

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In re:)	
)	Chapter 11
LAVIE CARE CENTERS, LLC, ¹)	Case No. 24-55507 (PMB)
)	
Debtors.)	(Jointly Administered)
)	
)	Related to Docket No. 481
)	

NOTICE OF FILING OF GUC TRUST AGREEMENT WITH RESPECT TO THE DEBTORS’ SECOND AMENDED COMBINED DISCLOSURE STATEMENT AND JOINT CHAPTER 11 PLAN OF REORGANIZATION

PLEASE TAKE NOTICE that, on October 1, 2024, LaVie Care Centers, LLC and certain of its affiliates and subsidiaries (collectively, the “Debtors”) filed the *Debtors’ Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization* [Docket No. 481] (as amended, modified, or supplemented and including all exhibits and supplements thereto, the “Plan”)² in the United States Bankruptcy Court for the Northern District of Georgia (the “Court”).

PLEASE TAKE FURTHER NOTICE that the Debtors hereby file the form GUC Trust Agreement, attached hereto as **Exhibit A** (as amended, modified, or supplemented, the “GUC Trust Agreement”), in support of confirmation of the Plan. The GUC Trust Agreement is integral to, part of, and incorporated by reference into the Plan and remains subject to ongoing negotiations among the Debtors, the Official Committee of Unsecured Creditors, the DIP Lenders, the Plan Sponsor, the Omega Parties, and other interested parties with respect thereto. The GUC Trust Agreement has not yet been approved by the Court. The Debtors reserve all rights to amend, revise, or supplement the GUC Trust Agreement at any time before the Effective Date, or any such other date in accordance with the Plan, the Confirmation Order, or any other order of the Court. The GUC Trust Agreement or its amendments are subject to certain consent and approval rights to the extent provided in the Plan.

¹ The last four digits of LaVie Care Centers, LLC’s federal tax identification number are 5592. There are 282 Debtors in these chapter 11 cases, which are being jointly administered for procedural purposes only. A complete list of the Debtors and the last four digits of their federal tax identification numbers are not provided herein. A complete list of such information may be obtained on the website of the Debtors’ claims and noticing agent at <https://www.veritaglobal.net/LaVie>. The location of LaVie Care Centers, LLC’s corporate headquarters and the Debtors’ service address is 1040 Crown Pointe Parkway, Suite 600, Atlanta, GA 30338.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.



PLEASE TAKE FURTHER NOTICE that the Plan, the GUC Trust Agreement, and other documents and materials filed in the above-captioned chapter 11 cases may be examined by any party-in-interest at the Debtors' case website (<https://www.veritaglobal.net/LaVie>). Such documents may also be obtained by written request to Verita Global (the "Claims and Noticing Agent") by clicking the "Submit an Inquiry" option at <https://veritaglobal.net/lavie/inquiry> or by telephoning the Claims and Noticing Agent at (877) 709-4750 (toll-free, U.S. or Canada) or (424) 236-7230 (International).

Dated: Atlanta, Georgia
October 21, 2024

MCDERMOTT WILL & EMERY LLP

/s/ Daniel M. Simon

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Counsel for the Debtors and Debtors-in-Possession

EXHIBIT A

GUC Trust Agreement

[Form attached]

GUC TRUST AGREEMENT

This liquidating trust agreement, dated as of November [●], 2024 (the “Agreement”), is entered into by and between the Debtors (as hereinafter defined) and [●], as the trustee (the “GUC Trustee”) of the GUC Trust (as defined in the Debtors’ Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization [Docket No. 481] (as may be amended from time to time, the “Plan”)).¹

RECITALS

WHEREAS, on June 2-3, 2024 (the “Petition Date”), LaVie Care Centers, LLC and 281 of its affiliates (the “Debtors”) filed voluntary petitions in the United States Bankruptcy Court for the Northern District of Georgia (the “Bankruptcy Court”) for relief under chapter 11 of the United States Bankruptcy Code;

WHEREAS, on October 1, 2024, the Debtors filed the Plan with the Bankruptcy Court;

WHEREAS, by the Confirmation Order dated [●], 2024 [Docket No. [●]], the Bankruptcy Court confirmed the Plan;

WHEREAS, the Plan, among other things, provides for the creation of the GUC Trust, for the primary purpose of monetizing and distributing the GUC Trust Assets to the Holders of Allowed General Unsecured Claims in Class 6A, Class 6B, and Class 6C (the “Beneficiaries”) under the Plan;

WHEREAS, the purpose of the GUC Trust is to (a) liquidate or otherwise monetize the non-Cash GUC Trust Assets; (b) reconcile and object to Claims, as provided for in the Plan and the Unliquidated Claim Procedures; and (c) make Distributions to the Beneficiaries in accordance with the Plan and with Treasury Regulations Section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating trust purpose of the GUC Trust;

WHEREAS, the GUC Trust is to be administered by the GUC Trustee;

WHEREAS, the GUC Trustee has accepted such appointment and has agreed to serve in such capacity under the terms and conditions set forth in the Plan and herein;

WHEREAS, the GUC Trust is intended to qualify as a liquidating trust within the meaning of United States Treasury Regulations (the “Treasury Regulations”) Section 301.7701-4(d), and this Agreement, the GUC Trust, the Confirmation Order, and the Plan are intended to comply with the advance ruling guidelines contained in Revenue Procedure 94-45;

¹ Capitalized terms not otherwise defined herein shall have the meanings set forth in the Plan.

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

ARTICLE I

DEFINITIONS

Section 1.1 *Certain Terms Defined.* Unless otherwise defined herein, capitalized terms shall have the meaning ascribed to such terms in the Plan. As used herein, the following terms have the respective meanings specified below:

“Available Cash” shall mean all Cash held in a Silo or by the GUC Trust from time to time on and after the Effective Date, net of amounts reasonably necessary to satisfy all known and anticipated GUC Trust Obligations.

“Claim Objection” shall mean an objection, motion, adversary proceeding or lawsuit challenging the validity, priority, and amount of any Claim, including, without limitation, requests to estimate, recharacterize or subordinate such Claim that has been filed or that may be filed with the Bankruptcy Court.

