

LIQUIDATING TRUST AGREEMENT

This Liquidating Trust Agreement (the “Agreement”), dated as of May 21, 2014, by and among KGen Power Corporation, a Delaware corporation (the “Company”), Daniel T. Hudson, W. Kevin Redmond and Thomas B. White (each a “Trustee” and collectively, the “Trustees”), executed in connection with the Plan (as defined below).

W I T N E S S E T H

WHEREAS, the Company’s Board of Directors (the “Board”) adopted a Plan of Dissolution on January 3, 2013 (as amended, modified and supplemented from time to time, the “Plan”);

WHEREAS, the stockholders of the Company approved the voluntary dissolution of the Company (the “Dissolution”) pursuant to the Plan;

WHEREAS, the Liquidating Trust (as hereinafter defined) is created pursuant to, and to effectuate certain provisions of, the Plan and to hold the Liquidating Trust Assets (as hereinafter defined) until such time as such assets may be distributed in accordance with the terms of this Agreement;

WHEREAS, the Liquidating Trust is intended to qualify as a liquidating trust within the meaning of Treasury Regulations Section 301.7701-4(d); and

WHEREAS, the Liquidating Trust is established for the sole purpose of liquidating its assets for the benefit of the Beneficiaries, in accordance with Treasury Regulations Section 301.7701-4(d), with no objective or authority to continue or engage in the conduct of a trade or business.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein and in the Plan, the Company and the Trustees agree as follows:

ARTICLE 1

NAME AND DEFINITIONS

1.1. Name. The trust shall be known as the “KGen Power Liquidating Trust” (the “Liquidating Trust”).

1.2. Defined Terms. For all purposes of this Agreement, the following terms shall have the following meanings:

“Beneficiary” shall mean, initially, each Initial Beneficiary and, thereafter, each Initial Beneficiary who holds a Liquidating Trust Interest and each transferee of a Liquidating Trust Interest transferred pursuant to and in accordance with the terms and conditions of this Agreement.

“Board” has the meaning set forth in the Recitals.

“Business Day” shall mean any day other than a Saturday, Sunday or day on which banks are closed in New York, New York.

“Code” shall mean the United States Internal Revenue Code of 1986, as amended from time to time.

“Company” has the meaning set forth in the Preamble.

“Contingency Reserve” has the meaning set forth in Section 6.1.

“Dissolution” has the meaning set forth in the Recitals.

“Dissolution Date” shall mean the effective date of the Dissolution.

“Indemnified Person” and “Indemnified Persons” shall have the meanings set forth in Section 9.2.

“Initial Beneficiaries” has the meaning set forth in Section 3.1(a).

“Liabilities” shall mean all of the Company’s unsatisfied debts, claims, liabilities, commitments, suits and other obligations, whether known or unknown, contingent or fixed or otherwise (including, without limitation, any costs and expenses incurred or to be incurred in connection with the dissolution, winding-up and liquidation of the Company).

“Liquidating Trust” has the meaning set forth in Section 1.1.

“Liquidating Trust Assets” shall mean all the rights, assets and property held from time to time by the Trustees under this Agreement, which initially shall consist of the Transferred Assets, and in addition, shall thereafter include all dividends, distributions, rents, royalties, income, payments and recoveries of claims, proceeds and other receipts of, from, or attributable to any rights, assets or property held by the Liquidating Trust, less any of the foregoing utilized by the Trustees to pay expenses of the Liquidating Trust, satisfy Liabilities or to make distributions to the Beneficiaries pursuant to the terms and conditions hereof.

“Liquidating Trust Interest” shall mean, as to each Beneficiary, the proportionate undivided share of the Liquidating Trust Assets allocated to such Beneficiary, initially determined by the ratio of the aggregate number of Units assigned to the a Beneficiary divided by the total number of Units assigned in the aggregate to all Beneficiaries.

“Person” shall mean an individual, a corporation, a partnership, an association, a joint stock company, a limited liability company, a trust, a joint venture, any unincorporated organization, or a government or political subdivision thereof.

“Plan” has the meaning set forth in the Recitals.

“Shares” shall mean the shares of common stock, par value \$0.01 per share, of the Company.

“Stockholders” shall mean the holders of record of the outstanding Shares as of the close of business on the Transfer Time.

“Stockholder List” has the meaning set forth in Section 3.1(a).

“Transfer Date” shall mean the Dissolution Date (or such later date as shall be determined by the Board).

“Transfer Time” shall mean 6:00 P.M., Eastern Time, on the Transfer Date (or such other time on the Transfer Date as shall be determined by the Board).

“Transferred Assets” shall mean all of the Company’s rights, assets and properties as of the Transfer Time, including any accounts receivable, cash, securities, claims, causes of action, contingent claims and reserves.

“Treasury Regulations” means the regulations, including temporary regulations, promulgated under the Code, as such regulations are amended from time to time.

“Trustee” has the meaning set forth in the Preamble.

“Units” has the meaning set forth in Section 3.1(a).

ARTICLE 2

ESTABLISHMENT OF THE LIQUIDATING TRUST

2.1. Establishment of Liquidating Trust. Pursuant to the Plan, the Company and the Trustees hereby establish the Liquidating Trust on behalf of the Beneficiaries. The Trustees agree to accept and hold the Liquidating Trust Assets in trust for the Beneficiaries subject to the terms of this Agreement.

2.2. Purpose of the Liquidating Trust.

(a) It is expected that the Company shall dissolve and liquidate prior to fully winding up its affairs. The Liquidating Trust hereby is organized for the sole purpose of winding up the affairs of the Company as promptly as reasonably possible and with no objective to continue or engage in the conduct of a trade or business.

(b) The Transferred Assets to be transferred, assigned and delivered to the Trustees as of the Transfer Time will be held in the Liquidating Trust, and the Trustees will:

- (i) further liquidate the Liquidating Trust Assets as the Trustees deem necessary to carry out the purpose of the Liquidating Trust and facilitate distribution of the Liquidating Trust Assets;
- (ii) allocate, protect, conserve and manage the Liquidating Trust Assets in accordance with the

terms and conditions hereof; and (iii) distribute the Liquidating Trust Assets in accordance with the terms and conditions hereof.

(c) It is intended that the transfer, assignment and delivery of the Transferred Assets by the Company to the Trustees pursuant to the terms hereof shall be treated for federal and state income tax purposes as if the Company made such distributions directly to the Beneficiaries and the Beneficiaries transferred the Transferred Assets to the Liquidating Trust in exchange for Liquidating Trust Interests for the benefit of such Beneficiaries in accordance with the Plan. It is further intended that for federal, state and local income tax purposes the Liquidating Trust shall be treated as a liquidating trust under Treasury Regulation Section 301.7701-4(d) and any analogous provision of state or local law, and the Beneficiaries shall be treated as the owners of their respective share of the Liquidating Trust pursuant to Sections 671 through 679 of the Code and any analogous provision of state or local law and shall be taxed on their respective share of the Liquidating Trust's taxable income (including both ordinary income and capital gains) pursuant to Section 671 of the Code and any analogous provision of state or local law.

2.3. Transfer of Assets and Rights to the Trustees.

(a) As of the Transfer Time, the Company hereby transfers, assigns, and delivers to the Trustees to be held in the Liquidating Trust, (i) all of its legal and beneficial right, title, interest in, to and under, the Transferred Assets, for the uses and purposes stated herein, subject to the terms and provisions set out below, and the Trustees hereby accepts such Transferred Assets, subject to the terms and conditions hereof, (ii) all of its rights with respect to the Transferred Assets including attorney-client privilege and work product, and hereby waive its right and the right of any legal, financial or other advisors to assert such rights as a defense or otherwise, and the Trustees hereby accept such Transferred Assets, subject to the terms and conditions in this Agreement.

(b) At any time and from time to time on and after the date hereof, the Company agrees (i) at the reasonable request of the Trustees to execute and deliver any instruments, documents, books, and records (including those maintained in electronic format and original documents as may be needed), and (ii) to take, or cause to be taken, all such further action as the Trustees may reasonably request in order to evidence or effectuate the transfer of the Transferred Assets to the Trustees to be held in the Liquidating Trust and consummation of the transactions contemplated hereby and by the Plan and to otherwise carry out the intent of the parties hereunder and under the Plan.

(c) Notwithstanding anything to the contrary contained in this Agreement, to the extent that the transfer, assignment or delivery or attempted transfer, assignment or delivery to the Trustees of any right or asset that is a Transferred Asset is prohibited by any applicable law, rule or regulation or would require any governmental or third party authorizations, approvals, consents or waivers, and such authorizations, approvals, consents or waivers shall not have been obtained prior to the Transfer Time, the transfer, assignment and delivery of the Transferred Assets shall proceed without the transfer, assignment or delivery of such right or asset

and following the Transfer Time, the Company and the Trustees shall use their reasonable best efforts, and cooperate with each other, to promptly obtain such authorizations, approvals, consents or waivers, to the extent that the Trustees determine in their reasonable judgement that seeking and obtaining such authorizations, approvals, consents or waivers is practicable. Pending, or in the absence of, such authorization, approval, consent or waiver, the Company and the Trustees shall cooperate with each other in any mutually agreeable, reasonable and lawful arrangements designed to provide to the Trustees the benefits of such right or asset. If authorization, approval, consent or waiver for the transfer, assignment or delivery of any such asset not transferred, assigned, or delivered at the Transfer Time is obtained, the Company shall transfer, assign and deliver such right or asset to the Trustees at no cost. To the extent that any such right or asset is not transferred or the full benefits of such right and asset cannot be provided to the Trustees following the Transfer Time pursuant to this Section 2.3(c), then the Company shall remit to the Trustees upon receipt thereof, all income, proceeds and other monies received by the Company in connection with, or in respect of, such right or asset.

2.4. Title to Liquidating Trust Assets.

(a) The transfer of the Transferred Assets to the Trustees to be held in the Liquidating Trust shall be made by the Company for the benefit and on behalf of the Beneficiaries. In this regard, the Transferred Assets will be treated for tax purposes as being transferred by the Company to the Beneficiaries, and then by such holders to the Liquidating Trust in exchange for Liquidating Trust Interests for the benefit of such Beneficiaries in accordance with the Plan. Upon the transfer of the Transferred Assets, the Trustees shall succeed to all of the Company' right, title and interest in the Transferred Assets and the Company will have no further interest in or with respect to the Transferred Assets or the Liquidating Trust Assets or this Liquidating Trust.

(b) For all federal income tax purposes, all parties (including, without limitation, the Company, the Trustees, and the Beneficiaries) shall treat the transfer of Transferred Assets to, and the assumption of the Liabilities by, the Liquidating Trust, as set forth in Section 2.2(c), this Section 2.4, and Section 2.5 and in accordance with the Plan, as a transfer to the Beneficiaries, followed by a transfer by such Beneficiaries to the Liquidating Trust, and the Beneficiaries of this Liquidating Trust shall be treated as the grantors and owners hereof.

2.5. Assumption of Liabilities. As of the Transfer Time, the Trustees, in their capacity as Trustees of the Liquidating Trust and not in their individual capacity, hereby assume all Liabilities and agree thereafter to cause the Liquidating Trust to pay, discharge and perform when due all of the Liabilities. Should any Liability be asserted against the Trustees as the transferee of the Transferred Assets or as a result of the assumption made in this Section 2.5, the Trustees may use such part of the Liquidating Trust Assets as may be necessary in contesting any such Liability or in payment thereof, but in no event shall any Trustee, Beneficiary or employee or agent of the Liquidating Trust or any of its subsidiaries be personally liable, nor shall resort be had to the private property of such Persons, in the event that the Liquidating Trust Assets are not sufficient to satisfy the Liabilities.

2.6. No Reversion to the Company. In no event shall any part of the Transferred Assets or other Liquidating Trust Assets revert to or be distributed to the Company.

2.7. Instruments of Further Assurance. Such Persons as shall have the right and power to so act, shall, upon reasonable request of the Trustees, execute, acknowledge, and deliver such further instruments and do such further acts as may be necessary or proper to carry out effectively the purposes of this Agreement, to confirm or effectuate the transfer to the Trustees of any property intended to be covered hereby, and to vest in the Trustees and their successors and assigns, the estate, powers, instruments or funds in trust hereunder.

2.8. Governance of the Liquidating Trust. The Liquidating Trust shall be governed by the Trustees. The Trustees' powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purposes of this Agreement and the Liquidating Trust and not otherwise.

2.9. Funding of the Liquidating Trust. The Trustees may from time to time make withdrawals from the Liquidating Trust Assets in amounts and at times that the Trustees, in their sole discretion, deem necessary or appropriate to fund any and all costs and expenses that the Trustees and the Liquidating Trust incur subsequent to the Transfer Time in accordance with this Agreement and the Plan.

ARTICLE 3

LIQUIDATING TRUST BENEFICIARIES

3.1. Identification of Beneficiaries.

(a) The initial Beneficiaries (the "Initial Beneficiaries") of the Liquidating Trust shall be determined by the Trustees in accordance with a certified copy of the Company's stockholders as of the close of business on the Transfer Date (the "Stockholder List"). The Company will cause its transfer agent to deliver a certified copy of the Stockholder List to the Trustees promptly after the close of business on the Transfer Date. If any of the Company's stockholders are unlocated, the Company will provide due notice to such stockholders in accordance with Delaware law. For ease of administration, the Trustees shall express the Liquidating Trust Interest of each Beneficiary in terms of units ("Units"). Each Initial Beneficiary shall be allocated one Unit for each Share owned by it as of the Transfer Time in its capacity as a Stockholder.

(b) The rights of the Beneficiaries in, to and under the Liquidating Trust Assets and the Liquidating Trust shall not be represented by any form of certificate or other instrument, and no Beneficiary shall be entitled to any certificate. The Trustees shall maintain or cause to be maintained a record of the name and address of each Beneficiary as well as the aggregate number of Units held by, and Liquidating Trust Interest of, each Beneficiary. All references in this Agreement to the Beneficiaries or the holders of Liquidating Trust Interests shall be read to mean holders of record of Units as set forth in the official register maintained by

the Trustees and shall not mean any beneficial owner not recorded on such official register. Unless expressly provided herein, the Trustees may establish a record date that it deems practicable for determining the Beneficiaries from time to time for any purpose.

3.2. Limitation on Transfer of Liquidating Trust Interests. The Liquidating Trust Interests shall not be transferable, provided, that the Liquidating Trust Interests shall be assignable or transferable by will, intestate succession, or operation of law and that the executor or administrator of the estate of a holder of a Liquidating Trust Interest may mortgage, pledge, grant a security interest in, hypothecate or otherwise encumber, the Liquidating Trust Interests held by the estate of such holder if (i) such transaction does not constitute a sale, exchange, or disposition for federal income tax purposes, and (ii) necessary in order to borrow money to pay estate, succession or inheritance taxes or the expenses of administering the estate of the holder, upon written notice to, and written consent of, the Trustees, which consent may not be unreasonably withheld. For all federal income tax purposes, any assignee or transferee that receives a Liquidating Trust Interest in compliance with the foregoing provisions of this Section 3.2 shall be treated as a grantor and owner of the Liquidating Trust pursuant to Treasury Regulation Section 1.671-2(c)(3).

3.3. Conflicting Claims. If any conflicting claims or demands are made or asserted with respect to certain Liquidating Trust Interests, or if there is any disagreement between the transferees, assignees, heirs, representatives or legatees succeeding to all or part of the Liquidating Trust Interests of any Beneficiary resulting in adverse claims or demands being made in connection with such Liquidating Trust Interests, then, in any of such events, the Trustees shall be entitled, at their sole election, to refuse to comply with any such conflicting claims or demands. In so refusing, the Trustees may elect to make no payment or distribution with respect to such Liquidating Trust Interests, or to make such payment to a court of competent jurisdiction or an escrow agent, and in so doing, the Trustees shall not be or become liable to any of such parties for their failure or refusal to comply with any of such conflicting claims or demands or to take any other action with respect thereto, nor shall the Trustees be liable for interest on any funds which they may so withhold. Notwithstanding anything to the contrary set forth in this Section 3.3, the Trustees shall be entitled to refrain and refuse to act until either (i) the rights of the adverse claimants have been adjudicated by a final judgment of a court of competent jurisdiction, (ii) all differences have been adjusted by valid written agreement between all of such parties, and the Trustees shall have been furnished with an executed counterpart of such agreement, or (iii) there is furnished to the Trustees a surety bond or other security satisfactory to the Trustees, as they shall deem appropriate, to fully indemnify the Trustees as between all conflicting claims or demands.

3.4. Limitation on Suits by Beneficiaries. No Beneficiary shall have the right by virtue of any provision of this Agreement to institute any action or proceeding at law or in equity against any party other than the Trustees upon or under or with respect to any Liquidating Trust Assets or the agreements relating to or forming a part of any Liquidating Trust Assets, and the Beneficiaries do hereby waive any such right.

3.5. Evidence of Action by Beneficiaries. Whenever in this Agreement it is provided that the Beneficiaries may take any action (including the making of any demand or request, the giving of any notice, consent, or waiver, the removal of a Trustee, the appointment of a successor Trustee, or the taking of any other action), the fact that at the time of taking any action such Beneficiaries have joined therein may be evidenced (i) by any instrument or any number of instruments of similar tenor executed by Beneficiaries in person or by agent or attorney appointed in writing, or (ii) by the record of the Beneficiaries voting in favor thereof at any meeting of Beneficiaries duly called and held in accordance with the provisions of ARTICLE 13. Such meeting or writing may take any form permitted under Delaware law.

ARTICLE 4

THE TRUSTEES

4.1. Number and Qualification of Trustees. Subject to the provisions of Section 8.2 relating to the period pending the appointment of a successor Trustee, there shall initially be three (3) Trustees of the Liquidating Trust, each of which shall be a citizen and resident of, or a corporation or other entity which is incorporated or formed under the laws of, a state of the United States and, if a corporation, it shall be authorized to act as a corporate fiduciary under the laws of the State of Delaware. The number of Trustees may be increased or decreased from time to time by the Trustees.

4.2. Appointment and Acceptance of Trustees. Pursuant to an appointment by the Stockholders, each of Daniel T. Hudson, W. Kevin Redmond and Thomas B. White is hereby named, constituted, and appointed as a Trustee, to act and serve as a Trustee of the Liquidating Trust and to perform the powers and functions of a Trustee to accomplish the objective of the Liquidating Trust as provided in this Agreement. Each Trustee is willing and able to so act, and does hereby accept the appointment to act and serve as a Trustee of the Liquidating Trust and to hold the Liquidating Trust Assets and administer the Liquidating Trust pursuant to the terms of this Agreement.

4.3. Role of the Trustees.

(a) In furtherance of and consistent with the purpose of the Liquidating Trust and the Plan, the Trustees shall, for the benefit of the Beneficiaries, have the power and authority to hold, manage, and distribute the Liquidating Trust Assets in accordance with the provisions of this Agreement. In all circumstances, the Trustees shall act in good faith in a manner that they believe to be in the best interests of all Beneficiaries and in furtherance of the purpose of the Liquidating Trust.

(b) In the event of a disagreement among the Trustees as to whether or not any action should be taken, the decision of a majority of the Trustees shall prevail. The foregoing does not in any way require the Trustees to formally vote on any matter.

4.4. Authority of Trustees. In connection with the administration of the Liquidating Trust, except as set forth in this Agreement, the Trustees are authorized to perform any and all acts necessary or desirable to accomplish the purposes of the Liquidating Trust. Without limiting, but subject to, the express purpose of the Trustee and to Section 4.4 hereof, the Trustees shall be expressly authorized, but shall not be required, to:

(a) hold legal title to any and all rights of the Beneficiaries in or arising from the Liquidating Trust Assets, including, without limitation, collecting, receiving any and all money and other property belonging to the Liquidating Trust;

(b) protect and enforce the rights to the Liquidating Trust Assets by any method deemed appropriate including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

(c) incur or assume liabilities, and pledge Liquidating Trust Assets on behalf of the Liquidating Trust in furtherance of or in connection with the Trustees' or the Liquidating Trust's duties, powers, authority, and obligations under this Agreement, and determine and satisfy any and all liabilities created, incurred or assumed by the Liquidating Trust;

(d) file, if necessary, any and all tax and information returns with respect to the Liquidating Trust, pay taxes, if any, properly payable by the Liquidating Trust, and provide tax reports to the Beneficiaries as required by law;

(e) pay all expenses and make all other payments relating to the Liquidating Trust Assets;

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

(g) retain and pay such counsel and other professionals as the Trustees in their sole discretion may select to assist the Trustees in their duties, on such terms as the Trustees deem appropriate. The Trustees may commit the Liquidating Trust to and shall pay such counsel and other professionals reasonable compensation for services rendered and expenses incurred. A law firm or professional shall not be disqualified from serving the Trustees solely because of its current or prior retention as counsel or professional to the Company;

(h) retain and pay an independent public accounting firm to perform such reviews and/or audits of the financial books and records of the Liquidating Trust as may be appropriate in the Trustees' sole discretion and to prepare and file any tax returns or informational returns for the Liquidating Trust as may be required. The Trustees may commit the Liquidating Trust to and shall pay such independent public accounting firm reasonable compensation for services rendered and expenses incurred;

(i) retain and pay such third parties as the Trustees, in their sole discretion, may deem necessary or appropriate to assist the Trustees in carrying out their powers and duties under this Agreement. The Trustees may commit the Liquidating Trust to and shall pay all such persons or entities reasonable compensation for services rendered and expenses incurred, as well as commit the Liquidating Trust to indemnify any such parties in connection with the performance of services;

(j) employ such employees as the Trustees, in their sole discretion and as consistent with the purposes of the Liquidating Trust, may deem necessary or appropriate to assist the Trustees in carrying out their powers and duties under this Agreement. The Trustees may commit the Liquidating Trust to and shall pay all such employees compensation in the amounts the Trustees shall determine to be appropriate and any employee benefits it may establish pursuant to Section 4.4(k) hereof. If the Trustees determine to employ employees pursuant to this Section 4.4(j), the Trustees shall establish payroll procedures and pay any and all federal, state or local tax withholding required under applicable law with respect to any such employees, and it will take all other actions it deems necessary to effectuate the provisions of this Section 4.4(j);

