

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re:

Northwest Senior Housing Corporation, *et al.*,<sup>1</sup>  
Debtors.

Chapter 11

Case No. 22-30659 (MVL)  
(Jointly Administered)

**NOTICE OF FILING OF PLAN SUPPLEMENT**

**PLEASE TAKE NOTICE THAT** on December 19, 2022, Northwest Senior Housing Corporation and its affiliated debtor (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”) and UMB Bank, N.A., in its capacity as successor bond trustee and master trustee for the Original Bonds (together, the “**Trustee**”) and in its capacity as lender under the DIP Credit Agreement (the “**DIP Lender**” and, together with the Trustee, the “**Initial Plan Sponsors**” and collectively with the Debtors, the “**Plan Sponsors**”) filed the (i) *Third Amended Plan of Reorganization of the Plan Sponsors Dated December 19, 2022* [Docket No. 933] (together with all the schedules and exhibits thereto, and each as amended, modified or supplemented from time to time, the “**Plan**”) and (ii) *Third Amended Disclosure Statement for the Third Amended Plan of Reorganization of the Plan Sponsors Dated December 19, 2022* [Docket No. 934] (together with all the schedules and exhibits thereto, and each as amended, modified or supplemented from time to time, the “**Disclosure Statement**”). The Plan is supported by the Plan Sponsors, Lifespace Communities, Inc. (“**Lifespace**”), and the official committee of unsecured creditors (the “**Committee**”).

**PLEASE TAKE FURTHER NOTICE THAT** on November 2, 2022, the Initial Plan Sponsors filed the *Motion of Trustee and DIP Lender for Entry of an Order (I) Authorizing and Approving the Bidding Procedures; (II) Authorizing and Approving the Stalking Horse Asset Purchase Agreement; (III) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; (IV) Scheduling Combined Confirmation and Sale Hearing; and (V) Granting Related Relief* [Docket No. 755] (the “**Sale Motion**”).

**PLEASE TAKE FURTHER NOTICE THAT** on December 6, 2022, the Initial Plan Sponsors filed the *Notice of Filing Revised and Supplemental Documents in Support of Motion of Trustee and DIP Lender for Entry of an Order (I) Authorizing and Approving the Bidding Procedures; (II) Authorizing and Approving the Stalking Horse Asset Purchase Agreement; (III) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired*

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Northwest Senior Housing Corporation (1278) and Senior Quality Lifestyles Corporation (2669). The Debtors’ mailing address is 8523 Thackery Street, Dallas, Texas 75225.



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*Leases; (IV) Scheduling Combined Confirmation and Sale Hearing; and (V) Granting Related Relief* [Docket No. 872] (the “**Sale Documents**”).

**PLEASE TAKE FURTHER NOTICE THAT** on December 19, 2022 the United States Bankruptcy Court for the Northern District of Texas (the “**Bankruptcy Court**”) entered the *Order Approving Disclosure Statement and Granting Related Relief* [Docket No. 936] (the “**Disclosure Statement Order**”) thereby approving the Disclosure Statement.

**PLEASE TAKE FURTHER NOTICE THAT** on December 20, 2022, the Bankruptcy Court entered its order [Docket No. 946] (the “**Bidding Procedures Order**”) approving the bidding procedures set forth in the Sale Motion and the Sale Documents.<sup>2</sup>

**PLEASE TAKE FURTHER NOTICE THAT**, as contemplated by the Plan, the Plan Sponsors filed the Plan Supplement with the Court on January 13, 2023. The Plan Supplement contains the following documents (as defined in the Plan): (i) the Litigation Trust Agreement; (ii) Residents Trust Agreement; and (iii) a list of Executory Contracts and Unexpired Leases, which includes those certain Insurance Policies to be assumed by the Debtors on the Effective Date of the Plan. A form of monthly rental agreement for Current Residents is forthcoming, and the Plan Sponsors will amend this Plan Supplement therewith. The Plan Sponsors shall have the right to amend the documents contained in, and exhibits to, the Plan Supplement, subject to the terms of the Plan.

**PLEASE TAKE FURTHER NOTICE THAT** the hearing at which the Court will consider Confirmation of the Plan and approval of the sale of substantially all of the Debtors’ assets pursuant to the terms of the Plan (the “**Confirmation and Sale Hearing**”) will commence on **February 21, 2023 at 9:30 a.m. prevailing Central Time** before the Honorable Michelle V. Larson, in the Bankruptcy Court located at 1100 Commerce St., 14th Flr. Courtroom #2 Dallas, TX 75242. The Confirmation and Sale Hearing will be conducted in a hybrid format. Thus, you may participate in-person or via Webex. If you wish to participate remotely, you may do so by video or telephone via the Court’s WebEx platform). **For WebEx Video Participation/Attendance:** Link: <https://us-courts.webex.com/meet/larson>. **For WebEx Telephonic Only Participation/Attendance:** Dial-In: 1.650.479.3207, Access code: 160 135 6015.

**PLEASE BE ADVISED:** THE CONFIRMATION AND SALE HEARING MAY BE CONTINUED FROM TIME TO TIME BY THE COURT OR THE PLAN SPONSORS **WITHOUT FURTHER NOTICE** OTHER THAN BY SUCH ADJOURNMENT BEING ANNOUNCED IN OPEN COURT OR BY A NOTICE OF ADJOURNMENT FILED WITH THE COURT AND SERVED ON ALL PARTIES ENTITLED TO NOTICE.

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<sup>2</sup> Important information and deadlines related to the proposed marketing and sale of the Debtors’ assets pursuant to the Plan are set forth in the Sale Motion and the Sale Documents, which should be reviewed together with the Plan by all parties in interest.

**CRITICAL INFORMATION REGARDING OBJECTING TO THE PLAN**

**SECTION 8 OF THE PLAN CONTAINS RELEASE, EXCULPATION, AND INJUNCTION PROVISIONS THAT WILL BECOME EFFECTIVE IF THE PLAN IS CONFIRMED. THUS, YOU ARE ADVISED TO REVIEW AND CONSIDER THE PLAN CAREFULLY BECAUSE YOUR RIGHTS MIGHT BE AFFECTED THEREUNDER.**

**IF YOU DO NOT AGREE TO SUCH PROVISIONS AND DO NOT WISH TO BE A RELEASING PARTY, AS DEFINED BY THE PLAN, YOU MUST TAKE ACTION BY FILLING OUT AND TIMELY SUBMITTING AN “OPT-OUT FORM.”**

**THIS NOTICE IS BEING SENT TO YOU FOR INFORMATIONAL PURPOSES ONLY. IF YOU HAVE QUESTIONS WITH RESPECT TO YOUR RIGHTS UNDER THE PLAN OR ABOUT ANYTHING STATED HEREIN OR IF YOU WOULD LIKE TO OBTAIN ADDITIONAL INFORMATION, CONTACT THE VOTING AGENT.**

**Plan Objection Deadline.** The deadline for filing objections to the Plan is **February 14, 2023 at 4:00 p.m. prevailing Central Time** (the “**Plan Objection Deadline**”). All objections to the relief sought at the Confirmation and Sale Hearing *must*: (a) be in writing; (b) comply with the Bankruptcy Rules, the Local Rules, and any applicable orders of the Court; (c) set forth the name of the objector and the nature and amount of any Claim or Interest asserted by the objector against or in the Debtors’ Estates; (d) state, with particularity, the legal and factual bases for the objection and, if practicable, a proposed modification to the Plan that would resolve such objection; and (e) be filed with the Court (contemporaneously with a proof of service) and served upon the following parties so as to be *actually received* on or before the Plan Objection Deadline: (i) counsel for the Debtors, Polsinelli PC, 2950 N. Harwood, Suite 2100, Dallas, TX 75201, Attn: Trinitee G. Green and 600 3rd Avenue, 42nd Floor, New York, NY 10016, Attn: Jeremy R. Johnson; (ii) counsel for Lifespace Communities, Inc., Cooley LLP, 110 North Upper Wacker Drive, Suite 4200, Chicago, Illinois 60606, Attn: Eric. E. Walker; (iii) counsel for UMB Bank, N.A., Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, Massachusetts 02111, Attn: Daniel Bleck, Eric Blythe, and Kaitlin Walsh; (iv) counsel for the Committee, Foley & Lardner, 2021 McKinney Avenue, Ste. 1600, Dallas, Texas 75201, Attn: Stephen A. McCartin, Thomas C. Scannell, and Mark C. Moore; (v) the Office of the United States Trustee, 1100 Commerce St, Room 976, Dallas, Texas 75242-1699, Attn: Lisa Lambert; and (vi) such other parties as the Court may order.

### **ADDITIONAL INFORMATION**

**Obtaining Solicitation Materials.** The materials in the Solicitation Package are intended to be self-explanatory. If you should have any questions or if you would like to obtain additional solicitation materials (or paper copies of solicitation materials if you received an electronic version) or a copy of the Plan Supplement, please feel free to contact the voting by: (a) calling (866) 967-0269 (toll free) or +1 (917) 281-4800 (international); (b) writing to Northwest Senior Housing Corporation Solicitation, c/o Kurtzman Carson Consultants LLC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245; (c) emailing at [EdgemereInfo@kcellc.com](mailto:EdgemereInfo@kcellc.com) with a reference to “Edgemere” in the subject line; or (d) visiting the case website at <http://www.kcellc.net/edgemere>. You may also obtain such information for a fee via PACER at <http://www.txnb.uscourts.gov>. Please be advised that the Voting Agent is authorized to answer questions about, and provide additional copies of, solicitation materials, but may not advise you as to whether you should vote to accept or reject the Plan.

**Lifespace’s Financial Information.** Financial information with respect to Lifespace is available on the bankruptcy case website maintained by KCC, the claims, solicitation and tabulation agent in these Chapter 11 Cases. The information may be accessed for free by visiting the Debtors’ bankruptcy case website at <https://www.kcellc.net/edgemere> and selecting the “Lifespace Financials” tab on the home page. In addition, parties in interest may request a copy of the Master Trust Indenture (as defined in the Lifespace Settlement and Contribution Agreement) by contacting the Voting Agent. Additionally, parties may contact the undersigned to request a copy of the Master Trust Indenture.

#### **BINDING NATURE OF THE PLAN:**

**IF CONFIRMED, THE PLAN SHALL BIND ALL HOLDERS OF CLAIMS AND INTERESTS TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WHETHER OR NOT SUCH HOLDER WILL RECEIVE OR RETAIN ANY PROPERTY OR INTEREST IN PROPERTY UNDER THE PLAN, HAS FILED A PROOF OF CLAIM IN THE CHAPTER 11 CASES, FAILED TO VOTE TO ACCEPT OR REJECT THE PLAN, OR VOTED TO REJECT THE PLAN.**

[Signatures on Following Page]

Dated: January 13, 2023  
Dallas, Texas

**POLSINELLI PC**

/s/ Trinitee G. Green

Trinitee G. Green (SBN 24081320)  
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– and –

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*Counsel to the Debtors and Debtors in Possession*

**HAYNES AND BOONE, LLP**

/s/J. Frasher Murphy

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– and –

**MINTZ, LEVIN, COHN, FERRIS,  
GLOVSKY AND POPEO, PC**

Daniel S. Bleck (Admitted *Pro Hac Vice*)  
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*Counsel to UMB Bank, N.A. as Trustee and DIP Lender*

**EXHIBIT A**

**Litigation Trust Agreement**

## LITIGATION TRUST AGREEMENT

This Litigation Trust Agreement,<sup>1</sup> dated as of January [•], 2023 (as amended, supplemented, or otherwise modified from time to time, this “Litigation Trust Agreement” or this “Agreement”), by and among (i) Northwest Senior Housing Corporation and Senior Quality Lifestyles Corporation, the debtors and debtors in possession (together, the “Debtors”) in the chapter 11 cases (the “Chapter 11 Cases”) currently pending in the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”), (ii) the undersigned Members of the Litigation Trust Oversight Committee (as defined herein), and (iii) [•], as trustee of the Litigation Trust referred to herein (in such capacity, the “Litigation Trustee”), creates and establishes the litigation trust (the “Litigation Trust”) for the benefit of the Litigation Trust Beneficiaries (as defined herein) in connection with the Plan (defined below). Each of the parties hereto are referred to herein individually as a “Party” and, collectively, as the “Parties.”

### RECITALS

**WHEREAS**, the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) on April 14, 2022 (the “Petition Date”), initiating the Chapter 11 Cases;

**WHEREAS**, on December 19, 2022, (i) UMB Bank, N.A., in its capacity as successor bond trustee and master trustee for the Original Bonds (together, the “Bond Trustee”), (ii) UMB Bank, N.A., in its capacity as lender under the DIP Credit Agreement (the “DIP Lender” and, together with the Trustee, the “Trustee”), (iii) Northwest Senior Housing Corporation d/b/a Edgemere (“Edgemere”), (iv) Senior Quality Lifestyles Corporation (“SQLC” and together with Edgemere, the “Debtors” and together with the Trustee, the “Plan Sponsors”) filed the *Third Amended Plan of Reorganization of the Plan Sponsors dated December 19, 2022* [Docket No. 933] (as the same may be amended, modified, or supplemented from time to time in accordance with the terms and provisions thereof, the “Plan”), which Plan is supported by Lifespace Communities, Inc. (“Lifespace”) and the Official Committee of Unsecured Creditors (the “Committee”);

**WHEREAS**, on December 19, 2022, the Plan Sponsors submitted the *Third Amended Disclosure Statement for the Plan of Reorganization of the Plan Sponsors dated December 19, 2022* [Docket No. 934] (as the same may be amended, modified, or supplemented from time to time in accordance with the terms and provisions thereof, the “Disclosure Statement”);

**WHEREAS**, on December 19, 2022, the Bankruptcy Court entered an order approving the Disclosure Statement [Docket No. 936];

**WHEREAS**, on January 13, 2023, the Plan Sponsors filed their *Plan Supplement to the Third Amended Plan of Reorganization of the Plan Sponsors* [Docket No. •];

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan or, if not defined therein, in the Disclosure Statement.

**WHEREAS**, on February [•], 2023, the Bankruptcy Court entered its order confirming the Plan (the “Confirmation Order”) [Docket No. •];

**WHEREAS**, the Effective Date of the Plan occurred on April [•], 2023;

**WHEREAS**, pursuant to and as provided in the Plan, as of the Effective Date of the Plan the Parties hereby seek to effectuate (a) the creation and establishment of the Litigation Trust for the benefit of the Litigation Trust Beneficiaries, (b) the transfer to the Litigation Trust of the Litigation Trust Assets, the Litigation Trust Causes of Action (as defined herein), free and clear of all Claims and Interests other than those of the Litigation Trust Beneficiaries, (c) the prosecution and settlement of the Litigation Trust Causes of Action by the Litigation Trustee, and (d) the distribution of the proceeds therefrom or from any of the Litigation Trust Assets (collectively, the “Litigation Trust Proceeds”) to the Litigation Trust Beneficiaries, in each case as set forth in the Plan, the Confirmation Order, and this Agreement;

**WHEREAS**, pursuant to and as provided in the Plan, the Litigation Trust shall be funded and vested with that certain Litigation Trust Fund<sup>2</sup> (as defined herein);

**WHEREAS**, the Litigation Trust is established hereunder for the sole purpose of prosecuting the Litigation Trust Causes of Action and liquidating and distributing the Litigation Trust Assets to or for the benefit of the holders of the Litigation Trust Beneficiaries, with no objective or authority to continue or engage in the conduct of a trade or business;

**WHEREAS**, the Holders of Allowed General Unsecured Claims under the Plan (collectively referenced herein as the “Litigation Trust Beneficiaries”) are the beneficiaries of the Litigation Trust;

**WHEREAS**, for the avoidance of any doubt, and pursuant to and consistent with the Plan, only those parties granted interests in the Litigation Trust pursuant to the Plan and Confirmation Order (or any transferee thereof made in accordance with this Agreement) shall be considered Litigation Trust Beneficiaries;

**WHEREAS**, the Litigation Trust is intended to qualify as a “liquidating trust” pursuant to the Internal Revenue Code of 1986, as amended (the “IRC”), and the regulations promulgated thereunder (“Treasury Regulations”) including Treasury Regulation section 301.7701-4(d), and thus as a “grantor trust” within the meaning of sections 671 through 679 of the IRC, with the Litigation Trust Beneficiaries treated for U.S. federal income tax purposes as the grantors and owners of their respective shares of the Litigation Trust Assets;

**WHEREAS**, the Litigation Trustee shall have all powers necessary to implement the provisions of the Plan, the Confirmation Order, and this Agreement and to administer the Litigation Trust as provided herein; and

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<sup>2</sup> For the avoidance of doubt, Section 4.2.3 of the Plan provides for the funding of \$500,000, on a Pro Rata basis by the Trustee and Lifespace, into the Litigation Trust Fund for the payment of Litigation Trust Expenses to be incurred by the Litigation Trust.



**NOW, THEREFORE**, pursuant to the Plan and the Confirmation Order, in consideration of the mutual agreements of the Parties contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and affirmed, the Parties hereby agree as follows:

## ARTICLE I

### ESTABLISHMENT OF THE LITIGATION TRUST

#### 1.1 Establishment of the Litigation Trust and Appointment of the Litigation Trustee and the Litigation Trust Oversight Committee.

(a) The Parties, pursuant to the Plan and the Confirmation Order, and in accordance with the applicable provisions of the Bankruptcy Code, hereby establish this Litigation Trust on behalf of the Litigation Trust Beneficiaries, which shall be known as the “Edgemere Litigation Trust,” on the terms set forth herein. In connection with the exercise of the Litigation Trustee’s powers hereunder, which powers are only effective as of the Effective Date of the Plan, the Litigation Trustee may use this name or such variation thereof as the Litigation Trustee sees fit.

(b) Litigation Trustee. [•] is hereby appointed as Litigation Trustee of the Litigation Trust effective solely as of the Effective Date of the Plan (such date for purposes hereof, referenced herein as the “Effective Date”) and agrees to accept and hold the assets of the Litigation Trust in trust for the Litigation Trust Beneficiaries subject to the terms of the Plan, the Confirmation Order, and this Agreement. As of the Effective Date of the Plan, the Litigation Trustee (and each successor trustee serving from time to time, as duly appointed hereunder) shall have all the rights, powers and duties set forth herein.

(c) Litigation Trust Oversight Committee. A committee is hereby appointed to oversee the Litigation Trust and the activities of the Litigation Trustee (the “Litigation Trust Oversight Committee”). The Litigation Trust Oversight Committee shall consist of one (1) Person appointed by the Trustee, one (1) Person appointed by Lifespace, and one (1) Person mutually agreeable to the Trustee and Lifespace (each, a “Member”). The initial Members are identified on Exhibit B attached hereto.

(d) Any action(s) undertaken by the Litigation Trustee under this Agreement that require direction by the Litigation Trust Oversight Committee shall be in writing approved by a majority in number of the Members of the Litigation Trust Oversight Committee in accordance with Article V hereof (a “Direction”).

(e) The Litigation Trustee and the Members shall serve without bond and shall have no obligation to file any accountings with any state court.

(f) For the avoidance of doubt, neither the Litigation Trustee nor any Member of the Litigation Trust Oversight Committee is or shall be deemed an officer, director, or fiduciary of any of the Debtors.

1.2 Transfer and Vesting of the Litigation Trust Assets.

(a) On the Effective Date of the Plan, the Debtors shall contribute or otherwise transfer to the Litigation Trust all Claims and Retained Causes of Action, including but not limited to the Landlord Litigation, as provided by the Plan (together with any additional causes of action or Litigation Trust Assets described in the Plan that may be assigned by any party to the Litigation Trust for the benefit of the Litigation Trust Beneficiaries, referenced herein collectively as the “Litigation Trust Causes of Action”). Litigation Trust Causes of Action may also include any additional claims and causes of action that may be assigned by any party to the Litigation Trust for the benefit of the Litigation Trust Beneficiaries. The contribution or transfer of the Litigation Trust Causes of Action to the Litigation Trust shall (i) be deemed to occur automatically on the Effective Date of the Plan, (ii) be deemed to include the rights and powers of each Debtor and Litigation Trust Beneficiary, as applicable, in such Litigation Trust Causes of Action, and (iii) be free and clear of all Claims and Interests other than the interests of the Litigation Trust Beneficiaries.

(b) Pursuant to section 4.2.4 of the Plan, on the Effective Date, the Debtors shall be deemed to transfer all of the Litigation Trust Assets (including the rights and powers of the Debtors’ Estates applicable to the Litigation Trust Assets in accordance with section 1141 of the Bankruptcy Code) and the Litigation Trust Causes of Action, to the Litigation Trust, including all information necessary to investigate, prosecute, protect, and conserve all Litigation Trust Assets, free and clear of all Liens, Claims, encumbrances, and Interests (legal, beneficial, or otherwise) for the benefit of the Litigation Trust Beneficiaries. For the avoidance of doubt, upon the transfer of the Litigation Trust Assets, the Litigation Trust shall succeed to all of the Debtors’ rights, title, and interest in the Litigation Trust Assets, and the Debtors shall have no further interest in or with respect to the Litigation Trust or the Litigation Trust Assets. The Plan shall be considered a motion pursuant to sections 105 and 363 of the Bankruptcy Code for such relief.

(c) Upon the Effective Date of the Plan, the Litigation Trustee shall be authorized to obtain, liquidate, and collect all of the Litigation Trust Assets in the possession of third parties, if any, and commence, litigate, and/or settle all of the Litigation Trust Causes of Action. The Litigation Trust acting through the Litigation Trustee shall serve as the successor-in-interest with respect to any action that was or could have been commenced by any of the Debtors prior to the Effective Date that is a Litigation Trust Asset and shall be deemed and entitled to be substituted for the same as the party in all such litigation. To the extent any of the foregoing does not automatically occur on the Effective Date or is not effectuated through the Plan, the Confirmation Order or this Agreement, the Debtors, as applicable, shall, on and after the Effective Date, cause to be executed such other and further documents as are reasonably necessary to effectuate all of the foregoing in connection with the administration of the Litigation Trust Assets by the Litigation Trustee. In no event shall any part of the Litigation Trust Causes of Action (including, without limitation, Litigation Trust Proceeds) revert to or be distributed to the Debtors or any other third parties other than as expressly provided for herein.

(d) [Reserved.]

(e) As soon as is reasonably practicable on or after the Effective Date (and under no circumstances later than thirty (30) Business Days following the Effective Date), the

Debtors shall have collected and retained and then deliver or cause to be delivered, as necessary and as requested by the Litigation Trustee, to the Litigation Trust any and all books and records and all other documents and communications related to the Litigation Trust Assets, including those maintained in electronic format and original documents, whether held by the Debtors, or their respective current officers, directors, employees, agents, advisors, attorneys, accountants, or any other professionals.

(f) The Litigation Trustee agrees to execute any documents or other instruments and take any other steps as are reasonably necessary to cause title to the Litigation Trust Assets to be transferred to the Litigation Trust on the Effective Date.

(g) The Litigation Trust shall be authorized to use Bankruptcy Rule 2004 and any other bankruptcy or other tools of discovery available to the Debtors and the Debtors' Estates. Any and all such rights in connection with Rule 2004 discovery, examinations, orders, and agreements related thereto concerning the Debtors and the Litigation Trust Assets shall vest in the Litigation Trustee and its representatives, and the Debtors and the Litigation Trustee are authorized to take all necessary actions to effectuate the transfer of such rights and privileges.

(h) The transfer of the Litigation Trust Assets to the Litigation Trust shall be exempt from any stamp, real estate transfer, mortgage reporting, sales, use, or other similar tax, pursuant to section 1146(a) of the Bankruptcy Code.

1.3 Funding of the Litigation Trust. On the Effective Date, pursuant to section 4.2.3 of the Plan, the Litigation Trust shall be funded Pro Rata by the Trustee and Lifespace in an amount of \$500,000 (the "Litigation Trust Fund") which amount shall be used to fund Litigation Trust Expenses to be incurred by the Litigation Trust. The Litigation Trust Fund shall also constitute a Litigation Trust Asset. The Litigation Trust Fund shall be funded in the manner described on Exhibit A attached hereto.

1.4 Acceptance by Litigation Trustee. The Litigation Trustee hereby accepts the trust imposed upon it by this Litigation Trust Agreement and agrees to observe and perform that trust on and subject to the terms and conditions set forth in this Agreement, the Plan, and the Confirmation Order. In connection with and in furtherance of the purposes of the Litigation Trust, the Litigation Trustee hereby accepts the transfer of the Litigation Trust Assets.

1.5 Payment of Litigation Trust Fees and Expenses.

(a) The Litigation Trustee may incur on behalf of the Litigation Trust any reasonable, documented, and necessary fees and expenses in pursuing the Litigation Trust Assets, administering the Litigation Trust, managing the Litigation Trust Assets, and making distributions thereof and of proceeds thereof on account of Litigation Trust Interests. All necessary, reasonable and documented fees, expenses, and costs incurred by the Litigation Trust or the Litigation Trustee on the Litigation Trust's behalf before and after the Effective Date, including fees and expenses incurred by counsel and other professionals retained by the Litigation Trust and/or the Litigation Trustee (all such fees, expenses, and costs, the "Litigation Trust Expenses")<sup>3</sup> shall be paid by, and

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<sup>3</sup> As set forth in the Litigation Trustee's compensation summary attached hereto as Exhibit C, for any anticipated expense to be incurred by the Litigation Trustee that shall exceed ten thousand dollars (\$10,000.00), the Litigation

shall solely be the obligation of, the Litigation Trust. On and after the Effective Date, the Litigation Trust Expenses shall be paid solely from the Litigation Trust Fund. Except as otherwise ordered by the Bankruptcy Court, on or after the Effective Date of the Plan, the Litigation Trust Expenses shall be paid in accordance with this Agreement without the necessity for any further order of the Bankruptcy Court.

(b) The Litigation Trust Oversight Committee may incur reasonable and necessary expenses in connection with the performance of its duties under the Plan, the Confirmation Order, and this Agreement. No fees and expenses incurred by any individual Member of the Litigation Trust Oversight Committee shall be reimbursable as to such Member, unless otherwise provided herein.

(c) Neither the Debtors nor the Litigation Trust Beneficiaries shall have any obligation, nor shall they be required, to pay any of the Litigation Trust Expenses, other than from the Litigation Trust Fund.

(d) The amounts held in the Litigation Trust Fund shall be subject to periodic review by the Litigation Trust Oversight Committee at any time upon reasonable request.

(e) Any failure or inability of the Litigation Trustee to obtain additional funding for the Litigation Trust will not affect the enforceability of this Agreement.

1.6 Title to the Litigation Trust Assets. The transfer of the Litigation Trust Assets to the Litigation Trust pursuant to Section 1.2 hereof is being made for the sole benefit, and on behalf, of the Litigation Trust Beneficiaries. Upon the transfer of the Litigation Trust Assets to the Litigation Trust, the Litigation Trust shall succeed to all of the Debtors' rights, title, and interest in and to the Litigation Trust Assets, and no other Person shall have any interest, legal, beneficial, or otherwise, in the Litigation Trust or the Litigation Trust Assets (other than as provided in the Plan, the Confirmation Order, or this Agreement).

1.7 Nature and Purpose of the Litigation Trust.

(a) Purpose. The Litigation Trust is organized and established as a trust, subject to the terms and conditions contained herein, the Plan and the Confirmation Order, for the sole purpose of liquidating the Litigation Trust Assets in an expeditious but orderly manner for the benefit of the Litigation Trust Beneficiaries, including the investigation and prosecution of the Litigation Trust Causes of Action, with no objective to continue or engage in the conduct of a trade or any other business, except to the extent reasonably necessary to effectuate, and consistent with, the purpose of the Litigation Trust.

(b) Relationship. This Agreement is intended to create a trust and a trust relationship and to be governed and construed in all respects as a trust. The Litigation Trust is not intended to be, and shall not be deemed to be, or be treated as, a general partnership, limited partnership, joint venture, corporation, joint stock company, or association, nor shall the Litigation Trustee, the Litigation Trust Oversight Committee (or any Member thereof), or the Litigation Trust

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Trustee is required to first consult with the Litigation Trust Oversight Committee for approval in advance of incurring such expense.

Beneficiaries for any purpose be, or be deemed to be or treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The relationship of the Litigation Trust Beneficiaries, on the one hand, to the Litigation Trust, the Litigation Trustee and the Litigation Trust Oversight Committee (and each Member thereof), on the other hand, shall be solely that of a beneficiary of a trust and shall not be deemed a principal and agency relationship, and their rights shall be limited to those conferred upon them by the Plan, the Confirmation Order, and this Agreement.

(c) No Waiver of Claims. Except as provided in, and unless expressly released, compromised, or settled in the Plan, the Confirmation Order, or in any contract, instrument, release, or other agreement entered into or delivered in connection with the Plan, the Litigation Trustee, upon the Direction of the Litigation Trust Oversight Committee, shall investigate, pursue and enforce the Litigation Trust Causes of Action, and the Litigation Trustee shall be deemed the representative of the Debtors' Estates with respect to the Litigation Trust Causes of Action in accordance with sections 1123(a)(5)(B) and (D) and 1123(b)(3) of the Bankruptcy Code. No Person or entity may rely on the absence of a specific reference in the Plan to any claim against them as any indication that the Litigation Trustee will not pursue any and all available Litigation Trust Causes of Action against them. No preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise) or laches shall apply to such Litigation Trust Causes of Action as a consequence of the confirmation of the Plan, the occurrence of the Effective Date, or the transfer and vesting of the Litigation Trust Causes of Action in the Litigation Trust. Notwithstanding the foregoing, nothing herein shall permit the Litigation Trustee or Litigation Trust from pursuing claims and causes of action against Released Parties.

(d) Relationship to and Incorporation of the Plan. The principal purpose of this Agreement is to aid in the implementation of the Plan and the Confirmation Order, and therefore this Agreement incorporates the provisions thereof by reference; provided, however, that if any provisions of this Agreement are found to be inconsistent with the provisions of the Plan or the Confirmation Order, then each such document shall have controlling effect in the following rank order: (1) the Confirmation Order; (2) the Plan; and (3) this Agreement.

1.8 Appointment as Representative. Pursuant to section 1123(b)(3) of the Bankruptcy Code, the Litigation Trustee shall be the duly appointed representative of the Debtors and their Estates with respect to the Litigation Trust Causes of Action and, as such, to the extent provided herein, the Litigation Trustee succeeds to the rights and powers of a trustee in bankruptcy solely with respect to the Litigation Trust Assets, including prosecution of the Litigation Trust Causes of Action for the benefit of the Litigation Trust Beneficiaries. To the extent that any of the Litigation Trust Causes of Action cannot be transferred to the Litigation Trust because of a restriction on transferability under applicable non-bankruptcy law that is not superseded or preempted by section 1123 of the Bankruptcy Code or any other provision of the Bankruptcy Code, such Litigation Trust Assets shall be deemed to have been retained by the Debtors (other than for tax purposes), and the Litigation Trustee shall be deemed to have been designated as a representative of the Debtors and their Estates to the extent provided herein pursuant to section 1123(b)(3)(B) of the Bankruptcy Code solely to enforce and pursue such Litigation Trust Causes of Action on behalf of the Debtors and their Estates. Notwithstanding the foregoing, all net proceeds of the Litigation Trust Assets shall be distributed to the Litigation Trust Beneficiaries

consistent with the provisions of this Agreement, the Plan, and the Confirmation Order. For the avoidance of doubt, any of the Litigation Trust Causes of Action subject to this Section 1.8 shall be treated by the Parties for U.S. federal, state, and local income tax purposes as a disposition of the Litigation Trust Causes of Action by the Debtors as described in Section 7.1 hereof.

[1.9 Valuation. As soon as reasonably practicable following the Effective Date, but in no event later than sixty (60) days thereafter, the Litigation Trustee shall inform, in writing, the Litigation Trust Oversight Committee and the Litigation Trust Beneficiaries of the fair market value of the Litigation Trust Assets (other than the Litigation Trust Causes of Action), based on the good-faith determination of the Litigation Trustee. Such determined fair market value shall be used consistently by all parties to the Agreement (including, without limitation, the Litigation Trustee, the Debtors, and the Litigation Trust Beneficiaries) for all U.S. federal income tax purposes, and the Litigation Trustee shall make such valuation available from time to time to all parties to the Litigation Trust, to the extent relevant to such parties for tax purposes.]

## ARTICLE II

### LITIGATION TRUST INTERESTS

#### 2.1 Litigation Trust Interests.

(a) Issuance of Litigation Trust Interests. The Litigation Trust Beneficiaries shall have interests issued in accordance with the terms and priorities set forth in the Plan (the “Litigation Trust Interests”). The Litigation Trust Interests shall entitle the Litigation Trust Beneficiaries to receive distributions from Litigation Trust, as provided in Article IV of this Agreement.

(b) Allocation of Litigation Trust Interests. On the Effective Date of the Plan, the Litigation Trust Interests shall be allocated to the Litigation Trust Beneficiaries. Notwithstanding anything in this Agreement to the contrary, any subsequent reallocation of Litigation Trust Interests or recoveries from Litigation Trust Causes of Action or Litigation Trust Assets, if any, shall be allowed solely upon the unanimous consent of the Litigation Trust Oversight Committee.

(c) The Litigation Trust Interests will be represented by the recording of such ownership in an electronic book-entry system (the “Book Entry System”) maintained by the Registrar (as defined herein).

(d) The Litigation Trustee may serve as or appoint a registrar for the purpose of recording ownership of the Litigation Trust Interests (the “Registrar”). The Registrar, if other than the Litigation Trustee, shall be a third-party institution selected upon the Direction of the Litigation Trust Oversight Committee. To the extent that the Registrar is not the Litigation Trustee then the Registrar shall be entitled to receive reasonable and documented compensation as an expense of the Litigation Trust as determined by the Litigation Trustee in consultation with the Litigation Trust Oversight Committee.

(e) The Litigation Trustee shall cause to be kept at the office of the Registrar, or at such other place or places as shall be designated from time to time, a registry of the Litigation Trust Beneficiaries of the Litigation Trust (the “Trust Register”) and their respective holdings of Litigation Trust Interests, which shall be maintained pursuant to such reasonable regulations as the Litigation Trustee and the Registrar may prescribe. The Litigation Trustee shall, upon the written request of any holder of Litigation Trust Interests, provide reasonably adequate documentary evidence of such holder’s Litigation Trust Interests, as indicated by the Book Entry System. The expense of providing such documentation shall be borne by the requesting holder.

2.2 Interests Beneficial Only. The ownership of the Litigation Trust Interests shall not entitle the Litigation Trust Beneficiaries to any title in or to or right to control the Litigation Trust Assets as such (which title shall be vested in the Litigation Trust) or to any right to call for a partition or division of the Litigation Trust Assets or to require an accounting.

2.3 Effect of Death, Incapacity, or Bankruptcy. The death, incapacity, or bankruptcy of any Litigation Trust Beneficiary during the term of the Litigation Trust shall not (i) operate to terminate the Litigation Trust; (ii) entitle the representatives or creditors of the deceased party to an accounting; (iii) entitle the representatives or creditors of the deceased party to take any action in the Bankruptcy Court or elsewhere for the distribution of the Litigation Trust Assets or for a partition thereof; or (iv) otherwise affect the rights and obligations of any of the Litigation Trust Beneficiaries under this Agreement.

2.4 Change of Address. Any Litigation Trust Beneficiaries may, after the Effective Date, select an alternative distribution address by providing notice to the Litigation Trustee identifying such alternative distribution address in accordance with Section 10.7. Such notification shall be effective only upon receipt by the Litigation Trustee. The Trust Register shall thereafter be updated accordingly. Absent actual receipt of such notice by the Litigation Trustee, the Litigation Trustee shall not recognize any such change of distribution address.

### ARTICLE III

#### **RIGHTS, POWERS, AND DUTIES OF LITIGATION TRUSTEE; THE LITIGATION TRUSTEE GENERALLY**

3.1 Role of the Litigation Trustee. In furtherance of and consistent with the purpose of the Litigation Trust and the Plan, subject to the terms and conditions contained in the Plan, the Confirmation Order, and this Agreement, the Litigation Trustee shall have the authority to and shall, as necessary and in consultation with the Litigation Trust Oversight Committee, and with respect to the Litigation Trust Assets or Claims related to the Litigation Trust Assets: (i) receive, manage, supervise, and protect the Litigation Trust Assets upon its receipt of same on behalf of and for the benefit of the Litigation Trust Beneficiaries; (ii) investigate, analyze, commence, prosecute, and, if necessary and appropriate, release, settle, and compromise the Litigation Trust Causes of Action and any objections to Claims related to the Litigation Trust Causes of Action; (iii) prepare and file all required tax returns, information returns, and other documents, and pay taxes and all other obligations of the Litigation Trust; (iv) liquidate and convert the Litigation Trust Assets to cash and make timely distributions to the Litigation Trust Beneficiaries in accordance with this Agreement, the Plan, and the Confirmation Order; (v)

pursuant to Section 4.2.9 of the Plan, (a) file, withdraw, or litigate to judgment objections to Claims against the Debtors, (b) settle or compromise any Disputed Claim against the Debtors, (c) amend the Bankruptcy Schedules in accordance with the Bankruptcy Code, and (d) administer and adjust the claims register to reflect any such settlements or compromises arising out of the Litigation Trust Assets, and (vi) have all such other powers and responsibilities as may be vested in the Litigation Trustee pursuant to, or as may be necessary and proper to carry out the provisions of, the Plan, the Confirmation Order, this Agreement, and all other orders of the Bankruptcy Court. In all circumstances, the Litigation Trustee shall act in the best interests of all the Litigation Trust Beneficiaries and in furtherance of the purpose of the Litigation Trust. The Litigation Trustee shall consult in good faith with and provide information to the Litigation Trust Oversight Committee in accordance with and pursuant to the terms of the Plan, the Confirmation Order, and this Agreement to enable the Litigation Trust Oversight Committee to meet its obligations hereunder.

3.2 Authority of the Litigation Trustee. Without limiting the foregoing, but subject to the Plan, the Confirmation Order, and other provisions of this Litigation Trust Agreement, the Litigation Trustee shall, in consultation with the Litigation Trust Oversight Committee (unless Direction of the Litigation Trust Oversight Committee is required as set forth below), and without further Bankruptcy Court approval, be expressly authorized to, with respect to the Litigation Trust and the Litigation Trust Assets, and may cause the Litigation Trust to:

(a) Exercise all power and authority that may be or could have been exercised, commence all proceedings that may be or could have been commenced, and take all actions that may be or could have been taken, by any officer, director, shareholder or other party acting in the name of the Debtors or their Estates with like effect as if duly authorized, exercised and taken by unanimous action of such officers, directors and shareholders or other party;

(b) Open and maintain bank accounts on behalf of or in the name of the Litigation Trust, calculate and make transfers of Litigation Trust Proceeds to the Litigation Trust Beneficiaries, and take other actions consistent with the Plan and the implementation thereof, including the establishment, re-evaluation, adjustment, and maintenance of appropriate reserves (including the Litigation Trust Reserve (as hereinafter defined)), in the name of the Litigation Trust;

(c) Receive, manage (including, for the avoidance of doubt, use the proceeds, products and income of the Litigation Trust to fund ongoing fees, costs and expenses of the Litigation Trust), invest, supervise, protect, collect, liquidate and distribute the Litigation Trust Assets and moneys held as part of the Litigation Trust in accordance with the terms hereof, and, subject to Article IV hereof and the parameters therein, determine the amount and timing of distributions of the Cash proceeds of the Litigation Trust Assets to the Litigation Trust Beneficiaries;

(d) Hold legal title to any and all rights of the holders of the Litigation Trust Interests in or arising from the Litigation Trust Assets, including, without limitation, collecting and receiving any and all money and other property belonging to the Litigation Trust and the right to vote any claim or interest relating to a Litigation Trust Asset in a case under the Bankruptcy Code and receive any distribution thereon;



(e) Upon Direction of the Litigation Trust Oversight Committee, commence, prosecute, compromise, adjust, settle, sue on or defend, dismiss, release, waive, withdraw, abandon, or resolve any or all Litigation Trust Causes of Action, or otherwise protect and enforce the rights to the Litigation Trust Assets by any method deemed appropriate including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium, or similar law and general principles of equity;

(f) Upon Direction of the Litigation Trust Oversight Committee, engage in, intervene in, join, compromise, adjust, release, mediate, arbitrate, sue on or defend, counterclaim, recoup, pursue, prosecute, abandon, or otherwise deal with and settle any actions, suits, proceedings, disputes, claims, controversies, demands, causes of action, or other litigation in favor of or against the Litigation Trust, to enter into agreements relating to the foregoing, whether or not any suit is commenced or claim accrued or asserted and, in advance of any controversy, to enter into agreements regarding arbitration, adjudication or settlement thereof, all in the name of the Litigation Trust if necessary or appropriate, and institute or continue actions that were or could have been commenced by any of the Debtors prior to the Effective Date that is a Litigation Trust Asset, and prosecute or defend all related litigation or appeals, and, when appropriate, settle such actions and claims;

(g) Perform the duties, exercise the powers, and assert the rights of a trustee under sections 704 and 1106 of the Bankruptcy Code, including, without limitation, commencing, prosecuting or settling causes of action, enforcing contracts or asserting claims, defenses, offsets and privileges, but only as such duties and powers relate to the Litigation Trust Assets;

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

(i) Upon the Direction of the Litigation Trust Oversight Committee (which Direction shall not be unreasonably withheld), purchase and carry all insurance policies and pay all insurance premiums and costs (i) of the Litigation Trustee as the Litigation Trustee deems reasonably necessary or advisable for coverage for the Litigation Trustee, and (ii) that the Litigation Trust Oversight Committee deems reasonably necessary or advisable for coverage for the Litigation Trustee and/or any Litigation Trust Oversight Committee Members;

(j) Subject to Section 1.2(d) hereof, preserve, assert, or waive any privilege or any defense on behalf of the Litigation Trust or the Debtors, as applicable, with respect to the Litigation Trust Assets;

(k) Conduct discovery or seek the examination of any Entity or Person, including pursuant to Bankruptcy Rule 2004 and any other bankruptcy or other tools of discovery available to the Debtors and their Estates, subject in all events to the provisions of the Federal Rules of Evidence, Bankruptcy Rule 2004 or any other applicable law or rule;

(l) Pay all valid and lawful expenses, debts, charges, taxes and liabilities of the Litigation Trust, including those incurred by the Litigation Trust under any financing entered into at the Direction of the Litigation Trust Oversight Committee;

(m) Implement, enforce, or discharge all of the terms, conditions, and all other provisions of, and all duties and obligations under, the Plan, the Confirmation Order, and this Litigation Trust Agreement, including to take all other actions not inconsistent with the provisions of the Plan that the Litigation Trustee deems reasonably necessary or desirable to administer the Litigation Trust and perform all duties and obligations thereunder;

(n) At the Direction of the Litigation Trust Oversight Committee, enter into any agreement or execute any document or instrument required by or consistent with the Plan, the Confirmation Order or this Agreement;

(o) If any of the Litigation Trust Assets are situated in any state or other jurisdiction in which the Litigation Trustee is not qualified to act as trustee, nominate and appoint an Entity duly qualified to act as trustee in such state or jurisdiction and require from each such trustee such security as may be designated by the Litigation Trustee in its reasonable discretion; confer upon such trustee all the rights, powers, privileges, and duties of the Litigation Trustee hereunder, subject to the conditions and limitations of this Litigation Trust Agreement, except as modified or limited by the Litigation Trustee and except where the conditions and limitations may be modified by the laws of such state or other jurisdiction (in which case, the laws of the state or other jurisdiction in which such trustee is acting shall prevail to the extent necessary); require such trustee to be answerable to the Litigation Trustee for all monies, assets and other property that may be received in connection with the administration of all property; and, remove such trustee, with or without cause, and appoint a successor trustee at any time by the execution by the Litigation Trustee of a written instrument declaring such trustee removed from office, and specifying the effective date and time of removal, which notice shall be promptly served on the Litigation Trust Beneficiaries;

(p) Employ and compensate professionals and other agents subject to the consent by Direction of the Litigation Trust Oversight Committee. Nothing in this Litigation Trust Agreement shall limit the Litigation Trustee from engaging counsel or other professionals, including the Litigation Trustee itself or former counsel to the ultimate economic parties and/or the Litigation Trust Beneficiaries in these cases to do work for or represent the Litigation Trust;

(q) At the Direction of the Litigation Trust Oversight Committee, obtain financing on behalf of and for the benefit of the Litigation Trust to assist in the pursuit of all Litigation Trust Assets, including financing for purpose of establishing the Litigation Trust Fund as set forth on Exhibit A;

(r) Enter into any joint prosecution and/or common interest agreement(s) as may be required by or consistent with the Plan, the Confirmation Order or this Agreement or as is otherwise advisable;

(s) At the Direction of the Litigation Trust Oversight Committee, purchase assignments of any claims or causes of action related to any of the Litigation Trust Assets; and

(t) Exercise such other powers as may be vested in or assumed by the Litigation Trustee pursuant to the Plan, this Agreement, the Confirmation Order, or other applicable orders of the Bankruptcy Court, and to take all other actions not inconsistent with the provisions of the

Plan and the Confirmation Order which the Litigation Trustee deems reasonably necessary or desirable with respect to implementing the Plan.

3.3 Fiduciary Duties. Subject to the provisions of Article VI below, the Litigation Trustee shall have fiduciary duties hereunder and to the Litigation Trust Beneficiaries to the same extent that a director or officer of a Texas corporation owes fiduciary duties to such corporation. Subject to the provisions of Article VI below, the Litigation Trustee shall act in good faith and in consideration of (i) the best interests of the Litigation Trust Beneficiaries, and (ii) the fiduciary obligations the Litigation Trustee owes the Litigation Trust Beneficiaries.

3.4 Prosecution of Litigation Trust Causes of Action. The Litigation Trust Oversight Committee shall have the absolute right to provide Direction to the Litigation Trustee to prosecute, pursue, commence, object to, seek to estimate, seek to subordinate, compromise, settle, or take any other action concerning any and all Litigation Trust Causes of Action as it determines in good faith to be in the best interests of the Litigation Trust Beneficiaries, and consistent with the purposes of the Litigation Trust.

(a) Any determinations by the Litigation Trust Oversight Committee with regard to the amount or timing of settlement or other disposition of any Litigation Trust Causes of Action settled in accordance with the terms of this Agreement shall be conclusive and binding on the Litigation Trust Beneficiaries and all other parties in interest.

(b) To the extent that any action has been taken to prosecute or otherwise resolve any Litigation Trust Causes of Action prior to the Effective Date, the Litigation Trustee shall be substituted for the applicable Party in connection therewith in accordance with Rule 25 of the Federal Rules of Civil Procedure, made applicable to such Litigation Trust Cause of Action by Bankruptcy Rule 7025, and the caption for such pending Litigation Trust Cause of Action shall be changed to the following: “[•], as Trustee for the Edgemere Litigation Trust v. [Defendant]” or “Edgemere Litigation Trust v. [Defendant].” Without limiting the foregoing, the Litigation Trustee shall, upon the Direction of the Litigation Trust Oversight Committee, take any and all actions necessary or prudent to intervene as plaintiff, movant, or additional party, as appropriate, in any applicable Litigation Trust Cause of Action. For purposes of exercising its powers, the Litigation Trustee shall be deemed to be a representative of the Debtors and their Estates pursuant to section 1123(b)(3)(B) of the Bankruptcy Code.

3.5 Collection of Income. The Litigation Trustee shall collect all income earned with respect to the Litigation Trust Assets, which shall thereupon become Litigation Trust Assets and held as a part of the Litigation Trust (and which title shall be vested in the Litigation Trust). Any and all proceeds generated from the Litigation Trust Assets shall be the property of the Litigation Trust.

3.6 Liquidation of Litigation Trust Assets. The Litigation Trustee shall, upon the Direction of the Litigation Trust Oversight Committee, in an expeditious but orderly manner, and subject to the other provisions of the Plan, the Confirmation Order, and this Agreement, liquidate and convert to Cash the Litigation Trust Assets, make timely distributions, and not unduly prolong the duration of the Litigation Trust. The Litigation Trustee shall use commercially reasonable efforts to resolve the Litigation Trust Causes of Action and to make timely distributions

of any Litigation Trust Proceeds and to otherwise monetize the Litigation Trust Assets and not unreasonably prolong the duration of the Litigation Trust. The Litigation Trustee shall take into consideration the likelihood of success, risks, timing, and costs of potential actions in exercising its reasonable business judgment to maximize net recoveries to the Litigation Trust Beneficiaries. Such liquidations may be accomplished through the prosecution, compromise and settlement, abandonment, or dismissal of any or all Litigation Trust Causes of Action or otherwise or through the sale or other disposition of the Litigation Trust Assets (in whole or in combination). Consistent with an agreed-upon budget in accordance with Section 3.12(c) of this Agreement, if any, the Litigation Trustee may incur any reasonable and necessary expenses in connection with liquidating and converting the Litigation Trust Assets to Cash and distribution of the proceeds thereof.

3.7 Litigation Trust Reserve. Notwithstanding anything in this Agreement to the contrary, the Litigation Trustee may withhold from amounts transferrable to the Litigation Trust Beneficiaries on account of their respective Litigation Trust Interests as required pursuant to this Agreement, and supplement from time to time, a reserve (the "Litigation Trust Reserve") in such amount as the Litigation Trustee, with the Direction of the Litigation Trust Oversight Committee, determines is or may be reasonably necessary: (i) to meet contingent liabilities and to maintain the value of the Litigation Trust Assets during the term of the Litigation Trust; (ii) to administer the Litigation Trust and pay reasonable administrative expenses including, without limitation, the compensation and the reimbursement of reasonable, actual and necessary costs, fees, and expenses (including attorneys' fees and expenses, financial advisor fees and expenses of the Litigation Trustee in connection with the performance of their duties in connection with this Litigation Trust Agreement); (iii) to wind-up the affairs of the Litigation Trust; and (iv) to satisfy all other liabilities of the Litigation Trust incurred or assumed in respect of the Litigation Trust, or to which the Litigation Trust Assets are otherwise subject, including repayment of any financing incurred with respect to the Litigation Trust Fund, but other than Claims, in accordance with the Plan, the Confirmation Order and this Agreement.

3.8 Retention of Counsel and Other Professionals. The Litigation Trustee may, without further order of the Bankruptcy Court, but subject to the terms of this Agreement, employ various professionals, including, but not limited to, counsel, experts, consultants, and financial advisors, as needed to assist the Litigation Trustee in fulfilling its obligations under the Plan. Such employment agreements shall be approved by Direction of the Litigation Trust Oversight Committee. Professionals engaged by the Litigation Trustee shall not be required to file applications with the Bankruptcy Court in order to receive compensation for services rendered and reimbursement of actual out-of-pocket expenses incurred. For the avoidance of doubt, unless an alternative fee arrangement has been agreed to (either by order of the Bankruptcy Court or by the Litigation Trustee upon the Direction of the Litigation Trust Oversight Committee, as applicable), professionals retained by the Litigation Trustee shall be compensated solely by the Litigation Trust Fund.

3.9 Investment of Cash. The right and power of the Litigation Trustee to invest Litigation Trust Assets, the proceeds thereof, or any income earned by the Litigation Trust shall be limited to the right and power to invest such Litigation Trust Assets only in Cash and U.S. Government securities as defined in section 2(a)(16) of the Investment Company Act; provided, however, that (a) the scope of any such permissible investments shall be further limited to include only those investments that a liquidating trust within the meaning of Treasury Regulation Section

301.7701-4(d) may be permitted to hold pursuant to the Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements, or otherwise; (b) the Litigation Trustee may retain any Litigation Trust proceeds received that are not Cash only for so long as may be required for the prompt and orderly liquidation of such assets; and (c) the Litigation Trustee may expend the assets of the Litigation Trust (i) as reasonably necessary to meet contingent liabilities and maintain the value of the assets of the Litigation Trust during liquidation; (ii) to pay reasonable administrative expenses (including any taxes imposed on the Litigation Trust or reasonable fees and expenses in connection with litigation); and (iii) to satisfy other liabilities incurred or assumed by the Litigation Trust (or to which the assets are otherwise subject) in accordance with the Plan or this Agreement.

3.10 Limitations on Power and Authority of the Litigation Trustee.

Notwithstanding anything in this Agreement to the contrary, the Litigation Trustee will not have the authority to do any of the following:

- (a) take any action in contravention of the Plan, the Confirmation Order, or this Agreement;
  - (b) take any action that would make it impossible to carry on the activities of the Litigation Trust;
  - (c) possess property of the Litigation Trust or assign the Litigation Trust's rights in specific property for any purpose other than as provided herein;
  - (d) cause or permit the Litigation Trust to engage in any trade or business;
  - (e) permit the Litigation Trust to retain Cash or Cash equivalents in excess of a reasonable amount necessary to meet claims and contingent liabilities (including expected expenses) or to maintain the value of the Litigation Trust Assets during liquidation;
  - (f) receive transfers of any listed stocks or securities or any readily marketable assets or any operating assets of a going business, except as is necessary or required under the Plan, the Confirmation Order, or this Agreement; provided, however, that in no event shall the Litigation Trustee receive any such investment that would jeopardize treatment of the Litigation Trust as a "liquidating trust" for U.S. federal income tax purposes under Treasury Regulation section 301.7701-4(d), or any successor provision thereof;
  - (g) exercise investment power beyond what is provided in Section 3.9 hereof;
- or
- (h) take any other action or engage in any investments or activities that would jeopardize treatment of the Litigation Trust as a liquidating trust for U.S. federal income tax purposes under Treasury Regulation section 301.7701-4(d), or any successor provision thereof.

3.11 Books and Records. The Litigation Trustee shall maintain good and sufficient books and records of accounts relating to the Litigation Trust Assets, the management thereof, all transactions undertaken by the Litigation Trustee, all expenses incurred by or on behalf of the Litigation Trustee, and all distributions to Litigation Trust Beneficiaries contemplated or

effectuated under the Plan, in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof and in accordance with Texas law. The Litigation Trustee shall also maintain separate books and records for the Litigation Trust Assets of each Debtor. Such books and records shall be maintained as reasonably necessary to facilitate compliance with the tax reporting requirements of the Litigation Trust. Nothing in this Agreement requires the Litigation Trustee to file any accounting or seek approval of any court with respect to the administration of the Litigation Trust or as a condition for managing any payment or distribution out of the Litigation Trust Assets.

### 3.12 Periodic Reports.

(a) Financial and Status Reports. The fiscal year of the Litigation Trust shall be the calendar year. Within sixty (60) days after the end of each calendar year during the term of the Litigation Trust, and within thirty (30) days after the end of each calendar quarter during the term of the Litigation Trust and as soon as practicable upon termination of the Litigation Trust, the Litigation Trustee shall, upon request by the Litigation Trust Oversight Committee, the Litigation Trust Beneficiaries, or the ultimate economic parties, make available a written report including: (i) financial statements of the Litigation Trust for such period, and, if the end of a calendar year, a report (which may be prepared by an independent certified public accountant employed by the Litigation Trustee at the Direction of the Litigation Trust Oversight Committee) reflecting the result of such agreed-upon procedures relating to the financial accounting administration of the Litigation Trust as proposed by the Litigation Trustee; (ii) a summary description of any action taken by the Litigation Trust that, in the judgment of the Litigation Trustee, materially affects the Litigation Trust and of which notice has not previously been given to the Litigation Trust Beneficiaries and ultimate economic parties; and (iii) a description of the progress of liquidating the Litigation Trust Assets and making distributions to the Litigation Trust Beneficiaries and any other material information relating to the Litigation Trust Assets and the administration of the Litigation Trust. In addition, on a quarterly basis, the Litigation Trustee shall provide unaudited financial statements to the Litigation Trust Oversight Committee and, upon request by an Ultimate Economic Party, to such party. No such reports shall be made public given the confidential nature of such reports and information contained therein; *provided, however*, that such confidential reports and information may be shared under an appropriate confidentiality agreement. The Litigation Trustee may not post any such report on any website maintained by the Litigation Trustee or otherwise due to the confidential nature of such reports and the information contained therein. To the extent of any reports required to be filed with the Bankruptcy Court, if any, they shall be filed under seal (unless otherwise required by the Bankruptcy Court or Confirmation Order) due to the confidential nature of such reports and the information contained therein.

(b) The Litigation Trustee will prepare and make available to the Litigation Trust Beneficiaries, the Indenture Trustee, and the Litigation Trust Oversight Committee, on a quarterly basis, a written report detailing, among other things, the litigation status of the Litigation Trust Causes of Action, any settlements entered into by the Litigation Trust, the proceeds recovered to date from the Litigation Trust Assets, and the distributions made by the Litigation Trust. Such written reports will be made available by the Litigation Trustee within thirty (30) days of the end of the preceding calendar quarter. No such reports shall be made public given the confidential nature of such reports and information contained therein; *provided, however*, that such

confidential reports and information may be shared under an appropriate confidentiality agreement.

(c) Annual Plan and Budget. Upon Direction by the Litigation Trust Oversight Committee, the Litigation Trustee shall prepare and submit to the Litigation Trust Oversight Committee for approval an annual plan and budget in such detail as is reasonably requested, which approval shall not be unreasonably withheld. The initial budget shall be presented to and approved by the Litigation Trust Oversight Committee as of the Effective Date, which initial budget shall be subject to modification by the Litigation Trustee, with approval of the Litigation Trust Oversight Committee. Thereafter, each annual plan and budget shall be presented to and approved by the Litigation Trust Oversight Committee on or before the annual anniversary of the Effective Date. No such plan and budget shall be made public given the confidential nature of such information; provided, however, if the Litigation Trustee is required to share such budget on a confidential basis with a party under any financing entered into by the Litigation Trust, the Litigation Trustee may do so to discharge the Litigation Trust's obligations under such financing. The Litigation Trustee may rely on any approved budget in incurring the reasonable fees and expenses projected thereon.

3.13 Independent Litigation Trustee. The Litigation Trustee may not be a Member of the Litigation Trust Oversight Committee, unless otherwise provided herein pursuant to section 3.17 of this Agreement.

3.14 Litigation Trustee's Compensation and Reimbursement.

(a) Compensation. The Litigation Trustee shall receive reasonable compensation as provided on Exhibit C attached hereto.

(b) Payment of Expenses. All actual, reasonable, and documented out-of-pocket expenses incurred by the Litigation Trustee in connection with the performance of its duties hereunder or under the Confirmation Order or the Plan shall be eligible for reimbursement from the Litigation Trust Fund. The expenses payable to the Litigation Trustee shall be subject to review and approval by the Litigation Trust Oversight Committee, which approval shall be deemed granted if the Litigation Trust Oversight Committee does not object to an expense within fourteen (14) days after receipt of an invoice from the Litigation Trustee, and paid to the Litigation Trustee without necessity for review or approval by the Bankruptcy Court or any other Person. Any objection to payment of expenses incurred by the Litigation Trustee shall be in writing, set forth in reasonable detail the specific expense(s) objected to and the basis for each objection, and be delivered to the Litigation Trustee in accordance with Section 10.7 hereof. The uncontested portion of each invoice shall be deemed authorized and the Litigation Trustee may pay the full amount of such fees and expenses after the fourteen (14) day review period for the Litigation Trust Oversight Committee. Any dispute between the Litigation Trustee and the Litigation Trust Oversight Committee regarding the payment of any expenses that remains unresolved fourteen (14) days after delivery of an objection to the Litigation Trustee shall be adjudicated before the Bankruptcy Court.

3.15 Resignation. The Litigation Trustee may resign by giving not less than ninety (90) days' prior written notice thereof to the Litigation Trust Oversight Committee. Such

resignation shall become effective on the later to occur of: (a) the day specified in such notice; and (b) the appointment of a successor as provided herein and the acceptance by such successor of such appointment; provided, however, that if a successor Litigation Trustee is appointed (and such appointment is accepted) pursuant to Section 3.18 hereof prior to the expiration of the ninety (90) day notice period referenced above, then the Litigation Trust Oversight Committee may in its sole discretion determine that the resignation of the resigning Litigation Trustee shall be deemed to become effective on a date that is earlier than the day specified in such notice. If a successor Litigation Trustee is not appointed or does not accept its appointment within ninety (90) days following delivery of notice of resignation, the Litigation Trustee may file a motion with the Bankruptcy Court, upon notice and a hearing, for the appointment of a successor Litigation Trustee, during which time the Litigation Trustee shall be entitled to receive the fees provided for in Section 3.14 hereof. Notwithstanding the foregoing, upon the Termination Date (as defined in Section 8.1 herein), the Litigation Trustee shall be deemed to have resigned, except as otherwise provided in Section 8.2 hereof.

### 3.16 Removal.

(a) The Litigation Trustee may be removed by the Litigation Trust Oversight Committee for Cause (as defined in Section 5.7 herein), immediately upon notice thereof, or without Cause, upon thirty (30) days' prior written notice.

(b) Notwithstanding the foregoing, the Litigation Trustee will continue to serve as the Litigation Trustee after his removal until the earlier of (i) the time when appointment of a successor Litigation Trustee becomes effective in accordance with Section 3.18 of this Agreement or (ii) the appointment of an Interim Trustee pursuant to Section 3.17 hereof, during which time the Litigation Trustee shall be entitled to receive the fees provided for in Section 3.14 hereof.

3.17 Interim Trustee. In the event of any period in which there is a vacancy in the position of Litigation Trustee, the Litigation Trust Oversight Committee shall appoint one of its Members to serve as interim Litigation Trustee (the "Interim Trustee"). The Interim Trustee shall be subject to all the terms and conditions applicable to a Litigation Trustee hereunder. Such Interim Trustee shall not be limited in any manner from exercising any rights or powers as a member of the Litigation Trust Oversight Committee merely by such Person's appointment as Interim Trustee.

3.18 Appointment of Successor Litigation Trustee. In the event of the death (in the case of a Litigation Trustee that is a natural person), dissolution (in the case of the Litigation Trustee that is not a natural person), resignation, incompetency, or removal of the Litigation Trustee, the Litigation Trust Oversight Committee shall designate a successor Litigation Trustee by majority vote. If the Litigation Trust Oversight Committee is unable to secure a majority vote, one or more Members of the Litigation Trust Oversight Committee may file a motion with the Bankruptcy Court, upon notice and a hearing, for the appointment of a successor Litigation Trustee. Any such appointment shall specify the date on which such appointment shall be effective. Every successor Litigation Trustee appointed hereunder shall execute, acknowledge, and deliver to the Litigation Trust Oversight Committee an instrument accepting the appointment under this Agreement and agreeing to be bound as Litigation Trustee thereto, and thereupon the successor Litigation Trustee, without any further act, deed or conveyance, shall become vested with all



rights, powers, trusts, and duties of the retiring Litigation Trustee. The successor Litigation Trustee shall not be personally liable for any act or omission of the predecessor Litigation Trustee, nor shall any Litigation Trustee be liable for acts or omissions by the successor Litigation Trustee or its professionals that occur subsequent to the cessation of its role as Litigation Trustee. Unless requested by Direction of the Litigation Trust Oversight Committee, a successor Litigation Trustee shall have no duty to examine or inquire into the acts or omissions of any predecessor Litigation Trustee.

3.19 Effect of Resignation or Removal. The death, dissolution, bankruptcy, resignation, incompetency, incapacity, or removal of the Litigation Trustee, as applicable, shall not operate to terminate the Litigation Trust created by this Agreement or to revoke any existing agency created pursuant to the terms of this Agreement or invalidate any action theretofore taken by the Litigation Trustee or any prior Litigation Trustee. In the event of the resignation or removal of the Litigation Trustee, such Litigation Trustee will promptly (a) execute and deliver such documents, instruments, and other writings as may be ordered by the Bankruptcy Court or reasonably requested by the Litigation Trust Oversight Committee, any Interim Trustee or the successor Litigation Trustee to effect the termination of such Litigation Trustee's capacity under this Agreement; (b) deliver to the Litigation Trust Oversight Committee, any Interim Trustee and/or the successor Litigation Trustee all documents, instruments, records, and other writings related to the Litigation Trust as may be in the possession of such Litigation Trustee (provided, however, that such Litigation Trustee may retain one copy of such documents for archival purposes); and (c) otherwise assist and cooperate in effecting the assumption of its obligations and functions by such successor Litigation Trustee, all without cost or expense to the predecessor Litigation Trustee. A Litigation Trustee that has resigned or been removed shall promptly execute and deliver an instrument or instruments conveying and transferring to such successor Litigation Trustee all the estates, properties, rights, powers, and trusts of such predecessor Litigation Trustee and otherwise assist and cooperate, without cost or expense to the predecessor Litigation Trustee, in effectuating the assumption of its obligations and functions by the successor Litigation Trustee.

3.20 Confidentiality. The Litigation Trustee shall, during the period that the Litigation Trustee serves as Litigation Trustee under this Agreement and following the termination of this Agreement or following such Litigation Trustee's removal or resignation hereunder, hold strictly confidential and not use for personal gain any non-public information of or pertaining to any Person to which any of the Litigation Trust Assets relates or of which the Litigation Trustee has become aware in the Litigation Trustee's capacity as Litigation Trustee, except as otherwise required by law.

## ARTICLE IV

### DISTRIBUTIONS

#### 4.1 Distributions.

(a) On any date determined by the Litigation Trustee in consultation with the Litigation Trust Oversight Committee, or on any date directed by unanimous consent of the Litigation Trust Oversight Committee (any such date upon which a distribution is made, referenced herein as a "Distribution Date"), the Litigation Trustee shall distribute or cause to be distributed

to each Litigation Trust Beneficiary its share of the Litigation Trust Assets, in accordance with this Section 4.1; provided, however, that the distributions shall be made not less than annually to the extent necessary for this Litigation Trust to maintain its status as a “liquidating trust” for U.S. federal income tax purposes.

(b) Timing and Amount of Distributions. The Litigation Trust Beneficiaries shall receive distributions of proceeds of the Litigation Trust Assets as monetized pursuant to this Agreement that are remaining after payment of amounts in accordance with Section 4.1(c) hereof and funding the Litigation Trust Reserve as required in this Agreement. For the avoidance of doubt, the Litigation Trustee shall not be deemed to be an “underwriter” in connection with its distribution of any Litigation Trust Assets, as such term is defined in section 1145(b) of the Bankruptcy Code, and no employees, agents, or representatives of the Litigation Trustee shall be deemed to be a “broker-dealer” as such term is defined in the Securities Exchange Act of 1934, as amended, or any rules promulgated thereunder.

(c) Priority of Distribution of Litigation Trust Assets and Proceeds. Any Litigation Trust Assets or Litigation Trust Proceeds available for distribution shall be applied as follows: (i) first, to pay or reimburse, as applicable, the reasonable, documented out-of-pocket fees, costs, expenses, and liabilities of the Litigation Trust, the Litigation Trustee (and any professionals retained by the Litigation Trustee), and the Litigation Trust Oversight Committee as provided in this agreement; (ii) second, to fund the Litigation Trust Reserve as set forth in Section 3.7 hereof; and (iii) third, to make distributions to holders of Litigation Trust Interests on a Pro Rata basis, which shall be made in accordance with the terms of the Plan.

(d) Distribution of Litigation Trust Assets and Proceeds Upon Termination. Promptly upon the complete liquidation of the Litigation Trust Assets, the Litigation Trustee shall distribute any Litigation Trust Assets available for distribution not yet distributed from the Litigation Trust in the same manner as described in paragraph (c) of this Section 4.1 and in accordance with the terms of this Agreement and the Plan.

(e) After the settlement or compromise or resolution of any Litigation Trust Causes of Action, or otherwise in advance of any Distribution, the Litigation Trustee shall provide the Litigation Trust Oversight Committee with an accounting showing the allocation of any recoveries among those Litigation Trust Causes of Action.

(f) Distributions of Cash on account of the Litigation Trust Interests shall, to the extent reasonably practicable, be made on the Distribution Date after the net proceeds of the Litigation Trust Causes of Action are received by the Litigation Trust.

(g) Subject to the requirements of Revenue Procedure 94-45, 1994-2 C.B. 684, the Litigation Trustee shall distribute all Cash on hand (including the net income and net proceeds, if any, from any disposition of Litigation Trust Assets, any Cash received on account of or representing proceeds, and treating as Cash for purposes of this Section 4.1(g) and any permitted investments under Section 3.9 hereof).

(h) The Litigation Trustee shall make or cause to be made distributions to each Litigation Trust Beneficiary (i) through its authorized designee for purposes of distributions to be

made under the Plan; or (ii) at its last-known address, as indicated on the Debtors' or Litigation Trust's records as of the applicable Distribution Date.

(i) In the event that any distribution to any Litigation Trust Beneficiary is returned as undeliverable, no distribution to such holder shall be made unless and until the Litigation Trustee has determined the then-current address of such holder, at which time such distribution shall be made to such holder without interest; provided, however, that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of one-hundred twenty (120) days from date of the attempted undeliverable payment. After such date, all unclaimed distributions shall be distributed on a *pro rata* basis to all Litigation Trust Beneficiaries whose initial distributions were not returned as undeliverable. Nothing contained herein shall require the Litigation Trustee to attempt to locate any holder of a Litigation Trust Interest.

(j) The Litigation Trustee may, in its reasonable discretion, withhold from amounts otherwise distributable to any Person any and all amounts required to be withheld by any law, regulation, rule, ruling, directive, treaty, or other governmental requirement. Any party issuing any instrument or making any distribution under this Agreement shall comply with all applicable withholding and reporting requirements imposed by any U.S. federal, state, or local tax law or taxing authority, and all distributions under this Agreement shall be subject to any such withholding or reporting requirements.

(k) Notwithstanding the above, each holder of a Litigation Trust Interest that is to receive a distribution under this Agreement shall have the sole and exclusive responsibility for the satisfaction and payment of any income taxes imposed on such holder by any governmental unit on account of such distribution. Any party issuing any instrument or making any distribution under this Agreement has the right, but not the obligation, to not make a distribution until such holder has made arrangements satisfactory to such issuing or disbursing party for payment of any such tax obligations. The Litigation Trustee may require, as a condition to the receipt of a distribution, that the holder complete the appropriate IRS Form W-8 or IRS Form W-9, as applicable to each holder. If the holder fails to comply with such a request within one-hundred twenty (120) days, such distribution shall be deemed an unclaimed distribution and treated in accordance with section 4.1(j) of this Agreement and section 6.7 of the Plan.

(l) Notwithstanding anything herein to the contrary, the Litigation Trustee shall not be required to make on account of any Litigation Trust Interest (i) partial distributions or payments of fractions of dollars; (ii) partial distributions or payments of fractions of Litigation Trust Interests; or (iii) a distribution if the amount to be distributed is or has an economic value of less than one hundred dollars (\$100.00). Any funds so withheld and not distributed shall be held in reserve and distributed in subsequent distributions. Notwithstanding the foregoing, all Cash shall be distributed in the final distribution of the Litigation Trust.

(m) Any check issued by the Litigation Trust on account of any Litigation Trust Interest shall be null and void if not negotiated within one-hundred twenty (120) days after the issuance of such check. Requests for reissuance of any check shall be made directly to the Litigation Trustee by the holder of the relevant Litigation Trust Interest with respect to which such check originally was issued. If any holder of a Litigation Trust Interest holding an un-negotiated

check does not request reissuance of that check within one year after the date the check was mailed or otherwise delivered to the holder, such holder's claim to such particular check/distribution shall be released, and the holder thereof shall be forever barred, estopped, and enjoined from asserting any Claim against any of the Debtors, the Litigation Trust, or the Litigation Trustee for such particular check/distribution. In such cases, any Cash held for payment on account of such Claims shall be property of the Litigation Trust, free of any Claims of such holder with respect thereto. No later than one-hundred twenty (120) days after the issuance of such checks, the Litigation Trustee shall file with the Bankruptcy Court a list of the holders of any un-negotiated checks; provided, however, that if at such time the Chapter 11 Cases have been closed, the Litigation Trustee shall not be required to re-open or seek to re-open the Chapter 11 Cases solely for purposes of effectuating the filing described in the immediately preceding sentence and instead shall furnish such notice to the Litigation Trust Beneficiaries and the ultimate economic parties instead. Nothing contained herein shall require the Litigation Trustee to attempt to locate any holder of any Litigation Trust Interest.

(n) For the avoidance of doubt, the Litigation Trust shall have no obligation to pay any amounts in respect of prepetition deductibles or self-insured retention amounts with respect to Claims covered by the Debtors' insurance policies.

## ARTICLE V

### LITIGATION TRUST OVERSIGHT COMMITTEE

5.1 Authority and Responsibilities of Litigation Trust Oversight Committee. (a) The Litigation Trust Oversight Committee shall, as and when requested by the Litigation Trustee, or when the Members otherwise deem it to be appropriate or as is otherwise required under the Plan, the Confirmation Order, or this Agreement, consult in good faith with and advise the Litigation Trustee as to the administration and management of the Litigation Trust in accordance with (i) the Plan, the Confirmation Order, and this Agreement, and (ii) the Litigation Trustee's and the Litigation Trust Oversight Committee's fiduciary duties, and shall have the other responsibilities and powers as set forth herein. The Litigation Trust Oversight Committee shall have the authority and responsibility to provide Direction with respect to the activities of the Litigation Trust and the performance of the Litigation Trustee and shall have the authority to remove the Litigation Trustee in accordance with Section 3.16 hereof; provided, however, that the Litigation Trust Oversight Committee may not (i) provide Direction to the Litigation Trustee or the Members to act inconsistently with their duties under the Plan, the Confirmation Order, this Agreement, or their fiduciary obligations to the Litigation Trust Beneficiaries; (ii) be authorized to engage in any trade or business; (iii) take any action inconsistent with the orderly liquidation of the assets of the Litigation Trust as is required or contemplated by applicable law, the Confirmation Order, this Agreement, or the Plan; or (iv) be authorized to engage in any investments or activities inconsistent with the treatment of the Litigation Trust as a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d) and in accordance with Revenue Procedure 94-45, 1994-2 C.B. 684.

5.2 Meetings of the Litigation Trust Oversight Committee. Meetings of the Litigation Trust Oversight Committee are to be held not less often than quarterly. Special meetings of the Litigation Trust Oversight Committee may be held whenever and wherever called for by the

Litigation Trustee or any Member; provided, however, that notice of any such meeting shall be duly given in writing no less than forty-eight (48) hours prior to such meeting (such notice being subject to waiver by the Members). Any action required or permitted to be taken by the Litigation Trust Oversight Committee at a meeting may be taken without a meeting if the action is taken by unanimous written consent by Direction of the Litigation Trust Oversight Committee as evidenced by one or more writings describing the action taken, signed by all Members and recorded in the minutes, if any, or other transcript, if any, of proceedings of the Litigation Trust Oversight Committee. Unless the Litigation Trust Oversight Committee decides otherwise (which decision shall rest in the reasonable discretion of the Litigation Trust Oversight Committee), the Litigation Trustee and the Litigation Trustee's advisors may, but are not required to, attend meetings of the Litigation Trust Oversight Committee.

5.3 Manner of Acting. (a) All meetings of the Litigation Trust Oversight Committee shall consist of all Members. The affirmative vote of a majority of the Members present at a duly called and noticed meeting (on not less than one week notice unless such notice is otherwise waived by all Members) at which all Members are present throughout shall be the act of the Litigation Trust Oversight Committee except as provided in this Agreement. Any or all of the Members may participate in a regular or special meeting by, or conduct the meeting through the use of video conference, conference telephone or similar communications equipment by means of which all Persons participating in the meeting may hear each other, in which case any required notice of such meeting may generally describe the arrangements (rather than or in addition to the place) for the holding thereof. Any Member participating in a meeting by these means is deemed to be present in person at the meeting. Voting (including on negative notice) may, if approved by the Members at a meeting, be conducted by electronic mail or individual communications by each Member.

5.4 Notwithstanding anything to the contrary herein, if a Member lacks authority to provide Direction to the Litigation Trustee of this Agreement pursuant to this Article V, a meeting of the Litigation Trust Oversight Committee may be held with a quorum consisting of those Members who have authority to provide Direction; provided, however, that all Members must be provided notice of and a reasonable opportunity to attend all meetings of the Litigation Trust Oversight Committee.

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

(b) Prior to the taking of a vote on any matter or issue or the taking of any action with respect to any matter or issue, each Member shall report to the Litigation Trust Oversight

Committee any conflict of interest such Member has or may have with respect to the matter or issue at hand and fully disclose the nature of such conflict or potential conflict (including disclosing any and all financial or other pecuniary interests that such Member may have with respect to or in connection with such matter or issue, other than solely as a holder of Litigation Trust Interests). With respect to a Member who, has or may have a conflict of interest whereby such Member's interests are adverse to the interests of the Litigation Trust (a "Conflicted Member"): (i) such Member shall not be entitled to vote or take part in any action with respect to such matter or issue; (ii) the vote or action with respect to such matter or issue shall be undertaken only by Members of the Litigation Trust Oversight Committee who are not Conflicted Members; and (iii) notwithstanding anything contained herein to the contrary, the affirmative vote of only a majority of the Members who are not Conflicted Members shall be required to approve of such matter or issue and the same shall be the act of the Litigation Trust Oversight Committee; provided, however, that a conflict or potential conflict will not exist merely because (i) a Member has an economic interest in, or business or commercial relationship with, the party who appointed that Member, or has an economic interest in the outcome of such matter or issue; or (ii) a Member, or a party who appoints a Member (or one of their affiliates, units, groups, divisions, or desks), in the ordinary course of business has trading, lending, commercial banking, investment banking, asset management, brokerage activities, or other similar relationships with parties who may be the subject of Litigation Trust Causes of Action, provided that appropriate barriers are put in place to protect against the sharing of confidential information and potential conflicts of interest, and to maintain compliance with any applicable securities laws.

5.5 Tenure of the Members of the Litigation Trust Oversight Committee. The authority of the Members will be effective as of the Effective Date and will remain and continue in full force and effect until the Litigation Trust is terminated in accordance with Section 8.1 hereof. Each Member will serve until such Member's successor is duly appointed or until such Member's earlier death or resignation pursuant to Section 5.6 below, or removal pursuant to Section 5.7 below.

5.6 Resignation. A Member may resign for any reason, including by giving not less than thirty (30) days' prior written notice thereof to the Litigation Trustee and the other Members. Such resignation shall become effective on the later to occur of: (i) the day specified in such notice; and (ii) the appointment of a successor in accordance with Section 5.8 below. Notwithstanding the foregoing, upon the occurrence of the Termination Date (as defined in Section 8 herein), all of the Members shall be deemed to have resigned. In the event of a Member resignation that results from a transfer of Litigation Trust Interests pursuant to Section 2.3 hereof, the prior written notice period may be less than the thirty (30) days required herein.

5.7 Removal. A majority of the Litigation Trust Oversight Committee may remove any Member for Cause. "Cause" shall mean (i) a Person's willful failure to perform his material duties hereunder (including with respect to a Member or, to the extent applicable, the Litigation Trustee, regular attendance at meetings of the Litigation Trust Oversight Committee) that is not remedied within thirty (30) days' notice; (ii) a finding by the Bankruptcy Court or other court of competent jurisdiction that a Person committed an act of fraud, theft, or embezzlement during the performance of his duties hereunder; (iii) a Person's conviction of a felony with all appeals having been exhausted or appeal periods lapsed; or (iv) a finding by the Bankruptcy Court or other court of competent jurisdiction that a Person engaged in gross negligence, fraud willful

misconduct, or a knowing violation of law in the performance of his or her duties hereunder. Subject to the provisions of Section 5.8, a Member of the Litigation Trust Oversight Committee may be removed without Cause at any time by its respective appointing party and replaced with a successor Member in accordance with Section 5.8 below.

5.8 Appointment of a Successor Member.

(a) In the event of a vacancy on the Litigation Trust Oversight Committee (whether by removal, death or resignation), a new Member may be appointed by the applicable appointing party to fill such position. In the event the applicable Appointing Party fails to fill a vacancy within thirty (30) days, the Litigation Trustee may appoint the successor Member to fill such vacancy, which appointment shall be effective immediately. The appointment of a successor Member shall be evidenced in the following manner: (i) in the event that the Chapter 11 Cases have not been closed as of the date of such appointment, the Litigation Trustee shall file with the Bankruptcy Court a notice of appointment, which notice shall include the name, address, and telephone number of the successor Member; or (ii) in the event that the Chapter 11 Cases have been closed as of the date of such appointment, the Litigation Trustee shall provide to the Litigation Trust Beneficiaries and the ultimate economic parties a notice of appointment, which notice shall include the name, address, and telephone number of the successor Member (at the addresses provided in the Trust Register).

(b) Immediately upon the appointment of any successor Member, all rights, powers, duties, authority, and privileges of the predecessor Member hereunder will be vested in and undertaken by the successor Member without any further act, and such successor Member will not be liable personally for any act or omission of the predecessor Member.

(c) Every successor Member appointed hereunder shall execute, acknowledge and deliver to the Litigation Trustee and other Members an instrument accepting the appointment under this Agreement and agreeing to be bound thereto, and thereupon the successor Member without any further act, deed, or conveyance, shall become vested with all rights, powers, trusts, and duties of the retiring Member.

(d) Any action taken by the Litigation Trust Oversight Committee during the period of a vacancy on the Litigation Trust Oversight Committee shall be deemed valid unless subsequently revoked or modified by the unanimous vote of the Litigation Trust Oversight Committee within thirty (30) days of the vacancy being filled.

5.9 Confidentiality. Each Member shall, during the period that such Member serves as a Member under this Agreement and following the termination of this Agreement or following such Member's removal or resignation, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any Person to which any of the Litigation Trust Assets relates or of which such Member has become aware in the Member's capacity as a Member, except as otherwise required by law.

## ARTICLE VI

### LIABILITY AND INDEMNIFICATION

6.1 No Further Liability. Each of the Litigation Trustee, the Members, and their representatives shall have no liability for any actions or omissions in accordance with this Agreement or with respect to the Litigation Trust unless arising out of each such Person's own fraud, willful misconduct, or gross negligence. In performing its duties under this Agreement, the Litigation Trustee, the Members and their representatives (as applicable) shall have no liability for any action taken by each such Person in accordance with the advice of counsel, accountants, appraisers, and/or other professionals retained by the Members or the Litigation Trustee. Without limiting the generality of the foregoing, the Litigation Trustee, the Members, and their representatives may rely without independent investigation on copies of orders of the Bankruptcy Court reasonably believed by such Person to be genuine and shall have no liability for actions taken in reliance thereon. None of the provisions of this Agreement shall require the Litigation Trustee, the Members, or their representatives to expend or risk their own funds or otherwise incur personal financial liability in the performance of any of their duties hereunder or in the exercise of any of their rights and powers. Each of the Litigation Trustee, the Members, and their representatives may rely without inquiry upon writings delivered to such Person pursuant to the Plan or the Confirmation Order that such Person reasonably believes to be genuine and to have been properly given. Notwithstanding the foregoing, nothing in this Section 6.1 shall relieve the Litigation Trustee, the Members, or their representatives from any liability for any actions or omissions arising out of such Person's fraud, willful misconduct, or gross negligence. Any action taken or omitted to be taken in the case of the Litigation Trustee or the Litigation Trust Oversight Committee with the express approval of the Bankruptcy Court will conclusively be deemed not to constitute fraud, willful misconduct, or gross negligence. No termination of this Agreement or amendment, modification, or repeal of this Section 6.1 shall adversely affect any right or protection of the Litigation Trustee, the Members of the Litigation Trust Oversight Committee, or their respective designees, professional agents, or representatives that exist at the time of such amendment, modification, or repeal.

6.2 Indemnification of the Litigation Trustee and Litigation Trust Oversight Committee.

(a) From and after the Effective Date, each of the Litigation Trustee, and the Litigation Trust Oversight Committee and its Members (each, a "Litigation Trust Indemnified Party" and collectively, the "Litigation Trust Indemnified Parties") shall be, and hereby is, indemnified by the Litigation Trust, to the fullest extent permitted by applicable law, from and against any and all Claims, debts, dues, accounts, actions, suits, Litigation Trust Causes of Action, bonds, covenants, judgments, damages, attorneys' fees, defense costs, and other assertions of liability arising out of any such Litigation Trust Indemnified Party's exercise of what such Litigation Trust Indemnified Party reasonably understands to be its powers or the discharge of what such Litigation Trust Indemnified Party reasonably understands to be its duties conferred by the Plan, the Confirmation Order, or this Agreement, any order of the Bankruptcy Court entered pursuant to, or in furtherance of, the Plan, applicable law, or otherwise (except only for actions or omissions to act to the extent ultimately determined by a Final Order to be due to such Litigation Trust Indemnified Party's own fraud, willful misconduct, or gross negligence, on and after the



Effective Date). The foregoing indemnification shall also extend to matters directly or indirectly in connection with, arising out of, arising from, based on, or in any way related to: (i) this Agreement; (ii) the services to be rendered pursuant to this Agreement; (iii) any document or information, whether oral or written, referred to herein or supplied to the Litigation Trustee; or (iv) proceedings against any Litigation Trust Assets or any Litigation Trust Indemnified Party by or on behalf of any creditor. The Litigation Trustee shall, on demand, advance or pay promptly, at the election of the Litigation Trust Indemnified Party, solely out of the Litigation Trust Assets, on behalf of each Litigation Trust Indemnified Party, attorneys' fees and other expenses and disbursements to which such Litigation Trust Indemnified Party would be entitled pursuant to the foregoing indemnification provision; provided, however, that any Litigation Trust Indemnified Party receiving any such advance shall execute a written undertaking to repay such advance if a court of competent jurisdiction ultimately determines, by Final Order, that such Litigation Trust Indemnified Party is not entitled to indemnification hereunder due to such Person's own fraud, willful misconduct, gross negligence. Any indemnification Claim of a Litigation Trust Indemnified Party shall be entitled to a priority distribution from the Litigation Trust Assets, ahead of the Litigation Trust Interests and any other Claim to or Interest in such assets. In any matter covered by the first two sentences of this subsection, any party entitled to indemnification shall have the right to employ such party's own separate counsel, at the Litigation Trust's expense, subject to the foregoing terms and conditions. In addition, at the Direction of the Litigation Trust Oversight Committee, the Litigation Trustee shall purchase insurance coverage, including liability insurance covering the Litigation Trustee and/or any Litigation Trust Oversight Committee Members using funds from the Litigation Trust Assets for the benefit of the Litigation Trustee. The indemnification provided under this Section 6.2 shall survive the death, dissolution, resignation, or removal, as may be applicable, of the Litigation Trustee, the Litigation Trust Oversight Committee, any Member, or any other Litigation Trust Indemnified Party and shall inure to the benefit of the Litigation Trustee's, each Member, and each other Litigation Trust Indemnified Party's respective heirs, successors, and assigns.

(b) The foregoing indemnity in respect of any Litigation Trust Indemnified Party shall survive the termination of such Litigation Trust Indemnified Party from the capacity for which such party is indemnified. Termination or modification of this Agreement shall not affect any indemnification rights or obligations set forth herein.

(c) The Litigation Trustee may, at the Direction of the Litigation Trust Oversight Committee, indemnify any Person who is not a Litigation Trust Indemnified Party for any loss, cost, damage, expense, or liability for which a Litigation Trust Indemnified Party would be entitled to mandatory indemnification under this Section 6.2.

(d) Any Litigation Trust Indemnified Party may waive the benefits of indemnification under this Section 6.2, but only by an instrument in writing executed by such Litigation Trust Indemnified Party.

(e) The rights to indemnification under this Section 6.2 are not exclusive of other rights which any Litigation Trust Indemnified Party may otherwise have at law or in equity, including common law rights to indemnification or contribution. Nothing in this Section will affect the rights or obligations of any Person (or the limitations on those rights or obligations) under any other agreement or instrument to which that Person is a party. For the avoidance of doubt, each

Litigation Trust Indemnified Party shall be entitled, subject to the terms hereof, to indemnification for any costs and attorneys' fees such Litigation Trust Indemnified Party may incur in connection with enforcing any of its rights under this Article VI.

6.3 Litigation Trust Liabilities. All liabilities of the Litigation Trust, including indemnity obligations under Section 6.2 of this Agreement, will be liabilities of the Litigation Trust as an Entity and will be paid or satisfied from the Litigation Trust Assets and paid on a priority basis. No liability of the Litigation Trust will be payable in whole or in part by any Litigation Trust Beneficiary individually or in such Litigation Trust Beneficiary's capacity as a Litigation Trust Beneficiary, by the Litigation Trustee individually or in the Litigation Trustee's capacity as Litigation Trustee, by any Member individually or in the Member's capacity as Member, or by any representative, member, partner, shareholder, director, officer, professional, employees, agent, affiliate, or advisor of any Litigation Trust Beneficiary, any Member, the Litigation Trustee, or their respective affiliates.

6.4 Limitation of Liability. None of the Litigation Trust Indemnified Parties shall be liable for indirect, punitive, exemplary, consequential, special, or other damages for a breach of this Agreement under any circumstances.

6.5 Burden of Proof. In making a determination with respect to entitlement to exculpation or indemnification hereunder, the court, Person, or Entity making such determination shall presume that any Litigation Trust Indemnified Party is entitled to exculpation and indemnification under this Agreement and any Person seeking to overcome such presumption shall have the burden of proof to overcome that presumption.

## **ARTICLE VII**

### **TAX MATTERS**

7.1 Treatment of Litigation Trust Assets Transfer. Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including receipt by the Litigation Trustee of a private letter ruling if the Litigation Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Litigation Trustee), the Litigation Trust shall be treated as a "liquidating trust" within the meaning of Treasury Regulation section 301.7701-4(d) and thus as a "grantor trust" within the meaning of sections 671 through 677 of the IRC, and all parties to the Litigation Trust (including, without limitation, the Litigation Trustee, the Debtors, and the Litigation Trust Beneficiaries) shall report consistently therewith for U.S. federal income tax purposes. Accordingly, for U.S. federal income tax purposes, the Litigation Trust Assets shall be treated by all parties as (i) having been transferred (subject to any obligations relating to such assets), pursuant to and consistent with the Plan, by the Debtors to the Litigation Trust Beneficiaries and (ii) immediately thereafter contributed by the holders of the Litigation Trust Assets to the Litigation Trust in exchange for Litigation Trust Interests. Accordingly, the Litigation Trust Beneficiaries shall be treated for U.S. federal income tax purposes as the grantors and owners of their respective share of the Litigation Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local tax purposes.

7.2 Tax Reporting. The Litigation Trustee shall file returns for the Litigation Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a) and in accordance with Section 7.1 hereof. The Litigation Trustee shall, in its discretion, make any applicable tax elections on behalf of the Litigation Trust. The Litigation Trustee shall annually send to each Litigation Trust Beneficiary a separate statement setting forth such Litigation Trust Beneficiary's share of items of income, gain, loss, deduction, or credit (including the receipts and expenditures of the Litigation Trust), in accordance with applicable Treasury Regulations and Revenue Procedure 94-45, 1994-2 C.B. 684, file (or cause to be filed) any other statements, returns (including any information returns) or disclosures relating to the Litigation Trust that is required by any governmental authority or applicable law, and pay taxes, if any, properly payable by the Litigation Trust.

7.3 Trust Taxable Income and Allocations. Allocations of Litigation Trust taxable income among the Litigation Trust Beneficiaries shall be determined by reference to the manner in which an amount of cash equal to such taxable income would be distributed (were such cash permitted to be distributed at such time, and without regard to any restrictions on distributions set forth in the Plan or this Agreement) if, immediately prior to such deemed distribution, the Litigation Trust had distributed all its assets (valued for this purpose at their tax book value) to the Litigation Trust Beneficiaries, adjusted for prior taxable income and loss and taking into account all prior and concurrent distributions from the Litigation Trust. Similarly, taxable loss of the Litigation Trust shall be allocated by reference to the manner in which an economic loss would be borne immediately after a hypothetical liquidating distribution of the remaining Litigation Trust Assets. The tax book value of the Litigation Trust Assets for purposes of this Section 7.3 shall equal their fair market value on the Effective Date, adjusted in accordance with tax accounting principles prescribed by the IRC, the applicable Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements. The Litigation Trustee shall be responsible for payment, out of the Litigation Trust Assets, of any Taxes imposed on the Litigation Trust or the Litigation Trust Assets.

7.4 Withholding of Taxes. The Litigation Trustee shall withhold and pay to the appropriate Tax Authority all amounts required to be withheld pursuant to the IRC or any provision of any foreign, state, or local tax law with respect to any payment or distribution to the Litigation Trust Beneficiaries. All such amounts withheld and paid to the appropriate Tax Authority shall be treated as amounts distributed to such Litigation Trust Beneficiaries for all purposes of this Agreement. The Litigation Trustee shall be authorized to collect such tax information from the Litigation Trust Beneficiaries (including social security numbers or other tax identification numbers) as it, in its sole discretion, deems necessary to effectuate the Plan, the Confirmation Order, and this Agreement. In order to receive distributions under the Plan, all Litigation Trust Beneficiaries will need to identify themselves to the Litigation Trustee and provide tax information and the specifics of their holdings, to the extent the Litigation Trustee deems appropriate, including a taxpayer identification number ("TIN") as assigned by the IRS or, in the case of Litigation Trust Beneficiaries that are not United States persons for U.S. federal income tax purposes, certification of foreign status on IRS Form W-8BEN, W-8BEN-E, or W-8ECI. This identification requirement may, in certain cases, extend to holders who hold their securities in street name. The Litigation Trustee may refuse to make a distribution to any Litigation Trust Beneficiary that fails to furnish such information in a timely fashion, until such information is delivered.

7.5 Expedited Determination of Taxes. The Litigation Trustee may request an expedited determination of taxes of the Litigation Trust under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Litigation Trust for all taxable periods through the termination of the Litigation Trust.

7.6 Foreign Tax Matters. The Litigation Trustee shall duly comply on a timely basis with all obligations, and satisfy all liabilities, imposed on the Litigation Trustee or the Litigation Trust under non-United States law relating to Taxes. The Litigation Trustee, or any other legal representative of the Litigation Trust, shall not distribute the Litigation Trust Assets or proceeds thereof without having first obtained all certificates required to have been obtained under applicable non-United States law relating to Taxes.

## ARTICLE VIII

### TERMINATION OF LITIGATION TRUST

8.1 Termination. The Litigation Trust Oversight Committee and the Litigation Trust shall be dissolved at such time as (i) all of the Litigation Trust Assets have been distributed pursuant to the Plan and this Agreement; or (ii) the Litigation Trust Oversight Committee determines that the administration of any remaining Litigation Trust Assets is not likely to yield sufficient additional Litigation Trust proceeds to justify further pursuit; provided, however, that in no event shall the Litigation Trust be dissolved later than five (5) years from the Effective Date; provided, further, that the Bankruptcy Court, upon motion by the Litigation Trustee, on notice with an opportunity for hearing, within six (6) months before the expiration of the original term or any extended term, may extend, for a fixed period, the term of the Litigation Trust if it is necessary to facilitate or complete the liquidation of the assets of the Litigation Trust, and not unduly extend the term of the Litigation Trust; provided further, however, that the Litigation Trustee must receive a favorable private letter ruling from the IRS or an opinion of counsel satisfactory to the Litigation Trustee and the Litigation Trust Oversight Committee that any extension would not adversely affect the status of the Litigation Trust as a “liquidating trust” for U.S. federal income tax purposes. The Bankruptcy Court may approve multiple extensions of the term of the Litigation Trust. If at any time the Litigation Trust Oversight Committee determines, in reliance upon such professionals as the Litigation Trust Oversight Committee may retain, that the expense of administering the Litigation Trust so as to make a final distribution to the Litigation Trust Beneficiaries is likely to exceed the value of the assets remaining in the Litigation Trust, the Litigation Trustee, at the Direction of the Litigation Trust Oversight Committee, may apply to the Bankruptcy Court for authority to (i) reserve any amount necessary to dissolve the Litigation Trust; (ii) donate any balance to a charitable organization (A) described in section 501(c)(3) of the IRC, (B) exempt from U.S. federal income tax under section 501(a) of the IRC, (C) not a “private foundation,” as defined in section 509(a) of the IRC, and that is unrelated to the Debtors, the Litigation Trust, and any insider of the Litigation Trustee; and (iii) dissolve the Litigation Trust. Such date upon which the Litigation Trust shall finally be dissolved shall be referred to herein as the “Termination Date.”

8.2 Continuance of Litigation Trust for Winding Up. After the termination of the Litigation Trust and solely for the purpose of liquidating and winding up the affairs of the Litigation Trust, the Litigation Trustee shall continue to act as such until its duties have been fully performed and shall continue to be entitled to receive the fees called for by Section 3.14 hereof.

Upon distribution of all the Litigation Trust Assets, the Litigation Trustee shall retain the books, records, and files that shall have been delivered or created by the Litigation Trustee. At the Litigation Trust Oversight Committee's discretion, all of such records and documents may be destroyed no earlier than two years following the date of final distribution of Litigation Trust Assets as the Litigation Trust Oversight Committee deems appropriate (unless such records and documents are necessary to fulfill the Litigation Trustee's obligations hereunder) subject to the terms of any joint prosecution and common interest agreement(s) to which the Litigation Trustee may be a party. Except as otherwise specifically provided herein, upon the final distribution of Litigation Trust Assets, the Litigation Trustee shall be deemed discharged and have no further duties or obligations hereunder, except to account to the Litigation Trust Beneficiaries as may be provided herein, the Litigation Trust Interests shall be cancelled, and the Litigation Trust will be deemed to have dissolved. The Litigation Trustee shall provide notice to the ultimate economic parties and the Litigation Trust Beneficiaries (which can be achieved by filing such notice on the docket of the Chapter 11 Cases or such other manner determined by the Litigation Trustee in consultation with the Litigation Trust Oversight Committee) of the termination of the Litigation Trust and final distribution of Litigation Trust Assets.

## ARTICLE IX

### **AMENDMENT AND WAIVER**

9.1 Amendment. This Agreement may from time to time be amended, supplemented, or modified without the approval of the Bankruptcy Court by the Litigation Trustee, at the Direction of the Litigation Trust Oversight Committee, provided, however, that no such amendment, supplement, or modification shall, except as otherwise provided herein: (a) adversely affect the payments and/or distributions to be made under this Agreement; (b) adversely affect the U.S. federal income tax status of the Litigation Trust as a "liquidating trust"; (c) be inconsistent with the purpose and intention of the Litigation Trust to liquidate in an expeditious but orderly manner the Litigation Trust Assets in accordance with Treasury Regulation section 301.7701-4(d); or (d) negate any fiduciary obligations established in this Agreement.

9.2 Waiver. No failure by the Litigation Trust or the Litigation Trustee to exercise or delay in exercising any right, power, or privilege hereunder shall operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any further exercise thereof, or of any other right, power, or privilege.

## ARTICLE X

### **MISCELLANEOUS PROVISIONS**

10.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware (without reference to principles of conflicts of law thereof).

10.2 Jurisdiction. The Parties agree that the Bankruptcy Court shall have exclusive jurisdiction over disputes arising out of the formation or implementation of the Litigation

Trust Agreement and to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby, or the transfer of the Litigation Trust Assets to the Litigation Trust on the Effective Date; provided, however, that notwithstanding the foregoing, the Litigation Trustee, at the Direction of the Litigation Trust Oversight Committee, shall have power and authority to bring any action in any court of competent jurisdiction to prosecute any of the Litigation Trust Causes of Action. For the avoidance of doubt, nothing in Article XII of the Plan shall be deemed to confer a broader grant of jurisdiction on the Bankruptcy Court than that set forth in this Section 10.2.

10.3 Dispute Resolution. In the event of any dispute between the Litigation Trustee, the Litigation Trust Beneficiaries, and/or the Litigation Trust Oversight Committee with respect to (a) the allocation of Litigation Trust Interests pursuant to Section 2.1(b) hereof or (b) the making of distributions by the Litigation Trustee pursuant to Article IV hereof (the occurrence of either (a) or (b) being referred to herein as a “Dispute”), the Parties hereby agree that any such Dispute shall, in the first instance, be resolved by referral of such Dispute to mediation for resolution thereof. In the event that mediation is not successful in resolving any such Dispute, any Party to such Dispute may petition the Bankruptcy Court for resolution thereof.

10.4 Reimbursement of Fees and Costs. In any action or proceeding initiated by a Litigation Trust Beneficiary against (a) the Litigation Trustee, (b) any Member(s) of the Litigation Trust Oversight Committee, or (c) any other current or former fiduciary of the Litigation Trust, the prevailing party in any such action or proceeding shall be entitled to reimbursement of its incurred attorneys’ fees and other costs from the non-prevailing party in such action or proceeding; provided, however, that in the case that the non-prevailing party is one of the parties listed in clauses (a) through (c) of this Section 10.4 then such reimbursement shall be paid solely from the Litigation Trust Assets except as otherwise provided in Article VI hereof.

10.5 Closing of Chapter 11 Cases. In the event that the Chapter 11 Cases are closed prior to the occurrence of the Termination Date hereunder and any approvals, reporting or filing is required hereunder by the Trustee, the Trustee, in consultation first with the Litigation Trust Oversight Committee, may, pursuant to the terms herein, petition the Bankruptcy Court to re-open the Chapter 11 Cases. If the Chapter 11 Cases are not reopened then any approval, report or filing required pursuant to this Agreement shall be provided by the Litigation Trustee directly to the Litigation Trust Beneficiaries and the ultimate economic parties.

10.6 Severability. In the event any provision of this Agreement or the application thereof to any person or circumstances shall be determined by Final Order to be invalid or unenforceable to any extent, the remainder of this Agreement or the application of such provision to persons or circumstances or in jurisdictions other than those as to or in which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

10.7 Notices. Any notice or other communication required or permitted to be made under this Agreement shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if delivered personally, by facsimile, by electronic communication, or by nationally recognized overnight delivery service or mailed by first-class mail. The date of receipt

of such notice shall be the earliest of (a) the date of actual receipt by the receiving party; (b) the date of personal delivery (or refusal upon presentation for delivery); (c) the date of the transmission confirmation; or (d) three (3) Business Days after service by first-class mail, to the receiving party's below address(es):

- (i) if to the Litigation Trustee, to:

[Litigation Trustee]  
[Street Address]  
[City, State, Zip Code]  
Attn: [•]  
Office: [•]  
E-mail: [•]

With a copy to:

[Litigation Trustee Law Firm]  
Attn: [•]  
[Street Address]  
[City, State, Zip Code]  
Office: [•]  
E-mail: [•]

(ii) if to any Litigation Trust Beneficiary, (i) to its authorized designee for purposes of distributions to be made under the Plan; (ii) to its last-known address according to the Litigation Trustee's records as set forth in the Trust Register.

- (iii) if to the Litigation Trust Oversight Committee, to:

[Board Member]  
[Street Address]  
[City, State, Zip Code]  
Attn: [•]  
Office: [•]  
E-mail: [•]

[Board Member]  
[Street Address]  
[City, State, Zip Code]  
Attn: [•]  
Office: [•]  
E-mail: [•]

[Board Member]  
[Street Address]  
[City, State, Zip Code]  
Attn: [•]

Office: [•]

E-mail: [•]

with a copy to:

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY, AND POPEO, PC

Attn: Daniel S. Bleck, Esq. & Eric Blythe, Esq.

One Financial Center

Boston, MA 02111

Telephone: (617) 546-6000

[dsbleck@mintz.com](mailto:dsbleck@mintz.com)

[erblythe@mintz.com](mailto:erblythe@mintz.com)

-and-

COOLEY LLP

Attn: Eric E. Walker

110 North Wacker Drive, Suite 4200

Chicago, IL 60606-1511

Telephone: 312-881-6375

Facsimile: 312-881-6598 (fax)

[ewalker@cooley.com](mailto:ewalker@cooley.com)

(iv) if to the Debtors/Reorganized Debtors, to:

POLSINELLI PC

Jeremy R. Johnson

600 3rd Avenue, 42nd Floor

New York, New York 10016

Telephone: (212) 684-0199

Facsimile: (212) 684-0197

[jeremy.johnson@polsinelli.com](mailto:jeremy.johnson@polsinelli.com)

-and-

Trinitee G. Green

2950 N. Harwood, Suite 2100

Dallas, Texas 75201

Telephone: (214) 397-0030

Facsimile: (214) 397-0033

[tggreen@polsinelli.com](mailto:tggreen@polsinelli.com)

*Counsel to the Reorganized Debtors*

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



10.9 Entire Agreement. This Agreement and the exhibits attached hereto, together with the Plan and Confirmation Order, contain the entire agreement between the Parties and supersede all prior and contemporaneous agreements or understandings between the Parties with respect to the subject matter hereof.

10.10 Meanings of Other Terms. Except where the context otherwise requires, words importing the masculine gender include the feminine and the neuter, if appropriate, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations, corporations, and other entities. All references herein to Articles, Sections, and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code, the Bankruptcy Rules, or other law, statute, or regulation, refer to the corresponding Articles, Sections, and other subdivisions of this Agreement, and the words “herein,” “hereof,” or “herewith” and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, or subdivision of this Agreement. The term “including” shall mean “including, without limitation.”

10.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but such counterparts shall together constitute one and the same instrument. A facsimile or electronic mail signature of any party shall be considered to have the same binding legal effect as an original signature.

10.12 Intention of Parties to Establish a Liquidating Trust. This Agreement is intended to create a “liquidating trust” for U.S. federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a trust and any ambiguity herein shall be construed consistent herewith and, if necessary, this Agreement may be amended in accordance with Section 9.1 hereof to comply with such U.S. federal income tax laws, which amendments may apply retroactively.

10.13 Other Activities. The Litigation Trustee shall be entitled to perform services for and be employed by third parties on matters not related to this Litigation Trust and the Litigation Trust Causes of Action; provided, however, that such performance or employment affords the Litigation Trustee sufficient time to carry out the Litigation Trustee’s responsibilities and duties as Litigation Trustee and such performance or employment does not conflict with or otherwise prohibit the Litigation Trustee from performing its responsibilities or duties with respect to the Litigation Trust as required under this Agreement free of conflict or interruption.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement or caused this Agreement to be duly executed by their respective officers, representatives, or agents, effective as of the date first above written.

NORTHWEST SENIOR HOUSING CORPORATION

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

Name: [•]

Title: [•]

SENIOR QUALITY LIFESTYLES CORPORATION

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

Name: [•]

Title: [•]

[TRUSTEE MEMBER REPRESENTATIVE]

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

Name: [•]

Title: [•]

[LIFESPACE MEMBER REPRESENTATIVE]

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

Name: [•]

Title: [•]

[JOINT MEMBER REPRESENTATIVE]

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

Name: [•]

Title: [•]

LITIGATION TRUSTEE

\_\_\_\_\_  
By: [•], solely in their capacity as Litigation  
Trustee of Edgemere Litigation Trust

**EXHIBIT A**

**Funding of Litigation Trust Fund**

<b><u>Funding Party</u></b>	<b>Funding Obligation in connection with <u>Litigation Trust Fund</u></b>
Lifespace Communities, Inc.	\$250,000
UMB Bank, N.A., in its capacity as successor bond trustee and master trustee for the Original Bonds	\$250,000

**EXHIBIT B**

**Initial Members of the Litigation Trust Oversight Committee**

<b>Name</b>	<b>Representative</b>
[•]	Trustee Member Representative
[•]	Lifespace Member Representative
[•]	Joint Member Representative



**EXHIBIT C**

**Compensation of Litigation Trustee**

[•]

**EXHIBIT B**

**Residents Trust Agreement**

## **RESIDENTS TRUST AGREEMENT**

This RESIDENTS TRUST AGREEMENT (the “Trust Agreement”) is made and entered into as of \_\_\_\_\_, 2023, by and among (a) Northwest Senior Housing Corporation and Senior Quality Lifestyles Corporation, in their capacities as debtors and debtors in possession and on behalf of themselves and their respective chapter 11 estates (each a “Debtor” and collectively, the “Debtors”), and (b) \_\_\_\_\_, as trustee of the Residents Trust (the “Trustee” or the “Trustee”), so long as such individual continues in office, and all other individuals who have been duly elected and qualify as trustee of the Residents Trust hereunder pursuant to Section 1.5 or Article VIII hereof. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan (as defined below).

### **BACKGROUND**

A. On April 14, 2022, the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”).

B. On December 19, 2022, the Plan Proponents filed their Third Amended Plan of Reorganization of the Plan Sponsors dated December 19, 2022 (as amended, confirmed, and/or modified from time to time, including by the Confirmation Order, the “Plan”).

C. The Plan provides for the creation of a trust on the Effective Date to hold, manage, and administer the Residents Trust Assets and to distribute the proceeds thereof to the holders of Residents Trust Interests (the “Residents Trust Beneficiaries” or “Beneficiaries”) in accordance with the terms of this Trust Agreement, the Plan, and the Confirmation Order.

D. The Residents Trust is being created on behalf of, and for the benefit of, the Residents Trust Beneficiaries, who are Participating Former Residents and Participating Current Residents of Edgemere that hold Allowed Class 5 and Class 6 Refund Claims under the Plan, and who shall hold beneficial interests in the Residents Trust (“Residents Trust Interests”).

E. The Residents Trust is organized for the sole purpose of collecting and distributing the Residents Trust Assets, and not to conduct a trade or business except to the extent reasonably necessary to, and consistent with, the purpose of the Residents Trust.

F. This Residents Trust is intended to qualify as a “liquidating trust” under the Internal Revenue Code of 1986, as amended (the “IRC”) and the regulations promulgated thereunder (the “Treasury Regulations”), specifically Treasury Regulations section 301.7701-4(d) and, as such, as a “grantor trust” for United States federal income tax purposes pursuant to Treasury Regulations Section 1.671-4(a), with the Residents Trust Beneficiaries treated as the grantors and owners of the Residents Trust.

## **TRUST AGREEMENT**

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein, the Debtors and the Trustee agree as follows:

### ARTICLE I.

#### **DECLARATION OF TRUST**

1.1. Creation of Trust. As of the Effective Date of the Plan, the Debtors and the Trustee, pursuant to the Plan and the Confirmation Order, and in accordance with the applicable provisions of chapter 11 of the Bankruptcy Code, hereby constitute and create the Residents Trust, which shall bear the name “Edgemere Residents Trust.” In connection with the exercise of the Trustee’s power hereunder, the Trustee may use this name or such variation thereof as the Trustee sees fit. The Edgemere Residents Trust shall be governed by the A.R.S. §§ 14-7401 et. seq. as the same may be amended from time to time (the “Trust Code”).

1.2. Purpose of Residents Trust. The purpose of the Residents Trust is to implement the terms of the Plan on behalf, and for the benefit of, the Residents Trust Beneficiaries, and to serve as a mechanism for collecting the contributions from Lifespace Communities Inc. (“Lifespace”) (the “Lifespace Contributions”) required under the Plan and Lifespace Settlement and Contribution Agreement dated December 14, 2022 as amended (the “Lifespace Settlement Agreement”), and distributing the Lifespace Contributions and earnings thereon in accordance with Treasury Regulations section 301.7701-4(d), with no objective to continue or engage in conduct or a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Residents Trust.

1.3. Transfer of Residents Trust Assets. On the Effective Date, the Debtors shall transfer, for the sole benefit of the Residents Trust Beneficiaries, pursuant to Bankruptcy Code sections 1123(a)(5)(B) and 1123(b)(3)(B), and in accordance with the Plan and the Confirmation Order, all of the Debtors’ rights, title and interests in the Lifespace Settlement Agreement, as amended from time to time, (together with Lifespace Contributions, the “Residents Trust Assets”) to the Residents Trust, free and clear of any and all liens, claims, encumbrances and interests (legal, beneficial, or otherwise) of all other entities to the maximum extent contemplated by and permissible under Bankruptcy Code section 1141(c). In this regard, the Residents Trust Assets will be treated as transferred, for United States federal as well as state and local income tax purposes, in the manner set forth pursuant to Section 5.2 of this Trust Agreement. The transfer of the Residents Trust Assets shall be exempt from any stamp, real estate transfer, mortgage reporting, sale, use or other similar tax, pursuant to section 1146(a) of the Bankruptcy Code. Upon delivery of all Residents Trust Assets to the Residents Trust, the Debtors shall be discharged and released from all liability with respect to the delivery of such assets, and exculpated as provided in the Plan. The Residents Trust Assets and all other property held from time to time by the Residents Trust under this Trust Agreement and any earnings, including interest, on any of the foregoing are to be applied by the Trustee in accordance with the terms hereof, the Plan, and the Confirmation Order for the benefit of the Residents Trust Beneficiaries, and for no other party, subject to the further covenants, conditions, and terms hereinafter set forth. In the event of any conflict among this Trust

Agreement, the Plan and the Confirmation Order, the provisions of Section 9.6 of this Trust Agreement shall control.

1.4. Funding of Residents Trust

a) Residents Trust Operations. On the Effective Date, the Residents Trust shall be funded by an assignment of all of the Debtors' rights, title and interests in the Lifespace Settlement Agreement. The Lifespace Contributions thereunder and earnings thereon shall be used exclusively for the following purposes: (i) to maintain the value of the Residents Trust Assets; (ii) to pay the reasonable and necessary administrative expenses of the Residents Trust, including, but not limited to, (a) the Trustee fees, compensation and expenses, (b) the reasonable costs and expenses incurred or anticipated to be incurred by the Trustee (including reasonable fees, costs and expenses incurred or anticipated to be incurred by professionals retained by the Trustee), (c) the reasonable costs and expenses incurred or anticipated to be incurred by the Residents Trust Advisory Board and its members (including reasonable fees, costs and expenses incurred or anticipated to be incurred by professionals retained by the Residents Trust Advisory Board but excluding the fees, costs and expenses of professionals retained by Residents Trust Advisory Board members individually), (d) any taxes imposed on the Residents Trust in respect of the Residents Trust Assets, (e) the reasonable fees and expenses incurred or anticipated to be incurred in connection with, arising out of or related to the Residents Trust Assets and any litigation associated therewith, and (f) other costs and expenses contemplated by this Trust Agreement; and (iii) to make distributions to the Residents Trust Beneficiaries.

b) Reserve. Prior to any distributions to the Residents Trust Beneficiaries, the Trustee shall withhold funds for the payment of projected Residents Trust expenses and Life Care Benefits.

1.5. Appointment and Acceptance of Trustee. As set forth in the Confirmation Order, the members of the Residents Trust Advisory Board hereby designate \_\_\_\_\_ to serve as the initial Trustee under the Plan. The Trustee accepts the Residents Trust created by this Trust Agreement and the grant, assignment, transfer, conveyance, and delivery by the Debtors of all of their respective right, title, and interest in the Residents Trust Assets, upon and subject to the terms and conditions set forth herein, in the Plan, and in the Confirmation Order, to the Trustee, on behalf, and for the benefit, of the Residents Trust Beneficiaries. The Trustee's powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purpose of the Residents Trust within the limitations set forth herein, including the Treasury Regulations and the Trust Code, and shall for all purposes hereunder be acting in the capacity as Trustee, and not individually.

1.6. Collection of the Residents Trust Assets. The Trustee shall, in an expeditious but commercially reasonable manner and subject to the provisions of the Plan, the Confirmation Order, and the Lifespace Settlement Agreement, collect Lifespace Contributions and make timely distributions to Residents Trust Beneficiaries in an amount up to their Allowed Refund Claims in the Debtors bankruptcy proceedings in accordance with the terms hereof and the Plan, and shall not unduly prolong the existence of the Residents Trust. The Trustee shall exercise reasonable business judgment and in the collection and distribution of the Residents Trust Assets. The Residents Trust Advisory Board must approve any (i) sale, transfer, assignment, abandonment, or

other disposition of Residents Trust Assets with an asserted value equal to or in excess of \$100,000; (ii) settlement or compromise of any claim of the Residents Trust; or (iii) settlement or compromise of an objection to a Class 5 and/or Class 6 Claim which would result in an Allowed Class 5 and/or Class 6 Claim equal to or in excess of \$100,000. The Trustee may incur any reasonable and necessary expense in connection with the collection and conversion of the Residents Trust Assets into Cash or in connection with the administration of the Residents Trust and, subject to the approval of the Residents Trust Advisory Board, such expenses shall be deducted from the Residents Trust Assets.

1.7. No Reversion to Debtors. In no event shall any part of the Residents Trust Assets revert to or be distributed to any Debtor.

1.8. Incidents of Ownership. The Residents Trust Beneficiaries shall be the sole beneficiaries of the Residents Trust and the Residents Trust Assets, and the Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein, in the Plan, and in the Confirmation Order, including those powers set forth in Section 6.2 hereof.

## ARTICLE II.

### **RESIDENTS TRUST BENEFICIARIES**

2.1. Conflicting Claims. If any conflicting claims or demands are made or asserted with respect to a Class 5 or Class 6 Claim, or to a Residents Trust Interest or a distribution to a Residents Trust Beneficiary, the Trustee shall be entitled, at the direction and with the approval of the Residents Trust Advisory Board, to refuse to comply with any such conflicting claims or demands. In so refusing, the Trustee, at the direction and with the approval of the Residents Trust Advisory Board, may elect to make no payment or distribution with respect to the Residents Trust Interest subject to the claims or demands involved, or any part thereof, and the Trustee shall refer such conflicting claims or demands to the Bankruptcy Court, which shall have exclusive jurisdiction over resolution of such conflicting claims or demands. In so doing, the Trustee shall not be or become liable to any party for its refusal to comply with any of such conflicting claims or demands. The Trustee shall be entitled to refuse to act until either (i) the rights of the adverse claimants have been adjudicated by a Final Order of the Bankruptcy Court (or such other court of proper jurisdiction) or (ii) all differences have been resolved by a written agreement among all of such parties and the Trustee, which agreement shall (x) include a complete release of the Residents Trust and the Trustee, and (y) be subject to the approval of the Residents Trust Advisory Board if the proposed agreement results in a Class 5 or Class 6 Claim Allowed Claim equal to or in excess of \$100,000 (the occurrence of either (i) or (ii) of this Section 2.1 being referred to as a "Dispute Resolution"). Promptly after a Dispute Resolution is reached, the Trustee shall transfer the payments and distributions, in accordance with the terms of such Dispute Resolution, the Plan and this Agreement.

2.2. Rights of Residents Trust Beneficiaries. Each Residents Trust Beneficiary shall be entitled to participate in the rights and benefits due to a Residents Trust Beneficiary hereunder according to the terms of its Residents Trust Interest. The Residents Trust Interest of a Residents Trust Beneficiary is hereby declared and shall be, in all respects, personal property. Except as

expressly provided hereunder, a Residents Trust Beneficiary shall have no title to, right to, possession of, management of or control of the Residents Trust or the Residents Trust Assets or to any right to call for a partition or division of such assets or to require an accounting. No surviving spouse, heir, or devisee of any deceased Residents Trust Beneficiary shall have any right of dower, homestead, or inheritance, or of partition, or any other right, statutory or otherwise, in the Residents Trust Assets, but the whole title to the Residents Trust Assets shall be vested in the Trustee and the sole interest of the Residents Trust Beneficiaries shall be the rights and benefits given to such person under this Trust Agreement and the Plan.

2.3. Evidence of Residents Trust Interest. Ownership of a Residents Trust Interest in the Residents Trust will be evidenced by the allowance of a Claim against the Debtors by a Participating Former Residents and Participating Current Resident pursuant to the terms of the Plan. Any Participating Former Resident and Participating Current Resident that is a holder of an Allowed Claim under Class 5 or Class 6 of the Plan shall hold a percentage in the Residents Trust Interest (as indicated on Appendix B) equal to the proportion of the underlying Allowed Claim's value to the total value of all Allowed Claims in Class 5 and Class 6 Claims under the Plan. A Residents Trust Beneficiary shall be deemed a "holder of record" (hereinafter "Holder") of such Residents Trust Beneficiary's Residents Trust Interest(s) for purposes of all applicable United States federal and state laws, rules, and regulations.

2.4. Transfers of Residents Trust Interests.

a) General. Residents Trust Interests shall not be transferable or assignable except by will, intestate succession, or operation of law.

b) Residents Trust Settlement Interest Registry. Any transfer or assignment of a Residents Trust Interest by will, intestate succession, or operation of law shall not be effective unless and until such transfer or assignment of the respective interest is recorded in the registry maintained by the Trustee, which shall be completed as soon as practicable after transfer or assignment. Subject to Section 2.4(d), the entries in the Claim Registry shall be conclusive evidence of ownership of a Residents Trust Interest absent manifest error, and the Residents Trust and the Trustee shall treat each person whose name is recorded in the registry pursuant to the terms hereof as the owner of Residents Trust Interests for all purposes of this Trust Agreement, notwithstanding notice to the contrary. The Residents Trust shall maintain, or cause the agent of the Residents Trust to maintain, a register (which may be electronic) setting forth the names and addresses of the Trustee Beneficiaries, and the amount of their Residents Trust Interests from time to time.

c) Registration. If the Trustee, upon advice of counsel, determines that any class of Residents Trust Interests may be subject to registration pursuant to section 12 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), the Trustee shall pursue relief from such registration by obtaining either an exemptive order, a no-action letter, or an interpretive letter from the Securities and Exchange Commission or its staff or, absent its ability to achieve that objective or in lieu thereof, shall register such class pursuant to section 12 of such statute (it being understood and agreed that the Trustee with the approval of the Residents Trust Advisory Board shall be authorized, among other things, to register such class and to seek relief from one or more of the requirements then applicable subsequent to such registration and to de-register such

class). Any expenses that are associated with such application for relief and/or registration shall be deducted from the Residents Trust Assets.

d) Further Limitations on Transfer. Notwithstanding any other provision to the contrary, the Trustee may disregard any purported transfer or assignment of Residents Trust Interests by will, intestate succession, or operation of law if sufficient necessary information (as reasonably determined by the Trustee), including applicable tax-related information, is not provided by such purported transferee or assignee to the Trustee.

2.5. Limited Liability. No provision of this Trust Agreement, the Plan, or the Confirmation Order, and no mere enumeration herein of the rights or privileges of any Residents Trust Beneficiary, shall give rise to any liability of such Residents Trust Beneficiary solely in its capacity as such, whether such liability is asserted by any Debtor, by creditors, employees, or equity interest holders of any Debtor, or by any other Person. Residents Trust Beneficiaries are deemed to receive the Residents Trust Assets in accordance with the provisions of this Trust Agreement, the Plan, and the Confirmation Order in exchange for the Allowed Class 5 and Class 6 Claims of Participating Former Residents and Participating Current Residents, without further obligation or liability of any kind, but subject to the provisions of this Trust Agreement and the Plan.

### ARTICLE III.

#### **DURATION AND TERMINATION OF LIQUIDATING TRUST**

3.1. Duration. The Residents Trust shall become effective upon the Effective Date of the Plan and shall have an initial term of eighteen (18) years from the Effective Date; provided, however, that, if warranted by the facts and circumstances, the Residents Trust Advisory Board may limit or extend the term of the Residents Trust.

3.2. Dissolution of the Residents Trust. The Trustee and the Residents Trust shall be discharged or dissolved earlier, as the case maybe, on the earlier to occur of (i) all of the Residents Trust Assets having been distributed pursuant to the Plan and this Trust Agreement, (ii) the Trustee having determined, with the approval of the Residents Trust Advisory Board, that the administration of any remaining Residents Trust Assets is not likely to yield sufficient additional Residents Trust proceeds to justify further pursuit, or (iii) conclusion of the Residents Trust as provided by Section 4.1.

3.3. Continuation of Residents Trust for Winding Up. After the dissolution of the Residents Trust and solely for the purpose of liquidating and winding up the affairs of the Residents Trust, the Trustee shall continue to act as such until its duties have been fully performed. Upon distribution of all the Residents Trust Assets, the Trustee shall retain the books, records, and files that shall have been delivered to or created by the Trustee. All such records and documents may be destroyed at any time following the date that is three (3) years after the final distribution of the Residents Trust Assets. Nothing herein shall be deemed to abridge any agreement(s) to which the Trustee may be party that expressly provides for further retention of such documents and records.



ARTICLE IV.

**ADMINISTRATION OF LIQUIDATING TRUST**

4.1. Payment of Trustee Fees, Expenses, and Liabilities. Except as otherwise provided herein, the Trustee shall use proceeds from the Residents Trust Assets (i) to pay compensation to the Trustee as approved by the Residents Trust Advisory Board, (ii) to pay reasonable costs and expenses of the Residents Trust that are incurred (including any taxes imposed on the Residents Trust, the actual reasonable out-of-pocket fees and expenses incurred by Trustee professionals in connection with the administration and liquidation of the Residents Trust Assets, as provided in Section 6.7 herein, and the preservation of books and records of the Residents Trust); (iii) to satisfy other obligations or other liabilities incurred or assumed by the Residents Trust (or to which the Residents Trust Assets are otherwise subject) in accordance with the Plan, the Confirmation Order, or this Trust Agreement, including fees and costs incurred in connection with the collection protection, preservation, liquidating, and distribution of the Residents Trust Assets and the costs of investigating, prosecuting, resolving, or settling any litigation or cause of action; (iv) as reasonably necessary to meet contingent liabilities and to maintain the value of the Residents Trust Assets during collection and liquidation; and (v) to satisfy any other obligations of the Residents Trust expressly set forth in the Plan, this Trust Agreement, and the Confirmation Order.

4.2. Distributions.

a) Generally. Except as otherwise provided in the Plan or this Trust Agreement, the Trustee shall make distributions of Residents Trust Assets to the Residents Trust Beneficiaries qualifying to receive distributions from the Residents Trust in the amount of their respective Allowed Refund Claims when the Trustee, in its sole discretion, determines such distribution appropriate and required pursuant to the terms and provisions of the Plan, the Confirmation Order and this Agreement, subject to the Trustee's duty to confer on such matters with the Residents Trust Advisory Board. The Trustee shall have discretion to determine when a Refund Trigger Date has occurred in unique and unforeseen circumstances, subject to the Trustee's duty to confer on such matters with the Residents Trust Advisory Board. The Trustee may postpone any distribution if the Trustee determines that a Distribution is impracticable under the circumstances, or the amount of such distribution would be too small to justify the administrative costs associated with making it. The Trustee shall not unduly prolong the duration of the Residents Trust.

b) Trust Interests; Allocation and Payment of Distributions. Each Residents Trust Beneficiary's (i) share of the Residents Trust Interests (including any Cash and other property to be received on account of any Residents Trust Interest) shall be owned by the Residents Trust Beneficiaries, and (ii) share of the Residents Trust Assets shall be allocated and distributed to the Residents Trust Beneficiaries, in each case in accordance with the Plan, the Confirmation Order and this Trust Agreement.

c) De Minimis Distributions. No Distribution shall be required to be made pursuant to the Plan and this Trust Agreement to any Residents Trust Beneficiary unless such Residents Trust Beneficiary is to receive in such Distribution at least \$500.00, or unless such Distribution is the final distribution to such Residents Trust Beneficiary pursuant to the Plan and

this Trust Agreement. Any such distribution shall be retained by the Trustee and invested as provided in the Plan and this Trust Agreement. Any distribution not made to such Residents Trust Beneficiary, shall be held in trust for the relevant Residents Trust Beneficiary until the earlier of (x) the date the next distribution made to such Residents Trust Beneficiary; provided, however, that such subsequent Distribution, taken together with amounts retained hereby, equals at least \$500.00, or (y) is the final distribution to such Residents Trust Beneficiary.

4.3. Undeliverable Distributions. If the distribution to any Residents Trust Beneficiary is returned to the Trustee as undeliverable or is otherwise an Unclaimed Distribution, no further Distributions shall be made to such Residents Trust Beneficiary unless and until the Trustee is notified in writing of such Residents Trust Beneficiary's then-current address, at which time all missed distributions shall be made to such Residents Trust Beneficiary without interest. The Trustee and the Residents Trust shall not be under any obligation to attempt to determine a Residents Trust Beneficiary's then-current address.

4.4. Treatment of Unclaimed Distributions. Any Residents Trust Beneficiary that does not assert a claim for an unclaimed distribution or negotiate a distribution within three (3) after an attempted distribution shall be deemed to have forfeited its claim for such undeliverable or unclaimed distribution and shall be forever barred and enjoined from asserting any such claim for an unclaimed distribution against the Debtors, the Trustee, the Residents Trust, and their respective agents, attorneys, representatives, employees or independent contractors, or any of its and their property. In such cases, any Cash otherwise reserved for unclaimed distributions shall become the property of the Residents Trust free of any restrictions thereon and notwithstanding any federal or state escheat laws to the contrary and shall be distributed pursuant to the terms of this Agreement. Nothing contained in the Plan or this Residents Trust Agreement shall require the Trustee to attempt to locate any Residents Trust Beneficiary; provided, however, that the Trustee, in its sole discretion, may publish notice of unclaimed distributions.

4.5. Remaining Residents Trust Assets Upon Dissolution of the Residents Trust. The Residents Trust Beneficiaries shall receive distributions in an amount up to, but not exceeding, the amount of their respective Allowed Refund Claims, with no interest thereon. All assets, if any, remaining in the Residents Trust after distributions to Residents Trust Beneficiaries as required under the Plan, the Confirmation Order, and this Agreement may be, at the discretion of the Residents Trust Advisory Board, either (i) distributed to the then owner of the Edgemere Community to be used for the benefit of residents at Edgemere, or (ii) donated to any other charitable organization.

4.6. Setoffs of Lifecare Benefits. Pursuant to the terms of the Plan, the Trustee may set off against any the distributions to be made to a Residents Trust Beneficiary pursuant to the Plan on account thereof (before any distribution is made on account of such Residents Trust Interest by the Trustee), all amounts advanced to such Residents Trust Beneficiary as a Life Care Benefit.

4.7. Compliance with Laws. Any and all distributions of Residents Trust Assets shall be in compliance with applicable laws, including applicable federal and state tax and securities laws, except as otherwise set forth in this Trust Agreement.

4.8. Fiscal Year. Except for the first and last years of the Residents Trust, the fiscal year of the Residents Trust shall be the calendar year. For the first and last years of the Residents Trust, the fiscal year of the Residents Trust shall be such portion of the calendar year that the Residents Trust is in existence.

4.9. Books and Records. The Trustee shall retain and preserve the Debtors' books, records, and files that have been delivered to or created by the Trustee. Subject to Section 3.3 hereof, the Trustee shall maintain, in respect of the Residents Trust and the Residents Trust Beneficiaries and all other parties who are to receive distributions under this Trust Agreement, books and records relating to the assets and the income of the Residents Trust and the payment of expenses of, liabilities of, and claims against or assumed by, the Residents Trust and the Trustee, in such detail and for such period of time as may be necessary to enable it to make full and proper reports in respect thereof in accordance with the provisions of this Trust Agreement and applicable provisions of law, including to applicable tax, securities and other federal and state laws. Except as otherwise provided herein or in the Plan, nothing in this Trust Agreement requires the Trustee to file any accounting or seek approval of any court with respect to the administration of the Residents Trust, or as a condition for making any payment or distribution out of the Residents Trust Assets. The Trustee shall provide any member of the Residents Trust Advisory Board with access to such books and records during normal business hours as may be reasonably requested with five (5) days' advance notice. Residents Trust Beneficiaries shall have the right upon thirty (30) days' prior written notice delivered to the Trustee to inspect such books and records; provided, that, if so requested, all costs associated with such inspection shall be paid in advance by such requesting Residents Trust Beneficiary and such Residents Trust Beneficiary shall have entered into a confidentiality agreement reasonably satisfactory in form and substance to the Trustee.

4.10. Cash Payments. All distributions required to be made by the Trustee to the Residents Trust Beneficiaries shall be made in Cash denominated in United States dollars by checks drawn on a domestic bank selected by the Trustee or, at the option of the Trustee, by wire transfer from a domestic bank selected by the Trustee or as otherwise required or provided in applicable agreements; provided, however, that Cash payments to foreign holders of Residents Trust Interests may be made, at the option of the Trustee, in such funds as and by such means as are necessary or customary in a particular foreign jurisdiction.

4.11. Insurance. The Residents Trust may, to the extent deemed necessary or advisable by the Trustee, maintain customary insurance coverage for the protection of the Trustee and the members.

4.12. Reports.

a) The Trustee shall deliver reports to members of the Residents Trust Advisory Board not later than thirty (30) days following the end of each fiscal year. Such reports shall specify in reasonable detail (i) the status of any causes of action, claims, and litigation involving the Residents Trust or the Residents Trust Assets, including any settlements entered into by the Residents Trust, (ii) the costs and expenses of the Residents Trust that are incurred (including any actual reasonable out-of-pocket fees and expenses incurred by Trustee professionals in connection with the administration and liquidation of the Residents Trust Assets during the preceding fiscal year), (iii) the amounts listed in clause (ii) incurred since the Effective Date, (iv)

the amount of Cash and other assets received by the Residents Trust during the prior fiscal year, (v) the aggregate amount of Cash and other assets received by the Residents Trust since the Effective Date, (vi) the aggregate amount of distributions from the Residents Trust to the Residents Trust Beneficiaries since the Effective Date, and (vii) such other information as the Residents Trust Advisory Board may reasonably request from time to time. The Trustee shall also timely prepare, file, and distribute such additional statements, reports, and submission (A) as may be necessary to cause the Residents Trust and the Trustee to be in compliance with applicable law or (B) as may be otherwise reasonably requested from time to time by the Residents Trust Advisory Board.

## ARTICLE V.

### TAX MATTERS

5.1. Tax Treatment. For all United States federal income tax purposes, all parties (including, without limitation, the Debtors, the Trustee and the Residents Trust Beneficiaries) will treat the Residents Trust as a “liquidating trust” within the meaning of section 301.7701-4(d) of the Treasury Regulations.

5.2. Residents Trust Assets Treated as Owned by Residents Trust Beneficiaries. For all United States federal income tax purposes, all parties (including the Debtors, the Trustee, and the Residents Trust Beneficiaries) generally will be required to treat the transfer of the Residents Trust Assets to the Residents Trust as (1) a transfer of the Residents Trust Assets (subject to any obligations relating to those assets) directly to the Residents Trust Beneficiaries and, to the extent Residents Trust Assets are allocable to Disputed Claims, to the Disputed Claims Reserve, followed by (2) the transfer by such beneficiaries to the Residents Trust of the Residents Trust Assets (other than the Residents Trust Assets allocable to the Disputed Claims Reserve) in exchange for Residents Trust Interests. Accordingly, the Residents Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Residents Trust Assets (other than such Residents Trust Assets as are allocable to the Disputed Claims Reserve, discussed below) and the earnings thereon. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

5.3. Tax Reporting.

a) The Trustee shall file (or cause to be filed) all Tax Returns for the Residents Trust treating the Residents Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a) and in accordance with this Article V. The Trustee also will annually send to each Residents Trust Beneficiary a separate statement regarding the receipts and expenditures of the Residents Trust as relevant for United States federal income tax purposes and will instruct all such Residents Trust Beneficiaries to use such information in preparing their United States federal income tax returns or to forward the appropriate information to such Residents Trust Beneficiary’s tax return preparer, with instructions to utilize such information in preparing their United States federal income tax returns. The Trustee shall also file (or cause to be filed) any other statement, return, or disclosure relating to the Residents Trust that is required by any governmental unit.

b) Taxable income and taxable losses shall be allocated to each Residents Trust Beneficiary in proportion to the amount of their unpaid Allowed Refund Claim as of December

31<sup>st</sup> of each taxable year divided by the total unpaid Allowed Refund Claims of all Residents Trust Beneficiaries as of December 31<sup>st</sup> of each taxable year.

c) The Trustee shall be responsible for payment, out of the Residents Trust Assets, any taxes imposed on the Residents Trust or its assets.

d) The Trustee may request an expedited determination of taxes of the Residents Trust under section 505(b) of the Bankruptcy Code for all Tax Returns filed for, or on behalf of, the Residents Trust for all taxable periods through the dissolution of the Residents Trust.

5.4. Tax Withholdings by Trustee. The Trustee shall withhold and pay to the appropriate tax authority all amounts required to be withheld pursuant to the IRC or any provision of any foreign, state, or local tax law with respect to any payment or distribution to the Residents Trust Beneficiaries. All such amounts withheld and paid to the appropriate tax authority (or placed in escrow pending resolution of the need to withhold) shall be treated as amounts distributed to such Residents Trust Beneficiary for all purposes of the Trust Agreement. The Trustee shall be authorized to collect such tax information from the Residents Trust Beneficiaries (including without limitation, social security numbers or other tax identification numbers) as the Trustee deems necessary to effectuate the Plan, the Confirmation Order, and the Trust Agreement. In order to receive distributions under the Plan, all Residents Trust Beneficiaries shall be required to identify themselves to the Trustee and provide tax information and the specifics of their holdings, to the extent the Trustee deems appropriate in the manner and in accordance with the procedures from time to time established by the Trustee for these purposes. This identification requirement generally applies to all Residents Trust Beneficiaries, including those who hold their Claims in “street name.” The Trustee may refuse to make a distribution to any Residents Trust Beneficiary that fails to furnish such information in a timely fashion, and until such information is delivered may treat such Residents Trust Beneficiary’s Residents Trust Interests as disputed; provided, however, that, upon the delivery of such information by a Residents Trust Beneficiary, the Trustee shall make such distribution to which the Residents Trust Beneficiary is entitled, without additional interest occasioned by such Residents Trust Beneficiary’s delay in providing tax information; and, provided, further, that, if such information is not furnished to the Trustee within six (6) months of the original request to furnish such information, no further distributions shall be made to the Residents Trust Beneficiary; and, provided, further, that, if the Trustee fails to withhold in respect of amounts received or distributable with respect to any such Residents Trust Beneficiary and the Trustee is later held liable for the amount of such withholding, such Residents Trust Beneficiary shall reimburse the Trustee for such liability (to the extent such amounts were actually distributed to such Residents Trust Beneficiary).

## ARTICLE VI.

### **POWERS AND LIMITATIONS ON THE TRUSTEE**

6.1. Trustee. References herein to the Trustee shall refer to the individual serving as the Trustee solely in its capacity as trustee hereunder. Subject to Article VIII hereof, the Trustee shall hold office until the termination of the Residents Trust in accordance with the terms set forth herein.

6.2. Powers of the Trustee.

a) Pursuant to the terms of the Plan, the Confirmation Order, and this Trust Agreement, the Trustee shall have various powers, duties, and responsibilities concerning the collection of Residents Trust Assets, the prosecution of litigation claims to collect Residents Trust Assets, the resolution of disputed Class 5 and Class 6 claims against the Debtors' Estates, the administration of the Residents Trust and the Residents Trust Assets, and to make Distributions to the Residents Trust Beneficiaries in accordance with the Plan, the Confirmation Order, and this Trust Agreement.

b) The Trustee shall have only such rights, powers, and privileges expressly set forth in the Confirmation Order, the Plan, and this Trust Agreement and as otherwise provided by applicable law. Subject to the oversight and approvals by and of the Residents Trust Advisory Board when required herein, the Trustee shall be expressly authorized to undertake the following actions:

i. To exercise all power and authority that may be or could have been exercised, commence all proceedings that may be or could have been commenced and take all actions that may be or could have been taken by the Debtors or any trustee appointed for any Debtor to collect amounts owed by Lifespace under the Lifespace Settlement Agreement;

ii. To open and maintain bank and other deposit accounts, escrows and other accounts, calculate and make distributions of Residents Trust Assets as provided for or contemplated by the Plan, the Confirmation Order, and this Trust Agreement, and take other actions consistent with the Plan and the implementation thereof in the name of the Trustee, even in the event of the dissolution of the Debtors;

iii. To collect, sell, liquidate or otherwise dispose of all Residents Trust Assets pursuant to the Plan, subject to approval by the Residents Trust Advisory Board in the event that a particular Residents Trust Asset is valued at or in excess of \$100,000 and, to make distributions of Residents Trust Assets;

iv. Subject to the prior approval of the Residents Trust Advisory Board to borrow funds, and to also take all actions necessary to preserve and maximize the value of the Residents Trust Assets;

v. To object to any Class 5 or Class 6 Claims asserted in the Debtors bankruptcy proceedings (disputed or otherwise), and to defend, compromise and/or settle any Class 5 and Class 6 Claims prior to or following objection without the necessity of approval of the Court, subject to approval by the Residents Trust Advisory Board if any such settlement or compromise results in an Allowed Class 5 and Class 6 Claim equal to or in excess of \$100,000;

vi. To make decisions, after consultation with and approval by the Residents Trust Advisory Board, regarding the retention or engagement of professionals, employees and consultants (generally, "Residents Trust Professionals") by the Residents Trust and to pay, from the Residents Trust Assets, the charges incurred by the Residents Trust on or after the Effective Date for services of professionals upon approval of the Residents Trust Advisory Board, without application to the Court (nothing herein shall prohibit the retention of Foley & Lardner

LLP or Ankura, former professionals retained by the Official Unsecured Creditors Committee, as professionals for the Residents Trust);

vii. To determine, after consultation with the Residents Trust Advisory Board, whether a Refund Trigger Date has occurred or should be deemed to have occurred in unique and unforeseen circumstances;

viii. To cause, on behalf of the Residents Trust, to prepare and file all necessary tax returns and all other appropriate or necessary documents related to municipal, State, Federal or other tax law;

ix. To invest Cash in accordance with section 345 of the Bankruptcy Code or as otherwise permitted by a Final Order of the Court as deemed appropriate by the Trustee in accordance with the investment and deposit guidelines set forth in this Trust Agreement;

x. To enter into any agreement or execute any instrument or document required by or consistent with the Plan and perform all of the obligations of the Trustee hereunder;

xi. To abandon in any commercially reasonable manner, including abandonment or donation to a charitable organization approved by the Residents Trust Advisory Board, any Residents Trust Assets that the Trustee determines too impractical to distribute, provided, however, that Court approval, upon notice and a hearing, shall be required for any abandonment or donation of assets with a value of ten thousand dollars (\$10,000) or more;

xii. To use Residents Trust Assets to purchase or create and maintain all appropriate insurance policies, bonds or other means of assurance and protection of the Residents Trust Assets and pay all reasonable insurance premiums and other costs he or she deems necessary or advisable to insure the acts and omissions of the Trustee, and if appropriate, the Residents Trust Advisory Board;

xiii. To implement and enforce all provisions of the Plan, subject to the advice of the Residents Trust Advisory Board;

xiv. To maintain appropriate books and records (including financial books and records) to govern the collection and distribution of the Residents Trust Assets, provided, however, that any abandonment or destruction of books and records shall require Residents Trust Advisory Board approval, unless otherwise provided herein;

xv. Subject to approval of the Residents Trust Advisory Board, to dissolve the Residents Trust if the Trustee determines, in reasonable reliance on such professionals as it may retain, that the expense of administering the Residents Trust so as to make a final distribution to Trust Beneficiaries is likely to exceed the value of the remaining Residents Trust Assets; and

xvi. To do all other acts or things consistent with the provisions of the Plan that the Trustee deems reasonably necessary or desirable with respect to implementing the Plan.

c) Except as otherwise provided in this Trust Agreement, the Trustee will not be required to obtain the order or approval of the Bankruptcy Court, or any other court of competent jurisdiction in, or account to the Bankruptcy Court or any other court of competent jurisdiction for, the exercise of any right, power, or privilege conferred hereunder. Notwithstanding the foregoing, where the Trustee determines that it is necessary, appropriate, or desirable, the Trustee will have the right to submit to the Bankruptcy Court any question or questions regarding any specific action proposed to be taken by the Trustee with respect to this Trust Agreement, the Residents Trust, or the Residents Trust Assets, including the administration and distribution of Residents Trust Assets and the termination of the Residents Trust. Pursuant to the Plan, the Bankruptcy Court has retained jurisdiction for such purposes and may approve or disapprove any such proposed action upon motion by the Trustee.

6.3. Limitations on Trustee.

a) The Trustee shall, on behalf of the Residents Trust, hold the Residents Trust out as a trust in the process of collection and liquidation and not as an investment company. The Trustee shall be restricted to the liquidation of the Residents Trust Assets on behalf, and for the benefit, of the Residents Trust Beneficiaries and the distribution and application of the Residents Trust Assets for the purposes set forth in, and the conservation and protection of the Residents Trust Assets and the administration thereof in accordance with, the provisions of this Trust Agreement, the Plan, and the Confirmation Order. In no event shall the Trustee receive any property, make any distribution, satisfy or discharge any claims, expenses, charges, liabilities and obligations or otherwise take any action which would jeopardize the status of the Residents Trust as a "liquidating trust" for United States federal income tax purposes within the meaning of Treasury Regulations Section 301.7701-4(d). This limitation shall apply irrespective of whether the conduct of any such actions is deemed by the Trustee to be necessary or appropriate for the conservation and protection of the Trust Assets.

b) Notwithstanding anything in this Trust Agreement to the contrary, the Trustee shall submit to the Residents Trust Advisory Board for its approval the following matters and any other matters that expressly or reasonably require the approval of the Residents Trust Advisory Board pursuant to the other terms of this Trust Agreement:

- i. The retention or engagement of any Trustee professionals;
- ii. Any payment to the Trustee or any Trustee professionals for fees and expenses in excess of twenty thousand dollars (\$20,000.00);
- iii. Any settlement of any litigation or causes of action involving an amount in controversy equal to or in excess of \$100,000;
- iv. Any borrowing of funds;
- v. Any incurrence of any cost, expense, or fee in excess of \$100,000;

and



- vi. The dissolution of the Residents Trust.

The foregoing shall not limit the Trustee's ability to make determinations and take actions regarding compliance with tax withholding requirements (including remittances).

6.4. Establishment of Residents Trust Advisory Board.

a) The "Residents Trust Advisory Board" means the board to be appointed in accordance with, and to exercise the duties set forth in, this Trust Agreement, which duties shall be (i) to oversee the collection and distribution of the Residents Trust Assets by the Trustee in accordance with this Trust Agreement, the Plan, and the Confirmation Order, (ii) to approve (or withhold approval) of those matters submitted to it for approval in accordance with the terms of this Trust Agreement, and (iii) to remove and appoint any successor to the Trustee as provided for in this Trust Agreement.

b) The Residents Trust Advisory Board shall consist of three (3) members.

c) The authority of the members of the Residents Trust Advisory Board shall be effective as of the Effective Date and shall remain and continue in full force and effect until the Residents Trust is dissolved in accordance with Section 3.2 hereof. The service of the members of the Residents Trust Advisory Board shall be subject to the following:

i. the members of the Residents Trust Advisory Board shall serve until death or resignation pursuant to clause (ii) below, or removal pursuant to clause (iii) below;

ii. a member of the Residents Trust Advisory Board may resign at any time by providing a written notice of resignation to the remaining members of the Residents Trust Advisory Board. Such resignation shall be effective when a successor is appointed as provided herein;

iii. a member of the Residents Trust Advisory Board may be removed by unanimous vote of the other members for (a) fraud or willful misconduct in connection with the affairs of the Residents Trust or (b) cause, which shall include a breach of fiduciary duty other than as specified in the foregoing clause (a). Such removal shall be effective only upon the earlier of (a) acceptance of such removal by the member, or (b) an order of the Bankruptcy Court requiring such removal;

iv. in the event of a vacancy in a member's position (whether by removal, death, or resignation) and such member is not replaced pursuant to Section 6.4(c)(iv), the Trustee shall appoint as successor member who is willing to serve on the Residents Trust Advisory Board and that is reasonably acceptable to the remaining members; and

v. immediately upon appointment of any successor member of the Residents Trust Advisory Board, all rights, powers, duties, authority, and privileges of the predecessor member of the Residents Trust Advisory Board hereunder shall be vested in and undertaken by the successor member of the Residents Trust Advisory Board without any further act; and the successor member of the Residents Trust Advisory Board shall not be liable personally for any act or omission of the predecessor member of the Residents Trust Advisory Board.

vi. Notwithstanding anything in this Trust Agreement to the contrary, the Residents Trust Advisory Board shall not take any action which will cause the Residents Trust to fail to qualify as a “liquidating trust” and taxed as a grantor trust for United States federal income tax purposes.

vii. A quorum for meetings of the Residents Trust Advisory Board shall consist of a majority of the members of the Residents Trust Advisory Board then serving; provided, however, that, for purposes of determining whether a quorum is present at such a meeting, a member of the Residents Trust Advisory Board shall be deemed present if a representative of the member is attending in person, by telephone, or by proxy; provided, further, however, that to the extent practicable, reasonable notice of a meeting must be given to all members of the Residents Trust Advisory Board.

viii. Except as expressly provided herein, the affirmative vote of a majority of the members of the Residents Trust Advisory Board shall be the act of the Residents Trust Advisory Board with respect to any matter that requires the determination, consent, approval, or agreement of such board. Any or all of the members of the Residents Trust Advisory Board may participate in a regular or special meeting by, or conduct the meeting through the use of, conference telephone or similar communications equipment by means of which all persons participating in the meeting may hear each other, in which case any required notice of such meeting may generally describe the arrangements (rather than or in addition to the Plan) for the holding thereof. Any member of the Residents Trust Advisory Board participating in a meeting by this means is deemed to be present in person at the meeting. In all matters submitted to a vote of the Residents Trust Advisory Board, each Residents Trust Advisory Board member shall be entitled to cast one vote, which vote shall be cast personally by such Residents Trust Advisory Board member or by proxy. In a matter in which the Trustee cannot obtain direction or authority from the Residents Trust Advisory Board, the Trustee may file a motion requesting such direction or authority from the Bankruptcy Court; provided, however, that any member of the Residents Trust Advisory Board may oppose such motion.

ix. Any action required or permitted to be taken by the Residents Trust Advisory Board at a meeting may be taken without a meeting if the action is taken by unanimous written consent of the Residents Trust Advisory Board as evidenced by one or more written consents describing the action taken, signed by the Residents Trust Advisory Board and filed with the minutes or proceedings of the Residents Trust Advisory Board.

x. Any member of the Residents Trust Advisory Board shall be reimbursed by the Trustee from the Residents Trust Assets for its actual, reasonable out-of-pocket expenses incurred for serving on such board, such as travel costs etc. (but excluding the fees, costs, and expenses of professionals retained by Residents Trust Advisory Board members individually), after submission of reasonably detailed receipts or invoices evidencing such expenses. Except as provided for in this Section 6.4, the members of the Residents Trust Advisory Board shall not be entitled to receive any other form of compensation for their services provided as such members. Except as provided for in this Section 6.4, the members of the Residents Trust Advisory Board shall not be entitled to receive any other form of compensation for their services provided as such members.

6.5. Resolution of Claims.

a) Unless otherwise provided in the Plan, from and after the Effective Date, the Trustee shall have authority to object to Class 5 and Class 6 Claims (in consultation with the Residents Trust Advisory Board) and to have the Bankruptcy Court determine the amount and treatment of any Class 5 and Class 6 Claim. Subject to Section 6.3 herein, from and after the Effective Date, the Trustee may settle or compromise any Disputed Class 5 and Class 6 Claim with or without approval of the Court.

b) Subject to Section 6.3 herein, the Trustee shall have the authority to retain counsel and other professionals in conjunction with the resolution of Claims pursuant to this Section 6.5. The reasonable fees and expenses of such counsel and professionals as approved by the Residents Trust Advisory Board shall be paid and deducted from the Residents Trust Assets.

6.6. Actions Taken on Other Than a Business Day. In the event that any payment or act under the Plan or this Trust Agreement is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

6.7. Agents, Employees, and Professionals.

a) Subject to approval by the Residents Trust Advisory Board, the Residents Trust may, but shall not be required to, from time to time enter into contracts with, consult with and retain Trustee Professionals deemed by the Trustee to have qualifications necessary or desirable to assist in the proper administration of the Residents Trust, on such terms as the Trustee deems appropriate.

b) After the Effective Date, Trustee Professionals shall be required to submit reasonably detailed invoices on a monthly basis, or as may otherwise be agreed by the Trustee, to the Trustee, including in such invoices a description of the work performed, who performed such work, and, if billing on an hourly basis, the hourly rate of such person, plus an itemized statement of expenses. Subject to the approval of the Residents Trust Advisory Board, the Trustee shall pay such invoices thirty (30) days after such invoices are received. In the event of any dispute concerning the entitlement to, or the reasonableness of any compensation and/or expenses of any Trustee Professionals, either the Trustee, with the approval of the Residents Trust Advisory Board, or the affected party may ask the Bankruptcy Court to resolve the dispute.

c) All payments to Trustee Professionals shall be paid out of the Residents Trust Assets.