“DivestCo Silo” shall mean the GUC Trust Assets consisting of the DivestCo GUC Allocation.

“GUC Trust Obligations” shall mean any and all financial obligations of the GUC Trust other than its obligations to Beneficiaries.

“Joint & Several OpCo Silo” shall mean the GUC Trust Assets consisting of the Joint & Several OpCo GUC Allocation.

“OpCo Silo” shall mean the GUC Trust Assets consisting of the OpCo GUC Allocation.

“Silo” shall mean any of the OpCo Silo, DivestCo Silo, or Joint & Several OpCo Silo.

Section 1.2 *Interpretation.* When a reference is made in this Agreement to a section or article, such reference shall be to a section or article of this Agreement unless otherwise clearly indicated to the contrary.

(a) Whenever the words “include” “includes” or “including” are used in this Agreement they shall be deemed to be followed by the words “without limitation.”

(b) The words “hereof,” “herein” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement, and article, section, paragraph, exhibit and schedule references are to the articles, sections, paragraphs, exhibits and schedules of this Agreement unless otherwise specified.

(c) The meaning assigned to each term defined herein shall be equally applicable to both the singular and the plural forms of such term. Where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning.

(d) A reference to any party to this Agreement or any other agreement or document shall include such party's successors and permitted assigns.

(e) A reference to any legislation or to any provision of any legislation shall include any amendment to, and any modification or reenactment thereof, any legislative provision substituted therefor and all regulations and statutory instruments issued thereunder or pursuant thereto.

(f) When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

(g) Any reference in this Agreement to "\$" shall mean U.S. dollars.

ARTICLE II

CREATION/TERMINATION OF LIQUIDATION TRUST

Section 2.1 *Creation of the GUC Trust.* The GUC Trust is hereby constituted and created, in accordance with Treasury Regulations Section 301.7701-4(d) and Revenue Procedure 94-45, to (i) contest, object to, litigate, compromise, or settle Claims in accordance with the Plan and Unliquidated Claim Procedures, (ii) liquidate and monetize the non-Cash GUC Trust Assets; (iii) make Distributions of Available Cash to the Beneficiaries, in all cases in accordance with Article VIII of the Plan; and (v) take such other action consistent with the terms of this Agreement, the Plan, the Confirmation Order, and any other agreement executed by the GUC Trust and/or the GUC Trustee on behalf of the GUC Trust pursuant to the Plan, as is necessary and appropriate to administer and implement the Plan and this Agreement.

(a) *Purpose of GUC Trust.* The GUC Trust is established for the primary purpose of monetizing and distributing the GUC Trust Assets to the Beneficiaries, in accordance with the Plan and with Treasury Regulations Section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the GUC Trust. Accordingly, subject to the terms and conditions of this Agreement, the Plan, and the Confirmation Order, the GUC Trustee shall, in an expeditious but orderly manner, liquidate and convert to Cash the non-Cash GUC Trust Assets, make timely Distributions to the Beneficiaries, and not unduly prolong the duration of the GUC Trust. The GUC Trustee shall be charged with liquidating the non-Cash GUC Trust Assets in the most cost-effective manner possible in the shortest reasonable time, with regard for the risk that undue haste may reduce the liquidation proceeds of any non-Cash portion of the GUC Trust Assets, and in all instances in accordance with the Plan and the Confirmation Order.

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

Section 2.2 *Appointment and Acceptance of the Liquidating Trustee.* [●] is hereby appointed as the GUC Trustee, to act and serve as the trustee of the GUC Trust. [●] hereby accepts the appointment as the trustee of the GUC Trust, and, in such capacity, agrees to hold the GUC Trust Assets in trust, in accordance with the terms of this Agreement, the Plan, and the Confirmation Order, and to administer the GUC Trust pursuant to the terms and conditions of this Agreement, the Plan, and the Confirmation Order.

Section 2.3 *Name of the GUC Trust.* The trust established through the Plan, the Confirmation Order, and pursuant to this Agreement shall bear the name “LaVie GUC Trust.” In connection with the exercise of the GUC Trustee’s powers under this Agreement, the GUC Trustee may use this name or such variation thereof as the GUC Trustee, in the GUC Trustee’s discretion, may determine.

Section 2.4 *Transfer of Assets to the GUC Trust.* Pursuant to the Plan and the Confirmation Order, on the Effective Date, all right, title, and interest in and to the GUC Trust Assets shall be deemed to have been irrevocably transferred, assigned, conveyed and delivered by the Debtors to the GUC Trust free and clear of all encumbrances, liens and Claims of any Person, but subject to the provisions of this Agreement, the Plan, and the Confirmation Order, in trust for the benefit of the Beneficiaries for the uses and purposes stated therein and herein. The GUC Trustee hereby accepts all such GUC Trust Assets free and clear of all Claims and Interests, except as provided in this Agreement, the Plan, the Confirmation Order, and agrees to hold and administer the GUC Trust Assets for the benefit of the Beneficiaries, subject to the terms and conditions of this Agreement, the Plan, and the Confirmation Order. Upon the transfer of the GUC Trust Assets, the GUC Trust shall succeed to all of the Debtors’ right, title, and interest in and to the GUC Trust Assets, and the Debtors will have no further interest in or with respect to the GUC Trust Assets or the GUC Trust.

Section 2.5 *Maintenance of Cash and Proceeds.* Cash in the GUC Trust shall be invested in demand-and-time deposits in banks or other savings institutions, or in other temporary, liquid investments, such as Treasury bills, consistent with the liquidity needs of the GUC Trust as determined by the GUC Trustee, in accordance with Bankruptcy Code section 345, unless the Bankruptcy Court otherwise requires; *provided, however*, that such investments are investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulations Section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

Section 2.6 *Fiscal Year*. The fiscal year of the GUC Trust shall be the calendar year.

