

IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
NEWNAN DIVISION

In re:

AFH AIR PROS, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 25-10356 (PMB)

(Jointly Administered)

Re: Docket No. 478

**NOTICE OF FILING OF (I) IDENTITY AND COMPENSATION  
OF THE LITIGATION TRUSTEE, (II) FORM OF LITIGATION TRUST  
AGREEMENT, AND (III) SCHEDULE OF ASSIGNED CAUSES OF ACTION  
WITH RESPECT TO THE SECOND AMENDED CHAPTER 11 PLAN OF  
LIQUIDATION OF AFH AIR PROS, LLC AND ITS DEBTOR AFFILIATES**

**PLEASE TAKE NOTICE** that on June 24, 2025, the above-captioned debtors and debtors-in-possession (the “Debtors”) filed the *Second Amended Chapter 11 Plan of Liquidation of AFH Air Pros, LLC and Its Debtor Affiliates* [Docket No. 478] (all exhibits thereto and as may be amended, supplemented, or otherwise modified from time to time, the “Plan”) and the *Second Amended Disclosure Statement for the Second Amended Chapter 11 Plan of AFH Air Pros, LLC and its Debtor Affiliates* [Docket No. 479] (as may be amended, modified, or supplemented from time to time, the “Disclosure Statement”)<sup>2</sup> with the United States Bankruptcy Court for the Northern District of Georgia (the “Court”).

**PLEASE TAKE FURTHER NOTICE** that on June 24, 2025, the Court entered an order [Docket No. 477] (the “Solicitation Procedures Order”) that, among other things, (a) approved on an interim basis the Disclosure Statement as containing “adequate information” pursuant to section 1125(a) of title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”) subject to final approval at the Combined Hearing (defined below) and (b) authorized the Debtors to solicit acceptances for the Plan.

**PLEASE TAKE FURTHER NOTICE** that as contemplated by the Solicitation Procedures Order, the Debtors must (i) file the form of Litigation Trust Agreement with the Court on or before July 14, 2025, and (ii) serve a notice of filing of the Litigation Trust Agreement, with

<sup>1</sup> The last four digits of AFH Air Pros, LLC’s tax identification number are 1228. Due to the large number of debtor entities in these chapter 11 cases, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the claims and noticing agent at <https://www.veritaglobal.net/AirPros>. The mailing address for the debtor entities for purposes of these chapter 11 cases is: 150 S. Pine Island Road, Suite 200, Plantation, Florida 33324.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings attributed to such terms in the Plan or Disclosure Statement, as applicable.



instructions for parties in interest to access the Litigation Trust Agreement on the Debtors' case website, on all parties entitled to receive a Solicitation Package.

**PLEASE TAKE FURTHER NOTICE** that attached hereto as **Exhibit A** is the identity and compensation of the Litigation Trustee.

**PLEASE TAKE FURTHER NOTICE** that attached hereto as **Exhibit B** is the form of Litigation Trust Agreement (as amended, modified, or supplemented pursuant to the terms thereof and the Plan, the "Litigation Trust Agreement").

**PLEASE TAKE FURTHER NOTICE** that attached hereto as **Exhibit C** is the Schedule of Assigned Causes of Action.

**PLEASE TAKE FURTHER NOTICE** that the foregoing Plan Supplement documents are in draft form and remain subject to ongoing review and negotiation among the Debtors, the Prepetition Lenders, the DIP Lenders, the Creditors' Committee, and other interested parties with respect thereto. The Plan Supplement documents have not yet been approved by the Bankruptcy Court. The Debtors reserve all rights to amend, revise, or supplement the Plan Supplement, and any of the documents, exhibits, 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 Bankruptcy Court, and all rights and remedies of any parties with respect thereto are expressly reserved.

**PLEASE TAKE FURTHER NOTICE THAT** the foregoing Plan Supplement Documents, as well as the Disclosure Statement, Plan, and other documents filed in the chapter 11 cases, are available free of charge on the Debtors' case information website (<https://www.veritaglobal.net/airpros>) or may be obtained from the Claims and Noticing Agent by calling (866) 927-7076 (U.S./Canada) or (310) 751-2650 (International), or by clicking the "Submit an Inquiry" option at <https://www.veritaglobal.net/airpros/Inquiry>. Please be advised that the Claims and Noticing Agent is authorized to answer questions about, and provide additional copies of, solicitation materials, but may not advise you as to whether you should vote to accept or reject the Plan.

*[Remainder of Page Intentionally Left Blank.]*

Dated: July 14, 2025

Respectfully submitted,

**GREENBERG TRAURIG, LLP**

/s/ David B. Kurzweil

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*Counsel for the Debtors and Debtors in Possession*

**Exhibit A**

*(Identity and Compensation of the Litigation Trustee)*

This Exhibit A identifies the Litigation Trustee selected by the Creditors' Committee pursuant to the Plan and the compensation to be paid to the Litigation Trustee. The Creditors' Committee has selected Olympus Guardians LLC to serve as the Litigation Trustee.

Olympus Guardians is a specialized advisory firm, focused on representing vendors, creditors, and trustees in complex Chapter 11 and post-confirmation bankruptcy matters. The firm brings hands-on experience in trust administration, claims reconciliation, and asset monetization across a wide range of industries including retail, manufacturing, digital assets, and healthcare. Olympus Guardians is known for its ability to operate under high-pressure, time-sensitive environments, working alongside official committees, trustees, and legal counsel to drive value recovery and enforce creditors' rights. More information on the firm can be found at <https://olympusguardian.com/>.

As provided for in the Litigation Trust Agreement, in consideration for the services of the Litigation Trustee under the Litigation Trust Agreement, the Litigation Trustee's initial compensation shall be \$20,000 per month for the first 12 months, \$15,000 per month for the next 12 months, and then \$10,000 per month thereafter, subject to modification by agreement between the Litigation Trustee and the Senior Secured Parties in accordance with the terms of the Litigation Trust Agreement.

**Exhibit B**

(Form of Litigation Trust Agreement)

**FORM SUBJECT TO ONGOING REVIEW**

**LITIGATION TRUST AGREEMENT AND DECLARATION OF LITIGATION TRUST**

This Litigation Trust Agreement and Declaration of Litigation Trust (this “Agreement”), dated as of August \_\_, 2025, is made by and among AFH Air Pros, LLC and its affiliated debtors and debtors in possession (collectively, the “Debtors”, and on and after the Effective Date of the Plan, the “Wind Down Debtors”) in the Chapter 11 Cases, and Olympus Guardians LLC (the “Litigation Trustee,” and together with the Debtors, the “Parties,” and each, a “Party”).

**RECITALS**

1. On March 16, 2025 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Northern District of Georgia (the “Bankruptcy Court”), and the Chapter 11 Cases are being jointly administered under the caption *In re AFH Air Pros, LLC, et al.*, Case No. 25-10356 (PMB) (Bankr. N.D. GA) (the “Chapter 11 Cases”).

2. On August \_\_, 2025, the Bankruptcy Court entered an order [Docket No. \_\_] (the “Confirmation Order”) confirming the *Second Amended Chapter 11 Plan of Liquidation of AFH Air Pros, LLC and its Debtor Affiliates* [Docket No. 478] (as confirmed, including all amendments and supplements thereto, the “Plan”).

3. The Plan provides for the creation of the Litigation Trust on the Effective Date of the Plan.

4. The Litigation Trust is established in accordance with the Plan, pursuant to the Confirmation Order, and for the purpose of receiving, holding, administering, distributing, and liquidating the assets of the Litigation Trust, including the Litigation Trust Assets (as defined in the Plan).

5. The Litigation Trustee shall: (a) be the exclusive administrator of the assets and properties of the Litigation Trust, including the Litigation Trust Assets, and (b) have the sole power and authority to (i) reconcile Class 4 General Unsecured Claims (other than the Prepetition Lender Deficiency Claim), including asserting any objections thereto (other than the Prepetition Lender Deficiency Claim), and (ii) distribute the Litigation Trust Assets net of the Litigation Trust Expenses in accordance with the terms of the Plan and this Agreement, with no objective or authority to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary and consistent with, the liquidating purpose of the Litigation Trust. The Litigation Trust is intended to qualify as a liquidating trust pursuant to Treasury Regulation section 301.7701-4(d), other than any Litigation Trust Disputed Claims Reserve (as defined herein) treated as a Disputed Ownership Fund (“DOF”) or other separate entity.

6. Pursuant to the Plan, for all United States federal income tax purposes, all parties shall treat the transfer of the Litigation Trust Assets to the Litigation Trust for the benefit of the Holders of Allowed Class 4 General Unsecured Claims, whether their Claims are Allowed on or after the Effective Date, including any amounts or other assets subsequently transferred to the Litigation Trust (but only at such time as actually transferred) as (i) a transfer of the Litigation Trust Assets (subject to any obligations relating to such Litigation Trust Assets, including, but not limited to, the Litigation Trust Expenses) to the Litigation Trust Beneficiaries and, to the extent the Litigation Trust Assets are allocable to Disputed General Unsecured Claims (any such Litigation Trust Assets allocable to, or retained on account of, Disputed General Unsecured Claims, the “Litigation Trust Disputed Claims Reserve”) that are the responsibility of the Litigation Trust, acting by and through its agents and representatives, to resolve, to the Litigation Trust Disputed Claims Reserve, followed by (ii) the transfer by the Litigation Trust Beneficiaries

of the Litigation Trust Assets (other than the Litigation Trust Assets allocable to the Litigation Trust Disputed Claims Reserve) to the Litigation Trust in exchange for their non-certified beneficial interests in the Litigation Trust (the “Litigation Trust Interests”) that will entitle the respective holder thereof to its *pro rata* share of the Litigation Trust Interests. Accordingly, the Litigation Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective shares of the Litigation Trust Interests (other than such Litigation Trust Assets as are allocable to the Litigation Trust Disputed Claims Reserve). The foregoing treatment shall also apply, to the extent permitted by applicable law, for applicable United States state and local income tax purposes.

7. The Litigation Trust is further intended to be exempt, pursuant to section 1145 of the Bankruptcy Code, from the requirements of (i) the Securities Exchange Act of 1933, as amended, and any applicable state and local laws requiring registration of securities, and (ii) the Investment Company Act of 1940, as amended, pursuant to sections 7(a) and 7(b) of that Act and section 1145 of the Bankruptcy Code.

NOW, THEREFORE, in accordance with the Plan and the Confirmation Order, and in consideration of the promises, and the mutual covenants and agreements of the Parties contained in the Plan and herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged and affirmed, the Parties agree and declare as follows:

#### **DECLARATION OF LITIGATION TRUST**

The Debtors and the Litigation Trustee enter into this Agreement to effectuate the distribution of the Litigation Trust Assets to the Litigation Trust Beneficiaries pursuant to the Plan and the Confirmation Order;



Pursuant to Article V of the Plan and Section 2.3.2 of this Agreement, on the Effective Date (or such later date as provided in the Confirmation Order or the Plan), all of the Litigation Trust Assets shall automatically be transferred to, and vest in or deem to be vested in, the Litigation Trust free and clear of all Claims, Liens, Interests, encumbrances, and contractually imposed restrictions except as otherwise provided in the Plan;

TO HAVE AND TO HOLD unto the Litigation Trustee and its successors in trust; and

IT IS HEREBY FURTHER COVENANTED AND DECLARED, that the Litigation Trust Assets, are to be held by the Litigation Trust and applied on behalf of the Litigation Trust by the Litigation Trustee (such Litigation Trustee to be a “United States person” within the meaning of Internal Revenue Code section 7701(a)(30) and established within the United States) on the terms and conditions set forth herein and the Plan, solely for the benefit of the Litigation Trust Beneficiaries, as more fully set forth in the Plan and this Agreement, and for no other party.

