

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

In re:)
) Chapter 11
NVN Liquidation, Inc., *et al.*,)
f/k/a NOVAN, INC.,¹) Case No. 23-10937 (LSS)
) (Jointly Administered)
Debtors.)
) **Re: 459**
)
_____)

**NOTICE OF FILING PLAN SUPPLEMENT WITH RESPECT TO
DEBTORS’ COMBINED DISCLOSURE STATEMENT
AND CHAPTER 11 PLAN OF LIQUIDATION**

PLEASE TAKE NOTICE that, on December 13, 2023, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Combined Disclosure Statement and Chapter 11 Plan of Liquidation Proposed by the Debtors* (as may be amended, modified, or supplemented and including all exhibits and supplements thereto, the “Plan”)² [D.I. 459] with the United States Bankruptcy Court for the District of Delaware (the “Court”).

PLEASE TAKE FURTHER NOTICE that the Debtors hereby file this *Plan Supplement with Respect to Debtors’ Combined Disclosure Statement and Plan* (as may be amended, modified or supplemented, the “Plan Supplement”) in support of confirmation of the Plan. The documents contained in the Plan Supplement are integral to, part of, and incorporated by reference into the Plan. The Plan documents have not yet been approved by the Court.

PLEASE TAKE FURTHER NOTICE that the Plan Supplement includes the following documents, as may be modified, amended, or supplemented from time to time by the Debtors in accordance with the Plan, as set forth below:

| <u>Exhibit</u> | <u>Description</u> |
|-----------------------|--|
| Exhibit A | Draft Form of Liquidating Trustee Agreement |
| Exhibit B | Identity of Liquidating Trustee |
| Exhibit C | Identity of Liquidating Trust Advisory Committee |

¹ The Debtors in these chapter 11 cases, along with the last four digitals of the Debtors’ federal tax identification number (if applicable), are: NVN Liquidation, Inc., (f/k/a Novan, Inc.) (7682) and EPI Health, LLC (9118). The corporate headquarters and the mailing address for the Debtors is P.O. Box 64, Pittsboro, NC 27312.

² Capitalized terms used but not otherwise defined shall have the meanings ascribed to such terms in the Plan.



Exhibit D Identity of Non-Released Debtor Parties

Exhibit E Schedule of Assumed Executory Contracts and Unexpired Leases

PLEASE TAKE FURTHER NOTICE that certain documents, or portions thereof, contained in this Plan Supplement may remain subject to ongoing negotiations among the Debtors, the official committee of unsecured creditors appointed in these cases (the “Committee”), and other interested parties with respect thereto. The Debtors reserve all rights to amend, revise, or supplement the Plan Supplement, and any of the documents and designations contained herein, at any time before the Effective Date, or any such other date in accordance with the Plan, the Confirmation Order, or any other order of the Court. Each of the documents contained in the Plan Supplement or its amendments are subject to certain consent and approval rights to the extent so provided in the Plan.

PLEASE TAKE FURTHER NOTICE that the Amended Plan, the Plan Supplement, and other documents and materials filed in the above-captioned chapter 11 cases may be examined by any party in interest (a) between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding federal holidays, at the Office of the Clerk of the Court (the “Clerk”), 824 N. Market St., 3rd Floor, Wilmington, Delaware 19801; (b) free of charge at the Debtors’ case website (<https://www.kccllc.net/novan>); or (c) for a fee at the Court’s website (<http://www.deb.uscourts.gov>) (a PACER account is required). Such documents may also be obtained by upon request to the Debtors’ claim and voting agent, Kurtzman Carson Consultants LLC, at (888) 251-2954 or (310) 751-2614 (for parties outside the U.S. and Canada) or at NovanInfo@kccllc.com.

Dated: January 11, 2024
Wilmington, Delaware

Respectfully submitted,

/s/ Daniel B. Butz

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Exhibit A

Draft Form of Liquidating Trust Agreement

NVN LIQUIDATING TRUST AGREEMENT

This Liquidating Trust Agreement (this “Agreement”), dated and effective as of January __, 2024, by and among NVN Liquidation, Inc. (f/k/a Novan, Inc.) and EPI Health, LLC, as debtors and debtors in possession (the “Debtors”), and Alan D. Halperin (the “Trustee”), provides for the establishment of a liquidating trust (the “Trust”) under the terms of the Plan of Liquidation dated January __, 2024 [Dkt No. __] (the “Plan”) confirmed by the United States Bankruptcy Court for the District of Delaware (the “Court”) by order dated _____, 2024 [Dkt No. __] (the “Confirmation Order”) in the Debtors’ chapter 11 cases jointly administered under case number 23-10937 (the “Cases”).

WITNESSETH

WHEREAS, on July 17, 2023, the Debtors filed voluntary petitions for relief under chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the Court;

WHEREAS, the Plan became effective on _____, 2024 (the “Effective Date”); copies of the Plan and the Confirmation Order are attached hereto as Exhibits “A” and “B” respectively, and are incorporated herein by reference;

WHEREAS, this Agreement is executed to establish the Trust and to facilitate implementation of the Plan;

WHEREAS, the Plan provides for the Trust to be established in order to, among other things, receive and liquidate the Assets, prosecute, settle or resolve the Disputed Claims, assert, prosecute or settle all Retained Causes of Action, make Distributions in accordance with the provisions of the Plan, and take any and all other actions not inconsistent with the terms of this Agreement, the Plan and the Confirmation Order that are necessary or appropriate to effectuate the wind-up and liquidation of the Debtors and the Estates;

WHEREAS, the primary purpose of the Trust is to (a) oversee and direct the liquidation of the Assets for the benefit of Holders of Allowed Class 3 NVN Unsecured Claims and Class 4 Allowed EPI Unsecured Claims (collectively, the “Beneficiaries”), whether or not their respective Claims are Allowed as of the Effective Date, in accordance with Treasury Regulation Section 301.7701-4(d) and (b) liquidate and distribute the Assets or any proceeds thereof to the Beneficiaries and to other parties as may be provided in the Plan and the Confirmation Order;

WHEREAS, the Trust shall not be operated with the objective of continuing or engaging in the conduct of a trade or business, except to the extent reasonably necessary to preserve or enhance the liquidation value of the Asset, and consistent with the liquidating purpose of the Trust;

WHEREAS, this Trust is intended to qualify as a “grantor trust” for federal income tax purposes, and the Trustee shall operate and maintain the Trust in compliance with the guidelines for liquidating trusts as set forth in the applicable provisions of Internal Revenue Service Revenue Procedure 94-45, 1994-2 C.B. 684, and Treasury Regulation Sections 1.671-4(a) and 301.7701-4(d) and all subsequent guidelines regarding liquidating trusts issued by the Internal Revenue

Service, U.S. Treasury Department and other applicable legislative, administrative, regulatory and judicial agencies and departments;

WHEREAS, pursuant to the Plan, the Debtors, the Trustee and the Beneficiaries are required to treat, for all federal income tax purposes, the transfer of the Assets to the Trust as a transfer of the Assets by the Debtors to the Beneficiaries in satisfaction of their Allowed General Unsecured Claims, followed by a transfer of the Assets by the Beneficiaries to the Trust in exchange for the beneficial interest therein, and to treat the Beneficiaries as the grantors and owners of the Trust in accordance with Treasury Regulation § 301.7701-4; and

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

ARTICLE I

DEFINITIONS AND INTERPRETATIONS

1.1 Definitions. The following definitions apply to the capitalized terms wherever those terms appear throughout this Agreement. Any capitalized term defined in the prefatory paragraph, the recitals, this Section or any Section below shall have the meaning ascribed to such term therein. Any capitalized term not otherwise defined in this Agreement shall have the meaning set forth in the Plan.

1.1.1 “Assets” shall mean the Liquidating Trust Assets, as such term is defined in the Plan.

1.1.2 “Available Cash” shall mean the aggregate net cash proceeds of the Assets after paying, reserving against, or satisfying (a) fees due to the U.S. Trustee pursuant to 28 U.S.C. § 1930, (b) operating and administrative expenses of the Trust, including but not limited to the compensation payable to the Trustee hereunder, all costs, expenses and obligations incurred by the Trustee (or professionals who may be employed by the Trustee in administering the Trust) in carrying out their responsibilities under this Agreement, or in any manner connected, incidental or related thereto, and (c) the Reserves.

1.1.3 “Beneficiaries” shall have the meaning set forth in the recitals to this Agreement.

1.1.4 “Indemnified Parties” shall have the meaning ascribed to such term in Section 7.6 of this Agreement.

1.1.5 “Member” and “Members” shall have the meanings ascribed to such terms in Section 11.1 of the Agreement.

1.1.6 “Other Claims” shall mean Allowed Administrative Claims, Fee Claims, Tax Claims, Other Secured Claims, and Other Priority Claims.

1.1.7 “Permitted Investments” shall include (a) short-term direct obligations of, or obligations guaranteed by, the United States of America, (b) short-term obligations of any agency or corporation that is or may hereafter be created by or pursuant to an act of the Congress of the United States as an agency or instrumentality thereof, (c) such other investments as the Court may approve from time to time or (d) demand deposits or certificates of deposit at any bank or trust company that has, at the time of the deposit, a capital stock and surplus aggregating at least \$1,000,000,000. The Trustee may take action reasonably necessary to maintain the value of the Assets and to further the liquidating purpose of the Trust; provided, however, that the scope of any Permitted Investments shall be limited to include only those investments that a liquidating trust, within the meaning of Treasury Regulation § 301.7701-4(d), may be permitted to hold, pursuant to Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements or otherwise. Permitted Investments shall not include listed stocks or securities.

1.1.8 “Reserves” shall mean reserves established to pay or satisfy the Others Claims (including the Plan Claim Reserve), the Liquidating Trust Operating Reserve and Disputed Claim Reserve (as defined in Section 4.4 hereof).

1.1.9 “Trustee” shall mean initially the person named in the prefatory paragraph of this Agreement and any successors or replacements duly appointed under the terms of this Agreement.

1.2 Interpretation. The headings in this Agreement are for convenience only and shall not affect the meaning or understanding of this Agreement or any provision hereof. Words defined, denoted or stated in the singular form also include the plural form and vice versa, and words defined, denoted or stated in the masculine, feminine or neuter form include each of the masculine, feminine and neuter forms. The word “including” means “including but not limited to.” The word “or” is not exclusive.

1.3 Particular Words. Reference in this Agreement to any Section or Article is, unless otherwise specified, to that such Section or Article under this Agreement. The words “hereof,” “herein,” “hereto” and similar terms shall refer to this Agreement and not to any particular Section or Article of this Agreement.

ARTICLE II

DECLARATION OF TRUST

2.1 Creation and Name. There is hereby created the Trust, which shall be known as the “NVN Liquidation, Inc. Liquidating Trust”, which is the Trust referred to as the “Trust” in the Plan. The Trustee may conduct the affairs of the Trust under the name of the “NVN Liquidation, Inc. Liquidating Trust.”

2.2 Purpose of Trust. Pursuant to the Plan, the Trust is created for the purpose of collecting, distributing and liquidating the Assets for the benefit of the Beneficiaries in accordance with the terms of this Agreement, the Plan and Treasury Regulation section 301.7701-4(d), with

no objective to continue or engage in the conduct of a trade or business except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Trust. The activities of the Trust shall be limited to those activities set forth in this Agreement and as otherwise contemplated by the Plan and the Confirmation Order. The Trustee shall make continuing efforts to dispose of the Assets, make timely distributions and not unduly prolong the duration of the Trust.

2.3 Transfer of Assets. The Debtors hereby grant, release, assign, convey, transfer and deliver, on behalf of the Beneficiaries, all of the Debtors' right, title and interest in the Assets to the Trust as of the Effective Date in trust for the benefit of the Beneficiaries, pursuant to sections 1123(a)(5)(B) and 1123(b)(3)(B) of the Bankruptcy Code and in accordance with the Plan and the Confirmation Order, as of the Effective Date, free and clear of any and all Liens, Claims, encumbrances and Interests (legal, beneficial or otherwise) of all other Persons to the maximum extent contemplated by and permissible under section 1141(c) of the Bankruptcy Code for the uses and purposes as specified in this Agreement, the Plan, and the Confirmation Order, but subject only to the Allowed Claims of the Beneficiaries and the expenses of the Trust

2.4 Title to Assets. From and after the Effective Date, legal title to the Assets shall be vested at all times in the Trust as a separate legal entity except where applicable law in any jurisdiction in which the Trust property may be located requires title to any part of the Assets to be vested in a trustee, in which case title shall be deemed vested in the Trustee. No Beneficiary shall have legal title to any part of the Assets.

2.5 Tax Treatment. The Trust shall be classified for federal income tax purposes as a "liquidating trust" within the meaning of Treasury Regulations Section 301.7701-4(d) and as a "grantor trust" within the meaning of Sections 671 through 679 of the Tax Code. In furtherance of this objective, the Trustee shall, in its business judgment, endeavor in good faith not to unduly prolong the duration of the Trust. For all federal income tax purposes, all parties (including the Debtors, the Trustee, and the Beneficiaries) shall treat the transfer of the Assets allocable to the Beneficiaries as a transfer to such Beneficiaries of their proportionate interests in the Assets followed by a transfer by such Beneficiaries of such interests in the Assets to the Trust in exchange for beneficial interests in the Trust. The Beneficiaries under the Trust will be treated as the deemed owners of the Trust. All such Beneficiaries shall use the valuation of the Assets transferred to the Trust as established by the Trustee for all federal income tax purposes.

2.6 Securities Law. It is intended that the interests of the Beneficiaries in the Trust and the entitlements hereunder, if any, of such Beneficiaries, shall not constitute "securities." Under section 1145 of the Bankruptcy Code, the issuance of beneficial interests in the Trust to the Beneficiaries under the Plan shall be exempt from registration under the Securities Act of 1933, as amended and the rules and regulations promulgated thereunder (the "Securities Act"), and all applicable state and local laws requiring registration of securities. If the Trustee determines, with the advice of counsel, that the Trust is required to comply with the registration and reporting requirements of the Securities and Exchange Act of 1934, as amended and the rules and regulations promulgated thereunder (the "Exchange Act"), the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act") or the Investment Company Act of 1940, as amended (the "Investment Company Act"), then the Trustee shall take any and all actions to comply with such reporting

requirements and file necessary periodic reports with the Securities and Exchange Commission. Nothing herein shall be deemed to preclude the Trustee from amending this Agreement to make such changes as are deemed necessary or appropriate by the Trustee, with the advice of counsel, to ensure that the Trust is not subject to registration and/or reporting requirements of the Securities Act, the Exchange Act, the Trust Indenture Act or the Investment Company Act.

2.7 Appointment and Acceptance of Trustee. Solely with respect to the Assets, the Trustee shall be deemed to be appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code. The Trustee accepts the Trust created by this Agreement and the grant, assignment, transfer, conveyance and delivery to the Trustee, on behalf, and for the benefit, of the Beneficiaries, by the Debtors of all of its right, title and interest in the Assets, upon and subject to the terms and conditions set forth in this Agreement, the Plan and the Confirmation Order.

2.8 Status of Trustee. The 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, the Plan and the Confirmation Order. Except as otherwise set forth in the Plan and the Confirmation Order, the Trustee shall be the successor-in-interest to the Debtors solely with respect to (a) the Assets, including any Retained Causes of Action that were or could have been commenced by the Debtors prior to the Effective Date and shall be deemed substituted for the same as the party in such action, and the Reserves and (b) any objections, setoffs, defenses or counterclaims that have been or could have been raised by the Debtors with respect to any Claim. All actions, claims, rights or interests constituting Assets are preserved and retained and may be enforced by the Trustee as the representative of the Estate pursuant to section 1123(b)(3)(B) of the Bankruptcy Code. The Trustee shall have authority to bind the Trust, and for all purposes of this Agreement, shall be acting as Trustee, and not in his individual capacity. Subject to the provisions of this Agreement, as of the date that the Assets and Reserves are transferred to the Trust, the Trustee on behalf of the Trust may control and exercise authority over the Assets and Reserves, over the acquisition, management and disposition thereof, and over the management and conduct of the affairs of the Trust.

2.9 No Reversion to Debtors. The Debtors shall have no Claim to, right, or Interest in, whether direct, residual, contingent or otherwise, the Assets or Reserves once such assets have been transferred to the Trust. In no event shall any part of the Assets or Reserves be distributed to any of the Debtors except as otherwise set forth herein.

2.10 Capacity of Trust. Notwithstanding any state or federal law to the contrary or anything herein, the Trust shall itself have the capacity, in its own right and name, to act or refrain from acting, including the capacity to sue and be sued and to enter into contracts. The Trust may alone be the named movant, respondent, party plaintiff or defendant, or the like in all adversary proceedings, contested matters, and other state or federal proceedings brought by or against it, and may settle and compromise all such matters in its own name. Subject to the terms of this Agreement, the Plan and the Confirmation Order, the Trust shall also be entitled to assert all of the Estates’ rights under section 558 of the Bankruptcy Code.

ARTICLE III

ADMINISTRATION OF THE TRUST

3.1 Rights, Powers and Privileges. The Trustee shall have only the rights, powers and privileges expressly provided in this Agreement, the Plan and the Confirmation Order. Subject to the terms of this Agreement, including Sections 3.4 and 11.4 of this Agreement, the Trustee shall have the power to take the actions granted in this Section 3.1 and any powers reasonably incidental thereto that the Trustee reasonably determines to be necessary or appropriate to fulfill the purpose of the Trust, without any further Court approval, including but not limited to:

A. Prosecuting, investigating (including causing the Trust to seek the examination of any Person pursuant to Federal Rule of Bankruptcy Procedure 2004), settling, assigning or otherwise compromising, releasing, dismissing or abandoning for the benefit of the Trust any and all Retained Causes of Action or claims or causes of action arising in favor of the Trust, including, without limitation, taking any action with respect to appeals, counterclaims and defenses of or with respect to such claims and causes of action, including retaining counsel to pursue the Retained Causes of Action and to confer with the Oversight Committee with respect to all such Retained Causes of Action.

B. Reviewing any Claims in the Cases and file or litigate objections to the allowance of any such Claims and seek to estimate them, and to confer with the Oversight Committee as set forth in Section 11.4 hereof;

C. Exercising all powers provided to the Trustee or the Trust under the Plan or Confirmation Order, including, without limitation, the right to allow, object to, settle or reconcile General Unsecured Claims and any Other Claims asserted against the Estate prior to or following objection without the necessity of approval of the Court;

D. Liquidating, selling or abandoning the Assets or any portion thereof;

E. Executing any documents and taking any other actions related to, or in connection with, the liquidation of the Assets and the exercise of the Trustee's powers granted in this Agreement, the Plan and the Confirmation Order;

F. Holding legal title to any and all rights of the Beneficiaries in, to or arising from the Assets;

G. Establishing the Reserves, as well as any other required reserves as may be necessary and appropriate for the proper operation of matters incident to the Trust;

H. Protecting and enforcing the rights to the Assets and Reserves vested in the Trustee by this Agreement by any method reasonably determined to be appropriate, including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

I. Calculating and making Distributions of the Assets to or on behalf of the Beneficiaries in accordance with this Agreement, the Plan and the Confirmation Order, and withholding from the amount distributable the maximum amount needed to pay any tax or other charge that the Trustee has determined, based upon the advice of its agents and/or professionals, may be required to be withheld from such Distribution under the income tax or other laws of the United States;

J. Making Distributions to Holders of the Other Claims from the respective Reserves in accordance with the Plan and the Confirmation Order, and in accordance therefore, shall be authorized to increase the amount of Cash held in the Reserves and any other reserve set up to pay the Allowed Other Claims, as needed, from Available Cash.

K. Preparing and filing any and all tax returns with respect to the Debtors and the Trust, and paying taxes properly payable by the Trust, if any, causing the Trust to make all tax withholdings, file tax information returns, file and prosecute tax refund claims, and make tax elections by and on behalf of the Trust; provided, however, that for the avoidance of doubt, neither the Trust nor the Trustee shall have any authority or duty to pay taxes properly payable by the Debtors, if any, and seeking a determination of tax liability under section 505 of the Bankruptcy Code or otherwise and to pay, or cause to be paid, from the Assets any taxes incurred by the Trustee after the Effective Date;

L. Making all necessary filings in accordance with any applicable law, statute or regulation;

M. Determining and satisfying from the Assets any and all taxes and ordinary course liabilities, including reasonable professional fees and expenses, incurred by or on behalf of the Trust;

N. Investing the Assets received by the Trust or Trustee or otherwise held by the Trust or Trustee in accordance with Section 3.5 of this Agreement;

O. In the event that the Trustee determines that the Beneficiaries or the Trust may, will or have become subject to different tax consequences than those described in this Agreement, taking such actions that will, or are intended to, address such different tax consequences;

P. Enforcing, waiving, assigning or releasing rights, privileges or immunities of any kind;

Q. Sending annually to each Beneficiary a grantor letter stating the Beneficiary's share of income, gain, loss, deduction or credit and instructing all such Beneficiaries to report such items on their federal tax returns;

R. Opening and maintaining bank accounts on behalf of or in the name of the Trust, determining and satisfying any and all liabilities created, incurred, or assumed by the Trust and paying all expenses, debts, and other liabilities of the Trust;

S. Purchasing customary insurance coverage in accordance with Section 3.10 of this Agreement on behalf of the Trust or the Trustee, including but not limited to errors and omissions policies, to the extent the Trustee deems necessary, after conferring with the Oversight Committee;

T. In reliance upon the official claims register maintained in the Cases and any applicable court order, maintaining on the Trustee's books and records a register evidencing the beneficial interest in the Trust held by each Beneficiary and the Other Claims;

U. Retaining, without Court approval, professionals to perform services for or on behalf of the Trust, and to assist the Trustee in carrying out its powers and duties, and to pay, without Court approval, all reasonable fees and expenses of such professionals retained by the Trust, including the fees and expenses of professionals, accruing from and after the Effective Date;

V. Seeking Court approval of any action to be undertaken by the Trust, provided, however, that the Trustee shall not be required to do so unless such requirement is specifically provided in this Agreement, the Plan, or the Confirmation Order;

W. Performing such functions and taking such actions as are provided for or permitted in this Agreement, the Plan, the Confirmation Order or any other agreement executed pursuant to this Agreement, the Plan or the Confirmation Order;

X. Seeking one or more final decrees to close the Debtors' Cases pursuant to section 350(a) of the Bankruptcy Code and terminating the Trust.

The Rights, Powers, and Privileges in this Section 3.1 are intended to be consistent with the Powers and Duties prescribed to the Trustee in Section 9.4(d) of the Plan. To the extent that the terms of this Section 3.1 are inconsistent with the terms set forth in 9.4(d) of the Plan, Section 13.6 of this Agreement will dictate which terms govern and control.

3.2 Agents and Professionals. The Trustee may, but shall not be required to, consult with and retain attorneys, financial advisors, accountants or other professionals and employees as the Trustee deems appropriate in the reasonable exercise of its discretion, and who the Trustee reasonably determines to have qualifications necessary to assist the Trustee in the proper administration of the Trust. Subject to Section 8.8 of this Agreement, the Trustee may pay the reasonable fees, costs and expenses of such persons (including itself) out of the Assets in the ordinary course of business pursuant to the Plan and the Confirmation Order. Subject to this Section 3.2 and the other terms and conditions of this Agreement, the Plan and the Confirmation Order, the Trustee may retain professionals who previously were employed by the Creditors' Committee and/or Debtors. For the avoidance of doubt, and without limitation of applicable law, nothing in this Agreement shall limit the Trustee from engaging the Trustee's firm or its affiliates, to do work for the Trust.

3.3 Safekeeping of Assets. All Assets shall, until distributed or paid over as provided herein or in the Plan and the Confirmation Order, be held in trust for the benefit of the Beneficiaries

in accordance with this Agreement, the Plan and the Confirmation Order. The Trustee shall be under no liability for interest or producing income on any moneys received by it under this Agreement and held for distribution or payment to the Beneficiaries or the Holders of the Other Claims, except as such interest or income shall actually be received by the Trustee.

3.4 Limitations on Trustee. The Trustee shall not at any time, on behalf of the Trust or Beneficiaries, enter into or engage in any trade or business, and no part of the Assets or the proceeds, revenue or income therefrom shall be used or disposed of by the Trust in furtherance of any trade or business.

3.5 Investment. The Trustee may only invest funds held in the Trust in Permitted Investments, in a manner consistent with the requirements of the Bankruptcy Code or any order of the Court modifying such requirements and, provided that the Trustee does so, it shall have no liability in the event of insolvency of any institution in which it has invested any of the Assets or Reserves or any proceeds, revenue or income therefrom.

3.6 Trustee Action. The Trustee shall hold, collect, conserve, protect and administer the Trust in accordance with the provisions of this Agreement, the Plan and the Confirmation Order, and pay and distribute amounts as set forth herein for the purposes set forth in this Agreement, the Plan and the Confirmation Order. Any good faith determination by the Trustee as to what actions are in the best interests of the Trust shall be determinative.

3.7 Court Approval of Trustee Actions. Except as provided in this Agreement, the Plan or the Confirmation Order, the Trustee need not obtain an order or approval of the Court in the exercise of any power, rights or discretion conferred hereunder, or account to the Court, including with respect to the sale of assets or the settlement of controversies. The Trustee shall exercise its business judgment for the benefit of the Beneficiaries in order to maximize the value of the Assets and Distributions, giving due regard to the cost, risk and delay of any course of action. Notwithstanding the foregoing in this Section 3.7, but subject to Section 3.4 of this Agreement, the Trustee may submit to the Court any question or questions regarding which the Trustee may desire to have explicit approval of the Court for the taking of any specific action proposed to be taken by the Trustee with respect to the Assets, the Trust, the Reserves, the Agreement, the Plan or the Debtors, including the administration and Distribution of the Assets and the funds in the Reserves. The Court shall retain jurisdiction for such purposes and shall approve or disapprove any such proposed action upon motion. In addition, subject to Section 3.4 of this Agreement, the Trustee shall have the authority, but not the obligation, to seek Court approval to sell any Asset free and clear of any and all Liens, Claims and encumbrances.

3.8 No Personal Gain. The Trustee shall, during the period that it serves as Trustee under this Agreement and following the termination of this Agreement or its removal or resignation hereunder, not use for personal gain any material, non-public information of or pertaining to any entity to which any of the Assets or Reserves relate or which it has become aware of in its capacity as Trustee.

3.9 United States Trustee Fees and Reports. After the Effective Date, the Trustee shall pay as an expense of the Trust all fees incurred under 28 U.S.C. § 1930 by reason of the Trust's

disbursements as required under the Plan and the Confirmation Order until the Cases are closed. After the Confirmation Date, the Trust shall prepare and serve on the Office of the U.S. Trustee such quarterly disbursement reports for the Trust as required by the U.S. Trustee for as long as the Cases remains open.

3.10 Insurance. The Trustee may use Assets in the Trustee's reasonable business judgment to maintain customary insurance coverage, if available, for the protection of the Assets after conferring with the Oversight Committee.

3.11 Abandonment; Donation. If, in the Trustee's reasonable judgment, any Assets cannot be sold or distributed in a commercially reasonable manner or the Trustee believes in good faith that such property has inconsequential value to the Trust or its Beneficiaries or is insufficient to render a further Distribution practicable, or exceed the amounts required to be paid under the Plan, the Trustee shall have the right to cause the Trust to abandon or otherwise dispose of such property, including by donation of such remaining funds to a charitable institution qualified as a not-for-profit corporation, under applicable federal and state laws selected by the Trustee.

ARTICLE IV

DISTRIBUTIONS TO TRUST BENEFICIARIES

4.1 Timing and Amount of Distributions. The Trustee shall in its discretion make Distributions of Available Cash to the Beneficiaries consistent with the Plan and the Confirmation Order, subject to oversight of the Oversight Committee on the Distribution Date; provided, however, that the Trustee may, in the reasonable exercise of the Trustee's discretion, cause the Trust to retain an amount of Available Cash reasonably necessary to maintain the value of the Assets or to meet Trust liabilities. The Trustee shall not make any Distributions of Assets to the Beneficiaries unless the Trustee maintains the Reserves in such amounts as are required under and consistent with the Plan.

4.2 Location for Distributions; Notice of Change of Address. Distributions to the Beneficiaries shall be made by the Trustee to the Beneficiaries (a) at the addresses set forth on the claims register delivered to the Trustee in accordance with this Agreement, or (b) at the addresses set forth in any written notices of address changes delivered to the Trustee after the Effective Date. The Trustee is not obligated to make any effort to determine the correct address of any of the Beneficiaries.

4.3 Tax Information. The Trustee shall require the Beneficiaries to furnish to the Trustee in writing his, her or its name, address, Employer or Taxpayer Identification Number as assigned by the IRS and completed IRS Form W-9 or, if applicable, IRS Form W-8, within thirty (30) days of a written request, and the Trustee shall make two (2) such requests. Failure of a Beneficiary to respond to the Trustee's second request for such tax information within 30 days of the second request shall result in the Beneficiary forfeiting their Trust interest and rights to any Distribution, and such forfeited amounts shall revert in the Trust and be distributed to the remaining Beneficiaries on the next Distribution Date.

4.4 Distributions After Allowance or Disallowance of a Disputed Claim. On the Effective Date and prior to making any Distributions, the Trustee shall establish reserves for Disputed NVN Unsecured Claims and Disputed EPI Unsecured Claims and shall transfer thereto the amounts of Cash as deemed necessary by the Trustee to provide Pro Rata Distributions to Holders of Allowed NVN Unsecured Claims from the NVN Recovery and to Holders of Allowed EPI Unsecured Claims from the EPI Recovery if such Disputed General Unsecured Claims become Allowed in accordance with the provisions of the Plan (the “Disputed Claim Reserve”). Upon a Disputed General Unsecured Claim becoming an Allowed General Unsecured Claim, the Trustee shall distribute to the Holder thereof, from the Disputed Claims Reserve no later than the next Distribution Date, such amount as would have been distributed to such Holder if its Allowed General Unsecured Claim existed on the Effective Date and any excess funds held in the Disputed Claim Reserve on account of such Claim shall be released from the Disputed Claim Reserve. The Trustee shall no longer reserve funds held in the Disputed Claims Reserve on account of any Disputed General Unsecured Claim that becomes a Disallowed Claim.

4.5 Payments Limited to Assets. All payments to be made by the Trustee to or for the benefit of any Beneficiary on behalf of the Trust shall be made only from the Assets.

4.6 Undeliverable Distributions and Unclaimed Property. In the event that any Distribution on account of an Allowed Claim is or becomes an Unclaimed Distribution, no further Distribution shall be made to the Holder thereof unless and until the Trustee is notified in writing of such Holder’s then-current address, at which time such Distribution shall be made to such Beneficiary without interest. In the event any Distribution remains an Unclaimed Distribution within three months of the date of the respective Distribution, such Distribution shall be cancelled and no additional Distribution shall be made to the Holder of the Allowed Claim on account of which the Unclaimed Distribution was made, such Unclaimed Distribution shall be deemed unclaimed property within the meaning of section 347(b) of the Bankruptcy Code, and the Claims of the Holder that may have been entitled to such Distribution shall be discharged and forever barred from receiving Distributions under this Agreement, the Plan and the Confirmation Order. After such date, all uncashed Distributions shall become Trust property and revert to the Trust, and shall be redistributed in accordance with this Agreement to the Beneficiaries. The Trustee may, in its sole discretion, attempt to determine a Beneficiary’s current address or otherwise locate a Beneficiary, but nothing in this Agreement or the Plan shall require the Trustee to do so. Any Cash otherwise reserved for Unclaimed Distributions shall become the property of the Trust free of any restrictions thereon and notwithstanding any federal or state escheat laws to the contrary and shall be distributed in accordance with the terms of this Plan and this Agreement.

ARTICLE V

DISTRIBUTIONS TO HOLDERS OF THE OTHER CLAIMS

5.1 Funding of the Plan Claim Reserve. On the Effective Date, the Debtors shall make any Distributions on account of the Other Claims that are Allowed on or prior to the Effective Date. As soon as practicable after the Effective Date, the Trustee shall fund the Plan Claim Reserve in the amount of the Disputed Other Claims, or the Trustee’s estimate of such Other Claims. The Trustee, subject to the terms and conditions of the Plan and Section 5.2 hereof, shall

pay each of the Other Claims on or as soon as reasonably practicable after the date such Claim becomes an Allowed Claim.

5.2 Distributions After Allowance or Disallowance of a Disputed Claim. On or as soon as reasonably practicable after a Disputed Other Claim becomes an Allowed Claim, the Trustee shall distribute to the Holder thereof, from the Plan Claim Reserve, such amount as would have been distributed to such Holder if its Claim had been an Allowed Claim on the Effective Date, in accordance the Plan and the Confirmation Order and, upon such Distribution, any excess amount reserved on account of such Claim shall be released from the Plan Claim Reserve and be deemed Available Cash. After any Other Claims are Disallowed, the Cash reserved for such Claim in the Plan Claim Reserve shall be released and deemed Available Cash. For the avoidance of doubt, when all of the Other Claims are Allowed or Disallowed and the Allowed amounts of such Claims are paid in full by the Trustee, any remaining Cash in the Plan Claim Reserve shall be released and deemed Available Cash.

5.3 Location for Distributions; Notice of Change of Address. Distributions to the Holders of Other Claims shall be made by the Trustee (a) at the addresses set forth on the claims register delivered to the Trustee in accordance with this Agreement, or (b) at the addresses set forth in any written notices of address changes delivered to the Trustee after the Effective Date. The Trustee is not obligated to make any effort to determine the correct address of any Holders of Other Claims.

5.4 Tax Information. The Trustee shall require the Holders of the Other Claims to furnish to the Trustee in writing his, her or its name, address, Employer or Taxpayer Identification Number as assigned by the IRS and completed IRS Form W-9 or, if applicable, IRS Form W-8, within thirty (30) days of a written request, and the Trustee shall make two (2) such requests. Failure of any Holder of the Other Claims to respond to the Trustee's second request for such tax information within 30 days of the second request shall result their forfeiting their Trust interest and rights to any Distribution, and such forfeited amounts shall revert in the Trust and be redistributed in accordance with this Agreement to the Beneficiaries.

5.5 Undeliverable Distributions and Unclaimed Property. In the event that any Distribution of Cash to any Holder of an Other Claim is returned as undeliverable, no further Distribution to such Holder shall be made unless and until the Trustee is notified in writing of such Holder's then-current address, at which time such Distribution shall be made to such Holder without interest; provided, however, that unless a Holder of an Other Claim asserts a claim for an undeliverable Distribution within ninety (90) days after such Distribution is returned as undeliverable, such Distribution shall be deemed unclaimed property within the meaning of section 347(b) of the Bankruptcy Code and all title to and beneficial interest in the Assets represented by any such undeliverable Distributions shall be cancelled and revert to and/or remain in the Trust automatically and without need for a further order by the Court (notwithstanding any applicable federal, provincial or state escheat, abandoned or unclaimed property laws to the contrary). In the event any check sent to a Holder of an Other Claims respecting a Distribution to such Holder has not been cashed within six months of the date of the respective Distribution, such check shall be cancelled and no additional Distribution shall be made to such Holder, such Distribution shall be deemed unclaimed property within the meaning of section 347(b) of the Bankruptcy Code, and the Claims of such Holder that may have been entitled to such Distribution shall be discharged and

forever barred from receiving Distributions under this Agreement, the Plan and the Confirmation Order. After such date, all uncashed Distributions shall become Trust property and revert to the Trust, and shall be redistributed in accordance with this Agreement to the Beneficiaries. The Trustee may, in its sole discretion, attempt to determine a Claim Holder's current address or otherwise locate a Claim Holder, but nothing in this Agreement or the Plan shall require the Trustee to do so.

ARTICLE VI

BENEFICIARIES

6.1 Incidents of Ownership. The Beneficiaries shall be the sole beneficiaries of the Trust, and the Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized in this Agreement, the Plan and the Confirmation Order.

6.2 Interest Beneficial Only. Each Beneficiary shall take and hold its beneficial interest in the Trust subject to all of the terms and provisions of this Agreement, the Plan and the Confirmation Order. The ownership of a beneficial interest in the Trust shall not entitle any Beneficiary or the Debtors to any title in or to the Assets or to any right to call for a partition or division of such assets or to require an accounting, except as specifically provided in this Agreement, the Plan, or the Confirmation Order. A Beneficiary shall have no title or right to, or possession, management, or control of, the Assets and the interest of a Beneficiary in the Trust is in all respects personal property, and the death, insolvency, or incapacity of an individual Beneficiary shall not terminate or affect the validity of this Agreement. No surviving spouse, heir, or devisee of any deceased Beneficiary shall have any right of dower, homestead, inheritance, partition, or any other right, statutory or otherwise, in the Assets, and their sole interest shall be the rights and benefits given to the Beneficiaries under this Agreement.

6.3 Evidence of Beneficial Interest. Ownership of a beneficial interest in the Assets shall not be evidenced by any certificate, security or receipt, or in any other form or manner whatsoever, except as maintained on the books and records of the Trust by the Trustee.

6.4 Identification of Beneficiaries. On or immediately prior to the Effective Date, the Debtors shall provide to the Trustee with a true and correct copy of the claims register maintained in the Cases or other document setting forth the names, addresses, any tax identification numbers and claim amounts, and noting whether any such Claims are Disputed and whether any Disputed Claims became Allowed Claims and if so the Allowed amount. None of the Debtors, the Trust and the Trustee and Members of the Oversight Committee shall incur any liability in connection with the determination of the interests of the Beneficiaries in the Trust and the size of the Disputed Claims Reserve. The Trust and the Trustee shall have the absolute and unconditional right to rely on the information provided by the Debtors for purposes of notices and distributions under this Agreement and neither the Trust, the Trustee nor the Members of the Oversight Committee shall incur any liability by relying on the information it receives under this section 6.4.

6.5 Distribution Record Date. The Trustee has no obligation to recognize the transfer of, or the sale of any participation in, any Allowed Claim that occurs after the close of business on the Distribution Record Date, and will be entitled for all purposes herein to recognize and distribute

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only to those Holders of Allowed Claims that are Holders of such Claims, or participants therein, as of the close of business on the Distribution Record Date. The Trustee shall instead be entitled to recognize and deal for all purposes under this Plan with only those record Holders stated on the official claims register as of the close of business on the Distribution Record Date.

6.6 Conflicting Claims. If any conflicting claims or demands are made or asserted with respect to a Claim of a Beneficiary, the Trustee shall be entitled, in his, her or its sole election, to refuse to comply with any such conflicting claims or demands. In so refusing, the Trustee shall (a) make no payment or Distribution with respect to the Claim represented by the claims or demands involved, or any part thereof, and (b) refer such conflicting claims and demands to the Court, which shall have exclusive jurisdiction over the resolution of such conflicting claims or demands. In so doing, the Trustee shall not be liable to any party for his, her or its refusal to comply with any such conflicting claims or demand. The Trustee shall be entitled to refuse to comply with conflicting claims and demands until either (a) the rights of the adverse claimants have become adjudicated by a Final Order is entered or (b) the conflict has been resolved by a written agreement among such parties and the Trustee, which agreement shall include a complete release of the Trust and the Trustee with respect to the subject matter of the dispute.

ARTICLE VII

THIRD PARTY RIGHTS AND LIMITATION OF LIABILITY

7.1 Reliance. Except as otherwise provided in this Agreement, the Plan or the Confirmation Order, the Trustee may rely and shall be fully protected in acting or refraining from acting upon any resolution, statement, instrument, opinion, report, notice, request, consent, order or other paper or document reasonably believed to be genuine and to have been signed or presented by an authorized party.

7.2 Parties Dealing With the Trustee. In the absence of actual knowledge to the contrary, any person dealing with the Trust or the Trustee shall be entitled to rely on the authority of the Trustee or any of the Trustee's agents to act in connection with the Assets. There is no obligation on any Person dealing with the Trustee to inquire into the validity, expediency or propriety of any transaction by the Trustee or any agent of the Trustee.

7.3 Limited Recourse. All Persons (including Beneficiaries and any professionals retained by the Trustee in accordance with this Agreement) engaged in transactions with the Trust, the Trustee or any of their professionals shall look only to the Assets (or to any insurance that may cover such claim) to satisfy any liability incurred in connection with the carrying out the terms of this Agreement, the Plan or the Confirmation Order.

7.4 Limitation of Liability. None of the Trustee, the Oversight Committee and their Members, or any of their respective agents, employees, officers, directors, professionals, attorneys, accountants, advisors and representatives shall be subject to any personal liability of any kind or nature whatsoever, in tort, contract or otherwise, to any Person caused by, relating to, based upon, arising out of or in connection with (directly or indirectly) the Assets, the Reserves, the carrying out or non-performance of the affairs of the Trust, the terms of this Agreement, the Plan or the

Confirmation Order or any other order of the Court, any applicable law or as may arise by reason of any action, omission, or error, except for their own gross negligence, willful misconduct, fraud, bad faith, self-dealing or breach of the duty of loyalty, *provided* that in no event will any such Person be liable for punitive, exemplary, consequential, or special damages under any circumstances. Every act taken or omitted, power exercised, or obligation assumed by or on behalf of the Trust pursuant to the provisions of this Agreement, the Plan, the Confirmation Order or any other order of the Court shall be held to be taken or omitted, exercised, or assumed, as the case may be, by the Person acting for and on behalf of the Trust or Trustee and not otherwise. The Trustee shall have the right at any time to seek and rely upon instructions from the Court concerning his/her/its rights or duties under or in connection with this Agreement, the Plan, the Confirmation Order or any other document executed in connection herewith or therewith, and the Trustee shall be entitled to rely upon such instructions in acting or failing to act and shall not be liable for any act taken or not taken in reliance thereon. Other than as set forth in the Plan or Confirmation Order, nothing in this Agreement shall be deemed to release any Beneficiary from any actions or omissions occurring prior to the Effective Date.

7.5 Non-Liability for Acts of Others. Except as expressly provided in this Agreement, the Plan or the Confirmation Order, neither the Trust nor the Trustee shall assume any of the liabilities, obligations or duties of the Debtors or the Beneficiaries. The Trustee may accept and rely upon any accounting made, written information previously generated and any statement or representation made by the Debtors or their agents and professionals as to the assets comprising the Assets, the Reserves, Claims, the Beneficiaries or as to any other fact bearing upon the creation or administration of the Trust, so long as it has a good faith basis to do so. Any successor Trustee may accept and rely upon any accounting made by or on behalf of any predecessor Trustee hereunder, and any statement or representation made by a predecessor Trustee or its agents as to the assets comprising the Assets, the Reserves or as to any other fact bearing upon the prior administration of the Trust, so long as it has a good faith basis to do so. The Trustee shall not be liable for having accepted and relied in good faith upon any such accounting, statement or representation if it is later proved to be incomplete, inaccurate or untrue. The Trustee or successor Trustee shall not be liable for any act or omission of any predecessor Trustee, nor have a duty to enforce any claims against any predecessor Trustee on account of any such act or omission. The Trustee or the Members of the Oversight Committee may, in connection with the performance of their functions, and in their sole and absolute discretion, consult with their attorneys, accountants, financial advisors and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in good faith reliance upon the advice or opinions rendered by such persons, regardless of whether such advice or opinions are provided in writing. Notwithstanding such authority, neither the Trustee nor the Members of the Oversight Committee shall be under any obligation to consult with attorneys, accountants, financial advisors or agents, and their determination not to do so shall not result in the imposition of liability on the Trustee or the Members and/or their designees, unless such determination is based on fraud, willful misconduct, or gross negligence.

