

DBSI REAL ESTATE LIQUIDATING TRUST AGREEMENT

AND

DECLARATION OF TRUST

By and Among

Note/Fund Consolidated Debtors,

As Substantively Consolidated Debtors and Debtors in Possession Under The “Second Amended Joint Chapter Plan Of Liquidation Filed By The Chapter 11 Trustee And The Official Committee Of Unsecured Creditors” Confirmed By Order Of The Bankruptcy Court Presiding Over The Chapter 11 Cases In re DBSI, Inc. et al., Case No. 08-12687 (PJW), pending in the United States Bankruptcy Court, District of Delaware,

and

Conrad Myers,

As DBSI Real Estate Liquidating Trustee

Dated

October 29, 2010

Table of Contents

| | <u>Page</u> |
|--|-------------|
| RECITALS | 1 |
| SECTION 1 — ORGANIZATION; ESTABLISHMENT OF THE DBSI REAL ESTATE LIQUIDATING TRUST..... | 2 |
| 1.1. Definitions..... | 2 |
| 1.2. Name..... | 5 |
| 1.3. Office | 5 |
| 1.4. Incorporation of Plan | 6 |
| 1.5. Declaration and Establishment of DBSI Real Estate Liquidating Trust..... | 6 |
| 1.6. DBSI Real Estate Liquidating Trust | 6 |
| 1.7. Title to DBSI Real Estate Liquidating Trust Assets | 7 |
| 1.8. Reporting Of Transfer Of DBSI Real Estate Liquidating Trust Assets..... | 7 |
| 1.9. Reservation of Bankruptcy Rights | 8 |
| 1.10. Books and Records | 8 |
| 1.11. Preservation of Privileges | 8 |
| 1.12. No Assumption of Liabilities..... | 8 |
| 1.13. Appointment of and Acceptance by Liquidating Trustee | 9 |
| 1.14. Valuation of DBSI Real Estate Liquidating Trust Assets..... | 9 |
| SECTION 2 — BENEFICIARIES | 9 |
| 2.1. Identification of Beneficiaries; Allocation of Interests..... | 9 |
| 2.2. Register | 10 |
| 2.3. Evidence of Beneficial Interests in the DBSI Real Estate Liquidating Trust..... | 10 |
| 2.4. Securities Law Registration | 10 |
| 2.5. Rights of Beneficiaries..... | 11 |

Table of Contents

| | <u>Page</u> |
|---|-------------|
| 2.6. Limit on Transfer of Interests of Beneficiaries..... | 12 |
| 2.7. No Legal Title in Beneficiaries..... | 13 |
| SECTION 3 — THE LIQUIDATING TRUSTEE | 13 |
| 3.1. Liquidating Trustee — Generally | 13 |
| 3.2. Manner of Acting..... | 14 |
| 3.3. Status of Liquidating Trustee..... | 14 |
| 3.4. DBSI Real Estate Liquidating Trust Oversight Committee..... | 14 |
| 3.5 Objection Rights | 15 |
| 3.6. Compensation and Reimbursement of Liquidating Trustee and Professionals from the Administrative Reserve..... | 16 |
| 3.7. Tenure, Removal, and Replacement of the Liquidating Trustee | 17 |
| 3.8. Continuance of Trust..... | 18 |
| 3.9. Acceptance of Appointment by Successor Liquidating Trustee..... | 19 |
| 3.10. Bond or Insurance | 19 |
| SECTION 4 — AUTHORITY, LIMITATIONS, DUTIES, AND FINAL REPORT AND DISCHARGE..... | 20 |
| 4.1. Authority | 20 |
| 4.2. Limitations on the Liquidating Trustee..... | 25 |
| 4.3. Liquidating Trustee and Conflicts of Interest | 26 |
| 4.4. Additional Duties of the Liquidating Trustee | 26 |
| 4.5. No Implied Obligations..... | 30 |
| 4.6. Unknown Property and Liabilities | 30 |
| 4.7. Compliance with Laws | 30 |
| 4.8. Inquiries into Liquidating Trustee's Authority..... | 31 |

Table of Contents

| | <u>Page</u> |
|---|-------------|
| 4.9. Final Report and Discharge of Liquidating Trustee | 31 |
| 4.10. Reliance by Liquidating Trustee..... | 32 |
| 4.11. Standard of Care; Exculpation..... | 32 |
| SECTION 5 — DISTRIBUTIONS..... | 33 |
| 5.1. Establishment of Reserves | 33 |
| 5.2. Distributions to Beneficiaries; Disbursing Agent..... | 34 |
| 5.3. Cash Distributions..... | 35 |
| 5.4. Other Provisions..... | 35 |
| SECTION 6 — DBSI Real Estate Liquidating Trust Oversight Committee..... | 35 |
| 6.1. DBSI Real Estate Liquidating Trust Oversight Committee..... | 35 |
| 6.2. Meetings..... | 38 |
| 6.3. Special Meetings | 39 |
| 6.4. Manner of Acting..... | 39 |
| 6.5. Action Without a Meeting | 40 |
| 6.6. Compensation | 40 |
| 6.7. Standard of Care; Exculpation | 40 |
| SECTION 7 — DURATION OF dbsi real estate LIQUIDATING TRUST | 41 |
| 7.1. Duration of DBSI Real Estate Liquidating Trust..... | 41 |
| 7.2. Continuance of DBSI Real Estate Liquidating Trust for Winding Up | 41 |
| SECTION 8 — INDEMNIFICATION; LIMITATIONS ON LIABILITY | 42 |
| 8.1. Action Upon Instructions | 42 |
| 8.2. Indemnification | 42 |
| 8.3. Limited Recourse | 44 |

Table of Contents

| | <u>Page</u> |
|--|-------------|
| 8.4. No Liability for Acts of Predecessor | 44 |
| 8.5. Express Exculpatory Clauses in Instruments..... | 45 |
| 8.6. Limited Liability of the DBSI Real Estate Liquidating Trust Assets Estate Representative..... | 45 |
| SECTION 9 — REPORTS TO BENEFICIARIES OTHER THAN FINAL REPORT | 45 |
| 9.1. Securities Laws and Investment Company Act | 45 |
| 9.3. Reports | 46 |
| 9.4. Calculations; Source of Distributions | 46 |
| 9.5. Tax Reporting | 46 |
| SECTION 10 — AMENDMENT AND WAIVER | 46 |
| SECTION 11 — MISCELLANEOUS PROVISIONS | 47 |
| 11.1. Notices | 47 |
| 11.2. Post Effective Date Service List | 49 |
| 11.3. Effectiveness | 49 |
| 11.4. Counterparts | 49 |
| 11.5. Governing Law | 49 |
| 11.6. Severability of Provisions | 49 |
| 11.7. Entire Agreement | 49 |
| 11.8. Effect of Death, Incapacity or Bankruptcy of Beneficiary | 50 |
| 11.9. Effect of DBSI Real Estate Liquidating Trust on Third Parties | 50 |
| 11.10. Waiver | 50 |
| 11.11. Tax Identification Numbers | 50 |
| 11.12. Headings | 50 |

Table of Contents

| | <u>Page</u> |
|---|-------------|
| 11.13. Reimbursement of Costs..... | 50 |
| 11.14. Jurisdiction..... | 51 |
| 11.15. Fiscal Year | 51 |
| 11.16. Confidentiality | 51 |
| 11.17. Joint Litigation Privilege..... | 52 |
| 11.18. Rules of Construction | 52 |
| EXHIBIT 3.6.1 AGREEMENT WITH LIQUIDATING TRUSTEE..... | 55 |

This DBSI Real Estate Liquidating Trust Agreement and Declaration of Trust (the "Agreement") is entered into as of October 29, 2010, and shall be effective as of the Effective Date, by and among:

- (i) Note/Fund Consolidated Debtors, as substantively consolidated Debtors and Debtors in Possession Under The "Plan Of Liquidation Filed By The Chapter 11 Trustee And The Official Committee Of Unsecured Creditors" confirmed by order of the Bankruptcy Court presiding over the Chapter 11 Cases In re DBSI, Inc. et al., Case No. 08-12687 (PJW), pending in the United States Bankruptcy Court, District of Delaware, as transferor; and
- (ii) Conrad Myers, not in its individual capacity but solely in its capacity as trustee under this Agreement, or such other party as may be appointed from time to time as the trustee under this Agreement pursuant to **Section 3.7**, as trustee of the DBSI Real Estate Liquidating Trust and as Estate Litigation Claims Representative (as defined in **Section 3.3** hereof) (any such party, including, as applicable, in such party's capacity as the Estate Litigation Claims Representative (as defined in **Section 3.3** hereof) the "Liquidating Trustee").

This Agreement is entered into pursuant to the "Second Amended Joint Chapter 11 Plan Of Liquidation Filed By The Chapter 11 Trustee And The Official Committee Of Unsecured Creditors" dated As Of August 17, 2010" (together with any and all amendments thereto, all exhibits and schedules thereto and all documents incorporated by reference therein, (as the same may be amended, modified or supplemented from time to time in accordance with the terms and provisions thereof)) (the "Plan").

RECITALS

A. On the Petition Date, each of the Debtors filed a voluntary petition under chapter 11 of the Bankruptcy Code in the Bankruptcy Court. Commencing on the Petition Date and continuing until the appointment of the Chapter 11 Trustee, the Debtors continued in possession of their property operated and managed their as debtors in possession pursuant to section 1107(a) and 1108 of the Bankruptcy Code.

B. On November 21, 2008, the United States Trustee appointed seven entities to serve on the Committee. The members of the Committee are: Circle 1984 Family Trust; John Bohinski; Russell Firkins; Herman Builders; 388 Midwood Executive Dr., LLC; Evans LLC-Avenue North; and Initial Building Maintenance Services, Inc.

C. By order of the Bankruptcy Court directing the appointment of a chapter 11 trustee and order of the Bankruptcy Court approving the appointment of James R. Zazzali as chapter 11 trustee, James R. Zazzali is serving as the chapter 11 trustee for the Debtors (the "Chapter 11 Trustee").

D. On October 26, 2010, the Bankruptcy Court entered the Confirmation Order. Copies of the Plan and the Confirmation Order are attached hereto as **Exhibits "A"** and **"B,"** respectively, and the Plan and the Confirmation Order are incorporated into this Agreement by this reference.

E. **Section VI.K.** of the Plan provides for the creation of the DBSI Real Estate Liquidating Trust and the irrevocable transfer and assignment to the DBSI Real Estate Liquidating Trust of the DBSI Real Estate Liquidating Trust Assets.

F. The DBSI Real Estate Liquidating Trust is established for the benefit of the Beneficiaries (as defined in **Section 1.1.2.4** hereof) and is intended to qualify as a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d).

G. The purpose of the DBSI Real Estate Liquidating Trust is to liquidate and distribute the DBSI Real Estate Liquidating Trust Assets in accordance with Treasury Regulations section 307.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

H. Pursuant to the Plan and the Confirmation Order, the Liquidating Trustee was duly appointed as a representative of the Estates of the Note/Fund Consolidated Debtors pursuant to sections 1123(a)(5), (a)(7), and (b)(3)(B) of the Bankruptcy Code for purposes of prosecuting Objection Rights.

I. The DBSI Real Estate Liquidating Trust is intended to qualify as a "liquidating trust" for federal income tax purposes and the Liquidating Trustee shall administer and maintain the DBSI Real Estate Liquidating Trust in compliance with the guidelines for liquidating trusts as set forth in Internal Revenue Service Revenue Procedure 94-45, 1994-2 C.B. 684, and Treasury Regulation Section 1.671-4(a) and all subsequent guidelines regarding liquidating trusts issued by the Internal Revenue Service (the "IRS"). That portion of the DBSI Real Estate Liquidating Trust that consists of the Disputed Unsecured Claims Reserve is intended to qualify as a "disputed ownership fund" pursuant to Treasury Regulations section 1.468B-9 and shall be administered consistent with such Treasury Regulation.

J. The Chapter 11 Trustee has delivered to the Liquidating Trustee a list setting forth the holders of Claims and Interests filed, scheduled or allowed under the Plan that are classified classes related to the Note/Fund Consolidated Debtors and entitled to receive under the Plan a Beneficial Interest in the DBSI Real Estate Liquidating Trust.]

NOW, THEREFORE, pursuant to the Plan and the Confirmation Order, in consideration of the premises, the mutual agreements of the parties contained herein and in the Plan, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and affirmed, the Note/Fund Consolidated Debtors and the Liquidating Trustee agree as follows:

**SECTION 1 — ORGANIZATION; ESTABLISHMENT
OF THE DBSI REAL ESTATE LIQUIDATING TRUST**

1.1. **Definitions**

1.1.1. **Defined Terms.** Unless otherwise stated herein, capitalized terms used in this Agreement shall have the meanings assigned to them in the Plan. Terms defined in the

Bankruptcy Code, and not otherwise specifically defined in the Plan or herein, when used herein, have the meanings attributed to them in the Bankruptcy Code.

1.1.2. Additional Defined Terms. As used herein, the following terms shall have the meanings set forth below, unless the context otherwise requires:

1.1.2.1 "Administrative Reserve" shall have the meaning set forth in Section 5.1.1.1.

1.1.2.2 "Administrative Trust Expenses" shall have the meaning set forth in Section 5.1.1.1.

1.1.2.3 "Agreement" shall have the meaning set forth in the introductory paragraph hereof.

1.1.2.4 "Beneficiaries" means the Holder or the Holders, as the context requires, of a DBSI Real Estate Liquidating Trust Interest.

1.1.2.5 "Cause" means (a) commission of any act of fraud or dishonesty in connection with his or her appointment as the Liquidating Trustee; (b) breach of this Agreement that has not been cured within 10 days after written notice has been delivered by the DBSI Real Estate Liquidating Trust Oversight Committee to the Liquidating Trustee, or breach of this Agreement that has, or could, without regard to any cure of such breach, adversely and materially affect the DBSI Real Estate Liquidating Trust Assets as determined in good faith by the DBSI Real Estate Liquidating Trust Oversight Committee; (c) engaging in conduct constituting a misdemeanor involving moral turpitude or a felony or indictment of the Liquidating Trustee for a felony; (d) material breach of this Agreement on more than two occasions, even if such breaches have been cured; (e) failure to perform his or her substantial job functions, or failure to respond to information inquiries or requests made in accordance with the Agreement, where such failure (even if not a breach of the Agreement), has occurred on more than two occasions, and each such occasion has been the subject of a written notice of such failure delivered by the DBSI Real Estate Liquidating Trust Oversight Committee to the Liquidating Trustee; or (f) Disability; provided, however, the DBSI Real Estate Liquidating Trust Oversight Committee shall not deliver a notice pursuant to clause (e) hereof where the failure is the result of the Liquidating Trustee's absence from duties or incapacity due to a Disability.

1.1.2.6 "Chapter 11 Trustee" shall have the meaning set forth in Recital C hereof.

1.1.2.7 "Confidential Information" shall have the meaning set forth in Section 11.16.

1.1.2.8 "Covered Person" shall have the meaning set forth in Section 11.16.

1.1.2.9 "DBSI Real Estate Liquidating Trust Oversight Committee"

means the Trust Oversight Committee established under the Plan with respect to the DBSI Real Estate Liquidating Trust.

1.1.2.10 "Designated Liquidating Trustee" shall have the meaning set

forth in Section 4.3.

1.1.2.11 "Disability" means either:

(i) the Liquidating Trustee's incapacity to perform his obligations under the Agreement due to physical or mental reasons; or
(ii) the Liquidating Trustee shall have been substantially unable to perform his or her duties under the Agreement for three consecutive months, or for an aggregate of 90 days during any period of six months.

1.1.2.11 "Disputed Claims Fund" shall have the meaning set forth in

Section 4.4.8.2.

1.1.2.12 "Distribution" shall have the meaning ascribed in the Plan and

shall include any distribution to a Holder of a Beneficial Interest under the Agreement.

1.1.2.13 "Distribution Amount" shall have the meaning set forth in

Section 5.2.4.

1.1.2.14 "Distribution Date" means each date on which a Distribution is

made by the Liquidating Trustee to Beneficiaries pursuant to the terms of the Plan, the Confirmation Order and this Agreement.

1.1.2.15 "Estate Litigation Claims Representative" shall have the meaning

set forth in Section 3.3.

1.1.2.16 "Exchange Act" shall have the meaning set forth in Section 2.4.

1.1.2.17 "Fee and Expense Report" shall have the meaning set forth in

Section 3.6.5.

1.1.2.18 "Fee Notice Period" shall have the meaning set forth in Section

3.6.5.

1.1.2.19 "Final Decree" shall have the meaning set forth in Section 6.1.2.

1.1.2.20 "Final Distribution Date" means the day on which the final Distribution is made.

1.1.2.21 "Final Report" shall have the meaning set forth in Section 4.9.1.

1.1.2.22 "Holder" means, depending on the context, any Person holding a Claim in the Chapter 11 Case, or any Person holding a Beneficial Interest in the DBSI Real Estate Liquidating Trust.

1.1.2.23 "Indemnified Person" shall have the meaning set forth in Section 8.2.1.

1.1.2.24 "Interim Trustee" shall have the meaning set forth in Section 3.7.2.4.

1.1.2.25 "IRS" shall have the meaning set forth in Recital I hereof.

1.1.2.26 "Investment Company Act" shall have the meaning set forth in Section 2.4.

1.1.2.27 "Liquidating Trustee" means Conrad Myers appointed as the Liquidating Trustee of the DBSI Real Estate Liquidating Trust pursuant hereto and the Confirmation Order.

1.1.2.28 "Other Reserve" shall have the meaning set forth in Section 5.1.2.1.

1.1.2.29 "Plan" shall have the meaning set forth in the introductory paragraph hereof.

1.1.2.30 "Post Effective Date Service List" shall have the meaning set forth in Section 11.2.

1.1.2.31 "Privileges" shall have the meaning set forth in Section 1.11.

1.1.2.32 "Register" shall have the meaning set forth in Section 2.2.1.

1.1.2.33 "Reserves" shall have the meaning set forth in Section 1.6.2.

1.1.2.34 "SEC" shall have the meaning set forth in Section 2.4.

1.1.2.35 "Securities Act" shall have the meaning set forth in Section 2.4.

1.1.2.36 "Transfer" shall have the meaning set forth in Section 2.6.2.

1.2. Name

The DBSI Real Estate Liquidating Trust shall be known as the "DBSI Real Estate Liquidating Trust," in which name the DBSI Real Estate Liquidating Trustee may conduct the affairs of the DBSI Real Estate Liquidating Trust.

1.3. Office

The office of the DBSI Real Estate Liquidating Trust shall be in care of the DBSI Real Estate Liquidating Trustee at 6327 SW Capital Highway, PMB 221, Portland, OR, attention Conrad Myers, or at any other address that the Liquidating Trustee may designate by written notice to the Post Effective Date Service List.

1.4. Incorporation of Plan

The Plan and Confirmation Order are incorporated into this Agreement. In the event of any conflict between the Plan and this Agreement, this Agreement will govern. In the event of any conflict between the Confirmation Order and the Plan or this Agreement, the Confirmation Order will control and govern.

1.5. Declaration and Establishment of DBSI Real Estate Liquidating Trust

For good and valuable consideration, the receipt of which is hereby acknowledged by the undersigned, and pursuant to the Plan and the Confirmation Order, the Note/Fund Consolidated Debtors, on behalf of themselves and the Estate of the Note/Fund Consolidated Debtors, by the Chapter 11 Trustee, executes this Agreement and, pursuant to the Plan, the Confirmation Order and this Agreement, hereby establishes the DBSI Real Estate Liquidating Trust and irrevocably transfers, absolutely grants, assigns, conveys, sets over, and delivers to the DBSI Real Estate Liquidating Trustee, pursuant to the Plan, and at such times as is set forth in the Plan, all of their right, title and interest in and to the DBSI Real Estate Liquidating Trust Assets to be held in trust to and for the benefit of the Beneficiaries for the uses and purposes stated herein and in the Plan. The Liquidating Trustee hereby agrees to accept and hold the DBSI Real Estate Liquidating Trust Assets in trust for the Beneficiaries subject to the terms of the Plan and this Agreement. The Liquidating Trustee shall have all the rights, powers and duties set forth in the Plan and this Agreement and available under applicable law for accomplishing the purposes of the DBSI Real Estate Liquidating Trust. The Liquidating Trustee is hereby authorized to file with any federal or state governmental authority any documents necessary or helpful to establish the DBSI Real Estate Liquidating Trust.

1.6. DBSI Real Estate Liquidating Trust

1.6.1 Beneficiaries. The DBSI Real Estate Liquidating Trust is organized and established as a trust for the benefit of the Beneficiaries and is intended to qualify as a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d). In accordance with Treasury Regulation Section 301.7701-4(d), the beneficiaries of the DBSI Real Estate Liquidating Trust are the Holders of Claims and Interests of the designated classes of Claims against and Interests in the Note/Fund Consolidated Debtors entitled to receive a Beneficial Interest in the DBSI Real Estate Liquidating Trust under the Plan (the "**Beneficiaries**"); provided, however, only holders of such Claims and Interests that are Allowed Claims and Allowed Interests shall be entitled to Distributions from the DBSI Real Estate Liquidating Trust to the extent, and only to the extent, provided for in the Plan.

1.6.2 Purpose. The primary purpose of the DBSI Real Estate Liquidating Trust is to (i) receive and maintain the DBSI Real Estate Liquidating Trust Assets for the benefit of the Beneficiaries, (ii) oversee and direct the liquidation of the DBSI Real Estate Liquidating Trust Assets for the benefit of the Beneficiaries, including the creation, maintenance and administration of the Administrative Reserves (defined in **Section 5.1.1.1** hereof), and the Other Reserve, if any (defined in **Section 5.1.2.1**) (together, the "**Reserves**") as set forth in **Section 5.1** hereof, (iii) object to Claims and Interests Filed (or deemed Filed) in the Chapter 11 Cases of the Note/Fund Consolidated Debtors; and (iv) distribute the DBSI Real Estate Liquidating Trust

Assets to the Beneficiaries pursuant to the terms of the Plan, the Confirmation Order and this Agreement. The DBSI Real Estate Liquidating Trust will be administered consistent with the liquidating purpose of the DBSI Real Estate Liquidating Trust, and with no objective to continue or to engage in the conduct of a trade or business, except to the extent reasonably necessary to preserve or enhance the liquidation value of the DBSI Real Estate Liquidating Trust Assets, and consistent with the liquidating purpose of the DBSI Real Estate Liquidating Trust.

1.7. Title to DBSI Real Estate Liquidating Trust Assets

From and after the Effective Date of the Plan, pursuant to, and at such times set forth in, the Plan, title to and all rights and interests in the DBSI Real Estate Liquidating Trust Assets shall be transferred to the DBSI Real Estate Liquidating Trust free and clear of all Liens, Claims, encumbrances or interests of any kind in such property of any other Person (including all Liens, Claims, encumbrances or interests of creditors of, or holders of Claims against or Interests in the Note/Fund Consolidated Debtors in accordance with Sections 1123, 1141 and 1146(a) of the Bankruptcy Code, except as otherwise expressly provided for in the Plan, and the Liquidating Trustee, on behalf of the DBSI Real Estate Liquidating Trust, shall receive the DBSI Real Estate Liquidating Trust Assets when they are transferred to the DBSI Real Estate Liquidating Trust under the Plan. The transfer of DBSI Real Estate Liquidating Trust Assets to the DBSI Real Estate Liquidating Trust by the Note/Fund Consolidated Debtors is made for the benefit and on behalf of the Beneficiaries. Upon the transfer of the DBSI Real Estate Liquidating Trust Assets, the Liquidating Trustee succeeds to all of the Note/Fund Consolidated Debtors', and the Estate's of the Note/Fund Consolidated Debtors, right, title and interest in the DBSI Real Estate Liquidating Trust Assets and the Note/Fund Consolidated Debtors and the Estates of the Note/Fund Consolidated Debtors will have no further right or interest in or with respect to the DBSI Real Estate Liquidating Trust Assets or this DBSI Real Estate Liquidating Trust.

1.8. Reporting Of Transfer Of DBSI Real Estate Liquidating Trust Assets

Subject to **Section 4.1(h)**, for United States federal and applicable state income tax purposes, the transfer of the DBSI Real Estate Liquidating Trust Assets to the DBSI Real Estate Liquidating Trust pursuant to, and in accordance with, the Plan shall be deemed to be, and shall be reported as, a disposition of the DBSI Real Estate Liquidating Trust Assets directly to, and for the benefit of, the Beneficiaries, for all purposes of the Internal Revenue Code (including, but not limited to, sections 61(a)(12), 483, 1001, 1012 and 1274), as provided for in the Plan in satisfaction of the Allowed Claims and Allowed Interests held by such Beneficiaries, immediately followed by a contribution of the DBSI Real Estate Liquidating Trust Assets by the Beneficiaries to the DBSI Real Estate Liquidating Trust in exchange for the Beneficial Interests in the DBSI Real Estate Liquidating Trust to be distributed to the Beneficiaries. Upon the transfer of the DBSI Real Estate Liquidating Trust Assets to the DBSI Real Estate Liquidating Trust, neither the Note/Fund Consolidated Debtors nor the Estates of the Note/Fund Consolidated Debtors will have any further interest in or with respect to the DBSI Real Estate Liquidating Trust Assets or the DBSI Real Estate Liquidating Trust. The Beneficiaries will be treated as the grantors and deemed owners of the DBSI Real Estate Liquidating Trust.

1.9. Reservation of Bankruptcy Rights

To the full extent permitted by law, and without excluding or limiting other rights transferred to the DBSI Real Estate Liquidating Trust, all rights under the Bankruptcy Code with respect to the DBSI Real Estate Liquidating Trust Assets are preserved for the benefit of the DBSI Real Estate Liquidating Trust and its Beneficiaries, and may be exercised by the Liquidating Trustee subject to the provisions hereof.

1.10. Books and Records

On the Effective Date, the DBSI Real Estate Liquidating Trust Assets shall include, and the Note/Fund Consolidated Debtors shall be deemed to have transferred, assigned and conveyed to the DBSI Real Estate Liquidating Trust, full title to, and the DBSI Real Estate Liquidating Trust shall be authorized to take possession of, all of the books and records, in whatever form, and wherever located, of the Note/Fund Consolidated Debtors with respect to the DBSI Real Estate Liquidating Trust Assets.

In order that each of the Trusts established under the Plan have full and complete access to all of the books and records that relates to the assets conveyed to each Trust, the DBSI Real Estate Liquidating Trust is authorized to enter into such sharing and access agreements, cost storage and retrieval sharing agreements, and confidentiality and privilege agreements as may be required to insure that each Trust has full and complete access to the books and records of the Debtors as may be required for each such Trust to administer the respective assets of such Trusts.

1.11. Preservation of Privileges

To the fullest extent permitted by law, the Note/Fund Consolidated Debtors will be deemed to irrevocably transfer to the Liquidating Trustee, as its legal successor, all rights of the Note/Fund Consolidated Debtors and the Estates of the Note/Fund Consolidated Debtors (including the Estates after the Confirmation Date) to exercise or waive any attorney-client privilege, accountant-client privilege, work-product privilege or other privilege or immunity attaching to any documents or communications (whether written or oral) as the same relate to or apply to the DBSI Real Estate Liquidating Trust Assets (collectively, the "Privileges"), and the Note/Fund Consolidated Debtors and subject to **Section 4.1(x)** the Liquidating Trustee are authorized to take all necessary actions to effectuate the transfer of the Privileges. All such Privileges also shall vest in the DBSI Real Estate Liquidating Trust and its representatives, to the fullest extent permitted by law. This transfer is self-executing, provided however, that the Liquidating Trustee and Note/Fund Consolidated Debtors are authorized and directed to take any and all necessary actions to effectuate the transfer of such Privileges. Subject to **Sections 3.5.3 and 4.1(x)**, after the Effective Date, the Liquidating Trustee shall have the exclusive power and authority to waive the Privileges.

1.12. No Assumption of Liabilities

The Liquidating Trustee, on behalf of the DBSI Real Estate Liquidating Trust, shall receive the DBSI Real Estate Liquidating Trust Assets and agrees that all DBSI Real Estate Liquidating Trust Assets are being transferred, assigned and conveyed to the DBSI Real Estate

Liquidating Trust subject to no liabilities of the Note/Fund Consolidated Debtors or the Estates of the Note/Fund Consolidated Debtors.

1.13. Appointment of and Acceptance by Liquidating Trustee

Conrad Myers is hereby appointed as the Liquidating Trustee, as of the Effective Date, provided that if Conrad Myers shall be unable to accept the position of Liquidating Trustee, the DBSI Real Estate Liquidating Trust Oversight Committee and the Chapter 11 Trustee shall jointly appoint a replacement Liquidating Trustee, subject to confirmation of such appointment by the Bankruptcy Court. By its signature below, Conrad Myers accepts and confirms the appointment, transfer of DBSI Real Estate Liquidating Trust Assets, and obligations and duties imposed on it by this Agreement. The Liquidating Trustee agrees to receive, hold, administer and distribute the DBSI Real Estate Liquidating Trust Assets and income derived therefrom, and to meet its duties as Liquidating Trustee, all pursuant to the terms of the Plan, the Confirmation Order and this Agreement.

1.14. Valuation of DBSI Real Estate Liquidating Trust Assets

As soon as possible after the Effective Date the Liquidating Trustee shall (i) determine the fair market value, as of the Effective Date, of the DBSI Liquidating Trust Assets based on its own good-faith determination, provided that nothing herein or in the Plan shall be construed to prevent the Liquidating Trustee from seeking a judicial valuation of the DBSI Real Estate Liquidating Trust Assets as of the Effective Date by the Bankruptcy Court, and (ii) apprise the Beneficiaries in writing of such valuation (and indicate in such writing each Beneficiary's percentage ownership interest in the Trust based on each such Beneficiary's Beneficial Interest in the DBSI Real Estate Liquidating Trust or portion thereof as of the Effective Date). The valuation shall be used consistently by all parties (including, without limitation, the Debtors, the Liquidating Trustee and Holders of Beneficial Interests) for all federal income tax purposes. Notwithstanding the foregoing, any such valuation shall not be binding upon the Liquidating Trustee for any purpose other than federal and state income taxes.

SECTION 2 — BENEFICIARIES

2.1. Identification of Beneficiaries; Allocation of Interests

2.1.1. Trust Beneficiaries. In accordance with the Plan, the Beneficiaries of the DBSI Real Estate Liquidating Trust shall be the parties identified as the Beneficiaries in **Section 1.6.1** of this Agreement.

2.1.2. Allocation of Interests. Each Holder of an Allowed Claim against or Allowed Interest in the Note/Fund Consolidated Debtors who are entitled to receive Beneficial Interests in the DBSI Real Estate Liquidating Trust under the Plan shall receive uncertificated Beneficial Interests in the DBSI Real Estate Liquidating Trust (and which shall include any underlying or related economic or other interest within or as a part thereof), which Beneficial Interest in the DBSI Real Estate Liquidating Trust solely shall entitle the holder thereof to the Distributions from the DBSI Real Estate Trust Assets as provided for herein and in the Plan.

2.1.3 Interests Beneficial Only. The ownership of a Beneficial Interest in the DBSI Real Estate Liquidating Trust shall not entitle any Beneficiary to any title in or to the DBSI Real Estate Liquidating Trust Assets (which title shall be vested in the Liquidating Trustee) or to any right to call for a partition or division of the DBSI Real Estate Liquidating Trust Assets or to require an accounting or make any investment decision with respect to or in respect of the DBSI Real Estate Liquidating Trust Assets.

2.2. Register

2.2.1 Names and Addresses. The Liquidating Trustee shall cause to be kept a register (the "Register") in which the Liquidating Trustee shall at all times maintain the names and addresses of the holders of Beneficial Interests in the DBSI Real Estate Liquidating Trust, whether they are allowed or disputed, and the respective interests of the Beneficiaries as allocated under **Section 2.1.2** of this Agreement. The Register shall be adjusted as Disputed Claims are determined to be Allowed Claims or are disallowed, and Disputed Interests are determined to be Allowed Interests or are disallowed. The Liquidating Trustee may rely upon this Register for the purposes of delivering Distributions or notices. In preparing and maintaining this Register, the Liquidating Trustee may rely on the name and address of each holder of a Claim or Interest as set forth in the list provided by the Chapter 11 Trustee to the Liquidating Trustee, unless (i) a different name and/or address is set forth in a proof of claim or proof of claim filed by such holder in the Chapter 11 Cases, or (ii) proper notice of a name or address change has been delivered by such Beneficiary to the Liquidating Trustee in accordance with the Plan and **Section 11.1 hereof**.

2.2.2. Access to the Register by the Beneficiaries. Beneficiaries and their duly authorized representatives shall have the right, upon reasonable prior written notice to the Liquidating Trustee, and in accordance with the reasonable regulations prescribed by the Liquidating Trustee, to inspect and make copies of the Register with respect to such Beneficiary's Beneficial Interest in the DBSI Real Estate Liquidating Trust.

2.2.3. Absolute Owners. The Liquidating Trustee may deem and treat the Beneficiary of record in the Register as the absolute owner of a Beneficial Interest in the DBSI Real Estate Liquidating Trust for the purpose of receiving Distributions and payment thereon or on account thereof and for all other purposes whatsoever and the Liquidating Trustee shall not be charged with having received notice of any claim or demand to such Beneficial Interest or the interest therein of any other Person.

2.3. Evidence of Beneficial Interests in the DBSI Real Estate Liquidating Trust

The Beneficial Interests in the DBSI Real Estate Liquidating Trust shall be represented by book entries on the books and records of the DBSI Real Estate Liquidating Trust.

2.4. Securities Law Registration

To the extent the Beneficial Interests in the DBSI Real Estate Liquidating Trust (or any underlying economic or other interest or part thereof) are deemed to be "securities," the issuance of Beneficial Interests in the DBSI Real Estate Liquidating Trust to holders of

Allowed Claims or Allowed Interests under the Plan shall be exempt, pursuant to section 1145 of the Bankruptcy Code, from registration under the Securities Act of 1933, as amended (the "Securities Act") and any applicable state and local laws requiring registration of securities. If the Liquidating Trustee determines, with the advice of counsel, that the DBSI Real Estate Liquidating Trust is required to comply with registration and reporting requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or the Investment Company Act of 1940, as amended (the "Investment Company Act"), then the Liquidating Trustee shall, after consultation with the DBSI Real Estate Liquidating Trust Oversight Committee, take any and all actions to comply with such registration and reporting requirements, if any, and file periodic reports with the Securities and Exchange Commission (the "SEC"), after the filing of a motion with the Bankruptcy Court seeking approval to do so, upon notice and opportunity for a hearing provided to the Post Effective Date Service List, and the entry of a Final Order of the Bankruptcy Court so directing. Notwithstanding the foregoing procedure, if the Liquidating Trustee determines, with the advice of counsel, that the DBSI Real Estate Liquidating Trust is required to comply with the registration and reporting requirements of the Exchange Act or the Investment Company Act, then prior to the registration of the Liquidating Trust under the Exchange Act or the Investment Company Act, the Liquidating Trustee in consultation with the DBSI Real Estate Liquidating Trust Oversight Committee shall seek to amend this Agreement to make such changes as are deemed necessary or appropriate to ensure that neither the DBSI Real Estate Liquidating Trust nor the Beneficial Interests in the DBSI Real Estate Liquidating Trust is subject to registration or reporting requirements of the Exchange Act, or the Investment Company Act, and this Agreement, as so amended, shall be effective after notice and opportunity for a hearing provided to the Post Effective Date Service List, and the entry of a Final Order of the Bankruptcy Court. If the Agreement, as amended, is not approved by Final Order of the Bankruptcy Court or the Bankruptcy Court otherwise determines in a Final Order that registration under one or both of the Exchange Act or Investment Company Act is required, then the Liquidating Trustee shall take such actions as may be required to satisfy the registration and reporting requirements of the Exchange Act and/or the Investment Company Act, as applicable.

2.5. Rights of Beneficiaries

Each Beneficiary will be entitled to participate in the rights due to a Beneficiary hereunder and under the Plan. Each Beneficiary shall take and hold its uncertificated Beneficial Interest in the DBSI Real Estate Liquidating Trust subject to all of the terms and provisions of this Agreement and the Plan. The Beneficial Interest of a Beneficiary of the DBSI Real Estate Liquidating Trust is in all respects personal property, and upon the death, insolvency or incapacity of an individual Beneficiary, such Beneficiary's interest shall pass to the legal representative of such Beneficiary and such death, insolvency or incapacity shall not terminate or affect the validity of this Agreement. A Beneficiary shall have no title to, right to, possession of, management of, or control of the DBSI Real Estate Liquidating Trust Assets, or any right to call for a partition or division of the DBSI Real Estate Liquidating Trust Assets, or to require an accounting, or any standing to direct the Liquidating Trustee to do or not to do any act or to institute any action or proceeding upon or with respect to the DBSI Real Estate Liquidating Trust Assets, except as expressly provided in this Agreement or the Plan. Title to all the DBSI Real

Estate Liquidating Trust Assets shall be vested in the Liquidating Trustee, and the sole interest of the Beneficiaries shall be the rights and benefits given to such Persons under this Agreement and the Plan.

2.6. Limit on Transfer of Interests of Beneficiaries

2.6.1.

(a) A Beneficial Interest in the DBSI Real Estate Liquidating Trust (including any economic or other interest or part thereof) shall not be transferable, provided, however, subject to the limitations set forth herein and in **Sections 2.6.2 and 2.6.3**, a Beneficiary may transfer its Beneficial Interest in the DBSI Real Estate Liquidating Trust by gift or sale, or upon death or permanent incapacity to such person's guardian, conservator, executor, administrator, trustees, or beneficiaries of such person's will, spouse, children, stepchildren, grandchildren, parents, siblings or legal dependants, to a trust of which the beneficiary or beneficiaries of the corpus and the income shall be such a person or persons, or the Beneficiary, to a partnership of which the partners shall be such a person or persons or the Beneficiary, and to its partners, members, shareholders or other equity owners. Any of the foregoing permitted transfers may only be effected if (i) the transferee agrees to become a party to this Agreement and (ii) such transfer is exempt from the registration provisions of the Securities Act of 1933, as amended, if applicable or from the qualification provisions of any state securities law, if applicable.

(b) The Liquidating Trustee need not reflect any transfer (or make any Distribution to any transferee) and will give notice to such Beneficiary that no transfer has been recognized in the event the Liquidating Trustee reasonably believes that such transfers (or the Distribution to such transferee) may constitute a violation of applicable laws or might cause the DBSI Real Estate Liquidating Trust to be required to register the Beneficial Interests in the DBSI Real Estate Liquidating Trust under the Exchange Act; and

2.6.2. Prior to any transfer, assignment, hypothecation, pledge, exchange or conveyance of a Beneficial Interest in the DBSI Real Estate Liquidating Trust (including any economic or other interest or part thereof) pursuant to **Section 2.6.1(a)** (each, a "**Transfer**"), the transferring Beneficiary shall submit to the Liquidating Trustee a duly endorsed assignment of the Beneficial Interest in the DBSI Real Estate Liquidating Trust to be transferred (in a form reasonably acceptable to the Liquidating Trustee) together with the service charge, if any, to be specified by the Liquidating Trustee pursuant to this **subsection 2.6.2**. No such Transfer shall be effected until, and the transferee shall succeed to the rights of a Beneficiary only upon, final acceptance and registration of the Transfer by the Liquidating Trustee in the Register. No transfer, assignment, pledge, hypothecation or other disposition of a Beneficial Interest in the DBSI Real Estate Liquidating Trust may be effected until either (i) the Liquidating Trustee and the DBSI Real Estate Liquidating Trust Oversight Committee have received such legal advice or other information that they, in their sole discretion, deem necessary or appropriate to assure that any such disposition shall not require the DBSI Real Estate Liquidating Trust to comply with the registration and reporting requirements of the Exchange Act or the Investment Company Act or (ii) the Liquidating Trustee and the DBSI Real Estate Liquidating Trust Oversight Committee have determined to register and/or make periodic reports in order to enable such disposition to be

made. In the event that any such disposition is allowed, the DBSI Real Estate Liquidating Trust Oversight Committee and the Liquidating Trustee may add such restrictions upon transfer and other terms to this Agreement as are deemed necessary or appropriate by the Liquidating Trustee, with the advice of counsel, and in consultation with the DBSI Real Estate Liquidating Trust Oversight Committee, to permit or facilitate such disposition under applicable securities and other laws.

2.6.3. Prior to the registration of any Transfer by a Beneficiary, the Liquidating Trustee shall (i) treat the Person in whose name the DBSI Real Estate Liquidating Trust Interest is registered as the owner for all purposes, and the Liquidating Trustee shall not be affected by notice to the contrary, and (ii) not be liable for making any Distribution to the transferring Beneficiary. When a request to register the Transfer of a DBSI Real Estate Liquidating Trust Interest is presented to the Liquidating Trustee, the Liquidating Trustee shall register the Transfer as requested if the requirements for Transfers hereunder are met. The Liquidating Trustee shall charge a service charge in an amount sufficient to cover the expenses of the Liquidating Trustee and its agents and any tax or governmental charge that may be imposed on any Transfer of an DBSI Real Estate Liquidating Trust Interest. Failure of any Beneficiary to comply with these provisions shall void any Transfer of the related DBSI Real Estate Liquidating Trust Interest, and the proposed transferee shall have no rights under this Agreement. Upon the Transfer of a transferring Beneficiary's entire DBSI Real Estate Liquidating Trust Interest as evidenced by the Register, such transferring Beneficiary shall have no further right, title or interest in the DBSI Real Estate Liquidating Trust Assets or the DBSI Real Estate Liquidating Trust.

2.7. No Legal Title in Beneficiaries

No Beneficiary shall have legal title to any part of the DBSI Real Estate Liquidating Trust Assets. No transfer by operation of law or otherwise, of the right, title and interest of any Beneficiary in and to the DBSI Real Estate Liquidating Trust Assets or the DBSI Real Estate Liquidating Trust shall operate to terminate this DBSI Real Estate Liquidating Trust or entitle any successor or transferee of such Beneficiary to an accounting or to the transfer to it of legal title to any part of the DBSI Real Estate Liquidating Trust Assets.

SECTION 3 — THE LIQUIDATING TRUSTEE

3.1. Liquidating Trustee — Generally

3.1.1. The Liquidating Trustee's powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purposes of the DBSI Real Estate Liquidating Trust. The Liquidating Trustee may arrange for payment of Administrative Trust Expenses (as defined in **Section 5.1.1.1** hereof, including its reasonable fees and expenses) from the DBSI Real Estate Liquidating Trust Assets as permitted herein.

3.1.2. The provisions of this Agreement relating to the DBSI Real Estate Liquidating Trust are intended to create a trust and a trust relationship and are to be governed and construed in all respects as a trust. The DBSI Real Estate Liquidating Trust is not intended to be, and shall not be deemed to be or treated as, a general partnership, limited partnership, joint

venture, corporation, joint stock company or association, nor shall the Liquidating Trustee nor the Beneficiaries, or any of them, for any purpose be, or be deemed to be, or treated in any way whatsoever to be, liable or responsible hereunder as partners or joint ventures. The relationship of the Beneficiaries to the DBSI Real Estate Liquidating Trust and the Liquidating Trustee shall be solely that of beneficiaries of a trust to a trust and its trustee and shall not be deemed a principal and agency relationship, and the rights of the Beneficiaries shall be limited to those expressly conferred upon them by this Agreement.

3.2. Manner of Acting

The Liquidating Trustee shall oversee the liquidation of the DBSI Real Estate Liquidating Trust Assets in good faith and in a cost-effective manner in a reasonable time. The Liquidating Trustee shall make continuing efforts to liquidate the DBSI Real Estate Liquidating Trust Assets, make timely Distributions and not unduly prolong the duration of the DBSI Real Estate Liquidating Trust. In overseeing the selling of the DBSI Real Estate Liquidating Trust Assets, or otherwise monetizing them, the Liquidating Trustee shall use reasonable efforts to maximize the amount of the net proceeds derived therefrom. The liquidation of the DBSI Real Estate Liquidating Trust Assets may be accomplished in part through the prosecution, compromise and settlement, abandonment or dismissal of any or all claims, rights or Objection Rights, subject to the terms of the Plan and this Agreement. Any and all proceeds generated from such DBSI Real Estate Liquidating Trust Assets shall be held and used and distributed by the DBSI Real Estate Liquidating Trust. The Liquidating Trustee may incur any reasonable and necessary expenses in liquidating the DBSI Real Estate Liquidating Trust Assets, as set forth herein.

3.3. Status of Liquidating Trustee

The Liquidating Trustee shall be the representative of the Estates of the Note/Fund Consolidated Debtors from and after the Confirmation Date within the meaning of Section 1123(b)(3)(B) of the Bankruptcy Code for purposes of administrating, investigating, litigating, and settling, the Objection Rights, and with respect thereto shall have all the rights and powers of the Note/Fund Consolidated Debtors and the Estates of the Note/Fund Consolidated Debtors as provided for in the Bankruptcy Code with respect to the DBSI Real Estate Liquidating Trust and the DBSI Real Estate Liquidating Trust Assets in addition to, and subject to, any rights and powers granted in this Agreement and in the Plan (acting in such capacity, the "Estate Litigation Claims Representative"). The Liquidating Trustee shall be a party in interest as to all matters over which the Bankruptcy Court has jurisdiction.

3.4. DBSI Real Estate Liquidating Trust Oversight Committee

The Liquidating Trustee shall consult with, or obtain the prior written approval of, the DBSI Real Estate Liquidating Trust Oversight Committee as expressly provided for herein and the Liquidating Trustee shall not act, or refrain from acting without prior consultation with or written approval of the DBSI Real Estate Liquidating Trust Oversight Committee if such consultation or approval is required hereunder; provided, however, that in those instances where the prior written approval of the DBSI Real Estate Liquidating Trust Oversight Committee is required, and such approval is not provided, then the Liquidating Trustee can nonetheless take such action or inaction upon a motion filed with the Bankruptcy Court, upon notice and

opportunity for a hearing provided to the Post Effective Date Service List and entry of a Final Order of the Bankruptcy Court approving such action or inaction. In connection with any such motion filed by the Liquidating Trustee, the DBSI Real Estate Liquidating Trust Oversight Committee may oppose the relief requested by the Liquidating Trustee and the fees and costs of the DBSI Real Estate Liquidating Trust Oversight Committee, and its agents and professionals, shall be Administrative Trust Expenses.

3.5 Objection Rights

3.5.1. Except as to any Objection Rights released under the Plan, the Liquidating Trustee shall be the successor-in-interest to the Note/Fund Consolidated Debtors and the Estates of the Note/Fund Consolidated Debtors with respect to any Objection Right that was or could have been commenced by the Note/Fund Consolidated Debtors or the Estates of the Note/Fund Consolidated Debtors prior to the Effective Date, or thereafter, until the DBSI Real Estate Liquidating Trust disposes of them. All such Objection Rights, including, without limitation, the right to subordinate Claims under Section 510 of the Bankruptcy Code, shall be retained and pursued and enforced by the Liquidating Trustee, including as the Estate Litigation Claims Representative pursuant to Section 1123(b)(3)(B) of the Bankruptcy Code and the terms of the Plan.

3.5.2. In consultation with the DBSI Real Estate Liquidating Trust Oversight Committee, the Liquidating Trustee shall have discretion to pursue or not to pursue any and all Objection Rights, as it determines to be in the best interests of the Beneficiaries and consistent with the purposes of the Liquidating Trust, and shall have no liability for the outcome of its decision, provided, however, with respect to any particular Objection Right that pertains to a Claim, or a dollar amount in controversy, equal to or greater than \$200,000 with respect to an S/A/P Claims and \$1,000,000 for an Unsecured Claim, the Liquidating Trustee may not agree to settle or otherwise dispose of any such Objection Right without prior written approval of the DBSI Real Estate Trust Committee, or the approval of the Bankruptcy Court. With respect to any Objection Right, the DBSI Real Estate Liquidating Trust and the Liquidating Trustee shall be bound by, and shall give effect to, any release, exculpation, waiver, estoppel or injunction provided by the Plan or the Confirmation Order.

3.5.3 (i) With respect to the Liquidating Trustee's assertion of any Objection Rights, including, but not limited to, Objection Rights under Section 502(d) of the Bankruptcy Code, the Liquidating Trustee shall, in consultation with the DBSI Real Estate Liquidating Trust Oversight Committee, coordinate with the DBSI Estate Litigation Trustee with respect to the DBSI Estate Litigation Trustee asserting any Estate Cause of Action that may relate to, be connected with, or overlap with, in any manner whatsoever, whether directly or indirectly, an Objection Right, to the extent necessary to preserve, and not prejudice, both any such Objection Right and Estate Cause of Action and as such the Liquidating Trustee shall, in consultation with the DBSI Real Estate Liquidating Trust Oversight Committee, work with the DBSI Estate Litigation Trustee in connection with the investigation, assertion, prosecution, assertion or waiver of any Privileges, and/or settlement of such Objection Rights and Estate Cause of Action.

(ii) The DBSI Estate Litigation Trust will be established to hold, prosecute and liquidate the Estate Causes of Action. To the extent that as of the Effective Date any Objection Right is pending as an adversary proceeding and the Objection Right relates to a common set of facts or legal issues implicated by an Estate Cause of Action, the DBSI Estate Litigation Trustee will take lead in prosecuting the Objection Right in connection with such Estate Cause of Action; provided, however, the DBSI Estate Litigation Trustee shall be obligated to consult with and cooperate with the Liquidating Trustee and the DBSI Real Estate Liquidating Trust Oversight Committee with respect to the assertion and prosecution of the Objection Right and shall not settle the Objection Right without the approval of the Liquidating Trustee and the DBSI Real Estate Liquidating Trust Oversight Committee.

3.6. Compensation and Reimbursement of Liquidating Trustee and Professionals from the Administrative Reserve

3.6.1 The Liquidating Trustee shall be compensated for services in the administration of the DBSI Real Estate Liquidating Trust from DBSI Real Estate Liquidating Trust Assets in accordance with that certain agreement among the Chapter 11 Trustee, the Committee and the Liquidating Trustee, in substantial conformity with the form annexed hereto as **Exhibit 3.6.1**.

3.6.2. The Liquidating Trustee's compensation will be paid monthly pursuant to **Section 3.6.5** hereof.

3.6.3. Any professional or any Person retained by the Liquidating Trustee pursuant to the Plan or this Agreement will be entitled to reasonable compensation for services rendered at a rate reflecting actual time billed by such professional or Person on an hourly basis, at the standard billing rates in effect at the time of service, or such other rate or basis of compensation that is reasonable and agreed upon by the Liquidating Trustee, after consultation with the DBSI Real Estate Liquidating Trust Oversight Committee, and in the case of any contingency fee, alternative fee, sharing arrangement, or other fee agreement that is not based upon actual time billed, the prior written approval of the DBSI Real Estate Liquidating Trust Oversight Committee.

3.6.4. Any and all reasonable and necessary costs and expenses incurred by the Liquidating Trustee and any professional or other Person retained by the Liquidating Trustee in performing their respective duties under this Agreement will be reimbursed by the Liquidating Trustee from the DBSI Real Estate Liquidating Trust Assets.

3.6.5. On a monthly basis, or as otherwise agreed by the Liquidating Trustee and the DBSI Real Estate Liquidating Trust Oversight Committee, the Liquidating Trustee (and each professional employed by the Liquidating Trustee) shall provide to the Liquidating Trustee and each member of the DBSI Real Estate Liquidating Trust Oversight Committee a statement setting forth its aggregate fees and expenses incurred in connection with the engagement not previously billed, together with reasonable documentation of such expenses (any such report, a "Fee and Expense Report"), and shall be entitled to receive payment of such fees and expenses **10 days** after providing the Fee and Expense Report (the "Fee Notice Period") to the Liquidating Trustee, and the DBSI Real Estate Liquidating Trust Oversight Committee.

Notwithstanding the foregoing, if the Liquidating Trustee or DBSI Real Estate Liquidating Trust Oversight Committee objects to such Fee and Expense Report within the Fee Notice Period, the parties may seek to resolve such objection on a consensual basis. If the parties are unable to reach a consensual resolution, the Liquidating Trustee (and each professional employed by the Liquidating Trustee) shall be entitled to payment of the contested portion of its fees and/or expenses only pursuant to a Final Order of the Bankruptcy Court after notice and opportunity for a hearing, provided that the Liquidating Trustee (and each professional employed by the Liquidating Trustee) shall be entitled to payment of the uncontested portion, if any, of such fees and expenses upon expiration of the Fee Notice Period. The Fee and Expense Report may be redacted as required to protect all applicable privileges.

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

3.7.1. The appointment and authority of the Liquidating Trustee will be effective as of the Effective Date and will remain and continue in full force and effect until the termination of the DBSI Real Estate Liquidating Trust as provided for in **Section 7.1**.

3.7.2. The service of the Liquidating Trustee will be subject to the following:

3.7.2.1. The Liquidating Trustee will serve until death, resignation pursuant to subsection (a) below, or removal pursuant to subsection (b) below:

(a) The Liquidating Trustee may resign upon not less than 60 days' prior written notice to the DBSI Real Estate Liquidating Trust Oversight Committee, provided that no such resignation will be effective until a successor Liquidating Trustee has been appointed and approved in accordance with this **Section 3.7** and such successor Liquidating Trustee has accepted such appointment in accordance with **Section 3.9** hereof. If a successor Liquidating Trustee is not appointed or does not accept its appointment within ninety (90) days following delivery of a written notice of resignation, the resigning Liquidating Trustee may file a motion with the Bankruptcy Court, upon notice and hearing to the Post Effective Date Service List, for the appointment of a successor Liquidating Trustee. Immediately upon the effectiveness of such Person's resignation, the resigning Liquidating Trustee shall file an interim report ("Interim Report") comparable to the Final Report described in **Section 4.9** but for the period of such Person's service. Upon the resignation of the Liquidating Trustee and the appointment and acceptance of a successor, the resigning Liquidating Trustee, if applicable, will convey, transfer, and set over to the successor Liquidating Trustee by appropriate instrument or instruments all of the funds, if any, then unconveyed or otherwise undisposed of and all other assets then in the resigning Liquidating Trustee's possession and held under this Agreement.

(b) (i) The Liquidating Trustee may be removed for Cause upon motion by the DBSI Real Estate Liquidating Trust Oversight Committee, which removal shall become effective upon the entry of an order of the Bankruptcy Court granting such motion and directing such removal. Prior to the effective date of removal of the Liquidating Trustee, a successor to the Liquidating Trustee (or an Interim Trustee (as defined below)) shall be appointed pursuant this **Section 3.7**. The former Liquidating Trustee having been removed immediately shall file an Interim Report comparable to the Final Report described in **Section 4.9** but for the period of its service.

3.7.2.2. In the event of a vacancy in the position of the Liquidating Trustee occurring by reason of resignation, removal or death, a successor Liquidating Trustee shall be appointed upon (i)(x) the consent of at the DBSI Real Estate Liquidating Trust Oversight Committee, or (y) by the Bankruptcy Court upon motion, with notice provided to the Post Effective Date Service List, and (ii) the confirmation of such appointment by the Bankruptcy Court and the acceptance of such appointment by the successor Liquidating Trustee. Upon the appointment of and acceptance by a successor Liquidating Trustee, the DBSI Real Estate Liquidating Trust Oversight Committee shall file a notice of such appointment and acceptance with the Bankruptcy Court, which notice shall be served upon the Post Effective Date Service List and shall include the name, address, and telephone number of the successor Liquidating Trustee; provided that the filing of such notice shall not be a condition precedent to the vesting in the successor Liquidating Trustee of all the properties, rights powers, trust and duties of its predecessor.

3.7.2.3. Immediately upon appointment of any successor Liquidating Trustee and acceptance of such appointment by the successor Liquidating Trustee, all rights, powers, duties, authority, and privileges of the predecessor Liquidating Trustee hereunder will be vested in and undertaken by the successor Liquidating Trustee without any further act. Any successor Liquidating Trustee shall also succeed as the Estate Litigation Claims Representative.

3.7.2.4. During any period in which there is a vacancy in the position of Liquidating Trustee, the DBSI Real Estate Liquidating Trust Oversight Committee shall appoint one of its members to serve as interim Liquidating Trustee, (the "Interim Trustee"). The Interim Trustee shall be subject to all the terms and conditions applicable to a Liquidating Trustee hereunder. Such Interim Trustee shall not be limited in any manner from exercising any rights or powers as a member of the DBSI Real Estate Liquidating Trust Oversight Committee merely by its appointment as Interim Trustee.

3.8. Continuance of Trust

3.8.1 The death, resignation, or removal of the Liquidating Trustee shall not operate to terminate the DBSI Real Estate Liquidating Trust created by this Agreement or to revoke any existing agency (other than any agency of the Liquidating Trustee as the Liquidating Trustee) created pursuant to the terms of this Agreement or invalidate any action taken by the Liquidating Trustee, and the Liquidating Trustee agrees that the provisions of this Agreement shall be binding upon and inure to the benefit of the Liquidating Trustee and the Liquidating Trustee's successors or assigns, as the case may be. In the event of the resignation or removal of the Liquidating Trustee, in addition to preparation and filing with the Bankruptcy Court of an Interim Report, the former Liquidating Trustee promptly shall:

(a) execute and deliver by the effective date of resignation or removal such documents, instruments, and other writings as may be reasonably requested by the successor Liquidating Trustee to effect the termination of the resigning or removed Liquidating Trustee's capacity under this Agreement and the conveyance of the DBSI Real Estate Liquidating Trust Assets then held by the resigning or removed Liquidating Trustee to the successor Liquidating Trustee;

(b) deliver to the successor Liquidating Trustee all documents, instruments, records and other writings relating to the DBSI Real Estate Liquidating Trust Assets as may be in the possession or under the control of the resigning or removed Liquidating Trustee; and

(c) otherwise assist and cooperate in effecting the assumption of the resigning or removed Liquidating Trustee's obligations and functions by the successor Liquidating Trustee.

3.8.2. The resigning, removed or departed Liquidating Trustee hereby irrevocably appoints the successor Liquidating Trustee (and the Interim Trustee) as its attorney-in-fact and agent with full power of substitution for it and its name, place and stead to do any and all acts that such resigning or removed Liquidating Trustee is obligated to perform under this **Section 3.8.** Such appointment shall not be affected by the subsequent disability or incompetence of the Liquidating Trustee making such appointment. The Bankruptcy Court also may enter such orders as are necessary to effect the termination of the appointment of the Liquidating Trustee and the appointment of the successor Liquidating Trustee.

3.9. Acceptance of Appointment by Successor Liquidating Trustee

Any successor Liquidating Trustee appointed hereunder shall execute an instrument accepting such appointment and assuming all of the obligations as and of the Liquidating Trustee under this Agreement and thereupon the successor Liquidating Trustee shall, without any further act, become vested with all the properties, rights, powers, trusts, and duties of its predecessor as Liquidating Trustee hereunder with like effect as if originally named herein (including without limitation the duties of the Estate Litigation Claims Representative). The successor Liquidating Trustee will not be personally liable for any act or omission of the predecessor Liquidating Trustee.

3.10. Bond or Insurance

The Liquidating Trustee shall obtain a trustee's bond from a Person reasonably satisfactory to the DBSI Real Estate Liquidating Trust Oversight Committee to protect the Beneficiaries with respect to its obligations as Liquidating Trustee, and shall pay the premiums for such bond with DBSI Real Estate Liquidating Trust Assets as an expense of administering the DBSI Real Estate Liquidating Trust. The bond amount shall be determined based upon the amount of Cash under the control of the Liquidating Trustee at any time. The amount of the bond shall be adjusted from time to time in accordance with Cash receipts and disbursements by the DBSI Real Estate Liquidating Trust. Alternatively, or in addition thereto, the Liquidating Trustee may satisfy the requirement of a bond with insurance coverage for the liabilities, duties and obligations of the Liquidating Trustee and its agents, employees, and professionals (in the form of an errors and omissions policy or otherwise) which may, at the sole option of the Liquidating Trustee, remain in effect for a reasonable period after the conclusion of the Liquidating Trustee's service. The Liquidating Trustee shall further be authorized to obtain all reasonably necessary insurance coverage with respect to any property that is or may in the future become DBSI Real Estate Liquidating Trust Assets.

SECTION 4 — AUTHORITY, LIMITATIONS, DUTIES, AND
FINAL REPORT AND DISCHARGE

4.1. Authority

In connection with the administration of the DBSI Real Estate Liquidating Trust, the Liquidating Trustee is authorized to and shall perform, in good faith, in accordance with this Agreement, the Plan and the Confirmation Order, any and all acts necessary or desirable to accomplish the purposes of the DBSI Real Estate Liquidating Trust, and to take such actions, in good faith, as required under this Agreement, the Plan and the Confirmation Order. Except as expressly required in this Agreement, the Plan, or the Confirmation Order, no prior or subsequent Bankruptcy Court approval is required for any act of the Liquidating Trustee. Subject to any specific limitations contained in, or as otherwise provided by this Agreement, the Plan, or the Confirmation Order, the Liquidating Trustee shall have the authority, power and obligation, in its capacity as Liquidating Trustee, as applicable, to:

- (a) open and maintain bank accounts on behalf of the DBSI Real Estate Liquidating Trust, deposit funds therein, and draw checks thereon, as appropriate under the Plan, the Confirmation Order and this Agreement;
- (b) in consultation with, and as to Objection Rights to the extent specifically provided for in **Sections 3.5.2 and 3.5.3** subject to the written approval of, the DBSI Real Estate Liquidating Trust Oversight Committee receive, control, manage, sell, convert, liquidate, convey, transfer, dispose of, reduce to Cash, release, assign, refinance, restructure, finance, enter into development agreements, joint venture agreements, or other agreements or other contracts, or otherwise take any action with respect to (collectively, a "**Liquidity Action**") all, or any portion of, or any right, title or interest in or to, the DBSI Real Estate Liquidating Trust Assets; provided, however, any Liquidity Action that involves DBSI Real Estate Liquidating Trust Assets with a value of one million dollars (\$1,000,000) or more, the prior written approval of the DBSI Real Estate Liquidating Trust Oversight Committee shall be required prior to the Liquidating Trustee implementing such Liquidity Action;
- (c) hold legal title to any and all rights of, in, or arising from, the DBSI Real Estate Liquidating Trust Assets, including, but not limited to, collecting any and all money and other property belonging to the DBSI Real Estate Liquidating Trust and the right to vote any claim or interest in a case under the Bankruptcy Code and receive any distribution therein, which title shall be held by the Liquidating Trustee solely in its capacity as Liquidating Trustee and not in any individual capacity;
- (d) in consultation with, and as to the Objection Rights to the extent specifically provided for in **Sections 3.5.2 and 3.5.3** subject to the written approval of, the DBSI Real Estate Liquidating Trust Oversight Committee, perform the duties, exercise the powers, and assert the rights of a trustee under Sections 704, 108 and 1106 of the Bankruptcy Code and Rule 2004 of the Bankruptcy Code, including, without limitation, hold and assert applicable Privileges and defenses, and as the Estate Litigation Claims Representative assert all rights vested hereunder and file, commence or prosecute the Objection Rights (including objections to Claims under Section 502 of the Bankruptcy Code, turnover actions under Sections 542 and 543 of the

Bankruptcy Code, avoidance actions under Sections 544, 547, 548, 549, 550, 551 and 553 of the Bankruptcy Code, and equitable subordination claims under Section 510 of the Bankruptcy Code);

(e) in consultation with, and as to the Objection Rights to the extent specifically provided for in **Sections 3.5.2 and 3.5.3** subject to the written approval of, the DBSI Real Estate Liquidating Trust Oversight Committee, protect and enforce the rights to the DBSI Real Estate 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;

(f) in consultation with, and as to Objection Rights to the extent specifically provided for in **Sections 3.5.2 and 3.5.3** subject to the written approval of, the DBSI Real Estate Liquidating Trust Oversight Committee, take or refrain from taking any action the Liquidating Trustee reasonably deems necessary to protect, preserve and maximize the DBSI Real Estate Liquidating Trust Assets, including, but not limited to, improving or repairing DBSI Real Estate Liquidating Trust;

(g) in consultation with the DBSI Real Estate Liquidating Trust Oversight Committee, make Distributions as specified in the Plan;

(h) in consultation with the DBSI Real Estate Liquidating Trust Oversight Committee, file or cause to be filed, if necessary, any and all tax and information returns, and any other statements or disclosures relating to the DBSI Real Estate Liquidating Trust that are required to be filed by any governmental unit with respect to the DBSI Real Estate Liquidating Trust, and withhold and pay taxes properly payable by the DBSI Real Estate Liquidating Trust, if any;

(i) in consultation with the DBSI Real Estate Liquidating Trust Oversight Committee, request any appropriate tax determination with respect to the DBSI Real Estate Liquidating Trust, including, without limitation, a determination pursuant to Section 505 of the Bankruptcy Code;

(j) in consultation with the DBSI Real Estate Liquidating Trust Oversight Committee, determine and satisfy any and all liabilities created, incurred or assumed by the DBSI Real Estate Liquidating Trust;

(k) in consultation with the DBSI Real Estate Liquidating Trust Oversight Committee, and subject to **Section 4.4.6**, invest moneys received by the Trust or otherwise held by the Trust;

(l) in consultation with the DBSI Real Estate Liquidating Trust Oversight Committee, in the event that the Liquidating Trustee determines that holders of Beneficial Interests or the DBSI Real Estate Liquidating Trust may, will or have become subject to adverse tax consequences, take such actions that will, or are intended to, alleviate such adverse tax consequences in a manner that does not otherwise adversely affect the Distributions to the holders of Beneficial Interests;

(m) in consultation with the DBSI Real Estate Liquidating Trust Oversight Committee, utilize the DBSI Real Estate Trust Assets to purchase or create and carry all appropriate insurance policies and pay all insurance premiums and costs necessary or advisable to insure the property of the DBSI Real Estate Liquidating Trust and the acts and omissions of the Liquidating Trustee and the DBSI Real Estate Liquidating Trust;

(n) in consultation with the DBSI Real Estate Liquidating Trust Oversight Committee, create one or more Entities for the purpose of holding or managing the DBSI Real Estate Liquidating Trust Assets, or in connection with the sale or other disposition thereof in accordance with **Section 4.1(b)**, or for any other purpose consistent with the Plan, the Confirmation Order and this Agreement;

(o) in consultation with, and with respect to the Objection Rights to the extent specifically set forth in **Sections 3.5.2 and 3.5.3**, and other matters to the extent specifically set forth herein, the written approval of, the DBSI Real Estate Liquidating Trust Oversight Committee, take any and all actions deemed necessary in the Liquidating Trustee's business judgment to preserve and enhance the value of the DBSI Real Estate Liquidating Trust Assets, including, but not limited to, maintaining and improving real property entitlements;

(p) in consultation with the DBSI Real Estate Liquidating Trust Oversight Committee, preserve and maintain all documents and electronic data (including, but not limited to, emails and email server back-up tapes) transferred to or otherwise acquired by the DBSI Real Estate Liquidating Trust and/or the Liquidating Trustee in accordance with the Plan and this Agreement;

(q) prepare and File post-Confirmation quarterly reports in conformance with the U.S. Trustee guidelines;

(r) in consultation with the DBSI Real Estate Liquidating Trust Oversight Committee, execute offsets against Claims as provided for in the Plan and Confirmation Order;

(s) in consultation with the DBSI Real Estate Liquidating Trust Oversight Committee, establish and maintain any necessary reserves pursuant to the terms of the Plan and Confirmation Order, the Reserves pursuant to **Section 5.1** hereof, and any order of the Bankruptcy Court;

(t) in consultation with the DBSI Real Estate Liquidating Trust Oversight Committee, pay all expenses and make other payments relating to the DBSI Real Estate Liquidating Trust Assets, including without limitation the reasonable fees and expenses of the Liquidating Trustee hereunder, and including any capital calls and other expenditures applicable to interests in entities acquired through foreclosure or execution or otherwise as DBSI Real Estate Liquidating Trust Assets, but only when determined by the Liquidating Trustee in its discretion to be reasonably necessary and appropriate to maximize the distribution of proceeds of the DBSI Real Estate Liquidating Trust Assets to Beneficiaries;

(u) in consultation with the DBSI Real Estate Liquidating Trust Oversight Committee, enter into contracts in the course of operating the DBSI Real Estate Liquidating

Trust Assets for liquidation or in conjunction with their disposition under the Plan and herein and subject to **Section 4.1(b)**;

(v) in consultation with the DBSI Real Estate Liquidating Trust Oversight Committee, engage, employ and/or pay such attorneys, accountants, engineers, agents, tax specialists, financial advisors, appraisers, investment bankers, other professionals, and other Persons as may, in the discretion of the Liquidating Trustee, be deemed necessary to fulfill its duties under the Plan and this Agreement, including without limitation, any professionals employed by the same law firm as the Liquidating Trustee, and/or previously retained by the Chapter 11 Trustee, the Creditor's Committee or the Plan Debtors, and/or also retained by the Private Actions Trustee, the DBSI Liquidating Trustee, the DBSI Real Estate Liquidating Trustee, or the DBSI Estate Litigation Trustee, as the Liquidating Trustee shall select to assist the Liquidating Trustee in his or her duties, on such terms as the Liquidating Trustee and the DBSI Real Estate Liquidating Trust Oversight Committee deem reasonable and appropriate, without Bankruptcy Court approval, and waive any conflicts of interest as deemed necessary or appropriate in its discretion; provided, however, and in the case of any contingency fee, alternative fee, sharing arrangement, or other fee agreement that is not based upon actual time billed, the prior written approval of the DBSI Real Estate Liquidating Trust Oversight Committee shall be required; and subject to the foregoing, the Liquidating Trustee may commit the DBSI Real Estate Liquidating Trust to and shall pay such counsel and other professionals reasonable compensation for services rendered and resonable documented out-of-pocket expenses incurred;

(w) in compliance with **Section 3.5 hereof**, sue and be sued in the name of the Liquidating Trustee and, in consultation with and subject to the written approval of the DBSI Real Estate Liquidating Trust Oversight Committee as specifically provided for in **Sections 3.5.2 and 3.5.3**, file or pursue objections to Claims and Objection Rights, and seek to settle or disallow, recharacterize, reclassify or subordinate any of them, and compromise, adjust, arbitrate, sue on or defend, pursue, prosecute abandon, or otherwise deal with and settle any Objection Rights in favor of or against the DBSI Real Estate Liquidating Trust as the Liquidating Trustee shall deem advisable, including seeking estimation of contingent or unliquidated Claims;

(x) in consultation with, and as to the Objection Rights to the extent specifically provided for in **Section 3.5.2** subject to the written approval of, the DBSI Real Estate Liquidating Trust Oversight Committee and the provisions of **Section 3.5.3**, assert, enforce, waive or release rights, Privileges or immunities of any kind, including any Privilege or defense of the Note/Fund Consolidated Debtors related to the DBSI Real Estate Liquidating Trust Assets;

(y) in consultation with the DBSI Real Estate Liquidating Trust Oversight Committee, seek the examination of any Person under, and subject to, the provisions of the Bankruptcy Rules, including Bankruptcy Rule 2004;

(z) in consultation with the DBSI Real Estate Liquidating Trust Oversight Committee, pay obligations or expenses of, or relating to, the DBSI Real Estate Liquidating Trust Assets when the Liquidating Trustee, considering the purposes, terms, distributional requirements and other circumstances of the Plan, deems it prudent to do so to effectuate the Plan;

(aa) notwithstanding anything to the contrary herein, in consultation with the DBSI Real Estate Liquidating Trust Oversight Committee, on 30 days written notice to the Persons identified on the Post Effective Date Service List in accordance with **Section 11** hereof, abandon any property which it determines in its reasonable discretion to be of de minimis value or otherwise burdensome to the DBSI Real Estate Liquidating Trust, including any pending adversary proceeding or other legal action, provided that if any Person to whom such notice is given provides a written objection to the Liquidating Trustee prior to the expiration of such thirty-day period with respect to the proposed abandonment of such property, then such property may be abandoned only pursuant to a Final Order of the Bankruptcy Court after notice and opportunity for a hearing;

(bb) in consultation with and subject to the written approval of the DBSI Real Estate Liquidating Trust Oversight Committee, and Bankruptcy Court approval, borrow funds on behalf of, and solely as a liability of, the DBSI Real Estate Liquidating Trust (which loans may be secured by the DBSI Real Estate Liquidating Trust Assets (but only if such Liens are subordinate to all Liens granted under the Plan), but shall be without recourse to the Liquidating Trustee in its individual capacity) as are necessary to enable the Liquidating Trustee to discharge its powers and duties as Liquidating Trustee under this Agreement, including without limitation funding the costs and expenses of prosecuting any Objection Rights; provided, however; the contributions to be made by the DBSI Real Estate Liquidating Trust to the DBSI Estate Litigation Trust and the Private Actions Trust as provided for in Article V, Sections B (vii) and (viii) of the Plan are hereby authorized and approved without further approval of the DBSI Real Estate Liquidating Trust Oversight Committee or the Bankruptcy Court;

(cc) in consultation with and subject to the written approval of the DBSI Real Estate Liquidating Trust Oversight Committee, and Bankruptcy Court approval, lend funds of, as an asset of, the DBSI Real Estate Liquidating Trust which loans shall be secured, as are necessary to enable the Liquidating Trustee to discharge its powers and duties as Liquidating Trustee under this Agreement, including without limitation lending funds to the DBSI Liquidating Trust, the DBSI Estate Litigation Trust and the Private Actions Trust;

(dd) except as otherwise set forth in this Agreement or in the Plan, and subject to the Treasury Regulations governing liquidating trusts and the retained jurisdiction of the Bankruptcy Court as provided for in the Plan and Confirmation Order, and in consultation with, and as to the Objection Claims to the extent specifically provided for in **Sections 3.5.2 and 3.5.3**, and any other matters to the extent provided for herein, subject to the written approval of, the DBSI Real Estate Liquidating Trust Oversight Committee, in general, without in any manner limiting any of the foregoing, to seek such orders, judgments, injunctions and rulings as it deems necessary to carry out the intentions and purposes, and to give full effect to the provisions, of the Plan and the Confirmation Order; and

(ee) in consultation with, and as to Objection Rights and any other matters to the extent provided for herein subject to the written approval of, the DBSI Real Estate Liquidating Trust Oversight Committee, in general, without in any manner limiting any of the foregoing, deal with the DBSI Real Estate Liquidating Trust Assets or any part or parts thereof in all other ways as would be lawful and prudent for any Person owning the same to deal therewith,

whether similar to or different from the ways herein specified, or take such other actions as may be necessary or helpful to accomplish the purposes of the Plan.

4.2. Limitations on the Liquidating Trustee

4.2.1. Notwithstanding anything in this Agreement to the contrary, the Liquidating Trustee shall not do or undertake any of the following:

- (a) guaranty any debt;
- (b) transfer DBSI Real Estate Liquidating Trust Assets to another trust with respect to which the Liquidating Trustee serves as trustee; or
- (c) make any transfer or Distribution of DBSI Real Estate Liquidating Trust Assets, other than those authorized under the Plan, the Confirmation Order or this Agreement.

4.2.2. Notwithstanding anything herein to the contrary, the Liquidating Trustee, acting in its capacity as Liquidating Trustee, other than to the extent necessary to preserve the liquidation value of the DBSI Real Estate Liquidating Trust Assets, shall not and shall not be authorized to engage in any trade or business, and shall take such actions consistent with the orderly liquidation of the DBSI Real Estate Liquidating Trust Assets as are required by applicable law, and such actions permitted hereunder. Notwithstanding any other authority granted herein, the Liquidating Trustee is not authorized to engage in any investments or activities inconsistent with the treatment of the DBSI Real Estate Liquidating Trust as a "liquidating trust" within the meaning of Treasury Regulations Section 301.7701-4(d) and in accordance with Rev. Proc. 94-45, 1994-2 C.B. 684.

4.2.3. The DBSI Real Estate Liquidating Trust shall not hold 50% or more of the stock (in either vote or value) of any Person that is treated as a corporation for federal income tax purposes, nor have any interest in an Person that is treated as a partnership for federal income tax purposes, except: (i) for the DBSI Real Estate Liquidating Trust Assets that were conveyed to the DBSI Real Estate Liquidating Trust as of the Effective Date; (ii) such stock or partnership interest as are obtained involuntarily or as a matter of practical economic necessity, including through foreclosure of security interests and execution of judgments; and (iii) in order to preserve the value of the DBSI Real Estate Liquidating Trust Assets; provided, however, except for any securities that were conveyed to the DBSI Real Estate Liquidating Trust as of the Effective Date, the DBSI Real Estate Liquidating Trust shall not hold more than 4.9% of the issued and outstanding securities of any public reporting company;;

4.2.4. In the absence of a Final Order of the Bankruptcy Court to the contrary, (i) the Liquidating Trustee shall not facilitate the development of an active trading market for the Beneficial Interests in the DBSI Real Estate Liquidating Trust, and shall not encourage any other Person to do so (including without limitation taking steps to list such interests on any national securities exchange or on NASDAQ, engaging the services of a market maker, placing any advertisements in the media promoting investment in the DBSI Real Estate Liquidating Trust, or collecting or publishing information about prices at which such interests may be transferred); and

(ii) the Liquidating Trustee shall take such affirmative action, including the amendment, supplementation or elimination of provisions of this Agreement, as is necessary or desirable to assure itself, its advisors, the Bankruptcy Court and the staff of the SEC (only if required), that neither the terms of the DBSI Real Estate Liquidating Trust nor its operation requires the registration of the DBSI Real Estate Liquidating Trust or the Beneficial Interests in the DBSI Real Estate Liquidating Trust under the Exchange Act or the Investment Company Act.

4.3. Liquidating Trustee and Conflicts of Interest

If the Liquidating Trustee determines, in the exercise of his reasonable discretion, that it has a material conflict of interest with respect to the settlement, resolution or prosecution of an Objection Right, or any other matter, the Liquidating Trustee with the written approval of the DBSI Real Estate Liquidating Trust Oversight Committee may select a designee to act on behalf of the DBSI Real Estate Liquidating Trust solely with respect to such matter (the "Designated Liquidating Trustee"), with such Designee's authority to act on behalf of the DBSI Real Estate Liquidating Trust to terminate upon the matter's conclusion. If the Designee files a pleading, motion or other paper with a court or tribunal on behalf of the DBSI Real Estate Liquidating Trust, it shall do so in its own name as "Designated Liquidating Trustee of the DBSI Real Estate Liquidating Trust."

4.4. Additional Duties of the Liquidating Trustee

Without limiting the authority, power and obligations set forth in **Section 4.1** hereof, subject to any limitations contained in, or as otherwise provided by this Agreement, the Plan or the Confirmation Order, the Liquidating Trustee, in its capacity as Liquidating Trustee, shall have the following duties.

4.4.1. Consultation with DBSI Real Estate Liquidating Trust Oversight Committee.

4.4.1.1. Information; Meetings.

(a) Monthly Reports. The Liquidating Trustee shall, no less frequently than monthly, or at such other more frequent times as reasonably requested by the DBSI Real Estate Liquidating Trust Oversight Committee, provide the DBSI Real Estate Liquidating Trust Oversight Committee with a written update as to the various actions taken (or declined to be taken) during the previous month, and shall offer the DBSI Real Estate Liquidating Trust Oversight Committee an opportunity to ask questions with respect to such actions or inactions.

(b) Quarterly Meetings and Reports. The Liquidating Trustee shall, no less frequently than quarterly, or at such other more frequent times as reasonably requested by the DBSI Real Estate Liquidating Trust Oversight Committee, meet with the DBSI Real Estate Liquidating Trust Oversight Committee (which meetings may be telephonic) to provide the DBSI Real Estate Liquidating Trust Oversight Committee with an update as to the various actions taken (or declined to be taken) since the prior meeting, and shall offer the DBSI Real Estate Liquidating Trust Oversight Committee an opportunity to ask questions with respect to

such actions or inactions. If requested by the DBSI Real Estate Liquidating Trust Oversight Committee, the Liquidating Trustee shall prepare a quarterly written report which may include (x) financial statements of the DBSI Real Estate Liquidating Trust for such period, and, at the end of each calendar year, a financial statement for such calendar year or portion thereof in which the DBSI Real Estate Liquidating Trust operated (which may be prepared by an independent certified public accountant employed by the Liquidating Trustee); (y) a statement of all transactions and the amounts thereof (including, without limitation, all income of the DBSI Real Estate Liquidating Trust, all dispositions and settlements of Objection Rights, Distributions under the Plan, expenditures and other disbursements) consummated or effected during the period covered by such report, as well as all settlements or other resolutions regarding Disputed Claims consummated or effected during the period covered by such report; and (z) a description of the progress of converting DBSI Real Estate Liquidating Trust Assets to Cash and making Distributions to holders of Beneficial Intersts and any other material information relating to the DBSI Real Estate Liquidating Trust Assets and the administration of the DBSI Real Estate Liquidating Trust. Such reports shall be served on each member of the DBSI Real Estate Liquidating Trust Oversight Committee.

(c) Other Information. The Liquidating Trustee shall, on a regular basis, inform the DBSI Real Estate Liquidating Trust Oversight Committee of actions that the Liquidating Trustee is pursuing and is planning to pursue in connection with the discharge of the Liquidating Trustee's duties. The Liquidating Trustee shall seek the advice or obtain the written approval of the DBSI Real Estate Liquidating Trust Oversight Committee when required by this Agreement and may seek approval from the Bankruptcy Court under the circumstances set forth in this Agreement. However, the Liquidating Trustee shall not be deemed to have delegated its authority or responsibilities under the DBSI Real Estate Liquidating Trust to the DBSI Real Estate Liquidating Trust Oversight Committee by means of this Section. Any motion, pleading, report, document, notice that is required to be Filed, served or provided hereunder or under the Plan or the Confirmation Order by the Liquidating Trustee shall be served upon the DBSI Real Estate Liquidating Trust Oversight Committee and each of its members.

4.4.1.2. Notice of, and Waiver of Notice for, 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 Liquidating Trustee and the members of the DBSI Real Estate Liquidating Trust Oversight Committee in person or by telephone, or via mail, electronic mail, or facsimile transmission. Notice to the Liquidating Trustee and the members of the DBSI Real Estate Liquidating Trust Oversight Committee of any such special meeting will be deemed given sufficiently in advance when (i) if given by mail, the same is deposited in the United States mail at least fourteen (14) calendar days before the meeting date, with postage thereon prepaid, (ii) if given by electronic mail or facsimile transmission, the same is transmitted at least five (5) Business Days prior to the convening of the meeting, or (iii) 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 Liquidating Trustee and the members of the DBSI Real Estate Liquidating Trust Oversight Committee or to an adult member of his/her office staff or household, at least three (3) Business Days prior to the convening of the meeting. The Liquidating Trustee and any member of the DBSI Real Estate Liquidating Trust Oversight Committee may waive notice of any meeting and any adjournment thereof at any time before,

during, or after it is held. Except as provided in the next sentence below, the waiver must be in writing, signed by the Liquidating Trustee or the applicable member or members of the DBSI Real Estate Liquidating Trust Oversight Committee entitled to the notice (which waiver and signature may be by email confirmation), and filed with the minutes or records of the DBSI Real Estate Liquidating Trust. The attendance of the Liquidating Trustee or a member of the DBSI Real Estate Liquidating Trust 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. Notwithstanding any provision in this Agreement to the contrary, the Liquidating Trustee and the members of the DBSI Real Estate Liquidating Trust Oversight Committee may agree to publish in the minutes of any duly noticed and convened meeting of the Liquidating Trustee and the members of the DBSI Real Estate Liquidating Trust Oversight Committee and disseminate to each member and the Liquidating Trustee a copy of (in the manner provide for the giving of Notice in this Agreement), a printed schedule of the date, time and location of the then next subsequent 12 or fewer regular meetings and as to such scheduled regular meetings no further notice to any member or the Liquidating Trustee shall be required.

4.4.1.3. Manner of Acting. The Liquidating Trustee or any member of the DBSI Real Estate Liquidating Trust Oversight Committee may participate in a regular or special meeting by, or conduct the meeting through the use of, conference telephone, or similar communications equipment by means of which all persons participating 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 Liquidating Trustee or any member of the DBSI Real Estate Liquidating Trust Oversight Committee participating in a meeting by this means is deemed to be present in person at the meeting.

4.4.2. Bond. As further set forth in **Sections 3.10 and 8.2** hereof, the Liquidating Trustee shall obtain and pay for a bond or may obtain and pay for insurance coverage relative to the proper performance of its duties under the Plan and this Agreement and to provide indemnification for itself and others provided for in the Plan.

4.4.3. Disbursing Agent. So long as the action taken does not adversely affect the DBSI Real Estate Liquidating Trust's status as a grantor trust, the Liquidating Trustee shall act as the representative of the Note/Fund Consolidated Debtors' Estates and/or disbursing agent for the Note/Fund Consolidated Debtors' Estates, pursuant to the Plan, for purposes of administering the assets of the Note/Fund Consolidated Debtors' Estates, implementing the Plan (including making Distributions provided for in the Plan), and winding up the Note/Fund Consolidated Debtors' Estates in accordance with the Plan and applicable law.

4.4.4. Maintenance of Post Effective Date Service List. Pursuant to **Section 11.2** hereof, the Liquidating Trustee shall maintain the Post Effective Date Service List.

4.4.5. Maintenance of Books and Records. The Liquidating Trustee shall store and maintain the books and records of the DBSI Real Estate Liquidating Trust, transferred hereunder, subject to **Section 7.2** hereof. The Chapter 11 Trustee shall cooperate with the Liquidating Trustee to facilitate the delivery and storage of such books and records.

4.4.6. Maintenance of Cash and Proceeds of the DBSI Real Estate Liquidating Trust Assets. Cash received on or collected subsequent to the Effective Date and/or Cash held by the Liquidating Trustee, and all proceeds and income therefrom (pending periodic distributions in accordance with the provisions of the Plan), shall be held by the Liquidating Trustee in cash, cash equivalents, interest-bearing bank accounts, deposits or investments, U.S. Treasury securities, money market investments, and similar investments, all as permissible under Section 345 of the Bankruptcy Code, or as otherwise approved by order of the Bankruptcy Court, for the benefit of Beneficiaries entitled to Distributions under the Plan and this Agreement, provided, however, that (a) the scope of any such permissible investments shall be limited to include only those investments, or shall be expanded to include any additional investments, as the case may be, that a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d) may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the guidelines of the IRS, whether set forth in IRS rulings, other IRS pronouncements or otherwise, and (b) the Liquidating Trustee may retain any proceeds received that are not Cash only for so long as may be required for the prompt and orderly liquidation of such assets in Cash.

4.4.7. Reports to Beneficiaries. The Liquidating Trustee shall provide notice to the Beneficiaries of the filing of the report described in **Section 4.9 hereof.**

4.4.8. Tax Returns.

4.4.8.1. The Liquidating Trustee shall cause the timely preparation, distribution and/or filing of any necessary tax returns and other documents or filings as a grantor trust as required by applicable law (including but not limited to (x) those pursuant to Treasury Regulation 1.671-4(a); and (y) any federal, state and local tax returns), and pay any taxes shown as due thereon and which are payable by the DBSI Real Estate Liquidating Trust by virtue of its existence and operations. Subject to **Section 4.4.8.2**, the DBSI Real Estate Liquidating Trust's taxable income, gain, loss, deduction or credit will be allocated to the Beneficiaries in accordance with their relative DBSI Real Estate Liquidating Trust Interests in the DBSI Real Estate Liquidating Trust. Beneficiaries shall be responsible for the payment of any tax due on said times of income, gain, loss, deduction or credit.

4.4.8.2. The Liquidating Trustee shall create, and timely elect to treat, any reserve that may be established for Disputed Claims (a "**Disputed Claims Fund**") as a "disputed ownership fund" pursuant to Treasury Regulations section 1.468B-9(c)(2)(ii). Consistent therewith, the Liquidating Trustee shall prepare and timely file income tax returns for the Disputed Claims Fund (which shall be separate and apart from any income tax returns prepared and filed for the DBSI Real Estate Liquidating Trust) as a C corporation or a qualified settlement fund, as the case may be, and shall pay any income taxes owing by or imposed on the Disputed Claims Fund. The Liquidating Trustee shall make such election by attaching a statement to that effect to the timely filed Federal income tax return of the Disputed Claims Fund for the first taxable year of the Disputed Claims Fund's existence and shall include the legend, in boldfaced type, "§1.468B-9(c) Election" at the top of the page. To the extent permitted by applicable law, the Liquidating Trustee shall report consistent with the foregoing for state and local income tax

purposes. The Liquidating Trustee shall file any information returns and make any tax deposits required to be made by applicable Federal, state or local law.

4.4.8.3. In accordance with the Plan, all Beneficiaries shall report, for tax purposes, consistent with the provisions of this **Section 4.4.8.**

4.4.8.4. The Liquidating Trustee shall pay (x) out of the DBSI Real Estate Liquidating Trust Assets, any taxes imposed on the DBSI Real Estate Liquidating Trust or the DBSI Real Estate Liquidating Trust Assets and (y) out of the Disputed Claims Reserve, any taxes imposed on the Disputed Claims Reserve. In the event, and to the extent, any Cash retained on account of Disputed Claims in the Disputed Claims Reserve is insufficient to pay the portion of any such taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims, such taxes shall be (x) reimbursed from any subsequent Cash amounts retained on account of Disputed Claims, or (y) to the extent such Disputed Claims have subsequently been resolved, deducted from any amounts distributable by the Liquidating Trustee as a result of the resolutions of such Disputed Claims.

4.4.8.5 The Liquidating Trustee shall be authorized to, and shall, exercise all powers regarding the DBSI Real Estate Liquidating Trust's tax matters, including filing tax returns and preparing, distributing and filing Interest holder tax statements and notices (including I.R.S. Form 1065), to the same extent as if the Liquidating Trustee were the debtor in possession. In consultation with the DBSI Real Estate Liquidating Trust Oversight Committee, the Liquidating Trustee may request an expedited determination of any unpaid tax liability of the DBSI Real Estate Liquidating Trust under Section 505(b) of the Bankruptcy Code prior to termination of the DBSI Real Estate Liquidating Trust, and shall represent the interest and account of the DBSI Real Estate Liquidating Trust before any taxing authority in all matters, including, but not limited to, any action, suit, proceeding, or audit.

4.5. No Implied Obligations

No covenants or obligations shall be implied into this Agreement, the Plan or the Confirmation Order. The Liquidating Trustee shall not be responsible in any manner whatsoever for the correctness of any recital, statement, representation, or warranty herein, or in any documents or instrument evidencing or otherwise constituting a part of the DBSI Real Estate Liquidating Trust Assets.

4.6. Unknown Property and Liabilities

The Liquidating Trustee shall be responsible for only that property delivered to it, and shall have no duty to make, nor incur any liability for failing to make, any search for unknown property or for any liabilities.

4.7. Compliance with Laws

Any and all Distributions of DBSI Real Estate Liquidating Trust Assets and proceeds of borrowings, if any, shall be in compliance with applicable laws.

4.8. Inquiries into Liquidating Trustee's Authority

Except as otherwise set forth in this Agreement or in the Plan, no Person dealing with the DBSI Real Estate Liquidating Trust shall be obligated to inquire into the authority of the Liquidating Trustee in connection with the protection, conservation or disposition of the DBSI Real Estate Liquidating Trust Assets.

4.9. Final Report and Discharge of Liquidating Trustee

4.9.1. Final Report. Prior to termination of the DBSI Real Estate Liquidating Trust, the Liquidating Trustee shall prepare a final report (the "**Final Report**"), which shall contain the following information: (i) all DBSI Real Estate Liquidating Trust Assets including assets originally charged under the Liquidating Trustee's control; (ii) all funds transferred into and out of, the Reserves; (iii) an accounting of all purchases, sales, gains, losses, and income and expenses in connection with the DBSI Real Estate Liquidating Trust Assets during the Liquidating Trustee's term of service (including any predecessor Liquidating Trustee); (iv) a statement setting forth each Beneficiary's share of items of income, gain, loss, deduction or credit and the Distributions to Beneficiaries; (v) the ending balance of all DBSI Real Estate Liquidating Trust Assets; (vi) a narrative describing actions taken by the Liquidating Trustee in the performance of its duties which materially affect the DBSI Real Estate Liquidating Trust; and (vii) schedule(s) reflecting that:

- (a) all adversary proceedings and contested matters have been finally adjudicated by the entry of a Final Order;
- (b) all Claims for which the Plan provides for treatment as a distribution of an DBSI Real Estate Liquidating Trust Interest shall have either: (i) become Allowed Claims and the Holders thereof become Beneficiaries in accordance with the treatment to be given such Allowed Claim pursuant to this Agreement and the Plan; or (ii) been disallowed by a Final Order or been deemed to be a Disallowed Claim in accordance with the terms of the Plan;
- (c) all DBSI Real Estate Liquidating Trust Assets (including Objection Rights) have been either: (i) reduced to Cash; or (ii) abandoned by the Liquidating Trustee, in accordance with the provisions of this Agreement and the Plan; and
- (d) all expenses of the Liquidating Trust have been paid (or will be paid) and all payments and Final Distributions to be made to Beneficiaries have been made (or will be made) by the Liquidating Trustee in accordance with the provisions of this Agreement and the Plan.

At the discretion of the DBSI Real Estate Liquidating Trust Oversight Committee, the Final Report may be audited, or reviewed, by the DBSI Real Estate Liquidating Trust's independent accountants in accordance with generally accepted auditing standards.

4.9.2. Approval of Final Report and Discharge of the Liquidating Trustee.

Notice of the Liquidating Trustee's Final Report, and any audit, or review, thereof, prepared pursuant to the Plan and this **Section 4.9**, shall be filed with the Bankruptcy Court and served on

each Person listed on the Post Effective Date Service List, along with a motion for approval of the Final Report and discharge of the Liquidating Trustee. Upon the entry of the order of the Bankruptcy Court approving the Final Report, the Liquidating Trustee and the DBSI Real Estate Liquidating Trust Oversight Committee shall be discharged from all liability to the DBSI Real Estate Liquidating Trust or any Person who or which has had or may then or thereafter have a claim against or the DBSI Real Estate Liquidating Trust or the DBSI Real Estate Liquidating Trust Oversight Committee for acts or omissions in the Liquidating Trustee's capacity as the Liquidating Trustee, or the DBSI Real Estate Liquidating Trust Oversight Committee in its capacity as such, or in any other capacity contemplated by this Trust Agreement or the Plan, unless the Bankruptcy Court orders otherwise for good cause.

4.10. Reliance by Liquidating Trustee

Except as otherwise provided herein:

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

(b) Persons dealing with the Liquidating Trustee shall look only to the assets of the DBSI Real Estate Liquidating Trust to satisfy any liability incurred by the Liquidating Trustee to such Person in carrying out the terms of this Agreement, and neither the Liquidating Trustee nor any member of the DBSI Real Estate Liquidating Trust Oversight Committee shall have any personal obligation to satisfy any such liability.

4.11. Standard of Care; Exculpation

Neither the Liquidating Trustee nor any of its duly designated agents or representatives or professionals shall be liable for any act or omission taken or omitted to be taken by the Liquidating Trustee in good faith, other than acts or omissions resulting from the recklessness, gross negligence, willful misconduct, knowing and material violation of law, or fraud of the Liquidating Trustee or its designated agents or representatives as determined by a final order not subject to appeal of a court of competent jurisdiction. The Liquidating Trustee may, in connection with the performance of its functions, and in its sole and absolute discretion, consult with its attorneys, accountants, financial advisors and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such Persons. Notwithstanding such authority, the Liquidating Trustee shall be under no obligation to consult with its attorneys, accountants, financial advisors or agents, and its good faith determination to not do so shall not result in the imposition of liability on the Liquidating Trustee, unless such determination is based on recklessness, gross negligence, willful misconduct, knowing and material violation of law, or fraud as determined by a final order not subject to appeal of a court of competent jurisdiction. The Liquidating Trustee and its employees, agents, professionals and representatives shall be and hereby are exonerated by all persons and entities, including, without limitation, Beneficiaries and other parties-in-interest, from any and all claims, causes of action and other assertions of liability arising out of any act or omission of the Liquidating Trustee, except only for claims, causes of action and other assertions

of liability to the extent based on the Liquidating Trustee's recklessness, gross negligence, willful misconduct, knowing and material violation of law, or fraud. No Beneficiary or other party-in-interest will have or be permitted to pursue any claim or cause of action against the Liquidating Trustee or its employees, agents, representative or professionals for making payments in accordance with the Plan or the Confirmation Order. Any act taken or not taken by the Liquidating Trustee with the approval of the Bankruptcy Court will be conclusively deemed not to constitute recklessness, gross negligence, willful misconduct, knowing and material violation of law, or fraud; provided, however, that such approval of the Bankruptcy Court is not subsequently deemed void as being procured by the Liquidating Trustee's fraud; provided, further, however, nothing herein shall absolve the Liquidating Trustee from liability with respect to any recklessness, gross negligence, willful misconduct, knowing and material violation of law, or fraud not within the scope of such specifically approved act taken or not taken.

SECTION 5 — DISTRIBUTIONS

5.1. Establishment of Reserves

5.1.1. Administrative Reserve

5.1.1.1. On or as soon as practicable after the Effective Date, the Liquidating Trustee shall establish, and shall thereafter maintain, one or more reserve accounts (the "**Administrative Reserve**") that will fund, and from which Administrative Reserve the Liquidating Trustee shall pay, (a) all reasonably anticipated costs and expenses of administering the DBSI Real Estate Liquidating Trust, including, without limitation, administrative expenses of the DBSI Real Estate Liquidating Trust; the fees, costs and expenses of all professionals retained by the Liquidating Trustee and the DBSI Real Estate Liquidating Trust Oversight Committee; any taxes imposed on the DBSI Real Estate Liquidating Trust or the DBSI Real Estate Liquidating Trust Assets, compensation to the Liquidating Trustee; costs, fees and expenses to meet liabilities of the DBSI Real Estate Liquidating Trust; and all liabilities described in **Sections 3.10 and 8.2** and (b) all reasonably foreseeable expenses of preserving, enhancing and maximizing the value of, and distributable proceeds of DBSI Real Estate Liquidating Trust Assets, including assets acquired through foreclosure, execution or otherwise as DBSI Real Estate Liquidating Trust Assets; (collectively, the "**Administrative Trust Expenses**"); provided, however, that funds in reserve accounts comprising the Administrative Reserve may be re-allocated and transferred to different reserve accounts, and provided that nothing herein shall prohibit payment of any Administrative Trust Expenses from any DBSI Real Estate Liquidating Trust Assets.

5.1.1.2. The Liquidating Trustee shall initially fund the Administrative Reserve from Cash transferred to the DBSI Real Estate Liquidating Trust on the Effective Date, and shall periodically re-assess and may modify the funding level, in its reasonable discretion (and in consultation with the DBSI Real Estate Liquidating Trust Oversight Committee) in an amount necessary to pay in full in Cash the Administrative Trust Expenses. The Administrative Reserve may be funded thereafter as determined by the Liquidating Trustee in its reasonable discretion (and as and to the extent required by the terms of the Plan, acting in consultation with the DBSI Real Estate Liquidating Trust Oversight Committee) to be necessary with Cash and Cash proceeds from the liquidation of DBSI Real Estate Liquidating Trust Assets. The

Liquidating Trustee shall pay Administrative Trust Expenses hereunder from the Administrative Reserve as soon as practicable.

5.1.2 Other Reserves

5.1.2.1. On or as soon as practicable after the Effective Date, the Liquidating Trustee may establish and thereafter maintain, one or more reserve accounts, to fund Distributions on account of Disputed Claims of holders of DBSI Real Estate Liquidating Trust Interests pending such Disputed Claims becoming Allowed Claims by Final Order (each, an "**Other Reserve**"). With respect to Disputed Claims designated in a Class under the Plan for which the Liquidating Trustee creates an Other Reserve, the Liquidating Trustee shall determine the amount of the Other Reserve for such Class based upon either: (x) (i) the particular Class under the Plan in which the Disputed Claims is classified; (ii) the treatment of Disputed Claims and such Class under the Plan; and (iii) the amount of the Disputed Claims and Allowed Claims designated in such Class; or (y) such amount as may be determined by order of the Bankruptcy Court. No Distribution shall be made with respect to any Claim to the extent it is a Disputed Claim unless and until such Disputed Claim becomes an Allowed Claim. Distributions on account of any Disputed Claim that becomes an Allowed Claim shall be: (i) made in accordance with the treatment of the Class in which such Allowed Claim is classified; and (ii) from the DBSI Real Estate Liquidating Trust Assets, or the Other Reserve, if applicable, in accordance with Section 5.2.4.

5.2. Distributions to Beneficiaries; Disbursing Agent

5.2.1. The Liquidating Trustee shall be responsible for making Distributions to holders of Beneficial Interests that are holders of Allowed Claims under the Plan entitled to distribution from the DBSI Real Estate Liquidating Trust as required by and set forth in the Plan, the Confirmation Order and in this Agreement.

5.2.2. All Distributions made by the Liquidating Trustee to the holders of Beneficial Interests shall be payable to the holders of record, as set forth in the Register, as of the 30th day prior to the date scheduled for the Distribution, unless such day is not a Business Day, then such day shall be the following Business Day. If the Distribution shall be in Cash, the Liquidating Trustee shall distribute such Cash by wire from a domestic bank, by check drawn on a DBSI Real Estate Liquidating Trust bank account, or by such other method as the Liquidating Trustee deems appropriate under the circumstances. The Liquidating Trustee may withhold from amounts distributable to any Person any and all amounts, determined in the Liquidating Trustee's reasonable sole discretion, to be required by any law, regulation, rule, ruling, directive or other governmental requirement.

5.2.3. All Distributions made to the holders of Beneficial Interests under the Plan and this Agreement shall be made only from DBSI Real Estate Liquidating Trust Assets, and only to the extent that the Liquidating Trustee shall have sufficient DBSI Real Estate Liquidating Trust Assets to make such Distributions in accordance with the terms of the Plan and this Agreement, including adequate funding of Reserves. Each Beneficiary shall look solely to the DBSI Real Estate Liquidating Trust Assets, and not to the Liquidating Trustee in its personal, individual or corporate capacity for Distribution to such Beneficiary as herein provided.

5.2.4. When, in the discretion of the Liquidating Trustee, the DBSI Real Estate Liquidating Trust has Cash in an amount sufficient to render feasible a Distribution to the Beneficiaries after taking into account adequate funding of Reserves, the Liquidating Trustee shall transfer and pay, or cause to be transferred and be paid, to the holders of Beneficial Interests such aggregate amount of Cash as shall then be held in the DBSI Real Estate Liquidating Trust in accordance with the Plan; provided, however, that the aggregate amount of Cash shall exclude any Cash held in the Administrative Reserve or otherwise needed to pay the expenses, debts, charges, liabilities and obligations of the DBSI Real Estate Liquidating Trust, and shall exclude any Cash held in the Disputed Claims Reserve not attributable to Claims Allowed as of the distribution date (the "**Distribution Amount**"). The Distribution Amount shall be determined by the Liquidating Trustee in its reasonable discretion, after consultation with the DBSI Real Estate Liquidating Trust Oversight Committee and, in the absence of gross negligence on the part of the Liquidating Trustee as determined by a final order not subject to appeal of a court of competent jurisdiction, its determination regarding the Distribution Amount shall be final and conclusive on all Persons and shall not be reviewed by the Bankruptcy Court; provided, however, in the event of a dispute between the Liquidating Trustee and the DBSI Real Estate Liquidating Trust Oversight Committee, the Liquidating Trustee may seek approval from the Bankruptcy Court. In determining the Distribution Amount, the Liquidating Trustee may rely on and shall be fully protected in relying on the advice and opinion of professionals employed to advise the Liquidating Trustee.

5.3. Cash Distributions

No Cash distributions shall be required to be made to any holder of a Beneficial Interest in an amount less than **\$1,000.00**. Any funds so withheld and not distributed shall be held in reserve and distributed in subsequent distributions. Notwithstanding the foregoing, all cash shall be distributed in the final distribution of the DBSI Real Estate Liquidating Trust.

5.4. Other Provisions

The provisions of Article VII - Distributions Under This Plan and Article VIII - Claims Administration and Disputed Claims - of the Plan are incorporated herein.

SECTION 6 — DBSI REAL ESTATE LIQUIDATING TRUST OVERSIGHT COMMITTEE

6.1. DBSI Real Estate Liquidating Trust Oversight Committee

6.1.1. Function and Initial Composition. The Liquidating Trustee shall be advised by, and where required by this Agreement receive written approval from, the DBSI Real Estate Liquidating Trust Oversight Committee, a committee of consisting of three to seven members, each of whom shall be a natural person holding or representing a holder of a Beneficial Interest in one of the Trusts. The initial members of the DBSI Real Estate Liquidating Trust Oversight Committee shall be comprised of members of the Committee.

6.1.2. Term. (a) The DBSI Real Estate Liquidating Trust Oversight Committee shall continue in effect until such time as the discharge of all liabilities of the Liquidating Trustee, final Distribution of the entire DBSI Real Estate Liquidating Trust Assets, entry of the

order of the Bankruptcy Court closing the Chapter 11 Cases (the "**Final Decree**"), and the entry of the order of the Bankruptcy Court determining that the Liquidating Trustee shall have no further duties or obligations under this Agreement. The members of the DBSI Real Estate Liquidating Trust Oversight Committee shall serve so long as the DBSI Real Estate Liquidating Trust Oversight Committee is in effect, or until resignation, removal or death.

(b) A member of the DBSI Real Estate Liquidating Trust Oversight Committee may resign at any time by providing ten (10) days' written notice to the DBSI Real Estate Liquidating Trust Oversight Committee.

(c) DBSI Real Estate Liquidating Trust Oversight Committee members may be removed for cause by a majority vote of the DBSI Real Estate Liquidating Trust Oversight Committee (not including the affected member) and written notice. The DBSI Real Estate Liquidating Trust Oversight Committee may determine that there is cause to remove a member if a majority of the entire DBSI Real Estate Liquidating Trust Oversight Committee (not including the named member) finds there is cause. For purposes hereof, cause shall include, but is not limited to:

(i) recklessness, gross negligence or willful misconduct in connection with the performance of the duties of a DBSI Real Estate Liquidating Trust Oversight Committee member;

(ii) knowing and material violation of law;

(iii) fraud;

(iv) The member no longer holds an interest in one of the Trusts;

(v) The designated representative of the DBSI Real Estate Liquidating Trust Oversight Committee member frequently fails to participate (by telephone or in person) in DBSI Real Estate Liquidating Trust Oversight Committee meetings and telephone conferences, and the DBSI Real Estate Liquidating Trust Oversight Committee in good faith believes that holders of Beneficial Interests would be better served by a replacement;

(vi) The presence of circumstances that makes the member incapable of representing the interests of holders of Beneficial Interests; or

(vii) Disability.

Any dispute between the DBSI Real Estate Liquidating Trust Oversight Committee and the removed member with respect to whether cause for removal exists shall be determined by the Bankruptcy Court. Upon resignation or removal, the DBSI Real Estate Liquidating Trust Oversight Committee member shall be discharged from his duties.

6.1.3. Replacement of Members of DBSI Real Estate Liquidating Trust Oversight Committee. Upon resignation, death or removal of a member of the DBSI Real Estate Liquidating Trust Oversight Committee, a replacement member who has a direct or indirect

interest in one of the Trusts shall be selected by the DBSI Real Estate Liquidating Trust Oversight Committee by at least majority vote of the then remaining members of the DBSI Real Estate Liquidating Trust Oversight Committee. In the event that there are no remaining members of the DBSI Real Estate Liquidating Trust Oversight Committee, appointments to fill such vacancies that would have been made by a majority of the remaining members of the DBSI Real Estate Liquidating Trust Oversight Committee shall be made upon an order entered after an opportunity for a hearing by the Bankruptcy Court, upon motion of the Liquidating Trustee. The appointment of a successor member of the DBSI Real Estate Liquidating Trust Oversight Committee will be evidenced by the Liquidating Trustee's filing with the Bankruptcy Court of a notice of appointment, which notice will include the name, address, and telephone number of the successor member of the DBSI Real Estate Liquidating Trust Oversight Committee.

Immediately upon the appointment of any successor member of the DBSI Real Estate Liquidating Trust Oversight Committee, all rights, powers, duties, authority, and privileges of the predecessor member of the DBSI Real Estate Liquidating Trust Oversight Committee hereunder will be vested in and undertaken by the successor member of the DBSI Real Estate Liquidating Trust Oversight Committee without any further act; and the successor member of the DBSI Real Estate Liquidating Trust Oversight Committee will not be liable personally for any act or omission of the predecessor member of the DBSI Real Estate Liquidating Trust Oversight Committee, or the DBSI Real Estate Liquidating Trust Oversight Committee taken as a whole.

6.1.4. Action By DBSI Real Estate Liquidating Trust Oversight Committee. The DBSI Real Estate Liquidating Trust Oversight Committee actions and consent of the DBSI Real Estate Liquidating Trust Oversight Committee shall be taken or given by a vote of at least majority of the members of the DBSI Real Estate Liquidating Trust Oversight Committee permitted to vote on such a matter, unless otherwise specified herein.

6.1.5. Duties, Rights and Powers of the DBSI Real Estate Liquidating Trust Oversight Committee. The DBSI Real Estate Liquidating Trust Oversight Committee shall have the following duties, rights and powers:

(a) To adopt rules of governance including those relating to conflicts of, and material financial interests in, matters which are the subject matter of deliberations or persons related to deliberations with the business of the DBSI Real Estate Liquidating Trust and the role, authority or responsibility of any member of the DBSI Real Estate Liquidating Trust Oversight Committee in respect thereof;

(b) To oversee, review, and guide the activities and performance of the Liquidating Trustee and shall have the authority to remove and/or replace the Liquidating Trustee in accordance with **Section 3.7** herein.

(c) To select and engage such Persons, and select and engage such professional advisors, (including, without limitation, any professional retained by the Creditors' Committee, or the Debtor), in accordance with the terms of this Agreement, the Plan and the Confirmation Order, as the DBSI Real Estate Liquidating Trust Oversight Committee deems necessary and desirable to assist the DBSI Real Estate Liquidating Trust Oversight Committee in

fulfilling its obligations under this Agreement and the Plan, and the Liquidating Trustee shall pay the reasonable fees of such Persons (including on an hourly, contingency, or modified contingency basis) and reimburse such Persons for their reasonable and documented out-of-pocket costs and expenses consistent with the terms of this Agreement. Any professionals retained by the Creditors' Committee may also represent the DBSI Real Estate Liquidating Trust Oversight Committee and/or the Liquidating Trustee, and such representation, including any concurrent representation, is hereby approved in all respects;

(c) Without limiting the specific provisions herein requiring the Liquidating Trustee to obtain the advice, or written approval, of the DBSI Real Estate Liquidating Trust Oversight Committee, to consult with the Liquidating Trustee, and provide or withhold its approval, as provided for in this Agreement, concerning the collection of funds, liquidation, sale or other disposition of DBSI Real Estate Liquidating Trust Assets, settlement of Objection Rights, matters relative to implementation of the Plan, Distributions under the Plan, professionals retained by the Liquidating Trustee and their compensation, compensation to any retained employees of the Note/Fund Consolidated Debtors by the Liquidating Trustee and any other matter as may be requested by the Liquidating Trustee or as provided for in this Agreement, to file a motion, document, or other pleading with the Bankruptcy Court requesting relief with respect to the Agreement or the Plan, with notice to be provided to the Post Effective Date Service List.

6.1.6. Recusal. Notwithstanding any other provision of this Agreement, individual members of the DBSI Real Estate Liquidating Trust Oversight Committee shall recuse themselves from participating in any discussion concerning, and voting on, any proposed action by the Liquidating Trustee that involves (A) an objection to any Claim held by such member or any Insider (as defined by Bankruptcy Code § 101(31)) of such member, (B) the initiation of any litigation or prosecution of any Objection Right against such member or any Insider of such member (or the Beneficiary which such member represents), (C) the settlement of any Objection Right against such member or any Insider of such member, or (D) any other matter as to which such member has a conflict of interest; for purposes of this provisions, "member" shall include the holder of a Beneficial Interest which such member represents.

6.1.7. No Liability. Nothing in this Section or in this Agreement shall be deemed to have transferred any fiduciary responsibilities of Liquidating Trustee to any member of the DBSI Real Estate Liquidating Trust Oversight Committee or the DBSI Real Estate Liquidating Trust Oversight Committee as a whole.

6.2. Meetings

Meetings of the DBSI Real Estate Liquidating Trust Oversight Committee are to be held with such frequency and at such place as the members of the DBSI Real Estate Liquidating Trust Oversight Committee may determine in their reasonable discretion.

6.3. Special Meetings

Special meetings of the DBSI Real Estate Liquidating Trust Oversight Committee may be held whenever and wherever called for by the Liquidating Trustee or any of the members of the DBSI Real Estate Liquidating Trust Oversight Committee.

6.4. Manner of Acting

6.4.1. A majority of the total number of members of the DBSI Real Estate Liquidating Trust Oversight Committee then in office shall constitute a quorum for the transaction of business at any meeting of the DBSI Real Estate Liquidating Trust Oversight Committee. Any or all of the members of the DBSI Real Estate Liquidating Trust Oversight Committee may participate in a regular or special meeting by, or conduct the meeting through the use of, conference telephone or similar communications equipment by means of which all persons participating 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. Any member of the DBSI Real Estate Liquidating Trust Oversight Committee participating in a meeting by this means is deemed to be present in person at the meeting. Voting may be conducted by electronic mail or individual communications by each member of the DBSI Real Estate Liquidating Trust Oversight Committee.

6.4.2. Any member of the DBSI Real Estate Liquidating Trust Oversight Committee who is present and entitled to vote at a meeting of the DBSI Real Estate Liquidating Trust Oversight Committee when action is taken is deemed to have assented to the action taken, subject to the requisite vote of the DBSI Real Estate Liquidating Trust Oversight Committee, unless: (i) such member of the DBSI Real Estate Liquidating Trust Oversight Committee objects at the beginning of the meeting (or promptly upon his/her arrival) to holding it or transacting business at the meeting; or (ii) his/her dissent or abstention from the action taken is entered in the minutes of the meeting; or (iii) he/she delivers written notice (including by electronic or facsimile transmission) of his/her dissent or abstention to the DBSI Real Estate Liquidating Trust Oversight Committee before its adjournment. The right of dissent or abstention is not available to any member of the DBSI Real Estate Liquidating Trust Oversight Committee who votes in favor of the action taken.

6.4.3. Prior to the taking of a vote on any matter or issue or the taking of any action with respect to any matter or issue, each member of the DBSI Real Estate Liquidating Trust Oversight Committee shall confirm and report to the DBSI Real Estate Liquidating Trust Oversight Committee with respect to any such person's possible conflict of interest, any potential violation of the rules of governance adopted by the DBSI Real Estate Liquidating Trust Oversight Committee, or whether such member has or may have with respect to the matter or issue at hand any potential involvement or violation including any conflict or potential conflict (including, without limitation, disclosing any and all financial or other pecuniary interests that such member might have with respect to or in connection with such matter or issue, other than solely as a Beneficiary). A member who is or may be disqualified from voting or further participating in the deliberations relating to any such matter (as determined by a majority vote of the DBSI Real Estate Liquidating Trust Oversight Committee (without the vote of such affected person) or has or who may have a conflict of interest (as determined by a majority vote of the

DBSI Real Estate Liquidating Trust Oversight Committee (without the vote of such affected person) shall be deemed to be a "conflicted member" who shall not be entitled to participate in any discussion regarding, or vote on any action with respect to, such matter or issue (however such member shall be counted for purposes of determining the existence of a quorum); the vote or action with respect to such matter or issue shall be undertaken only by members of the DBSI Real Estate Liquidating Trust Oversight Committee who are not "conflicted members." If with respect to a particular issue there are more than two "conflicted members," then in such instance, notwithstanding anything to the contrary herein, with respect to such issues action of the DBSI Real Estate Liquidating Trust Oversight Committee will require a majority of the members who are not "conflicted members."

6.5. Action Without a Meeting

Any action required or permitted to be taken by the DBSI Real Estate Liquidating Trust Oversight Committee at a meeting may be taken without a meeting if the action is taken by unanimous written consent of the DBSI Real Estate Liquidating Trust Oversight Committee as evidenced by one or more written consents describing the action taken, signed by all of the members of the DBSI Real Estate Liquidating Trust Oversight Committee (which signatures may be by email confirmation) and recorded in the minutes or other transcript of proceedings of the DBSI Real Estate Liquidating Trust Oversight Committee.

6.6. Compensation

6.6.1. Each member of the DBSI Real Estate Liquidating Trust Oversight Committee shall be paid, by the DBSI Real Estate Liquidating Trust, all reasonable and documented out-of-pocket fees and expenses incurred by members of the DBSI Real Estate Liquidating Trust Oversight Committee in connection with the performance of the services rendered hereunder shall be reimbursed, without duplication, by the DBSI Real Estate Liquidating Trust upon demand for payment thereof.

6.6.2. Any and all reasonable and necessary costs and expenses incurred by the DBSI Real Estate Liquidating Trust Oversight Committee (and any professional or other Person retained by the DBSI Real Estate Liquidating Trust Oversight Committee), or members of the DBSI Real Estate Liquidating Trust Oversight Committee in performing their respective services under this Agreement, will be reimbursed by the Liquidating Trustee from the DBSI Real Estate Liquidating Trust Assets.

6.7. Standard of Care; Exculpation

None of the DBSI Real Estate Liquidating Trust Oversight Committee, its members, designees or professionals, nor any of their duly designated agents or representatives, shall be liable for the act or omission of any other member, agent or representative of the DBSI Real Estate Liquidating Trust Oversight Committee, nor shall the DBSI Real Estate Liquidating Trust Oversight Committee or any of its members be liable for any act or omission taken or omitted to be taken by the DBSI Real Estate Liquidating Trust Oversight Committee in good faith, other than acts or omissions resulting from the DBSI Real Estate Liquidating Trust Oversight Committee's own recklessness, gross negligence, willful misconduct, knowing and material

violation of law, or fraud. The DBSI Real Estate Liquidating Trust Oversight Committee and each of its members may, in connection with the performance of its functions, and in its sole and absolute discretion, consult with its attorneys, accountants, financial advisors and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in good faith in accordance with advice or opinions rendered by such Persons. Notwithstanding such authority, neither the DBSI Real Estate Liquidating Trust Oversight Committee nor any of its members shall be under any obligation to consult with its attorneys, accountants, financial advisors or agents, and its good faith determination not to do so shall not result in the imposition of liability on the DBSI Real Estate Liquidating Trust Oversight Committee or, as applicable, its members or designees, unless such determination is based on recklessness, gross negligence, willful misconduct, knowing and material violation of law, or fraud. The DBSI Real Estate Liquidating Trust Oversight Committee and its employees, agents, professionals and representatives shall be and hereby are exculpated by all persons and entities, including, without limitation, Beneficiaries and other parties-in-interest, from any and all claims, causes of action and other assertions of liability arising out of any act or omission of the , DBSI Real Estate Liquidating Trust Oversight Committee except only for claims, causes of action and other assertions of liability to the extent based on the DBSI Real Estate Liquidating Trust Oversight Committee's recklessness, gross negligence, willful misconduct, knowing and material violation of law, or fraud.

SECTION 7 — DURATION OF DBSI REAL ESTATE LIQUIDATING TRUST

7.1. Duration of DBSI Real Estate Liquidating Trust

The DBSI Real Estate Liquidating Trust shall terminate after its liquidation, administration and distribution of the DBSI Real Estate Liquidating Trust Assets in accordance with the Plan and this Agreement, but in any event no later than the fifth (5th) anniversary of the Effective Date; provided, however, that, within a period of six (6) months prior to such termination date or any extended termination date, the Liquidating Trustee may extend the term of the DBSI Real Estate Liquidating Trust if it is necessary to facilitate or complete the liquidation of the DBSI Real Estate Liquidating Trust Assets administered by the DBSI Real Estate Liquidating Trust; provided further, however, that the aggregate of all extensions shall not exceed three (3) years, unless the Liquidating Trustee receives a favorable ruling from the IRS that any further extension would not adversely affect the status of the DBSI Real Estate Liquidating Trust as a “liquidating trust” for federal income tax purposes within the meaning of Treasury Regulations 301.7701-4(d).

7.2. Continuance of DBSI Real Estate Liquidating Trust for Winding Up

After the termination of the DBSI Real Estate Liquidating Trust and for the purpose of liquidating and winding up the affairs of the DBSI Real Estate Liquidating Trust, the Liquidating Trustee shall continue to act as such until it has fully executed its duties pursuant to the Plan and this Agreement (including, without limitation, its duties as the Estate Litigation Claims Representative). Prior to the final distribution of all of the remaining assets of the DBSI Real Estate Liquidating Trust and upon approval of the DBSI Real Estate Liquidating Trust Oversight Committee, the Liquidating Trustee shall be entitled to reserve from such assets any and all amounts required to provide for its own costs and expenses, in accordance with **Section 3.6** herein, until such time as the winding up of the DBSI Real Estate Liquidating Trust is completed.

Upon distribution of the entire DBSI Real Estate Liquidating Trust Assets and the entry of the Final Decree and unless ordered otherwise by the Bankruptcy Court as part of the Final Decree, the Liquidating Trustee shall retain for a period of six (6) months the books, records, Register, and certificates and other documents and files which shall have been delivered to or created by the Liquidating Trustee. Subject to the Final Decree, at the Liquidating Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after six (6) months from the completion and winding up of the affairs of the DBSI Real Estate Liquidating Trust. Upon the discharge of all liabilities of the Liquidating Trustee, final Distribution of the entire DBSI Real Estate Liquidating Trust Assets and entry of the Final Decree, the Liquidating Trustee shall have no further duties or obligations hereunder.

SECTION 8 — INDEMNIFICATION; LIMITATIONS ON LIABILITY

8.1. Action Upon Instructions

If in performing the Liquidating Trustee's duties under this Agreement, the Liquidating Trustee is required to decide between alternative courses of action, or the Liquidating Trustee is unsure of the application of any provision of this Agreement or the Plan, then the Liquidating Trustee shall be under no duty to take or refrain from taking such action as is consistent with this Agreement as the Liquidating Trustee shall deem advisable. The Liquidating Trustee and the DBSI Real Estate Liquidating Trust Oversight Committee members may consult with legal counsel and shall be fully protected in respect of any action taken or suffered in accordance with the advice of legal counsel. The Liquidating Trustee and the DBSI Real Estate Liquidating Trust Oversight Committee may at any time apply to the Bankruptcy Court for a determination as to the course of action to be taken by the Liquidating Trustee, or at any time seek instructions from the Bankruptcy Court concerning the acquisition, management or disposition of the DBSI Real Estate Liquidating Trust Assets.

8.2. Indemnification

8.2.1. Indemnification of Indemnified Persons. To the fullest extent permitted by law, the DBSI Real Estate Liquidating Trust, to the extent of its DBSI Real Estate Liquidating Trust Assets, but not any holder of any Beneficial Interest, shall indemnify, defend and hold harmless any Person who was, or is, a party, or is threatened to be made a party, to any pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such Person is or was: (i) the Liquidating Trustee; (ii) an employee of the DBSI Real Estate Liquidating Trust; (iii) the DBSI Real Estate Liquidating Trust Oversight Committee; (iv) a member of the DBSI Real Estate Liquidating Trust Oversight Committee; or (v) an employee, contractor, agent, attorney, accountant or other professional for any Person described in the preceding clauses (i) through (iv) (collectively, an "Indemnified Person"), from and against any and all losses, liabilities, costs, damages, expenses (including fees and expenses of attorneys and other advisors and any court costs incurred by an Indemnified Person), judgments, fines and amounts paid in settlement actually and reasonably incurred by such Person in connection with such action, suit or proceeding, or the defense or settlement of any claim, issue or matter therein, to the fullest extent, except to the extent such liability is finally determined by an order not subject to appeal of a court of competent jurisdiction to be the result of such Person's recklessness, gross negligence, willful misconduct, knowing and material

violation of law, or fraud. For the avoidance of doubt, nothing in this Agreement shall preclude actions by the Liquidating Trustee or the DBSI Real Estate Liquidating Trust Oversight Committee against any professionals engaged by it as Liquidating Trustee for professional malpractice. Costs or expenses incurred by any such Person in defending any such action, suit or proceeding may be paid by the DBSI Real Estate Liquidating Trust in advance of the institution or final disposition of such action, suit or proceeding, if authorized by the Liquidating Trustee after consultation with the DBSI Real Estate Liquidating Trust Oversight Committee. Any action taken or omitted to be taken with the express approval of the Bankruptcy Court will conclusively be deemed not to constitute recklessness, gross negligence, willful misconduct, knowing and material violation of law, or fraud. Notwithstanding anything to the contrary herein, each Indemnified Person shall be indemnified by the Liquidating Trust under this Section for any costs, expenses (including attorneys' fees), judgments, fines and amounts paid in settlement arising from or relating to any claim, demand, or cause of action arising, or liability by reason of any act or omission by the Indemnified Person occurring prior to the existence of the DBSI Real Estate Liquidating Trust, except to the extent that the loss, cost, damage, expense or liability resulted primarily from the Indemnified Person's recklessness, gross negligence, willful misconduct, knowing and material violation of law, or fraud. The Liquidating Trustee shall not be liable except with respect to the performance or non-performance of such duties and obligations as are specifically set forth herein, and no implied duties or obligations shall be read into this Agreement against the Liquidating Trustee.

8.2.2. Waiver. Any Indemnified Person may waive the benefits of indemnification under this **Section 8.2**, but only by an instrument in writing executed by such Indemnified Person.

8.2.3. Non-Exclusive Rights. The rights to indemnification under this **Section 8.2** are not exclusive of other rights which any Indemnified Person may otherwise have at law or in equity, including without limitation common law rights to indemnification or contribution. Nothing in this **Section 8.2** will affect the rights or obligations of any Person (or the limitations on those rights or obligations) under this Agreement, or any other agreement or instrument to which that Person is a party.

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

8.2.5. Status of Indemnification Claims. Any Persons entitled to indemnification under the Plan shall have a priority distribution right on the corpus of the DBSI Real Estate Liquidating Trust ranking pari passu with other Persons entitled to indemnification hereunder or under the Plan, provided, however, that such right to payment shall be (i) in all respects Administrative Trust Expenses, and (ii) subordinate to any right of payment of any Distributions to holders of S/A/P Allowed Claims.

8.2.6. Insurance. The Liquidating Trustee may use DBSI Real Estate Liquidating Trust Assets to purchase indemnification insurance to satisfy any potential indemnification claims that may arise under this **Section 8.2** or the Plan, in conjunction with any insurance obtained pursuant to **Section 3.10**, for the benefit of the Liquidating Trust, the Liquidating Trustee, the DBSI Real Estate Liquidating Trust Oversight Committee (and its members), and any agents, representatives, attorneys, accountants, advisors or other professionals employed by any of them.

8.3. Limited Recourse

No recourse shall ever be had, directly or indirectly, against the Liquidating Trustee personally, or any member of the DBSI Real Estate Liquidating Trust Oversight Committee, or against any employee, contractor, agent, attorney, accountant or other professional retained in accordance with the terms of this Agreement or the Plan by either the Liquidating Trustee or the DBSI Real Estate Liquidating Trust Oversight Committee, by legal or equitable proceedings or by virtue of any statute or otherwise, nor upon any promise, contract, instrument, undertaking, obligation, covenant or agreement whatsoever executed by the Liquidating Trustee or the DBSI Real Estate Liquidating Trust Oversight Committee in implementation of this Agreement or the Plan, or by reason of the creation of any indebtedness by the Liquidating Trustee under the Plan for any purpose authorized by this Agreement or the Plan, it being expressly understood and agreed that all such liabilities, covenants, and agreements of the DBSI Real Estate Liquidating Trust or the DBSI Real Estate Liquidating Trust Oversight Committee, whether in writing or otherwise, shall be enforceable only against and be satisfied only out of the DBSI Real Estate Liquidating Trust Assets or such part thereof as shall under the term of any such agreement be liable therefore or shall be evidence only of a right of payment out of the DBSI Real Estate Liquidating Trust Assets. Notwithstanding the foregoing, the Liquidating Trustee may be held liable for its recklessness, gross negligence, willful misconduct, knowing and material violation of law, or fraud as determined by a final order of a court of competent jurisdiction not subject to appeal; and if liability on such grounds is established, recourse may be had against (a) the Liquidating Trustee's bond or applicable insurance coverage, and, (b) to the extent not covered by such bond or insurance, subject to **Section 8.4**, directly against the Liquidating Trustee, provided, however, in no event shall the liability of the Liquidating Trustee based upon recklessness or gross negligence be any more than the fees to which the Liquidating Trustee is entitled to hereunder that are paid to, or are received by way of set off or otherwise by, the Liquidating Trustee. The Liquidating Trustee shall be discharged from all liability and obligations to any Beneficiary which has received its final distribution from the DBSI Real Estate Liquidating Trust.

8.4. No Liability for Acts of Predecessor

No successor Liquidating Trustee shall be in any way responsible or liable for the acts or omissions of any predecessor Liquidating Trustee in office prior to the date on which such Person becomes the Liquidating Trustee, nor shall such successor Liquidating Trustee be obligated to inquire into the validity or propriety of any such act or omission unless such successor Liquidating Trustee expressly assumes such responsibility. Any successor Liquidating Trustee shall be entitled to accept as conclusive any final accounting and statement of DBSI Real

Estate Liquidating Trust Assets furnished to such successor Liquidating Trustee by the predecessor Liquidating Trustee and shall further be responsible only for those DBSI Real Estate Liquidating Trust Assets properly includable in such statement.

8.5. Express Exculpatory Clauses in Instruments

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

8.6. Limited Liability of the DBSI Real Estate Liquidating Trust Assets Estate Representative

For the avoidance of doubt, the provisions of **Section 8** hereof, to the extent applicable, shall include the Liquidating Trustee acting in its capacity as Estate Litigation Claims Representative and as disbursing agent under the Plan.

SECTION 9 — REPORTS TO BENEFICIARIES OTHER THAN FINAL REPORT

9.1. Securities Laws and Investment Company Act

Were the Beneficial Interests in the DBSI Real Estate Liquidating Trust to be deemed by Final Order of the Bankruptcy Court (or any other judicial or quasi-judicial authority with applicable jurisdiction) to be securities as defined in applicable federal and state securities laws, then under Section 1145 of the Bankruptcy Code, the issuance of the Beneficial Interests in the DBSI Real Estate Liquidating Trust pursuant to 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. The DBSI Real Estate Liquidating Trust is organized as a liquidating Person in the process of liquidation, and therefore should not be considered, and the DBSI Real Estate Liquidating Trust does not and will not hold itself out as, an "investment company" or a Person "controlled" by an "investment company" as such terms are defined in the Investment Company Act. Notwithstanding the foregoing, if the Bankruptcy Court enters an order determining that the DBSI Real Estate 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 Liquidating Trustee shall take any and all actions to comply with such reporting requirements and file periodic reports with the Securities and Exchange Commission and under such circumstances, and solely and exclusively for purposes of Section

1145 of the Bankruptcy Code, the DBSI Real Estate Liquidating Trust shall be successor-in-interest to the Note/Fund Consolidated Debtors.

9.2. [Intentionally Omitted]

9.3. Reports

The Liquidating Trustee shall prepare all such other reports and financial statements as may be required by law and concurrent with filing or delivery of the same as may be required by law shall serve a copy on each member of the DBSI Real Estate Liquidating Trust Oversight Committee, the U.S. Trustee and any Person listed on the Post Effective Date Service List. Any holder of a Beneficial Interest may receive a copy of any such report by making a written request to the Liquidating Trustee.

9.4. Calculations; Source of Distributions

The Liquidating Trustee shall maintain detailed records of (i) the calculations performed by the Liquidating Trustee or its professionals in respect of any Distributions and disbursements made pursuant to the Plan and this Agreement; and (ii) the accounts from which any such Distributions or disbursements were made.

9.5. Tax Reporting

Following the end of each calendar year, the Liquidating Trustee shall promptly submit to each Beneficiary appearing in its records during such year a separate statement setting forth the information necessary for such Beneficiary to determine its share of items of income, gain, loss, deduction, or credit and will instruct each Beneficiary to report such items on its federal income tax returns (and state and local tax returns, as applicable).

SECTION 10 — AMENDMENT AND WAIVER

10.1. The Liquidating Trustee, with the prior approval of the DBSI Real Estate Liquidating Trust Oversight Committee, may amend, supplement, delete or waive any provision of, this Agreement, without notice to or the consent of any Beneficiary or the approval of the Bankruptcy Court: (i) to cure any ambiguity, omission, defect or inconsistency in this Agreement provided that such amendments, supplements or waivers shall not adversely affect the Distributions to be made under this Agreement to any of the Beneficiaries, or adversely affect the U.S. federal income tax status of the Litigation Trust as a "liquidating trust;" (ii) to comply with any requirements in connection with the U.S. Federal income tax status of the DBSI Real Estate Liquidating Trust as a "liquidating trust;" (iii) to comply with any requirements in connection with maintaining that the DBSI Real Estate Liquidating Trust is not subject to registration or reporting requirements of the Exchange Act, or the Investment Company Act; (iv) to make the DBSI Real Estate Liquidating Trust a reporting Person and, in such event, to comply with any requirements in connection with satisfying the registration or reporting requirements of the Exchange Act or the Investment Company Act; (v) to correct provisions which may cause the staff of the SEC, counsel to the Liquidating Trustee or counsel to the DBSI Real Estate Liquidating Trust Oversight Committee otherwise to conclude that without such deletions,

modifications or supplements the Liquidating Trust may be subject to the registration or reporting provisions of the Exchange Act or the Investment Company Act; and (vi) to evidence and provide for the acceptance of appointment hereunder by a successor trustee in accordance with the terms of this Agreement and the Plan. Only if ordered by the Bankruptcy Court to register under the Exchange Act or the Investment Company Act, then the Liquidating Trustee, with the prior approval of the DBSI Real Estate Liquidating Trust Oversight Committee, shall make such amendments, deletions and supplements of provisions of this Agreement as are necessary or desirable under the circumstances, including amendments to provide for the certification of DBSI Real Estate Liquidating Trust Interests and the mechanics relating thereto.

10.2. Any substantive provision of this Agreement may be amended or waived by the Liquidating Trustee, subject to the prior approval of the DBSI Real Estate Liquidating Trust Oversight Committee, with the approval of the Bankruptcy Court upon notice to the Post Effective Date Service List and an opportunity for a hearing; provided, however, that no change may be made to this Agreement that would adversely affect the Distributions to be made under this Agreement to any of the holders of Beneficial Interests, or adversely affect the U.S. Federal income tax status of the DBSI Real Estate Liquidating Trust as a "liquidating trust."

10.3. Notwithstanding this **Section 10**, any amendments to this Agreement shall not be inconsistent with the purpose and intention of the DBSI Real Estate Liquidating Trust to liquidate in an expeditious but orderly manner the DBSI Real Estate Liquidating Trust Assets in accordance with Treasury Regulation Section 301.7701-4(d).

SECTION 11 — MISCELLANEOUS PROVISIONS

11.1. Notices

All notices, requests or other communications to the parties hereto shall be in writing and shall be sufficiently given only if (i) delivered in person; (ii) sent by electronic mail or facsimile communication (as evidenced by a confirmed fax transmission report); (iii) sent by registered or certified mail, return receipt requested; or (iv) sent by commercial delivery service or courier. Until a change of address is communicated, as provided below, all notices, requests and other communications shall be sent to the parties at the following addresses or facsimile numbers:

If to the DBSI Estate Liquidation Trustee, to:

Conrad Myers, Liquidating Trustee
DBSI Liquidating Trust
6327 SW Capital Highway
PMB 221
Portland, OR 97239

With a copy to:

Karen A. Giannelli, Esq.
Lawrence A. Goldman, Esq.
Gibbons P.C.
One Gateway Center
Newark, NJ 07102-5310
Facsimile: (973) 639-6229/(973) 639-6283

If to the DBSI Real Estate Liquidating Trust Oversight Committee, to:

c/o Greenberg Traurig LLP
Attn: Michael H. Goldstein, Esq.
Nathan A. Schultz, Esq.
2450 Colorado Avenue
Suite 400 East
Santa Monica, CA 90404
Facsimile: (310) 586-0250 / (310) 586-0523

If to the Chapter 11 Trustee, to:

James R. Zazzali, Esq.
Gibbons P.C.
One Gateway Center
Newark, NJ 07102-5310
Facsimile: (973) 639-6483

With a copy to:

Karen A. Giannelli, Esq.
Gibbons P.C.
One Gateway Center
Newark, NJ 07102-5310
Facsimile: (973) 639-6229

11.1.1. Any notice, report, document, statement, pleading or other writing to be provided under this, or pursuant to this, Agreement shall be in writing and shall be delivered personally, by overnight delivery service, or mailed by stamped first class certified mail, return receipt requested. Any Person may change the address to which notices shall be sent by notice given in accordance with this Section. Such notice shall be deemed to have been given the next Business Day after receipt or, if mailed by first class certified mail, return receipt requested, seven (7) days after receipt.

11.1.2. Notwithstanding anything to the contrary set forth herein, to the extent that any document, pleading, schedule, exhibit, or the like is required to be served by the

Liquidating Trustee on any Person (other than the DBSI Real Estate Liquidating Trust Oversight Committee), in lieu of such service, the Liquidating Trustee may post the same on a web site maintained by the Liquidating Trustee provided that notice of such posting is provided to such Persons in accordance with this Agreement.

11.2. Post Effective Date Service List

A holder of a Beneficial Interest requesting notice under this Agreement where this Agreement provides such notice to a holder of a Beneficial Interest who makes a request therefore, shall make such request in accordance with **Section 11.1**. A list setting forth the name, address, e-mail address, if any, and telephone number of each such requesting holder of a Beneficial Interest shall be maintained by the Liquidating Trustee and shall be provided upon request (the "**Post Effective Date Service List**"). The Persons listed in **Section 11.1** and the Committee and its counsel shall be automatically placed on the Post Effective Date Service List without any further action or direction.

11.3. Effectiveness

This Agreement shall become effective upon the Effective Date.

11.4. Counterparts

This Agreement may be executed in one or more counterparts, all of which shall be taken together to constitute one and the same instrument.

11.5. Governing Law

Except to the extent the Bankruptcy Code or the Bankruptcy Rules are applicable, this Agreement shall be governed by, construed under and interpreted in accordance with, the laws of the Delaware, without giving effect to conflict-of-law principles.

11.6. Severability of Provisions

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.

11.7. Entire Agreement

This Agreement (including the Recitals and the Exhibits), the Plan, and the Confirmation Order constitute the entire agreement by and among the parties and there are no representations, warranties, covenants or obligations except as set forth herein or therein. This Agreement, the Plan and the Confirmation Order supersede all prior agreements, understandings, negotiations, discussions, written or oral, of the parties hereto, relating to any transaction contemplated hereunder. Except as otherwise specifically provided herein, in the Plan or in the Confirmation

Order, nothing in this Agreement is intended or shall be construed to confer upon or to give any Person other than the parties hereto and their respective heirs, administrators, executors, successors, or assigns any right to remedies under or by reason of this Agreement.

11.8. Effect of Death, Incapacity or Bankruptcy of Beneficiary

The death, incapacity or bankruptcy of a holder of a Beneficial Interest during the term of this Agreement shall not operate to terminate the Agreement, nor shall it entitle the representatives or creditors of the deceased holder of a Beneficial Interest to an accounting, or to take any action in the courts or elsewhere for the distribution of the DBSI Real Estate Liquidating Trust Assets or for a partition thereof, nor shall it otherwise affect the rights and obligations of any holder of a Beneficial Interest.

11.9. Effect of DBSI Real Estate Liquidating Trust on Third Parties

There is no obligation on the part of any purchaser or purchasers from the Liquidating Trustee or any agent of the Liquidating Trustee, or on the part of any other Entities dealing with the Liquidating Trustee or any agent of the Liquidating Trustee, to see to the application of the purchase money or other consideration passing to the Liquidating Trustee or any agent of the Liquidating Trustee.

11.10. Waiver

No failure or delay of any party to exercise any right or remedy pursuant to this Agreement shall affect such right or remedy or constitute a waiver by such party of any right or remedy pursuant thereto. Resort to one form of remedy shall not constitute a waiver of alternative remedies.

11.11. Tax Identification Numbers

The Liquidating Trustee may require any Beneficiary to furnish to the Liquidating Trustee (a) its employer or taxpayer identification number as assigned by the IRS, and (b) such other records or documents necessary to satisfy the Liquidating Trustee's tax reporting obligations (including, but not limited to, certificates of non-foreign status). The Liquidating Trustee may condition the payment of any Distribution to any Beneficiary upon receipt of such identification number and requested documents.

11.12. 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.

11.13. Reimbursement of Costs

If the Liquidating Trustee, the DBSI Real Estate Liquidating Trust Oversight Committee, or the DBSI Real Estate Liquidating Trust, as the case may be, is the prevailing party in a dispute regarding the provisions of this Agreement or the enforcement thereof, the Liquidating Trustee,

the DBSI Real Estate Liquidating Trust Oversight Committee or the DBSI Real Estate Liquidating Trust, as the case may be, shall be entitled to collect any and all costs, reasonable and documented out-of-pocket expenses and fees, including attorneys' fees, from the non-prevailing party incurred in connection with such dispute or enforcement action. To the extent that the DBSI Real Estate Liquidating Trust has advanced such amounts, the DBSI Real Estate Liquidating Trust may recover such amounts from the non-prevailing party.

11.14. Jurisdiction

Without limiting any Person or Person's right to appeal any order of the Bankruptcy Court or to seek withdrawal of the reference with regard to any matter, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby, and (ii) any and all actions related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the parties, including the holders of Beneficial Interests, and holders of Claims against the Note/Fund Consolidated Debtors, hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court.

11.15. Fiscal Year

The first fiscal year of the DBSI Real Estate Liquidating Trust will begin on the Effective Date and end on the last day of December of each year. All subsequent fiscal years of the DBSI Real Estate Liquidating Trust will begin on the first day of January and end of the last day of December of each such year.

11.16. Confidentiality

The Liquidating Trustee and each successor Liquidating Trustee and each member of the DBSI Real Estate Liquidating Trust Oversight Committee and each successor member of the DBSI Real Estate Liquidating Trust Oversight Committee (each a "**Covered Person**") shall, during the period that each such person, respectively, serves in such capacity under this Agreement and following either the termination of this Agreement or such individual'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 Person to which any of the assets of the DBSI Real Estate Liquidating Trust relates or of which it has become aware in its capacity as a Covered Person (the "**Confidential Information**"), except to the extent disclosure is required by applicable law, order, regulation or legal process. In the event that any Covered Person is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigation, demand or similar legal process) to disclose any Confidential Information, such Covered Person shall notify the DBSI Real Estate Liquidating Trust Oversight Committee and the Liquidating Trustee promptly (unless prohibited by law or legal process) so that the DBSI Real Estate Liquidating Trust Oversight Committee or the Liquidating Trustee may seek an appropriate protective order or other appropriate remedy or, in the discretion of the DBSI Real Estate Liquidating Trust Oversight Committee or the Liquidating Trustee, waive compliance with the terms of this Section (and if the DBSI Real Estate Liquidating Trust Oversight Committee or the Liquidating Trustee seeks such an order, the relevant Covered

Person will provide cooperation as the DBSI Real Estate Liquidating Trust Oversight Committee or the Liquidating Trustee, as the case may be, shall reasonably request). In the event that no such protective order or other remedy is obtained, or that the DBSI Real Estate Liquidating Trust Oversight Committee and the Liquidating Trustee waives compliance with the terms of this Section and that any Covered Person is nonetheless legally compelled to disclose the Confidential Information, the Covered Person will furnish only that portion of the Confidential Information, which the Covered Person, advised by counsel, is legally required and will give the DBSI Real Estate Liquidating Trust Oversight Committee written notice (unless prohibited by law or legal process) of the Confidential Information to be disclosed as far in advance as practicable and exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Confidential Information.

11.17. Joint Litigation Privilege

All communications, whether in writing or oral, among, and all documents exchanged among, the Liquidating Trustee, and its agents and representatives, on the one hand, and the DBSI Real Estate Liquidating Trust Oversight Committee, and its agents and representative, on the other hand, shall be for all purposes deemed to be, and treated as, privileged communications, not subject to discovery, disclosure, or process seeking the same, based upon their common interests, joint litigation privileges, and joint attorney-work product protections, of the Liquidating Trustee and the DBSI Real Estate Liquidating Trust Oversight Committee with respect to all matters pertaining to the Plan and this Agreement, except for matters pertaining to the compensation of the Liquidating Trustee.

11.18. Rules of Construction

Except as otherwise expressly provided in this Agreement or unless the context otherwise clearly requires:

(a) References to designated Sections and other subdivisions of this Agreement, such as "Section ____," refer to the designated Section or other subdivision of this Agreement as a whole and to all subdivisions of the designated Section or other subdivision. The words "herein," "hereof," "hereto," "hereunder" and other words and phrases of similar import refer to this Agreement as a whole and not to any particular Section or other subdivision of this Agreement.

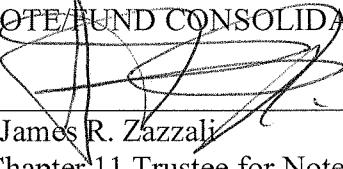
(b) Any term that relates to a document or a statute, rule, or regulation includes any amendments, modifications, supplements, replacements or any other changes that may have occurred since the document, statute, rule, or regulation came into being, including changes that occur after the date of this Agreement to the extent they apply to this Agreement by their terms.

(c) Any party may perform any of the requirements under this Agreement either directly or through others, and the right to cause something to be done rather than doing it directly shall be implicit in every requirement under this Agreement. Unless a provision is restricted as to time or limited as to frequency, all provisions under this Agreement are implicitly available from time to time.

- (d) The term "including" and all its variations mean "including, but not limited to."
- (e) All accounting terms used in an accounting context and not otherwise defined shall be construed in accordance with generally accepted accounting principles.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement or caused this Agreement to be duly executed by their respective duly authorized agents as of the day and year first written above.

JAMES R. ZAZZALI, CHAPTER 11 TRUSTEE
FOR NOTE/FUND CONSOLIDATED DEBTORS

By: 
Name: James R. Zazzali
Title: Chapter 11 Trustee for Note/Fund
Consolidated Debtors

LIQUIDATING TRUSTEE

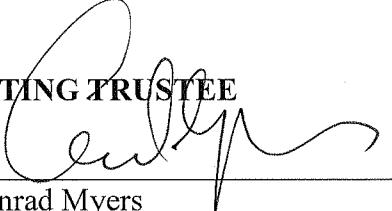
By: 
Name: Conrad Myers
Title: DBSI Real Estate Liquidating Trustee

EXHIBIT 3.6.1

AGREEMENT WITH LIQUIDATING TRUSTEE