

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
 In re: : Chapter 11  
 :  
 SquareTwo Financial Services : Case No. 17-10659 (JLG)  
 Corporation, et al.,<sup>1</sup> :  
 : (Jointly Administered)  
 Debtors. :  
 -----X

**ORDER APPROVING SETTLEMENT AGREEMENT  
AND CREDITOR DISTRIBUTION TRUST AGREEMENT**

Upon the motion, dated May 19, 2017 (the “**Motion**”),<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”), pursuant to Rule 9019(a) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and section 105(a) of title 11 of the United States Code (the “**Bankruptcy Code**”) for approval of that certain Settlement Agreement entered into as of May 19, 2017, and attached hereto as Exhibit 1 (the “**Settlement Agreement**”) and that certain Creditor Distribution Trust Agreement, attached hereto as Exhibit 2 (the “**CDTA**”), by and among (a) the Debtors, (b) the Official Committee of Unsecured Creditors (the “**Committee**”), (c) Apollo Global Management, LLC and certain entities directly or indirectly controlled by it (“**Apollo**”), and (d) KKR Credit Advisors (US) LLC and certain entities directly or indirectly controlled by it (“**KKR**” and, together with the Debtors, the Committee and Apollo, the “**Settlement Parties**”), all as more fully described in the Motion; and

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<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of each Debtor’s federal taxpayer identification number and/or Canadian equivalent are as follows: Astrum Financial, LLC (2265); Autus, LLC (2736); CA Internet Marketing, LLC (7434); CACH, LLC d/b/a Fresh View Funding (6162); CACV of Colorado, LLC (3409); CACV of New Jersey, LLC (3499); Candeo, LLC (2809); CCL Financial Inc. (7548); Collect Air, LLC (7987); Collect America of Canada, LLC (7137); Healthcare Funding Solutions, LLC (2985); Metropolitan Legal Administration Services, Inc. (6811); Orsa, LLC (2864); Preferred Credit Resources Limited (0637); ReFinance America, Ltd. (4359); SquareTwo Financial Canada Corporation (EIN: 1034; BN: 0174); SquareTwo Financial Corporation (1849); and SquareTwo Financial Services Corporation d/b/a Fresh View Solutions (5554). The Debtors’ executive headquarters are located at 6300 South Syracuse Way, Suite 300, Centennial, CO 80111.

<sup>2</sup> Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Motion.

the Court having jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska, C.J.); and it appearing that venue of these cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this proceeding on the Motion is a core proceeding pursuant to 28 U.S.C. §157(b); and due and adequate notice of the Motion having been given; and it appearing that no other or further notice need be provided; and the Court having found that the Settlement Agreement is reasonable, fair and equitable and supported by adequate consideration; and that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and a hearing on the Motion having been held on June 2, 2017; and after due deliberation and sufficient cause appearing therefore, it is hereby

FOUND AND DETERMINED that:

- A. This Court has jurisdiction to hear and adjudicate the Motion.
- B. Notice of the Motion was reasonable and adequate under the circumstances, and constitutes due and sufficient notice of the Motion.
- C. Any objections that were raised or that could have been raised in opposition to the Motion, that have not been withdrawn or resolved, are overruled and/or waived.
- D. The Debtors have acted in good faith and exercised sound business judgment in connection with their determination to enter into and execute the Settlement Agreement. Approval of the Settlement Agreement is in the best interests of the Debtors, their respective estates and creditors.

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED  
that:

1. The Motion is granted.

2. Pursuant to Bankruptcy Rule 9019 and section 105 of the Bankruptcy Code, the Settlement Agreement and its terms are approved.

3. The form of CDTA and the terms contained therein are approved. The party designated as Creditor Trustee (as defined in the CDTA) in the CDTA is appointed Creditor Trustee.

4. To the extent not already authorized, the Debtors and Creditor Trustee are authorized to execute, deliver, implement and fully perform any and all obligations, instruments, documents and papers and to take any and all actions reasonably necessary or appropriate to consummate the Settlement Agreement and perform any and all obligations contemplated therein. The Creditor Trustee shall pay from the Creditor Distribution Trust to U.S. Bank National Association as Second Lien Trustee all reasonable and documented fees and expenses incurred from the Petition Date up to and including the Effective Date without application or approval from the Bankruptcy Court, in an amount not to exceed fifty thousand dollars (\$50,000.00). The Second Lien Trustee shall provide a reasonably detailed invoice to the Creditor Trustee no later than thirty (30) days after the Effective Date. If the Creditor Trustee disputes any requested fees and expenses the Creditor Trustee shall (i) pay the undisputed portion of the fees, (ii) notify the Second Lien Trustee of such dispute within five (5) days of presentment of the invoice. The Second Lien Trustee may assert its charging lien to pay the disputed portion or submit such dispute for resolution to the Bankruptcy Court.

5. The Creditor Trustee in its discretion, may (i) request that the Second Lien Trustee hold and direct distributions from the Creditor Distribution Trust for the benefit of holders of the Second Lien Lender Claims, and (ii) assist and provide necessary information or

other services to facilitate the creditor election and distribution process in accordance with the terms of the order approving the bar date and election procedures (collectively, the “**Trustee Requested Services**”). The Creditor Trustee shall pay from the Creditor Distribution Trust to the Second Lien Trustee all reasonable and documented fees and expenses incurred after the Effective Date in connection with the Trustee Requested Services, without application or approval from the Bankruptcy Court, in an amount not to exceed fifty thousand dollars (\$50,000.00). Nothing in this Order shall obligate the Second Lien Trustee to undertake any Trustee Requested Services not required by the Second Lien Indenture as altered by the Plan and the Confirmation Order, and for the avoidance of doubt the Second Lien Trustee is not obligated to undertake any Trustee Requested Services for which it is not reasonably certain it will receive payment for performing.

6. If, pursuant to the first sentence of Section 6.2(b) of the Plan Funding Agreement, the Plan Investor offers to surrender books or records to the Debtors’ Representative (as defined in the Plan Funding Agreement), the Plan Investor may, at its sole discretion, and the Plan Administrator and the Dissolving Debtors shall within three (3) business days after the Plan Investor’s offer to surrender, notify the Creditor Trustee of such offer prior to the destruction of any such books or records if the offer of surrender is refused. Until the completion of the Wind Down, the Creditor Trustee may, within three (3) business days after the Creditor Trustee receives notice of the Plan Investor’s offer to surrender, request that the Debtors’ Representative (a) accept such surrender and (b) thereafter provide access to books or records so surrendered in accordance with the terms of the CDTA, and if such request is denied, the Creditor Trustee may within five (5) business days after the denial of such request seek an order from this Court as to require the same. All books and records to which access is obtained by the Creditor Trustee as

described above shall be used by the Creditor Trustee exclusively for the purposes contemplated under the CDTA and shall be kept by the Creditor Trustee in the strictest confidence and in accordance with all applicable laws.

7. The terms of this Order shall be effective and enforceable immediately upon its entry. To the extent of any inconsistency between the terms of the Settlement Agreement and the Confirmation Order or the Plan, the Settlement Agreement and this Order shall control.

8. This Court retains exclusive jurisdiction to hear and determine any dispute regarding the interpretation or enforcement of the Settlement Agreement and the CDTA. The Court otherwise retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: June 8, 2017  
New York, New York

*s/ James L. Garrity, Jr.*  
THE HONORABLE JAMES L. GARRITY, JR.  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT 1**

**Settlement Agreement**

**EXHIBIT 2**

**CDTA**

## SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into as of May 19, 2017, by and among (i) Astrum Financial, LLC, Autus, LLC, CA Internet Marketing, LLC, CACH, LLC, CACV of Colorado, LLC, CACV of New Jersey, LLC, Candeo, LLC, CCL Financial Inc., Collect Air, LLC, Collect America of Canada, LLC, Healthcare Funding Solutions, LLC, Metropolitan Legal Administration Services, Inc., Orsa, LLC, Preferred Credit Resources Limited, ReFinance America, Ltd., SquareTwo Financial Canada Corporation, SquareTwo Financial Corporation, and SquareTwo Financial Services Corporation (collectively, the “Debtors”); (ii) Apollo Global Management, LLC and certain entities directly or indirectly controlled by it (“Apollo”); (iii) KKR Credit Advisors (US) LLC and certain entities directly or indirectly controlled by it (“KKR”); and (iv) the Official Committee of Unsecured Creditors (as it may be constituted from time to time, the “Committee”) appointed in the Debtors’ chapter 11 cases (collectively, the “Chapter 11 Cases”). Each of the Debtors, Apollo, KKR and the Committee, may be referred to herein as a “Party” and collectively as the “Parties.”

### RECITALS

WHEREAS, the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) on March 19, 2017 (the “Petition Date”) in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”);

WHEREAS, the Debtors filed the *Joint Prepackaged Chapter 11 Plan for SquareTwo Financial Services Corporation and Its Affiliated Debtors* [Docket No. 20] (as the same has been or may be modified or supplemented, and including all exhibits, supplements and documents related thereto, the “Plan”) and the *Disclosure Statement for SquareTwo Financial Services Corporation and Its Affiliated Debtors* [Docket No. 21] (the “Disclosure Statement”) on the Petition Date;

WHEREAS, by order dated March 27, 2017 (the “Initial Scheduling Order”), the Bankruptcy Court scheduled a hearing for May 12, 2017 to consider the adequacy of the Disclosure Statement, approval of the solicitation procedures related thereto, and confirmation of the Plan;

WHEREAS, the Committee was appointed by the United States Trustee on April 7, 2017;

WHEREAS, by order dated April 27, 2017 (the “DIP Order”), the Bankruptcy Court approved the Debtors’ debtor in possession financing facility on a final basis;

WHEREAS, since the appointment of the Committee, the Committee has been conducting a review and analysis of, among other things, the claims held against the Debtors by Apollo and KKR, as well as terms of the Plan, and has engaged in extensive discovery and investigation regarding such claims and the Plan;

WHEREAS, by order dated May 12, 2017 (the “Amended Scheduling Order”), the Bankruptcy Court amended the Initial Scheduling Order and scheduled the hearing to



consider the adequacy of the Disclosure Statement, approval of the solicitation procedures related thereto, and confirmation of the Plan for June 2, 2017 (the "Confirmation Hearing"); and

WHEREAS, the Parties have engaged in extensive negotiations regarding the Committee's objections to the Plan, and the claims held by Apollo and KKR, and have agreed to the terms hereof to resolve such objections.

NOW, THEREFORE, after good faith, arm's-length negotiations without collusion, in consideration of the mutual representations, warranties, agreements and covenants contained in this Agreement and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the Parties), the Parties hereby agree as follows:

## **AGREEMENT**

### **ARTICLE I**

#### **GENERAL TERMS**

Section 1.01. Capitalized terms used but not defined herein shall have the meanings given to them in the Plan.

Section 1.02. Subject to entry of the 9019 Order (as defined below) as to the Debtors, this Agreement shall become effective immediately upon execution by or on behalf of each of the Parties.

Section 1.03. The Confirmation Hearing shall commence on its currently scheduled date of June 2, 2017 at 10:00 a.m. (prevailing Eastern Time), or such later date and time as may be agreed to by the Parties and scheduled by the Debtors, as ordered by the Bankruptcy Court. The Parties shall request that the hearing on the 9019 Motion be held prior to the commencement of the Confirmation Hearing. In the event the Bankruptcy Court determines that the Confirmation Hearing shall be held prior to the hearing on the 9019 Motion, approval of the 9019 Motion shall be a condition precedent to the Effective Date of the Plan.