Section 2.7 *Termination of Liquidating Trust*. The GUC Trust may be dissolved or otherwise terminated at such time as (i) all Disputed Claims have been resolved; (ii) all of the GUC Trust Assets have been liquidated, resolved, or abandoned pursuant to, and in accordance with, the Plan and this Agreement; (iii) all duties and obligations of the GUC Trust under the Plan, the Confirmation Order, and this Agreement have been fulfilled; (iv) all Distributions required under the Plan and this Agreement have been made; (v) the GUC Trustee shall have filed a notice with the Bankruptcy Court that the foregoing conditions (i) through (iv) have been met; and (v) the Chapter 11 Cases have been closed; *provided, however*, in no event shall the GUC Trust be dissolved later than five (5) years from the Effective Date unless the Bankruptcy Court determines that a fixed period extension (not to exceed two (2) years, including any prior extensions) is necessary to facilitate or complete the recovery and liquidation of the GUC Trust Assets. Subject to the requirements of the preceding sentence, upon dissolution or termination of the GUC Trust, any remaining GUC Trust Assets may be transferred by the GUC Trustee to a charitable organization(s) in accordance with the terms of the Plan.

Section 2.8 *Creation of the Disputed Claim Reserve*. The GUC Trustee may establish a reserve for payment of Disputed Claims (the “Disputed Claim Reserve”). The amount held back in the Disputed Claim Reserve shall be equal to the amount necessary to satisfy the Distributions that would be required on account of such Disputed Claims all such Disputed Claims were subsequently to be Allowed.

Section 2.9 *Status of GUC Trust*. The GUC Trust will be the successor-in-interest to the Debtors with respect to the GUC Trust Assets. The GUC Trustee shall step into the shoes of the Debtors when making Distributions to the Beneficiaries, objecting to any Disputed Claims, or pursuing any D&O Claims. The GUC Trustee, on behalf of the GUC Trust, will be the representative of the Debtors’ estates and will have the rights and powers provided in the Bankruptcy Code in addition to any rights and powers granted in this Agreement and in the Plan and Confirmation Order when making Distributions to the Beneficiaries, objecting to any Disputed Claims, or pursuing any D&O Claims.

ARTICLE III

BENEFICIARIES

Section 3.1 *GUC Trust Interests*. Beneficiaries that are Holders of Class 6A Claims shall have undivided beneficial interests in, and only in, the OpCo Silo. Beneficiaries that are Holders of Class 6B Claims shall have undivided beneficial interests in, and only in, the DivestCo Silo. Beneficiaries that are Holders of Class 6C Claims shall have undivided beneficial interests in, and only in, the Joint & Several OpCo Silo. The ownership of a beneficial interest in any GUC Trust Assets hereunder shall not entitle any Beneficiary to (a) any title in or to the GUC Trust Assets, (b) any right to call for a partition or division of GUC Trust Assets, (c) require an accounting, or (d) any management of or control of the GUC Trust or the GUC Trust Assets.

Section 3.2 *No Suits by Beneficiaries.* No Beneficiary shall have any right by virtue of any provision of this Agreement to institute any action or proceeding, at law or in equity, against any Person, including the GUC Trustee, with respect to the GUC Trust Assets, any cause of action, or Claims Objections; *provided, however,* that a Beneficiary shall be permitted to institute in the Bankruptcy Court an action or proceeding, in law or in equity, against the GUC Trustee with respect to this Agreement, the Plan, the Confirmation Order, or the GUC Trust Assets for acts or omissions arising from the GUC Trustee's gross negligence, actual fraud, or willful misconduct.

Section 3.3 *Recording of GUC Trust Interests.* As soon as practicable after the creation of the GUC Trust, the GUC Trustee or a duly authorized agent of the GUC Trustee shall record all ownership and permitted transfers (if any) of interests in GUC Trust Assets in a register (the "Register") maintained by the GUC Trustee (or a duly authorized agent of the GUC Trustee) for such purpose.

Section 3.4 *Non-Transferability of Interests in GUC Trust Assets.* Interests in the GUC Trust Assets shall not be certificated and no physical certificates shall be issued representing such interests. Interests in the GUC Trust Assets shall not be transferable, assignable, pledged, sold, or hypothecated, in whole or in part, except with respect to a transfer by operation of law, by will or under the laws of descent and distribution. Any such transfer, however, will not be effective until and unless the GUC Trustee receives written notice of and approves such transfer as satisfying the limited exceptions to transfer in the preceding sentence. Other than with respect to transfers by operation of law, will or under the laws of descent and distribution, neither the GUC Trustee nor any Persons affiliated with the GUC Trust or the Debtors will take any action to cause, facilitate or encourage any trading in or transfer of interests in the GUC Trust Assets or support or take any action to support the establishment of an active trading market for such interests.

Section 3.5 *Notice of Change of Address; Undeliverable Property.* Each Beneficiary shall be responsible for providing the GUC Trustee with written notice of any change in address. The GUC Trustee is not obligated to make any effort to determine the correct address of a Beneficiary.

(a) *Undeliverable and Unclaimed Property.* Subject to the Plan and the Confirmation Order, all Distributions under the Plan and this Agreement shall be made to each Beneficiary at the address of such Beneficiary as listed on the Schedules as of the Distribution Record Date, unless the GUC Trustee has been notified in writing of a change of address, including, without limitation, by the timely filing of a Proof of Claim by such Beneficiary that provides an address for such Beneficiary different from the address reflected on the Schedules. In the event that any Distribution to any such Beneficiary is returned as undeliverable and a new address is not provided within 90 days of the issuance of such Distribution, or in the event an unreturned distribution check has not been cashed within 90 days of issuance, then the GUC Trustee may cancel any outstanding checks and return the funds for Distribution to the same Silo from which such Distribution came, automatically and without need for a further order by the Bankruptcy Court, for Distribution in accordance with the Plan; and such Beneficiary shall, in the GUC Trustee's sole discretion, not be entitled to any further distribution from the GUC Trust.