7.6 Indemnification. The Trustee, the Oversight Committee and its Members, and each of their current equity holders, including shareholders, partnership interest holders and limited liability company unit holders, Affiliates, partners, subsidiaries, members, officers, directors, managers serving on a board of managers, principals, employees, agents, managed funds, advisors,

attorneys, accountants, investment bankers, consultants, representatives and other professionals, together with their respective predecessors, successors and assigns (in each case, solely in their capacity as such) (collectively, the “Indemnified Parties”) shall be indemnified and held harmless by the Trust, to the fullest extent permitted by law, solely from the Assets and/or any applicable insurance coverage and the proceeds thereof, for any losses, claims, damages, liabilities and expenses, including, without limitation, reasonable attorneys’ fees, disbursements and related expenses which the Indemnified Parties may incur or to which the Indemnified Parties may become subject in connection with any action, suit, proceeding or investigation brought or threatened against one or more of the Indemnified Parties on account of the acts or omissions of an Indemnified Party solely in its capacity as such; provided, however, that the Trust shall not be liable to indemnify any Indemnified Party for any act or omission constituting gross negligence, willful misconduct, fraud, bad faith, self-dealing or breach of the duty of loyalty by such Indemnified Party. Notwithstanding any provision in this Agreement to the contrary, the Indemnified Parties shall be entitled to request advances from the Trust to cover reasonable fees and necessary expenses incurred in connection with defending themselves in any action brought against them as a result of the acts or omissions, actual or alleged, of an Indemnified Party in its capacity as such; provided, however, that the Trustee shall not be required to make any such advances; provided further, however, that any Indemnified Parties receiving such advances shall repay the amounts so advanced to the Trust upon the entry of a Final Order of a court of competent jurisdiction finding that such Indemnified Parties were not entitled to any indemnity under the provisions of this Section 7.6. This indemnification shall survive the death, dissolution, resignation or removal, as may be applicable, of the Indemnified Parties, or the termination of the Trust, and shall inure to the benefit of the Indemnified Parties’ heirs and assigns.

7.7 Reliance by Trustee. The Trustee and his Professionals may absolutely and unconditionally rely, and shall be protected in acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by the Trustee and/or the Trustee’s professionals in good faith to be genuine and to have been signed or presented by the proper party or parties. The Trustee may consult with legal counsel, financial or accounting advisors, and other professionals to be selected by the Trustee and may rely, in good-faith, on the advice thereof, and shall not be liable for any action taken or omitted to be taken in accordance with the advice thereof.

7.8 No Successor Liability. Except as otherwise expressly provided in This Agreement, the Plan and Confirmation Order, neither the Trust nor the Trustee (i) shall be deemed to assume, agree to perform, pay, or otherwise have any responsibilities for any liabilities or obligations of the Debtors relating to or arising out of the Assets prior to the Effective Date; (ii) shall be deemed successors to the Debtors by any reason of any theory of law or equity or responsible for the knowledge or conduct of any Debtors prior to the Effective Date; and (iii) shall have any successor or transferee liability of any kind or character.

7.9 Confirmation of Survival of Provisions. Without limitation in any way of any provision of this Agreement, the provisions of this Article VII shall survive the death, dissolution, liquidation, resignation, replacement, or removal, as may be applicable, of the Trustee or Members of the Oversight Committee, or the termination of the Trust or this Agreement, and shall inure to the benefit of the Trustee’s and the Members’ respective heirs, successors, and assigns.

ARTICLE VIII

SELECTION, REMOVAL AND COMPENSATION OF TRUSTEE

8.1 Initial Trustee. The initial Trustee shall be Alan D. Halperin.

8.2 Term of Service. The Trustee shall serve as of the Effective Date until (a) the completion of all the Trustee's duties, responsibilities and obligations under this Agreement and the Plan, (b) termination of the Trust in accordance with this Agreement, or (c) the Trustee's death or dissolution, incapacitation, resignation or removal.

8.3 Removal of a Trustee. The U.S. Trustee, any Beneficiary, or the Oversight Committee in accordance with Section 11.2 hereof, may request the removal of the Trustee for "cause" pursuant to a motion filed with the Court and served upon (a) the Trustee and its counsel, (b) the U.S. Trustee (if not the movant) and (c) all other entities that have formally requested notice pursuant to Bankruptcy Rule 2002. In connection with any such motion to remove the Trustee, "cause" will include: (a) the Trustee's willful failure to perform his, her or its material duties hereunder, which is not remedied within thirty (30) days of notice; (b) the Trustee's death; (c) the Trustee's mental or physical incapacity that materially and adversely affects the Trustee's ability to perform his, her or its duties under the Plan; (d) the Trustee's commission of an act of fraud, theft or embezzlement in connection with the Trustee's duties under this Plan; (e) the Trustee's conviction for the commission of a felony with all appeals having been exhausted or appeal periods lapsed; *provided, however*, that no "cause" shall exist involving clause (a) above until the Trustee first has failed to cure such failure within thirty (30) days of having been given written notice of such failure. For purposes of the foregoing, no act or failure to act on the part of the Trustee shall be considered "willful" unless it is done, or permitted to be done, by the Trustee without reasonable belief that the Trustee's action or omission was in the best interests of the Debtors.

8.4 Resignation of Trustee. The Trustee may resign by giving not less than thirty (30) days prior written notice thereof to the Oversight Committee. In the case of the resignation of any Trustee, the Oversight Committee shall appoint a successor Trustee pursuant to Section 8.5 of this Agreement. Upon appointment of a successor Trustee, notice of such appointment shall be filed with the Court for notice purposes only and not for approval. Resignation shall become effective on the later to occur of: (a) the day specified in such notice, (b) the appointment of a successor Trustee by the Oversight Committee and the acceptance by such successor of such appointment, or (c) the date the accounting described in the last sentence of this section is delivered. In the event of a resignation, the resigning Trustee shall render to the Oversight Committee a full and complete accounting of monies and assets received, disbursed and held during the term of office of that Trustee. In the event of a resignation of the Trustee, the resigning Trustee shall be entitled to payment of all compensation earned by the Trustee through and including the effective date of such resignation.

8.5 Appointment of Successor Trustee. Upon the resignation, death, incapacity or removal of a Trustee, the Oversight Committee shall promptly, by a majority vote of those members voting, appoint a successor Trustee to fill the vacancy so created. Any successor Trustee

so appointed shall consent to and accept in writing the terms of this Agreement and agree that the provisions of this Agreement shall be binding upon and inure to the benefit of the successor Trustee and all of the successor Trustee's heirs and legal and personal representatives, successors or assigns. Notwithstanding anything in this Agreement, in the event that a successor Trustee is not appointed within thirty (30) days of the occurrence or effectiveness, as applicable, of the prior Trustee's resignation, death, incapacity or removal, the Trustee or any Beneficiary shall be authorized to move the Court for the appointment of a successor Trustee.

8.6 Powers and Duties of Successor Trustee. A successor Trustee shall have all the rights, privileges, powers and duties of the predecessor Trustee under this Agreement and the Plan.

8.7 Trust Continuance. The death, incapacity, resignation or removal of the Trustee shall not terminate the Trust or revoke any existing agency created pursuant to this Agreement or invalidate any action theretofore taken by the Trustee.

8.8 Compensation and Costs of Administration. The Trustee shall deliver invoices or fee statements to the Oversight Committee before payment, but shall not require notice to any other party, or an order of the Bankruptcy Court approving such payments. The Trustee may retain and compensate professionals as provided for in Section 3.2 and this Section 8.8 of this Agreement. The reasonable fees and actual and necessary expenses of such professionals and the Trustee shall be paid by the Trustee, without Court approval. Any professionals retained by the Trustee pursuant to this Agreement shall deliver invoices or fee statements to the Trustee and Oversight Committee for approval before payment from the Assets shall be allowed. The Trustee and Oversight Committee, as applicable, shall have ten (10) days from the delivery of any invoice or fee statement to give notice of an objection to the fee statement to the professional seeking compensation or reimbursement. In the event no objections are timely raised, the Trustee may pay the fee, or that portion of the fee, that is not subject to an objection. For an objection to be valid, it shall be in writing and set forth in detail the specific fees objected to and the basis for the objection. Any objection that remains unresolved fifteen (15) days after it is made may be submitted to the Court for resolution. The terms of the compensation of the Trustee are set forth on Exhibit A hereto. The Trustee may pay his compensation and other costs and expenses of the Trust before approving or making any Distributions.

8.9 Liquidating Trust Operating Reserve. Prior to making any Distributions, the Trustee shall establish the Liquidating Trust Operating Reserve as set forth in the Plan. Upon conferring in good faith with the Oversight Committee, the Liquidating Trust Operating Reserve may be replenished from time to time as may be necessary to satisfy ongoing expenses of administering the Trust.

8.10 No Bond. The Trustee shall not be required to post any bond or surety or other security for the performance of his, her or its duties unless otherwise ordered by the Court and, in the event the Trustee is so otherwise ordered, all reasonable costs and expenses of procuring any such bond or surety shall be borne by the Trust and paid for from the Assets.

8.11 Reporting and Filing Requirements. The Trustee shall deliver to the Oversight Committee a report of all Assets received by the Trust, all Distributions made to the Beneficiaries,

all Assets held by the Trust, and all fees, income and expenses related to the Trust during the preceding calendar year, which report shall be delivered on an annual basis. The Trustee shall also timely prepare, file and distribute such additional statements, reports and submissions as may be necessary to cause the Trust and the Trustee to be in compliance with applicable law.

ARTICLE IX

TRUST TAX OBLIGATIONS

9.1 The Trustee shall file tax returns for the Trust as a grantor trust pursuant to Treasury Regulation § 1.671-4(a) and any other applicable laws or regulations.

9.2 On an annual basis, the Trustee shall send to each Beneficiary a grantor letter setting forth the Beneficiary's share of items of income, gain, loss, deduction or credit and will instruct all such Holders to report such items on their federal income tax returns. The Trust's taxable income, gain, loss, deduction or credit will be allocated (subject to provisions of the Plan and the Confirmation Order relating to Disputed Claims) to the Beneficiaries in accordance with their relative beneficial interests in the Trust, as determined pursuant to this Agreement.

9.3 As soon as practicable after the Effective Date, the Trustee (to the extent that it deems it necessary or appropriate in the reasonable exercise of its discretion) shall, in good faith, value the Assets, and shall apprise the Beneficiaries of such valuation. The valuation shall be used consistently by all parties (including the Debtors, the Trustee and the Beneficiaries) for all federal income tax purposes. The Court shall resolve any dispute regarding the valuation of the Assets.

ARTICLE X

MAINTENANCE OF RECORDS

10.1 On the Effective Date, the Trustee shall provide for the retention and storage of the books, records, and files that were delivered to the Trust consistent with Section 12.3 hereof, and file a certificate informing the Court of the location at which such books, records, and files are being stored. The Trustee shall maintain books and records containing a description of all property from time to time constituting the Assets and an accounting of all receipts and disbursements. Said books and records shall be open to reasonable inspection by any Beneficiary upon written request to the Trustee. The Trustee shall furnish to any Beneficiary upon written request an annual statement of receipts and disbursements, including a summary of all income and expenses of the Trust.

ARTICLE XI

OVERSIGHT COMMITTEE

11.1 Oversight Committee. As of the Effective Date, the Oversight Committee shall be comprised of (a) Dr. Reddy's Laboratories, Inc., and (b) Aclaris Therapeutics, Inc. (each, a "Member" and, together, the "Members"). Should any of the Members resign from or otherwise cease to serve on the Oversight Committee, replacements, if any, may be selected by the remaining

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Members acting by majority vote, including the Trustee. In all circumstances, the Oversight Committee and its Members shall act in the best interests of all Beneficiaries and in furtherance of the purpose of the Trust. The Oversight Committee shall not take any action which will cause the Trust to fail to qualify as a “liquidating trust” for U.S. federal income tax purposes.

11.2 Oversight Committee Approval. Except as otherwise expressly provided herein, a majority affirmative vote of the Members present at a meeting at which a quorum is present shall constitute an act or decision of the Oversight Committee. A majority of the total number of Members shall constitute a quorum for the transaction of business at any meeting of the Oversight Committee. Any or all of the Members may participate in a regular or special meeting by, or conduct the meeting through the use of, telephone or similar communications equipment by means of which all Persons participating in the meeting may hear each other, in which case any required notice of such meeting may generally describe the arrangement (rather than or in addition to the place) for holding thereof. Any Member participating by this means is deemed to be present in person at the meeting. If the event of a tie vote, the Trustee shall be deemed a voting Member for the sole purpose of breaking any such tie vote of the Oversight Committee. Any action required or permitted to be taken by the Oversight Committee at a meeting may be taken without a meeting if the action is taken by unanimous written consent, as evidenced by one or more written consents describing the action taken, signed by the Members provided, however, the Trustee may make recommendations for the action or inaction of the Oversight Committee via email on four (4) days’ notice (the “Voting Period”), and in the absence of a majority of the Members rejecting the recommendation within the Voting Period, the recommendation shall be deemed to have been approved by a majority of the Members, except in emergency circumstances where the Trustee will give as much notice as reasonably practical under the circumstances.

11.3 Reports to the Oversight Committee. Notwithstanding any other provision of this Agreement, the Trustee shall report to the Oversight Committee as may be requested by the Oversight Committee, but not less than bi-annually, and such reports shall include such matters and information as reasonably requested by the Oversight Committee. The Oversight Committee shall keep all such information strictly confidential, except to the extent the Oversight Committee deems it reasonably necessary to disclose such information to the Court (in which case, a good faith effort shall be made to file such information under seal).

11.4 Actions Requiring Consultation with the Oversight Committee. Notwithstanding anything to the contrary herein, the Trustee shall [consult with / obtain the approval of] the Oversight Committee prior to taking any of the following actions, which may be by affirmative vote of the Oversight Committee, or upon notice pursuant to the procedures set forth in Section 11.2 above:

A. The commencement of any Retained Cause of Action against any third parties, other than Claim objections;

B. The settlement, compromise, withdrawal, dismissal or other resolution of any (i) Claims or Objections to Claims where the settlement, compromise, withdrawal, dismissal or other resolution amount exceeds \$250,000, and (ii) Retained Cause of Action where the amount sought to be recovered in the complaint or other document initiating such Retained Cause of Action exceeds \$250,000;

C. The sale, transfer, abandonment, assignment or other disposition of any Assets having a valuation in excess of \$250,000;

D. The borrowing of any funds by the Trust or pledge of any portion of the Assets; and

E. The amount and timing of Distributions from Assets or the proceeds of Assets, except as otherwise set forth in this Agreement;

11.5 In the event that the Trustee cannot take any action, including, without limitation, the prosecution of any Retained Causes of Action or the objection to any Claim, by reason of an actual or potential conflict of interest, the Oversight Committee acting by a majority shall be authorized to take any such action(s) in his place and stead, including without limitation, the retention of professionals (which may include professionals retained by the Trustee) for such purpose of taking such actions.

11.6 Investments. The Oversight Committee may consent to the Trust investing the Assets in Permitted Investments other than those described in section 345 of the Bankruptcy Code.

11.7 Compensation of the Oversight Committee. The Members shall not be entitled to any compensation or the reimbursement of expenses.

11.8 Tenure and Replacement of the Members. The authority of the Members will be effective as of the Effective Date and will remain and continue in full force and effect until the Trust is dissolved in accordance with the terms of this Agreement. The service of the Members will be subject to the following terms and conditions:

A. The Members will serve until death, incapacitation or resignation.

B. A Member may resign at any time by providing a written notice of resignation to the Trustee and remaining members of the Oversight Committee. Such resignation will be effective on the earlier of (a) when a successor is appointed as provided herein, (b) at a time mutually agreed to by the Trustee and the Oversight Committee, and (c) thirty (30) days after the date on the notice of resignation, and as such time, the resigning member shall have no further liability or responsibility with respect thereto.

C. Upon the resignation, death, or incapacity of a Member, the successor member shall be appointed by the majority vote of the remaining Members and the Trustee.

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

11.9 Recusal. A Member shall be recused from the Oversight Committee's deliberations and votes on any matters as to which such Member has a conflicting interest. If a Member does not voluntarily recuse itself from any such matter, that Member may be recused from such matter by the unanimous vote of the remaining Members that are not recused from the matter. In such

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event, (a) a unanimous affirmative vote of the non-recused Members shall be required to constitute an act of the Oversight Committee, and (b) the recused Member may challenge such vote, and the vote which resulted in the involuntary recusal of the Member, and the Court shall have jurisdiction to adjudicate such matter.

ARTICLE XII

DURATION OF TRUST

12.1 Duration. The Trust shall become effective upon the Effective Date of the Plan, and the Trust and its provisions herein shall remain and continue in full force and effect until the Trust is terminated.

12.2 Termination. The Trust shall be dissolved and its affairs wound up and the Trustee shall make the final Distributions, upon the earlier of (a) the date which is five (5) years after the Effective Date, and (b) that date when, in the reasonable judgment of the Trustee, substantially all of the Assets have been liquidated, all Distributions required to be made by the Trustee under the Plan and this Agreement have been made and there are no substantial potential sources of additional Cash for Distribution. Notwithstanding the foregoing, on or prior to a date not less than six (6) months prior to such termination, the Court, upon motion by a party in interest, may extend the term of the Trust for one or more finite terms based upon the particular facts and circumstances present at that time, if an extension is necessary to the liquidating purpose of the Trust, provided that any further extension would not adversely affect the status of the Trust as a liquidating trust within the meaning of Section 301.7701-4(d) of the Treasury Regulations for federal income tax purposes.

12.3 Continuance of Trust for Winding Up. After the termination of the Trust and for the purpose of liquidating and winding up the affairs of the Trust, the Trustee shall continue to act as such until the Trustee's duties have been fully performed, including, without limitation, performing such post-distribution tasks as necessary to windup the affairs of the Trust at the Trust's expense. After the termination of the Trust, the Trustee shall retain for a period of twelve (12) months the books, records, Beneficiary lists and certificates and other documents and files which shall have been delivered to or created by the Trustee. At the Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after twelve (12) months from the completion and winding up of the affairs of the Trust. Except as otherwise specifically provided herein, upon the discharge of all liabilities of the Trust and final Distribution of the Trust, the Trustee shall have no further duties or obligations hereunder. For the avoidance of doubt, the limitations on liability contained in Article VII hereof shall apply to any actions taken by the Trustee during the course of winding up the affairs of the Trust.

ARTICLE XIII

MISCELLANEOUS

13.1 Jurisdiction. The Court shall have exclusive jurisdiction over (a) the Trust and the Trustee, with respect to the administration of and activities relating to the Trust, and (b) any issues or disputes arising out of this Agreement; provided, however, that notwithstanding the foregoing,

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the Trustee shall have the power and authority to bring any action in any court of competent jurisdiction to prosecute the Retained Causes of Action.

13.2 Notices. All notices to be given to the Holders of the Other Claims and the Beneficiaries may be given by ordinary mail at the addresses appearing on the books kept by Trustee. Any notice or other communication which may be or is required to be given, served or sent to the Trustee shall be in writing and shall be sent by registered or certified United States mail, return receipt requested, postage prepaid, or transmitted by hand delivery or electronic mail (if receipt is confirmed) addressed as follows:

If to the Trust/Trustee:

Halperin Battaglia Benzija, LLP
40 Wall Street, 37th Floor
New York, New York 10005
Attention: Alan D. Halperin, Esq.
alanhalperin@halperinlaw.net
Debra J. Cohen, Esq.
dcohen@halperinlaw.net

If to the Oversight Committee:

or to such other address as may from time to time be provided in written notice by the Trustee or the Oversight Committee.

13.3 Governing Law. This Agreement is made in the State of Delaware, and the Trust and this Agreement, and the rights and obligations of the Trustee and the Oversight are to be governed by and construed and administered according to the laws of the State of Delaware, provided, however, that, except as expressly provided in this Agreement, there shall not be applicable to the Trust, the Trustee, the Oversight Committee or its Members, or this Agreement (a) the provisions of Section 3540 of Title 12 of the Delaware Code, or (b) any provisions of the laws (statutory or common) of the State of Delaware pertaining to trusts which relate to or regulate: (i) the filing with any court or governmental body or agency of trustee accounts or schedules of trustee fees and charges, (ii) affirmative requirements to post bonds for trustees, officers, agents or employees of a trust, (iii) the necessity for obtaining court or other governmental approval concerning the acquisition, holding or disposition of real or personal property, (iv) fees or other sums payable to trustees, officers, agents or employees of a trust, (v) the allocation of receipts and expenditures to income or principal, (vi) restrictions or limitations on the permissible nature, amount or concentration of trust investments or requirements relating to the titling, storage or other manner of holding of trust assets, or (vii) the establishment of fiduciary or other standards or responsibilities or limitations on the acts or powers of trustees, which are inconsistent with the limitations or liabilities or authorities and powers of the Trustee set forth or referenced in this Agreement.

13.4 Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

13.5 No Execution. All funds in the Trust and the Reserves shall be deemed *in custodia legis* until such times as the funds have actually been paid to or for the benefit of a Beneficiary or a Holder of the Other Claims, as applicable, and no Beneficiary or any other Person can bind, pledge, encumber, execute upon, garnish or attach the Assets, the Reserves or the Trustee in any manner or compel payment from the Trust except by Final Order of the Court. Payment will be governed solely by the Plan and this Agreement.

13.6 Plan and Confirmation Order. To the extent that the terms of this Agreement are inconsistent with the terms set forth in the Plan, then the terms of the Plan shall govern and control, provided that if the terms of this Agreement expressly states that a provision controls over the Plan, this Agreement shall govern and control. To the extent the terms of the Confirmation Order are inconsistent with the terms set forth in the Plan and/or this Agreement, then the terms of the Confirmation Order (and any other orders of this Court) shall govern and control over the Plan and this Agreement.

13.7 Intention of Parties to Establish Grantor Trust. This Agreement is intended to create a grantor trust for United States federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a grantor trust, and any ambiguity herein shall be construed consistent herewith, and if necessary, this Agreement may be amended to comply with such federal income tax laws, which amendments may apply retroactively.

13.8 Amendment. The Trustee may, with the approval of a majority of the Members of the Oversight Committee, modify, supplement or amend this Agreement, but only for non-material modifications to facilitate a more efficient administration of the Trust or to clarify any ambiguity or inconsistency, or render the Agreement in compliance with its stated tax purposes, and only if such amendment (a) does not materially and adversely affect the interests, rights, treatment or Distributions of any Beneficiaries, and (b) is not inconsistent with the Plan or the Confirmation Order. In the event that a majority (as described above) of the Members of the Oversight Committee is unable to reach a consensus regarding a proposed modification, supplement or amendment, the Trustee may seek Court approval of any such modification, supplement or amendment.

13.9 Severability. If any term, provision, covenant or restriction contained in this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable or against its regulatory policy, the remainder of the terms, provisions, covenants and restrictions contained in this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

13.10 Integration. This Agreement, the Plan and the Confirmation Order constitute the entire agreement with, by and among the parties thereto, and there are no representations, warranties, covenants or obligations except as set forth herein, in the Plan and in the Confirmation Order. This Agreement, together with 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. Except as otherwise provided in this Agreement, the Plan or Confirmation Order, nothing herein is intended or shall be construed to confer upon or give any person other than the parties hereto and the Beneficiaries any rights or remedies under or by reason of this Agreement.

13.11 Third Party Beneficiary. Nothing in this Agreement is intended to benefit or create any right or cause of action in or on behalf of any person other than the parties hereto unless expressly set forth herein.

13.12 Counterparts. This Agreement may be signed by the parties hereto in counterparts, which, when taken together, shall constitute one and the same document.

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

13.14 Preservation of Privilege. In connection with any rights, Claims, and Retained Causes of Action that constitute Assets, any attorney-client privilege, work product privilege, or other privilege or immunity attaching to any documents or communications (whether oral or written) in respect of those assets shall vest in the Trustee. The Trustee's receipt of such information shall not waive any such privileges, and all such privileges are expressly preserved, *provided*, for the avoidance of doubt, upon the Effective Date, such privileges shall belong to the Trust and Trustee and shall be waivable by the Trustee.

[Remainder of page intentionally blank]

IN WITNESS WHEREOF, the parties have executed this Agreement (or are deemed to have so executed this Agreement) as of the day and year first written above.

THE DEBTORS

By: _____
Name:
Authorized Officer

By: _____
ALAN D. HALPERIN

EXHIBIT A

Trustee Compensation

\$845.00 per hour, subject to periodic adjustments in accordance with the Trustee's standard business practice, plus reasonable out-of-pocket expenses.

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Exhibit A to the Liquidating Trust Agreement

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Exhibit B

Identity of the Liquidation Trustee

| Liquidation Trustee | Compensation |
|----------------------------|---------------------|
| Alan D. Halperin | \$845/hour |

Exhibit C

Identity of Liquidation Trust Oversight Committee

| Liquidation Trust Oversight Committee | Compensation |
|--|---------------------|
| Aclaris Therapeutics, Inc. | None. |
| Dr. Reddy's Laboratories, Inc. | None. |

Exhibit D

Identity of Non-Released Debtor Parties

None.

Exhibit E

Schedule of Assumed Executory Contracts and Unexpired Leases

None.