Section 1.04. Each of the Parties shall support confirmation and consummation of the Plan (including the Plan Funding Agreement and the transactions contemplated thereby) and shall not take any act inconsistent with the foregoing or that would result in delay in confirmation or consummation of the Plan (including the Plan Funding Agreement and the transactions contemplated thereby). The Committee shall not be permitted to file any Challenge (as defined in the DIP Order), unless the Bankruptcy Court denies entry of the 9019 Order.

Section 1.05. All pending discovery and litigation initiated by the Committee with respect to the Plan, the Confirmation Hearing and the DIP Order shall be halted immediately and all matters related thereto (including document collection, review and production, depositions and related actions and proceedings), whether directed at a Party or another party in interest in the Debtors' Chapter 11 Cases, shall be discontinued immediately. No financial advisor to the Committee (the "Committee FA") shall seek allowance or payment of compensation for services rendered or reimbursement of expenses incurred from and after the date of this Agreement from the Estate in

excess of \$7,500 (provided, however, that if the Bankruptcy Court denies entry of the 9019 Order, the Committee FA may seek compensation and reimbursement for such services rendered and related expenses incurred after any such denial in excess of such amount). Notwithstanding the forgoing, the Committee FA may only seek compensation and reimbursement in accordance with prior orders of the Bankruptcy Court.

Section 1.06. On the Effective Date, the Committee shall establish a creditor distribution trust (the "Creditor Distribution Trust") which shall be governed by a creditor distribution trust agreement in form and substance acceptable to the Debtors, Apollo, KKR and the Committee (the "CDTA"), a copy of which shall be filed with the Bankruptcy Court no later than May 24, 2017. Pursuant to the CDTA:

- (a) On the Effective Date, a fund (the "Creditor Distribution Trust Fund") shall be established to fund the activities of the Creditor Distribution Trust and make distributions to beneficiaries of the Creditor Distribution Trust.
- (b) On the Effective Date, the Creditor Distribution Trust Fund shall be funded, pursuant to Section 1.07 below, in the amount of One Million Three Hundred Thousand Dollars (\$1,300,000.00). All expenses of the Creditor Distribution Trust shall be satisfied by the Creditor Distribution Trust Fund and no Party shall have any liability therefor, except for the funding of the Creditor Distribution Trust as described in Section 1.07 below.
- (c) The purpose of the Creditor Distribution Trust shall be to make distributions, as determined by the Committee and/or the trustee under the CDTA selected by the Committee (the "Creditor Trustee"), from the Credit Distribution Trust Fund, net of trust expenses, to holders of U.S. General Unsecured Claims against the Debtors and holders of Second Lien Lender Claims that, in each case, (i) properly file a proof of claim no later than the established bar date, and (ii) properly elect to receive a distribution from the Credit Distribution Trust Fund and consent to the Third Party Release (as defined below). Except for the funding of the Creditor Distribution Trust Fund, pursuant to Section 1.07 below, neither Apollo nor KKR shall have any responsibility under or related to the Creditor Distribution Trust, the Creditor Distribution Trust Fund or the CDTA. The Debtors shall not have any responsibility under or related to the Creditor Distribution Trust, the Creditor Distribution Trust Fund or the CDTA, except as may be provided in the CDTA.
- (d) The Creditor Distribution Trust shall be solely responsible for the administration and distribution process on account of U.S. General Unsecured Claims and Second Lien Lender Claims (which are not entitled to receive any distribution under the Plan), including the establishment of any deadline for the assertion of such claims, the noticing of any such deadline, the review, analysis and reconciliation of any such claims that may be asserted, and distributions on account of such claims.

- (e) In order to receive a distribution from the Creditor Distribution Trust on account of a U.S. General Unsecured Claim or a Second Lien Lender Claim, the holder of such claim shall be required to waive and release in writing any and all claims that it may hold against each of the directors of SquareTwo Financial Corporation, in their capacity as such, from and after May 24, 2016 through the Effective Date of the Plan, and Apollo and KKR, and their respective directors, officers, managers, employees, attorneys, agents and advisors, relating to the Debtors (the “Third Party Release”).

Section 1.07. As holders of Allowed Claims in Class 4 (1.25 Lien Lender Claims), on the Effective Date (a) Apollo shall waive and release its right to receive seven-hundred and two thousand Dollars (\$702,000) under the Plan from the Closing Purchase Price, (b) KKR shall waive and release its right to receive five-hundred and ninety-eight thousand Dollars (\$598,000) under the Plan from the Closing Purchase Price, and (c) Apollo and KKR shall instruct the Plan Investor to transfer such amounts as proceeds of their collateral to the Creditor Distribution Trust immediately following consummation of the Plan and payment in full in Cash of the DIP Claims and the First Lien Lender Claims (which amounts the Plan Investor shall be entitled to deduct from the Closing Purchase Price payable by it to the Debtors upon consummation of the Plan Funding Agreement).

Section 1.08. The Debtors (a) shall file a motion (the “9019 Motion”) seeking entry of an order (the “9019 Order”) approving this Agreement pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure on or before May 19, 2017, and (b) request that the Bankruptcy Court schedule the hearing to consider approval of this Agreement and the 9019 Motion in connection with the Confirmation Hearing commencing on June 2, 2017.

## ARTICLE II

### REPRESENTATIONS, COVENANTS AND ACKNOWLEDGEMENTS

Section 2.01. Representations. Except for Bankruptcy Court approval in the Chapter 11 Cases, each Party hereby represents and warrants to the other Parties as of the date hereof that:

- (a) the execution, delivery, performance and observance of this Agreement by such Party (i) have been duly authorized by all necessary action on the part of such Party, do not and will not conflict with, or result in a violation of, any law applicable to it, and do not require it to obtain any permit, consent, approval, order or authorization of, or provide notice to or make a filing with, any court, governmental or regulatory agency or authority or other person or entity that has not been obtained, provided or made, as applicable, (ii) do not and will not violate, conflict with or result in the breach of any provision of its organizational or governance documents and (iii) do not and will not result in any breach of, constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, require any consent under, or give to others any rights of termination, amendment, acceleration, suspension, revocation or cancellation of, any note, bond, mortgage, indenture, contract, agreement, lease,

sublease, license, permit, franchise or other instrument or arrangement to which it is a party, which would materially adversely affect its ability to carry out its obligations under and otherwise observe this Agreement; and

- (b) this Agreement is the legal, valid and binding obligation and agreement of such Party, enforceable against such Party in accordance with its terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

Section 2.02. Covenants. Each Party hereby agrees that it (a) shall use commercially reasonable efforts to support entry of the 9019 Order and approval of this Agreement by the Bankruptcy Court, and (b) shall not take any action that is inconsistent with, or fail to take any action required by, the foregoing or that would result in delay of entry of the 9019 Order or approval of this Agreement.

Section 2.03. Acknowledgements. Each Party is represented by, and has consulted with, its own legal and other advisors to the extent it has deemed necessary. The Parties have participated jointly in the negotiating and drafting of this Agreement. If an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Agreement. Prior drafts of this Agreement or the fact that any clauses have been added, deleted or otherwise modified from any prior drafts of this Agreement shall not be construed in favor of or against any Party on account of its participation in such negotiations and drafting or be used as an aide of construction or otherwise constitute evidence of the intent of the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party hereto by virtue of such prior drafts.

### ARTICLE III

#### CONDITIONS PRECEDENT TO CONTINUED EFFECTIVENESS

Section 3.01. Conditions Precedent to the Continued Effectiveness of this Agreement. The continued effectiveness of this Agreement is subject to the occurrence of the following:

- (a) Entry of the 9019 Order, substantially in the form annexed hereto as Exhibit A, with only such changes as may be agreed to by the Parties or required by the Bankruptcy Court;
- (b) The Effective Date of the Plan;
- (c) On the Effective Date, the Plan Investor shall transfer One Million Three Hundred Thousand Dollars (\$1,300,000.00) to the Creditor Distribution Trust, as contemplated by Section 1.07 above.
- (d) Inclusion of the following provision in the Confirmation Order (with only such changes as may be agreed to by the Parties or required by the Bankruptcy Court):

Notwithstanding anything to the contrary contained in the Plan, the Plan Funding Agreement or this Order, any rights of an account obligor that may exist as of the Effective Date to assert as a defense or counterclaim, in response to a claim against such account obligor (whether in litigation or otherwise) by one or more of the Debtors or Reorganized Debtors (including an Acquired Debtor), a right of setoff against a debt owing by such account obligor to one or more of the Debtors or Reorganized Debtors (including an Acquired Debtor), as the case may be, are preserved; provided that, except with respect to Canadian Claims, in no event may an account obligor assert, claim, collect or otherwise recover any Liability against a Debtor or Reorganized Debtor (including an Acquired Debtor) other than as a setoff against a claim asserted against such account obligor; provided further that any such setoff may not be asserted, claimed, collected or recovered in an amount that exceeds the amount owed by such account obligor to the applicable Debtor or Reorganized Debtor (including an Acquired Debtor), as the case may be; and provided further that nothing in the Plan, the Plan Funding Agreement or this Order creates, confers, expands or grants any right to assert any defense, counterclaim or setoff that did not otherwise exist, and the Plan, the Plan Funding Agreement and this Order do not and may not be deemed to recognize or approve the validity of any such particular defense, counterclaim or setoff of an account obligor.

- (e) Inclusion of the following provision in the Confirmation Order (with only such changes as may be agreed to by the Parties or required by the Bankruptcy Court):

The 9019 Order and Agreement shall survive entry of this Confirmation Order and shall continue in effect. To the extent of any inconsistency between the terms of the Plan, Confirmation Order, the 9019 Order or the Agreement, the terms of the 9019 Order and Agreement shall control.

#### **ARTICLE IV**

#### **TERMINATION OF AGREEMENT**

Section 4.01. Termination Event. This Agreement shall terminate in the event the Bankruptcy Court denies entry of the 9019 Order. In the event this Agreement is so terminated, as of the date of such termination, the terms, conditions and provisions of this Agreement (other than the provisions of this ARTICLE IV and ARTICLE V below) shall have no further force or effect. For the avoidance of doubt, in the event this Agreement terminates, the rights of all of the Parties are reserved.

#### **ARTICLE V**

#### **MISCELLANEOUS**

Section 5.01. Voluntary Agreement. Each Party acknowledges that it has read all of the terms of this Agreement, has had an opportunity to consult with counsel of its own choosing or voluntarily waived such right, and enters into this Agreement voluntarily and without duress.

Section 5.02. No Admission of Liability. Each Party hereby acknowledges and agrees that this Agreement is entered into for the sole purpose of resolving the Committee's investigation under the DIP Order and objections to confirmation of the Plan. It is hereby expressly agreed and acknowledged that neither the execution nor performance of any of the terms of this Agreement shall constitute or be construed as or deemed to be evidence of an admission or concession on the part of any of the Parties as to the existence or non-existence of any breach, fault, liability, wrongdoing, or damage, or with respect to the strength or infirmity of any defense, or the allowance, disallowance, or appropriate treatment of any claims of the Parties, and this Agreement shall not be admissible in any action (other than an action to enforce this Agreement).

Section 5.03. Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement. Delivery of a signature page to this Agreement by facsimile or other electronic means shall be effective as delivery of the original signature page to this Agreement.

Section 5.04. Entire Agreement; Amendment. This Agreement constitutes the entire agreement, and supersedes all prior agreements, understandings (including letters of intent or term sheets), representations and warranties, both written and oral, between the Parties with respect to the subject matter of this Agreement. This Agreement may only be modified, altered, amended or supplemented by means of a writing signed by the Parties.

Section 5.05. Authority. Each Party represents and warrants that each Person who executes this Agreement on its behalf is duly authorized to execute this Agreement on behalf of the respective Party, and that such Party has full knowledge of and has consented to this Agreement.

Section 5.06. No Third Party Beneficiaries. There are no third party beneficiaries of this Agreement.

