

5.4 Setoffs. The Trustee may set off against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Allowed Claim pursuant to Section 9.10 of the Plan.

5.5 Plan Provisions. All other provisions of the Plan governing distributions shall apply to the Trustee, this Agreement, and the Distribution Agent.

ARTICLE VI

INSURANCE AND LIABILITY LIMITATION

6.1 Insurance. The Plan Administration Trustee may obtain at its expense in accordance with the Wind-Down Budget commercially reasonable liability or other appropriate insurance. The Plan Administration Trustee may rely upon written information previously generated by the Debtors which the Plan Administration Trustee reasonably believes was accurately prepared by competent professionals or persons using reasonable methods.

ARTICLE VII

TERMINATION AND FINAL DISTRIBUTION

7.1 Termination of Trust. The Trust shall terminate upon the occurrence of the complete administration and distribution of the Trust Assets in accordance with the Plan, this Agreement and the escrow agreements for the Escrows, and the full performance of all other duties and functions of the Trustee set forth in the Plan and this Agreement (the "Termination Date"). The Trustee shall be released of all liabilities and discharged from his or her obligations under the Plan or this Agreement once the Trust has terminated pursuant to this section; provided, however, that the Trustee shall not be released of any liabilities for any losses, claims, damages, liabilities, obligations, settlements, proceedings, suits, judgments, causes of action, litigation, actions, or investigations (whether civil or administrative and whether sounding in tort, contract, or otherwise), penalties, costs, and expenses, including reasonable fees and disbursements suffered or incurred directly or indirectly by the Trust or any Trust Beneficiary that are found in a final judgment by a court of competent jurisdiction (not subject to further appeal) to have resulted from the fraud, gross negligence, or willful misconduct of the Trustee.

7.2 Final Distribution. Prior to and upon termination of the Trust, the Trust Assets will be finally distributed to the Trust Beneficiaries pursuant to the provisions set forth herein and the Plan.

ARTICLE VIII

TAX REPORTS TO BENEFICIARIES OF LIQUIDATING TRUST

The Trustee shall submit to each Trust Beneficiary of the Trust appearing on its records during such year a separate statement setting forth the Trust Beneficiary's share of items of income, gain, loss, deduction or credit.

ARTICLE IX

AMENDMENT AND WAIVER

This Agreement may not be amended, modified or supplemented, and no provision hereof or rights hereunder may be waived, except with the written consent of the Trustee and in accordance with the terms of the Plan. Any amendments to the Agreement shall not be inconsistent with the purpose and intention of the Plan. Notwithstanding anything to the contrary herein, no amendment, modification, supplement or waiver shall be effective if it materially and adversely affects the distributions contemplated by the Plan.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.1 Prevailing Party. If the Trustee and/or the Distribution Agent is the prevailing party in a dispute regarding the provisions of this Agreement or the enforcement thereof, the Trustee shall be entitled to collect any and all costs, expenses and fees, including attorneys' fees, from the non-prevailing party incurred in connection with such dispute or enforcement action.

10.2 Confidentiality. The Trustee, the Distribution Agent and their respective employees, members, agents, professionals and advisors (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; *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, or (b) 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 (b), such Confidential Party shall promptly, in advance of making such disclosure, provide reasonable notice of such required disclosure to the Trustee to allow him sufficient time to object to or prevent such disclosure through judicial or other means and shall cooperate reasonably with the Trustee in making any such objection, including but not limited to appearing in any judicial or administrative proceeding in support of any objection to such disclosure.

10.3 Cooperation Among Parties. Each of the Wind-Down Debtors, the Plan Administration Trust, the GUC Recovery Trust, and the Purchaser shall reasonably cooperate with one another and shall use commercially reasonable efforts to provide or grant access to (a) readily available documents and information from the Debtors' books and records (including the books and records acquired by the Purchaser from the Debtors under the Asset Purchase Agreement) related to the period prior to the Petition Date, and (b) such personnel having knowledge of the location or contents of such documents, relating to or concerning, (i) with respect to the Wind-Down Debtors, the tax filings, the Tax Refund, or the Deferred Amounts Claims; (ii) with respect to the Plan Administration Trust, the Administrative Claims, Professional Claims, Priority Tax Claims, Other Priority Claims, Other Secured Claims, Second Lien Term Loan Claims, Third Lien Notes Claims, Intercompany Claims, Subordinated Claims, or the Deferred Amounts Claims, (iii) with respect to the GUC Recovery Trust, the General Unsecured Claims and the GUC Recovery Trust Assets, and (iv) with respect to the Purchaser, for legitimate business reasons as may be determined by the Purchaser in its reasonable discretion. In addition, the Wind-Down Debtors, the Plan Administration Trust, the GUC Recovery Trust, and the Purchaser shall coordinate to develop a document sharing, retention, and maintenance policy with respect to the Debtors' books and records related to the period prior to the Petition Date, the terms of which shall be agreed upon among the Wind-Down Debtors, the Plan Administration Trust, the GUC Recovery Trust, and the Purchaser.

10.4 Laws as to Construction. This Agreement shall be governed and construed in accordance with the laws of the state of New York, without giving effect to rules governing the conflict of laws.

10.5 Severability. If any provision of this 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 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 such provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

10.6 Retention of Jurisdiction. Notwithstanding the Effective Date and to the fullest extent permitted by law, the Bankruptcy Court shall retain exclusive jurisdiction over matters affecting the Agreement after the Effective Date, including, without limitation, jurisdiction to resolve any and all controversies, suits and issues that may arise in connection with the Agreement, or any entity's obligations incurred in connection with the Agreement, and any action by or against the Trustee, the Distribution Agent or any professional retained by the Trustee or the Distribution Agent, in each case in its capacity as such. Each party to this Agreement hereby irrevocably consents to the exclusive jurisdiction of the Bankruptcy Court in any action to enforce, interpret or construe any provision of this Agreement or of any other agreement or document delivered in connection with this Agreement, and also hereby irrevocably waives any defense of improper venue, forum non conveniens or lack of personal jurisdiction to any such action brought in the Bankruptcy Court. Each party further irrevocably agrees that any action to enforce, interpret or construe any provision of this Agreement will be brought only in the Bankruptcy Court. Each party hereby irrevocably consents to service by certified or registered mail, return receipt requested, to be sent to its address set forth in this Agreement or in the official Schedules filed in the Cases or

to such other address as it may designate from time to time by notice given in the manner provided above, of any process in any action to enforce, interpret or construe any provision of this Agreement.

10.7 Notices. Any notice or other communication under this Agreement shall be in writing and shall be given by either (i) hand-delivery, (ii) first class mail (postage prepaid), (iii) reliable overnight commercial courier (charges prepaid), or (iv) telecopy or other means of electronic transmission, if confirmed promptly by any of the methods specified in clauses (i), (ii) and (iii) of this sentence, to the following addresses:

(a) If to the Trustee:

[Sean Harding], Trustee
[1201 W Peachtree Street, NW]
[Atlanta, GA 30309]
Attn: [Sean Harding]

with copies to:

Skadden, Arps, Slate, Meagher & Flom LLP
300 South Grand Avenue
Suite 3400
Los Angeles, CA 90071
Attn: Van C. Durrer, II

525 University Avenue, Suite 1400
Palo Alto, CA 94301
Attn: Jennifer Madden

(b) If to any Trust Beneficiary, to the last known address of such Trust Beneficiary according to the Trustee's records.

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

10.9 Integration. This Agreement and the Plan constitute the entire agreement of the parties with respect to the subject matter hereof and thereof and supersede all oral negotiations and prior writings with respect to the subject matter hereof and thereof.

10.10 Further Assurances. From and after the Effective Date, the parties hereto covenant and agree to execute and deliver all such documents and notices and to take all such further actions as may reasonably be required from time to time to carry out the intent and purposes of the Plan and to consummate the transactions contemplated hereby.

10.11 Successors and Assigns. The terms of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

10.12 Counterparts. This Agreement may be signed by the parties hereto in counterparts, which, taken together, shall constitute one and the same document, and the counterparts may be delivered by facsimile transmission or by electronic mail in portable document format (.pdf).

10.13 Relationship to the Plan. The principal purpose of this Agreement is to aid in the implementation of the Plan and therefore this Agreement incorporates the provisions of the Plan. To that end, the Trustee shall have full power and authority to take any action consistent with the purpose and provisions of the Plan, and to seek any orders from the Bankruptcy 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 or the Confirmation Order, the provisions of the Plan or the Confirmation Order shall control.

IN WITNESS WHEREOF, the parties hereto have either executed and acknowledged this 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.

THE McCLATCHY COMPANY

By: /s/ Draft
Name:
Title:

HERALD CUSTOM PUBLISHING OF
MEXICO, S. DE R.L. DE C.V.

By: /s/ Draft
Name:
Title:

PLAN ADMINISTRATION TRUSTEE

By: /s/ Draft
Name: Sean M. Harding
Title: Plan Administration Trustee

EXHIBIT E

Stipulation Regarding Mediated Sale and Plan Settlement

[Filed under separate cover at Annex A to ECF No. 744]