(b) *Failure to Provide Requested Tax Identification Information.* If a Beneficiary fails to complete and return to the GUC Trustee the appropriate Form W-8 or Form W-9 (if applicable) within ninety (90) days of a request by the GUC Trustee for the completion and return to it of such form, then such Beneficiary shall be deemed to have forfeited its right to any current, reserved and future Distributions from the GUC Trust. The forfeited Distributions shall revert to the GUC Trust automatically and without need for a further order by the Bankruptcy Court for Distribution in accordance with the Plan.

Section 3.6 *Notices.* The GUC Trustee shall distribute such notices to the Beneficiaries as the GUC Trustee determines are necessary or desirable.

ARTICLE IV

TAX AND SECURITIES MATTERS

Section 4.1 *Income Tax Status.* The GUC Trust is established for the sole purpose of liquidating, monetizing, and distributing the GUC Trust Assets, and any proceeds therefrom, in accordance with Treasury Regulations Section 301.7701-4(d) and Revenue Procedure 94-45, with no objective to continue or engage in the conduct of a trade or business. It is intended that the GUC Trust qualify as a grantor trust pursuant to Sections 671-677 of the United States Internal Revenue Code of 1986, as amended (the “Code”), or any successor provisions thereof for federal income tax purposes, and that the Beneficiaries are treated as grantors. To the extent consistent with Revenue Procedure 94-45 and not otherwise inconsistent with this Agreement, this Agreement shall be construed so as to satisfy the requirements for liquidating trust status. Except with respect to the GUC Trust Assets allocable to the Disputed Claim Reserve, (i) the Beneficiaries will be treated as the grantors, deemed owners and beneficiaries of the GUC Trust, and (ii) any items of income, gain, loss, deduction and credit of the GUC Trust shall be allocated for United States federal income tax purposes to the Beneficiaries. The GUC Trust shall at all times be administered so as to constitute a domestic trust for United States federal income tax purposes.

Section 4.2 *Treatment of GUC Trust Assets Transfer.* The transfer of the GUC Trust Assets will be treated for United States federal income tax purposes, including any amounts or other assets subsequently transferred to the GUC Trust (but only at such time as actually transferred), as a transfer (other than amounts set aside as Disputed Claim Reserves if the Disputed Claim Reserves are subject to any entity level tax) to the Beneficiaries, followed by a deemed transfer from such Beneficiaries to the GUC Trust in exchange for the GUC Trust interests; *provided, however,* that the GUC Trust Assets will be subject to any post-Effective Date obligations incurred by the GUC Trust relating to monetizing GUC Trust Assets, reconciling Claims and making Distributions. Accordingly, the Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the GUC Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes. All items of income, gain, loss, deduction and credit will be included in the income of the Beneficiaries as if such items had been recognized directly by the Beneficiaries in the proportions in which they own the GUC Trust Interests.

Section 4.3 *Valuation.* Except to the extent definitive guidance from the Internal Revenue Service or a court of competent jurisdiction (including the issuance of applicable Treasury Regulations or the receipt by the GUC Trustee of a private letter ruling if the GUC Trustee so requests one) indicates that such valuation is not necessary to maintain the treatment of the GUC Trust as a liquidating trust for purposes of the Code and applicable Treasury Regulations, as soon as reasonably practicable after the GUC Trust Assets are transferred to the GUC Trust, the GUC Trustee shall make a good faith valuation of the GUC Trust Assets. Such valuation shall be made available from time to time to all parties to this Agreement and to all Beneficiaries, to the extent relevant to such parties for tax purposes, and subject to any lawful objection thereto, shall be used consistently by such parties for all United States federal income tax purposes, including for determining tax basis and gain or loss. For the avoidance of doubt, the GUC Trustee's final valuation shall not be binding on the Beneficiaries, the GUC Trust or the GUC Trustee for any purpose other than United States federal income tax purposes, and the valuation shall not impair or prejudice any rights, claims, powers, duties, authority, and privileges of the Beneficiaries, the GUC Trust or the GUC Trustee except with respect to United States federal income tax purposes. The GUC Trustee also shall file (or cause to be filed) any other statements, returns or disclosure relating to the GUC Trust that are required by governmental unit.

Section 4.4 *Tax Basis.* For all United States federal income tax purposes, a Distribution will be allocated to the principal amount of a Claim first and then, to the extent the Distribution exceeds the principal amount of the Claim, to the portion of the Claim representing accrued but unpaid interest.

Section 4.5 *Tax Identification Numbers.* Subject to the Plan and the Confirmation Order, the GUC Trustee may require any Beneficiary to furnish to the GUC Trustee necessary information for tax and reporting purposes, including such Beneficiary's employer or taxpayer identification number as assigned by the Internal Revenue Service or the Social Security Administration, as the case may be, and to complete any related documentation (including but not limited to a Form W-8 or Form W-9). The GUC Trustee may condition any Distribution to any Beneficiary upon the receipt of such information and the receipt of such other documents as the GUC Trustee reasonably requests.

Section 4.6 *Withholding Taxes.* Subject to the Plan and the Confirmation order, any federal, state, or local withholding taxes or other amounts required to be withheld under applicable law shall be deducted from Distributions hereunder and treated as amounts distributed to such Beneficiaries for all purposes under this Agreement, the Plan, and the Confirmation Order. All Beneficiaries shall be required to provide any information necessary to effect the withholding of such taxes. If the GUC Trustee fails to withhold in respect of amounts received or distributable with respect to any Beneficiary and the GUC Trustee is later held liable for the amount of such withholding, such Beneficiary shall reimburse the GUC Trustee for such liability.

Section 4.7 *Tax Returns.* The GUC Trustee shall file United States federal income tax returns for the GUC Trust as a grantor trust in accordance with Treasury Regulations Section 1.671-4 and report, but not pay tax on, the GUC Trust's tax items of income, gain, loss, deduction and credit, other than such tax items allocable to the Dispute Claim Reserve (the "Reserve Tax Items"). Each Beneficiary shall report such Reserve Tax Items on its United States federal income tax returns and pay any resulting United States federal income tax liability. In

addition, the GUC Trust shall file in a timely manner such other tax returns, including any state and local tax returns, as are required by applicable law and pay any taxes shown as due thereon. Within a reasonable time following the end of the taxable year, the GUC Trust shall send to each Beneficiary a separate statement setting forth the Beneficiary's share of Reserve Tax Items and will instruct each such Beneficiary to report such items on its applicable income tax return. The GUC Trust may provide each Beneficiary with a copy of the Form 1041 for the GUC Trust (without attaching any other Beneficiary's Schedule K-1 or other applicable information form) along with such Beneficiary's Schedule K-1 or other applicable information form in order to satisfy the foregoing requirement.