Section 5.07. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of any and all successors, permitted assigns and other representatives of the Parties, as if such successor, permitted assign or other representative was an original signatory to this Agreement.

Section 5.08. Irreparable Harm. The Parties agree that irreparable harm would result to, and that legal damages would not adequately compensate, the Parties if any part of this Agreement is not performed in accordance with the terms hereof, and that the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement or to enforce it specifically in addition to any other remedy to which such Party is entitled at Law or in equity.

Section 5.09. Headings; Construction. The headings of all sections of this Agreement are inserted solely for the convenience of reference and are not a part of and are not intended to govern, limit or aid in the construction or interpretation of any term or provision hereof. For purposes of this Agreement, the term “including” means “including but not limited to.”

Section 5.10. Notices. All notices or demands given or made by one Party to another relating to this Agreement shall be in writing and either personally served or sent by registered or certified mail, postage paid, return receipt requested, overnight delivery service, or by electronic mail transmission with a copy by first-class mail, and shall be deemed to be given for purposes of this Agreement on the earlier of the date of actual receipt or three (3) days after the deposit thereof in the mail. Unless a different or additional address for subsequent notices is specified in a notice sent or delivered in accordance with this Section, such notices or demands shall be sent as follows:

If to the Debtors:

Matthew Feldman, Esq.  
Paul V. Shalhoub, Esq.  
Robin Spigel, Esq.  
WILLKIE FARR & GALLAGHER LLP  
787 Seventh Avenue  
New York, New York 10019  
mfeldman@willkie.com  
pshalhoub@willkie.com

If to the Committee:

Robert M. Hirsh, Esq.  
George P. Angelich, Esq.  
ARENT FOX LLP  
1675 Broadway  
New York, New York 10019  
robert.hirsh@arentfox.com  
george.angelich@arentfox.com

If to Apollo or KKR:

Alan W. Kornberg, Esq.  
Elizabeth R. McColm, Esq.  
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP  
1285 Avenue of the Americas  
New York, New York 10019  
akornberg@paulweiss.com  
emccolm@paulweiss.com

Section 5.11. Law. This Agreement, the rights and obligations of the Parties under this Agreement, and any and all disputes arising under or in connection with this Agreement, shall be governed by and construed in accordance with (a) the laws of the State of New York, without

regard to any conflict of laws provisions that would require the application of the Law of any other jurisdiction (other than New York General Obligations Law § 5-1401), and (b) any applicable provision of the Bankruptcy Code or Bankruptcy Rules.

Section 5.12. Jurisdiction. Each Party hereby submits to the exclusive jurisdiction of the Bankruptcy Court to hear, resolve and determine any and all matters, claims and disputes arising from or relating to this Agreement.



IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date first set forth above.

**SQUARETWO FINANCIAL SERVICES  
CORPORATION**, on behalf of itself and its affiliated  
Debtors

By: /s/ J.B. Richardson, Jr.  
Name: J.B. Richardson, Jr.  
Title: President and Chief Executive Officer  
and/or Authorized Signatory

**THE OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS OF  
SQUARETWO FINANCIAL SERVICES  
CORPORATION., ET AL**

By: /s/ Christopher Ward  
Committee Chair

Christopher Ward, Esq. on behalf of  
Lynn M. Dingwall

Polsinelli PC  
222 Delaware Avenue, Suite 1101  
Wilmington, DE 19801

*[Signature Pages of Apollo and KKR Redacted]*

Exhibit A

9019 Order (without exhibits)

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re: : Chapter 11  
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SquareTwo Financial Services : Case No. 17-10659 (JLG)  
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Debtors. :  
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<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of each Debtor’s federal taxpayer identification number and/or Canadian equivalent are as follows: Astrum Financial, LLC (2265); Autus, LLC (2736); CA Internet Marketing, LLC (7434); CACH, LLC d/b/a Fresh View Funding (6162); CACV of Colorado, LLC (3409); CACV of New Jersey, LLC (3499); Candeo, LLC (2809); CCL Financial Inc. (7548); Collect Air, LLC (7987); Collect America of Canada, LLC (7137); Healthcare Funding Solutions, LLC (2985); Metropolitan Legal Administration Services, Inc. (6811); Orsa, LLC (2864); Preferred Credit Resources Limited (0637); ReFinance America, Ltd. (4359); SquareTwo Financial Canada Corporation (EIN: 1034; BN: 0174); SquareTwo Financial Corporation (1849); and SquareTwo Financial Services Corporation d/b/a Fresh View Solutions (5554). The Debtors’ executive headquarters are located at 6300 South Syracuse Way, Suite 300, Centennial, CO 80111.

<sup>2</sup> Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Motion.

the Court having jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska, C.J.); and it appearing that venue of these cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this proceeding on the Motion is a core proceeding pursuant to 28 U.S.C. §157(b); and due and adequate notice of the Motion having been given; and it appearing that no other or further notice need be provided; and the Court having found that the Settlement Agreement is reasonable, fair and equitable and supported by adequate consideration; and that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and a hearing on the Motion having been held on June 2, 2017; and after due deliberation and sufficient cause appearing therefore, it is hereby

FOUND AND DETERMINED that:

- A. This Court has jurisdiction to hear and adjudicate the Motion.
- B. Notice of the Motion was reasonable and adequate under the circumstances, and constitutes due and sufficient notice of the Motion.
- C. Any objections that were raised or that could have been raised in opposition to the Motion, that have not been withdrawn or resolved, are overruled and/or waived.
- D. The Debtors have acted in good faith and exercised sound business judgment in connection with their determination to enter into and execute the Settlement Agreement. Approval of the Settlement Agreement is in the best interests of the Debtors, their respective estates and creditors.

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED  
that:

1. The Motion is granted.
2. Pursuant to Bankruptcy Rule 9019 and section 105 of the Bankruptcy Code, the Settlement Agreement and its terms are approved.
3. The form of CDTA and the terms contained therein are approved. The party designated as Creditor Trustee (as defined in the CDTA) in the CDTA is appointed Creditor Trustee.
4. To the extent not already authorized, the Debtors and Creditor Trustee are authorized to execute, deliver, implement and fully perform any and all obligations, instruments, documents and papers and to take any and all actions reasonably necessary or appropriate to consummate the Settlement Agreement and perform any and all obligations contemplated therein.
5. The terms of this Order shall be effective and enforceable immediately upon its entry. To the extent of any inconsistency between the terms of the Settlement Agreement and the Confirmation Order or the Plan, the Settlement Agreement and this Order shall control.
6. This Court retains exclusive jurisdiction to hear and determine any dispute regarding the interpretation or enforcement of the Settlement Agreement and the CDTA. The Court otherwise retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: \_\_\_\_\_, 2017  
New York, New York

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THE HONORABLE JAMES L. GARRITY, JR.  
UNITED STATES BANKRUPTCY JUDGE

## **CREDITOR DISTRIBUTION TRUST AGREEMENT**

THIS CREDITOR DISTRIBUTION TRUST AGREEMENT (the “Agreement”) is entered into this \_th day of June, 2017, by and among the Dissolving Debtors<sup>1</sup>; the Official Committee of Unsecured Creditors of the Debtors (the “Committee”); and Ted Gavin, CTP, Managing Director of GAVIN/SOLMONESE LLC in his capacity as Creditor Trustee of the SquareTwo Unsecured Creditor Distribution Trust (the “Creditor Trustee”) (collectively, the “Parties”).

### **W I T N E S S E T H:**

WHEREAS, SquareTwo Financial Services Corporation, *et al.*<sup>2</sup>, as debtors and debtors in possession (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) on March 19, 2017 (the “Petition Date”) in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”);

WHEREAS, on March 19, 2017, the Debtors filed the Joint Prepackaged Chapter 11 Plan for SquareTwo Financial Services Corporation and Its Affiliated Debtors [ECF No. 20] (as amended, modified, or supplemented, the “Plan”) with the Bankruptcy Court;

WHEREAS, on April 7, 2017 the United States Trustee, pursuant to sections 1102(a) and (b) of the Bankruptcy Code, appointed certain unsecured creditors to the Committee to represent the interests of all unsecured creditors in the Chapter 11 Cases [ECF No. 103];

WHEREAS, after the appointment of the Committee, the Committee conducted a review and analysis of, among other things, the claims held against the Debtors by Apollo and KKR (each as defined below), as well as terms of the Plan, and engaged in extensive discovery and investigation regarding such claims and the Plan;

WHEREAS, the Parties engaged in extensive negotiations regarding the Committee’s objections to the Plan, and the claims held by the 1.25 Lien Lenders and the 1.5 Lien Lenders, and have agreed to the terms of a settlement to resolve such objections;

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<sup>1</sup> The Dissolving Debtors consist of the following entities: Astrum Financial, LLC; Autus, LLC; CACV of New Jersey, LLC; CA Internet Marketing, LLC; Collect Air, LLC; Collect America of Canada, LLC; Orsa, LLC; ReFinance America, Ltd.; Healthcare Funding Solutions, LLC; Candeo, LLC; SquareTwo Financial Corporation; and SquareTwo Financial Services Corporation (d/b/a Fresh View Solutions) (and any of their respective successors).

<sup>2</sup> The Debtors in these chapter 11 cases and the last four digits of each Debtor’s federal taxpayer identification number and/or Canadian equivalent are as follows: Astrum Financial, LLC (2265); Autus, LLC (2736); CA Internet Marketing, LLC (7434); CACH, LLC d/b/a Fresh View Funding (6162); CACV of Colorado, LLC (3409); CACV of New Jersey, LLC (3499); Candeo, LLC (2809); CCL Financial Inc. (7548); Collect Air, LLC (7987); Collect America of Canada, LLC (7137); Healthcare Funding Solutions, LLC (2985); Metropolitan Legal Administration Services, Inc. (6811); Orsa, LLC (2864); Preferred Credit Resources Limited (0637); ReFinance America, Ltd. (4359); SquareTwo Financial Canada Corporation (EIN: 1034; BN: 0174); SquareTwo Financial Corporation (1849); and SquareTwo Financial Services Corporation d/b/a Fresh View Solutions (5554).

WHEREAS, on May 19, 2017, the Debtors filed the Debtors' Motion Pursuant to Fed. R. Bankr. P. 9019 and 11 U.S.C. § 105(a) For Entry of an Order Approving Settlement Agreement and Creditor Distribution Trust Agreement [ECF No. 239] (the "Settlement Motion") seeking to effectuate the agreement (the "Settlement Agreement") between the (i) Debtors, (ii) Committee, (iii) Apollo Global Management, LLC and certain entities directly or indirectly controlled by it ("Apollo"); and (iv) KKR Credit Advisors (US) LLC and certain entities directly or indirectly controlled by it ("KKR"), that resolves the Committee's objections to the Plan, and the claims held by Apollo and KKR;

WHEREAS, on June [●], 2017, the Bankruptcy Court entered an order [ECF No. ● ] (the "Settlement Order") approving the Settlement Agreement;

WHEREAS, on June [●], 2017, the Bankruptcy Court entered an order [ECF No. ● ] (the "Confirmation Order") confirming the Plan;

WHEREAS, the Settlement Order provides for, among other things, the establishment of a Creditor Distribution Trust (the "Creditor Distribution Trust") for the benefit of its Beneficiaries (defined below) and the appointment of the Creditor Trustee, as the trustee and manager of the Creditor Distribution Trust;

WHEREAS, the Creditor Trustee has agreed to act as trustee under this Agreement for purposes herein provided;

WHEREAS, the Creditor Distribution Trust is established for the sole purpose of administering the Creditor Distribution Trust Fund (defined below) and implementing the Creditor Distribution Trust Functions (defined below), in accordance with Treasury Regulations Section 301.7701-4(d), with no objective or authority to continue or engage in the conduct of a trade or business; and

WHEREAS, the Creditor Distribution Trust is intended to qualify as a liquidating trust within the meaning of Treasury Regulations Section 301.7701-4(d) and, as such, a "grantor trust" for U.S. federal income tax purposes.

