

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF COLORADO

In re:	)	
	)	
CROSSOVER FINANCIAL I, LLC	)	Bankruptcy Case No. 11-24257 SBB
	)	Chapter 11
	)	
Debtor	)	

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**SUBMISSION OF DEBTOR'S LIQUIDATING TRUST AGREEMENT**

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Fairfield and Woods, P.C. hereby submits the Crossover Financial I, LLC Liquidating Trust Agreement.

Dated: April 8, 2014.

FAIRFIELD AND WOODS, P.C.

s/ Caroline C. Fuller

Caroline C. Fuller, #14403  
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ATTORNEYS FOR TRUSTEE,  
C. RANDEL LEWIS

Certificate of Service

The undersigned hereby certifies that on April 8, 2014, a true and correct copy of the foregoing was served by United States Mail, first class postage prepaid on the following:

See that attached mailing matrix.

s/ Julie Boling

Julie Boling

Label Matrix for local noticing  
1082-1  
Case 11-24257-SBB  
District of Colorado  
Denver  
Tue Apr 8 11:43:19 MDT 2014

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End of Label Matrix  
Mailable recipients 15  
Bypassed recipients 0  
Total 15

**CROSSOVER FINANCIAL I LIQUIDATING TRUST AGREEMENT**

THIS CROSSOVER FINANCIAL I LIQUIDATING TRUST AGREEMENT is dated this 3<sup>rd</sup> day of April, 2014 ("Trust Agreement") and is entered into by and between Crossover Financial I, LLC, a Colorado (the "Debtor"), and C. Randel Lewis, as trustee (the "Trustee") for the benefit of the creditors of the Debtor identified on the Register of Beneficiaries (as defined below).

**STATEMENT OF FACTS**

A. On June 15, 2011, the Debtor filed its voluntary petition for relief under chapter 11 of Title 11, U.S.C. (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Colorado (the "Bankruptcy Court"), captioned as Case No. 11-24257 SBB (the "Bankruptcy Case").

B. Debtor's Plan of Liquidation Dated November 20, 2013 (the "Plan"), was confirmed by an Order of the Bankruptcy Court entered on March 20, 2014 (the "Confirmation Order").

C. The Plan provides for all of the Debtor's assets to be transferred to the Crossover Financial I Liquidating Trust to be administered for the benefit of the holders of Allowed Claims against the Debtor as provided in, and pursuant to the priorities established by, the Plan.

D. The Plan directs that this Trust Agreement first provide for the payment of Allowed Administrative Claims (as defined below) and priority claims, including priority tax claims. Next, provision is to be made for payment of Allowed Class 2 (secured) Claims; Allowed Class 3 (secured) Claims; Allowed Class 4 (secured) Claims. Available Cash will then be distributed to Allowed Class 5 (secured) Claims on a pro rata basis. It is not anticipated that Available cash will be sufficient to pay Class 5 claims in full. Accordingly, it is not anticipated junior classes will receive distributions.

**AGREEMENT**

NOW, THEREFORE, in consideration of the premises and the mutual promises and agreements contained herein and for other valuable consideration the receipt and sufficiency of which are hereby expressly acknowledged, the Debtor and the Trustee on behalf of the Beneficiaries hereby agree as follows:

**DEFINED TERMS**

1. Terms Defined Above. Each of the terms previously identified in quotation marks shall have the respective meaning set forth above. Any capitalized term that is not defined in this Trust Agreement shall have the meaning set forth in the Plan.

2. Additional Defined Terms. The following terms shall have the meanings set forth below unless the context otherwise requires:

- (a) "Administrative Claims" shall mean the post-petition expenses described in 11 U.S.C. § 503 and with a priority of payment as provided in 11 U.S.C. § 507. Administrative Claims include, but are not limited to attorneys' fees and costs.
- (b) "Available Cash" shall mean the cash on hand in the Trust Estate at any given time after payment in full of all Allowed administrative expense claims (including any ongoing Trust administration expenses), Allowed priority tax claims, any Class 2, 3 and 4 claims, and reserves reasonably necessary in the Trustee's sole discretion for payment of U.S. Trustee Fees, and expenses of administering the Trust through the final distribution to creditors hereunder, including the fees and expenses of the Trustee, and its professionals.
- (c) "Beneficiary" or "Beneficiaries" shall mean either any individual Claimant or all of the Claimants collectively listed in the Register of Beneficiaries.
- (d) "Beneficial Interest" shall mean the rights and interests of each of the Beneficiaries in and to the Trust Estate.
- (e) "Claim" shall have the same meaning as claim amount.
- (f) "Claim Amount" shall mean the principal amount owed to each Claimant. Claim Amount does not include accrued interest and expenses incurred on the claim, unless expressly provided for in the Plan.
- (g) "Claimant" shall mean the holder of an Allowed Claim against the Debtor as provided in the Plan.
- (h) "Effective Date" shall mean the date of this Trust Agreement.
- (i) "Final Order" shall mean any order of the Bankruptcy Court as to which (a) the time to appeal has expired and no appeal has been taken, (b) any timely appeal has been finally determined or dismissed, or (c) a timely appeal has been taken but such order has not been stayed.

- (j) "Priority" shall mean the priority position of each class of Allowed Claims as established by the Plan.
- (k) "Register of Beneficiaries" shall mean a register that contains the names and addresses of all Beneficiaries.
- (l) "Trust" shall mean the Crossover Financial I Liquidating Trust created pursuant to this Trust Agreement.
- (m) "Trust Administration Expenses" shall mean any and all expenses of administering the Trust as provided in Sections 3.4(j) and 3.18, or elsewhere in this Trust Agreement.
- (n) "Trust Assets" shall mean any and all property of the Debtor, which shall be irrevocably assigned, transferred and conveyed to the Trust free and clear of any and all liens, claims, interests, and encumbrances as of the Effective Date, including any proceeds thereof.
- (o) "Trust Estate" is defined in Section 2.1.
- (p) "Trust Termination Date" is defined in Section 3.12.

## ARTICLE I

### ORGANIZATION OF TRUST

- 1.1 Beneficiaries. The Beneficiaries are the sole beneficiaries of the Trust.
- 1.2 Office. The principal office of the Trust shall be located at 1600 Wynkoop Street, Suite 200, Denver, CO 80202, or at such other address as the Trustee may from time to time designate.
- 1.3 Appointment of the Trustee. C. Randel Lewis, is hereby appointed as Trustee of the Trust effective as of the Effective Date, to have all the rights, powers and duties set forth herein. The Trustee hereby agrees to serve as trustee of the Trust.
- 1.4 Plan Controls Over Agreement. If there shall exist any inconsistency between the respective terms and provisions of the Plan and this Trust Agreement, the terms and provisions of the Plan shall govern, control and take precedence.
- 1.5 Irrevocability. The Debtor does not have any right to amend, revise or revoke the Trust, and reserves no powers over the Trustee, the Trust Assets, or the Beneficiaries.

1.6 Effect of Actions. Unless contrary to the provisions of this Trust Agreement, all actions taken and determinations made by the Trustee shall be final and binding upon all Beneficiaries individually and collectively.

1.7 Effective Date. The Trust shall be established and become effective upon the Effective Date.

1.8 Exemption from Registration. The parties to this Trust Agreement intend that the rights of the Beneficiaries arising pursuant to this Trust Agreement shall not be "securities" under applicable law, but none of the parties represent or warrant that such rights shall not be securities or shall be entitled to exemption from registration under applicable securities law.

## ARTICLE II

### AUTHORITY AND CERTAIN DIRECTIONS TO TRUSTEE: DECLARATION OF TRUST

2.1 Creation of the Crossover Financial I Liquidating Trust. The Beneficiaries and the Debtor hereby create the Crossover Financial I Liquidating Trust for the benefit of the Beneficiaries. Subject to the provisions of Section 2.2 below, the Debtor hereby irrevocably transfers, absolutely assigns, conveys, sets over, and delivers to the Trust, and its successors and assigns, all right, title, and interest of the Debtor in and to the Trust Assets, in trust, to and for the benefit of the Beneficiaries for the uses and purposes stated herein. The Confirmation Order shall automatically vest the Trust Assets in the Trust (the "Trust Estate") without the need for any additional documentation, notice, or acknowledgements; *however*, to the extent reasonably requested by the Trustee, the Debtor shall execute and deliver such other instruments of sale, transfer, conveyance, assignment, and confirmation, and will cooperate and take such other actions, as are necessary or desirable in order to transfer, convey, and assign all rights, title, and interests in and to the Trust Assets to the Trust.

2.2 Transfer of Trust Assets. Transfer of the Trust Assets to the Trust, pursuant to and in accordance with the Plan and this Trust Agreement, shall be deemed a transfer to and for the benefit of the Beneficiaries followed by a deemed transfer by the Beneficiaries to the Trust to hold in trust for the benefit of the Beneficiaries, except as otherwise provided in the Plan or this Trust Agreement. The Beneficiaries shall be treated as the grantors and deemed owners of the Trust. Upon the Effective Date, title to the Trust Assets shall pass to the Trust free and clear of all liens, claims, encumbrances, and interests, as provided in and subject to the terms of the Plan.

2.3 Property in the Trust. The Trust shall hold the legal title to all property at any time constituting a part of the Trust Estate and shall hold such property in trust to be administered and/or disposed of by it pursuant to the terms of this Trust Agreement and the Plan for the benefit of the Beneficiaries. The Trustee shall invest the Trust Assets that consist of cash subject to the limitations

set forth in 11 U.S.C. Section 345. The Trustee may make such investments in such amounts and at such times as it may deem necessary in its sole and absolute discretion, to provide funds when needed to make payment from the Trust Assets. The Trustee is authorized to make disbursements and payments from the Trust Estate as described in this Agreement.

2.4 Purposes. The purposes of the Trust include but are not limited to authorizing and directing the Trustee to take such action in connection with the Trust Assets to maximize their value by maintaining and preserving the Trust Assets, and taking any other lawful action that is consistent with and carries out the objectives of this Trust Agreement. The Trustee is hereby authorized and directed: (i) to take all reasonable and necessary actions to conserve and protect the Trust Estate; (ii) to the extent necessary and appropriate, and except as limited by the Plan, object to claims asserted against the Trust; and (iii) to maintain, operate, lease, or sell or otherwise dispose of the Trust Estate, in accordance with the terms of this Agreement and the Plan, and to distribute the net proceeds of such disposition to the Beneficiaries, in as prompt, efficient, and orderly a fashion as possible.

2.5 Acceptance of Trust and Conveyance. The Trustee is hereby directed to, and the Trustee accepts the Trust imposed upon it by this Trust Agreement and agrees to observe and perform that trust, upon and subject to the terms and conditions set forth in this Trust Agreement. Further, the Trustee agrees that it will:

- (a) Accept delivery of the Trust Assets on behalf of the Trust;
- (b) Accept all bills of sale, deeds, assumptions, and assignments, and any other instruments of conveyance reasonably required to be delivered by the Debtor with respect to the Trust Estate transferred to the Trustee on behalf of the Trust pursuant to, or in connection with, the Plan, the Confirmation Order, or this Trust Agreement; and
- (c) Take such other action as may be required of the Trust hereunder, including the receipt and acceptance of the Trust Estate.

2.6 Title. On the Effective Date, legal title to all Trust Assets shall be vested in the Trust in accordance with and pursuant to the terms of the Plan and this Agreement. Except as otherwise provided in the Plan, on the Effective Date, the Trustee, on behalf of the Trust, shall be: (i) authorized to act as representative of the Debtor's Estate in respect of any and all claims or causes of action that constitute Trust Assets or assets of the Trust Estate (ii) substituted as successor to the Debtor (a) in all actions and proceedings pending or thereafter commenced in the Bankruptcy Court or elsewhere in regard to the Trust Assets or the Trust Estate, and (b) in all actions and proceedings pending or thereafter commenced in the Bankruptcy Court, including Avoidance Actions as defined in the Plan.

### ARTICLE III



### **DUTIES OF THE TRUSTEE**

3.1 **Obligations of Trustee.** The Trustee shall perform and discharge all obligations and duties specifically assigned to it pursuant to the terms of this Trust Agreement and the Plan, and such other duties as may be necessary or appropriate in order to carry out and implement this Agreement and the Plan.

3.2 **Register of Beneficiaries.** The Trustee shall keep the Register of Beneficiaries at its principal office. The Trustee may treat the person in whose name any Beneficial Interest in the Trust is registered on the Register of Beneficiaries as the owner of such Beneficial Interest for any and all purposes of the Trust Agreement.

3.3 **No Duties Except as Specified in Trust Agreement or Plan.** The Trustee shall not have any right, duty, or obligation to manage, make any payment in respect of, register, record, sell, dispose of, vary, or otherwise deal with the Trust Assets, or to otherwise take or refrain from taking any action under, or in connection with the Trust Assets or any portion thereof, except as expressly provided by the terms of this Trust Agreement and the Plan.

3.4 **Powers of the Trustee.** The Trustee shall have such rights and powers as are set forth in this Trust Agreement and in the Plan in order to carry out and implement the purposes of the Trust. The Debtor hereby grants, assigns, conveys, delivers, delegates and sets over unto the Trustee and the Trust Estate in trust for the benefit of the Beneficiaries and subject to the terms and provision set out in this Trust Agreement and the Plan, all of the authority, rights, powers and duties previously vested in the Debtor under the Bankruptcy Code and applicable non-bankruptcy law including without limitation such laws to which the Debtor or the Trustee is or hereafter may become subject. All powers granted to the Trustee by this Trust Agreement are exercisable by the Trustee only in a fiduciary capacity and only in furtherance of the administration of the Trust Assets in accordance with this Trust Agreement. During the Trustee's administration of the Trust, and subject to the Plan and this Trust Agreement, the Trustee may exercise the following powers and duties:

- (a) To hold and retain the Trust Assets in the form in which it receives the same until sale or other disposition and to have exclusive, possession, and control thereof as permissible under applicable law;
- (b) To manage the Trust Assets, to maintain, maximize and preserve the value of the Trust Assets and to employ such persons, as may be necessary to carry out the purposes of the Trust;
- (c) To distribute the Trust Assets, and the proceeds thereof, as provided in this Trust Agreement;
- (d) To open bank deposit and checking accounts, deposit funds therein, withdraw funds therefrom and conduct such other banking activities as are necessary for the



effectuation of the trust set forth herein, and to pay routine and ordinary fees in connection therewith;

- (e) To select and employ such brokers, banks, institutions, investment counsel, attorneys, accountants, appraisers and such other agents as it may deem advisable, and to delegate to such agents such of its ministerial duties, rights and powers as it deems necessary and appropriate, and to pay reasonable compensation to such agents;
- (f) To renew and extend the due date of any obligations, and to commence, litigate, arbitrate, adjust, defend, abandon, settle or compromise any causes of action relating to the Trust Assets on such terms as it may deem advisable;
- (g) To institute any action or proceeding at law or in equity for the collection of the sums due the Trust or otherwise to advance the interest of the Trust;
- (h) To enter into, perform, and exercise rights under contracts binding upon the Trust (but not upon the Trustee in its individual or corporate capacity) which are reasonably incident to the administration of the Trust and which the Trustee, in the exercise of its best business judgment, reasonably believes to be in the best interests of the Trust;
- (i) To collect and receive any accounts receivable, income, proceeds of sale, and distributions derived from or relating to the Trust Estate and to distribute the same to the Beneficiaries in accordance with the terms of this Agreement;
- (j) To pay any and all reasonably necessary expenses attributable or relating to the management, maintenance, operation, preservation, or liquidation of the Trust Estate ("Trust Administration Expenses");
- (k) To investigate, file, compromise, settle, withdraw, or litigate in the Bankruptcy Court or on appeal (or pursuant to a withdrawal of the reference of jurisdiction) objections to claims filed against the Debtor's estate, the Trust Estate or the Trust;
- (l) To investigate, file, compromise, settle, withdraw, or litigate in Bankruptcy Court or other court of competent jurisdiction, any and all causes of action belonging to the Trust Estate;
- (m) To sue in connection with any matter arising from or related to the Plan or this Trust Agreement that affects in any way the rights or obligations of the Trust, the Trustee, or the Beneficiaries relating to the Trust Assets;
- (n) To represent the interests of the Beneficiaries in their capacity as beneficiaries of the Trust with respect to any matters relating to the Plan, this Agreement, or the Trust

affecting the rights of such Beneficiaries;

- (o) To act as representative of the Debtor's Estate with respect to the assets that constitute the Trust Estate, and to investigate, initiate, prosecute, settle, or compromise any and all claims, or causes of action belonging to the Trust Estate;
- (p) If the Trust shall become subject to federal income or state tax, the Trustee shall have the power, but not the obligation, exercisable at its discretion, to take any action reasonably necessary to minimize any adverse federal or state income tax consequences to the Beneficiaries resulting from any distribution made by the Trust to such Beneficiaries; and
- (q) To do any and all other things, not in violation of any other terms of the Plan and this Trust Agreement, which, in the reasonable business judgment of the Trustee, are necessary or appropriate for the proper liquidation, management, investment, and distribution of the assets of the Trust Estate in accordance with the provisions of this Trust Agreement and the Plan.

3.5 Liquidation of Non-Cash Assets; Abandonment of Burdensome Property.

- (a) The Trustee shall have the duty to liquidate and convert to cash all non-cash portions of the Trust Estate, and distribute the proceeds thereof in accordance with the provisions of this Trust Agreement. The Trustee shall exercise reasonable business judgment in liquidating all non-cash assets and shall attempt to liquidate the assets in an orderly manner and with a view towards maximizing the proceeds thereof. Notwithstanding the foregoing, all non-cash assets (excluding, however, Avoidance Actions) shall be liquidated pursuant to the Plan.
- (b) The Trustee shall also have the authority upon notice filed with the Bankruptcy Court to abandon and not administer any non-cash asset of the Trust Estate that the Trustee determines in the exercise of reasonable business judgment to be burdensome to the Trust Estate or of inconsequential value and benefit to the Trust Estate. Any Beneficiary may offer to purchase any Trust Asset that the Trustee proposes to abandon by written notice that is received by the Trustee within fourteen (14) days after the filing of the Trustee's notice with the Bankruptcy Court. If more than one Beneficiary timely makes such an offer, the Trustee shall conduct an auction among such Beneficiaries, and sell the asset in question to the highest bidder, as determined by the Trustee in its sole and absolute discretion. If no Beneficiary makes a timely offer, the asset in question shall be abandoned from the Trust Estate, to be sold for taxes if it is real property, and to escheat to the State of Colorado if it is personal property.

3.6 Limitation on Liability of Trustee. Subject to applicable law, the Trustee shall not

be liable for any act it may do or omit to do as Trustee hereunder while acting in good faith and in the exercise of its reasonable judgment; nor shall the Trustee be liable in any event except for its own gross negligence or willful misconduct. The foregoing limitation on liability shall apply equally to the agents and/or employees of the Trustee acting on behalf of the Trustee in the fulfillment of the Trustee's duties hereunder.

3.7 Trustee Not Acting in Individual Capacity. The Trustee may contract in such a manner that the Trustee is exempt from personal liability and that liability is limited to the Trust Estate. The Trustee shall not engage in self-dealing, and any material self-dealing shall be considered willful.

3.8. Trustee's Employment of Professionals. The Trustee may retain such legal counsel, accountants, advisors, professionals or other persons as deemed necessary by the Trustee to assist the Trustee in fulfilling its duties hereunder or in exercising any of the Trustee's rights and powers hereunder (regardless of whether any such person is related to the Trustee or is otherwise affiliated with the Trustee in any manner, except as expressly provided herein). To the extent that the Trustee is licensed and capable of doing so, the Trustee may serve as its own attorney, accountant and/or tax specialist in conjunction with any of the rights, powers and duties of the Trustee under this Trust Agreement.

3.9. Compensation and Reimbursement of Trustee and Professionals. The Trustee or any professionals or any other person retained by the Trustee pursuant to this Trust Agreement shall be entitled to reasonable compensation for services rendered at a rate reflecting actual time billed by such Trustee, professional or person on an hourly basis, at the standard billing rates for such services in effect at the time of service or such other rate of compensation that is reasonable. All reasonable out-of-pocket expenses incurred by the Trustee or any other professional or other person retained by the Trustee shall be reimbursable as a Trust Administration Expense.

3.10 Beneficiaries.

(a) All cash held by the Trustee from the sale or other disposition of the Trust Assets, or from any other source, shall be deposited in a bank account established by the Trust and held by the Trustee and if deemed advisable by the Trustee, invested as permitted by this Trust Agreement. The Trustee shall keep an accounting of receipts and disbursements which shall be available to the Beneficiaries upon written request at all reasonable times.

(b) No Beneficiary shall have the right to dispute the amount or Priority of any other Beneficiary's claim.

(c) The distributions to the Beneficiaries pursuant to Article V, below, shall be in complete, final and absolute satisfaction of their Claims and Claim Amounts. Such distributions are in complete, final and absolute satisfaction of all Beneficiary Claims and Claim Amounts.

3.11 No Rights In Assets. The Trust Estate shall be held by the Trustee in trust for the benefit of the Claimants. Consequently, this Trust Agreement does not create for, or give to, any Claimant any direct interest or property right to any of the Trust Assets, and no Claimant shall have any rights against any such assets until a distribution is made or required to be made to a Claimant under the Plan.

3.12 Termination of the Trust. This Trust Agreement and the Trust shall terminate and this Trust Agreement shall be of no further force or effect (the "Trust Termination Date") one hundred twenty (120) days after the final distribution by the Trustee of all money and other properties and proceeds constituting the Trust Assets. Upon termination of the Trust as herein provided, the Trustee shall execute and lodge among the records of the Trust an instrument setting forth the fact of such termination, and the Trustee shall thereupon be discharged from all further liabilities and duties hereunder.

3.13 Right to Withhold. To the extent that the Trustee is required by applicable law to withhold or otherwise deduct any taxes or other governmental charges in respect of any distributions made pursuant to the Trust, the Trustee shall be entitled to withhold or deduct the amount of such taxes or charges from the gross amount of such distribution and remit the same to the appropriate taxing or governmental authority.

3.14 No Premature Termination. The death, incapacity, insolvency or bankruptcy of a Beneficiary during the term of the Trust shall not operate to terminate the Trust, nor shall it entitle the representatives or creditors of such Beneficiary to enforce the interests of such Beneficiary in any manner other than as provided for in this Trust Agreement

3.15 Trust Not An Investment Company. The Trustee shall not take any action which might cause the Trust to become subject to the provisions of the Investment Company Act of 1940, as amended.

3.16 Tax Treatment of the Trust. It is anticipated that the Trust will constitute either a liquidating trust or a grantor trust owned, within the meaning of section 671 of the Internal Revenue Code of 1986, as amended (the "IRC"), entirely by the Beneficiaries. The Trustee shall have the right, but not the obligation, to file a ruling request with, or otherwise seek guidance or advice from, the Internal Revenue Service or tax counsel as to the proper federal income tax classification and treatment of the Trust and, upon receipt of such guidance, shall file the appropriate federal, state, and local income tax returns, provide Beneficiaries with the appropriate information returns, and, in accordance with such guidance or advice, pay from the corpus or income of the Trust (to the extent that it is subject to income taxation) any federal, state, or local income tax attributable to the earnings of the Trust. Pending receipt of such guidance or advice, the Trustee shall be entitled:

- (a) to assume that the Trust is either a liquidating trust, a grantor trust owned entirely by the Beneficiaries, or a complex trust taxable under section 641 of the IRC, with each Beneficiary treated as owning a separate and independent share within the meaning of section 663(c) of the IRC and the regulations issued thereunder;

- (b) to pay from the Trust Assets such federal, state, and local income taxes as may be payable in accordance with such assumptions; and
- (c) to file all appropriate federal, state, and local income tax returns, and provide the Beneficiaries with information statements in accordance with such assumptions.

The taxable year of the Trust shall, unless otherwise required by the IRC, be the calendar year.

3.17 Bonds. Unless a bond is required by law, no bond shall be required of the Trustee hereunder. If a bond is required by law, no surety or security with respect to such bond shall be required unless such security is also required by law. If any such bond is required, all costs and expenses of procuring any such bond shall be paid by the Trustee as a cost of administering the Trust.

3.18 Costs and Expenses of Trustee. The Trustee shall pay out of the Trust Estate all reasonable costs, expenses, and obligations incurred by the Trustee in carrying out his duties under this Agreement or in any manner connected, incidental or related to the administration of the Trust, without application to the Bankruptcy Court, including, without limitation:

- (a) Any reasonable fees and expenses of attorneys, accountants, consultants, analysts, investment advisors, expert witnesses, insurance adjusters, property managers, realtors, brokers, professionals, or other persons whom the Trustee may reasonably deem advisable to employ in connection with the Trust, or in their own behalf in accordance with the terms of this Agreement;
- (b) Any taxes, charges, and assessments which may be owed by, or levied or assessed against, the Trust Estate or any property held in trust hereunder; and
- (c) Reasonable compensation for the services performed pursuant to the terms of, and in accordance with this Agreement, as set forth in Section 3.9.

#### ARTICLE IV

##### SUCCESSOR TRUSTEES AND ADDITIONAL TRUSTEES

##### 4.1 Resignation or Removal of Trustee; Appointment of Successor.

4.1.1 Resignation. The Trustee may resign at any time without cause by giving at least thirty (30) days prior written notice to the Beneficiaries. In case of the death, disability, dissolution, removal or resignation of the Trustee, the Court shall appoint a successor trustee.

4.1.2 Removal. The Trustee may be removed only upon entry of a Final Order of



the Bankruptcy Court specifically finding that the Trustee has engaged in willful misconduct or committed gross negligence with respect to its administration of the Trust.

4.1.3 Successor Trustee. Any successor Trustee shall execute and file with the Bankruptcy Court an instrument accepting such appointment, and thereupon such successor Trustee, without further act, shall become vested with all the estates, properties, rights, powers, duties, and trusts of the predecessor Trustee in the Trust with like effect as if originally named the Trustee herein; but nevertheless, upon the written request of such successor Trustee, such predecessor Trustee shall execute and deliver an instrument(s) transferring to such successor Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, duties, and trusts of such predecessor Trustee, and such predecessor Trustee shall duly assign, transfer, deliver, and pay over to such successor Trustee all monies or other property then held or subsequently received by such predecessor Trustee upon the trusts herein expressed.

4.1.4 Trust Continuance. The death, resignation, incompetency or removal of the Trustee shall operate neither to terminate the Trust created by this Agreement nor to revoke any existing agency created pursuant to the terms of this Agreement or invalidate any action theretofore taken by such Trustee. In the event of the resignation or removal of the Trustee, such Trustee shall (i) promptly execute and deliver any such documents, instruments, and other writing as may be necessary to effect the termination of such Trustee's capacity under this Agreement, and the conveyance of the Trust Estate then held by such Trustee to the temporary or successor trustee; (ii) deliver to the temporary or successor trustee all documents, instruments, records, and other writings relating to the Trust or Trust Estate as may be in the possession of such Trustee; and (iii) otherwise assist and cooperate in effecting the transfer and assumption of his obligations and functions by the temporary or successor trustee.

## ARTICLE V

### PAYMENT OF ADMINISTRATIVE CLAIMS, DISTRIBUTIONS TO BENEFICIARIES

5.1 Administrative Claims. The Beneficiaries acknowledge and agree that for the Trust Assets to be transferred to the Trust as contemplated in the Plan, it is necessary that Administrative Claims and priority claims, including priority tax claims, incurred in the Debtor's Bankruptcy Case be paid prior to any distributions to any Beneficiaries.

5.2 Class 2 Claims. Each Class 2 Claim, to the extent Allowed, shall be paid and satisfied by the Trustee solely from the Net Proceeds of the sale of the property interest that originally secured such claim, on the later of (i) when sufficient proceeds have been generated from the sale of the property to satisfy the claim after the payment of higher priority claims (ii) five (5) Business Days after the claim becomes an Allowed Claim.

5.3 Class 3 Claims. Each Class 3 Claim, to the extent Allowed, shall be paid and satisfied by the Trustee solely from the Net Proceeds of the sale of the property interest that originally secured such claim, on the later of (i) when sufficient proceeds have been generated from the sale of the property to satisfy the claim after the payment of higher priority claims (ii) five (5) Business Days after the claim becomes an Allowed Claim.

5.4 Class 4 Claims. Each Class 4 Claim, to the extent Allowed, shall be paid and satisfied by the Trustee solely from the Net Proceeds of the sale of the property interest that originally secured such claim, on the later of (i) when sufficient proceeds have been generated from the sale of the property to satisfy the claim after the payment of higher priority claims (ii) five (5) Business Days after the claim becomes an Allowed Claim.

5.5 Class 5 Claims. Distributions to Class 5 Claimants shall be made from time to time in the Trustee's sole discretion out of Available Cash on a pro rata basis.

5.6 At the present time it is not believed that funds will be generated through the sale of the property in amount to satisfy the Class 5 in full and accordingly no distributions are anticipated for the holders of Claims in junior classes.



ARTICLE VI

MISCELLANEOUS

6.1 Title to Trust Estate. No Beneficiary shall have title to any part of the Trust Estate.

6.2 Sales of Assets of the Trust Estate. Any sale or other conveyance of any assets of the Trust Estate, or part thereof, by the Trustee made in accordance with the terms of this Agreement, shall bind the Beneficiaries and shall be effective to transfer or convey all right, title, and interest of the Trustee and the Beneficiaries in and to such asset of the Trust Estate.

6.3 Notices. Unless otherwise expressly specified or permitted by the terms of the Plan or this Agreement, all notices shall be in writing and delivered by registered or certified mail, return receipt requested, or by a hand or facsimile transmission (and confirmed by mail), in any such case addressed as follows:

If to the Trustee:

C. Randel Lewis  
Western Receiver, Trustee & Consulting Services, Ltd.  
1600 Wynkoop Street, Suite 200  
Denver, CO 80202

With a copy to:

Caroline C. Fuller  
Fairfield & Woods, P.C.  
1700 Lincoln Street, Suite 2400  
Denver, CO 80203-4524

And if to any Beneficiary, addressed to its latest mailing address reflected on the Register of Beneficiaries.

6.4 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

6.5 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument.

6.6 Binding Agreement. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Trustee and its respective successors and assigns and any successor Trustee, its respective successors and assigns, and the Beneficiaries, and their respective personal representatives, successors and assigns. Any request, notice, direction, consent, waiver, or other instrument or action by any party hereto or any Beneficiary shall bind their respective heirs, personal representatives, successors and assigns.

6.7 Construction. Except where the context otherwise requires, words importing the masculine gender shall include the feminine and the neuter, if appropriate; words importing the singular number shall include the plural number and vice versa; and words importing persons shall include partnerships, associations, and corporations.

6.8 Execution by Facsimile or Email. Facsimile or e-mail transmissions of an executed original of this Trust Agreement and/or retransmission of any executed facsimile or e-mail transmission shall be deemed to be the same as the delivery of an executed original.

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

6.10 Governing Law. Except to the extent that the Bankruptcy Code is applicable, this Trust Agreement shall be governed, construed, interpreted and enforced in accordance with the substantive laws of the State of Colorado applied to agreements entered into and performed entirely within such State.

6.11 Retention of Bankruptcy Court Jurisdiction. The Bankruptcy Court shall retain original and exclusive jurisdiction as provided in the Plan over this Trust, the Trustee, and the Trust Assets, including without limitation the determination of all controversies and disputes arising under or in conjunction with this Trust Agreement.

6.12 No Obligation to Register Trust. The Trustee will have no obligation to register this Trust pursuant to any requirement of state law.

6.13 Gender. All personal pronouns, whether used in the masculine, feminine or neuter gender, shall include all other genders.

6.14 Non-Avoidability of Trust. The Debtor shall not raise, and hereby expressly waives, any claim or action to avoid this Trust Agreement, the Trust created hereby, and the transfer of the Trust Assets as described herein, as a preference, fraudulent transfer, post-petition transaction, or other similar claim.

6.15 Further Assurances. To the extent necessary, the Debtor agrees to execute and deliver to the Trustee such instruments to terminate the automatic stay imposed by 11 U.S.C. § 362. In addition, each party hereto shall execute all instruments and documents and take all actions as may be reasonably required to effectuate this Trust Agreement.


6.16 Entire Agreement. This Trust Agreement contains the entire agreement between the parties hereto with respect to the subject matter of this Trust Agreement and supersedes all prior understandings, agreements, representations, and warranties, if any, with respect to such subject matter.

6.17 Attorney Fees. If a party hereto or any Beneficiary commences a legal proceeding to enforce any of the terms of this Trust Agreement, the prevailing party in such action shall have the right to recover reasonable attorney fees and costs from the other party to be fixed by the court in the same action.

6.18 No Strict Construction. All parties hereto have participated jointly in the negotiation and drafting of this Trust Agreement. In the event an ambiguity or question of intent or interpretation arises under any provision of this Trust Agreement, this Trust Agreement shall be construed as if drafted jointly by all parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Trust Agreement.

IN WITNESS WHEREOF, the Trustee and the Debtor have duly executed this Trust Agreement as of the day and year first above written.

TRUSTEE:



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C. Randel Lewis  
Western Receiver, Trustee & Consulting Services Ltd.

CROSSOVER FINANCIAL I, LLC

A handwritten signature in black ink, appearing to read "Mitchell B. Yellen", written over a horizontal line.

Mitchell B. Yellen, Managing Member  
Debtor-in-Possession