## **ARTICLE I RECITALS, PLAN DEFINITIONS, OTHER DEFINITIONS, INTERPRETATION, AND CONSTRUCTION**

1.1 Recitals. The Recitals are incorporated into and made terms of this Agreement.

1.2 Definitions. All terms used in this Agreement but not defined herein shall have the meanings set forth in the Plan or the Confirmation Order, as applicable, or as otherwise set forth herein. For the avoidance of doubt, “Litigation Trust Assets” shall mean the Litigation Trust Assets (as defined in the Plan), any and all other property held from time to time by the Litigation Trust under this Agreement and any proceeds thereof and earnings thereon. In addition, as used in this Agreement, “Term Sheet” means the Committee Settlement Term Sheet attached as Exhibit C to the Disclosure Statement.

1.3 Conflict Among Plan Documents. In the event of any inconsistency between the Plan, the Confirmation Order, and/or this Agreement, each such document shall have controlling

effect in the following rank order: (i) first the Confirmation Order, (ii) then the Plan, and (iii) then this Agreement, *provided, however*, that to the extent the Plan and the Confirmation Order are silent as to a particular issue, the terms of this Agreement shall control so long as not otherwise inconsistent with the intent of the Plan and/or the Confirmation Order. Notwithstanding the foregoing, in the event of any inconsistency solely between Article V.C of the Plan and this Agreement, this Agreement shall control.

## **ARTICLE II ESTABLISHMENT OF LITIGATION TRUST**

2.1 Effectiveness of Agreement; Name of Litigation Trust. The Debtors and the Litigation Trustee, pursuant to the Plan and in accordance with Bankruptcy Code, hereby create the Litigation Trust in furtherance of the compromises and agreements more fully set forth in the Plan and Term Sheet. This Agreement shall become effective on the Effective Date. The Litigation Trust shall be officially known as the “Air Pros Litigation Trust.”

2.2 Purpose of Litigation Trust. Further to the establishment and purpose of the Litigation Trust as declared in Recitals 7 and 8 of this Agreement, the Litigation Trust is established for the primary purpose of (i) collecting, holding, administering, distributing, and liquidating the Litigation Trust Assets for the benefit of the Litigation Trust Beneficiaries in accordance with the terms and conditions of this Agreement and the Plan and Confirmation Order, (ii) investigating, pursuing (as appropriate), and collecting any proceeds of Litigation Trust Claims; and (iii) reconciling, seeking to subordinate, compromising, or settling any or all General Unsecured Claims (other than the Prepetition Lender Deficiency Claim); and with no objective or authority 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 Litigation Trust.

2.3 Transfer of Litigation Trust Assets.

2.3.1 Conveyance of Litigation Trust Assets. Pursuant to the Plan, the Debtors hereby grant, release, assign, transfer, convey and deliver, on behalf of the Litigation Trust Beneficiaries, all of such Debtors' rights, title, and interest in and to the Litigation Trust Assets to the Litigation Trust as of the Effective Date (or such later date as provided in the Confirmation Order or the Plan) in trust for the benefit of the Litigation Trust Beneficiaries, which shall constitute Litigation Trust Assets and shall be administered and applied as specified in this Agreement and the Plan. The transfer of the Litigation Trust Assets to the Litigation Trust shall be exempt from any stamp, transfer, recording, sales, use or similar tax. Upon the transfer of the Litigation Trust Assets to the Litigation Trust in accordance with the Plan, none of the Debtors or the Wind Down Debtors shall have any further obligations with respect to the Allowed General Unsecured Claims in Class 4 under the Plan, or the distribution or payment of any proceeds of the Litigation Trust Assets to any of the Litigation Trust Beneficiaries. The Wind Down Debtors shall, from time to time, (i) execute and deliver or cause to be executed and delivered any such documents (in recordable form where necessary or appropriate) and (ii) take or cause to be taken such further commercially reasonable action, in each case as the Litigation Trustee may reasonably deem necessary or appropriate to vest in or confirm to the Litigation Trustee title to and possession of the Litigation Trust Assets; *provided* that neither the Debtors nor the Wind Down Debtors shall be required to incur any unreimbursed liability for any fees or expenses (including any indemnification obligations) in connection with such actions. The Litigation Trustee shall have no duty to arrange for any of the transfers contemplated under this Agreement or by the Plan or to ensure their compliance with the terms of the Plan and/or the Confirmation Order and shall be conclusively entitled to rely on the legality and validity of such transfers by the Debtors or third parties, if any. Under no circumstance

shall the Debtors, the Wind Down Debtors, or any other party be required to contribute any additional assets to or for the benefit of the Litigation Trust other than the Litigation Trust Assets.

2.3.2 Transfer of Litigation Trust Funding Amount. On the Effective Date, the Debtors or the Wind Down Debtors, as applicable, shall distribute the Initial Litigation Trust Funding Cash Amount to the Litigation Trust. Promptly after payment of all Allowed Professional Fee Claims of the Creditors' Committee Professionals, the Wind Down Debtors shall transfer the Committee Professionals Remaining Amount, if any, to the Litigation Trust.

2.3.3 Title to Litigation Trust Assets. Pursuant to the Plan, all of the Debtors' rights, title, and interest in and to the Litigation Trust Assets, including all such assets held or controlled by third parties (if any), are hereby transferred to, and automatically vested or deemed to be vested in, the Litigation Trust on the Effective Date (or such later date as provided in the Confirmation Order or the Plan) and shall constitute Litigation Trust Assets, free and clear of all Liens, Claims, encumbrances, Interests, contractually-imposed restrictions, and other interests, except as specifically provided in the Plan, and such transfer is on behalf of the Litigation Trust Beneficiaries to establish the Litigation Trust. The Litigation Trust shall be authorized, among other things, to (i) obtain possession or control of, liquidate, and collect all of the Litigation Trust Assets in the possession or control of the Debtors and/or third parties and (ii) assert and/or exercise any and all rights of setoff and recoupment and defenses of the Debtors, their Estates, and the Wind Down Debtors, as applicable, to any Holders of Disputed General Unsecured Claims. Without limiting the generality of the foregoing, the Litigation Trust shall have the right to invoke section 542 of the Bankruptcy Code to pursue turnover of Litigation Trust Assets. On the Effective Date (or such date that the Litigation Trust Assets are transferred to the Litigation Trust in accordance with the Plan), the Litigation Trust shall be substituted for the Debtors for all purposes with respect to the

Litigation Trust Assets and administration of the Litigation Trust Interests. To the extent any law or regulation prohibits the transfer of ownership of any of the Litigation Trust Assets from the Debtors to the Litigation Trust and such law is not superseded by the Bankruptcy Code, the Litigation Trust's interest in such Litigation Trust Assets shall be a Lien upon, and security interest in, such Litigation Trust Assets, in trust, nevertheless, for the sole use and purposes set forth in Section 2.2 of this Agreement, and this Agreement shall be deemed a security agreement granting such interest thereon without need to file financing statements or mortgages. By executing this Agreement, the Litigation Trustee on behalf of the Litigation Trust hereby accepts all of such property as Litigation Trust Assets, to be held in trust for the Litigation Trust Beneficiaries, subject to the terms of this Agreement and the Plan.

2.4 Capacity of Litigation Trust. Notwithstanding any state or federal law to the contrary or anything herein, the Litigation 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 Litigation 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.

2.5 Mutual Cooperation.

2.5.1 The Wind Down Debtors shall provide commercially reasonable access to the Litigation Trustee and any professionals retained by the Litigation Trust (at the sole cost and expense of the Litigation Trust) to retrieve or access data reasonably necessary to reconcile Class 4 General Unsecured Claims and to investigate and pursue the Litigation Trust Claims; *provided* that neither the Debtors nor the Wind Down Debtors shall be required to incur any liability for any

fees or expenses (including any indemnification obligations) that may result from the provision of any such access to the Litigation Trustee and any professionals retained by the Litigation Trust; *provided further* that neither the Debtors nor the Wind Down Debtors shall have any obligation or duty to investigate any Claims, issues, or other matters concerning any Class 4 General Unsecured Claim or any Litigation Trust Claim for the benefit of the Litigation Trust. The Litigation Trustee may request an updated Claims Register of General Unsecured Claims from the Claims and Noticing Agent within thirty (30) days after the Effective Date and, upon request, the Debtors or Wind Down Debtors, as applicable, shall instruct the Claims and Noticing Agent to make such register available to the Litigation Trustee.

2.5.2 The Litigation Trustee and its professionals shall use commercially reasonable efforts to cooperate with the Wind Down Debtors and their professionals in connection with implementing certain provisions of the Plan including, but not limited to, the issuance of distributions pursuant to the Plan, reporting requirements, the exchange of information in the prosecution of objections to Claims to the extent necessary, and any other reasonably requested information or assistance.

2.6 Reimbursement of the Wind Down Debtors. The Litigation Trust shall reimburse the Wind Down Debtors for all out-of-pocket expenses incurred in connection with the Wind Down Debtors' compliance with its cooperation and/or delivery obligations in this Agreement.

2.7 Acceptance by Litigation Trustee. The Litigation Trustee accepts its appointment as Litigation Trustee of the Litigation Trust.

### **ARTICLE III ADMINISTRATION OF LITIGATION TRUST**

3.1 Rights, Powers, and Privileges of Litigation Trustee Generally. Except as otherwise provided in this Agreement, the Plan, or the Confirmation Order, as of the Effective Date, the

Litigation Trustee, on behalf of the Litigation Trust, may control and exercise authority over the Litigation Trust Assets, over the acquisition, management, and disposition thereof, and over the management and conduct of the affairs of the Litigation Trust in accordance with the Plan, the Confirmation Order, and this Agreement. In administering the Litigation Trust Assets, the Litigation Trustee shall, among other things, in an expeditious but commercially reasonable manner, (i) liquidate and convert to Cash the Litigation Trust Assets, (ii) make timely distributions in accordance with this Agreement and the Plan, and (iii) exercise reasonable business judgment and not unduly prolong the Litigation Trust's duration. Notwithstanding anything in the Plan, the Confirmation Order, or this Agreement to the contrary, the Litigation Trustee shall always act consistently with, and not contrary to, the purpose of the Litigation Trust as set forth in this Agreement and the Plan.

3.2 Power to Contract. In furtherance of the purpose of the Litigation Trust, and except as otherwise specifically restricted in the Plan, the Confirmation Order, or this Agreement, the Litigation Trustee shall have the right and power on behalf of the Litigation Trust, and also may cause the Litigation Trust to enter into any covenants or agreements binding the Litigation Trust, and to execute, acknowledge, and deliver any and all instruments that are necessary or deemed by the Litigation Trustee to be consistent with, and advisable in, furthering the purpose of the Litigation Trust.

3.3 Ultimate Right to Act Based on Advice of Counsel or Other Professionals. Nothing in this Agreement shall be deemed to prevent the Litigation Trustee from taking or refraining to take any action on behalf of the Litigation Trust that, based upon the advice of counsel or other professionals, the Litigation Trustee determines it is obligated to take or to refrain from taking in

the performance of any duty that the Litigation Trustee may owe the Litigation Trust Beneficiaries or any other Person under the Plan, the Confirmation Order, or this Agreement.