NOW, THEREFOR, for and in consideration of the promises and mutual covenants herein contained, pursuant to the Plan, the Parties do hereby covenant and agree as follows:

## ARTICLE I

### **Definitions; Interpretive Rules.**

1.1 Definitions. For the purposes of this Agreement, the following terms shall have the meanings set forth below. Capitalized terms used but not defined herein shall have the meanings attributed to them in the Plan or Settlement Agreement.

"Allowed Trust Claim" means:

(a) a Trust Claim (i) for which a proof of claim has been submitted and received by the Creditor Distribution Trust by the Trust Claim Bar Date or otherwise has been deemed timely



submitted and received under applicable law and (ii) (a) to which no objection has been filed by the applicable Trust Claim Objection Deadline and (b) that is not a Disputed Trust Claim;

(b) a Trust Claim that is allowed: (i) in any stipulation of amount and nature of claim executed by or on behalf of the Creditor Trustee and Trust Claim holder; and (ii) in a Final Order; or

(c) a Trust Claim that the Creditor Trustee determines prior to the Trust Claim Objection Deadline (i) will not be subject to an objection and (ii) will be satisfied in accordance with the terms of this Agreement, the Settlement Agreement, and the Settlement Order on or after the Effective Date.

“Disputed Trust Claim” means a Trust Claim for which a proof of claim has been submitted and received by the Creditor Distribution Trust by the Trust Claim Bar Date or has otherwise been deemed timely submitted and received under applicable law, for which an objection, complaint or request for estimation has been filed by the Creditor Trustee by the Trust Claim Objection Deadline, where such objection has not been withdrawn or denied in its entirety by a Final Order.

“Creditor Distribution Trust Fund” means \$1.3 million in Cash funded in accordance with Section 1.07 of the Settlement Agreement.

“Third Party Release” means the waiver, discharge and release in writing of all claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities against (i) each of the directors of the Debtors, serving in such capacities, from and after May 24, 2016 through the Effective Date and (ii) the 1.25 Lien Lenders and the Consenting 1.5 Lien Lenders, or any of their respective officers, directors, employees, agents, attorneys, consultants, financial advisors, affiliates, assigns, or successors, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, now existing or hereafter arising, in law, equity or otherwise that are based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the Reorganized Debtors, including the Acquired Debtors, and the Dissolving Debtors, the purchase, sale or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the Chapter 11 Cases, the Canadian Proceeding, the RSA, the DIP Facility, the Plan Funding Agreement, or the Plan or the Disclosure Statement.

“Trust Claim Bar Date” means the bar date by which a proof of Claim must be or have been submitted and received by the Creditor Distribution Trust by a (a) holder of Second Lien Lender Claims against the Debtors [Class 6 under the Plan], and (b) holder of U.S. General Unsecured Claims against the Debtors [Class 7A under the Plan] to be specifically fixed by order of the Bankruptcy Court upon application of the Creditor Trustee.

“Trust Claim” means a Claim asserted by a Beneficiary.

“Trust Claim Objection Deadline” means for all Trust Claims the latest of: (a) 90 days after the filing of a proof of Claim; and (b) such other period of limitation as may be specifically fixed by order of the Bankruptcy Court.

“Trust Election” means the election available to each (a) holder of Second Lien Lender Claims [Class 6 under the Plan], and (b) holder of U.S. General Unsecured Claims [Class 7A under the Plan] to opt to receive a distribution from the Creditor Distribution Trust in full and complete satisfaction, discharge and release of such Trust Claim; provided, that in making such election, each (a) holder of Second Lien Lender Claims against the Debtors [Class 6 under the Plan], and (b) holder of U.S. General Unsecured Claims against the Debtors [Class 7A under the Plan] shall be deemed to have granted the Third Party Release on a properly cast Trust Election Form.

“Trust Election Form” means the form distributed to each (a) holder of Second Lien Lender Claims against the Debtors [Class 6 under the Plan], and (b) holder of U.S. General Unsecured Claims against the Debtors [Class 7A under the Plan] on which each holder may elect to receive a distribution from the Creditor Distribution Trust in full and complete satisfaction, discharge and release of such Trust Claim; provided, that in making such election, each (a) holder of Second Lien Lender Claims against the Debtors [Class 6 under the Plan], and (b) holder of U.S. General Unsecured Claims against the Debtors [Class 7A under the Plan] shall be deemed to have granted the Third Party Release. The Creditor Distribution Trust shall provide a draft copy of the Trust Election Form at least three (3) days prior to the service of such form to counsel to the Debtors and counsel to Apollo and KKR, and such form shall be in form and substance acceptable to Counsel to the Debtors and counsel to Apollo and KKR.

“Trust Election Form Deadline” means the deadline for returning the Trust Election Form to be specifically fixed by order of the Bankruptcy Court.

1.2 Other Definitions. The following terms shall have the meanings defined in the Section indicated:

Agreement.....	Preamble
Apollo.....	Recitals
Bankruptcy Code.....	Recitals
Bankruptcy Court.....	Recitals
Beneficiaries.....	Section 5.1
Committee.....	Preamble
Confirmation Order.....	Recitals
Creditor Distribution Trust.....	Preamble
Creditor Trustee.....	Preamble
Creditor Distribution Trust Functions.....	Section 3.3
Creditor Trust Disputed Claims Reserves.....	Section 3.6
Debtors.....	Recitals
Dissolving Debtors.....	Preamble
Indemnified Party.....	Section 4.10
KKR.....	Recitals
Petition Date.....	Recitals

Plan.....	Recitals
Plan Investor.....	Recitals
RSA.....	Recitals
Resignation Notice.....	Section 7.2
Settlement Agreement.....	Recitals
Settlement Motion.....	Recitals
Settlement Order.....	Recitals
Trust Accounts.....	Section 4.12
Trust Professionals.....	Section 4.7

1.3 Interpretive Rules. For purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires: (a) references to “Articles”, “Sections”, and other subdivisions, without reference to a particular document, are to be designated Articles, Sections, and other subdivisions of this Agreement; (b) the use of the term “including” means “including but not limited to”; and (c) the words “herein”, “hereof”, “hereunder”, and other words of similar import refer to this Agreement as a whole and not to any particular provision (unless otherwise specified). The enumeration and headings contained in this Agreement are for convenience of reference only and are not intended to have any substantive significance in interpreting this Agreement. The singular shall include the plural and the plural the singular, when the context so requires, and the feminine, the masculine, and the neuter genders shall be mutually inclusive.

## ARTICLE II

### **Establishment of the Creditor Distribution Trust, Appointment of the Creditor Trustee**

2.1 Establishment of the Creditor Distributions Trust. Effective as of the Effective Date, the Creditor Distribution Trust shall be deemed established and will become effective, in order to carry out the Creditor Distribution Trust Functions (defined below). The Creditor Distribution Trust is organized and established as a trust for the benefit of the Beneficiaries (defined below) and is intended to qualify as a liquidating trust within the meaning of Treasury Regulation Sections 301.7701-4(d). The Creditor Distribution Trust will not be deemed a successor-in-interest of the Estate for any purpose other than as specifically set forth in this Agreement. This Agreement and the Creditor Distribution Trust created hereby are hereby declared to be irrevocable and the Debtors, Plan Investor, Apollo and KKR shall not have any right at any time to withdraw any of the property held hereunder or to revoke, annul, or cancel the Creditor Distribution Trust in whole or in part, or to alter, amend, or modify this Agreement in any respect.

2.2 Appointment of Creditor Trustee. Ted Gavin, CTP, Managing Director of GAVIN/SOLMONESE LLC is hereby appointed as the Creditor Trustee and hereby accepts such appointment. On the Effective Date and automatically and without further action, the Creditor Trustee will have full power and authority as the trustee of the Creditor Distribution Trust in accordance with the Settlement Agreement, Settlement Order, and this Agreement to take any and all actions as he believes may be reasonably necessary, desirable or appropriate with respect to the Creditor Distribution Trust.

2.3 Vesting of Creditor Distribution Trust Fund. On the Effective Date, pursuant to the Settlement Agreement and Settlement Order, Apollo and KKR shall carve out of the proceeds of their collateral and the Plan Investor will transfer, grant, assign, convey, set over, and deliver to the Creditor Trustee, for the benefit of the Creditor Distribution Trust, the Creditor Distribution Trust Fund free and clear of all Liens, Claims, encumbrances or interests of any kind in such property.

2.4 Trust Name. The trust created hereby shall be known as the SquareTwo Unsecured Creditor Distribution Trust, in which name the Creditor Trustee may, among other things, carry out the Creditor Distribution Trust Functions.

### ARTICLE III

#### **Creditor Distribution Trust, Purpose, Administration**

3.1 Purpose of the Creditor Distribution Trust. The Creditor Distribution Trust shall be established for the purpose of carrying out the Creditor Distribution Trust Functions, including liquidating, distributing and resolving the claims of (a) holders of Second Lien Lender Claims against the Debtors [Class 6 under the Plan], and (b) holders of U.S. General Unsecured Claims against the Debtors [Class 7A under the Plan] to the Creditor Distribution Trust Fund, in accordance with Treasury Regulations Section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business. Accordingly, the Creditor Trustee shall, in an expeditious but orderly manner, carry out the Creditor Distribution Trust Functions and make timely distributions and not unduly prolong the duration of the Creditor Distribution Trust.

3.2 Governance of the Creditor Distribution Trust. The Creditor Distribution Trust will be administered and controlled by the Creditor Trustee.

3.3 Purpose of this Agreement and Creditor Distribution Trust Functions. The Parties hereby enter into this Agreement for the purposes of establishing the Creditor Distribution Trust contemplated by the Settlement Agreement and Settlement Order and authorizing the Creditor Trustee to, among other things, implement and carry out the Creditor Distribution Trust functions as follows: (a) adopt, execute, deliver or file all plans, agreements, certificates and other documents and instruments necessary or appropriate to implement the provisions of the Settlement Agreement, Settlement Order, and this Agreement; (b) perform the duties, exercise the powers, and assert the rights of a trustee or estate representative under applicable law with respect to the Creditor Distribution Trust, including for purposes of reconciling, objecting to and settling the Trust Claims; (c) to accept, preserve, manage, invest, and supervise the Creditor Distribution Trust Fund pending distributions; (d) calculate and make distributions to holders of Allowed Trust Claims; (e) pay all expenses and make all other payments relating to the Creditor Distribution Trust; (f) exercise rights and fulfill obligations under this Agreement, the Settlement Agreement, and the Settlement Order; (g) review, reconcile, settle or object to Trust Claims and resolve such objections; (h) retain third party disbursing agents and professionals and other entities; (i) file appropriate tax returns and other reports on behalf of the Creditor Distribution Trust and pay taxes or other obligations owed by the Creditor Distribution Trust on account of its status as a trust (and not on account of any taxes

owed by the Debtors or the Reorganized Debtors); (j) dissolve the Creditor Distribution Trust; (k) establish, keep, and maintain a reserve for the benefit of Disputed Trust Claims; (l) engage and reasonably compensate the Trust Professionals (defined herein) to assist the Creditor Trustee in carrying out his duties; and (m) prepare and deliver written statements or notices, quarterly or otherwise, required by law to be delivered to Beneficiaries of the Creditor Distribution Trust (collectively “Creditor Distribution Trust Functions”). All Creditor Distribution Trust Functions and related activities of the Creditor Trustee shall be reasonably necessary to, and consistent with, the accomplishment of these purposes.

3.4 Authority of the Creditor Trustee. The Creditor Trustee will serve as a fiduciary to the Beneficiaries and will be empowered to perform the Creditor Distribution Trust Functions.

3.5 Expenses of the Creditor Distribution Trust. The Creditor Distribution Trust Fund will be used to pay all liabilities, costs and expenses of the Creditor Distribution Trust, including compensation then due and payable to the Creditor Trustee, his agents, representatives, the Trust Professionals and employees and all costs, expenses, and liabilities incurred by the Creditor Trust in connection with the performance of the Creditor Trustee’s duties and the Creditor Distribution Trust Functions. The reasonable fees and expenses of the Creditor Trust and its counsel and agents will be paid from the Creditor Distribution Trust Fund without need of Bankruptcy Court approval, subject to the terms set forth in Section 4.15 herein. In no event shall any of the Debtors, the Reorganized Debtors or their respective estates, or Apollo or KKR have any liability whatsoever for any liabilities, costs or expenses of the Creditor Distribution Trust.

3.6 Tax Treatment of Creditor Distribution Trust. For United States federal and applicable state income tax purposes, the transfer of the Creditor Distribution Trust Fund to the Creditor Distribution Trust pursuant to and in accordance with the Settlement Agreement, Settlement Order, and this Agreement shall be treated as a disposition of such assets directly to and for the benefit of the Beneficiaries. The Creditor Distribution Trust is intended to qualify as a liquidating trust that is treated as a “grantor trust” for federal income tax purposes, and the Creditor Trustee shall use his best efforts to operate and maintain the Creditor Distribution Trust in compliance with all applicable guidelines regarding liquidating trusts issued by the Internal Revenue Service (including Revenue Procedure 94-45, 1994-2 C.B. 684); provided, however, that the Creditor Trustee shall timely elect to treat any assets allocable to, or retained on account of, Disputed Trust Claims (the “Creditor Trust Disputed Claims Reserves”) under Treasury Regulations Section 1.468B-9(c)(2)(ii) to treat the Creditor Trust Disputed Claims Reserve as a “disputed ownership fund.” Accordingly, other than the portion of the Creditor Distribution Trust Fund comprising the Creditor Trust Disputed Claims Reserve, Beneficiaries shall be treated for U.S. federal income tax purposes, (i) as direct recipients of an undivided interest in the assets transferred to the Creditor Distribution Trust and as having immediately contributed such assets to the Creditor Distribution Trust, and (ii) thereafter, as the grantors and deemed owners of the Creditor Distribution Trust and thus, the direct owners of an undivided interest in the assets held by the Creditor Distribution Trust. The Beneficiaries will be treated as the grantors and owners of the Creditor Distribution Trust. All parties (including the Creditor Trustee and the Beneficiaries) shall report for United States federal, state and local income tax purposes consistently with foregoing.

3.7 Cooperation by the Dissolving Debtors and Plan Administrator. After the Effective Date, but prior to the completion of the Wind Down, the Dissolving Debtors, and the Plan Administrator, shall provide reasonable cooperation and assistance to the Creditor Trustee in its administration of the Creditor Distribution Trust and the performance of the Creditor Distribution Trust Functions, including no later than five (5) Business Days of the Effective Date (a) providing the Creditor Trustee with the names and addresses of (i) all known holders of U.S. General Unsecured Claims against the Debtors and (ii) named plaintiffs in putative class actions and their counsel (but not all potential class members), and (b) requesting that the Second Lien Agent provide the Creditor Trustee with the names and addresses of holders of Second Lien Claims. Such assistance shall also include timely responses to reasonable requests by the Creditor Trustee for information related to his duties under this Agreement and the Creditor Distribution Trust Functions, designating a representative of the Dissolving Debtors (the “DD Rep”), no later than five (5) Business Days of the Effective Date, as the source of contact for the Creditor Distribution Trust, providing reasonable access (subject to mutually acceptable confidentiality agreements) to the Dissolving Debtors’ books and records and requesting books and records from the Acquired Debtors, to the extent they are permitted under the Plan Funding Agreement and TSA, to the extent necessary for the administration of the Creditor Distribution Trust (and, contemporaneously with the request, the Plan Investor shall receive notice that the requested books and records are necessary for such purpose) until the earlier of the completion of the Wind Down or the dissolution of the Creditor Distribution Trust. Notwithstanding anything to the contrary contained herein, (i) the DD Rep shall not be required to expend more than five (5) hours per month responding to the requests of the Creditor Trustee, provided, however, the time spent requesting access to the books and records from the Acquired Debtors shall not be included in the calculation of the five (5) hours per month limit, and (ii) the obligations of the Dissolving Debtors and the Plan Administrator under this Agreement shall not require any Dissolving Debtor or the Plan Administrator to incur any out-of-pocket costs or expend any monies. Any request made by the Creditor Trustee that requires the incurrence of any out-of-pocket costs or expenditure of any monies by the Dissolving Debtors shall not be required to be undertaken unless the Creditor Trustee has agreed to pay for such costs or expenses out of the Creditor Distribution Trust Fund.

## ARTICLE IV

### **Duties, Rights and Powers of Creditor Trustee**

4.1 Duties of the Creditor Trustee. The Creditor Trustee shall have the exclusive right and duty to perform the Creditor Distribution Trust Functions, including administering the Creditor Distribution Trust Fund and pursuing and overseeing the objections and resolution of Claims submitted by holders of Second Lien Lender Claims [Class 6 under the Plan] and U.S. General Unsecured Claims [Class 7A under the Plan] and related processes, and make distributions to the Beneficiaries from the Creditor Distribution Trust, as provided under this Agreement, the Settlement Agreement, and the Settlement Order.

4.2 Standard of Care. The Creditor Trustee shall exercise his rights and powers vested in it by this Agreement and use reasonable business judgment in his exercise of his duties. Subject to applicable law, the Creditor Trustee shall not be liable to the Creditor Distribution Trust or any Beneficiary for any act he may do or omit to do as a Creditor Trustee

while acting in good faith and in the exercise of his reasonable business judgment. The foregoing limitation on liability will apply equally to the agents, and/or employees of the Creditor Trustee and Trust Professionals (defined herein) acting on behalf of the Creditor Trustee in the fulfillment of the Creditor Trustee's duties hereunder.

4.3 Bond. The Creditor Trustee shall not be required to post a bond.

4.4 Creditor Trustee's Rights and Powers. The Creditor Trustee shall act on behalf of the Creditor Distribution Trust and shall be vested with all rights, powers, privileges, and benefits afforded to a trustee or estate representative under applicable law. The Creditor Trustee shall have all the powers and authority set forth herein and in the Settlement Agreement, Settlement Order, and this Agreement necessary to effect the claims reconciliation process and distribution of all Creditor Distribution Trust Fund and proceeds thereof. As of the Effective Date, the rights and powers of the Creditor Trustee shall include, the right and power, without further Bankruptcy Court approval, to:

- (a) Object, settle, and resolve Trust Claims;
- (b) Seek to establish the Trust Claim Objection Deadline, Trust Election Form Deadline and solicit the Trust Election Form from each (a) holder of Second Lien Lender Claims [Class 6 under the Plan], and (b) holder of U.S. General Unsecured Claims [Class 7A under the Plan];
- (c) Make distributions to the Beneficiaries hereunder;
- (d) Seek an estimation of contingent or unliquidated Trust Claims under section 502(c) of the Bankruptcy Code;
- (e) Invest the Creditor Distribution Trust Fund, which investment powers of the Creditor Trustee are limited by Section 4.12 herein;
- (f) Establish, maintain and administer the Creditor Trust Disputed Claims Reserves;
- (g) Maintain and administer the Cash in the Creditor Distribution Trust;
- (h) Enforce and carry out with the terms of the Settlement Agreement, Settlement Order, and this Agreement;
- (i) Enforce, carry out and perform the Creditor Trustee's duties and Creditor Distribution Trust Functions under this Agreement;
- (j) Pay all expenses and obligations of the Creditor Distribution Trust, including professional fees, out of the Creditor Distribution Trust Fund;
- (k) Retain counsel or special counsel, financial advisors or accountants, and employ other individuals in connection with the administration of the Creditor Distribution Trust;

(l) Prepare and deliver written statements or notices, quarterly or otherwise, required by law or by the terms of this Agreement to be delivered to Beneficiaries;

(m) If at any time the Creditor Trustee determines, in reliance upon such professionals as the Creditor Trustee may retain, that the expense of administering the Creditor Distribution Trust so as to make a final distribution to the Beneficiaries is likely to exceed the value of the assets remaining in the Creditor Distribution Trust, the Creditor Trustee shall apply to the Bankruptcy Court for authority to donate a balance to a charitable organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, that is unrelated to the Creditor Distribution Trust, the Creditor Trustee;

(n) Hold legal title to any and all rights of the Beneficiaries in or arising from the Creditor Distribution Trust or Creditor Distribution Trust Fund;

(o) Execute and file any and all documents, regulatory filings and transfer applications and take any and all other actions related to, or in connection with, the Creditor Distribution Trust Functions granted herein;

(p) Open and maintain bank accounts and deposit funds, draw checks and make disbursements in accordance with this Agreement;

(q) File, if necessary, any and all tax and information returns with respect to the Creditor Distribution Trust treating the Creditor Distribution Trust as a grantor trust pursuant to Treasury Regulations Section 1.671-4(a) and pay taxes properly payable by the Creditor Distribution Trust, if any, and make distributions to Beneficiaries net of any such taxes;

(r) In the event the Creditor Trustee determines that any of the Beneficiaries of the Creditor Distribution Trust may, will or has become subject to adverse tax consequences, take such actions that in his reasonable discretion will, or are intended to, alleviate such adverse tax consequences, such as dividing the Creditor Distribution Trust Fund into several trusts or other structures and/or paying certain Beneficiaries in a manner different than that originally contemplated hereunder (but not otherwise inconsistent with the provisions of this Agreement, the Settlement Agreement, or the Settlement Order), provided, however, the Creditor Trustee shall be under no obligation to take any such actions;

(s) Withhold from the amount allocable, payable or distributable to any entity such amount as may be sufficient or required to pay any tax or other charge which the Creditor Distribution Trust has determined, in his reasonable discretion, is required to be withheld therefrom under the income tax laws of the United States or of any state or political subdivision thereof, and to pay or deposit such withheld tax with the appropriate governmental authority. In the exercise of his discretion and judgment, the Creditor Trustee may enter into agreements with taxing or other governmental authorities for the payment of such amounts as may be withheld in accordance with the provisions hereof;

(t) Seek any relief from or resolution of any disputes concerning the Settlement Agreement, Settlement Order, the Creditor Distribution Trust, or the Creditor Distribution Trust Fund by the Bankruptcy Court or any other court with proper jurisdiction;



(u) Appear and participate in any proceeding before the Bankruptcy Court or any other court with proper jurisdiction with respect to any matter regarding or relating to this Agreement, the Settlement Agreement, Settlement Order, Confirmation Order, Creditor Distribution Trust, or the Creditor Distribution Trust Fund; and

(v) Otherwise take such other actions as shall be necessary to implement the Settlement Agreement, Settlement Order, the terms of this Agreement, wind down the affairs of the Creditor Trust or to carry out the Creditor Distribution Trust Functions and related obligations and to exercise its rights in accordance with and subject to the Settlement Order, and shall perform all of the duties, responsibilities and obligations as set forth in this Agreement.

4.5 Estimation of Claims. The Creditor Trustee may at any time request that the Bankruptcy Court estimate any Trust Claim pursuant to section 502(c) of the Bankruptcy Code to the extent that such Claim has not already been adjudicated by the Bankruptcy Court on the same grounds. In the event that the Bankruptcy Court estimates any Trust Claim, the amount so estimated shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Creditor Trustee may pursue supplementary proceedings to object to the allowance of such Trust Claim. All of the aforementioned objection, estimation, and resolution procedures are intended to be cumulative and not exclusive of one another.

4.6 Limitations on the Creditor Trustee's Liabilities. The Creditor Trustee and the Creditor Distribution Trust's professionals, including accountants, financial advisors, legal advisors, shall not be responsible and shall not have any liability whatsoever to any person for any loss or liability the Creditor Distribution Trust, the Debtors, the Reorganized Debtors, or the Estates may sustain or incur, except as otherwise provided in Section 4.10 of this Agreement.

4.7 Selection of Agents. The Creditor Trustee may select and employ, and determine compensation for, any professionals, including accountants, financial advisors, legal advisors, brokers, consultants, custodians, investment advisors, asset services, auditors, and other agents, as the Creditor Trustee deems necessary (collectively, the "Trust Professionals") to assist it in carrying out his duties and the Creditor Distribution Trust Functions, with the reasonable fees and expenses of such professionals to be paid by the Creditor Distribution Trust. The Creditor Trustee shall not be liable for any loss to the Debtors, the Dissolving Debtors, or the Creditor Distribution Trust or any person interested therein, including Beneficiaries, by reason of any mistake or default of any such agent or consultant.

4.8 Signature. As of the Effective Date, the Creditor Trustee shall have the signature power and authority on behalf of the Creditor Distribution Trust to (a) open and close accounts with any banking, financial or investment institution; (b) make deposits and withdrawals of cash and other property into or from any such account; (c) make or endorse checks with respect to any such account; (d) execute any settlement agreement, contract or pleading; and (e) effectuate purchases and sales of securities and give security purchase and sale orders to brokers or any other third parties, and the exercise of such power and authority shall be deemed to be authorized by and to represent the decision of the Creditor Trustee then entitled to make such decision.

4.9 Maintenance of Register. The Creditor Trustee shall at all times maintain or cause to be maintained a register of the names, addresses, and amount of the Beneficiaries.

4.10 Liability of Creditor Trustee.

(a) Liability; Indemnification. The Creditor Trustee, the Trust Professionals, and the Creditor Trustee's agents and servants, shall not in any way be liable for any acts or omissions to act except by reason of their gross negligence, willful misconduct, fraud, or a criminal act in the performance of their duties under the Settlement Agreement, Settlement Order, or this Agreement. The Creditor Distribution Trust shall indemnify the Creditor Trustee, the Trust Professionals, the Creditor Trustee's agents and servants, and the Dissolving Debtors and the Plan Administrator and their respective employees, agents and advisors (for any activities taken by them as required by this Agreement), and hold them harmless from and against any and all liabilities, expenses, claims, damages and losses incurred by them as a direct result of actions taken or omissions to act by them in such capacity or otherwise related to this Agreement or the Creditor Distribution Trust. The Creditor Distribution Trust shall indemnify and hold harmless any entity who was, or is, a party, or is threatened to be made a party, to any pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such entity is or was the Creditor Trustee, a Trustee Professional, or the Creditor Trustee's agent or servant, and the Dissolving Debtors and the Plan Administrator and their respective employees, agents and advisors (for any activities taken by them as required by this Agreement), against all costs, expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by such entity in connection with such action, suit or proceeding, or the defense or settlement of any claim, issue or matter therein, to the fullest extent permitted by applicable law, if such costs and expenses, judgments, fines or amounts paid in settlement are found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from the entity's gross negligence, willful misconduct, fraud or criminal act. Costs or expenses incurred by any entity entitled to the benefit of the provisions of this Section 4.10 in defending any such action, suit or proceeding may be paid by the Creditor Distribution Trust in advance of the institution or final disposition of such action, suit or proceeding, if authorized by the Creditor Trustee, subject to providing an undertaking to repay all such advanced amounts if he is subsequently determined that such entity is not entitled to indemnification under this Section 4.10. Any dispute regarding such indemnification of the Creditor Trustee shall be resolved only by the Bankruptcy Court, which shall retain jurisdiction over matters relating to the indemnification provided under this Section 4.10. The Creditor Trustee may in its discretion purchase and maintain insurance on behalf of any entity who is or was a beneficiary of this provision. Promptly after receipt by an indemnified party or parties (the "Indemnified Party") of notice of any claim, or notice of commencement of any action, suit, or proceeding by an Entity other than the Creditor Trustee, in respect of which the Indemnified Party may seek indemnification from the Creditor Distribution Trust pursuant to this Section 4.10, the Indemnified Party, if not the Creditor Distribution Trust, shall notify the Creditor Trustee of such claim, action, suit or proceeding and shall thereafter promptly convey all further communications and information in respect thereof to the Creditor Trustee. If the Indemnified Party is the Creditor Trustee, the Creditor Trustee shall notify the Bankruptcy Court of such claim, action, suit, or proceeding and shall thereafter promptly convey all further communications and information in respect thereof to the Bankruptcy Court. The Creditor Trustee shall, if he so elects, have sole control at the expense of the Creditor Distribution Trust

over the contest, settlement, adjustment, or compromise of any claim, action, suit, or proceeding in respect of which this Section 4.10 requires that the Creditor Distribution Trust indemnify the Indemnified Party. If the Creditor Trustee is the Indemnified Party, he shall obtain the written approval of Bankruptcy Court before settling, adjusting, or compromising any claim, action, suit, or proceeding in respect of which this Section 4.10 requires that the Creditor Distribution Trust indemnify the Indemnified Party. The Indemnified Party shall cooperate with the reasonable requests of the Creditor Trustee in connection with such contest, settlement, adjustment, or compromises, provided that (i) the Indemnified Party may, if it so elects, employ counsel at its own expense to assist in (but not control) the handling of such claim, action, suit, or proceeding, (ii) the Creditor Trustee shall obtain the prior written approval of the Indemnified Party before entering into any settlement, adjustment, or compromise of such claim, action, suit, or proceeding, or ceasing to defend against such claim, action, suit, or proceeding, if pursuant thereto or as a result thereof injunction or other relief would be imposed upon the Indemnified Party, and (iii) the Indemnified Party shall obtain the prior written approval of the Creditor Trustee, or, if the Creditor Trustee is the Indemnified Party, the prior written approval of the Bankruptcy Court, before entering into any settlement, adjustment or compromise of such claim, action, suit, or proceeding, or ceasing to defend against such claim, action, suit, or proceeding, and no such settlement, adjustment, or compromise shall be binding on the Creditor Distribution Trust without such approval.

(b) No Liability for Acts of Predecessor. No successor Creditor Trustee shall be in any way responsible for the acts or omissions of any Creditor Trustee in office prior to the date on which such person becomes a Creditor Trustee, nor shall such successor be obligated to inquire into the validity or propriety of any such act or omission, unless such successor Creditor Trustee expressly assumes such responsibility. Any successor Creditor Trustee shall be entitled to accept as conclusive any final accounting and statement of the Creditor Distribution Trust Fund furnished to such successor Creditor Trustee by such predecessor Creditor Trustee and shall further be responsible only for those Creditor Distribution Trust Fund included in such statement.

(c) No Implied Obligations. The Creditor Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth herein, in the Settlement Agreement or the Settlement Order, and no other or further covenants or obligations shall be implied into this Agreement. The Creditor Trustee shall not be responsible for making distributions to holders of Second Lien Lender Claims [Class 6 under the Plan] and U.S. General Unsecured Claims [Class 7A under the Plan] that are not Beneficiaries of the Creditor Trust. The Creditor Trustee shall not be responsible in any manner whatsoever for the correctness of any recitals, statements, representations, or warranties herein or in any documents or instrument evidencing or otherwise constituting a part of the Creditor Distribution Trust Fund. The Creditor Trustee makes no representations as to validity, execution, enforceability, legality, or sufficiency of this Agreement; and the Creditor Trustee shall incur no liability or responsibility with respect to any such matters.

(d) Reliance by Creditor Trustee on Documents or Advice of Counsel or Other Entities. Except as otherwise provided herein, the Creditor Trustee may rely and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, and other paper or document reasonably believed to be genuine and to

have been signed or presented by the proper party or parties, and shall have no liability or responsibility with respect to the form, execution, or validity thereof. None of the provisions hereof shall require the Creditor Trustee to expend or risk his own funds or otherwise incur financial liability or expense in the performance of any duties hereunder.

(e) No Personal Obligation for Debtors' Liabilities. Beneficiaries or other persons dealing with the Creditor Trustee in his capacity as Creditor Trustee within the scope of this Agreement shall look solely to the Creditor Distribution Trust Fund to satisfy any liability incurred by the Creditor Trustee to such person in carrying out the terms of this Agreement, and the Creditor Trustee and all Beneficiaries shall have no personal or individual obligation to satisfy any such liability.

4.11 Establishment of Trust Accounts. The Creditor Trustee shall establish and maintain accounts in connection with carrying out the purposes of the Creditor Distribution Trust (the "Trust Accounts"). Such accounts bear a designation clearly indicating that the funds deposited therein are held for the benefit of the Creditor Distribution Trust.

4.12 Investment of Cash. Cash in the Trust Accounts and any other amounts contemplated by this Agreement shall be maintained in United States dollars or shall be invested by the Creditor Trustee in (a) direct obligations of, or obligations guaranteed by, the United States of America, (b) obligations of any agency or corporation that is or may hereafter be created by or pursuant to an act of Congress of the United States of America as an agency or instrumentality thereof, or (c) such other obligations or instruments as may from time to time be permitted under section 345 of the Bankruptcy Code; provided that the Creditor Trustee may, to the extent necessary to implement the provisions of the this Agreement, deposit moneys in demand deposits, time accounts or checking accounts at any banking institution or trust company having combined capital stock and surplus in excess of \$100,000,000 based upon its most recently available audited financial statements, or any institution approved by the Executive Office of the United States Trustee Program for deposit of estate funds. Such investments shall mature in such amounts and at such times as the Creditor Trustee, in his discretion, shall deem appropriate to provide funds when needed to transfer funds in accordance with the Settlement Agreement, Settlement Order and this Agreement, make payments to the Trust Accounts or make distributions in accordance with this Agreement, the Settlement Agreement and the Settlement Order. Notwithstanding anything to the contrary herein, the scope of any such investment shall be limited to include only those investments that a liquidating trust, within the meaning of Treasury Regulations Section 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS Service rulings, other IRS pronouncements or otherwise.

4.13 Tax Returns.

(a) From and after the Effective Date, to the extent required, the Creditor Trustee shall be responsible for the preparation and filing of any and all tax returns or other filings as required by law to be filed on behalf of the Creditor Distribution Trust. Such returns shall be consistent with the treatment of the Creditor Distribution Trust as a liquidating trust within the meaning of Treasury Regulations Section 301.7701-4(d) that is a grantor trust pursuant to Treasury Regulations Section 1.671-4(a) other than with respect to the Creditor Trust

Disputed Claims Reserves, which shall be consistent with the treatment of the Creditor Trust Disputed Claims Reserves as a “disputed ownership fund” within the meaning of Treasury Regulations Section 1.468B-9(b)(1), and to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes.

(b) Allocations of Creditor Distribution Trust taxable income among the Beneficiaries of the Creditor Distribution Trust (other than taxable income allocable to the Creditor Trust Disputed Claims Reserves) shall be determined by reference to the manner in which an amount of Cash representing such taxable income would be distributed (were such Cash permitted to be distributed at such time) if, immediately prior to such deemed distribution, the Creditor Distribution Trust had distributed all its assets (valued at their tax book value, and other than assets allocable to the Creditor Trust Disputed Claims Reserves) to the Beneficiaries, adjusted for prior taxable income and loss and taking into account all prior and concurrent distributions from the Creditor Distribution Trust.

4.14 Compensation for Creditor Trustee. The Creditor Trustee shall be paid fair and reasonable compensation from the Creditor Distribution Trust Fund. The Creditor Trustee shall be entitled to reimbursement of reasonable and actual out-of-pocket expenses, to be paid monthly from the Creditor Distribution Trust Fund.

4.15 Reimbursement of the Creditor Trustee’s and Trust Professionals’ Fees and Expenses. The Creditor Trustee may pay from the Creditor Distribution Trust Fund all reasonable fees and expenses incurred in connection with the duties and actions of the Creditor Trustee and the Creditor Distribution Trust Functions, including, but not limited to, (a) fees and expenses of any agents or consultants employed pursuant to this Agreement, (b) fees and expenses of any Trust Professionals retained under this Agreement, and (c) fees and expenses arising in the ordinary course of business in maintaining and distributing the Creditor Distribution Trust Fund.

## ARTICLE V

### **Beneficiaries**

5.1 Identification of Beneficiaries. The Creditor Distribution Trust is created for the benefit of the following beneficiaries (the “Beneficiaries”): (i) holders of Second Lien Lender Claims against the Debtors [Class 6 under the Plan], and (ii) holders of U.S. General Unsecured Claims against the Debtors [Class 7A under the Plan] that, in each case; (a) properly and timely submit a Proof of Claim no later than the Trust Claim Bar Date; and (b) properly make the Trust Election on a properly cast Trust Election Form and return a completed W-9 (or other tax identification information as may be reasonably required by the Creditor Distribution Trust) no later than the Trust Election Bar Date. The Beneficiaries shall each have an undivided beneficial interest in the assets of the Creditor Distribution Trust (“Beneficial Interest”). All distributions to Beneficiaries shall be made in accordance with the terms of this Agreement, the Settlement Agreement, and the Settlement Order.

5.2 Rights of Beneficiaries. Each Beneficiary shall be entitled to participate in the rights due to a Beneficiary hereunder. Each Beneficiary shall take and hold its Beneficial

Interest subject to the terms and provisions of this Agreement. The Beneficial Interests shall not be certificated. No Beneficiary shall have legal title to any part of the Creditor Distribution Trust Fund. The interest of a Beneficiary is in all respects personal property, and upon the death, insolvency or incapacity of an individual Beneficiary, such Beneficiary's Beneficial Interest shall pass to the legal representative of such Beneficiary. A Beneficiary shall have no title to, or any right to possess, manage or control, the Creditor Distribution Trust Fund, or any portion thereof or interest therein, except as expressly provided herein. No surviving spouse, heir, or devisee of any deceased Beneficiary shall have any right of dower, homestead or inheritance, or of partition, or any other right, statutory or otherwise, in the Creditor Distribution Trust Fund, but the whole title to all the Creditor Distribution Trust Fund shall be vested in the Creditor Trustee and the sole interest of the Beneficiaries shall be the rights and benefits provided to such persons under this Agreement and the Settlement Order.

5.3 Transferability. Interests in the Creditor Distribution Trust shall not be transferred or assigned by a holder of an interest in the Creditor Distribution Trust except by will, intestate succession or operation of law, provided, however, that a holder of such interests may abandon such interests back to the Creditor Distribution Trust at its sole discretion.

## ARTICLE VI

### **Distributions**

6.1 Distributions under the Agreement. The Creditor Trustee shall make Distributions to the Beneficiaries as holders of Allowed Trust Claims pursuant to the terms of this Agreement.

6.2 Distributions to Allowed Trust Claims. Each Beneficiary holding an Allowed Trust Claim will receive in full satisfaction, release, settlement and discharge of such Allowed Trust Claim and Beneficial Interest, its Pro Rata share of any proceeds of the Creditor Distribution Trust Fund remaining after the payment of the costs of administering the Creditor Distribution Trust.

6.3 Releases. Each Beneficiary receiving a distribution from the Creditor Trust Distribution Fund shall, upon receiving such distribution, be deemed to have granted the Third Party Release.

6.4 Distributions on Account of Disputed Trust Claims. Except as otherwise provided in a Final Order or as agreed by the relevant parties, distributions on account of Disputed Trust Claims that become Allowed after the Effective Date will be made by the Creditor Trustee at such periodic intervals as the Creditor Distribution Trust determines to be reasonably prudent.

6.5 No Distributions Pending Allowance. Notwithstanding anything in the Agreement to the contrary: (a) no distribution will be made with respect to any Disputed Trust Claim until such Trust Claim becomes an Allowed Trust Claim, and (b) unless determined otherwise by the Creditor Trustee, no distribution will be made to any Person that holds both (i)

an Allowed Trust Claim and (ii) a Disputed Trust Claim until such Person's Disputed Trust Claim has been resolved by settlement or Final Order.

6.6 Objection Deadline. The Creditor Trustee will file all objections to Disputed Trust Claims, and will file all motions to estimate Trust Claims under section 502(c) of the Bankruptcy Code, on or before the Trust Claims Objection Deadline: provided, however, that the Creditor Trustee may request that the Bankruptcy Court extend the Trust Claim Objection Deadline.

6.7 Creditor Trust Disputed Claims Reserve. On and after the Effective Date, the Creditor Distribution Trust will maintain, as part of the Creditor Trust Disputed Claims Reserves, such Cash as the Creditor Distribution Trust estimates to be reasonably necessary to satisfy the distributions that could be required to be made under the Plan.

6.8 Settling Disputed Trust Claims. The Creditor Trustee is authorized to settle, or withdraw any objections to, any Disputed Trust Claims following the Effective Date without need for approval of the Bankruptcy Court.

6.9 Distributions in Cash. The Creditor Trustee will make any required Cash payments to Beneficiaries holding Allowed Trust Claims: (a) in U.S. dollars by check, draft or warrant, drawn on a domestic bank, or by wire transfer from a domestic bank, and (b) by first-class mail (or by other equivalent or superior means as determined by the Creditor Trustee).

6.10 Unclaimed Distributions. Any Beneficiary holding an Allowed Trust Claim that does not assert a claim pursuant to this Agreement for an undeliverable distribution within 60 days after the last date on which a distribution was deliverable to such Beneficiary will have its claim for such undeliverable distribution deemed satisfied, waived and released and will be forever barred from asserting any such claim against the Creditor Distribution Trust and its respective property. In such cases, unclaimed distributions will revert to the Creditor Distribution Trust for disposition in accordance with the terms of this Agreement. Nothing contained in this Agreement, the Settlement Agreement, or the Settlement Order shall require the Creditor Trustee or any third party disbursing agent to attempt to locate any holder of any Beneficiary holding an Allowed Trust Claim.

6.11 Setoff. Nothing contained in the Agreement shall constitute a waiver or release by the Creditor Distribution Trust of any right of setoff or recoupment the Debtors, the Dissolving Debtors, the Acquired Debtors, the Estates, or the Creditor Distribution Trust, may have against any Beneficiary. To the extent permitted by applicable law, the Creditor Trustee may, but is not required to, set off or recoup against any Trust Claim and the payments or other distributions to be made under this Agreement in respect of such Trust Claim, claims of any nature whatsoever that arose before the Petition Date that the Dissolving Debtors or the Creditor Distribution Trust may have against the holder of such Trust Claim.

6.12 Taxes. To the extent permitted by section 346(f) of the Bankruptcy Code, the Creditor Trustee will be entitled to deduct and withhold any federal, state, or local taxes from any payments made with respect to holders of Beneficial Interests with Allowed Trust Claims, as appropriate. All such amounts withheld shall be treated as amounts distributed to such holder for

all purposes of this Agreement. The Creditor Trustee will be authorized to take all actions necessary to comply with applicable withholding and recording requirements. Notwithstanding any provision of this Agreement, each holder that has received a distribution of Cash under the this Agreement, the Settlement Agreement, and the Settlement Order will have sole and exclusive responsibility for the satisfaction or payment of any tax obligation imposed by any governmental unit, including income, withholding and other tax obligation, on account of such distribution. For tax purposes, distributions received in respect of any Trust Claim will be allocated first to the principal amount of such Trust Claim, with any excess allocated to unpaid accrued interest.

6.13 De Minimis Distributions. If any interim distribution under this Agreement to a Beneficiary holding an Allowed Trust Claim would be less than \$50.00, the Creditor Trustee may withhold such distribution until a final distribution is made to such holder. If any final distribution under the Plan to a Beneficiary holding an Allowed Trust Claim would be less than \$50.00, the Creditor Trustee may cancel such distribution.

## ARTICLE VII

### **Removal or Resignation of the Creditor Trustee**

7.1 Removal of the Creditor Trustee. The Creditor Trustee appointed pursuant to this Agreement, the Settlement Agreement, and the Settlement Order may be removed for “cause” upon order of the Bankruptcy Court after notice and opportunity for a hearing. For purposes of this Agreement, the term “cause” shall mean (a) the Creditor Trustee’s gross negligence, willful misconduct or willful failure to perform his duties under this Agreement and the Settlement Order or (b) the Creditor Trustee’s misappropriation or embezzlement of any Creditor Distribution Trust Fund. If a Creditor Trustee is removed for cause, such Creditor Trustee shall not be entitled to any accrued but unpaid fees, reimbursements or other compensation under this Agreement or otherwise. If the Creditor Trustee is removed by the Bankruptcy Court other than for “cause”, or is unwilling or unable to serve (a) by virtue of his inability to perform his duties under this Agreement due to death, illness, or other physical or mental disability, or (b) for any other reason whatsoever other than for “cause,” subject to a final accounting, the Creditor Trustee shall be entitled to all accrued and unpaid fees, reimbursement, and other compensation, to the extent incurred or arising or relating to events occurring before such removal, and to any out-of-pocket expenses reasonably incurred in connection with the transfer of all powers and duties and all rights to any successor Creditor Trustee.

7.2 Resignation of the Creditor Trustee. The Creditor Trustee may resign as Creditor Trustee at any time by giving prior written notice thereof to the Bankruptcy Court (the “Resignation Notice”); provided, however, that such resignation shall not be effective earlier than sixty (60) days after the date of such Resignation Notice, unless an earlier effective date is allowed by the Bankruptcy Court. If the Creditor Trustee resigns from his position hereunder, subject to a final accounting, he shall be entitled to all accrued unpaid fees, reimbursement, and other compensation to the extent incurred or arising or relating to events occurring before such resignation, and any out-of-pocket expenses reasonably incurred in connection with the transfer of all powers and duties to the successor Creditor Trustee.



7.3 Successor to the Creditor Trustee. In the event of the resignation, removal or death of the Creditor Trustee, the undersigned Chairperson of the Committee may designate a disinterested person to serve as the successor Creditor Trustee. A notice identifying any proposed successor Creditor Trustee with an affidavit of disinterestedness from such proposed successor Creditor Trustee will be filed with the Bankruptcy Court and served on any post-Confirmation service list. The successor Creditor Trustee, without any further act, will become fully vested with all of the rights, powers, duties, and obligations of his predecessor.

## ARTICLE VIII

### **Waiver**

8.1 No failure or delay of any party to exercise any right or remedy pursuant to this Agreement shall affect such right or remedy or constitute a waiver by such party of any right or remedy pursuant thereto. Resort to one form of remedy shall not constitute a waiver of alternative remedies.

## ARTICLE IX

### **Termination of the Agreement and Amendment**

9.1 Termination of the Agreement. This Agreement (other than Section 4.11, 4.15 and 4.16 and related provisions) shall terminate and the Creditor Distribution Trust shall dissolve and terminate and be of no further force or effect upon the earlier to occur of (a) the final distribution of all monies in accordance with the terms of this Agreement, the Settlement Agreement, and the Settlement Order and (b) entry of a Final Order of the Bankruptcy Court terminating and dissolving the Creditor Distribution Trust as provided under the terms of this Agreement. The Creditor Distribution Trust will terminate no later than the third (3rd) anniversary of the Effective Date, provided, however, that, on or prior to such termination, the Bankruptcy Court, upon motion by the Creditor Trustee or a party in interest, may within the six-month period prior to the third (3rd) anniversary (or within the six-month period prior to the end of any extension period), extend the term of the Creditor Distribution Trust for a fixed period if it is necessary complete the distribution of the Creditor Distribution Trust Fund), provided, however, that the aggregate of all such extensions shall not exceed two (2) years, unless the Creditor Trustee receives a favorable ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the Creditor Distribution Trust as a grantor trust for federal income tax purposes. The Creditor Trustee will not unduly prolong the duration of the Creditor Distribution Trust and will at all times endeavor to resolve, settle or otherwise dispose of all Trust Claims, to effect distributions to Beneficiaries holding Allowed Trust Claims in accordance with the terms hereof and to terminate the Creditor Distribution Trust as soon as practicable in a prompt and timely fashion. In the event that the Creditor Trustee elects to terminate the Creditor Distribution Trust, he shall provide twenty (20) day notice thereof to the Office of United States Trustee and file such notice with the Bankruptcy Court and upon such termination, the Creditor Trustee shall cease to act as the Creditor Trustee such that the Creditor Trustee shall not have any further duties or responsibilities under the Agreement or otherwise.

9.2 Amendment of the Agreement. Except as otherwise set forth herein, any provisions of this Agreement may be amended, modified, terminated, revoked, or altered only in writing pursuant to an Order of the Bankruptcy Court. Notwithstanding this Section 9.2, any amendments to this Agreement shall not be inconsistent with the Plan or the purpose and intention of the Creditor Distribution Trust to distribute in an expeditious but orderly manner the Creditor Distribution Trust Fund in accordance with Treasury Regulations Section 301.7701-4(d) this Agreement, the Settlement Agreement, and the Settlement Order.

## ARTICLE X

### Miscellaneous

10.1 Intention of Parties to Establish the Creditor Distribution Trust. This Agreement is not intended to create, and shall not be interpreted as creating, an association, partnership or joint venture of any kind. It is intended as a trust to be governed and construed in all respects as a trust.

10.2 Filing Documents. A copy of this Agreement and all amendments thereof shall be maintained in an office or residence of the Creditor Trustee and shall be available for inspection.

10.3 Books and Records.

(a) Subject to mutually acceptable confidentiality arrangements, for the later of (i) six (6) months after the Effective Date, and (ii) the completion of the Wind Down, the Dissolving Debtors shall provide reasonable access to the Creditor Distribution Trust to the books and records of the Dissolving Debtors in the Dissolving Debtors' possession relating to Second Lien Lender Claims [Class 6 under the Plan] and U.S. General Unsecured Claims [Class 7A under the Plan], and shall request from third parties, including the Acquired Debtors, to the extent the Dissolving Debtors are permitted to do so under the Plan Funding Agreement and the TSA, or professionals possessing such books and records (including computer generated or computer maintained books, records and data, legal and accounting files maintained by any professional of the Debtors and other of the Debtors' books and records maintained by or in the possession of third parties), to permit access to such books and records as may be reasonably requested by the Creditor Trustee, provided that the Creditor Trustee shall only request such books and records or access thereto to the extent reasonably necessary to the Creditor Trustee's performance of his duties hereunder. Notwithstanding anything to the contrary contained herein, (i) the DD Rep shall not be required to expend more than five (5) hours per month responding to the requests of the Creditor Trustee, provided, however, the time spent requesting access to the books and records from the Acquired Debtors shall not be included in the calculation of the five (5) hours per month limit, and (ii) the obligations of the Dissolving Debtors and the Plan Administrator under this Agreement shall not require any Dissolving Debtor or the Plan Administrator to incur any out-of-pocket costs or expend any monies. Any request made by the Creditor Trustee that requires the incurrence of any out-of-pocket costs or expenditure of any monies by the Dissolving Debtors shall not be required to be undertaken unless the Creditor Trustee has agreed to pay for such costs or expenses out of the Creditor Distribution Trust Fund.

(b) The Creditor Distribution Trust will maintain reasonably good and sufficient books and records in respect to matters related to the Creditor Distribution Trust Functions. The Creditor Trustee may, upon notice to the Dissolving Debtors and without Bankruptcy Court approval, destroy any documents that each believes are no longer required to effectuate the terms and conditions of the Settlement Agreement, Settlement Order, and this Agreement. Upon dissolution of the Creditor Distribution Trust, unless otherwise ordered by the Court, the Creditor Trustee may destroy or otherwise dispose of all records maintained by them.

ix. Tax Identification Numbers. The Creditor Trustee will require any Beneficiary holding an Allowed Trust Claim to furnish to the Creditor Trustee, (i) its employer or taxpayer identification number as assigned by the Internal Revenue Service, and (ii) such other information, records or documents necessary to satisfy the Creditor Trustee's tax reporting obligations (including certificates of non-foreign status). Distribution to any Beneficiary is conditioned upon receipt of such identification number and requested documents.

10.4 U.S. Trustee Fees and Post-Confirmation Reports. After the Effective Date, the Dissolving Debtors shall pay any statutory fees due for the post-Effective Date period pursuant to 28 U.S.C. § 1930(a)(6) and such fees shall be paid until entry of a final decree or an order converting or dismissing the Bankruptcy Case. After the Effective Date, Creditor Trustee will file post-confirmation status reports in the form of a post-confirmation operating report acceptable to the Office of the United States Trustee for Region 2, on a quarterly basis up to the entry of a final decree closing the Bankruptcy Case or termination of the Creditor Distribution Trust whichever occurs first. Notwithstanding the foregoing, the Creditor Trustee must reimburse the Dissolving Debtors for any statutory fees due relating to any distributions made by the Creditor Distribution Trust. Prior to the completion of the Wind Down, if a Dissolving Debtors provides written notice to the Creditor Trustee of its intention to close the applicable chapter 11 case, the Creditor Trustee may request that such chapter 11 case remain open, provided that the Creditor Distribution Trust shall thereafter be responsible for all statutory fees relating to the applicable Dissolving Debtor, until such time that the Creditor Trustee provides written notice to the applicable Dissolving Debtor that it may close the case.

#### 10.5 Privilege.

(a) The Committee's counsel and financial advisor shall provide to the Creditor Trustee (or such professionals designated by the Creditor Trustee) documents and other information gathered, and relevant work product developed, during the Chapter 11 Cases, provided that the provision of any such documents and information shall be without waiver of any evidentiary privileges, including without limitation the attorney-client privilege, work-product privilege or other privilege or immunity attaching to any such documents or information (whether written or oral).

(b) Solely to the extent necessary for completion of the Creditor Distribution Trust Functions, the attorney-client privilege, work product doctrine or other privileges or immunities inuring to the benefit of the Dissolving Debtors or attaching to documents or communications of the Dissolving Debtors may be transferred to the Creditor Distribution Trust and shall be shared between the Creditor Trustee and the Dissolving Debtors. The Creditor Trustee is authorized to assert or, with consent of the Dissolving Debtors, waive any such

privilege or doctrine, as necessary or appropriate for the administration of the Creditor Trust; provided that, to the extent any such privilege or doctrine is waived in connection with information requested of any professional previously employed by the Debtors, the Creditor Trustee agrees that he shall obtain the consent of the Dissolving Debtors prior to waiving any privilege.

10.6 Governing Law. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

10.7 Severability. If any one or more of the provisions herein, or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect, and of the remaining provisions, shall not be in any way impaired or affected. In such event, there shall be added as part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable. The effective date of the added provision shall be the date upon which the prior provision was held to be invalid, illegal or unenforceable.

10.8 Entire Agreement. This Agreement (including the recitals), the Settlement Agreement, and the Settlement Order constitute the entire agreement of the parties and there are no representations, warranties, covenants, or obligations except as set forth herein or therein. This Agreement, the Settlement Agreement, and the Settlement Order, supersede all prior and contemporaneous agreements, understandings, negotiations, and discussions, written or oral, of the parties hereto, relating to any transaction contemplated hereunder. Except as otherwise specifically provided herein, nothing in this Agreement is intended or shall be construed to confer upon or to give any Person other than the Beneficiaries and the parties hereto and their respective heirs, administrators, executors, successors, and assigns any rights or remedies under or by reason of this Agreement.

10.9 Jurisdiction; Venue.

(a) Each party hereto irrevocably agrees that any suit, action or proceeding with respect to this Agreement shall be brought in the United States Bankruptcy Court for the Southern District of New York, and by execution and delivery of this Agreement, each party (a) irrevocably submits to each such jurisdiction and venue, (b) waives, to the fullest extent permitted by law, any objection that it may have to the laying of the venue of any such suit, action or proceeding brought in such court has been brought in an inconvenient forum, and (c) agrees that final judgment in any such suit, action or proceeding brought in such a court shall be conclusive and binding upon it and may be enforced in any court to the jurisdiction of which such party is subject by a suit upon such judgment, provided that service of process is effected as otherwise permitted by law.

(b) The Bankruptcy Court shall have jurisdiction over all matters arising in, arising under, or related to the Chapter 11 Cases and this Agreement, including but not limited to

(i) to ensure that distributions to holders of Allowed Trust Claims are accomplished as provided herein, and (ii) to consider Trust Claims or the allowance, classification, priority, compromise, estimation, or payment of Trust Claims.

10.10 Notices. Unless otherwise expressly specified or permitted by the terms hereof, any notice, request, submission, instruction or other document to be given hereunder by a party shall be in writing and shall be deemed to have been given, (a) when received if given in person, (b) upon delivery, if delivered by a nationally known commercial courier service providing next day delivery service (such as Federal Express), or (c) upon delivery, or refusal of delivery, if deposited in the U.S. mail, certified or registered mail, return receipt requested, postage prepaid:

**If to the Creditor Trustee, addressed as follows:**

[•]

With a copy to his counsel:

[•]

or to such other individual or address as a party hereto may designate for itself by notice given as herein provided.

10.11 WAIVER OF JURY TRIAL. EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY.

10.12 Exculpatory Provisions and Survival Thereof. Whether or not expressly therein so provided, any and all exculpatory provisions, immunities and indemnities, and any limitations and negations of liability contained in this Agreement, in each case inuring to the benefit of the Creditor Trustee and the Trust Professionals, Plan Administrator, Dissolving Debtors and their respective employees, agents and advisors, shall survive (a) the termination or revocation of this Agreement, and (b) as to any person who has served as Creditor Trustee, the resignation or removal of such person as Creditor Trustee.

10.13 Conflicts. In the event of any inconsistency between the Plan or Confirmation Order, on the one hand, and the Settlement Agreement, Settlement Order or Agreement, on the other, the terms and provisions of the Settlement Agreement, Settlement Order and this Agreement shall govern. In the event of any inconsistency between the Settlement Agreement or this Agreement, the terms and provisions of this Agreement shall govern.

10.14 Headings. The headings of the various Articles and Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

10.15 Successors and Assigns. All covenants and agreements contained herein shall, as applicable, be binding upon, and inure to the benefit of the Committee, the Creditor Trustee and its successors, the Dissolving Debtors and its successors, all as herein provided.

10.16 Separate Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the undersigned 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.

CREDITOR TRUST:

By: \_\_\_\_\_  
Ted Gavin, CTP, Managing Director of  
GAVIN/SOLMONESE LLC in his capacity as  
Creditor Trustee of the SquareTwo Unsecured Creditor  
Distribution Trust

DISSOLVING DEBTORS:

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

COMMITTEE:

By: \_\_\_\_\_