

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

GRITSTONE BIO, INC.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 24-12305 (KBO)

**Related Docket Nos. 423, 424, 492**

**NOTICE OF FILING FIRST AMENDED PLAN SUPPLEMENT  
FOR GRITSTONE BIO, INC.'S FIRST MODIFIED  
CHAPTER 11 PLAN OF REORGANIZATION**

**PLEASE TAKE NOTICE** that on February 11, 2025, the Debtor filed *Gritstone bio, Inc.'s First Modified Chapter 11 Plan of Reorganization* [Docket No. 423] (the "Plan") and the *First Amended Disclosure Statement with Respect to Gritstone bio, Inc.'s First Modified Chapter 11 Plan of Reorganization* [Docket No. 424] (the "Disclosure Statement") in the United States Bankruptcy Court for the District of Delaware (the "Court").<sup>2</sup> The Court entered an Order [Docket No. 442] (the "Disclosure Statement Order"), approving the Disclosure Statement as containing adequate information within the meaning of section 1125 of Bankruptcy Code.

**PLEASE TAKE FURTHER NOTICE** that, as contemplated by the Plan and the Disclosure Statement Order, on March 5, 2025, the Debtor filed the *Notice of Filing Plan Supplement for Gritstone bio, Inc.'s First Modified Chapter 11 Plan of Reorganization* [Docket No. 492] (the "Plan Supplement").

**PLEASE TAKE FURTHER NOTICE** that the Debtor hereby amends the Plan Supplement by filing drafts of the following documents (which are subject to continued negotiation between interested parties and the Debtor), as may be amended, supplemented, or modified from time to time through the Effective Date.<sup>3</sup>

Exhibit	Description
A.	Liquidating Trust Agreement
B.	Financial Projections
C.	Schedule of Assumed Contracts
D.	Identity of Liquidating Trustee
E.	Officers and Directors of Reorganized Debtor

<sup>1</sup> The Debtor's mailing address is 4698 Willow Road, Pleasanton, CA 94588, and the last four digits of the Debtor's federal tax identification number is 9534.

<sup>2</sup> Any capitalized terms not defined herein shall have the meanings ascribed to them in the Plan and/or Disclosure Statement.

<sup>3</sup> Exhibit C is accompanied by a redlined version showing changes from version filed with the original Plan Supplement.



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**PLEASE TAKE FURTHER NOTICE** that the documents, or portions thereof, contained in the Plan Supplement are not final and remain subject to ongoing review by the Debtor and interested parties. The Debtor reserves the right, subject to the terms and conditions set forth in the Plan, to alter, amend, modify, or supplement the Plan Supplement, and any of the documents and designations contained therein, at any time before the Effective Date of the Plan, or any such other date as may be provided for by the Plan or by order of the Court. If any document in this Plan Supplement is altered, amended, modified, or supplemented in any material respect prior to the date of the Confirmation Hearing, the Debtor will file a redline of such document with the Court.

**PLEASE TAKE FURTHER NOTICE** that the Plan, the Disclosure Statement, the Plan Supplement, as well as further information regarding this Chapter 11 Case are available for inspection on the Court's website at <https://www.deb.uscourts.gov/>, or free of charge on the Debtor's restructuring website at <https://www.veritaglobal.net/gritstone>.

Dated: March 21, 2025

PACHULSKI STANG ZIEHL & JONES LLP

*/s/ James E. O'Neill*

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**EXHIBIT A**

**(LIQUIDATING TRUST AGREEMENT)**

*(Form of Agreement – Subject to Amendment and Conforming Modifications)*

## **LIQUIDATING TRUST AGREEMENT**

THIS LIQUIDATING TRUST AGREEMENT (the “Agreement”) is entered into on this [\*]th day of \_\_\_\_\_ 2025, by and among Gritstone bio Inc. (“Gritstone” or the “Debtor”) and the Official Committee of Unsecured Creditors (the “Committee”) appointed in the Debtor’s chapter 11 case (the “Chapter 11 Case”), which is currently pending under Case No. 24-12305 in the Bankruptcy Court (as defined below); and the individual identified in **Exhibit C** hereto, solely in their capacity as Liquidating Trustee under the Plan (as defined below) (the “Liquidating Trustee,” and collectively with the Debtor and the Committee, the “Parties”).

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

WHEREAS, on October 10, 2024 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), thereby commencing the Chapter 11 Case;

WHEREAS, on October 29, 2024, the United States Trustee for Region 3 appointed the Committee pursuant to that certain Notice of Appointment of Committee of Unsecured Creditors [Docket No. 77] filed in the Chapter 11 Case;

WHEREAS, on January 16, 2025, the Debtor filed its Chapter 11 Plan of Reorganization [Docket No. 354] (as may be amended, supplemented, or modified from time to time, the “Plan”) with the Bankruptcy Court;

WHEREAS, on \_\_\_\_\_, 2025, the Bankruptcy Court entered an order confirming the Plan [Docket No. \*] (as may be amended or modified, the “Confirmation Order”). Copies of the Plan and Confirmation Order are attached hereto as **Exhibits A** and **B**, respectively, and are incorporated herein by reference;

WHEREAS, the Plan provides for, among other things, the establishment of a liquidating trust (the “Liquidating Trust”) for the benefit of its Beneficiaries (defined below) and the appointment of the Liquidating Trustee, as the fiduciary responsible for administering the Liquidating Trust;

WHEREAS, effective upon their execution of the joinder attached hereto as **Exhibit C** (the “Trustee Acceptance and Joinder”), the Liquidating Trustee has agreed to act as trustee under this Agreement for the purposes provided for herein and in the Plan;

WHEREAS, the Liquidating Trust is established for the sole purpose of administering Liquidating Trust Assets (defined below) and implementing the Liquidating Trust Functions (defined below), in accordance with Treasury Regulations Section 301.7701-4(d), with no objective or authority to continue or engage in the conduct of a trade or business; and

WHEREAS, the Liquidating Trust is intended to qualify as a liquidating trust within the meaning of Treasury Regulations Section 301.7701-4(d) that is a “grantor trust” for U.S. federal income tax purposes, subject to the Liquidating Trustee’s discretion to elect to treat the

Liquidating Trust or any Liquidating Trust Asset (in whole or in part) as a Disputed Ownership Fund (defined below) for U.S. federal income tax purposes in accordance with Section 3.7 herein.

NOW, THEREFORE, for and in consideration of the promises and mutual covenants herein contained, pursuant to the Plan, the Parties do hereby covenant and agree as follows:

## ARTICLE I

### **Definitions; Interpretive Rules.**

1.1 Terms Defined in Plan. Any capitalized term used and not defined herein shall have the meaning assigned to it in the Plan.

1.2 Interpretive Rules. For purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires: (a) references to “Articles”, “Sections”, and other subdivisions, without reference to a particular document, are to be designated Articles, Sections, and other subdivisions of this Agreement; (b) the use of the term “including” means “including but not limited to”; and (c) the words “herein”, “hereof”, “hereunder”, and other words of similar import refer to this Agreement as a whole and not to any particular provision (unless otherwise specified). The enumeration and headings contained in this Agreement are for convenience of reference only and are not intended to have any substantive significance in interpreting this Agreement. The singular shall include the plural and the plural the singular, when the context so requires, and the feminine, the masculine, and the neuter genders shall be mutually inclusive.

## ARTICLE II

### **Establishment of the Liquidating Trust, Appointment of the Liquidating Trustee**

2.1 Establishment of the Liquidating Trust. Pursuant to the Plan, the Parties hereby establish the Liquidating Trust. On the Effective Date, the Liquidating Trust will become effective, in order to carry out the Liquidating Trust Functions. The Liquidating Trust is organized and established as a trust for the benefit of the Beneficiaries and is intended to qualify as a liquidating trust within the meaning of Treasury Regulation Sections 301.7701-4(d), subject to the Liquidating Trustee’s discretion to elect to treat the Liquidating Trust or any of the Liquidating Trust Assets (in whole or in part) as a Disputed Ownership Fund for U.S. federal income tax purposes in accordance with Section 3.7 herein. The Liquidating Trust will not be deemed a successor-in-interest of the Estate for any purpose other than as specifically set forth in the Plan and this Agreement; *provided, however*, that the Liquidating Trust shall be deemed to be substituted as the party-in-lieu of the Debtor or the Reorganized Debtor, as applicable, with respect to the Liquidating Trust Assets, including, but not limited to: (i) motions, contested matters, and adversary proceedings pending in the Bankruptcy Court; and (ii) all matters pending in any courts, tribunals, forums, or administrative proceedings outside of the Bankruptcy Court, in each case without the need or requirement for the Liquidating Trustee on behalf of the Liquidating Trust to file motions or substitutions of parties or counsel in each such matter; *provided*, in each of (i) – (ii), such matters involve Liquidating Trust Assets. This Agreement

and the Liquidating Trust created under the Plan are hereby declared to be irrevocable and the Debtor and/or the Reorganized Debtor shall not have any right at any time to withdraw any of the property held hereunder or to revoke, annul, or cancel the Liquidating Trust created under the Plan in whole or in part, or to alter, amend, or modify this Agreement in any respect.

2.2 Appointment of Liquidating Trustee. The Liquidating Trustee shall be selected by the Committee prior to the Effective Date in its sole discretion, but in consultation with the Debtor and Hercules Capital Inc. (“Hercules”), and such person shall thereafter execute the Trustee Acceptance and Joinder. Upon their execution of the Trustee Joinder, the individual identified in the Trustee Joinder shall be and hereby is appointed to serve as the Liquidating Trustee of the Liquidating Trust effective as of the Effective Date. On the Effective Date and automatically and without further action, the Liquidating Trustee will have full power and authority as the Liquidating Trustee of the Liquidating Trust in accordance with the Plan and this Agreement to take any and all actions as they believe may be necessary, desirable or appropriate with respect to the Liquidating Trust and the Liquidating Trust Assets, subject to the terms of the Plan and this Agreement.

2.3 Vesting of Liquidating Trust Assets. On the Effective Date, pursuant to the Plan and sections 1123, 1141 and 1146(a) of the Bankruptcy Code, the Debtor, the Reorganized Debtor, the Estate, or such other party as provided in the Plan, will transfer, grant, assign, convey, set over, and deliver to the Liquidating Trustee, for the benefit of the Liquidating Trust, all of the Debtor’s and Estate’s right, title and interest in and to the Liquidating Trust Assets, which comprise: (i) the Vested Causes of Action, and all proceeds thereof (including, for the avoidance of doubt, the proceeds of D&O Insurance Policies), (ii) the Trust Funding Amount, and (iii) the Trust Initial Distribution. Upon the Effective Date, the Liquidating Trust will be vested with all right, title, and interest in the Liquidating Trust Assets, and such property will become the property of the Liquidating Trust free and clear of all Claims, liens, charges, other encumbrances, and interests, except as set forth in the Plan. Nothing contained herein, in the Plan, or in the Debtor’s governance documents (including any bylaws or articles of incorporation) shall prevent the Debtor, Reorganized Debtor, or the Estate from assigning any assets, including rights, claims, and causes of action, to the Liquidating Trust.

2.4 Trust Name. The trust created hereby shall be known as the “Gritstone bio Liquidating Trust,” in which name the Liquidating Trustee may, among other things, carry out the Liquidating Trust Functions, conduct the business of the Liquidating Trust, retain the Trust Professionals (defined below), pay fees and costs incurred by the Trust Professionals, make and execute contracts on behalf of the Liquidating Trust, sue and be sued on behalf of the Liquidating Trust, wind up the affairs of the Liquidating Trust, and take such other actions as the Liquidating Trust or Liquidating Trustee is authorized to take under the Plan and this Agreement.

### ARTICLE III

#### **Liquidating Trust, Purpose, Administration**

3.1 Purpose of the Liquidating Trust. The Liquidating Trust shall be established for the purpose of liquidating the Liquidating Trust Assets in accordance with the terms set forth herein, which includes prosecuting any Vested Causes of Action to maximize

recoveries for the benefit of the Liquidating Trust's Beneficiaries, and making Distributions in accordance with the Plan to the Beneficiaries, with no objective to continue or engage in the conduct of a trade or business in accordance with Treas. Reg. § 301.7701-4(d). The Liquidating Trust is intended to qualify as a "grantor trust" for federal income tax purposes consistent with Internal Revenue Service Revenue Procedure 94-45, 1994-2 C.B. 684, and, to the extent permitted by applicable law, for state and local income tax purposes, with the Liquidating Trust's Beneficiaries treated as grantors and owners of the trust, subject to the Liquidating Trustee's discretion to elect to treat the Liquidating Trust or any Liquidating Trust Asset (in whole or in part) as a Disputed Ownership Fund for U.S. federal income tax purposes in accordance with Section 3.7 herein..

3.2 Governance of the Liquidating Trust. The Liquidating Trust will be administered by the Liquidating Trustee, who shall, in an expeditious but orderly manner and in accordance with the terms set forth herein, carry out the Liquidating Trust Functions, liquidate and convert to Cash the Liquidating Trust Assets, make timely distributions in accordance with the provisions of the Plan and not unduly prolong the duration of the Liquidating Trust or the Chapter 11 Case.

3.3 Purpose of this Agreement and Liquidating Trust Functions. The parties hereby enter into this Agreement for the purposes of establishing the Liquidating Trust contemplated by the Plan and authorizing the Liquidating Trustee to, among other things, implement and carry out the following: (a) open bank accounts in the name of the Liquidating Trust, establish reserves and, notwithstanding anything under Section 345 of the Bankruptcy Code, have the sole discretion to decide (but not the obligation) to invest some or all of the cash held by the Liquidating Trust; (b) retain and pay professionals (which, for the avoidance of doubt, may include professionals previously retained by the Committee or who are members of the Liquidating Trustee's own firm) as necessary to carry out the purposes of the Liquidating Trust in accordance with the terms hereof; (c) request and obtain access to the books and records of the Debtor and/or Reorganized Debtor not otherwise provided as of the Effective Date, (d) object to, reconcile, seek to subordinate, compromise or settle any or all Class 5 and Class 6 Claims and administer distributions to Holders of Claims, including filed Claims and scheduled Claims (regardless of whether they were scheduled as undisputed, noncontingent, or liquidated); (e) evaluate, file, litigate, settle (in accordance with the terms hereof), or otherwise pursue any Vested Causes of Action; (f) make Distributions as provided under the Plan and this Agreement; (g) seek to collect, or enforce the Liquidating Trust's rights and remedies under, the Liquidating Trust Assets; (h) manage, distribute or liquidate the Liquidating Trust Assets; (i) wind-up the affairs of the Liquidating Trust and dissolve it under applicable law, including forwarding any relevant materials in connection with employee benefits to the proper parties; (j) elect to treat any portion of the Liquidating Trust and/or Liquidating Trust Assets (in either case, in whole or in part) as a Disputed Ownership Fund (as defined in Section 3.7 herein) for U.S. federal income tax purposes; (k) use Liquidating Trust Assets, in the Liquidating Trustee's reasonable business judgment, to purchase and maintain customary insurance coverage (including, without limitation, purchasing any errors and omissions insurance), if available, for the protection of the Persons or Entities serving as Liquidating Trustee on and after the Effective Date; and (l) such other responsibilities as may be necessary and proper to carry out the provisions of this Agreement and the Plan, but only to the extent consistent with this Agreement and the Plan (collectively, the "Liquidating Trust Functions"). All Liquidating Trust Functions and related activities of the

Liquidating Trustee shall be reasonably necessary to, and consistent with, the accomplishment of these purposes; all of such purposes benefit the Liquidating Trust. Except as set forth herein, nothing contained herein shall be deemed to limit the authority of the Liquidating Trustee.

3.4 Administration of the Liquidating Trust Assets. From and after the Effective Date, the Liquidating Trustee shall take all steps necessary to liquidate all Liquidating Trust Assets and distribute the proceeds in accordance with the Plan, Confirmation Order, and this Agreement, including prosecuting, litigating, settling or otherwise liquidating and reducing the Liquidating Trust Assets to money, or abandoning the Liquidating Trust Assets on such terms and for such consideration as the Liquidating Trustee deems to be reasonable and in the best interests of the Beneficiaries.

3.5 Authority of the Liquidating Trustee. The Liquidating Trustee will serve as a fiduciary to the Beneficiaries of the Liquidating Trust and will be empowered to implement the Liquidating Trust Functions.

3.6 Expenses of the Liquidating Trust. The Liquidating Trust Assets will be used to pay all liabilities, and reasonable and documented out-of-pocket costs and expenses of the Liquidating Trust, including compensation then due and payable to the Liquidating Trustee, their agents, representatives, the Trust Professionals (defined herein) and employees and all costs, expenses, and liabilities incurred by the Liquidating Trustee in connection with the performance of their duties; provided however, that the Trust Initial Distribution shall be used only to make distributions directly to Beneficiaries and holders of claims in Class 6. The reasonable documented out-of-pocket fees and expenses of the Liquidating Trustee and their counsel, Trust Professionals, and agents will be paid out of the Liquidating Trust Assets, without need of Bankruptcy Court approval, subject to the terms set forth in Section 4.18 herein.

3.7 Tax Treatment of Liquidating Trust. For United States federal and applicable state income tax purposes, the transfer of the Liquidating Trust Assets to the Liquidating Trust pursuant to and in accordance with the Plan shall be treated as a taxable disposition of such assets directly to and for the benefit of the Beneficiaries. Pursuant to Section 11.7, valuations of any such Liquidating Trust Assets, and any other Liquidating Trust Assets actually or deemed transferred by the Liquidating Trust, shall be consistently applied among the Liquidating Trust, Debtor, the Reorganized Debtor and Beneficiaries for all federal income tax purposes. The Liquidating Trust is intended to qualify as a liquidating trust that is treated as a “grantor trust” for federal income tax purposes, and the Liquidating Trustee shall use their best efforts to operate and maintain the Liquidating Trust in compliance with all applicable guidelines regarding liquidating trusts issued by the Internal Revenue Service (including Revenue Procedure 94-45, 1994-2 C.B. 684); *provided, however,* that the Liquidating Trustee may (a) timely elect to treat any portion or all of the Liquidating Trust and/or any Liquidating Trust Assets (in either case, in whole or in part) as a “disputed ownership fund” within the meaning of Treasury Regulations Section 1.468B-9(c)(2)(ii) for federal income tax purposes (the “Disputed Ownership Fund”); or (b) timely elect to report as a separate trust or sub-trust or other entity (based, in part, on the advice of Trust Professionals). If an election is made to report the Liquidating Trust and/or any Liquidating Trust Assets (in either case, in whole or in part) as a Disputed Ownership Fund, the Liquidating Trust shall comply with all federal and state reporting and tax compliance requirements of the Disputed Ownership Fund, including but not limited to



the filing (under a specially established tax identification number distinct from that established for the Liquidating Trust) of a separate federal tax return for the Disputed Ownership Fund and the payment of any federal and/or state income taxes that may come due. Accordingly, other than the portion of the Liquidating Trust Assets comprising the Disputed Ownership Fund, each Beneficiary shall be treated for U.S. federal income tax purposes, (i) as a direct recipient of an allocable portion of the undivided interest in each of the assets transferred to the Liquidating Trust and then as having immediately contributed such assets to the Liquidating Trust, and (ii) thereafter, as a grantor and deemed owner of the Liquidating Trust and thus, the direct owner of an allocable portion of the undivided interests in each of the assets held by the Liquidating Trust. The Beneficiaries will be treated as the grantors and owners of the Liquidating Trust. All parties (including the Liquidating Trustee, the Debtor, the Reorganized Debtor and the Beneficiaries) shall report for United States federal, state and local income tax purposes consistently with foregoing. The Liquidating Trustee may request an expedited determination of taxes of the Disputed Ownership Fund or of the Liquidating Trust under Bankruptcy Code section 505(b) for all tax returns filed for, or on behalf of, the Disputed Ownership Fund and/or the Liquidating Trust for all taxable periods through the dissolution of the Liquidating Trust. The Liquidating Trustee may elect for the Liquidating Trust to be treated as a partnership or a corporation, other entity, or Disputed Ownership Fund, for tax purposes only, if the Liquidating Trustee determines in their reasonable discretion that such election is permitted under applicable law and would be in the best interests of the Beneficiaries of the Liquidating Trust.

3.8 Incorporation of Plan. The Plan and the provisions summarized in the Disclosure Statement with respect to the amount and timing of distributions to the (i) Prepetition Agent in Class 1 and (ii) on account of the Prepetition Lenders' Deficiency Claim in Class 5 are hereby incorporated into this Agreement, required by the Liquidating Trustee to implement and made a part hereof by this reference. For the avoidance of doubt, (i) subject to the conditions set forth in Class 1 of the Plan, the Liquidating Trustee shall take no action to oppose that the \$400,000.00 Distribution for Class 1 of the Plan, be paid to the Prepetition Agent by the Reorganized Debtor, no later than (7) days after the Effective Date, unless otherwise agreed to in writing by the Prepetition Agent and (ii) subject to the language in Class 5 of the Plan including with respect to a reserve, the distribution of \$1,700,000.00 on a Pro Rata basis, including on account of the Prepetition Lenders' Deficiency Claim, shall be made by the Liquidating Trustee as soon as practicable after the Effective Date.

#### ARTICLE IV

##### **Duties, Rights and Powers of Liquidating Trustee**

4.1 Status of the Liquidating Trustee. The Liquidating Trustee shall be a "representative of the estate" as that phrase is used in section 1123(b)(3)(B) of the Bankruptcy Code with respect to the rights and powers granted in this Agreement and in the Plan and Confirmation Order. Except as otherwise set forth in the Plan and Confirmation Order, the Liquidating Trust shall be the successor-in-interest to the Debtor or the Reorganized Debtor, as applicable, with respect to all Liquidating Trust Assets, including all Vested Causes of Action that were or could have been commenced by the Debtor or the Estate prior to the Effective Date and shall be deemed substituted for the same as the party in any such actions. All actions, claims, rights or interests constituting Liquidating Trust Assets are preserved and retained and may be enforced by the Liquidating Trust on behalf of Beneficiaries both on behalf of the

Liquidating Trust and as the representative of the Debtor, Reorganized Debtor, and/or the Estate pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, as applicable and subject to the terms of this Agreement. The Liquidating Trust shall be a party-in-interest as to all matters over which the Bankruptcy Court has jurisdiction and, except as otherwise set forth in this Agreement, shall be the only party to have standing to file, prosecute, settle, or compromise all Liquidating Trust Assets, including all Vested Causes of Action and objections to Class 5 and Class 6 Claims.

4.2 Duties of the Liquidating Trustee. The Liquidating Trustee shall have the exclusive right and duty to administer and liquidate the Liquidating Trust Assets; file, prosecute, litigate, compromise, settle, and abandon Vested Causes of Action and other Liquidating Trust Assets, except as otherwise set forth in this Agreement; pursue and oversee the objections and resolution of all Class 5 and Class 6 Claims and related processes; and collect all income and make distributions as provided under this Agreement, the Plan, and Confirmation Order.

4.3 Standard of Care. The Liquidating Trustee shall exercise its rights and powers vested in it by this Agreement and use reasonable business judgment in the exercise of his duties. Subject to applicable law, the Liquidating Trustee shall not be liable to the Liquidating Trust or any Beneficiary for any act they may do or omit to do as a Liquidating Trustee while acting in good faith and in the exercise of their reasonable business judgment. The foregoing limitation on liability will apply equally to the agents, and/or employees of the Liquidating Trustee and Trust Professionals (defined herein) acting on behalf of the Liquidating Trustee in the fulfillment of the Liquidating Trustee's duties hereunder. Nothing in this Agreement shall be deemed to prevent the Liquidating Trustee from taking, or failing to take, any action that, based upon the advice of counsel or other Trust Professionals, the Liquidating Trustee determines they are obligated to take (or fail to take) in the performance of any fiduciary or similar duty which the Liquidating Trustee owes to the Beneficiaries.

4.4 Bond. The Liquidating Trustee shall not be required to post a bond.

4.5 Liquidating Trustee's Rights and Powers. The Liquidating Trustee shall act on behalf of the Liquidating Trust and to the extent and except as otherwise provided for under the Plan, shall be vested with all rights, powers, privileges, and benefits afforded to the Estate and/or a "trustee" under sections 704 and 1106 of the Bankruptcy Code, including, without limitation, subject to Section 11.6 hereof, the attorney-client and work product privilege, and they shall be vested with any such rights, powers, privileges, and benefits of the Debtor and its Estate with respect to the Liquidation Trust Functions. The Liquidation Trustee shall have all the powers and authority set forth herein, in the Plan, and in the Confirmation Order necessary to effect the disposition, orderly liquidation, and/or distribution of all Liquidation Trust Assets and proceeds thereof and make certain Distributions in accordance with the Plan. Nothing in this Agreement shall be deemed to prevent the Liquidating Trustee from taking, or failing to take, any action that, based upon the advice of counsel or other Trust Professionals, the Liquidating Trustee determines it is obligated to take (or fail to take) in the performance of any fiduciary or similar duty which the Liquidating Trustee owes the Beneficiaries, consistent with this Agreement, the Confirmation Order and the Plan. As of the Effective Date, the rights and powers of the Liquidating Trustee shall include, subject to the limitations set forth in the Plan or Confirmation Order, the right and power, without further Bankruptcy Court approval, to

effectuate the Liquidating Trust Functions, in each case, with respect to the Liquidating Trust Assets, including:

(a) Sell, liquidate, transfer, assign, distribute or otherwise reduce to Cash the Liquidating Trust Assets, or any part thereof, in accordance with the Plan and this Agreement;

(b) Review, reconcile, object, settle, seek to subordinate, and resolve all Class 5 and Class 6 Claims, whether filed or scheduled (and regardless of whether they were scheduled as undisputed, noncontingent or liquidated), and whether or not the objections have been commenced prior to the Effective Date. For the avoidance of doubt, this Agreement does not preclude any party in interest from prosecuting an objection to any Class 5 or Class 6 Claim; provided however, the Liquidating Trustee shall have sole authority to settle, compromise or withdraw any objection to any Class 5 and/or Class 6 Claims, regardless of the party who initially asserted such objection, without approval of the Bankruptcy Court; *provided further*, however, the Bankruptcy Court may nevertheless consider motions to approve any compromises and settlements in accordance with Bankruptcy Rule 9019;

(c) Substitute, or cause the Liquidating Trust to substitute in, as the real party in interest in any Vested Causes of Action, objections to Class 5 or Class 6 Claims, and other proceedings relating to the Liquidating Trust Assets and commenced by or against the Debtor or the Committee prior to the Effective Date;

(d) Investigate, file, prosecute, compromise, settle, or otherwise pursue all Class 5 and Class 6 Claims, Vested Causes of Action, or other legal rights that constitute Liquidating Trust Assets, whether or not such actions have been commenced prior to the Effective Date, in accordance with the terms of this Agreement;

(e) Calculate and make interim and final distributions to the holders of Allowed Claims in accordance with the terms of the Plan, Confirmation Order and this Agreement;

(f) Calculate and make Distributions to Beneficiaries hereunder from the Liquidating Trust Assets in accordance with the terms of the Plan, Confirmation Order and this Agreement;

(g) Seek an estimation of contingent, unliquidated, or equitable Class 5 or Class 6 Claims under section 502(c) of the Bankruptcy Code;

(h) Manage, maintain, administer and invest any portion of the Liquidating Trust Assets reduced to Cash, which investment powers of the Liquidating Trustee are limited by Section 4.14 herein;

(i) Establish, maintain and administer any reserves created on the Effective Date and create any reserves for payments required to be made pursuant to the Plan or this Agreement, including on account of any Disputed Claims, including the Disputed Ownership Fund;

(j) Maintain and administer the Cash in the Liquidating Trust or Disputed Ownership Fund;

(k) Enforce, carry out, and comply with the terms of the Plan, Confirmation Order, and this Agreement;

(l) Enforce, carry out and perform the Liquidating Trustee's duties and Liquidating Trust Functions under this Agreement and the Plan;

(m) Negotiate, incur, and pay the expenses and obligations of the Liquidating Trust, including professional fees, out of the Liquidating Trust Assets;

(n) Retain and pay counsel or special counsel, financial advisors or accountants, and employ other individuals and Trust Professionals in connection with the administration or the liquidation of, and pay all reasonable and necessary costs of any litigation directly or indirectly involving, the Liquidation Trust Assets;

(o) Prepare and deliver written statements or notices, required by law or by the terms of this Agreement to be delivered to Beneficiaries, subject to the Liquidating Trustee's discretion to elect to treat the Liquidating Trust or any Liquidating Trust Assets (in whole or in part) as a Disputed Ownership Fund for U.S. federal income tax purposes in accordance with Section 3.7 hereof;

(p) Establish, maintain, administer and, as appropriate, destroy documents and records consistent with this Agreement and the Plan;

(q) Compile and maintain the official claims register, including for purposes of making initial and subsequent Distributions under the Plan; *provided, however*, that the liquidating Trustee may, in its sole discretion, select the Voting Agent (or other Trust Professional) to provide this service to the Liquidating Trust;

(r) Seek authority from the Bankruptcy Court to close the Chapter 11 Case in accordance with the Bankruptcy Code and the Bankruptcy Rules;

(s) If at any time the Liquidating Trustee determines, in reliance upon such professionals as the Liquidating Trustee may determine, that the expense of administering the Liquidating Trust so as to make a final distribution to the Beneficiaries is likely to exceed the value of the assets remaining in the Liquidating Trust, the Liquidating Trustee may (i) reserve any amounts necessary to discharge its duties under this Agreement, the Plan, and the Confirmation Order, and apply to the Bankruptcy Court for authority to close the Chapter 11 Case, (ii) donate a balance to a charitable organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, that is unrelated to the Liquidating Trust and/or the Liquidating Trustee, and (iii) close the Chapter 11 Case in accordance with the Bankruptcy Code and Bankruptcy Rules;

(t) Hold legal title to any and all rights of the Beneficiaries in or arising from the Liquidating Trust or Liquidating Trust Assets;

(u) Execute and file any and all documents, regulatory filings and transfer applications and take any and all other actions related to, or in connection with, the liquidation of the Liquidating Trust Assets, the exercise of the Liquidating Trustee's powers granted herein and the enforcement of any and all instruments, contracts, agreements, claims, or causes of action relating to the Liquidating Trust or the Liquidating Trust Assets;

(v) Open and maintain bank accounts and deposit funds, draw checks and make disbursements in accordance with this Agreement and the Plan;

(w) File, if necessary, any and all tax and information returns with respect to the Liquidating Trust treating the Liquidating Trust as a grantor trust pursuant to Treasury Regulations Section 1.671-4(a) and pay taxes properly payable by the Liquidating Trust, if any, and make distributions to Beneficiaries net of any such taxes, subject to the Liquidating Trustee's discretion to elect to treat the Liquidating Trust or any of the Liquidating Trust Assets (in whole or in part) as a Disputed Ownership Fund for federal income tax purposes in accordance with Section 3.7 herein;

(x) In the event the Liquidating Trustee determines that any of the Beneficiaries of the Liquidating Trust may, will or has become subject to adverse tax consequences, take such actions that in their reasonable business judgment will, or are intended to, alleviate such adverse tax consequences, such as dividing the Liquidating Trust Assets into several trusts or other structures and/or paying certain Beneficiaries in a manner different than that originally contemplated hereunder (but not otherwise inconsistent with the provisions of this Agreement or the Plan), provided, however, the Liquidating Trustee shall be under no obligation to take any such actions described above in this subparagraph;

(y) Withhold from the amount allocable, payable or distributable to any Entity such amount as may be sufficient or required to pay any tax or other charge which the Liquidating Trustee has determined, in their reasonable business judgment, is required to be withheld therefrom under the income tax laws of the United States or of any state or political subdivision thereof, and to pay or deposit such withheld tax with the appropriate governmental authority. In the exercise of their reasonable business judgment, the Liquidating Trustee may enter into agreements with taxing or other governmental authorities for the payment of such amounts as may be withheld in accordance with the provisions hereof;

(z) Seek any relief from or resolution of any disputes concerning the Debtor, the Plan, the Committee, the Liquidating Trust, or the Liquidating Trust Assets by the Bankruptcy Court or any other court with proper jurisdiction;

(aa) Seek to collect, or enforce the Liquidating Trust's rights and remedies under or in relation to, the Liquidating Trust Assets, including but not limited to the Vested Causes of Action;

(bb) Appear and participate in any proceeding before the Bankruptcy Court or any other court with proper jurisdiction with respect to any matter regarding or relating to this Agreement, the Plan, Confirmation Order, the Debtor, the Committee, the Liquidating Trust, or the Liquidating Trust Assets; and

(cc) Otherwise take such other actions as the Liquidating Trustee shall deem reasonably necessary or desirable to administer the Liquidating Trust and to implement the Plan, Confirmation Order, the terms of this Agreement, wind up the affairs of the Liquidating Trust and effect the closing of the Chapter 11 Case or to carry out the Liquidating Trust Functions and related obligations and to exercise its rights in accordance with and subject to the Plan and Confirmation Order, and shall perform all of the duties, responsibilities and obligations as set forth in this Agreement.

The above-enumerated powers of the Liquidating Trustee shall be broadly interpreted, and in any applicable instance shall be interpreted as taking any action or causing the Liquidating Trust to take such action. Any actions authorized on behalf of the Liquidating Trustee may be taken by the Liquidating Trust at the direction of the Liquidating Trustee.

4.6 Limitation on Liquidating Trustee's Authority. Notwithstanding anything in this Agreement to the contrary, the Liquidating Trustee shall not take any action that will cause the Liquidating Trust to fail to qualify as a "liquidating trust" for United States federal income tax purposes, subject to the Liquidating Trustee's discretion to elect to treat the Liquidating Trust or any of the Liquidating Trust Assets (in whole or in part) as a Disputed Ownership Fund for federal income tax purposes in accordance with Section 3.7 herein.

4.7 Estimation of Claims. In accordance with the terms of the Plan, the Liquidating Trustee may at any time request that the Bankruptcy Court estimate any Class 5 or Class 6 Claim pursuant to section 502(c) of the Bankruptcy Code to the extent that such Claim has not already been adjudicated or allowed by the Bankruptcy Court (including as set forth in the Plan or Confirmation Order). In the event that the Bankruptcy Court estimates any such Claim, the amount so estimated shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Liquidating Trustee may pursue supplementary proceedings to object to the allowance of such Claim. All of the aforementioned objection, estimation, and resolution procedures are intended to be cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

4.8 Limitations on the Liquidating Trustee's Liabilities. After the Effective Date and to the maximum extent provided by law, the Liquidating Trustee and the Liquidating Trustee's respective representatives and professionals, including accountants, financial advisors, and legal advisors, shall not be responsible and shall not have any liability whatsoever to any person for any loss or liability the Debtor, the Reorganized Debtor, the Estate, or the Liquidating Trust may sustain or incur, except as otherwise provided in Section 4.12 of this Agreement. For the avoidance of doubt, the Liquidating Trust Functions shall not include, and the Liquidating Trustee shall not be responsible or have any liability for, the winding up or termination of any 401(k) or other retirement or pension plans of the Debtor.

4.9 Selection of Agents.

(a) Generally. The Liquidating Trustee shall retain (a) ArentFox Schiff LLP as general counsel to the Liquidating Trustee, (b) Potter Anderson & Corroon LLP as local

counsel to the Liquidating Trustee, and may select, retain, employ, replace or terminate, and determine compensation for, such other professionals, including accountants, financial advisors, legal advisors, brokers, consultants, claims agents, custodians, investment advisors, asset services, auditors, and other agents, as the Liquidating Trustee deems necessary (collectively, the “Trust Professionals”) to assist them in carrying out their duties, in accordance with applicable non-bankruptcy law and rules of professional conduct. Subject to the Plan and this Agreement, the Liquidating Trustee may pay the reasonable and documented out-of-pocket salaries, fees, and expenses of such persons or firms out of the Liquidating Trust Assets, without further Bankruptcy Court approval. The Liquidating Trustee shall not be liable for any loss to the Debtor, the Reorganized Debtor, the Estate, or the Liquidating Trust or any person interested therein, including Beneficiaries, by reason of any mistake or default of any such agent or consultant or Trust Professional. The Liquidating Trustee shall not be liable for any act taken or omitted to be taken, or suggested to be done, in accordance with advice or opinions rendered by any Trust Professionals regardless of whether such advice or opinions were in writing.

(b) D&O Causes of Action. Notwithstanding Section 4.09(a) or anything else in this Agreement, Hercules shall have the sole right, in its discretion and after consultation with the Liquidating Trustee, to select or direct the selection of counsel to the Liquidation Trustee for purposes of investigating, filing, prosecuting, compromising, settling (subject to the terms of this Agreement), or otherwise pursuing, any Claims and Causes of Action of the Liquidating Trust against current or former directors or officers of the Debtor for breach of fiduciary duty or similar claims (such causes of action, the “D&O Causes of Action”). The Liquidating Trustee shall not compromise or settle any D&O Cause of Action for less than \$10,000,000.00 (ten million dollars), net of any applicable fees or costs payable in connection with such settlement, without Hercules’ prior written consent, which consent may be withheld in Hercules’ sole discretion. The retention of any counsel in connection with any D&O Cause of Action shall be on a contingency fee basis at a market rate; *provided, however*, that any such counsel may, at Hercules’ sole discretion in consulting with the Liquidating Trustee, be permitted to be paid up to and no more than \$50,000.00 (fifty thousand dollars), on an hourly basis, in the aggregate, from the Trust Funding Amount, with any additional counsel fees and costs to be paid from and on a market rate contingency fee basis, for purposes of investigating, preparing, or otherwise performing diligence in connection with D&O Causes of Action. For the avoidance of doubt, the provisions of this Section 4.09(b) do not apply to any Vested Causes of Action that are not D&O Causes of Action, and the Liquidating Trustee shall retain all such rights and powers with respect to such Vested Causes of Action in their sole discretion as set forth in this Agreement.

4.10 Signature. As of the Effective Date, the Liquidating Trustee shall have the signature power and authority on behalf of the Liquidating Trust to (a) open and close accounts with any banking, financial or investment institution; (b) make deposits and withdrawals of cash and other property into or from any such account; (c) make or endorse checks with respect to any such account; (d) complete and file any regulatory agreement or governmental form as may be required; and (e) effectuate purchases and sales of securities and give security purchase and sale orders to brokers or any other third parties, and the exercise of such power and authority shall be deemed to be authorized by and to represent the decision of the Liquidating Trustee then entitled to make such decision.

4.11 Maintenance of Register. The Liquidating Trustee shall at all times maintain or cause to be maintained a register of the names, addresses, and amount of the Beneficiaries.

4.12 Liability of Liquidating Trustee.

(a) Liability; Indemnification. The Liquidating Trustee, the Trust Professionals, and the Liquidating Trustee's agents and representatives shall not in any way be liable for any acts or omissions to act except by reason of their bad faith, gross negligence, willful misconduct, reckless disregard of duty, self-dealing, fraud, or a criminal act in the performance of their duties under the Plan, Confirmation Order, or this Agreement, including by any of the foregoing, if applicable, in their role in connection with making distributions under the Plan, in each case as determined by a final non-appealable court order from a court of competent jurisdiction. The Liquidating Trust shall indemnify the Liquidating Trustee, the Trust Professionals, and the Liquidating Trustee's agents and representatives and hold them harmless from and against any and all liabilities, expenses, claims, damages and losses incurred by them as a result of actions taken or omissions to act by them in such capacity or otherwise related to this Agreement or the Liquidating Trust; *provided, however*, the Liquidating Trustee, the Trust Professionals, and the Liquidating Trustee's agents and representatives shall not be entitled to indemnification if such liabilities, expenses, claims, damages and losses were incurred by reason of such parties' bad faith, gross negligence, willful misconduct, reckless disregard of duty, self-dealing, fraud, or a criminal act in the performance of their duties under the Plan, Confirmation Order, or this Agreement, in each case as determined by a final non-appealable court order from a court of competent jurisdiction. The Liquidating Trust shall indemnify and hold harmless any Entity who was, or is, a party, or is threatened to be made a party, to any pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such Entity is or was the Liquidating Trustee, a Trust Professional, and/or the Liquidating Trustee's agent or representative, against all costs, expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by such Entity in connection with such action, suit or proceeding, or the defense or settlement of any claim, issue or matter therein, to the fullest extent permitted by applicable law, except if such costs and expenses, judgments, fines or amounts paid in settlement are found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such parties' bad faith, gross negligence, reckless disregard of duty, criminal acts, willful misconduct, self-dealing, or fraud. Costs or expenses incurred by any Entity entitled to the benefit of the provisions of this Section 4.12 in defending any such action, suit or proceeding may be paid by the Liquidating Trust when incurred and in advance of the institution or final disposition of such action, suit or proceeding, if authorized by the Liquidating Trustee, subject to providing an undertaking to repay all such advanced amounts if it is subsequently determined that such Entity is not entitled to indemnification under this Section 4.12. Any dispute regarding such indemnification of the Liquidating Trustee, the Trust Professionals, and/or the Liquidating Trustee's agents and representatives shall be resolved only by the Bankruptcy Court, which shall retain jurisdiction over matters relating to the indemnification provided under this Section 4.12. The Liquidating Trustee may in their business judgment purchase and maintain insurance on behalf of any Entity who is or was a beneficiary of this provision. Promptly after receipt by an indemnified party or parties (the "Indemnified Party") of notice of any claim, or notice of commencement of any action, suit, or proceeding by an Entity other than the Liquidating Trustee, in respect of which



the Indemnified Party may seek indemnification from the Liquidating Trust pursuant to this Section 4.12, the Indemnified Party, if not the Liquidating Trust, shall notify the Liquidating Trustee of such claim, action, suit or proceeding and shall thereafter promptly convey all further communications and information in respect thereof to the Liquidating Trustee. If the Indemnified Party is the Liquidating Trustee, the Liquidating Trustee shall notify the Bankruptcy Court of such claim, action, suit, or proceeding and shall thereafter promptly convey all further communications and information in respect thereof to the Bankruptcy Court. The Liquidating Trustee shall, if it so elects, have sole control at the expense of the Liquidating Trust over the contest, settlement, adjustment, or compromise of any claim, action, suit, or proceeding in respect of which this Section 4.12 requires that the Liquidating Trust indemnify the Indemnified Party. If the Liquidating Trustee is the Indemnified Party, he shall obtain the written approval of Bankruptcy Court before settling, adjusting, or compromising any claim, action, suit, or proceeding in respect of which this Section 4.12 requires that the Liquidating Trust indemnify the Indemnified Party. The Indemnified Party shall cooperate with the reasonable requests of the Liquidating Trustee in connection with such contest, settlement, adjustment, or compromises, provided that (a) the Indemnified Party (if not the Liquidating Trustee) may, if it so elects, employ counsel at its own expense to assist in (but not control) the handling of such claim, action, suit, or proceeding, (b) the Liquidating Trustee shall obtain the prior written approval of the Indemnified Party before entering into any settlement, adjustment, or compromise of such claim, action, suit, or proceeding, or ceasing to defend against such claim, action, suit, or proceeding, if pursuant thereto, or as a result thereof, injunction or other relief would be imposed upon the Indemnified Party, and (c) the Indemnified Party shall obtain the prior written approval of the Liquidating Trustee, or, if the Liquidating Trustee is the Indemnified Party, the prior written approval of the Bankruptcy Court, before entering into any settlement, adjustment or compromise of such claim, action, suit, or proceeding, or ceasing to defend against such claim, action, suit, or proceeding, and no such settlement, adjustment, or compromise shall be binding on the Liquidating Trust without such approval. Any payment to an Indemnified Party arising pursuant to this Section 4.12 shall be paid from any portion of the Liquidating Trust Assets reduced to Cash.

(b) No Liability for Acts of Predecessor. No successor Liquidating Trustee shall be in any way responsible for the acts or omissions of any Liquidating Trustee in office prior to the date on which such person becomes a Liquidating Trustee, nor shall it be obligated to inquire into the validity or propriety of any such act or omission, unless such successor Liquidating Trustee expressly assumes such responsibility. Any successor Liquidating Trustee shall be entitled to accept as conclusive any final accounting and statement of the Liquidating Trust Assets furnished to such successor Liquidating Trustee by such predecessor Liquidating Trustee and shall further be responsible only for those Liquidating Trust Assets included in such statement.

(c) No Implied Obligations. The Liquidating Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth herein, in the Plan and Confirmation Order, and no other or further covenants or obligations shall be implied into this Agreement. The Liquidating Trustee shall not be responsible in any manner whatsoever for the correctness of any recitals, statements, representations, or warranties herein or in any documents or instrument evidencing or otherwise constituting a part of the Liquidating Trust Assets. The Liquidating Trustee makes no representations as to the value of the

Liquidating Trust Assets or any part thereof, nor as to the validity, execution, enforceability, legality, or sufficiency of this Agreement; and the Liquidating Trustee shall incur no liability or responsibility with respect to any such matters.

(d) Reliance by Liquidating Trustee on Documents or Advice of Counsel or Other Entities. Except as otherwise provided herein, the Liquidating Trustee may rely and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, and other paper or document reasonably believed to be genuine and to have been signed or presented by the proper party or parties, and shall have no liability or responsibility with respect to the form, execution, or validity thereof. None of the provisions hereof shall require the Liquidating Trustee to expend or risk their own funds or otherwise incur financial liability or expense in the performance of any duties hereunder.

(e) Exculpation. No Holder of a Claim or Interest or any other party in interest will have, or otherwise pursue, any claim or cause of action against the Liquidating Trustee, the Liquidating Trust, the Trust Professionals, or the Liquidating Trustee's agents and representatives, for making payments and Distributions in accordance with this Agreement or for fulfilling any functions incidental to implementing the provisions of the Plan or the Liquidating Trust Agreement, including by any of the foregoing in their role in connection with making distributions under the Plan, if applicable, except for any acts or omissions to act that are the result of bad faith, willful misconduct, reckless disregard of duty, criminal conduct, gross negligence, fraud, or self-dealing, in each case as determined by a final non-appealable court order from a court of competent jurisdiction.

(f) No Personal Obligation for Debtor's Liabilities. Beneficiaries or other persons dealing with the Liquidating Trustee in their capacity as Liquidating Trustee within the scope of this Agreement shall look solely to the Liquidating Trust Assets to satisfy any liability incurred by the Liquidating Trustee to such person in carrying out the terms of this Agreement, and the Liquidating Trustee shall have no personal or individual obligation to satisfy any such liability.

4.13 Establishment of Trust Accounts. The Liquidating Trustee shall establish or cause to be established and maintained any accounts needed in connection with carrying out the purposes of the Liquidating Trust (the "Trust Account"). Such accounts shall be maintained only at FDIC insured financial institutions and shall bear a designation clearly indicating that the funds deposited therein are held for the benefit of the Liquidating Trust.

4.14 Investment of Cash. Cash in the Trust Accounts and any other amounts contemplated by this Agreement shall be maintained in United States dollars or shall be invested by the Liquidating Trustee in (a) direct obligations of, or obligations guaranteed by, the United States of America, including Government Money Market Funds, (b) obligations of any agency or corporation that is or may hereafter be created by or pursuant to an act of Congress of the United States of America as an agency or instrumentality thereof, or (c) such other obligations or instruments as may from time to time be permitted under section 345 of the Bankruptcy Code; provided that the Liquidating Trustee may, to the extent necessary to implement the provisions of the Plan and this Agreement, deposit moneys in demand deposits, time accounts or checking accounts at any banking institution or trust company having combined capital stock and surplus

in excess of \$100,000,000 based upon its most recently available audited financial statements, regardless of whether such investments and deposits are insured or as otherwise provided in Section 4.13 above. Such investments shall mature in such amounts and at such times as the Liquidating Trustee, in their business judgment, shall deem appropriate to provide funds when needed to transfer funds in accordance with the Plan and Confirmation Order, make payments to the Trust Accounts or make Distributions in accordance with this Agreement and the Plan and Confirmation Order. The Liquidating Trust may not retain cash or cash equivalents in excess of a reasonable amount as determined by the Liquidating Trustee in its sole discretion needed to satisfy Claims and contingent liabilities or to maintain the value of the Liquidating Trust Assets in liquidation or maintain or fund an adequate and sufficient reserve. Notwithstanding anything to the contrary herein, the scope of any such investment shall be limited to include only those investments that a liquidating trust, within the meaning of Treasury Regulations Section 301.7701-4(d), may be permitted to hold, pursuant to Section 3.09 of Internal Revenue Service Revenue Procedure 94-45 or the Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements or otherwise. For the avoidance of doubt, notwithstanding any permissions or obligations (in either case, whether express or implied) under section 345 of the Bankruptcy Code, the Liquidating Trustee shall have no duty or obligation to invest any of the Liquidating Trust Assets, and failure to invest any such assets shall not constitute a breach of duty on behalf of the Liquidating Trust or the Liquidating Trustee.

#### 4.15 Tax Returns.

(a) From and after the Effective Date, to the extent required, the Liquidating Trustee shall be responsible for the preparation and filing of any and all federal and state tax returns or other filings as required by law to be filed on behalf of the Liquidating Trust. Such returns filed on behalf of the Liquidating Trust shall be consistent with the treatment of the Liquidating Trust as a liquidating trust within the meaning of Treasury Regulations Section 301.7701-4(d) that is a grantor trust pursuant to Treasury Regulations Section 1.671-4(a) (other than with respect to the Disputed Ownership Fund, which shall be consistent with the treatment of the Disputed Ownership Fund as a “disputed ownership fund” within the meaning of Treasury Regulations Section 1.468B-9), and to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes.

(b) Allocations of Liquidating Trust taxable income among the Beneficiaries of the Liquidating Trust, as set forth in the Plan (including any taxable income in respect of a reserve established for disputed claims, other than taxable income allocable to the Disputed Ownership Fund) shall be determined by reference to the manner in which an amount of Cash representing such taxable income would be distributed (were such Cash permitted to be distributed at such time) if, immediately prior to such deemed distribution, the Liquidating Trust had distributed all its assets (valued at their tax book value, and other than assets allocable to the Disputed Ownership Fund) to the holders of the applicable Liquidating Trust Interests, adjusted for prior taxable income and loss and taking into account all prior and concurrent distributions from the Liquidating Trust. Similarly, taxable loss of the Liquidating 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 Liquidating Trust Assets. The tax book value of the Liquidating Trust Assets for purposes of this Section 4.15(b) shall equal their fair

market value on the Effective Date, adjusted in accordance with tax accounting principles prescribed by the Internal Revenue Code of 1986, as amended, the applicable Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements.

4.16 Compensation for Liquidating Trustee. The Liquidating Trustee shall be paid fair and reasonable compensation for services rendered on behalf of the Liquidating Trust under this Agreement. The terms of the compensation of the Liquidating Trustee shall be as set forth on the Trustee Joinder. Any change in compensation set forth in the Trustee Joinder is void and without effect unless such change in compensation is requested by motion to the Bankruptcy Court, on appropriate notice, and approved by a Final Order of the Bankruptcy Court. The Liquidating Trustee shall be entitled to reasonable and actual out-of-pocket expenses, to be paid monthly from the Liquidating Trust Assets, pursuant to Sections 4.17 and 4.18 and related provisions of this Agreement.

4.17 Reimbursements. The Liquidating Trustee, any agents or consultants employed pursuant to this Agreement, and Trust Professionals shall be reimbursed from the Liquidating Trust Assets for all reasonable and documented out-of-pocket expenses incurred in the performance of their duties hereunder in addition to any compensation received pursuant to Section 4.18 and related provisions of this Agreement.

4.18 Reimbursement of the Liquidating Trustee's and Trust Professionals' Fees and Expenses. Pursuant to the terms of the Plan, Confirmation Order, and this Agreement, the Liquidating Trustee may pay from the Liquidating Trust Assets, other than from the Trust Initial Distribution, all reasonable and documented out-of-pocket fees and expenses incurred in connection with the duties and actions of the Liquidating Trustee, including, but not limited to, reasonable and documented out-of-pocket fees and expenses of any Trust Professionals retained under this Agreement and reasonable and documented out-of-pocket fees and expenses to pay insurance, taxes and other expenses arising in the ordinary course of business in maintaining, liquidating, disposing of, and distributing the Liquidating Trust Assets and compensation to the Liquidating Trustee. The Liquidating Trustee may pay or reimburse all reasonable and documented out-of-pocket compensation, fees, and expenses of the Liquidating Trust authorized under this Agreement without need for further approval by the Bankruptcy Court.

## ARTICLE V

### Beneficiaries

5.1 Identification of Beneficiaries. The Liquidating Trust is created for the benefit of each Holder of a Claim entitling such Holder to a Liquidating Trust Interest, as set forth in the Plan, fixed as of the date of entry of the Confirmation Order, to the extent such Claim entitling such Holder to a Liquidating Trust Interest is determined to be an Allowed Claim (the "Beneficiaries"). The Beneficiaries shall each have an undivided beneficial interest, as provided in the Plan, in the assets of the Liquidating Trust (a "Beneficial Interest"). All Distributions shall be made in accordance with the terms of the Plan, the Confirmation Order and this Agreement.

5.2 Rights of Beneficiaries. Each Beneficiary shall be entitled to participate in the rights due to a Beneficiary hereunder. Each Beneficiary shall take and hold its Beneficial

Interest subject to all in the terms and provisions of this Agreement and the Plan. The Beneficial Interests shall not be certificated. No Beneficiary shall have legal title to any part of the Liquidating Trust Assets. The interest of a Beneficiary is in all respects personal property, and upon the death, insolvency or incapacity of an individual Beneficiary, such Beneficiary's Beneficial Interest shall pass to the legal representative of such Beneficiary. A Beneficiary shall have no title to, or any right to possess, manage or control, the Liquidating Trust Assets, or any portion thereof or interest therein, except as expressly provided herein. No surviving spouse, heir, or devisee of any deceased Beneficiary shall have any right of dower, homestead or inheritance, or of partition, or any other right, statutory or otherwise, in the Liquidating Trust Assets, but the whole title to all the Liquidating Trust Assets shall be vested in the Liquidating Trustee and the sole interest of the Beneficiaries shall be the rights and benefits provided to such persons under this Agreement and the Plan.

5.3 Transferability. Interests in the Liquidating Trust shall not be transferred or assigned by a Holder of a Liquidating Trust Interest except by will, intestate succession or operation of law; *provided, however*, that (i) a Holder of such Liquidating Trust Interest may abandon such Liquidating Trust Interest back to the Liquidating Trust at its sole discretion and (ii) the Prepetition Lenders (as defined in the Plan) shall be permitted to assign their claims and Trust Interests with the consent of the Liquidating Trustee which shall not be unreasonably withheld.

## ARTICLE VI

### Distributions

6.1 Distributions under the Plan. Subject to the terms of the Plan and the Confirmation Order, distributions by the Liquidating Trust under the Plan shall be made as follows:

(a) The Liquidating Trust, in accordance with the provisions of the Plan and as described in the Disclosure Statement with respect to amounts and timing, will make distributions to Holders of Claims entitling such Holder to Liquidating Trust Interests that are Allowed on and after the Effective Date, to the extent that such Claims have not been paid in full on or prior to the Effective Date or otherwise in accordance with the Plan. For the avoidance of doubt, the Debtor or the Reorganized Debtor, as applicable, will make distributions to Holders of Allowed Secured Claims, Other Secured Claims, Priority Tax Claims, Priority Non-Tax Claims, Administrative Claims, and Professional Fee Claims, in accordance with the Plan, and/or Holders of any such claims shall have waived, as applicable, any right to any distribution from the Liquidating Trust Assets or the Liquidating Trust, and the Liquidating Trustee shall have no duty or obligation to make any distributions to any such claims and shall have no liability in connection therewith. Except as otherwise provided by the Plan and Confirmation Order, or this Agreement, the Liquidating Trust is required to distribute at least annually (or more frequently as the Liquidating Trustee may determine, in their sole discretion) to the Beneficiaries its net income plus all net proceeds from the sale or other disposition of Liquidating Trust Assets, except that the Liquidating Trust may retain an amount of net proceeds or net income, as determined by the Liquidating Trustee in their reasonable business judgment, as reasonably necessary to maintain the value of its assets or to satisfy Claims and contingent liabilities

(including disputed Claims), within the meaning of Internal Revenue Service Revenue Procedure 94-45.

(b) The Liquidating Trust will make the distributions described in Section 6.1(a) either from such accounts or reserves as the Liquidating Trustee, in their business judgment, may determine to establish in accordance with the provisions of the Plan and this Agreement.

(c) The Liquidating Trust will make distributions from the Liquidating Trust Assets to Beneficiaries in accordance with each Beneficiary's Pro Rata share of the Trust Initial Distribution, and in accordance with the terms of the Plan.

(d) Distributions to be made by the Liquidating Trust may be made by any Person(s) designated or retained by the Liquidating Trust to serve as the disbursing agent(s) without the need for any further order of the Bankruptcy Court, and in accordance with the terms of the Plan.

(e) The Liquidating Trustee shall be authorized, in their business judgment, to delay distributions to Holders of Beneficial Interests or otherwise determine reasonable distribution dates for such Holders, including, without limitation, based upon the status and progress of the liquidation of Liquidating Trust Assets, the total number of and/or asserted amounts of Disputed Claims, and any other relevant factors.

6.2 Reserved.

6.3 Distributions on Account of Disputed Claims. Except as otherwise provided in a Final Order or as agreed by the relevant parties, distributions on account of Disputed Claims that become Allowed Claims after the Effective Date will be made by the Liquidating Trust at such periodic intervals as the Liquidating Trustee determines, in their sole discretion, to be reasonably prudent.

6.4 No Distributions Pending Allowance. Except as provided otherwise in the Plan: (a) no distribution will be made with respect to any Disputed Claim until such Claim becomes an Allowed Claim, and (b) unless determined otherwise by the Liquidating Trustee, no distribution will be made to any person that holds both (i) an Allowed Claim and (ii) a Disputed Claim until such person's Disputed Claims have been resolved by settlement or Final Order. The Prepetition Secured Claims and Prepetition Lenders' Deficiency Claim are Allowed Claims.

6.5 Objection Deadline. The Liquidating Trustee will file all Objections to Disputed Claims, will file all motions to estimate such Claims under section 502(c) of the Bankruptcy Code, on or before the applicable Claims Objection Deadline: provided, however, that the Liquidating Trustee may request that the Bankruptcy Court extend the Claims Objection Deadline one or more times with respect to any or all of such Disputed Claims.

6.6 Disputed Claims Reserves. On and after the Effective Date, the Liquidating Trust may maintain Disputed Claims Reserves, including Disputed Ownership Fund (as defined in Section 3.7), with such Cash as the Liquidating Trustee estimates to be reasonably necessary to satisfy the distributions that could be required to be made under the Plan (the

“Disputed Claims Reserve”). The Disputed Claims Reserves are separate and distinct from any other reserve required to be established by the Plan or this Agreement. The Liquidating Trust may maintain separate Disputed Claims Reserves with respect to different classes of Disputed Claims. Notwithstanding any other term of this Agreement or the Plan, in the event the Liquidating Trust establishes Disputed Claims Reserves that the Liquidating Trust estimates to be reasonably necessary to satisfy the distributions that could be required to be made by the Liquidating Trust on account of Allowed Claims, then the remaining Cash held by the Liquidating Trust shall be available for distribution to Holders of Allowed General Unsecured Claims. When establishing such reserves and determining the amounts of distributions to be made on account of Allowed Claims, the Liquidating Trustee agrees to consult with Hercules to enable a distribution to be made on account of the Class 5 Prepetition Lenders’ Deficiency Claim as soon as practicable after the Effective Date; provided however, that consistent with this Agreement, such distributions and reserves shall remain in the sole discretion of the Liquidating Trustee.

6.7 Settling Disputed Claims. Subject to Sections 4.6 and 4.9 herein, the Liquidating Trustee is authorized to settle, or withdraw any Objections to, any Disputed Claims following the Effective Date without need for approval of the Bankruptcy Court.

6.8 Distributions in Cash. The Liquidating Trustee will make any required Cash payments to Beneficiaries or otherwise under this Agreement by a check or wire transfer (including via ACH) or as otherwise required or provided in applicable agreements or customary practices of the Debtor or the Liquidating Trust, as applicable.

6.9 Unclaimed Distributions. All unclaimed property with respect to Distributions made to Beneficiaries will revert to the Liquidating Trust free of any restrictions in accordance with the Plan and the Confirmation Order, the Bankruptcy Code or the Bankruptcy Rules. Upon forfeiture, the Beneficiary with respect to such funds will be forever barred against the Liquidating Trust, the Debtor, the Reorganized Debtor, and the Estate, notwithstanding any federal or state escheat laws to the contrary, and such Beneficiary will have no claim whatsoever against the Liquidating Trust, the Debtor, the Reorganized Debtor, the Estate, or any Holder of a Liquidating Trust Interest to whom distributions are made by the Liquidating Trust.

6.10 Setoff. Nothing contained in the Plan shall constitute a waiver or release by the Liquidating Trust of any right of setoff or recoupment the Estate, the Liquidating Trust, or Debtor may have against any creditor. To the extent permitted by the Plan and applicable law, the Liquidating Trustee may, but is not required to, set off or recoup against any Claim and the payments or other distributions to be made under the Plan in respect of such Claim, claims of any nature whatsoever that arose before the Petition Date that the Estate or the Liquidating Trust may have against the Holder of such Claim.

6.11 Taxes. Pursuant to section 346(f) of the Bankruptcy Code, the Liquidating Trustee will be entitled to deduct and withhold any federal, state, or local taxes from any payments made with respect to Beneficiaries, as appropriate. All Beneficiaries holding Claims shall be required to provide any information requested by the Liquidating Trustee that is necessary to effect the withholding of such taxes. All such amounts withheld shall be treated as amounts distributed to such Holder for all purposes of this Agreement. The Liquidating Trustee

will be authorized to take all actions necessary to comply with applicable withholding and recording requirements. If any Holder fails to provide the information necessary to comply with any withholding requirements of any governmental unit within sixty (60) days from the date of first notification to the Holder of the need for such information or for the Cash necessary to comply with any applicable withholding requirements, then such Holder's distribution shall be treated as unclaimed property in accordance with the Plan or the Confirmation Order or the amount required to be withheld (which may be increased as a result of a Holder's failure to cooperate in providing the requested information or documentation) may be so withheld and turned over to the applicable authority. Notwithstanding any provision of the Plan, each Holder that has received a distribution of Cash under the Plan will have sole and exclusive responsibility for the satisfaction or payment of any tax obligation imposed by any governmental unit, including income, withholding and other tax obligation, on account of such distribution. For tax purposes, (a) distributions received in respect of any Allowed Claim will be allocated first to the principal amount of such Claim, with any excess allocated to unpaid accrued interest, and (b) the Liquidating Trust shall treat any Holder of a wage-related Claim as "single with no deductions," irrespective of any prior or current designation on the books and records of the Debtor.

6.12 Legal Proceedings. If any Vested Causes of Action are asserted and if claims or any other legal proceedings are initiated or prosecuted against any creditor pursuant to the Plan, Confirmation Order, or this Agreement, or asserted as an Objection to any Claim, then notwithstanding anything to the contrary contained in the Plan or Confirmation Order, until such proceeding or contested matter is finally resolved and all payments to the Estate or Liquidating Trust, as applicable, required by such resolution have been made, such creditor shall only receive distributions under the Plan or Confirmation Order to the extent that the distributions to which such creditor is otherwise entitled exceed the maximum liability of such creditor to the Estate or Liquidating Trust, as applicable, asserted in such proceedings.

6.13 De Minimis Distributions. If any interim distribution under the Plan would be less than \$25.00, the Liquidating Trustee may withhold such distribution until a final distribution is made to such Holder.

6.14 Abandonment. Notwithstanding anything to the contrary in the Plan or the Confirmation Order, but subject to the provisions of section 4.9(b) (as applicable), if in the Liquidating Trustee's business judgment, any Liquidating Trust Assets cannot be sold or distributed in a commercially reasonable manner or the Liquidating Trustee believes in good faith that such property has inconsequential value to the Liquidating Trust or its Beneficiaries or determines to be too impractical to distribute to Beneficiaries, the Liquidating Trustee shall have the right to cause the Liquidating Trust to abandon or otherwise dispose of such property, including by donation of such property to a charity.

6.15 Delivery of Distributions. Subject to Bankruptcy Rule 9010, and except as set forth in the Plan or the Confirmation Order, all distributions from the Liquidating Trust Assets to Holders of Allowed Claims shall be made to the Holder of each Allowed Claim at the address of such Holder as listed on the Schedules as of the Effective Date, unless the Liquidating Trustee has been notified in writing of a change of address, including, without limitation, by the timely filing of a proof of claim by such Holder that provides an address for such Holder different from the address reflected on the Schedules. In the event that any distribution to any



Holder is returned as undeliverable, the Liquidating Trustee or the disbursing agent (if not the Liquidating Trustee), as applicable, shall use reasonable efforts to locate the Holder of an Allowed Claim whose distribution is returned as undeliverable. If such reasonable efforts are not successful, no further distributions should be made unless and until the Liquidating Trustee is notified in writing of the then-current address of such Holder, at which time such distribution shall be made to such Holder without interest; *provided, however*, such distribution shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of ninety (90) days from the date the such distribution is made. After such date, all unclaimed property or interests in property shall revert (notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary) to the Liquidating Trust automatically and without need for a further order by the Bankruptcy Court for distribution in accordance with the Plan and the Confirmation Order, and the Claim of any such Holder to such property or interest in property shall be released, settled, compromised, and forever barred.

6.16 No Distribution in Excess of Amount of Allowed Claim. Notwithstanding anything to the contrary in the Plan, no Holder of an Allowed Claim entitling such Holder to a Liquidating Trust Interest shall receive, on account of such Allowed Claim, distributions in excess of the Allowed amount of such Claim.

## ARTICLE VII

### **Removal or Resignation of the Liquidating Trustee**

7.1 Removal of the Liquidating Trustee. The Liquidating Trustee appointed pursuant to the Plan, Confirmation Order and this Agreement may be removed for “cause” upon order of the Bankruptcy Court after notice and opportunity for a hearing. For purposes of this Agreement, the term “cause” shall mean (a) the Liquidating Trustee’s gross negligence, criminal acts, bad faith, self-dealing, reckless disregard of duty, fraud, willful misconduct or willful failure to perform their duties under the Plan, the Confirmation Order and this Agreement, in each case as finally determined by a court order from a court of competent jurisdiction or (b) the Liquidating Trustee’s misappropriation or embezzlement of any Liquidating Trust Assets or the proceeds thereof as finally determined by a court order from a court of competent jurisdiction. If a Liquidating Trustee is removed for cause, such Liquidating Trustee shall not be entitled to any accrued but unpaid fees, reimbursements or other compensation under this Agreement or otherwise. If the Liquidating Trustee is removed by the Bankruptcy Court other than for “cause”, or is unwilling or unable to serve (a) by virtue of their inability to perform their duties under this Agreement due to death, illness, or other physical or mental disability, or (b) for any other reason whatsoever other than for “cause,” subject to a final accounting, the Liquidating Trustee shall be entitled to all accrued and unpaid fees, reimbursement, and other compensation, to the extent incurred or arising or relating to events occurring before such removal, and to any out-of-pocket expenses reasonably incurred in connection with the transfer of all powers and duties and all rights to any successor Liquidating Trustee.

7.2 Resignation of the Liquidating Trustee. The Liquidating Trustee may resign as Liquidating Trustee at any time by giving thirty (30) calendar days prior written notice thereof (the “Notice Period”) to the Bankruptcy Court, all Beneficiaries, and any post-Confirmation service list (the “Notice”); *provided, however*, that such resignation shall only

become effective upon (a) the appointment of a successor Liquidating Trustee, who shall be identified and recommended by the resigning Liquidating Trustee in the Notice, which Notice shall also include an affidavit of disinterestedness and an engagement letter setting forth proposed terms of engagement of the successor Liquidating Trustee that are consistent with this Agreement, the Plan, and Confirmation Order, or (b) entry of order of the Bankruptcy Court authorizing such resignation. Beneficiaries of the Liquidating Trust, as well as the United States Trustee for Region 3, shall have standing to object to the proposed successor Liquidating Trustee within the Notice Period, and Beneficiaries shall also have standing to propose alternative recommendations for successor Liquidating Trustee within the Notice Period, provided that, such alternative recommendations shall satisfy the requirements set forth herein and comply in all respects with this Agreement, the Plan, and the Confirmation Order. If the Liquidating Trustee resigns from their position hereunder, subject to a final accounting, they shall be entitled to all accrued unpaid fees, reimbursement, and other compensation to the extent incurred or arising or relating to events occurring before such resignation, and any fees and out-of-pocket expenses reasonably incurred in connection with the transfer of all powers and duties to the successor Liquidating Trustee.

7.3 Successor to the Liquidating Trustee. In the event of the resignation, removal or death of the Liquidating Trustee, and upon request and proper notice by the resigning Liquidating Trustee or a Beneficiary, as applicable, the Bankruptcy Court may designate a disinterested person to serve as the successor Liquidating Trustee. Within three (3) business days of such designation by the Bankruptcy Court, the successor Liquidating Trustee shall execute and file (a) an affidavit of disinterestedness; and (b) an engagement letter setting forth proposed terms of engagement that are consistent with this Agreement, the Plan, and Confirmation Order. Thereupon, the successor Liquidating Trustee, without any further act, will become fully vested with all of the rights, powers, duties, and obligations of his or her predecessor.

## ARTICLE VIII

### **Effect of the Agreement on Third Parties**

8.1 There is no obligation on the part of any person dealing with the Estate, the Debtor, the Reorganized Debtor, the Liquidating Trustee, or the Trust Professionals, to see to the application of the money or other consideration paid or delivered to the Liquidating Trustee, or any agent of the Liquidating Trustee, or to inquire into the validity, expediency, or propriety of any such transaction, or the authority of the Liquidating Trustee, or any agent of the Liquidating Trustee, to enter into or consummate the same, except upon such terms as the Liquidating Trustee may deem advisable.

## ARTICLE IX

### **Waiver**

9.1 No failure or delay of any Party to exercise any right or remedy pursuant to this Agreement shall affect such right or remedy or constitute a waiver by such Party of any

right or remedy pursuant thereto. Resort to one form of remedy shall not constitute a waiver of alternative remedies.

## ARTICLE X

### Termination of the Agreement and Amendment

10.1 Termination of the Agreement. This Agreement (other than Section 4.12, 4.18 and related provisions) shall terminate and the Liquidating Trust shall dissolve and terminate and be of no further force or effect upon the earlier to occur of (a) the final distribution of all monies and other Liquidating Trust Assets in accordance with the terms of this Agreement, the Plan and Confirmation Order; and (b) entry of a Final Order of the Bankruptcy Court terminating and dissolving the Liquidating Trust as provided under the terms of this Agreement and the Plan. The Liquidating Trust will terminate no later than the fifth (5th) anniversary of the Effective Date, *provided, however*, that, on or prior to such termination, the Bankruptcy Court, upon motion by the Liquidating Trustee, may within six (6) months of the beginning of such extended term, extend the term of the Liquidating Trust for a fixed period if it is necessary to facilitate or complete the liquidation and distribution of the Liquidating Trust Assets, *provided further, however*, that the aggregate of all such extensions shall not exceed three (3) years (i.e. for a maximum total of eight (8) years from the Effective Date), unless the Liquidating Trustee receives a favorable ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the Liquidating Trust as a grantor trust for federal income tax purposes. The Liquidating Trustee will not unduly prolong the duration of the Liquidating Trust and will at all times endeavor to resolve, settle or otherwise dispose of all Disputed Claims and all Liquidating Trust Assets, to effect distributions to Beneficiaries in accordance with the terms hereof, the Plan and Confirmation Order and to terminate the Liquidating Trust as soon as practicable in a prompt and timely fashion.

10.2 Powers Upon Termination of Liquidating Trust. Upon termination of the Liquidating Trust, and solely for the purpose of liquidating and winding up the affairs of the Liquidating Trust, the Liquidating Trustee shall continue to act as such until their duties under this Agreement have been fully performed or their role as Liquidating Trustee is otherwise terminated under this Agreement. Upon motion by the Liquidating Trustee, the Bankruptcy Court may enter an order relieving the Liquidating Trustee, and the Liquidating Trustee's agents and employees, of any further duties, and discharging the Liquidating Trustee, notwithstanding the preceding sentence.

10.3 Amendment of the Agreement. Except as otherwise set forth herein, any provisions of this Agreement may be amended, modified, terminated, revoked, or altered only pursuant to an Order of the Bankruptcy Court. Notwithstanding this Section 10.3, any amendments to this Agreement shall not be inconsistent with the purpose and intention of the Liquidating Trust to liquidate in an expeditious but orderly manner the Liquidating Trust Assets in accordance with Treasury Regulations Section 301.7701-4(d) and this Agreement. Notwithstanding the foregoing, this Agreement may be amended by the Parties hereto to correct any obvious error or technical defect without further approval of the Bankruptcy Court.

## ARTICLE XI

### Miscellaneous

11.1 Intention of Parties to Establish the Liquidating Trust. This Agreement is not intended to create, and shall not be interpreted as creating, an association, partnership or joint venture of any kind. It is intended as a trust to be governed and construed in all respects as a trust.

11.2 Filing Documents. A copy of this Agreement and all amendments thereof shall be maintained in an office or residence of the Liquidating Trustee and shall be available for inspection upon reasonable written request provided to the Liquidating Trustee seeking such inspection.

11.3 Books and Records.

(a) No later than thirty (30) days from the date of this Agreement, the Debtor and/or Reorganized Debtor, as applicable, shall provide to Committee the Debtor's books and records (including communications), or copies thereof, relating to Claims and Vested Causes of Action (the "Books and Records"), as set forth in the Plan and this Agreement, and the Debtor, the Reorganized Debtor, and/or the Committee, as applicable, shall provide the Books and Records to the Liquidating Trustee as of the Effective Date.

(b) By no later than the Effective Date, the Debtor and/or Reorganized Debtor, as applicable, shall instruct any third parties or professionals possessing any Books and Records, to permit access to such Books and Records as may be reasonably requested by the Liquidating Trustee, *provided* that the Liquidating Trustee shall only request such Books and Records or access thereto to the extent reasonably necessary to the Liquidating Trustee's performance of its duties hereunder, and *provided, further*, that the out-of-pocket expenses of complying with any such request shall be borne by the party upon whom the request is made, absent agreement to the contrary or unless otherwise provided in the Seattle Sale Order.

(c) The Liquidating Trust will maintain reasonably good and sufficient books and records in respect to matters related to the Liquidating Trust Functions. The Liquidating Trustee may, without Bankruptcy Court approval, destroy any documents that it believes are no longer required to effectuate the terms and conditions of the Plan. Upon the entry of a final decree closing the Chapter 11 Case, unless otherwise ordered by the Bankruptcy Court, the Liquidating Trustee may destroy or otherwise dispose of all records maintained by them.

11.4 Tax Identification Numbers. The Liquidating Trustee may require any Beneficiary to furnish to the Liquidating Trustee, (i) its employer or taxpayer identification number as assigned by the Internal Revenue Service, and (ii) such other information, records or documents necessary to satisfy the Liquidating Trustee's tax reporting obligations (including certificates of non-foreign status). The Liquidating Trustee may condition the payment of any distribution to any Beneficiary upon receipt of such identification number and requested documents.

11.5 U.S. Trustee Fees and Post-Confirmation Reports. After the Effective Date, the Liquidating Trust shall pay any U.S. Trustee Fees due for the post-Effective Date period in accordance with the Plan, and any such fees shall be paid until entry of a final decree or an order converting or dismissing the Chapter 11 Case. After the Effective Date, the Liquidating Trustee will file post-confirmation status reports with respect to the Liquidating Trust in the form of a post-confirmation operating report acceptable to the U.S. Trustee, on a quarterly basis up to the entry of a final decree closing the Chapter 11 Case or termination of the Liquidating Trust, whichever occurs first.

11.6 Privilege.

(a) To effectively investigate, defend or pursue the Liquidating Trust Assets, including the Vested Causes of Action, the Debtor, the Reorganized Debtor, the Liquidating Trust, Liquidating Trustee and all counsel thereto, must be able to exchange information with each other on a confidential basis and cooperate in common interest efforts without waiving any applicable privilege. Given the common interests of the parties and the Liquidating Trust's position as successor to the Liquidating Trust Assets, sharing such information in the manner described in the previous sentence to the extent necessary, shall not waive or limit any applicable privilege or exemption from disclosure or discovery related to such information. Furthermore, the Debtor and the Reorganized Debtor, as applicable, shall fully and timely cooperate with all reasonable requests for documents and/or information (including but not limited to Books and Records) from the Liquidating Trustee in connection with the Liquidating Trustee's execution of the Liquidating Trust Functions pursuant to this Agreement and the Plan. For purposes of such cooperation, the Liquidating Trustee and the Debtor and/or Reorganized Debtor, as applicable, may enter into one or more confidentiality and/or common interest agreements or protective orders in form and substance reasonably acceptable to the Liquidating Trustee and Reorganized Debtor. Until the termination of the Liquidating Trust, the Reorganized Debtor shall be bound by and adhere to all legal hold and similar obligations of the Debtor, its agents, and advisors, and shall not transfer or destroy, without limitation, any communications, Books and Records, documents and/or information referring or relating to (i) the Granville Derivation Action, (ii) the Rodriguez Class Action (iii) the Board meeting minutes, Board agendas, notes and presentations, and/or (iv) any other Vested Causes of Action or other Liquidating Trust Assets. Any dispute with respect to the Debtor and/or the Reorganized Debtor's cooperation under this paragraph may be brought before and decided by the Bankruptcy Court. The Liquidating Trustee shall not waive any applicable privilege without the express written consent of the Reorganized Debtor and any purported waiver not in compliance with the foregoing shall be ineffective.

(b) All of the Committee's privileges, including, but not limited to, corporate privileges, confidential information, work product protections, attorney-client privileges, and other immunities or protections relating to the Vested Causes of Action shall be vested in the Liquidating Trust as applicable without waiver, limitation or release on the Effective Date.

11.7 Valuation of the Liquidating Trust Assets. After the Effective Date, but in no event later than the due date for timely filing of the Liquidating Trust's first federal income tax return (taking into account applicable tax filing extensions), the Liquidating Trustee shall (i) determine the fair market value of the Liquidating Trust Assets as of the Effective Date, based on the Liquidating Trustee's good faith determination (in conjunction with guidance provided by

Trust Professionals, if any); and (ii) establish appropriate means to apprise the Beneficiaries of such valuation; provided, however, that no such valuation will be required if the Liquidating Trustee elects to treat the Liquidating Trust and/or all of the Liquidating Trust Assets as a Disputed Ownership Fund. The valuation, if established pursuant to the terms of this Section 11.7, shall be used consistently by all Parties (including, without limitation, the Debtor, the Reorganized Debtor, the Liquidating Trust, the Liquidating Trustee, and the Beneficiaries) for all federal income tax purposes.

11.8 Governing Law. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

11.9 Severability. If any one or more of the provisions herein, or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect, and of the remaining provisions, shall not be in any way impaired or affected. In such event, there shall be added as part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable. The effective date of the added provision shall be the date upon which the prior provision was held to be invalid, illegal or unenforceable.

11.10 Entire Agreement. This Agreement (including the recitals), the Plan and the Confirmation Order constitute the entire agreement of the Parties and there are no representations, warranties, covenants, or obligations except as set forth herein or therein. This Agreement, the Plan, and the Confirmation Order supersede all prior and contemporaneous agreements, understandings, negotiations, and discussions, written or oral, of the Parties hereto, relating to any transaction contemplated hereunder. In the event of any inconsistency between the terms of this Agreement, the Plan, and the Confirmation Order, the terms of the Confirmation Order shall govern. In the event of any inconsistency between the terms of this Agreement and the Plan, the terms of this Agreement shall govern; *provided, however*, that the Liquidating Trustee may amend, modify, and/or correct the terms hereof to supersede the Plan and/or the Confirmation Order, with the approval of the Bankruptcy Court and notice to any affected party. Except as otherwise specifically provided herein, nothing in this Agreement is intended or shall be construed to confer upon or to give any person other than the Parties hereto and their respective heirs, administrators, executors, successors, and assigns any rights or remedies under or by reason of this Agreement.

11.11 Jurisdiction; Venue. Each Party hereto irrevocably agrees that any suit, action or proceeding with respect to this Agreement shall be brought exclusively in the United States Bankruptcy Court for the District of Delaware, and by execution and delivery of this Agreement, each Party (a) irrevocably submits to each such jurisdiction and venue, (b) waives, to the fullest extent permitted by law, any objection that it may have to the laying of the venue of any such suit, action or proceeding brought in such court has been brought in an inconvenient forum, and (c) agrees that final judgment in any such suit, action or proceeding brought in such a court shall be conclusive and binding upon it and may be enforced in any court to the jurisdiction

of which such Party is subject by a suit upon such judgment, *provided that* service of process is effected as otherwise permitted by law.

11.12 Notices. Unless otherwise expressly specified or permitted by the terms hereof, any notice, request, submission, instruction or other document to be given hereunder by a Party shall be in writing and shall be deemed to have been given, (a) when received if given in person, (b) upon delivery, if delivered by a nationally known commercial courier service providing next day delivery service (such as Federal Express), or (c) upon delivery, or refusal of delivery, if deposited in the U.S. mail, certified or registered mail, return receipt requested, postage prepaid:

**If to the Liquidating Trustee, addressed as follows:**

Thomas A. Pitta  
Emmet, Marvin & Martin, LLP  
120 Broadway, 32<sup>nd</sup> Floor  
New York, NY 10271

With a copy to its counsel:

Beth Brownstein, Esq.  
Patrick Feeney, Esq.  
ArentFox Schiff LLP  
1301 Avenue of the Americas, 42<sup>nd</sup> Floor  
New York, NY 10019

James E. Britton, Esq.  
ArentFox Schiff LLP  
800 Boylston Street, 32<sup>nd</sup> Floor  
Boston, MA 02199

And with a copy of all Notices to counsel for the Prepetition Agent:

Stuart Komrower, Esq  
Cole Schotz P.C.  
25 Main St.  
Hackensack, NJ 07601  
[skomrower@coleschotz.com](mailto:skomrower@coleschotz.com)

or to such other individual or address as a Party hereto may designate for itself by notice given as herein provided.

11.13 WAIVER OF JURY TRIAL. EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY.

11.14 Further Assurances. Each Party hereto (and its respective successors and assigns) shall, upon the Liquidating Trustee's reasonable request, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further instruments, and do or cause to be done, such further acts, as may be necessary to carry out the purposes of this Agreement and to vest in the Liquidating Trustee the powers and duties contemplated hereunder.

11.15 Exculpatory Provisions and Survival Thereof. Whether or not expressly therein so provided, any and all exculpatory provisions, immunities and indemnities, payment provisions and any limitations and negations of liability contained in this Agreement, in each case inuring to the benefit of the Liquidating Trustee, shall survive (i) the termination or revocation of this Agreement, and (ii) as to any person who has served as Liquidating Trustee, the resignation or removal of such person as Liquidating Trustee, as applicable.

11.16 Headings. The headings of the various Articles and Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

11.17 Successors and Assigns. All covenants and agreements contained herein shall, as applicable, be binding upon, and inure to the benefit of the Committee, the Liquidating Trustee and its successors, the Estate, the Debtor, the Reorganized Debtor, and their successors, all as herein provided.

11.18 Separate Counterparts. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. An electronic signature of any Party, including a conformed signature, shall be considered to have the same binding legal effect as an original signature.

IN WITNESS WHEREOF, the undersigned have either executed and acknowledged this Agreement or caused it to be executed and acknowledged on their behalf by their duly authorized officers all as of the date first above written.

**DEBTOR AND DEBTOR IN POSSESSION:**

Gritstone bio Inc.

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



**CREDITORS' COMMITTEE:**

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

**EXHIBIT C**

**TRUSTEE JOINDER**

### **JOINDER TO LIQUIDATING TRUST AGREEMENT**

This Joinder to the Liquidating Trust Agreement is executed by Thomas A. Pitta, as Liquidating Trustee (the “Liquidating Trustee”), in connection with the Liquidating Trust Agreement dated the [\*]th day of \_\_\_\_\_ 2025 (the “Liquidating Trust Agreement”), by and among Gritstone bio Inc. (“Gritstone” or the “Debtor”); and the Official Committee of Unsecured Creditors (the “Committee,” and together with the Debtor and the Liquidating Trustee, the “Parties”) appointed in the Debtor’s chapter 11 case, which is currently pending under Case No. 24-12305 in the Bankruptcy Court. Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Liquidating Trust Agreement. The Liquidating Trustee, agreeing to be bound, hereby states as follows:

1. The Liquidating Trustee acknowledges that they have read and understood the Liquidating Trust Agreement, and agrees to be bound by the terms and conditions of the Liquidating Trust Agreement subject to and in accordance with the terms thereof. Upon execution of this Joinder, the Liquidating Trustee shall be and shall be deemed to be appointed as the Liquidating Trustee under the Liquidating Trust Agreement effective as of the Effective Date, and the Liquidating Trustee hereby accepts such appointment. Nothing contained in this Joinder shall amend or otherwise alter the Liquidating Trust Agreement and/or any rights or powers of the Liquidating Trustee or any other Party thereunder except as may otherwise explicitly be set forth herein.

2. The Liquidating Trustee acknowledges and agrees that they shall be compensated for their service as Liquidating Trustee, subject to and in accordance with the terms of the Liquidating Trust Agreement, at the following rates:

<b>Person:</b>	<b>Hourly Rate:</b>

**LIQUIDATING TRUSTEE:**

By: \_\_\_\_\_  
Name: Thomas A. Pitta

**EXHIBIT B**

**(FINANCIAL PROJECTIONS)**

The DIP Agent, on behalf of the Reorganized Debtor and in consultation with the Debtor, prepared the Financial Projections based on, among other things, the anticipated future financial condition and results of operations of the Reorganized Debtor. The Financial Projections cover the anticipated post-emergence period from April 1, 2025, through December 31, 2027 (the "Projection Period"). The Financial Projections assume that the Plan will be consummated in accordance with its terms and that all transactions contemplated by the Plan will be consummated by March 31, 2025 (the "Assumed Effective Date"). Any significant delay in the Assumed Effective Date may have a significant negative impact on the operations and financial performance of the Reorganized Debtor including, but not limited to, an increased risk or inability to meet forecasts and the incurrence of higher reorganization expenses.

Although the Financial Projections represent the Reorganized Debtor's best estimates and good faith judgment, in consultation with the Debtor, of the results of future operations, financial position, and cash flows of the Reorganized Debtor, they are only estimates and actual results may vary considerably from such Financial Projections. Consequently, the inclusion of the Financial Projections herein should not be regarded as a representation by the Debtor, the Reorganized Debtor, the DIP Agent, the DIP Lenders or any of the respective advisors or any other person that the projected results of operations, financial position, and cash flows of the Reorganized Debtor will be achieved.

The Debtor and Reorganized Debtor do not intend to update or otherwise revise the Financial Projections to reflect circumstances that may occur after their preparation, or to reflect the occurrence of unanticipated events, even if any or all of the underlying assumptions are shown to be in error.

THE FINANCIAL PROJECTIONS HAVE BEEN PREPARED BY THE DIP AGENT, ON BEHALF OF THE REORGANIZED DEBTOR, IN CONSULTATION WITH THE DEBTOR, AND IN CONJUNCTION WITH THE DEBTOR'S ADVISORS. THE FINANCIAL PROJECTIONS WERE NOT PREPARED TO COMPLY WITH THE GUIDELINES FOR PROSPECTIVE FINANCIAL STATEMENTS PUBLISHED BY THE AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OR THE RULES AND REGULATIONS OF THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION, AND BY THEIR NATURE ARE NOT FINANCIAL STATEMENTS PREPARED IN ACCORDANCE WITH ACCOUNTING PRINCIPLES GENERALLY ACCEPTED IN THE UNITED STATES OF AMERICA. THE FINANCIAL PROJECTIONS DO NOT REFLECT THE IMPACT OF FRESH START REPORTING IN ACCORDANCE WITH AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS STATEMENT OF POSITION 90-7 "FINANCIAL REPORTING BY ENTITIES IN REORGANIZATION UNDER THE BANKRUPTCY CODE." THE IMPACT OF FRESH START REPORTING AT THE EFFECTIVE DATE MAY HAVE AN IMPACT ON ASSETS, LIABILITIES AND SHAREHOLDER EQUITY AS REFLECTED ON THE REORGANIZED DEBTOR'S CONSOLIDATED BALANCE SHEETS AND PROSPECTIVE RESULTS OF OPERATIONS.

Gritstone bio  
Projections 2025-2027

(in \$ thousands)	F'cast Q2 2025	F'cast Q3 2025	F'cast Q4 2025	F'cast FY 2025	F'cast FY 2026	F'cast FY 2027	F'cast FY 25-27
<b>Revenue</b>							
Milestone Payments from Collaboration Deals	-	-	250	250	750	1,500	2,500
U.S. and State Grant Funding	-	-	75	75	75	75	225
I.P. Licensing Receipts	-	-	-	-	300	300	600
<b>Total Revenue</b>	-	-	325	325	1,125	1,875	3,325
<b>Direct Operating Expenses</b>							
Payroll & Benefits	(162)	(162)	(162)	(487)	(590)	(597)	(1,674)
Rent, Utilities & Equipment	(27)	(17)	(15)	(59)	(43)	(44)	(146)
Sales & Marketing	(8)	(8)	(8)	(23)	(23)	(23)	(68)
Business Insurance	(10)	(10)	(10)	(30)	(30)	(30)	(90)
Other	(11)	(11)	(11)	(32)	(33)	(34)	(98)
<b>Total Direct Operating Expenses</b>	(217)	(207)	(205)	(630)	(718)	(728)	(2,075)
<b>Indirect Operating Expenses</b>							
Patent & Trademark	(33)	(26)	(24)	(82)	(83)	(83)	(247)
Legal	(24)	(3)	(3)	(29)	(19)	(34)	(81)
Accounting & Income Taxes	-	-	(250)	(250)	(25)	(25)	(300)
IT	(80)	(24)	(5)	(108)	(99)	(99)	(306)
Other	(44)	-	(3)	(46)	(10)	(10)	(66)
<b>Total Indirect Operating Expenses</b>	(179)	(52)	(284)	(515)	(235)	(250)	(1,000)
<b>Cash Flow from Operations</b>	(396)	(259)	(163)	(819)	172	897	250
Capital Contributions	500	500	500	1,500	1,000	1,000	3,500
<b>Net Cash Flow</b>	104	241	337	681	1,172	1,897	3,750

**EXHIBIT C**

**(SCHEDULE OF ASSUMED CONTRACTS)**

<b>Description</b>	<b>Cure Amount</b>
Master Agreement, dated August 8, 2019, by and among Oracle America, Inc. and Gritstone bio, Inc., as amended, supplemented, or otherwise modified, including pursuant to Estimate #1564833 dated as of February 4, 2025 and executed on February 25, 2025	\$19,451.18

**EXHIBIT C**

**(SCHEDULE OF ASSUMED CONTRACTS)**

~~None.~~

<b>Description</b>	<b>Cure Amount</b>
<u>Master Agreement, dated August 8, 2019, by and among Oracle America, Inc. and Gritstone bio, Inc., as amended, supplemented, or otherwise modified, including pursuant to Estimate #1564833 dated as of February 4, 2025 and executed on February 25, 2025</u>	<u>\$19,451.18</u>



**EXHIBIT D**

**(IDENTITY OF LIQUIDATING TRUSTEE)**

Thomas A. Pitta  
Emmet, Marvin & Martin, LLP  
120 Broadway, 32nd Floor  
New York, NY 10271  
Telephone: 212-238-3148  
Email: tpitta@emmetmarvin.com

**EXHIBIT E**

**(OFFICERS AND DIRECTORS OF REORGANIZED DEBTOR)**

**Board of Directors:**

Michael Solomon - Chair

John Demeter

Wayne Robinson

Brian Paperny

**Officers:**

Wayne Robinson- CEO/CFO

Rachel Miller - VP Operations and Corporate Secretary

Brian Paperny - Treasurer