3.4 Powers of Litigation Trustee. Without limiting the generality of the above Section 3.1, in addition to the powers granted in the Plan, at the sole cost and expense of the Litigation Trust, the Litigation Trustee shall have the power to take the following actions on behalf of the Litigation Trust and any powers reasonably incidental thereto that the Litigation Trustee, in its reasonable discretion, deems necessary or appropriate to fulfill the purpose of the Litigation Trust, without need for further approval by the Bankruptcy Court except as specifically set forth herein, unless otherwise specifically limited or restricted by the Plan, the Confirmation Order, or this Agreement:

3.4.1 hold legal title to the Litigation Trust Assets and to any and all rights of the Debtors (including as Wind Down Debtors, as applicable) and the Litigation Trust Beneficiaries in or arising from the Litigation Trust Assets;

3.4.2 receive, maintain, conserve, supervise, prosecute, collect, settle, manage, adjust, invest, protect, enforce, and, where appropriate, cause the Litigation Trust to abandon the Litigation Trust Assets, including causing the Litigation Trust to invest any moneys held as Litigation Trust Assets in accordance with the terms of Section 3.8 hereof;

3.4.3 open and maintain bank accounts on behalf of, or in the name of, the Litigation Trust;

3.4.4 establish and maintain the Litigation Trust Expense Fund;

3.4.5 cause the Litigation Trust to enter into any agreement or execute any document or instrument required by or consistent with the Plan, the Confirmation Order, or this Agreement, and to perform all obligations thereunder;



3.4.6 collect any and all of the Litigation Trust Assets;

3.4.7 protect and enforce the rights to the Litigation Trust Assets vested in the Litigation Trust and the Litigation Trustee by this Agreement by any method deemed appropriate, including, without limitation, by judicial proceedings or otherwise;

3.4.8 investigate the Litigation Trust Claims and cause the Litigation Trust to seek the examination of any Person pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure or other applicable rules;

3.4.9 consistent with Article VIII.B of the Plan, review, investigate reconcile, compromise, settle, or object to General Unsecured Claims (other than the Prepetition Lender Deficiency Claim) as set forth in the Plan, and cause the Litigation Trust to seek the examination of any Person pursuant to Bankruptcy Rule 2004;

3.4.10 cause the Litigation Trust to employ or retain professionals, including without limitation, a distribution agent, and other agents, attorneys, financial advisors, independent contractors, and third parties pursuant to this Agreement and pay the reasonable compensation thereof as Litigation Trust Expenses;

3.4.11 cause the Litigation Trust to enter into any litigation funding or contingency agreements as may be necessary in the Litigation Trustee's reasonable discretion to liquidate the Litigation Trust Claims;

3.4.12 cause the Litigation Trust to pay all of its lawful expenses, debts, charges, taxes, and other liabilities, and make all other payments relating to the Litigation Trust Assets as Litigation Trust Expenses, solely out of the Litigation Trust Expense Fund;

3.4.13 calculate, authorize, and make all distributions to the Holders of Allowed General Unsecured Claims as provided for in, or contemplated by, the Plan, the Confirmation Order, and this Agreement;

3.4.14 establish, adjust, and maintain the Disputed Unsecured Claims Reserve;

3.4.15 cause the Litigation Trust to withhold from the amount distributable to any Person the maximum amount needed to pay any tax or other charge that the Litigation Trustee has determined, in good faith and 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 or of any state or political subdivision thereof;

3.4.16 in reliance upon the Debtors' Schedules and the official Claims Register maintained in the Chapter 11 Cases, review, and, where appropriate, cause the Litigation Trust to Allow or object to, General Unsecured Claims (other than the Prepetition Lender Deficiency Claim), and supervise and administer the Litigation Trust's commencement, prosecution, settlement, compromise, withdrawal, or resolution of all objections to the Disputed General Unsecured Claims required to be administered by the Litigation Trust in accordance with the Plan;

3.4.17 in reliance upon the Debtors' Schedules and the Claims Register maintained in the Chapter 11 Cases, maintain a register evidencing the Litigation Trust Interests held by each Litigation Trust Beneficiary and, in accordance with Section 3.9 of this Agreement, such register may be the official Claims Register maintained in the Chapter 11 Cases;

3.4.18 without limiting, and as set forth in Section 3.4.13 of this Agreement, cause the Litigation Trust to make all tax withholdings, file tax information returns, file and prosecute tax refund claims, make tax elections by and on behalf of the Litigation Trust, and file tax returns for the Litigation Trust as a grantor trust under IRC section 671 and Treasury Regulation section

1.671-4 pursuant to and in accordance with the Plan and Article VII hereof (subject to the treatment of any portion of the Litigation Trust as a DOF or other separate entity), and pay taxes, if any, payable for and on behalf of the Litigation Trust, *provided, however*, neither the Litigation Trust nor the Litigation Trustee shall have any responsibility or liability in any capacity whatsoever for the filing of Debtors' income tax returns for any period either prior to or after the Effective Date;

3.4.19 cause the Litigation Trust to abandon or deposit into the registry of the Bankruptcy Court any Litigation Trust Assets that the Litigation Trustee determines to be too impractical to distribute to the Litigation Trust Beneficiaries or of inconsequential value to the Litigation Trust and the Litigation Trust Beneficiaries;

3.4.20 cause the Litigation Trust to send annually to Litigation Trust Beneficiaries, in accordance with the applicable tax laws, a separate statement stating a Litigation Trust Beneficiary's interest in the Litigation Trust and its share of the Litigation Trust's income, gain, loss, deduction, or credit, and to instruct all such Litigation Trust Beneficiaries to report such items on their United States federal tax returns, as applicable;

3.4.21 cause the Litigation Trust to seek a determination of tax liability or refund of the Litigation Trust (including any Litigation Trust Disputed Claims Reserve treated as a DOF (if elected) or other separate entity) under section 505 of the Bankruptcy Code;

3.4.22 cause the Litigation Trust to establish such reserves for taxes, assessments, and other Litigation Trust Expenses as may be necessary and appropriate for the proper operation of matters incident to the Litigation Trust, including the Litigation Trust Expense Fund;

3.4.23 cause the Litigation Trust to purchase and carry all insurance policies that the Litigation Trustee deems reasonably necessary or advisable and to pay all associated insurance premiums and costs as Litigation Trust Expenses;

3.4.24 undertake all administrative functions of the Litigation Trust, including overseeing the winding down and termination of the Litigation Trust;

3.4.25 exercise, implement, enforce, and discharge all of the applicable and relevant terms, conditions, powers, duties, and other provisions of the Plan, the Confirmation Order, and this Agreement;

3.4.26 distribute net proceeds received, if any, from the Litigation Trust Claims pursuant to the Litigation Trust Proceeds Waterfall; and

3.4.27 take all other actions consistent with the provisions of the Plan that the Litigation Trustee deems reasonably necessary or desirable to administer the Litigation Trust.

3.5 Abandonment. Notwithstanding the foregoing, if, in the Litigation Trustee's reasonable judgment, any Litigation Trust Asset cannot be monetized or resolved in a commercially reasonable manner or the Litigation Trustee believes in good faith that such property has inconsequential value to the Litigation Trust or the Litigation Trust Beneficiaries, the Litigation Trustee shall have the right to cause the Litigation Trust to abandon or otherwise dispose of such property, including donating any de minimis remaining amount of cash to a qualified IRC 501(c)(3) charitable organization.

3.6 Exclusive Authority to Pursue Litigation Trust Claims. The Litigation Trust shall have the exclusive right, power, and interest to pursue, settle, waive, release, abandon, or dismiss the Litigation Trust Claims. The Litigation Trust shall be the sole representative of the Estates under section 1123(b)(3) of the Bankruptcy Code with respect to the Litigation Trust Assets including, but not limited to, the Litigation Trust Claims. The Litigation Trust shall be vested with and entitled to assert all setoffs and defenses of the Debtors or the Litigation Trust to any counterclaims that may be asserted by any defendant with respect to any Litigation Trust Claim.

The Litigation Trust shall also be vested with and entitled to assert all the Debtors' and the Estates' rights with respect to any such counterclaims under section 558 of the Bankruptcy Code.

3.7 Responsibility for Administration of Claims. From and after the Effective Date, the Litigation Trust shall be solely responsible for administering and paying distributions to the Holders of Allowed Class 4 General Unsecured Claims. The Litigation Trust, acting by and through the Litigation Trustee, shall have the exclusive right to object to the allowance of any such General Unsecured Claim (other than the Prepetition Lender Deficiency Claim) on any ground, to file, withdraw, or litigate to judgment objections to such General Unsecured Claims, to settle or compromise any Disputed General Unsecured Claims without any further notice to or action, order or approval by the Bankruptcy Court, and to assert all defenses of the Debtors and their Estates with respect to such General Unsecured Claims. Except as set forth herein or in the Plan, the Litigation Trust, acting by and through the Litigation Trustee, shall also be entitled to assert all of the Debtors' and their Estates' rights under, without limitation, section 558 of the Bankruptcy Code with respect to such General Unsecured Claims, and may seek estimation of any General Unsecured Claims under and subject to section 502(c) of the Bankruptcy Code.

3.8 Agents and Professionals. The Litigation Trustee may, but shall not be required to, consult with and retain attorneys, financial advisors, accountants, appraisers, and other professionals the Litigation Trustee believes have qualifications necessary to assist in the administration of the Litigation Trust, including professionals previously retained by the Debtors or the Creditors' Committee. For the avoidance of doubt, and without limitation of applicable law, nothing in this Agreement shall limit the Litigation Trustee from engaging counsel or other professionals, including Professionals retained during the Chapter 11 Cases, the Litigation Trustee itself, or the Litigation Trustee's firm or their affiliates, to do work for the Litigation Trust. The

Litigation Trustee may pay the reasonable salaries, fees, and expenses of such Persons out of the Litigation Trust Expense Fund (or, solely to the extent of any Approved Excess Litigation Trust Expenses (as defined below), then out of any proceeds of Litigation Trust Claims), in the ordinary course of business as Litigation Trust Expenses without the need for Bankruptcy Court approval. The Debtors, the Wind Down Debtors, and their Affiliates (and anyone acting on their behalf), and the Senior Secured Parties<sup>1</sup> shall not be responsible for payment of any Litigation Trust Expenses.

3.9 Safekeeping and Investment of the Litigation Trust Assets. All moneys and other assets received by the Litigation Trustee shall, until distributed or paid over as provided herein and in the Plan, be held in trust for the benefit of the Litigation Trust Beneficiaries but (except as provided in the Plan or this Agreement) need not be segregated in separate accounts from other Litigation Trust Assets, unless and to the extent required by law or the Plan. Neither the Litigation Trust nor the Litigation Trustee shall have any liability for interest or producing income on any moneys received by them and held for distribution on account of applicable Allowed Class 4 General Unsecured Claims or payment to the Litigation Trust Beneficiaries except as such interest shall actually be received by the Litigation Trust or the Litigation Trustee, which shall be distributed as provided in the Plan. Except as otherwise provided by the Plan, the powers of the Litigation Trustee to invest any moneys held by the Litigation Trust, other than those powers reasonably necessary to maintain the value of the assets and to further the Litigation Trust's liquidating purpose, shall be limited to powers to invest in demand and time deposits, such as short-term certificates of deposit, in banks or other savings institutions, or other temporary liquid investments, such as treasury bills; *provided, however*, that the scope of permissible investments shall be limited to include only those investments that a "liquidating trust," within the meaning of

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<sup>1</sup> For purposes of this Agreement, "Senior Secured Parties" includes the DIP Lenders, the DIP Agent, the Prepetition Lenders, and the Prepetition Agent (each as defined in the Plan).

Treasury Regulation section 3.01.7701-4(d), may be permitted to hold pursuant to the Treasury Regulations, or any IRS guidelines, whether set forth in IRS rulings, IRS pronouncements, or otherwise. For the avoidance of doubt, the provisions of section 11-2.3 of the Estates, Powers, and Trusts Law of New York shall not apply to this Agreement. Notwithstanding the foregoing, the Litigation Trustee shall not be prohibited from engaging in any trade or business on its own account, provided that such activity does not interfere or conflict with the Litigation Trustee's administration of the Litigation Trust (including the Litigation Trust's status as a "liquidating trust" for tax purposes).

3.10 Maintenance and Disposition of Litigation Trust and Debtor Records. The Litigation Trustee shall maintain accurate records of the administration of the Litigation Trust Assets, including receipts and disbursements and other activity of the Litigation Trust. The Litigation Trust may (at its sole cost and expense), but has no obligation to, engage a claims agent (including, but not limited to, the Debtors' Claims and Noticing Agent) to continue to maintain and update the Claims Register maintained in the Chapter 11 Cases throughout the administration of the Litigation Trust. To the extent of any Class 4 General Unsecured Claims reflected thereon, the Claims Register may serve as the Litigation Trustee's register of Litigation Trust Interests held by Litigation Trust Beneficiaries. The fees and costs associated with maintaining and updating the Claims Register with respect to General Unsecured Claims shall be the sole responsibility of the Litigation Trust. The books and records maintained by the Litigation Trustee and any records of the Debtors transferred to the Litigation Trust may be disposed of by the Litigation Trustee at the later of (a) such time as the Litigation Trustee determines that the continued possession or maintenance of such books and records is no longer necessary for the benefit of the Litigation

Trust or the Litigation Trust Beneficiaries and (b) upon the termination and completion of the winding down or dissolution of the Litigation Trust.

3.11 Preservation of Privilege. As provided in the Plan and Confirmation Order, any attorney-client privilege, work-product privilege, or other privilege of immunity of any Debtor (but no other person) attaching to any documents or communications (whether written or oral) transferred to the Litigation Trust with respect to General Unsecured Claims or Litigation Claims shall vest in the Litigation Trust. The Litigation Trust shall preserve and protect all applicable privileges attaching to any such documents, information, or communications. To the extent there is overlap of supporting documents, claims, defenses, legal theories or analyses between the Litigation Trust Claims, on the one hand, and any Causes of Action, defenses, claims or counterclaims retained by, or asserted against, the Wind Down Debtors, on the other hand, the Wind Down Debtors and the Litigation Trustee shall cooperate with each other pursuant to principles of common interest with respect to privileges. Nothing herein shall be deemed to constitute a waiver of any privilege or any shared, joint, or common interest privilege or immunity, and all such privileges and immunities are expressly preserved.

3.12 Reporting Requirements. The Litigation Trustee shall provide the Senior Secured Parties with a monthly report (the “Monthly Report”) that shall include, at a minimum, (a) a report of the Litigation Trust Expenses theretofore incurred, (b) a summary description on the status of any causes of action for claims greater than \$500,000 that the Litigation Trustee is contemplating, commencing, actively prosecuting, or settling, and (c) such other information and reports the Senior Secured Parties may reasonably request concerning the status of the Litigation Trust and disposition of the Litigation Trust Assets, including the status of (i) the litigation, settlement, administration, and pursuit of the Litigation Trust Claims, and (ii) the administration of the



Litigation Trust Assets. The Litigation Trustee shall provide such Monthly Report on a monthly basis, to be delivered (with email being sufficient) by the third business day of each month for reporting on the preceding month (or such other period/frequency as the Senior Secured Parties may determine to from time to time).

3.13 Reports to be Provided by the Litigation Trustee and Reimbursement of Statutory Fees. Pursuant to Article II.E of the Plan, until entry of a final decree closing the last of the Chapter 11 Cases, the Litigation Trustee shall provide the Wind Down Debtors a schedule of disbursements made by the Litigation Trust during each quarterly period after the Effective Date to be filed with the post-confirmation quarterly reports required by the Office of the United States Trustee. The Litigation Trustee shall be solely responsible for all Statutory Fees payable on account of disbursements made by the Litigation Trustee from the Litigation Trust; provided, for the avoidance of doubt, the Debtors and the Wind Down Debtors shall be solely liable to pay Statutory Fees on account of the payment of the Litigation Trust Funding Amount to the Litigation Trust.

3.14 No Bond Required; Procurement of Insurance. Notwithstanding any state or other applicable law to the contrary, the Litigation Trustee (including any successor Litigation Trustee) shall be exempt from giving any bond or other security in any jurisdiction and shall serve hereunder without bond. The Litigation Trustee is hereby authorized, but not required, to obtain all reasonable insurance coverage for itself, its agents, representatives, employees, or independent contractors, including, without limitation, coverage with respect to the liabilities, duties, and obligations of the Litigation Trustee and its agents, representatives, employees, or independent contractors under this Agreement. The cost of any such insurance coverage shall be an expense of the Litigation Trust, constitute Litigation Trust Expenses, and be paid out of the Litigation Trust Expense Fund.

3.15 Fiduciary and Other Duties. Notwithstanding anything in the Plan or this Agreement to the contrary, the Litigation Trustee shall always act in the best interests of the Litigation Trust Beneficiaries and in furtherance of the purpose of the Litigation Trust as set forth in the Plan. The Litigation Trustee shall have fiduciary duties to the Litigation Trust Beneficiaries consistent with the fiduciary duties that a member of an official committee appointed pursuant to section 1102 of the Bankruptcy Code has to the creditor constituents represented by such committee and shall exercise his, her, or its responsibilities accordingly. Except for obligations expressly imposed on the Litigation Trustee by this Agreement, to the extent that, at law or in equity, the Litigation Trustee has duties (including fiduciary duties) to the Litigation Trust Beneficiaries or to any other person that is a party to or is otherwise bound by this Agreement, such duties are hereby eliminated by this Agreement to the fullest extent permitted by applicable law; *provided, however*, that this Agreement does not eliminate the implied contractual covenant of good faith and fair dealing.

3.16 No Suit Against Released Parties. The Litigation Trustee shall not pursue any Causes of Action against the Released Debtor D&O or any other Released Party.

#### **ARTICLE IV DISTRIBUTIONS**

4.1 Distribution and Reserve of Litigation Trust Assets. Following the transfer of the Litigation Trust Assets to the Litigation Trust, the Litigation Trustee shall make continuing efforts on behalf of the Litigation Trust to collect, liquidate, and distribute all Litigation Trust Assets, subject to the reserves required under the Plan or this Agreement or deemed necessary by the Litigation Trustee pursuant to this Agreement, in accordance with the Plan.

4.1.1 Distributions. The Litigation Trustee shall make distributions only in accordance with the terms of the Plan, the Confirmation Order, and this Agreement to Litigation Trust

Beneficiaries from the Litigation Trust on a *pro rata* basis. The timing of distributions to the Litigation Trust Beneficiaries shall be determined by the Litigation Trustee in its sole and reasonable discretion. Subject to the terms of this Agreement, the Litigation Trust may retain an amount of net income and other Litigation Trust Assets to maintain the Litigation Trust Disputed Claims Reserve, to maintain the value of the Litigation Trust Assets pending their liquidation during the term of the Litigation Trust or that are determined to be necessary to pay or be reserved for reasonably incurred or anticipated Approved Excess Litigation Trust Expenses, and retention of such amount may preclude distributions to Holders of such Allowed Claims. The Litigation Trust may engage disbursing agents and other Persons to assist in making such distributions.

4.1.2 Reserves; Pooling of Reserved Funds. As soon as practicable following the Effective Date, the Litigation Trustee shall, in its reasonable discretion (but subject to the budget described in Section 4.1.3), establish, supplement, and maintain a reserve from the Initial Litigation Trust Funding Cash Amount in an amount sufficient to meet any and all Litigation Trust Expenses, including attorneys' fees and expenses and the fees and expenses of other professionals, up to the Budgeted Expense Amount. The Litigation Trust may also maintain as necessary, using funds from the Initial Litigation Trust Funding Cash Amount, one or more reserves (including the Litigation Trust Disputed Claims Reserve and the Litigation Trust Expense Fund) with respect to the Class 4 General Unsecured Claims required to be administered by the Litigation Trust. For the avoidance of doubt, the Litigation Trust may withhold any distribution pending the Litigation Trust's determination of whether to object to any Class 4 General Unsecured Claim (other than the Prepetition Lender Deficiency Claim). Any such withheld distribution shall become part of a reserve with respect to Class 4 General Unsecured Claims and shall be distributed to the appropriate Litigation Trust Beneficiary no later than the first Distribution Record Date after a

decision is made not to object to the pertinent Claim or the Claim becomes Allowed. The Litigation Trustee need not maintain any of the Litigation Trust's reserves in segregated bank accounts and may pool funds in the reserves with each other and other funds of the Litigation Trust; *provided, however*, that the Litigation Trust shall treat all such reserved funds as being held in a segregated manner in its books and records.

4.1.3 Litigation Trust Expense Budget; Excess Litigation Trust Expenses. The Litigation Trustee shall, in consultation with the Senior Secured Parties, prepare a reasonably detailed narrative budget, based on (and not to exceed) the Litigation Trust Funding Amount, of the reasonably expected Litigation Trust Expenses. The Litigation Trustee shall maintain the Litigation Trust Expense Fund in an amount sufficient to pay the budgeted Litigation Trust Expenses (the "Budgeted Expense Amount"). Notwithstanding anything to the contrary herein, the Litigation Trust Expenses shall not exceed the Budgeted Expense Amount; *provided* that the Litigation Trustee may incur Litigation Trust Expenses in excess of the Budgeted Expense Amount with the prior written consent of the Senior Secured Parties (such approved excess Litigation Trust Expenses, the "Approved Excess Litigation Trust Expenses"), which may include additional compensation payable to the Litigation Trustee. For the avoidance of doubt, in no event shall the Debtors, Wind Down Debtors, the DIP Lenders, or the Senior Secured Parties be responsible for any amount in excess of the Litigation Trust Funding Amount.

4.1.4 Distributions Net of Reserves and Costs. Distributions shall be made net of (i) reserves in accordance with the Plan and this Agreement, and (ii) the actual and reasonable costs of making the distributions. The Litigation Trustee may sell or otherwise dispose of Litigation Trust Assets in order to pay such costs.

4.1.5 Right to Rely on Professionals. Without limitation of the generality of Section 6.6 of this Agreement, in determining the amount of any distribution or reserves, the Litigation Trustee may rely on, and shall be fully protected in relying on the advice and opinion of, the Litigation Trust's attorneys, financial advisors, accountants, or other professionals.

4.2 Legal Proceedings. If any Litigation Trust Claim is asserted and if such claim or any other legal proceeding is initiated or prosecuted against any General Unsecured 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 Estates or the Litigation Trust, as applicable, required by such resolution have been made, such General Unsecured Creditor shall only receive distributions under the Plan or Confirmation Order to the extent that the distributions to which such General Unsecured Creditor is otherwise entitled exceed the maximum liability of such General Unsecured Creditor to the Estates or the Litigation Trust, as applicable, asserted in such proceedings.

4.3 Objection Deadline. On and after the Effective Date, the Litigation Trustee shall be entitled to file objections to all General Unsecured Claims (other than the Prepetition Lender Deficiency Claim) that are otherwise not deemed Allowed Claims, including General Unsecured Claims listed on the Debtors' Schedules, under the Plan, or otherwise. Pursuant to Article VIII.E of the Plan, any objections to General Unsecured Claims shall be filed on or before the Claims Objection Bar Date.

4.4 Setoff. The Wind Down Debtors and the Litigation Trustee, pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), applicable bankruptcy or nonbankruptcy law, may, but shall not be required to, set off against any Allowed Claim (other

than the Prepetition Lender Deficiency Claim) and the distributions to be made pursuant to the Plan on account of such Allowed Claim (before any distribution is to be made on account of such Allowed Claim), any claims of any nature whatsoever that the Wind Down Debtors or the Litigation Trust may have against the Holder of such Allowed Claim, provided, however, that neither the failure to effect such a setoff nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Wind Down Debtors or the Litigation Trustee of any such claim the Wind Down Debtors may have against the Holder of such Claim.

4.5 Withholding from Distributions. The Litigation Trustee, in its discretion, may cause the Litigation Trust to deduct and withhold from amounts distributable from the Litigation Trust to any Litigation Trust Beneficiaries any and all amounts as may be sufficient to pay the maximum amount of any tax or other charge that has been or might be assessed or imposed by any law, regulation, rule, ruling, directive, or other governmental requirement on such Litigation Trust Beneficiary or the Litigation Trust, including with respect to the amount to be distributed to such Litigation Trust Beneficiary, any amounts received by, collections of, or earnings of the Litigation Trust and any proceeds from the Litigation Trust Assets. The Litigation Trustee shall determine such maximum amount to be withheld by the Litigation Trust in its sole, reasonable discretion and shall cause the Litigation Trust to distribute to the applicable Litigation Trust Beneficiary any excess amount withheld. The Litigation Trustee may, if necessary or appropriate to comply with applicable withholding requirements, withhold the entire distribution due to any Litigation Trust Beneficiary until such Litigation Trust Beneficiary provides the necessary information to comply with any withholding requirements of any governmental unit. All such amounts deducted or withheld and timely paid to the appropriate taxing authority shall be treated as amounts distributed

to such Litigation Trust Beneficiaries for all purposes of the Plan and this Agreement, to the extent permitted by applicable law.

4.6 IRS Forms. The Litigation Trustee may require any Holder of a General Unsecured Claim to, and each such Holder shall, properly complete and execute the appropriate IRS Form W-8 (including any supporting documents) or IRS Form W-9, or such other documentation, as a prerequisite to receiving any distribution under the Plan or this Agreement. If a Holder of such Claim does not provide to the Litigation Trustee within ninety (90) days of first written request with all documentation that in the Litigation Trustee's reasonable business judgment is necessary to determine the tax withholding and reporting requirements for such Claim, then any current or future distribution on such Claim shall be deemed forfeited, the underlying General Unsecured Claim disallowed and expunged in its entirety and the funds shall in respect of such present and future distribution(s) shall revert to the Litigation Trust for all purposes, including but not limited to, redistribution to other Litigation Trust Beneficiaries, in accordance with the terms of the Confirmation Order, the Plan, and Section 4.4 of this Agreement. No additional ninety (90) day period under Section 4.4 of this Agreement shall be required to pass before such distributions become unrestricted funds of the Litigation Trust.

4.7 Unclaimed and Undeliverable Distributions. Unclaimed property (including, but not limited to, uncashed checks), together with any distributions to Litigation Trust Beneficiaries returned as undeliverable, shall be held by the Litigation Trustee in an unclaimed property reserve (the "Unclaimed Property Reserve") until ninety (90) days from the date of first issuance and may be released by the Litigation Trustee upon the expiration such time period if presentation of proper proof by such Litigation Trust Beneficiary of its entitlement thereto is presented to the Litigation Trustee. After the expiration of the applicable time period set forth in this Section 4.4, all

unclaimed property or interest in property otherwise payable to the Holder or its successors shall revert to the Litigation Trust for all purposes including, but not limited to, for redistribution in accordance with the terms of the Plan, the Confirmation Order, and this Agreement. Upon such revesting, the Claim of the Holder or its successors with respect to such property shall be cancelled, released, discharged, and forever barred, and the Claim of any other Holder to such property or interest in property shall be discharged and forever barred notwithstanding any applicable federal, state, or provincial, or local government escheat, abandoned, or unclaimed property laws, or any provisions in any document governing the distribution that is an unclaimed distribution to the contrary.

4.8 No Responsibility to Attempt to Locate Litigation Trust Beneficiaries. If a distribution is returned to the Litigation Trust as undeliverable, or otherwise remains unclaimed, no further distribution shall be made to a Holder of an applicable Allowed Claim unless and until such Holder notifies the Litigation Trustee of such Holder's then-current address and taxpayer identification number. The Litigation Trustee may, in its sole discretion, attempt to determine a Holder of an applicable Allowed Claim's current address or otherwise locate such Holder, but nothing in this Agreement or the Plan shall require the Litigation Trustee to do so.

4.9 Inapplicability of Escheat, Abandoned or Unclaimed Property Laws. Unclaimed property held by the Litigation Trust shall not be subject to the escheat, abandoned, or unclaimed property laws of the United States, or any state, provincial, or local governmental unit.

4.10 Request for Reissuance. Distribution checks shall be null and void if not negotiated within ninety (90) days after the date of issuance thereof. Distribution checks not cashed within such 90-day period shall be treated as unclaimed property that has been held in the Unclaimed Property Reserve as set forth above in Section 4.4. Requests for reissuance of any check shall be



made in writing directly to the Litigation Trustee by the Holder of the applicable Allowed Claim that was originally issued such check. All such requests shall be made promptly and in time for the check to be reissued and cashed before the funds for the checks become unrestricted Litigation Trust Assets under Section 4.4 of this Agreement. The Holder of an applicable Allowed General Unsecured Claim shall bear all the risk that, and shall indemnify and hold the Litigation Trust and the Litigation Trustee harmless against any loss that may arise if, the Litigation Trustee does not reissue a check promptly after receiving a request for its reissuance.

4.11 Conflicting Claims. If any conflicting claims or demands are made or asserted with respect to the Litigation Trust Interest of a Litigation Trust Beneficiary, or if there is any disagreement between the assignees, transferees, heirs, representatives, or legatees succeeding to all or a part of such an interest resulting in adverse claims or demands being made in connection with such interest, then, in any of such events, the Litigation Trustee shall be entitled, in its sole discretion, to refuse to comply with any such conflicting claims or demands.

4.11.1 The Litigation Trustee may elect to cause the Litigation Trust to make no payment or distribution with respect to the Litigation Trust Interest subject to the conflicting claims or demand, or any part thereof, and to refer such conflicting claims or demands to the Bankruptcy Court, which shall have continuing jurisdiction over resolution of such conflicting claims or demands. Neither the Litigation Trust nor the Litigation Trustee shall be or become liable to any of such parties for their refusal to comply with any such conflicting claims or demands, nor shall the Litigation Trust or Litigation Trustee be liable for interest on any funds which may be so withheld.

4.11.2 The Litigation Trustee shall be entitled to refuse to act until either (a) the rights of the adverse claimants have been adjudicated by a Final Order of the Bankruptcy Court or any other

court of competent jurisdiction adjudicating the matter or (b) all differences have been resolved by a valid written agreement among all such parties to the satisfaction of the Litigation Trustee, which agreement shall include a complete release of the Litigation Trust and Litigation Trustee. Until the Litigation Trustee receives written notice that one of the conditions of the preceding sentence is met, the Litigation Trustee may deem and treat as the absolute owner under this Agreement of the Litigation Trust Interest in the Litigation Trust the Litigation Trust Beneficiary identified as the owner of that interest in the books and records maintained by the Litigation Trustee. The Litigation Trustee may deem and treat such Litigation Trust Beneficiary as the absolute owner for purposes of receiving distributions and any payments on account thereof for federal and state income tax purposes, and for all other purposes whatsoever.

4.12 Limitation on Liability. In acting or refraining from acting under and in accordance with this the Agreement, the Litigation Trustee shall be fully protected and incur no liability to any purported claimant or any other Person pursuant to Article IV of this Agreement.

4.13 Priority of Expenses of Litigation Trust. The Litigation Trust shall pay or reserve for all necessary Litigation Trust Expenses before making any distributions, including but not limited to, any distribution to Litigation Trust Beneficiaries.

4.14 Minimum Distributions. If any Distribution under the Plan to the Holder of an Allowed General Unsecured Claim would be less than \$150.00, the Litigation Trust may hold such Distribution until the time of a subsequent or final Distribution. If the final Distribution under the Plan to the Holder of an Allowed General Unsecured Claim would be less than \$150.00, the Litigation Trust may cancel such Distribution. Any cancelled Distributions pursuant to this Section 4.14 shall revert to the Litigation Trust for all purposes, including Distributions to other Holders of Allowed General Unsecured Claims.

**ARTICLE V**  
**LITIGATION TRUST BENEFICIARIES**

5.1 Interest Beneficial Only. The ownership of a Litigation Trust Interest shall not entitle any Litigation Trust Beneficiary to any title in or to the Litigation Trust Assets or to any right to call for a partition or division of such assets or to require an accounting.

5.2 Ownership of Litigation Trust Beneficial Interests Hereunder. Each Litigation Trust Beneficiary shall own a Litigation Trust Interest herein which shall, subject to Section 4.1 of this Agreement and the Plan, be entitled to a distribution in the amounts, and at the times, set forth in the Plan, the Confirmation Order, and this Agreement.

5.3 Evidence of Litigation Trust Beneficial Interest. Ownership of a Litigation Trust Interest in the Litigation Trust 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 Litigation Trust by the Litigation Trustee.

5.4 No Right to Accounting. Except as otherwise provided in this Agreement or the Plan, so long as the Litigation Trustee provides information and reporting to the Senior Secured Parties in accordance with Section 3.12 hereof, neither the Litigation Trust Beneficiaries nor their respective successors, assigns, creditors, nor any other Person shall have any right to an accounting by the Litigation Trustee, and the Litigation Trustee shall not be obligated to provide any accounting to any Person. Nothing in this Agreement is intended to require the Litigation Trustee at any time or for any purpose to file any accounting or seek approval of any court with respect to the administration of the Litigation Trust or as a condition for making any advance, payment, or distribution out of proceeds of Litigation Trust Assets.

5.5 No Standing. Except as expressly provided in this Agreement, a Litigation Trust Beneficiary shall not have standing to direct or to seek to direct the Litigation Trust or Litigation

Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any Person upon or with respect to the Litigation Trust Assets; *provided, however*, that, for the avoidance of doubt, this Section 5.5 shall not prevent a Litigation Trust Beneficiary from seeking any appropriate or necessary relief from the Bankruptcy Court.

5.6 Requirement of Undertaking. In any suit for the enforcement of any right or remedy under this Agreement, or in any suit against the Litigation Trustee for any action taken or omitted by it as Litigation Trustee, the Litigation Trustee may request the Bankruptcy Court to require the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, including reasonable attorneys' fees, against any party litigant in such suit; *provided, however*, that the provisions of this Section 5.6 shall not apply to any suit by the Litigation Trust or Litigation Trustee.

5.7 Limitation on Transferability. It is understood and agreed that the Litigation Trust Interests shall be non-transferable and non-assignable during the term of this Agreement except by operation of law. An assignment by operation of law shall not be effective until appropriate notification and proof thereof is submitted to the Litigation Trustee, and the Litigation Trustee may continue to cause the Litigation Trust to pay all amounts to or for the benefit of the assigning Litigation Trust Beneficiaries until receipt of proper notification and proof of assignment by operation of law. The Litigation Trustee may rely upon such proof without the requirement of any further investigation.

5.8 Exemption from Registration. The rights of the Litigation Trust Beneficiaries arising under this Agreement may be deemed "securities" under applicable law. However, such rights have not been defined as "securities" under the Plan because (a) the parties hereto intend that such rights shall not be securities and (b) if the rights arising under this Agreement in favor of

the Litigation Trust Beneficiaries are deemed to be “securities,” the exemption from registration under section 1145 of the Bankruptcy Code is intended to be applicable to such securities. No Party to this Agreement shall make a contrary or different contention.

5.9 Delivery of Distributions. Subject to the terms of this Agreement, the Litigation Trustee shall cause the Litigation Trust to make distributions to Litigation Trust Beneficiaries in the manner provided in the Plan and in this Agreement.

5.10 Limited Liability. No provision of this Agreement, the Plan, or the Confirmation Order, and no mere enumeration herein of the rights or privileges of any Litigation Trust Beneficiary, shall give rise to any liability of such Litigation Trust Beneficiary solely in its capacity as such, whether such liability is asserted by any Debtor, creditors, successors, representatives, employees, or Holders of Interests of any Debtor, or by any other person. Litigation Trust Beneficiaries are deemed to receive the Litigation Trust Assets in accordance with the provisions of this Agreement, the Plan, and the Confirmation Order in exchange for their Allowed Claims as set forth in the Plan without further obligation or liability of any kind, but subject to the provisions of this Agreement.

## **ARTICLE VI THIRD-PARTY RIGHTS AND LIMITATION OF LIABILITY**

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

6.2 Limitation of Litigation Trustee Liability. In exercising the rights granted herein, the Litigation Trustee shall exercise the Litigation Trustee's best judgment in accordance with its fiduciary duties, to the end that the affairs of the Litigation Trust shall be properly managed and the interests of all of the Litigation Trust Beneficiaries safeguarded. However, notwithstanding anything herein to the contrary, neither the Litigation Trustee nor any of its respective firms, companies, affiliates, partners, officers, directors, members, employees, designees, professionals, advisors, attorneys, representatives, disbursing agents, or agents, and any of such Person's successors and assigns, shall incur any responsibility or liability by reason of any error of law or fact or of any matter or thing done or suffered or omitted to be done under or in connection with this Agreement, whether sounding in tort, contract, or otherwise, except for fraud, gross negligence, or willful misconduct that is found by a Final Order of the Bankruptcy Court to be the direct and primary cause of loss, liability, damage, or expense suffered by the Litigation Trust. In no event shall the Litigation Trustee be liable for indirect, punitive, special, incidental, or consequential damage or loss (including, but not limited to, lost profits) whatsoever, even if the Litigation Trustee has been informed of the likelihood of such loss or damages and regardless of the form of action. Without limiting the foregoing, the Litigation Trustee shall be entitled to the benefits of any limitation of liability provisions under the Plan and Confirmation Order.

6.3 No Liability for Acts of Other Persons. None of the Persons identified in the immediately preceding Section 6.2 of this Agreement shall be liable for the act or omission of any other Person identified in that Section.

6.4 No Liability for Acts of Predecessors. No successor Litigation Trustee shall be in any way responsible for the acts or omissions of any Litigation Trustee in office prior to the date

on which such successor becomes the Litigation Trustee, unless a successor Litigation Trustee expressly assumes such responsibility.

6.5 No Liability for Good Faith Error of Judgment. The Litigation Trustee shall not be liable for any error of judgment made in good faith, unless it shall be finally determined by a Final Order of the Bankruptcy Court that the Litigation Trustee was grossly negligent.

6.6 Reliance by Litigation Trustee on Documents and Advice of Counsel or Other Persons. Except as otherwise provided herein, the Litigation Trustee may 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 them to be genuine and to have been signed or presented by the proper party or parties. The Litigation Trustee also may engage and consult with its respective legal counsel and other agents and advisors, and shall not be liable for any action taken, omitted, or suffered in good faith reliance upon the advice of such counsel, agents, or advisors to the extent permitted by law.

6.7 No Liability For Acts Approved by Bankruptcy Court. The Litigation Trustee shall have the right at any time to seek an order from the Bankruptcy Court concerning the administration or disposition of the Litigation Trust, General Unsecured Claims, and Litigation Trust Assets required to be administered by the Litigation Trust. Following the entry of any such order of the Bankruptcy Court, the Litigation Trustee shall not be liable for any act or omission expressly taken in accordance with, and not inconsistent with, any such order, and all such actions or omissions shall be deemed not to constitute fraud, gross negligence, or willful misconduct.

6.8 No Personal Obligation for Litigation Trust Liabilities. Persons dealing with the Litigation Trustee shall have recourse only to the Litigation Trust Assets to satisfy any liability

incurred by the Litigation Trustee to any such Person in carrying out the terms of this Agreement, and the Litigation Trustee shall have no personal, individual obligation to satisfy any such liability.

6.9 Indemnification. The Litigation Trustee and each of its respective accountants, agents, assigns, attorneys, consultants, directors, employees, executors, financial advisors, transfer agents, independent contractors, managers, members, officers, partners, predecessors, principals, professional persons, the employees of the Litigation Trust, and their respective agents, employees, officers, directors, professionals, attorneys, accountants, advisors, representatives, affiliate, employer and successors and principals (each, an “Indemnified Party”) shall be indemnified, and defended and held harmless against, by the Litigation Trust solely from the Litigation Trust Assets, for any losses, liability, claims, damages, judgment, fine, penalty, claim, demand, settlement, cost, or expenses occurring on or after the Effective Date (including reasonable attorneys’ fees and expenses which the Indemnified Party may incur in connection therewith) for any act or omission in their capacity as, or on behalf of, the Litigation Trust or Litigation Trustee in connection with the acceptance, administration, exercise, and performance of their duties under the Plan or this Agreement, as applicable if the applicable Indemnified Party acted in good faith and in a manner reasonably believed to be in, or not opposed to, the best interest of the Litigation Trust or the Litigation Trust Beneficiaries. An act or omission taken by the Litigation Trustee pursuant to Section 6.7 of this Agreement will be deemed not to constitute gross negligence, willful misconduct, or fraud. The amounts necessary for the indemnification provided in this Section (including, but not limited to, any costs and expenses incurred in enforcing the right of indemnification in this Section) shall be paid by the Litigation Trustee out of the Litigation Trust Expense Fund; *provided, however*, that the Litigation Trust shall not be liable to indemnify any Indemnified Party for any act or omission arising out of such Indemnified Party’s respective gross



negligence, fraud or willful misconduct as determined by a Final Order of the Bankruptcy Court. The Indemnified Parties shall be entitled to obtain advances from the Litigation Trust to cover their reasonable expenses of defending themselves in any action brought against them as a result of the acts or omissions, actual or alleged, of an Indemnified Party in its capacity as such, except for any actions or omissions arising from their own respective willful misconduct, fraud or gross negligence; *provided, however*, that the Indemnified Parties receiving such advances shall repay the amounts so advanced to the Litigation Trust immediately upon the entry of a final, non-appealable judgment or order finding that such Indemnified Parties were not entitled to any indemnity under the provisions of this Section 6.9 of this Agreement. The Litigation Trustee shall not be personally liable for the payment of any Litigation Trust expense or claim or other liability of the Litigation Trust, and no Person shall look to the Litigation Trustee personally for the payment of any such expense or liability. Nothing contained in this Section 6.9 shall implicate the Debtors or the Wind Down Debtors.

6.10 Expense of Litigation Trust; Limitation on Source of Payment of Indemnification.

All indemnification liabilities of the Litigation Trust under Section 6.9 shall be expenses of the Litigation Trust and constitute Litigation Trust Expenses. The amounts necessary for such indemnification and reimbursement shall be paid by the Litigation Trust out of the Litigation Trust Expense Fund after reserving for all other actual and anticipated expenses and liabilities of the Litigation Trust. The Litigation Trustee shall not be personally liable for the payment of any Litigation Trust Expenses or claim or other liability of the Litigation Trust, and no Person shall look to the Litigation Trustee or other Indemnified Parties personally for the payment of any such Litigation Trust Expenses or liability.

6.11 Confirmation of Survival of Provisions. Without limitation in any way of any provision of this Agreement, the provisions of this Article VI shall survive the death, dissolution, liquidation, incapacity, resignation, replacement, or removal, as may be applicable, of the Litigation Trustee or, as it relates to Section 6.9, an Indemnified Party, or the termination of the Litigation Trust or this Agreement, and shall inure to the benefit of the Litigation Trustee's and the Indemnified Parties' heirs and assigns.

## **ARTICLE VII TAX MATTERS**

7.1 Tax Treatment of Litigation Trust. Pursuant to and in accordance with the Plan, including, but not limited to Article V.B.3 of the Plan, for all United States federal income tax purposes, the Debtors, the Wind Down Debtors, the Litigation Trust Beneficiaries, the Litigation Trustee, and the Litigation Trust shall treat (a) the Litigation Trust as a "liquidating trust" within the meaning of Treasury Regulation section 301.7701-4(d) and guidance promulgated in respect thereof, including IRS Revenue Procedure 94-45, 1994-2 C.B. 684 and, thus, as a "grantor trust" within the meaning of IRC sections 671 through 677 consistent with the terms of the Plan and (b) the transfer of the Litigation Trust Assets to the Litigation Trust as a transfer of the Litigation Trust Assets (subject to any obligations relating to such Litigation Trust Assets) by the U.S. Debtors to the Litigation Trust Beneficiaries in satisfaction of their Allowed General Unsecured Claims (other than any Litigation Trust Disputed Claims Reserve treated as a DOF (if elected) or other separate entity), followed by a transfer of such Litigation Trust Assets by such Litigation Trust Beneficiaries to the Litigation Trust in exchange for their *pro rata* Litigation Trust Interests. The Litigation Trust Beneficiaries shall be treated as the grantors and owners of the Litigation Trust for United States federal income tax purposes.

7.2 Annual Reporting and Filing Requirements. Pursuant to and in accordance with the terms of the Plan and this Agreement, the Litigation Trustee shall file tax returns (including applicable state, local and foreign tax returns, if any) for the Litigation Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a) to the extent required by applicable law and subject to the treatment of the Litigation Trust Disputed Claims Reserve as a DOF or other separate entity.

7.3 Tax Treatment of Reserves for Disputed Claims. The Litigation Trustee may, in the Litigation Trustee's sole discretion, determine the best way to report for United States tax purposes with respect to the Litigation Trust Disputed Claims Reserve, if applicable, including (a) filing a tax election to treat the Litigation Trust Disputed Claims Reserve as a DOF or other separate entity within the meaning of Treasury Regulation section 1.468B-9 for federal income tax purposes rather than to tax such reserve as a part of the Litigation Trust (and, to the extent permitted by applicable law, report consistently with the foregoing for United States federal, state, and local income tax purposes) or (b) electing to report as a separate trust or sub-trust or other entity. If an election is made to report the Litigation Trust Disputed Claims Reserve as a DOF or other separate entity, the Litigation Trust shall comply with all federal and state tax reporting and tax compliance requirements of the DOF or other separate entity, including, but not limited to, the filing of a separate federal tax return for the DOF or other separate entity and the payment of federal and/or state income tax due.

7.3.1 If an election is made to report the Litigation Trust Disputed Claims Reserve as a DOF or other separate entity, all parties (including the Litigation Trust, the Litigation Trustee, and the Litigation Trust Beneficiaries) shall be bound by such election and report for United States federal, state, and local income tax purposes consistently with the foregoing. The Litigation

Trustee shall be responsible for payment, out of the Litigation Trust Assets, of any taxes (including with respect to earned interest, if any) imposed on the Litigation Trust or the Litigation Trust Assets, including the Litigation Trust Disputed Claims Reserve. In the event, and to the extent, any Cash retained on account of a Disputed Claim in the Litigation Trust Disputed Claims Reserve is insufficient to pay the portion of any such taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, such Disputed Claims, the Litigation Trustee may, in its discretion, (i) sell any non-Cash assets relating to such Claim (including any assets distributable as a result of disallowance of such Claim) to pay such taxes or (ii) reimburse the Litigation Trust for the payment of such taxes from any subsequent Cash amounts allocable to, or retained on account of such Disputed Claim (including any Cash distributable by the Litigation Trustee as a result of disallowance of such Disputed Claim).

7.4 Valuation of Litigation Trust Assets. As soon as practicable following the Effective Date, but in no event later than the due date for timely filing of the Litigation Trust's first United States federal income tax return (taking into account applicable tax filing extensions), the Litigation Trustee shall determine the fair market value of the Litigation Trust Assets as of the Effective Date, based on the Litigation Trustee's good faith determination and subject in all respects to Section 7.4, and establish appropriate means to apprise, in writing, the Litigation Trust Beneficiaries and the Wind Down Debtors of such valuation, from time to time as relevant for tax reporting purposes. The valuation shall be used consistently by all parties (including, without limitation, the Debtors, the Wind Down Debtors, the Litigation Trust, the Litigation Trustee, and the Litigation Trust Beneficiaries) for all applicable United States federal, state and local income tax purposes; *provided, however*, that such valuation shall not be binding on the Litigation Trustee or any other party for any other purposes, including without limitation in regard to the liquidation

of the Litigation Trust Assets, whether by disposition, liquidation, litigation, settlement, or otherwise. Any such valuation shall be inadmissible in any proceeding concerning the Litigation Trust Claims.

7.5 In the event that the Litigation Trustee determines that the Litigation Trust may be required to withhold from amounts distributable from the Litigation Trust pursuant to Article 4.2 above, it shall endeavor to promptly notify the relevant Litigation Trust Beneficiary.

7.6 Allocations of Litigation Trust taxable income among the Beneficiaries 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 Litigation Trust had distributed all its assets (valued at their tax book value) to the holders of the Litigation Trust interests, adjusted for prior taxable income and loss and taking into account all prior and concurrent distributions from the Litigation Trust. Similarly, taxable loss of the Litigation Trust shall be allocated by reference to the manner in which an economic loss would be borne immediately after a hypothetical liquidating distribution of the remaining Litigation Trust Assets. The tax book value of the Litigation Trust Assets for purposes of this Section 7.6 shall equal their fair market value on the Effective Date, adjusted in accordance with tax accounting principles prescribed by the IRC, the applicable Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements.

**ARTICLE VIII**  
**SELECTION, REMOVAL, REPLACEMENT,**  
**AND COMPENSATION OF LITIGATION TRUSTEE**

8.1 Initial Litigation Trustee. The Litigation Trustee has been selected by the Committee, is appointed effective as of the Effective Date, and shall serve as the trustee of the Litigation Trust. The initial trustee shall be the Litigation Trustee, subject to the requirement that

the Litigation Trustee (including any successor trustee, Supplemental Litigation Trustee (as defined herein), and assignee of any of the foregoing) be a “United States person” within the meaning of IRC Section 7701(a)(30).

8.2 Term of Service. The Litigation Trustee shall serve until the earliest of (a) the completion of the administration of the Litigation Trust Assets and the Litigation Trust, including the winding up of the Litigation Trust, in accordance with this Agreement and the Plan, (b) termination and dissolution of the Litigation Trust in accordance with the terms of this Agreement and the Plan, or (c) the Litigation Trustee’s resignation, death, dissolution, incapacity, liquidation, or removal. In the event that the Litigation Trustee’s appointment terminates by reason of resignation, death, dissolution, incapacity, liquidation, or removal, except as provided in Section 8.3 of this Agreement, the Litigation Trustee shall be immediately compensated for all reasonable fees and expenses accrued but unpaid through the effective date of termination, whether or not previously invoiced. The provisions of Article VI of this Agreement shall survive the resignation or removal of any Litigation Trustee.

8.3 Removal of Litigation Trustee. Any party in interest, on notice and hearing before the Bankruptcy Court, may seek removal of the Litigation Trustee for cause. If a Litigation Trustee is removed for cause, such Litigation Trustee shall not be entitled to any accrued but unpaid fees, reimbursements, or other compensation under this Agreement or otherwise. For purposes of this Article, the term “cause” shall mean (a) the Litigation Trustee’s actual fraud, gross negligence, reckless or willful misconduct, willful disregard of its duties under the Plan, the Confirmation Order, or this Agreement, or material breach of the Agreement, or (b) the Litigation Trustee’s misappropriation or embezzlement of any Litigation Trust Assets or the proceeds thereof. The Bankruptcy Court shall hear and finally determine any dispute arising out of this Section.

8.4 Resignation of Litigation Trustee. The Litigation Trustee may resign at any time on written notice to the Senior Secured Parties, U.S. Trustee and Bankruptcy Court. The resignation shall be effective on the later of (a) the date specified in the notice of resignation and (b) the date that is thirty (30) days after the date such notice is filed with the Bankruptcy Court. In the event of a resignation, the resigning Litigation Trustee shall file a full and complete accounting of moneys and assets received, disbursed, and held during the term of that Litigation Trustee.

8.5 Appointment of Successor Litigation Trustee. Upon the resignation, death, dissolution, incapacity, liquidation, or removal of a Litigation Trustee, any party in interest (including, in the case of resignation, the Litigation Trustee) may file a motion in the Bankruptcy Court to appoint a successor trustee. In the event no party in interest seeks the appointment of a successor Litigation Trustee, the Bankruptcy Court may do so on its own motion. Any successor Litigation Trustee so appointed (a) shall consent to and accept his, her, or its appointment as successor Litigation Trustee, which may be done by email or through acquiescence in not objecting to a motion for approval of his, her, or its appointment as successor Litigation Trustee, and (b) shall not have any liability or responsibility for the acts or omissions of any predecessor(s). Any successor Litigation Trustee may be appointed to serve only on an interim basis.

8.6 Powers and Duties of Successor Litigation Trustee. A successor Litigation Trustee shall have all the rights, privileges, powers, and duties of his, her, or its predecessor under this Agreement, the Plan, and the Confirmation Order.

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

8.8 Compensation of Litigation Trustee and Costs of Administration. The Litigation Trustee shall receive fair and reasonable compensation for its services in accordance with the terms and conditions of the Plan, which shall be a charge solely against, and solely paid out of, the Litigation Trust Expense Fund as Litigation Trust Expenses. In consideration for the services of the Litigation Trustee under this Agreement, the Litigation Trustee's initial compensation shall be \$20,000 per month for the first 12 months, \$15,000 per month for the next 12 months, and then \$10,000 thereafter per month thereafter, payable from the Litigation Expense Fund as Litigation Trust Expenses. All costs, expenses, and obligations incurred by the Litigation Trustee (or professionals who may be employed by the Litigation Trustee in administering the Litigation Trust, in carrying out their other responsibilities under this Agreement, or in any manner connected, incidental, or related thereto) shall be paid by the Litigation Trust solely from the Litigation Trust Expense Fund prior to any distribution to Holders of applicable Allowed General Unsecured Claims; provided, however, that the Litigation Trust's expenses to pursue Litigation Claims, including as may be necessary, contingency counsel, may be payable from the proceeds of Litigation Claims, if any, solely to the extent such expenses are Approved Excess Litigation Trust Expenses.

8.9 Appointment of Supplemental Litigation Trustee. If the Litigation Trustee has a conflict or any of the Litigation Trust Assets are situated in any state or other jurisdiction in which the Litigation Trustee is not qualified to act as trustee, the Litigation Trustee shall nominate and appoint a Person duly qualified to act as trustee (the "Supplemental Litigation Trustee") with respect to such conflict, or in such state or jurisdiction, and require from each such Supplemental Litigation Trustee such security as may be designated by the Litigation Trustee in its discretion. In the event the Litigation Trustee is unwilling or unable to appoint a disinterested Person to act



as Supplemental Litigation Trustee to handle any such matter, the Bankruptcy Court, on notice and hearing, may do so. The Litigation Trustee or the Bankruptcy Court, as applicable, may confer upon such Supplemental Litigation Trustee any or all of the rights, powers, privileges, and duties of the Litigation Trustee hereunder, subject to the conditions and limitations of this Agreement, except as modified or limited by the laws of the applicable state or other jurisdiction (in which case, the laws of the state or other jurisdiction in which such Supplemental Litigation Trustee is acting shall prevail to the extent necessary). To the extent the Supplemental Litigation Trustee is appointed by the Litigation Trustee, the Litigation Trustee shall require such Supplemental Litigation Trustee to be answerable to the Litigation Trustee for all moneys, assets, and other property that may be received in connection with the administration of all property. The Litigation Trustee or the Bankruptcy Court, as applicable, may remove such Supplemental Litigation Trustee, with or without cause, and appoint a successor Supplemental Litigation Trustee at any time by executing a written instrument declaring such Supplemental Litigation Trustee removed from office and specifying the effective date and time of removal.

## **ARTICLE IX DURATION OF LITIGATION TRUST**

9.1 Duration. Once the Litigation Trust becomes effective upon the Effective Date of the Plan, the Litigation Trust and this Agreement shall remain and continue in full force and effect until the Litigation Trust is terminated in accordance with the terms hereof and the Plan.

9.2 Termination on Payment of Litigation Trust Expenses and Distribution of Litigation Trust Assets. Upon the payment of all Litigation Trust Expenses, and the distribution of all Litigation Trust Assets in accordance with the provisions of the Plan, the Confirmation Order, and this Agreement, the Litigation Trust shall automatically terminate and dissolve and the

Litigation Trustee shall have no further responsibility in connection therewith except as may be required to effectuate such termination under relevant law.

9.3 Termination after Five Years Unless Extended. If the Litigation Trust has not been previously terminated and dissolved pursuant to Section 9.2 hereof, no later than five (5) years from the Effective Date, unless the Litigation Trust term has been extended in accordance with Article V.B.3 of the Plan by order of the Bankruptcy Court, the Litigation Trustee shall distribute all of the Litigation Trust Assets, after payment or reserve for all Litigation Trust Expenses, to the Litigation Trust Beneficiaries, abandon, or donate any de minimis amounts, all pursuant to the terms of the Plan and this Agreement, and immediately thereafter the Litigation Trust shall dissolve and terminate and the Litigation Trustee shall have no further responsibility in connection therewith except to the limited extent set forth in Section 9.5 of this Agreement.

9.4 No Termination by Litigation Trust Beneficiaries. The Litigation Trust may not be terminated and dissolved at any time by the Litigation Trust Beneficiaries.

9.5 Continuance of Litigation Trust for Winding Up; Discharge and Release of Litigation Trustee. After the termination of the Litigation Trust and solely for the purpose of liquidating and winding up the affairs of the Litigation Trust, the Litigation Trustee shall continue to act as such until its responsibilities have been fully performed. Except as otherwise specifically provided herein, upon the distribution of the Litigation Trust Assets, including all excess reserves, the Litigation Trustee and the Litigation Trust's professionals and agents shall be deemed discharged and have no further duties or obligations hereunder. In connection with the foregoing, upon a motion by the Litigation Trustee, the Bankruptcy Court may enter an order relieving the Litigation Trustee and its employees, professionals, and agents of any further duties, discharging

and releasing the Litigation Trustee and its employees, professionals, and agents from all liability related to the Litigation Trust.

**ARTICLE X  
MISCELLANEOUS**

10.1 Cumulative Rights and Remedies. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies under law or in equity.

10.2 Notices. All notices to be given to Litigation Trust Beneficiaries may be given by email, ordinary mail, or may be delivered personally, at the addresses for such Litigation Trust Beneficiaries appearing on the books kept by the Litigation Trustee. Any notice or other communication which may be or is required to be given, served, or sent to the Litigation Trustee shall be in writing and shall be sent by registered or certified United States mail, return receipt requested, postage prepaid, or transmitted by email, hand delivery, or facsimile (if receipt is confirmed) addressed as follows:

If to the Litigation Trust or the Litigation Trustee:

Olympus Guardians LLC  
Arian Eghbali, Sole Member  
28653 Ventura Blvd., #107  
Tarzana, CA 91356

With a copy to:

Pachulski Stang Ziehl & Jones LLP  
1700 Broadway, 36th Floor  
New York, New York 10019  
Attn: Bradford J. Sandler and Shirley S. Cho  
Email: [bsandler@pszjlaw.com](mailto:bsandler@pszjlaw.com) and [scho@pszjlaw.com](mailto:scho@pszjlaw.com)  
Fax: (212) 561-7777

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

10.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to rules governing the conflict of laws.

10.4 Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns.

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

10.6 Execution. All funds in the Litigation Trust shall be deemed *in custodia legis* until such times as the funds have actually been paid to or for the benefit of a Litigation Trust Beneficiary, and no Litigation Trust Beneficiary or any other Person can execute upon, garnish or attach the Litigation Trust Assets or the Litigation Trustee in any manner or compel payment from the Litigation Trust except by Final Order of the Bankruptcy Court. Payments will be solely governed by the Plan, the Confirmation Order and this Agreement.

10.7 Amendment. This Agreement may be amended by written agreement of the Litigation Trustee, the Wind Down Debtors, and the Senior Secured Parties or by order of the Bankruptcy Court; *provided, however*, that such amendment may not be inconsistent with the Plan or the Confirmation Order.

10.8 No Waiver. 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 thereof.

10.9 No Relationship Created. Nothing contained herein shall be construed to constitute any relationship created by this Agreement as an association, partnership or joint venture of any kind.

10.10 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.

10.11 Further Assurances. Without limitation of the generality of Section 2.5 of this Agreement, the Parties agree to execute and deliver all such documents and notices and to take all such further actions as may reasonably be required from time to time to carry out the intent and purposes and provide for the full implementation of this Agreement and the pertinent provisions of the Plan and to consummate the transactions contemplated hereby.

10.12 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

10.13 Jurisdiction. The Bankruptcy Court shall have jurisdiction regarding the Debtors, the Wind Down Debtors, the Litigation Trust, the Litigation Trustee, and the Litigation Trust Assets, including, without limitation, the determination of all disputes arising out of or related to administration of the Litigation Trust. The Bankruptcy Court shall have continuing jurisdiction and venue to hear and finally determine all disputes and related matters among the Parties arising out of or related to this Agreement or the administration of the Litigation Trust. The Parties expressly consent to the Bankruptcy Court hearing and exercising such judicial power as is

necessary to finally determine all such disputes and matters. If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under, or related to the Chapter 11 Cases, including the matters set forth in this Agreement, the provisions of this Agreement shall have no effect on and shall not control, limit, or prohibit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter, and all applicable references in this Agreement to an order or decision of the Bankruptcy Court shall instead mean an order or decision of such other court of competent jurisdiction.

*[Remainder of Page Intentionally Left Blank]*

**FORM SUBJECT TO ONGOING REVIEW**

IN WITNESS WHEREOF, the Parties have or are deemed to have executed this Agreement as of the day and year written above.

**AFH AIR PROS, LLC**

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

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

Title: \_\_\_\_\_

**AIR PROS ATLANTA LLC**

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

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

Title: \_\_\_\_\_

**AIR PROS BLUE STAR, LLC**

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

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

Title: \_\_\_\_\_

**AIR PROS BOCA LLC**

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

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

Title: \_\_\_\_\_

**AIR PROS COLORADO LLC**

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

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

Title: \_\_\_\_\_

**AIR PROS DALLAS L.L.C.**

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

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

Title: \_\_\_\_\_

**AIR PROS ONE SOURCE LLC**

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

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

Title: \_\_\_\_\_

**AIR PROS SOLUTIONS HOLDINGS, LLC**

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

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

Title: \_\_\_\_\_

**AIR PROS SOLUTIONS, LLC**

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

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

Title: \_\_\_\_\_

**AIR PROS TEXAS LLC**

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

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

Title: \_\_\_\_\_

**AIR PROS WASHINGTON, LLP**

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

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

Title: \_\_\_\_\_

**AIR PROS WEST LLC**

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

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

Title: \_\_\_\_\_



**AIR PROS, LLC**

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

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

Title: \_\_\_\_\_

**CM AIR PROS, LLC**

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

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

Title: \_\_\_\_\_

**DALLAS PLUMBING AIR PROS, LLC**

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

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

Title: \_\_\_\_\_

**DOUG'S SERVICE AIR PROS, LLC**

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

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

Title: \_\_\_\_\_

**DREAM TEAM AIR PROS, LLC**

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

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

Title: \_\_\_\_\_

**EAST COAST MECHANICAL, LLC**

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

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

Title: \_\_\_\_\_

**HANSEN AIR PROS, LLC**

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

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

Title: \_\_\_\_\_

**MAUZY AIR PROS, LLC**

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

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

Title: \_\_\_\_\_

**LITIGATION TRUSTEE**

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By: Olympus Guardians LLC  
Name: Arian Eghbali  
Title: Chief Executive Officer

**Exhibit C**

*(Assigned Causes of Action)*

This Exhibit C contains the Assigned Causes of Action, which will be transferred to, vested in, and/or retained by the Litigation Trust on the Effective Date, in addition to all other Litigation Trust Claims identified in the Plan.

### **Schedule of Assigned Causes of Action**

Pursuant to the *Second Amended Plan of Liquidation for AFH Air Pros, LLC and its Debtor Affiliates*, [Docket No. 478] (as may be further amended, modified, or supplemented, the “Plan”),<sup>1</sup> a Litigation Trust is being established as a grantor trust for the purpose of litigating, liquidating and distributing the Litigation Trust Assets to the Litigation Trust Beneficiaries in accordance with the Plan. The “Litigation Trust Assets” include the Litigation Trust Claims, which means, to the extent not otherwise transferred to a buyer pursuant to the Sale Orders or Asset Purchase Agreements or waived, relinquished, released, exculpated, compromised, transferred, or settled under the Plan, the Confirmation Order, or by another Bankruptcy Court order in the Chapter 11 Cases, (i) the Designated Causes of Action<sup>2</sup> that the Debtors or their Estates may have against the Non-Released Debtor D&Os and any other Person that is not a Released Party; and (ii) the Assigned Causes of Action. Notwithstanding the foregoing and for the avoidance of doubt, Litigation Trust Claims shall not include (x) any Cause of Action against any Released Party or (y) any Retained Cause of Action.

Unless an Assigned Cause of Action is expressly waived, relinquished, released, exculpated, compromised, transferred, or settled pursuant to the Plan, the Confirmation Order, or by another Bankruptcy Court order, on the Effective Date, all Litigation Trust Claims shall be transferred to, vested in, and/or retained by the Litigation Trust. Therefore, no preclusion doctrine, including the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable, or otherwise) or laches shall apply to such Litigation Trust Claims (including counterclaims) on or after the Confirmation Date as a consequence of entry of the Confirmation Order. All Litigation Trust Claims shall be preserved for the benefit of the Litigation Trust whether or not brought by the Debtors prior to the Effective Date of the Plan.

Accordingly, unless otherwise agreed by the Debtors, the Lenders, and the Creditors’ Committee, the following shall constitute Assigned Causes of Action under the Plan to the extent such Assigned Causes of Action (i) were not otherwise transferred to a buyer pursuant to the Sale Orders or Asset Purchase Agreements (ii) are not Retained Causes of Action,<sup>3</sup> or (ii) are not otherwise expressly waived, relinquished, released, exculpated, compromised, transferred, or settled pursuant to the Plan, the Confirmation Order, or by another Bankruptcy Court order in the Chapter 11 Cases:

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

<sup>2</sup> Under the Plan, the Designated Causes of Action are the following Causes of Action: (i) breach of fiduciary duty, (ii) aiding and abetting breach of fiduciary duty, (iii) breach of contract, (iv) corporate waste, (v) abuse of control, (vi) gross mismanagement, (vii) willful misconduct, (viii) fraud, (ix) aiding and abetting fraud, (x) actual fraudulent transfer, (xi) constructive fraudulent transfer, (xii) preferential transfer, (xiii) negligent misrepresentation, (xiv) conversion, (xv) unlawful stock redemption and dividends, (xvi) unjust enrichment, (xvii) conspiracy, (xviii) equitable subordination, (xix) recharacterization, and (xx) any Cause of Action arising from the same core of operative facts as delineated in (i) through (xix).

<sup>3</sup> Under the Plan, Retained Causes of Action means all Causes of Action of the Debtors or their Estates related to, concerning, or arising from any of the Remaining Assets that are not otherwise released under the Plan.

## **1. Causes of Action Related to Avoidance Actions**

Assigned Causes of Action include all Causes of Action in which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, and/or a transfer is avoidable under sections 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, except to the extent such Causes of Action relate to or arise from any Remaining Assets. Such Causes of Action specifically include, but are not limited to, all potential preference claims under section 547 of the Bankruptcy Code related to transfers made within the 90-day period before the Petition Date, or between 90 days and one year before the Petition Date with respect to transfers made to any insider<sup>4</sup> of the Debtors (excluding the Released Debtor D&Os or any other Released Party), on account of an antecedent debt owed by the Debtor as identified by the Debtors in their Statements of Financial Affairs.

Further, Assigned Causes of Action specifically include, but are not limited to, all potential fraudulent transfer claims as may be asserted under sections 544 and 548 of the Bankruptcy Code and any other applicable state fraudulent transfer or conveyance law related to transfers made within the applicable lookback time period applicable to the particular fraudulent transfer statute or law, including all transfers identified in the Debtors' respective Statement of Financial Affairs and any transfers made to any insider of the Debtors (excluding the Released Debtor D&Os or any other Released Party).

## **2. Causes of Action Related to Current or Former Insiders and/or Related Entities**

Assigned Causes of Action shall include all Causes of Action under federal or state law against or related to all current or former insiders of the Debtors (excluding the Released Debtor D&Os or any other Released Party), including directors, officers, shareholders, managers, or members of any Debtor and/or related Entities, including claims or actions, litigation, arbitration, or any other type of adversarial proceeding or dispute resolution proceeding, whether formal or informal, judicial or non-judicial. Such Assigned Causes of Action specifically include but are not limited to: (i) all claims against such parties for misfeasance, malfeasance, negligence, gross negligence, mismanagement, breach of any fiduciary duty arising under applicable law (including the duties of loyalty, candor, and care), aiding and abetting, conspiracy, fraud, unjust enrichment, and/or constructive trust; and (ii) all potential claims related to Avoidance Actions as previously described herein.

## **3. Causes of Action Related to the Debtors' Operations, Management, Capital Structure, and Business Activities, including any Fraud or Other Facts Described in the Disclosure Statement and Plan**

Assigned Causes of Action include direct or derivative Claims or Causes of Action of any of the Debtors or their Estates arising under federal or state law against: (a) any and all current and former officers, directors, shareholders, members, managers, employees, Affiliates, or insiders of any of the Debtors (excluding the Released Debtor D&Os or any other Released Party), including, but not limited to, claims for breach of fiduciary duty, aiding and abetting breach of fiduciary duty, breach of express or implied written or oral contract, tortious conduct (including fraud,

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<sup>4</sup> The term "insider" as used herein shall have the meaning set forth in 11 U.S.C. § 101(31).

constructive fraud, conspiracy, negligence, or gross negligence), in equity (including constructive trust or unjust enrichment), violations of any applicable statute, or under and pursuant to any applicable liability insurance policy, including Directors and Officers, Errors and Omissions, or General Liability (including bad faith); (b) any other Person who transacted business with any of the Debtors or engaged in conduct with the parties identified in subsection (a) of this paragraph to the detriment of the Debtors; (c) all Persons or Entities that provided professional services to any of the Debtors, including, without limitation, all attorneys, accountants, auditors, consultants, financial advisors and other parties providing services to the Debtors; and (d) any Affiliates of the Persons described in subsections (a) through (c).

#### **4. Defenses to General Unsecured Claims**

For the avoidance of doubt, the Assigned Causes of Action include defenses to any General Unsecured Claims asserted in these Chapter 11 Cases (other than the Prepetition Lender Deficiency Claim), including, but not limited to, all rights of setoff, recoupment, counterclaims, fraud, mistake, duress, usury and any other defenses as provided for under section 558 of the Bankruptcy Code with respect to General Unsecured Claims (other than the Prepetition Lender Deficiency Claim).