6.8. Investment of Residents Trust Monies. All monies and other assets received by the Trustee as Residents Trust Assets (including the proceeds thereof as a result of investment in accordance with this Section 6.8) shall, until distributed or paid over as herein provided, be held in trust for the benefit of the Residents Trust Beneficiaries, and shall not be segregated from other Residents Trust Assets, unless and to the extent required by the Plan. The Trustee shall promptly invest any such monies (including any earnings thereon or proceeds thereof) as permitted by section 345 of the Bankruptcy Code, in the manner set forth in this Section 6.8, but shall otherwise

have no liability for interest or income on any monies received by the Residents Trust hereunder and held for distribution or payment to the Residents Trust Beneficiaries, except as such interest shall actually be received. Investment of any monies held by the Residents Trust shall be administered in accordance with the general duties and obligations hereunder. Unless otherwise approved by the Residents Trust Advisory Board, the right and power of the Trustee to invest the Residents Trust Assets, the proceeds thereof, or any income earned by the Residents Trust, shall be limited to the right and power to (i) invest such Residents Trust Assets (pending distributions in accordance with the Plan or this Trust Agreement) in short-term direct obligations of any agency or corporation which is or may hereafter be created by or pursuant to an act of the Congress of the United States as an agency or instrumentality thereof; or (ii) deposit such assets in demand deposits at any bank or trust company, which has, at the time of the deposit, a capital stock and surplus aggregating at least \$1,000,000,000 (collectively, the "Permissible Investments"); provided, however, that the scope of any such Permissible Investments shall be limited to include only those investments that a liquidating trust, within the meaning of Treasury Regulations section 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings (including but not limited to Revenue Procedure 82-58, Revenue Procedure 91-15, and Revenue Procedure 94-45), other IRS pronouncements or otherwise.

6.9. Termination. The duties, responsibilities, and powers of the Trustee and the Residents Trust Advisory Board shall terminate on the date the Residents Trust is wound up and dissolved in accordance with \_\_\_\_\_ law pursuant to Section 3.2 hereof, under applicable law and in accordance with this Trust Agreement and the Plan; provided, however, that Sections 7.2, 7.3, 7.4, 7.5, and 7.6 hereof shall survive such termination, dissolution, and entry.

## ARTICLE VII.

### **CONCERNING THE RESIDENTS TRUST TRUSTEE AND**

### **RESIDENTS TRUST ADVISORY BOARD**

7.1. Reliance by the Trustee and the Members of the Residents Trust Advisory Board. Except as otherwise provided in this Trust Agreement, the Plan, or the Confirmation Order, the Trustee and the members of the Residents Trust Advisory Board may rely and shall be protected in acting upon any resolution, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document reasonably believed by the Trustee to be genuine and to have been signed or presented by the proper party or parties.

7.2. Liability to Third Persons. The Trustee, the Trustee Professionals, and the members of the Residents Trust Advisory Board shall not be subject to any personal liability whatsoever, in tort, contract, or otherwise, to any person (including, in the case of the Trustee and members of the Residents Trust Advisory Board, to any Trustee Professionals retained by the Trustee in accordance with this Trust Agreement) in connection with the Residents Trust Assets or the affairs of the Residents Trust and shall not be liable with respect to any action taken or omitted to be taken in good faith, except for actions and omissions determined by a Final Order of the Bankruptcy Court to be due to their respective gross negligence, intentional fraud, criminal conduct, or willful

misconduct (“Indemnifiable Claims”), and all such Persons shall look solely to the Residents Trust Assets for satisfaction of claims of any nature arising in connection with affairs of the Residents Trust. Other than as set forth in the Plan or in the Confirmation Order, nothing in this Section 7.2 shall be deemed to release any Residents Trust Beneficiary from any actions or omissions occurring prior to the Effective Date.h

7.3. Nonliability of Trustee and Residents Trust Advisory Board for Acts of Others. Except as provided herein, nothing contained in this Trust Agreement, the Plan, or the Confirmation Order shall be deemed to be an assumption by the Trustee, the Residents Trust Advisory Board (or its members), or the Trustee Professionals of any of the liabilities, obligations, or duties of the Debtors or shall be deemed to be or contain a covenant or agreement by the Trustee to assume or accept any such liability, obligations, or duty. Any successor Trustee, or Residents Trust Advisory Board member may accept and rely upon any accounting made by or on behalf of any predecessor Trustee hereunder, and any statement of representation made as to the assets comprising the Residents Trust Assets or as to any other fact bearing upon the prior administration of the Residents Trust, so long as it has a good faith basis to do so. The Trustee, and the Residents Trust Advisory Board members shall not be liable for having accepted and relied in good faith upon any such accounting, statement, or representation if it is later proved to be incomplete, inaccurate, or untrue. The Trustee or any successor Trustee, and Residents Trust Advisory Board members shall not be liable for any act or omission of any predecessor Trustee, or Residents Trust Advisory Board member, nor have a duty to enforce any claims against any predecessor Trustee, or Residents Trust Advisory Board member on account of any such act or omission, unless directed to do so by the Residents Trust Advisory Board. No provision of this Trust Agreement shall require the Trustee to expend or risk his or her personal funds or otherwise incur any financial liability in the performance of his or her rights or powers hereunder if the Trustee has reasonable grounds to believe that the payment of such funds or adequate indemnity against such risk or liability is not reasonably assured or provided to him or her.

7.4. Exculpation. As of the Effective Date, the Trustee, the Trustee professionals, and any member of the Residents Trust Advisory Board shall be and hereby are exculpated by all Persons, including Residents Trust Beneficiaries, and other parties-in-interest, from any and all claims, causes of action, and other assertions of liability arising out of or related to the discharge of their respective powers and duties conferred by the Plan, this Trust Agreement, or any order of the Bankruptcy Court entered pursuant to or in furtherance of the Plan, or applicable law or otherwise, except for actions or omissions to act that are determined by Final Order of the Bankruptcy Court to have arisen out of their own respective intentional fraud, criminal conduct, gross negligence, or willful misconduct. No Residents Trust Beneficiary, or other party-in-interest shall have or be permitted to pursue any claim or cause of action against the Trustee, the Residents Trust, the employees, professionals, or representatives of either the Trustee or the Residents Trust (including the Trustee Professionals) or the members of the Residents Trust Advisory Board, for making payments in accordance with, or for implementing, the provisions of the Plan, the Confirmation Order, and this Trust Agreement in good faith. Any action taken or omitted to be taken with the express approval of the Bankruptcy Court or the Residents Trust Advisory Board shall conclusively be deemed not to constitute gross negligence or willful misconduct; provided, however, that, notwithstanding any provision herein to the contrary, the Trustee shall not be obligated to comply with a direction of the Residents Trust Advisory Board, whether or not

express, which would result in a change to the distribution provisions of this Trust Agreement and the Plan.

7.5. Duties of the Members of the Residents Trust Advisory Board. The members of the Residents Trust Advisory Board shall owe a fiduciary duty to Residents Trust Beneficiaries as a whole and not to any individual Residents Trust Beneficiary. Members of the Residents Trust Advisory Board shall owe the same duties to the Residents Trust Beneficiaries as the duties owed by members of a committee established by Section 1102(a) of the Bankruptcy Code to their constituents.

7.6. Indemnity. The Trustee, the employees of the Residents Trust, the members of the Residents Trust Advisory Board, and their respective agents, employees, officers, directors, professionals, attorneys, accountants, advisors, representatives, and principals, including the Trustee Professionals (collectively, the “Indemnified Parties”) shall be indemnified by the Residents Trust solely from the Residents Trust Assets for any losses, claims, damages, liabilities, and expenses occurring after the Effective Date, including reasonable attorneys’ fees, disbursements, and related expenses which the Indemnified Parties may incur or to which the Indemnified Parties may become subject in connection with any action, suit, proceeding, or investigation brought by or threatened against one or more of the Indemnified Parties on account of the acts or omissions in their capacity as, or on behalf of, the Trustee or a member of the Residents Trust Advisory Board; provided, however, that the Residents Trust shall not be liable to indemnify any Indemnified Party for any act or omission arising out of such Indemnified Party’s respective, fraud or willful misconduct as determined by a Final Order of the Bankruptcy Court. Notwithstanding any provision herein to the contrary, the Indemnified Parties shall be entitled to obtain advances from the Residents Trust to cover their reasonable expenses of defending themselves in any action brought against them as a result of the acts or omissions, actual or alleged, of an Indemnified Party in its capacity as such, except for any actions or omissions arising from their own respective willful misconduct or fraud; provided, however, that the Indemnified Parties receiving such advances shall repay the amounts so advanced to the Residents Trust immediately upon the entry of a Final Order finding that such Indemnified Parties were not entitled to any indemnity under the provisions of this Section 7.6. The foregoing indemnity in respect of any Indemnified Party shall survive the termination of such Indemnified Party from the capacity for which they are indemnified.

7.7. Compensation and Expenses. Subject to the approval of the Residents Trust Advisory Board, the Trustee shall receive compensation for its services, to be paid out of the Residents Trust Assets. In addition, the Trustee shall be entitled, with the approval of the Residents Trust Advisory Board to reimburse itself from the Residents Trust Assets on a monthly basis for all reasonable out-of-pocket expenses actually incurred in the performance of duties in accordance with this Trust Agreement and the Plan.

## ARTICLE VIII.

### SUCCESSOR RESIDENTS TRUSTEE

8.1. Resignation. The Trustee may resign from the Residents Trust by giving at least sixty (60) days prior written notice thereof to each member of the Residents Trust Advisory Board.

Such resignation shall become effective on the later to occur of (a) the date specified in such written notice, and (b) the effective date of the appointment of a successor Trustee in accordance with Section 8.4 hereof and such successor's acceptance of such appointment in accordance with Section 8.5 hereof.

8.2. Removal. At any time upon the request of the Residents Trust Advisory Board through a motion filed in the Bankruptcy Court, the Bankruptcy Court may remove the Trustee, including any successor Trustee, for cause. For purposes of this Section 8.2, "cause" shall mean: (a) an act of fraud, embezzlement, or theft in connection with the Trustee's duties or in the course of her employment in such capacity, (b) the intentional wrongful damage to the Residents Trust Assets, (c) the intentional wrongful disclosure of confidential information of the Residents Trust resulting in material harm to the Residents Trust, or (d) gross negligence by the Trustee in connection with the performance of his or her duties under this Residents Trust Agreement. Unless the Bankruptcy Court orders immediate removal, the Trustee shall continue to serve until a successor Trustee is appointed, and such appointment becomes effective, in accordance with Section 8.2 hereof. If the Trustee is removed for cause, such Trustee shall not be entitled to any accrued but unpaid fees, expenses or other compensation under this Residents Trust Agreement or otherwise. If the Trustee is unwilling or unable to serve for any other reason whatsoever other than for "cause," subject to a final accounting, such Trustee shall be entitled to all accrued but unpaid fees, expenses, and other compensation, to the extent incurred, arising or relating to events occurring before his or her removal or resignation, and to any out-of-pocket expenses reasonably incurred in connection with the transfer of all powers and duties and all rights to any successor Trustee.

8.3. Effect of Resignation or Removal. The resignation, removal, incompetency, bankruptcy, or insolvency of the Trustee shall not operate to terminate the Residents Trust or to revoke any existing agency created pursuant to the terms of this Trust Agreement, the Plan, or the Confirmation Order or invalidate any action theretofore taken by the Trustee. All fees and expenses properly incurred by the Trustee prior to the resignation, incompetency, or removal of the Trustee shall be paid from the Residents Trust, unless such fees and expenses are disputed by (a) the Residents Trust Advisory Board or (b) the successor Trustee, in which case the Bankruptcy Court shall resolve the dispute and any disputed fees and expenses of the predecessor Trustee that are subsequently allowed by the Bankruptcy Court shall be paid from the Residents Trust Assets. In the event of the resignation or removal of the Trustee, such Trustee shall: (i) promptly execute and deliver such documents, instruments, and other writings as may be reasonably requested by the successor Trustee or directed by the Bankruptcy Court to effect the termination of such Trustee's capacity under this Trust Agreement; (ii) promptly deliver to the successor Trustee all documents, instruments, records, and other writings related to the Residents Trust as may be in the possession of such Trustee; and (iii) otherwise assist and cooperate in effecting the assumption of its obligations and functions by such successor Trustee.

8.4. Appointment of Successor. In the event of the death, resignation, removal, incompetency, bankruptcy, or insolvency of the Trustee, a vacancy shall be deemed to exist and a successor shall be appointed by a majority of the Residents Trust Advisory Board. In the event that a successor Trustee is not appointed within thirty (30) days after the date of such vacancy, the Bankruptcy Court, upon its own motion or the motion of a Residents Trust Beneficiary or any member of the Residents Trust Advisory Board, shall appoint a successor Trustee.

8.5. Acceptance of Appointment by Successor Trustee. Any successor Trustee appointed hereunder shall execute an instrument accepting its appointment and shall deliver one counterpart thereof to the Bankruptcy Court for filing and to the Residents Trust Advisory Board and, in case of the Trustee's resignation, to the resigning Trustee. Thereupon, such successor Trustee shall, without any further act, become vested with all the duties, powers, rights, title, discretion, and privileges of its predecessor in the Residents Trust with like effect as if originally named Trustee and shall be deemed appointed pursuant to Bankruptcy Code section 1123(b)(3)(B). The resigning or removed Trustee shall duly assign, transfer, and deliver to such successor Trustee all property and money held by such resigning or removed Trustee hereunder and shall, as directed by the Bankruptcy Court or reasonably requested by such successor Trustee, execute and deliver an instrument or instruments conveying and transferring to such successor Trustee upon the trusts herein expressed, all the liabilities, duties, powers, rights, title, discretion, and privileges of such resigning or removed Trustee.

## ARTICLE IX.

### MISCELLANEOUS PROVISIONS

9.1. Governing Law. This Trust Agreement shall be governed by and construed in accordance with the laws of the State of \_\_\_\_\_, without giving effect to rules governing the conflict of laws.

9.2. Jurisdiction. Subject to the proviso below, the parties agree that the Bankruptcy Court shall have exclusive jurisdiction over the Residents Trust and the Trustee, including the administration and activities of the Residents Trust and the Trustee, and, pursuant to the Plan, the Bankruptcy Court has retained such jurisdiction; provided, however, that notwithstanding the foregoing, the Trustee shall have power and authority to prosecute any Cause of Action in any court of competent jurisdiction (including the Bankruptcy Court).

9.3. Severability. In the event any provision of this Trust Agreement or the application thereof to any person or circumstances shall be determined by a final, non-appealable judgment or order to be invalid or unenforceable to any extent, the remainder of this Trust Agreement or the application of such provision to persons or circumstances or in jurisdictions other than those as to or in which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Trust Agreement shall be valid and enforceable to the full extent permitted by law.

9.4. Notices. Any notice or other communication required or permitted to be made under this Trust Agreement shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if delivered personally, by email, facsimile, sent by nationally recognized overnight delivery service or mailed by first-class mail:

- i. If to the Trustee:
- ii. If to the Debtors:



iii. If to the members of the Residents Trust Advisory Board:

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

9.6. Relationship to the Plan. The terms of this Trust Agreement are intended to supplement the terms provided by the Plan and the Confirmation Order, and therefore this Trust Agreement incorporates the provisions of the Plan and the Confirmation Order (which may amend or supplement the Plan). To the extent that there is a conflict between the provisions of this Trust Agreement, the provisions of the Plan, or the Confirmation Order, each document shall have controlling effect in the following rank order: (1) this Trust Agreement, (2) the Confirmation Order, and (3) the Plan.

9.7. Entire Trust Agreement. This Trust Agreement (including the recitals and annex hereto), the Plan, and the Confirmation Order constitute the entire agreement by and among the parties and supersede all prior and contemporaneous agreements or understandings by and among the parties with respect to the subject matter hereof.

9.8. Cooperation. The Debtors shall turn over or otherwise make available to the Trustee at no cost to the Residents Trust or the Trustee, all books and records reasonably required by the Trustee to carry out its duties hereunder, and agree to otherwise reasonably cooperate with the Trustee in carrying out its duties hereunder, subject to the confidentiality provisions herein to preserve the confidential nature of the Debtors' books and records.

9.9. Amendment and Waiver. Any provision of this Trust Agreement may be amended or waived by the Trustee with the consent of all members of the Residents Trust Advisory Board provided, however, that no change may be made to this Residents Trust Agreement that would adversely affect the distributions to be made under this Residents Trust Agreement to any of the Residents Trust Beneficiaries, or adversely affect the United States federal income tax status of the Residents Trust as a "liquidating trust." Notwithstanding this Section 9.9, any amendment to this Trust Agreement shall not be inconsistent with the purpose and intention of the Residents Trust to liquidate in an expeditious but orderly manner the Residents Trust Assets in accordance with Treasury Regulations section 301.7701-4(d) and Section 1.2 hereof.

9.10. Confidentiality. The Trustee and its employees, members, agents, professionals, and advisors, including the Trustee Professionals, and each member of the Residents Trust Advisory Board (each a "Confidential Party" and, collectively, the "Confidential Parties") shall hold strictly confidential and not use for personal gain any material, non-public information of which they have become aware in their capacity as a Confidential Party, of or pertaining to any Debtor to which any of the Residents Trust Assets relates; provided, however, that such information may be disclosed if (a) it is now or in the future becomes generally available to the public other than as a result of a disclosure by the Confidential Parties; or (b) such disclosure is required of the Confidential Parties pursuant to legal process including subpoena or other court order or other applicable laws or regulations. In the event that any Confidential Party is requested to divulge confidential information pursuant to this clause (b), such Confidential Party shall

promptly, in advance of making such disclosure, provide reasonable notice of such required disclosure to the Trustee (or the Residents Trust Advisory Board in the case the Trustee is the disclosing party) to allow sufficient time to object to or prevent such disclosure through judicial or other means and shall cooperate reasonably with the Trustee (or the Residents Trust Advisory Board, as applicable) in making any such objection, including appearing in any judicial or administrative proceeding in support of any objection to such disclosure.

9.11. Meanings of Other Terms. Except where the context otherwise requires, words importing the masculine gender include the feminine and the neuter, if appropriate, words importing the singular number shall include the plural number and vice versa and words importing persons shall include firms, associations, corporations, and other entities. All references herein to Articles, Sections, and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code, the Bankruptcy Rules, or other law, statute, or regulation, refer to the corresponding Articles, Sections, and other subdivisions of this Trust Agreement, and the words herein and words of similar import refer to this Trust Agreement as a whole and not to any particular Article, Section, or subdivision of this Trust Agreement. The term “including” shall mean “including, without limitation.”

9.12. Counterparts. This Trust Agreement may be executed in any number of counterparts, each of which shall be deemed in original, but such counterparts shall together constitute but one and the same instrument. A facsimile or portable document file (PDF) signature of any party shall be considered to have the same binding legal effect as an original signature.

9.13. Intention of Parties to Establish a Liquidation Trust. This Trust Agreement is intended to create a “liquidating trust” for United States federal income tax purposes within the meaning of Treasury Regulations section 301.7701-4(d), and, to the extent provided by law, shall be governed and construed in all respects as such a trust and any ambiguity herein shall be construed consistent herewith and, if necessary, this Trust Agreement may be amended to comply with such United States federal income tax laws, which amendments may apply retroactively. This Trust Agreement is not intended to create and shall not be interpreted as creating a corporation, association, partnership or joint venture of any kind for United States federal income tax purposes or for any other purposes.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Trust Agreement or caused this Trust Agreement to be duly executed by their respective officers, representatives, or agents, effective as of the date first written above.

NORTHWEST SENIOR HOUSING CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SENIOR QUALITY LIFESTYLES CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

RESIDENTS TRUST  
TRUSTEE

\_\_\_\_\_  
Name: \_\_\_\_\_

INITIAL RESIDENTS  
TRUST ADVISORY BOARD

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

**EXHIBIT C**

**Executory Contracts and Unexpired Leases**

Contract Counterparty	Description of Executory Contract/Lease	Cure Amount
Access Systems	Office Equipment Lease	\$10,560.04
Advanced Answers On Demand, Inc.	Marketing, Sales Software License Agreement	\$0
AT&T	Telecom/Internet	\$483.72
Atmos Energy	Natural Gas	\$0
Augustine Management Texas, Inc.	Management Services Agreement	\$0
Augustine Management Texas, Inc.	Operating Agreements	\$0
Blue Cross and Blue Shield of Texas (BCBSTX)	Provider Agreements	\$0
Centers for Medicare & Medicaid Services	Provider agreements	\$0
City of Dallas	Water/Sewer	\$0
Community Waste Disposal LP	Waste	\$0
Dallas MD Associates, LLC/Dr. Kahn	Medical Director Agreement	\$0
Direct Energy	Electric	\$54,261.29
Fusion LLC	Telecom/Internet	\$0
Intercity Investment Properties, Inc.	Ground Lease	TBD
Kim Fellman, MD	Medical Director Agreement	\$5,133.33
LeadingCare Network Texas, LLC (Aetna)	Provider agreements	\$0
Management and Network Services, LLC	Provider agreements	\$0
MatrixCare, Inc.	Software License & Service Agreement	\$0
Novitas Solutions, LLC	Medicare Administrative Contractor	\$0
Spectrum (f/k/a Time Warner Cable)	Telecom/Internet	\$0
ThyssenKrupp Elevator	Elevator Maintenance Agreement	\$1,267.25
UnitedHealthcare Insurance Company	Provider agreements	\$0
US Dept Health & Human Services Centers for Medicare & Medicaid Services	Medicare Provider Agreement	\$0
Verizon	Telecom/Internet	\$0

**EXHIBIT D**

**Form Rental Agreement for Current Residents**

*[To be filed.]*