Section 4.8 *Expedited Determination of Taxes.* The GUC Trustee may request an expedited determination of taxes of the GUC Trust under applicable law for all returns filed for, or on behalf of, the GUC Trust for all taxable periods through the dissolution of the GUC Trust.

Section 4.9 *Tax Treatment of Dispute Claim Reserves.* Notwithstanding any other provision of this Agreement to the contrary, subject to definitive guidance from the Internal Revenue Service or a court of competent jurisdiction to the contrary, with respect to any GUC Trust Assets allocable to the Disputed Claim Reserves, the GUC Trustee may in the GUC Trustee's discretion, for United States federal income tax purposes (and to the extent permitted by law, for state and local income tax purposes), either (i) make an election to treat such assets as held in a "disputed ownership fund" within the meaning of Treasury Regulations Section 1.468B-9, or (ii) treat such assets as held in a discrete trust (which may consist of separate and independent shares) in accordance with the trust provisions of the Code (Section 641, *et seq.*). In either case, the GUC Trustee shall treat as taxable income or loss of such fund or separate trust with respect to each taxable year, the portion of the taxable income or loss and other tax items for such year that would have been allocated to holders of Disputed Claims had such Claims been allowed on the Effective Date (but only for the portion of the taxable year with respect to which such Claims are unresolved). Any separate entity level tax incurred with respect to the Disputed Claim Reserves shall be paid by the GUC Trustee out of the Disputed Claim Reserves. All parties (and the Beneficiaries) must report consistently with the income tax treatment determined by the GUC Trustee in the GUC Trustee's discretion.

Section 4.10 *Securities Laws.* It is the intention of the parties hereto that the rights of the Beneficiaries under this Agreement and the interests in the Liquidating Trust Assets do not constitute "securities" under the Securities Act of 1933, the Securities Exchange Act of 1934, or any state securities law; however, if the rights of the Beneficiaries under this Agreement or the GUC Trust Interests do constitute "securities," the parties hereto intend that the exemption from registration for the issuance and distribution of the interests in the GUC Trust Assets provided in section 1145 of the Bankruptcy Code shall apply. If the GUC Trustee determines, with the advice of counsel, that the GUC Trust is required to comply with the registration and reporting requirements of the Securities Exchange Act of 1934, as amended, or the Investment Company Act of 1940, as amended, then the GUC Trustee shall take any and all actions reasonably necessary or appropriate to comply with such reporting requirements and file periodic reports with the Securities and Exchange Commission.

ARTICLE V

POWERS OF AND LIMITATIONS ON THE GUC TRUSTEE

Section 5.1 *Powers of the GUC Trustee.* In connection with the administration of the GUC Trust, and subject to the Plan and the Confirmation Order, the GUC Trustee is authorized to perform any and all acts necessary and desirable to accomplish the purposes of the GUC Trust. The GUC Trustee will act for the GUC Trust, subject to the provisions of the Plan, the Confirmation Order and this Agreement. On the Effective Date, the GUC Trustee shall succeed to all rights of the Debtors with respect to the GUC Trust Assets. Without limiting, but subject to, the foregoing, subject to the Plan and the Confirmation Order, the GUC Trustee shall be expressly authorized to:

- (a) establish and maintain bank accounts, make Distributions and take other actions consistent with the Plan;
- (b) make decisions regarding the retention or engagement of professionals (including, without limitation, professionals previously retained by the UCC) or other Persons and to pay, without court approval, all related fees and expenses accruing from and after the Effective Date, which the GUC Trustee in its sole discretion determines to be reasonable;
- (c) prosecute, compromise, settle, otherwise resolve or withdraw the D&O Claims and make related claims against applicable Insurance Policies, all without approval of the Bankruptcy Court;
- (d) object to, litigate or seek estimation of Claims, as and when appropriate;
- (e) compromise, settle, otherwise resolve or withdraw any Claim Objections or resolve and settle any Claims, all without approval of the Bankruptcy Court;
- (f) maintain a Disputed Claims Reserve, if necessary;
- (g) make Distributions, in the GUC Trustee's reasonable discretion, from the Disputed Claims Reserve (if any) as Disputed Claims are resolved;
- (h) sell, liquidate, or otherwise dispose of non-Cash GUC Trust Assets;
- (i) procure insurance, to the extent necessary, at the expense of the GUC Trust;
- (j) effect all actions and execute all agreements, instruments and other documents necessary to perform its duties under the Plan and this Agreement;
- (k) take all other actions not inconsistent with the provisions of the Plan which the GUC Trustee deems reasonably necessary or desirable in connection with the administration of the GUC Trust; and
- (l) exercise such other powers as may be vested in the GUC Trustee by Order of the Bankruptcy Court.

Section 5.2 *Limitations on GUC Trustee.* The GUC Trustee shall not at any time, on behalf of the GUC Trust or the Beneficiaries, (i) enter into or engage in any trade or business, (ii) take any actions that are not related, directly or indirectly, to the purposes of this Agreement and the GUC Trust or the administration or implementation of the terms hereof, or that are contrary to the terms of the Plan or the Confirmation Order, (iii) be authorized to engage in any investments or activities inconsistent with the treatment of the GUC Trust as a liquidating trust within the meaning of Treasury Regulations Section 301.7701-4(d) and in accordance with Revenue Procedure 94-45, or (iv) take any action that would jeopardize treatment of the GUC Trust as a grantor trust for United States federal income tax purposes under Section 671-677 of the Code, or any successor provisions thereof, except such prohibition shall not apply with respect to the Disputed Claim Reserve.

Section 5.3 *Payment of Claims, Expenses and Liabilities of the GUC Trust.* The GUC Trustee shall pay the expenses of the GUC Trust, including the fees and expenses of any professionals retained by the GUC Trustee.

Section 5.4 *Non-Cash Trust Assets.* To the extent GUC Trust Assets consist of property other than Cash, the GUC Trustee shall reduce such GUC Trust Assets to Cash. The GUC Trustee shall determine the preferred timing of reducing such GUC Trust Assets to Cash.

Section 5.5 *Request for Tax Identification Information.* As early as practicable prior to the first anticipated Distribution, the GUC Trustee shall distribute to all Beneficiaries of such Distribution a form to be completed by such Beneficiary and returned to the GUC Trustee requesting tax identification information from the Beneficiary.

Section 5.6 *Books and Records.* The GUC Trustee shall maintain, in respect of the GUC Trust and the Beneficiaries, books and records relating to the assets and the income of the GUC Trust and the payment of expenses of the GUC Trust, in such detail and for such period of time as is commercially reasonable.

Section 5.7 *Cash Payments.* Distributions shall be made, at the option, and in the sole discretion, of the GUC Trustee, by wire, check, or such other method as the GUC Trustee deems appropriate under the circumstances. Cash payments to foreign creditors may be made, at the option, and in the sole discretion, of the GUC Trustee, in such funds and by such means as are necessary or customary in a particular foreign jurisdiction. For purposes of effectuating Distributions under the Plan, any Claim denominated in foreign currency shall be converted to U.S. dollars pursuant to the applicable published exchange rate in effect on the Petition Date.

Section 5.8 *Setoff.* The GUC Trustee may, but shall not be required to, set off against, or recoup from, any Claim, and the payments or other Distributions to be made pursuant to the Plan in respect of such Claim, claims of any nature whatsoever that the Debtors or the GUC Trust may have against the Beneficiary that is the Holder of such Claim; *provided, however,* that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the GUC Trustee of any such Claim that it may have against such Holder.

ARTICLE VI

DISTRIBUTIONS

Section 6.1 *Distribution Agent.* The GUC Trustee or its designee shall be the Distribution Agent with respect to Allowed Claims and shall make all Distributions on Allowed Claims. The GUC Trustee shall not be required to give any bond or surety or other security for the performance of the GUC Trustee's duties as Distribution Agent unless otherwise ordered by the Bankruptcy Court.

Section 6.2 *Distributions.* After the Effective Date and the establishment and funding of any necessary Disputed Claim Reserves, subject to applicable limitations set forth in this Agreement, on any Distribution Date, the GUC Trustee shall distribute from the OpCo Silo, the DivestCo Silo and/or the Joint & Several OpCo Silo the Available Cash to Beneficiaries of such Silo in accordance with the terms of the Plan and the Confirmation Order. The timing of all Distributions shall be at the discretion of the GUC Trustee. In the event that the GUC Trustee elects to make a Distribution prior to the resolution of all Disputed Claims, the GUC Trustee shall create a Disputed Claim Reserve. Prior to making any Distributions to the Beneficiaries permitted by this Agreement, the GUC Trustee may retain such amounts (x) as are reasonably necessary to meet contingent liabilities, fund required or appropriate reserves, and to maintain the value of the GUC Trust Assets during the liquidation, (y) to pay reasonable expenses (including, but not limited to, any taxes imposed on the GUC Trust or in respect of the GUC Trust Assets), and (z) to satisfy other liabilities incurred by the GUC Trust in accordance with the Plan, the Confirmation Order, and this Agreement.

Section 6.3 *Timing of Distributions.* The GUC Trustee may make one or more interim Distributions to Holders of Allowed Claims, in its sole discretion.

Section 6.4 *Minimum; De Minimis Distributions.* With respect to any interim Distributions, no Cash payment of less than \$50.00 shall be made to a Beneficiary on account of an Allowed Claim. With respect to the final Distribution from a Silo, no Cash payment of less than \$25.00 shall be made to a Beneficiary on account of an Allowed Claim and instead shall vest in the GUC Trust for final Distribution to other Beneficiaries in the same Silo. In the event the GUC Trustee determines the remaining Cash (after liquidation of all assets) in the OpCo Silo or DivestCo Silo is insufficient economically to make a Distribution to Beneficiaries of such Silo, such remaining Cash shall, after satisfaction of any outstanding fees or expenses, be reallocated from the OpCo Silo to the DivestCo Silo, or from the DivestCo Silo to the OpCo Silo, as applicable, in the discretion of the GUC Trustee and without further order of the Bankruptcy Court. In the event the GUC Trustee determines the remaining Cash in the GUC Trust is insufficient economically to make any further Distributions, then after payment of any remaining GUC Trust Obligations, the GUC Trustee may make a contribution of the remaining funds to the charity of its choice.

Section 6.5 *Interest on Claims.* Notwithstanding anything to the contrary in the Plan, no Beneficiary shall, on account of its Allowed Claim, receive a Distribution in excess of the Allowed amount of such Claim plus any interest accruing on such Claim that is actually payable in accordance with the Plan.

ARTICLE VII

CONCERNING THE GUC TRUSTEE

Section 7.1 *Generally.* The GUC Trustee accepts and undertakes to discharge the GUC Trust created by this Agreement, the Plan, and the Confirmation Order upon the terms and conditions hereof and thereof. The GUC Trustee shall exercise such of the rights and powers vested in the GUC Trustee by this Agreement, the Plan, and the Confirmation Order and use the same degree of care and skill in the GUC Trustee's exercise as a prudent person would exercise or use under the circumstances in the conduct of GUC Trustee's own affairs. No provision of this Agreement shall be construed to relieve the GUC Trustee or the GUC Trustee's employees, affiliates, officers, directors, principals, attorneys, accountants, experts, and agents (collectively with the GUC Trustee, the "Trustee Parties") from liability for that Trustee Party's own gross negligence, actual fraud, intentional misconduct, or willful misconduct, except that:

(a) the Trustee Parties shall not be liable for any action taken in good faith in reliance upon the advice of attorneys, accountants, and other professionals;

(b) the Trustee Parties shall undertake to perform such duties and only such duties as are specifically set forth in this Agreement, the Plan, and the Confirmation Order and to the fullest extent permitted by applicable law no implied covenants or obligations shall be read into this Agreement, the Plan, or the Confirmation Order against the Trustee Parties; and

(c) the Trustee Parties shall not be liable for any error of judgment made in good faith.

