

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

_____)	
In re:)	Chapter 11
)	
ISAACSON STEEL, INC.)	Case No. 11-12415-JMD
ISAACSON STRUCTURAL STEEL, INC.)	Case No. 11-12416-JMD
)	
Debtors.)	Jointly Administered
_____)	

FIRST AMENDED JOINT PLAN OF REORGANIZATION
FOR ISAACSON STEEL, INC. AND ISAACSON STRUCTURAL STEEL, INC.
DATED SEPTEMBER 25, 2013, AS MODIFIED OCTOBER 14, 2013

Isaacson Structural Steel, Inc. and Isaacson Steel, Inc. (each, a “Debtor” and combined, the “Debtors”), propose this First Amended Joint Plan of Reorganization dated September 25, 2013, pursuant to 11 U.S.C § 1121 of the Bankruptcy Code (the “Plan”).

INTRODUCTION

On June 22, 2011 (the “Filing Date”), each of the Debtors filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code (the “Bankruptcy Code”), thereby initiating a proceeding under Chapter 11 of the Bankruptcy Code (the “Code”) for each Debtor. As a result of the filing, each Debtor became a debtor-in-possession with authority to operate its business pursuant to §§ 1107 and 1108 of the Code.

The Debtors were formerly engaged in the business of fabricating and selling structural steel. During the course of the Debtors’ Chapter 11 proceedings, the tangible assets of each of the Debtors were liquidated, and, with the exception of a limited amount of cash and remaining accounts receivable, and after payment of certain costs of administration, the proceeds of the liquidation of the tangible assets of the Debtors were distributed to secured creditors holding liens and security interests in such assets. The Debtors continue to hold certain valuable causes of action, including claims against former officers and directors of the Debtors (the “D&O Claims”) which claims are insured by available D&O insurance policies, and certain causes of action arising under Chapter 5 of the Bankruptcy Code (the “Chapter 5 Causes of Action”). By virtue of that certain Global Settlement Agreement, dated August, 2013, between and among the Debtors, the Official Committee of Unsecured Creditors of the Debtors (the “Committee”), the New Hampshire Business Finance Authority (“BFA”), Passumpsic

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Savings Bank (together with and including its participating lenders, Woodsville Guaranty Savings Bank and Ledyard National Bank, “PSB”), and Turner Construction Company, Inc. (“Turner”), the parties to that Agreement, representing each major constituency of creditors of the Debtors, agreed upon the means and method for the liquidation of the D&O Claims and the Chapter 5 Causes of Action, and the distribution of the proceeds of the same. The Global Settlement Agreement (sometimes referred to hereafter as the “GSA”) presents significant advantages to every class of creditors of the Debtors, and accordingly, the Debtors propose this Plan of Reorganization in order to confirm and make binding upon all creditors and parties in interest, the agreements reached in the Global Settlement Agreement for the liquidation and distribution of the proceeds of the remaining assets of the Debtors. In the event of any conflict or apparent conflict between the Global Settlement Agreement and this Plan, the conflict or apparent conflict shall be resolved solely by reference to the Global Settlement Agreement, which shall be the controlling document.

Each of the non-Debtor parties to the GSA, that is, the Committee, BFA, PSB, and Turner, shall have the right to join in this Plan as Plan proponents.

ARTICLE I

DEFINITIONS

General. Unless the context otherwise requires and/or unless defined in the GSA or elsewhere in the Plan, the following terms shall have the following meanings when used in initially capitalized form in this Plan. Such meanings shall be equally applicable to both the singular and plural forms of such terms. Any term used in initially capitalized form in this Plan that is not defined herein but that is defined in the Bankruptcy Code shall have the meaning assigned to such term in the Bankruptcy Code.

- 1.1 Administrative Claim shall mean a Claim arising and allowable under § 503(b) of the Bankruptcy Code with respect to the Debtor, including charges against the Debtor’s estate under 28 U.S.C. § 1930.
- 1.2 Allowed with respect to a Claim or Interest other than a Fee Claim, shall mean any Claim or Interest (a) that is the subject of a timely filed proof of claim, or (b) any Claim or Interest that has been listed in the schedules filed with the Bankruptcy Court by the Debtor pursuant to Bankruptcy Code § 521 and is not listed therein as disputed, unliquidated, or contingent; and, in each such case as to which either (i) no objection to the allowance thereof or other similar pleading has been filed within the applicable time period set forth in the Plan, or (ii) an objection or other similar pleading has been filed and the Claim or Interest has been allowed by a Final Order but only to the extent so allowed. To the extent that all or a portion of a Claim is not Allowed, the holder of such Claim shall not receive any distribution on account of the portion of such Claim that is not Allowed.

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- 1.3 Allowed Amount shall mean the amount of any Allowed Claim or Allowed Interest.
- 1.4 Assets means all property that would be property of the Debtor and the Debtor's estate under § 541 of the Bankruptcy Code, whether such property is now existing or hereafter arising or acquired and wherever located including, without limitation, all Causes of Action and all proceeds of and recoveries on Causes of Action, all accounts, contract rights, chattel paper, general intangibles, instruments, securities, furniture, fixtures, machinery, equipment, inventory, intellectual property, domain names, and interest in real estate.
- 1.5 Approval Order means the September 25, 2013 order of the Bankruptcy Court [Doc. #11861] approving the GSA, as that term is defined herein.
- 1.6 Bank shall mean Passumpsic Savings Bank, together with and including its participating lenders, Woodsville Guaranty Savings Bank and Ledyard National Bank and ~~its~~ their affiliates, successors, agents, and assigns.
- 1.7 Bankruptcy Code shall mean 11 U.S.C. §§ 101 *et seq.*, as in effect with respect to the Case on the Petition Date. All Code references herein are to the Bankruptcy Code in effect as of the Petition Date, unless otherwise stated.
- 1.8 Bankruptcy Court shall mean the United States Bankruptcy Court for the District of New Hampshire, or any other court with jurisdiction over the Case.
- 1.9 Bar Date shall mean the date, if any, established by the Bankruptcy Court as the deadline for filing proofs of claims or interests in the Case.
- 1.10 Case shall mean the Chapter 11 Cases of the Debtors now pending in the Bankruptcy Court pursuant to Chapter 11 of the Bankruptcy Code.
- 1.11 Cash shall mean payment, including by check, issued by or on behalf of the Debtor with respect to any payment of collected funds required to be made pursuant to the Plan.
- 1.12 Cause of Action shall mean all claims and causes of action now owned or hereafter acquired by the Debtor and/or its estate, other than the D&O Claims, whether arising under the Bankruptcy Code or other federal or state law, including, without limitation, Chapter 5 Causes of Action.
- 1.13 Chapter 5 Causes of Action shall mean all Causes of Action (as that term

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is defined *infra* at §1.11 arising under Chapter 5 of the Bankruptcy Code (including, but not limited to, causes of action arising under 11 U.S.C. §§544, 547, 548, 549, 550, and 553). As used in this Plan, the terms “Chapter 5 Causes of Action” shall have and be given the same meaning as the phrase “Chapter 5 Actions” used in the GSA.

- 1.14 Claim shall mean a claim, as defined in § 101(5) of the Bankruptcy Code, against either of the Debtors.
- 1.15 Committee shall mean the Official Committee of Unsecured Creditors of the Debtor appointed in this case.
- 1.17 Confirmation Date shall mean the date on which the Confirmation Order is entered on the docket of the Bankruptcy Court.
- 1.18 Confirmation Order shall mean the Order (which need not be a Final Order) confirming the Plan pursuant to § 1129 of the Bankruptcy Code.
- 1.19 D&O Claims and D&O Policy means (a) all claims and causes of action against former officers, ~~and~~ directors, or accountants of the Debtors, arising by reason of their service as directors and/or officers or accountants of the Debtors, and (b) all policies of insurance insuring such claims and causes of action, including the Debtors’ directors and officers liability insurance policy issued by Executive Risk Indemnity, Inc., Policy No. 8167-110
- 1.20 Effective Date shall mean the date determined in accordance with Article VI of the Plan.
- 1.21 Encumbrances shall mean all liens, encumbrances, mortgages, hypothecations, pledges, and security interests of any kind whatsoever.
- 1.22 Executory Contract shall mean an executory contract within the meaning of § 365 of the Bankruptcy Code.
- 1.23 Fee Claim shall mean the Administrative Claim of a professional person for compensation and/or reimbursement of expenses.
- 1.24 Final Order shall mean an Order of any court, administrative agency or other tribunal as entered on its docket as to which (a) the time to appeal or petition for rehearing or *certiorari* has expired and as to which no appeal or motion for rehearing or petition for *certiorari* has been timely filed or taken, (b) if such an appeal or motion for rehearing or petition for *certiorari* has been timely filed or taken, such order or judgment has been affirmed by the highest tribunal in which review was sought or such appeal, motion for rehearing or petition for *certiorari* was dismissed or

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otherwise terminated without modification of such order or judgment, and the time has expired within which any further proceeding for review may be commenced.

1.25 GSA shall mean that certain Global Settlement Agreement, dated August ____, 2013, by and between the Debtors, the Official Committee of Unsecured Creditors, New Hampshire Business Finance Authority, Passumpsic Savings Bank, and Turner Construction Company, Inc., as the same may be modified or amended by the parties thereto, or pursuant to the Approval Order, as that term is defined herein.

1.26 Liquidating Trust or Trust shall mean the Isaacson Steel Liquidating Trust established pursuant to the GSA.

1.27 Net Estate Recoveries shall have and be given the same meaning as is attributed to such term in the Global Settlement Agreement.

1.258 Order shall mean an order of the Bankruptcy Court in the above case.

1.279 Petition Date shall mean June 22, 2011.

1.2830 Plan shall mean this First Amended Joint Plan of Reorganization, dated September 25, 2013, as Modified October 18~~+~~, 2013 as it may be amended or modified by the Debtor from time to time, together with all exhibits, schedules and other attachments hereto, as the same may be amended or modified by the Debtor from time to time, all of which are incorporated herein by reference.

1.2931 Post-Petition Bar Date shall mean the date that is forty-five (45) days after the Effective Date.

1.302 Prime Rate shall mean the annualized rate of interest designated as the "Prime Rate" as published in the Money Rates Section of the Wall Street Journal, Eastern Edition, as of the Effective Date. If the Prime Rate shall no longer be published in the Money Rates or any other section of The Wall Street Journal, then the holder(s) of an obligation payable with interest at the Prime Rate pursuant to this Plan shall have the right, exercising reasonable judgment, to substitute a new method for determining a comparable per annum interest rate to be charged by the holder(s) and such rate of interest determined by such method shall become the Prime Rate for the purpose of this Plan and any obligation issued pursuant to this Plan.

1.343 Priority Claim shall mean an Unsecured Claim arising before the Petition Date and allowable under §§ 507(a)(2) through 507(a)(9) of the

Bankruptcy Code.

1.324 PSB shall mean Passumpsic Savings Bank and its participating lenders, Woodsville Guaranty Savings Bank and Ledyard National Bank

1.335 Secured Claim shall mean a claim that is secured by a perfected (or similarly binding) Encumbrance on any of the Debtor's assets, to the extent provided in 11 U.S.C. § 506 of the Bankruptcy Code.

1.36 Trustees shall mean the trustees designated to administer the Liquidating Trust and their successors.

1.347 Unsecured Claim shall mean a Claim which arose before the Petition Date and which is not secured by any interest in any property of the Debtor's estate, and shall include a Claim which arises from the rejection of an Executory Contract or Unexpired Lease, within the meaning of § 365 of the Bankruptcy Code; provided, however, that in order to be an Unsecured Claim, such claim must be evidenced by a proof of claim which has been timely filed by the holder of the Claim (whether or not such proof of claim has been Allowed) prior to the Bar Date, or such Claim must be described on Schedule F filed by the Debtor and not noted as unliquidated, contingent or disputed on such Schedule (whether or not such claim is deemed Allowed).

ARTICLE II

TREATMENT OF NON-CLASSIFIED CLAIMS

2.1 Administrative Claims. Except as otherwise provided in the GSA, all Allowed Administrative Claims shall be paid in full upon the later of the Effective Date and the date which is thirty (30) days after the date upon which such Administrative Claim becomes an Allowed Administrative Claim. In the alternative, an Allowed Administrative claim may be paid and satisfied in accordance with any agreement between the Debtors and the holder of such Allowed Administrative Claim.

2.2 Priority Claims. The holders of Allowed Priority Claims, shall be paid in full upon the later of the Effective Date and the date which is thirty (30) days after the date upon which such Priority Claim becomes an Allowed Priority Claim.

2.3 Bankruptcy Fees. Any Administrative Claim for outstanding fees incurred in the Case pursuant to 28 U.S.C. § 1930(a)(6) and due and payable as of the Effective Date shall be paid in full on the Effective Date. Thereafter, the ~~General~~-Liquidating Trust shall pay any and all fees lawfully due and payable under 28 U.S.C. § 1930(a)(6) with respect to the Case in the ordinary course without necessity of allowance by the Court until entry of an Order closing the Case.

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ARTICLE III

DESIGNATION OF CLASSES OF CLAIMS

Claims that are required or permitted to be classified under Bankruptcy Code § 1123(a)(1) are hereby classified into the following classes:

3.1 Class One shall consist of all Allowed Claims against the Debtors of any kind or nature held by PSB.

3.2 Class Two shall consist of all Allowed Claims against the Debtors of any kind or nature held by BFA.

3.3 Class Three shall consist of the holders of all Allowed Unsecured Claims against the Debtors, as that term is defined in Section 101(31) of the Bankruptcy Code. Class Three shall include Allowed Unsecured Claims arising from (i) the insufficiency of assets held as collateral by secured creditors to satisfy the claims of such creditors, to the extent that such insufficiency is not entitled to treatment as an administrative claim, and (ii) claims arising from the rejection, prior to or after the Confirmation Date, of an executory contract or unexpired lease.

3.4 Class Four shall consist of the holders of all equity interests in and to each Debtor, including equity interests evidenced by any class of stock issued by each Debtor.

ARTICLE IV

TREATMENT OF CLASSIFIED CLAIMS AND INTERESTS

All classes of claims and interests are impaired under this Plan, within the meaning of Section 1124 of the Bankruptcy Code.

4.1 Class One. The holder of the Class One Claim shall receive payment, in full settlement and satisfaction of such Claim, in accordance with the terms of the GSA.

4.2 Class Two. The holder of the Class Two Claim shall receive payment, in full settlement and satisfaction of such Claim, in accordance with the terms of the GSA.

4.3 Class Three. The holders of the Class Three Claims shall receive payment, in full settlement and satisfaction of such Claims, of each holder's pro-rata share of all sums distributed to or for the account of holders of such claims in the aggregate, in accordance with the terms of the GSA.

4.4 Class Four. All equity interests in Class Four shall be cancelled and terminated on the Effective Date, and the holders thereof shall receive no distribution on

account of or with respect to such equity interests Plan.

ARTICLE V

MEANS FOR EXECUTION OF THE PLAN

5.1 ~~A~~The Liquidating Trust, ~~known as the “Isaacson Steel Liquidating Trust”, (the “Trust”)~~ has been established pursuant to the GSA, and by virtue of transfers made ~~or to be made~~ by the Debtors and PSB, such Trust ~~will hold~~s cash; all of the D&O Claims of the Debtors and PSB; ~~and if and to the extent assignable,~~ all of the Chapter 5 Causes of Action; ~~and all of the Net Estate Recoveries made by the Debtors on account of their Chapter 5 Causes of Action which shall be assigned, paid or otherwise transferred to the Trust for distribution pursuant to this Plan and the GSA~~ (the “Trust Assets”). A copy of the Liquidating Trust Agreement is available upon written request made to counsel for the Debtor, William S. Gannon, Esq. by letter addressed to Mr. Gannon at 889 Elm Street, Fourth Floor, Manchester, NH 03101-2101, or sent by facsimile, (603) 621-0830.

5.2 The administration, use and distribution of the Trust Assets shall be governed by the GSA, a copy of which, with confidential information redacted, is annexed hereto as **Exhibit A**. Such Agreement is hereby adopted by the Debtors pursuant to this plan, ratified, confirmed, and incorporated herein by reference.

5.3 The Trust is established for the purpose, among other things, of prosecuting claims against former officers and directors of the Debtor, as insured individuals under the D&O Policy, ~~and causing the prosecution and/or liquidation of the Chapter 5 Causes of Action and distributing the proceeds thereof~~. The Trust is established under this Plan in order to satisfy the exception to the “insured v. insured” exclusion contained in the Debtor’s D&O Policy. The pertinent exception to the “insured v. insured” exclusion provides in pertinent part that:

“a Claim brought against Insured Persons of any Insured Organization by a bankruptcy trustee, receiver, liquidator, conservator, rehabilitator, creditors’ committee or any similar official who has been appointed to take control of, supervise, manage or liquidate the: Parent Corporation”

shall not be excluded from coverage under the D&O Policy by virtue of the “insured v. insured” exclusion.

Accordingly, the entry of the Confirmation Order shall constitute a finding and determination of the Court, binding upon all parties in interest, that the Trust: (a) is a “bankruptcy trustee, receiver, liquidator, conservator, rehabilitator, creditors’ committee or any similar official who has been appointed to take control of, supervise, manage or liquidate the Parent Corporation” within the meaning of the D&O Policy, and that claims brought by said Trust against present or former officers and directors of the Debtor satisfies the exception to the “insured v. Insured” exclusion set forth in the D&O Policy; and (b) has the standing, rights and powers of a trustee under the Bankruptcy Code to prosecute the Chapter 5 Causes of Action.

5.4 Except as provided in, and unless expressly waived, relinquished, exculpated, released, compromised or settled in the Plan, the Confirmation Order, or in any contract, instrument, release or other agreement entered into or delivered in connection with the Plan, Debtor and/or the Trust will ~~exclusively~~ retain and may enforce, and ~~the Debtor~~ expressly reserves and preserves for these purposes, in accordance with sections 1123(a)(5)(A) of the Bankruptcy Code, any Claims, Causes of Action and demands and rights relating thereto that the Debtor or its Estate may hold against any person or entity, the proceeds of which shall be deemed Net Estate Recoveries and administered by the Trust in accordance with the GSA. No preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches shall apply to them by virtue of or in connection with the confirmation, consummation of effectiveness of the Plan.

ARTICLE VI

THE EFFECTIVE DATE

6.1 Effective Date. Unless the Confirmation Order has been stayed prior thereto, the Effective Date shall be the tenth (10th) day following entry of the Confirmation Order, provided that such date is not a weekend day or a holiday. If such date falls on a weekend date or a holiday, the Effective Date shall be the next day which is not a weekend day or a holiday.

ARTICLE VII

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

7.1 Assumption/Rejection of Certain Executory Contracts and Unexpired Leases Other Than the D&O Policy.

(a) Unless the subject of a motion to assume an executory contract that is pending as of the Effective Date, or unless an executory contract is dealt with by an Order of this Court entered on or prior to the Effective Date, any and all executory contracts and unexpired leases of the Debtor that were entered into prior to the Filing Date shall be deemed rejected as of the Effective Date, if not earlier rejected by other orders of the Bankruptcy Court. If an executory contract is the subject of a motion to assume as of the Effective Date, then such executory contract shall be assumed or rejected in accordance with an order entered into by the Court with respect to such motion, or in accordance with an agreement of the Debtor and the non-debtor party(ies) to such executory contract.

(b) The non-Debtor party to any such rejected contract or lease shall be required to assert a claim for damages from such rejection in accordance with Section 8.2 hereof.

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7.2 Damages. Any claim for damages arising from the rejection or deemed rejection of an executory contract or unexpired lease must be filed on or before thirty (30) days after written notice of the Confirmation Date to the non-Debtor party to such contract or lease, or by such other date as may be specified by Order of the Bankruptcy Court and, if not so filed, will be deemed disallowed, discharged, and forever barred from receiving any distribution under this Plan. All Allowed Claims arising from the rejection of executory contracts and unexpired leases shall be classified as Allowed Unsecured Claims in Class Three of the Plan.

7.3 D&O Policy. The entry of the Confirmation Order shall constitute and effectuate the Debtors' assumption of the D&O Policy, within the meaning of Section 365(a) of the Bankruptcy Code. The Debtor shall have no liability for payment of any amounts for cure with respect to the D&O Policy, and the entry of the Confirmation Order shall constitute adequate assurance of performance of such D&O Policy, all within the meaning of Section 365(b)(1) of the Bankruptcy Code.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

8.1 Legally Binding Effect. The provisions of the Plan shall bind all holders of Claims and Interests, whether or not they accept the Plan.

8.2 Debtor's Assets and Causes of Action. On the Effective Date of the Plan, and subject to the terms and provisions of this Plan, the Confirmation Order, and the GSA, all property of the Debtor's bankruptcy estate shall vest in the ~~Debtor Trust~~, subject only to liens and encumbrances that are not discharged and that are continued in full force and effect pursuant to this Plan. On and after the Confirmation Date, and subject to the terms and provisions of this Plan, the Confirmation Order, and the GSA, the ~~Debtor Trust~~ may, without further approval of the Bankruptcy Court, use, sell, assign, transfer, abandon, settle, or otherwise dispose of at a public or private sale any of the ~~Debtor Trust's~~ Assets for the purpose of liquidating and converting such assets to cash, making distributions, and fully consummating the Plan. ~~Without limiting the generality of the foregoing, and the terms and provisions of this Plan, the Confirmation Order, and the GSA, the Debtor shall retain all Causes of Action, including all causes of action against any purported secured creditor of the Debtor challenging the amount, validity, enforceability, or priority of any allegedly secured claim. Notwithstanding the foregoing, the Trust or the Debtor shall seek and obtain Bankruptcy Court approval of any compromise or settlement of a Cause of Action.~~

8.3 Claims Subject to Allowance. Notwithstanding any other provision of the Plan, no distribution shall be made on account of any Claim until such Claim is Allowed.

8.4 Prepetition Claim and Amendments. Each Claim as to which a proof

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of claim was required to be filed on or before the Bar Date and as to which a proof of claim was not filed on or before the Bar Date shall not under any circumstances become an Allowed Claim. In no event shall the Allowed Amount of any Claim against the Debtor exceed the amount set forth in a proof of claim therefor filed on or before the Bar Date unless the claimant in its proof of claim expressly reserved the right to amend such proof of Claim, in which case any such amended proof of claim must be filed by the Confirmation Date. No Order allowing or disallowing a Claim may be reconsidered, pursuant to the Bankruptcy Code Section 502(j) or otherwise, so as to increase the Allowed Amount thereof after entry of the Confirmation Order.

8.5 Objections to Prepetition Claims and Interests. Claims and Interests that arose prior to the Petition Date, and which have not been scheduled by the Debtor as contingent, unliquidated or disputed, or as to which a valid proof of claim or interest has been filed on or before the Bar Date, shall be allowed in full, unless an objection to such Claim or Interest is filed on or before the date which is thirty (30) days after the Confirmation Date. Claims that have been objected to and not allowed shall have no right to vote with respect to the acceptance or rejection of this Plan except as otherwise ordered by the Court.

8.6 Bar Date for and Objection to Post-Petition Claims. Any Claim entitled to priority under Bankruptcy Code § 503(a) arising before the Confirmation Date and still outstanding 60 days thereafter, except for a Fee Claim, shall be forever barred unless it is the subject of a proof of claim filed with the Bankruptcy Court on or before the Post-Petition Bar Date. Any Claim that is the subject of such a proof of claim shall be Allowed in full unless an objection thereto is filed within 30 days after the Post-Petition Bar Date or such other date as is provided by Order upon motion of the Debtor.

8.7 Means of Cash Payment. Cash payments made pursuant to the Plan will be in United States funds, by the means agreed to by the Debtor and the respective holders of Allowed Claims, including by check or wire transfer or, in the absence of an agreement, such commercially reasonable manner as the Debtor shall reasonably determine.

8.8 Discharge. To the fullest extent allowable under the Bankruptcy Code, and except as expressly provided otherwise in the Amended Plan, the Debtor shall, as of the Confirmation Date, have the full benefit of the discharge provided by Bankruptcy Code Section 1141(d); provided, however, that nothing herein shall release or discharge the Debtor with respect to its obligation to make the payments and to provide the other consideration which is described in this Plan.

8.9 Release of Encumbrances. The entry of an order confirming this Plan shall constitute the immediate release and discharge of any contractual or statutory or judicial lien, security interest, mortgage or other encumbrance affecting property of the estate or property of the Debtor (the "Encumbrances"), unless this Plan or the Confirmation Order requires the continuation in effect of any of such Encumbrances. Any holder of an Encumbrance that is discharged pursuant to this Plan shall, upon request of the Debtor, execute and deliver to the Debtor such documents and agreements,

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in recordable form, as are reasonably necessary to cause the discharge of record of any such Encumbrance. In the event that any such holder fails and refuses to do so, then the Debtor may cause to be recorded a discharge of such Encumbrance.

8.10 Injunction and Stay. Unless otherwise provided, all injunctions or stays provided for in the Case pursuant to §§ 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the close of the Case. The entry of the Confirmation Order shall constitute a stay and injunction applicable to all persons, staying and enjoining the enforcement or attempted enforcement by any means of all liens, claims, Encumbrances, and debts discharged pursuant to Sections ~~8.8 and 8.9~~ 8.8 and 8.9 above.

8.11 Modification of Confirmed Plan. After the Confirmation Date, the proponent of this Plan may modify the Plan under Bankruptcy Code § 1127 and may remedy any defect or omission or reconcile any inconsistency in the Plan or in the Confirmation Order in such manner as may be necessary or appropriate to carry out the purposes and intent of the Plan, so long as the interests of holders of Claims and Interests are not materially and adversely affected thereby.

8.12 Substantial Consummation. The Plan shall be deemed to have been substantially consummated when all of the requirements of Bankruptcy Code § 1101(2) shall have been satisfied.

8.13 Closing of Case. The Case shall be deemed closed at such time as the Order closing the Case pursuant to Bankruptcy Code § 350 has been entered by the Bankruptcy Court on the motion of the Debtor, and the Order becomes a Final Order.

8.14 Retained Jurisdiction. The Bankruptcy Court shall retain jurisdiction over the Case after the Confirmation Date for the following purposes:

- (a) to hear and determine objections to claims, and requests for approval of any compromise or settlement of a Cause of Action;
- (b) to hear and determine any disputes arising under the Plan, its implementation and execution of any necessary documents thereunder, and any requests to amend, modify, or correct the Plan, provided that such matters are brought before the Court prior to the point of Substantial Consummation as that term is defined in Bankruptcy Code § 1101(2) of the Bankruptcy Code and by the Plan itself, and subject, further, to the restrictions set forth in Bankruptcy Code § 1127(b);
- (c) to grant extensions of any deadlines set forth in the order confirming this Plan as may be appropriate;
- (d) to enforce all discharge provisions under the Plan, including the provisions of § 8.9 of this Article;

- (e) to review and rule upon applications for compensation of professional persons; and
- (f) If at the time of the hearing confirming the Plan, the Debtor expects that a broader retention of jurisdiction will be sought, but is not in a position to request a specific enlargement, the Court may conditionally reserve the question of additional retained jurisdiction in the order confirming the Plan and shall set a time within which the Debtor shall file a motion on notice requesting retention of such additional jurisdiction as necessary, to be embodied in a supplemental order.

8.15 Dates. Whenever the Plan requires the Debtor or the Trust to make a transfer or distribution or take some other action on a particular date, such action shall be taken on the required date or as soon as practicable thereafter.

8.16 Exemption from Transfer Taxes. Pursuant to § 1146(c) of the Bankruptcy Code, the assignment or surrender of any lease or sublease, or the delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan, including the execution, delivery and recording of any deeds, bills of sale or assignments executed in connection with any disposition of assets under, in furtherance of, or in connection with the Plan shall not be subject to any stamp, real estate transfer, mortgage recording, sales, use or other similar tax.

8.17 Binding Effect. Except as otherwise provided in § 1141(d)(3) of the Bankruptcy Code, on and after the Confirmation Date, the provisions of the Plan shall bind any holder of a Claim against, or Interest in, the Debtor and its respective successors and assigns, whether or not the Claim or Interest of such holder is impaired under the Plan and whether or not such holder has accepted the Plan. The rights, benefits and obligations of any entity named or referred to in the Plan, whose actions may be required to effectuate the terms of the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such entity (including, but not limited to, any trustee appointed for the Debtor under chapters 7 or 11 of the Bankruptcy Code).

8.18 Severability. In the event that the Bankruptcy Court determines, prior to the Confirmation Date, that any provision of the Plan is invalid, void or unenforceable, the Bankruptcy Court shall, with the consent of the Debtor, have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

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8.19 Headings. Headings are utilized in the Plan for convenience and reference only and shall not constitute a part of the Plan for any other purpose.

8.20 Plan Controls. To the extent that the Plan is inconsistent with the Disclosure Statement, the provisions of the Plan shall be controlling.

[Signatures on following page]

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Dated: ~~September 25~~October 18, 2013

**ISAACSON STEEL, INC.
ISAACSON STRUCTURAL
STEEL, INC.**

By: /s/William S. Gannon
Attorney for the Debtor

William S. Gannon, PLC
889 Elm St., 4th Floor
Manchester, NH 03101

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LIQUIDATING TRUST AGREEMENT

This Liquidating Trust Agreement (this “**Agreement**”), dated as of October ___, 2013, is by and between Chapter 11 Debtors Isaacson Steel, Inc. and Isaacson Structural Steel, Inc. (combined the “**Estate**”), the Official Committee of Unsecured Creditors of the Estate (the “**Committee**”), the New Hampshire Business Finance Authority (“**BFA**”), Passumpsic Savings Bank (together with and including its participating lenders, Woodsville Guaranty Savings Bank and Ledyard National Bank, “**PSB**”), and Turner Construction Company, Inc. (“**Turner**”) (together, the Estate, the Committee, BFA, PSB, and Turner are referred to in this Agreement as the “**Parties**”), and is created in order to establish a liquidating trust in collection with that certain Global Settlement Agreement, dated August ___ 2013, by and between the Parties and approved by the United States Bankruptcy Court for the District of New Hampshire (the “**Bankruptcy Court**”). Said Global Services Agreement, as the same may be amended, modified or supplemented from time to time in accordance with the terms and provisions thereof and/or as modified supplemented, or amended by further order of the Bankruptcy Court, is hereinafter referred to as the “**GSA**”.¹

WITNESSETH

WHEREAS, the Estates are debtors-in-possession in proceedings currently pending under Chapter 11 of the United States Bankruptcy Code (the “**Chapter 11 Case**”) in the Bankruptcy Court;

WHEREAS, the Committee was duly appointed by the United States Trustee for Region One in the Estate’s Chapter 11 Case.

WHEREAS, BFA is the holder of post-petition secured and administrative claims, including superpriority administrative claims against the Estate, such claims arising by virtue of post petition loans made to the Estate, and pursuant to orders of the Bankruptcy Court entered in the Chapter 11 Case; and

WHEREAS PSB holds secured, administrative, including superpriority administrative, and unsecured claims against the Estate, such claims arising from security agreements with the Estates entered into prior to the commencement of the Estate’s Chapter 11 Case, as well as post-petition agreements with the Estate, and pursuant to orders of the Bankruptcy Court entered in the Chapter 11 case; and

WHEREAS, Turner holds administrative, including super priority administrative claims against the Estate, arising from contracts entered into with the Estate, and pursuant to orders of the Bankruptcy Court entered in the Chapter 11 Case; and

WHEREAS, the Parties have all executed the GSA for the purpose of (a) settling and compromising conflicting claims among the Parties to the proceeds arising from

¹ Capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings ascribed to them in the GSA and the Plan. A copy of the GSA is attached as Exhibit A.

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the prosecution of certain claims against former officers and directors of the Estate (the “**D&O Claims**”), liability for which claims are or may be insured pursuant to Director and Officer liability insurance policies held by the Estate (the proceeds of such policies being referred to herein as the “**D&O Proceeds**”), and (b) settling and compromising certain disputes regarding the order and priority of distribution of proceeds of the prosecution of the D&O Claims and causes of action held by the Estate under Chapter 5 and other provisions of the U.S. Bankruptcy Code (the “**Chapter 5 Causes of Action**”); and

WHEREAS, by Order dated September 25, 2013 [Doc. #1186] (the “Approval Order”), the Bankruptcy Court approved the GSA and the terms of the settlement, distributions, and liquidating trust described therein, subject to confirmation of the Estate’s proposed Chapter 11 Plan (as and when confirmed by a final order of the Bankruptcy Court, the “Plan”); and

WHEREAS, pursuant to the GSA, all D&O Claims and the Net Estate Recoveries (as defined in ¶ 7 of the GSA) are to be transferred to a liquidating trust established to administer, prosecute, and distribute –the Net Estate Recoveries in accordance with the GSA and the Plan; and

WHEREAS, the liquidating trust established in accordance with the terms of the GSA will also continue to serve as a liquidating trust under and pursuant to the Plan; and

WHEREAS, the Parties, by this Agreement, wish to establish the liquidating trust called for by the GSA to receive the transfer of the D&O Claims and to administer, prosecute and distribute the proceeds thereof and the Net Estate Recoveries in accordance with the GSA, and upon confirmation of the Plan, in accordance with the Plan;

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements contained herein and in the GSA, the Parties agree as follows:

ARTICLE 1
ESTABLISHMENT OF THE LIQUIDATING TRUST

1.1 Establishment of the Isaacson Steel Liquidating Trust and Appointment of the Liquidating Trustees.

(a) The Parties hereby established a trust which shall be known as the “**Isaacson Steel Liquidating Trust**,” which shall also be referred to herein as the “Liquidating Trust” or the “**Trust**,” and which is established on behalf of and for the benefit of the Parties and the entities that they represent, respectively, and the creditors of the Estate, all of whom shall be the beneficiaries of the Trust created hereby (the “**Beneficiaries**”).

(b) There shall be three (3) trustees of the Trust, ~~with~~ ~~– Within ten (10) days following the entry of an order of the Bankruptcy Court approving the GSA, each of~~ the Committee, BFA, and PSB shall each having appointed one person to serve as a

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trustee of the Trust, and together the three persons so appointed shall constitute and shall be referred to herein as the Liquidating Trustees (together, the “**Liquidating Trustees**”, and each a “**Liquidating Trustee**” or a “**Trustee**”), and they shall be the trustees of the Trust. Each Trustee and each successor trustee serving from time to time hereunder as a Liquidating Trustee shall have all the rights, powers and duties set forth herein. The initial Trustees of the Trust shall be:

PSB Appointee: Robert M. Bishop, Senior Vice President
BFA Appointee: Jack Donovan, Chief Executive Director Officer
Committee Appointee: Charles B. Fenderson, President

1.2 Transfer of Assets and Rights to the Isaacson Steel Liquidating Trust and the Liquidating Trustees.

(a) ~~Upon the entry of a final order of the Bankruptcy Court approving the GSA, and the appointment of the Liquidating Trustees, Upon confirmation of the Plan,~~ the Parties shall cause to be transferred, assigned and delivered to the Trust all of their right, title, and interest in and to the D&O Claims, the Chapter 5 Causes of Action, and the Net Estate Recoveries, ~~the Chapter 5 Causes of Action (the “Transfer”) including.~~ ~~In addition, the Estate shall transfer to the Trust the sum of \$ [REDACTED] (the “Estate Cash”), comprised of representing all cash assets of the Estate derived from the prosecution by the Estate of Chapter 5 Causes of Action and other sources, claims prior to the date of this Agreement less an amount sufficient to pay the Estate’s accountant and taxes² (the “Initial Cash Transfer”).~~ Each ~~of such the~~ **Transfers** shall be free and clear of all liens, claims, encumbrances and interests of any person or entity.

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(b) Upon and after such Transfer, the Trustees shall administer, prosecute, liquidate and distribute the proceeds of the D&O Claims, and the Chapter 5 Causes of Action and administer and distribute the Net Estate Recoveries in accordance with the terms and conditions of this Agreement, ~~and the GSA, and the Plan.~~

(c) Upon and after such Transfer, the Parties shall (i) cause to be delivered to the Trustees any and all documents or other information in their possession, that is, or may be, useful in connection with the prosecution of the D&O Claims and the Chapter 5 Causes of Action (including those maintained in electronic format and original documents), and (ii) shall provide access at reasonable times and under reasonable conditions to the Trustees as to all employees or agents of the Parties with knowledge of matters relevant to the D&O Claims and the Chapter 5 Causes of Action.

1.3 Title to D&O Claims and Chapter 5 Causes of Action.

Upon the Transfer of the D&O Claims and the Chapter 5 Causes of Action, and subject to the terms of the Plan, the Liquidating Trustees shall succeed to all of the Parties’ right, title and interest in and to the D&O Claims, the Chapter 5 Causes of

² For convenience sake, and subject to the Trustees’ approval the Estate has agreed to have its accountants complete and file the Estate tax returns for all periods through [REDACTED], 2013.

Action, and the Net Estate Recoveries, and the Parties, separately or individually, shall have no any further interest in or with respect to the same.

1.4 Nature and Purpose of the Isaacson Steel Liquidating Trust.

(a) Purpose. The Isaacson Steel Liquidating Trust is organized and established as a trust pursuant to which the Liquidating Trustees, subject to the terms and conditions contained herein, ~~and~~ in the GSA, and in the Plan, agree to (i) hold the assets of the Trust and dispose of the same in accordance with this Agreement, the GSA, the Plan, and ~~in accordance with~~ Treasury Regulation Section 301.7701-4(d); and (ii) oversee and direct the expeditious and orderly liquidation of the assets of the Trust and the distribution thereof in accordance with the GSA and the Plan. Accordingly, the primary purpose of the Trust is to liquidate and distribute the assets transferred to it with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to preserve or enhance the liquidation value of the assets of the Trust, and consistent with, the liquidating purpose of the Trust.

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(b) Actions of the Liquidating Trust. The Liquidating Trustees, subject to the exercise of their reasonable business judgment, and on behalf of the Trust, shall, in an expeditious and orderly manner, liquidate and convert the D&O Claims and the Chapter 5 Causes of Actions to Cash, and make timely disbursements under this Agreement, in accordance with ~~and~~ the GSA and the Plan. The liquidation of the D&O Claims and the Chapter 5 Causes of Action and the distribution of the proceeds thereof, may be accomplished by the Liquidation Trustees, in the exercise of their sole judgment and discretion, and, except as provided in ¶ 3 of the GSA and the Plan, without the necessity of Bankruptcy Court approval, and through the prosecution, compromise and settlement, abandonment or dismissal of any or all claims, rights or causes of action, or otherwise. Without limiting the generality of the foregoing:

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(i) All actions of the Trust shall be upon the consent, authorization and/or approval of the Liquidating Trustees acting by a majority vote of the Trustees. Such consent, authorization and/or approval by majority vote of the Liquidating Trustees shall be obtained in one or more meetings thereof duly noticed and held pursuant to this Agreement, or upon one or more written consents, authorizations and/or approvals executed by a majority of the Liquidating Trustees, and obtained in accordance with the terms of this Agreement.

(ii) A meeting of the Liquidating Trustees may be held at any location within the State of New Hampshire or by telephonic conference call in which all Trustees are invited to participate in the same conference call. A meeting in person or by telephonic conference call may be called upon ~~three (3)~~ two (2) days written (mail or electronic) notice delivered by any Trustee to the other Trustees, which notice shall specify the time and place and/or dial in instructions for the meeting or conference call, as the case may be. A Trustee may appear in person at any such meeting of the Trustees, or may participate by telephone in such meeting. A majority of the Trustees shall

constitute a quorum of the Trustees, which shall be necessary for the conduct of any business at any such meeting.

(iii) A Trustee may propose that any consent, authorization and/or approval be provided by written agreement of the Trustees. Notice of any such proposed consent, authorization and/or approval shall be provided to the Trustees by any one or more or more Trustees by written notice, and specifying the consent, authorization and/or approval to be sought. After three days following the delivery of such notice, any such consent, approval or authorization shall be effective if executed by a majority of the Trustees.

(c) Nothing in this Agreement requires the Liquidating Trustees to file any accounting or seek approval of any court with respect to the administration of the Trust, or as a condition for managing any payment or distribution out of the assets of the Trust, provided that such payment or distribution is made in accordance with the provisions of this Agreement, ~~and~~ the GSA, ~~and~~ the Plan.

(d) Prosecutorial Discretion of Liquidating Trustees. Subject to such Bankruptcy Court approval as may be required by the GSA or the Plan. ~~The~~ Liquidating Trustees shall have the absolute right to pursue, settle and compromise or not pursue any and all D&O Claims and/or Chapter 5 Causes of Action as they may, in their sole judgment, determine to be in the best interests of the Beneficiaries. The Liquidating Trustees shall have no liability for the outcome of any such decision except for any damages caused by recklessness, gross negligence, willful misconduct, or knowing violation of law.

(e) Relationship. 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 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 Liquidating Trustee or the Beneficiaries, or any of them, for any purpose be, or be deemed to be or treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The relationship of the Beneficiaries to the Liquidating Trustees shall be solely that of beneficiaries of a trust and shall not be deemed a principal or agency relationship, and the Beneficiaries' rights shall be limited to those conferred upon them by this Agreement.

1.5 Incorporation of GSA; ~~Plan Controls.~~

The GSA, the Approval Order, and the Plan (if confirmed) ~~and the order of the Bankruptcy Court approving the same;~~ are hereby incorporated into this Agreement and made a part hereof by this reference; provided, however, to the extent that there is conflict between the provisions of this Agreement, the Plan, and/or the provisions of the GSA, ~~and/or the Plan, such Order,~~ the terms of the Approval Order ~~Plansuch Order,~~ and to the extent consistent therewith, the GSA, shall govern.

1.6 Funding of the Trust.

~~(a) Initial Funding. The Trust shall be initially funded by the Estate Cash included with the Transfer, Initial Cash Transfer.~~

~~(b) Subsequent Funding. And, thereafter, ~~the Trust shall be funded by~~ with the proceeds from the liquidation of the D&O Claims and the Chapter 5 Causes of Action and any other Net Estate Recoveries.~~

ARTICLE 2
ISAACSON STEEL LIQUIDATING TRUST INTERESTS

2.1 Interests Beneficial Only.

The ownership of a beneficial interest in the Trust shall not entitle any Beneficiary to any title in or to the assets of the Trust as such (which title shall be vested in the Liquidating Trustees) or to any right to call for a partition or division of the assets of the Trust or to require an accounting or give standing to direct the Liquidating Trustees to do or not to do any act or to institute any action or proceeding upon or with respect to the assets of the Trust, except as expressly provided in this Agreement ~~or~~ the GSA, or the Plan.

ARTICLE 3
THE LIQUIDATING TRUSTEES

3.1 Trust ~~Proceeds~~Assets.

The Estate Cash and All of the rights to and proceeds of the prosecution, compromise and settlement of D&O Claims and Chapter 5 Causes of Action and any other Net Estate Revenues shall ~~comprise~~ be added to the assets of the Trust (the "Trust AssetsProceeds") and held as a part thereof, ~~(and which~~ title to which shall be vested in the Liquidating Trustees).

3.2 Payment of Trust Expenses.

(a) The Liquidating Trustees shall maintain a litigation expense fund (the "**Litigation Expense Fund**") and expend the assets of the Litigation Expense Fund (i) as reasonably necessary to meet contingent liabilities and to maintain the value of the ~~a~~ Assets of the Trust during its duration; (ii) to pay reasonable administrative costs (including but not limited to, the costs and expenses of the Liquidating Trustees (including reasonable fees, costs, and expenses of professionals employed by the Liquidating Trustees), any taxes imposed on the Trust or fees and expenses in connection

with, arising out of or related to the D & O Claims and the Chapter 5 Causes of Action; and (iii) to satisfy other liabilities incurred or assumed by the Trust (or to which the Trust Assets are otherwise subject) in accordance with this Agreement.

(b) The Liquidating Trustees may retain from the Trust ~~Proceeds~~Assets and add to the Litigation Expense Fund, at any time and from time to time, such amounts as the Liquidating Trustees deem reasonable and appropriate to ensure that the Litigation Expense Fund will be adequate to meet the expenses and liabilities described in this Section 3.2.

(c) Notwithstanding any other provision of this Agreement to the contrary, the Liquidating Trustees shall not be required to take any action or enter into or maintain any claim, demand, action or proceeding relating to the Trust unless it shall have sufficient funds in the Litigation Expense Fund for that purpose.

3.3 Distributions.

The Liquidating Trustees shall distribute the net distributable ~~assets of the Trust Assets~~ to the Parties and/or the Beneficiaries in accordance with the provisions of the ~~GSA~~ and the Plan.

3.4 Tenure, Removal, and Replacement of the Liquidating Trustee.

(a) Each Liquidating Trustee will serve until resignation and the appointment of a successor pursuant to subsection (b) below, disability or death (if applicable)).

(b) A Liquidating Trustee may resign by giving not less than sixty (60) days' prior written notice to the remaining Liquidating Trustees. Such resignation will become effective on the later to occur of (i) the day specified in such notice and (ii) the appointment of a successor trustee as provided herein and the acceptance by such successor trustee of such appointment; provided, however, that if a successor trustee is not appointed or does not accept his or her appointment within sixty (60) days following delivery of notice of resignation, the resignation shall become effective on the 60th day following the delivery of notice of resignation.

(c) In the event of a vacancy in any Trustee position, (whether by removal, resignation, disability, or death, if applicable), the vacancy will be filled by the Party who appointed the Trustee who has ceased service as Trustee.

(d) Immediately upon the appointment of any successor trustee, all rights, powers, duties, authority, and privileges of the predecessor Liquidating Trustee will be vested in and undertaken by the successor trustee without any further act; and the successor trustee will not be liable personally for any act or omission of the predecessor Liquidating Trustee;

(e) Upon the appointment of a successor trustee, the predecessor Liquidating Trustee (or the duly appointed legal representative of a deceased Liquidating Trustee) shall, if applicable, when requested in writing by the successor trustee, execute and deliver an instrument or instruments conveying and transferring to such successor trustee upon the trust herein expressed, without recourse to the predecessor Liquidating Trustee, all properties, rights, powers and trusts of such predecessor Liquidating Trustee, and shall duly assign, transfer, and deliver to such successor trustee all property and money held hereunder, and all other assets and documents relating to the Trust; and

3.5 Acceptance of Appointment by Successor Liquidating Trustee.

Any successor trustee appointed hereunder shall execute an instrument accepting such appointment and assuming all of the obligations of the predecessor Liquidating Trustee hereunder and thereupon the successor trustee shall, without any further act, become vested with all the estates, properties, rights, powers, trusts, and duties of his or her predecessor in the Trust with like effect as if originally appointed as Liquidating Trustee.

3.6 Role of the Liquidating Trustees.

In furtherance of and consistent with the purpose of the Trust, the Liquidating Trustees, subject to the terms and conditions contained herein and in the Plan, shall have the power to (i) prosecute, compromise and settle, abandon or dismiss for the benefit of the Beneficiaries all claims, rights and causes of action transferred to the Liquidating Trustees and the Trust, including the D&O Claims and the Chapter 5 Causes of Action; and (ii) ~~subject to the terms of the Plan,~~ to otherwise perform the functions and take the actions provided or permitted in the GSA or in this Agreement. In all circumstances, the Liquidating Trustees shall act in the best interests of all the Beneficiaries and in furtherance of the purpose of the Trust.

3.7 Authority of Liquidating Trustees.

Subject to any limitations contained herein (including, without limitation, Article 4 hereof) or in the GSA or the Plan, the Liquidating Trustees shall have the following powers and authorities:

(a) hold legal title to any and all rights of the Trust, including, without limitation, collecting, receiving any and all money and other property belonging to the Trust;

(b) prosecute, compromise, settle, adjust, arbitrate, sue on or defend, pursue, abandon, exercise rights, powers, and privileges with respect to, or otherwise deal with and settle, in accordance with the terms set forth herein, all D&O Claims and all Chapter 5 Causes of Action or other causes of action in favor of the Trust;

(c) protect and enforce the Trust's rights of ownership to D&O Claims and Chapter 5 Causes of Action by any method deemed appropriate including, without

limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

(d) obtain reasonable insurance coverage with respect to the liabilities and obligations of the Liquidating Trustees under this Agreement (in the form of an errors and omissions policy or otherwise);

(e) subject to the provisions of the GSA and the Plan, select counsel and other professionals, who will be entitled to reasonable compensation for services rendered upon such terms as the Liquidating Trustees, in their sole discretion, shall deem fair and reasonable;

(f) waive any privilege or any defense held by the Trust, on behalf of the Trust; and

(g) take or refrain from taking any and all other actions (apart from those listed above) that the Liquidating Trustees, in their sole discretion, deem necessary or convenient for the continuation, protection and maximization of the assets of the Trust and to carry out the purposes hereof; and

(h) make payments and distributions as contemplated by this Agreement, the Plan and the GSA.

3.8 Limitation of Liquidating Trustee's Authority.

Notwithstanding anything herein to the contrary, and subject to the terms of the Plan, the Liquidating Trustees shall not, in their capacities as Liquidating Trustees, (i) be authorized to engage in any trade or business, (ii) take such actions inconsistent with the orderly liquidation of the assets of the Trust as are required or contemplated by applicable law, the GSA and this Agreement, or (iii) be authorized to engage in any investments or activities inconsistent with the treatment of the Trust as a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d) and in accordance with Rev. Proc. 94-45, 1994-2 C.B. 684.

3.9 Books and Records.

(a) The Liquidating Trustees shall maintain books and records relating to the assets of the Trust and collections of the Trust and the payment of expenses of, and liabilities of claims against or assumed by, the Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained on a cash or other comprehensive basis of accounting necessary to facilitate compliance with the tax reporting requirements of the Trust.

(b) The Parties and their duly authorized representatives shall have the right, upon reasonable prior written notice to the Liquidating Trustees, to inspect and, at the sole

expense of the Party seeking the same, make copies of the books and records referenced in Section 3.9(a) on any business day and as often as may be reasonably be desired.

3.10 Inquiries into Trustee's Authority.

Except as otherwise set forth in this Agreement or in the GSA ~~or in the Plan~~, no person dealing with the Trust shall be obligated to inquire into the authority of the Liquidating Trustees in connection with the protection, conservation or disposition of the assets of the Trust or the making of disbursements by the Trust.

3.11 Compliance with Laws.

Any and all distributions of assets of the Trust and proceeds of borrowings, if any, shall be in compliance with applicable laws, including, without limitation, applicable federal and state securities laws, and the provisions of the Bankruptcy Code.

3.12 Compensation of the Liquidating Trustee.

The Liquidating Trustees shall not be compensated for their service to the Trust. The Liquidating Trustees shall, however, be entitled to reimbursement for their reasonable out of pocket expenses incurred on behalf of the Trust.

3.13 Reliance by Liquidating Trustee.

Except as otherwise provided herein: (a) the Liquidating Trustee may rely, and shall be protected in acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by the Liquidating Trustee to be genuine and to have been signed or presented by the proper party or parties; and (b) persons dealing with the Liquidating Trustee shall look only to the assets of the Trust to satisfy any liability incurred by the Liquidating Trustee to such ~~P~~person in carrying out the terms of this Agreement, and the Liquidating Trustee shall not have any personal obligation to satisfy any such liability.

3.14 Standard of Care: Exculpation.

(a) Neither the Liquidating Trustee nor any of his or her duly designated agents or representatives or professionals shall be liable for any act or omission taken or omitted to be taken by the Liquidating Trustee in good faith, other than acts or omissions resulting from the Liquidating Trustee's own gross negligence, recklessness, willful misconduct, knowing and material violation of law, or fraud.

(b) Neither the Liquidating Trustee nor any of his or her duly designated agents or representatives or professionals shall be liable to the ~~Estate~~debtor or any Beneficiaries for the impairment, waiver, lapse or bar of any Chapter 5 Causes of Action (including, without limitation, the expiration of the applicable statute of limitations or repose) related to a failure by the Liquidating Trustee to prosecute the Chapter 5 Causes of Action,

unless the failure to prosecute the Chapter 5 Causes of Action was the result of gross negligence, recklessness, willful misconduct, or knowing violation of law.

(c) The Liquidating Trustee may, in connection with the performance of his or her functions, and in his or her sole and absolute discretion, consult with his or her attorneys, accountants, financial advisors and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such ~~P~~persons. Notwithstanding such authority, the Liquidating Trustee shall be under no obligation to consult with his or her attorneys, accountants, financial advisors or agents, and his or her good faith determination not to do so shall not result in the imposition of liability on the Liquidating Trustee, unless such determination is based on gross negligence, recklessness, willful misconduct, knowing and material violation of law, or fraud.

3.15 Conflicts of Interest.

If a Liquidating Trustee determines, in the exercise of his or her reasonable discretion, that he or she has a material conflict of interest with respect to the settlement, resolution or prosecution of the D&O Claims or the Chapter 5 Causes of Action, or any other matter (including, but not limited to, issues related to disbursements under the GSA), such Liquidating Trustee, with the written approval of the party appointing him or her, may select a designee to act on behalf of the Trust solely with respect to such matter (the “**Designated Liquidating Trustee**”), with such designee’s authority to act on behalf of the Trust to terminate upon the matter’s conclusion.

3.16 No Implied Obligations.

No covenants or obligations shall be implied into this Agreement, or the GSA. The Liquidating Trustees shall not be responsible in any manner whatsoever for the correctness of any recital, statement, representation, or warranty herein, or in any documents or instrument evidencing or otherwise constituting a part of the ~~Liquidating~~ Trust ~~A~~assets.

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ARTICLE 4 **TAX MATTERS**

4.1 Federal Income Tax Reporting.

Subject to definitive guidance from the IRS, the terms of the Plan, or an order of the Bankruptcy Court or other court of competent jurisdiction to the contrary (including receipt by the Liquidating Trustees of a private letter ruling if the Liquidating Trustees so request one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Liquidating Trustees, the Liquidating Trustees shall file returns for the Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a) and in accordance with this Article 4.

ARTICLE 5
INDEMNIFICATION

5.1 Indemnification of Liquidating Trustees and Others.

(a) To the fullest extent permitted by law, the Liquidating Trust, to the extent of its assets legally available for that purpose, shall indemnify and hold harmless the Liquidating Trustees and each of its respective officers, agents, employees, attorneys and other professionals (collectively, the “**Indemnified Persons**”) from and against any and all losses, costs, damages, reasonable and documented out-of-pocket expenses (including, without limitation, fees and expenses of attorneys and other advisors and any court costs incurred by any Indemnified Person) or liability by reason of anything any Indemnified Person did, does, or refrains from doing for the business or affairs of the Trust, except to the extent that the loss, cost, damage, expense or liability resulted primarily from the Indemnified Person’s recklessness, gross negligence, willful misconduct, knowing and material violation of law, or fraud. To the extent reasonable, the Trust shall pay in advance or reimburse reasonable and documented out-of-pocket expenses (including advancing reasonable costs of defense) incurred by the Indemnified Person who is or is threatened to be named or made a defendant or a respondent in a proceeding concerning the business and affairs of the Trust.

(b) The fact that an act or omission of an Indemnified Person was based upon advice of ~~counsel~~ will conclusively be deemed not to constitute recklessness, gross negligence, willful misconduct, knowing and material violation of law, or fraud. Each Indemnified Person may rely, and shall be protected in acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties, and any order of the Bankruptcy Court.

(c) The Liquidating Trust may purchase indemnification insurance to satisfy any potential indemnification claims that may arise under this Section 5.1, in conjunction with any insurance obtained pursuant to Section 3.7(e), for the benefit of the Trust, the Liquidating Trustee, and any agents, representatives, attorneys, accountants, advisors or other professionals employed by any of them.

(d) The rights to indemnification under this Section 5.1 are not exclusive of other rights which any Indemnified Person may otherwise have at law or in equity, including without limitation common law rights to indemnification or contribution. Nothing in this Article 5.1 will affect the rights or obligations of any person (or the limitations on those rights or obligations) under this Agreement, or any other agreement or instrument to which that Person is a party.

5.2 Limited Recourse.

No recourse shall ever be had, directly or indirectly, against a Liquidating Trustee personally, or against any employee, contractor, agent, attorney, accountant or other professional retained in accordance with the terms of this Agreement by the Liquidating Trustees, by legal or equitable proceedings or by virtue of any statute or otherwise, nor upon any promise, contract, instrument, undertaking, obligation, covenant or agreement whatsoever executed by the Liquidating Trustees in implementation of this Agreement, or by reason of the creation of any indebtedness by the Trust for any purpose authorized by this Agreement, it being expressly understood and agreed that all such liabilities, covenants, and agreements of the Trust, whether in writing or otherwise, shall be enforceable only against and be satisfied only out of the Trust ~~Assets~~ or such part thereof as shall under the term of any such agreement be liable therefore or shall be evidence only of a right of payment out of the Trust ~~Assets~~.

Notwithstanding the foregoing, a Liquidating Trustee may be held liable for his or her recklessness, gross negligence, willful misconduct, knowing and material violation of law, or fraud, in each case, as determined by a final order of a court of competent jurisdiction not subject to appeal; and if liability on such grounds is established, recourse may be had against (a) the Liquidating Trustee's bond or applicable insurance coverage, and, (b) to the extent not covered by such bond or insurance, subject to Section 5.3, directly against the Liquidating Trustee, provided, however, in no event shall the liability of the Liquidating Trustee based upon recklessness or gross negligence be any more than the fees to which the Liquidating Trustee is entitled to hereunder that are paid to, or are received by way of set off or otherwise by, the Liquidating Trustee.

5.3 No Liability for Acts of Predecessor.

No successor Liquidating Trustee shall be in any way responsible or liable for the acts or omissions of any predecessor Liquidating Trustee in office prior to the date on which such person becomes the Liquidating Trustee, nor shall such successor Liquidating Trustee be obligated to inquire into the validity or propriety of any such act or omission unless such successor Liquidating Trustee expressly assumes such responsibility. Any successor Liquidating Trustee shall be entitled to accept as conclusive any final accounting and statement of Trust ~~Assets~~ furnished to such successor Liquidating Trustee by the predecessor Liquidating Trustee and shall further be responsible only for those Trust ~~Assets~~ properly includable in such statement.

5.4 Express Exculpatory Clauses in Instruments

As far as practicable, the Liquidating Trustee shall cause any written instrument creating an obligation of the Trust to include a reference to this Agreement and the Plan and to provide that none of the Liquidating Trustees shall be liable thereunder and that the other parties to such instrument shall look solely to the Trust ~~Assets~~ for the payment of any claim thereunder or the performance thereof; provided, however, that the omission of such provision from any such instrument shall not render any Liquidating Trustee liable nor shall a Liquidating Trustee be liable to anyone for such omission.

ARTICLE 6
TERM; TERMINATION OF THE TRUST

Term: Termination of the Trust.

(a) The Trust shall remain in existence until all Trust assets have been fully administered and distributed in accordance with this Agreement, the GSA, and to the extent applicable, the Plan, and a final report and accounting of the Liquidating Trustees shall have been issued to the Parties and accepted by the Parties, in writing.

(b) The Trust may be terminated prior to the occurrence of the events described in Section 6(a) only upon either (i) the express written agreement of the Parties, or (ii) a final order of the Bankruptcy Court terminating the Trust.

ARTICLE 7
AMENDMENT AND WAIVER

7.1 Amendment and Waiver.

(a) The Liquidating Trustees, acting unanimously, may (i) amend, supplement or waive any provision of this Agreement, without notice to or the consent of any Party, any Beneficiary or the approval of the Bankruptcy Court: (ii) cure any ambiguity, omission, defect or inconsistency in this Agreement provided, however, that no such amendment or cure shall be inconsistent with the terms of the Plan or adversely affect the U.S. federal income tax status of the Trust as a “liquidating trust”.

ARTICLE 8
MISCELLANEOUS PROVISIONS

8.1 Intention of Parties to Establish the Trust.

This Agreement is intended to create a liquidating trust for federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a trust and any ambiguity herein shall be construed consistent herewith and, if necessary, this Agreement may be amended in accordance with Article 7 to comply with such federal income tax laws, which amendments may apply retroactively.

8.2 Laws as to Construction.

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW HAMPSHIRE, WITHOUT REGARD TO WHETHER ANY CONFLICTS OF LAW WOULD REQUIRE THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION.

JackD@nhbfa.com

With a copy to:

George J. Marcus, Esq.
Marcus, Clegg & Mistretta, P.A
One Canal Plaza, Suite 600
Portland, ME 04101
Tel: (207) 828-8000
Fax: (207) 773-3210
gjm@mcm-law.com

If to the Committee:

[Charles B. Fenderson, President](#)
[Charles Leonard Construction Company, Inc.](#)
[183 Pembroke Road](#)
[Concord NH 03301](#)
charles@charlesleonardinc.com

Formatted: Font: Italic

With a copy to:

Daniel S. Sklar, Esq.
Nixon Peabody
900 Elm Street
Manchester, NH 03101
Tel: (603) 628-4000
Fax: (603) 628-4040
dsklar@nixonpeabody.com

If to PSB:

Passumpsic Savings Bank, Attn: Senior Loan Officer
497 Railroad St
PO Box 38
St Johnsbury VT 05819.

With a copy to:

Daniel P. Luker, Esq.
Preti Flaherty
P.O. Box 1318
Concord, NH 03302-1318
Tel: (603) 410-1500
Fax: (603) 410-1501
dluker@preti.com

If to Turner:


With a copy to:

D. Ethan Jeffery, Esq.
Murphy & King, PC
One Beacon Street, 21st Floor
Boston, MA 02108
Tel: (617) 423-0400
dej@murphyking.com

Any party from time to time may change its address, facsimile number, or other information for the purpose of notices to that party by giving notice specifying such change to the other party hereto.

8.6 Fiscal Year.

The fiscal year of the Trust shall be the calendar year, January 1 to December 31.

8.7 Headings.

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

8.8 Counterparts.

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

8.9 Entire Agreement.

This Agreement (including the Recitals), constitutes the entire agreement by and among the Parties hereto and there are no representations, warranties, covenants or obligations except as set forth herein or therein. This Agreement supersedes all prior and contemporaneous agreements, understandings, negotiations, 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 parties thereto and their respective heirs, administrators, executors, successors, or assigns any right to remedies under or by reason of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and delivered on their behalf by their duly authorized agents, all as of the date first above written.

[signatures on following page]

WITNESS:

**ISAACSON STEEL, INC.
ISAACSON STRUCTURAL STEEL,
INC.**

By:
Print Name:
Title:

**NEW HAMPSHIRE BUSINESS
FINANCE AUTHORITY**

By:
Print Name:
Title:

**OFFICIAL COMMITTEE OF
UNSECURED CREDITORS**

By:
Print Name:
Title:

PASSUMPSIC SAVINGS BANK

By:
Print Name:
Title:

**TURNER CONSTRUCTION
COMPANY, INC.**

By:
Print Name:

|

Title:

