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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of Earliest Event Reported):

September 25, 2006

Brush Engineered Materials Inc.

\_\_\_\_\_  
(Exact name of registrant as specified in its charter)

Ohio

001-15885

34-1919973

\_\_\_\_\_  
(State or other jurisdiction  
of incorporation)

\_\_\_\_\_  
(Commission  
File Number)

\_\_\_\_\_  
(I.R.S. Employer  
Identification No.)

17876 St. Clair Avenue, Cleveland, Ohio

44110

\_\_\_\_\_  
(Address of principal executive offices)

\_\_\_\_\_  
(Zip Code)

Registrant's telephone number, including area code:

216-486-4200

Not Applicable

\_\_\_\_\_  
Former name or former address, if changed since last report

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 1.01 Entry into a Material Definitive Agreement.**

Brush Engineered Materials Inc. (the "Company") entered into the following agreements on September 25, 2006, except as otherwise indicated:

The Fifth Amendment to its \$125 million Revolving Credit Agreement with JPMorgan Chase Bank, N.A. as Administrative Agent, and a syndicate of other lenders and the Third Amendment to its \$67 million Precious Metals Agreement with Bank of America, N.A. Each amendment increases the dollar limitations for capitalized lease obligations and other unsecured indebtedness in the applicable agreement.

A Trust Agreement with Fifth Third Bank for the Key Employee Share Option Plan (KESOP). This agreement was put in place as a convenient way for the Company to maintain assets for use in keeping its obligation to participants under the KESOP.

A Trust Agreement with Fidelity Investments for certain deferred compensation plans for non-employee directors. This trust agreement was entered into on September 26, 2006 and replaces the existing trust agreements with National City Bank, N.A. (filed as Exhibit 10tt to the Company's Annual Report for the year ended December 31, 2005) and LaSalle Bank, N.A. (filed as Exhibit 10uu to the Company's Annual Report for the year ended December 31, 2005).

Copies of the amendments and trust agreements are attached hereto as Exhibits 99.1, 99.2, 99.3 and 99.4 and are incorporated herein by reference.

**Item 9.01 Financial Statements and Exhibits.**

- 99.1 Fifth Amendment to Credit Agreement dated September 25, 2006.
- 99.2 Third Amendment to Precious Metals Agreement, dated September 25, 2006.
- 99.3 Trust Agreement with Fifth Third Bank, dated September 25, 2006.
- 99.4 Trust Agreement with Fidelity Investments, dated September 26, 2006.

The foregoing description of the agreement is qualified in its entirety by reference to the full text of the agreement, a copy of which has been filed as an exhibit hereto and incorporated herein by this reference.

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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Brush Engineered Materials Inc.

*September 29, 2006*

*By: Michael C. Hasychak*

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*Name: Michael C. Hasychak*

*Title: Vice President, Treasurer and Secretary*

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Exhibit Index

<b>Exhibit No.</b>	<b>Description</b>
99.1	Fifth Amendment to Credit Agreement dated September 25, 2006
99.2	Third Amendment to Precious Metals Agreement, dated September 25, 2006
99.3	Trust Agreement with Fifth Third Bank, dated September 25, 2006
99.4	Trust Agreement with Fidelity Investments, dated September 26, 2006

## FIFTH AMENDMENT TO CREDIT AGREEMENT

This FIFTH AMENDMENT TO CREDIT AGREEMENT (this “Amendment”) is made and entered into as of September 25, 2006 (the “Effective Date”), by and among Brush Engineered Materials Inc., an Ohio corporation (the “Company”), the other Borrowers (as defined in the Credit Agreement (as defined below)), the other Loan Parties (as defined in the Credit Agreement), the Lenders (as defined in the Credit Agreement) and JPMorgan Chase Bank, N.A., a national banking association (the “Agent”).

WHEREAS, the Company, the other Borrowers, the other Loan Parties, the Lenders, and the Agent entered into a Credit Agreement dated as of December 4, 2003, as amended by that certain First Amendment to Credit Agreement entered into on March 1, 2004, that Second Amendment to Credit Agreement entered into on December 22, 2004, that Third Amendment to Credit Agreement entered into on October 5, 2005, and that Fourth Amendment to Credit Agreement, entered into on December 29, 2005 (as amended, and as may from time to time be further amended, restated, modified or supplemented, the “Credit Agreement”);

WHEREAS, the Company, the other Borrowers, the other Loan Parties, the Lenders and the Agent desire to amend certain provisions of the Credit Agreement as set forth in and pursuant to the terms and conditions of this Amendment; and

WHEREAS, the defined terms used but not defined herein shall have the meanings ascribed to such terms in the Credit Agreement;

NOW, THEREFORE, for valuable consideration received to their mutual satisfaction, the parties hereby agree as follows:

1. Amendments to Section 6.16. Section 6.16(c) of the Credit Agreement is hereby amended by deleting the text “\$2,500,000” appearing therein and replacing it with the text “\$10,000,000”. Section 6.16(h) of the Credit Agreement is hereby amended by deleting the text “\$5,000,000” appearing therein and replacing it with “\$15,000,000”.

2. Representations and Warranties. Each Loan Party represents and warrants to the Agent and the Lenders that (a) it has the power and authority and legal right to execute and deliver this Amendment, (b) the execution and delivery by such Loan Party of this Amendment, and the performance of its obligations hereunder, have been duly authorized by proper proceedings, and (c) this Amendment constitutes a legal, valid and binding obligation of such Loan Party enforceable against such Loan Party in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors’ rights generally and except as the same may be subject to general principles of equity.

3. General Terms. This Amendment shall be effective as of the Effective Date. Except as specifically amended herein, directly or by reference, all of the terms and conditions set forth in the Credit Agreement are confirmed and ratified, and shall remain as originally written. This Amendment shall be construed in accordance with the laws of the State of Ohio, without regard to principles of conflict of laws. The Credit Agreement and all other Loan Documents shall remain in full force and effect in all respects as if the unpaid balance of the principal outstanding, together with interest accrued thereon, had originally been payable and secured as provided for therein, as amended from time to time and as modified by this Amendment. Nothing herein shall affect or impair any rights and powers which the Company, any other Borrower, any Loan Party, any Lender or the Agent may have under the Credit Agreement and any and all other Loan Documents. Headings and footers in this Amendment are for convenience of reference only and shall not govern the interpretation of any of the provisions of this Amendment.

4. No Effect. The parties hereto agree that this Amendment shall in no manner affect or impair the liens and security interests evidenced by the Credit Agreement and/or any other instruments evidencing, securing or related to the Obligations.

5. Fees. The Company hereby agrees to reimburse the Agent for any and all out-of-pocket costs, fees and expenses incurred in connection with this Amendment, including, without limitation, reasonable attorney’s fees.

6. **Counterparts; Facsimile Signatures** . This Amendment may be executed in counterparts and all such counterparts shall constitute one agreement binding on all the parties, notwithstanding that the parties are not signatories to the same counterpart. The parties may execute this Amendment by facsimile, and all such facsimile signatures shall have the same force and effect as manual signatures delivered in person.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Company, the other Borrowers, the Lenders and the Agent have executed this Amendment as of the date first above written.

**BORROWERS:**

**BRUSH ENGINEERED MATERIALS INC.**

By: /s/ Gary W. Schiavoni  
Name: Gary W. Schiavoni  
Title: Assistant Treasurer and Assistant Secretary

**BRUSH INTERNATIONAL, INC.**

By: /s/ Gary W. Schiavoni  
Name: Gary W. Schiavoni  
Title: Secretary

**ZENTRIX TECHNOLOGIES INC.**

By: /s/ Gary W. Schiavoni  
Name: Gary W. Schiavoni  
Title: Treasurer and Assistant Secretary

**BRUSH CERAMIC PRODUCTS INC.**

By: /s/ Gary W. Schiavoni  
Name: Gary W. Schiavoni  
Title: Treasurer and Assistant Secretary

**TECHNICAL MATERIALS, INC.**

By: /s/ Gary W. Schiavoni  
Name: Gary W. Schiavoni  
Title: Assistant Treasurer and Assistant Secretary

**WILLIAMS ACQUISITION, LLC**

By: /s/ Gary W. Schiavoni  
Name: Gary W. Schiavoni  
Title: Secretary

**BEM SERVICES, INC.**

By: /s/ Michael C. Hasychak  
Name: Michael C. Hasychak  
Title: Vice President, Treasurer and Secretary

**BRUSH WELLMAN INC.**

By: /s/ Michael C. Hasychak  
Name: Michael C. Hasychak  
Title: Vice President, Treasurer and Secretary

**BRUSH RESOURCES INC.**

By: /s/ Michael C. Hasychak  
Name: Michael C. Hasychak  
Title: Treasurer

**CIRCUITS PROCESSING TECHNOLOGY, INC.**

By: /s/ Michael C. Hasychak  
Name: Michael C. Hasychak  
Title: Chief Financial Officer and Secretary

**WILLIAMS ADVANCED MATERIALS INC.**

By: /s/ Michael C. Hasychak  
Name: Michael C. Hasychak  
Title: Vice President, Secretary and Treasurer

**SINGAPORE BORROWER:**

**BRUSH WELLMAN (SINGAPORE) PTE LTD.**

By: /s/ Tony Ong Wee Swez  
Name: Tony Ong Wee Swez  
Title: Managing Director

**LENDERS:**

**JPMORGAN CHASE BANK, N.A.**

Individually, as the Agent, a Lender and LC Issuer

By: /s/ Paul A. Taubeneck  
Name: Paul A. Taubeneck  
Title: Assistant Vice President  
**JPMORGAN CHASE BANK, N.A.** Singapore Branch  
as a Lender

By: /s/ Paul A. Taubeneck  
Name: Paul A. Taubeneck  
Title: Assistant Vice President

**LASALLE BANK NATIONAL ASSOCIATION**

as a Lender

By: /s/ Patrick F. Dunphy  
Name: Patrick F. Dunphy  
Title: First Vice President

**RZB FINANCE LLC**  
as a Lender

By: /s/ Louis T. Marosi  
Name: Louis T. Marosi  
Title: Vice President

**FIFTH THIRD BANK**

as a Lender

By: /s/ James P. Byrnes  
Name: James P. Byrnes  
Title: Senior Vice President

**UPS CAPITAL CORPORATION**  
as a Lender

By: /s/ Michael O'Neal  
Name: Michael O'Neal  
Title:

Senior Credit Officer

### THIRD AMENDMENT TO PRECIOUS METALS AGREEMENT

THIS THIRD AMENDMENT TO PRECIOUS METALS AGREEMENT (“**this Amendment**”) is made as of the 25th day of September, 2006, by and among **BANK OF AMERICA, N.A.**, a national banking association, as assignee of Fleet Precious Metals Inc., a Rhode Island corporation (the “**Metal Supplier**”); and **BRUSH ENGINEERED MATERIALS INC.**, an Ohio corporation (“**BEM**”), **WILLIAMS ADVANCED MATERIALS INC.**, a New York corporation (“**WAM**”), **TECHNICAL MATERIALS, INC.**, an Ohio corporation (“**TMI**”), **BRUSH WELLMAN INC.**, an Ohio corporation (“**BWI**”), and **ZENTRIX TECHNOLOGIES INC.**, an Arizona corporation (“**ZTI**”) (BEM, WAM, TMI, BWI and ZTI are herein referred to collectively as the “**Customers**” and individually as a “**Customer**”).

#### W I T N E S S E T H H A T:

WHEREAS, the Metal Supplier and the Customers are parties to a certain Precious Metals Agreement dated as of March 24, 2005, as amended by a certain First Amendment to Precious Metals Agreement dated as of November 16, 2005 and a certain Second Amendment to Precious Metals Agreement dated December 29, 2005 (the “**Agreement**”); and

WHEREAS, the parties hereto desire to amend certain provisions of the Agreement as hereinafter provided;

NOW, THEREFORE, for value received and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby amend the Agreement and agree, effective as of the date first written above, as follows:

1. **Section 9.14** of the Agreement is hereby amended as follows: **Section 9. 14(c)** is hereby amended by deleting the text “\$2,500,000” appearing therein and replacing it with the text “\$10,000,000”, and **Section 9. 14(i)** is hereby amended by deleting the text “\$5,000,000” appearing therein and replacing it with “\$15,000,000”.

2. To induce the Metal Supplier to enter into this Amendment, each Customer hereby represents and warrants to the Metal Supplier that (a) it has the power and authority and legal right to execute and deliver this Amendment, (b) the execution and delivery by such Customer of this Amendment, and the performance of its obligations hereunder, have been duly authorized by proper proceedings, (c) this Amendment constitutes a legal, valid and binding obligation of such Customer enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors’ rights generally and except as the same may be subject to general principles of equity, and (d) on and as of the date hereof, no Default or Event of Default exists under the Agreement.

3. This Amendment and the rights and obligations of the parties hereunder shall be construed and interpreted in accordance with the laws of the State of New York (excluding the laws applicable to conflicts or choice of law).

4. The Agreement (including the Exhibits and Schedules thereto), as amended hereby, together with the other Precious Metal Documents, is intended by the parties as the final, complete and exclusive statement of the transactions evidenced by the Agreement. Except for the Existing Copper Swap, all prior or contemporaneous promises, agreements and understandings, whether oral or written, are deemed to be superseded by the Agreement, as amended hereby, and no party is relying on any promise, agreement or understanding not set forth in the Agreement, as amended hereby. The Agreement, as amended hereby, may not be amended or modified except by a written instrument describing such amendment or modification executed by the Customers and the Metal Supplier. The parties hereto agree that this Amendment shall in no manner affect or impair the liens and security interests evidenced or granted by the Agreement.

5. Except as amended hereby, the Agreement shall remain in full force and effect and is in all respects hereby ratified and affirmed.

6. This Amendment may be executed in separate counterparts and all such counterparts shall constitute one agreement binding on all parties, notwithstanding that the parties are not signatories to the same counterpart. The



parties may execute this Amendment by facsimile transmission, and all such facsimile signatures shall have the same force and effect as manual signatures delivered in person.

(The next page is the signature page.)

IN WITNESS WHEREOF, the undersigned parties have caused this Amendment to be executed by their duly authorized officers as of the date first above written.

CUSTOMERS:

**BRUSH ENGINEERED MATERIALS INC.**

By: /s/ Michael C. Hasychak  
Title: Vice President, Treasurer and Secretary  
**WILLIAMS ADVANCED MATERIALS INC.**

By: /s/ Michael C. Hasychak  
Title: Vice President, Secretary and Treasurer  
**TECHNICAL MATERIALS, INC.**

By: /s/ Michael C. Hasychak  
Title: Vice President, Secretary and Treasurer  
**BRUSH WELLMAN INC.**

By: /s/ Michael C. Hasychak  
Title: Vice President, Treasurer and Secretary  
**ZENTRIX TECHNOLOGIES INC.**

By: /s/ Michael C. Hasychak  
Title: Chief Financial Officer and Secretary

METAL SUPPLIER:

**BANK OF AMERICA, N.A.**

By: /s/ Paul M. Mongeau  
Title: Senior Vice President

**TRUST AGREEMENT**

**FOR**

**BRUSH ENGINEERED MATERIALS INC.**

**KEY EMPLOYEE SHARE OPTION PLAN**

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## Exhibits

**TRUST AGREEMENT**

**FOR**

**BRUSH ENGINEERED MATERIALS INC.**

**KEY EMPLOYEE SHARE OPTION PLAN**

THIS AGREEMENT made this \_\_\_\_ day of September 2006 by and between BRUSH ENGINEERED MATERIALS INC., an Ohio corporation (the "Corporation") and FIFTH THIRD BANK (together with any successor designated in accordance with Section 12 of this Agreement, the "Trustee"),

## W I T N E S S E T H:

WHEREAS, the Corporation has adopted the Brush Engineered Materials Inc. Key Employee Share Option Plan, (the "Plan"), a copy of which is attached as Exhibit A hereto; and

WHEREAS, the Corporation has incurred or expects to incur liability under the terms of the Plan with respect to the individuals participating in the Plan;

WHEREAS, the Corporation wishes to establish a trust (the "Trust") and to contribute to the Trust, assets that

shall be held therein subject to the claims of the Corporation's creditors in the event of the Corporation's Insolvency, as herein defined, until paid to Plan Participants and their Beneficiaries in such manner and at such times as specified in the Plan;

WHEREAS, it is the intention of the parties that this Trust shall constitute an unfunded arrangement and shall not affect the status of the Plan as unfunded for purposes of Title I of the Employee Retirement Income Security Act of 1974; and

WHEREAS; it is the intention of the Corporation to make contributions to the Trust to provide itself with a source of funds to assist it in the meeting of its liabilities under the Plan;

NOW, THEREFORE, the parties do hereby establish the Trust and agree that the Trust shall be comprised, held and disposed of as follows:

#### Section 1. Definitions.

As used in this Agreement, the following words and phrases shall have the following meanings:

(a) "Beneficiary" shall mean a "Beneficiary" as determined pursuant to the Plan, if the Participant (as hereinafter defined) is deceased, or a permitted assignee of a Participant as determined pursuant to the Plan.

(b) "Board" shall mean the Board of Directors of the Corporation.

(c) "Change of Control" shall mean, with respect to the Corporation, that if subsequent to June 1, 2006 any of the following events shall occur:

(1) The Board at any time shall fail to include a majority of Directors who are either "Original Directors" or "Approved Directors". An Original Director is a Director who is serving on June 1, 2006. An Approved Director is a Director, who after such date, is elected, or is nominated for election by the shareholders, by a vote of at least two-thirds of the Original Directors and the previously elected Approved Directors, if any.

(2) Any person (as the term "person" is defined in Section 1701.01(G) of the Ohio Revised Code) shall have made a "control share acquisition" (as the term "control share acquisition" is defined in Section 1701.01(Z) of the Ohio Revised Code) of shares of the Corporation without having first complied with Section 1701.831 of the Ohio Revised Code (dealing with control share acquisitions).

(3) The Board shall at any time determine in the good faith exercise of its judgment that (A) any particular actual or proposed accumulation of shares of the Corporation, tender offer for shares of the Corporation, merger, consolidation, sale of assets, proxy contest, or other transaction or event or series of transactions or events will, or is likely to, if carried out, result in a Change of Control falling within (1) above or (2) above, and (B) it is in the best interests of the Corporation and its shareholders, and will serve the intended purposes of this Agreement, if such transaction or event or series of transactions or events is deemed to be a Change of Control.

(d) "Code" shall mean the Internal Revenue Code of 1986, as amended, or any successor provision thereto.

(e) "Committee" shall mean the Committee and the Committee's delegate(s) pursuant to the Plan.

(f) "Insolvent" or "Insolvency" shall mean that the Corporation is unable to pay its debts as they become due or is subject to a pending proceeding as a debtor under the United States Bankruptcy Code, as now in force or hereafter amended.

(g) "Participant" shall mean a "Participant" as defined in the Plan and for whom an account has been established pursuant to Section 3 of this Agreement.

(h) "Plan" shall mean the Brush Engineered Materials Inc. Key Employee Share Option Plan, as the same

shall be amended from time to time.

Any capitalized term used herein as a defined term that is not defined herein shall have the meaning set forth in the Plan.

## Section 2. Trust Fund.

(a) The Corporation shall make an initial contribution to the Trust, which shall become principal of the Trust to be held, administered and disposed of by Trustee as provided in this Agreement.

(b) The Trust hereby established shall be revocable by the Corporation prior to a Change of Control; it shall become irrevocable upon a Change of Control. The Trust hereby established shall be amended only as provided in Section 13 of this Agreement.

(c) The Trust is intended to be a grantor trust, of which the Corporation is the grantor, within the meaning of subpart E, part I, subchapter J, chapter 1, subtitle A of the Code, and shall be construed accordingly.

(d) The principal of the Trust, and any earnings thereon, shall be held in trust separate and apart from other funds of the Corporation and shall be used exclusively for the uses and purposes of Participants and Beneficiaries and general creditors as herein set forth. Participants and Beneficiaries shall have no preferred claim on or any beneficial ownership or security interest in any assets of the Trust. Any rights created under the Plan and this Agreement shall be mere unsecured contractual rights of Participants and their Beneficiaries against the Corporation. Any assets held by the Trust will be subject to the claims of the Corporation's general creditors under federal and state law in the event of Insolvency.

(e) The Corporation, in its sole discretion, may at any time or from time to time make additional deposits to the Trust of cash or other property that is acceptable to the Trustee to augment the principal of any separate account hereunder to be held, administered and disposed of by Trustee as provided in this Agreement. Neither the Trustee nor any Participant or Beneficiary shall have any right to compel such additional deposits.

## Section 3. Separate Accounts.

The Trustee shall create and maintain one or more separate accounts in the name of each Participant named in Exhibit 3 attached hereto and made a part of this Agreement and any subsequent addition(s) to such Exhibit. Each such separate account shall be maintained and administered separately, and credited and debited, as herein provided, but all such separate accounts may be invested by the Trustee as a single trust fund.

## Section 4. Change of Control.

If a Change of Control occurs (i) the Corporation shall immediately deliver to the Trustee, with a copy to each Participant or Beneficiary, a written notice to that effect authorized by the Committee and signed by two officers of the Corporation, or (ii) a Participant or Beneficiary, may, with a copy to the Corporation, notify the Trustee in writing to that effect. The Trustee may conclusively rely on any such notification from the Corporation. If the Trustee receives such notification from a Participant or Beneficiary and not from the Corporation, the Trustee shall immediately notify the Corporation and the Board thereof. If the Corporation does not within fifteen (15) business days after receipt of such notification from the Trustee deliver to the Trustee written objection thereto, a Change of Control shall be deemed to have occurred for purposes of this Agreement; if the Trustee timely receives such written objection from the Corporation, the Trustee shall forthwith, in its sole discretion, determine whether a Change of Control has occurred, and if the Trustee determines that a Change of Control has occurred, a Change of Control shall be deemed to have occurred for purposes of this Agreement; and during the period in which the Trustee is determining whether a Change of Control has occurred, the Trustee shall administer this Agreement as though a Change of Control had occurred, except that the Trustee shall make no payments to Participants and Beneficiaries from the Trust other than as provided in Section 5(c) of this Agreement. The determination of the Trustee upon any such objection shall be final and binding for purposes of this Agreement. In making such determination, the Trustee may in its sole discretion consult with independent legal counsel and shall incur no liability for acting or refraining from acting in accordance with the advice of such counsel. Except as otherwise provided in this Section 4, the Trustee shall have no independent obligation to

make a determination as to the occurrence of a Change of Control.

#### Section 5. Payments to Participants and Beneficiaries.

(a) The Corporation shall provide the Trustee with a copy of each amendment to the Plan within a reasonable period after the adoption thereof. The Corporation shall maintain adequate records identifying its obligations to each Participant and Beneficiary under the Plan. At any time reasonably requested by the Trustee after a Change of Control, the Corporation shall provide the Trustee with copies of such records.

(b) After a Change of Control, and provided that the Corporation is not then Insolvent, upon receipt by the Trustee of both (i) a certificate signed by the Participant or Beneficiary, substantially in the form of Exhibit 5(b)(1) attached hereto and made a part of this Agreement, and (ii) an affidavit executed by the Participant or Beneficiary in the form of Exhibit 5(b)(2) attached hereto and made a part of this Agreement, the Trustee shall make a payment to the Participant or Beneficiary from the assets of his separate account(s) under the Trust in an amount equal to the lesser of the amount specified in such certificate or the amount of assets then held in his separate account(s) under the Trust. Upon receipt of an affidavit in the form of Exhibit 5(b)(2) attached hereto and made a part of this Agreement, the Trustee shall forthwith forward a copy of the affidavit to the Corporation. Such payment shall be in Designated Property specified in such certificate then held in the Participant's or Beneficiary's separate account(s) under the Trust, or to the extent the Designated Property held in the Participant's or Beneficiary's separate account(s) under the Trust is insufficient therefor by bank check or cashier's check from the liquidation of any other assets of the Participant's or Beneficiary's separate account(s) under the Trust, and shall be transmitted to the Participant or Beneficiary together with a letter substantially in the applicable form of Exhibit 5(c) attached hereto and made a part of this Agreement signed by an officer of the Trustee. The Trustee shall use its reasonable best efforts to make such payment within ten business days following satisfaction of the conditions for such payment under this Section 5(b), or, if later than ten business days after the satisfaction of the conditions for such payment under this Section 5(b), as soon as reasonably practicable.

(c) Provided that the Corporation is not then Insolvent, upon receipt by the Trustee of a written direction from the Committee, the Trustee shall make a payment to the Participant or Beneficiary from the assets of his separate account(s) under the Trust in an amount equal to the lesser of the amount specified in such written direction or the amount of assets then held in his separate account(s) under the Trust. Such payment shall be by bank check or cashier's check, or in Designated Property then held in the Trust, as directed by the Committee, and shall be transmitted to the Participant or Beneficiary together with a letter substantially in the applicable form of Exhibit 5(c) attached hereto and made a part of this Agreement signed by an officer of the Trustee. The Trustee shall use its reasonable best efforts to make such payment within ten business days following satisfaction of the conditions for such payment under this Section 5(c), or, if later than ten business days after the satisfaction of the conditions for such payment under this Section 5(c), as soon as reasonably practicable.

(d) The Trustee shall, after consultation with the Committee, make such provision as it considers necessary or appropriate for the withholding of any federal, state, and local taxes that may be required to be withheld in connection with and/or from any payment under Section 5(b) of this Agreement. The Corporation shall make such provision as it considers necessary or appropriate for the withholding of any federal, state, and local taxes that may be required to be withheld in connection with any payment under Section 5(c) of this Agreement, but the Committee may in the written notice to the Trustee directing payment instruct the Trustee to withhold such taxes and transmit such taxes to the appropriate authority.

(e) If the amount of assets of his separate account(s) under the Trust is not sufficient to provide for full payment to the Participant or Beneficiary as specified in Section 5(b) of this Agreement or Section 5(c) of this Agreement, the Corporation shall make the balance of such payment as provided in the Plan and the Trustee shall have no obligation with respect thereto.

(f) If any payment to the Participant or Beneficiary referred to in Section 5(b) of this Agreement or Section 5(c) of this Agreement exceeds that to which the Participant or Beneficiary is entitled pursuant to the Plan, the Participant or Beneficiary shall be obligated to repay the Corporation with respect to the excess, but the Trustee shall have no obligation with respect to the excess.

(g) Receipt by a Participant or Beneficiary of any payment or distribution from the Trust shall be deemed to constitute agreement by the Participant or Beneficiary to the terms and conditions required for the receipt of benefits pursuant to the Plan.

(h) Notwithstanding any other provision herein to the contrary, in no circumstances shall the Trustee be liable to any Participant or Beneficiary for any insufficiency of the Trust assets (or his separate account(s)) to discharge payments hereunder, rather, the liability for all such payments shall be and remain the ultimate responsibility of the Corporation, and if the assets of any Participant's separate account(s) under the Trust are insufficient at any time to make payments to such Participant or Beneficiary in accordance with the provisions of the Plan, the Corporation shall make the balance of any such payment as it falls due.

#### Section 6. Trustee Responsibility Regarding Payments to Participants When Corporation Insolvent.

(a) At all times during the continuance of this Trust, the principal and income of the Trust shall be subject to claims of general creditors of the Corporation under federal and state law as set forth below.

(1) The Board and the highest ranking officer of the Corporation shall have the duty to inform the Trustee in writing of the Corporation's Insolvency. If a person claiming to be a creditor of the Corporation alleges in writing to the Trustee that the Corporation has become Insolvent, the Trustee shall determine whether the Corporation is Insolvent and, pending such determination, the Trustee shall discontinue payment of benefits to Participants or their Beneficiaries.

(2) Unless the Trustee has actual knowledge of the Corporation's Insolvency, or has received notice from the Corporation or a person claiming to be a creditor alleging that the Corporation is Insolvent, the Trustee shall have no duty to inquire whether the Corporation is Insolvent. The Trustee may in all events rely on such evidence concerning the Corporation's solvency as may be furnished to the Trustee and that provides the Trustee with a reasonable basis for making a determination concerning the Corporation's solvency.

(3) If at any time the Trustee has determined that the Corporation is Insolvent, the Trustee shall discontinue payments to Participants or their Beneficiaries and shall hold the assets of the Trust for the benefit of the Corporation's general creditors. Nothing in this Agreement shall in any way diminish any rights of Participants or their Beneficiaries to pursue their rights as general creditors of the Corporation with respect to benefits due under the Plan or otherwise.

(4) The Trustee shall resume the payment of benefits to Participants or their Beneficiaries in accordance with Section 5 of this Agreement only after the Trustee has determined that the Corporation is not Insolvent (or is no longer Insolvent).

(b) If the Trustee discontinues payments of benefits from the Trust pursuant to Section 6(a) of this Agreement and subsequently resumes such payments, subject to the sufficiency of each Participant's separate account(s) to make required payments to such Participant or Beneficiary, the first payment following such discontinuance shall include the aggregate amount of all payments which would have been made to the Participant or Beneficiary in accordance with the provisions of the Plan, during the period of such discontinuance, less the aggregate amount of payments made to the Participant or Beneficiary by the Corporation in lieu of the payments provided for hereunder during any such period of discontinuance.

#### Section 7. Payments to Corporation.

(a) Except as provided in Sections 7(b), 7(c), 13(a), or 13(b) hereof, the Corporation shall have no right or power to direct the Trustee to pay any assets of the Trust to the Corporation.

(b) Upon the written direction of the Committee with respect to the separate account(s) of a Participant or Beneficiary and delivered to the Trustee prior to a Change of Control, the Trustee shall pay to the Corporation all or such portion of any assets of such separate account(s) of the Participant or Beneficiary then in the Trust as may be specified in such direction.

(c) Within ten business days after payment, if any, in full by the Corporation or by the Trustee to the Participant or Beneficiary pursuant to Section 5 of this Agreement, of all benefits to which the Participant or Beneficiary is entitled under the Plan, as determined pursuant to this Section 7(c), the Trustee shall distribute to the Corporation all of the assets, if any, of the separate account(s) of the Participant or Beneficiary held by the Trust. The Trustee shall make such payment to the Corporation only upon receipt by the Trustee of a written request from the Corporation authorized by the Committee and signed by two officers of the Corporation and after it has made a determination pursuant to this Section 7(c) that the Participant or Beneficiary has received payment in full of all amounts to which he is or may be entitled (or is no longer and will not become entitled to any amounts) under the Plan. Together with any request for payment with respect to a Participant or Beneficiary, the Corporation shall provide the Trustee with copies of the Corporation's books and records identifying the Corporation's obligations to the Participant or Beneficiary under the Plan, and such other evidence of the Corporation's satisfaction of the Corporation's obligations under the Plan as the Corporation shall desire. Upon receipt of the Corporation's request, the Trustee shall notify the Participant or Beneficiary that it is considering the Corporation's request and shall provide the Participant or Beneficiary with a copy of all documents and information submitted by the Corporation. The Participant or Beneficiary may object to the Corporation's request in writing and may submit any information or arguments to support his position within thirty (30) days of such notice or such extended time as the Trustee may, upon application, grant. If the Participant or Beneficiary objects, the Trustee shall so advise the Corporation and afford the Corporation a reasonable opportunity to respond. If there is a disputed request, the Trustee shall determine in its sole discretion whether the Participant or Beneficiary is or may be entitled to any amounts under the Plan. In making its determination, the Trustee shall adhere to the following: The Corporation shall have the burden of proving its claim by clear and convincing evidence, and the Trustee shall resolve any reasonable doubt in favor of the Participant or Beneficiary. In making its decision, the Trustee shall disregard any amendment or modification to the Plan or an Option Agreement adopted on or after a Change of Control that purports to decrease benefits with respect to the Participant or Beneficiary. The decision of the Trustee upon any such request shall be final and binding for purposes of this Agreement. Notwithstanding the foregoing, if the Trustee determines in its sole discretion that, in the event of any disputed request as described in this Section 7(c), it is unable to determine the proper party to which assets are payable, the Trustee may thereupon apply to a court of competent jurisdiction, including by way of an interpleader action, for a judicial determination of the proper payee. The Trustee shall have no liability with respect to any such action, other than for the payment of assets in accordance with such judicial determination.

#### Section 8. Additional Powers, Duties, and Immunities of the Trustee.

(a) In the administration of the Trust, the Trustee shall, subject to Section 8(b), have the following additional powers, duties, and immunities:

(i) The Trust assets, including any income accumulated and added to principal, shall be invested by the Trustee with the purpose of the preservation of principal and liquidity. The rate of return on investments, while important, shall not take precedence over safety of principal. Notwithstanding the two immediately preceding sentences, the Trust assets may be invested by the Trustee in any Designated Property, and the Corporation or the Committee shall provide timely written notice to the Trustee of the property that is from time to time Designated Property under the Plan. The Trustee shall have the powers:

(A) to receive, hold, manage, improve, repair, sell, lease, pledge, mortgage, exchange or otherwise dispose of all or any part of the Trust assets upon such terms, prices and conditions as it deems advisable;

(B) to invest and reinvest the Trust assets in any property or undivided interest therein, wherever located, including bonds, notes (secured or unsecured), stock of corporations, time and savings deposits (including savings deposits and certificates of deposit in the Trustee or its affiliates if such deposits bear a reasonable rate of interest), real estate or any other interest therein, shares in investment trusts and stock in mutual funds and investment companies (including investment trusts, mutual funds, and investment companies to which the Trustee or an affiliate thereof may serve as investment advisor, sponsor, underwriter, manager, administrator, distributor, custodian, transfer agent, or in any other capacity for which it may receive a fee), and annuities and other policies of insurance, upon such terms, prices and conditions as it deems advisable, without being restricted by any statute or rule of law governing the investments in which a trustee may invest funds held by it, and without regard to the proportion which an investment may bear to the entire amount of the Trust assets or any separate account under the Trust;

(C) with the prior, written approval of the Committee, to borrow money upon such terms and conditions and for such purposes as it deems advisable;

(D) to vote in person or by proxy the stocks, securities, or other investments which it holds as Trustee; to execute and deliver proxies, powers of attorney, and other agreements which it deems advisable; to exchange the securities of any corporation or issuing authority for other securities upon such terms and conditions as it deems advisable; to consent to or oppose any corporate action; to pay all assessments and subscriptions as it deems advisable; to exercise options and, in general, to exercise in respect of all stocks, securities, or other investments which it holds as Trustee all rights, powers and privileges as might be exercised by an individual in his own right;

(E) to execute such instruments, deeds, leases, mortgages, contracts, agreements, assignments, transfers, bills of sale, and other documents of any kind, as it deems advisable; and

(F) to retain uninvested cash in the Trust either in its banking department or elsewhere to meet contemplated payments or transfers from the Trust, or temporarily awaiting investment, without liability for interest thereon.

(ii) The Trustee is empowered to register securities, and to take and hold title to other property, in the name of the Trustee or in the name of a nominee without disclosing the Trust. Securities also may be held in bearer form and may be held in bulk with certificates of the same class and issuer which are assets of other fiduciary accounts. The Trustee shall be responsible for any wrongful acts of any nominee of the Trustee.

(iii) The Trustee is empowered to employ such agents and attorneys as the Trustee shall deem advisable and to determine and pay the reasonable compensation of any agents and attorneys so employed, without diminution of the compensation of the Trustee. Unless paid by the Corporation, such compensation shall be charged against the separate accounts from time to time held under the Trust in such proportions as the Trustee shall deem equitable. The Trustee shall not be liable for any neglect, omission, or wrong doing of any such agent or attorney if reasonable care is exercised in the selection of such agent or attorney.

(iv) The Trustee is empowered to take all actions necessary or advisable in order to collect any insurance, annuity, or other benefits or payments of which the Trustee is the designated beneficiary. The Trustee further is empowered to enforce, release, compromise, and settle any and all claims in favor of or against the Trust or any separate account under the Trust, whether or not such claims are in litigation, upon such terms and conditions as the Trustee shall deem advisable.

(v) The Trustee is authorized to segregate and hold separately any part or all of the Trust assets from time to time allocable to the separate accounts then existing or to hold any part or all of the Trust assets as a single commingled fund and allocate undivided interests in the same among the separate accounts then existing.

(vi) The Trustee is empowered to pay out of the Trust, as a general charge thereon, or in the sole discretion of the Trustee as a charge to one or more affected separate accounts any and all taxes of whatsoever nature assessed against the Trust; provided, however, that, if the Corporation shall notify the Trustee in writing that in the opinion of its counsel any such tax is not lawfully assessed, the Trustee, if so requested by the Corporation, shall contest the validity of such tax in any manner deemed appropriate by the Corporation or its counsel. The word "taxes", as used herein, shall be deemed to include any interest or penalties assessed in respect to such taxes. Unless the Trustee first shall have been indemnified to its satisfaction by the Corporation, however, the Trustee shall not be required to contest the validity of any tax, to institute, maintain, or defend against any other action or proceeding, or to incur any other expense in connection with the Trust, except to the extent that the Trust is sufficient therefor.

(vii) The Trustee shall have all other powers and duties conferred or imposed on trustees by law which are consistent with the provisions of this instrument and such further powers as may be required to give effect to the powers and duties of the Trustee expressly set forth in this instrument.

(viii) Notwithstanding anything to the contrary in this Section or any other provision of this Agreement or any power granted to the Trustee pursuant to law: The Trustee shall have no power to invest any of the Trust assets in



securities or obligations of the Corporation or any subsidiary or affiliate of the Corporation nor any power that could give this Trust the objective of carrying on a business and dividing the gains therefrom, within the meaning of Section 301.7701-2 of the Procedure and Administrative Regulations promulgated pursuant to the Code. If an insurance policy or annuity contract is held as an asset of the Trust, the Trustee shall have no power to name a beneficiary of such policy or contract other than the Trust, to assign the policy or contract (as distinct from conversion of the policy or contract to a different form) other than to a successor Trustee, or to loan to any person the proceeds of any borrowing against or withdrawal from such policy or contract.

(ix) The Trustee shall not be required to furnish bond, nor shall the Trustee be required to obtain leave or confirmation from any court before exercising any of the powers or performing any of the duties of the Trustee; but the Trustee at all times shall be obligated to act in good faith and to exercise reasonable prudence.

(x) No person dealing with the Trustee shall be obligated to inquire into the Trustee's powers with respect to any action which the Trustee may propose to take, and the receipt of the Trustee for any payment made or property transferred to the Trustee by any person shall constitute a complete acquittance to such person for such payment or property and its proper application.

(b) During periods prior to a Change of Control, the Committee shall have the following powers and authority with respect to the assets of the Participant's or Beneficiary's separate account(s) held in the Trust:

(i) The Committee may direct the Trustee to hold the assets held in the Trust as one fund in accordance with and for the purposes hereinafter set forth in this Section 8(b) or from time to time to divide and redivide the assets held in the Trust, for such purposes, into two or more funds, of which the first shall be designated as "Investment Fund A" and each other shall be designated by another letter of the alphabet. For the purposes of this Section 8(b), the Trust or, in the event of its division as provided in this Section 8(b), each separate Investment Fund, shall hereinafter be referred to as an "Investment Fund". At the time of the first division and of each redivision, the Committee may specify the part of the assets held in the Trust to be allocated to each Investment Fund, and the Committee may reallocate all or any part of such assets between or among the Investment Funds from time to time. For all purposes other than investment purposes (except as otherwise provided in this Agreement with respect to separate accounts), such assets shall be held as a single trust fund.

(ii) From time to time the Committee may designate one or more persons, or may designate itself, to act as an "investment manager" hereunder by written notice to the Trustee, with authority to direct the investment and reinvestment of the Investment Fund or Funds specified in such notice. The Trustee may rely upon any such appointment continuing in effect until it receives written notice from the Committee of its revocation. The Committee may by similar notice modify or terminate such designation and authority from time to time. So long as, and to the extent that, any such designation is in effect, the Trustee shall invest, reinvest and retain the Investment Fund assigned to an investment manager and the Trustee shall exercise its investment powers set forth in Section 8(a) (including the powers set forth in clause (i)(D) thereof) in accordance with instructions received from such investment manager. So long as, and to the extent that, no such designation is in effect, the Trustee shall invest, reinvest and retain, in accordance with its sole discretion, that part of the Trust not assigned to an investment manager.

(iii) All instructions from an investment manager to the Trustee shall be in writing (or by telephone or telegraph confirmed in writing) and shall be complete in all reasonable and necessary details. The Trustee shall have no duty to question such instructions nor shall the Trustee incur any liability for following such instructions. The Corporation shall indemnify the Trustee, in its capacity as Trustee and individually, from any liability with regard to following such instructions from an investment manager or from refraining from action in the absence of instructions from a duly appointed investment manager. Without limitation of the generality of the preceding sentence, the Corporation shall indemnify and hold the Trustee harmless against any and all actions, claims, demands, liabilities, losses, damages or expenses of whatsoever kind and nature, whenever arising, which arise from the failure by the Trustee to pay for property purchased by the investment manager for the Trust, by reason of the insufficiency of funds in the Trust.

(iv) The Committee shall regularly notify each designated investment manager of the anticipated requirements for disbursements from the Investment Fund or Funds under his or its direction, and shall direct the

Trustee to hold cash funds uninvested in such amounts and for such periods of time as may appear to be reasonably necessary to meet cash requirements. Notwithstanding the appointment of an Investment Manager, the Trustee is authorized in its sole discretion to invest and reinvest the cash forming a part of any Investment Fund, which it has not been directed to hold uninvested, in such certificates of deposit, variable demand notes, corporate money market instruments such as commercial paper and U.S. Treasury bills and notes, repurchase agreements or other evidences of indebtedness which are payable on demand or which generally have a maturity date of not more than fifteen (15) months from the time of acquisition and including units of any common trust fund holding any such investments administered by the Trustee, as the Trustee in its sole discretion deems suitable for the Investment Fund. The Trustee does not guarantee any such obligation, deposit, note, or other investment made by it from loss, depreciation, or diminution in value.

(v) Payment of the cost of the acquisition, sale or exchange of any security or other property for an Investment Fund shall be charged to such Investment Fund.

(vi) The investment manager shall receive such compensation as may be agreed upon by it and the Committee, which compensation shall be paid by the Corporation.

(vii) If the Committee appoints an investment manager, the Trustee shall be relieved of its rights, duties and obligations hereunder to the extent delegated to such investment manager in accordance with this Agreement.

(viii) All actions (and inaction) by the Committee pursuant to this Section 8(b) shall be in a nonfiduciary capacity (except with respect to any fiduciary duties to the Corporation and its shareholders).

#### Section 9. Accounting by Trustee.

The Trustee shall keep accurate and detailed records of all investments, receipts, disbursements, and all other transactions required to be done, including such specific records as shall be agreed upon in writing between the Committee and the Trustee. All such accounts, books and records shall be open to inspection and audit at all reasonable times by the Committee, the Corporation, and, after a Change of Control and with respect to his separate account(s) only, by a Participant or his Beneficiary. Within sixty (60) days following the close of each fiscal quarter of the Corporation and within sixty (60) days after the resignation or removal of the Trustee, the Trustee shall deliver to the Committee, and after a Change of Control and with respect to his separate account(s) only, to each Participant or his Beneficiary, a written account of its administration of the Trust during such quarter or during the period from the close of the last preceding quarter to the date of such resignation or removal, setting forth all investments, receipts, disbursements and other transactions effected by it, including a description of all securities and investments purchased and sold with the cost or net proceeds of such purchases or sales (accrued interest paid or receivable being shown separately), and showing all cash, securities and other property held in the Trust at the end of such quarter or as of the date of such resignation or removal, as the case may be. In the absence of the filing in writing with the Trustee by the Committee of exceptions or objections to any such account within 60 days, the Committee, or the Participant or his Beneficiary with respect to his separate account(s) after a Change of Control, shall be deemed to have approved such account, and in such case, or upon the written approval by the Committee, or the Participant or his Beneficiary with respect to his separate account(s) after a Change of Control, of any such account, the Trustee shall be released, relieved and discharged with respect to all matters and things set forth in such account as though such account had been settled by the decree of a court of competent jurisdiction.

#### Section 10. Responsibility of Trustee.

(a) The Trustee shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent corporate trustee acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; provided, however, that the Trustee shall incur no liability to anyone for any action taken pursuant to a direction, request, or approval contemplated by and complying with the terms of this Agreement.

(b) The Trustee shall not be required to undertake or to defend any litigation on behalf of the Trust, unless it be first indemnified by the Corporation against its prospective costs, expenses and the liability, and the Corporation hereby agrees to indemnify Trustee for such costs, expenses, and liability. If the Corporation does not make payment to

the Trustee of an agreed indemnity for such costs, expenses, and liabilities in a reasonably timely manner, the Trustee may obtain payment from the Trust to the extent permitted under applicable law and in accordance with Section 11.

(c) The Trustee may consult with legal counsel (who may also be counsel generally or specially for the Trustee or the Corporation or their affiliates) with respect to any of its duties or obligations hereunder, and shall be fully protected in acting or refraining from acting in accordance with the advice of such counsel.

(d) The Trustee may rely and shall be protected in acting or refraining from acting upon any written notice, instruction or request furnished to it hereunder and reasonably believed by it to be genuine and to have been signed or presented by the Corporation, the Committee, or a Participant or Beneficiary.

#### Section 11. Compensation and Expenses of Trustee .

The Trustee shall be entitled to receive reasonable compensation for its services in accordance with its published fee schedule as in effect from time to time. The Trustee shall be entitled to receive its reasonable expenses incurred with respect to the administration of the Trust, including fees and expenses incurred by the Trustee pursuant to this Agreement (including attorney's fees and court costs). Such compensation and expenses shall be paid by the Corporation. If the Corporation fails to pay such compensation and expenses within thirty (30) business days after written request therefor has been made by the Trustee, such compensation and expenses may be paid from the assets of the Trust and charged against the separate accounts from time to time held under the Trust in such proportions as the Trustee shall deem equitable, but the Corporation shall remain liable therefor and the Trustee shall take reasonable action, including, but not limited to, institution of legal action, to collect such compensation and expenses and upon such collection shall credit the separate accounts under the Trust to which such compensation and expenses were charged with the net proceeds of such collection in such proportions as the Trustee deems equitable. The expenses incurred by the Trustee in connection with any reasonable action required to obtain payment of such compensation or expenses shall constitute additional expenses for which the Trustee shall be entitled to reimbursement under this Section.

#### Section 12. Tenure and Succession of Trustees .

(a) Each Trustee from time to time serving under this Agreement shall have the right to resign by at least 45 days advance written notice to the Committee (unless the Committee shall accept shorter notice), and if a Change of Control has not occurred the Committee may remove any Trustee from time to time serving under this Agreement by at least 45 days advance written notice (unless the Trustee shall accept shorter notice) to the Trustee received by the Trustee prior to a Change of Control. No such resignation or removal shall become effective, however, until the acceptance of the Trust by a successor Trustee designated in accordance with Section 12(b) of this Agreement.

(b) If the Trustee, or any successor to it designated in accordance with this Section 12(b), for any reason shall resign, decline, cease or otherwise fail to serve as Trustee or be removed by the Committee, a new trustee shall be appointed by the Committee if a Change of Control shall not have occurred. If the Trustee should resign, decline, cease, or otherwise fail to serve as Trustee, and a Change of Control has occurred or does occur, or within 45 days of such resignation, declination, cessation, or failure to serve the Committee shall not have notified the Trustee of a successor trustee, the Trustee shall appoint a successor trustee or may, in its sole discretion, apply to a court of competent jurisdiction for the appointment of a successor trustee. A successor trustee shall be a bank or trust Company (1) that the appointing person or entity in its sole discretion considers an appropriate trustee for the Trust, having due regard for the objectives, magnitude, and expected duration of the Trust; (2)(i) whose trust assets under investment would place it among the 100 largest trust companies in the United States or (ii) which is a national banking association or established under the laws of one of the states of the United States and which has gross assets in excess of \$1 billion; and (3) which is independent and not subject to the control of the Corporation or a Participant or Beneficiary. The preceding determinations shall be made as of the time of appointment of the successor trustee.

(c) Upon acceptance of the Trust, each successor Trustee shall be vested with the title to the Trust assets possessed by the Trustee which it succeeds less any amounts to which the predecessor Trustee may be entitled under Section 11 and shall have all the powers, discretions, and duties of such predecessor Trustee; provided, however, the predecessor Trustee may reserve such reasonable amount as it shall deem necessary to provide for expenses and

compensation to which it may be entitled under Section 11 and any taxes or other sums chargeable against the Trust for which it may be liable, and in the event that the amount so reserved is insufficient for such purposes, the Trustee shall be entitled to reimbursement from the Corporation or, in the absence thereof, the successor Trustee. No successor Trustee shall be required to furnish bond.

(d) Each successor Trustee may accept as complete and correct and may rely upon any accounting by any predecessor Trustee and upon any statement or representation by any predecessor Trustee as to the assets comprising or any other matter pertaining to the administration of the Trust. No successor Trustee shall be liable for any act or omission of any predecessor Trustee or have any duty to enforce or seek to enforce any claim of any kind against any predecessor Trustee on account of any such act or omission.

### Section 13. Amendment and Termination.

(a) This Agreement shall not be subject to amendment by the Corporation or any other organization or individual in any respect, except as provided in this Section 13(a). At any time and from time to time the Corporation may amend this Agreement in any respect, but only by delivery to the Trustee of an instrument authorized by the Committee which is signed by two officers of the Corporation; provided, however, that no such amendment delivered to the Trustee on or after a Change of Control shall be effective unless the Corporation shall obtain the written consent to such amendment of any Participant or Beneficiary affected by such amendment and provide the Trustee with such evidence of such consent as the Trustee shall reasonably require. Any amendment shall be effective only upon the Trustee's written acceptance of such amendment, which acceptance shall not be unreasonably withheld unless such amendment would affect the powers, duties, liabilities, or compensation of the Trustee. For purposes of this Section 13 (a), any amendment to this Agreement may be made with respect only to the separate account of an individual Participant or Beneficiary, in which case such amendment shall be deemed not to affect any other Participant or Beneficiary.

(b) After full satisfaction of the benefits under the Plan of a Participant or Beneficiary as determined under Section 7(c) of this Agreement, any remaining Trust assets attributable to the Participant's or Beneficiary's separate account shall be returned to the Corporation or redistributed to other separate accounts under the Trust at the Corporation's option and upon a written direction by the Committee to the Trustee to such effect.

(c) The Trust shall terminate on the earlier of the date on which prior to a Change of Control the Trustee receives an instrument revoking the Trust that is authorized by the Committee and is signed by two officers of the Corporation or the first date on which all Participants and Beneficiaries are no longer entitled to benefits under the Plan.

(d) Upon termination of the Trust as provided in Section 13(c) of this Agreement, any assets remaining in the Trust shall be returned to the Corporation.

### Section 14. Amendments to Plan.

(a) The Corporation may amend or terminate the Plan as provided therein and shall promptly furnish the Trustee with copies of any modification, amendment, restatement, or change of the Plan.

(b) Notwithstanding the foregoing provisions of Section 14(a) of this Agreement, any modification, amendment, restatement, termination or change of the Plan that would increase the responsibilities or liabilities of the Trustee under this Agreement or change its duties under this Agreement shall not be binding upon the Trustee without the written consent of the Trustee, and if the Trustee shall decline to so consent it shall forthwith resign as Trustee as provided in Section 12 of this Agreement.

### Section 15. General Provisions.

(a) Any provision of this Agreement prohibited by law shall be ineffective to the extent of any such prohibition without invalidating the remaining provisions hereof.

(b) No right or interest of any Participant or Beneficiary under this Agreement may (either at law or in equity)

be anticipated, assigned, alienated, encumbered, pledged or subject to attachment, garnishment, levy, execution or other legal or equitable process, and any attempted anticipation, assignment, alienation, encumbrance, pledge, attachment, garnishment, levy, execution, or subjection to process shall be void ab initio. Except to the extent amounts have been paid in excess of that due in accordance with the Plan, no amount paid to a Participant or Beneficiary by Trustee shall be subject to any claim for repayment by the Corporation or Trustee.

(c) Nothing in this Agreement shall in any way diminish the rights of a Participant or Beneficiary to pursue his rights as a general creditor of the Corporation with respect to the benefits under the Plan or otherwise, and the rights or obligations of a Participant or Beneficiary and the Corporation under the Plan shall in no way be affected or diminished by any provision of this Agreement or action taken pursuant to this Agreement except that any payment actually received by a Participant or Beneficiary hereunder shall reduce amounts otherwise due to the Participant or Beneficiary pursuant to the Plan as provided in this Agreement.

(d) If at any relevant time the Committee shall not exist or be acting, then any action contemplated herein to be taken by the Committee shall be taken by the Board.

(e) Except as may otherwise be provided hereunder or agreed to in writing between the Corporation and the Trustee, the Corporation shall have responsibility for the preparation and delivery to persons and governmental agencies of all information, descriptions, reports and returns required by law; the Trustee shall, however, provide such reasonable assistance to the Corporation as is necessary or appropriate for the Corporation to perform such obligations. Notwithstanding the foregoing provisions of this Section 15(e), however, the Trustee shall have responsibility for filing any returns or reports imposed upon the Trustee as trustee of the Trust with respect to the Trust under the Code, and the Corporation shall provide such reasonable assistance to the Trustee as is necessary or appropriate for the Trustee to file such returns or reports. The Trustee shall be entitled, as it may deem appropriate, to require the Corporation or any person having any interest under the Plan or in, to, or under the Trust, to provide such certifications and proofs of facts as shall permit the Trustee to perform its duties under applicable law and regulations adopted thereunder as may be in effect from time to time, or to exercise the powers granted the Trustee under the Trust.

(f) The creation or maintenance of the Trust shall not entitle any person to continued employment with the Corporation or any of its subsidiaries or affiliates or otherwise affect any such employment relationship, nor shall it entitle any person to continued status as a director of the Corporation or any of its subsidiaries or affiliates.

(g) Each Participant or Beneficiary is an intended beneficiary under this Trust, and, as an intended beneficiary, shall be entitled to enforce the terms and provisions of this Agreement applicable to the Participant or Beneficiary.

(h) This Agreement may be executed in two or more counterparts, each of which shall be considered an original agreement.

(i) All notices, requests, consents, and other communications required hereunder shall be in writing and shall be effective when received:

If to the Corporation at:

Brush Engineered Materials Inc.  
17876 St. Clair Avenue  
Cleveland, Ohio 44110-2697  
Attention: Secretary

If to the Trustee at:

Fifth Third Bank  
600 Superior Avenue East  
Cleveland, OH 44114  
Attention: Craig A. Bush

If to a Participant at:

The address set forth on Exhibit 3;

provided, however, that if any of the foregoing or its or his successors shall have designated a different address by written notice, then at the last address so designated.

(j) This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

Section 16. Indemnification of the Trustee.

Notwithstanding any other provision herein to the contrary, and whether or not the Trustee has resigned or been removed, except to the extent that it is judicially determined that the Trustee has acted with neglect or willful misconduct, the Corporation shall indemnify the Trustee against any liabilities, losses, damages, and expenses, including attorney's, accountant's, and other advisors' fees, incurred as a result of:

(a) any action of the Trustee taken in good faith in accordance with any information, instruction, direction, or opinion given the Trustee by any person or entity authorized under this Agreement to give any such information, instruction, direction, or opinion to the Trustee; or

(b) the failure of any person or entity to make timely disclosure to the Trustee of information that there is an obligation under this Agreement to disclose to the Trustee and that any such person knows or should know if it acted in a reasonably prudent manner.

IN WITNESS WHEREOF, the Corporation has caused this Agreement to be executed as of the date first above written, and the Trustee has caused this Agreement to be executed on \_\_\_\_, 2006.

BRUSH ENGINEERED MATERIALS, INC.

By: /s/ Michael C. Hasychak

Title: Vice President, Secretary and Treasurer  
FIFTH THIRD BANK

By: /s/ Craig Bush

Title: Vice President

And: /s/ Richard Lutts

Title: Vice President

# **TRUST AGREEMENT**

**Between**

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**BRUSH ENGINEERED MATERIALS, INC.**

**And**

**FIDELITY MANAGEMENT TRUST COMPANY**

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## **BRUSH ENGINEERED MATERIALS, INC. DEFERRED COMPENSATION PLAN TRUST**

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- (c) Waiver.
- (d) Successors and Assigns.
- (e) Partial Invalidity.
- (f) Section Headings.

Section 20.	Use of Data.
Section 21.	Other Services.
Section 22.	Governing Law.

- (a) Massachusetts Law Controls.
- (b) Trust Agreement Controls.

**SCHEDULES**

Schedule “A”	Recordkeeping and Administrative Services
Schedule “B”	Fee Schedule
Schedule “C”	Investment Options
Schedule “D”	Operational Guidelines for Non-Fidelity Mutual Funds

**TRUST AGREEMENT** , dated as of the twenty-sixth day of September, 2006, between **BRUSH ENGINEERED MATERIALS, INC.** , an Ohio corporation, having an office at 17876 St. Clair Avenue, Cleveland Ohio 44110 (the “Sponsor”), and **FIDELITY MANAGEMENT TRUST COMPANY** , a Massachusetts trust company, having an office at 82 Devonshire Street, Boston, Massachusetts 02109 (the “Trustee”).



WITNESSETH:

**WHEREAS** , the Sponsor is the sponsor of the 1997 Stock Incentive Plan for Non-Employee Directors (As Amended and Restated as of May 1, 2001), as further amended by Amendment No. 1 (the "1997 Plan"), the 1992 Brush Engineered Materials, Inc. Deferred Compensation Plan for Non-Employee Directors (As Amended as of May 16, 2000), as further amended by the Reorganization Amendment, Amendment No. 1, Amendment No. 2 and Amendment No. 3 (the "1992 Plan"), the Brush Engineered Materials, Inc. 2005 Deferred Compensation Plan for Non-employee Directors (Effective January 1, 2005) (the "2005 Plan") and the Brush Engineered Materials Inc. 2006 Non-Employee Director Equity Plan (the "2006 Plan") (collectively and individually the "Plan"); and

**WHEREAS** , the Sponsor has informed the Trustee that the 1997 Plan provides that the Sponsor may establish a trust to secure the Sponsor's obligation to deliver shares of common stock of the Sponsor at the end of the deferral period pursuant to the 1997 Plan (the "Deferred Shares"); and

**WHEREAS** , the Sponsor has informed the Trustee that the 1992 Plan provides for the Sponsor to establish a trust and transfer thereto from time to time cash in amounts equal to (i) the amounts by which non-employee directors of the Sponsor who elect to have their compensation reduced pursuant to the 1992 Plan, (ii) the amount deferred by Gerald C. McDonough ("McDonough") for his services as a non-employee director pursuant to the Deferred Compensation Agreement dated December 26, 1984 (the "McDonough Agreement"), and (iii) the amount of vested retirements benefits (the "Retirement Benefits") credited to participant's accounts under the 1992 Plan as a result of the termination of the Brush Wellman Inc. Directors' Retirement Plan (As Amended January 26, 1993); and

**WHEREAS** , the Sponsor and National City Bank, N.A., as trustee ("National City") entered into (i) the Trust Agreement dated January 1, 1992 covering deferrals of compensation under the 1992 Plan, including under the McDonough Agreement, (ii) the Amended and Restated Trust Agreement dated February 10, 1998 to provide for the Retirement Benefits, (iii) the Second Amended and Restated Trust Agreement to provide for the Deferred Shares, and (iv) the Third Amended and Restated Trust Agreement to provide for additional investment vehicles (the "National City Trust"); and

**WHEREAS** , the Sponsor and LaSalle Bank National Association, as trustee ("LaSalle") entered into the Trust Under the Brush Engineered Materials Inc. 2005 Deferred Compensation Plan for Non-employee Directors and 1997 Stock Incentive Plan for Non-employee Directors dated as of January 1, 2005 covering liabilities under the 2005 Plan and under the 1997 Plan relating to grants of Deferred Shares beginning in 2005 (the "LaSalle Trust");

**WHEREAS** , the 1992 Plan was amended pursuant to Amendment No. 3 to suspend contributions thereto effective as of January 1, 2005; and

**WHEREAS** , the amount deferred under the McDonough Agreement have been distributed pursuant to the terms of the 1992 Plan; and

**WHEREAS** , the 2006 Plan replaced the 1997 Plan and the 2005 Plan effective May 6, 2006; and

**WHEREAS** , the Sponsor has informed the Trustee that, pursuant to the 2006 Plan, non-employee directors of the Sponsor may elect to have their director compensation otherwise payable in cash to be paid in the form of shares of common stock of the Sponsor and may further elect to defer receipt of such shares and restricted stock units or other stock awards payable under the 2006 Plan in the form of deferred stock units ("Deferred Stock Units") that will be credited to a bookkeeping account in the name of the director in accordance with the 2006 Plan; and

**WHEREAS** , the Sponsor wishes to combine the National City Trust and the LaSalle Trust into a single trust to be held under the Trust, to remove National City as the trustee of the National City Trust and to replace LaSalle as the trustee of the LaSalle Trust, to appoint the Trustee as the trustee of the Trust and to transfer to the Trustee assets held in the National City Trust and the LaSalle Trust, and to contribute to the Trust assets that shall be held therein, subject to the claims of Sponsor's creditors in the event of Sponsor's Insolvency, as herein defined, until paid to Participants in such manner and at such times as specified in the Plan; and

**WHEREAS** , it is the intention of the parties that this Trust shall constitute an unfunded arrangement and shall not affect the status of the Plan as an unfunded Plan for purposes of Title I of the Employee Retirement Income Security Act of 1974 ("ERISA"); and

**WHEREAS** , it is the intention of the Sponsor to make contributions to the Trust to provide itself with a source of funds to assist it in the meeting of its liabilities under the Plan; and

**WHEREAS** , the Trustee is willing to hold and invest the aforesaid plan assets in trust among several investment options selected by the Sponsor; and

**WHEREAS** , the Sponsor also wishes to have the Trustee perform certain ministerial recordkeeping and administrative functions under the Plan; and

**WHEREAS** , the Trustee is willing to perform recordkeeping and administrative services for the Plan if the services are ministerial in nature and are provided within a framework of plan provisions, guidelines and interpretations conveyed in writing to the Trustee by the Sponsor (as defined herein).

**NOW, THEREFORE** , in consideration of the foregoing premises and the mutual covenants and agreements set forth below, the Sponsor and the Trustee agree that the Trust established by this Trust Agreement shall be comprised, held, administered and disposed of as follows:

### **Section 1. Definitions.**

The following terms as used in this Trust Agreement have the meaning indicated unless the context clearly requires otherwise:

**(a) “Agreement”**

“Agreement” shall mean this Trust Agreement, and the Schedules and/or Exhibits attached hereto, as the same may be amended and in effect from time to time.

**(b) “Business Day”**

“Business Day” shall mean each day the NYSE is open. The closing of a Business Day shall mean the NYSE’s normal closing time of 4:00 p.m.(ET), however, in the event the NYSE closes before such time or alters its closing time, all references to the NYSE closing time shall mean the actual or altered closing time of the NYSE.

**(c) “Code”**

“Code” shall mean the Internal Revenue Code of 1986, as it has been or may be amended from time to time.

**(d) “Confidential Information”**

“Confidential Information” shall mean (individually and collectively) proprietary information of the parties to this Trust Agreement, including but not limited to, their inventions, know how, trade secrets, business affairs, prospect lists, product designs, product plans, business strategies, finances, fee structures, etc.

**(e) “EDT”**

“EDT” shall mean electronic data transfer.

**(f) “Electronic Services”**

“Electronic Services” shall mean communication and services made available via electronic media.

**(g) “ERISA”**

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as it has been or may be amended from time to time.

**(h) “External Account Information”**

“External Account Information” shall mean account information, including retirement savings account information, from third party websites or other websites maintained by Fidelity or its affiliates.

**(i) “Fidelity Mutual Fund”**

“Fidelity Mutual Fund” shall mean any investment company advised by Fidelity Management & Research Company or any of its affiliates.

**(j) “FIIOC”**

“FIIOC” shall mean Fidelity Investments Institutional Operations Company, Inc.

**(k) “In Good Order”**

“In Good Order” shall mean in a state or condition acceptable to the Trustee in its sole discretion, which the Trustee determines is reasonably necessary for accurate execution of the intended transaction.

**(l) “Insolvency”**

“Insolvency” shall mean that if (i) Sponsor is unable to pay its debts as they become due, or (ii) Sponsor is subject to a pending proceeding as a debtor under the United States Bankruptcy Code.

**(m) “Insolvent”**

“Insolvent” shall mean that if (i) Sponsor is unable to pay its debts as they become due, or (ii) Sponsor is subject to a pending proceeding as a debtor under the United States Bankruptcy Code.

**(n) “Losses”**

“Losses” shall mean any and all loss, damage, penalty, liability, cost and expense, including without limitation, reasonable attorney’s fees and disbursements.

**(o) “Mutual Fund”**

“Mutual Fund” shall refer both to Fidelity Mutual Funds and Non-Fidelity Mutual Funds.

**(p) “NAV”**

“NAV” shall mean Net Asset Value.

**(q) “NFSLLC”**

“NFSLLC” shall mean National Financial Services LLC.

**(r) “Non-Fidelity Mutual Fund”**

“Non-Fidelity Mutual Fund” shall mean certain investment companies not advised by Fidelity Management & Research Company or any of its affiliates.

**(s) “NYSE”**

“NYSE” shall mean the New York Stock Exchange.

**(t) “Participant”**

“Participant” shall mean, with respect to the Plan, any non-employee director of the Sponsor (or former non-employee director) with an account under the Plan, which has not yet been fully distributed and/or forfeited, and shall include the designated beneficiary(ies) with respect to the account of any deceased non-employee director (or deceased former non-employee director) until such account has been fully distributed and/or forfeited.

**(u) “Participant Recordkeeping Reconciliation Period”**

“Participant Recordkeeping Reconciliation Period” shall mean the period beginning on the date of the initial transfer of assets to the Trust and ending on the date of the completion of the reconciliation of Participant records.

**(v) “PIN”**

“PIN” shall mean personal identification number.

**(w) “Plan”**

“Plan” shall mean individually and collectively, the 1992 Plan, the 1997 Plan, the 2005 Plan and the 2006 Plan. Each reference to “a Plan” or “the Plan” in this Agreement shall mean and include the Plan or Plans to which the particular provision of this Agreement is being applied or all Plans, as the context may require.

**(x) “Plan Administration Manual”**

“Plan Administration Manual” shall mean the document which sets forth the administrative and recordkeeping duties and procedures to be followed by the Trustee in administering the Plan, as such document may be amended and in effect from time to time.

**(y) “Plan Sponsor Webstation”**

“Plan Sponsor Webstation” shall mean the graphical windows based application that provides current Plan and Participant information including indicative data, account balances, activity and history.

**(z) “Reporting Date”**

“Reporting Date” shall mean the last day of each fiscal quarter of the Plan and, if not on the last day of fiscal quarter, the date as of which the Trustee resigns or is removed pursuant to this Agreement or the date as of which this Agreement terminates pursuant to Section 9 hereof.

**(aa) “SEC”**

“SEC” shall mean the Securities and Exchange Commission.

**(bb) “Sponsor”**

“Sponsor” shall mean Brush Engineered Materials Inc., an Ohio corporation, or any successor to all or substantially all of its businesses which, by agreement, operation of law or otherwise, assumes the responsibility of the Sponsor under this Agreement.

**(cc) “Sponsor Stock”**

“Sponsor Stock” shall mean the common stock of the Sponsor, or such other publicly-traded stock of the Sponsor, or such other publicly-traded stock of the Sponsor’s affiliates.

**(dd) “Stock Fund”**

“Stock Fund” shall mean the investment option consisting of Sponsor Stock.

**(ee) “Trust”**

“Trust” shall mean the Brush Engineered Materials Inc. Deferred Compensation Plan Trust, being the trust established by the Sponsor and the Trustee pursuant to the provisions of this Agreement.

**(ff) “Trustee”**

“Trustee” shall mean Fidelity Management Trust Company, a Massachusetts trust company and any successor to all or substantially all of its trust business as described in Section 10. The term Trustee shall also include any successor trustee appointed pursuant to Section 10 to the extent such successor agrees to serve as Trustee under this Agreement.

**(gg) “VRS”**

“VRS” shall mean Voice Response System.

**Section 2. Trust.**

**(a) Establishment.**

The Sponsor hereby establishes the Trust with the Trustee. The Trust shall consist of an initial contribution of money or other property acceptable to the Trustee in its sole discretion, made by the Sponsor or transferred from a previous trustee under the Plan, such additional sums of money or other property as shall from time to time be delivered to the Trustee under the Plan, all investments made therewith and proceeds thereof, and all earnings and profits thereon, less the payments that are made by the Trustee as provided herein, without distinction between principal and income. The Trustee hereby accepts the Trust on the terms and conditions set forth in this Agreement. In accepting this Trust, the Trustee shall be accountable for the assets received by it, subject to the terms and conditions of this Agreement. Except as specifically described herein, the Trust established hereby shall be irrevocable.

**(b) Grantor Trust.**

The Trust is intended to be a grantor trust, of which the Sponsor is the grantor, within the meaning of subpart E, part I, subchapter J, chapter 1, subtitle A of the Code, as amended, and shall be construed accordingly. The Trust is neither intended nor designed to qualify under Section 401(a) of the Code.

**(c) Trust Assets.**

The principal of the Trust, and any earnings thereon shall be held separate and apart from other funds of the Sponsor and shall be used exclusively for the uses and purposes of Participants and general creditors as herein set forth. Participants shall have no preferred claim on, or any beneficial ownership interest in, any assets of the Trust. Any rights created under the Plan and this Agreement shall be mere unsecured contractual rights of Participants against the Sponsor. Any assets held by the Trust will be subject to the claims of the Sponsor’s general creditors under federal and state law in the event of Sponsor’s Insolvency.

**(d) Non-Assignment.**

Benefit payments to Participants funded under this Trust may not be anticipated, assigned (either at law or in equity), alienated, pledged, encumbered, or subjected to attachment, garnishment, levy, execution, or other legal or equitable process.

**Section 3. Payments to Sponsor.**

Except as provided under this Agreement, the Sponsor shall have no right or power to direct the Trustee to return to the Sponsor or to or divert to others any of the Trust assets before all payment of benefits have been made to Participants pursuant to the terms of the Plan.

**Section 4. Disbursements.**

**(a) Directions from Sponsor.**

The Trustee shall disburse monies or other property for benefit payments in the amounts that the Sponsor directs from time to time in writing to Participant. The Trustee shall: (i) not disburse monies to persons not described in this subsection (a) and (ii) not be responsible for ascertaining whether the Sponsor’s direction complies with the terms of the Plan or of any applicable law. The Trustee shall be responsible for Federal or State income tax reporting or withholding with respect to such Plan benefits and shall provide, as appropriate, an IRS Form W-2 (Wage and Tax Statement), 1099-R, 1099-Misc or 1042-S. However, the Sponsor shall be required to properly identify any Participants and update appropriate Participant indicative data fields relating to the special tax status of any Participant who receives any of the above-referenced forms other than an IRS Form W-2. The Trustee shall not be responsible for FICA (Social Security and Medicare), or any Federal or State unemployment or local tax with respect to Plan distributions.

**(b) Limitations.**

The Trustee shall not be required to make any disbursement in excess of the net realizable value of the assets of the Trust at the

time of the disbursement. The Trustee shall not be required to make any disbursement in cash or shares unless the Sponsor has provided a written direction as to the assets to be converted to cash or shares for the purpose of making the disbursement.

(c) General.

The entitlement of a Plan Participant to benefits under the Plan shall be determined by the Sponsor or such party as it shall designate under the Plan, and any claim for such benefits shall be considered and reviewed under the procedures set out in the Plan.

**Section 5. Investment of Trust.**

(a) Selection of Investment Options.

The Trustee shall have no responsibility for the selection of investment options under the Trust and shall not render investment advice to any person in connection with the selection of such options.

(b) Available Investment Options.

The Sponsor shall direct the Trustee as to what investment options the Trust shall be invested in (i) during the Participant Recordkeeping Reconciliation Period, and (ii) following the Participant Recordkeeping Reconciliation Period, subject to the following limitations. The Sponsor may determine to offer as investment options only (i) Mutual Funds and (ii) Sponsor Stock; provided, however, that the Trustee shall not be considered a fiduciary with investment discretion. The investment options are set forth on Schedule "C". The Sponsor may add or remove investment options with the consent of the Trustee to reflect administrative concerns and upon mutual amendment of this Agreement and the Schedules thereto, to reflect such additions.

(c) Investment Directions.

The Sponsor shall direct the Trustee as to how to invest the assets held in the Trust. In order to provide for an accumulation of assets comparable to the contractual liabilities accruing under the Plan, the Sponsor may direct the Trustee in writing to invest the assets held in the Trust to correspond to the hypothetical investments made for Participants in accordance with their direction under the Plan. In such cases, Participants may provide directions with respect to their hypothetical investments under the Plan by use of the system maintained for such purposes by the Trustee or its agents, as may be agreed upon from time to time by the Sponsor and the Trustee, and shall be processed in accordance with the fund exchange provisions set forth in the Plan Administration Manual. The Trustee shall not be liable for any loss or expense that arises from a Participant's exercise or non-exercise of rights under this Section 5 over the assets in the Participant's accounts. In the event that the Trustee fails to receive a proper direction, the assets in question shall be invested in the investment option set forth for such purpose on Schedule "C" until the Trustee receives a proper direction.

(d) Unfunded Status of Plan

The Sponsor's designation of available investment options, the maintenance of accounts for each Participant, the crediting of investments gains (or losses) to such accounts, and the exercise by Participants of any powers relating to investments under this Agreement are solely for the purpose of providing a mechanism for measuring the obligation of the Sponsor to any particular Participant under the applicable Plan. As provided in this Agreement, no Participant will have any preferential claim to or beneficial ownership interest in any asset or investment held in the Trust, and the rights of any Participant under the applicable Plan and this Agreement are solely those of an unsecured general creditor of the Sponsor with respect to the benefits of the Participant under the Plan.

(e) Mutual Funds.

On the effective date of this Agreement, in lieu of receiving a printed copy of the prospectus for each Fidelity Mutual Fund selected by the Sponsor as a Plan investment option or short-term investment fund, the Sponsor hereby consents to receiving such documents electronically. The Sponsor shall access each prospectus on the internet after receiving notice from the Trustee that a current version is available online at a website maintained by the Trustee or its affiliate. Trustee represents that on the effective date of this Agreement, a current version of each such prospectus is available at <https://www.fidelity.com> or such successor website as Trustee may notify the Sponsor of in writing from time to time. The Sponsor represents that it has accessed/will access each such prospectus as of the effective date of this Agreement at <https://www.fidelity.com> or such successor website as Trustee may notify the Sponsor of in writing from time to time. Transactions involving Non-Fidelity Mutual Funds shall be executed in accordance with the operational guidelines set forth in Schedule "D" attached hereto.

Trust investments in Mutual Funds shall be subject to the following limitations:

(i) Execution of Purchases and Sales.

Purchases and sales of Mutual Funds (other than for exchanges) shall be made on the date on which the Trustee receives from the Sponsor In Good Order all information and documentation necessary to accurately effect such transactions and (if applicable) wire transfer of funds .

Exchanges of Mutual Funds shall be processed in accordance with the fund exchange provisions set forth in the Plan Administration Manual.

(ii) Voting.

The Sponsor directs the Trustee to vote the shares of Mutual Funds held in the Trust in the same manner as directed by Participants for the corresponding hypothetical shares of Mutual Funds credited to Participants' accounts under the Plan. At the time of mailing of notice of each annual or special stockholders' meeting of any Mutual Fund, the Trustee shall send a copy of the notice and all proxy solicitation materials to each Participant who has hypothetical shares of such Mutual Fund credited to the Participant's account, together with a voting direction form for return to the Trustee or its designee. The Participant shall have the right to direct the Trustee as to the manner in which the Trustee is to vote the hypothetical shares credited to the Participant's account. The Trustee shall vote the shares held in the Trust in a manner which corresponds to Participant directions with respect to the hypothetical shares credited to the Participant's Plan account. The Trustee shall not vote shares for which it has received no corresponding directions from the Participant.

During the Participant Recordkeeping Reconciliation Period, the Sponsor shall have the right to direct the Trustee as to the manner in which the Trustee is to vote the shares of the Mutual Funds in the Trust, including Mutual Fund shares held in any short-term investment fund for liquidity reserve. Following the Participant Recordkeeping Reconciliation Period, the Sponsor shall continue to have the right to direct the Trustee as to the manner in which the Trustee is to vote any Mutual Funds shares held in a short-term investment fund for liquidity reserve. The Trustee shall not vote any such Mutual Fund shares for which it has received no directions from the Sponsor.

With respect to all rights other than the right to vote, the Trustee shall follow the directions of the Sponsor. The Trustee shall have no further duty to solicit directions from the Sponsor or Participants.

(f) Sponsor Stock.

Trust investments in Sponsor Stock shall be made via the Stock Fund.

(i) Acquisition Limit.

Pursuant to the Plan, the Trust may be invested in Sponsor Stock to the extent necessary to comply with investment directions under this Agreement. The Sponsor shall be responsible for providing specific direction on any acquisition limits required by the Plan or applicable law.

(ii) Duty.

The Sponsor shall continually monitor the suitability of acquiring and holding Sponsor Stock. The Trustee shall not be liable for any loss, or expense, which arises from the directions of the Sponsor with respect to the acquisition and holding of Sponsor Stock, unless it is clear on their face that the actions to be taken under those directions would be prohibited by any applicable law or would be contrary to the terms of this Agreement.

(iii) Purchases and Sales of Sponsor Stock for Batch Activity.

Unless otherwise directed by the Sponsor in writing pursuant to directions that the Trustee can administratively implement, the following provisions shall govern purchases and sales of Sponsor Stock for contributions, distributions, or any other purchase or sale of Sponsor Stock related to a transaction that the Sponsor has directed the Trustee in writing to implement on a batch basis ("batch activity").

Purchases and sales of Sponsor Stock shall be made on the open market in accordance with the Trustee's standard trading guidelines, as they may be amended from time to time, as necessary to honor batch activity. Such general rules shall not apply in

the following circumstances:

(A) If the Trustee is unable to purchase or sell the total number of

shares required to be purchased or sold on such day as a result of market conditions; or

(B) If the Trustee is prohibited by the SEC, the NYSE or principal

exchange on which the Sponsor Stock is traded, or any other regulatory or judicial body from purchasing or selling any or all of the shares required to be purchased or sold on such day.

In the event of the occurrence of a circumstance described in (A) or (B) above, the Trustee shall purchase or sell such shares as soon thereafter as administratively feasible, and shall determine the price of such purchases or sales to be the average purchase or sales price of all such shares purchased or sold, respectively. The Trustee may follow written directions from the Sponsor to deviate from the above purchase and sale procedures.

(iv) Purchases and Sales of Sponsor Stock for Participant-Initiated

Exchanges (“Real Time” Trading)

Unless otherwise directed by the Sponsor in writing pursuant to directions that the Trustee can administratively implement, the following provisions shall govern purchases and sales of Sponsor Stock for Participant-initiated exchanges of hypothetical investment in Sponsor Stock.

(A) Purchases and Sales of Sponsor Stock. Purchases and sales of Sponsor Stock associated with individual Participant-initiated exchanges into or out of a Participant’s hypothetical interest in the Stock Fund shall be made on the open market pursuant to order types selected by the Participant in accordance with the Trustee’s procedures for “Real Time Trading.” The Sponsor may instruct the Trustee to limit the order types available to Participants.

(1) Automated Order Entry. Sponsor Stock trades associated with Participant-initiated exchanges of a Participant’s hypothetical interest in the Stock Fund shall be sent to market as soon as administratively feasible during regular trading hours via an electronic order entry system, unless such trade is treated as a block trade. Such electronic order entry system shall be deemed an Electronic Service for purposes of Section 15 of this Agreement.

(2) Limitations on Trades; Cancellation of Exchange Requests. Trades rejected under rules of the applicable securities exchange will not be executed. The Trustee will not submit orders (or will cancel orders) for stock trades that violate the Trustee’s procedures for “Real Time Trading”. The Trustee shall not submit any trade order associated with a Participant-initiated exchange of a Participant’s hypothetical interest in the Stock Fund at any time when the Stock Fund has been closed to such activity. Trades associated with Participant-initiated exchanges of a Participant’s hypothetical interest in the Stock Fund shall not be transacted at any time when the regular market is closed, or when the SEC, the NYSE or principal exchange on which the Sponsor Stock is traded, or any other regulatory or judicial body has prohibited purchases or sales of any or all of the shares requested to be traded pursuant to the Participant-initiated exchange of a Participant’s hypothetical interest in the Stock Fund. An exchange requested by the Participant in a Participant’s hypothetical interest in the Stock Fund shall be rejected or cancelled, as the case may be, to the extent any accompanying hypothetical trade is not submitted, not executed or cancelled.

(B) Reserve Requirements for Exchanges Into Stock Fund and Corrective Sales. The Participant’s ability to initiate hypothetical exchanges into the Stock Fund shall be subject to standard reserve requirements applicable to the investment options used to fund the exchange, as established by the Trustee from time to time (or such higher reserve requirements as may be established by the Sponsor in written direction to the Trustee). Requests to exchange into the Stock Fund that exceed such reserves, and accompanying trade orders, may be rejected or cancelled. In the event that a buy trade associated with a request to exchange into Sponsor Stock is executed, and the Participant does not have sufficient hypothetical interest in assets in the designated investment option to fund the trade, the Trustee will liquidate the hypothetical interest in the investment options (including those held in other sources eligible for liquidation) in the affected Participant’s account pro rata. In the event that the Participant does not have sufficient hypothetical interest in assets in any other investment option, the Trustee shall initiate a corrective sale, and shall debit the costs of such corrective trade from the Participant’s hypothetical account.

(C) Fractional Shares. Participants will be entitled make hypothetical exchanges out of hypothetical interests in fractional shares in the Stock Fund only in connection with a request to exchange out the entire hypothetical balance of their Stock Fund (or the entire hypothetical balance in a particular source, as applicable). Fractional shares will be transacted at the price



determined by the stock trade order selected by the Participant.

(v) Use of an Affiliated Broker.

For all purchases and sales of Sponsor Stock on the open market, whether Participant-initiated or otherwise, the Sponsor hereby directs the Trustee to use Fidelity Brokerage Services LLC ("FBSLLC") to provide brokerage services. Subject to the provisions of this agreement, FBSLLC shall execute such trades directly or through any of its affiliates. The provision of brokerage services shall be subject to the following:

(1) Any successor organization of FBSLLC, through reorganization, consolidation, merger or similar transactions, shall, upon consummation of such transaction, become the successor broker in accordance with the terms of this direction provision. FBSLLC may assign its rights and obligations under this agreement to any affiliate, provided that the assignee is bound by the terms hereof, including the provisions concerning remuneration.

(2) The Trustee and FBSLLC shall continue to rely on this

direction provision until notified to the contrary. The Sponsor reserves the right to terminate this direction upon written notice to FBSLLC (or its successors or assigns) and the Trustee, in accordance with Section 11 of this Agreement.

(3) The Sponsor acknowledges that FBSLLC (and its successors and assigns) may rely upon this Agreement in establishing an account in the name of the Trustee for the Plan, and in allowing each Participant to exercise limited trading authorization over such account, to the extent of his or her individual account balance in the Stock Fund subject to Participant direction.

(vi) Securities Law Reports.

The Sponsor shall be responsible for filing all reports required under Federal or state securities laws with respect to the Trust's ownership of Sponsor Stock, including, without limitation, any reports required under section 13 or 16 of the Securities Exchange Act of 1934, and shall immediately notify the Trustee in writing of any requirement to stop purchases or sales of Sponsor Stock pending the filing of any report. The Sponsor shall be responsible for the registration of any Plan interests to the extent required under Federal or state securities law. The Trustee shall provide to the Sponsor such information on the Trust's ownership of Sponsor Stock as the Sponsor may reasonably request in order to comply with Federal or state securities laws.

(vii) Voting and Tender Offers.

Notwithstanding any other provision of this Agreement, the provisions of this Section shall govern the voting and tendering of Sponsor Stock. The Sponsor shall pay for all printing, mailing, tabulation and other costs associated with the voting and tendering of Sponsor Stock. The Trustee, after consultation with the Sponsor, shall prepare the necessary documents associated with the voting and tendering of Sponsor Stock.

(A) Voting.

(1) When the issuer of Sponsor Stock prepares for any annual or special meeting, the Sponsor shall notify the Trustee at least thirty (30) days in advance of the intended record date and shall cause a copy of all proxy solicitation materials to be sent to the Trustee. If requested by the Trustee, the Sponsor shall certify to the Trustee that the aforementioned materials represent the same information distributed to shareholders of Sponsor Stock. The Sponsor may direct the Trustee to vote the shares of Sponsor Stock held in the Trust in the same manner as directed by the Participants for the corresponding hypothetical shares of Sponsor Stock credited to the Participant's account under the Plan. Based on the aforementioned materials and the Sponsor's direction, the Trustee shall prepare a voting instruction form and shall provide a copy of all proxy solicitation materials to be sent to each Participant with a hypothetical interest in shares of Sponsor Stock under the Plan, together with the foregoing voting instruction form to be returned to the Trustee or its designee. The form shall show the number of full and fractional hypothetical shares of Sponsor Stock credited to the Participant's account.

(2) As directed by the Sponsor under this Agreement, each Participant with a hypothetical interest in shares of Sponsor Stock held in the Trust shall have the right to direct the manner in which the corresponding shares of Sponsor Stock credited to the Participant's account (both vested and unvested) shall be voted. Directions from a Participant to the Trustee concerning the voting of Sponsor Stock shall be communicated in writing, or other means as agreed upon by the Trustee and the Sponsor. These directions shall be held in confidence by the Trustee and shall not be divulged to the Sponsor, or any officer or employee thereof, or any other person except to the extent that the consequences of such directions are reflected in reports

regularly communicated to any such person in the ordinary course of the performance of the Trustee's services hereunder. Upon its receipt of the directions, the Trustee shall vote the shares of Sponsor Stock held in the Trust to correspond to the directions provided by the Participant with respect to the Participant's proportional hypothetical investment in the Stock Fund under the Plan. Except as otherwise required by law, the Trustee shall not vote shares of Sponsor Stock reflecting a Participant's hypothetical investment in the Stock Fund for which it has received no directions from the Participant.

(3) Except as otherwise required by law, the Trustee shall vote that number of shares of Sponsor Stock not credited to Participants' accounts under the Plan in the same proportion on each issue as it votes those shares corresponding to shares credited to Participants' accounts under the Plan for which it received voting directions from Participants.

(B) Tender Offers.

(1) Upon commencement of a tender offer for any securities held in the Trust that are Sponsor Stock, the Sponsor shall timely notify the Trustee in advance of the intended tender date and shall cause a copy of all materials to be sent to the Trustee. The Sponsor shall certify to the Trustee that the aforementioned materials represent the same information distributed to shareholders of Sponsor Stock. The Sponsor may direct the Trustee to tender the shares of Sponsor Stock held in the Trust in the same manner as directed by the Participants for their hypothetical interest in the corresponding shares of Sponsor Stock credited to the Participants' Plan accounts. Based on the aforementioned materials and after consultation with the Sponsor, the Trustee shall prepare a tender instruction form and shall provide a copy of all tender materials to be sent to each Participant with a hypothetical interest in the Stock Fund, together with the foregoing tender instruction form, to be returned to the Trustee or its designee. The tender instruction form shall show the hypothetical number of full and fractional shares of Sponsor Stock credited to the Participant's account (both vested and unvested) under the Plan.

(2) As directed by the Sponsor under this Agreement, each Participant with a hypothetical interest in the Stock Fund shall have the right to direct to the manner in which that number of shares of Sponsor Stock credited to the Participant's account (both vested and unvested) under the Plan shall be tendered or not tendered. Directions from a Participant to the Trustee concerning the tender of Sponsor Stock shall be communicated in writing, or such other means as agreed upon by the Trustee and the Sponsor. These directions shall be held in confidence by the Trustee and shall not be divulged to the Sponsor, or any officer or employee thereof, or any other person except to the extent that the consequences of such directions are reflected in reports regularly communicated to any such persons in the ordinary course of the performance of the Trustee's services hereunder. The Trustee shall tender or not tender shares of Sponsor Stock held in the Trust to correspond to directions provided by the Participants under their Plan accounts. Except as otherwise required by law, the Trustee shall not tender shares of Sponsor Stock for which it has received no corresponding directions from the Participant under the Plan.

(3) Except as otherwise required by law, the Trustee shall tender that number of shares of Sponsor Stock held in the Trust which exceeds the number of shares credited to Participants' accounts, in the same proportion as the total number of shares of Sponsor Stock credited to Participants' accounts for which it received instructions from Participants.

(4) A Participant who has directed the Trustee to tender some or all of the hypothetical shares of Sponsor Stock credited to the Participant's account may, at any time prior to the tender offer withdrawal date, direct the Trustee to withdraw some or all of the tendered shares reflecting the Participant's hypothetical investment in Sponsor Stock, and the Trustee shall withdraw the corresponding number of shares from the tender offer prior to the tender offer withdrawal deadline. Prior to the withdrawal deadline, if any shares of Sponsor Stock not credited to Participants' accounts have been tendered, the Trustee shall re-determine the number of shares of Sponsor Stock that would be tendered under Section 5(f)(vii)(B)(3) if the date of the foregoing withdrawal were the date of determination, and withdraw from the tender offer the number of shares of Sponsor Stock not credited to Participants' accounts as necessary to reduce the amount of tendered Sponsor Stock credited to Participants' accounts to the amount so re-determined. A Participant shall not be limited as to the number of directions to tender or withdraw that the Participant may give to the Trustee.

(5) A direction by a Participant to the Trustee to tender shares of Sponsor Stock reflecting the Participant's hypothetical investment in Sponsor Stock shall not be considered a written election under the Plan by the Participant to withdraw, or have distributed, any or all of his withdrawable shares. The Trustee shall credit to each account of the Participant from which the tendered shares were taken the proceeds received by the Trustee in exchange for the corresponding shares of Sponsor Stock tendered from the Trust. Pending receipt of directions from the Participant or the Sponsor, as provided in the Plan, as to which of the remaining investment options the proceeds should be invested, the Trustee shall invest the proceeds in the investment option described in Schedule "C".

(viii) General.

With respect to all shareholder rights other than the right to vote, the right to tender, and the right to withdraw shares previously

tendered, in the case of Sponsor Stock, the Trustee shall follow the procedures set forth in subsection (vii), above.

(ix) Conversion.

All provisions in this Section 5(f) shall also apply to any securities received as a result of a conversion of Sponsor Stock.

(g) Trustee Powers.

The Trustee shall have the following powers and authority:

(i) Subject to this Section 5, to sell, exchange, convey, transfer, or otherwise dispose of any property held in the Trust, by private contract or at public auction. No person dealing with the Trustee shall be bound to see to the application of the purchase money or other property delivered to the Trustee or to inquire into the validity, expediency, or propriety of any such sale or other disposition.

(ii) To cause any securities or other property held as part of the Trust to be registered in the Trustee's own name, in the name of one or more of its nominees, or in the Trustee's account with the Depository Trust Company of New York and to hold any investments in bearer form, but the books and records of the Trustee shall at all times show that all such investments are part of the Trust.

(iii) To keep that portion of the Trust in cash or cash balances as the Sponsor may, from time to time, deem to be in the best interest of the Trust.

(iv) To make, execute, acknowledge, and deliver any and all documents of transfer or conveyance and to carry out the powers herein granted.

(v) To borrow funds from a bank or other financial institution not affiliated with the Trustee in order to provide sufficient liquidity to process Plan transactions in a timely fashion, provided that the cost of borrowing shall be allocated in a reasonable fashion to the investment fund(s) in need of liquidity. The Sponsor acknowledges that it has received the disclosure on the Trustee's line of credit program and credit allocation policy and a copy of the text of Prohibited Transaction Exemption 2002-55 prior to executing this Agreement if applicable.

(vi) To settle, compromise, or submit to arbitration any claims, debts, or damages due to or arising from the Trust; to commence or defend suits or legal or administrative proceedings; to represent the Trust in all suits and legal and administrative hearings; and to pay all reasonable expenses arising from any such action, from the Trust if not paid by the Sponsor.

(vii) To employ legal, accounting, clerical, and other assistance as may be required in carrying out the provisions of this Agreement and to pay their reasonable expenses and compensation from the Trust if not paid by the Sponsor.

(viii) To do all other acts, although not specifically mentioned herein, as the Trustee may deem necessary to carry out any of the foregoing powers and the purposes of the Trust.

Notwithstanding any powers granted to Trustee pursuant to this Agreement or to applicable law, Trustee shall not have any power that could give this Trust the objective of carrying on a business and dividing the gains therefrom, within the meaning of Section 301.7701-2 of the Procedure and Administrative Regulations promulgated pursuant to the Code. The Trustee will file an annual fiduciary return to the extent required by law.

**Section 6. Recordkeeping and Administrative Services to Be Performed.**

(a) General.

The Trustee shall perform those recordkeeping and administrative functions described in Schedule "A" attached hereto. These recordkeeping and administrative functions shall be performed within the framework of the Sponsor's written directions regarding the Plan's provisions, guidelines and interpretations.

(b) Accounts.

The Trustee shall keep accurate accounts of all investments, receipts, disbursements, and other transactions hereunder, and shall report the value of the assets held in the Trust as of the last day of each Reporting Date. Within thirty (30) days following each

Reporting Date or within sixty (60) days in the case of a Reporting Date caused by the resignation or removal of the Trustee, or the termination of this Agreement, the Trustee shall file with the Sponsor a written account setting forth all investments, receipts, disbursements, and other transactions effected by the Trustee between the Reporting Date and the prior Reporting Date, and setting forth the value of the Trust as of the Reporting Date. Except as otherwise required under applicable law, upon the expiration of six (6) months from the date of filing such account, the Trustee shall have no liability or further accountability to anyone with respect to the propriety of its acts or transactions shown in such account, except with respect to such acts or transactions as to which a written objection shall have been filed with the Trustee within such six (6) month period.

(c) Inspection and Audit.

Prior to the termination of this Agreement, all records generated by the Trustee in accordance with paragraphs (a) and (b) shall be open to inspection and audit, by the Sponsor or any persons designated by the Sponsor, during the Trustee's regular business hours. Upon the resignation or removal of the Trustee or the termination of this Agreement, the Trustee shall provide to the Sponsor, at no expense to the Sponsor, in the format regularly provided to the Sponsor, a statement of each Participant's account as of the resignation, removal, or termination, and the Trustee shall provide to the Sponsor or the Plan's new recordkeeper such further records as are reasonable, at the Sponsor's expense.

(d) Notice of Plan Amendment.

The Trustee's provision of the recordkeeping and administrative services set forth in this Section shall be conditioned on the Sponsor delivering to the Trustee a copy of any amendment to the Plan as soon as administratively feasible following the amendment's adoption, and on the Sponsor providing the Trustee, on a timely basis, with all the information the Trustee deems necessary for the Trustee to perform the recordkeeping and administrative services and such other information as the Trustee may reasonably request.

(e) Returns, Reports and Information.

Except as set forth in the Plan Reporting section of Schedule "A", the Sponsor shall be responsible for the preparation and filing of all returns, reports, and information required of the Trust or Plan by law. The Trustee shall provide the Sponsor with such information as the Sponsor may reasonably request to make these filings. The Sponsor shall also be responsible for making any disclosures to Participants required by law.

**Section 7. Compensation and Expenses.**

Sponsor shall pay to Trustee, within thirty (30) days of receipt of the Trustee's bill, the fees for services in accordance with Schedule "B." Fees for services are specifically outlined in Schedule "B" and are based on any assumptions identified therein. The Trustee shall maintain its fees for two years; provided, however, in the event that the Plan characteristics referenced in the assumptions outlined in Schedule "B" change significantly by either falling below or exceeding current or projected levels, such fees may be subject to revision, upon mutual renegotiation. To reflect increased operating costs, Trustee may once each calendar year, but not prior to September 26, 2008, amend Schedule "B" without the Sponsor's consent upon ninety (90) days prior notice to the Sponsor.

All reasonable expenses of Plan administration as shown on Schedule "B" attached hereto, as amended from time to time, shall be a charge against and paid from the appropriate Participants' accounts, except to the extent such amounts are paid by the Sponsor in a timely manner.

All expenses of the Trustee relating directly to the acquisition and disposition of investments constituting part of the Trust, and all taxes of any kind whatsoever that may be levied or assessed under existing or future laws upon or in respect of the Trust or the income thereof, shall be a charge against and paid from the appropriate Participants' accounts.

**Section 8. Directions and Indemnification.**

(a) Identity of the Sponsor.

The Trustee shall be fully protected in relying on the fact that the Sponsor under the Plan is the person named as such above or such other persons as the Sponsor may notify the Trustee in writing.

(b) Directions from the Sponsor.

Whenever the Sponsor provides a direction to the Trustee, the Trustee shall not be liable for any loss or expense arising from the direction if the direction is contained in a writing provided by any individual whose name has been submitted (and not withdrawn) in writing to the Trustee by the Sponsor unless it is clear on the direction's face that the actions to be taken under the direction would be contrary to the terms of this Agreement. The Trustee may rely without further duty of inquiry on the authority of any such individual to provide direction to the Trustee on behalf of the Sponsor.

For purposes of this Section, such Direction may also be made via EDT, facsimile or such other secure electronic means in accordance with procedures agreed to by the Sponsor and the Trustee and, in any such case the Trustee shall be fully protected in relying on such Direction as if it were a Direction made in writing by the Sponsor.

(c) Directions from Participants.

The Trustee shall not be liable for any loss which arises from any Participant's exercise or non-exercise of rights under the Plan over the assets in the Participants' hypothetical accounts.

(d) Indemnification.

The Sponsor shall indemnify the Trustee against, and hold the Trustee harmless from, any and all Losses that may be incurred by, imposed upon, or asserted against the Trustee by reason of any claim, regulatory proceeding, or litigation arising from any act done or omitted to be done by any individual or person with respect to the Plan or Trust, excepting only any and all Losses arising solely from the Trustee's negligence, bad faith, fraud or willful misconduct.

(e) Survival.

The provisions of this Section shall survive the termination of this Agreement.

**Section 9. Resignation or Removal of Trustee.**

(a) Resignation and Removal.

The Trustee may resign at any time in accordance with the notice provisions set forth below. The Sponsor may remove the Trustee at any time in accordance with the notice provisions set forth below.

(b) Termination.

This Agreement may be terminated in full, or with respect to only a portion of Plan (i.e. a "partial deconversion") at any time by the Sponsor upon prior written notice to the Trustee in accordance with the notice provisions set forth below.

(c) Notice Period.

In the event either party desires to terminate this Agreement or any Services hereunder, the party shall provide at least sixty (60) days prior written notice of the termination date to the other party; provided, however, that the receiving party may agree, in writing, to a shorter notice period.

(d) Transition Assistance.

In the event of termination of this Agreement, if requested by Sponsor, the Trustee shall assist Sponsor in developing a plan for the orderly transition of the Plan data, cash and assets then constituting the Trust and services provided by the Trustee hereunder to Sponsor or its designee. The Trustee shall provide such assistance for a period not extending beyond sixty (60) days from the termination date of this Agreement. The Trustee shall provide to Sponsor, or to any person designated by Sponsor, at a mutually agreeable time, one file of the Plan data prepared and maintained by the Trustee in the ordinary course of business, in the Trustee's format. The Trustee may provide other or additional transition assistance as mutually determined for additional fees, which shall be due and payable by the Sponsor prior to any termination of this Agreement.

(e) Failure to Appoint Successor.

If, by the termination date, the Sponsor has not notified the Trustee in writing as to the individual or entity to which the assets and cash are to be transferred and delivered, the Trustee may bring an appropriate action or proceeding for leave to deposit the assets and cash in a court of competent jurisdiction. The Trustee shall be reimbursed by the Sponsor for all costs and expenses of the

action or proceeding including, without limitation, reasonable attorneys' fees and disbursements.

## **Section 10. Successor Trustee.**

### **(a) Appointment.**

If the office of Trustee becomes vacant for any reason, the Sponsor may in writing appoint a successor trustee under this Agreement. The successor trustee shall have all of the rights, powers, privileges, obligations, duties, liabilities, and immunities granted to the Trustee under this Agreement. The successor trustee and predecessor trustee shall not be liable for the acts or omissions of the other with respect to the Trust.

### **(b) Acceptance.**

As of the date the successor trustee accepts in writing its appointment under this Agreement, title to and possession of the Trust assets shall immediately vest in the successor trustee without any further action on the part of the predecessor trustee, except as may be required to evidence such transition. The predecessor trustee shall execute all instruments and do all acts that may be reasonably necessary and requested in writing by the Sponsor or the successor trustee to vest title to all Trust assets in the successor trustee or to deliver all Trust assets to the successor trustee.

### **(c) Corporate Action.**

Any successor of the Trustee or successor trustee, either through sale or transfer of the business or trust department of the Trustee or successor trustee, or through reorganization, consolidation, or merger, or any similar transaction of either the Trustee or successor trustee, shall, upon consummation of the transaction, become the successor trustee under this Agreement.

## **Section 11. Resignation, Removal, and Termination Notices.**

All notices of resignation, removal, or termination under this Agreement must be in writing and mailed to the party to which the notice is being given by certified or registered mail, return receipt requested, to the Sponsor c/o Benefits Manager, 17876 St. Clair Avenue, Cleveland Ohio 44110, and to the Trustee c/o FESCo Business Compliance, Attn: Contracts, Fidelity Investments, 82 Devonshire Street, MM3H, Boston, Massachusetts 02109, or to such other addresses as the parties have notified each other of in the foregoing manner.

## **Section 12. Duration.**

This Trust shall continue in effect without limit as to time, subject, however, to the provisions of this Agreement relating to amendment, modification, and termination thereof. Notwithstanding the foregoing, but subject to any applicable provision in the Plan to the contrary, the Trust shall terminate upon the earliest to occur of (a) a determination by the Company that no Participant is or will be entitled to any further payment of benefits under the Plan, (b) such time as the Trust no longer contains any assets, or (c) such time as the Trustee shall have received written consents from all Participants entitled to payment of benefits under the Plan as to the termination of the Trust.

## **Section 13. Insolvency of Sponsor.**

(a) Trustee shall cease disbursement of funds for payment of benefits to Participants if the Sponsor is Insolvent.

(b) All times during the continuance of this Trust, the principal and income of the Trust shall be subject to claims of general creditors of the Sponsor under federal and state law as set forth below.

(i) The Board of Directors and the Chief Executive Officer of the Sponsor shall have the duty to inform Trustee in writing of Sponsor's Insolvency. If a person claiming to be a creditor of the Sponsor alleges in writing to Trustee that Sponsor has become Insolvent, Trustee shall determine whether Sponsor is Insolvent and, pending such determination, Trustee shall discontinue disbursements for payment of benefits to Participants.

(ii) Unless Trustee has actual knowledge of Sponsor's Insolvency, or has received notice from Sponsor or a person claiming to be a creditor alleging that Sponsor is Insolvent, Trustee shall have no duty to inquire whether Sponsor is Insolvent. Trustee may in all events rely on such evidence concerning Sponsor's solvency as may be furnished to Trustee and that provides Trustee with a reasonable basis for making a determination concerning Sponsor's solvency.

(iii) If at any time Trustee has determined that Sponsor is Insolvent, Trustee shall discontinue disbursements for payments to Participants and shall hold the assets of the trust for the benefit of Sponsor's general creditors. Nothing in this Agreement shall in any way diminish any rights of Participants to pursue their rights as general creditors of Sponsor with respect to benefits due under the Plan or otherwise.

(iv) Trustee shall resume disbursement for the payment of benefits to Participants in accordance with this Agreement only after Trustee has determined that Sponsor is not Insolvent (or is no longer Insolvent).

(c) Provided that there are sufficient assets, if Trustee discontinues the payment of benefits from the Trust pursuant to (a) hereof and subsequently resumes such payments, the first payment following such discontinuance shall include the aggregate amount of all payments due to Participants under the terms of the Plan for the period of such discontinuance, less the aggregate amount of any payments made to Participants by Sponsor in lieu of the payments provided for hereunder during any such period of discontinuance.

#### **Section 14. Amendment or Modification.**

This Agreement may be amended or modified at any time and from time to time and to any extent only by an instrument executed by both the Sponsor and the Trustee. The individuals authorized to sign such instrument shall be those authorized by the Sponsor. Notwithstanding the foregoing, no such amendment shall conflict with the terms of the Plan or shall make the Trust revocable after it has become irrevocable in accordance with Section 2(a) hereof. The Trustee shall have no responsibility to determine whether the terms of the Plan conflict with any amendment or whether any such amendment would make the plan revocable.

#### **Section 15. Electronic Services.**

(a) The Trustee may provide communications and Electronic Services via electronic media, including, but not limited to NetBenefits, eWorkplace and Fidelity Plan Sponsor WebStation. The Sponsor agrees to use such Electronic Services only in the course of reasonable administration of or participation in the Plan and to keep confidential and not alter, publish, copy, broadcast, retransmit, reproduce, frame-in, link to, commercially exploit or otherwise disseminate the Electronic Services, any content associated therewith, or any portion thereof (including, without limitation, any trademarks and service marks associated therewith), without the written consent of the Trustee. Notwithstanding the foregoing, the Trustee acknowledges that certain Electronic Services may, by their nature, be intended for non-commercial, personal use by Participants, with respect to their participation in the Plan, or for their other retirement or employee benefit planning purposes, and certain content may be intended or permitted to be modified by the Sponsor in connection with the administration of the Plan. In such cases, the Trustee will notify the Sponsor of such fact, and any requirements or guidelines associated with such usage or modification no later than the time of initial delivery of such Electronic Services. To the extent permission is granted to make Electronic Services available to administrative personnel designated by the Sponsor, it shall be the responsibility of the Sponsor to keep the Trustee informed as to which of the Sponsor personnel are authorized to have such access. Except to the extent otherwise specifically agreed by the parties, the Trustee reserves the right, upon notice when reasonably feasible, to modify or discontinue Electronic Services, or any portion thereof, at any time.

(b) From time to time, upon mutual agreement of the Trustee and the Sponsor, the Trustee may deliver to the Sponsor certain software products ("Electronic Products") not covered by the terms and conditions stated herein for use in connection with the administration of or participation in the Plan. Terms and conditions of use for such Electronic Products shall be provided to the Sponsor, as applicable. The Trustee makes no warranties, express or implied, and specifically disclaims all warranties of merchantability, fitness for a particular purpose, or non-infringement. To the extent that such alternate terms and conditions are not furnished, the use of such Electronic Products shall be governed by the terms of this Agreement as applicable.

(c) Without limiting the responsibilities of the Trustee or the rights of the Sponsor stated elsewhere in this Agreement, Electronic Services shall be provided to the Sponsor without acceptance of legal liability related to or arising out of the electronic nature of the delivery or provision of such Services. To the extent that any Electronic Services utilize Internet services to transport data or communications, the Trustee will take, and the Sponsor agrees to follow, reasonable security precautions. However, the Trustee disclaims any liability for interception of any such data or communications. The Trustee reserves the right not to accept data or communications transmitted electronically or via electronic media by the Sponsor or a third party if it determines that the method of delivery does not provide adequate data security, or if it is not administratively feasible for the Trustee to use the data security provided. The Trustee shall not be responsible for, and makes no warranties regarding access, speed or availability of Internet or network services, or any other service required for electronic communication, nor does the Trustee make any warranties, express or implied, and specifically disclaims all warranties of merchantability, fitness for a particular purpose, or non-infringement. The Trustee shall not be responsible for any loss or damage related to or resulting from any changes or modifications to the Electronic Services made in violation of this Agreement.

(d) The Sponsor acknowledges that certain web sites through which the Electronic Services are accessed may be protected by passwords or require a login and the Sponsor agrees that neither the Sponsor nor, where applicable, Participants, will obtain or attempt to obtain unauthorized access to such Services or to any other protected materials or information, through any means not intentionally made available by the Trustee for the specific use of the Sponsor. To the extent that a PIN is necessary for access to the Electronic Services, the Sponsor and/or its Participants, as the case may be, are solely responsible for all activities that occur in connection with such PINs.

(e) The Trustee will provide to Participants the FullView<sup>SM</sup> service via NetBenefits, through which Participants may elect to consolidate and manage any retirement account information available through NetBenefits as well as External Account Information. To the extent not provided by the Trustee or its affiliates, the data aggregation service will be provided by Yodlee.com, Inc. or such other independent provider as the Trustee may select, pursuant to a contract that requires the provider to take appropriate steps to protect the privacy and confidentiality of information furnished by users of the service. The Sponsor acknowledges that Participants who elect to use FullView<sup>SM</sup> must provide passwords and PINs to the provider of data aggregation services. The Trustee will use External Account Information to furnish and support FullView<sup>SM</sup> or other services provided pursuant to this Agreement, and as otherwise directed by the Participant. The Trustee will not furnish External Account Information to any third party, except pursuant to subpoena or other applicable law. The Sponsor agrees that the information accumulated through FullView<sup>SM</sup> shall not be made available to the Sponsor, provided, however, that the Trustee shall provide to the Sponsor, upon request, aggregate usage data that contains no personally identifiable information.

#### **Section 16. Assignment.**

This Agreement, and any of its rights and obligations hereunder, may not be assigned by any party without the prior written consent of the other party(ies), and such consent may be withheld in any party's sole discretion. Notwithstanding the foregoing, Trustee may assign this Agreement in whole or in part, and any of its rights and obligations hereunder, to a subsidiary or affiliate of Trustee without consent of the Sponsor. All provisions in this Agreement shall extend to and be binding upon the parties hereto and their respective successors and permitted assigns.

#### **Section 17. Force Majeure.**

No party shall be deemed in default of this Agreement to the extent that any delay or failure in performance of its obligation(s) results, without its fault or negligence, from any cause beyond its reasonable control, such as acts of God, acts of civil or military authority, acts of terrorism, whether actual or threatened, quarantines, embargoes, epidemics, war, riots, insurrections, fires, explosions, earthquakes, floods, unusually severe weather conditions, power outages or strikes. This clause shall not excuse any of the parties to the Agreement from any liability which results from failure to have in place reasonable disaster recovery and safeguarding plans adequate for protection of all data each of the parties to the Agreement are responsible for maintaining for the Plan.

#### **Section 18. Confidentiality.**

Both parties to this Agreement recognize that in the course of implementing and providing the services described herein, each party may disclose to the other Confidential Information. All such Confidential Information, individually and collectively, and other proprietary information disclosed by either party shall remain the sole property of the party disclosing the same, and the receiving party shall have no interest or rights with respect thereto if so designated by the disclosing party to the receiving party. Each party agrees to maintain all such Confidential Information in trust and confidence to the same extent that it protects its own proprietary information, and not to disclose such Confidential Information to any third party without the written consent of the other party. Each party further agrees to take all reasonable precautions to prevent any unauthorized disclosure of Confidential Information. In addition, each party agrees not to disclose or make public to anyone, in any manner, the terms of this Agreement, except as required by law, without the prior written consent of the other party. Notwithstanding the foregoing, Trustee may use Sponsor's name in a general list of its customers, including any such list compiled for Fidelity Investment's annual report to shareholders, without obtaining Sponsor's prior consent.

#### **Section 19. General.**

##### **(a) Performance by Trustee, its Agents or Affiliates.**

The Sponsor acknowledges and authorizes that the services to be provided under this Agreement shall be provided by the Trustee, its agents or affiliates, and that certain of such services may be provided pursuant to one or more other contractual agreements or relationships.



(b) Entire Agreement.

This Agreement, together with the Schedules referenced herein, contains all of the terms agreed upon between the parties with respect to the subject matter hereof. This Agreement supersedes any and all other agreements, written or oral, made by the parties with respect to the services.

(c) Waiver.

No waiver by either party of any failure or refusal to comply with an obligation hereunder shall be deemed a waiver of any other obligation hereunder or subsequent failure or refusal to comply with any other obligation hereunder.

(d) Successors and Assigns.

The stipulations in this Agreement shall inure to the benefit of, and shall bind, the successors and assigns of the respective parties.

(e) Partial Invalidity.

If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(f) Section Headings.

The headings of the various sections and subsections of this Agreement have been inserted only for the purposes of convenience and are not part of this Agreement and shall not be deemed in any manner to modify, explain, expand or restrict any of the provisions of this Agreement.

(g) Communications.

In the event that the Sponsor retains any responsibility for delivering Participant communications to some or all Participants, the Sponsor agrees to furnish the communications to such Participants in a timely manner as determined under applicable law. The Sponsor also represents that such communications will be delivered to such Participants in a manner permitted by applicable law, including electronic delivery that is consistent with applicable regulations regarding electronic transmission (for example, DOL Regulation §2520.104b-1). The Trustee and its affiliates shall have no responsibility or liability for any Losses resulting from the failure of the Sponsor to furnish any such communications in a manner which is timely and consistent with applicable law.

The provisions of this Agreement shall apply to all information provided and all Participant communications prepared and delivered by the Sponsor or the Trustee during the implementation period prior to the execution date of this Agreement and throughout the term set forth in this Agreement.

(h) Survival.

Trustee's and Sponsor's respective obligations under this Agreement, which by their nature would continue beyond the termination of this Agreement, including but not limited to those contained in Sections 6(c), 8(d), 18 and 20 shall survive any termination of the Agreement.

**Section 20. Use of Data.**

In order to fulfill its obligations under this Agreement, the Trustee may receive personal data, including but not limited to, compensation, benefits, tax, marital/family status and other similar information, about Participants ("Personal Data"). With respect to Personal Data it receives, the Trustee agrees to (i) safeguard Personal Data in accordance with its privacy policy, and (ii) exercise the same standard of care in safeguarding such Personal Data that it uses to protect the personal data of its own employees. Notwithstanding the foregoing, the Sponsor may monitor the Trustee's interactions with Participants and the Sponsor authorizes the Trustee to permit third-party prospects of the Trustee to monitor Participants' interactions for the purpose of evaluating Trustee's services.

**Section 21. Other Services.**

The Sponsor hereby authorizes the Trustee and its affiliates to provide Participants with communications about goal-based planning services, tools and products offered by the Trustee or its affiliates, including but not limited to multi-goal savings and investment planning, guidance and retirement income management. Such programs may include print communication material, web-based materials, email and/or related outbound calls, as well as workshops, seminars, and one-on-one meetings, which may be supported by one or more affiliates of the Trustee including FBSLLC. Program communications may be directed to Participant populations based on potential Participant needs, taking into account Participant age and deferral rate, among other factors.

For purposes of both facilitating these communications and providing goal-based planning services, tools and products to Participants, the Sponsor authorizes the Trustee and its affiliates to provide FBSLLC, and/or other affiliates or agents of the Trustee, with access to the Plan’s terms and provisions and to individual Plan account information of Participants, provided that such affiliates and agents shall safeguard such data in accordance with the Trustee’s privacy policy. The Sponsor acknowledges that, as part of this program, Participants may consent to have services provided to them by FBSLLC and/or other affiliates.

**Section 22. Governing Law.**

(a) Massachusetts Law Controls.

This Agreement is being made in the Commonwealth of Massachusetts, and the Trust shall be administered as a Massachusetts trust. The validity, construction, effect, and administration of this Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts, except to the extent those laws are superseded under section 514 of ERISA.

(b) Trust Agreement Controls.

The Trustee is not a party to the Plan, and in the event of any conflict between the provisions of the Plan and the provisions of this Agreement, the provisions of this Agreement shall control.

**IN WITNESS WHEREOF** , the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the day and year first above written. By signing below, the undersigned represent that they are authorized to execute this Agreement on behalf of the respective parties. Each party may rely without duty of inquiry on the foregoing representation.

**BRUSH ENGINEERED MATERIALS, INC.**

By: \_\_\_\_\_  
Authorized Signatory  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**FIDELITY MANAGEMENT TRUST COMPANY**

By: \_\_\_\_\_  
Authorized Signatory  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

**SCHEDULES**

**Schedule “A”** **Recordkeeping and Administrative Services**

**Administration**

- Establishment and maintenance of a Trust account for each Participant (and sub-accounts with respect to each Participant’s Trust account as determined by the Sponsor) and Participant election percentages.

- Maintenance of the Plan investment options set forth on Schedule “C”.
- Maintenance of the money classifications set forth in the Plan Administration Manual.
- The Trustee will provide the recordkeeping and administrative services set forth on this Schedule “A” or as otherwise agreed to in writing (or by means of a secure electronic medium) between Sponsor and Trustee. The Trustee may unilaterally add or enhance services, provided there is no impact on the fees set forth in Schedule “B.”

#### **A) Participant Services**

- 1) Participant service representatives are available each Business Day at the times set forth in the Plan Administration Manual via toll free telephone service for Participant inquiries and transactions.
- 2) Through the automated voice response system and on-line account access via the World Wide Web, Participants also have virtually 24 hour account inquiry and transaction capabilities.
- 3) For security purposes, all calls are recorded. In addition, several levels of security are available including the verification of a PIN or such other personal identifier as may be agreed to from time to time by the Sponsor and the Trustee.
- 4) The following services are available via the telephone or such other electronic means as may be agreed upon from time to time by the Sponsor and the Trustee:
  - Process Participant enrollments, in accordance with the procedures set forth in the Plan Administration Manual.
  - Provide Plan investment option information.
  - Provide and maintain information and explanations about Plan provisions.
  - Respond to requests for literature.
  - Maintain and process changes to Participants’ contribution allocations for all money sources, if applicable.
  - Process exchanges (transfers) between investment options on a daily basis.

#### **B) Plan Accounting**

- 1) Process consolidated payroll contributions according to the Sponsor’s payroll frequency via EDT, consolidated magnetic tape or diskette. The data format will be provided by the Trustee.
- 2) Maintain and update employee data necessary to support Plan administration. The data will be submitted according to payroll frequency.
- 3) Provide daily Plan and Participant level accounting for all Plan investment options.
- 4) Provide daily Plan and Participant level accounting for all money classifications for the Plan.
- 5) Audit and reconcile the Plan and Participant accounts daily.
- 6) Reconcile and process Participant withdrawal requests and distributions as approved and directed by the Sponsor. All requests are paid based on the current market values of Participants’ accounts, not advanced or estimated values. A distribution report will accompany each check.
- 7) Maintain and process changes to Participants’ existing hypothetical investment mix elections.

#### **C) Participant Reporting**

- 1) Provide confirmation to Participants of all Participant initiated transactions either online or via the mail. Online confirms are generated upon submission of a transaction and mail confirms are available by mail generally within five (5) calendar days

of the transaction.]

- 2) Provide Participant statements in accordance with the procedures set forth in the Plan Administration Manual.

**D) Plan Reporting**

- 1) Prepare, reconcile and deliver a monthly Trial Balance Report presenting all money classes and investments. This report is based on the market value as of the last business day of the month. The report will be delivered not later than twenty (20) calendar days after the end of each month in the absence of unusual circumstances.

**E) Government Reporting**

- 1) Provide federal and state tax reporting and withholding on benefit payments made to Participants and beneficiaries in accordance with this Agreement.
- 2) Provide Mutual Fund tax reporting (Forms 1099 DIV. and 1099-B) to the Sponsor.

**F) Communication & Education Services**

- 1) Design, produce and distribute a customized comprehensive communications program for employees. The program may include multimedia informational materials, investment education and planning materials, access to Fidelity's homepage on the internet and STAGES magazine. Additional fees for such services may apply as mutually agreed upon between Sponsor and Trustee.
- 2) Provide Portfolio Review an internet-based educational service for Participants that generates target asset allocations and model portfolios customized to investment options in the Plan based upon methodology provided by Strategic Advisers, Inc., an affiliate of the Trustee.

**G) Other**

- 1) Plan Sponsor Webstation : The Fidelity Participant Recordkeeping System is available on-line to the Sponsor via the Plan Sponsor Webstation. PSW is a graphical, Windows-based application that provides current Plan and Participant-level information, including indicative data, account balances, activity and history. The Sponsor agrees that PSW access will not be granted to third parties without the prior consent of the Trustee.
- 2) Change of Address by Telephone : The Trustee shall allow Participants as directed by the Sponsor and documented in the Plan Administration Manual, to make address changes via Fidelity's toll-free telephone service.

**BRUSH ENGINEERED MATERIALS INC. FIDELITY MANAGEMENT TRUST**

**COMPANY**

By: \_\_\_\_ By: \_\_\_\_

Authorized Signatory

Date Authorized Signatory

Date

**Schedule "B"**

**Fee Schedule**

Annual Recordkeeping Fee:

\$10,000 per year  
billed and payable on a quarterly basis.

Non-Fidelity Mutual Funds:

Fees paid directly to Fidelity  
Investments Institutional Operations  
Company, Inc. (FIIOC) or its affiliates  
by Non-Fidelity Mutual Fund vendors shall  
be posted and updated quarterly on Plan  
Sponsor Webstation at

**Sponsor Stock :**

To the extent that assets are invested in Sponsor Stock, 0.15% of such assets in the Trust payable pro rata quarterly on the basis of such assets as of the calendar quarter's last valuation date, but no less than \$10,000 per year nor more than \$50,000 per year.

**Commissions:**

Fidelity Brokerage Services LLC shall be entitled to remuneration in the amount of no more than \$0.029 commission on each share of Sponsor Stock. Any increase in such remuneration may be made only by written agreement between the Sponsor and Trustee.

**Other Fees :**

Other Fees: separate charges may apply for extraordinary expenses resulting from large numbers of simultaneous manual transactions, from errors not caused by Fidelity, reports not contemplated in this Agreement, corporate actions, or the provision of communications materials in hard copy which are also accessible to participants via electronic services in the event that the provision of such material in hard copy would result in an additional expense deemed to be material.

**Note: Assumptions** – These fees have been negotiated and accepted based on current participation of 9 Participants. Fees may be subject to revision, upon mutual renegotiation, if these Plan characteristics change significantly by either falling below or exceeding current or projected levels.

**BRUSH ENGINEERED MATERIALS, INC. FIDELITY MANAGEMENT TRUST**

**COMPANY**

By: _____	By: _____	
Authorized Signatory	Date	Authorized Signatory
		Date

**Schedule "C"**

**Investment Options**

In accordance with Section 5(b), the Sponsor hereby directs the Trustee that Participants' individual hypothetical accounts may be invested in the following investment options:

- Fidelity Money Market Trust: Retirement Money Market Portfolio
- PIMCO Total Return Fund – Institutional Class
- T. Rowe Price New Horizons Fund
- Templeton Foreign Fund – Class A
- Vanguard Asset Allocation Fund – Investor Class
- Vanguard Index Fund – 500 Portfolio – Investor Class
- Brush Engineered Materials Stock Fund

The Sponsor hereby directs that the investment option referred to in Section 5(c) shall be the Brush Engineered Materials Stock Fund and in Section 5(f)(vii)(B)(5) shall be the Fidelity Money Market Trust: Retirement Money Market Portfolio.

## **BRUSH ENGINEERED MATERIALS, INC.**

By: \_\_\_\_

Authorized Signatory

Date

### **Schedule “D” Operational Guidelines for Non-Fidelity Mutual Funds**

#### **Pricing**

By 7:00 p.m. Eastern Time (“ET”) each Business Day, the Non-Fidelity Mutual Fund Vendor (“Fund Vendor”) will input the following information (“Price Information”) into the Fidelity Participant Recordkeeping System (“FPRS”) via the remote access price screen that FIIOC, an affiliate of the Trustee, has provided to the Fund Vendor: (1) the NAV for each Fund at the Close of Trading, (2) the change in each Fund’s NAV from the Close of Trading on the prior Business Day, and (3) in the case of an income fund or funds, the daily accrual for interest rate factor (“mil rate”). FIIOC must receive Price Information each Business Day. If on any Business Day the Fund Vendor does not provide such Price Information to FIIOC, FIIOC shall pend all associated transaction activity in the FPRS until the relevant Price Information is made available by Fund Vendor.

#### **Trade Activity and Wire Transfers**

By 7:00 a.m. ET each Business Day following Trade Date (“Trade Date Plus One”), FIIOC will provide, via facsimile, to the Fund Vendor a consolidated report of net purchase or net redemption activity that occurred in each of the Funds up to 4:00 p.m. ET on the prior Business Day. The report will reflect the dollar amount of assets and shares to be invested or withdrawn for each Fund. FIIOC will transmit this report to the Fund Vendor each Business Day, regardless of processing activity. In the event that data contained in the 7:00 a.m. ET facsimile transmission represents estimated trade activity, FIIOC shall provide a final facsimile to the Fund Vendor by no later than 9:00 a.m. ET. Any resulting adjustments shall be processed by the Fund Vendor at the net asset value for the prior Business Day.

The Fund Vendor shall send via regular mail to FIIOC transaction confirms for all daily activity in each of the Funds. The Fund Vendor shall also send via regular mail to FIIOC, but no later than the fifth Business Day following calendar month close, a monthly statement for each Fund. FIIOC agrees to notify the Fund Vendor of any balance discrepancies within twenty (20) Business Days of receipt of the monthly statement.

For purposes of wire transfers, FIIOC shall transmit a daily wire for aggregate purchase activity and the Fund Vendor shall transmit a daily wire for aggregate redemption activity, in each case including all activity across all Funds occurring on the same day.

#### **Prospectus Delivery**

FIIOC shall be responsible for the timely delivery of Fund prospectuses and periodic Fund reports (“Required Materials”) to Participants, and shall retain the services of a third-party vendor to handle such mailings. The Fund Vendor shall be responsible for all materials and production costs, and hereby agrees to provide the Required Materials to the third-party vendor selected by FIIOC. The Fund Vendor shall bear the costs of mailing annual Fund reports to Participants. FIIOC shall bear the costs of mailing prospectuses to Participants.

#### **Proxies**

The Fund Vendor shall be responsible for all costs associated with the production of proxy materials. FIIOC shall retain the services of a third-party vendor to handle proxy solicitation mailings and vote tabulation. Expenses associated with such services shall be billed directly the Fund Vendor by the third-party vendor.

#### **Participant Communications**

The Fund Vendor shall provide internally prepared fund descriptive information approved by the Funds’ legal counsel for use by FIIOC in its written Participant communication materials. FIIOC shall utilize historical performance data obtained from third-party vendors (currently Morningstar, Inc., FACTSET Research Systems and Lipper Analytical Services) in telephone conversations with Participants and in quarterly Participant statements. The Sponsor hereby consents to FIIOC’s use of such materials and acknowledges that FIIOC is not responsible for the accuracy of third-party information. FIIOC shall seek the approval of the Fund Vendor prior to retaining any other third-party vendor to render such data or materials under this Agreement.

## **Compensation**

FIIOC shall be entitled to fees as set forth in a separate agreement with the Fund Vendor.

### **SAMPLE DIRECTION LETTER**

**[Employer's Letterhead]**

FESCO Business Compliance, Attn: Contracts.  
Fidelity Investments  
82 Devonshire Street, MM3H  
Boston, MA 02109

***Re: Investment Instructions for Rabbi Trust Assets***

Dear [Insert Names]:

The Participants under the 1992 Brush Engineered Materials, Inc. Deferred Compensation Plan for Non-Employee Directors (As Amended as of May 16, 2000) have the right to direct the investment of their Plan account in hypothetical investment options, which are currently based on (i) Mutual Funds; and (ii) the Stock Fund. Fidelity Management Trust Company has agreed pursuant to a Trust Agreement with Brush Engineered Materials, Inc. dated September 26, 2006, to receive such Participant directions.

The Sponsor hereby directs the Trustee to invest funds contributed to the rabbi trust in a manner which corresponds directly to elections made by Participants under the Plan. The Sponsor also hereby directs the Trustee to vote the shares of Fidelity and Non-Fidelity Mutual Funds and vote and/or tender shares of Sponsor Stock in the same manner as directed by the Participants for the corresponding hypothetical shares credited to Participants' accounts under the Plan.

These procedures will remain in effect until a revised instruction letter is provided by the Sponsor and accepted by the Trustee.

Sincerely,

---

Authorized Signatory

**(w/enc.)**