(k) establish and adopt or cease to provide such employee benefits for the benefit of any employees described in Section 4.4(j) hereof as the Trustees, in their sole discretion and as consistent with the purposes of the Liquidating Trust, may deem necessary or appropriate, including, without limitation, the adoption of any group health plan;

(l) assert or waive any privilege or defense on behalf of the Liquidating Trust or, with respect to the Liquidating Trust Assets, the Company;

(m) compromise, adjust, arbitrate, sue on or defend, pursue, prosecute abandon, exercise rights, powers, and privileges with respect to, or otherwise deal with and settle, in accordance with the terms set forth herein, claims and all causes of action in favor of or against the Liquidating Trust as the Trustees shall deem advisable;

(n) in the Trustees' sole discretion (subject to ARTICLE 7 hereof and this Section 4.4), take all appropriate action with respect to the Liquidating Trust Assets consistent with the purpose of the Liquidating Trust, including without limitation the avoidance of any transfer or obligation, and the filing, prosecution, settlement or other resolution of claims and causes of action;

(o) establish and maintain bank, brokerage and other accounts in the name of the Trustees or the Liquidating Trust and invest any moneys held as part of the Liquidating Trust in accordance with the terms of Section 4.13 hereof, limited, however, to such investments that are consistent with the Liquidating Trust's status as a liquidating trust within the meaning of Treasury Regulations Section 301.7701-4(d);

(p) request any appropriate tax determination with respect to the Liquidating Trust; and

(q) take or refrain from taking any and all actions the Trustees reasonably deem necessary or convenient for the continuation, protection and maximization of the Liquidating Trust Assets or to carry out the purposes hereof.

4.5. Limitation of Trustees' Authority.

(a) Notwithstanding anything herein to the contrary, the Trustees shall not take any action that would cause the Liquidating Trust not to be taxed as a liquidating trust for purposes of Treasury Regulation 301.7701-4(d), shall not be authorized to cause the Liquidating Trust to engage in any trade or business, and shall not take such actions inconsistent with the orderly liquidation of the Liquidating Trust Assets as are required or contemplated by applicable law, the Plan and this Agreement.

(b) The Liquidating Trust shall not receive (i) transfers of any listed stocks or securities, any readily-marketable assets, or any operating assets of a going business, (ii) unlisted stock of any entity that is treated as a corporation for federal income tax purposes that represents 80% or more of the stock (in either vote or value) of such entity, or (iii) any interest in an entity that is treated as a partnership for federal income tax purposes.

4.6. Books and Records. The Trustees shall maintain in respect of the Liquidating Trust and the Beneficiaries, books and records relating to the Liquidating Trust Assets, income and liabilities of the Liquidating Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof in accordance with this Agreement and to comply with applicable law. Such books and records shall be maintained on a basis or bases of accounting necessary to facilitate compliance with the tax reporting requirements of the Liquidating Trust and the reporting obligations of the Trustee under Section 10.1. Except as otherwise may be expressly provided by this Agreement, nothing in this Agreement requires the Trustees to file any accounting or seek approval of any court with respect to the administration of the Liquidating Trust or as a condition for managing any payment or distribution out of the Liquidating Trust Assets. Beneficiaries shall have the right upon 30 days' prior written notice delivered to the Trustees to inspect during normal business hours such books and records (including financial statements) for any proper cause; provided, that, if so requested, such Beneficiaries shall have entered into a confidentiality agreement satisfactory in form and substance to the Trustees.

4.7. Additional Powers. Except as otherwise set forth in this Agreement or in the Plan, and subject to the Treasury Regulations governing liquidating trusts and as provided for in the Plan, but without prior or further authorization, the Trustees may control and exercise authority over the Liquidating Trust Assets and over the protection, conservation and disposition thereof. No Person dealing with the Liquidating Trust shall be obligated to inquire into the authority of the Trustees in connection with the protection, conservation or disposition of the Liquidating Trust Assets.

4.8. Tax and Reporting Duties of the Trustees. The Trustees shall be responsible for all tax and other matters as set forth in ARTICLE 5 hereof.

4.9. Compliance with Laws. Any and all distributions of Liquidating Trust Assets and proceeds of borrowings, if any, shall be in compliance with applicable laws, including, without limitation, applicable federal and state securities laws.

4.10. Costs and Expenses of the Trustees. The costs and expenses of the Liquidating Trust, including the fees and expenses of the Trustees and any retained professionals, shall be paid first out of the Liquidating Trust Assets. Fees and expenses incurred in connection with the prosecution and settlement of any Claims shall be considered costs and expenses of the Liquidating Trust.

4.11. Compensation of the Trustees. The Trustees shall be entitled to reasonable compensation for their services hereunder; provided that any Trustee subject to a separation and consulting agreement entered into with the Company (and assumed pursuant to Section 2.5 hereof) shall be entitled to receive compensation as provided for under such agreement.

4.12. Reliance by Trustees. Except as otherwise provided in ARTICLE 9 hereof:

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

(b) persons dealing with the Trustees shall look only to the Liquidating Trust Assets to satisfy any liability incurred by the Trustees to such person in carrying out the terms of this Agreement, and no Trustee shall have any personal obligation to satisfy any such liability.

4.13. Investment and Safekeeping of Trust Assets. The right and power of the Trustees to invest Liquidating Trust Assets, the proceeds thereof, or any income earned by the Liquidating Trust, shall be limited to the right and power that a liquidating trust, within the meaning of Treasury Regulations Section 301.7701-4(d), is permitted to hold, pursuant to the Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements or otherwise (including, for the avoidance of doubt, Revenue Procedure 82-58, as amplified by Revenue Procedure 91-15), and in accordance with such requirements, the Trustees' investment powers shall be limited to powers to invest in demand and time deposits in banks and savings institutions, or temporary investments such as short-term certificates of deposit or Treasury bills. The Trustees may expend the cash of the Liquidating Trust (a) as reasonably necessary to meet contingent liabilities and to maintain the value of the respective assets of the Liquidating Trust during liquidation, (b) to pay the reasonable costs and expenses (including, without limitation, any taxes imposed on the Liquidating Trust) and (c) to satisfy other respective liabilities incurred by the Liquidating Trust in accordance with this Agreement or the Plan.

4.14. Authorization to Expend Liquidating Trust Assets. The Trustees may expend the Liquidating Trust Assets (a) as they good faith believe to be reasonably necessary to maintain the value of the Liquidating Trust Assets during liquidation, (b) to pay all costs and expenses of the

Liquidating Trust (including, without limitation, any taxes imposed on the Liquidating Trust), and (c) to satisfy all other liabilities incurred or assumed by the Liquidating Trust (or to which the Liquidating Trust Assets are otherwise subject) in accordance with this Agreement and the Plan.

4.15. Right of Trustees to Own Liquidating Trust Interests and to Engage in Other Business.

(a) Each Trustee, in its individual capacity, or through persons that it controls or in which it has an interest, may own, hold and (to the extent permitted hereunder) dispose of Liquidating Trust Interests for its individual account, and may exercise all rights thereof and thereunder to the same extent and in the same manner as if it were not a Trustee.

(b) Subject to applicable law and its obligations under this Agreement, each Trustee, in its individual capacity, or through persons that it controls or in which it has an interest, may directly or indirectly engage in or possess any interest in any business venture, including, but not limited to, the ownership, financing, management of or the investment in securities, or the provision of any services in connection with such activities, whether or not such activities are similar or in addition to its responsibilities under this Agreement. No Trustee has any duty to present any business opportunity to the Trust before taking advantage of such opportunity either in such Trustee's individual capacity or through participation in any person.

ARTICLE 5

TAX MATTERS

5.1. Federal Income Tax Treatment of the Trust for the Liquidating Trust Assets.

(a) Liquidating Trust Assets Treated as Owned by Beneficiaries. For all federal income tax purposes, all parties (including, without limitation, the Company, the Trustees, and the Beneficiaries) shall treat the transfer of the Transferred Assets to, and the assumption of the Liabilities by, the Liquidating Trust for the benefit of the Beneficiaries as (A) a transfer of the Transferred Assets directly to, and an assumption of the Liabilities directly by, the Beneficiaries followed by (B) the transfer by such holders to the Liquidating Trust of the Transferred Assets, and the assumption by the Liquidating Trust of the Liabilities from such holders, in exchange for beneficial interests in the Liquidating Trust. Accordingly, the Beneficiaries shall be treated for federal income tax purposes as the grantors and owners of their respective share of the Liquidating Trust Assets.

(b) Tax Reporting.

(i) The Trustees shall file or cause to be filed returns for the Liquidating Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a) and in accordance with this ARTICLE 5. The Trustees shall also annually send or cause to be sent to each holder of a Liquidating Trust Interest a separate statement setting forth the holder's share of items of income, gain, loss, deduction or credit and will instruct all such holders to report such

items on their federal income tax returns. The Liquidating Trust's taxable income, gain, loss, deduction or credit will be allocated to the Beneficiaries in proportion to the Liquidating Trust Interests of each Beneficiary.

(ii) The Company shall file such forms as it is required to file in connection with its liquidation (including any Forms 1099-DIV and Form 966) and, in connection with such filings, shall make a good faith valuation of its assets. Such valuation shall be used consistently by all parties (including, without limitation, the Company, the Trustees, and the Beneficiaries) for all federal income tax purposes. The Trustees shall also file (or cause to be filed) any other statements, returns or disclosures relating to the Liquidating Trust that are required by any governmental unit.

(iii) The Trustees shall be responsible for payments, out of the Liquidating Trust Assets, of any taxes imposed on the Liquidating Trust or its assets.

(iv) The Trustees may request an expedited determination of taxes of the Liquidating Trust, for one or more returns filed for, or on behalf of, the Liquidating Trust for any or all taxable periods through the dissolution of the Liquidating Trust.

ARTICLE 6

LIQUIDATING TRUST CONTINGENCY RESERVE

6.1. Creation of Reserve. Notwithstanding anything in this Agreement to the contrary, at and after the Transfer Time, the Trustees shall have the right to establish and maintain a reserve of sufficient funds (the "Contingency Reserve") as the Trustees shall determine are reasonably necessary for the Liquidating Trust: (i) to meet Liabilities and maintain the value of the Liquidating Trust Assets during the term of the Liquidating Trust (including taxes imposed or which may be imposed on the Liquidating Trust or in respect of Liquidating Trust Assets); and (ii) to make the payments and satisfy the existing and anticipated future obligations, costs, expenses, and liabilities of the Liquidating Trust. The Contingency Reserve shall be in cash or cash equivalents in the form of instruments or deposits in bank, brokerage or other accounts in the name of the Trustees or the Liquidating Trust as permitted under Section 4.4(o) and Section 4.13, or other as determined by the Trustees in their sole discretion, and no payments or withdrawals from the Contingency Reserve shall be made except for purposes set forth in clauses (i) and (ii) in the preceding sentence or to transfer the interest earned or other sums realized on the Contingency Reserve to other accounts or instruments of the Liquidating Trust. In no event shall the Liquidating Trust receive or retain cash in excess of a reasonable amount to meet claims and contingent liabilities.

6.2. Withholding Pending Allowance of Claims. The Trustees shall withhold from any property to be distributed under this Agreement any Liquidating Trust Assets as are reasonably necessary, in the sole discretion of the Trustees, to fund and maintain the Contingency Reserve and shall hold such assets in trust pending resolution of any unknown or contingent Liabilities.

ARTICLE 7

DISTRIBUTIONS

7.1. Interim Distributions. In a timely manner as may be determined by the Trustees in their sole discretion, but no less often than annually, the Trustees shall distribute, or cause to be distributed to the Beneficiaries, in proportion to the Liquidating Trust Interests of each Beneficiary on the record date fixed for such distribution as determined by the Trustees, such cash or other property (including proceeds from the sale of assets or income from investments) comprising a portion of the Liquidating Trust Assets as the Trustees, in their sole discretion, determine may be distributed without detriment to the conservation and protection of the Liquidating Trust Assets, including compliance with ARTICLE 6 hereof.

7.2. Final Distribution. If the Trustees, in their sole discretion, determine that the Liabilities and all other claims, expenses, charges, and obligations of the Liquidating Trust have been paid or discharged or if the existence of the Liquidating Trust shall terminate pursuant to Section 11.1, the Trustees shall, as expeditiously as is consistent with the conservation and protection of the Liquidating Trust Assets, distribute the remaining Liquidating Trust Assets, if any, to the Beneficiaries in proportion to the Liquidating Trust Interests of each Beneficiary. The Trustees shall hold in the Liquidating Trust and thereafter make disposition of all liquidating distributions and other payments due any Beneficiaries who have not been located following due notice, in accordance with Delaware law, subject to applicable state laws regarding escheat and abandoned property. In addition, if the term of the Liquidating Trust is extended pursuant to Section 11.1 with respect to certain installment obligations held by the Liquidating Trust, then on the third (3rd) anniversary of the Transfer Date the Trustees shall distribute, in accordance with this Section 7.2, all Liquidating Trust Assets other than those installment obligations with respect to which the term of the Liquidating Trust has been extended.

7.3. Manner of Payment or Distribution. All distributions made by the Trustees to Beneficiaries pursuant to this Agreement shall be payable to the Beneficiaries as of the record date fixed for each such distribution determined by the Trustees in their sole discretion. If the Distribution shall be in cash, the Trustees shall distribute such cash by wire, check, or such other method as the Trustees deem appropriate under the circumstances.

7.4. Delivery of Liquidating Trust Distributions. All distributions under this Agreement to any Beneficiary shall be made at the address of such Beneficiary as set forth on the books and records of the Liquidating Trust, the Company or either of their agents, unless the Trustees have been notified in writing of a change of address, including, without limitation, by the filing of a proof of claim or interest by such Beneficiary that contains an address for such Beneficiary different from the address reflected on the record for such Beneficiary. In the event that any distribution to any Beneficiary is returned as undeliverable, the Trustees shall use reasonable efforts to determine the current address of such Beneficiary, but no distribution to such Beneficiary shall be made unless and until the Trustees have determined the then current address of such Beneficiary, at which time such distribution shall be made to such Beneficiary without interest; provided, however, that such undeliverable or unclaimed distributions shall be

deemed unclaimed property at the expiration of one year from the date of distribution. The Trustees shall reallocate the undeliverable and unclaimed distributions for the benefit of the other Beneficiaries.

ARTICLE 8

SUCCESSOR TRUSTEES

8.1. Resignation and Removal. Any Trustee may resign and be discharged from the Liquidating Trust by giving not less than five (5) days' prior written notice thereof to any remaining Trustee or Trustees or, if there are no remaining Trustees, by giving written notice to the Beneficiaries holding Units representing an aggregate of at least a majority of the total Liquidating Trust Interests. Such resignation shall become effective on the day specified in such notice or upon the appointment of such Trustee's successor and such successor's acceptance of such appointment, whichever is earlier. Any Trustee may be removed at any time, with or without cause, by Beneficiaries holding Units representing an aggregate of at least a majority of the total Liquidating Trust Interests. All obligations of a Trustee hereunder shall cease and terminate on the effective date of such Trustee's resignation or removal, provided, that, in the case of any resignation in circumstances in which there are no remaining Trustees, then such resigning Trustee's sole responsibility thereafter shall be to hold the Liquidating Trust Assets for a period of ninety (90) days following the effective date of resignation, at which time, if a successor Trustee shall have been appointed and have accepted such appointment in a writing to the Beneficiaries, then the resigning Trustee shall deliver the Liquidating Trust Assets to the successor Trustee. If a successor Trustee shall not have been appointed within such ninety (90) day period from the predecessor Trustee's resignation, for any reason whatsoever, the resigning Trustee shall deliver the Liquidating Trust Assets to a court of competent jurisdiction and give written notice of the same to the Beneficiaries.

8.2. Appointment of Successor. Should at any time a Trustee resign or be removed, die or become mentally incompetent, or be adjudged bankrupt or insolvent, unless any remaining Trustees shall decrease the number of Trustees of the Trust pursuant to Section 4.1 hereof or should the number of Trustees be increased by the Trustees pursuant to Section 4.1 hereof, a vacancy(ies) shall be deemed to exist and a successor(s) shall be appointed by any remaining Trustees.

8.3. Acceptance of Appointment by Successor Trustee. Any successor Trustee appointed hereunder shall execute an instrument accepting such appointment hereunder and shall file such acceptance with the Liquidating Trust records. Thereupon, such successor Trustee shall, without any further act, become vested with all the estates, properties, rights, powers, trusts and duties of its predecessor in the Liquidating Trust with like effect as if originally named herein; provided, however, that an incapacitated, or resigning Trustee shall, nevertheless, when requested in writing by the successor Trustee, execute and deliver an instrument or instruments conveying and transferring to such successor Trustee under the Liquidating Trust all the estates, properties, rights, powers, and trusts of such predecessor Trustee.

ARTICLE 9

LIMITATION ON LIABILITY; INDEMNIFICATION

9.1. Generally. In no event shall any Trustee be subject to any personal liability whatsoever to any person in connection with the Liquidating Trust Assets or the affairs of the Liquidating Trust, except for fraud or other misconduct knowingly or intentionally committed in bad faith; and provided, further that:

(a) no Trustee shall be required to perform any duties or obligations except for the performance of such duties and obligations as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against any Trustee;

(b) in the absence of bad faith on the part of a Trustee, each Trustee may conclusively rely, as to the truth, accuracy and completeness thereof, on the statements and certificates or opinions furnished to such Trustee and conforming to the requirements of this Agreement;

(c) no Trustee shall be liable for any error of judgment made in good faith;

(d) a Trustee may rely, and shall be fully protected in relying on, the books and records of the Company or the Liquidating Trust and upon such information, opinions, reports or statements presented by another Trustee, any Beneficiary or any employee of the Liquidating Trust or any other person as to matters the Trustee believes are within such other person's professional or expert competence, including information, opinions, reports and statements as to the value or amount of assets or reserves or contracts, agreements or other undertakings that would be sufficient to pay Liabilities or claims and obligations of the Liquidating Trust or to make reasonable provisions to pay such Liabilities, claims and obligations, or any other facts pertinent to the existence and amounts from which distributions to Beneficiaries or creditors might be properly paid;

(e) no Trustee shall be liable with respect to any action taken or omitted to be taken in good faith by it at the written direction of the Beneficiaries where such direction has been approved by the affirmative vote of or written consents of Beneficiaries holding Units representing a majority of the Liquidating Trust Interests; and

(f) no Trustee shall be responsible for the acts or omissions of any successor Trustee, nor shall any successor Trustee be responsible for the acts or omission of a predecessor Trustee unless such Trustee, in bad faith, knowingly or intentionally, participated in, approved of, acquiesced in or concealed the fraud or other misconduct.

9.2. Indemnification of Trustee. Each Trustee and each of its employees and agents, if any (each an "Indemnified Person" and collectively, the "Indemnified Persons"), shall be indemnified out of all Liquidating Trust Assets against all liabilities and expenses, including amounts paid in satisfaction of judgments, in compromise or as fines and penalties, and all costs and expenses, including, but not limited to, reasonable counsel fees and disbursements paid or

incurred by such Indemnified Person in connection with claim, demand, action, suit or proceeding by the Liquidating Trust or any other Person, whether civil or criminal, in which the Indemnified Person may be involved, or with which the Indemnified Person may be threatened, while in office or thereafter, by reason of its or his or her being or having been such a Trustee, employee or agent; provided, however, that the Indemnified Person shall not be entitled to such indemnification if the Indemnified Person shall have been finally adjudicated to have committed fraud or other misconduct knowingly or intentionally committed in bad faith. The rights accruing to any Indemnified Person under these provisions shall not exclude any other right to which the Indemnified Person may be lawfully entitled. The Trustees shall cause the Liquidating Trust to make advance payments in connection with indemnification under this Section 9.2, provided, that the Indemnified Person shall have given a written undertaking to repay any amount advanced to the Indemnified Person and to reimburse the Liquidating Trust in the event it is subsequently determined in a final adjudication by a court of law that the Indemnified Person is not entitled to such indemnification. The Trustees may purchase with the Liquidating Trust Assets such insurance as they believe, in the exercise of their discretion, adequately insures that each Indemnified Person shall be indemnified against any such loss, liability or damage pursuant to this Section 9.2. The rights accruing to any Indemnified Person by reason of the foregoing shall not be deemed to exclude any other right to which he, she or it may legally be entitled nor shall anything else contained herein restrict the right of the Trustees to indemnify or reimburse such Indemnified Person in any proper case even though not specifically provided for herein, nor shall anything contained herein restrict the right of any such Indemnified Person to contribution under applicable law. As security for the timely and full payment and satisfaction of all of the present and future obligations of the parties to the Trustees under this Agreement, including, without limitation, the indemnity obligations hereunder, whether joint or several, the Liquidating Trust (and by accepting distributions hereunder, each Beneficiary) hereby grants to the Trustees a continuing security interest in and to any and all of the Liquidating Trust Assets, whether now existing or hereafter acquired or created, together with the products and proceeds thereof, all payments and other distributions with respect thereto, and any and all investments, renewals, substitutions, modifications and extensions of any and all of the foregoing. In addition, in the event any Trustee has not received any payment, indemnity, reimbursement or other amount due it under this Agreement, then, notwithstanding any other term or provision of this Agreement, such Trustee may, in its discretion, set off and apply any of the Liquidating Trust Assets as is required to pay and satisfy those obligations. Promptly after the receipt by the Trustees of notice of any demand or claim or the commencement of any action, suit or proceeding, the Trustees shall, if a claim in respect thereof is to be made against any of the other parties hereto, notify such other parties thereof in writing; but the failure by the Trustees to give such notice shall not relieve any party from any liability which such party may have to the Trustees hereunder. Notwithstanding any obligation to make payments and deliveries hereunder, the Trustees may retain and hold for such time as they reasonably deem necessary such amount of the Liquidating Trust Assets as the Trustees shall from time to time, in their sole discretion, reasonably deem sufficient to indemnify the Trustees for any such loss or expense and for any amounts due to the Trustees hereunder. Except as required by law or as expressly provided herein, the Trustees shall be under no duty to institute any suit, or to take any remedial procedures under this Agreement, or to enter any appearance or in any way defend any suit in which any Trustee may be made a defendant hereunder until the Trustees shall be indemnified as provided above, except as

expressly set forth herein. Any repeal, modification or amendment of the provisions of this Section 9.2 shall not affect any rights or obligations under the provisions of this Section 9.2 with respect to any state of facts then or theretofore existing or any claim, demand, action, suit or proceeding theretofore or thereafter brought based in whole or in part upon any such state of facts.

ARTICLE 10

REPORTS TO BENEFICIARIES

10.1. Securities Laws, Tax and Other Reports to Beneficiaries.

(a) Securities Laws. The issuance of Liquidating Trust Interests under the Plan shall be exempt from registration under the Securities Act of 1933, as amended, and applicable state and local laws requiring registration of securities. If the Trustees determine, with the advice of counsel, that the Liquidating Trust is required to comply with the registration and reporting requirements of the Securities Exchange Act of 1934, as amended, or the Investment Company Act of 1940, as amended, then the Trustees shall take any and all actions to comply with such reporting requirements and file periodic reports with the Securities and Exchange Commission.

(b) Reports to Beneficiaries. As soon as practicable after the end of each taxable year of the Liquidating Trust and after termination of the Liquidating Trust, the Trustees shall submit a written report and account to the Beneficiaries describing (i) the assets and liabilities of the Liquidating Trust at the end of such taxable year or upon termination and the receipts and disbursements of the Trustees for such taxable year or period, to the extent known to the Trustees, (ii) any material changes in the Liquidating Trust Assets which they have not previously reported, and (iii) any action taken by the Trustees in the performance of their duties under this Agreement which has not previously reported and which, in the opinion of the Trustees, materially and adversely affects the Liquidating Trust Assets. The Trustees may submit similar reports for such interim periods during the taxable year as they deem advisable. The taxable year of the Liquidating Trust shall end on December 31 of each year unless the Trustees deem it advisable to establish some other date as the date on which the taxable year of the Liquidating Trust shall end, to the extent permitted by law.

(c) Federal Income Tax Information. As soon as practicable after the close of each taxable year and after the termination of the Liquidating Trust, the Trustees shall submit to each Beneficiary appearing on its records during such year a separate statement setting forth the Beneficiary's share of items of income, gain, loss, deduction or credit and will instruct all such holders to report such items on their federal income tax returns. The Liquidating Trust's taxable income, gain, loss, deduction, and credit will be allocated to the Beneficiaries in proportion to the Liquidating Trust Interests of each Beneficiary. The Trustees shall file (or cause to be filed) any other statements, returns, or disclosures relating to the Liquidating Trust that are required by any governmental authority. In addition, after receipt of a written request in good faith, or in the Trustees' discretion without such request or if required by applicable law, the Trustees shall

furnish to any person who has been a Beneficiary at any time during the preceding taxable period a statement containing such further information as is reasonably available to the Trustees, which shall be helpful in determining the amount of taxable income which such person should include in such person's federal income tax return. In the event that any Liquidating Trust Asset includes one or more installment obligations that are payable over a period that ends after the third (3rd) anniversary of the Transfer Date, the Trustees annually will compile and disseminate to each Beneficiary all available tax return information with respect to interest (stated or unstated) and otherwise necessary or useful in reporting under the installment method.

ARTICLE 11

DURATION AND TERMINATION OF LIQUIDATING TRUST

11.1. Termination of Liquidating Trust. The Liquidating Trust will terminate on the earlier of (a) the date of the final distribution of all of the Liquidating Trust Assets in accordance with the terms of this Agreement and the Plan; or (b) the third (3rd) anniversary of the Transfer Time. Notwithstanding the foregoing, to the extent any Liquidating Trust Asset includes one or more installment obligations that are payable over a period that ends after the third (3rd) anniversary of the Transfer Date, multiple fixed-term extensions can be obtained for a period that is reasonably necessary to collect and distribute installments on such obligations, but only with respect to such installment obligations. The aggregate of all such extensions shall not exceed three (3) years, unless the Trustees receive a favorable ruling from the IRS that any further extension would not adversely affect the status of the Liquidating Trust as a liquidating trust within the meaning of Treasury Regulations Section 301.7701-4(d) for federal income tax purposes. The Trustees shall not unduly prolong the duration of the Liquidating Trust and shall at all times endeavor to resolve, settle or otherwise dispose of all claims that constitute Liquidating Trust Assets and to effect the timely distribution of the Liquidating Trust Assets to the Beneficiaries in accordance with the terms hereof and terminate the Liquidating Trust as soon as practicable.

11.2. No Termination for 24 Months or During Pendency of Indemnification Claims. Notwithstanding Section 11.1 and subject to Section 9.2, no termination of the Liquidating Trust shall occur until the later of (i) twenty-four (24) months after the Transfer Date; or (ii) the final disposition of any claim pending or asserted against the Company or the Liquidating Trust, including any such claim for indemnification pursuant to Section 9.2.

ARTICLE 12

AMENDMENT AND WAIVER

12.1. No Right to Revoke Liquidating Trust or Withdraw Assets. Except as provided by Section 12.2(a), this Agreement is irrevocable and all transfers of Transferred Assets made to the Liquidating Trust may not be revoked or withdrawn by the Company or by any shareholder or creditor of the Company.

12.2. Amendment and Waiver.

(a) Prior to the Transfer Time, the Company reserves the right to modify the Plan, reserves the right to withhold assigning to the Liquidating Trust any or all of the assets contemplated as being assigned to the Liquidating Trust by the Plan and reserves the right, by written instrument approved by Board and executed by an authorized officer of the Company, to amend terms of this Agreement.

(b) Except as provided by Section 12.1, after the Transfer Time, at the direction or with the consent of Beneficiaries holding aggregate Units representing at least a majority of the total Liquidating Trust Interests, the Trustees shall promptly make and execute a declaration amending this Agreement for the purpose of adding any material provisions to or changing in any material manner or eliminating any of the material provisions of this Agreement or amendments thereto as they apply to the Liquidating Trust; provided, however, that no change may be made to this Agreement that would (i) materially and adversely affect the Beneficiaries' rights to receive their respective pro rata shares of the Liquidating Trust Assets at the time of any distributions, or (ii) adversely affect the U.S. Federal income status of the Liquidating Trust as a "liquidating trust" (in accordance with Section 2.2 hereof); and provided, further that no consent of the Beneficiaries shall be required with respect to any amendment made for any of the following purposes, each such amendment requiring only the approval of the Trustees:

(i) for the purpose of complying with applicable laws, including tax laws;

(ii) to evidence the removal, resignation or discharge or appointment of a Trustee in accordance with Section 4.1 and Article 8;

(iii) to cure any ambiguity, to correct or supplement any provision herein that may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Agreement; or

(iv) as may be necessary to ensure that the Liquidating Trust Interests or the Liquidating Trust are not subject to registration or the reporting requirements under the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, or the Investment Company Act of 1940, as amended, or any state or local laws requiring registration.

Notwithstanding this Section 12.2, any amendments to this Agreement shall not be inconsistent with the purpose and intention of the Liquidating Trust to liquidate in an expeditious but orderly manner the Liquidating Trust Assets in accordance with Treasury Regulations Section 301.7701-4(d) and Section 2.2 hereof.

ARTICLE 13

MEETING OF BENEFICIARIES

13.1. Purpose of Meetings. A meeting of the Beneficiaries may be called at any time and from time to time pursuant to the provisions of this ARTICLE 13 for the purposes of taking any action which the terms of this Agreement permit Beneficiaries having aggregate Units representing a specified percentage of Liquidating Trust Interests to take. Nothing herein shall be interpreted as precluding Beneficiaries from acting by written consent without a meeting so long as the action sought to be taken by the Beneficiaries is consented to in writing by Beneficiaries having aggregate Units representing the percentage of Liquidating Trust Interests required hereunder to take the applicable action.

13.2. Meeting Called by the Trustees. The Trustees may at any time call a meeting of the Beneficiaries to be held at such time and at such place as the Trustees shall determine. Written notice of every meeting of the Beneficiaries shall be given by the Trustees (except as provided in Section 13.3 of this Agreement), which written notice will set forth the time and place of such meeting and in general terms the action proposed to be taken at such meeting, and shall be mailed not more than sixty (60) nor less than fifteen (15) days before such meeting is to be held to all of the Beneficiaries as of the record date fixed by the Trustees in their sole discretion. The notice shall be directed to the Beneficiaries at their respective addresses as they appear in the records of the Liquidating Trust.

13.3. Meeting Called on Request of Beneficiaries. Within ten (10) days after written request to the Trustees by Beneficiaries holding Units representing at least a majority of the aggregate Liquidating Trust Interests to call a meeting of all of the Beneficiaries, which written request shall specify in reasonable detail the action proposed to be taken, the Trustees shall proceed under the provisions of Section 13.2 of this Agreement to call a meeting of the Beneficiaries.

13.4. Persons Entitled to Vote at Meeting of Beneficiaries. Each Beneficiary shall be entitled to vote at a meeting of the Beneficiaries either in person or by his, her or its proxy duly authorized in writing. The vote of each Beneficiary shall be weighted based on the number of Units held by each Beneficiary as of the record date for such action or meeting, determined pursuant to the official register maintained by the Trustees under Section 3.1. The signature of the Beneficiary on such written authorization need not be witnessed or notarized.

13.5. Quorum. At any meeting of Beneficiaries, the presence in person or by proxy of Beneficiaries holding Units representing at least a majority of the aggregate Liquidating Trust Interests shall constitute a quorum; but if less than a quorum be present, Beneficiaries having a majority of the Liquidating Trust Interests so present and so represented may adjourn such meeting with the same effect and for all intents and purposes as though a quorum had been present.

13.6. Adjournment of Meeting. Subject to Section 13.5 of this Agreement, any meeting of Beneficiaries may be adjourned from time to time and a meeting may be held at such adjourned time and place without further notice.

13.7. Conduct of Meeting. At each meeting of the Beneficiaries, the Beneficiaries present or represented by proxy may adopt such rules for the conduct of such meeting as they shall deem appropriate, provided that such rules shall not be inconsistent with the provisions of this Agreement.

ARTICLE 14

MISCELLANEOUS PROVISIONS

14.1. Documents. The Trustees, in their discretion, may elect to file or record this Agreement in offices, and in such office or offices as the Trustees may determine to be necessary or desirable. A copy of this Agreement and all amendments thereof shall be maintained at www.kgenpower.com (or any other public website selected by the Trustees) and 9337 Spring Cypress Road. #214, Spring, Texas 77379 or in such other office as shall be identified on such website by the Trustees from time to time and be available at all times during regular business hours for inspection by the Beneficiaries or such person's duly authorized representative. The Trustees shall file or record any amendment of this Agreement in the same places where the original Agreement is filed or recorded. The Trustees shall file or record any instrument which relates to any change in the office of the Trustees in the same places, if any, where the original Agreement is filed or recorded.

14.2. Intention of Parties to Establish Liquidating Trust. This Agreement is not intended to create and shall not be interpreted as creating an association, partnership, corporation or joint venture of any kind. This Agreement is intended to create a liquidating trust to be governed and construed in all respects as a trust. It is intended that the Liquidating Trust be classified for federal income tax purposes as a "liquidating trust" within the meaning of Treasury Regulations Section 301.7701-4(d), and any ambiguity herein shall be construed consistent with the foregoing and, if necessary, this Agreement may be amended to comply with such federal income tax laws, which amendments may apply retroactively.

14.3. Preservation of Privilege and Defenses. In connection with the rights, claims, and causes of action that constitute the Liquidating 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 Liquidating Trust shall vest in the Trustees, and the Trustees, their representatives and the Company are authorized to take all necessary actions to effectuate the transfer of such privileges and available defenses.

14.4. Beneficiaries Have No Rights or Privileges as Stockholders. Except as expressly provided in this Agreement or under applicable law, the Beneficiaries shall have no rights or privileges as Beneficiaries attributable to their former status as Stockholders.

14.5. Laws as to Construction. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to rules governing the conflict of laws. In the event of any conflict between the terms of this Agreement and the Plan, this Agreement shall control.

14.6. Severability. If any provision of this 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 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 such provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

14.7. Notices. Any notice or other communication hereunder shall be in writing (including by facsimile transmission or by e-mail) 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 (or, in the case of notice by facsimile transmission or email, when received and telephonically or electronically confirmed), addressed as follows (provided, however, that only one notice or other communication hereunder need be sent to holders sharing the same address):

If to the Company, to:

KGen Power Corporation
9337 Spring Cypress Road. #214
Spring, Texas 77379
Attention: Thomas B. White, Daniel T. Hudson and W. Kevin Redmond
Phone: (713) 979-1990
Fax: (713) 979-1950
Email: TWhite@KGenPower.com
cfo@navasotaenergy.com
KRedmond@KGenPower.com

If to the Trustees, to:

Trustees
KGen Power Liquidating Trust
9337 Spring Cypress Road. #214
Spring, Texas 77379
Attention: Thomas B. White, Daniel T. Hudson and W. Kevin Redmond
Phone: (713) 979-1990
Fax: (713) 979-1950
Email: TWhite@KGenPower.com
cfo@navasotaenergy.com
KRedmond@KGenPower.com

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

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

14.10. Relationship to the Plan. The principal purpose of this Agreement is to aid in the implementation of the Plan and therefore this Agreement incorporates the provisions of the Plan. To that end, the Trustees shall have full power and authority to take any action consistent with the purpose and provisions of the Plan. If any provisions of this Agreement are found to be inconsistent with the provisions of the Plan, the provisions of this Agreement shall control.

14.11. No Bond. No bond shall be required of the initial Trustees appointed hereunder. Unless a bond is required by law, and such requirement cannot be waived by the remaining Trustees (if any) or the Beneficiaries, no bond shall be required of any successor Trustee hereunder. If a bond is required by law, no surety or security with respect to such bond shall be required unless required by law and such requirement cannot be waived by the remaining Trustees (if any) or the Beneficiaries. In the event a surety or security is required, the remaining Trustees (if any) or the Beneficiaries shall determine the extent and amount of such surety or security with respect to such bond. The cost of any such bond shall be borne by the Liquidating Trust.

14.12. Confidentiality. Each Trustee shall, during the period that he, she or it serves in such capacity under this Agreement and following either the termination of this Agreement or such Trustee's removal, incapacity, or resignation hereunder, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any entity to which any of the Liquidating Trust Assets relates or of which it has become aware in his, her or its capacity as Trustee hereunder.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have either executed and acknowledged this 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.

KGEN POWER CORPORATION



By: _____
Name: Thomas B White
Title: President and Chief Executive Officer

TRUSTEES

Daniel T. Hudson



W. Kevin Redmond



Thomas B. White

IN WITNESS WHEREOF, the parties hereto have either executed and acknowledged this 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.

KGEN POWER CORPORATION

By: _____

Name:

Title:

TRUSTEES



Daniel T. Hudson

W. Kevin Redmond

Thomas B. White