Whether or not therein expressly so provided, every provision of this Agreement relating to the conduct or affecting the liability of or affording protection to the Trustee Parties shall be subject to the provisions of this section.

Section 7.2 *Certain Rights of the GUC Trustee.* Except as otherwise provided in this Agreement:

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

(b) the GUC Trustee may consult with counsel, and the advice or opinion of counsel shall be full and complete protection to the GUC Trustee in respect of any action taken, suffered, or omitted by the GUC Trustee in good faith and in reliance on, or in accordance with, such advice or opinion;

(c) except in the case of liability arising from the GUC Trustee's gross negligence, actual fraud, intentional misconduct, or willful misconduct, persons dealing with the GUC Trustee shall look only to the GUC Trust Assets to satisfy any liability incurred by the GUC Trustee to such person in carrying out the terms of this Agreement and the GUC Trustee shall have no personal or individual obligation to satisfy any such liability;

(d) whenever, in the administration of this Agreement, the Liquidating Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the GUC Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on the part of the GUC Trustee, rely upon an opinion of counsel or certificate furnished to the GUC Trustee by or on behalf of the Beneficiaries;

(e) the GUC Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, or other paper or document, but the GUC Trustee, in the GUC Trustee's discretion, may make such further inquiry or investigation into such facts or matters as the GUC Trustee may see fit, and, if the GUC Trustee shall determine to make such further inquiry or investigation, the GUC Trustee shall be entitled to examine the books, records and premises of the relevant person or entity, personally or by agent or attorney; and

(f) the GUC Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the GUC Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by the GUC Trustee hereunder.

Section 7.3 *Limitation of Liability; Indemnification.* The GUC Trustee and all of its designees, employees, agents, representatives or professionals shall not be liable for the act or omission of any other member, designees, agent or representative of the GUC Trustee, nor shall they be liable for any act or omission taken or omitted to be taken in their respective capacities, other than acts or omission resulting from willful misconduct, gross negligence, intentional misconduct, or actual fraud. The GUC Trustee shall not be deemed to have any fiduciary duty to the Beneficiaries but shall exercise its obligations and duties under this Agreement, the Plan, and the Confirmation Order in good faith and in the reasonable best interests of the GUC Trust. Subject to the terms and conditions of this Agreement, the Plan and the Confirmation Order, the GUC Trustee shall be entitled to enjoy all of the rights, powers, immunities and privileges applicable to a chapter 7 trustee. The GUC Trustee may, in connection with the performance of its functions, consult with attorneys, accountants, financial advisors and agents, which consultation may act as a defense for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such persons. Notwithstanding such authority, the GUC Trustee shall be under no obligation to consult with attorneys, accountants, financial advisors or agents, and its determination not to do so shall not result in the imposition of liability, unless such determination is based on willful misconduct, gross negligence, intentional misconduct, or actual fraud. The GUC Trust shall indemnify and hold harmless the GUC Trustee and its designees and professionals, and all duly designated agents and representatives thereof (in their capacity as such), from and against and in respect of all liabilities, losses, damages, claims, costs and expenses, including, but not limited to attorneys' fees and costs arising out of or due to such actions or omissions, or consequences of their actions or omissions with respect or related to the performance of their duties or the implementation or administration of the Plan; *provided, however*, that no such indemnification will be made to such persons for such actions or omissions as a result of willful misconduct, gross negligence, intentional misconduct, or actual fraud.

Section 7.4 *Compensation and Reimbursement.*

(a) The GUC Trustee shall be entitled to (i) compensation at the GUC Trustee's normal and customary hourly rates, as set from time to time by the GUC Trustee, for services rendered as the GUC Trustee and (ii) reimbursement of actual, reasonable and necessary out-of-pocket expenses from time to time incurred by the GUC Trustee in rendering services as the GUC Trustee. The GUC Trustee's current hourly rate is \$[●].

(b) Subsequent to the Effective Date, the reasonable fees and expenses of any professionals retained by the GUC Trustee shall be (i) deemed an expense of the GUC Trust, and (ii) paid by the GUC Trust in accordance with any applicable retention agreements without any requirement of approval by the Bankruptcy Court of the retention, fees or expenses payable to such professionals.

Section 7.5 *Exculpatory Provisions.* The GUC Trustee shall not have any obligation, responsibility or liability for: (i) the validity, execution (except the GUC Trustee's own execution), enforceability, legality, or sufficiency of this Agreement; and (ii) taking any action under this Agreement, if taking such action (x) would subject the GUC Trust to a tax in any jurisdiction where the GUC Trust is not then subject to a tax, or (y) would require the GUC Trust to qualify to do business in any jurisdiction where it is not then so qualified, unless the GUC Trustee receives an indemnity satisfactory to the GUC Trustee against such tax (or equivalent liability), or any liability resulting from such qualification.

ARTICLE VIII

REMOVAL AND SUCCESSOR TRUSTEES

Section 8.1 *Resignation or Removal.* The GUC Trustee may resign and be discharged by giving at least 60 days' prior written notice thereof to the holders of the 20 largest Allowed General Unsecured Claims. Such resignation shall become effective on the later to occur of (i) the date specified in such written notice and (ii) the effective date of the appointment of a successor GUC Trustee in accordance with Section 8.3 hereof and such successor's acceptance of such appointment.

Section 8.2 *Removal.* The GUC Trustee may be removed at any time for cause shown (including fraud or gross negligence) upon application to, and subject to the approval of, the Bankruptcy Court on at least twenty-one (21) days' prior written notice to the GUC Trustee and its counsel.

Section 8.3 *Appointment of Successor.* In the event of the resignation or removal, death or incapacity of the GUC Trustee, counsel to the GUC Trustee shall, subject to approval of the Bankruptcy Court, designate another Person to serve as GUC Trustee.

