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

In re:

Northwest Senior Housing Corporation, *et al.*,¹

Debtors.

Chapter 11

Case No. 22-30659 (MVL)

(Jointly Administered)

Re: Docket No. 1039

NOTICE OF FILING OF SUPPLEMENTAL INFORMATION TO PLAN SUPPLEMENT

PLEASE TAKE NOTICE OF THE FOLLOWING:

¹ The Debtors in these 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.



1. Pursuant to section 4.2 of the *Fourth Amended Chapter 11 Plan of the Plan Sponsors Dated February 17, 2023* [Docket No. 1241] (the “**Plan**”), if the Plan is confirmed and becomes effective, a Litigation Trust² will be formed for the benefit of the Holders of Allowed General Unsecured Claims.

2. On January 13, 2023, the Plan Sponsors filed the *Notice of Filing of Plan Supplement* [Docket No. 1039] (the “**Plan Supplement**”) which attached as Exhibit A a draft of the Litigation Trust Agreement. Thereafter, the Court approved the form of Litigation Trust Agreement attached as Exhibit A to the Plan Supplement in the Court’s *Findings of Facts, Conclusions of Law, and Order Confirming Chapter 11 Plan of Sponsors* [Docket No. 1393] (the “**Confirmation Order**”). Attached hereto as **Exhibit A-1** is a clean copy of the revised Litigation Trust Agreement (the “**Revised LTA**”)³ and attached hereto as **Exhibit A-2** is a redline copy of the revised Litigation Trust Agreement, reflecting minor revisions made to the form approved by the Confirmation Order.

3. As set forth in the Revised LTA, the identity of the Litigation Trustee is the Honorable Leif M. Clark of Leif M Clark Consulting PLLC. The Litigation Trust will be administered by the Litigation Trustee and a three (3) member Litigation Trust Oversight Committee who will oversee, direct, and approve the actions of the Litigation Trust. The Trustee and Lifespace shall designate the Litigation Trustee, and 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.

[Signature page follows.]

² Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Plan and/or Confirmation Order, as applicable.

³ Capitalized terms not defined herein shall have the meanings ascribed to them in the Revised Litigation Trust Agreement.

Dated: May 22, 2023

Dallas, Texas

POLSINELLI PC

/s/ Trinitee G. Green

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Counsel to UMB Bank, N.A. as Trustee and DIP Lender

Exhibit A-1

LITIGATION TRUST AGREEMENT

This Litigation Trust Agreement,¹ dated as of May 22, 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) Leif M. Clark of Leif M Clark Consulting PLLC, 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”) 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. 1039];

WHEREAS, on February 17, 2023, the Plan Sponsors filed the *Fourth Amended Plan of Reorganization of the Plan Sponsors dated February 17, 2023* [Docket No. 1241] (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”);

¹ 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 April 7, 2023, the Bankruptcy Court entered its order confirming the Plan (the “Confirmation Order”) [Docket No. 1393];

WHEREAS, the Effective Date of the Plan occurred on May [•], 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 Fund² (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

² 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. Leif M. Clark of Leif M Clark Consulting PLLC 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")³ shall be paid by, and

³ 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

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:

Leif M Clark Consulting PLLC
P O Box 2676
San Antonio, Texas 78299
Attn: Leif M. Clark
Office: (210) 663-5183
E-mail: lmclark@leifmclark.com

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
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

(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

-and-

Trinitee G. Green
2950 N. Harwood, Suite 2100
Dallas, Texas 75201
Telephone: (214) 397-0030
Facsimile: (214) 397-0033
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: [•]

LITIGATION TRUST OVERSIGHT COMMITTEE MEMBER

By: _____

Name: [•]

Title: [•]

LITIGATION TRUST OVERSIGHT COMMITTEE MEMBER

By: _____

Name: [•]

Title: [•]

LITIGATION TRUST OVERSIGHT COMMITTEE MEMBER

By: _____

Name: [•]

Title: [•]

LITIGATION TRUSTEE

By: Leif M. Clark, solely in his capacity as
Litigation Trustee of Edgemere Litigation
Trust

EXHIBIT A

Funding of Litigation Trust Fund

<u>Funding Party</u>	Funding Obligation in connection with <u>Litigation Trust Fund</u>
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

Name	Representative
[•]	Trustee Member Representative
[•]	Lifespace Member Representative
[•]	Joint Member Representative

EXHIBIT C

Compensation of Litigation Trustee

TBD

Exhibit A-2

LITIGATION TRUST AGREEMENT

This Litigation Trust Agreement,¹ dated as of ~~January~~ May 22, 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) ~~Leif M. Clark of Leif M Clark Consulting PLLC~~, 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”) 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. 1039];

WHEREAS, on February 17, 2023, the Plan Sponsors filed the ~~Third~~Fourth Amended Plan of Reorganization of the Plan Sponsors dated ~~December 19~~February 17, 20222023 [Docket No. 9331241] (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

¹ 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.

Draft Subject to Further Revision

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. •];~~

~~WHEREAS, on February [•] April 7, 2023, the Bankruptcy Court entered its order confirming the Plan (the “Confirmation Order”) [Docket No. •1393];~~

WHEREAS, the Effective Date of the Plan occurred on ~~April~~ May [•], 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 Fund² (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;

² 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.

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

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. [Leif M. Clark of Leif M Clark Consulting PLLC](#) 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")³ shall be paid by, and 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.

³ 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 Trustee is required to first consult with the Litigation Trust Oversight Committee for approval in advance of incurring such expense.

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 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

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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]~~

Leif M Clark Consulting PLLC
P O Box 2676
San Antonio, Texas 78299
Attn: ~~[•]~~ Leif M. Clark
Office: ~~[•]~~ (210) 663-5183
E-mail: ~~[•]~~ lmclark@leifmclark.com

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: [•]

~~Draft Subject to Further Revision~~

[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
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

(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

-and-

Trinitee G. Green
2950 N. Harwood, Suite 2100
Dallas, Texas 75201
Telephone: (214) 397-0030
Facsimile: (214) 397-0033
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.

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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: [•]

~~*Draft Subject to Further Revision*~~

~~[TRUSTEE MEMBER REPRESENTATIVE]~~
LITIGATION TRUST OVERSIGHT COMMITTEE MEMBER

By: _____
Name: [•]
Title: [•]

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~~LIFESPACE MEMBER REPRESENTATIVE~~
LITIGATION TRUST OVERSIGHT COMMITTEE MEMBER

By: _____
Name: [•]
Title: [•]

~~*Draft Subject to Further Revision*~~

~~JOINT~~LITIGATION TRUST OVERSIGHT COMMITTEE MEMBER
~~REPRESENTATIVE]~~

By: _____
Name: [•]
Title: [•]

~~*Draft Subject to Further Revision*~~

LITIGATION TRUSTEE

By: [•]Leif M. Clark, solely in ~~their~~his
capacity as Litigation Trustee of Edgemere
Litigation Trust

~~*Draft Subject to Further Revision*~~

EXHIBIT A

Funding of Litigation Trust Fund

<u>Funding Party</u>	<u>Funding Obligation in connection with Litigation Trust Fund</u>
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

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EXHIBIT B

Initial Members of the Litigation Trust Oversight Committee

Name	Representative
[•]	Trustee Member Representative
[•]	Lifespace Member Representative
[•]	Joint Member Representative

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EXHIBIT C

Compensation of Litigation Trustee

~~{+}~~

TBD

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