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In re Schwab Indus.

United States Bankruptcy Court for the Northern District of Ohio, Eastern Division

December 15, 2010, Filed

Chapter 11, Case No. 10-60702-rk (Jointly Administered)

Reporter

2010 Bankr. LEXIS 5970 *

In re: SCHWAB INDUSTRIES, INC., et al, ¹ Debtors

Core Terms

Confirmation, Oversight, distributions, holders, liquidation, Proceeds, Cases, cause of action, Estates, rights, administrative expense, professional fees, Professionals, days, consultation, provisions, Disputed, notice, termination, pension plan, Expenses, Refund, consolidation, Settlement, parties, Disclosure, Impaired, effective date, law law law, Proponents

Case Summary

Procedural Posture

Debtors filed petitions under Chapter 11 of the Bankruptcy Code. The court ordered joint administration of the debtors' bankruptcy cases, and debtors, together with the official committee of unsecured creditors, filed a first amended joint plan of liquidation and asked the court to approve their plan.

Overview

The debtors declared bankruptcy and filed a joint plan of liquidation which identified various classes of claims and interests and established a creditor trust. The plan proposed to liquidate the debtors' interests and distribute the assets to the creditor trust. One source of anticipated funds was recoveries from lawsuits, which included claims against potential insider defendants. The plan reserved such claims for the creditor trust to pursue. The court found that the debtors' plan complied

with 11 U.S.C.S. § 1129 and other applicable provisions of the Bankruptcy Code, and could be confirmed. The debtors had provided proper notice to all interested parties and had secured the votes of two impaired classes. The remaining classes, which were subject to cramdown under 11 U.S.C.S. § 1129(b), had been treated fairly and equitably and without unfair discrimination according to the standards set forth in § 1129(b). Because the plan contemplated liquidation and transfer of all remaining assets of the debtors' estates to a creditor trust, and reorganization was not required, the feasibility test of 11 U.S.C.S. § 1129(a)(11) was satisfied.

Outcome

The court confirmed the debtors' plan.

LexisNexis® Headnotes

Bankruptcy Law > ... > Plan

Confirmation > Prerequisites > Impaired Class Consent

[HN1](#) [Download] Prerequisites, Impaired Class Consent

Pursuant to 11 U.S.C.S. § 1129(a)(10), if a class of claims is impaired under a Chapter 11 plan, at least one class of claims that is impaired under the plan must accept the plan, determined without including any acceptance of the plan by any insider.

Bankruptcy Law > ... > Plans > Plan Confirmation > Cramdowns

[HN2](#) [Download] Nonconsensual Confirmations, Cramdowns

¹ The Debtors in these Cases, along with the last four digits of each Debtor's tax identification number are: Schwab Industries, Inc. (2467); Medina Cartage Co (9373); Medina Supply Company (3995); Quality Block & Supply, Inc. (2186); O.I.S. Tire, Inc. (7525); Twin Cities Concrete Company (9196); Schwab Ready-Mix, Inc. (8801); Schwab Materials, Inc. (8957); and Eastern Cement Corp. (7232)

11 U.S.C.S. § 1129(b) allows for a Chapter 11 plan to be confirmed, notwithstanding an impaired class rejecting the plan, if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interest that is impaired, under, and has not accepted the plan. 11 U.S.C.S. § 1129(b)(1). But, one impaired class must nevertheless accept the plan for the court to approve the plan under 11 U.S.C.S. § 1129.

Counsel: [*1] Lawrence E. Oscar (0022696), Daniel A. DeMarco (0038920), Christopher W. Peer (0067257), HAHN LOESER & PARKS LLP, Counsel for the Debtors and Debtors-in-Possession.

Aaron L. Hammer, Esq., Richard S. Lauter, Esq., Thomas R. Fawkes, Esq., FREEBORN & PETERS LLP, Counsel to the Official Committee of Unsecured Creditors.

Judges: Russ Kendig, United States Bankruptcy Judge.

Opinion by: Russ Kendig

Opinion

[EDITOR'S NOTE: THE ORIGINAL SOURCE CONTAINED ILLEGIBLE WORDS AND/OR MISSING TEXT. THE LEXIS SERVICE WILL PLACE THE CORRECTED VERSION ON-LINE UPON RECEIPT.]

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER: (I) APPROVING FIRST AMENDED DISCLOSURE STATEMENT WITH RESPECT TO FIRST AMENDED JOINT PLAN OF LIQUIDATION OF SCHWAB INDUSTRIES, INC. ET AL. PURSUANT TO 11 U.S.C. § 1125; AND (II) CONFIRMING FIRST AMENDED JOINT PLAN OF LIQUIDATION DATED OCTOBER 26, 2010

Schwab Industries, Inc. and its affiliated debtors and debtors-in-possession (collectively, the "*Debtors*"),² having each filed with this Court their voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "*Bankruptcy Code*") on February 28, 2010

(the "*Petition Date*"); and the Debtors and the Official Committee of Unsecured Creditors (the "[*2] *Committee*," and collectively with the Debtors, the "*Plan Proponents*"), having filed with this Court their First Amended Joint Plan of Liquidation dated October 26, 2010 (the "*Plan*"); and the Plan Proponents, having filed with this Court the Disclosure Statement pursuant to [section 1125 of the Bankruptcy Code](#) (the "*Disclosure Statement*"); and the Plan Proponents seeking approval of the Disclosure Statement simultaneously with confirmation of the Plan, as allowed by this Court's order on October 27, 2010 (the "*Solicitation Procedures Order*"); and which Solicitation Procedures Order also (1) authorized the Plan Proponents to solicit acceptances or rejections of the Plan, (2) approved the form of ballots to be transmitted with the Plan and Disclosure Statement for voting purposes, (3) fixed 5:00 p.m. (prevailing Eastern time) on December 3, 2010 as the deadline for submitting acceptances or rejections to the Plan (the "*Voting Deadline*"), (4) set December 3, 2010 as the deadline for filing objections to the Disclosure Statement or to confirmation of the Plan (the "*Objection Deadline*"), (5) fixed December 9, 2010, at 2:00 p.m. (prevailing Eastern time) for the hearing to consider confirmation [*3] of the Plan pursuant to [section 1129 of the Bankruptcy Code](#) and adequacy of the Disclosure Statement pursuant to [section 1125 of the Bankruptcy Code](#) (the "*Joint Hearing*") and (6) approved the form and manner of notice of the Joint Hearing, the Voting Deadline and Objection Deadline; and the Plan Proponents, having solicited votes on the Plan and having provided notice of the Joint Hearing in accordance with the Solicitation Procedures Order; and the Court having considered the Declaration of Patrick M. Leathern of the Garden City Group, Inc. Regarding the Methodology for the Tabulation of Ballots Accepting or Rejecting the First Amended Joint Plan of Liquidation Dated October 26, 2010, filed with this Court on December 6, 2010, (the "*Ballot Report*"); and due notice of the Voting Deadline, the Joint Hearing and the Objection Deadline having been given by the Plan Proponents to all creditors, equity security holders and other parties-in-interest in accordance with the Solicitation Procedures Order, the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure (the "*Bankruptcy Rules*"); and the Plan Proponents having filed with this Court the Memorandum of Law in Support of: (I) Approval [*4] of First Amended Disclosure Statement with Respect to First Amended Joint Plan of Liquidation of Schwab Industries, Inc. et al. Pursuant to [11 U.S.C. § 1125](#); and (II) Confirmation of First Amended Joint Plan of Liquidation Dated October 26, 2010, dated December 6, 2010 (the "*Confirmation Brief*") and their

² Terms not otherwise defined herein shall have the meanings ascribed to such terms in the Plan or the Disclosure Statement.

Omnibus Reply to Objections to: (I) Approval of First Amended Disclosure Statement with Respect to First Amended Joint Plan of Liquidation of Schwab Industries, Inc. et al. Pursuant to [11 U.S.C. § 1125](#); and (II) Confirmation of First Amended Joint Plan of Liquidation Dated October 26, 2010, on December 6, 2010 (the "*Omnibus Reply*"); and upon all the documents and the evidence of record adduced at the Joint Hearing and the statements of the parties appearing at such hearing; and upon all the pleadings and proceedings heretofore in this matter; and after due deliberation and consideration; and good and sufficient cause appearing therefore:

FINDINGS OF FACT AND CONCLUSIONS OF LAW³

IT IS HEREBY FOUND AND DETERMINED that:

A. Exclusive Jurisdiction, Venue and Core Proceeding

This Court has jurisdiction over these chapter 11 cases (the "*Cases*") pursuant to 28 U.S.C. §§ 157 and 1334, Venue is proper pursuant to [28 U.S.C. §§ 1408](#) and [1409](#). Confirmation of the Plan is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L), and this Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed.

B. Judicial Notice

This Court takes judicial notice of the docket of these Cases maintained by the Clerk of the Court and/or its duly appointed agent, including, without limitation, all pleadings and documents filed, all orders entered and all evidence and arguments made, proffered or adduced at, the hearings held before the Court during the pendency of these Cases.

C. Burden of Proof

The proponents of the Plan have met their burden of proving the elements of *sections 1129(a) and 1129(b) of the Bankruptcy Code* by a preponderance of the

evidence.

D. Transmittal, Mailing Materials and Notice

In accordance with the **[*6]** Solicitation Procedures Order, the Plan Proponents timely mailed the Solicitation Package to holders of Claims entitled to vote on the Plan, which contained the following materials: (1) a copy of the Solicitation Procedures Order; (2) a copy of the Plan and Disclosure Statement; (3) a Class 2a or Class 3 Ballot, as appropriate; and (4) a copy of the Joint Hearing Notice. As to those holders of Claims or Interests not entitled to vote on the Plan, the Office of the United States Trustee and all other parties requesting service of notices in the Debtors' Cases, the Plan Proponents timely mailed copies of: (1) the Joint Hearing Notice; (2) the Solicitation Procedures Order; and (3) the Plan and Disclosure Statement. Adequate and sufficient notice of the Joint Hearing, the Voting Deadline, the Objection Deadline and other requirements, deadlines, hearings and matters described in the Solicitation Procedures Order was provided in compliance with the Solicitation Procedures Order and the Bankruptcy Rules, and no further notice is required. All parties-in-interest had the opportunity to appear and be heard at the Joint Hearing.

E. Impaired Classes that Have Voted To Accept the Plan

As evidenced **[*7]** by the Ballot Report, which certified both the method and results of the voting by Impaired Classes of Claims with respect to the Plan, Classes 2a and 3 are Impaired and have voted to accept the Plan pursuant to the requirements of [sections 1124](#) and [1126 of the Bankruptcy Code](#). Thus, at least one Impaired Class of Claims has voted to accept the Plan.

F. Classes Deemed To Have Accepted the Plan

Classes 1 and 2b are not Impaired under the Plan and are deemed to have accepted the Plan pursuant to [section 1126\(f\) of the Bankruptcy Code](#).

G. Classes Deemed To Have Rejected the Plan

Class 4 is impaired under the Plan and is deemed to have rejected the Plan pursuant to [section 1126\(g\) of the Bankruptcy Code](#).

³ Pursuant to Bankruptcy Rule 7050, findings of fact shall be construed as conclusions **[*5]** of law and conclusions of law shall be construed as findings of fact when appropriate.

H. Compliance with Requirements of Section 1129 of the Bankruptcy Code

1. Section 1129(a)(1) of the Bankruptcy Code — Plan Compliance With Provisions of the Bankruptcy Code

The Plan complies with all applicable provisions of the Bankruptcy Code, including, without limitation, [sections 1122](#) and [1123 of the Bankruptcy Code](#), thereby satisfying [section 1129\(a\)\(1\) of the Bankruptcy Code](#).

a. Proper Classification ([11 U.S.C. §§ 1122](#) and [1123\(a\)\(1\)](#))

Pursuant to [sections 1122\(a\)](#) and [1123\(a\)\(1\) of the Bankruptcy Code](#), [*8] Article III of the Plan designates Classes of Claims and Interests, other than Administrative Claims and Priority Tax Claims against the Debtors, which are not required to be classified. As required by [section 1122\(a\) of the Bankruptcy Code](#), each Class of Claims and Interests contains only Claims or Interests that are substantially similar to the other Claims or Interests within that Class, and therefore the Plan satisfies the requirement of [sections 1122\(a\)](#) and [1123\(a\)\(1\) of the Bankruptcy Code](#).

b. Specification of Impaired and Unimpaired Claims and Interests and Treatment Thereof

Pursuant to [sections 1123\(a\)\(2\)](#) and [1123\(a\)\(3\) of the Bankruptcy Code](#), Article IV of the Plan specifies which Claims and Interests are not Impaired and which Claims and Interests are Impaired. Pursuant to [section 1123\(a\)\(4\) of the Bankruptcy Code](#), Article V of the Plan also provides the same treatment for each Claim or Interest within a particular Class. Therefore, the Plan complies with [sections 1123\(a\)\(2\)-\(4\) of the Bankruptcy Code](#).

c. Means of Implementation ([11 U.S.C. § 1123\(a\)\(5\)](#))

The Plan provides adequate means for its implementation, thereby satisfying [section 1123\(a\)\(5\) of the Bankruptcy Code](#).

d. Non-Voting [*9] Equity Securities ([11 U.S.C. §](#)

[1123\(a\)\(6\)](#))

The Plan contemplates and mandates liquidation of the Debtors' Estates and remaining assets and, therefore, no securities will be issued. Therefore, the Plan complies with [section 1123\(a\)\(6\) of the Bankruptcy Code](#).

e. Selection of Directors and Officers ([11 U.S.C. § 1123\(a\)\(7\)](#))

The Plan contemplates and mandates liquidation of the Debtors' Estates and remaining assets, and therefore, no directors or officers will be appointed under the Plan. The Plan, however, appoints the Creditor Trustee to administer the Creditor Trust after confirmation of the Plan, with such Creditor Trustee being named by the Plan Proponents by that certain notice filed with the Court on December 6, 2010.

f. Compliance with [Bankruptcy Rule 3016](#)

The Plan is dated and identifies the entities submitting it, thereby satisfying [Bankruptcy Rule 3016\(a\)](#). The filing of the Disclosure Statement with the Court satisfies [Bankruptcy Rule 3016\(b\)](#).

g. Compliance with [Bankruptcy Rule 3018](#)

The solicitation of votes to accept or reject the Plan was conducted in accordance with the Solicitation Procedures Order and otherwise satisfies [Bankruptcy Rule 3018](#). The Plan was transmitted to all Creditors [*10] entitled to vote on the Plan and those other parties entitled to notice under applicable law. Sufficient time was prescribed for such Creditors to accept or reject the Plan, and the solicitation materials and procedures comply with [section 1126 of the Bankruptcy Code](#). The requirements of [Bankruptcy Rule 3018](#) are thereby satisfied.

2. Section 1129(a)(2) of the Bankruptcy Code — Plan Proponents' Compliance with Provisions of the Bankruptcy Code

The Plan Proponents have complied with the applicable provisions of the Bankruptcy Code, including, without limitation, [sections 1125](#) and [1126 of the Bankruptcy Code](#) and [Bankruptcy Rules 3013](#), [3018](#) and [3019](#) and

all applicable orders of this Court. The solicitation of acceptances or rejections of the Plan was (a) in compliance with the solicitation procedures set forth in the Solicitation Procedures Order, and (b) solicited after disclosure of adequate information as defined in [section 1125\(a\) of the Bankruptcy Code](#) to holders of Claims and Interests, and, therefore, the Plan satisfies the requirements of *section 1129(a)(2) of the Bankruptcy Code*.

3. Section 1128(a)(3) of the Bankruptcy Code — Plan Proposed in Good Faith and Not by Means Forbidden [*11] by Law

The Plan has been proposed in good faith and not by any means forbidden by law. In determining that the Plan has been proposed in good faith, the Court has examined the totality of the circumstances surrounding the formulation of the Plan. The Plan Proponents proposed the Plan with legitimate and honest purposes to preserve and protect the rights and interests of Creditor's and all other parties in interest. Consistent with the overriding purpose of chapter 11 of the Bankruptcy Code, the Plan is designed to effectuate the liquidation of the Debtors' Estates and remaining assets and distribute those assets to holders of Allowed Claims, in accordance with the priority scheme set forth in the Bankruptcy Code and pursuant to the mechanic set forth in Article V of the Plan and the Creditor Trust Agreement, by a Creditor Trust formed pursuant to the Plan and this Confirmation Order. Moreover, the Plan itself and the process leading to its formulation provide independent evidence that the Plan has been proposed in good faith, including, without limitation, the Committee's and the Debtors' collaborative effort in formulating and soliciting the Plan and the consent of the Pre-Petition [*12] Lenders thereto.

4. Section 1129(a)(4) of the Bankruptcy Code — Payment of Costs and Expenses

All payments made, or to be made, by the Debtors' Estates, for services or for costs and expenses in connection with these Cases or in connection with the Plan and incident to the Cases are reasonable and by this Confirmation Order hereby are approved as appropriate under the circumstances. The Court further finds that any fees and expenses payable to any Professional Persons retained in these Cases are subject to approval of this Court in accordance with applicable law. Therefore, the Plan satisfies the

requirements of *section 1129(a)(4) of the Bankruptcy Code*.

5. Section 1129(a)(5) of the Bankruptcy Code — Disclosure of Identities of Officers, Directors and Insiders

Under the Plan, all of the Debtors' remaining assets (other than the Tax Refund) will be transferred to the Creditor Trust, and the Debtors will cease to exist. Thus, the Plan, having not identified anyone as successor, still meets the requirements of *section 1129(a)(5) of the Bankruptcy Code* because no one will be serving in any capacity of the Debtors.

6. Section 1129(a)(6) of the Bankruptcy Code — Rate Changes

Section 1129(a)(6) of the Bankruptcy Code [*13] is inapplicable to confirmation of the Plan because there are no rate changes provided for in the Plan over which a governmental regulatory commission will have jurisdiction.

7. Section 1129(a)(7) of the Bankruptcy Code — Best Interests of Creditors

With respect to each Impaired Class of Claims and Interests, each holder of a Claim or Interest of such Class has accepted the Plan, or will receive or retain under the Plan on account of such Claim or Interest, property of a value, as of the Effective Date of the Plan, that is not less than the amount that such holder would so receive or retain if each of the Debtors were liquidated under chapter 7 of the Bankruptcy Code on such date. Therefore, the Plan satisfies the requirements of *section 1129(a)(7) of the Bankruptcy Code*.

8. Section 1129(a)(8) of the Bankruptcy Code — Acceptance of the Plan or Non-Impairment

Due to the Plan meeting the requirements set forth in *section 1129(b) of the Bankruptcy Code*, *section 1129(a)(8) of the Bankruptcy Code* does not have to be satisfied.

9. Section 1129(a)(9) of the Bankruptcy Code — Treatment of Claims Entitled to Priority

Except to the extent that the holder of a Claim agrees to different treatment of [*14] such Claim, the Plan provides that Administrative Claims will be paid in accordance with the Bankruptcy Code, the Plan and the Creditor Trust Agreement. Therefore, the Plan satisfies the requirements of *section 1129(a)(9) of the Bankruptcy Code*.

10. Section 1129(a)(10) of the Bankruptcy Code — Acceptance by at Least One Impaired Class

Classes 2a and 3 are Impaired under the Plan. [HN1](#)^[↑] Pursuant to *section 1129(a)(10) of the Bankruptcy Code*, if a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan must accept the plan, determined without including any acceptance of the plan by any insider. This requirement has been satisfied because Classes 2a and 3 have overwhelmingly voted to accept the Plan.

11. Section 1129(a)(11) of the Bankruptcy Code — Feasibility

Normally the feasibility test, used to determine if *section 1129(a)(11) of the Bankruptcy Code* has been satisfied, determines whether a reorganization plan can be successfully implemented. Because the Plan contemplates liquidation and transfer of all remaining assets of the Debtors' Estates to the Creditor Trust, and reorganization is not required, the feasibility test is satisfied based on [*15] the Plan Proponents' showing that there is a "reasonable probability" that the provisions of the Plan can be performed. Therefore, *section 1129(a)(11) of the Bankruptcy Code* is satisfied.

12. Section 1129(a)(12) of the Bankruptcy Code — Payment of Fees

The Debtors have paid or, pursuant to Section 9.2 of the Plan, shall pay, on or prior to the Effective Date, all amounts due under [28 U.S.C. § 1930](#), and therefore, the Plan satisfies the requirements of *section 1129(a)(12) of the Bankruptcy Code*.

13. Sections 1129(a)(13)-1129(a)(16) of the Bankruptcy Code

There are no retirement benefits owed by the Debtors, the Debtors are not required to pay domestic support

obligations, the Debtors are not individuals and transfers of property of the Plan will be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a trust that is not a moneyed, business or commercial corporation or trust. Therefore, the final four subsections of *section 1129(a) of the Bankruptcy Code* are inapplicable to the Debtors.

14. Section 1129(b) of the Bankruptcy Code — Cramdown

[HN2](#)^[↑] *Section 1129(b) of the Bankruptcy Code* allows for the Plan to be confirmed, notwithstanding an [*16] Impaired Class rejecting the Plan, if "the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interest that is impaired, under, and has not accepted the plan." 11 U.S.C. § 1129(b)(1). But, one Impaired Class must nevertheless accept the Plan for this Court to approve the Plan under *section 1129 of the Bankruptcy Code*. Here, two impaired Classes — Class 2a and Class 3 — have accepted the Plan, and the remaining Classes, which are subject to cramdown under *section 1129(b) of the Bankruptcy Code*, have been treated fairly and equitably and without unfair discrimination according to the standards set forth in *section 1129(b) of the Bankruptcy Code*.

15. Section 1129(c) of the Bankruptcy Code — No Other Plan

The Plan Proponents seek confirmation of the Plan, as modified, a copy of which is attached to this Confirmation Order as [Exhibit A](#).⁴ No other entity has proposed a plan contradicting the current Plan. Therefore, *section 1129(c) of the Bankruptcy Code* has been satisfied.

16. [*17] Section 1129(d) of the Bankruptcy Code — Avoidance of Taxes

The principal purpose of this Plan is not the avoidance of taxes or the avoidance of the Securities Act of 1933, but for the liquidation and distribution of the remaining assets of the Debtors and their Estates. The Plan, therefore, satisfies the requirements of *section 1129(d)*

⁴A redline of the Plan, reflecting those non-material modifications made since the date of the filing of the Plan, is attached to this Confirmation Order as [Exhibit B](#).

of the Bankruptcy Code.

H. Compliance with Section 1125(e) of the Bankruptcy Code

Based on the record before the Court in these Cases, the Plan Proponents have acted in good faith within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all of their respective activities relating to the solicitation of acceptances to the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code, and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and as otherwise provided herein.

I. Retention of Causes of Action/Reservation of Rights.

As disclosed in the Disclosure Statement and as provided in the Plan, it is anticipated that a source of funds for payments to Creditors under the Plan will **[*18]** be recoveries from existing or potential Causes of Action commenced by or on behalf of the Debtors, their Estates and/or the Creditor Trust, which Causes of Action may include: (i) any and all Causes of Action pursuant to any applicable section of the Bankruptcy Code, including Avoidance Actions; (ii) objections to Claims; and (iii) claims against the Potential Insider Defendants based on: (a) breaches of fiduciary duties (both prior to and after the Petition Date); (b) aiding and abetting breaches of fiduciary duties; (c) piercing the corporate veil; (d) conversion; (e) fraud; (f) negligence; (g) negligent misrepresentation; (h) waste of corporate assets; and (i) equitable subordination of Claims. The above list of potential claims against the Potential Insider Defendants is not exhaustive, and if a specific Cause of Action or defendant is not identified thereon, it is because such Cause of Action or defendant is not known to the Debtors or the Creditor Trustee at this time. On behalf of the Debtors and their Estates, the Debtors preserve for the Creditor Trust the rights to any Causes of Action that may be identified on or after the Confirmation Date. The recoveries, if any, from **[*19]** any litigation brought by the Creditor Trust will depend on many factors, which cannot be predicted at this time. The Creditor Trustee may in his sole discretion elect not to pursue any Causes of Action (including Avoidance Actions) the pursuit of which the Creditor Trustee deems not to be in the best interest of the

Estates or the Creditor Trust.

This Court hereby finds that provisions in the Disclosure Statement, Plan and this Confirmation Order relating to retention of Causes of Action/reservation of rights shall be sufficient for all purposes to satisfy the requirements of the standard set forth in Browning v Levy, 283 F.3d 761 (6th Cir. 2002).

J. Objections to Confirmation of the Plan and/or Approval of the Disclosure Statement

The following creditors or parties-in-interest (collectively, the "*Objecting Parties*") filed objections to the confirmation of the Plan and/or approval of the Disclosure Statement (collectively, the "*Objections*"): (1) Oldcastle Materials, Inc. ("*Oldcastle*"); (2) Department of the Treasury, Internal Revenue Service (the "*IRS*"); (3) Ohio Department of Taxation and Bureau of Workers' Compensation ("*Ohio*"); (4) Allen Concrete & Masonry, Inc. and Allen Concrete **[*20]** Pumping (collectively, "*Allen Concrete*"); and (5) Timothy Taylor.

ORDER

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

Approval of the Disclosure Statement and Confirmation of the Plan

1. The Disclosure Statement contains adequate information pursuant to section 1125 of the Bankruptcy Code and is hereby approved.

2. The Plan shall be, and hereby is, confirmed in each and every respect pursuant to section 1129 of the Bankruptcy Code. Any modifications to the Plan shall be, and hereby are, approved and are incorporated into and made part of the Plan. Each and every provision of the Plan is incorporated by reference into, and is made an integral part of, this Confirmation Order as if the Plan were set forth in its entirety in this paragraph. Further, the provisions of the Plan and this Confirmation Order, including the findings of fact and conclusions of law set forth herein, are non-severable and mutually dependent.

Objections to Confirmation of the Plan or Approval of the Disclosure Statement

3. All Objections to confirmation of the Plan or approval of the Disclosure Statement, other than those withdrawn with prejudice in their entirety prior to, or on the record at, the Joint [*21] Hearing, or resolved pursuant to this Confirmation Order, are hereby expressly overruled.

4. Ohio Objection. The Objection of Ohio is overruled. The Bankruptcy Court provided Ohio with the option to elect to certain modifications to Section 7.20 of the Plan. Ohio has exercised this option, and the Plan, as attached hereto as Exhibit A, has been modified in accordance with the Bankruptcy Court's remarks on the record and as agreed between the Committee, the Debtors and Ohio.

5. IRS Objection. Based on the evidence submitted at the Joint Hearing and the proffers offered by counsel to the Committee, the Debtors and the Pre-Petition Lenders concerning the clear intention of the parties in preparing the Core Sale Order, the Objection of the IRS raised at the Confirmation Hearing is overruled. In resolution of the other objections of the IRS raised in its Objection, the Creditor' Trustee will make quarterly distributions to the IRS, with respect to its Allowed Priority Tax Claim, in equal installments in Cash, beginning on the Effective Date (or as soon as practicable following the date the IRS's Claim becomes an Allowed Priority Tax Claim) and through the fifth year following the Petition [*22] Date, pursuant to *section 1129(a)(9)(C) of the Bankruptcy Code*. Further, approval of this Confirmation Order shall not be deemed consent by the United States to any actions or jurisdiction of any Court nor a waiver of any rights it may have if these Cases are dismissed.

6. Allen Concrete Objection. The Allen Concrete Objection has been resolved pursuant to Schedule 7.4 of the Plan. The Creditor Trustee is hereby authorized to execute on behalf of itself, the Debtors and their Estates and the Committee, and file with the Bankruptcy Court, a stipulation resolving, among other things, ACM's and ACP's asserted secured and administrative expense claims against the Debtors' estates, within three (3) days of the entry of this Confirmation Order without a motion or further' hearing before the Bankruptcy Court. Upon such filing, the stipulation shall be automatically approved and the parties authorized to act in accordance therewith.

7. Oldcastle Objection. In full settlement of the Objection filed by Oldcastle, Oldcastle shall have an Allowed Agreed Administrative Claim in the amount of \$75,000 (the "*Oldcastle AAA Claim*"), constituting an Allowed

Administrative Claim not subject to further challenge, [*23] review, objection, offset (other than as provided in this paragraph) or otherwise; provided, however, that Oldcastle's \$9,000 contribution obligation owed to the Debtors pursuant to the Agreed Order (Docket No. 674) regarding the Settlement Agreement and Release attached thereto shall be satisfied by an offset against the Oldcastle AAA Claim. Notwithstanding anything in this Confirmation Order, the Plan or the Creditor Trust Agreement to the contrary, the Oldcastle AAA Claim (in the net amount of \$66,000) shall be paid to Oldcastle in Cash no later than the Effective Date. In exchange for the foregoing, Oldcastle hereby agrees to withdraw, with prejudice, its Objection and its Motion of Oldcastle Materials, Inc. for Allowance of Administrative Expense Claims (Docket No. 680).

8. Taylor Objection. Mr. Taylor's objection to approval of the Disclosure Statement has been resolved. No later than December 30, 2010, Mr. Taylor shall file a proof of claim (the "*Taylor Claim*") by submitting the same to The Garden City Group, Inc. ("*Garden City*") by first class mail at The Garden City Group, Inc., Attn: Schwab Industries Claims Processing, P.O., Box 9402, Dublin, Ohio 43017-4502, setting forth [*24] his claims against the Debtors' Estates or be forever barred. So long as the Taylor Claim is received by Garden City not later than December 30, 2010, the Plan Proponents and the Creditor Trustee hereby agree not to object to the Taylor Claim on timeliness grounds, but reserve all rights to object to the Taylor Claim on substantive grounds in accordance with the Plan and the Creditor Trust Agreement. In consideration for the foregoing, Mr. Taylor has agreed to withdraw his objection to the Disclosure Statement.

Effects of Confirmation

9. Binding Effect. In accordance with the provision of [*section 1141 of the Bankruptcy Code*](#) and immediately upon entry of the Confirmation Order, the Plan and all of its provisions shall be, and hereby are, binding upon the Debtors, any Person acquiring or receiving property or a distribution under the Plan, any lessor or lessee of property to or from the Debtors, any past, present, or future Creditor of the Debtors and any holder of a Claim against or Interest in the Debtors, whether or not such Claim or Interest of such holder is Impaired under the Plan, whether known or unknown, and whether or not such holder has accepted or rejected the Plan or will [*25] or will not receive a distribution under the Plan.

10. Subject to the terms of the Plan and this Confirmation Order, all prior orders of this Court entered in these Cases, all documents and agreements executed by the Debtors as authorized and directed thereunder, and all motions or requests for relief by the Debtors pending before the Court as of the Effective Date shall be, and hereby are, binding upon and shall inure to the benefit of the Creditor Trust.

11. The form, terms and provisions of the Creditor Trust Agreement, a copy of which is attached as Exhibit C, and any other documents executed and delivered in connection therewith (collectively, the "*Plan Related Documents*") are hereby approved and each of the Plan Related Documents shall constitute legal, valid, binding and authorized obligations of the respective parties thereto, enforceable in accordance with its terms (except as enforceability may be limited by any bankruptcy or insolvency proceeding filed by any party thereto subsequent to the date of the execution of such document). The appointment of John B. Pidcock as the initial Creditor Trustee is hereby approved.

12. Pursuant to sections 1123(a) and 1142(a) of the Bankruptcy Code, [*26] the provisions of this Confirmation Order, the Plan and the Plan Related Documents shall apply and be enforceable notwithstanding any otherwise applicable non-bankruptcy law.

13. Executory Contracts and Unexpired Leases. The executory contract and unexpired lease provisions of Article VI of the Plan shall be, and hereby are, approved. Each executory contract or unexpired lease of the Debtors that has not expired by its own terms or been assumed prior to the Confirmation Date shall be deemed rejected pursuant to section 365 of the Bankruptcy Code on the Confirmation Date.

14. All proofs of claim with respect to Claims arising from the rejection of executory-contracts or unexpired leases pursuant to Section 6.1 of the 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 Claims of any Creditor arising from the rejection of executory contracts or unexpired leases pursuant to Section 6.1 of the Plan that fails to timely file a proof of claim shall be released, [*27] discharged and forever barred from assertion against the Debtors, their Estates or their property.

15. Termination of Pension Plan: PBGC Claims. From

and after the Confirmation Date, the Creditor Trustee will oversee the termination of the Pension Plan according to the terms and conditions of the Pension Plan and effected in conformity with all statutory and regulatory requirements, including any applicable notice provisions. Alternatively, to the extent permitted by the Bankruptcy Code, the Pension Plan will be deemed rejected as of the Confirmation Date. Any undistributed, vested benefits of the terminated Pension Plan will be distributed to the participants of the Pension Plan, as provided by statute, the applicable regulations and the Pension Plan's provisions. In order to ensure that the Pension Plan's termination complies with the terms of the Pension Plan, applicable statutes and regulations, the Debtors, the Creditor Trustee or the Plan Administrator (as defined in the Pension Plan) will obtain any necessary approvals of the relevant regulatory agencies, such as the PBGC, the Internal Revenue Service and the U.S. Department of Labor, in respect of such terminations. To the extent [*28] that such processes require additional time or expense to complete after the Confirmation Date, the Plan Administrator shall be responsible for completing such process and such costs will be paid from the assets of the Pension Plan. The Debtors and the Creditor Trustee do not waive any objections they may have to any of the PBGC's Claims. The Bankruptcy Court shall retain jurisdiction over any disputes relating to the termination of the Pension Plan and the Creditor Trustee shall have standing to object to any Claim filed by the PBGC with respect to the Pension Plan.

16. Unimpaired Claims. All Class 1 and 2b Claims are not Impaired by the Plan in accordance with section 1124 of the Bankruptcy Code and shall survive confirmation of the Plan. All Professional Persons requesting payment of Professional Fee Claims and all other persons requesting payments of Other Administrative Expense Claims arising after July 12, 2010 shall be entitled to file an application for allowance of such Claims until not later than thirty (30) days after the Confirmation Date. In conjunction therewith, the Plan Proponents shall serve a notice of entry of this Confirmation Order and Administrative Claims bar [*29] date to all known or anticipated holders of Administrative Claims by U.S. mail within three (3) days following the Confirmation Date. Objections to any applications from holders of Professional Fee Claims or Other Administrative Expense Claims arising after July 12, 2010 must be written, filed with the Bankruptcy Court, and served on the applicable parties within forty-five (45) days after such application is filed. Any dispute with respect to any other unimpaired Claim may be

determined, resolved or adjudicated, as the case may be, with respect to the Creditor Trust in the manner in which such dispute would have been determined, resolved or adjudicated if these Cases had not been commenced, with this Court expressly retaining jurisdiction to adjudicate any such dispute. Moreover, notwithstanding anything in this Confirmation Order or the Plan to the contrary, no Other Administrative Expense Claim arising before July 12, 2010 that is not properly evidenced by a proof of claim or application for allowance of such Claim filed in advance of the applicable bar date shall be deemed an Allowed Other Administrative Expense Claim and shall be disallowed and forever barred. Except as otherwise [*30] provided in the Plan, nothing under the Plan or this Confirmation Order shall affect the Creditor Trust's rights in respect of any unimpaired Claims, including, but not limited to, all rights in respect of legal and equitable defenses to or setoff, or recoupments against such unimpaired Claims.

17. Injunctions and Stays Remain in Effect until Effective Date. All injunctions and stays pursuant to sections 105 and 362 of the Bankruptcy Code or otherwise shall remain in full force and effect through the termination of the Creditor Trust and the imposition of the injunction set forth in Section 7.16 of the Plan; provided, however, that no Person will be stayed or enjoined from exercising or enforcing their rights, remedies and interests with respect to: (i) that certain adversary case pending in the Bankruptcy Court as Adversary Case No. 10-06097 or any of the claims, demands, causes of action or remedies asserted therein; (ii) any rights under that certain Assignment of Rights in Agreement Regarding Earnout Payments, dated June 2, 2010, between SMI and Key Bank; and (iii) the Tax Refund.

Matters Relating to Implementation of the Plan

18. Vesting of Assets. Within seven (7) days of the Confirmation [*31] Date, all assets of the Debtors and their Estates, other than the Tax Refund (collectively, the "*Creditor Trust Assets*") shall be transferred to and vest in the Creditor Trust and be deemed contributed thereto, subject to the terms of the Plan. In the event KeyBank, on behalf of the Pre-Petition Lenders, provides written direction to the Creditor Trustee (on behalf of the Debtors or the Creditor Trust) to incur any fees and expenses necessary and appropriate in KeyBank's sole discretion to prosecute the Tax Refund and respond to any related issues (the "*Authorized Fees and Expenses*"), pursuant to KeyBank's and the Pre-

Petition Lenders' rights under the Core Sale Order, any such Authorized Fees and Expenses shall be satisfied by KeyBank, in its capacity as agent for the Pre-Petition Lender's, and shall be reimbursed to KeyBank through the Tax Refund prior to calculating the actual amount of recovery realized upon the Tax Refund for purposes of the sharing agreement set forth in the Core Sale Order. Neither KeyBank nor the Pre-Petition Lenders shall have any obligation to direct the Creditor Trustee (on behalf of the Debtor's or the Creditor Trust, as the case may be) to prosecute the [*32] Tax Refund or otherwise respond to any related issues or matters, including, but not limited to, responding to any audit. KeyBank shall be authorized to abandon the Pre-Petition Lenders' rights, claims, interests and Liens on the Tax Refund in its sole discretion by formal written notice to the Creditor Trustee (on behalf of the Debtors or the Creditor Trust), in which case, the Creditor Trustee shall have all of the rights of KeyBank and the Pre-Petition Lenders solely with respect to the Tax Refund as set forth herein. The Creditor Trust Assets include, without limitation, all Cash in the possession of the Debtors (less any Cash paid or to be paid on account of unpaid Allowed Professional Fee Claims), the Settlement Amount, all Avoidance Actions and Miscellaneous Causes of Action, the 503(b)(9) Fund, the Administrative Expense Fund, all rights of the Debtors under the Plan, the Confirmation Order and all other orders entered by the Bankruptcy Court in these Cases on or prior to the Confirmation Date, and all books and records related to the Estates. The Creditor Trust Assets shall also include all remaining real property and personal property of the Debtors.

19. For the avoidance [*33] of doubt, all property held for distribution pursuant to the Plan shall be held by the Creditor Trust solely in trust for the holders of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Claims, Allowed Class 2a Secured Claims and Allowed Class 3 Claims and shall not be deemed property of the Debtor's. Additionally, proceeds of the Settlement Amount obtained for General Unsecured Creditor's from the Pre-Petition Lenders shall be distributed only to the holders of Allowed Class 3 General Unsecured Claims, proceeds of collateral subject to the Pre-Petition Lenders' Liens shall be distributed only to the holders of Allowed Class 2a Secured Claims until the Pre-Petition Lenders have received distributions on their Allowed Secured Claims totaling \$51,000,000 and, thereafter, all further distributions to the Pre-Petition Lenders of Net Proceeds from the Creditor Trust shall be subject to the sharing formula appended to the Core Sale Order, the 503(b)(9)

Fund shall be distributed only to the holders of Allowed 503(b)(9) Claims and the Administrative Expense Fund shall be distributed only to the holders of Allowed Administrative Claims; provided, however, that the **[*34]** Settlement Amount may be used to pay Allowed Administrative Claims or satisfy the Trustee's Expenses pursuant to any budget approved by the Oversight Committee.

20. Nothing in the Plan shall preclude payment of: (i) statutory fees under [28 U.S.C. § 1930](#) to the extent unpaid on the Confirmation Date; and (ii) the Trustee's Expenses in accordance with the Plan and the Creditor Trust Agreement from any other assets held by the Creditor Trust. The Debtors are hereby authorized and directed to take such steps as may be necessary or appropriate to confirm such transfer and contribution of their property to the Creditor Trust, subject to oversight from the Oversight Committee or the Creditor Trustee, as applicable.

21. Substantive Consolidation of Debtors' Estates. Effective as of the date of this Confirmation Order, each of the Debtor's Estates shall be substantively consolidated into the Estate of SII, On the Confirmation Date, and except as otherwise provided in the Plan: (i) all guaranties of any Debtor of the payment, performance or collection of another Debtor shall be deemed eliminated and cancelled; (ii) any obligation of any Debtor and all guaranties thereof executed by another Debtor **[*35]** or Debtors shall be treated as a single obligation and any obligation of two or more Debtors, and all multiple Claims against such entities on account of such joint obligations, shall be treated and allowed only as a single Claim against the consolidated Debtors; and (iii) each Claim filed or to be filed against any Debtor shall be deemed filed against the consolidated Debtors and shall be deemed a single Claim against and a single obligation of the consolidated Debtors. On the Confirmation Date, and in accordance with the terms of the Plan and the consolidation of the assets and liabilities of the Debtors, all Claims based upon guaranties of collection, payment or performance made by the Debtors as to the obligations of another Debtor shall be released and of no further force and effect. Except as set forth in Section 7.1.1 of the Plan, such substantive consolidation shall not (other than for purposes related to the Plan) cause any Debtor to be liable under the Plan for any Claim for which it otherwise is not liable, and the liability for any such Claim shall not be affected by such substantive consolidation. On the Confirmation Date, the Intercompany Claims of Debtors against any **[*36]** other Debtors shall be extinguished

and cancelled.

22. Creditor Trust Administration. The Creditor Trustee shall administer the Creditor Trust's assets pursuant to the Plan and the Creditor Trust Agreement from and after the Confirmation Date. The Creditor Trustee shall be responsible for liquidating the Creditor Trust Assets and distributing the Net Proceeds to the beneficiaries of the Creditor Trust pursuant to the Plan and the Creditor Trust Agreement.

23. Chapter 11 Case Administration. From and after the Confirmation Date and continuing through the date that a final decree closing these Cases is entered pursuant to [section 350 of the Bankruptcy Code](#) and [Bankruptcy Rule 3022](#), the Creditor 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 Cases. In addition to the foregoing, for all matters arising in, arising under or related to the Debtors or these Cases, the Creditor 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 **[*37]** to, the Debtors (including, without limitation, bank statements and cancelled checks), (iii) have the right to sign or otherwise execute documents, receive funds and direct transfers to third parties (including without limitation, with respect to the Tax Refund) on behalf of the Debtors; (iv) be entitled to notice and opportunity for hearing; (v) be entitled to participate in all matters brought before the Bankruptcy Court, including, but not limited to, adversary proceedings; (vi) have exclusive standing (including derivative standing to pursue Causes of Action on behalf of the Debtors) to commence Avoidance Actions and Miscellaneous Causes of Action; (vii) be entitled to request the Bankruptcy Court to enter a final decree closing the Cases; (viii) be entitled to receive notice of all applications, motions and other papers and pleadings set before the Bankruptcy Court in these Cases; and (ix) be authorized to designate the allocation of the funds remaining in the 503(b)(9) Fund and the Administrative Expense Fund as of the Confirmation Date, following consultation with, and subject to the approval of, the Oversight Committee.

24. Dissolution of the Debtors. Promptly after: (i) the **[*38]** Creditor Trustee completes the Debtors' wind-down (including, without limitation, closing any pending sale(s) of real estate); (ii) ACP is dissolved; and (iii) a final determination is made with respect to the Tax Refund, the Creditor Trustee is hereby authorized to

allow the applicable Secretary of State to involuntarily dissolve each of the Debtors. The Creditor Trustee shall thereafter have standing to assert claims or pursue matters on behalf of the Debtors to the extent necessary to preserve, protect and liquidate the Creditor Trust Assets or otherwise necessary to administer the Creditor Trust or any matter related to the Tax Refund.

25. Closing of Debtors' Cases Other Than the SII Case. The Cases of MCC, MSC, QBS, TCC, SRM, SMI, OIS and ECC shall be deemed closed as of the entry of this Confirmation Order and the substantive consolidation of the foregoing Estates into the Estate of SII, and the Clerk of Court shall take all necessary actions to effectuate the closing of such Cases. Upon such event, the Creditor Trustee may file all Causes of Action and objections to Claims in the SIT Case, and not in any other individual Debtor Case, notwithstanding the fact that the transferring [*39] Debtor (in an Avoidance Action) or the Debtor against whom the Claim, was filed (in a Claim objection proceeding) may be a Debtor other than SII.

26. Name Change; Transfer of Remaining Trade Names to Oldcastle. Upon the Confirmation Date, the Debtors shall thereafter be referred to, collectively, as "SIT Liquidation Company." The Debtors shall take any actions as necessary, including, without limitation, registering such name change with the appropriate secretary of state, to effect such name change.

27. From and after the Confirmation Date, the caption of these Cases shall be modified as follows:

In re:) Chapter 11

)

SII LIQUIDATION COMPANY.) Case No. 10-60702-rk

)

Debtor.)

) Judge Russ Kendig

All parties filing pleadings, notices or other documents in these Cases shall use the forgoing case caption, and the Clerk of the Court is hereby ordered to modify the docket maintained for these Cases on the Court's PACER system to reflect the modified caption.

28. [*40] Effective upon the Confirmation Date, all trade names of the Debtors, including without, limitation, the trade names associated with SII, MCC, MSC, QBS,

TCC, SRM, SMI, OIS and ECC shall be indefeasibly and permanently transferred to Oldcastle.

29. Dissolution of Committee. The Committee shall terminate automatically upon the acceptance by the Creditor Trustee of its appointment in accordance with this Plan and the Creditor 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 Cases or the Plan and its implementation, and the retention or employment of the Committee's counsel shall terminate, except: for ministerial duties or any duties imposed pursuant to the Plan (including, without limitation, filing applications for allowance and payment of Professional Fee Claims).

Injunctions and Related Provisions

30. Preservation of Rights of Action. Except as otherwise provided in the Plan, in this Confirmation Order or in any contract, instrument, release, indenture or other agreement entered into in connection with the Plan, in accordance [*41] with [section 1123\(b\) of the Bankruptcy Code](#), the Creditor Trust shall retain and may exclusively enforce any Avoidance Actions, the Miscellaneous Causes of Action or other causes of action or rights to payment of claims that the Debtors or their estates may hold against any Person or entity. The Creditor Trust may pursue such retained Avoidance Actions, the Miscellaneous Causes of Action, other causes of action and rights to payment of claims, as appropriate, in accordance with the best interests of the Creditor Trust and its beneficiaries. The Creditor Trust shall retain and may enforce all defenses, counterclaims and rights against all Claims and Interests asserted against the Debtors or their estates.

31. Permanent Injunction. Except as otherwise provided in the 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 Debtors 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 [*42] proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtors or the Creditor 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 Debtors or the foregoing

Creditor 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 Debtors or the Creditor 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 Debtors or the Creditor Trust, any of their property, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to the Debtors or the Creditor 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 Debtors or the Creditor Trust, any of their property, or any [*43] direct or indirect transferee of any property of, or direct or indirect successor in interest to, the Debtors or the Creditor Trust; (v) other than as otherwise expressly provided for in this Plan, asserting any right of setoff, subordination or recoupment of any kind, directly or indirectly, against any obligation due the Debtors, the Creditor Trust, any of their property, or any direct or indirect transferee of any property of, or successor in interest to, the Debtors or the Creditor 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 Plan,

32. Notwithstanding the injunction set forth in Paragraph 31 of this Confirmation Order, nothing contained herein or in the Plan shall prohibit, preclude, limit or otherwise impair the rights of (i) any Person to enforce their rights, remedies and interests with respect to: (a) that certain adversary case pending in the Bankruptcy Court as Adversary Case No. 10-06097 or any of the claims, demands, causes of action or remedies asserted therein; (b) any rights under that certain Assignment of Rights in Agreement Regarding Earnout Payments, dated June 2, 2010, between [*44] SMI and KeyBank; and (c) the Tax Refund; or (ii) KeyBank or any of the Pre-Petition Lenders to file a motion with the Bankruptcy Court seeking relief from the injunction and stay provisions of the Plan, including, without limitation, Sections 7.16 and 7.17 thereof, with respect to matters concerning the administration or liquidation of the Creditor Trust Assets subject to the Liens of the Pre-Petition Lenders.

33. Exculpation and Limitation of Liability. Neither the Committee, the Pre-Petition Lenders, the Creditor Trustee, the Debtors (excluding the Schwab Family

Members) nor any of their respective present and former members, officers, directors, shareholder's, subsidiaries, affiliates, employees, advisors, attorneys or agents acting in such capacity or any of their successors or assigns (but in all cases, excluding the Schwab Family Members), 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 Cases, the pursuit of confirmation of the Plan or the Plan's implementation, except for their fraud, willful misconduct or gross negligence, and in all respects shall [*45] be entitled to rely reasonably upon the advice of counsel with respect to their duties and responsibilities under the Plan.

34. Closing of the SII Case; Structured Dismissal. The SII Case shall not be closed, or if closed shall remain subject to re-opening pursuant to [section 350 of the Bankruptcy Code](#), until the Creditor Trust Assets have been fully administered and any Tax Refund is fully adjudicated. If, prior to the Effective Date, the Creditor Trustee determines, following consultation with the Oversight Committee, that the Creditor Trust will be unable to generate sufficient cash proceeds from the liquidation of Creditor 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 SII Case pursuant to [section 1112\(b\) of the Bankruptcy Code](#), which shall be deemed immediately effective and which shall not require further approval of this Court.

35. Following such dismissal, the Creditor Trustee shall, following consultation with, and approval by, the Oversight Committee: (i) oversee the liquidation of the Creditor Trust Assets and distribution [*46] of the Net Proceeds through the commencement of dissolution proceedings in the Common Pleas Courts of Cuyahoga County, Ohio, including, without limitation, conducting a Claims reconciliation process and distributing Net Proceeds (not including the Settlement Amount, collateral subject to the Liens of the Pre-Petition Lenders, the 503(b)(9) Fund or the Administrative Expense Fund other than as directed below) to holders of Allowed Claims according to the priority scheme set forth in the Bankruptcy Code, Pro Rata; (ii) distribute the Settlement Amount to the holder's of Allowed Class 3 General Unsecured Claims, Pro Rata; (iii) distribute Net Proceeds of Creditor Trust Assets subject to the Liens of the Pre-Petition Lenders to holders of Allowed Class 2a Secured Claims, Pro Rata, until the Pre-Petition Lenders have received \$51,000,000 with respect to their Allowed Secured Claims, at which point any future Net

Proceeds of such collateral shall be distributed to holder's of Allowed Class 2a Secured Claims and Allowed Class 3 General Unsecured Claims pursuant to the sharing formula appended to the Core Sale Order; (iv) distribute the 503(b)(9) Fund to holders of Allowed 503(b)(9) Claims, **[*47]** Pro Rata; and (v) distribute the Administrative Expense Fund to holders of Allowed Administrative Claims, Pro Rata. The Debtors, their Creditors and all other parties-in interest hereby consent to the substantive consolidation of the Debtors into SII, the dismissal of the SII Case and the jurisdiction of the Common Pleas Courts of Cuyahoga County, Ohio to supervise its dissolution.

36. In the event of a dismissal of the SII Case pursuant to Paragraphs 34 and 35 of this Confirmation Order, the Creditor Trustee shall have standing to commence, prosecute and settle Avoidance Actions and Miscellaneous Causes of Action in the Bankruptcy Court, with all Net Proceeds of such Causes of Action to be distributed to holders of Allowed Claims according to the priority scheme set forth in the Bankruptcy Code, Pro Rata, and the Bankruptcy Court shall retain jurisdiction over the Avoidance Actions and Miscellaneous Causes of Action notwithstanding the dismissal of the Cases.

Retention of Jurisdiction

37. Notwithstanding the entry of this Confirmation Order or the occurrence of the Effective Date, the Bankruptcy Court shall retain jurisdiction over these Cases and related matters after the Confirmation **[*48]** Date and after the Effective Date, as legally permissible, as and to the extent provided in Article X of the Plan.

Payment of Statutory And Other Fees

38. The Creditor Trustee shall pay: (i) statutory fees under [28 U.S.C. § 1930](#) to the extent unpaid on the Confirmation Date, and (ii) the Trustee Expenses in accordance with the Plan and the Creditor Trust Agreement.

Creditor Trust Professional Fees

39. All reasonable professional fees for services rendered following the Confirmation Date shall be paid by the Creditor Trust in accordance with the Plan and the Creditor Trust Agreement, without the need for

further Court authorization or entry of a Final Order. If the Creditor Trust and any of its professionals cannot agree on the amount of post-Effective Date fees and expenses to be paid to such professional, such amount shall be determined by this Court pursuant to the dispute resolution procedures set forth in the Creditor Trust Agreement.

Notice of Entry of Confirmation Order

40. Pursuant to [Bankruptcy Rules 2002\(f\)\(7\)](#) and [3020\(c\)](#), the Plan Proponents shall be, and hereby are, directed to serve a notice of entry of this Confirmation Order on all holders of Claims and Interests to whom the **[*49]** Joint Hearing Notice was mailed and the United States Trustee no later than three (3) business days after the Confirmation Date. Notwithstanding the foregoing, the Plan Proponents shall be, and hereby are, directed to serve copies of the Confirmation Order on each party that has filed a notice of appearance in these Cases and on each Objecting Party, no later than fourteen (14) days after the Confirmation Date. No further notice of the entry of this Confirmation Order shall be required.

Effect of Reference to the Plan in this Confirmation Order

41. The failure to include or specifically reference any particular provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Plan be confirmed in its entirety. The provisions of the Plan and of this Confirmation Order shall be construed in a manner consistent with each other so as to effect the purposes of each; provided, however, that if there is determined to be any inconsistency between any Plan provision and any provision of this Confirmation Order that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions **[*50]** of this Confirmation Order shall govern and any such provision of this Confirmation Order shall be deemed a modification of the Plan and shall control and take precedence.

Retention of Causes of Action/Reservation of Rights.

42. Except as specifically provided in the Plan or this Confirmation Order, nothing contained in the Plan or this

Confirmation Order shall be deemed to be a waiver or the relinquishment of any rights, claims, or Causes of Action (including any Avoidance Actions) that the Debtors or the Creditor Trust, as the case may be, may have or which the Creditor Trustee may choose to assert on behalf of the Estates or the Creditor Trust in accordance with any provision of the Bankruptcy Code or any applicable nonbankruptcy law. including, without limitation, (i) the avoidance of any transfer by or obligation of any of the Estates or the Debtors under chapter 5 of the Bankruptcy Code or the recovery of the value of such transfer, (ii) the turnover of any property of the Estate, or (iii) any other Cause of Action not specifically released pursuant to the Plan.

43. Except as specifically provided in the Plan or in this Confirmation Order, nothing contained in the Plan or this Confirmation Order shall be deemed to be a waiver or relinquishment of any Claim, Cause of Action (including Avoidance Actions) or other legal or equitable defense that the Debtors had immediately prior to the Petition Date, against or with respect to any Claim left unimpaired by the Plan. The Creditor Trust or the Creditor Trustee, as the case may be, shall have, retain, reserve and be entitled to assert all such Claims, Causes of Action (including Avoidance Actions) or other legal or equitable defenses which the Debtors, the Estates, the Creditor Trust or the Creditor Trustee or any of them had immediately prior to the Petition Date fully as if the Cases had not been commenced, and all legal and equitable rights of the Debtors respecting any Claim, Cause of Action (including Avoidance Actions) or other legal or equitable defense left unimpaired by the Plan may be asserted after the Confirmation Date by the Creditor Trust or the Creditor Trustee to the same extent as if the Cases had not been commenced.

44. ALL CAUSES OF ACTION SHALL SURVIVE CONFIRMATION AND THE COMMENCEMENT OR PROSECUTION OF CAUSES OF ACTION SHALL NOT BE BARRED OR LIMITED BY ANY ESTOPPEL, WHETHER JUDICIAL, EQUITABLE, OR OTHERWISE. [*52] The Creditor Trustee's right to commence and prosecute Causes of Action (including Avoidance Actions) shall not be abridged or materially altered in any manner by reason of confirmation of the Plan. No defendant party to any Cause of Action (including an Avoidance Action) shall be entitled to assert any defense based, in whole or in part, upon confirmation of the Plan, and confirmation of the Plan shall not have any *res judicata* or collateral estoppel effect upon the commencement and prosecution of Causes of Action (including Avoidance Actions).

Reversal

45. If any or all of the provisions of this Confirmation Order are hereafter reversed, modified or vacated by subsequent order of this Court or any other court, such reversal, modification or vacatur shall not affect the validity of the acts or obligations incurred or undertaken under, or in connection with, the Plan prior to the Creditor Trust's receipt of written notice of any such order; nor shall such reversal, modification or vacatur of this Confirmation Order affect the validity or enforceability of such act or obligation. Notwithstanding any such reversal, modification or vacatur of this Confirmation Order, any such act or obligation [*53] incurred or undertaken pursuant to, and in reliance on, this Confirmation Order prior to the effective date of such reversal, modification or vacatur shall be governed in all respects by the provisions of this Confirmation Order, the Plan and the Plan Related Documents or any amendments or modifications thereto.

Headings

46. Headings utilized herein are for the convenience of reference only, and shall not constitute a part of the Plan or this Confirmation Order for any other purpose.

Post-Confirmation Date Status Conference

47. A status hearing on post-confirmation issues is hereby scheduled for January 27, 2011, at 2p.m.

IT IS SO ORDERED.

Submitted by:

/s/ Russ Kendig

Russ Kendig

United States Bankruptcy Judge

EXHIBIT A

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

In re: SCHWAB INDUSTRIES, INC., et al., ¹ Debtors.

FIRST AMENDED JOINT PLAN OF LIQUIDATION **DATED OCTOBER 26, 2010**

The above-captioned debtors and debtors-in-possession (collectively, the "*Debtors*") and the Official Committee of Unsecured Creditors (the "*Committee*"), hereby submit this First Amended Joint Plan of Liquidation (the "*Plan*") pursuant to [section 1123 of the Bankruptcy Code](#):

ARTICLE I

Definitions

The following terms, when used in the Plan shall, unless the context otherwise requires, have the following meanings, respectively:

1.1 "**503(b)(9) Claim**" shall mean a Claim of a Creditor of the kind specified in [section 503\(b\)\(9\) of the Bankruptcy Code](#) and that was filed by the Bar Date pursuant to the procedures set forth in the Bar Date Order.

1.2 "**503(b)(9) Fund**" shall mean the \$500,000 in Cash provided by Oldcastle to pay 503(b)(9) Claims, which is expressly preserved solely for the benefit of holders of 503(b)(9) Claims.

1.3 "**ACP**" shall mean Allen Concrete Pumping, a Florida Partnership, fifty percent (50%) owned by SRM.

1.4 "**Administrative Claim**" shall mean a Claim of a Creditor of the kind specified in [section 503\(b\) of the Bankruptcy Code](#) that is entitled to priority under [section 507\(a\)\(2\) of the Bankruptcy Code](#), **[*55]** and shall include: (i) any actual and necessary costs and expenses incurred by the Debtors after the Petition Date

with respect to preserving the Estates and operating the Debtors' businesses; (ii) any Professional Fee Claims approved by the Bankruptcy Court pursuant to [section 330 of the Bankruptcy Code](#); and (iii) all fees and charges properly assessed against the Estates pursuant to [28 U.S.C. § 1930](#). Pursuant to the Bar Date Order, all Administrative Claims (other than Professional Fee Claims) were required to be filed prior to the Bar Date and in accordance with the Bar Date Order. Pursuant to the Bar Date Order: (i) 503(b)(9) Claims were required to be submitted no later than the Bar Date pursuant to the proof of claim form (with the appropriate checked box); and (ii) all holders of Other Administrative Expense Claims (other than holders of 503(b)(9) Claims) were required to seek allowance of their Administrative Claim by the Bar Date.. Those Administrative Claims (other than Professional Fee Claims and those Claims identified on Schedule 1.6 to this Plan as Agreed Administrative Claims) not filed by the Bar Date and pursuant to the procedures established by the Bar Date Order **[*56]** shall be forever barred and disallowed as untimely. Notwithstanding the foregoing, Administrative Claims shall also include post-petition expenses of the Debtors that the Creditor Trustee otherwise believes should be paid as administrative expenses of the Estates.

1.5 "**Administrative Expense Fund**" shall mean the \$900,000 in Cash provided by Oldcastle under the Core Sale Order to pay Allowed Administrative Claims, which is expressly preserved solely for the benefit of holders of Allowed Administrative Claims.

1.6 "**Agreed Administrative Claims**" shall mean the Claims identified on [Schedule 1.6](#) to this Plan, which Administrative Claims are known to the Debtors to have existed on the date this Plan was filed with the Court and remain unpaid as of such date. Agreed Administrative Claims remain subject to objection for substantive reasons, but the Creditor Trustee shall not object to such Agreed Administrative Claims for failure to file a proof of claim prior to the Bar Date so long as such Creditors holding Agreed Administrative Claims actually filed an Administrative Claim by the Bar Date. Nothing herein shall preclude the Creditor Trustee from seeking to establish a subsequent bar date if **[*57]** determined to be necessary or beneficial to administration of the Estates.

1.7 "**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,

¹ The Debtors in these Cases, along with the last four digits of each Debtor's tax identification number are: Schwab Industries, Inc. (2467); Medina Cartage Co (9373); Medina Supply Company (3995); Quality Block & Supply, Inc. (2186); O.I.S. Tire, Inc. (7525); Twin Cities Concrete Company (9196); Schwab Ready-Mix, Inc. (8801); Schwab Materials, Inc. (8957); and **[*54]** Eastern Cement Corp. (7232)

scheduled by the Debtors as liquidated in amount and not disputed or contingent, and to which no objection to allowance thereof has been raised by the Creditor 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.

1.8 "**Avoidance Action**" shall mean causes of action against Persons arising under *sections 502, [510](#), [541](#), [542](#), [544](#), [545](#), [547](#) through [551](#) and [553 of the Bankruptcy Code](#)*, or under related state or federal statutes and common law, including fraudulent transfer laws, whether or not litigation is commenced before or after the Confirmation Date to prosecute such Avoidance Actions.

1.9 "**Bankruptcy Code**" shall mean Title 11 of the United States Code, *11 U.S.C. §§ 101 et seq.*

1.10 "**Bankruptcy Court**" shall mean the United States Bankruptcy Court for the Northern District of Ohio, Eastern Division, located in Canton, Ohio, **[*58]** or any court having jurisdiction over these Cases or a proceeding arising in, or arising under or related to these Cases.

1.11 "**Bankruptcy Rules**" shall mean the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, as now in effect.

1.12 "**Bar Date**" shall mean the applicable bar date by which a proof of Claim must be filed, as established by the Bar Date Order.

1.13 "**Bar Date Order**" shall mean that certain *Order Approving Debtors' Motion for Order Establishing Bar Date for Filing Prepetition Claims and Postpetition Administrative Claims and Approving Form and Manner of Notice Thereof* (Docket No. 529).

1.14 "**BofA**" shall mean Bank of America, N.A.

1.15 "**Cases**" shall mean the jointly administered cases commenced under chapter 11 of the Bankruptcy Code by the Debtors on the Petition Date, styled *In re Schwab Industries, Inc., et al.*, Case No. 10-60702, currently pending before the Bankruptcy Court.

1.16 "**Cash**" shall mean legal tender of the United States of America and equivalents thereof.

1.17 "**Causes of Action**" shall mean all claims and causes of action now owned or hereafter acquired by the Debtors, whether arising under any contract, the Bankruptcy Code, or other **[*59]** federal or state law,

including, but not limited to, all litigation pending as of the Confirmation Date in any jurisdiction in which any of the Debtors are a plaintiff, defendant or other party, and all other adversary proceedings and lawsuits.

1.18 "**Claim**" means 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*.

1.19 "**Class**" shall mean a class of holders of Claims as described in the Plan.

1.20 "**Committee**" shall mean the Official Committee of Unsecured Creditors appointed in these Cases on March 9, 2010, pursuant to *[section 1102 of the Bankruptcy Code](#)*.

1.21 "**Confirmation Date**" shall mean the date of entry of the Confirmation Order.

1.22 "**Confirmation Order**" shall mean the order confirming this Plan.

1.23 "**Core Sale Order**" shall mean that certain *Order (1) Authorizing the Sale of Substantially all of the Debtors' Assets, Free and Clear of Liens, Claims, Interests and Encumbrances, Subject to Higher or Better Offers Pursuant to [Bankruptcy Code 363](#) and [365](#); (2) Approving the Assumption and Assignment **[*60]** of Certain Executory Contracts and Unexpired Leases in Connection with Such Sale and Determining and Adjudicating Cure Amounts with Respect to Such Contracts and Leases, (3) Waiving the Fourteen-Day Period Provided by [Bankruptcy Rule 6004\(h\)](#), and Granting Related Relief* entered by the Bankruptcy Court on May 28, 2010.

1.24 "**Creditors**" shall mean all creditors of the Debtors holding Claims for debts, liabilities, demands or other Claims of any character whatsoever.

1.25 "**Creditor Trust**" shall mean a common law trust to be established pursuant to the Plan, the Creditor Trust Agreement and the Confirmation Order for the sole and exclusive benefit of the holders of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Claims, Allowed Class 2a Secured Claims and Allowed Class 3 General Unsecured Claims. The Creditor Trust shall liquidate and distribute the Creditor Trust Assets, in accordance with the Creditor Trust Agreement.

1.26 **"Creditor Trust Agreement"** shall mean the agreement to be executed as soon as reasonably practicable after the Confirmation Date among the Debtors, the Committee and the Creditor Trustee, which shall govern the obligations of the Creditor [*61] Trustee with respect to oversight of the distribution of the Net Proceeds of the Creditor Trust Assets, as further set forth in the Creditor Trust Agreement and the Plan.

1.27 **"Creditor Trust Assets"** shall mean those assets to be transferred to and vested in the Creditor Trust pursuant to this Plan and the Confirmation Order, plus all proceeds, earnings and replacements arising from or relating to these assets and all assets acquired by the Creditor Trust at any time. The Creditor Trust Assets shall include (but not be limited to): (i) all Cash held by the Debtors (less any Cash paid or to be paid on account of unpaid Allowed Professional Fee Claims); (ii) the Settlement Amount; (iii) the Debtors' 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; (iv) the Debtors' outstanding accounts receivable; (v) the proceeds from any Avoidance Actions or Miscellaneous Causes of Action engaged in by the Creditor Trust; (vi) the 503(b)(9) Fund; and (vii) the Administrative Expense Fund. The [*62] Creditor Trust Assets shall not include: (i) any carve-outs from collateral of Secured Creditors, including without limitation amounts held by Professionals as carve-outs from the Pre-Petition Lenders' collateral to be used to compensate Professionals for their fees and expenses; or (ii) the Tax Refund.

1.28 **"Creditor Trustee"** shall mean such Person or entity, including any replacements thereof or successors thereto, as may be designated by the Plan Proponents at least three (3) days in advance of the Joint Hearing, and approved by the Bankruptcy Court, as necessary or appropriate, to serve as custodian for the Creditor Trust and to oversee the liquidation and distribution of the Creditor Trust Assets held therein for the benefit of the holders of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Claims, Allowed Class 2a Secured Claims and Allowed Class 3 General Unsecured Claims, pursuant to the Plan, the Confirmation Order and the Creditor Trust Agreement.

1.29 **"Debtors"** shall mean SII, MCC, MSC, QBS, OIS, TCC, SRM, SMI and ECC, collectively.

1.30 **"Deficiency Claim"** shall mean any General Unsecured Claim of a Creditor against a Debtor equal to the excess of [*63] the Allowed amount of the Creditor's asserted Claim over the value of such Creditor's interest in such Debtor's interest in the property securing such Claim, as determined pursuant to *section 506(a) of the Bankruptcy Code*.

1.31 **"Disclosure Statement"** shall mean the Disclosure Statement filed by the Debtors and the Committee and approved by the Bankruptcy Court.

1.32 **"Disputed Claim"** shall mean any Claim (other than an Allowed Claim) which is either a Claim that has been scheduled by the Debtors or a Claim which is the subject of a proof of claim which has been filed with the Bankruptcy Court, as to which the Debtors, the Committee or the Creditor Trustee have 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.

1.33 **"ECC"** shall mean Eastern Cement Corp.

1.34 **"Effective Date"** shall mean a date not greater than 180 days after the Confirmation Date, unless extended by the Creditor Trustee in his or her sole discretion; provided, however, that if a stay of the Confirmation Order is in effect on such day, then [*64] 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.

1.35 **"Equity Security"** shall have the meaning provided by *section 101(16) of the Bankruptcy Code*.

1.36 **"Equity Security Holder"** shall have the meaning provided by *section 101(17) of the Bankruptcy Code*.

1.37 **"Estates"** shall mean the estates of the Debtors created in these Cases pursuant to *section 541 of the Bankruptcy Code*.

1.38 **"Final Order"** shall mean an order or judgment as to which the time to appeal or seek review or rehearing has expired and as to which no appeal or petition for review or rehearing is pending.

1.39 **"General Unsecured Claim"** shall mean any Unsecured Claim, arising prior to the Petition Date, that is not a Professional Fee Claim, Other Administrative Expense Claim, Unsecured Priority Tax Claim, Class 1 Claim (Priority Claims), Class 2a Claim (Secured Claims of the Pre-Petition Lenders), Class 2b Claim (Other

Secured Claims) or Class 4 Interest (Equity Security Interests).

1.40 **"Huntington"** shall mean The Huntington National Bank.

1.41 **"Impaired"** shall mean any Class, or any Claim or Interest in a Class, that is **[*65]** impaired within the meaning of [section 1124 of the Bankruptcy Code](#), and shall include, without limitation, Class 2a Secured Claims of the Pre-Petition Lenders, Class 3 General Unsecured Claims and Class 4 Equity Security Interests.

1.42 **"Intercompany Claim"** shall mean any Claim held by a Debtor against any other Debtor.

1.43 **"Interest"** shall mean the legal, equitable, contractual and other rights of the holders of any Equity Security in the Debtors, 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.

1.44 **"Joint Hearing"** shall mean the date on which the Bankruptcy Court holds a hearing to consider approval of the Disclosure Statement and confirmation of this Plan.

1.45 **"KeyBank"** shall mean KeyBank, National Association, both in its capacity as a Pre-Petition Lender and as administrative agent for the Pre-Petition Lenders.

1.46 **"Lien"** shall have the meaning provided by *section 101(37) of the Bankruptcy Code*.

1.47 **"MCC"** shall mean Medina Cartage Co.

1.48 **"Miscellaneous [*66] Causes of Action"** means all Causes of Action other than Avoidance Actions.

1.49 **"MSC"** shall mean Medina Supply Company.

1.50 **"Net Proceeds"** shall mean the Cash proceeds received by the Creditor Trustee from time to time from the sale or other disposition of the Creditor Trust Assets, net of the reasonable or necessary costs of such sale or other disposition, including reasonable fees and expenses of the Creditor Trustee's legal counsel and other Professionals incurred in connection therewith.

1.51 **"OIS"** shall mean O.I.S. Tire, Inc.

1.52 **"Oldcastle"** shall mean Oldcastle Materials, Inc., the purchaser of the bulk of the Debtors' core assets pursuant to the Core Sale Order.

1.53 **"Oldcastle AAA Claim"** shall mean Oldcastle's Allowed Agreed Administrative Claim in the amount of \$75,000, minus Oldcastle's \$9,000 contribution obligation owed to the Debtors pursuant to the *Agreed Order* (Docket No. 674) regarding the Settlement Agreement and Release attached thereto.

1.54 **"Other Administrative Expense Claim"** shall mean an Administrative Claim that is not a Professional Fee Claim.

1.55 **"Other Secured Claim"** shall mean a Secured Claim of a Secured Creditor other than the Pre-Petition Lenders.

1.56 **"Oversight [*67] Committee"** shall mean the committee created pursuant to the Creditor Trust Agreement, which shall have the duties and powers set forth in the Creditor Trust Agreement.

1.57 **"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.

1.58 **"Petition Date"** shall mean the date of the filing of the Debtors' Cases, or February 28, 2010.

1.59 **"Plan"** shall mean this First Amended Joint Plan of Liquidation as set forth herein or as it may be modified or amended.

1.60 **"Plan Proponents"** shall mean the Debtors and the Committee.

1.61 **"Pre-Petition Lenders"** shall mean KeyBank, BofA and Huntington, collectively.

1.62 **"Priority Claim"** shall mean a Claim, other than an Administrative Claim or Priority Tax Claim, that is entitled to priority in payment under *section 507(a) of the Bankruptcy Code*. With respect to the Claims of employees or former employees, such Claims shall constitute Priority Claims only to the extent permissible under *sections 507(a)(4) and (a)(5) of the Bankruptcy Code* or prior order of the Bankruptcy Court.

1.63 **"Priority [*68] Tax Claims"** shall mean a Claim of a governmental unit of the kind specified in *section 507(a)(8) of the Bankruptcy Code*.

1.64 **"Professional Fee Claims"** shall mean Claims of Professional Persons for compensation for services rendered in these Cases prior to the Confirmation Date pursuant to [sections 327, 328, 330, 331, 363, 503](#) or [1103 of the Bankruptcy Code](#).

1.65 **"Professional Fee Carve Out Funds"** shall mean such Cash held by: (i) Professionals for the Debtors to compensate Professionals for the Debtors; and (ii) Professionals for the Committee to compensate Professionals for the Committee, respectively, as described more fully in the Core Sale Order, for such Professionals' Allowed Professional Fee Claims.

1.66 **"Professional"** or **"Professional Persons"** shall mean persons, including attorneys, accountants and financial advisors retained by the Debtors, the Committee or the Creditor Trustee, or to be compensated pursuant to [sections 327, 328, 330, 331, 363, 503](#) or [1103 of the Bankruptcy Code](#).

1.67 **"Pro Rata"** 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 **[*69]** 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.

1.68 **"QBS"** shall mean Quality Block & Supply, Inc.

1.69 **"Reclamation Claim"** shall mean a Claim of a Creditor: (i) of the kind specified in [section 546\(c\)\(1\) of the Bankruptcy Code](#); or (ii) any similar Claim available under applicable state law.

1.70 **"Schwab Family Members"** shall mean Jerry A. Schwab, Donna L. Schwab, David A. Schwab and Mary Lynn Hites.

1.71 **"Secured Claim"** shall mean a Claim of a Creditor secured by a lien on property of the Estates, 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 Estates, or to the extent of the amount subject to set off, as the case may be.

1.72 **"Secured Creditor"** shall mean the holder of a Secured Claim.

1.73 **"Settlement Amount"** shall mean the "gift" made by the Pre-Petition Lenders to the Class 3 General Unsecured Creditors pursuant to the Core Sale Order in

an amount equal to \$850,000, plus fifteen percent (15%) of the net **[*70]** sale proceeds received by the Pre-Petition Lenders in excess of \$51 million based on a sharing formula appended to the Core Sale Order, which is expressly preserved solely for the benefit of Class 3 General Unsecured Creditors and to pay the Trustee's Expenses in accordance with any budget approved by the Oversight Committee.

1.74 **"SII"** shall mean Schwab Industries, Inc.

1.75 **"SMI"** shall mean Schwab Materials, Inc.

1.76 **"SRM"** shall mean Schwab Ready-Mix, Inc.

1.77 **"Substantive Consolidation Order"** shall mean the order, or provision of the Confirmation Order, substantively consolidating the Cases as provided in Section 7.1.1 of the Plan.

1.78 **"Tax Refund"** shall mean any rights of the Debtors to a federal, state or local tax refund, which is subject to a perfected security interest in favor of KeyBank.

1.79 **"TCC"** shall mean Twin Cities Concrete Company.

1.80 **"Trustee's Expenses"** shall mean the reasonable fees, costs and expenses incurred by the Creditor Trustee and any Professionals retained by it in connection with the performance of its duties and responsibilities under the Plan and Creditor Trust Agreement, as well as any other reasonable and necessary costs of administration of the Creditor **[*71]** Trust, including U.S. Trustee fees incurred during the post-Confirmation Date period, which may be paid from the Creditor Trust Assets (including, without limitation, the Settlement Amount) in accordance with any budget approved by the Oversight Committee.

1.81 **"Unsecured Claim"** shall mean a Claim of a Creditor not secured by a Lien on property of the Estates and not entitled to be classified as a Priority Claim pursuant to [section 507 of the Bankruptcy Code](#).

1.82 **"U.S. Trustee"** shall mean the United States Trustee.

Rules of Interpretation and Computation of Time.

For purposes of this 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 Plan, any reference in this 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 Plan to an existing document or schedule filed or to be filed means such document [*72] or schedule, as it may have been or may be amended, modified or supplemented pursuant to this Plan; (iv) any reference to any entity as a holder of a Claim or Interest includes the entity's successors and assigns; (v) all references in this Plan to Sections, Articles and Exhibits are references to Sections, Articles and Exhibits of or to this Plan; (vi) the words "herein," "hereunder" and "hereto" refer to this Plan in its entirety rather than to a particular portion of this 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 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 Plan, the provisions of *Bankruptcy Rule 9006(a)* will apply.

ARTICLE II

Unclassified Claims

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

2.1 Allowed Administrative Claims include the following:

2.1.1 **Allowed Administrative Claims of any Professional Person** shall include Allowed [*73] Professional Fee Claims.

2.1.2 **Allowed Other Administrative Expense Claims** shall include the Allowed Administrative Claims of parties other than Professional Persons, including such Agreed Administrative Claims as may be Allowed.

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

ARTICLE III

Designation of Classified Claims and Interests

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

3.1 **Class 1 Claims** shall consist of all Allowed unsecured Priority Claims (other than unsecured Priority Tax Claims).

3.2 **Class 2a Claims** shall consist of all Allowed Secured Claims of the Pre-Petition Lenders that are fully secured to the extent of the value in the underlying collateral securing the Class 2a Claims.

3.3 **Class 2b Claims** shall consist of all Allowed Other Secured Claims that are fully secured to the extent of the value in the underlying collateral securing the Class 2b Claims. For convenience of identification, the Plan classifies Class 2b Claims in a single class. This Class is actually a group of subclasses, and each Class 2b Claim will be placed in a separate subclass and treated as a distinct Class for distribution [*74] purposes.

3.4 **Class 3 Claims** shall consist of the Allowed Claims of general unsecured Creditors, including Deficiency Claims of Secured Creditors. The Pre-Petition Lenders' Deficiency Claim has been waived in its entirety by agreement between the Pre-Petition Lenders and the Committee, as set forth in the Core Sale Order.

3.5 **Class 4 Interests** shall consist of the Interests of Equity Security Holders.

ARTICLE IV

Impairment of Classes

4.1 **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 Plan, Class 2a and Class 3 are Impaired and holders of Claims in those Classes shall be entitled to vote to accept or reject this Plan.

4.2 **Classes Deemed To Accept the Plan.** Class 1 Claims and Class 2b Claims are unimpaired by this Plan and holders of such Claims are conclusively presumed to have accepted this Plan pursuant to *section 1126(f) of the Bankruptcy Code*. The votes of Creditors holding these Claims will therefore not be solicited.

4.3 **Classes Deemed To Reject the Plan.** Holders of Interests in Class 4 will not receive or retain any distribution under the Plan on account of their Interests.

Pursuant to **[*75]** to [section 1126\(g\) of the Bankruptcy Code](#), Class 4 is Impaired and is conclusively presumed to have rejected this Plan, and the votes of Creditors holding Class 4 Interests therefore will not be solicited.

4.4 Cram Down. The Debtors and the Committee will request confirmation of the 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 Plan.

ARTICLE V

Treatment of Claims and Interests

5.1 Allowed Professional Fee Claims and Allowed Other Administrative Expense Claims.

5.1.1 Allowed Professional Fee Claims (to the extent not paid from amounts carved out of the Pre-Petition Lenders' collateral, including the Professional Fee Carve Out Funds, which may only be used to compensate Professionals in accordance with the Core Sale Order) and Allowed Other Administrative Expense Claims shall be paid in accordance with the Creditor Trust Agreement and this Plan. In accordance with the Creditor Trust Agreement, all property of the Estates shall be deposited in the Creditor Trust account no later than seven (7) days after entry of the Confirmation Order, or as otherwise provided in the Confirmation Order. The Creditor **[*76]** Trustee shall liquidate the Creditor Trust Assets, as applicable, and distribute the Net Proceeds in accordance with this Plan, the Confirmation Order and the Creditor Trust Agreement. Notwithstanding anything stated above, Agreed Administrative Claims remain subject to objection for substantive reasons, but the Creditor Trustee shall not object for failure to file a proof of claim prior to the Bar Date so long as such Creditors holding Agreed Administrative Claims actually filed an Administrative Claim by the Bar Date. Nothing herein shall preclude the Creditor Trustee from seeking to establish a subsequent bar date if determined to be necessary or beneficial to administration of the Estates.

5.1.2 Distributions of the Net Proceeds from the Creditor Trust shall be made by the Creditor Trustee in accordance with the Creditor Trust Agreement to the holders of Allowed Professional Fee Claims and Allowed Other Administrative

Expense Claims from time to time on dates determined by the Creditor Trustee, following consultation with, and approval by, the Oversight Committee, within a reasonable time after the creation of appropriate reserves as determined by the Creditor Trustee in an amount **[*77]** that would be sufficient to: (i) make a distribution on account of Disputed Claims that are Professional Fee Claims or Other Administrative Expense Claims; and (ii) pay the Trustee's Expenses in full; provided, however, that Oldcastle's AAA Claim shall be paid in full in Cash no later than the Effective Date.

5.1.3 No Professional Fee Claims will be paid prior to such Claims becoming Allowed Professional Fee Claims pursuant to Section 7.9 herein, but all Professional Fee Claims shall be paid within twenty (20) days of becoming Allowed Professional Fee Claims, provided that the Creditor Trust has sufficient Cash to make such distribution(s).

5.1.4 Distributions from the 503(b)(9) Fund shall be made first, to holders of Allowed 503(b)(9) Claims, and second, to any unpaid Allowed Administrative Claims in accordance with Section 5.1.2 of the Plan.

5.1.5 Distributions from the Administrative Expense Fund shall be made to holders of Allowed Administrative Claims in accordance with Section 5.1.2 of the Plan.

5.1.6 No distributions from the Settlement Amount shall be made to holders of Professional Fee Claims or Other Administrative Expense Claims, except as may be permitted by the Plan or Creditor **[*78]** Trust Agreement.

5.1.7 No distributions of Net Proceeds of Creditor Trust Assets subject to the Liens of the Pre-Petition Lenders shall be made to holders of Professional Fee Claims or Other Administrative Expense Claims, until such time as Allowed Class 2a Claims are paid in full.

5.2 Priority Tax Claims.

5.2.1 Allowed Priority Tax Claims shall be paid in accordance with the Creditor Trust Agreement and this Plan. In accordance with the Creditor Trust Agreement, all property of the Estates shall be deposited in the Creditor Trust account no later than seven (7) days after entry of the Confirmation Order, or as otherwise provided in the Confirmation Order. The Creditor Trustee shall liquidate the Creditor Trust Assets, as applicable, and distribute the Net Proceeds in accordance with this Plan, the Confirmation Order and the Creditor Trust

Agreement.

5.2.2 Distributions of the Net Proceeds from the Creditor Trust shall be made by the Creditor Trustee in accordance with the Creditor Trust Agreement (and in accordance with *sections 507(a)(8) and 1129(a)(9)(C) of the Bankruptcy Code*) to the holders of Allowed Priority Tax Claims from time to time on dates determined by the Creditor Trustee, **[*79]** following consultation with, and approval by, the Oversight Committee, within a reasonable time after the creation of appropriate reserves as determined by the Creditor 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 Trustee's Expenses in full; provided, however, that the Creditor Trustee will make quarterly distributions to the Internal Revenue Service, with respect to its Allowed Priority Tax Claim, in equal installments in Cash, beginning on the Effective Date (or as soon as practicable following the date the Internal Revenue Service's Claim becomes an Allowed Priority Tax Claim) and through the fifth year following the Petition Date, pursuant to *section 1129(a)(9)(C) of the Bankruptcy Code*.

5.2.3 No distributions of Net Proceeds of Creditor Trust Assets subject to the Liens of the Pre-Petition Lenders shall be made to holders of Priority Tax Claims, until such time as each of Allowed Class 2a Claims, Allowed Professional Fee Claims and Allowed Other Administrative Expense Claims are paid in full.

5.3 Class **[*80]** 1 Claims.

5.3.1 Allowed Priority Claims shall be paid in accordance with the Creditor Trust Agreement and this Plan. In accordance with the Creditor Trust Agreement, all property of the Estates shall be deposited in the Creditor Trust account no later than seven (7) days after entry of the Confirmation Order, or as otherwise provided in the Confirmation Order. The Creditor Trustee shall liquidate the Creditor Trust Assets, as applicable, and distribute the Net Proceeds in accordance with this Plan, the Confirmation Order and the Creditor Trust Agreement.

5.3.2 Distributions of the Net Proceeds from the Creditor Trust shall be made by the Creditor Trustee in accordance with the Creditor Trust Agreement to the holders of Allowed Priority Claims

from time to time on dates determined by the Creditor Trustee, following consultation with, and approval by, the Oversight Committee, within a reasonable time after the creation of appropriate reserves as determined by the Creditor 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 Claims or Priority Tax Claims; and (iii) **[*81]** pay the Trustee's Expenses in full.

5.3.3 No distributions of Net Proceeds of Creditor Trust Assets subject to the Liens of the Pre-Petition Lenders shall be made to holders of Priority Claims, until such time as each of Allowed Class 2a Claims, Allowed Professional Fee Claims and Allowed Other Administrative Expense Claims are paid in full.

5.4 Class 2a Claims.

5.4.1 Allowed Secured Claims of the Pre-Petition Lenders shall be paid in accordance with the Creditor Trust Agreement and this Plan. In accordance with the Creditor Trust Agreement, all property of the Estates shall be deposited in the Creditor Trust account no later than seven (7) days after entry of the Confirmation Order, or as otherwise provided in the Confirmation Order. The Creditor Trustee shall liquidate the Creditor Trust Assets, as applicable, and distribute the Net Proceeds in accordance with this Plan, the Confirmation Order and the Creditor Trust Agreement.

5.4.2 Distributions of the Net Proceeds from the Creditor Trust, solely from Creditor Trust Assets that are subject to the Liens of the Pre-Petition Lenders, shall be made by the Creditor Trustee in accordance with the Creditor Trust Agreement to the holders of **[*82]** Allowed Secured Claims of the Pre-Petition Lenders from time to time on dates determined by the Creditor Trustee, following consultation with, and approval by, the Oversight Committee, within a reasonable time after the creation of appropriate reserves as determined by the Creditor Trustee in an amount that would be sufficient to pay in full the Trustee's Expenses incurred solely in connection with the liquidation of the Creditor Trust Assets that are subject to the Liens of the Pre-Petition Lenders. Notwithstanding anything to the contrary contained herein, the Trustee's Expenses relating to the liquidation of the Creditor Trust Assets that are subject to the Liens of the Pre-Petition Lenders shall be subject to the

prior written approval of KeyBank.

5.4.3 Upon payment to the Pre-Petition Lenders of an amount equal to \$51,000,000 with respect to the Pre-Petition Lenders' Secured Claims (whether from distributions from the Creditor Trust or otherwise), all further distributions to the Pre-Petition Lenders of Net Proceeds from the Creditor Trust shall be subject to the sharing formula appended to the Core Sale Order.

5.4.4 Upon payment in full of all sums required pursuant to this Plan, [*83] the holders of Class 2a Claims shall release, and shall be deemed to have released, their Liens upon property of the Debtors' Estates. Evidence of such release shall be provided to the Creditor Trustee and filed with the Bankruptcy Court.

5.5 Class 2b Claims.

5.5.1 The Creditor Trustee shall pay one hundred percent (100%) of Allowed Class 2b Claims in Cash as soon as practicable following the Effective Date, or surrender the collateral securing such Allowed Class 2b Claims, in full satisfaction of such Claims. Upon payment in full of all sums due, the holders of Class 2b Claims shall release, and shall be deemed to have released, their Liens upon property of the Debtors' Estates. Evidence of such release shall be provided to the Creditor Trustee and filed with the Bankruptcy Court.

5.6 Class 3 Claims.

5.6.1 Allowed Class 3 Claims shall be paid Pro Rata in accordance with the Creditor Trust Agreement and this Plan. In accordance with the Creditor Trust Agreement, all property of the Estates shall be deposited in the Creditor Trust account no later than seven (7) days after entry of the Confirmation Order. The Creditor Trustee shall liquidate the Creditor Trust Assets, as applicable, and [*84] distribute the Net Proceeds in accordance with this Plan and the Creditor Trust Agreement.

5.6.2 Pro Rata distributions of the Net Proceeds from the Creditor Trust shall be made by the Creditor Trustee in accordance with the Creditor Trust Agreement to the holders of Allowed Class 3 General Unsecured Claims from time to time on dates determined by the Creditor Trustee, following consultation with, and approval by, the Oversight Committee, within a reasonable time after the creation of appropriate reserves as determined by

the Creditor Trustee in an amount that would be sufficient to: (i) satisfy all alleged Administrative Claims in full; (ii) satisfy all alleged Priority Tax Claims and Priority Claims in full; (iii) make a Pro Rata distribution on account of Disputed Claims that are Class 3 General Unsecured Claims; and (iv) pay the Trustee's Expenses in full.

5.6.3 Distributions from the Settlement Amount shall be made to holders of Allowed General Unsecured Claims in accordance with Section 5.6.2 of this Plan.

5.6.4 No distributions from the Settlement Amount shall be made to holders of Claims other than Allowed Class 3 General Unsecured Claims, notwithstanding that this may cause Allowed [*85] Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Claims and/or Allowed Class 2a Secured Claims to not be paid in full, provided, however, that the Settlement Amount may be used to pay certain Allowed Administrative Claims or the Trustee's Expenses as permitted by the Plan or Creditor Trust Agreement.

5.6.5 Upon payment to the Pre-Petition Lenders of an amount equal to \$51,000,000 with respect to the Pre-Petition Lenders' Secured Claims (whether from distributions from the Creditor Trust or otherwise), all further distributions of Net Proceeds from the Creditor Trust with respect to Creditor Trust Assets subject to the Pre-Petition Lenders' Liens shall be subject to the sharing formula appended to the Core Sale Order.

5.7 **Class 4 Interests.** Holders of Class 4 Interests shall not receive a distribution under the Plan. Upon the Confirmation Date of the Plan, all Equity Securities in the Debtors will be retired.

ARTICLE VI

Treatment of Executory Contracts

6.1 **Contracts Deemed Rejected.** Each executory contract or unexpired lease of the Debtors that has not expired by its own terms or been assumed prior to the Confirmation Date shall be deemed rejected pursuant to *section 365 of the Bankruptcy Code* [*86] on the Confirmation Date.

6.2 **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 6.1 of this 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 Claims of any Creditor arising from the rejection of executory contracts or unexpired leases pursuant to Section 6.1 of this Plan that fails to timely file a proof of claim shall be released, discharged and forever barred from assertion against the Debtors, their Estates or their property.

6.3 Pension Plan. The Debtors are contributing sponsors of the Schwab Industries, Inc. Employees' Pension Plan (the "*Pension Plan*") or asserted by the Pension Benefit Guaranty Corporation (the "*PBGC*") to be the members of the contributing sponsor's controlled group. The PBGC asserts that the Pension Plan is covered by Title IV of the Employment Retirement Income Security Act of 1974, as amended ("*ERISA*") ([29 U.S.C. § 1310 et seq.](#)).

From **[*87]** and after the Confirmation Date, the Creditor Trustee will oversee the termination of the Pension Plan according to the terms and conditions of the Pension Plan and effected in conformity with all statutory and regulatory requirements, including any applicable notice provisions. Alternatively, to the extent permitted by the Bankruptcy Code, the Pension Plan will be deemed rejected as of the Confirmation Date. Any undistributed, vested benefits of the terminated Pension Plan will be distributed to the participants of the Pension Plan, as provided by statute, the applicable regulations and the Pension Plan's provisions. In order to ensure that the Pension Plan's termination complies with the terms of the Pension Plan, applicable statutes and regulations, the Debtors, the Creditor Trustee or the Plan Administrator (as defined in the Pension Plan) will obtain any necessary approvals of the relevant regulatory agencies, such as the PBGC, the Internal Revenue Service and the U.S. Department of Labor, in respect of such terminations. To the extent that such processes require additional time or expense to complete after the Confirmation Date, the Plan Administrator shall be responsible for **[*88]** completing such process and such costs will be paid from the assets of the Pension Plan.

The PBGC is the wholly-owned United States government corporation and agency of the United States created under Title IV of ERISA to administer the federal pension insurance programs and enforce compliance with the provisions of Title IV. The PBGC

guarantees the payment of certain pension benefits upon termination of a pension plan covered by Title IV.

The PBGC has filed various Claims against the Estates with respect to the Pension Plan, including the following: (i) a contingent Claim for unfunded benefit liabilities allegedly owed to the Pension Plan in the estimated amount of \$19,014,863 pursuant to [29 U.S.C. § 1362\(a\)](#), a portion of which the PBGC asserts is an Administrative Claim; (ii) an estimated Claim asserting that contributions are owed to the Pension Plan in the amount of \$1,875,941 pursuant to [29 U.S.C. § 1082\(c\)\(11\)](#), a portion of which the PBGC asserts is an Administrative Claim; (iii) an estimated Claim for statutory premiums allegedly owed to the PBGC in the amount of \$3,141,960 pursuant to [29 U.S.C. § 1307](#), a portion of which the PBGC asserts is a Priority Claim; and (iv) an estimated **[*89]** Claim for alleged shortfall and waiver amortization charges in the amount of \$12,402,766 pursuant to [29 U.S.C. § 1362\(c\)](#).

The Creditor Trustee does not waive any objections it may have to any of the PBGC's Claims. The Bankruptcy Court will retain jurisdiction over any disputes relating to the termination of the Pension Plan and the Creditor Trustee shall have standing to object to any Claim filed by the PBGC with respect to the Pension Plan.

No provision contained herein, in the Confirmation Order or [section 1141 of the Bankruptcy Code](#) shall be construed as discharging, releasing or relieving any party, other than the Debtors or the Creditor Trustee in any capacity, from any liability with respect to the Pension Plan under any law, government policy or regulatory provision; provided, however, that the PBGC shall not share in any amounts disbursed pursuant to this Plan other than with respect to any Allowed Claims in whatever class such Claims may be Allowed. The PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability against any party, other than the Debtors, the Creditor Trust and the Creditor Trustee, as a result of the provisions herein for satisfaction, **[*90]** release and discharge of claims.

ARTICLE VII

Means of Implementation of the Plan

7.1 Substantive Consolidation.

7.1.1 The Substantive Consolidation Order shall contain one or more provisions substantively

consolidating the Estates into the Estate of SII. On the Confirmation Date, and except as otherwise provided in the Plan: (i) all guaranties of any Debtor of the payment, performance or collection of another Debtor shall be deemed eliminated and cancelled; (ii) any obligation of any Debtor and all guaranties thereof executed by another Debtor or Debtors shall be treated as a single obligation and any obligation of two or more Debtors, and all multiple Claims against such entities on account of such joint obligations, shall be treated and allowed only as a single Claim against the consolidated Debtors; and (iii) each Claim filed or to be filed against any Debtor shall be deemed filed against the consolidated Debtors and shall be deemed a single Claim against and a single obligation of the consolidated Debtors. On the Confirmation Date, and in accordance with the terms of the Plan and the consolidation of the assets and liabilities of the Debtors, all Claims based upon guaranties of collection, [*91] payment or performance made by the Debtors as to the obligations of another Debtor shall be released and of no further force and effect. Except as set forth in this Section 7.1.1, such substantive consolidation shall not (other than for purposes related to the Plan) cause any Debtor to be liable under the Plan for any Claim for which it otherwise is not liable, and the liability for any such Claim shall not be affected by such substantive consolidation. On the Confirmation Date, the Intercompany Claims of Debtors against any other Debtors shall be extinguished and cancelled.

7.1.2 Unless the Bankruptcy Court has approved the substantive consolidation of the Estates by a prior order, this Plan shall serve as, and shall be deemed to be, a motion for entry of an order substantively consolidating the Debtors as provided in Section 7.1.1 hereof. If no objection to substantive consolidation is timely filed and served by any holder of an Impaired Claim affected by the Plan as provided herein on or before the deadline for objection to confirmation of the Plan, or if any such objection is resolved by the parties or overruled by the Bankruptcy Court, the Substantive Consolidation Order (which [*92] may be the Confirmation Order) may be entered by the Bankruptcy Court. If any such objections are timely filed and served, a hearing with respect to the substantive consolidation of the Estates and any objections thereto shall be scheduled by the Bankruptcy Court, which hearing may, but is not required to, coincide with the Joint Hearing.

7.1.3 Upon the substantive consolidation of each Estate into the Estate of SII, the Cases of all Debtors other than SII shall be closed. Upon such event, the Creditor Trustee may file all Causes of Action and objections to Claims in the SII Case, and not in any other individual Debtor Case, notwithstanding the fact that the transferring Debtor (in an Avoidance Action) or the Debtor against whom the Claim was filed (in a Claim objection proceeding) may be a Debtor other than SII.

7.2 **Vesting of Assets.** Within seven (7) days of the Confirmation Date, all assets of the Debtors and their Estates (other than the Tax Refund) shall be transferred to and vest in the Creditor Trust and be deemed contributed thereto, subject to the terms of the Plan. In the event KeyBank, on behalf of the Pre-Petition Lenders, provides written direction to the Creditor Trustee [*93] (on behalf of the Debtors or the Creditor Trust) to incur any fees and expenses necessary and appropriate in KeyBank's sole discretion to prosecute the Tax Refund and respond to any related issues (the "*Authorized Fees and Expenses*"), pursuant to KeyBank's and the Pre-Petition Lenders' rights under the Core Sale Order, any such Authorized Fees and Expenses shall be satisfied by KeyBank, in its capacity as agent for the Pre-Petition Lenders, and shall be reimbursed to KeyBank through the Tax Refund prior to calculating the actual amount of recovery realized upon the Tax Refund for purposes of the sharing agreement set forth in the Core Sale Order. Neither KeyBank nor the Pre-Petition Lenders shall have any obligation to direct the Creditor Trustee (on behalf of the Debtors or the Creditor Trust, as the case may be) to prosecute the Tax Refund or otherwise respond to any related issues or matters, including, but not limited to, responding to any audit. KeyBank shall be authorized to abandon the Pre-Petition Lenders' rights, claims, interests and Liens on the Tax Refund in its sole discretion by formal written notice to the Creditor Trustee (on behalf of the Debtors or the Creditor Trust), [*94] in which case, the Creditor Trustee shall have all of the rights of KeyBank and the Pre-Petition Lender's solely with respect to the Tax Refund as set forth herein. The Creditor Trust Assets include, without limitation, all Cash in the possession of the Debtors (less any Cash paid or to be paid on account of unpaid Allowed Professional Fee Claims), the Settlement Amount, all Avoidance Actions and Miscellaneous Causes of Action, the 503(b)(9) Fund, the Administrative Expense Fund, all rights of the Debtors under the Plan, the Confirmation Order and all other orders entered by the Bankruptcy Court in these Cases on or prior to the Confirmation Date, and all

books and records related to the Estates. The assets shall also include all remaining real property and personal property of the Debtors. For the avoidance of doubt, all property, held for distribution pursuant to the Plan shall be held by the Creditor Trust solely in trust for the holders of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Claims, Allowed Class 2a Secured Claims and Allowed Class 3 Claims and shall not be deemed property of the Debtors. Additionally, proceeds of the Settlement Amount obtained **[*95]** for General Unsecured Creditors from the Pre-Petition Lenders shall be distributed only to the holders of Allowed Class 3 General Unsecured Claims, proceeds of collateral subject to the Pre-Petition Lenders' Liens shall be distributed only to the holders of Allowed Class 2a Secured Claims until the Pre-Petition Lenders have received distributions on their Allowed Secured Claims totaling \$51,000,000 and, thereafter, all further distributions to the Pre-Petition Lenders of Net Proceeds from the Creditor Trust shall be subject to the sharing formula appended to the Core Sale Order, the 503(b)(9) Fund shall be distributed only to the holders of Allowed 503(b)(9) Claims and the Administrative Expense Fund shall be distributed only to the holders of Allowed Administrative Claims; provided, however, that the Settlement Amount may be used to pay Allowed Administrative Claims or satisfy the Trustee's Expenses pursuant to any budget approved by the Oversight Committee. Nothing in the Plan, however, shall preclude payment of: (i) statutory fees under [28 U.S.C. § 1930](#) to the extent unpaid on the Confirmation Date; and (ii) the Trustee's Expenses in accordance with this Plan and the Creditor Trust **[*96]** Agreement from any other assets held by the Creditor Trust; provided, however, that the proceeds from the liquidation of the Creditor Trust Assets subject to the Liens of the Pre-Petition Lenders shall only be used to satisfy the Trustee's Expenses incurred solely in connection with the liquidation of such assets. The Debtors are hereby authorized and directed to take such steps as may be necessary or appropriate to confirm such transfer and contribution of their property to the Creditor Trust, subject to oversight from the Oversight Committee or the Creditor Trustee, as applicable.

7.3 Creditor Trust Asset Administration. The Creditor Trustee, with oversight from the Oversight Committee, shall administer the Creditor Trust Assets pursuant to the Plan and the Creditor Trust Agreement from and after the Confirmation Date. The Creditor Trustee shall be responsible for liquidating the Creditor Trust Assets, analyzing and reconciling Claims (including filing and pursuing objections to the extent required), pursuing the

Avoidance Actions and Miscellaneous Causes of Action, making distributions of the Net Proceeds to the beneficiaries of the Creditor Trust and all other activities typically **[*97]** related to trust administration. Notwithstanding anything to the contrary contained herein, the Creditor Trustee shall consult with KeyBank with respect to the administration of the Creditor Trust Assets that are subject to the Liens of the Pre-Petition Lenders and shall not liquidate any of such assets without KeyBank's prior written consent.

7.4 ACP Resolution. The terms of the resolution of ACP's alleged Claims are set forth on Schedule 7.4 to this Plan.

7.5 Dissolution of the Debtors. Promptly after: (i) the Creditor Trustee completes the Debtors' wind-down (including, without limitation, closing any pending sale(s) of real estate); (ii) ACP is dissolved; and (iii) a final determination is made with respect to the Tax Refund, the Creditor Trustee will allow the applicable Secretary of State to involuntarily dissolve each of the Debtors. The Creditor Trustee shall thereafter have standing to assert claims or pursue matters on behalf of the Debtors to the extent necessary to preserve, protect and liquidate the Creditor Trust Assets or otherwise necessary to administer the Creditor Trust or any matter related to the Tax Refund.

7.6 Name **[*98] Change; Transfer of Remaining Trade Names to Oldcastle.** Upon the Confirmation Date, the Debtors shall thereafter be referred to, collectively, as "SII Liquidation Company." The Debtors shall take any actions as necessary, including, without limitation, registering such name change with the appropriate secretary of state, to effect such name change, and the Confirmation Order shall contain a provision approving a corresponding change to the caption of the Cases.

Effective upon the Confirmation Date, all trade names of the Debtors, including without limitation, the trade names associated with SII, MCC, MSC, QBS, TCC, SRM, SMI, OIS and ECC shall be indefeasibly and permanently transferred to Oldcastle.

7.7 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.

7.8 Conditions to Effective Date. The following are conditions precedent to the occurrence of the Effective Date: (i) the Confirmation Order confirming the Plan, as

such Plan may have been modified, shall have been entered by the Bankruptcy Court and be in full force and effect and shall [*99] 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 Creditor Trust Agreement, in form and substance satisfactory to the Committee, shall be executed and delivered, and all conditions precedent to the effectiveness thereof shall have been satisfied; (iii) all other documents or agreements necessary to consummate the Plan shall have been delivered or effectuated; (iv) the Creditor Trustee shall have been appointed by the Plan Proponents upon notice to the Bankruptcy Court; and (v) the Creditor Trustee determines that it believes there will be sufficient assets, once liquidated, to pay Allowed Administrative Claims, Allowed Priority Tax Claims and Allowed Priority Claims in full. The Plan Proponents or the Creditor Trustee, as the case may be, may waive any of the foregoing conditions precedent at any time.

7.9 Administrative Claims Bar Date. All Persons requesting payment of Other Administrative Expense Claims shall file a proof of claim (in accordance with the Bar Date Order) no later than the Bar Date or, for Other Administrative Expense Claims arising [*100] after July 12, 2010, no later than thirty (30) days after the Confirmation Date. The Bar Date shall not apply to Professional Persons requesting payment of Professional Fee Claims, who shall be entitled to file an application for allowance of such claims until not later than thirty (30) days after the Confirmation Date. Objections to such applications for payment (whether by Professional Persons requesting payment of Professional Fee Claims or Persons requesting payment of Other Administrative Expense Claims), if any, must be written, filed with the Bankruptcy Court and served on the applicable parties within forty-five (45) days after such application is filed.

7.10 Termination of Committee. The Committee shall terminate automatically upon the acceptance by the Creditor Trustee of its appointment in accordance with this Plan and the Creditor 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 Cases or the Plan and its implementation, and the retention or employment of the Committee's counsel shall terminate, except for [*101] ministerial duties or any duties imposed pursuant to the Plan (including, without limitation, filing applications for allowance and payment of Professional

Fee Claims).

7.11 Case Administration. From and after the Confirmation Date and continuing through the date that a final decree closing the Cases is entered pursuant to [section 350 of the Bankruptcy Code](#) and [Bankruptcy Rule 3022](#), the Creditor 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 Debtors or these Cases. In addition to the foregoing, for all matters arising in, arising under or related to the Cases, the Creditor 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 Debtors (including, without limitation, bank statements and cancelled checks); (iii) have the right to sign or otherwise execute documents, receive funds and direct transfers to third parties (including without limitation, with respect to the Tax Refund) on behalf of the Debtors; (iv) be entitled [*102] to notice and opportunity for hearing; (v) be entitled to participate in all matters brought before the Bankruptcy Court, including, but not limited to, adversary proceedings; (vi) have exclusive standing (including derivative standing to pursue Causes of Action on behalf of the Debtors) to commence Avoidance Actions and Miscellaneous Causes of Action; (vii) be entitled to request the Bankruptcy Court to enter a final decree closing the Cases; (viii) be entitled to receive notice of all applications, motions and other papers and pleadings set before the Bankruptcy Court in these Cases; and (ix) be authorized to designate the allocation of the funds remaining in the 503(b)(9) Fund and the Administrative Expense Fund as of the Confirmation Date, following consultation with, and subject to the approval of, the Oversight Committee.

7.12 Oversight Committee. For purposes of implementation of the Plan, the Oversight Committee shall be created on the Confirmation Date and comprised of three (3) members, at least two (2) of which shall be representatives of the Committee and at least one (1) of which shall be a representative of the Debtors (subject to the approval of the Committee, which shall [*103] not be unreasonably withheld or delayed). The Oversight Committee shall exercise such rights and duties as are set forth in the Creditor 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 Creditor Trust Agreement; and (iii) the termination of the Creditor Trust.

7.13 Filing of Additional Documents. On or before the Confirmation Date of the 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 Plan, including, without limitation, the final Creditor Trust Agreement and Schedule 7.4.

7.14 Creditor Trustee's Professionals. Upon the later to occur of the Confirmation Date and acceptance by the Creditor Trustee of its appointment in accordance with this Plan and the Creditor Trust Agreement, the Creditor Trustee may retain such law firms, accounting firms, experts, advisors, consultants, investigators or other Professionals as it may deem necessary, upon approval of the Oversight Committee, in accordance with the Creditor Trust Agreement, **[*104]** to aid in the performance of its responsibilities pursuant to the terms of the Plan, including, without limitation, the liquidation and distribution of assets of the Creditor Trust. The Professionals retained by the Creditor 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 these Cases, and the Creditor Trustee shall be permitted to retain any such Professional in light of the efficiencies implicit in continuity. The Creditor 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 Section 5.1 of this Plan.

7.15 Notices. Any notice required or permitted to be provided under the 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 Debtors:

Laurence V. Goddard
The Parkland Group Inc.
One Cleveland Center

1375 **[*105]** E. 9th Street, Suite 1350
Cleveland, Ohio 44114
Telephone: 216-621-1985
Facsimile: 216-621-1894
E-Mail: lgoddard@parkland.com

With a copy to:

Lawrence E. Oscar, Esq.
Hahn Loeser & Parks LLP
200 Public Square, Suite 2800

Cleveland, Ohio 44114
Telephone: 216-621-0150
Facsimile: 216-241-2824
E-Mail: leoscar@hahnlaw.com

Counsel for the Debtors
The Committee:

Aaron L. Hammer, Esq.
Freeborn & Peters LLP
311 South Wacker Drive, Suite 3000
Chicago, Illinois 60606
Telephone: 312-360-6000
Facsimile: 312-360-6520
E-Mail: ahammer@freebornpeters.com

Counsel for the Committee
The Creditor Trustee:

John B. Pidcock,
Creditor Trustee
Conway MacKenzie, Inc.
109 North Main Street
500 Performance Place
Dayton, Ohio 45402
Telephone: 513-235-0164
Facsimile: 513-672-2175
E-Mail: jpidcock@c-m-d.com

7.16 Injunction. Except as otherwise provided in the 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 Debtors 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, **[*106]** without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtors or the Creditor 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 Debtors or the foregoing Creditor 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 Debtors or the Creditor 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 Debtors or the Creditor Trust, any of their property, or any direct or indirect transferee

of any property of, or direct or indirect successor in interest to the Debtors or the Creditor 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 Debtors or the Creditor Trust, any of [*107] their property, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, the Debtors or the Creditor Trust; (v) other than as otherwise expressly provided for in this Plan, asserting any right of setoff, subordination or recoupment of any kind, directly or indirectly, against any obligation due the Debtors, the Creditor Trust, any of their property, or any direct or indirect transferee of any property of, or successor in interest to, the Debtors or the Creditor 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 Plan. Notwithstanding the foregoing or anything to the contrary contained herein, nothing contained in the Plan shall prohibit, preclude, limit or otherwise impair the rights of (i) any Person to enforce their rights, remedies and interests with respect to: (a) that certain adversary case pending in the Bankruptcy Court as Adversary Case No. 10-06097 or any of the claims, demands, causes of action or remedies asserted therein; (b) any rights under that certain Assignment of Rights in Agreement Regarding Earnout Payments, dated June 2, 2010, between [*108] SMI and KeyBank; and (c) the Tax Refund; or (ii) KeyBank or any of the Pre-Petition Lenders to file a motion with the Bankruptcy Court seeking relief from the injunction and stay provisions of the Plan, including, without limitation, Sections 7.16 and 7.17 thereof, with respect to matters concerning the administration or liquidation of the Creditor Trust Assets subject to the Liens of the Pre-Petition Lenders.

7.17 Term of Bankruptcy Injunction or Stays. All injunctions or stays provided for in the Cases 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 Creditor Trust and the imposition of the injunction set forth in Section 7.16 of this Plan; provided, however, that no Person will be stayed or enjoined from exercising or enforcing their rights, remedies and interests with respect to: (i) that certain adversary case pending in the Bankruptcy Court as Adversary Case No. 10-06097 or any of the claims, demands, causes of action or remedies asserted therein; (ii) any rights under that certain Assignment of Rights in Agreement Regarding Earnout Payments, dated June [*109] 2, 2010, between SMI and KeyBank;

and (iii) the Tax Refund.

7.18 Exculpation and Limitation of Liability. Neither the Committee, the Pre-Petition Lenders, the Creditor Trustee, the Debtors (excluding the Schwab Family Members) 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 (but in all cases, excluding the Schwab Family Members), 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 Cases, the pursuit of confirmation of the Plan or the 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 Plan.

7.19 Quarterly Reports. The Creditor Trustee shall prepare and provide to the Oversight Committee and file with the Bankruptcy Court a report within thirty (30) days after the conclusion of every calendar quarter setting forth: [*110] (i) all distributions to Creditors during the calendar quarter; (ii) a summary of the Creditor Trust deposits and disbursements during the calendar quarter; and (iii) a summary of the Creditor 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 Creditor Trustee shall have no obligation to prepare and file quarterly reports.

7.20 Closing of the SII Case. The SII Case shall not be closed, or if closed shall remain subject to re-opening pursuant to [section 350 of the Bankruptcy Code](#), until the Creditor Trust Assets have been fully administered and any Tax Refund fully adjudicated. If, prior to the Effective Date, the Creditor Trustee determines, following consultation with the Oversight Committee, that the Creditor Trust may be unable to generate sufficient cash proceeds from the liquidation of Creditor Trust Assets to pay Allowed Administrative Claims, Allowed Priority Tax Claims and Allowed Priority Claims in full, it shall file a notice of dismissal [*111] of the SII Case pursuant to [section 1112\(b\) of the Bankruptcy Code](#), which shall be deemed immediately effective. Following such dismissal, the Creditor Trustee shall, following consultation with, and approval by, the Oversight Committee: (i) oversee the liquidation of the

Creditor Trust Assets and distribution of the Net Proceeds through the commencement of dissolution proceedings in the Common Pleas Courts of Cuyahoga County, Ohio, including, without limitation, conducting a Claims reconciliation process and distributing Net Proceeds (not including the Settlement Amount, collateral subject to the Liens of the Pre-Petition Lenders, the 503(b)(9) Fund or the Administrative Expense Fund other than as directed below) to holders of Allowed Claims according to the priority scheme set forth in the Bankruptcy Code, Pro Rata; (ii) distribute the Settlement Amount to the holders of Allowed Class 3 General Unsecured Claims, Pro Rata; (iii) distribute Net Proceeds of Creditor Trust Assets subject to the Liens of the Pre-Petition Lenders to holders of Allowed Class 2a Secured Claims, Pro Rata, until the Pre-Petition Lenders have received \$51,000,000 with respect to their Allowed Secured Claims, [*112] at which point any future Net Proceeds of such collateral shall be distributed to holders of Allowed Class 2a Secured Claims and Allowed Class 3 General Unsecured Claims pursuant to the sharing formula appended to the Core Sale Order; (iv) distribute the 503(b)(9) Fund to holders of Allowed 503(b)(9) Claims, Pro Rata; and (v) distribute the Administrative Expense Fund to holders of Allowed Administrative Claims, Pro Rata. The Debtors, their creditors and all other parties-in-interest hereby consent to the substantive consolidation of the Debtors into SII, the dismissal of the SII Case and the jurisdiction of the Common Pleas Courts of Cuyahoga County, Ohio to supervise its dissolution. Notwithstanding the foregoing, the Creditor Trustee shall have standing to commence, prosecute and settle Avoidance Actions and Miscellaneous Causes of Action in the Bankruptcy Court, with all Net Proceeds of such Causes of Action to be distributed to holders of Allowed Claims according to the priority scheme set forth in the Bankruptcy Code, Pro Rata, and the Bankruptcy Court shall retain jurisdiction over the Avoidance Actions and Miscellaneous Causes of Action notwithstanding the dismissal of the [*113] Cases.

ARTICLE VIII

Modification of the Plan

The 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 IX

General Provisions

9.1 Headings for Convenience Only. The headings in the Plan are for convenience of reference only and shall not limit or otherwise affect the meanings thereof.

9.2 U.S. Trustee Fees. The Debtors shall continue to pay quarterly fees to the U.S. Trustee that have accrued up to the Confirmation Date; provided, however, that the Creditor Trustee shall pay any unpaid quarterly fees which remain unpaid on the Confirmation Date. Following the Confirmation Date, the Creditor Trustee shall pay quarterly fees accrued during the post-Confirmation Date period to the U.S. Trustee.

9.3 Objections to Claims. The Creditor Trustee shall have standing to file objections to Claims, even if such Claims were scheduled by the Debtors as undisputed, liquidated and non-contingent. The Creditor Trustee shall file objections to Claims no later than 180 days after the Confirmation Date (unless extended by an order of the Bankruptcy [*114] Court). If the Creditor 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 Plan on the undisputed portion of the Claim. Notwithstanding the deadline to file objections to Claims provided herein, the Creditor Trustee may file objections to claims within ninety (90) days of the filing of an amended Claim.

9.4 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 Creditor Trust and be distributed Pro Rata to the remaining beneficiaries of the Creditor Trust in accordance with the Plan and the Creditor Trust Agreement.

9.5 Undeliverable and Unclaimed Distributions. If any distribution is returned as undeliverable, no further distributions to such Creditor will be made unless the Creditor Trustee is notified in writing of the Creditor's current address. Upon receipt of the notification, the Creditor Trustee will remit all missed distributions to the Creditor without interest. All claims for undeliverable [*115] distributions must be made on or before the second anniversary of the Confirmation Date of the Plan. If a claim is not made within that time, all

unclaimed distributions will revert to the Creditor Trust and be distributed Pro Rata to the remaining beneficiaries of the Creditor Trust. Nothing in this Plan will require the Creditor Trustee to attempt to locate any holder of an Allowed Claim.

ARTICLE X

Retention of Jurisdiction

This Bankruptcy Court shall retain jurisdiction over these Cases for the following purposes:

10.1 Resolution of any and all objections to Claims.

10.2 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) any Debtor and any other party; (ii) the Creditor Trustee and any other party; or (iii) otherwise under this Plan, the Confirmation Order or any other order issued by the Bankruptcy Court in connection with these Cases.

10.3 The correction of any defect and the curing of any omission or inconsistency in the Plan or the Confirmation Order as may be necessary to carry out the purposes and intent of the Plan.

10.4 Modification **[*116]** of the Plan after confirmation pursuant to the Bankruptcy Code and the Bankruptcy Rules.

10.5 Allowance of all Claims and applications for payment of Administrative Claims and professional fees and expenses which may be paid by the Debtors or their Estates pursuant to the provisions of the Bankruptcy Code, and resolution of all disputes pertaining thereto.

10.6 Resolution of any disputes regarding the Creditor Trust or any claim or controversy related thereto.

10.7 Entry of a final order confirming substantial consummation of the Plan and closing the Cases.

10.8 Avoidance Actions and Miscellaneous Causes of Action, in the event that these Cases are dismissed pursuant to Section 7.20 of this Plan.

Dated this 26th day of October, 2010.

SCHWAB INDUSTRIES, INC., et al.

By: _____

Their Chief Restructuring Officer

OFFICIAL COMMITTEE OF UNSECURED CREDITORS

By: _____

Its Chair

Schwab Industries, Inc.

Administrative Claims

Schedule 1.6

 [Go to table 1](#)

Schedule **[*117]** 7.4

The objection of Allen Concrete & Masonry, Inc. ("ACM") and Allen Concrete Pumping ("ACP") to confirmation of the Plan and approval of the Disclosure Statement has been resolved. By agreement confirmed on the record at the Joint Hearing, notwithstanding anything contained in the Plan, all rights, claims, counterclaims, defenses and interests with respect to ACP and its assets, or the Debtors' ownership interest therein are hereby preserved.

EXHIBIT B

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

In re: SCHWAB INDUSTRIES, INC., et al., ¹

¹ The Debtors in these Cases, along with the last four digits of each Debtor's tax identification number are: Schwab Industries, Inc. (2467); Medina Cartage Co. (9373); Medina Supply Company (3995); Quality Block & Supply, Inc. (2186); O.I.S. Tire, Inc. (7525); Twin Cities Concrete Company (9196);

Chapter 11

Case No. 10-60702-rk

(Jointly Administered)

Judge Russ Kendig

FIRST AMENDED JOINT PLAN OF LIQUIDATION **DATED OCTOBER 26, 2010**

The above-captioned debtors and debtor [ILLEGIBLE TEXT] (collectively, the "*Debtors*") and the Official Committee [*118] of Unsecured Creditors (the "*Committee*"), hereby submit this First Amended Joint Plan of Liquidation (the "*Plan*") pursuant to [section 1123 of the Bankruptcy Code](#):

ARTICLE I

Definitions

The following terms, when used in the Plan shall, unless the context otherwise requires, have the following meanings, respectively:

1.1 "**503(b)(9) Claim**" shall mean a Claim of a Creditor of the kind specified in [section 503\(b\)\(9\) of the Bankruptcy Code](#) and that was filed by the Bar Date pursuant to the procedures set forth in the Bar Date Order.

1.2 "**503(b)(9) Fund**" shall mean the \$500,000 in Cash provided by Oldcastle to pay 503(b)(9) Claims, which is expressly preserved solely for the benefit of holders of 503(b)(9) Claims.

1.3 "**ACP**" shall mean Allen Concrete Pumping, a Florida Partnership, fifty percent (50%) owned by SRM.

1.4 "**Administrative Claim**" shall mean a Claim of a Creditor of the kind specified in [section 503\(b\) of the Bankruptcy Code](#) that is entitled to priority under [section 507\(a\)\(2\) of the Bankruptcy Code](#), and shall include: (i) any actual and necessary costs and expenses incurred by the Debtors after the Petition Date with respect to preserving the Estates and operating the Debtors' businesses; [*119] (ii) any Professional Fee Claims

approved by the Bankruptcy Court pursuant to [section 330 of the Bankruptcy Code](#); and (iii) all fees and charges properly assessed against the Estates pursuant to [28 U.S.C. § 1930](#). Pursuant to the Bar Date Order, all Administrative Claims (other than Professional Fee Claims) were required to be filed prior to the Bar Date and in accordance with the Bar Date Order. Pursuant to the Bar Date Order: (i) 503(b)(9) Claims were required to be submitted no later than the Bar Date pursuant to the proof of claim form (with the appropriate checked box); and (ii) all holders of Other Administrative Expense Claims (other than holders of 503(b)(9) Claims) were required to seek allowance of their Administrative Claim by the Bar Date. Those Administrative Claims (other than Professional Fee Claims and those Claims identified on Schedule 1.6 to this Plan as Agreed Administrative Claims) not filed by the Bar Date and pursuant to the procedures established by the Bar Date Order shall be forever barred and disallowed as untimely. Notwithstanding the foregoing, Administrative Claims shall also include post-petition expenses of the Debtors that the Creditor Trustee otherwise [*120] believes should be paid as administrative expenses of the Estates.

1.5 "**Administrative Expense Fund**" shall mean the \$900,000 in Cash provided by Oldcastle under the Core Sale Order to pay Allowed Administrative Claims, which is expressly preserved solely for the benefit of holders of Allowed Administrative Claims.

1.6 "**Agreed Administrative Claims**" shall mean the Claims identified on [Schedule 1.6](#) to this Plan, which Administrative Claims are known to the Debtors to have existed on the date this Plan was filed with the Court and remain unpaid as of such date. Agreed Administrative Claims remain subject to objection for substantive reasons, but the Creditor Trustee shall not object to such Agreed Administrative Claims for failure to file a proof of claim prior to the Bar Date so long as such Creditors holding Agreed Administrative Claims actually filed an Administrative Claim by the Bar Date. Nothing herein shall preclude the Creditor Trustee from seeking to establish a subsequent bar date if determined to be necessary or beneficial to administration of the Estates.

1.7 "**Allowed Claim**" or "**Allowed . . . Claim**" shall mean a Claim, proof of which is filed by the Bar Date pursuant to the procedures [*121] established pursuant to the Bar Date Order, or that has been, or is hereafter, scheduled by the Debtors as liquidated in amount and not disputed or contingent, and to which no objection to

Schwab Ready-Mix, Inc. (8801); Schwab Materials, Inc. (8957); and Eastern Cement Corp. (7232).

allowance thereof has been raised by the Creditor 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

1.8 **"Avoidance Action"** shall mean causes of action against Persons arising under *sections 502, 510, 541, 542, 544, 545, 547 through 551 and 553 of the Bankruptcy Code*, or under related state or federal statutes and common law, including fraudulent transfer laws, whether or not litigation is commenced before or after the Confirmation Date to prosecute such Avoidance Actions.

1.9 **"Bankruptcy Code"** shall mean Title 11 of the United States Code, *11 U.S.C. §§ 101 et seq.*

1.10 **"Bankruptcy Court"** shall mean the United States Bankruptcy Court for the Northern District of Ohio, Eastern Division, located in Canton, Ohio, or any court having jurisdiction over these Cases or a proceeding arising in, or arising under or related to these Cases.

1.11 **"Bankruptcy Rules"** shall mean the Federal Rules of Bankruptcy Procedure and **[*122]** the Local Rules of the Bankruptcy Court, as now in effect.

1.12 **"Bar Date"** shall mean the applicable bar date by which a proof of Claim must be filed, as established by the Bar Date Order.

1.13 **"Bar Date Order"** shall mean that certain *Order Approving Debtors' Motion for Order Establishing Bar Date for Filing Prepetition Claims and Postpetition Administrative Claims and Approving Form and Manner of Notice Thereof* (Docket No. 529).

1.14 **"BoFA"** shall mean Bank of America, N.A.

1.15 **"Cases"** shall mean the jointly administered cases commenced under chapter 11 of the Bankruptcy Code by the Debtors on the Petition Date, styled *In re Schwab Industries, Inc.*, et al., Case No. 10-60702, currently pending before the Bankruptcy Court.

1.16 **"Cash"** shall mean legal tender of the United States of America and equivalents thereof

1.17 **"Causes of Action"** shall mean all claims and causes of action now owned or hereafter acquired by the Debtors, whether arising under any contract, the Bankruptcy Code, or other federal or state law, including, but not limited to, all litigation pending as of the Confirmation Date in any jurisdiction in which any of the Debtors are a plaintiff, defendant or other party, and

all **[*123]** other adversary proceedings and lawsuits.

1.18 **"Claim"** means 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*.

1.19 **"Class"** shall mean a class of holders of Claims as described in the Plan.

1.20 **"Committee"** shall mean the Official Committee of Unsecured Creditors appointed in these Cases on March 9, 2010, pursuant to *section 1102 of the Bankruptcy Code*

1.21 **"Confirmation Date"** shall mean the date of entry of the Confirmation Order.

1.22 **"Confirmation Order"** shall mean the order confirming this Plan.

1.23 **"Core Sale Order"** shall mean that certain *Order (1) Authorizing the Sale of Substantially all of the Debtors' Assets, Free and Clear of Liens, Claims, Interests and Encumbrances, Subject to Higher or Better Offers Pursuant to Bankruptcy Code 363 and 365; (2) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with Such Sale and Determining and Adjudicating Cure Amounts with Respect to Such Contracts and Leases, (3) Waiving the Fourteen-Day [*124] Period Provided by Bankruptcy Rule 6004(h), and Granting Related Relief* entered by the Bankruptcy Court on May 28, 2010.

1.24 **"Creditors"** shall mean all creditors of the Debtors holding Claims for debts, liabilities, demands or other Claims of any character whatsoever.

1.25 **"Creditor Trust"** shall mean a common law trust to be established pursuant to the Plan, the Creditor Trust Agreement and the Confirmation Order for the sole and exclusive benefit of the holders of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Claims, Allowed Class 2a Secured Claims and Allowed Class 3 General Unsecured Claims. The Creditor Trust shall liquidate and distribute the Creditor Trust Assets, in accordance with the Creditor Trust Agreement.

1.26 **"Creditor Trust Agreement"** shall mean the agreement to be executed as soon as reasonably

practicable after the Confirmation Date among the Debtors, the Committee and the Creditor Trustee, which shall govern the obligations of the Creditor Trustee with respect to oversight of the distribution of the Net Proceeds of the Creditor Trust Assets, as further set forth in the Creditor Trust Agreement and the Plan.

1.27 **"Creditor Trust Assets" [*125]** shall mean those assets to be transferred to and vested in the Creditor Trust pursuant to this Plan and the Confirmation Order, plus all proceeds, earnings and replacements arising from or relating to these assets and all assets acquired by the Creditor Trust at any time. The Creditor Trust Assets shall include (but not be limited to): (i) all Cash held by the Debtors (less any Cash paid or to be paid on account of unpaid Allowed Professional Fee Claims); (ii) the Settlement Amount; (iii) the Debtors' 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; (iv) the Debtors' outstanding accounts receivable; (v) the proceeds from any Avoidance Actions or Miscellaneous Causes of Action engaged in by the Creditor Trust; (vi) the 503(b)(9) Fund; and (vii) the Administrative Expense Fund. The Creditor Trust Assets shall not include: (i) any carve-outs from collateral of Secured Creditors, including without limitation amounts held by Professionals as carve-outs from the Pre-Petition Lenders' [*126] collateral to be used to compensate Professionals for their fees and expenses; or (ii) the Tax Refund.

1.28 **"Creditor Trustee"** shall mean such Person or entity, including any replacements thereof or successors thereto, as may be designated by the Plan Proponents at least three (3) days in advance of the Joint Hearing, and approved by the Bankruptcy Court, as necessary or appropriate, to serve as custodian for the Creditor Trust and to oversee the liquidation and distribution of the Creditor Trust Assets held therein for the benefit of the holders of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Claims, Allowed Class 2a Secured Claims and Allowed Class 3 General Unsecured Claims, pursuant to the Plan, the Confirmation Order and the Creditor Trust Agreement.

1.29 **"Debtors"** shall mean SII, MCC, MSC, QBS, OIS, TCC, SRM, SMI and ECC, collectively.

1.30 **"Deficiency Claim"** shall mean any General Unsecured Claim of a Creditor against a Debtor equal to

the excess of the Allowed amount of the Creditor's asserted Claim over the value of such Creditor's interest in such Debtor's interest in the property securing such Claim, as determined pursuant to *section 506(a) of the Bankruptcy Code*.

1.31 **["*127] "Disclosure Statement"** shall mean the Disclosure Statement filed by the Debtors and the Committee and approved by the Bankruptcy Court.

1.32 **"Disputed Claim"** shall mean any Claim (other than an Allowed Claim) which is either a Claim that has been scheduled by the Debtors or a Claim which is the subject of a proof of claim which has been filed with the Bankruptcy Court, as to which the Debtors, the Committee or the Creditor Trustee have 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.

1.33 **"ECC"** shall mean Eastern Cement Corp.

1.34 **"Effective Date"** shall mean a date not greater than 180 days after the Confirmation Date, unless extended by the Creditor Trustee in his or her sole discretion; 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.

1.35 **"Equity Security"** shall have the meaning provided by *section 101(16) of the Bankruptcy Code*.

1.36 **["*128] "Equity Security Holder"** shall have the meaning provided by *section 101(17) of the Bankruptcy Code*.

1.37 **"Estates"** shall mean the estates of the Debtors created in these Cases pursuant to *section 541 of the Bankruptcy Code*.

1.38 **"Final Order"** shall mean an order or judgment as to which the time to appeal or seek review or rehearing has expired and as to which no appeal or petition for review or rehearing is pending.

1.39 **"General Unsecured Claim"** shall mean any Unsecured Claim, arising prior to the Petition Date, that is not a Professional Fee Claim, Other Administrative Expense Claim, Unsecured Priority Tax Claim, Class 1 Claim (Priority Claims), Class 2a Claim (Secured Claims of the Pre-Petition Lenders), Class 2b Claim (Other Secured Claims) or Class 4 Interest (Equity Security

Interests).

1.40 **"Huntington"** shall mean The Huntington National Bank.

1.41 **"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, Class 2a Secured Claims of the Pre-Petition Lenders, Class 3 General Unsecured Claims and Class 4 Equity Security Interests.

1.42 **"Intercompany Claim"** shall **[*129]** mean any Claim held by a Debtor against any other Debtor.

1.43 **"Interest"** shall mean the legal, equitable, contractual and other rights of the holders of any Equity Security in the Debtors, 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.

1.44 **"Joint Hearing"** shall mean the date on which the Bankruptcy Court holds a hearing to consider approval of the Disclosure Statement and confirmation of this Plan.

1.45 **"KeyBank"** shall mean KeyBank, National Association, both in its capacity as a Pre-Petition Lender and as administrative agent for the Pre-Petition Lenders.

1.46 **"Lien"** shall have the meaning provided by *section 101(37) of the Bankruptcy Code*.

1.47 **"MCC"** shall mean Medina Cartage Co.

1.48 **"Miscellaneous Causes of Action"** means all Causes of Action other than Avoidance Actions.

1.49 **"MSC"** shall mean Medina Supply Company.

1.50 **"Net Proceeds"** shall mean the Cash proceeds received by the Creditor Trustee from time to time from the sale or other disposition **[*130]** of the Creditor Trust Assets, net of the reasonable or necessary costs of such sale or other disposition, including reasonable fees and expenses of the Creditor Trustee's legal counsel and other Professionals incurred in connection therewith.

1.51 **"OIS"** shall mean O.I.S. Tire, Inc.

1.52 **"Oldcastle"** shall mean Oldcastle Materials, Inc., the purchaser of the bulk of the Debtors' core assets pursuant to the Core Sale Order.

1.53 **"Oldcastle AAA Claim"** shall mean Oldcastle's Allowed Agreed Administrative Claim in the amount of \$75,000, minus Oldcastle's \$9,000 contribution obligation owed to the Debtors pursuant to the *Agreed Order* (Docket No. 674) regarding the Settlement Agreement and Release attached thereto.

1.54

1.53 **"Other Administrative Expense Claim"** shall mean an Administrative Claim that is not a Professional Fee Claim.

1.55

1.54 **"Other Secured Claim"** shall mean a Secured Claim of a Secured Creditor other than the Pre-Petition Lenders.

1.56

1.55 **"Oversight Committee"** shall mean the committee created pursuant to the Creditor Trust Agreement, which shall have the duties and powers set forth in the Creditor Trust Agreement.

1.57

1.56 **"Person"** shall mean an individual, corporation, partnership, **[*131]** joint venture, association, joint stock company, limited liability company, limited liability partnership, trust, estate, unincorporated organization or other entity.

1.58

1.57 **"Petition Date"** shall mean the date of the filing of the Debtors' Cases, or February 28, 2010.

1.59

1.58 **"Plan"** shall mean this First Amended Joint Plan of Liquidation as set forth herein or as it may be modified or amended.

1.60

1.59 **"Plan Proponents"** shall mean the Debtors and the Committee.

1.61

1.60 **"Pre-Petition Lenders"** shall mean KeyBank, BofA and Huntington, collectively.

1.62

1.61 **"Priority Claim"** shall mean a Claim, other than an Administrative Claim or Priority Tax Claim, that is entitled to priority in payment under *section 507(a) of the Bankruptcy Code*. With respect to the Claims of employees or former employees, such Claims shall constitute Priority Claims only to the extent permissible under *sections 507(a)(4) and (a)(5) of the Bankruptcy Code* or prior order of the Bankruptcy Court.

1.63

1.62 **"Priority Tax Claims"** shall mean a Claim of a governmental unit of the kind specified in *section 507(a)(8) of the Bankruptcy Code*.

1.64

1.63 **"Professional Fee Claims"** shall mean Claims of Professional Persons for **[*132]** compensation for services rendered in these Cases prior to the Confirmation Date pursuant to [sections 327, 328, 330, 331, 363, 503](#) or [1103 of the Bankruptcy Code](#).

1.65

1.64 **"Professional Fee Carve Out Funds"** shall mean such Cash held by: (i) Professionals for the Debtors to compensate Professionals for the Debtors; and (ii) Professionals for the Committee to compensate Professionals for the Committee, respectively, as described more fully in the Core Sale Order, for such Professionals' Allowed Professional Fee Claims.

1.66

1.65 **"Professional"** or **"Professional Persons"** shall mean persons, including attorneys, accountants and financial advisors retained by the Debtors, the Committee or the Creditor Trustee, or to be compensated pursuant to [sections 327, 328, 330, 331, 363, 503](#) or [1103 of the Bankruptcy Code](#).

1.67

1.66 **"Pro Rata"** 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 **[*133]** of which a particular Allowed Claim is included.

1.68

1.67 **"QBS"** shall mean Quality Block & Supply, Inc.

1.69

1.68 **"Reclamation Claim"** shall mean a Claim of a Creditor: (i) of the kind specified in [section 546\(c\)\(1\) of the Bankruptcy Code](#); or (ii) any similar Claim available under applicable state law.

1.70

1.69 **"Schwab Family Members"** shall mean Jerry A. Schwab, Donna L. Schwab, David A. Schwab and Mary Lynn Hites.

1.71

1.70 **"Secured Claim"** shall mean a Claim of a Creditor secured by a lien on property of the Estates, 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 Estates, or to the extent of the amount subject to set off, as the case may be.

1.72

1.71 **"Secured Creditor"** shall mean the holder of a Secured Claim.

1.73

1.72 **"Settlement Amount"** shall mean the "gift" made by the Pre-Petition Lenders to the Class 3 General Unsecured Creditors pursuant to the Core Sale Order in an amount equal to \$850,000, plus fifteen percent (15%) of the net sale proceeds received by the Pre-Petition Lenders in excess of \$51 million based on a sharing formula appended to the Core Sale Order, which is expressly **[*134]** preserved solely for the benefit of Class 3 General Unsecured Creditors and to pay the Trustee's Expenses in accordance with any budget approved by the Oversight Committee.

1.74

1.73 **"SII"** shall mean Schwab Industries, Inc.

1.75

1.74 **"SMI"** shall mean Schwab Materials, Inc.

1.76

1.75 **"SRM"** shall mean Schwab Ready-Mix, Inc.

1.77

1.76 **"Substantive Consolidation Order"** shall mean the order, or provision of the Confirmation Order, substantively consolidating the Cases as provided in Section 7.1.1 of the Plan.

1.78 **"Tax Refund"** shall mean any rights of the Debtors to a federal, state or local tax refund, which is subject to a perfected security interest in favor of KeyBank.

1.79

1.77 **"TCC"** shall mean Twin Cities Concrete Company.

1.80

1.78 **"Trustee's Expenses"** shall mean the reasonable fees, costs and expenses incurred by the Creditor Trustee and any Professionals retained by it in connection with the performance of its duties and responsibilities under the Plan and Creditor Trust Agreement, as well as any other reasonable and necessary costs of administration of the Creditor Trust, including U.S. Trustee fees incurred during the post-Confirmation Date period, which may be paid from the Creditor **[*135]** Trust Assets (including, without limitation, the Settlement Amount) in accordance with any budget approved by the Oversight Committee.

1.81

1.79 **"Unsecured Claim"** shall mean a Claim of a Creditor not secured by a Lien on property of the Estates and not entitled to be classified as a Priority Claim pursuant to *section 507 of the Bankruptcy Code*.

1.82

1.80 **"U.S. Trustee"** shall mean the United States Trustee.

Rules of Interpretation and Computation of Time. For purposes of this 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 Plan, any reference in this 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 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 Plan; (iv) any reference **[*136]** to any entity as a holder of a Claim or Interest includes the entity's successors and assigns; (v) all references in this Plan to Sections, Articles and Exhibits are references to Sections, Articles and Exhibits of or to this Plan, (vi) the words "herein," "hereunder" and "hereto" refer to this Plan in its entirety rather than to a particular portion of this 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 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 Plan, the provisions of [Bankruptcy Rule 9006\(a\)](#) will apply.

ARTICLE II

Unclassified Claims

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

2.1 Allowed Administrative Claims include the following:

2.1.1 **Allowed Administrative Claims of any Professional Person** shall include Allowed Professional Fee Claims.

2.1.2 **Allowed Other Administrative Expense Claims** shall include the Allowed Administrative **[*137]** Claims of parties other than Professional Persons, including such Agreed Administrative Claims as may be Allowed.

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

ARTICLE III

Designation of Classified Claims and Interests

Pursuant to [section 1123\(a\)\(1\) of the Bankruptcy Code](#),

Claims and Interests are classified as follows:

3.1 **Class 1 Claims** shall consist of all Allowed unsecured Priority Claims (other than unsecured Priority Tax Claims).

3.2 **Class 2a Claims** shall consist of all Allowed Secured Claims of the Pre-Petition Lenders that are fully secured to the extent of the value in the underlying collateral securing the Class 2a Claims.

3.3 **Class 2b Claims** shall consist of all Allowed Other Secured Claims that are fully secured to the extent of the value in the underlying collateral securing the Class 2b Claims. For convenience of identification, the Plan classifies Class 2b Claims in a single class. This Class is actually a group of subclasses, and each Class 2b Claim will be placed in a separate subclass and treated as a distinct Class for distribution purposes.

3.4 **Class 3 Claims** shall consist of the Allowed Claims of general unsecured Creditors, including [*138] Deficiency Claims of Secured Creditors. The Pre-Petition Lenders' Deficiency Claim has been waived in its entirety by agreement between the Pre-Petition Lenders and the Committee, as set forth in the Core Sale Order.

3.5 **Class 4 Interests** shall consist of the Interests of Equity Security Holders.

ARTICLE IV

Impairment of Classes

4.1 **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 Plan, Class 2a and Class 3 are Impaired and holders of Claims in those Classes shall be entitled to vote to accept or reject this Plan.

4.2 **Classes Deemed To Accept the Plan.** Class 1 Claims and Class 2b Claims are unimpaired by this Plan and holders of such Claims are conclusively presumed to have accepted this Plan pursuant to [section 1126\(f\) of the Bankruptcy Code](#). The votes of Creditors holding these Claims will therefore not be solicited.

4.3 **Classes Deemed To Reject the Plan.** Holders of Interests in Class 4 will not receive or retain any distribution under the Plan on account of their Interests.

Pursuant to [section 1126\(g\) of the Bankruptcy Code](#), Class 4 is Impaired and is conclusively presumed to have [*139] rejected this Plan, and the votes of Creditors holding Class 4 Interests therefore will not be solicited.

4.4 **Cram Down.** The Debtors and the Committee will request confirmation of the 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 Plan

ARTICLE V

Treatment of Claims and Interests

5.1 Allowed Professional Fee Claims and Allowed Other Administrative Expense Claims.

5.1.1 Allowed Professional Fee Claims (to the extent not paid from amounts carved out of the Pre-Petition Lenders' collateral, including the Professional Fee Carve Out Funds, which may only be used to compensate Professionals in accordance with the Core Sale Order) and Allowed Other Administrative Expense Claims shall be paid in accordance with the Creditor Trust Agreement and this Plan. In accordance with the Creditor Trust Agreement, all property of the Estates shall be deposited in the Creditor Trust account no later than seven (7) days after entry of the Confirmation Order, or as otherwise provided in the Confirmation Order. The Creditor Trustee shall liquidate the Creditor Trust Assets, as applicable, and distribute the Net Proceeds in accordance [*140] with this Plan, the Confirmation Order and the Creditor Trust Agreement. Notwithstanding anything stated above, Agreed Administrative Claims remain subject to objection for substantive reasons, but the Creditor Trustee shall not object for failure to file a proof of claim prior to the Bar Date so long as such Creditors holding Agreed Administrative Claims actually filed an Administrative Claim by the Bar Date. Nothing herein shall preclude the Creditor Trustee from seeking to establish a subsequent bar date if determined to be necessary or beneficial to administration of the Estates.

5.1.2 Distributions of the Net Proceeds from the Creditor Trust shall be made by the Creditor Trustee in accordance with the Creditor Trust Agreement to the holders of Allowed Professional

Fee Claims and Allowed Other Administrative Expense Claims from time to time on dates determined by the Creditor Trustee, following consultation with, and approval by, the Oversight Committee, within a reasonable time after the creation of appropriate reserves as determined by the Creditor Trustee in an amount that would be sufficient to: (i) make a distribution on account of Disputed Claims that are Professional Fee [*141] Claims or Other Administrative Expense Claims; and (ii) pay the Trustee's Expenses in full: provided, however, that Oldcastle's AAA Claim shall be paid in full in Cash no later than the Effective Date.

5.1.3 No Professional Fee Claims will be paid prior to such Claims becoming Allowed Professional Fee Claims pursuant to Section 7.9 herein, but all Professional Fee Claims shall be paid within twenty (20) days of becoming Allowed Professional Fee Claims, provided that the Creditor Trust has sufficient Cash to make such distribution(s).

5.1.4 Distributions from the 503(b)(9) Fund shall be made first, to holders of Allowed 503(b)(9) Claims, and second, to any unpaid Allowed Administrative Claims in accordance with Section 5.1.2 of the Plan.

5.1.5 Distributions from the Administrative Expense Fund shall be made to holders of Allowed Administrative Claims in accordance with Section 5.1.2 of the Plan.

5.1.6 No distributions from the Settlement Amount shall be made to holders of Professional Fee Claims or Other Administrative Expense Claims, except as may be permitted by the Plan or Creditor Trust Agreement.

5.1.7 No distributions of Net Proceeds of Creditor Trust Assets subject to the Liens of [*142] the Pre-Petition Lenders shall be made to holders of Professional Fee Claims or Other Administrative Expense Claims, until such time as Allowed Class 2a Claims are paid in full.

5.2 Priority Tax Claims.

5.2.1 Allowed Priority Tax Claims shall be paid in accordance with the Creditor Trust Agreement and this Plan. In accordance with the Creditor Trust Agreement, all property of the Estates shall be deposited in the Creditor Trust account no later

than seven (7) days after entry of the Confirmation Order, or as otherwise provided in the Confirmation Order. The Creditor Trustee shall liquidate the Creditor Trust Assets, as applicable, and distribute the Net Proceeds in accordance with this Plan, the Confirmation Order and the Creditor Trust Agreement.

5.2.2 Distributions of the Net Proceeds from the Creditor Trust shall be made by the Creditor Trustee in accordance with the Creditor Trust Agreement (and in accordance with *sections 507(a)(8) and 1129(a)(9)(C) of the Bankruptcy Code*) to the holders of Allowed Priority Tax Claims from time to time on dates determined by the Creditor Trustee, following consultation with, and approval by, the Oversight Committee, within a reasonable time after [*143] the creation of appropriate reserves as determined by the Creditor 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 Trustee's Expenses in full: provided, however, that the Creditor Trustee will make quarterly distributions to the Internal Revenue Service, with respect to its Allowed Priority Tax Claim, in equal installments in Cash, beginning on the Effective Date for as soon as practicable following the date the Internal Revenue Services's Claim becomes an Allowed Priority Tax Claim) and through the fifth year following the Petition Date, pursuant to *section 1129(a)(9)(C) of the Bankruptcy Code*.

5.2.3 No distributions of Net Proceeds of Creditor Trust Assets subject to the Liens of the Pre-Petition Lenders shall be made to holders of Priority Tax Claims, until such time as each of Allowed Class 2a Claims, Allowed Professional Fee Claims and Allowed Other Administrative Expense Claims are paid in full.

5.3 Class 1 Claims.

5.3.1 Allowed Priority Claims shall be paid in accordance with the Creditor Trust Agreement [*144] and this Plan. In accordance with the Creditor Trust Agreement, all property of the Estates shall be deposited in the Creditor Trust account no later than seven (7) days after entry of the Confirmation Order, or as otherwise provided in the Confirmation Order. The Creditor Trustee shall liquidate the Creditor Trust Assets, as applicable,

and distribute the Net Proceeds in accordance with this Plan, the Confirmation Order and the Creditor Trust Agreement.

5.3.2 Distributions of the Net Proceeds from the Creditor Trust shall be made by the Creditor Trustee in accordance with the Creditor Trust Agreement to the holders of Allowed Priority Claims from time to time on dates determined by the Creditor Trustee, following consultation with, and approval by, the Oversight Committee, within a reasonable time after the creation of appropriate reserves as determined by the Creditor 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 Claims or Priority Tax Claims; and (iii) pay the Trustee's Expenses in full.

5.3.3 No distributions of Net Proceeds of Creditor Trust Assets **[*145]** subject to the Liens of the Pre-Petition Lenders shall be made to holders of Priority Claims, until such time as each of Allowed Class 2a Claims, Allowed Professional Fee Claims and Allowed Other Administrative Expense Claims are paid in full.

5.4 Class 2a Claims.

5.4.1 Allowed Secured Claims of the Pre-Petition Lenders shall be paid in accordance with the Creditor Trust Agreement and this Plan. In accordance with the Creditor Trust Agreement, all property of the Estates shall be deposited in the Creditor Trust account no later than seven (7) days after entry of the Confirmation Order, or as otherwise provided in the Confirmation Order. The Creditor Trustee shall liquidate the Creditor Trust Assets, as applicable, and distribute the Net Proceeds in accordance with this Plan, the Confirmation Order and the Creditor Trust Agreement.

5.4.2 Distributions of the Net Proceeds from the Creditor Trust, solely from Creditor Trust Assets that are subject to the Liens of the Pre-Petition Lenders, shall be made by the Creditor Trustee in accordance with the Creditor Trust Agreement to the holders of Allowed Secured Claims of the Pre-Petition Lenders from time to time on dates determined by the Creditor **[*146]** Trustee, following consultation with, and approval by, the Oversight Committee, within a reasonable time after the creation of appropriate reserves as

determined by the Creditor Trustee in an amount that would be sufficient to pay

the Trustee's Expenses in full in full the Trustee's Expenses incurred solely in connection with the liquidation of the Creditor Trust Assets that are subject to the Liens of the Pre-Petition Lenders. Notwithstanding anything to the contrary contained herein the Trustee's Expenses relating to the liquidation of the Creditor Trust Assets that are subject to the Liens of the Pre-Petition Lenders shall be subject to the prior written approval of KeyBank.

5.4.3 Upon payment to the Pre-Petition Lenders of an amount equal to \$51,000,000 with respect to the Pre-Petition Lenders' Secured Claims (whether from distributions from the Creditor Trust or otherwise), all further distributions to the Pre-Petition Lenders of Net Proceeds from the Creditor Trust shall be subject to the sharing formula appended to the Core Sale Order.

5.4.4 Upon payment in full of all sums required pursuant to this Plan, the holders of Class 2a Claims shall release, and shall be deemed to have **[*147]** released, their Liens upon property of the Debtors' Estates. Evidence of such release shall be provided to the Creditor Trustee and filed with the Bankruptcy Court.

5.5 Class 2b Claims.

5.5.1 The Creditor Trustee shall pay one hundred percent (100%) of Allowed Class 2b Claims in Cash as soon as practicable following the Effective Date, or surrender the collateral securing such Allowed Class 2b Claims, in full satisfaction of such Claims. Upon payment in full of all sums due, the holders of Class 2b Claims shall release, and shall be deemed to have released, their Liens upon property of the Debtors' Estates. Evidence of such release shall be provided to the Creditor Trustee and filed with the Bankruptcy Court.

5.6 Class 3 Claims.

5.6.1 Allowed Class 3 Claims shall be paid Pro Rata in accordance with the Creditor Trust Agreement and this Plan. In accordance with the Creditor Trust Agreement, all property of the Estates shall be deposited in the Creditor Trust account no later than seven (7) days after entry of the Confirmation Order. The Creditor Trustee shall liquidate the Creditor Trust Assets, as applicable,

and distribute the Net Proceeds in accordance with this Plan and the Creditor [*148] Trust Agreement.

5.6.2 Pro Rata distributions of the Net Proceeds from the Creditor Trust shall be made by the Creditor Trustee in accordance with the Creditor Trust Agreement to the holders of Allowed Class 3 General Unsecured Claims from time to time on dates determined by the Creditor Trustee, following consultation with, and approval by, the Oversight Committee, within a reasonable time after the creation of appropriate reserves as determined by the Creditor Trustee in an amount that would be sufficient to: (i) satisfy all alleged Administrative Claims in full; (ii) satisfy all alleged Priority Tax Claims and Priority Claims in full; (iii) make a Pro Rata distribution on account of Disputed Claims that are Class 3 General Unsecured Claims; and (iv) pay the Trustee's Expenses in full.

5.6.3 Distributions from the Settlement Amount shall be made to holders of Allowed General Unsecured Claims in accordance with Section 5.6.2 of this Plan.

5.6.4 No distributions from the Settlement Amount shall be made to holders of Claims other than Allowed Class 3 General Unsecured Claims, notwithstanding that this may cause Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority [*149] Claims and/or Allowed Class 2a Secured Claims to not be paid in full; provided, however, that the Settlement Amount may be used to pay certain Allowed Administrative Claims or the Trustee's Expenses as permitted by the Plan or Creditor Trust Agreement.

5.6.5 Upon payment to the Pre-Petition Lenders of an amount equal to \$51,000,000 with respect to the Pre-Petition Lenders' Secured Claims (whether from distributions from the Creditor Trust or otherwise), all further distributions of Net Proceeds from the Creditor Trust with respect to Creditor Trust Assets subject to the Pre-Petition Lenders' Liens shall be subject to the sharing formula appended to the Core Sale Order.

5.7 Class 4 Interests. Holders of Class 4 Interests shall not receive a distribution under the Plan. Upon the Confirmation Date of the Plan, all Equity Securities in the Debtors will be retired.

ARTICLE VI

Treatment of Executory Contracts

6.1 Contracts Deemed Rejected. Each executory contract or unexpired lease of the Debtors that has not expired by its own terms or been assumed prior to the Confirmation Date shall be deemed rejected pursuant to *section 365 of the Bankruptcy Code* on the Confirmation Date.

6.2 Bar Date for [*150] Rejection Damages. All proofs of claim with respect to Claims arising from the rejection of executory contracts or unexpired leases pursuant to Section 6.1 of this 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 Claims of any Creditor arising from the rejection of executory contracts or unexpired leases pursuant to Section 6.1 of this Plan that fails to timely file a proof of claim shall be released, discharged and forever barred from assertion against the Debtors, their Estates or their property.

6.3 Pension Plan. The Debtors are contributing sponsors of the Schwab Industries, Inc. Employees' Pension Plan (the "*Pension Plan*") or asserted by the Pension Benefit Guaranty Corporation (the "*PBGC*") to be the members of the contributing sponsor's controlled group. The PBGC asserts that the Pension Plan is covered by Title IV of the Employment Retirement Income Security Act of 1974, as amended ("*ERISA*") ([29 U.S.C. § 1310 et seq.](#)).

On/From and after the Confirmation [*151] Date, the

Pension Plan will be deemed rejected, and the Creditor Trustee will oversee the termination of the Pension Plan according to the terms and conditions of the Pension Plan and effected in conformity with all statutory and regulatory requirements, including any applicable notice provisions. Alternatively, to the extent permitted by the Bankruptcy Code, the Pension Plan will be deemed rejected as of the Confirmation Date. Any undistributed, vested benefits of the terminated Pension Plan will be distributed to the participants of the Pension Plan, as provided by statute, the applicable regulations and the Pension Plan's provisions. In order to ensure that the Pension Plan's termination complies with the terms of the Pension Plan, applicable statutes and regulations, the Debtors, the Creditor Trustee or the Plan

Administrator (as defined in the Pension Plan) will obtain any necessary approvals of the relevant regulatory agencies, such as the PBGC, the Internal Revenue Service and the U.S. Department of Labor, in respect of such terminations. To the extent that such processes require additional time or expense to complete after the Confirmation Date, the Plan Administrator shall [*152] be responsible for completing such process and such costs will be paid from the assets of the Pension Plan.

The PBGC is the wholly-owned United States government corporation and agency of the United States created under Title IV of ERISA to administer the federal pension insurance programs and enforce compliance with the provisions of Title IV. The PBGC guarantees the payment of certain pension benefits upon termination of a pension plan covered by Title IV.

The PBGC has filed various Claims against the Estates with respect to the Pension Plan, including the following: (i) a contingent Claim for unfunded benefit liabilities allegedly owed to the Pension Plan in the estimated amount of \$19,014,863 pursuant to [29 U.S.C. § 1362\(a\)](#), a portion of which the PBGC asserts is an Administrative Claim; (ii) an estimated Claim asserting that contributions are owed to the Pension [ILLEGIBLE TEXT] the amount of \$1,875,941 pursuant to [29 U.S.C. § 1082\(c\)\(11\)](#), a portion of which the PBGC asserts is an Administrative Claim; (iii) an estimated Claim for statutory premiums allegedly owed to the PBGC in the amount of \$3,141,960 pursuant to [29 U.S.C. § 1307](#), a portion of which the PBGC asserts is a Priority [*153] Claim; and (iv) an estimated Claim for alleged shortfall and waiver amortization charges in the amount of \$12,402,766 pursuant to [29 U.S.C. § 1362\(c\)](#).

The Creditor Trustee does not waive any objections it may have to any of the PBGC's Claims. The Bankruptcy Court will retain jurisdiction over any disputes relating to the termination of the Pension Plan and the Creditor Trustee shall have standing to object to any Claim filed by the PBGC with respect to the Pension Plan.

No provision contained herein, in the Confirmation Order or [section 1141 of the Bankruptcy Code](#) shall be construed as discharging, releasing or relieving any party, other than the Debtors or the Creditor Trustee in any capacity, from any liability with respect to the Pension Plan under any law, government policy or regulatory provision; provided, however, that the PBGC shall not share in any amounts disbursed pursuant to this Plan other than with respect to any Allowed Claims

in whatever class such Claims may be Allowed. The PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability against any party, other than the Debtors, the Creditor Trust and the Creditor Trustee, as a result of the [*154] provisions herein for satisfaction, release and discharge of claims.

ARTICLE VII

Means of Implementation of the Plan

7.1 Substantive Consolidation.

7.1.1 The Substantive Consolidation Order shall contain one or more provisions substantively consolidating the Estates into the Estate of SII. On the Confirmation Date, and except as otherwise provided in the Plan: (i) all guaranties of any Debtor of the payment, performance or collection of another Debtor shall be deemed eliminated and cancelled; (ii) any obligation of any Debtor and all guaranties thereof executed by another Debtor or Debtors shall be treated as a single obligation and any obligation of two or more Debtors, and all multiple Claims against such entities on account of such joint obligations, shall be treated and allowed only as a single Claim against the consolidated Debtors; and (iii) each Claim filed or to be filed against any Debtor shall be deemed filed against the consolidated Debtors and shall be deemed a single Claim against and a single obligation of the consolidated Debtors. On the Confirmation Date, and in accordance with the terms of the Plan and the consolidation of the assets and liabilities of the Debtors, all [*155] Claims based upon guaranties of collection, payment or performance made by the Debtors as to the obligations of another Debtor shall be released and of no further force and effect. Except as set forth in this Section 7.1.1, such substantive consolidation shall not (other than for purposes related to the Plan) cause any Debtor to be liable under the Plan for any Claim for which it otherwise is not liable, and the liability for any such Claim shall not be affected by such substantive consolidation. On the Confirmation Date, the Intercompany Claims of Debtors against any other Debtors shall be extinguished and cancelled.

7.1.2 Unless the Bankruptcy Court has approved the substantive consolidation of the Estates by a prior order, this Plan shall serve as, and shall be deemed to be, a motion for entry of an order

substantively consolidating the Debtors as provided in Section 7.1.1 hereof. If no objection to substantive consolidation is timely filed and served by any holder of an Impaired Claim affected by the Plan as provided herein on or before the deadline for objection to confirmation of the Plan, or if any such objection is resolved by the parties or overruled by the Bankruptcy Court, [*156] the Substantive Consolidation Order (which may be the Confirmation Order) may be entered by the Bankruptcy Court. If any such objections are timely filed and served, a hearing with respect to the substantive consolidation of the Estates and any objections thereto shall be scheduled by the Bankruptcy Court, which hearing may, but is not required to, coincide with the Joint Hearing.

7.1.3 Upon the substantive consolidation of each Estate into the Estate of SII, the Cases of all Debtors other than SII shall be closed. Upon such event, the Creditor Trustee may file all Causes of Action and objections to Claims in the SII Case, and not in any other individual Debtor Case, notwithstanding the fact that the transferring Debtor (in an Avoidance Action) or the Debtor against whom the Claim was filed (in a Claim objection proceeding) may be a Debtor other than SII.

7.2 Vesting of Assets. Within seven (7) days of the Confirmation Date, all assets of the Debtors and their Estates (other than the Tax Refund) shall be transferred to and vest in the Creditor Trust and be deemed contributed thereto, subject to the terms of the Plan.

The assets. In the event KeyBank, on behalf of the Pre-Petition Lenders, [*157] provides written direction to the Creditor Trustee (on behalf of the Debtors or the Creditor Trust) to incur any fees and expenses necessary and appropriate in KeyBank's sole discretion to prosecute the Tax Refund and respond to any related issues (the "*Authorized Fees and Expenses*"), pursuant to KeyBank's and the Pre-Petition Lenders' rights under the Core Sale Order, any such Authorized Fees and Expenses shall be satisfied by KeyBank, in its capacity as agent for the Pre-Petition Lenders, and shall be reimbursed to KeyBank through the Tax Refund prior to calculating the actual amount of recovery realized upon the Tax Refund for purposes of the sharing agreement set forth in the Core Sale Order. Neither KeyBank nor the Pre-Petition Lenders shall have any obligation to direct the Creditor Trustee (on behalf of the Debtors or the Creditor Trust as the case may be) to prosecute the Tax Refund or otherwise respond to any related issues

or matters, including, but not limited to, responding to any audit. KeyBank shall be authorized to abandon the Pre-Petition Lenders' rights, claims, interest and Liens on the Tax Refund in its sole discretion by formal written notice to the Creditor Trustee [*158] (on behalf of the Debtors or the Creditor Trust), in which case, the Creditor Trustee shall have all of the rights of KeyBank and the Pre-Petition Lenders solely with respect to the Tax Refund as set forth herein. The Creditor Trust Assets include, without limitation, all Cash in the possession of the Debtors (less any Cash paid or to be paid on account of unpaid Allowed Professional Fee Claims), the Settlements Amount, all Avoidance Actions and Miscellaneous Causes of Action, the 503(b)(9) Fund, the Administrative Expense Fund, all rights of the Debtors under the Plan, the Confirmation Order and all other orders entered by the Bankruptcy Court in these Cases on or prior to the Confirmation Date, and all books and records related to the Estates. The assets shall also include all remaining real property and personal property of the Debtors. For the avoidance of doubt, all property held for distribution pursuant to the Plan shall be held by the Creditor Trust solely in trust for the holders of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Claims, Allowed Class 2a Secured Claims and Allowed Class 3 Claims and shall not be deemed property of the Debtors.

[*159] Additionally, proceeds of the Settlement Amount obtained for General Unsecured Creditors from the Pre-Petition Lenders shall be distributed only to the holders of Allowed Class 3 General Unsecured Claims, proceeds of collateral subject to the Pre-Petition Lenders' Liens shall be distributed only to the holders of Allowed Class 2a Secured Claims until the Pre-Petition Lenders have received distributions on their Allowed Secured Claims totaling \$

51,000,000 51,000,000 and, thereafter, all further distributions to the Pre-Petition Lenders of Net Proceeds from the Creditor Trust shall be subject to the sharing formula appended to the Core Sale Order. the 503(b)(9) Fund shall be distributed only to the holders of Allowed 503(b)(9) Claims and the Administrative Expense Fund shall be distributed only to the holders of Allowed Administrative Claims; provided, however, that the Settlement Amount may be used to pay Allowed Administrative Claims or satisfy the Trustee's Expenses pursuant to any budget approved by the Oversight Committee. Nothing in the Plan, however, shall preclude payment of: (i) statutory fees under [28 U.S.C. § 1930](#) to the extent unpaid on the Confirmation Date; and (ii) the [*160] Trustee's Expenses in accordance with this Plan and the Creditor Trust Agreement from any other assets

held by the Creditor Trust: provided, however, that the proceeds from the liquidation of the Creditor Trust Assets subject to the Liens of the Pre-Petition Lenders shall only be used to satisfy the Trustee's Expenses incurred solely in connection with the liquidation of such assets. The Debtors are hereby authorized and directed to take such steps as may be necessary or appropriate to confirm such transfer and contribution of their property to the Creditor Trust, subject to oversight from the Oversight Committee or the Creditor Trustee, as applicable.

7.3 Creditor Trust Asset Administration. The Creditor Trustee, with oversight from the Oversight Committee, shall administer the Creditor Trust Assets pursuant to the Plan and the Creditor Trust Agreement from and after the Confirmation Date. The Creditor Trustee shall be responsible for liquidating the Creditor Trust Assets, analyzing and reconciling Claims (including filing and pursuing objections to the extent required), pursuing the Avoidance Actions and Miscellaneous Causes of Action, making distributions of the Net Proceeds to the **[*161]** beneficiaries of the Creditor Trust and all other activities typically related to trust administration. Notwithstanding anything to the contrary contained herein, the Creditor Trustee shall consult with KeyBank with respect to the administration of the Creditor Trust Assets that are subject to the Liens of the Pre-Petition Lenders and shall not liquidate any of such assets without KeyBank's prior written consent.

7.4 ACP Resolution. The terms of the resolution of ACP's alleged Claims are set forth on **Schedule 7.4** to this Plan.

7.5 Dissolution of the Debtors. Promptly after

completing their: (i) the Creditor Trustee completes the Debtors' wind-down (including, without limitation, closing any pending sale(s) of real estate);

and following dissolution of ACP: (ii) ACP is dissolved; and (iii) a final determination is made with respect to the Tax Refund, the Creditor Trustee will allow the applicable Secretary of State to involuntarily dissolve each of the Debtors. The Creditor Trustee shall thereafter have standing to assert claims or pursue matter's on behalf of the Debtors to the extent necessary to preserve, protect and liquidate the Creditor Trust Assets or otherwise necessary to administer **[*162]** the Creditor Trust or any matter related to the Tax Refund.

7.6 Name Change; Transfer of Remaining Trade

Names to Oldcastle. Upon the Confirmation Date, the Debtors shall thereafter be referred to, collectively, as "SII Liquidation Company." The Debtors shall take any actions as necessary, including, without limitation, registering such name change with the appropriate secretary of state, to effect such name change, and the Confirmation Order shall contain a provision approving a corresponding change to the caption of the Cases.

Effective upon the Confirmation Date, all trade names of the Debtors, including without limitation, the trade names associated with SII, MCC, MSC, QBS, TCC, SRM, SMI, OIS and ECC shall be indefeasibly and permanently transferred to Oldcastle.

7.7 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.

7.8 Conditions to Effective Date. The following are conditions precedent to the occurrence of the Effective Date: (i) the Confirmation Order confirming the Plan, as such Plan may have been modified, shall have been entered **[*163]** 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 Creditor Trust Agreement, in form and substance satisfactory to the Committee, shall be executed and delivered, and all conditions precedent to the effectiveness thereof shall have been satisfied; (iii) all other documents or agreements necessary to consummate the Plan shall have been delivered or effectuated; (iv) the Creditor Trustee shall have been appointed by the Plan Proponents upon notice to the Bankruptcy Court; and (v) the Creditor Trustee determines that it believes there will be sufficient assets, once liquidated, to pay Allowed Administrative Claims, Allowed Priority Tax Claims and Allowed Priority Claims in full. The Plan Proponents or the Creditor Trustee, as the case may be, may waive any of the foregoing conditions precedent at any time.

7.9 Administrative Claims Bar Date. All Persons requesting payment of Other Administrative Expense Claims shall file a proof of claim (in accordance with the Bar Date Order) no later **[*164]** than the Bar Date or, for Other Administrative Expense Claims arising after July 12, 2010, no later than thirty (30) days after the Confirmation Date. The Bar Date shall not apply to Professional Persons requesting payment of Professional Fee Claims, who shall be entitled to file an

application for allowance of such claims until not later than thirty (30) days after the Confirmation Date. Objections to such applications for payment (whether by Professional Persons requesting payment of Professional Fee Claims or Persons requesting payment of Other Administrative Expense Claims), if any, must be written, filed with the Bankruptcy Court and served on the applicable parties within forty-five (45) days after such application is filed.

7.10 Termination of Committee. The Committee shall terminate automatically upon the acceptance by the Creditor Trustee of its appointment in accordance with this Plan and the Creditor 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 Cases or the Plan and its implementation, and the retention [*165] or employment of the Committee's counsel shall terminate, except for ministerial duties or any duties imposed pursuant to the Plan (including, without limitation, filing applications for allowance and payment of Professional Fee Claims).

7.11 Case Administration. From and after the Confirmation Date and continuing through the date that a final decree closing the Cases is entered pursuant to [section 350 of the Bankruptcy Code](#) and [Bankruptcy Rule 3022](#), the Creditor 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 Debtors or these Cases. In addition to the foregoing, for all matters arising in, arising under or related to the Cases, the Creditor 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 Debtors (including, without limitation, bank statements and cancelled checks); (iii) have the right to sign or otherwise execute documents, receive funds and direct transfers to third parties (including without limitation, with [*166] respect to the Tax Refund) on behalf of the Debtors; (iv) be entitled to notice and opportunity for hearing; (

ivv) be entitled to participate in all matters brought before the Bankruptcy Court, including, but not limited to, adversary proceedings; (

vv) have exclusive standing (including derivative standing to pursue Causes of Action on behalf of the Debtors) to commence Avoidance Actions and

Miscellaneous Causes of Action; (

viii) be entitled to request the Bankruptcy Court to enter a final decree closing the Cases; (

viiviii) be entitled to receive notice of all applications, motions and other papers and pleadings set before the Bankruptcy Court in these Cases; and (

viiiix) be authorized to designate the allocation of the funds remaining in the 503(b)(9) Fund and the Administrative Expense Fund as of the Confirmation Date, following consultation with, and subject to the approval of, the Oversight Committee.

7.12 Oversight Committee. For purposes of implementation of the Plan, the Oversight Committee shall be created on the Confirmation Date and comprised of three (3) members, at least two (2) of which shall be representatives of the Committee and at least one (1) of which shall be [*167] a representative of the Debtors (subject to the approval of the Committee, which shall not be unreasonably withheld or delayed). The Oversight Committee shall exercise such rights and duties as are set forth in the Creditor 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 Creditor Trust Agreement; and (iii) the termination of the Creditor Trust.

7.13 Filing of Additional Documents. On or before the Confirmation Date of the 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 Plan, including, without limitation, the final Creditor Trust Agreement and Schedule 7.4.

7.14 Creditor Trustee's Professionals. Upon the later to occur of the Confirmation Date and acceptance by the Creditor Trustee of its appointment in accordance with this Plan and the Creditor Trust Agreement, the Creditor Trustee may retain such law firms, accounting firms, experts, advisors, consultants, investigators or other Professionals as it may deem necessary, [*168] upon approval of the Oversight Committee, in accordance with the Creditor Trust Agreement, to aid in the performance of its responsibilities pursuant to the terms of the Plan, including, without limitation, the liquidation and distribution of assets of the Creditor Trust. The Professionals retained by the Creditor 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 these Cases, and the Creditor Trustee shall be permitted to retain any such Professional in light of the efficiencies implicit in continuity. The Creditor 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 Section 5.1 of this Plan.

7.15 Notices. Any notice required or permitted to be provided under the 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 **[*169]** following:

The Debtors:

Laurence V. Goddard
The Parkland Group Inc.
One Cleveland Center
1375 E. 9th Street, Suite 1350
Cleveland, Ohio 44114
Telephone: 216-621-1985
Facsimile: 216-621-1894
E-Mail: lgoddard@parkland.com

With a copy to:

Lawrence E. Oscar, Esq.
Hahn Loeser & Parks LLP
200 Public Square, Suite 2800
Cleveland, Ohio 44114
Telephone: 216-621-0150
Facsimile: 216-241-2824
E-Mail: leoscar@hahnlaw.com

Counsel for the Debtors

The Committee:

Aaron L. Hammer, Esq.
Freeborn & Peters LLP
311 South Wacker Drive, Suite 3000
Chicago, Illinois 60606
Telephone: 312-360-6000
Facsimile: 312-360-6520
E-Mail: ahammer@freebornpeters.com

Counsel for the Committee

The Creditor Trustee:

John B. Pidcock
Creditor Trustee

Conway MacKenzie, Inc.

109 North Main Street

500 Performance Place

Dayton, Ohio 45402

Telephone: 513-235-0164

Facsimile: 513-672-2175

E-Mail: ipidcock@c-m-d.com

7.16 Injunction. Except as otherwise provided in the 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 Debtors are, with respect to any such Liens, Claims or Interests, permanently enjoined from: (i) commencing, conducting or continuing in **[*170]** 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 Debtors or the Creditor 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 Debtors or the foregoing Creditor 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 Debtors or the Creditor 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 Debtors or the Creditor Trust, any of their property, or any direct or indirect transferee of any property, of or direct or indirect successor in interest to the Debtors or the Creditor Trust; (iv) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any **[*171]** Liens, Claims or Interests of any kind against or in the Debtors or the Creditor Trust, any of their property, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, the Debtors or the Creditor Trust; (v) other than as otherwise expressly provided for in this Plan, asserting any right of setoff, subordination or recoupment of any kind, directly or indirectly, against any obligation due the Debtors, the Creditor Trust, any of their property, or any direct or indirect transferee of any property of, or successor in interest to, the Debtors or the Creditor 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 Plan.

Notwithstanding the foregoing or anything to the contrary contained herein, nothing contained in the Plan shall prohibit, preclude, limit or otherwise impair the rights of: (i) any Person to enforce their rights, remedies and interest with respect to: (a) that certain adversary case pending in the Bankruptcy Court as Adversary Case No. 10-06097 or any of the claims, demands, causes of action or remedies asserted therein; (b) any rights under that [*172] certain Assignment of Rights in Agreement Regarding Earnout Payments, dated June 2, 2010, between SMI and KeyBank; and (c) the Tax Refund; or (ii) KeyBank or any of the Pre-Petition Lenders to file a motion with the Bankruptcy Court seeking relief from the injunction and stay provisions of the Plan, including, without limitation. Sections 7.16 and 7.17 thereof, with respect to matters concerning the administration or liquidation of the Creditor Trust Assets subject to the Liens of the Pre-Petition Lenders.

7.17 Term of Bankruptcy Injunction or Stays. All injunctions or stays provided for in the Cases 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 Creditor Trust and the imposition of the injunction set forth in Section 7.16 of this Plan: provided, however, that no Person will be stayed or enjoined from exercising or enforcing their rights, remedies and interest with respect to: (i) that certain adversary case pending in the Bankruptcy Courts as Adversary Case No. 10-06097 or any of the claims, demands, causes of action or remedies asserted therein; (ii) any rights [*173] under that certain Assignment of Rights in Agreement Regarding Earnout Payments, dated June 2, 2010, between SMI and KeyBank; and (iii) the Tax Refund.

7.18 Exculpation and Limitation of Liability. Neither the Committee, the Pre-Petition Lenders, the Creditor Trustee, the Debtors (excluding the Schwab Family Members) no, 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 (but in all cases, excluding the Schwab Family Members), 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 Cases, the pursuit of confirmation of the Plan or the 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 Plan.

7.19 Quarterly Reports. The Creditor Trustee shall prepare and provide to the Oversight Committee and file with the Bankruptcy Court a [*174] report within thirty (30) days after the conclusion of every calendar quarter setting forth: (i) all distributions to Creditors during the calendar quarter; (ii) a summary of the Creditor Trust deposits and disbursements during the calendar quarter; and (iii) a summary of the Creditor 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 Creditor Trustee shall have no obligation to prepare and file quarterly reports.

7.20 Closing of the SII Case. The SII Case shall not be closed, or if closed shall remain subject to re-opening pursuant to [section 350 of the Bankruptcy Code](#), until the Creditor Trust Assets have been fully administered and any Tax Refund fully adjudicated. If, prior to the Effective Date, the Creditor Trustee determines, following consultation with the Oversight Committee, that the Creditor Trust

will may be unable to generate sufficient cash proceeds from the liquidation of Creditor Trust Assets to pay Allowed Administrative Claims, [*175] Allowed Priority Tax Claims and Allowed Priority Claims in full, it

may, upon approval by the Oversight Committee, shall file a notice of dismissal of the SII Case pursuant to [section 1112\(b\) of the Bankruptcy Code](#), which shall be deemed immediately effective. Following such dismissal, the Creditor Trustee shall, following consultation with, and approval by, the Oversight Committee: (i) oversee the liquidation of the Creditor Trust Assets and distributions of the Net Proceeds through the commencement of dissolution proceedings in the Common Pleas Courts of Cuyahoga County, Ohio, including, without limitation, conducting a Claims reconciliation process and distributing Net Proceeds (not including the Settlement Amount, collateral subject to the Liens of the Pre-Petition Lenders, the 503(b)(9) Fund or the Administrative Expense Fund other than as directed below) to holders of Allowed Claims according to the priority scheme set forth in the Bankruptcy Code, Pro Rata; (ii) distribute the Settlement Amount to the holders of Allowed Class 3 General Unsecured Claims, Pro Rata; (iii) distribute Net Proceeds of Creditor Trust Assets subject to the Liens of the Pre-Petition Lenders

to holders **[*176]** of Allowed Class 2a Secured Claims, Pro Rata, until the Pre-Petition Lenders have received \$51,000,000 with respect to their Allowed Secured Claims, at which point any future Net Proceeds of such collateral shall be distributed to holders of Allowed Class 2a Secured Claims and Allowed Class 3 General Unsecured Claims pursuant to the sharing formula appended to the Core Sale Order; (iv) distribute the 503(b)(9) Fund to holders of Allowed 503(b)(9) Claims, Pro Rata; and (v) distribute the Administrative Expense Fund to holders of Allowed Administrative Claims, Pro Rata. The Debtors, their creditors and all other parties-in-interest hereby consent to the substantive consolidation of the Debtors into SII, the dismissal of the SII Case and the jurisdiction of the Common Pleas Courts of Cuyahoga County, Ohio to supervise its dissolution. Notwithstanding the foregoing, the Creditor Trustee shall have standing to commence, prosecute and settle Avoidance Actions and Miscellaneous Causes of Action in the Bankruptcy Court, with all Net Proceeds of such Causes of Action to be distributed to holders of Allowed Claims according to the priority scheme set forth in the Bankruptcy Code, Pro Rata, and **[*177]** the Bankruptcy Court shall retain jurisdiction over the Avoidance Actions and Miscellaneous Causes of Action notwithstanding the dismissal of the Cases.

ARTICLE VIII

Modification of the Plan

The 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 IX

General Provisions

9.1 Headings for Convenience Only. The headings in the Plan are for convenience of reference only and shall not limit or otherwise affect the meanings thereof.

9.2 U.S. Trustee Fees. The Debtors shall continue to pay quarterly fees to the U.S. Trustee that have accrued up to the Confirmation Date; provided, however, that the Creditor Trustee shall pay any unpaid quarterly fees

which remain unpaid on the Confirmation Date. Following the Confirmation Date, the Creditor Trustee shall pay quarterly fees accrued during the post-Confirmation Date period to the U.S. Trustee.

9.3 Objections to Claims. The Creditor Trustee shall have standing to file objections to Claims, even if such Claims were scheduled by the Debtors as undisputed, liquidated and non-contingent. The **[*178]** Creditor Trustee shall file objections to Claims no later than 180 days after the Confirmation Date (unless extended by an order of the Bankruptcy Court). If the Creditor 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 Plan on the undisputed portion of the Claim. Notwithstanding the deadline to file objections to Claims provided herein, the Creditor Trustee may file objections to claims within ninety (90) days of the filing of an amended Claim.

9.4 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 Creditor Trust and be distributed Pro Rata to the remaining beneficiaries of the Creditor Trust in accordance with the Plan and the Creditor Trust Agreement.

9.5 Undeliverable and Unclaimed Distributions. If any distribution is returned as undeliverable, no further distributions to such Creditor will be made unless the Creditor Trustee is notified in writing of the Creditor's current address. **[*179]** Upon receipt of the notification, the Creditor 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 Plan. If a claim is not made within that time, all unclaimed distributions will revert to the Creditor Trust and be distributed Pro Rata to the remaining beneficiaries of the Creditor Trust. Nothing in this Plan will require the Creditor Trustee to attempt to locate any holder of an Allowed Claim.

ARTICLE X

Retention of Jurisdiction

This Bankruptcy Court shall retain jurisdiction over these Cases for the following purposes:

10.1 Resolution of any and all objections to Claims.

10.2 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) any Debtor and any other party; (ii) the Creditor Trustee and any other party; or (iii) otherwise under this Plan, the Confirmation Order or any other order issued by the Bankruptcy Court in connection with these Cases.

10.3 The correction of any defect and the curing of any [*180] omission or inconsistency in the Plan or the Confirmation Order as may be necessary to carry out the purposes and intent of the Plan.

10.4 Modification of the Plan after confirmation pursuant to the Bankruptcy Code and the Bankruptcy Rules.

10.5 Allowance of all Claims and applications for payment of Administrative Claims and professional fees and expenses which may be paid by the Debtors or their Estates pursuant to the provisions of the Bankruptcy Code, and resolution of all disputes pertaining thereto.

10.6 Resolution of any disputes regarding the Creditor Trust or any claim or controversy related thereto.

10.7 Entry of a final order confirming substantial consummation of the Plan and closing the Cases.

10.8 Avoidance Actions and Miscellaneous Causes of Action, in the event that these Cases are dismissed pursuant to Section 7.20 of this Plan.

Dated this 26th day of October, 2010.

SCHWAB INDUSTRIES, INC., et al.

By: _____

Their Chief Restructuring Officer

OFFICIAL COMMITTEE OF UNSECURED CREDITORS

By: _____

Its Chair

Schedule 1.6

Schedule 7.4

(to be filed prior to the Voting Deadline)

The objection of Allen Concrete & Masonry, Inc. ("ACM") and Allen Concrete Pumping ("ACP") to confirmation [*181] of the Plan and approval of the Disclosure Statement has been resolved. By agreement confirmed on the record at the Joint Hearing, notwithstanding anything contained in the Plan, all rights, claims, counterclaims, defenses and interests with respect to ACP and its assets, or the Debtors' ownership interest therein are hereby preserved.

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EXHIBIT C

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

In re: SCHWAB INDUSTRIES, INC., et al., ¹

Chapter 11

Case No. 10-60702-rk

(Jointly Administered)

Judge Russ Kendig

SCHWAB INDUSTRIES, INC. CREDITOR TRUST AGREEMENT

¹ The Debtors in these Cases, along with the last four digits of each Debtor's tax [*182] identification number are: Schwab Industries, Inc. (2467); Medina Cartage Co. (9373); Medina Supply Company (3995); Quality Block & Supply, Inc. (2186); O.I.S. Tire, Inc. (7525); Twin Cities Concrete Company (9196); Schwab Ready-Mix, Inc. (8801); Schwab Materials, Inc. (8957); and Eastern Cement Corp. (7232).

Dated: ___, 2010

Counsel for the Debtors

Aaron L. Hammer, Esq.

Richard S. Lauter, Esq.

Thomas R. Fawkes, Esq.

Freeborn & Peters LLP

311 South Wacker Drive, Suite 3000

Chicago, Illinois 60606

Telephone: 312-360-6000

Facsimile: 312-360-6520

E-Mail: ahammer@freebornpeters.com

rlauter@freebornpeters.com

tfawkes@freebornpeters.com

- and -

Douglas L. Lutz Esq. (0064761)

FROST BROWN TODD LLC

2200 PNC Center

201 East Fifth Street

Cincinnati, Ohio 45202

Telephone: 513-651-6800

E-Mail: Dlutz@fbtlaw.com

Counsel to Official Committee of Unsecured Creditors

Lawrence E. Oscar, Esq.

Hahn Loeser & Parks LLP

200 Public Square, Suite 2800

Cleveland, Ohio 44114

Telephone: 216-621-0150

Facsimile: 216-241-2824

E-Mail: leoscar@hahnlaw.com

dademarco@hahnlaw.com

cpeer@hahnlaw.com

PREAMBLE

This Agreement (the "*Creditor [*183] Trust Agreement*") is made this __ day of __, 2010, by and among Schwab Industries, Inc. and its affiliated debtors and debtors-in-possession (the "*Debtors*"), the Official Committee of Unsecured Creditors (the "*Committee*"), and John B. Pidcock, not individually, but solely as trustee of this Creditor Trust (the "*Creditor Trustee*" and, collectively with the Debtors and the Committee, the "*Parties*") in accordance with the First Amended Joint Plan of Liquidation dated October 26, 2010 (the "*Plan*"), confirmed by the Bankruptcy Court (as defined *infra*) by the Order Confirming First Amended Joint Plan of Liquidation, dated ___, 2010 (the "*Confirmation Order*").

2

RECITALS:

A. On February 28, 2010, the Debtors each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "*Bankruptcy Code*") in the United States Bankruptcy Court for the Northern District of Ohio (the "*Bankruptcy Court*") and commenced their chapter 11 cases (the "*Cases*");

B. On March 9, 2010, the Office of the United States Trustee (the "*U.S. Trustee*") appointed the Committee, which consists of the [*184] following five (5) unsecured creditors: National Lime & Stone Co. (Committee Chair), Holcim (US) Inc. (Committee Vice Chair), Cemex Inc., St. Marys Cement and The Euclid Chemical Company;

C. The Plan and the Confirmation Order provide, among other things, that the Creditor Trustee shall be empowered to make distributions, pursuant to the Plan, the Confirmation Order and this Creditor Trust Agreement, to holders of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Claims, Allowed Class 2a Claims and Allowed Class 3 Claims (collectively, the "*Beneficiaries*");

D. The Creditor Trust is created pursuant to, and to effectuate, the Plan and the Confirmation Order;

E. The Creditor Trust is created on behalf of and for the sole benefit of, the Beneficiaries;

² Capitalized terms not defined herein shall have the meanings ascribed to them in the Plan.

F. The powers, authority, responsibilities and duties of the Creditor Trustee shall be governed by this Creditor Trust Agreement, the Plan, applicable orders issued by the Bankruptcy Court (including the Confirmation Order), and general fiduciary obligations of trustees under Ohio law;

G. Pursuant to the terms and conditions of the Plan, the Confirmation Order and this Creditor Trust Agreement, the Creditor Trustee **[*185]** shall administer all assets of the Creditor Trust, including, without limitation: (a) all Cash held by the Debtors (less any Cash paid or to be paid on account of unpaid Allowed Professional Fee Claims); (b) the Settlement Amount; (c) the Debtors 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; (d) the Debtors' outstanding accounts receivable; (e) the proceeds from any Avoidance Actions or Miscellaneous Causes of Action engaged in by the Creditor Trust; (f) the 503(b)(9) Fund; and (g) the Administrative Expense Fund (collectively, the "*Creditor Trust Assets*"); provided, however, that the Creditor Trust Assets shall not include any assets that may be excluded by the Creditor Trustee from any transfer of assets from the Debtors and their Estates to the Creditor Trust;

H. This Creditor Trust Agreement is intended to supplement and complement the Plan and the Confirmation Order; provided, however, that if any of the terms and/or provisions of this Creditor Trust Agreement conflict **[*186]** with the terms and/or provisions of the Plan or the Confirmation Order, the Plan and the Confirmation Order shall govern; and

I. The Creditor Trust is intended to qualify as a "liquidating trust" under the Internal Revenue Code of 1986 and the regulations promulgated thereunder, specifically [*Treas. Reg. § 301.7701-4\(d\)*](#), and as such is a "grantor trust" for federal income tax purposes with the Beneficiaries treated as the grantors and owners of the Creditor Trust Assets. In particular:

(i) The Creditor Trust is organized for the primary purpose of liquidating the Creditor Trust Assets, with no objective to conduct a trade or business except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Creditor Trust. The Creditor Trust shall not be deemed a successor of the Debtors;

(ii) The Creditor Trust provides that the

Beneficiaries of the Creditor Trust will be treated as the grantors of the Creditor Trust and deemed owners of the Creditor Trust Assets. This Creditor Trust Agreement requires the Creditor Trustee to file returns for the Creditor Trust as a grantor trust pursuant to [*Treas. Reg. § 1.671-4\(a\)*](#);

(iii) This Creditor Trust Agreement provides for **[*187]** consistent valuations of the transferred property by the Creditor Trustee and the Beneficiaries, and those valuations shall be used for federal income tax purposes,

(iv) All of the Creditor Trust's income is to be treated as subject to tax on a current basis to the Beneficiaries who will be responsible for payment of any tax due;

(v) This Creditor Trust contains a fixed or determinable termination date that is not more than thirty (30) years from the date of creation of the Creditor Trust and that is reasonably based on all the facts and circumstances;

(vi) The investment powers of the Creditor Trustee, other than those reasonably necessary to maintain the value of the Creditor Trust Assets and to further the liquidating purpose of the Creditor Trust, are limited to powers to invest in demand and time deposits, such as short-term certificates of deposit, in banks or other savings institutions, or other temporary, liquid investments, such as treasury bills; and

(vii) The Creditor Trustee is required to make a distribution at least once per twelve-month period to the Beneficiaries in the order of priorities set forth in this Creditor Trust Agreement based on the Creditor Trust's net income, **[*188]** except that the Creditor Trustee, after consultation with the Oversight Committee (as defined *infra*) may retain an amount of net income reasonably necessary to maintain the value of the Creditor Trust Assets or to satisfy claims and contingent liabilities (including Disputed Claims).

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein and in the Plan and the Confirmation Order, the Parties agree as follows:

ARTICLE I

ESTABLISHMENT OF THE CREDITOR TRUST

1.1 Transfer of Assets to the Creditor Trust

1.1.1 Pursuant to the Plan, the Debtors, the Committee and the Creditor Trustee hereby establish the Creditor Trust on behalf of the Beneficiaries, to be treated as the grantors and deemed owners of the Creditor Trust Assets, and the Debtors and their Estates hereby transfer, assign and deliver to the Creditor Trust, on behalf of the Beneficiaries, all of their right, title and interest in the Creditor Trust Assets, other than any claims and causes of action waived, exculpated or released in accordance with the provisions of the Plan and the Confirmation Order, notwithstanding any prohibition of assignability under applicable non-bankruptcy [*189] law. The Creditor Trust agrees to accept and hold the Creditor Trust Assets in the Creditor Trust for the benefit of the Beneficiaries, subject to the terms of the Plan, the Confirmation Order and this Creditor Trust Agreement.

1.1.2 All rights in connection with the vesting and transfer of the Creditor Trust Assets, including the Causes of Action, and any attorney-client privileges, work-product protection or other privilege or immunity attaching to any documents or communications of the Debtors' or Committee's professionals (whether written or oral) related to the Creditor Trust Assets, will vest with the Creditor Trust. All bank accounts established by the Debtors will be transferred to and held in the Creditor Trust on behalf of the Beneficiaries, subject to the provisions of the Plan and this Creditor Trust Agreement. The Debtors, the Committee and the Creditor Trustee are authorized to take all necessary actions to effectuate the foregoing.

1.2 Title to Assets

1.2.1 Within seven (7) days of the Confirmation Date, the Debtors and their Estates shall transfer the Creditor Trust Assets to the Creditor Trust for the benefit of the Beneficiaries. Notwithstanding any prohibition of assignability [*190] under applicable non-bankruptcy law, all assets and properties transferred to the Creditor Trust pursuant to the Plan shall vest in the Creditor Trust in accordance with [section 1141 of the Bankruptcy Code](#). Upon the transfer of the Creditor Trust Assets to the Creditor Trust, the Debtors shall have no interest in or with respect to such Creditor Trust Assets or the Creditor Trust.

1.2.2 For federal income tax purposes, all parties (including, without limitation, the Debtors, the Creditor Trustee and the Beneficiaries) shall treat the transfer of the Creditor Trust Assets by the Debtors and their Estates to the Creditor Trust as a transfer of such assets by the Debtors and their Estates to the holders of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Claims, Allowed Class 2a Secured Claims and Allowed Class 3 General Unsecured Claims entitled to distributions under the Plan and the Confirmation Order, followed by a transfer by such holders to the Creditor Trust. Thus, the Beneficiaries shall be treated as the grantors and owners of a grantor trust for federal income tax purposes.

1.2.3 To any extent not effectuated by the Confirmation Order, the Debtors and [*191] the Committee shall execute and deliver or cause to be executed and delivered all such documents (in recordable form where necessary or appropriate), and the Debtors and the Committee shall take or cause to be taken such further action as may reasonably be necessary or appropriate, to vest or perfect in or confirm to the Creditor Trust title to and possession of the Creditor Trust Assets.

1.3 Valuation of Assets

The Creditor Trust, to the extent that the Creditor Trustee deems it necessary or appropriate after consultation with the Oversight Committee, may conduct a good faith valuation of the Creditor Trust Assets, and shall make such valuation available to the Beneficiaries by filing a report of such valuation with the Bankruptcy Court promptly after its completion. The valuation shall be used consistently by all parties (including the Debtors, the Creditor Trustee and the Beneficiaries) for federal income tax purposes. Any dispute regarding the valuation of the Creditor Trust Assets shall be resolved by the Bankruptcy Court.

1.4 Claims Against the Creditor Trust Assets

The Creditor Trust Assets shall be subject to the claims of the Creditor Trustee, its Professionals (as defined *infra*) [*192] and Non-Professionals (as defined *infra*) and U.S. Trustee fees. The Creditor Trustee shall be entitled to reimburse such persons out of any available Cash in the Creditor Trust, for reasonable compensation and actual reasonable out-of-pocket expenses, and against and from any and all loss, liability, expense or damage, which each may sustain in good faith and

without willful misconduct, gross negligence, fraud or, solely in the case of the Creditor Trustee, breach of fiduciary duty other than negligence, in the exercise and performance of any of the powers and duties of the Creditor Trustee.

ARTICLE II

APPOINTMENT OF THE CREDITOR TRUSTEE

John B. Pidcock is hereby appointed to serve as the initial Creditor Trustee under the Plan and hereby accepts this appointment and agrees to serve in such capacity, effective upon the date of this Creditor Trust Agreement. Any successor Creditor Trustee shall be appointed as set forth in Section 4.7 in the event any Creditor Trustee is removed or resigns pursuant to this Creditor Trust Agreement, or if such Creditor Trustee otherwise vacates the position.

ARTICLE III

DUTIES AND POWERS OF THE CREDITOR TRUSTEE

3.1 Generally

The Creditor Trustee shall be responsible **[*193]** for administering the Creditor Trust Assets and taking actions on behalf of, and representing, the Creditor Trust. The Creditor Trustee shall have the authority to bind the Creditor Trust within the limitations set forth herein, but shall for all purposes hereunder be acting in the capacity of Creditor Trustee and not individually.

3.2 Scope of Authority

Within the limitations set forth herein, the responsibilities and authority of the Creditor Trustee shall include, without limitation: (a) collecting and liquidating the Creditor Trust Assets and distributing the Creditor Trust Assets to the Beneficiaries in accordance with the Plan, the Confirmation Order and this Creditor Trust Agreement; (b) facilitating the prosecution or settlement of objections to, or estimations of, Claims in accordance with, but subject to the limitations set forth in, the Plan; (c) analyzing, prosecuting and settling Avoidance Actions and Miscellaneous Causes of Action; (d) filing all required tax returns and paying taxes and all other obligations on behalf of the Creditor Trust from funds

held by the Creditor Trust; (e) filing Quarterly Reports (commencing upon the occurrence of the Effective Date of the Plan); **[*194]** (f) providing periodic reports to the Oversight Committee, the Bankruptcy Court and other parties-in-interest on the status of the Claims resolution process, the status of the prosecution of Avoidance Actions and Miscellaneous Causes of Action, distributions to Beneficiaries and the financial status of the Creditor Trust; and (g) carrying out such other responsibilities not specifically set forth herein as may be vested in the Creditor Trustee pursuant to the Plan, this Creditor Trust Agreement, any Bankruptcy Court order or as may otherwise be necessary and proper to carry out the provisions of the Plan and the Confirmation Order.

3.3 Fiduciary Obligations to the Creditor Trust and Beneficiaries

The Creditor Trustee's actions as Creditor Trustee will be held to the same standard as a trustee of a trust under Ohio law. His or her fiduciary obligations to the Creditor Trust and its Beneficiaries are the same fiduciary obligations that the trustee of a trust owes to that trust and its beneficiaries under Ohio law.

3.4 Powers

In connection with the administration of the Creditor Trust, except as otherwise set forth in this Creditor Trust Agreement, the Plan or the Confirmation Order, the **[*195]** Creditor Trustee is hereby authorized to perform those acts necessary to accomplish the purposes of the Creditor Trust, without further authorization from the Bankruptcy Court. Without limiting, but subject to, the foregoing, the Creditor Trustee is expressly authorized, but not required, unless otherwise provided in this Creditor Trust Agreement and subject to the limitations contained herein, in the Plan and in the Confirmation Order, to:

- (a) hold legal title (on behalf of the Creditor Trust as Creditor Trustee, but not individually) to the Creditor Trust Assets;
- (b) effect all actions and execute all agreements, instruments and other documents necessary to implement the Plan;
- (c) protect and enforce the rights to the Creditor Trust Assets vested in the Creditor Trust by the Plan and the Confirmation Order by any method deemed appropriate, following consultation with, and subject to the approval of, the Oversight Committee, including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law

and general principles of equity:

(d) following consultation with, and subject to the approval of, the Oversight Committee, invest **[*196]** funds (in the manner set forth in **Section 3.8**), make distributions, and pay taxes and other obligations owed by the Creditor Trust from funds held by the Creditor Trustee and/or the Creditor Trust in accordance with the Plan and the Confirmation Order;

(e) following consultation with, and subject to the approval of, the Oversight Committee, prosecute, defend, compromise, adjust, arbitrate, abandon or otherwise deal with and settle, in accordance with the terms set forth herein and in the Plan and Confirmation Order, all actions arising under state law or the Bankruptcy Code, specifically, but not limited to, Avoidance Actions arising under or related to Chapter 5 of the Bankruptcy Code and the Miscellaneous Causes of Action; provided, however, that the Creditor Trustee shall not be required to consult with or obtain approval of the Oversight Committee, to the extent such matters are limited to a claim or cause of action, where the amount demanded or claimed is, in the aggregate, less than or equal to \$50,000 (a "*De Minimis Claim or Cause of Action*");

(f) following consultation with, and subject to the approval of, the Oversight Committee, determine, compromise and satisfy any and all **[*197]** liabilities created, incurred or assumed by the Creditor Trust;

(g) following consultation with, and subject to the approval of, the Oversight Committee, file, if necessary, any and all tax and information returns with respect to the Creditor Trust and pay taxes properly payable by the Creditor Trust, if any, commensurate with the Creditor Trust's classification as a grantor trust pursuant to [Treas. Reg. § 1.671-4\(a\)](#);

(h) following consultation with, and subject to the approval of, the Oversight Committee, make all tax withholdings and make tax elections by and on behalf of the Creditor Trust;

(i) following consultation with, and subject to the approval of, the Oversight Committee, send annually to each Beneficiary a separate statement stating the Beneficiary's share of income, gain, loss, deduction or credit and instruct all such Beneficiaries to report such items on their federal tax returns;

(j) in reliance upon the Claims List (as defined *infra*) provided by the Debtors claims, noticing and balloting agent, The Garden City Group, Inc. ("*Garden City*"), maintain on the Creditor Trustee's books and records, a register evidencing the beneficial interest herein held by each Beneficiary;

(k) **[*198]** following consultation with, and subject to the approval of, the Oversight Committee, administer, reconcile, compromise, estimate and/or resolve Claims in accordance with, but subject to the limitations set forth in, the Plan (including the filing of any objections to such Claims as appropriate): provided, however, that the Creditor Trustee shall not be required to consult with or obtain approval of the Oversight Committee, to the extent such matters are limited to a De Minimis Claim or Cause of Action;

(l) following consultation with, and subject to the approval of, the Oversight Committee, establish such reserves for Disputed Claims, taxes, assessments, Professional, fees and other expenses of administration of the Creditor Trust as may be necessary and appropriate for the proper operation of matters incident to the Creditor Trust;

(m) following consultation with, and subject to the approval of, the Oversight Committee, make distributions as provided for in this Creditor Trust Agreement, the Plan and the Confirmation Order;

(n) following consultation with, and subject to the approval of, the Oversight Committee, determine the allocation of funds remaining in the 503(b)(9) Fund and the **[*199]** Administrative Expense Fund as of the Confirmation Date;

(o) following consultation with, and subject to the approval of, the Oversight Committee, open and maintain bank accounts on behalf of or in the name of the Creditor Trust;

(p) following consultation with, and subject to the approval of, the Oversight Committee, pay expenses and make disbursements necessary to preserve, liquidate and enhance the Creditor Trust Assets;

(q) purchase such insurance coverage as the Creditor Trustee, following consultation with, and subject to the approval of, the Oversight Committee, deems necessary and appropriate with respect to the liabilities and obligations of the Creditor Trustee (in the form of an errors and omissions policy, fiduciary policy or otherwise);

(r) purchase such insurance coverage as the Creditor Trustee, following consultation with, and

subject to the approval of, the Oversight Committee, deems necessary and appropriate with respect to real and personal property which may be or may become Creditor Trust Assets;

(s) following consultation with, and subject to the approval of, the Oversight Committee, retain and pay Professionals and Non-Professionals as provided for in **Article XI** of **[*200]** this Creditor Trust Agreement to assist the Creditor Trust and/or the Creditor Trustee with respect to its responsibilities to the extent permitted by this Creditor Trust Agreement, the Plan and the Confirmation Order;

(t) following consultation with, and subject to the approval of, the Oversight Committee, take such actions as are necessary, appropriate or desirable to close or dismiss the Cases;

(u) following consultation with, and subject to the approval of, the Oversight Committee, take such actions as are necessary, appropriate or desirable to terminate the existence of the Debtors to the extent not already effectuated pursuant to the Plan;

(v) following consultation with, and subject to the approval of, the Oversight Committee, terminate and dissolve the Creditor Trust pursuant to and in accordance with the terms of the Plan and this Creditor Trust Agreement;

(w) following consultation with, and subject to the approval of, the Oversight Committee, file a notice of dismissal of the SII Case prior to the Effective Date if the Creditor Trustee determines that the Creditor Trust will be unable to generate sufficient cash proceeds from the liquidation of Creditor Trust Assets to pay Allowed **[*201]** Administrative Claims, Allowed Priority Tax Claims and Allowed Priority Claims in full; and

(x) following consultation with, and subject to the approval of, the Oversight Committee, assume such other powers as may be vested in or assumed by the Creditor Trust pursuant to the Plan or Bankruptcy Court order, or as may be necessary and proper to carry out the provisions of the Plan, the Confirmation Order or this Creditor Trust Agreement.

3.5 General Authority of the Creditor Trustee

Unless specifically stated otherwise herein, the Creditor Trustee shall not be required to obtain Bankruptcy Court approval with respect to any proposed action or inaction authorized in this Creditor Trust Agreement or specifically contemplated in the Plan and the

Confirmation Order.

3.6 Limitation of Creditor Trustee's Authority; No On-Going Business

The Creditor Trustee shall have no power or authority except as set forth in this Creditor Trust Agreement, in the Plan or in the Confirmation Order. For federal tax purposes, the Creditor Trustee shall not be authorized to engage in any trade or business with respect to the Creditor Trust Assets except to the extent reasonably necessary to, and consistent with, **[*202]** the liquidating purpose of the Creditor Trust. The Creditor Trustee shall take such actions consistent with the prompt orderly liquidation of the Creditor Trust Assets as required by applicable law and consistent with the treatment of the Creditor Trust as a liquidating trust under [*Treas. Reg. § 301.7701-4\(d\)*](#), to the extent such actions are permitted by this Creditor Trust Agreement.

3.7 Other Activities of the Creditor Trustee

The Creditor Trustee shall be entitled to be employed by third parties while serving as Creditor Trustee for the Creditor Trust; provided, however, that such employment shall not include actions or representations of parties that are adverse to the Creditor Trust.

3.8 Investment and Safekeeping of Creditor Trust Assets

All monies and other assets received by the Creditor Trust shall, until distributed or paid over as herein provided, be held in trust for the benefit of the Beneficiaries, but need not be segregated from other Creditor Trust Assets. Upon consultation with the Oversight Committee, the Creditor Trustee shall promptly invest any such monies in the manner set forth in this [*Section 3.8*](#), but shall otherwise be under no liability for interest or income on **[*203]** any monies received by the Creditor Trust hereunder and held for distribution or payment to the Beneficiaries, except as such interest shall actually be received by the Creditor Trustee. Investment of any monies held by the Creditor Trust shall be administered in accordance with the Creditor Trustee's general duties and obligations hereunder and in view of the Creditor Trustee's general fiduciary duties under Ohio law. The rights and powers of the Creditor Trustee to invest the Creditor Trust Assets transferred to the Creditor Trust, the proceeds thereof or any income earned by the Creditor Trust, shall be limited to the right and power to: (a) invest such Creditor Trust Assets (pending distributions in accordance with the Plan and the Confirmation Order) in (i) short-term direct obligations of, or obligations

guaranteed by, the United States of America or (ii) short-term obligations of any agency or corporation which is or may hereafter be created by or pursuant to an act of the Congress of the United States as an agency or instrumentality thereof; or (b) deposit such assets in demand accounts at any bank or trust company, which has, at the time of the deposit, a capital stock and **[*204]** surplus aggregating at least \$1,000,000,000 (collectively, the "*Permissible Investments*"); provided, however, that the scope of any such Permissible Investments shall be limited to include only those investments that a liquidating trust, within the meaning of Treas. Reg. § 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the Internal Revenue Service ("*IRS*") guidelines, whether set forth in IRS rulings, other IRS pronouncements or otherwise.

3.9 Authorization to Expend Creditor Trust Assets

Upon consultation with the Oversight Committee, the Creditor Trustee may expend assets of the Creditor Trust to the extent necessary to: (a) satisfy and discharge liabilities and to maintain the value of the Creditor Trust Assets during liquidation; (b) pay Trustee Expenses (including, but not limited to, any taxes imposed on the Creditor Trust, and fees and expenses in connection with litigation or compensation of the Creditor Trustee in accordance with **Section 4.1** below); (c) satisfy other liabilities incurred or assumed by the Creditor Trust (or to which the Creditor Trust Assets are otherwise subject) in accordance with this Creditor Trust Agreement, **[*205]** the Plan or the Confirmation Order; and (d) make distributions to Beneficiaries on account of their Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Claims, Allowed Class 2a Secured Claims and Allowed Class 3 General Unsecured Claims in accordance with this Creditor Trust Agreement, the Plan and the Confirmation Order. Notwithstanding anything to the contrary in this Creditor Trust Agreement, proceeds from the liquidation of the Creditor Trust Assets subject to the Liens of the Pre-Petition Lenders shall only be used to satisfy the Trustee Expenses incurred solely in connection with the liquidation of such assets, and such Trustee Expenses relating to the liquidation of the Creditor Trust Assets subject to the Liens of the Pre-Petition Lenders shall be subject to the prior written approval of KeyBank.

ARTICLE IV

CREDITOR TRUSTEE

4.1 Compensation of the Creditor Trustee

The Creditor Trustee shall be entitled to receive, but is not required to accept, reasonable compensation for services rendered on behalf of the Creditor Trust. All compensation and other amounts payable to the Creditor Trustee shall be paid out of the Creditor Trust Assets. The Creditor Trust **[*206]** shall reimburse the Creditor Trustee for its actual reasonable out-of-pocket expenses incurred including, without limitation, postage, telephone and facsimile charges upon receipt of periodic billings. All reimbursement for expenses payable to the Creditor Trustee shall be paid from the Creditor Trust Assets in priority over any distributions to Beneficiaries to be made under the Plan. If the Creditor Trust Assets are insufficient to fully satisfy the amounts payable to, or other obligations owing to, the Creditor Trustee, the Beneficiaries shall be required to disgorge their Pro Rata share of any interim distributions received from the Creditor Trust, until all such amounts have been fully paid and all such obligations have been fully satisfied. If the Creditor Trustee dies or becomes disabled, then such former Creditor Trustee (or his or her estate, successor or assigns) shall be entitled to any remaining unpaid compensation and reimbursement due hereunder. The initial Creditor Trustee has elected to forgo receipt of compensation (but not reimbursement of out-of-pocket expenses).

4.2 Term of Service

The Creditor Trustee shall serve until the earliest of: (a) the completion of all the **[*207]** Creditor Trustee's duties, responsibilities and obligations under this Creditor Trust Agreement and the Plan; (b) termination of the Creditor Trust in accordance with this Creditor Trust Agreement; and (c) the Creditor Trustee's death, resignation or removal.

4.3 No Bond

The Creditor Trustee shall serve without bond

4.4 Removal

The Creditor Trustee may be removed for cause by the Oversight Committee; provided, however, that the Creditor Trustee may not be removed until a successor Creditor Trustee has been named. "Cause" shall include, without limitation: (a) the undue prolongation of the duration of the Creditor Trust and of distributions of the Creditor Trust Assets to the Beneficiaries; (b) gross negligence, fraud or willful misconduct (as determined by a Final Order) in connection with the affairs of the

Creditor Trust; (c) a physical and/or mental disability that substantially prevents the Creditor Trustee from performing the duties of a Creditor Trustee hereunder; or (d) breach of fiduciary duty or an unresolved conflict of interest. In addition, the Creditor Trustee may be removed for cause at any time by any other person upon entry of an order of the Bankruptcy Court following **[*208]** a noticed motion for removal served upon the Creditor Trustee (and his or her Professionals) and the Oversight Committee. Any person seeking removal through an order of the Bankruptcy Court must demonstrate to the Bankruptcy Court that such removal is appropriate for cause. The removal in this instance shall be effective on the date specified in the order.

4.5 Resignation

The Creditor Trustee may resign by giving not less than thirty (30) days' prior written notice thereof to the parties entitled to notice under **Section 14.10** hereof. In the event of a resignation, the resigning Creditor Trustee shall render to the Oversight Committee a statement of discharge as described in **Section 4.6** below. The resignation will be effective on the later of: (a) the date specified in the notice; (b) the date that is thirty (30) days after the date the notice is delivered; (c) the date the statement of discharge is delivered; and (d) the date the successor Creditor Trustee accepts his or her appointment as such.

4.6 Discharge of Creditor Trustee

4.6.1 Statement of Discharge. The Creditor Trustee shall, upon termination of the Creditor Trust or upon the Creditor Trustee's resignation, removal or death (in **[*209]** which case the Creditor Trustee's estate or third-party employer, as may be appropriate, shall) render a statement of discharge containing the following information: (a) all assets and funds of the Creditor Trust originally charged under the Creditor Trustee's control; (b) a summarized accounting, in sufficient detail, of all purchases, sales, gains, losses and income of the Creditor Trust during the Creditor Trustee's term of service; and (c) the ending balance of all assets and funds of the Creditor Trust as of the date of discharge. At the discretion of the Oversight Committee, such statement may be audited by independent accountants in accordance with generally accepted auditing standards.

4.6.2 Approval of Statement of Discharge. The statement of discharge required by **Section 4.6.1** shall be presented to the Oversight Committee.

Unless the Oversight Committee requests that such statement of discharge not be approved within thirty (30) days after the date on which such statement of discharge was presented to the Oversight Committee, the withdrawing Creditor Trustee shall be discharged from all liability to the Creditor Trust or any Person who has had or may then or thereafter have **[*210]** an interest in the Creditor Trust for acts or omissions in the Creditor Trustee's capacity as the Creditor Trustee or in any other capacity contemplated by this Creditor Trust Agreement or the Plan.

4.6.3 Costs Relating to Statement of Discharge.

The expenses of any accounting, including, but not limited to any statement of discharge, shall be paid by the Creditor Trust as an expense of the Creditor Trust.

4.7 Appointment of Successor Trustee

4.7.1 In the event the Creditor Trustee is removed or resigns pursuant to this Creditor Trust Agreement or the Creditor Trustee otherwise vacates his or her position, the Oversight Committee shall designate a successor Creditor Trustee. Any successor Creditor Trustee appointed hereunder shall execute an instrument accepting such appointment and shall deliver such acceptance to the Bankruptcy Court. Thereupon, such successor Creditor Trustee shall, without any further act, become vested with all of the properties, rights, powers, trusts and duties of his or her predecessor in the Creditor Trust with like effect as if originally named herein; provided, however, that the removed or resigning Creditor Trustee shall, nevertheless, when requested in writing **[*211]** by the successor Creditor Trustee, execute and deliver any reasonable instrument or instruments conveying and transferring to such successor Creditor Trustee all the estates, properties, rights, powers and trusts of the removed or resigning Creditor Trustee.

4.7.2 The Oversight Committee shall appoint a successor Creditor Trustee as soon as practicable, but in any event within thirty (30) days after the occurrence of the vacancy or, in the case of resignation, at least fifteen (15) days before the proposed resignation is to take effect. If the Oversight Committee fails to appoint a successor Creditor Trustee within the prescribed period, any Member (as defined *infra*) of the Oversight Committee or any Beneficiary may petition the

Bankruptcy Court to appoint a proposed successor Creditor Trustee. If the Oversight Committee, or if any Member of the Oversight Committee or any Beneficiary, fails to appoint a successor Creditor Trustee, then: (a) if the Creditor Trustee is resigning, the Creditor Trustee may appoint a qualified successor or (b) if the Creditor Trustee is removed or upon the Creditor Trustee's death, the Bankruptcy Court may appoint a successor Creditor Trustee.

4.8 Creditor [*212] Trust Continuance

The resignation or removal of the Creditor Trustee will not terminate the Creditor Trust or revoke any existing agency created pursuant to this Creditor Trust Agreement or invalidate any action theretofore taken by the Creditor Trustee.

ARTICLE V

OVERSIGHT COMMITTEE

5.1 Creation of the Oversight Committee

Simultaneously with the creation of the Creditor Trust, a committee (the "*Oversight Committee*") comprised of three (3) members (the "*Members*"), at least two (2) of which shall be representatives of the Committee and at least one (1) of which shall be a representative of the Debtors (subject to the approval of the Committee, which shall not be unreasonably withheld or delayed), shall be established. The Oversight Committee shall perform an advisory role in the administration of the Creditor Trust and shall carry out such other responsibilities as may be required or permitted under this Creditor Trust Agreement or under the Plan. The initial Members of the Oversight Committee are Cemex Inc. (Committee's representative), St. Marys Cement (Committee's representative) and David A. Schwab (Debtors' representative). These Members of the Oversight Committee will serve, not as [*213] individuals, but as representatives of their respective organizations. Each Member of the Oversight Committee shall serve until the earlier of: (a) his or her death or resignation; (b) his or her removal pursuant to **Section 5.5** of the Creditor Trust Agreement; and (c) the termination of the Creditor Trust. To any extent a Member of the Oversight Committee has a conflict of interest with respect to any matter being handled by the Creditor Trustee, such Member of the Oversight Committee shall recuse themselves and be recused

from any such discussions in accordance herewith and any by-laws governing operation of the Oversight Committee approved by the Creditor Trustee.

5.2 Role of the Oversight Committee

The Oversight Committee shall monitor, and the Creditor Trustee shall consult with the Oversight Committee in connection with, the administration of the Creditor Trust by the Creditor Trustee. The Oversight Committee may provide advice or recommendations with respect to any action to be taken by the Creditor Trustee in connection therewith, including, without limitation: (a) the arrangement of any sale, transfer or other disposition of Creditor Trust Assets; (b) the investment of any proceeds [*214] of Creditor Trust Assets in Permitted Investments; (c) the conduct and settlement of litigation with respect to any Disputed Claims and any Cause of Action (other than with respect to a De Minimis Claim or Cause of Action), or otherwise; and (d) the making of any distributions in respect of Allowed Claims. Further, the Oversight Committee may from time to time issue written directives to the Creditor Trustee with respect to any of the foregoing, which shall be complied with by the Creditor Trustee. All decisions of the Oversight Committee, and all actions, directives, approvals and consents of the Oversight Committee required or contemplated hereunder, shall be effective upon a majority vote of the Members thereof. In taking or failing to take any action hereunder, the Creditor Trustee may rely upon a written statement (including signatures by counterpart facsimile or approval by electronic transmission) by such majority of the Oversight Committee. The Oversight Committee will have the authority to remove and/or replace the Creditor Trustee as set forth in **Sections 4.4** and **4.7** hereof. Without limiting the foregoing, neither the Oversight Committee nor its Members shall exercise any [*215] control or authority over the Creditor Trust or the Creditor Trust Assets that is inconsistent with the provisions of this Creditor Trust Agreement.

5.3 Compensation of the Oversight Committee

The Oversight Committee shall not be compensated for services rendered to the Creditor Trust. However, the Oversight Committee Members shall be reimbursed from the Creditor Trust Assets for all reasonable out-of-pocket expenses incurred by serving on the Oversight Committee, except fees and expenses of professionals retained by individual Oversight Committee Members.

5.4 Resignation of Member

An Oversight Committee Member may resign by giving

not less than fifteen (15) days' prior written notice thereof to the parties entitled to notice under **Section 14.10** hereof. From and after the date of its resignation from the Oversight Committee, the resigning Oversight Committee member shall have no further rights or obligations under this Creditor Trust Agreement.

5.5 Removal of Member

5.5.1 Removal for Disability. Subject to Bankruptcy Court approval, a Member of the Oversight Committee may be removed by a unanimous vote of all other Members of the Oversight Committee upon a finding that such Member is unable **[*216]** to perform his or her duties due to illness or other physical or mental disability.

5.5.2 Removal for Cause. Subject to Bankruptcy Court approval, a Member of the Oversight Committee may be removed for cause by a unanimous vote of all other Members of the Oversight Committee. "Cause" shall include, without limitation: (a) fraud or willful misconduct in connection with the affairs of the Creditor Trust; or (b) breach of fiduciary duty or an unresolved conflict of interest.

5.6 Replacement of Member

In the event that an Oversight Committee Member resigns or is removed as an Oversight Committee Member in accordance with this **Article V**, the entity that designated the removed or resigning Member (i.e., the Committee or the Debtors) may designate a successor Member; provided, however, that prior to the replacement of the resigning or removed Member pursuant to this **Section 5.6**, Holcim (US) Inc., as the alternative Oversight Committee Member, may elect to assume the vacant Oversight Committee Member position.

5.7 Reliance by Oversight Committee Members

The Oversight Committee Members may rely, and shall be fully protected in acting or refraining from acting, on any resolution, statement, certificate, **[*217]** instrument, opinion, report, notice, request, consent, order or other instrument or document that the Oversight Committee Member has no reason to believe to be other than genuine and to have been signed or presented by the proper party or parties or, in the case of facsimiles, to have been sent by the proper party or parties, and the Oversight Committee Members may conclusively rely as to the truth of the statements and correctness of the opinions expressed therein. The Oversight Committee

Members may consult with any counsel employed by the Creditor Trust or by the Oversight Committee.

5.8 Meetings of the Creditor Trustee and the Oversight Committee

5.8.1 Regular Meetings of the Creditor Trustee and the Oversight Committee. Meetings of the Creditor Trustee and the Oversight Committee are to be held with such frequency and at such place as the Oversight Committee may determine in its sole discretion, but in no event shall meetings be held less frequently than quarterly.

5.8.2 Special Meetings of the Creditor Trustee and the Oversight Committee. Special meetings of the Creditor Trustee and the Oversight Committee may be held whenever and wherever called for either by the Creditor Trustee **[*218]** or at least two Members of the Oversight Committee.

5.8.3 Notice of, and Waiver of Notice for, Creditor Trustee and Oversight Committee Meetings. Notice of the time and place (but not necessarily the purpose or all of the purposes) of any regular or special meeting will be given to the Creditor Trustee and/or the Members of the Oversight Committee in person or by telephone, mail, electronic mail or facsimile Transmission. Notice to the Creditor Trustee and the Members of the Oversight Committee of any such meeting will be deemed given sufficiently in advance when: (a) if given by mail, the same is deposited in the United States mail at least ten (10) calendar days before the meeting date, with postage thereon prepaid; (b) if given by electronic mail or facsimile transmission, the same is transmitted at least one (1) business day prior to the convening of the meeting; or (c) if personally delivered (including by overnight courier) or given by telephone, the same is handed, or the substance thereof is communicated over the telephone to the Creditor Trustee and/or the Members of the Oversight Committee or to an adult member of his/her office staff or household, at least one (1) business **[*219]** day prior to the convening of the meeting. The Creditor Trustee and any Member of the Oversight Committee may waive notice of any meeting and any adjournment thereof at any time before, during or after it is held, as provided by law. Except as provided in the next sentence below, the waiver must be in writing, signed by the Creditor Trustee or the applicable Member or Members of the Oversight Committee entitled to the notice and filed with the minutes or

records of the Creditor Trust. The attendance of the Creditor Trustee or a Member of the Oversight Committee at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

5.8.4 Manner of Participation in Creditor Trustee and Oversight Committee Meetings. The Creditor Trustee or any Member of the Oversight Committee may participate in a regular or special meeting by, or conduct the meeting in person or through the use of conference telephone, videoconference or similar communications equipment by means of which all persons participating **[*220]** in the meeting may hear each other, in which case any required notice of such meeting may generally describe the arrangements (rather than or in addition to the place) for the holding thereof. The Creditor Trustee or any Member of the Oversight Committee participating in a meeting by this means is deemed to be present in person at the meeting.

5.8.5 Manner of Acting. Any Member of the Oversight Committee who is present and entitled to vote at a meeting of the Oversight Committee when action is taken is deemed to have assented to the action taken, subject to the requisite vote of the Oversight Committee, unless: (a) such member of the Oversight Committee objects at the beginning of the meeting (or promptly upon his/her arrival) to holding it or to the transaction of any business at the meeting; (b) his/her dissent or abstention from the action taken is entered in the minutes of the meeting; or (c) he/she delivers written notice (including by electronic or facsimile transmission) of his/her dissent or abstention before the adjournment of the meeting. The right of dissent or abstention is not available to any member of the Oversight Committee who votes in favor of the action taken.

5.9 Oversight **[*221] Committee Action Without a Meeting**

Any action required or permitted to be taken by the Oversight Committee at a meeting may be taken without a meeting if the action is taken by unanimous written consent of the Oversight Committee as evidenced by one or more written consents describing the action taken, signed by all Members of the Oversight Committee and recorded in the minutes or other

transcript of proceedings of the Oversight Committee and the Creditor Trustee.

5.10 Dispute Resolution

In the event of a dispute between the Creditor Trustee and the Oversight Committee, or between Members of the Oversight Committee, involving an allegation that either party has failed to act in a manner consistent with the Plan or this Creditor Trust Agreement, the parties shall meet and confer and attempt to reach a consensual resolution of the dispute. Should a consensual resolution not be reached, the Creditor Trustee or the Oversight Committee or any of its Members may seek appropriate relief from the Bankruptcy Court, and the Bankruptcy Court shall retain jurisdiction to resolve such disputes. This **Section 5.10** shall also apply to any disputes relating to recusal pursuant to **Section 5.1** of this **[*222]** Agreement.

5.11 Confidentiality of Information and Conflicts of Interest

The Creditor Trustee shall have authority to exclude any Oversight Committee Member from any deliberations, or withhold any information from any Oversight Committee Member, regarding matters affecting the Creditor Trust or Creditor Trust Assets in which such excluded Member is encumbered by a conflict of interest that has been disclosed or otherwise becomes known to the Creditor Trustee. The non-conflicted Oversight Committee Members may overrule the Creditor Trustee's decision to exclude or withhold information from a conflicted Oversight Committee Member by unanimous vote of any non-conflicted Oversight Committee Members; provided, however, that the Creditor Trustee shall not be liable to the Oversight Committee or the Creditor Trust in any way for any statements made or actions taken by such conflicted Oversight Committee Member following such overruling by the Oversight Committee, and the Creditor Trust shall hold the Creditor Trustee harmless for any claims that may arise as a result of such conflicted Oversight Committee Member's statements and actions. Any Oversight Committee Member that is excluded from **[*223]** deliberations or denied access to information under this **Section 5.11** may challenge the Creditor Trustee's determination in accordance with the dispute resolution procedure set forth in **Section 5.10** of this Creditor Trust Agreement.

5.12 Limitation of Liability and Indemnification of the Oversight Committee

5.12.1 The Members of the Oversight Committee

shall not be personally liable to the Creditor Trust or to any Beneficiary (or any successor of such entities) except for such of their own respective acts as shall constitute willful misconduct or fraud as determined by a Final Order. The Members of the Oversight Committee and any officers, employees, professionals and agents of any Member of the Oversight Committee, shall be defended, held harmless and indemnified and shall be entitled to advancement of their expenses; provided, however, that such Member shall be obligated to repay any amounts advanced hereunder if a court of competent jurisdiction shall determine by a Final Order that such Member violated its standard of care hereunder.

5.12.2 The obligation of the Creditor Trust to indemnify the Members of the Oversight Committee and their respective officers, employees, professionals **[*224]** and agents hereunder, and any such Person's rights to be compensated and to be reimbursed for its reasonable out-of-pocket expenses and disbursements, shall constitute indebtedness of the Creditor Trust. In acting hereunder, any Member of the Oversight Committee acts in its representative and not individual capacity. All Persons having any claim against any Member of the Oversight Committee or their agents by reason of the transactions contemplated hereby shall look only to the Creditor Trust Assets for payment or satisfaction thereof.

5.12.3 The indemnification and exculpation provisions hereunder shall supplement and augment those provisions set forth in the Plan.

ARTICLE VI

CREDITOR TRUST BENEFICIARIES

6.1 Identification of Beneficiaries

The beneficial interests of each Beneficiary in the Creditor Trust shall be recorded and set forth in the Claims List maintained by the Creditor' Trustee.

6.2 Beneficial Interest Only

The ownership of a beneficial interest in the Creditor Trust shall not entitle any Beneficiary or the Debtors to any title in or to the Creditor Trust Assets or to any right to call for a partition or division of such Creditor Trust Assets or to require an accounting, except **[*225]** as

specifically provided herein.

6.3 Ownership of Beneficial Interests Hereunder

Each Beneficiary shall own a beneficial interest in the Creditor Trust Assets equal in proportion to the Pro Rata share of such Beneficiary's Allowed Claim in accordance with the Plan.

6.4 Evidence of Beneficial Interest

Ownership of a beneficial interest in the Creditor Trust Assets shall not be evidenced by any certificate, security or receipt or in any other form or manner whatsoever, except as maintained on the Claims List.

6.5 Limitation on Transferability

It is understood and agreed that the beneficial interests in the Creditor Trust shall be non-assignable during the term of this Creditor Trust Agreement except by operation of law. An assignment by operation of law shall not be effective until appropriate notification and proof thereof is submitted to the Creditor Trustee, and the Creditor Trustee may continue to pay all amounts to or for the benefit of the assigning Beneficiary until receipt of proper notification and proof of assignment by operation of law. The Creditor Trustee may rely upon such proof without the requirement of any further investigation. Any notice of a change of beneficial interest **[*226]** ownership as permitted by operation of law shall be forwarded to the Creditor Trustee by registered or certified mail pursuant to the notice provisions set forth in **Section 14.10** hereof. The notice shall be executed by both the transferee and the transferor, and the signatures of the parties shall be acknowledged before a notary public and as required by [Bankruptcy Rule 3001\(e\)](#). The notice must clearly describe the interest to be transferred. The Creditor Trustee may conclusively rely upon such signatures and acknowledgments as evidence of such transfer without the requirement of any further investigation.

6.6 Conflicting Claims

If any conflicting claims or demands are made or asserted with respect to the Creditor Trust Assets, or if there is any disagreement between the assignees, transferees, heirs, representatives or legatees succeeding to all or a part of the Creditor Trust Assets resulting in adverse claims or demands being made in connection with such assets, then, in any of such events, the Creditor Trustee, following consultation with the Oversight Committee, shall be entitled to refuse to comply with any such conflicting claims or demands. In

so refusing, the Creditor Trustee **[*227]** may elect to make no payment or distribution with respect to the Creditor Trust Assets that are the subject of the claims or demands involved, or any part thereof, and to refer such conflicting claims or demands to the Bankruptcy Court, which shall have exclusive jurisdiction over resolution of such conflicting claims or demands. In so doing, the Creditor Trustee shall not be or become liable to any of such parties for its refusal to comply with any of such conflicting claims or demands, nor shall the Creditor Trustee be liable for interest on any funds that it may so withhold. The Creditor Trustee shall be entitled to refuse to act until either: (a) the rights of the adverse claimants have been adjudicated by a final Order of the Bankruptcy Court; or (b) all differences have been resolved by a valid written agreement among all of such parties and the Creditor Trustee.

ARTICLE VII

PROVISIONS REGARDING DISTRIBUTIONS

7.1 Timing and Methods of Distributions

7.1.1 Generally. The Creditor Trustee, on behalf of the Creditor Trust, or such other entity as may be designated by the Creditor Trustee, on behalf of the Creditor Trust, will make all distributions to the Beneficiaries as set forth in, **[*228]** and as required by, this Creditor Trust Agreement, the Plan and the Confirmation Order. Unless the entity or Person receiving a payment agrees otherwise, the Creditor Trustee, in its sole discretion, will make any payment in Cash to be made by the Creditor Trust by check drawn on a domestic bank or by wire transfer from a domestic bank.

7.1.2 Priority of Distributions. After payment of all unpaid Trustee Expenses, the Creditor Trustee in its good faith judgment and based on available Creditor Trust Assets, shall: (a) distribute the 503(b) Fund first, to holders of Allowed 503(b)(9) Claims and second, to any unpaid Allowed Administrative Claims in accordance with Section 5.1.2 of the Plan; (b) distribute the Administrative Expense Fund to holders of Allowed Administrative Claims in accordance with Section 5.1.2 of the Plan; (c) distribute the Net Proceeds of Creditor Trust Assets subject to the Liens of the Pre-Petition Lenders to holders of Allowed Class 2a Claims until the Pre-Petition Lenders have recovered an amount equal to \$51,000,000 with respect to their Secured

Claims, at which point, all further distributions of the Net Proceeds of Creditor Trust Assets subject to the Liens **[*229]** of the Pre-Petition Lenders shall be subject to the sharing formula appended to the Core Sale Order; and (d) distribute the Settlement Amount to holders of Allowed Class 3 Claims in accordance with Section 5.6.2 of the Plan. The Creditor Trustee shall distribute all remaining Cash in the order of priorities as follows: (a) first, to holders of Allowed Administrative Claims, Pro Rata; (b) second, to holders of Allowed Priority Tax Claims and Allowed Priority Claims, Pro Rata; and (c) third, to holders of Allowed Class 3 General Unsecured Claims, Pro Rata. The Creditor Trustee may withhold from amounts distributable to any entity any and all amounts, determined in the Creditor Trustee's reasonable discretion, following consultation with the Oversight Committee, to be required by any law, regulation, rule, ruling, directive or other government equivalent of the United States or of any political subdivision thereof, or to otherwise facilitate the administration of the Creditor Trust.

7.1.3 Distributions by the Creditor Trustee. Subject to the provisions of this **Article VII**, the Creditor Trustee shall distribute to the holders of Allowed Administrative Claims, Allowed Priority Tax Claims, **[*230]** Allowed Priority Claims, Allowed Class 2a Secured Claims (solely from the Net Proceeds of Creditor Trust Assets subject to the Liens of the Pre-Petition Lenders) and Allowed Class 3 General Unsecured Claims, in the priorities set forth in the Plan and in this Creditor Trust Agreement, all net Cash income (including as Cash for this purpose, all cash equivalents) from time to time at such time intervals as decided by the Creditor Trustee following consultation with, and subject to the approval of, the Oversight Committee (but within a reasonable time after creation of a Disputed Claims Reserve (as defined *infra*) determined to be sufficient to make Pro Rata distributions on Disputed Claims and to pay the Trustee Expenses in full), pursuant to the terms of the Plan and the Confirmation Order. The Creditor Trustee may, following consultation with, and subject to the approval of the Oversight Committee, cause the Creditor Trust to retain an amount of net Cash proceeds or net Cash income reasonably necessary to maintain the value of its assets, as set forth in, and to effectuate the provisions of, the Plan and the Confirmation Order. The Creditor Trustee may withhold from the amount distributable

[*231] from the Creditor Trust at any time to any Person (except with respect to the IRS) such sum or sums as may be sufficient to pay any tax or taxes or other charge or charges that have been or may be imposed on such Person or upon the Creditor Trust with respect to the amount distributable or to be distributed under the income tax laws of the United States or of any state or political subdivision or entity by reason of any distribution provided for in this Creditor Trust Agreement, whenever such withholding is required by any law, regulation, rule, ruling, directive or other governmental requirement, and the Creditor Trustee may enter into agreements with taxing or other authorities for the payment of such amounts as may be withheld in accordance with the provisions of this **Section 7.1.3**. Notwithstanding the foregoing, but without prejudice to the Creditor Trustee's rights hereunder, such Person shall have the right with respect to the United States, or any state, or any political subdivision of either, to contest the imposition of any tax or other charge by reason of any distribution hereunder.

7.1.4 Claims List. At least ten (10) days prior to the Confirmation Date, Garden City will **[*232]** deliver to the Creditor Trustee a list of all Claims scheduled by the Debtors and/or filed against the Debtors as of such date, the addresses of all such holders as of a record date that is not more than fifteen (15) days prior to the date of the list, the designation and amount of each such Claim as disputed or not disputed, fixed or contingent and liquidated or unliquidated, and the Employer or Taxpayer Identification Number as assigned by the IRS for each holder (the "*Claims List*"). The Creditor Trustee shall be entitled to rely upon the Claims List in calculating and making distributions from the Creditor Trust as provided herein: provided, however, that the Claims List shall be adjusted from time to time by the Creditor Trustee as necessary to maintain its accuracy. The Creditor Trustee shall also revise the Claims List from time to time upon receipt of notice from a Beneficiary notifying the Creditor Trustee of a change of address or stating that its Claim has been transferred to a new Beneficiary, that the new Beneficiary has complied with any applicable provisions of [Bankruptcy Rule 3001\(e\)](#) (and providing evidence thereof) and setting forth the name and address of such new **[*233]** Beneficiary. The Creditor Trustee shall establish the revised Claims List that is to be used in conjunction with any particular distribution no

less than fourteen (14) days prior to the date of such distribution.

7.1.5 503(b)(9) Fund. Notwithstanding any provision of this Creditor Trust Agreement to the contrary, the 503(b)(9) Fund provided by Oldcastle shall be held by the Creditor Trustee solely for the benefit of the holders of Allowed 503(b)(9) Claims. Distributions from the 503(b)(9) Fund shall be made first, to holders of Allowed 503(b)(9) Claims, and second, to any unpaid Allowed Administrative Claims in accordance with Section 5.1.2 of the Plan.

7.1.6 Administrative Expense Fund. Notwithstanding any provision of this Creditor Trust Agreement to the contrary, the Administrative Expense Fund provided by Oldcastle shall be held by the Creditor Trustee solely for the benefit of the holders of Allowed Administrative Claims.

7.1.7 Settlement Amount. Notwithstanding any provision of this Creditor Trust Agreement to the contrary, the Settlement Amount provided by the Pre-Petition Lenders pursuant to the Core Sale Order shall be held by the Creditor Trustee solely for the benefit of the **[*234]** holders of Allowed Class 3 General Unsecured Claims. No distribution with respect to such Settlement Amount shall be made to any holders of Claims or Interests other than Class 3 General Unsecured Claims; provided, however, that the Settlement Amount may be used to satisfy the Trustee's Expenses pursuant to any budget approved by the Oversight Committee.

7.1.8 Creditor Trust Assets Subject to Liens. Notwithstanding any provisions of this Creditor Trust Agreement to the contrary, the Net Proceeds of Creditor Trust Assets subject to the Liens of the Pre-Petition Lenders shall be made solely to holders of Allowed Class 2a Secured Claims until the Pre-Petition Lenders have received \$51,000,000 with respect to their Secured Claims (whether from distributions from the Creditor Trust or otherwise), at which point all further distributions of the Net Proceeds of Creditor Trust Assets subject to the Liens of the Pre-Petition Lenders shall be subject to the sharing formula appended to the Core Sale Order.

7.1.9 Sufficiency of Creditor Trust Assets

(a) If, prior to the Effective Date of the Plan, the Creditor Trustee determines, following

consultation with the Oversight Committee, that the Creditor **[*235]** Trust will be unable to generate sufficient cash proceeds from the liquidation of Creditor 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 SII Case pursuant to [section 1112\(b\) of the Bankruptcy Code](#), which shall be deemed immediately effective. Following such dismissal, the Creditor Trustee shall, following consultation with, and approval by, the Oversight Committee: (a) oversee the liquidation of the Creditor Trust Assets and distribution of the Net Proceeds through the commencement of dissolution proceedings in the Common Pleas Courts of Cuyahoga County, Ohio, including, without limitation, conducting a Claims reconciliation process and distributing Net Proceeds (not including the Settlement Amount, collateral subject to the Liens of the Pre-Petition Lenders, the 503(b)(9) Fund or the Administrative Expense Fund other than as directed below) to holders of Allowed Claims according to the priority scheme set forth in the Bankruptcy Code, Pro Rata; (b) distribute the Settlement Amount to the holders of Allowed Class 3 General Unsecured **[*236]** Claims, Pro Rata; (c) distribute Net Proceeds of Creditor Trust Assets subject to the Liens of the Pre-Petition Lenders to holders of Allowed Class 2a Secured Claims, Pro Rata, until the Pre-Petition Lenders have received \$51,000,000 with respect to their Allowed Secured Claims, at which point any future Net Proceeds of such collateral shall be distributed to holders of Allowed Class 2a Secured Claims and Allowed Class 3 General Unsecured Claims pursuant to the sharing formula appended to the Core Sale Order; (d) distribute the 503(b)(9) Fund to holders of Allowed 503(b)(9) Claims, Pro Rata; and (e) distribute the Administrative Expense Fund to holders of Allowed Administrative Claims, Pro Rata. Pursuant to the Plan and the Confirmation Order, the Debtors, their creditors and all other parties-in-interest shall be deemed to have consented to the substantive consolidation of the Debtors into SII, the dismissal of the SII Case and the jurisdiction of the Common Pleas Courts of Cuyahoga County, Ohio to supervise its dissolution. Notwithstanding the foregoing,

pursuant to the Plan, the Creditor Trustee shall have standing to commence, prosecute and settle Avoidance Actions and Miscellaneous **[*237]** Causes of Action in the Bankruptcy Court, with all Net Proceeds of such Causes of Action to be distributed to holders of Allowed Claims according to the priority scheme set forth in the Bankruptcy Code, Pro Rata, and the Bankruptcy Court will retain jurisdiction over the Avoidance Actions and Miscellaneous Causes of Action notwithstanding the dismissal of the Cases.

(b) If, any time after the Effective Date, the Creditor Trustee determines, following consultation with the Oversight Committee, that the aggregate proceeds and income available for distribution are not sufficient to pay holders of Allowed Administrative Claims, Allowed Priority Tax Claims and Allowed Priority Claims in full, the Creditor Trustee shall not be required to make any distributions other than: (a) distributing the Settlement Amount to holders of Allowed Class 3 General Unsecured Claims, Pro Rata, less any amount expressly reserved by the Oversight Committee to satisfy Trustee's Expenses; (b) distributing the 503(b)(9) Fund to holders of 503(b)(9) Claims, Pro Rata; (c) distributing the Administrative Expense Fund to holders of Allowed Administrative Claims, Pro Rata; (d) distributing the Net Proceeds of Creditor **[*238]** Trust Assets subject to the Liens of the Pre-Petition Lenders to holders of Allowed Class 2a Secured Claims, Pro Rata, until the Pre-Petition Lenders have received \$51,000,000 with respect to their Allowed Secured Claims, at which point the remaining Net Proceeds of such collateral shall be distributed to holders of Allowed Class 2a Secured Claims and Allowed Class 3 General Unsecured Claims pursuant to the sharing formula appended to the Core Sale Order; and (e) distributing all remaining Creditor Trust Assets, first, to holders of Allowed Administrative Claims, Pro Rata, second, to holders of Allowed Priority Tax Claims, Pro Rata, and, third, to holders of Allowed Priority Claims, Pro Rata.

7.2 Delivery of Distributions

Subject to the provisions of [Bankruptcy Rule 2002\(g\)](#),

and except as otherwise provided herein, distributions and deliveries to holders of record of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Claims, Allowed Class 2a Secured Claims and Allowed Class 3 General Unsecured Claims shall be made at the address of each such holder set forth on the Claims List.

7.3 No Post-Petition Interest on Claims

Except as expressly provided in the Plan, the **[*239]** Confirmation Order or any contract, instrument, release, settlement or other agreement entered into in connection with the Plan, or as required by applicable bankruptcy law, post-petition interest will not accrue on account of any Claim and the Creditor Trustee will not distribute post-petition interest on account of any Claim.

7.4 No Post-Confirmation Date Interest on Claims

Post-Confirmation Date interest will not accrue on account of any Claim, and the Creditor Trustee will not distribute post-Confirmation Date interest on account of any Claim.

7.5 Undeliverable Distributions

If any distribution with respect to a Claim is returned to the Creditor Trustee as undeliverable, no further distributions shall be made to such holder, unless the Creditor Trustee is notified in writing of the Claim holder's current address. Upon receipt of the notification, the Creditor Trustee will remit all missed distributions to the Claim holder without interest. All claims for undeliverable distributions must be made on or before the second anniversary of the Confirmation Date of the Plan. If a claim is not made within that time, all unclaimed distributions will revert to the Creditor Trust and be distributed **[*240]** to the remaining Beneficiaries of the Creditor Trust in accordance with the priority scheme set forth in the Plan and in this Creditor Trust Agreement. Nothing contained in the Plan, the Confirmation Order or this Creditor Trust Agreement shall require the Creditor Trustee to attempt to locate any holder of an Allowed Administrative Claim, an Allowed Priority Tax Claim, an Allowed Priority Claim, an Allowed Class 2a Secured Claim or an Allowed Class 3 General Unsecured Claim.

7.6 Lapsed Distributions

Any distribution that has not 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 Creditor Trust and be distributed to the remaining Beneficiaries of the Creditor

Trust in accordance with the priorities set forth in the Plan and this Creditor Trust Agreement; provided, however, that: (a) lapsed distributions from the 503(b)(9) Fund shall be distributed only to the remaining holders of Allowed 503(b)(9) Claims (or, if Allowed 503(b)(9) Claims have been paid in full, to remaining holders of Allowed Administrative Claims); (b) lapsed distributions from the Administrative Expense Fund **[*241]** shall be distributed only to the remaining holders of Allowed Administrative Claims; (c) lapsed distributions from the Net Proceeds of Creditor Trust Assets subject to the Liens of the Pre-Petition Lenders shall be distributed only to the remaining holder's of Allowed Class 2a Secured Claims (only until such holders have received \$51,000,000 with respect to their Allowed Secured Claims); and (d) lapsed distributions from the Settlement Amount shall be distributed only to the remaining holders of Allowed Class 3 General Unsecured Claims; provided further, however, that the lapsed distributions from the Settlement Amount may be used to satisfy the Trustee's Expenses pursuant to any budget approved by the Oversight Committee.

7.7 Compliance with Tax Requirements/Allocation

To the extent applicable, the Creditor Trust shall comply with all tax withholding and reporting requirements imposed on it by any governmental unit, and all distributions pursuant to the Plan and the Confirmation Order shall be subject to such withholding and reporting requirements. For tax purposes, distributions received in respect of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Claims, **[*242]** Allowed Class 2a Secured Claims and Allowed Class 3 General Unsecured Claims will be allocated first to the principal amount of such Claims, with any excess allocated to unpaid accrued interest.

7.8 Fractional Dollars; *De Minimis* Distributions

Notwithstanding anything contained herein to the contrary, payments of fractions of dollars will not be made. Whenever any payment of a fraction of a dollar under this Creditor Trust Agreement, the Plan or the Confirmation Order would otherwise be called for, the actual payment made will reflect a rounding of such fraction to the nearest dollar (up or down), with half dollars being rounded down. The Creditor Trustee shall not be required to make any payment of less than Fifty Dollars (\$50) with respect to any Allowed Administrative Claim, Allowed Priority Tax Claim, Allowed Priority Claim, Allowed Class 2a Secured Claim or Allowed Class 3 General Unsecured Claim. To the extent that any interim distribution is not paid to a Beneficiary on

the grounds that it amounts to less than Fifty Dollars (\$50), the amount of such withheld distribution shall be reserved for addition to any future distribution or as the final distribution to such Beneficiary, [*243] and may be made at that time if the total distribution is at least Fifty Dollars (\$50).

7.9 Setoffs

The Creditor Trustee may, pursuant to *sections 502(d) or 553 of the Bankruptcy Code* or applicable non-bankruptcy law, set off against any Allowed Administrative Claim, Allowed Priority Tax Claim, Allowed Priority Claim, Allowed Class 2a Secured Claim or Allowed Class 3 General Unsecured Claim and the distributions to be made pursuant to the Plan and the Confirmation Order on account thereof (before any distribution is made on account of such Claim), the claims, rights and causes of action of any nature that the Creditor Trust may hold against the holder of such Allowed Administrative Claim, Allowed Priority Tax Claim, Allowed Priority Claim, Allowed Class 2a Secured Claim or Allowed Class 3 General Unsecured Claim; provided, however, that neither the failure to effect such a setoff nor the allowance of any Claim shall constitute a waiver or release by the Creditor Trust or the Estates of any such claims, rights and causes of action that they may possess against such holder.

7.10 Preservation of Debtors' Subordination Rights

All subordination rights and claims relating to the subordination [*244] by the Debtors or their Estates of the Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Claims, Allowed Class 2a Secured Claims and Allowed Class 3 General Unsecured Claims of any Creditor shall remain valid and enforceable by the Creditor Trust, unimpaired in accordance with *section 510 of the Bankruptcy Code* or otherwise, and may be asserted by the Creditor Trustee as necessary or appropriate.

7.11 Waiver by Creditors of All Subordination Rights

Except as otherwise ordered by the Bankruptcy Court, each holder of an Allowed Administrative Claim, Allowed Priority Tax Claim, Allowed Priority Claim, Allowed Class 2a Secured Claim or Allowed Class 3 General Unsecured Claim shall be deemed to have waived all contractual, legal and equitable subordination rights that they may have, whether arising under general principles of equitable subordination, *section 510(c) of the Bankruptcy Code* or otherwise, with respect to any and all distributions to be made under the Plan and the Confirmation Order, and all such contractual, legal or

equitable subordination rights that each holder of a Claim has individually and collectively, with respect to any such distribution, made [*245] pursuant to the Plan and the Confirmation Order shall be discharged and terminated, and all actions related to the enforcement of such subordination rights will be permanently enjoined.

ARTICLE VIII

PROCEDURES FOR RESOLUTION OF DISPUTED, CONTINGENT AND UNLIQUIDATED CLAIMS

8.1 Objections to Claims; Prosecution of Disputed Claims

The Creditor Trustee, following consultation with, and subject to the approval of, the Oversight Committee, and on behalf of the Creditor Trust, may file objections to Claims, even if such Claims were scheduled by the Debtors as undisputed, liquidated and non-contingent. The Creditor Trustee shall have the authority to file, settle, compromise or withdraw any objections to Claims without approval of the Bankruptcy Court. The Creditor Trustee shall file objections to Claims no later than 180 days after the Confirmation Date (unless extended by an order of the Bankruptcy Court). Notwithstanding the deadline to file objections to Claims provided in the Plan, the Creditor Trustee may file objections to Claims within ninety (90) days of the filing of an amended Claim.

8.2 Estimation of Claims

The Creditor Trustee, on behalf of the Creditor Trust, may at any time request [*246] that the Bankruptcy Court estimate any contingent or Disputed Claim pursuant to *section 502(c) of the Bankruptcy Code*, regardless of whether the Debtors, the Committee or the Creditor Trustee previously have objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to such Claim, including, without limitation, during the pendency of any appeal relating to any such objection. Subject to the provisions of *section 502(j) of the Bankruptcy Code*, in the event that the Bankruptcy Court estimates any contingent or Disputed Claim, the amount so estimated shall constitute the maximum allowed amount of such Claim. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Creditor Trust may pursue supplementary proceedings to object

to the allowance of such Claim. All of the aforementioned objection, estimation and resolution procedures are intended to be cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by **[*247]** the Bankruptcy Court.

8.3 Disputed Claims

8.3.1 If the Creditor Trustee has objected to a Claim, distributions will be withheld only with respect to the amount actually in dispute, and such objection shall not affect payments or distributions under the Plan on the undisputed portion of the Claim.

8.3.2 The Creditor Trustee shall maintain, in accordance with the Creditor Trustee's powers and responsibilities under the Plan, the Confirmation Order and this Creditor Trust Agreement, a reserve for any distributable amounts required to be set aside on account of Disputed Claims (the "*Disputed Claims Reserve*").

8.3.3 Once a Disputed Claim becomes an Allowed Claim, the Creditor Trustee shall, as soon as practicable following the entry of a Final Order regarding the allowance of such Claim, and to the extent of the allowance of such Claim, distribute to the holder thereof, from the Disputed Claims Reserve, such amount of Creditor Trust Assets as would have been distributed to such holder if the allowed portion of its Claim had been an Allowed Claim on the Confirmation Date, less such holder's share of any taxes paid or payable by the Disputed Claims Reserve. If a Disputed Claim becomes disallowed, **[*248]** in whole or part, the Creditor Trustee shall reallocate the disallowed amount previously set aside in the Disputed Claims Reserve in connection with such Disputed Claim among the Beneficiaries and the Disputed Claims Reserve on behalf of the Disputed Claims not yet resolved, as applicable, all to be distributed pursuant to **Article VII** of this Creditor Trust Agreement.

ARTICLE IX

LIABILITY AND EXCULPATION PROVISIONS

9.1 Standard of Liability.

In no event shall the Creditor Trustee or the Creditor Trust, or their respective Professionals, Non-Professionals or representatives, be held personally liable for any claim asserted against the Creditor Trust or the Creditor Trustee, or any of their Professionals, Non-Professionals or representatives. Specifically, the Creditor Trustee, the Creditor Trust and their respective Professionals, Non-Professionals or representatives shall not be liable for any negligence or any error of judgment made in good faith with respect to any action taken or omitted to be taken in good faith. Notwithstanding the foregoing, the Creditor Trust or the Creditor Trustee, or any of their Professionals, Non-Professionals or representatives may be held personally liable **[*249]** to the extent that the action taken or omitted to be taken by each of the same or their respective Professionals, Non-Professionals or representatives is determined by a Final Order to be solely due to their own respective gross negligence, willful misconduct, fraud or, solely in the case of the Creditor Trustee, breach of fiduciary duty other than negligence. Any act or omission taken with the approval of the Bankruptcy Court will be conclusively deemed not to constitute gross negligence, willful misconduct, fraud or a breach of fiduciary duty.

9.2 Reliance by Creditor Trustee

Except as otherwise provided in **Article III** hereof:

(a) the Creditor Trustee may rely, and shall be protected in acting upon, any resolution, certificate, statement, installment, opinion, report, notice, request, consent, order or other paper or document reasonably believed by him or her to be genuine and to have been signed or presented by the proper party or parties except as otherwise provided in the Plan or the Confirmation Order; and

(b) the Creditor Trustee shall not be liable for any action reasonably taken or not taken by him or her in accordance with the advice of a Professional retained pursuant to **Article [*250] XI**, and persons dealing with the Creditor Trustee shall look only to the Creditor Trust Assets to satisfy any liability incurred by the Creditor Trustee to such person in carrying out the terms of this Creditor Trust Agreement, and the Creditor Trustee shall have no personal obligation to satisfy any such liability, except to the extent that actions taken or not taken after the Confirmation Date by the Creditor Trustee are determined by a Final Order to be solely due to the Creditor Trustee's own gross negligence, willful misconduct, fraud or breach of fiduciary duty, other than negligence.

9.3 Exculpation

9.3.1 From and after the Confirmation Date, the Creditor Trustee and its Professionals, Non-Professionals and representatives shall be and hereby are exculpated by all Persons, including, without limitation, holders of Claims and other parties in interest, from any and all claims, causes of action and other assertions of liability arising out of the discharge of the powers and duties conferred upon said parties pursuant to or in furtherance of this Creditor Trust Agreement, the Plan, the Confirmation Order or any order of the Bankruptcy Court or applicable law or otherwise, except **[*251]** only for actions taken or not taken, from and after the Confirmation Date only to the extent determined by a Final Order to be solely due to their own respective gross negligence, willful misconduct, fraud or, solely in the case of the Creditor Trustee, breach of fiduciary duty, other than negligence.

9.3.2 No holder of a Claim or other party-in-interest will be permitted to pursue any claim or cause of action against the Creditor Trustee or its Professionals, Non-Professionals or representatives for making payments in accordance with the Plan or the Confirmation Order or for implementing the provisions of the Plan or the Confirmation Order. Any act taken or not taken by the Creditor Trustee with the approval of the Bankruptcy Court will be conclusively deemed not to constitute gross negligence, willful misconduct or fraud or, solely in the case of the Creditor Trustee, a breach of fiduciary duty, other than negligence.

9.4 Indemnification

The Creditor Trust shall indemnify, defend and hold harmless the Creditor Trustee and its respective Professionals, Non-Professionals and representatives from and against any and all claims, causes of action, liabilities, obligations, losses, damages **[*252]** or expenses (including reasonable attorneys' fees and expenses) occurring after the Confirmation Date, other than to the extent determined by a Final Order to be solely due to their own respective gross negligence, willful misconduct or fraud or, solely in the case of the Creditor Trustee, breach of fiduciary duty, other than negligence, to the fullest extent permitted by applicable law.

ARTICLE X

ADMINISTRATION

10.1 Purpose of the Creditor Trust

The Creditor Trust shall be established for the primary purpose of liquidating its assets, in accordance with Treas. Reg. § 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Creditor Trust. Accordingly, the Creditor Trust shall, in an expeditious but orderly manner, liquidate and convert to Cash the Creditor Trust Assets, make timely distributions to the Beneficiaries and not unduly prolong the duration of the Creditor Trust.

10.2 Books and Records

10.2.1 Maintenance of Books and Records. The Creditor Trustee shall maintain, with respect to the Creditor Trust and the Beneficiaries, books and records relating **[*253]** to the assets and income of the Creditor Trust and the payment of expenses of and liabilities of, claims against or assumed by, the Creditor Trust in such detail and for such period of time as the Creditor Trustee determines, after consultation with the Oversight Committee, may be necessary to make full and proper accounting in respect thereof in accordance with **Article X** hereof and to comply with applicable provisions of law. Except as otherwise provided herein, in the Plan, or in the Confirmation Order, nothing in this Creditor Trust Agreement requires the Creditor Trust to file any accounting or seek approval of any court with respect to the administration of the Creditor Trust, or as a condition for making any payment or distribution out of the Creditor Trust Assets. Subject to all applicable privileges, the Beneficiaries shall have the right, in addition to any other rights they may have pursuant to this Creditor Trust Agreement, under the Plan and the Confirmation Order, or otherwise, upon thirty (30) days' prior written notice delivered to the Creditor Trustee, to request a reasonable inspection (as determined by the Creditor Trustee, following consultation with the Oversight **[*254]** Committee) of such books and records; provided, however, that, if so requested, such Beneficiary shall: (a) first enter into a confidentiality agreement satisfactory in form and substance to the Creditor Trustee and the Oversight Committee; and (b) make such other reasonable arrangements as requested by the Creditor Trustee and the Oversight Committee.

10.2.2 Consultation. The Creditor Trustee shall consult with the Oversight Committee in good faith regarding all material issues affecting the Creditor Trust, including, without limitation, the resolution of objections to Disputed Claims and the disposition of Creditor Trust Assets, and seek the prior approval (written, as applicable) from the Oversight Committee as may be required by this Creditor Trust Agreement, except to the extent: (a) the Oversight Committee or any individual Oversight Committee Member is encumbered by a conflict of interest that has been disclosed or otherwise becomes known to the Creditor Trustee, in which event the Creditor Trustee shall seek the advice and approval, as may be required, of the Oversight Committee without such Member, except as provided in **Section 5.11** hereof; and (b) the Oversight Committee instructs **[*255]** the Creditor Trustee, in writing, that the Creditor Trustee need not consult it with respect to one or more particular issues. In addition, the Creditor Trustee, at the written request of the Oversight Committee, shall present one or more budgets for the Creditor Trust that set forth expected disbursements for litigation, operations and other purposes.

10.2.3 Quarterly Reports. Within thirty (30) days after the conclusion of every calendar quarter during the term of this Creditor Trust Agreement following the Effective Date, the Creditor Trustee shall provide a Quarterly Report to the Oversight Committee and shall file it with the Bankruptcy Court. The Quarterly Report shall set forth: (a) all distributions to Beneficiaries during the calendar quarter; (b) a summary of the Creditor Trust deposits and disbursements during the calendar quarter; and (c) a summary of the Creditor Trust Assets. In the event the Effective Date of the Plan does not occur, the Creditor Trustee shall have no obligation to prepare and file Quarterly Reports.

10.2.4 Distribution of Reports. Within ten (10) business days after the end of the relevant Quarterly Report preparation period, the Creditor Trustee shall **[*256]** make available any information listed in **Section 10.2.3** above to the Oversight Committee and (if requested) to the U.S. Trustee, and, to the extent required under the Bankruptcy Rules or other local rules, shall file the same with the Bankruptcy Court.

10.2.5 The Creditor Trustee may post any report or records required to be provided under this **Section**

10.2 on a website maintained by the Creditor Trustee in lieu of actual delivery of such reports or records to the Oversight Committee (unless otherwise required by law), subject to the provisions of notice of such website and its purpose to the Oversight Committee.

10.3 Security Interests

The Creditor Trustee, its respective Professionals and Non-Professionals and the U.S. Trustee are hereby granted a first-priority lien on, and security interest in, the Creditor Trust Assets to secure the payment of all amounts owed to, accrued or reserved on account of, to be retained by or otherwise due hereunder to each of the above. The Creditor Trustee shall cause the Creditor Trust to take such actions and execute such documents as the Creditor Trustee, its respective Professionals and Non-Professionals and the U.S. Trustee deem appropriate to perfect **[*257]** the security interests granted hereunder. The Creditor Trustee is authorized to execute and deliver all documents on behalf of the Creditor Trust to accomplish the purposes of this Creditor Trust Agreement, the Plan and the Confirmation Order.

10.4 Compliance with Laws

Any and all distributions of Creditor Trust Assets shall comply with all applicable laws and regulations, including, but not limited to, applicable federal and state tax and securities laws.

ARTICLE XI

PROFESSIONALS AND NON-PROFESSIONALS

11.1 Retention of Professionals and Non-Professionals

11.1.1 Retention of Professionals. Subject to the approval of the Oversight Committee, the Creditor Trustee, upon the later to occur of the Confirmation Date and acceptance by the Creditor Trustee of its appointment in accordance with the Plan and this Creditor Trust Agreement, shall have the right to retain its own professionals without any further approval by any court or otherwise including, without limitation, legal counsel, accountants, experts, advisors, consultants, investigators, appraisers, real estate brokers, auctioneers and other professionals as the Creditor Trustee deems appropriate (collectively, the "*Professionals*"). Such **[*258]** Professionals shall be compensated in

accordance with **Section 11.3** hereof. The Professionals so retained may be "interested" as that term is defined in the Bankruptcy Code and may include, without limitation, counsel and financial advisors of any party in the Cases for efficiency.

11.1.2 Retention of Non-Professionals. Subject to the approval of the Oversight Committee, the Creditor Trustee, upon the later to occur of the Confirmation Date and acceptance by the Creditor Trustee of its appointment in accordance with the Plan and this Creditor Trust Agreement, shall have the right to retain non-professionals without any further approval by any court or otherwise including, without limitation, employees, independent contractors or other agents as the Creditor Trustee deems appropriate (the "*Non-Professionals*"). Such Non-Professionals shall be compensated in accordance with **Section 11.3** hereof. The Non-Professionals so retained may be "interested" as that term is defined in the Bankruptcy Code and may include, without limitation, employees, independent contractors and agents of the Debtors or the Committee.

11.2 Retention of Creditor Trustee's Legal Counsel

The initial Creditor Trustee has **[*259]** chosen to retain Freeborn & Peters LLP as its primary counsel and Frost Brown Todd LLC as its Ohio counsel (together, the "*Initial Professionals*"). Such retention is made pursuant to this **Article XI** without any further approval by any court. The Initial Professionals are Professionals as that term is used herein, and shall be compensated in accordance with **Section 11.3** hereof.

11.3 Compensation of Professionals and Non-Professionals

Each Professional and Non-Professional shall submit monthly invoices to the Creditor Trustee for its fees and expenses incurred in connection with services requested by, and provided to, the Creditor Trustee. The Creditor Trustee may pay the reasonable fees and expenses of such Professionals and Non-Professionals as an expense of the Creditor Trust without application to the Bankruptcy Court, subject to the following procedure: Each Professional and Non-Professional shall serve its fee invoice (which shall contain detailed time entries) upon the Creditor Trustee no more frequently than once a month. The Creditor Trustee shall have until fourteen (14) days after its receipt of an invoice (the "*Objection Deadline*") to review such invoice

and deliver to the **[*260]** applicable Professional or Non-Professional, any objections thereto. Any objection to an invoice (each an "*Objection*") must: (a) be in writing; and (b) set forth the precise nature of the Objection and the amount of objectionable fees and expenses at issue. If no Objection is timely filed, served and received in respect of an invoice, then the Professional or Non-Professional shall be entitled to payment from the Creditor Trust on such invoice. If a timely Objection is filed, the Professional or Non-Professional shall be entitled to payment from the Creditor Trust of only that portion of the invoice that is not the subject of the Objection, and the Creditor Trustee and the affected Professional or Non-Professional may attempt to resolve on a consensual basis that portion of the invoice that is the subject of the Objection. If the parties are unable to reach a resolution of the Objection, the affected Professional or Non-Professional may file a request for payment of the disputed amount with the Bankruptcy Court and serve such request on the Creditor Trustee on regular notice, and the Creditor Trustee or the affected Professional or Non-Professional may request, by motion, that the **[*261]** Bankruptcy Court adjudicate and rule on the Objection.

ARTICLE XII

TAXES

12.1 Tax Returns and Payments

The Creditor Trustee will be responsible for: (a) the preparation and timely filing of all required federal, state and local tax returns for the Creditor Trust and the Debtors; (b) the timely payment of any taxes shown on such returns as owing by the Creditor Trust or the Debtor's (as applicable) from the applicable Creditor Trust Assets; and (c) the preparation and timely distribution to the Beneficiaries of any necessary federal, state or local information returns. The Creditor Trustee will retain all tax returns and supporting documentation until the expiration of the applicable statute of limitations. The Creditor Trustee may request an expedited determination of the taxes owed by the Debtors, the Creditor Trust or any Disputed Claims Reserve under [section 505\(b\) of the Bankruptcy Code](#) for any tax return for which such determination may be requested.

12.2 Creditor Trust

The Creditor Trustee will file tax returns pursuant to [Treas. Reg. § 1.671-4\(a\)](#) on the basis that the Creditor Trust is a grantor trust that is a "liquidating trust" within the meaning of [Treas. Reg. § 301.7701-4\(d\)](#) **[*262]** and related regulations. Pursuant to such provisions, for federal income tax purposes, the Creditor Trustee will allocate to the Beneficiaries their applicable shares of any income or loss of the Creditor Trust Assets, and such Beneficiaries will be subject to tax on the Creditor Trust Assets' taxable income on a current basis. As soon as reasonably practicable after the close of each calendar year, the Creditor Trustee will send each affected Beneficiary a statement setting forth such Beneficiary's share of the Creditor Trust's income, gain, deduction, loss and credit for the year and will instruct the Beneficiary to report all such items on his, her or its tax return for such year and pay any tax due with respect thereto.

12.3 Disputed Claims Reserve

The Creditor Trustee will file all applicable tax and other returns and statements for the Disputed Claims Reserve in accordance with the requirements for discrete trusts taxed pursuant to [section 641, et seq. of the Internal Revenue Code](#) or as "disputed ownership funds" within the meaning of [Treas. Reg. § 1.468B-9\(b\)\(1\)](#), as applicable. In addition, the Creditor Trustee will pay from the applicable Creditor Trust Assets on a current basis **[*263]** any taxes owed on any net income or gain of such Disputed Claims Reserve.

12.4 Tax Withholding and Reporting; Liability for Taxes

The Creditor Trustee (and its designees) will comply with all applicable tax withholding and reporting requirements imposed on it or on the Creditor Trust by any governmental unit, and all distributions pursuant to the Plan will be subject to applicable withholding and reporting requirements. The Creditor Trustee (and its designees) will be authorized to take any actions that may be necessary or appropriate to comply with such tax withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes or establishing any other mechanism the Creditor Trustee believes is reasonable and appropriate following consultation with the Oversight Committee, including requiring holder's of Claims to submit appropriate tax and withholding certifications. To the extent any Claim holder fails to submit appropriate tax and withholding certifications as required by the Creditor Trustee, such Claim holder's distribution may, in the Creditor Trustee's reasonable discretion,

[*264] be deemed undeliverable and be subject to the provisions of the Plan and this Creditor Trust Agreement with respect to undeliverable distributions. Each Person or entity receiving (or deemed to receive) a distribution pursuant to the Plan will have sole responsibility for the payment of any taxes imposed on it.

ARTICLE XIII

TERMINATION OF THE CREDITOR TRUST

13.1 Duration and Extension

The Creditor Trust will terminate no later than the fifth (5th) anniversary of the Confirmation Date; provided, however, that on or prior to the date six (6) months prior to such termination, the Bankruptcy Court, upon motion by a party in interest, may extend the term of the Creditor Trust for a finite period if it is necessary to the liquidating purpose thereof. Multiple extensions may be obtained so long as Bankruptcy Court approval is obtained at least six (6) months prior to the expiration of such extended term; provided, however, that prior to requesting any such extension, the Creditor Trustee must receive an opinion of counsel or a favorable ruling from the IRS that any further extension would not adversely affect the status of the trust as a grantor trust for federal income tax purposes.

13.2 Termination **[*265]** Upon Distribution of All Creditor Trust Assets

The Creditor Trust will terminate and the Creditor Trustee will have no additional responsibility in connection therewith except as may be required to effectuate such termination under relevant law and except as described in **Section 13.4** hereof, upon the latest of: (a) the payment of all costs, expenses and obligations incurred in connection with administering the Creditor Trust; (b) the distribution of all remaining Creditor Trust Assets; (c) the closure or dismissal of the Cases; and (d) the completion of any necessary or appropriate reports, tax returns or other documentation determined by the Creditor Trustee, in its reasonable discretion, to be necessary, appropriate or desirable, in each case pursuant to and in accordance with the Plan, the Confirmation Order and this Creditor Trust Agreement.

13.3 Diligent Administration

The Creditor Trustee shall: (a) not unduly prolong the duration of the Creditor Trust; (b) at all times endeavor

to resolve, settle or otherwise dispose of all claims that constitute Creditor Trust Assets; (c) effect the distribution of the Creditor Trust Assets to the Beneficiaries in accordance with the terms hereof; [*266] and (d) endeavor to terminate the Creditor Trust as soon as practicable and without derogating from the Plan or this Creditor Trust Agreement. Prior to and upon termination of the Creditor Trust, the Creditor Trustee shall distribute the Creditor Trust Assets to the Beneficiaries in accordance with their distribution rights under the Plan and the Confirmation Order, subject to the provisions set forth herein. If any distributions of the Creditor Trust are not duly claimed, the Creditor Trustee shall dispose of all such distributions in accordance with the Plan, the Confirmation Order and this Creditor Trust Agreement.

13.4 Other Termination Procedures

Upon termination of this Creditor Trust, the Creditor Trustee will file a written notice with the Bankruptcy Court disclosing the Creditor Trust's termination. Notwithstanding the foregoing, after the termination of the Creditor Trust, the Creditor Trustee will have the power to exercise all the rights, powers and privileges herein conferred solely for the purpose of liquidating and winding up the affairs of the Creditor Trust. Except as otherwise provided under the Plan or this Creditor Trust Agreement, for a period of five (5) years after [*267] the distribution of all of the Creditor Trust Assets, the Creditor Trustee will retain the books, records and files that have been delivered to or created by the Creditor Trustee, at which time the Creditor Trustee may dispose of such books, records and files in any manner that the Creditor Trustee deems appropriate. Except as otherwise specifically provided herein, after termination of this Creditor Trust Agreement, the Creditor Trustee shall have no further duties or obligations hereunder.

ARTICLE XIV

MISCELLANEOUS PROVISIONS

14.1 Intention of Parties to Establish a Grantor Trust

This Creditor Trust Agreement is intended to create a grantor trust for United States federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as a grantor trust.

14.2 Preservation of Privilege

In connection with the rights, claims and Causes of Action that constitute the Creditor Trust Assets, any attorney-client privilege, work-product privilege or other privilege or immunity attaching to any documents or communications (whether written or oral) transferred to the Creditor Trust shall vest in the Creditor Trust and its representatives, and the Debtors and [*268] the Committee, on the one hand, and the Creditor Trustee, on the other hand, are authorized to take all necessary actions to effectuate the transfer of such privileges. For the avoidance of doubt, neither the Creditor Trustee nor the Creditor Trust shall be treated as a successor to the Debtor's or their Estates for any purpose.

14.3 Cooperation

The Debtors shall provide the Creditor Trustee with access to or copies of such of its books and records as the Creditor Trustee shall reasonably require for the purpose of performing its duties and exercising its powers under this Creditor Trust Agreement, the Plan or the Confirmation Order. All third parties in possession of the Debtors' books and records shall provide the Creditor Trustee with similar cooperation, and the Creditor Trustee shall have the right to seek appropriate relief from the Bankruptcy Court to the extent that a third party unreasonably refuses to cooperate with the Creditor Trustee's requests.

14.4 Payment of Statutory Fees

Following the transfer of all Creditor Trust Assets to the Creditor Trust on and after the Confirmation Date and through the date that a final decree is entered in the Cases, the Creditor Trust shall [*269] be obligated to pay any U.S. Trustee fees pursuant to [28 U.S.C. § 1930\(a\)\(6\)](#) on account of each Estate. For the purpose of payment of such U.S. Trustee fees, the SII Estate shall be treated as the only Estate from which Creditor Trust Assets are to be distributed under the Plan and under this Creditor Trust Agreement. Although the Creditor Trust may pay U.S. Trustee fees on account of each of the other Estates, such fees will be calculated based upon there having been no distributions by such Estates.

14.5 Prevailing Party

In the event of a dispute regarding the provisions of this Creditor Trust Agreement or the enforcement thereof, the prevailing party shall be entitled to collect any and all costs, expenses and fees, including attorneys' fees, from the non-prevailing party incurred in connection with such dispute or enforcement action.

14.6 Implied Authority of the Creditor Trustee

No person dealing with the Creditor Trust shall be obligated to inquire into the authority of the Creditor Trustee in connection with the protection, conservation or disposition of Creditor Trust Assets.

14.7 Confidentiality

The Creditor Trustee, its employees, Professionals and Non-Professionals, and each Member **[*270]** of the Oversight Committee (each a "*Confidential Party*" and collectively the "*Confidential Parties*") shall hold strictly confidential and not use for personal gain any material, non-public information of which they have become aware in their capacity as a Confidential Party, of or pertaining to any entity to which any of the Creditor Trust Assets relate; provided, however, that such information may be disclosed if: (a) it is now or in the future becomes generally available to the public other than as a result of a disclosure by the Confidential Parties; (b) was available to the Confidential Parties on a non-confidential basis prior to its disclosure to the Confidential Parties pursuant to this Creditor Trust Agreement; (c) becomes available to the Confidential Parties on a non-confidential basis from a source other than their work in connection with the Debtors or the Creditor Trust, provided that the source is not also bound by a confidentiality agreement with the Debtors or the Creditor Trust; or (d) such disclosure is required of the Confidential Parties pursuant to legal process including but not limited to subpoena or other court order or other applicable laws or regulations. **[*271]** In the event that any Confidential Party is requested to divulge confidential information pursuant to subparagraph (d), such Confidential Party shall promptly, in advance of making such disclosure, provide reasonable notice of such required disclosure to the Creditor Trustee to allow the Creditor Trustee sufficient time to object to or prevent such disclosure through judicial or other means and shall cooperate reasonably with the Creditor Trustee in making any such objection, including, but not limited to, appearing in any judicial or administrative proceeding in support of the Creditor Trustee's objection to such disclosure.

14.8 Governing Law; Submission to Jurisdiction; Service of Process

14.8.1 Bankruptcy Court Jurisdiction. This Creditor Trust Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to rules governing the conflict of law. The Bankruptcy Court will have

exclusive jurisdiction over any dispute arising out of or in connection with the transactions contemplated by this Creditor Trust Agreement. The parties to this Creditor Trust Agreement consent to the exclusive jurisdiction of the Bankruptcy Court (and of **[*272]** the appropriate appellate courts therefrom) and irrevocably waive, to the fullest extent permitted by law, any objection that they may now or hereafter have to the laying of the venue of any such dispute in the Bankruptcy Court or that any such dispute brought in the Bankruptcy Court has been brought in an inconvenient forum. This Creditor Trust Agreement is subject to any order or act of the Bankruptcy Court applicable hereto. Process may be served on any party anywhere in the world, whether within or without the jurisdiction of the Bankruptcy Court. Without limiting the foregoing, each party to this Creditor Trust Agreement agrees that service of process on that party may be made upon the designated Person or entity at the address provided in **Section 14.10** hereof and will be deemed to be effective service of process on that party.

14.8.2 Jurisdiction of the Common Pleas Courts of Cuyahoga County, Ohio. In the event of a dismissal of the SII Case pursuant to **Section 7.1.9** of this Creditor Trust Agreement, the parties to this Creditor Trust Agreement consent to the jurisdiction of the Common Pleas Courts of Cuyahoga County, Ohio with respect to all matters related to the liquidation **[*273]** of the Creditor Trust Assets and distribution of the Net Proceeds, except for those matters for which the Bankruptcy Court shall retain jurisdiction pursuant to **Section 7.1.9**.

14.9 Severability

If any provision of this Creditor Trust Agreement or the application thereof to any Person or circumstance shall be finally determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Creditor Trust Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

14.10 Notices

Any notice or other communication hereunder shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if delivered via personal delivery,

first-class mail (unless registered or certified mail is required), facsimile or electronic mail to the addresses as set forth below, or such other addresses as may be filed with the Bankruptcy Court:

Creditor Trustee:

John B. Pidcock
c/o Conway MacKenzie, Inc.
109 North Main Street
500 Performance Place
Dayton, Ohio 45402

Telephone: [*274] 513-235-0164
Facsimile: 513-672-2175
E-Mail: jpidcock@c-m-d.com

with a copy to:

Aaron L. Hammer, Esq.
Freeborn & Peters LLP
311 South Wacker Drive, Suite 3000
Chicago, Illinois 60606
Telephone: 312-360-6000
Facsimile: 312-360-6520
E-Mail: ahammer@freebornpeters.com

and:

Douglas L. Lutz, Esq.
Frost Brown Todd LLC
2200 PNC Center
201 East Fifth Street
Cincinnati, Ohio 45202-4182
Telephone: 513-651-6724
Facsimile: 513-651-6981
E-Mail: dlutz@fbtlaw.com

Debtors:

Laurence V. Goddard
The Parkland Group Inc.
One Cleveland Center
1375 East 9th Street, Suite 1350
Cleveland, Ohio 44114
Telephone: 216-621-1985
Facsimile: 216-621-1894
E-Mail: lgoddard@parkland.com

with a copy to:

Lawrence E. Oscar, Esq.
Hahn Loeser & Parks LLP
200 Public Square, Suite 2800
Cleveland, Ohio 44114
Telephone: 216-621-0150
Facsimile: 216-241-2824
E-Mail: leoscar@hahnlaw.com

Oversight Committee:

Cemex Inc.

Attn: Thomas Shimko
2600 Paramount Place, Suite 450
Fairborn, Ohio 45324
Telephone: 937-306-4126
Facsimile: 937-306-4128
E-Mail: thomas.shimko@cemex.com

St. Marys Cement

Attn: Paul J. Lemanski
9333 Dearborn Street
Detroit, Michigan 48209
Telephone: 313-849-4588
Facsimile: 313-849-4555
E-Mail: pjlemanski@vcsmc.com
David A. Schwab

Notice to be provided to the Creditor
[*275] Trustee

14.11 Notices if to a Beneficiary

Any notice or other communication hereunder shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if deposited, postage prepaid, in a post office or letter box addressed to the person for whom such notice is intended to the name and address set forth on the Claims List.

14.12 Headings

The Article and Section headings contained in the Creditor Trust Agreement are solely for the convenience of reference and shall not affect the meaning or interpretation of this Creditor Trust Agreement or of any term or provision thereof.

14.13 Counterparts and Facsimile Signatures

This Creditor Trust Agreement may be executed in counterparts and a facsimile or other electronic form of signature shall be of the same force and effect as an original.

14.14 Amendment or Waiver

Any substantive provision of this Creditor Trust Agreement may be materially amended or waived by the Creditor Trustee, subject to the prior approval of a two-thirds vote of the Members of the Oversight Committee, with the approval of the Bankruptcy Court upon notice and an opportunity for a hearing; provided, however, that no change may be made to this Creditor [*276] Trust Agreement that would adversely affect the federal income tax status of the Creditor Trust as a "grantor trust," if applicable. Technical or non-material amendments to or waivers of portions of this Agreement may be made by the Creditor Trustee without the

approval of the Bankruptcy Court, as necessary, to clarify this Creditor Trust Agreement or to enable the Creditor Trust to effectuate the terms of this Creditor Trust Agreement; provided, however, that such amendments are subject to the prior approval of a two-thirds vote of the Members of the Oversight Committee.

14.15 Intervention

On the Confirmation Date, and without requirement of obtaining any order of the Bankruptcy Court, the Creditor Trustee shall be deemed to have intervened or substituted as plaintiff, moving, defendant or additional party, as appropriate, in any adversary proceeding, contested matter, Claim objection or other motion that was filed prior to the Confirmation Date, where the subject matter of such action involves any Disputed Claim, any Creditor Trust Asset or any Claim, to the extent such Claim impacts the Creditor Trust Assets.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the Parties hereto **[*277]** have either executed and acknowledged this Creditor Trust Agreement, or caused it to be executed and acknowledged on their behalf by their duly authorized officers all as of the date first above written.

CREDITOR TRUSTEE

By: _____

John B. Pidcock, not individually, but solely as trustee of the Creditor Trust

SCHWAB INDUSTRIES, INC.

By: _____

Laurence V. Goddard, Chief Restructuring Officer

OFFICIAL COMMITTEE OF UNSECURED CREDITORS

By: _____

National Lime & Stone Co., Committee Chair

Table1 ([Return to related document text](#))

[ILLEGIBLE TEXT]	TOTAL [ILLEGIBLE TEXT]
[ILLEGIBLE TEXT]	35, 133.72
Agreed Administrative Claims	35, 176.72
State Unemployment(SII, TCC, MSC, QBS)	5, 176.42
Federal Unemployment(SII, TCC, MSC, QBS)	2, 527.59
State Unemployment(SRM)	881.86
Federal Unemployment(SRM)	[ILLEGIBLE TEXT]
Approve & Filed [ILLEGIBLE TEXT]	[ILLEGIBLE TEXT]
Approve & Filed Post AP	[ILLEGIBLE TEXT]
Post petition Healthcare Expense Claims	[ILLEGIBLE TEXT]
Hospitalization and Drug Coverage run out (estimated)	[ILLEGIBLE TEXT]
PBGC Administrative Claim	[ILLEGIBLE TEXT]
Reinburse OC for MCC [ILLEGIBLE TEXT]	[ILLEGIBLE TEXT]
Sales Tax (MSC, QBS, TCC)	[ILLEGIBLE TEXT]
Sales Tax(SRM)	[ILLEGIBLE TEXT]
Sales Tax(ECC)	[ILLEGIBLE TEXT]
Ohio Bureu of Worckers Compensation admin fee and prior to [ILLEGIBLE TEXT]	[ILLEGIBLE TEXT]
US Trustee Fees 2nd qtr 2010	[ILLEGIBLE TEXT]
US Trustee Fees 3rd qtr 2010	[ILLEGIBLE TEXT]
[ILLEGIBLE TEXT]	[ILLEGIBLE TEXT]
Ohio Workers Camp Claims	[ILLEGIBLE TEXT]
[ILLEGIBLE TEXT]	[ILLEGIBLE TEXT]
[ILLEGIBLE TEXT]	[ILLEGIBLE TEXT]
[ILLEGIBLE TEXT]	[ILLEGIBLE TEXT]
[ILLEGIBLE TEXT]	[ILLEGIBLE TEXT]
Total Administrative Claims	[ILLEGIBLE TEXT]

Table1 ([Return to related document text](#))**Table2** ([Return to related document text](#))**Input:**

Document 1 ID	interwovenSite://FPDMS/DMSDB1/2160413/4
Description	#2160413v4<DMSDB1> - Schwab Joint Liquidation Plan (changes since Oct. 12, 2010 filing)
Document 2 ID	interwovenSite://FPDMS/DMSDB1/2191858/2
Description	#2191858v2<DySDB1> - Schwab Joint Liquidation Plan (changes since Oct. 26, 2010 filing)
Rendering set	Standard

Table2 ([Return to related document text](#))**Table3** ([Return to related document text](#))**Legend**

Insertion
Deletion
Moved from
Moved to
Style change

Legend

Format change
Moved deletion
Inserted cell
Deleted cell
Moved cell
Split/Merged cell
Padding cell

Statistics:

	Count
Insertions	42
Deletions	52
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	98

Table3 ([Return to related document text](#))

End of Document