Section 8.4 *Acceptance of Appointment by Successor Liquidating Trustee.* The death, resignation, or removal of the GUC Trustee shall not operate to terminate the GUC Trust created by this Agreement or to revoke any existing agency created pursuant to the terms of this Agreement or invalidate any action theretofore taken by the GUC Trustee. Any successor

GUC Trustee appointed hereunder shall execute an instrument accepting such successor GUC Trustee's appointment and shall deliver one counterpart thereof to the Bankruptcy Court for filing, and, in case of the GUC Trustee's resignation or removal, to the departing GUC Trustee. Thereupon, such successor GUC Trustee shall, without any further act, become vested with all the liabilities, duties, powers, rights, title, discretion, and privileges of the predecessor GUC Trustee in the GUC Trust with like effect as if originally named GUC Trustee.

ARTICLE IX

MISCELLANEOUS PROVISIONS

Section 9.1 *Privileges.* Without compromising any other attorney-client privileges of the Debtors vis-à-vis any other Person, any and all attorney-client privileges, work product immunity, and other privileges of the Debtors related to the D&O Claims and the Claims of Beneficiaries shall vest in the GUC Trust and the GUC Trustee. For the limited purpose of retaining the attorney-client privileges of the Debtors alone, the GUC Trustee shall be deemed to be an officer of each of the Debtors and, as such, no communications between any of the Debtors and their professionals, employees, agents and representatives on the one hand, and the GUC Trustee and its professionals, employees, agents and representatives on the other, shall be deemed to have waived the attorney-client privileges held by the Debtors. Moreover, any other privileges or immunities attaching to any documents or communications (whether written or oral) transferred from any of the Debtors to the GUC Trust shall automatically vest in, and be available for assertion by, the GUC Trust and its representatives.

Section 9.2 *Construction.* This Agreement and the GUC Trust created hereby shall be governed by and construed in accordance with the laws of the State of [●] without giving effect to choice of law principles. The GUC Trustee's interpretation of the provisions of this Agreement, the Confirmation Order and the Plan shall be deemed conclusive in the absence of a contrary interpretation of a court of competent jurisdiction.

Section 9.3 *Jurisdiction.* The parties agree that the Bankruptcy Court shall have jurisdiction to determine all controversies and disputes arising under or in connection with this Agreement.

Section 9.4 *Severability.* In the event any provision of this Agreement shall be determined by Final Order of a court of proper jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 9.5 *Notices.* Any notice, consent, approval or other communication required or permitted to be given in accordance with this Agreement shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if delivered personally or by facsimile or mailed by first class mail to the following address (it being understood that any party may change its address by similar written notice to the other party):

- (i) if to the Liquidating Trustee:

[●]

With a copy to:

Francis J. Lawall
Troutman Pepper Hamilton Sanders LLP
3000 Two Logan Square, Eighteenth and Arch Streets
Philadelphia, PA 19103-2799
francis.lawall@troutman.com

-and-

Deborah Kovsky-Apap
Troutman Pepper Hamilton Sanders LLP
875 Third Avenue
New York, NY 10022
deborah.kovsky@troutman.com

- (ii) if to any Beneficiary, to the address or facsimile number of such Beneficiary as reflected in the Register.
- (iii) if to Debtors:

[●]

With a copy to:

Daniel M. Simon
McDermott Will & Emery LLP
1180 Peachtree St. NE, Suite 3350
Atlanta, GA 30309
dsimon@mwe.com

Section 9.6 *Entire Agreement*. This Agreement (including the recitals hereof and, to the extent applicable, the Plan, and the Confirmation Order) constitutes the entire agreement by and among the parties with respect to the subject matter hereof, and there are no representations, warranties, covenants, or obligations except as set forth herein, in the Plan, and in the Confirmation Order. This Agreement (together with the Plan and the Confirmation Order) supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions, written or oral, if any, 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 parties hereto and the

Beneficiaries any rights or remedies under or by reason of this Agreement. This Agreement shall be binding on the parties hereto and their successors, including any chapter 7 trustee appointed in the Chapter 11 Cases.

Section 9.7 *No Relationship Created.* Nothing contained herein shall be construed to constitute any relationship created by this Agreement as an association, partnership, or joint venture of any kind.

Section 9.8 *Effective Date.* This Agreement shall become effective as of the Effective Date.

Section 9.9 *Amendment.* This Agreement may from time to time be amended, supplemented or modified by the GUC Trustee with the approval of the Bankruptcy Court.

Section 9.10 *Headings.* The headings contained in this Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Agreement or of any term or provision hereof.

Section 9.11 *Counterparts.* This Agreement may be executed in facsimile and in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

Section 9.12 *No Bond.* The GUC Trustee shall serve without a bond.

Section 9.13 *Relationship to the Plan.* The principal purpose of this Agreement is to aid in the implementation of the Plan and the Confirmation Order and therefore this Agreement incorporates the provisions of the Plan and the Confirmation Order. To that end, the GUC Trustee shall have full power and authority to take any action consistent with the purpose and provisions of the Plan and the Confirmation Order, and to seek any orders from the Bankruptcy Court in furtherance of the implementation of the Plan, the Confirmation Order, and this Agreement. If any provisions of this Agreement are found to be inconsistent with provisions of the Plan or the Confirmation Order, the provisions of the Plan or Confirmation Order, as applicable, shall control.

Section 9.14 *Confidentiality.* The GUC Trustee shall, during the period that such GUC Trustee serves as GUC Trustee under this Agreement and for a period of twelve (12) months following the termination of this Agreement or such GUC Trustee's removal or resignation hereunder, hold strictly confidential and not use for personal gain, any material, non-public information of or pertaining to any entity to which any of the GUC Trust Assets relates or of which such GUC Trustee has become aware in its capacity as GUC Trustee, except as otherwise required by law.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the date first above written.

LIQUIDATING TRUSTEE

By: _____

Name:

Title:

LAVIE CARE CENTERS, LLC, ET AL.

By: _____

Name:

Title: