

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:)	Chapter 11
)	
Trainor Glass Company,)	Case No. 12-09458
d/b/a Trainor Modular Walls,)	
Trainor Solar, and Trainor Florida,)	Honorable Carol A. Doyle
)	
Debtor.)	

ORDER
CONFIRMING THE DEBTOR'S AND OFFICIAL COMMITTEE OF
UNSECURED CREDITORS' SECOND AMENDED PLAN OF LIQUIDATION

Trainor Glass Company, debtor and debtor-in-possession (the "*Debtor*"), and the Official Committee of Unsecured Creditors (the "*Committee*," and together with the Debtor, the "*Plan Proponents*") in the above captioned case, having proposed and filed the Second Amended Joint Plan of Liquidation [Dkt. 1571] (as may be amended or supplemented from time to time and including all exhibits and supplements thereto, the "*Plan*")¹ dated November 13, 2013, a copy of which is appended hereto as Exhibit 1;

IT IS HEREBY ORDERED THAT:

1. The Plan, as modified below, is confirmed.
2. The Plan is modified by agreement of the parties as follows:
 - a. Section 1.20 is replaced with the following:

1.20 Committee Fee Reserve shall mean a reserve of up to \$300,000 above the Committee Fee Cap against which Committee Professionals may recover allowed fees (up to an aggregate allowance of \$643,000), which shall be paid from the first proceeds of Avoidance Actions, on a Pro

¹ Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the Plan.

Rata basis with the Debtor's Professionals regardless of whether such proceeds are generated by the Trainor estate or the Liquidating Trustee, except as otherwise agreed to by the Debtor, the Committee and First Midwest.

- b. Section 1.28 is replaced with the following:

1.28 Debtor Fee Cap shall mean that the fees of the Debtor's Professionals accruing from February 1, 2013 through the Effective Date that are to be paid from the Encumbered Assets shall not exceed (1) \$160,000 for Debtor's Bankruptcy Counsel, and (2) \$111,002 for Debtor's Consultant, except as otherwise agreed to by the Debtor, the Committee and First Midwest.

- c. Section 1.29 is replaced with the following:

1.29 Debtor Fee Reserve shall mean the amount that Debtor's Bankruptcy Counsel may recover up to an additional \$150,000 in allowed fees above the Debtor Fee Cap and Debtor's Consultant may recover up to an additional \$10,000 in allowed fees above the Debtor Fee Cap which shall be paid solely from the first proceeds of Avoidance Actions on a Pro Rata basis with the Committee Professionals regardless of whether those net proceeds are generated by the Debtor's Estate or the Liquidating Trustee, except as otherwise agreed to by the Debtor, the Committee and First Midwest.

- d. Section 1.60 is replaced with the following:

1.60 Oversight Committee shall mean a three member post-confirmation Oversight Committee, comprised of representatives of (a) First Midwest (or its designee), (b) the Committee (or a Committee designee, should no member of the Committee be willing to serve), and (c) the WARN Class, to monitor the activities of the Liquidating Trustee.

- e. Section 7.2 is replaced with the following:

Any Class 1(B) Claim shall be satisfied solely from the release of collateral securing such claim, the payment of proceeds of collateral securing such claim to the claimant, or by the exercise of any right of setoff and/or recoupment permitted under section 553 of the Bankruptcy

Code, with such remedies to be exercised at the option of the claimant, subject to applicable defenses, if any.

- e. Section 9.11 is replaced with the following:

The Oversight Committee shall be created on the Confirmation Date. The Oversight Committee shall be comprised of three (3) members, a representative each of (a) First Midwest (or its designee), (b) the Committee (or a Committee designee, should no member of the Committee be willing to serve), and (c) the representative of the WARN Class. The Oversight Committee shall monitor the activities of the Liquidating Trustee and otherwise exercise such rights and duties as are set forth in the Liquidating Trust Agreement. Each member of the Oversight Committee shall serve until the earlier of: (i) his or her death or resignation; (ii) his or her removal pursuant to the Liquidating Trust Agreement; and (iii) the termination of the Trainor Liquidating Trust.

- f. Section 9.12 (B) shall be replaced with the following:

The Liquidating Trustee may settle Causes of Action involving the Encumbered Assets only with the consent of First Midwest. The Liquidating Trustee may settle Avoidance Actions (i) with the consent of a majority of the members of the Oversight Committee, or, (ii) in the event the Oversight Committee has less than three (3) members, with the consent of one member of the Oversight Committee and approval of the Bankruptcy Court after notice and a hearing.

3. The objection to confirmation of Robert Trainor [Dkt. 1642] is overruled.

4. The Liquidating Trust Agreement by and between Trainor Glass Company, the Liquidating Trustee and the Committee, the form of which is appended hereto as Exhibit 2, is approved.

5. A class claim filed by Katherine McNeel on her own behalf and on behalf of other similarly situated former employees (collectively, the “*WARN Act Class*”) seeking damages under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. sec. 2101 et seq. (the “*WARN Act*”), is allowed as a 507(a)(4) Class 2 Priority Claim in the amount of \$1,250,000 (the

“*WARN Allowed Claim*”), with no member of the WARN Act Class entitled to more than the maximum aggregate cap of \$11,725 allowed pursuant to sections 507(a)(4) and (a)(5) of the Bankruptcy Code, including such allowed non-WARN claims as such holders may have. In connection with allowance of the WARN Allowed Claim, the WARN Act Class waives and releases any other claims that it may assert against the Debtor’s estate or any other third parties in connection with this case under the WARN Act, while non-WARN Act claims held by class members, if any, are preserved. The WARN Allowed Claim shall be subject to post-confirmation approval by this Court pursuant to Rules 9019 and 7023, pursued through the joint efforts of the WARN Act Class representative, the debtor and the committee.

6. The stipulation by and between Bond Safeguard Insurance Company, Lexon Insurance Company, Fidelity and Deposit Company of Maryland, Colonial American Insurance Company, and their affiliates and subsidiaries (collectively, the “*Sureties*”), the Plan Proponents, First Midwest Bank (“*First Midwest*”), and Edwin J. Trainor and Thomas D. Trainor, as appended hereto as Exhibit 3 (the “*Sureties Settlement Stipulation*”), is approved.

7. Nothing in the Plan or this Confirmation Order shall constitute an adjudication of the claims or priority of liens of Dallas County and Carrollton Farmers Branch Independent School District (hereinafter “*Texas Taxing Authorities*”) and all rights of the Texas Taxing Authorities, the Debtor, its Estate, the Trainor Liquidating Trust and First Midwest as to the amount, validity and priority of the claims and liens of the Texas Taxing Authorities are hereby reserved. Pursuant to Section 7.1(B) of the Plan, the rights of the Texas Taxing Authorities to assert Permitted Priority Claims are specifically preserved by this Confirmation Order (the “*Texas Tax Claims*”). If agreement is reached on the allowed amount of such alleged secured claims, the Debtor (or Liquidating Trustee as applicable) shall pay the pre-petition secured

portion of the Texas Tax Claims in full with interest as provided in the Bankruptcy Code or as agreed upon by the parties no later than the first day of the first month which is 30 days after entry of the Confirmation Order. In the event an agreement on the allowed amount of the Texas Tax Claims is not reached and payment not made on as set forth above, the Debtor, Liquidating Trustee or First Midwest shall file an objection to the Texas Taxing Authorities claims on or before April 1, 2014, and a hearing on such objection shall be set and held (subject to the Court's docket constraints) on or before June 1, 2014. In the event such an objection is filed, the Texas Tax Claims, to the extent allowed as secured claims by the Court, shall be paid in full within 30 days of the entry of the order determining the claims. Failure by the Debtor, the Liquidating Trustee and/or First Midwest to file a timely objection as set forth herein shall result in the Texas Tax Claims being deemed allowed as filed and they shall be paid by the Liquidating Trustee on or before May 1, 2014. The Liquidating Trustee shall not be permitted to seek a dismissal pursuant to Section 9.19 of the Plan unless and until the claims of the Texas Taxing Authorities are paid in full. The Texas Taxing Authorities shall retain their liens with the same validity, extent and priority on the Debtor's remaining property and the proceeds of the sale of the Debtor's business personal property until all taxes and related interest, penalties, and fees (if any) have been paid in full or otherwise adjudicated by the Court. To the extent any portion of the Texas Tax Claims are allowed as unsecured claims, such claims shall be subject to the rules of priority distribution under the Bankruptcy Code and the Plan.

8. Upon entry of this Confirmation Order, the stay shall lift such that Dallas County may cause to be sold certain property of the Debtor seized pre-petition (2 vehicles more fully described as a 1999 International Eagle Tractor Truck with Plate 2AW – 489 and a 2001 GMC

flat-bed truck w/miller welder with Plate 09K – GH8) (the “Trucks”). Dallas County shall be authorized to use the proceeds of sale of the Trucks to satisfy the costs incurred in storing, insuring and maintaining this property. The impact on the claim of Dallas County due to the sale of the Trucks is reserved for future agreement of the parties or further order of Court.

9. Notwithstanding any conflicting provision in the Plan or Confirmation Order, the Plan Proponents agree that the affiliates of AIG Property Casualty, Inc., will not be barred from asserting any rights to set off, subrogation, or recoupment.

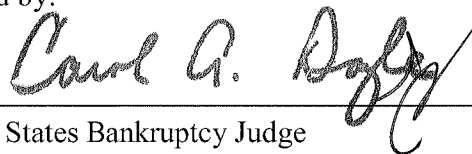
10. Notwithstanding any conflicting provision in the Plan or Confirmation Order, the Plan Proponents agree that Austin Building Company and Austin Commercial L.P. will not be barred from asserting any rights to set off, subrogation, or recoupment.

11. Notwithstanding Bankruptcy Rule 3020(e), this Confirmation Order shall take effect immediately upon its entry.

Dated: December ___, 2013

20 DEC 2013

Entered by:



United States Bankruptcy Judge

Prepared by:

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EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:)	Chapter 11
)	
Trainor Glass Company,)	Case No. 12-09458
d/b/a Trainor Modular Walls,)	
Trainor Solar, and Trainor Florida,)	Honorable Carol A. Doyle
)	
Debtor.)	Hearing: December 18, 2013 at 11:15 a.m.

DEBTOR'S AND OFFICIAL COMMITTEE OF UNSECURED CREDITORS'
SECOND AMENDED JOINT PLAN OF LIQUIDATION

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November 13, 2013

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Introduction

Trainor Glass Company, together with the Official Committee of Unsecured Creditors appointed in the above-captioned bankruptcy case, jointly propose the following Second Amended Joint Plan of Liquidation ("*Joint Plan*"). The Debtor and the Committee are joint proponents of the Joint Plan within the meaning of section 1129 of the Bankruptcy Code. Reference is made to the Disclosure Statement, distributed contemporaneously herewith, and all exhibits to the Disclosure Statement. In the event of any inconsistency between the Disclosure Statement and the Joint Plan, the relevant provision of the Joint Plan, as it relates to such inconsistency, will govern. Subject to the restrictions and requirements set forth in section 1127 the Bankruptcy Code, Fed. R. Bankr. P. 3019, and the Joint Plan, the Debtor and the Committee reserve the right to alter, amend, modify or withdraw this Joint Plan at any time before its substantial consummation.

ARTICLE I

Definitions

Unless the context otherwise requires or a term is defined within the Joint Plan itself, the following terms shall have the respective meanings set forth below, except as expressly provided otherwise.

- 1.1 ***Administrative Claim*** shall mean any cost or expense of administration of the Case allowed by the Bankruptcy Court pursuant to section 503(b) of the Bankruptcy Code, including, without limitation, Professional Fee Claims.
- 1.2 ***Administrative Claims Bar Date*** shall mean the applicable date on which an Administrative Claim must be filed, as established by section 9.8 of the Joint Plan.
- 1.3 ***Allowed Claim*** or ***Allowed . . . Claim*** shall mean a Claim, proof of which is filed by the Bar Date pursuant to the procedures established pursuant to the Bar Date Order, or that has been, or is hereafter, scheduled by the Debtor as liquidated in amount and not disputed or contingent, and to which no objection to allowance thereof has been raised by the Liquidating Trustee or filed within any applicable period fixed by the Bankruptcy Court, or as to which a Final Order allowing such Claim has been entered.
- 1.4 ***Assets of the Estate*** shall mean any and all right, title, and interest of the Debtor in and to property of whatever type or nature.
- 1.5 ***Avoidance Actions*** shall mean any and all prior, pending or possible actions, proceedings, accounts, controversies, agreements, promises, claims, and rights, of the Debtor or its Estate to avoid or recover a transfer of property of the Debtor or an interest of the Debtor in property arising under sections 544-551 of the Bankruptcy Code and any other applicable federal, state, or common law related thereto, including but not limited to fraudulent transfer or conveyance claims, whether or not litigation has been commenced with respect to such Causes of Action as of the Effective Date.

- 1.6 **Bankruptcy Code** shall mean Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*
- 1.7 **Bankruptcy Court** shall mean the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, located in Chicago, Illinois, or any court having jurisdiction over this Case or a proceeding arising in, arising under, or related to this Case.
- 1.8 **Bankruptcy Rules** shall mean the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, as now in effect.
- 1.9 **Bar Date** shall mean the applicable date on which a proof of claim must be filed, as established by the Bar Date Order.
- 1.10 **Bar Date Order** shall mean that certain *Order Granting Motion To Set Last Day To File Proofs of Claim* fixing September 5, 2012 as the bar date for claims of governmental entities and August 13, 2012 as the bar date for all other claims that arose prior to the Petition Date [Dkt. 324.]
- 1.11 **Case** shall mean the case commenced under chapter 11 of the Bankruptcy Code by the Debtor on the Petition Date, styled *In re Trainor Glass Company*, Case No. 12-90458, currently pending before the Bankruptcy Court.
- 1.12 **Cash** shall mean legal tender of the United States of America and equivalents thereof.
- 1.13 **Causes of Action** shall mean any and all actions, causes of action, proceedings, controversies, liabilities, obligations, rights, suits, claims for money or refunds due, indebtedness (for borrowed money or in the nature of a guarantee), damages, judgments, Claims, objections to Claims, benefits of subordination of Claims, demands, debts, liens, contracts, agreements, promises, representations, torts, damages, costs, losses, attorneys' fees, moneys due on account, obligations, judgments or liabilities of any kind whatsoever, whether known or unknown, anticipated or unanticipated, suspected or unsuspected, reduced to judgment, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, secured or unsecured, assertable directly or derivatively, existing or hereafter arising in law, equity arising out of agreement or imposed by statute, common law or otherwise, including but not limited to Avoidance Actions.
- 1.14 **Claim** shall mean any right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured, as defined by section 101(5) of the Bankruptcy Code.
- 1.15 **Class** shall mean a class of holders of Claims as described in the Joint Plan.

- 1.16** *Committee* shall mean the Official Committee of Unsecured Creditors appointed in the Case on March 27, 2012, pursuant to section 1102 of the Bankruptcy Code [Dkt. 31.]
- 1.17** *Committee Carve-Out* shall mean a carve-out of \$293,000 in favor of the Committee's Professionals additional to the amount specified by the Final Cash Collateral Order, which shall be used to fund allowed professional fee claims of the Committee's professionals from the Petition Date to the Effective Date of the Joint Plan.
- 1.18** *Committee Excess Fee Claims* shall mean the allowed fees of the Committee's Professionals above the Committee Fee Cap and the Committee Fee Reserve, which shall be (a) paid solely from the proceeds of Avoidance Actions, and (b) junior in priority to the First Midwest Diminution Claim, except as otherwise agreed to by the Debtor, the Committee and First Midwest.
- 1.19** *Committee Fee Cap* shall mean the Committee Carve-Out plus the initial carve-out amount of \$50,000 (i.e., a total of \$343,000), except as otherwise agreed to by the Debtor, the Committee and First Midwest.
- 1.20** *Committee Fee Reserve* shall mean a reserve of up to \$100,000 above the Committee Fee Cap against which Committee professionals may recover allowed fees (up to an aggregate allowance of \$443,000), which shall be paid from the first proceeds of Avoidance Actions, on a Pro Rata basis with the Debtor's Professionals regardless of whether such proceeds are generated by the Trainor estate or the Liquidating Trustee, except as otherwise agreed to by the Debtor, the Committee and First Midwest.
- 1.21** *Committee Professionals* shall mean Sugar Felsenthal Grais & Hammer LLP ("SugarFGH"), solely in its capacity as counsel to the Committee, and Protiviti, Inc.
- 1.22** *Confirmation Date* shall mean the date of entry of the Confirmation Order.
- 1.23** *Confirmation Hearings* shall mean, collectively, the hearing or hearings held by the Bankruptcy Court on confirmation of the Joint Plan, as such hearing or hearings may be continued from time to time.
- 1.24** *Confirmation Order* shall mean the order confirming this Joint Plan.
- 1.25** *Creditors* shall mean all creditors of the Debtor holding Claims for debts, liabilities, demands or other Claims of any character whatsoever.
- 1.26** *Debtor* shall mean Trainor Glass Company, d/b/a Trainor Modular Walls, Trainor Solar, and Trainor Florida.
- 1.27** *Debtor Excess Fee Claims* shall mean the allowed fees of the Debtor's Bankruptcy Counsel and Debtor's Consultant above the Debtor Fee Cap and the Debtor Fee Reserve, which shall be paid (a) solely from the proceeds of Avoidance Actions, and (b) junior in

priority to the First Midwest Diminution Claim, except as otherwise agreed to by the Debtor, the Committee and First Midwest.

- 1.28 *Debtor Fee Cap*** shall mean that the fees of the Debtor's Professionals accruing from February 1, 2013 through the Effective Date that are to be paid from the Encumbered Assets shall not exceed (1) \$61,500 for Debtor's Bankruptcy Counsel, and (2) \$60,000 for Debtor's Consultant, except as otherwise agreed to by the Debtor, the Committee and First Midwest.
- 1.29 *Debtor Fee Reserve*** shall mean the amount that Debtor's Bankruptcy Counsel may recover up to an additional \$40,000 in allowed fees above the Debtor Fee Cap and Debtor's Consultant may recover up to an additional \$10,000 in allowed fees above the Debtor Fee Cap which shall be paid solely from the first proceeds of Avoidance Actions on a Pro Rata basis with the Committee Professionals regardless of whether those net proceeds are generated by the Debtor's Estate or the Liquidating Trustee, except as otherwise agreed to by the Debtor, the Committee and First Midwest.
- 1.30 *Debtor's Bankruptcy Counsel*** shall mean Arnstein & Lehr LLP.
- 1.31 *Debtor's Consultant*** shall mean High Ridge Partners.
- 1.32 *Debtor's Ordinary Course Professionals*** shall mean any professional person retained by the Debtor in the Bankruptcy Case other than Arnstein & Lehr LLP and High Ridge Partners.
- 1.33 *Debtor's Professionals*** shall mean Arnstein & Lehr LLP and High Ridge Partners.
- 1.34 *Disclosure Statement*** shall mean the Disclosure Statement filed by the Plan Proponents and approved by the Bankruptcy Court pursuant to the Order dated November 13, 2013.
- 1.35 *Disputed Claim*** shall mean any Claim (other than an Allowed Claim) which is either a Claim that has been scheduled by the Debtor or a Claim which is the subject of a proof of claim which has been filed with the Bankruptcy Court, as to which the Debtor, the Committee or the Liquidating Trustee has indicated a dispute, or as to which scheduled or filed Claim a timely objection to the allowance thereof has been filed by a party entitled to make such an objection, but as to which the Bankruptcy Court has not yet entered a Final Order.
- 1.36 *Effective Date*** shall mean a date not later than the 15th day after the Confirmation Date unless extended by the Plan Proponents with the consent of First Midwest; provided, however, that if a stay of the Confirmation Order is in effect on such day, then the Effective Date shall be the first day thereafter on which, if the Confirmation Order has not been vacated, no stay of the Confirmation Order is in effect.

- 1.37 ***Encumbered Assets*** shall mean all Assets of the Estate except for Avoidance Actions and any recoveries thereon.
- 1.38 ***Equity Interest*** shall mean the legal, equitable, contractual and other rights of the holders of any Equity Security in the Debtor, including the rights of any entity to purchase or demand the issuance of any Equity Securities, including: (i) conversion, exchange, voting, participation and dividend rights; (ii) liquidation preferences; (iii) stock options, warrants and put rights; and (iv) share-appreciation rights.
- 1.39 ***Equity Security*** shall have the meaning provided by section 101(16) of the Bankruptcy Code.
- 1.40 ***Equity Security Holder*** shall have the meaning provided by section 101(17) of the Bankruptcy Code.
- 1.41 ***Estate*** shall mean the estate of the Debtor created in this Case under section 541 of the Bankruptcy Code.
- 1.42 ***Final Cash Collateral Order*** shall mean that certain *Final Order Authorizing Debtor To: (A) Use Cash Collateral, (B) Incur PostPetition Debt, And (C) Grant Adequate Protection And Provide Security And Other Relief To First Midwest Bank*, entered on April 13, 2012, and all amendments to the same [Dkt. 98.].
- 1.43 ***Final Order*** shall mean an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, as entered on the docket in any Case or the docket of any other court of competent jurisdiction, that has not been reversed, stayed, modified or amended, and as to which the time to appeal or seek certiorari or move for a new trial, reargument or rehearing has expired, and no appeal or petition for certiorari or other proceedings for a new trial, reargument or rehearing has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been timely filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or the new trial, reargument or rehearing has been denied or resulted in no modification of such order, provided, however, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or applicable state court rules of civil procedure, may be filed with respect to such order shall not cause such order not to be a Final Order.
- 1.44 ***First Midwest*** shall mean First Midwest Bank.
- 1.45 ***First Midwest Claim Amount*** shall mean the Debtor's indebtedness to First Midwest as of the Petition Date in an amount equal to \$34,059,905.29.

- 1.46 ***First Midwest Deficiency Claim*** shall mean the allowed claim in an amount equal to (a) the First Midwest Claim Amount, less (b) the amounts First Midwest has recovered and shall recover on account of the Encumbered Assets from and after the Petition Date.
- 1.47 ***First Midwest Diminution Claim*** shall mean the priority claim pursuant to Section 507(b) of the Bankruptcy Code held by First Midwest equal to \$975,000.00 as provided in the Global Settlement Agreement.
- 1.48 ***First Midwest Secured Claim*** shall mean the First Midwest Claim secured by a perfected security interest on all Assets of the Estate, except for Avoidance Actions.
- 1.49 ***General Unsecured Claim*** shall mean any Unsecured Claim, arising before the Petition Date, that is not a First Midwest Diminution Claim, Professional Fee Claim, Administrative Claim, WARN Act Claim, Priority Claim or Priority Tax Claim.
- 1.50 ***General Unsecured Creditor*** shall mean the Holder of a General Unsecured Claim.
- 1.51 ***Global Settlement Agreement*** shall mean the *Stipulation of Global Settlement of Controversies between the Official Committee of Unsecured Creditors, First Midwest Bank and Trainor Glass Company* approved by the Court on April 3, 2013 [dkt. 895].
- 1.52 ***Holder*** shall mean the Person that is the owner of record of a Claim or Interest, as applicable, including such Person's successors and/or assigns.
- 1.53 ***Impaired*** shall mean any Class, or any Claim or Interest in a Class, that is impaired within the meaning of section 1124 of the Bankruptcy Code, and shall include, without limitation, claims in Class 1(A) (First Midwest Secured Claim), Class 1(B) (Other Secured Claims), Class 2 (Priority Claims), Class 3 (General Unsecured Claims), Class 4 (WARN Act Claims).
- 1.54 ***Lien*** shall have the meaning provided by section 101(37) of the Bankruptcy Code.
- 1.55 ***Liquidating Trust Agreement*** shall mean the agreement to be executed as soon as reasonably practicable after the Confirmation Date among the Debtor, the Committee, First Midwest, and the Liquidating Trustee, which shall govern the obligations of the Liquidating Trustee with respect to oversight of the distribution of the Net Proceeds of the Trainor Liquidating Trust Assets, as further set forth in the Liquidating Trust Agreement and the Joint Plan.
- 1.56 ***Liquidating Trustee*** shall mean Phillip Van Winkle, or any successor thereto who will serve pursuant to the Joint Plan and the Liquidating Trust Agreement to oversee the liquidation and distribution of the Trainor Liquidating Trust Assets held therein for the benefit of the holders of Allowed Claims, pursuant to the Joint Plan, the Confirmation Order and the Liquidating Trust Agreement.

- 1.57 *Liquidating Trustee's Expenses*** shall mean the reasonable fees, costs and expenses incurred by the Liquidating Trustee and any Professionals retained by him or her in connection with the performance of his or her duties and responsibilities under the Joint Plan and Liquidating Trust Agreement, as well as any other reasonable and necessary costs of administration of the Trainor Liquidating Trust, including U.S. Trustee fees incurred during the post-Confirmation Date period, which may be paid from the Trainor Liquidating Trust Assets (including, without limitation, the Settlement Amount) in accordance with any budget approved by the Oversight Committee.
- 1.58 *Net Proceeds*** shall mean the Cash proceeds received by the Liquidating Trustee from time to time from the sale or disposition, through litigation, settlement or otherwise, of the Trainor Liquidating Trust Assets, net of the reasonable or necessary costs of such sale or other disposition, including reasonable fees and expenses of the Liquidating Trustee's legal counsel and other professionals incurred in connection therewith.
- 1.59 *Other Secured Claim*** shall mean a Secured Claim of a Secured Creditor other than First Midwest.
- 1.60 *Oversight Committee*** shall mean a two member post-confirmation Oversight Committee comprised of representatives for First Midwest (or its designee) and the Committee (or a Committee designee, should no member of the Committee be willing to serve) to monitor the activities of the Liquidating Trustee.
- 1.61 *Permitted Priority Liens*** shall mean liens in favor of persons other than First Midwest upon any Assets of the Estate that, as of the Petition Date: (1) had priority under applicable law over First Midwest's pre-petition Liens on Assets of the Estate, (2) were not subordinated by agreement or applicable law, and (3) were non-avoidable, valid, properly perfected and enforceable as of the Petition Date.
- 1.62 *Person*** shall mean an individual, corporation, partnership, joint venture, association, joint stock company, limited liability company, limited liability partnership, trust, estate, unincorporated organization or other entity.
- 1.63 *Petition Date*** shall mean the date of the filing of the Case, March 9, 2012.
- 1.64 *Joint Plan*** shall mean this Joint Plan of Liquidation as set forth herein or as it may be modified or amended.
- 1.65 *Plan Proponents*** shall mean the Debtor and the Committee.
- 1.66 *Priority Claim*** shall mean a Claim of the kind specified in sections 507(a)(1), (4), (5), (6), (7), (9), or (10) of the Bankruptcy Code.

- 1.67 **Priority Tax Claim** shall mean a Claim of a governmental unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.
- 1.68 **Professional** shall mean any professional employed in this Case pursuant to sections 327, 328 or 1103 of the Bankruptcy Code or any Professional or other Person seeking compensation or reimbursement of expenses in connection with this Case pursuant to section 503(b)(4) of the Bankruptcy Code.
- 1.69 **Professional Fee Claim** shall mean a Claim of a Professional for compensation or reimbursement of costs and expenses relating to services incurred during the period from the Petition Date to the Effective Date.
- 1.70 **Pro Rata** when used in the context of distributions to creditors, shall mean proportionately so that the ratio of the amount of the distribution made on account of a particular Allowed Claim to the distribution made on account of all Allowed Claims of the Class in which the particular Allowed Claim is included is the same as the ratio of the amount a particular Allowed Claim to the total amount of the Allowed Claims of the Class of which a particular Allowed Claim is included.
- 1.71 **Record Date** shall mean the Confirmation Date.
- 1.72 **Record Holder** shall mean the Holder of an Interest or Claim as of the Record Date.
- 1.73 **Scheduled Claim** shall mean any claim set forth on the Schedules.
- 1.74 **Schedules** shall mean the Schedules of Assets and Liabilities filed by the Debtor, as such Schedules may be amended from time to time in accordance with Bankruptcy Rule 1009.
- 1.75 **Secured Claim** shall mean a Claim of a Creditor secured by a lien on property of the Estate, or a Claim subject to set off under section 553 of the Bankruptcy Code, to the extent of the value of such Creditor's interest in property of the Estate, or to the extent of the amount subject to set off, as the case may be.
- 1.76 **Secured Creditor** shall mean the holder of a Secured Claim.
- 1.77 **Surety** means any one of (a) Bond Safeguard Insurance Company, (b) Lexon Insurance Company, (c) Fidelity & Deposit Company of Maryland and Colonial Deposit Insurance Company, and any of their affiliates and subsidiaries, and (d) Westchester Fire Insurance Company and any of its affiliates and subsidiaries.
- 1.78 **Sureties** means any two or more of the entities listed in Section 1.77 above.
- 1.79 **Trainor Liquidating Trust** shall mean a common law trust to be established pursuant to the Joint Plan, the Liquidating Trust Agreement, and the Confirmation Order. The

Trainor Liquidating Trust shall liquidate and distribute the Trainor Liquidating Trust Assets in accordance with the Liquidating Trust Agreement and the Joint Plan.

- 1.80** ***Trainor Liquidating Trust Assets*** shall mean those Assets to be transferred to and vested in the Trainor Liquidating Trust pursuant to this Joint Plan and the Confirmation Order, plus all proceeds, earnings and replacements arising from or relating to these Assets and all Assets acquired by the Trainor Liquidating Trust at any time.

The Trainor Liquidating Trust Assets shall include (but not be limited to): (i) all Cash held by the Debtor (less any Cash paid or to be paid on account of unpaid Allowed Professional Fee Claims); (ii) the Debtor's remaining property, including real estate, motor vehicles, furniture, fixtures, inventory, investments, partnership or other ownership interests, refunds, accounts, equipment, any other tangible or intangible personal property and any and all proceeds thereof; (iii) the Debtor's outstanding accounts receivable; and (iv) all Causes of Action.

- 1.81** ***Unsecured Claim*** shall mean a Claim of a Creditor not secured by a Lien on property of the Estate.
- 1.82** ***U.S. Trustee*** shall mean the United States Trustee.
- 1.83** ***Voting Class*** shall mean Classes 1(A) and (B), Class 2, Class 3 and Class 4 which are Impaired and entitled to vote on the Joint Plan.
- 1.84** ***WARN Act*** shall mean the Worker Adjustment and Retraining Notification Act, Title 29 of the United States Code, 29 U.S.C. §§ 2101 *et seq.*
- 1.85** ***WARN Act Claims*** shall mean claims arising under sections 2102 and 2104 of the WARN Act.
- 1.86** ***WARN Act Claimants*** shall mean Holders of WARN Act Claims.
- 1.87** ***WARN Class*** shall mean the Holders of WARN Act Claims entitled to adjudication and allowance or disallowance through the WARN Act Class Claim.
- 1.88** ***WARN Act Class Claim*** shall mean the class proof of claim lodged by lead WARN Act Claimant Katherine J. McNeel against the estate, docketed originally as claim number 56 and then amended claim number 376.

ARTICLE II

Rules of Interpretation and Computation of Time

For purposes of this Joint Plan, unless otherwise provided herein: (i) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, will include both the singular and the plural; (ii) unless otherwise provided in this Joint Plan, any reference in this

Joint Plan to a contract, instrument, release or other agreement or document being in a particular form or on particular terms and conditions means that such document will be substantially in such form or substantially on such terms and conditions; (iii) any reference in this Joint Plan to an existing document or schedule filed or to be filed means such document or schedule, as it may have been or may be amended, modified or supplemented pursuant to this Joint Plan; (iv) any reference to any Person as a holder of a Claim or Interest includes the Person's successors and assigns; (v) all references in this Joint Plan to Sections, Articles and exhibits are references to Sections, Articles and exhibits of or to this Joint Plan; (vi) the words "herein," "hereunder" and "hereto" refer to this Joint Plan in its entirety rather than to a particular portion of this Joint Plan; (vii) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Joint Plan; (viii) the rules of construction set forth in section 102 of the Bankruptcy Code will apply; and (ix) in computing any period of time prescribed or allowed by this Joint Plan, the provisions of Bankruptcy Rule 9006(a) will apply.

ARTICLE III

Provisions for Treatment of Unclassified Claims and Interests

Section 1123(a)(1) of the Bankruptcy Code provides that Administrative Claims and Priority Tax Claims are not to be classified under the Joint Plan.

3.1 Allowed Administrative Claims

Allowed Administrative Claims shall include the following:

- (A) *Allowed Administrative Claims of any Professional Person* shall include Allowed Professional Fee Claims provided, however, that payment of such claims shall be subject to Article VI of this Joint Plan.
- (B) *Allowed Other Administrative Expense Claims* shall include the Allowed Administrative Claims of Persons other than Professional Persons, including such Administrative Claims as may be Allowed by agreement.
- (C) *First Midwest Diminution Claim* shall be an allowed claim for diminution in its collateral pursuant to section 507(b) of the Bankruptcy Code, Section 4(c) of the Final Cash Collateral Order, and the Global Settlement Agreement, in an amount equal to \$975,000. The First Midwest Diminution Claim shall have priority over all other allowed priority claims, except for allowed but unpaid claims under section 507(a)(2) of the Bankruptcy Code including, without limitation, claims made against the Committee Fee Reserve or Debtor Fee Reserve; *provided that*, notwithstanding the above, the First Midwest Diminution Claim shall be senior in priority to any Committee Excess Fee Claims and Debtor Excess Fee Claims.

3.2 Priority Tax Claims

Priority Tax Claims shall include the Allowed unsecured Priority Tax Claims.

**ARTICLE IV
Designation of Classified Claims and Interests**

Pursuant to section 1123(a)(1) of the Bankruptcy Code, Claims and Interests are classified as follows:

4.1 Class 1(A) Claims (First Midwest Secured Claim)

Class 1 Claims shall consist of the First Midwest Secured Claim.

4.2 Class 1(B) Claims (Other Secured Claims)

Class 1(B) Claims shall consist of Other Secured Claims.

4.3 Class 2 Claims (Priority Claims)

Class 2 Claims shall consist of the allowed unsecured priority claims held by Persons pursuant to section 507(a) of the Bankruptcy Code, other than claims arising under 507(a)(2), (3), and (8) of the Bankruptcy Code; *provided, however*, that Allowed Priority Tax Claims shall receive distributions as Class 2 Claims.

4.4 Class 3 Claims

Class 3 Claims shall consist of allowed General Unsecured Claims, including but not limited to the First Midwest Deficiency Claim and any Unsecured Claims held by Sureties.

4.5 Class 4 Claims

Class 4 shall consist of the WARN Act Class Claim, which consists of a class action claim for compensation for alleged violations of the Worker Adjustment and Retraining Notification Act. If allowed, the WARN Act Class Claim shall receive the same treatment as Class 2 and will be deemed entitled to priority under 507(a)(4) and (5) of the Code for each WARN Act Class member up to the maximum aggregate cap of \$11,725, with any remainder as a non-priority general unsecured claim.

4.6 Class 5 Interests

Class 5 Interests shall consist of the Interests of Equity Security Holders.

**ARTICLE V
Impairment of Classes**

5.1 Impaired Classes of Claims Entitled To Vote.

Except as otherwise provided in order(s) of the Bankruptcy Court pertaining to solicitation of votes on this Joint Plan, Classes 1(A) and (B), 2, 3 and 4 are Impaired and

Holders of Claims in those Classes shall be entitled to vote to accept or reject this Joint Plan.

5.2 Classes Deemed To Reject the Joint Plan.

Holders of Interests in Class 5 will not receive or retain any distribution under the Joint Plan on account of their Interests. Pursuant to section 1126(g) of the Bankruptcy Code, Class 5 is Impaired and is conclusively presumed to have rejected this Joint Plan, and the votes of Equity Security Holders holding Class 5 Interests therefore will not be solicited.

5.3 Cram Down.

The Debtor and the Committee will request confirmation of the Joint Plan, as it may be modified from time to time, under section 1129(b) of the Bankruptcy Code with respect to any Class that rejects the Joint Plan.

**ARTICLE VI
Plan Funding and Distribution**

6.1 Plan Funding

In accordance with the Liquidating Trust Agreement, on the Effective Date, all Assets of the Estate shall be transferred to the Trainor Liquidating Trust for administration by the Liquidating Trustee. The Liquidating Trustee shall liquidate the Trainor Liquidating Trust Assets, as applicable, and distribute the Net Proceeds in accordance with this Joint Plan and the Liquidating Trust Agreement.

6.2 Distribution of Avoidance Actions Proceeds

Proceeds of Avoidance Actions (net of the reasonable fees and expenses of the Liquidating Trustee, which shall include the contingent fees paid to SugarFGH, in its capacity as Committee Professional or otherwise, on collections from Avoidance Actions) shall be distributed as follows:

- (A) First, to any unpaid Allowed Administrative Claims, other than Committee Excess Fee Claims and Debtor Excess Fee Claims, including (i) hourly fees paid to SugarFGH, in its capacity as Committee Professional, related to Litigation Claims against the Sureties, and, on a Pro Rata basis (ii)(a) the allowed fees of Committee Professionals payable from the Committee Fee Reserve, and (b) allowed fees of Debtor's Bankruptcy Counsel and Debtor's Consultant from the Debtor Fee Reserve;
- (B) Second, to First Midwest on account of its First Midwest Diminution Claim;
- (C) Third, to any Committee Excess Fee Claims and Debtor Excess Fee Claims on a Pro Rata basis;

- (D) Fourth, to any Allowed but unpaid Class 2 Claims and Priority Tax Claims in the order prescribed by section 507(a) of the Bankruptcy Code, including Priority Tax Claims payable pursuant to section 507(a)(8), which Claims shall be payable over a period ending not later than five (5) years from the Petition Date pursuant to sections 1129(a)(9)(B) and (C) of the Bankruptcy Code; and
- (E) Fifth, to Holders of Allowed Class 3 and 4 Claims against the Debtor, including First Midwest on account of the First Midwest Deficiency Claim, on a Pro Rata basis.

ARTICLE VII

Treatment of Claims and Interests

7.1 Class 1(A) Claim.

- (A) The First Midwest Secured Claim shall be paid in accordance with the Liquidating Trust Agreement and this Joint Plan. The First Midwest Secured Claim shall continue to be satisfied by the Encumbered Assets including, but not limited to: (a) the net proceeds of the sale of the Debtor's real and personal property during the Case; (b) the collection of the Debtor's accounts receivable; and (c) the sale, collection or disposition of any other Assets of the Estate (except for Avoidance Actions) regardless of whether the proceeds are realized (i) in the Bankruptcy Case, (ii) by the Liquidating Trustee or (iii) by any other means including, but not limited to, relief from the automatic stay or agreement of the Liquidating Trustee to allow First Midwest to realize upon the Encumbered Assets.
- (B) The Encumbered Assets shall be used solely to satisfy the First Midwest Secured Claim unless (1) a Holder of a Permitted Priority Claim has obtained an order of the Bankruptcy Court, prior to entry of the Confirmation Order, finding that such Holder has an interest senior in priority to First Midwest in a particular Encumbered Asset, or (2) the rights of an alleged Holder of a Permitted Priority Claim to establish that it has an interest senior in priority to First Midwest in a particular Encumbered Asset are preserved in the Confirmation Order.

7.2 Class 1(B) Claims

Any Class 1(B) Claim shall be satisfied solely from the release of collateral securing such claim or the payment of proceeds of collateral securing such claim to the claimant.

7.3 Allowed Professional Fee Claims and Allowed Other Administrative Claims.

Allowed Professional Fee Claims and other Allowed Administrative Claims shall be paid in full in accordance with this Joint Plan, including Section 6.2 hereof and the Liquidating Trust Agreement.

7.4 Priority Tax Claims.

Allowed Priority Tax Claims shall be treated as Class 2 Claims for purposes of distribution under the Joint Plan, and shall be paid from time to time from the proceeds of Avoidance Actions pursuant to section 6.2 of the Joint Plan. Priority Tax Claims shall include interest accruing at the rate prescribed by § 511 of the Bankruptcy Code beginning on the Effective Date until paid in full.

7.5 Class 2 Claims (Priority Claims)

Allowed Class 2 Claims shall be paid in full, in the order of priority prescribed by section 507(a) of the Bankruptcy Code, to the extent funds are available, prior to payment of any General Unsecured Claims, pursuant to the Liquidating Trust Agreement and this Joint Plan. Class 2 Claims shall include simple interest accruing at the federal judgment rate under 28 U.S.C. § 1961 beginning on the Effective Date until paid in full.

7.6 Class 3 Claims (General Unsecured Claims)

Allowed Class 3 Claims shall be paid Pro Rata, to the extent funds are available, pursuant to the Liquidating Trust Agreement and this Joint Plan. Pro Rata distributions of the Net Proceeds from the Trainor Liquidating Trust shall be made by the Liquidating Trustee in accordance with the Liquidating Trust Agreement to the holders of Allowed Class 3 General Unsecured Claims from time to time on dates determined by the Liquidating Trustee, following consultation with, and approval by, the Oversight Committee.

7.7 Class 4 (WARN Act Class Claim)

The WARN Act Class Claim consists of claims asserted by individuals entitled to treatment within the WARN Class, seeking compensation for alleged violations of the Worker Adjustment and Retraining Notification Act. If allowed, the WARN Act Class Claim shall receive the same treatment as Class 2 and will be deemed entitled to priority under 507(a)(4) and (5) of the Code for each WARN Act Class member up to the maximum aggregate cap of \$11,725 per member, with any remainder as a non-priority general unsecured claim.

7.8 Class 5 (Interests)

Holders of Class 5 Interests shall not receive a distribution under the Joint Plan. Upon the Confirmation Date of the Joint Plan, all Equity Securities in the Debtor will be cancelled.

ARTICLE VIII
Treatment of Executory Contracts

8.1 Contracts Deemed Rejected.

Each executory contract or unexpired lease of the Debtor that has not expired by its own terms or been assumed pursuant to an order of the Bankruptcy Court prior to the Confirmation Date shall be deemed rejected pursuant to section 365 of the Bankruptcy Code on the Confirmation Date.

8.2 Bar Date for Rejection Damages.

All proofs of claim with respect to Claims arising from the rejection of executory contracts or unexpired leases pursuant to Section 8.1 of this Joint Plan shall, unless another order of the Bankruptcy Court provides for a different date, be filed with the Bankruptcy Court by the Bar Date, or if an executory contract or unexpired lease is rejected after the Bar Date, by no later than thirty (30) days after the Confirmation Date. The Claim of any Creditor arising from the rejection of executory contracts or unexpired leases pursuant to Section 8.1 of this Joint Plan that fails to timely file a proof of claim shall be released, discharged, and forever barred from assertion against the Debtor, the Estate, or their property.

ARTICLE IX
Means of Implementation of the Joint Plan

9.1 Vesting of Trainor Liquidating Trust Assets.

(A) On the Effective Date, all Assets of the Estate shall be transferred to the Trainor Liquidating Trust. Subject to Section 7.1(B) hereof, the Encumbered Assets remaining in the Estate as of the Effective Date shall be transferred to the Trainor Liquidating Trust for the sole and exclusive benefit of First Midwest on account of the First Midwest Secured Claim. All costs and expenses of the Liquidating Trustee in pursuing and liquidating the Encumbered Assets shall be funded by the proceeds of the Encumbered Assets or as otherwise directed by First Midwest.

(B) All Avoidance Actions shall also be transferred to the Trainor Liquidating Trust. The Liquidating Trustee shall be vested with the authority pursuant to section 1123(b)(3) of the Bankruptcy Code to pursue all Causes of Action including, but not limited to, Avoidance Actions.

(C) All costs and expenses incurred by the Liquidating Trustee in pursuing Avoidance Actions shall be funded solely with the proceeds of such Avoidance Actions.

9.2 Distribution of Liquidating Trust Assets.

Distributions of Net Proceeds from the Liquidating Trust shall be made by the Liquidating Trustee in accordance with Article VI of this Joint Plan from time to time on

dates determined by the Liquidating Trustee, following consultation with, and approval by, the Oversight Committee, within a reasonable time after the creation of appropriate reserves as determined by the Liquidating Trustee in an amount that would be sufficient to: (i) satisfy all alleged Administrative Claims in full; (ii) make a distribution on account of Disputed Claims that are Priority Tax Claims or Priority Claims; and (iii) pay the Liquidating Trustee's Expenses in full.

9.3 The Liquidating Trustee.

The Liquidating Trustee shall be Phillip Van Winkle. The Liquidating Trustee shall be appointed as of the Effective Date and shall serve without bond.

9.4 Trust Asset Administration.

The Liquidating Trustee, with oversight from the Oversight Committee, shall administer the Trainor Liquidating Trust Assets pursuant to the Joint Plan and the Liquidating Trust Agreement from and after the Confirmation Date. Administration of the Trainor Liquidating Trust shall include the pursuit of Avoidance Actions and other Causes of Action, lodging objections to and resolving Claims, distributing Net Proceeds to the beneficiaries of the Trainor Liquidating Trust, and other activities typically related to trust administration.

9.5 Dissolution of the Debtor.

Promptly after completing its wind-down, the Liquidating Trustee will allow the applicable Secretary of State to involuntarily dissolve the Debtor. The Liquidating Trustee shall thereafter continue to have standing to assert claims or pursue matters on behalf of the Debtor to the extent necessary to preserve, protect and liquidate the Trainor Liquidating Trust Assets or otherwise necessary to administer the Trainor Liquidating Trust.

9.6 Conditions to Confirmation.

The Bankruptcy Court shall not enter the Confirmation Order unless and until the Confirmation Order shall be reasonably acceptable in form and substance to the Plan Proponents and First Midwest.

9.7 Conditions to Effective Date.

The following are conditions precedent to the occurrence of the Effective Date: (i) the Confirmation Order confirming the Joint Plan, as such Joint Plan may have been modified, shall have been entered by the Bankruptcy Court and be in full force and effect and shall not have been vacated, amended, modified or stayed, and if it is the subject of any appeal, reconsideration or other review, no stay of the Confirmation Order shall be in effect; (ii) the Liquidating Trust Agreement, in form and substance satisfactory to the Plan Proponents and First Midwest, shall be executed and delivered, and all conditions precedent to the effectiveness thereof shall have been satisfied; and (iii) all other

documents or agreements necessary to consummate the Joint Plan shall have been delivered or effectuated. The Plan Proponents or the Liquidating Trustee, as the case may be and with the consent of First Midwest, may waive any of the foregoing conditions precedent at any time.

Upon the satisfaction of the conditions to the Effective Date, or alternatively, the waiver of any of the foregoing conditions, and upon the approval of the Oversight Committee, the Plan Proponents shall file and serve a notice of Effective Date.

9.8 Administrative Claims Bar Date.

All Persons requesting payment of Administrative Claims shall file a proof of claim no later than the earlier of (a) any deadline established by the Bar Date Order, and (b) thirty (30) days after the Effective Date. Objections to such applications for payment of Administrative Claims (whether by Professional Persons requesting payment of Professional Fee Claims or Persons requesting payment of other Administrative Claims), if any, must be written, filed with the Bankruptcy Court and served on the applicable parties within twenty-one (21) days after such application is filed.

9.9 No Effect on Administrative Priority Claims

Distributions under Article VI of the Joint Plan shall not prejudice or otherwise affect the rights of entities other than the Plan Proponents and their Professionals to assert their right to distributions based on claims entitled to administrative priority under sections 503(b) or 507(a)(2) of the Bankruptcy Code.

9.10 Termination of Committee.

The Committee shall terminate automatically upon the acceptance by the Liquidating Trustee of his or her appointment in accordance with this Joint Plan and the Liquidating Trust Agreement following the Confirmation Date. Upon termination of the Committee, the Committee shall be dissolved and its members shall be deemed released of their duties and responsibilities in connection with the Case or the Joint Plan and its implementation, and the retention or employment of the Committee's counsel shall terminate except to conclude ministerial duties or any duties imposed pursuant to the Joint Plan (including, without limitation, filing applications for allowance and payment of Professional Fee Claims).

9.11 Oversight Committee.

The Oversight Committee shall be created on the Confirmation Date. The Oversight Committee shall be comprised of two (2) members, a representative each of First Midwest (or its designee) and the Committee (or a Committee designee, should no member of the Committee be willing to serve). The Oversight Committee shall monitor the activities of the Liquidating Trustee and otherwise exercise such rights and duties as are set forth in the Liquidating Trust Agreement. Each member of the Oversight

Committee shall serve until the earlier of: (i) his or her death or resignation; (ii) his or her removal pursuant to the Liquidating Trust Agreement; and (iii) the termination of the Trainor Liquidating Trust.

9.12 Post-Confirmation Case Administration by the Liquidating Trustee.

(A) From and after the Confirmation Date and continuing through the date that a final decree closing the Case is entered pursuant to section 350 of the Bankruptcy Code and Bankruptcy Rule 3022, the Liquidating Trustee shall possess the rights of a party in interest pursuant to section 1109(b) of the Bankruptcy Code for all matters arising in, arising under or related to the Case. In addition to the foregoing, for all matters arising in, arising under or related to the Case, the Liquidating Trustee shall: (i) have the right to appear and be heard on matters brought before the Bankruptcy Court or other courts of competent jurisdiction; (ii) have the right to obtain records of, or related to, the Debtor (including, without limitation, bank statements and cancelled checks); (iii) be entitled to notice and opportunity for hearing; (iv) be entitled to participate in all matters brought before the Bankruptcy Court, including, but not limited to, adversary proceedings; (v) have exclusive standing (including derivative standing to pursue Causes of Action on behalf of the Debtor) to commence all Causes of Action, including all Avoidance Actions; (vi) be entitled to request the Bankruptcy Court to enter a final decree closing the Case; (vii) be entitled to receive notice of all applications, motions and other papers and pleadings set before the Bankruptcy Court in this Case; and (viii) be authorized to undertake such other activities as may be warranted to administer the Joint Plan following consultation with, and subject to the approval of, the Oversight Committee.

(B) The Liquidating Trustee may settle Causes of Action involving the Encumbered Assets only with the consent of First Midwest. The Liquidating Trustee may settle Avoidance Actions (1) with the unanimous consent of the members of the Oversight Committee, or (2) with the consent of (a) one member of the Oversight Committee, and (b) approval of the Bankruptcy Court after notice and a hearing.

9.13 Filing of Additional Documents.

On or before the Confirmation Date of the Joint Plan, the Plan Proponents shall file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Joint Plan, including, without limitation, the final Liquidating Trust Agreement.

9.14 Liquidating Trustee's Professionals.

Upon his appointment, the Liquidating Trustee may retain such law firms, accounting firms, experts, advisors, consultants, investigators or other Professionals as he may deem necessary, upon approval of the Oversight Committee, in accordance with the Liquidating Trust Agreement, to aid in the performance of his or her responsibilities pursuant to the terms of the Joint Plan, including, without limitation, the liquidation and

distribution of assets of the Trainor Liquidating Trust. The Professionals retained by the Liquidating Trustee are not required to be “disinterested” as that term is defined in the Bankruptcy Code and may include, without limitation, counsel and financial advisors of any party in this Case, and the Liquidating Trustee shall be permitted to retain any such Professional in light of the efficiencies implicit in continuity. The Liquidating Trustee’s retention of any such Professionals is deemed not to pose any conflict of interest, and no conflict shall exist by virtue of the filing of applications by Professional Persons for allowance of Administrative Claims in accordance with this Joint Plan and the Global Settlement Agreement.

9.15 Objections to Claims.

The Liquidation Trustee shall have standing to file objections to Claims, even if such Claims were scheduled by the Debtor as undisputed, liquidated and non-contingent. The Liquidation Trustee shall file objections to Claims no later than 180 days after the Effective Date (unless extended by an order of the Bankruptcy Court) (the “*Claim Objection Deadline*”). If the Liquidation Trustee has objected to a Claim, payment will be withheld only with respect to the amount actually in dispute, and such objection shall not affect payments or distributions under the Joint Plan on the undisputed portion of the Claim. Notwithstanding the deadline to file objections to Claims provided herein, the Liquidating Trustee may file objections to claims within ninety (90) days of the later of (a) the Claim Objection Deadline and (b) the filing of an amended Claim.

9.16 Injunction.

Except as otherwise provided in the Joint Plan or the Confirmation Order, on and after the Confirmation Date, all Persons and entities who have held, hold or may hold Liens, Claims or Interests in or against the Debtor are, with respect to any such Liens, Claims or Interests, permanently enjoined from: (i) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the Trainor Liquidating Trust or any of their property, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, the Debtor or the foregoing Trainor Liquidating Trust, or any property of any such transferee or successor; (ii) enforcing against, levying upon or attaching (including, without limitation, any pre-judgment attachment) the Debtor or the Trainor Liquidating Trust, or any property of any such transferee or successor; (iii) enforcing, levying, attaching (including, without limitation, any pre-judgment attachment), collecting or otherwise recovering by any manner or means whether directly or indirectly, of any judgment, award, decree, claim or order against the Debtor or the Trainor Liquidating Trust, any of their property, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to the Debtor or the Trainor Liquidating Trust; (iv) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any

Liens, Claims or Interests of any kind against or in the Debtor or the Trainor Liquidating Trust, any of their property, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, the Debtor or the Trainor Liquidating Trust; (v) other than as otherwise expressly provided for in this Joint Plan, asserting any right of setoff, subordination or recoupment of any kind, directly or indirectly, against any obligation due the Debtor, the Trainor Liquidating Trust, any of their property, or any direct or indirect transferee of any property of, or successor in interest to, the Debtor or the Trainor Liquidating Trust; and (vi) taking any actions in any place and in any manner whatsoever that do not conform to or comply with the provisions of this Joint Plan.

9.17 Term of Bankruptcy Injunction or Stays.

All injunctions or stays provided for in the Case under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect through the termination of the Trainor Liquidating Trust and the imposition of the injunction set forth in Section 9.16 of this Joint Plan.

9.18 Quarterly Reports.

The Liquidating Trustee shall prepare and provide to the Oversight Committee and file with the Bankruptcy Court a report by the end of the first calendar month following the conclusion of every calendar quarter setting forth: (i) all distributions to Creditors during the calendar quarter; (ii) a summary of the Trainor Liquidating Trust deposits and disbursements during the calendar quarter; and (iii) a summary of the Trainor Liquidating Trust Assets. As used in this section, "calendar quarter" shall mean a three month period of time, and the first calendar quarter shall commence on the first day of the first month immediately following the occurrence of the Effective Date. In the event the Effective Date does not occur, the Liquidating Trustee shall have no obligation to prepare and file quarterly reports.

9.19 Closing of the Case.

The Case shall not be closed, or if closed shall remain subject to re-opening pursuant to section 350 of the Bankruptcy Code, until the Trainor Liquidating Trust Assets have been fully administered. If, however, the Liquidating Trustee determines, following consultation with the Oversight Committee, that the Trainor Liquidating Trust will be unable to generate sufficient cash proceeds from the liquidation of Trainor Liquidating Trust Assets to pay Allowed Administrative Claims, Allowed Priority Tax Claims and Allowed Priority Claims in full, it may, upon approval by the Oversight Committee, file a notice of dismissal of the Case pursuant to section 1112(b) of the Bankruptcy Code, which shall be deemed immediately effective. Following such dismissal, the Liquidating Trustee shall, following consultation with, and approval by, the Oversight Committee oversee the liquidation of the Trainor Liquidating Trust Assets and distribution of the Net Proceeds, conduct a Claims reconciliation process and distribute Net Proceeds to holders of Allowed Claims according to the priority scheme set forth in the Bankruptcy Code.

The Debtor, its creditors and all other parties-in-interest hereby consent to such dismissal of the Case.

ARTICLE X
Modification of the Plan

The Joint Plan and related documents may be altered, amended or modified, jointly, by the Plan Proponents, before or after the Confirmation Date, as provided in section 1127 of the Bankruptcy Code and the Bankruptcy Rules.

ARTICLE XI
General Provisions

11.1 Headings for Convenience Only.

The headings in the Joint Plan are for convenience of reference only and shall not limit or otherwise affect the meanings of the sections to which they pertain.

11.2 U.S. Trustee Fees.

Following the Confirmation Date, the Liquidating Trustee shall pay quarterly fees accrued during the post-Confirmation Date period to the U.S. Trustee.

11.3 Notices.

Any notice required or permitted to be provided under the Joint Plan shall be in writing and served by either: (i) certified mail, return receipt requested, postage prepaid; (ii) hand delivery; or (iii) reputable overnight delivery service, freight prepaid, addressed to the following:

The Debtor:
Michael L. Gesas, Esq.
David A. Golin, Esq.
ARNSTEIN & LEHR LLP
120 S. Riverside Plaza, Ste. 1200
Chicago, IL 60606
Counsel for the Debtor

The Committee:
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Counsel for the Committee

First Midwest Bank:
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Counsel for First Midwest Bank

The Liquidating Trustee:
Phillip Van Winkle
AEG Partners, LLC
200 W. Madison St., Ste. 2410
Chicago, IL 60606
Liquidating Trustee

11.4 Lapsed Distributions.

Any distribution that has not been cleared within ninety (90) days of the date of the distribution will lapse. With respect to any lapsed distributions, the lapsed distribution will revert to the Trainor Liquidating Trust and be distributed Pro Rata to the remaining beneficiaries of the Trainor Liquidating Trust in accordance with the Joint Plan and the Liquidating Trust Agreement.

11.5 Minimum Distributions.

The Liquidating Trustee shall not be required to make a distribution to a creditor unless the amount of the distribution is twenty-five dollars (\$25.00) or greater.

11.6 Undeliverable and Unclaimed Distributions.

Distributions shall be delivered to a Creditor at the address listed in the Debtor's books and records or, if a claim was filed, at the address listed in such claim for receipt of distributions. If any distribution is returned as undeliverable, no further distributions to such Creditor will be made unless the Liquidating Trustee is notified in writing of the Creditor's current address. Upon receipt of the notification, the Liquidating Trustee will remit all missed distributions to the Creditor without interest. All claims for undeliverable distributions must be made on or before the second anniversary of the Confirmation Date of the Joint Plan. If a claim is not made within that time, all unclaimed distributions will revert to the Trainor Liquidating Trust and be distributed Pro Rata to the remaining beneficiaries of the Trainor Liquidating Trust. Nothing in this Joint Plan will require the Liquidating Trustee to attempt to locate any holder of an Allowed Claim.

11.7 Releases.

Subject to and limited by Section 11.8 hereof, as of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, including: (1) the settlement, release and compromise of debt and all other good and valuable consideration paid in connection with the Joint Plan, and (2) the services of Edwin J. Trainor and Thomas D. Trainor in facilitating the expedient implementation of the transactions contemplated in this Joint Plan, the Debtor, and any person or entity seeking to exercise the rights of the Debtor's estate (including the Committee or the Liquidating Trustee), including, without limitation, any successor to the Debtor or any estate representative appointed or selected pursuant to section 1123(B)(3) of the Bankruptcy Code, shall be deemed to forever release, waive, and discharge Edwin J. Trainor and spouse Angela Trainor, Thomas D. Trainor and spouse Irene Trainor, and their descendants, successors, and assigns, from any and all claims, objections, suits, judgments, damages, demands, debts, remedies, rights, causes of action, rights of setoff and liabilities whatsoever (including any derivative claims asserted on behalf of the Debtor), in connection with or in any way relating to the Debtor, the conduct of the Debtor's business, the chapter 11 case, the Disclosure Statement or the Joint Plan (other than the rights of the Debtor, the Liquidating Trustee or a creditor holding an allowed claim to enforce the obligations under the Confirmation Order and the Joint Plan and the contracts, instruments, releases, and other agreements or documents delivered pursuant to the Joint Plan), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, that are based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the foregoing release by the Debtor, which includes by reference each of the related provisions and definitions contained herein, and further, shall constitute the Bankruptcy Court's finding that the foregoing release by the Debtor is: (1) in exchange for the good and valuable consideration provided by Edwin J. Trainor, Angela Trainor, Thomas D. Trainor, and Irene Trainor; (2) a good faith settlement and compromise of the claims released by the Debtor; (3) in the best interests of the Debtor and all holders of claims and interests; (4) fair, equitable and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to the Debtor asserting any claim or cause of action released herein.

11.8 Third Party Retention of Rights Against Non-Debtor Insiders.

For avoidance of doubt, this Joint Plan shall not waive, release or impair the claims of any non-Debtor third party against any member of the Trainor family including, without limitation, Robert Trainor, Thomas D. Trainor, Edwin J. Trainor and William Trainor, or against any other guarantor, indemnitor, or other party responsible for any debt owed by the Debtor.

11.9 Exculpation and Limitation of Liability.

Neither the Debtor, the Committee, First Midwest, the Liquidating Trustee, nor any of their respective present and former members, officers, directors, shareholders, subsidiaries, affiliates, employees, advisors, attorneys or agents acting in such capacity or any of their successors or assigns, shall have or incur any liability to, or be subject to any right of action by, any person or entity, for any act or omission in connection with, relating to or arising out of, the administration of the Case, the pursuit of confirmation of the Joint Plan or the Joint Plan's implementation, except for their fraud, willful misconduct or gross negligence, and in all respects shall be entitled to rely reasonably upon the advice of counsel with respect to their duties and responsibilities under the Joint Plan.

**ARTICLE XII
Retention of Jurisdiction**

This Bankruptcy Court shall retain jurisdiction over this Case for the following purposes:

- A. Resolution of any and all objections to Claims.
- B. Resolution of pending Avoidance Actions and other Causes of Action, in the event that this Case is dismissed pursuant to Section 9.18 of the Joint Plan.
- C. Determination of all questions and disputes regarding all Causes of Action, controversies, disputes or conflicts, whether or not subject to pending actions as of the Confirmation Date, between: (i) the Debtor and any other party; (ii) the Liquidating Trustee and any other party; or (iii) otherwise under this Joint Plan, the Confirmation Order or any other order issued by the Bankruptcy Court in connection with this Case.
- D. The correction of any defect and the curing of any omission or inconsistency in the Joint Plan or the Confirmation Order as may be necessary to carry out the purposes and intent of the Joint Plan.
- E. Modification of the Joint Plan after confirmation pursuant to the Bankruptcy Code and the Bankruptcy Rules.
- F. Allowance of all Claims and applications for payment of Administrative Claims and professional fees and expenses which may be paid by the Debtor or its Estate pursuant to the provisions of the Bankruptcy Code, and resolution of all disputes pertaining thereto.
- G. Resolution of any disputes regarding the Trainor Liquidating Trust or any claim or controversy related thereto.

H. Entry of a final order confirming substantial consummation of the Joint Plan and closing the Case.

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Dated this 13th day of November, 2013.

TRAINOR GLASS COMPANY

By: /s/ Thomas D. Trainor
Its: President

TRAINOR GLASS COMPANY

By: /s/ Edwin J. Trainor
Its: Vice President

THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS OF
TRAINOR GLASS COMPANY

By: /s/ Gary Meyers
Its Chair