

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>In re:</b>	§	
	§	<b>Chapter 11</b>
<b>NORTHSTAR OFFSHORE GROUP, LLC</b>	§	
	§	<b>Case No. 16-34028</b>
<b>Debtor.</b>	§	

**NOTICE OF (I) ENTRY OF ORDER CONFIRMING DEBTOR’S SECOND AMENDED  
CHAPTER 11 PLAN OF LIQUIDATION, (II) THE OCCURRENCE OF THE  
EFFECTIVE DATE, AND (III) THE DEADLINES FOR FILING PROFESSIONAL FEE  
CLAIMS AND ADMINISTRATIVE EXPENSE CLAIMS**

**PLEASE TAKE NOTICE** that on December 22, 2017, (the “**Confirmation Date**”) the United States Bankruptcy Court for the Southern District of Texas entered its *Findings of Fact, Conclusions of Law and Order Approving Debtor’s Second Amended Chapter 11 Plan of Liquidation* [ECF No.1078] (the “**Confirmation Order**”) pursuant to which the Bankruptcy Court approved and confirmed the *Debtor’s Second Amended Plan of Liquidation Under Chapter 11 of the Bankruptcy Code*, dated November 22, 2017 (as amended and confirmed, the “**Plan**”). You may obtain a copy of the Confirmation Order and the Plan from the website of the Debtor’s claims and balloting agent, Prime Clerk (the “**Claims Agent**”) at <https://cases.primeclerk.com/northstar/>.

**PLEASE TAKE FURTHER NOTICE** that on January 19, 2018, the “Effective Date” of the Plan occurred.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to Section 2.2 of the Plan and Paragraph 10 of the Confirmation Order, all Professionals requesting payment for Professional Fee Claims shall file their respective final applications for allowance of compensation for services rendered and reimbursement of expenses incurred no later than forty-five (45) days after the Effective Date.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to Sections 1.2 and 2.1 of the Plan and Paragraph 9 of the Confirmation Order, any party requesting payment of an Administrative Expense Claim must file and serve its claim no later than thirty (30) days following the Effective Date (the “**Administrative Expense Claims Bar Date**”). Failure to file and serve such Administrative Expense Claim by the Administrative Expense Claims Bar Date shall result in the claimant being forever barred, estopped, and enjoined from asserting such Administrative Expense Claim against the Debtor or its Estate, and such Administrative Expense Claim shall be deemed released as of the Effective Date. Objections or responses to a request for payment of an Administrative Expense Claim, if any, must be filed and served by no later than ninety (90) days following the Effective Date (the “**Administrative Expense Claims Objection Bar Date**”); *provided, however*, that the Administrative Expense Claims Objection Bar Date may be extended pursuant to an Order of the Bankruptcy Court upon a motion filed by the Debtor after notice and

a hearing.

**PLEASE TAKE FURTHER NOTICE** that the Litigation Trust Agreement filed in the Plan Supplement has been revised.

**PLEASE TAKE FURTHER NOTICE** that attached hereto as Exhibits A through Exhibit B are the following:

**Exhibit A:**      **Litigation Trust Agreement; and**

**Exhibit B:**      **Redline of Litigation Trust Agreement**

Dated: January 19, 2018

Respectfully Submitted,

**WINSTON & STRAWN LLP**

*/s/ Lydia T. Protopapas*

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**CERTIFICATE OF SERVICE**

I, Nita Moore, hereby certify that, on January 19, 2018, all counsel of record who are deemed to have consented to electronic service were served with a copy of the *Notice of (I) Entry of Order Confirming Debtor's Second Amended Chapter 11 Plan of Liquidation, (II) The Occurrence of The Effective Date, and (III) The Deadlines for Filing Professional Fee Claims and Administrative Expense Claims* via the Court's CM/ECF system.

/s/ Nita Moore, Senior Paralegal

**Exhibit A**

**Litigation Trust Agreement**

**LITIGATION TRUST AGREEMENT**

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**THIS LITIGATION TRUST AGREEMENT** (this “*Agreement*”), dated as of December 22, 2017, is entered into by and among:

1. Northstar Offshore Group, LLC (“*Debtor*”); and
2. James Katchadurian of CR3 Partners, LLC, as trustee (the “*Original Trustee*”)

### RECITALS

**WHEREAS**, on August 12, 2016 (the “*Involuntary Petition Date*”), Alliance Offshore, LLC, Alliance Energy Services, LLC, and Montco Oilfield Contractors, LLC filed an involuntary chapter 11 petition for relief against the Debtor (ECF No. 1) (the “*Involuntary Petition*”) under section 303 of the Bankruptcy Code in the U.S. Bankruptcy Court for the Southern District of Texas (the “*Bankruptcy Court*”);

**WHEREAS**, on September 29, 2016, the Debtor responded to the Involuntary Petition by filing a Motion for Abstention Under 11 U.S.C. § 305(A), and, in the Alternative, Answer, Affirmative Defenses, and Request for Discovery (ECF No. 38) (the “*Abstention Motion*”);

**WHEREAS**, on December 2, 2016 (the “*Voluntary Petition Date*”), the Debtor agreed to convert the involuntary case to a voluntary case by filing a voluntary petition for relief (ECF No. 88) (the “*Voluntary Petition*”) under chapter 11 of the Bankruptcy Code in the case styled *In re Northstar Offshore Group LLC* (Case No. 16-34028) (the “*Chapter 11 Case*”);

**WHEREAS**, on December \_\_, 2017, the Bankruptcy Court entered an order (ECF No. \_\_) (the “*Confirmation Order*”) confirming the Debtor’s Second Amended Plan of Liquidation (ECF No. 983) (including any supplement and modification to such Plan and all exhibits and schedules thereto, as the same may be amended, modified or supplemented from time to time in accordance with the terms and provisions thereof, collectively the “*Plan*”);

**WHEREAS**, this Agreement is intended to establish a litigation trust (the “*Litigation Trust*”) pursuant to, and to effectuate certain provisions of, the Plan and the Confirmation Order;

**WHEREAS**, the Trustee (defined below) will hold and administer the Litigation Trust Assets (defined below) for the benefit of the Litigation Trust Beneficiaries (defined below) as contemplated by the Plan and the Confirmation Order;

**WHEREAS**, the Litigation Trust is established for the sole purpose of liquidating and distributing the Litigation Trust Assets pursuant to the Plan and this Agreement, with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Plan and the Litigation Trust;

**WHEREAS**, the Trustee was duly appointed as a representative of the Debtor’s estate pursuant to the Confirmation Order and sections 1123(a)(5), (a)(7) and (b)(3)(B) of the Bankruptcy Code;

**WHEREAS**, the Litigation Trust is intended to qualify as a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d) and the advance ruling guidelines contained in Rev. Proc. 94-45, 1994-2 C.B. 684;

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and agreements contained herein and in the Plan and the Confirmation Order, the Debtor and the Original Trustee, intending to be legally bound, agree as follows:

## **ARTICLE 1 ESTABLISHMENT OF THE LITIGATION TRUST**

### 1.1 Establishment of The Litigation Trust and Appointment of Original Trustee.

(a) Pursuant to the Plan and the Confirmation Order, the Debtor and the Original Trustee hereby establish a trust which shall be known as the “**Northstar Litigation Trust**” of the “**Litigation Trust**” on behalf of and for the benefit of the Litigation Trust Beneficiaries (defined below).

(b) The Original Trustee is hereby appointed as trustee of the Litigation Trust effective as of the effective date of the Plan (the “**Effective Date**”) and agrees to accept and hold the Litigation Trust Assets (defined below), and any other assets acquired by the Litigation Trust on or after the Effective Date pursuant to this Agreement or the Plan (collectively, the “**Litigation Trust Assets**”), in trust for the benefit of holders of Allowed Claims and unpaid professionals in relation to the Chapter 11 Case<sup>1</sup> (the “**Litigation Trust Beneficiaries**”) subject to the terms of the Plan, the Confirmation Order and this Agreement. The Original Trustee and each successor trustee serving from time to time hereunder (the “**Trustee**”) shall have all the rights, powers and duties set forth herein and pursuant to applicable law for accomplishing the purposes of the Litigation Trust.

### 1.2 Transfer of Assets and Rights to the Litigation Trust.

(a) Litigation Trust Assets. As of the Effective Date, pursuant to and in accordance with section 1141 of the Bankruptcy Code, the Plan and the Confirmation Order, the Debtor hereby irrevocably transfers, assigns and delivers to the Litigation Trust all of its rights, title and interests in and to the Litigation Trust Assets, free and clear of any and all Liens, charges, Claims, claims, encumbrances, Interests, and interests of any kind in such property of any other Person. The Trustee agrees to accept and hold the Litigation Trust Assets in trust for the Litigation Trust Beneficiaries, subject to the terms of this Agreement. None of the foregoing transfers to the Litigation Trust shall constitute a merger or consolidation of any Litigation Trust Assets, each of which shall retain its separateness following the transfer for all purposes relevant to the prosecution thereof.

(b) In this Agreement, “**Litigation Trust Assets**” means (i) the Expense Fund (defined below) and (ii) Causes of Action which include, but are not limited to, Avoidance Actions and the claims and causes of action set forth on Exhibit 1 hereto.

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<sup>1</sup>Capitalized terms used but not defined in this Agreement shall have the meanings ascribed to them in the Plan.

(c) Privileges. In connection with the Litigation Trust Assets, any attorney-client privilege, work product privilege, joint interest privilege or other privilege or immunity (collectively, the “*Privileges*”) attaching to any documents or communications (whether written or oral) shall vest in the Trustee and its representatives, and the Debtor and the Trustee are authorized to take all necessary actions to effectuate the transfer of such privileges and available defenses. The Litigation Trust’s receipt of the Privileges associated with the Litigation Trust Assets shall not operate as a waiver of other privileges possessed or retained by the Debtor.

(d) Documents. After the Effective Date, the Debtor shall (i) deliver or cause to be delivered to the Litigation Trust any and all documents reasonably requested by the Trustee and related to the Litigation Trust Assets (including those maintained in electronic format and original documents), whether held by the Debtor, NOV or its respective employees, or any of their agents, advisors, attorneys, accountants, or other professionals and (ii) provide reasonable access to employees of NOV and its and the Debtor’s agents, advisors, attorneys, accountants or any other professionals hired by the Debtor with knowledge of matters relevant to the Litigation Trust Assets.

(e) Further Assurances. As promptly as is practicable after the Effective Date, in order to evidence or effectuate the transfer of the Litigation Trust Assets and the Privileges to the Litigation Trust and the consummation of the transactions contemplated hereby and by the Plan and to otherwise carry out the intent of the parties hereunder and under the Plan, the Debtor agrees to (i) at the reasonable request of the Trustee, execute and/or deliver to the Trustee, or as otherwise directed by the Trustee, any instruments, documents, books, and records (including those maintained in electronic format and original documents as may be needed), and (ii) take, or cause to be taken, all such further actions as the Trustee may reasonably request. The Debtor agrees to cooperate with the Trustee in the analysis and prosecution of the Litigation Trust Assets to the extent reasonably requested by Trustee. Notwithstanding anything contained herein, without the express written consent of the Trustee, no Person or creditor of the Debtor shall be permitted to assert, bring, institute, or commence any Claim or Cause of Action that is transferred to the Litigation Trust pursuant to the Plan.

1.3 Title to The Litigation Trust Assets. The transfer of the Litigation Trust Assets to the Litigation Trust shall be made, as provided in the Plan and this Agreement, for the sole benefit of the Litigation Trust Beneficiaries. Upon the transfer of the Litigation Trust Assets to the Litigation Trust, the Debtor, shall have no interest in or claim to the Litigation Trust Assets or the Litigation Trust, and the Litigation Trust shall succeed to all of the Debtor’s rights, title and interests in and to the Litigation Trust Assets. To the extent that any Litigation Trust Assets cannot be transferred to the Litigation Trust because of a restriction on transferability under applicable non-bankruptcy law that is not superseded or preempted by section 1123 of the Bankruptcy Code or any other provision of the Bankruptcy Code, such Litigation Trust Assets shall be deemed to be retained by the Debtor, and the Trustee shall be deemed to have been designated as a representative of the Debtor pursuant to section 1123(b)(3)(B) of the Bankruptcy Code to enforce and pursue such Litigation Trust Assets on behalf of the Debtor, and all proceeds, income and recoveries on account of any such Litigation Trust Assets shall be assets of the Litigation Trust and paid over thereto immediately upon receipt by the Debtor, or any other Person. Notwithstanding the

foregoing, all net proceeds, income, and recoveries of or on account of such Litigation Trust Assets shall be transferred to the Litigation Trust to be distributed to the Litigation Trust Beneficiaries consistent with the terms of the Plan and this Agreement.

1.4 Nature and Purpose of the Litigation Trust.

(a) Purpose. The Litigation Trust is organized and established as a trust pursuant to which the Trustee, subject to the terms and conditions contained herein and in the Plan, shall (i) hold the Litigation Trust Assets and administer the same in accordance with this Agreement and the Plan in accordance with Treasury Regulation section 301.7701-4(d) and (ii) oversee and direct the expeditious but orderly liquidation of the Litigation Trust Assets. Accordingly, the sole purpose of the Litigation Trust is to liquidate the Litigation Trust Assets with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to preserve or enhance the liquidation value of the Litigation Trust Assets, and consistent with, the liquidating purpose of the Litigation Trust.

(b) Actions of the Trustee. Subject to the terms of this Agreement, the Trustee shall, in an expeditious but orderly manner, liquidate and convert to Cash the Litigation Trust Assets, which include, without limitation, pursuing recovery on the Litigation Trust Assets, making timely distributions and not unduly prolonging the duration of the Litigation Trust. The liquidation of the Litigation Trust Assets may be accomplished through the prosecution, compromise and settlement, abandonment or dismissal of any or all claims, rights or causes of action, or otherwise. The Trustee, with the consent of a majority of the members of the Trust Board, shall have the absolute right to pursue, settle and compromise or not pursue any and all of the Litigation Trust Assets as it determines is in the best interests of the Litigation Trust Beneficiaries, and consistent with the purposes of the Litigation Trust. The Trustee shall have no liability for the outcome of any such decision except for any damages caused by fraud, gross negligence, willful misconduct or knowing violation of law.

(c) Relationship. This Agreement is intended to create a trust and a trust relationship and the Litigation Trust is to be governed and construed in all respects as a trust. The Litigation Trust is not intended to be, and shall not be deemed to be or treated as, a general partnership, limited partnership, joint venture, corporation, joint stock company or association, nor shall the Trustee, or the Litigation Trust Beneficiaries, or any of them, for any purpose be, or be deemed to be or treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The relationship of the Litigation Trust Beneficiaries, on the one hand, to the Litigation Trust and the Trustee, on the other, shall not be deemed a principal or agency relationship, and their rights shall be limited to those conferred upon them by this Agreement and the Plan.

(d) No Waiver of Claims. In accordance with section 1123(b)(3) of the Bankruptcy Code, the Trustee may enforce all rights to commence and pursue the liquidation and conversion to cash of, as appropriate, any and all Litigation Trust Assets after the Effective Date. The Trustee shall have, retain, reserve, and be entitled to assert all such Claims, Causes of Action, rights of setoff, and other legal or equitable defenses

which the Debtor or any other party contributing claims or causes of action to the Litigation Trust Assets, had immediately prior to the Petition Date fully as if the Chapter 11 Case had not been commenced or the Litigation Trust Assets had not been transferred to the Litigation Trust in accordance with the Plan, the Confirmation Order and this Agreement, and all of the Debtor's legal and equitable rights respecting any Claim under the Plan, and the rights of any other party contributing claims or causes of action to the Litigation Trust Assets, may be asserted after the Confirmation Date to the same extent as if the Chapter 11 Case had not been commenced. Nothing in this Agreement shall be construed in a manner that is inconsistent with the Plan or the Confirmation Order.

1.5 Incorporation of Plan. The Plan and the Confirmation Order are each hereby incorporated into this Agreement and made a part hereof by this reference; *provided, however*, unless otherwise specified herein, to the extent that there is conflict between the provisions of this Agreement, the provisions of the Plan or the Confirmation Order, each such document shall have controlling effect in the following rank order: (1) the Confirmation Order; (2) the Plan; and (3) this Agreement.

1.6 Funding Expenses of the Litigation Trust. On the Effective Date, Northstar Offshore Ventures LLC shall transfer or shall have transferred \$150,000 in cash (the "***Expense Fund***") to the Litigation Trust which shall be retained by the Trustee to finance the operations and administration of the Litigation Trust and the Litigation Trust Assets. Upon liquidation of all Litigation Trust Assets, the balance of the Expense Fund, if any, shall be distributed to the Litigation Trust Beneficiaries.

1.7 Appointment as Representative. Pursuant to sections 1123(a)(5)(B) and 1123(b)(3) of the Bankruptcy Code, the Plan provides for the appointment of the Trustee as the duly appointed representative of the Debtor with respect to the Litigation Trust Assets and, as such, the Trustee succeeds to all of the rights and powers of a trustee in bankruptcy with respect to prosecution of the Litigation Trust Assets for the benefit of the Litigation Trust Beneficiaries in accordance with the terms of this Agreement, the Plan, and the Confirmation Order.

## ARTICLE 2 THE LITIGATION TRUST INTERESTS

2.1 Allocation of Litigation Trust Interests. The allocation and distribution of beneficial interests in the Litigation Trust ("***Litigation Trust Interests***") shall be accomplished as set forth in the Plan and the Confirmation Order. The aggregate number and face value of Litigation Trust Interests to be distributed pursuant to the Plan shall be equal in proportion to the pro rata share of such Trust Beneficiary's Allowed Claim (or any professional's unpaid claim) in accordance with the Plan.

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

2.3 Evidence of Beneficial Interests. The Litigation Trust Interests will not be represented by certificates, securities, receipts or in any other form or manner whatsoever, except

as maintained on the books and records of the Litigation Trust by the Trustee. The death, incapacity or bankruptcy of any Litigation Trust Beneficiary during the term of the Litigation Trust shall not (i) operate to terminate the Litigation Trust, (ii) entitle the representatives or creditors of the deceased party to an accounting, (iii) entitle the representatives or creditors of the deceased party to take any action in the Bankruptcy Court or elsewhere for the distribution of the Litigation Trust Assets or for a partition thereof or (iv) otherwise affect the rights and obligations of any of the Litigation Trust Beneficiaries hereunder.

2.4 Securities Law Registration. It is intended that the Litigation Trust Interests and the entitlements hereunder, if any, of the Litigation Trust Beneficiaries, shall not constitute “securities.” To the extent the Litigation Trust Interests or the entitlements of the Litigation Trust Beneficiaries are deemed to be “securities,” the issuance of Litigation Trust Interests to Litigation Trust Beneficiaries or the issuance to Litigation Trust Beneficiaries of any entitlements hereunder or under the Plan (and any redistribution of any of the foregoing pursuant to the Plan or otherwise) shall be exempt, pursuant to section 1145 of the Bankruptcy Code, from registration under the Securities Act of 1933, as amended (the “*Securities Act*”), and any applicable state and local laws requiring registration of securities. If the Trustee determines, with the advice of counsel, that the Litigation Trust is required to comply with registration and/or reporting requirements of the Securities Act, the Securities Exchange Act of 1934, as amended (the “*Exchange Act*”), the Trust Indenture Act of 1939, as amended (the “*Trust Indenture Act*”), or the Investment Company Act of 1940, as amended (the “*Investment Company Act*”), then the Trustee shall take any and all actions to comply with such registration and reporting requirements, if any, and file reports with the Securities and Exchange Commission (the “*SEC*”) to the extent required by applicable law. Notwithstanding the foregoing procedure, nothing herein shall be deemed to preclude the Trustee from amending this Agreement to make such changes as are deemed necessary or appropriate by the Trustee, with the advice of counsel, to ensure that the Litigation Trust is not subject to registration and/or reporting requirements of the Securities Act, the Exchange Act, the Trust Indenture Act or the Investment Company Act, except that no amendment to this Agreement may be made which would not be permitted by Article 11 of this Agreement.

2.5 Transfers.

(a) No transfer, sale assignment, distribution, exchange, pledge, hypothecation, mortgage or other disposition (each a “*Transfer*”) of a Litigation Trust Interest or any entitlement hereunder of a Litigation Trust Beneficiary may be effected or made except as hereinafter provided. Transfers of the Litigation Trust Interests or entitlements hereunder of a Litigation Trust Beneficiary and/or under the Plan may be made (i) by operation of law or by will or the laws of descent and distribution; (ii) if the Trustee has otherwise received such legal advice or other information that it, in its sole discretion, deems necessary or appropriate to assure that any other disposition shall not require the Litigation Trust to comply with the registration and reporting requirements of the Exchange Act or the Investment Company Act; or (iii) if the Trustee has determined to register under such Acts, as necessary, and/or make periodic reports in order to enable such other disposition to be made. In the event that any such disposition is allowed, the Trustee may add such restrictions upon transfer and other terms to this Agreement as are deemed necessary or appropriate by the Trustee, with the advice of counsel, to permit or facilitate such disposition under applicable securities and other laws.

(b) The Trustee shall act as a registrar, for the purpose of recording ownership of the Litigation Trust Interests as provided for in this Agreement.

(c) The Trustee shall cause to be kept, a registry of the Litigation Trust Beneficiaries (the "***Trust Register***") which shall be maintained pursuant to such reasonable regulations as the Trustee may prescribe. In order to determine the actual names and addresses of the Litigation Trust Beneficiaries, the Litigation Trustee may either (i) rely upon the official claims register maintained in the Debtor's Chapter 11 Case, or (ii) deliver a notice to the Litigation Trust Beneficiaries. Such notice will include a form for each Litigation Trust Beneficiary to complete in order to be properly registered as a Litigation Trust Beneficiary and be eligible for distributions under the Litigation Trust.

2.6 Access to the Trust Register by the Litigation Trust Beneficiaries. Litigation Trust Beneficiaries and their duly authorized representatives shall have the right, upon thirty (30) days' prior written notice to the Trustee and in accordance with the reasonable regulations prescribed by the Trustee, to inspect and, at the sole expense of the Litigation Trust Beneficiaries seeking the same, make copies of the Trust Register, in each case for a purpose reasonably related to such holder's interest in the Litigation Trust.

2.7 Absolute Owners. The Trustee may deem and treat the holder of a Litigation Trust Interest of record in the Trust Register as the absolute owner of such Litigation Trust Interest for the purpose of receiving distributions and payment thereon or on account thereof and for all other purposes whatsoever and the Trustee shall not be charged with having received notice of any claim or demand to such Litigation Trust Interest or the interest therein of any other Person.

### ARTICLE 3 THE TRUSTEE

3.1 Litigation Trust Proceeds. Any and all proceeds, income and/or recoveries obtained on account of or from the Litigation Trust Assets, after payment of any and all expenses of the Litigation Trust, shall be added to the Litigation Trust Assets (the "***Litigation Trust Proceeds***"), held as a part thereof (and title therein shall be vested in the Trustee) and administered in accordance with the terms of this Agreement.

3.2 Collection of Income. The Trustee shall collect all income earned with respect to the Litigation Trust Assets, which shall thereupon be added to the Litigation Trust Assets, held as a part thereof (and title therein shall be vested in the Trustee) and administered in accordance with the terms of this Agreement.

3.3 Payment of Litigation Trust Expenses. The Trustee shall maintain the Litigation Trust Assets (i) as is reasonably necessary to meet contingent liabilities and to maintain the value of the Litigation Trust Assets during liquidation, (ii) to pay reasonable and necessary expenses (including but not limited to, the reasonable costs and expenses of the Trustee (including reasonable fees, costs, and expenses of professionals retained by the Trustee), any taxes imposed on the Litigation Trust or in respect of the Litigation Trust Assets or reasonable fees and expenses in connection with, arising out of, or related to, the Litigation Trust Assets and litigation associated therewith), (iii) to pay the costs and expenses of the valuations of the Litigation Trust Assets incurred by the Trustee in accordance with Section 5.1(c) of this Agreement, (iv) to pay or

reimburse amounts in accordance with Article 7 and (v) to satisfy other liabilities incurred or assumed by the Litigation Trust (or to which the Litigation Trust Assets are otherwise subject) in accordance with the Plan, the Confirmation Order and this Agreement.

3.4 Distributions. The Trustee shall make distributions of the Litigation Trust Proceeds in accordance with the provisions of Article 6 of this Agreement and the Plan.

3.5 Tenure, Removal, and Replacement of the Trustee.

(a) The Trustee will serve until the earliest of (i) the completion of all the Trustee's duties, responsibilities and obligations under this Agreement and the Plan, (ii) the Trustee's resignation and the appointment of a successor pursuant to Section 3.5(b) of this Agreement, (iii) the Trustee's removal pursuant to Section 3.5(c) of this Agreement, (iv) the Trustee's death (if applicable) and (v) the termination of the Litigation Trust in accordance with this Agreement, the Confirmation Order and the Plan.

(b) The Trustee may resign by filing a notice with the Bankruptcy Court (a "**Resignation Notice**"). Such resignation will become effective on the later to occur of: (i) the day specified in such Resignation Notice and (ii) the appointment of a successor trustee as provided in Section 3.5(d) and the acceptance by such successor trustee of such appointment in accordance with Section 3.6 of this Agreement. If a successor trustee is not appointed or does not accept his appointment within ninety (90) days following the filing of the Resignation Notice, the Trustee shall, or any holder of a Litigation Trust Interest may, file a motion with the Bankruptcy Court, upon notice and a hearing, seeking the appointment of a successor trustee.

(c) The Trustee will serve as Trustee until the earlier of the following: (i) the resignation of the Trustee, and (ii) a vote of the majority of the Trust Board to remove the Trustee. In the event of a vacancy in the position of the Trustee (whether by removal, resignation, or death, if applicable), a majority of the Trust Board may appoint a successor trustee.

(d) Immediately upon the appointment of any successor trustee, all rights, powers, duties, authority, and privileges of the predecessor Trustee hereunder will be vested in and undertaken by the successor trustee without any further act, and the successor trustee will not be liable personally for any act or omission of the predecessor Trustee. A successor trustee shall have all the rights, privileges, powers, and duties of the predecessor Trustee under this Agreement, the Confirmation Order and the Plan. The predecessor Trustee shall thereupon cease to have any further rights, powers, privileges or duties hereunder, except the right to receive unpaid compensation due as of the date of the appointment of the successor trustee pursuant to any agreement then in effect.

(e) Upon the appointment of a successor trustee, the predecessor Trustee (or the duly appointed legal representative of a deceased Trustee) shall, if applicable, when requested in writing by the successor trustee or the Bankruptcy Court, execute and deliver an instrument or instruments conveying and transferring to such successor trustee upon the trust herein expressed all the estates, properties, rights, powers and trusts of such

predecessor Trustee, and shall duly assign, transfer, and deliver to such successor trustee all property and money held hereunder, and all other assets, documents, instruments, records and other writings relating to the Litigation Trust, the Litigation Trust Assets, the Litigation Trust Proceeds, the Litigation Trust Interests, and the entitlements of the Litigation Trust Beneficiaries hereunder, then in its possession and held hereunder, and shall execute and deliver such documents, instruments and other writings as may be requested by the Bankruptcy Court or a successor trustee to effect the termination of such predecessor Trustee's capacity under the Litigation Trust, this Agreement and the Plan and otherwise assist and cooperate, without cost or expense to the predecessor Trustee, in effectuating the assumption of its obligations and functions by the successor trustee.

(f) The death, resignation or removal of the 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 Trustee.

3.6 Acceptance of Appointment by Successor Trustee. Any successor trustee appointed hereunder shall execute an instrument accepting such appointment and assuming all of the obligations and duties of the predecessor Trustee on the same terms and conditions hereunder and accepting the terms of this Agreement and agreeing that the provisions of this Agreement shall be binding upon and inure to the benefit of the successor trustee and all of its heirs, and legal and personal representatives, successors and assigns, and thereupon the successor trustee shall, without any further act, become vested with all the estates, properties, rights, powers, trusts, and duties of the predecessor Trustee hereunder with like effect as if originally named herein.

3.7 Role of the Trustee. In furtherance of and consistent with the purpose of the Litigation Trust and the Plan, the Trustee, subject to the terms and conditions contained in this Agreement, in the Plan and in the Confirmation Order, shall have the power to (i) prosecute, compromise and settle, abandon or dismiss for the benefit of the Litigation Trust all Litigation Trust Assets, rights, Avoidance Actions and Causes of Action transferred to the Litigation Trust (whether such suits are brought in the name of the Litigation Trust, the Trustee or otherwise), and (ii) otherwise perform the functions and take the actions provided for or permitted in the Plan, in the Confirmation Order or in this Agreement. In all circumstances, the Trustee shall act in the best interests of the Litigation Trust Beneficiaries and in furtherance of the purpose of the Litigation Trust.

3.8 Authority of Trustee. Subject only to any limitations contained herein, the Trustee is authorized to perform any and all acts necessary or desirable to accomplish the purposes of the Litigation Trust, and is expressly authorized to:

(a) hold legal title to any and all rights of the holders of the Litigation Trust Interests in or arising from the Litigation Trust Assets, including collecting, receiving any and all money and other property belonging to the Litigation Trust (including any Litigation Trust Proceeds) and the right to vote any claim or interest relating to a Litigation Trust Claim in a case under the Bankruptcy Code and receive any distribution thereon;

(b) exercise and perform the rights, powers and duties held by the Debtor's estate with respect to the Litigation Trust Assets, including, without limitation, the

authority under section 1123(b)(3) of the Bankruptcy Code, and act in the capacity of a trustee under sections 704 and 1106 of the Bankruptcy Code, including by commencing, prosecuting or settling causes of action, enforcing contracts or asserting claims, defenses, offsets and privileges;

(c) take possession and control, administer, maintain and dispose of documents, books and records related to the Litigation Trust Assets;

(d) protect and enforce the rights to the Litigation Trust Assets by any method deemed appropriate including by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

(e) obtain reasonable insurance coverage with respect to the liabilities and obligations of the Trustee under this Agreement (in the form of an errors and omissions policy or otherwise);

(f) obtain insurance coverage with respect to real and personal property that may become assets of the Litigation Trust, if any;

(g) retain and pay such counsel and other professionals, including any professionals previously retained by the Debtor, as the Trustee shall select to assist the Trustee in its duties, on such terms as the Trustee deems reasonable and appropriate, without Bankruptcy Court approval. The Trustee may commit the Litigation Trust to, and shall pay such counsel, experts, litigation consultants, and other professionals reasonable compensation for, services rendered (including on an hourly, contingency, or modified contingency basis) and reasonable, documented out-of-pocket expenses incurred. Notwithstanding the foregoing, the approval of the majority of the Trust Board shall be required for the retention of any counsel by the Trustee on a basis other than on contingency fee basis;

(h) retain and pay an accounting firm to perform such reviews and/or audits of the financial books and records of the Litigation Trust as may be required by applicable laws (including, if applicable, securities laws) and/or this Agreement, and to prepare and file any tax returns, informational returns or periodic and current reports for the Litigation Trust as required by applicable laws (including, if applicable, securities laws) and/or by this Agreement. The Trustee may commit the Litigation Trust to and shall pay such accounting firm reasonable compensation for services rendered and reasonable and documented out-of-pocket expenses incurred;

(i) retain, enter into fee arrangements with and pay such third parties to assist the Trustee in carrying out its powers, authorities and duties under this Agreement. The Trustee may commit the Litigation Trust to and shall pay all such Persons reasonable compensation for services rendered and reasonable and documented out-of-pocket expenses incurred, as well as commit the Litigation Trust to indemnify any such Persons in connection with the performance of services (provided that such indemnity shall not cover any losses, costs, damages, expenses or liabilities that result from the fraud, gross negligence, bad faith, willful misconduct or knowing violation of law by such Persons);

(j) in the exercise of its reasonable discretion, waive any privilege (including the Privileges) or any defense on behalf of the Litigation Trust or, with respect to the Litigation Trust Assets;

(k) investigate, analyze, initiate, compromise, settle, adjust, arbitrate, mediate, sue on or defend, pursue, prosecute, release, withdraw, abandon, dismiss, exercise rights, powers and privileges with respect to, litigate to judgment or otherwise administer, in accordance with the terms set forth herein, all causes of action, objections and Litigation Trust Assets in favor of or against the Litigation Trust without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court, except as set forth in Section 3.9, below;

(l) invest any moneys held as part of the Litigation Trust in accordance with the terms of Section 3.15 of this Agreement, limited, however, to such investments that are consistent with the Litigation Trust's status as a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d) and in accordance with Rev. Proc. 94-45, 1994-2 C.B. 684;

(m) request any appropriate tax determination with respect to the Litigation Trust, including a determination pursuant to section 505 of the Bankruptcy Code;

(n) seek the examination of any Person, subject to the provisions of Bankruptcy Rule 2004 or any other applicable law or rule;

(o) make distributions in accordance with Article 6 of this Agreement;

(p) determine and satisfy any and all liabilities created or incurred by the Litigation Trust; and

(q) take or refrain from taking any and all other actions that the Trustee reasonably deems necessary or convenient for the continuation, protection and maximization of the Litigation Trust Assets, or to otherwise carry out the purposes hereof.

### 3.9 Limitation of Trustee's Authority.

(a) Notwithstanding anything herein to the contrary, the Trustee shall not (i) be authorized to engage in any trade or business, (ii) take such actions inconsistent with the orderly liquidation of the Litigation Trust Assets as are required or contemplated by applicable law, the Plan, the Confirmation Order, or this Agreement, or (iii) be authorized to engage in any investments or activities inconsistent with the treatment of the Litigation Trust as a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d) and in accordance with Rev. Proc. 94-45, 1994-2 C.B. 684.

(b) Notwithstanding anything herein to the contrary, the Trustee shall not be permitted to take any of the actions described below (the "**Prior Notice Actions**") without prior notice to and, as required, the requisite approval of the Trust Board in accordance with the following terms. If the Trustee intends to take any one or more of the Prior Notice Actions, the Trustee shall provide at least ten (10) Business Days prior notice thereof to all

members of the Trust Board, which notice shall reasonably describe the intended Prior Notice Action(s) and advise the Trust Board of their right to object by an objection deadline that is at least ten (10) Business Days after the date such notice is mailed. If no objections to the proposed Prior Notice Action(s) are actually received by the stated objection deadline from a majority of the members of the Trust Board, the Trustee shall be authorized to carry out the specified Prior Notice Action(s). If, on the other hand, holders of a majority of the members of the Trust Board object to the proposed Prior Notice Action(s) by objection actually received by the Trustee on or before the objection deadline, then the Trustee shall not be authorized to carry out any Prior Notice Action(s) not approved by a majority of the members of the Trust Board. For the purpose hereof, each of the following shall constitute Prior Notice Actions:

(i) any settlement or withdrawal of a Litigation Trust Asset where the amount in controversy exceeds \$75,000;

(ii) any determination to seek audited financial statements for the Litigation Trust;

(iii) any action to enter into any one or more of the following to the extent the same results in aggregate expenditures greater than \$50,000 during any fiscal year:

(A) obtaining insurance coverage of the type described in Sections 3.8(e) or 3.8(f) hereof or otherwise;

(B) any agreement to provide services to the Litigation Trust; or

(C) any non-ordinary course transaction.

(iv) any proposed distribution to Litigation Trust Beneficiaries;

(v) any proposal to terminate, declare insolvent or extend the terms of the Litigation Trust; and

(vi) any material amendment or modification to the Trustee's compensation, as described in Section 3.13 hereof.

(c) The Litigation Trust shall not hold 50% or more of the stock (in either vote or value) of any Person that is treated as a corporation for federal income tax purposes, nor be the sole member of a limited liability company, nor have any interest in a Person that is treated as a partnership for federal income tax purposes, unless such stock, membership interest, or partnership interest was obtained involuntarily or as a matter of practical economic necessity in order to preserve the value of the Litigation Trust Assets.

### 3.10 Books and Records.

(a) The Trustee shall maintain books and records relating to the Litigation Trust Assets, the status of Claims against the Litigation Trust Assets and income of the Litigation Trust and the payment of expenses and liabilities of, claims against or assumed by, the

Litigation Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained on a modified cash or other comprehensive basis of accounting necessary to facilitate compliance with the tax reporting and securities law requirements, if any, of the Litigation Trust as well as the reporting requirements set forth in Article 9 of and elsewhere in this Agreement.

(b) Litigation Trust Beneficiaries and their duly authorized representatives shall have the right, upon thirty (30) days' prior written notice to the Trustee, and in accordance with the reasonable procedures prescribed by the Trustee, to inspect and, at the sole expense of such holder seeking the same, make copies of the books and records relating to the Litigation Trust on any Business Day and as often as may be reasonably be desired, in each case for a purpose reasonably related to such holder's interest in the Litigation Trust.

3.11 Inquiries into Trustee's Authority. Except as otherwise set forth in this Agreement, the Confirmation Order or the Plan, no Person dealing with the Litigation Trust shall be obligated to inquire into the authority of the Trustee in connection with the protection, conservation, administration, or disposition of the Litigation Trust Assets.

3.12 Compliance with Laws. Any and all distributions of the Litigation Trust Assets shall be in compliance with applicable laws, including applicable federal and state securities laws.

3.13 Compensation and Reimbursement of the Trustee. Notwithstanding anything to the contrary contained herein, the Trustee shall be compensated for his services at the hourly rate then in effect and applicable to other clients served by the Trustee and shall be reimbursed for his reasonable out-of-pocket expenses incurred in connection with the performance of his duties hereunder solely from the Litigation Trust Assets.

3.14 Reliance by Trustee. Except as otherwise provided herein:

(a) the 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 reasonably believed by the Trustee to be genuine and to have been signed or presented by the proper party or parties including, but not limited to, documents, analyses and information provided or to be provided by the Debtor and its professionals, whether such professionals were retained in the Chapter 11 Case or otherwise; and

(b) Persons dealing with the Trustee shall look only to the Litigation Trust Assets to satisfy any liability incurred by the Trustee to such Person in carrying out the terms of this Agreement, and the Trustee shall not have any personal obligation to satisfy any such liability.

3.15 Investment and Safekeeping of The Litigation Trust Assets. The Trustee shall invest all Litigation Trust Assets (pending distribution in accordance with Article 6 of this Agreement) only in Cash and Government securities as defined in section 2(a)(16) of the Investment Company Act; provided, however, that (a) the scope of any such permissible investments shall be further limited to include only those investments that a liquidating trust, within the meaning of Treasury Regulation section 301.7701-4(d), may be permitted to hold,

pursuant to the Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements, or otherwise, and (b) the Trustee may retain any Litigation Trust Proceeds received that are not Cash only for so long as may be required for the prompt and orderly liquidation of such assets in Cash.

3.16 Standard of Care; Exculpation. Neither the Trustee nor any of its duly designated agents or representatives or professionals shall be liable for any act or omission taken or omitted to be taken by the Trustee in good faith, other than (i) acts or omissions resulting from the Trustee's or any such agent's, representative's or professional's fraud, gross negligence, bad faith, willful misconduct or knowing violation of law or (ii) acts or omissions from which the Trustee or any such agent, representative or professional derived an improper personal benefit. The Trustee may, in connection with the performance of his functions, and in his sole and absolute discretion, consult with his attorneys, accountants, financial advisors and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such persons. Notwithstanding such authority, the Trustee shall be under no obligation to consult with his attorneys, accountants, financial advisors or agents, and his good faith determination not to do so shall not result in the imposition of liability on the Trustee, unless such determination is based on fraud, gross negligence, bad faith, willful misconduct or knowing violation of law. No amendment, modification or repeal of this Section 3.16 shall adversely affect any right or protection of the Trustee or any of his agents, representatives or professionals that exists at the time of such amendment, modification or repeal.

#### ARTICLE 4 LITIGATION TRUST GOVERNING TRUST BOARD

4.1 Creation of Litigation Trust Governing Trust Board. On the Effective Date, the Litigation Trust Governing Trust Board (the "**Trust Board**") shall be formed and constituted of no more than three persons, all approved by the Bankruptcy Court prior to the conclusion of the Confirmation Hearing. The initial members of the Trust Board shall be: B&J Martin, Inc. and Offshore Contract Services, LLC.

4.2 Vacancy.

(a) In the event that a member of the Trust Board becomes unable or unwilling to serve before the Effective Date, the remaining members of the Trust Board shall as soon as reasonably practicable appoint a replacement subject to approval by the Bankruptcy Court.

(b) In the event that after the Effective Date any member of the Trust Board ceases to serve as a result of death, incapacity, resignation or removal, the vacancy shall be promptly filled by a majority vote of the remaining members of the Trust Board, subject to approval by the Trustee. In the event of a tie, the Trustee shall have the deciding vote. In the event that after the Effective Date all members of the Trust Board shall resign or otherwise cease to serve at once, no successor shall be appointed as a result of the foregoing provisions. Instead, the Trustee shall promptly file a motion with the Bankruptcy Court pursuant to which the Bankruptcy Court shall appoint successor members of the Trust Board to fill all vacancies, upon notice and hearing to the Litigation Trust Beneficiaries.

The Trustee may recommend replacement members for the Bankruptcy Court's consideration.

4.3 Removal.

(a) A member of the Trust Board may be removed at any time as follows:

(i) By a majority vote of the remaining Trust Board members at any meeting called and held in accordance with the provisions of this Agreement; or

(ii) By an order of the Bankruptcy Court, after application by (A) one or more Trust Board members, or (B) the Trustee. The Bankruptcy Court shall retain jurisdiction for this purpose.

(b) If the Trustee or any member(s) of the Trust Board believes that cause exists to remove any Trust Board member, such Person(s) shall give written notice thereof to the Trustee and all members of the Trust Board, specifying with particularity the basis on which that belief is based, and including copies of any documents or written materials that support that belief. The notice shall also call a meeting of the Trust Board to consider whether cause for removal exists, with the meeting to be held not less than 10 days and not more than 30 days after the notice is given.

4.4 Chairperson. The Trust Board members shall elect a Chairperson ("*Chairperson*") by majority vote.

4.5 Procedures. The Trust Board shall adopt bylaws that shall provide for the governance of the Trust Board and shall permit telephonic meetings.

4.6 Function, Duties and Responsibilities. Neither the Trust Board nor any member shall be liable for any duties or obligations except for the performance of such duties and obligations as are specifically set forth herein, and no implied covenants or obligations shall be read into this Agreement. The Trust Board shall have the following functions, duties and responsibilities:

(a) It shall meet with the Trustee upon such regular basis as the Trust Board and the Trustee deem appropriate, but in no event less frequently than quarterly (except as may be unanimously determined otherwise by the Trust Board and Trustee); and

(b) It shall consult with the Trustee regarding the carrying out of his duties, and may specify tasks and duties to be taken by the Trustee in furtherance of the administration of the Litigation Trust and consistent with the terms of the Plan and this Agreement, including (but not limited to):

- (i) administration of the Litigation Trust Assets;
- (ii) status of the Causes of Action; and
- (iii) distributions to the Litigation Trust Beneficiaries.

(c) In addition, the Trustee shall be required to obtain the consent of a majority of the Trust Board's members before taking, or refraining from taking any Prior Notice Actions set forth in Section 3.9(b) hereof.

4.7 Duration. The Trust Board shall remain in existence until the Litigation Trust is terminated.

4.8 Compensation and Expenses. The members of the Trust Board shall serve without compensation.

4.9 Meetings and Reports.

(a) During the first three (3) months following the Effective Date, the Trustee shall meet with the Trust Board at least on a monthly basis, unless the meeting is cancelled by the Trust Board in consultation with the Trustee. Beginning three (3) months after the Effective Date, the Trustee shall meet with the Trust Board no less frequently than quarterly (except as may be determined otherwise by the Trust Board). At such meetings, the Trustee shall make available to the Trust Board the Litigation Trust's books and records. Thereafter, the Trust Board shall determine, in consultation with the Trustee, whether less frequent meetings are appropriate. Two (2) members of the Trust Board shall constitute a quorum for purposes of meetings of the Trust Board.

(b) Special meetings of the Trust Board may be held at such times as may be determined by the members of the Trust Board, as called by the Chairperson, or as requested by the Trustee. The Trustee shall attend or participate in such meetings upon reasonable request of the Trust Board or the Trustee.

(c) The Trustee shall maintain contemporaneous books and records of all Litigation Trust business, transactions and affairs and may engage independent accountants to audit the Litigation Trust's financial statements.

(d) The Trustee shall provide such reporting, and allow reasonable inspection by the Trust Board of the Litigation Trust's books and records, as requested by the Trust Board or Chairperson, from time to time. In addition to any other reporting required herein, as soon as practicable after the termination of the Litigation Trust, the Trustee shall submit a final written report and accounting to the Trust Board.

4.10 Liability; Indemnification. Neither the Trust Board, nor any of its members, designees, agents, or representatives, or any of their respective employees, shall be liable for the act or omission of any other member, designee, agent, or representative of the Trust Board, nor shall any member of the Trust Board be liable for any act or omission taken or omitted to be taken in its capacity as a member of the Trust Board, other than acts or omissions resulting from such member's fraud, willful misconduct or gross negligence. The Litigation Trust shall indemnify and hold harmless the Trust Board and its members, designees, agents, and representatives (acting in such capacity) from all liabilities, losses, damages, claims, costs and expenses (including, but not limited to attorneys' fees and costs arising out of or due to their actions or omissions, or consequences of these acts or omissions) with respect to the Litigation Trust or the implementation

or administration of the Plan; *provided, however*, that no indemnification will be made to such Persons for actions or omissions as a result of fraud, willful misconduct or gross negligence.

4.11 Reliance by Trust Board. The Trust Board and its members may rely, and shall be fully protected personally in acting upon, any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order, or other instrument or document which the Trust Board/member believes to be genuine and to have been signed or presented by the proper party or parties or, in the case of facsimile transmissions or electronic mail, to have been sent by the proper party or parties, in each case without obligation to satisfy itself that the same was given in good faith and without responsibility for errors in delivery, transmission, or receipt. In the absence of fraud, willful misconduct or gross negligence on the Trust Board's part, the Trust Board and its members may rely as to the truth of any statements contained therein in acting thereon. The Trust Board may, in connection with the performance of its function, and in its sole and absolute discretion, hire and consult with attorneys, accountants, and its agents, and the Trust Board and its members shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such professionals. Notwithstanding such authority, the Trust Board and its members shall be under no obligation to consult with attorneys, accountants or its agents, and its determination to not do so shall not result in the imposition of liability on the Trust Board or its members, unless such determination is based on willful misconduct, gross negligence or fraud.

4.12 No Personal Liability. Neither the Trust Board nor any member shall have any personal liability or individual obligation to satisfy any liability incurred by the Trustee or the Litigation Trust, except to the extent that such liability results from the Trust Board's, or its relevant member's, willful misconduct, gross negligence, or fraud.

4.13 Selection and Compensation of Attorneys and Advisors. In the event that the Trust Board has reason to believe, after reasonable investigation, that the Litigation Trustee has taken actions, or failed to take actions, constituting fraud, gross negligence or willful misconduct in the administration of the Litigation Trust, the Trust Board shall be entitled (but not required) to select and employ an attorney or such other advisors to assist the Trust Board in further investigating such actions and/or omissions by the Trustee. The reasonable fees and expenses incurred by the attorney or advisor employed by the Trust Board shall be paid solely from the Litigation Trust Assets without further order of the Bankruptcy Court. The Trust Board shall not be liable for any action taken or suffered by the Trust Board in reliance upon the advice or opinions rendered by its professionals.

## ARTICLE 5 TAX MATTERS

### 5.1 Federal Income Tax Treatment of the Litigation Trust.

(a) For all federal income tax purposes, all parties (including the Debtor, the Litigation Trust, the Trustee and the Litigation Trust Beneficiaries) shall treat the transfer of the Litigation Trust Assets to the Litigation Trust for the benefit of the Litigation Trust Beneficiaries as (a) a transfer of the Litigation Trust Assets directly by the Debtor to the Litigation Trust Beneficiaries in satisfaction of their treatment under the Plan, followed by (b) the transfer by the Litigation Trust Beneficiaries to the Litigation Trust of the Litigation

Trust Assets in exchange for beneficial interests in the Litigation Trust. Accordingly, the Litigation Trust Beneficiaries shall be treated for federal income tax purposes as the grantors and owners of their respective shares of the Litigation Trust Assets. The foregoing treatment also shall apply, to the extent permitted by applicable law, for state and local income tax purposes.

(b) Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including receipt by the Trustee of a private letter ruling if the Trustee so requests, or the receipt of an adverse determination by the IRS, upon audit, or otherwise if not contested by the Trustee), the Trustee shall (i) file returns for the Litigation Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a) and in accordance with this Article 5 and Section 5.2 of the Plan and (ii) annually send to each holder of a Litigation Trust Interest a separate statement setting forth such holder's share of items of income, gain, loss, deduction, or credit and will instruct all such holders and parties to report such items on their federal income tax returns. The Trustee also shall file (or cause to be filed) any other statements, returns or disclosures relating to the Litigation Trust that are required by any governmental unit.

(c) Pursuant to the Plan, the Litigation Trustee shall apprise the Litigation Trust Beneficiaries of the value of the Litigation Trust Assets. The valuation shall be used consistently by all parties (including the Litigation Trustee and the Litigation Trust Beneficiaries) for all federal income tax purposes. Any dispute regarding the valuation of the Litigation Trust Assets shall be resolved by the Bankruptcy Court.

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

(e) The Trustee shall be responsible for payments, out of the Litigation Trust Assets and Litigation Trust Proceeds, of any taxes imposed on the Litigation Trust or the Litigation Trust Assets.

(f) The Trustee may require any of the Litigation Trust Beneficiaries to furnish to the Trustee its Employer or Taxpayer Identification Number as assigned by the IRS and the Trustee may condition any distribution or payment to any of them upon receipt of such identification number.

5.2 Allocations of Litigation Trust Taxable Income. Allocations of the Litigation Trust taxable income among the Litigation Trust Beneficiaries shall be determined by reference to the manner in which an amount of Cash equal to such taxable income would be distributed (without regard to any restrictions on distributions described in the Plan or herein) if, immediately prior to such deemed distribution, the Litigation Trust had distributed all of its other assets (valued at their tax book value) to the Litigation Trust Beneficiaries, in each case up to the tax book value of the assets treated as contributed by such holders, adjusted for prior taxable income and loss and taking into account all prior and concurrent distributions from the Litigation Trust (including all distributions held in escrow pending the resolution of Disputed Claims). 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 liquidating distribution of the remaining Litigation Trust Assets. The tax book value of the Litigation Trust Assets for this purpose shall equal their fair market value on the Effective Date as determined under Section 5.1(c) above, adjusted in either case in accordance with tax accounting principles prescribed by the Tax Code, and applicable tax regulations, and other applicable administrative and judicial authorities and pronouncements.

5.3 Tax Withholdings by Trustee. The Trustee shall be authorized to collect such tax information from the Litigation Trust Beneficiaries (including, without limitation, social security numbers or other tax identification numbers) as the Trustee, in its sole discretion, deems necessary to effectuate the Plan, the Confirmation Order, and this Agreement. The Trustee shall take reasonable steps and give reasonable notices to the Litigation Trust Beneficiaries to alert them to this requirement. In order to receive distributions pursuant to the Plan and this Agreement, all Litigation Trust Beneficiaries shall be required to identify themselves to the Trustee and provide tax information and the specifics of their holdings, to the extent the Trustee deems appropriate in the manner and in accordance with the procedures from time to time established by the Trustee for these purposes. This identification requirement applies to all Litigation Trust Beneficiaries. The Trustee may refuse to make a distribution to any Litigation Trust Beneficiary that fails to furnish such information in a timely fashion and, until such information is delivered. If any requested tax information is not furnished by a Litigation Trust Beneficiary to the Trustee within six (6) months of the original request for such information (the “*Withholding Deadline*”), no further distributions shall be made to such Litigation Trust Beneficiary; *provided, however*, that upon the delivery of such information by a Litigation Trust Beneficiary, the Trustee shall make all such distributions to which such Litigation Trust Beneficiary is entitled, without interest. If the Trustee fails to withhold in respect of amounts received or distributable to any Litigation Trust Beneficiary and the Trustee or the Litigation Trust is later determined to be liable for the amount of such withholding, such Litigation Trust Beneficiary shall reimburse the Trustee or the Litigation Trust, as appropriate, for such liability (to the extent such amounts were actually distributed to such holder).

## ARTICLE 6 DISTRIBUTIONS

6.1 Distributions; Withholding. Quarterly, the Trustee shall distribute Litigation Trust Assets that become deliverable during the preceding calendar quarter subject to the priority of distribution under Section 6.7; *provided, however*, that the Trustee must retain and reserve an escrow of such amounts as are reasonably necessary to satisfy amounts that would be distributable in respect of Disputed Claims if the Disputed Claims were allowed in the face amount of such Disputed Claims (the “*Disputed Claim Reserve*”), and any such other amounts (such as other claims or other contingent liabilities) as reasonably necessary in his business judgment to fulfill his duties under the Plan or this Agreement.

6.2 Manner of Payment or Distribution. All distributions to be made by the Trustee to the Litigation Trust Beneficiaries shall be paid quarterly. If the distribution shall be in Cash, the Trustee shall distribute such Cash by wire, check, or such other method as the Trustee deems appropriate under the circumstances.

6.3 Cash Distributions. No Cash distributions shall be required to be made to any Litigation Trust Beneficiary in an amount less than \$100.00. Any funds so withheld and not

distributed shall be held in reserve and distributed in subsequent distributions. The foregoing shall not apply to the final distribution made to the Litigation Trust Beneficiaries.

6.4 Delivery of Litigation Trust Distributions.

(a) Except as set forth in Section 6.4(b), all distributions under this Agreement to a Litigation Trust Beneficiary shall be made at the address of such Beneficiary as set forth in the Trust Register or at such other address or in such manner as such Beneficiary shall have specified for payment purposes in a written notice to the Trustee at least twenty (20) days prior to such distribution date.

(b) If any distribution to any Litigation Trust Beneficiary is returned as undeliverable, and, after reasonable efforts by the Trustee, the Trustee has been unable to determine the then current address of such Beneficiary, such undeliverable or unclaimed distribution shall be deemed unclaimed property 120 days after the date of such returned distribution, and shall be reallocated to the remaining Litigation Trust Beneficiaries and distributed to such remaining Litigation Trust Beneficiaries in accordance with the terms of this Agreement. Any such undeliverable or unclaimed distributions shall not be subject to (i) any claims by such Litigation Trust Beneficiary or (ii) the unclaimed property or escheat laws of any state or governmental unit.

6.5 Disputed Claims Reserve. The Disputed Claim Reserve shall include assets held separately from other assets of the Litigation Trust, subject to an allocable share of all expenses and obligations for the Litigation Trust, on account of Disputed Claims. The amount of the Disputed Claim Reserve shall be equal to the amount necessary to satisfy the distributions to which the holders of the relevant Disputed Claims would be entitled to receive if all such Disputed Claims were to be subsequently allowed. The Trustee may, for U.S. federal income tax purposes (and, to the extent permitted by law, for state and local income tax purposes), (i) make an election pursuant to Treasury Regulation section 1.468B-9 to treat the Disputed Claims Reserve as a “disputed ownership fund” within the meaning of that section (ii) allocate taxable income or loss to the Disputed Claims Reserve, with respect to any given taxable year (but only for the portion of the taxable year with respect to which such claims are Disputed Claims), and (iii) distribute assets from the Disputed Claims Reserve and distribute the same as provided in this Article 6 as, when, and to the extent, such Disputed Claims either become Allowed or are otherwise resolved. The Litigation Trust Beneficiaries shall be bound by such election, if made by the Trustee, and as such shall, for U.S. federal income tax purposes (and, to the extent permitted by law, for state and local income tax purposes), report consistently therewith.

6.6 Fees and Expenses. The Trustee must pay the operating and administrative expenses of the Litigation Trust before approving distributions to or of the benefit of Litigation Trust Beneficiaries.

6.7 Priority of Distributions. Any recovery by the Litigation Trust on account of the Litigation Trust Assets shall be applied in the following order:

- (i) first, to satisfy unpaid professional fees in relation to the Chapter 11 Case and any unpaid costs and expenses of the Litigation Trust, including without

limitation, the compensation of reasonable attorneys' fees and expenses and court costs; and

(ii) second, the pro rata shares of the Litigation Trust Beneficiaries' Allowed Claims.

## ARTICLE 7 INDEMNIFICATION

### 7.1 Indemnification of Trustee.

(a) To the fullest extent permitted by law, the Litigation Trust, to the extent of its assets legally available for that purpose, shall indemnify and hold harmless the Trustee, CR3 Partners, LLC, and each of its respective directors, members, shareholders, partners, officers, agents, employees, attorneys and other professionals (collectively, the "*Indemnified Persons*") from and against any and all losses, costs, damages, reasonable and documented out-of-pocket expenses (including reasonable fees and expenses of attorneys and other advisors and any court costs incurred by any Indemnified Person) or liability by reason of anything any Indemnified Person did, does, or refrains from doing for the business or affairs of the Litigation Trust, except to the extent that the loss, cost, damage, expense or liability resulted (x) from the Indemnified Person's fraud, gross negligence, bad faith, willful misconduct or knowing violation of law or (y) from an act or omission from which the Indemnified Person derived an improper personal benefit. To the extent reasonable, the Litigation Trust shall pay in advance or reimburse reasonable and documented out-of-pocket expenses (including advancing reasonable costs of defense) incurred by the Indemnified Person who is or is threatened to be named or made a defendant or a respondent in a proceeding concerning the business and affairs of the Litigation Trust. The indemnification provided under this Section 7.1 shall survive the death, dissolution, resignation or removal, as may be applicable, of the Trustee and/or any other Indemnified Person, and shall inure to the benefit of the Trustee's and each other Indemnified Person's heirs, successors and assigns.

(b) Any Indemnified Person may waive the benefits of indemnification under this Section 7.1, but only by an instrument in writing executed by such Indemnified Person.

(c) The rights to indemnification under this Section 7.1 are not exclusive of other rights which any Indemnified Person may otherwise have at law or in equity, including without limitation common law rights to indemnification or contribution. Nothing in this Section 7.1 will affect the rights or obligations of any Person (or the limitations on those rights or obligations) under this Agreement, or any other agreement or instrument to which that Person is a party.

## ARTICLE 8 REPORTING OBLIGATIONS OF TRUSTEE

### 8.1 Reports.

(a) The Trustee shall prepare quarterly reports and make the same available to the members of the Trust Board, and shall prepare and provide annual (fiscal year) reports to the Litigation Trust Beneficiaries (including unpaid professionals relating to the Chapter

11 Case), with respect to (i) the prosecution and resolution of the Litigation Trust Assets, (ii) the status of Claims against the Litigation Trust Assets, and (iii) expenditures, receipts, and distributions of the Litigation Trust. The Trustee shall cause to be prepared, as applicable, either at such times as may be required by the Exchange Act, if applicable, or, not less than annually, financial statements of the Litigation Trust, to be delivered to the Litigation Trust Beneficiaries together with annual income tax reporting of the Litigation Trust.

(b) Within ten (10) Business Days after the end of the relevant quarter or year for which a report is required by the Trustee pursuant to Section 8.1(a), the Trustee shall cause notice of any information reported pursuant to Section 8.1(a) to be given to the Litigation Trust Beneficiaries.

(c) All of the foregoing reports, and the information and documents upon which such reports are based, shall be made available to the Litigation Trust Beneficiaries in accordance with Section 3.10 hereof.

## **ARTICLE 9 TERM; TERMINATION OF THE LITIGATION TRUST**

### **9.1 Term; Termination of the Litigation Trust.**

(a) The Litigation Trust shall commence on the date hereof and terminate no later than the fifth anniversary of the Effective Date; *provided, however*, that, on or prior to the date that is ninety (90) days prior to such termination, the Bankruptcy Court, upon motion by a party in interest, may extend the term of the Litigation Trust if it is necessary to the liquidation of the Litigation Trust Assets. Notwithstanding the foregoing, multiple extensions may be obtained so long as the Bankruptcy Court approval is obtained not less than ninety (90) days prior to the expiration of each extended term; *provided, however*, that in no event shall the term of the Litigation Trust extend past the tenth (10<sup>th</sup>) anniversary of the Effective Date; *provided further* that neither this Agreement nor the continued existence of the Litigation Trust shall prevent the Debtor from closing the Chapter 11 Case pursuant to section 350 of the Bankruptcy Code and obtaining a final decree pursuant to Bankruptcy Rule 3022.

(b) The Litigation Trust may be terminated earlier than its scheduled termination if the Trustee has administered all of the Litigation Trust Assets and performed all other duties required by the Plan, the Confirmation Order, this Agreement and the Litigation Trust.

(c) If at any time, the Trustee determines that the expense of administering the Litigation Trust is likely to exceed the value of the remaining Litigation Trust Assets, the Trustee may dissolve the Litigation Trust.

9.2 Continuance of Trust for Winding Up. After the termination of the Litigation Trust and for the purpose of liquidating and winding up the affairs of the Litigation Trust, the Trustee shall continue to act as such until his duties have been fully performed. Prior to the final distribution of all of the remaining Litigation Trust Assets, the Trustee shall be entitled to reserve from such assets any and all amounts required to provide for his own reasonable costs and

expenses, in accordance with the terms of this Agreement, until such time as the winding up of the Litigation Trust is completed. Upon termination of the Litigation Trust, the Trustee shall retain for a period of three years the books, records, lists of the Litigation Trust Beneficiaries, the Trust Register, and other documents and files that have been delivered to or created by the Trustee. Except as otherwise specifically provided herein, upon the termination of the Litigation Trust, the Trustee shall have no further duties or obligations hereunder.

## ARTICLE 10 AMENDMENT AND WAIVER

### 10.1 Amendment and Waiver.

(a) Subject to the other provisions of this Agreement, the Trustee may amend, supplement or waive any provision of, this Agreement, without the consent of the Litigation Trust Beneficiaries or the approval of the Bankruptcy Court: (i) upon reasonably advance notice to the Trust Board, to cure any ambiguity, omission, defect or inconsistency in this Agreement; (ii) to comply with any requirements in connection with the U.S. Federal income tax status of the Litigation Trust as a “liquidating trust;” (iii) to comply with any requirements in connection with maintaining that the Litigation Trust is not subject to registration or reporting requirements of the Exchange Act, the Trust Indenture Act or the Investment Company Act; (iv) to make the Litigation Trust a reporting entity and, in such event, to comply with any requirements in connection with satisfying the registration or reporting requirements of the Exchange Act, the Trust Indenture Act or the Investment Company Act; and (v) to evidence and provide for the acceptance of the appointment hereunder by a successor trustee in accordance with the terms of this Agreement and the Plan; *provided, however*, that notice shall be given to the Litigation Trust Beneficiaries promptly after such amendment, supplement or waiver is effective.

(b) Any provision of this Agreement that the Trustee cannot amend pursuant to Section 10.1(a) of this Agreement may be amended or waived by the Trustee, subject to approval of a majority of the Trust Board.

(c) Notwithstanding anything contained in this Section 10.1, no amendment, supplement, or waiver may be made to this Agreement that (i) would adversely affect the payments and/or distributions to be made under this Agreement to (or on behalf or for the account of) any Litigation Trust Beneficiary, or (ii) is inconsistent with the purpose and intention of the Litigation Trust to liquidate in an expeditious but orderly manner the Litigation Trust Assets in accordance with Treasury Regulation section 301.7701-4(d).

## ARTICLE 11 MISCELLANEOUS PROVISIONS

11.1 Intention of Parties to Establish the Litigation Trust. This Agreement is intended to create a liquidating trust for federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a trust and any ambiguity herein shall be construed consistent herewith and, if necessary, this Agreement may be amended in accordance with Section 10.1 to comply with such federal income tax laws, which amendments may apply retroactively.

11.2 Litigation Costs. If, during the term of this Agreement, any dispute arises among the parties to this Agreement regarding the provisions of this Agreement or the enforcement thereof, each party shall bear its own costs and expenses, including attorneys' fees.

11.3 Laws as to Construction. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to whether any conflicts of law would require the application of the law of another jurisdiction.

11.4 Jurisdiction. Without limiting any Person's right to appeal any order of the Bankruptcy Court or to seek withdrawal of the reference with regard to any matter, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby, and (ii) any and all actions related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the parties, including the Litigation Trust Beneficiaries, hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court.

11.5 Severability. If any provision of this Agreement or the application thereof to any Person or circumstance shall be finally determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

11.6 Notices. All notices, requests or other communications to the parties hereto shall be in writing and shall be sufficiently given only if (i) delivered in person; (ii) sent by electronic mail or facsimile communication (as evidenced by a confirmed fax transmission report); (iii) sent by first class U.S. mail; (iv) sent by commercial delivery service or courier; or (v) with respect to notices to any Litigation Trust Beneficiary that has elected to receive notices electronically. Until a change of address is communicated, as provided below, all notices, requests and other communications shall be sent to the parties at the following addresses or facsimile numbers:

<b>If to the Trustee:</b>	CR3 Partners LLC Attn: James Katchadurian 450 Lexington Ave, 4 <sup>th</sup> Floor New York, NY 10017 914-646-9451 James.katchadurian@cr3partners.com
<b>If to the Litigation Trust Beneficiaries:</b>	To the name and address set forth on the registry maintained by the Trustee

All notices shall be effective and shall be deemed delivered (i) if by personal delivery, delivery service or courier, on the date of delivery; (ii) if by electronic mail or facsimile

communication, on the date of receipt or confirmed transmission of the communication; and (iii) if by mail, on the date of receipt. Any Person from time to time may change his, her or its address, facsimile number, or other information for the purpose of notices to that Person by giving notice specifying such change to the Trustee.

11.7 Fiscal Year. The fiscal year of the Litigation Trust shall be a calendar year ending on December 31 of each year.

11.8 Construction; Usage.

(a) Interpretation. In this Agreement, unless a clear contrary intention appears:

(i) the singular number includes the plural number and vice versa;

(ii) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;

(iii) reference to any gender includes each other gender;

(iv) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;

(v) reference to any applicable law means such applicable law as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any section or other provision of any applicable law means that provision of such applicable law from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision;

(vi) "hereunder," "hereof," "hereto," and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article, Section or other provision hereof;

(vii) reference to Articles, Sections, Schedules or Exhibits herein shall be deemed to be references to the Articles, Sections, Schedules and Exhibits to this Agreement unless otherwise specified;

(viii) "including" means including without limiting the generality of any description preceding such term; and

(ix) references to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto.

(b) Headings. The headings contained in this Agreement are for the convenience of reference only, shall not be deemed to be a part of this Agreement and shall not be referred to in connection with the construction or interpretation of this Agreement.

11.9 Counterparts; Facsimile; PDF. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. Any facsimile or portable document format copies hereof or signature hereon shall, for all purposes, be deemed originals.

11.10 Confidentiality. The Trustee and each successor trustee (each a “*Covered Person*”) shall, during the period that they serve in such capacity under this Agreement and following either the termination of this Agreement or such individual’s removal, incapacity, or resignation hereunder, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any Person to which any of the Litigation Trust Assets relate or of which it has become aware in its capacity (the “*Information*”), except to the extent disclosure is required by applicable law, order, regulation or legal process. In the event that any Covered Person is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigation, demand or similar legal process) to disclose any Information, such Covered Person shall notify the Debtor reasonably promptly (unless prohibited by law) so that the Debtor may seek an appropriate protective order or other appropriate remedy or, in their discretion, waive compliance with the terms of this Section 11.10 (and if the Debtor seeks such an order, the relevant Covered Person will provide cooperation as the Debtor shall reasonably request). In the event that no such protective order or other remedy is obtained, or that the Debtor waives compliance with the terms of this Section 11.10 and any Covered Person is nonetheless legally compelled to disclose the Information, the Covered Person will furnish only that portion of the Information, which the Covered Person, advised by counsel, is legally required and will give the Debtor written notice (unless prohibited by law) of the Information to be disclosed and exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Information.

11.11 Entire Agreement. This Agreement (including the Recitals), the Plan and the Confirmation Order constitute the entire agreement by and among the parties hereto and there are no representations, warranties, covenants or obligations except as set forth herein or therein. This Agreement, the Plan and the Confirmation Order supersede all prior and contemporaneous agreements, understandings, negotiations, discussions, written or oral, of the parties hereto, relating to any transaction contemplated hereunder. Except as otherwise specifically provided herein, in the Plan or in the Confirmation Order, nothing in this Agreement is intended or shall be construed to confer upon or to give any Entity or Person other than the parties hereto and their respective heirs, administrators, executors, permitted successors, or permitted assigns any right to remedies under or by reason of this Agreement, except that the Persons identified in Article 7 hereof are intended third party beneficiaries of Article 7 hereof and shall be entitled to enforce the provisions thereof as if they were parties hereto.

11.12 No Bond. The Trustee shall serve without bond, and notwithstanding any state or federal law to the contrary, the Trustee (including any successor trustee) shall be exempt from giving any bond or other security in any jurisdiction.

11.13 Effectiveness. This Agreement shall become effective on the Effective Date.

11.14 Investment Company Act. This Litigation Trust is organized as a liquidating entity in the process of liquidation, and therefore should not be considered, and the Litigation Trust does not and will not hold itself out as, an “investment company” or an entity “controlled” by an “investment company” as such terms are defined in the Investment Company Act.

11.15 Successor and Assigns. This Agreement shall inure to the benefit of the parties hereto and the intended third party beneficiaries identified in Section 11.11 hereof (to the extent specified therein), and shall be binding upon the parties hereto, and each of their respective successors and assigns to the extent permitted by this Agreement and applicable law.

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

11.17 No 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 holder of a Litigation Trust Interest, and no holder of a Litigation Trust Interest or any other Person can execute upon, garnish or attach the Litigation Trust Assets in any manner or compel payment from the Litigation Trust except by an order of the Bankruptcy Court. Distributions from the Litigation Trust will be governed solely by the Plan and this Agreement.

11.18 Irrevocability. The Litigation Trust is irrevocable but is subject to amendment and waiver as provided for in this Agreement.

[SIGNATURE PAGE FOLLOWS]

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

**THE DEBTOR:**

**Northstar Offshore Group, LLC**

By: /s/ Avery C. Alcorn

Name: Avery C. Alcorn

Title: Chief Financial Officer and Senior Vice President

**ORIGINAL TRUSTEE:**

By: /s/ James Katchadurian

Name: James Katchadurian

Title: Trustee

**[SIGNATURE PAGE]**

**EXHIBIT 1****CAUSES OF ACTION TO BE TRANSFERRED  
AND RETAINED BY THE LITIGATION TRUST**

The Debtor operated as an oil and gas company with substantially all of its producing assets located offshore in U.S. federal and Louisiana and Texas waters in the Gulf of Mexico. The Debtor's financial condition resulted at least in part due to acts and omissions of its previous and current equity holders and entities related to them.

The Litigation Trust may pursue claims against the Debtor's previous equity holder NPX Holdings and all entities and persons related to them (collectively, "NGP")<sup>1</sup> based on their sale of the Debtor to non-credit worthy buyer Northstar GOM Holdings Group, LLC ("Holdings"), a wholly owned subsidiary of PPVA Oil and Gas LLC, which, on information and belief, is in turn wholly owned by Platinum Partners Value Arbitrage Fund LP ("PPVA"). At the time of the sale, and as a result of the structure of the transaction (including giving the Debtor a \$15 million negative working capital adjustment), the Debtor was insolvent, undercapitalized, and unable to pay its debts as they came due. After the sale, the buyer was unable to provide sufficient liquidity for the Debtor to function and the structure of the transaction ultimately doomed the Debtor's ability to meet its debts as they came due. NGP's actions may give rise to claims for fraudulent transfer, breach of fiduciary duty, fraud, negligent misrepresentation, self-dealing, negligence, conversion, embezzlement, conflicts of interest, misuse of insider information and related claims.

Additionally, the Litigation Trust may pursue claims against the Platinum Equity Holders, and all persons and entities related to them (collectively, "Platinum")<sup>2</sup> based on their domination and negligent operation of the Debtor's business, their use of the Debtor as a vehicle to promote their own self-interests, undercapitalization of the Debtor, and their failure to observe fundamental corporate formalities, such as constituting a Board of Directors, and their resulting unfettered control and domination of the Debtor. Other acts and omissions may give rise to claims for self-dealing, misappropriation of assets, diversion, usurpation and theft of corporate opportunities and assets, breach of fiduciary duty, breach of contract, embezzlement, conspiracy, fraud, negligent misrepresentation, misuse of collateral, conflicts of interest, securities violations, misuse of insider information, fraudulently structuring security interests and thus fraudulently obtaining interest

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<sup>1</sup> NGP Holdings means NGP X US Holdings, L.P., NGP X Holdings GP, L.L.C., NOG Royalty Holdings GP, LLC, and NOG Royalty Holdings, LP.

<sup>2</sup> Platinum Equity Holders means Holdings; PPVA Oil and Gas, LLC; PPCO; Platinum Partners Liquid Opportunity Master Fund LP; and PPVA. Platinum Partners, LP is "a Manhattan-based hedge fund," that was founded in part by, among others, Mark Nordlicht ("Nordlicht") and Murray Huberfeld ("Huberfeld"), both of whom are currently under criminal indictment. PPVA, the core Platinum fund, was founded in 2003 by Nordlicht, with investors that also included Huberfeld. Nordlicht has been the Chief Investment Officer ("CIO") and the person primarily directing Platinum's day-to-day operations. A number of other Platinum executives have played key roles in the Platinum companies, like Black Elk and Northstar, in which Platinum invested, and then dominated and controlled. Other Platinum related persons relevant to this case are: (i) David Levy ("Levy"), Huberfeld's nephew, a Managing Director and Portfolio Manager at Platinum, whom Platinum placed as CIO of the "friendly" Beechwood entities, and as the President of B Asset Manager, which was both the Administrative Agent for Black Elk's credit facility and also the investment arm of the Beechwood entities; and (ii) Daniel Small ("Small"), a Managing Director and Portfolio Manager at Platinum, an executive at Beechwood, and a member of Black Elk's Board of Managers. Levy and Small are under criminal indictment along with Nordlicht and other Platinum operatives, for, among other things, their role in the fraudulent transfer of Black Elk's assets, including the transfers to the Debtor.

payments, causing the Debtor to purchase assets with significant financial burdens, including plugging and abandonment obligations, bonding requirements, and encumbrances from operator liens. Platinum caused the Debtor to purchase these troubled assets from other entities wholly-owned by Platinum, such as Black Elk, and sought to use the Debtor as a means to avert Black Elk's bankruptcy. In connection with the Black Elk transaction, Platinum was advised by Chardan Capital Markets Inc. ("Chardan"), which does not appear to have been an impartial or "independent" advisor, and, as such, the Litigation Trust may seek to pursue claims against such entity.

The Debtor believes that the following additional claims and causes of action may exist:

a. Claims and causes of action for avoidance and recovery under §§ 541, 542, 543, 544, 545, 547, 548, 549, 550, 553(b) of the Bankruptcy Code and all applicable state law counterparts, including claims against all parties who received payments within the ninety (90) days prior to the Petition Date, including but not limited to those parties identified in the Debtor's Statement of Financial Affairs (ECF No. 237) and Section IV.A.4, and all insiders who directly or indirectly received, or were beneficiaries of, payments within one (1) year of the Petition Date, including but not limited to those parties identified in the Debtor's Statement of Financial Affairs (ECF No. 237), NGP, and Platinum.

b. Any and all claims and causes of action against NGP and former officers, directors, and managers (i) Christopher Ray, (ii) Jesse Bomer, (iii) Tomas Ackerman, (iv) David Albin, (v) David Hayes, (vi) S. Glynn Roberts, (vii) Gaylon Freeman, (viii) Mark Stevens, (ix) James Ulm, II, (x) Thomas Maloy, Jr., (xi) Michael Rauch, and (xii) any other former officers directors, managers, control persons of the Debtor, and employees of the Debtor (other than Brian Macmillan, David Dean, Keith Krenek, and Avery Alcorn) (the "Former NGP D&Os") arising out of the sale of assets to Northstar GOM. Specifically, and without waiving the generality of the foregoing, these claims include, but are not limited to, claims for breach of fiduciary duty, fraud, negligent misrepresentation, self-dealing, breach of contract, misuse of collateral, negligence, conversion, embezzlement, conflicts of interest, misuse of insider information related to their acts and omissions or the transfers referred to herein and related claims.

c. Any and all claims and causes of action against Platinum and former officers, directors, and managers (i) S. Glynn Roberts, (ii) Gaylon Freeman, (iii) Mark Stevens, (iv) James Ulm II, (v) Kenneth Schott, (vi) Thomas Maloy Jr., (vii) Michael Rauch (viii) Sabrina Greenlee, and (ix) any other former officers directors, managers, control persons of the Debtor, and employees of the Debtor (other than Brian Macmillan, David Dean, Keith Krenek, and Avery Alcorn) (the "Former Platinum D&Os") arising out of the sale of assets to Holdings, the purchase of the Black Elk assets, the transfer of any collateral underlying any surety bonds of the Debtor, the selling of the Debtor's oil and gas hedge contracts, and the allegations in *Eleanor Fiduciary Servs., LLC v. Northstar GOM Holdings Grp., LLC et al.*, No. 654014/2016 (N.Y. Sup. Ct. Aug. 1, 2016), among others. Specifically, and without waiving the generality of the foregoing, such claims and causes of action include, but are not limited to, claims for breach of fiduciary duty, fraud, negligent misrepresentation, self-dealing, breach of contract, misuse of collateral, negligence, conversion, embezzlement, conflicts of interest, misuse of insider information related to their acts and omissions or the transfers referred to herein and related claims.

d. Claims and causes of action against any former auditors of the Debtor and their respective insurers, including Chardan and Kerry Propper, for negligence, negligent misrepresentation, gross negligence, failure to abide by the standard of care for auditors and/or failure to institute appropriate controls and for malpractice related to false and misleading financial reporting associated with work performed from 2014 to 2016.

e. Claims and causes of action against any of the following persons or entities: Platinum, Dan Small, Stephen Silver, Zach Weiner, John Hoffman, Jeff Shulse, Jed Latkin, Dov Weiner, Chaim Nordlicht, Mark Nordlicht, David Levy, Daniel Sakes, Jamie Hartman, Ehtan Benovitz, Beechwood Asset Management, Beechwood International Bermuda, LTD, Chardan, Kerry Propper, and any affiliates or related persons of the aforementioned entities for claims for the avoidance of preferential or fraudulent transfers, conspiracy, breach of contract or warranty, civil theft, conversion, fraud, negligent misrepresentation, breach of fiduciary duty, usurpation of corporate opportunity, self-dealing, breach of contract, misuse of collateral, negligence, embezzlement, equitable subordination, conflicts of interest associated with their control of/ or dealings with the Debtor and/or the transfer and receipt of the Debtor's assets and related claims;

f. Claims and causes of action against NGP, its partners, officers, directors, and affiliates, including but not limited to claims for the avoidance of preferential or fraudulent transfers, conspiracy, civil theft, conversion, fraud, negligent misrepresentation, breach of fiduciary duty, usurpation of corporate opportunity, self-dealing, breach of contract, misuse of collateral, negligence, embezzlement, equitable subordination, and conflicts of interest associated with the sale of the Debtor in September 2014;

g. Claims and causes of action against Platinum, its members, officers, directors, and affiliates, including but not limited to claims for the avoidance of preferential or fraudulent transfers, conspiracy, civil theft, conversion, fraud, negligent misrepresentation, breach of fiduciary duty, usurpation of corporate opportunity, self-dealing, breach of contract, misuse of collateral, negligence, embezzlement, equitable subordination, and conflicts of interest associated with the purchase of the Debtor in September 2014;

h. Claims and causes of action against Platinum, their officers directors, employees and affiliates, including but not limited to, claims for the avoidance of preferential or fraudulent transfers, conspiracy, civil theft, conversion, fraud, negligent misrepresentation, breach of fiduciary duty, self-dealing, breach of contract, negligence, embezzlement, equitable subordination, conflicts of interest associated with the \$30 million transferred to New Mountain Finance and interest payments made on such notes;

i. Claims and causes of action against Platinum and Chardan their officers directors, employees and affiliates, including but not limited to, claims for the avoidance of preferential or fraudulent transfers, conspiracy, civil theft, conversion, fraud, negligent misrepresentation, breach of fiduciary duty, self-dealing, breach of contract, negligence, embezzlement, equitable subordination, conflicts of interest associated with purchase of Black Elk assets in 2014;

j. Claims and causes of action against the Debtor's direct and indirect equity interest holders and their respective insurers for breach of fiduciary duty, fraudulent transfers, preferences, civil theft, conspiracy, embezzlement, self-dealing, conflicts of interest, successor liability, fraud, misrepresentation, piercing of the corporate veil associated with their role in the insolvency of the Debtor and the transfers referred to herein;

k. Any and all claims and causes of action against any present or former joint interest partner or joint venture partners, including breach of contract, breach of the duty of good faith, commercial torts, tortious interference, setoff, recoupment, fraud, fraudulent inducement, misrepresentation, fraudulent or negligent misrepresentation, fraudulent or preferential transfers arising under the Bankruptcy Code, conversion, equitable subordination, negligence, conspiracy, aiding and abetting, self-dealing, and un-commercial transactions;

l. Any and all claims and causes of action against all predecessors in interest (i.e., prior owners of properties sold to the Debtor), including breach of contract, breach of the duty of good faith, commercial torts, tortious interference, setoff, recoupment, fraud, fraudulent inducement, misrepresentation, fraudulent or negligent misrepresentation, fraudulent or preferential transfers arising under the Bankruptcy Code, conversion, equitable subordination, negligence, conspiracy, aiding and abetting, self-dealing, and un-commercial transactions;

m. Any and all claims and causes of action against the Debtor's members and former senior management related to fraud, negligence, usurpation of corporate opportunity, self-dealing, breach of confidential relationship, mismanagement, breach of fiduciary duty, and aiding and abetting breaches of fiduciary duty;

n. Any and all claims and causes of action against all creditors that initiated an involuntary petition against the Debtor, any entities that served or serve as sureties for the Debtor, including commercial torts, tortious interference, unfair competition, breach of contract, loss of income, setoff, recoupment, fraud, fraudulent inducement, misrepresentation, fraudulent or negligent misrepresentation, fraudulent or preferential transfers arising under the Bankruptcy Code, conversion, lender liability, equitable subordination, negligence, conspiracy, aiding and abetting, self-dealing, and un-commercial transactions, and breach of duty of good faith; and

o. Any and all claims and causes of action against any party that received a payment within the 90 day period prior to the filing of the Involuntary Petition or for statutory insiders within the one year period prior to the filing of the Involuntary Petition, including those parties set forth on the Debtor's Schedules and Statement of Financial Affairs.

In addition, there may be additional state or federal law causes of action which currently exist or may arise that are not set forth in this list of Causes of Action to be Transferred and Retained by the Litigation Trust because the facts that form the basis of such causes of action are not currently known by the Debtor (the "Unknown Causes of Action"). The Plan Supplement is premised on the Litigation Trust continuing the investigation of these causes. The failure to list Unknown Causes of Action in the Plan Supplement is not in any way intended to waive such Unknown Causes of Action or to limit the rights of the Litigation Trust to pursue them.

Due to the preliminary nature of the Debtor's investigation of the Causes of Action, it is currently unknown whether there will be a recovery, and if so, the likely amount of such recovery. Until further progress has been made in the investigation, and sufficient discovery undertaken, the Debtor will be unable to offer an informed and credible estimate of the likely recovery on the Causes of Action.

**Exhibit B**

**Redline of Litigation Trust Agreement**

**LITIGATION TRUST AGREEMENT**

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**THIS LITIGATION TRUST AGREEMENT** (this “*Agreement*”), dated as of December 22, 2017, is entered into by and among:

1. Northstar Offshore Group, LLC (“*Debtor*”); and
2. James Katchadurian of CR3 Partners, LLC, as trustee (the “*Original Trustee*”)

#### RECITALS

**WHEREAS**, on August 12, 2016 (the “*Involuntary Petition Date*”), Alliance Offshore, LLC, Alliance Energy Services, LLC, and Montco Oilfield Contractors, LLC filed an involuntary chapter 11 petition for relief against the Debtor (ECF No. 1) (the “*Involuntary Petition*”) under section 303 of the Bankruptcy Code in the U.S. Bankruptcy Court for the Southern District of Texas (the “*Bankruptcy Court*”);

**WHEREAS**, on September 29, 2016, the Debtor responded to the Involuntary Petition by filing a Motion for Abstention Under 11 U.S.C. § 305(A), and, in the Alternative, Answer, Affirmative Defenses, and Request for Discovery (ECF No. 38) (the “*Abstention Motion*”);

**WHEREAS**, on December 2, 2016 (the “*Voluntary Petition Date*”), the Debtor agreed to convert the involuntary case to a voluntary case by filing a voluntary petition for relief (ECF No. 88) (the “*Voluntary Petition*”) under chapter 11 of the Bankruptcy Code in the case styled *In re Northstar Offshore Group LLC* (Case No. 16-34028) (the “*Chapter 11 Case*”);

**WHEREAS**, on December \_\_, 2017, the Bankruptcy Court entered an order (ECF No. \_\_) (the “*Confirmation Order*”) confirming the Debtor’s Second Amended Plan of Liquidation (ECF No. 983) (including any supplement and modification to such Plan and all exhibits and schedules thereto, as the same may be amended, modified or supplemented from time to time in accordance with the terms and provisions thereof, collectively the “*Plan*”);

**WHEREAS**, this Agreement is intended to establish a litigation trust (the “*Litigation Trust*”) pursuant to, and to effectuate certain provisions of, the Plan and the Confirmation Order;

**WHEREAS**, the Trustee (defined below) will hold and administer the Litigation Trust Assets (defined below) for the benefit of the Litigation Trust Beneficiaries (defined below) as contemplated by the Plan and the Confirmation Order;

**WHEREAS**, the Litigation Trust is established for the sole purpose of liquidating and distributing the Litigation Trust Assets pursuant to the Plan and this Agreement, with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Plan and the Litigation Trust;

**WHEREAS**, the Trustee was duly appointed as a representative of the Debtor’s estate pursuant to the Confirmation Order and sections 1123(a)(5), (a)(7) and (b)(3)(B) of the Bankruptcy Code;

**WHEREAS**, the Litigation Trust is intended to qualify as a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d) and the advance ruling guidelines contained in Rev. Proc. 94-45, 1994-2 C.B. 684;

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and agreements contained herein and in the Plan and the Confirmation Order, the Debtor and the Original Trustee, intending to be legally bound, agree as follows:

## **ARTICLE 1 ESTABLISHMENT OF THE LITIGATION TRUST**

### 1.1 Establishment of The Litigation Trust and Appointment of Original Trustee.

(a) Pursuant to the Plan and the Confirmation Order, the Debtor and the Original Trustee hereby establish a trust which shall be known as the “**Northstar Litigation Trust**” of the “**Litigation Trust**” on behalf of and for the benefit of the Litigation Trust Beneficiaries (defined below).

(b) The Original Trustee is hereby appointed as trustee of the Litigation Trust effective as of the effective date of the Plan (the “**Effective Date**”) and agrees to accept and hold the Litigation Trust Assets (defined below), and any other assets acquired by the Litigation Trust on or after the Effective Date pursuant to this Agreement or the Plan (collectively, the “**Litigation Trust Assets**”), in trust for the benefit of holders of Allowed Claims and unpaid professionals in relation to the Chapter 11 Case<sup>1</sup> (the “**Litigation Trust Beneficiaries**”) subject to the terms of the Plan, the Confirmation Order and this Agreement. The Original Trustee and each successor trustee serving from time to time hereunder (the “**Trustee**”) shall have all the rights, powers and duties set forth herein and pursuant to applicable law for accomplishing the purposes of the Litigation Trust.

### 1.2 Transfer of Assets and Rights to the Litigation Trust.

(a) Litigation Trust Assets. As of the Effective Date, pursuant to and in accordance with section 1141 of the Bankruptcy Code, the Plan and the Confirmation Order, the Debtor hereby irrevocably transfers, assigns and delivers to the Litigation Trust all of its rights, title and interests in and to the Litigation Trust Assets, free and clear of any and all Liens, charges, Claims, claims, encumbrances, Interests, and interests of any kind in such property of any other Person. The Trustee agrees to accept and hold the Litigation Trust Assets in trust for the Litigation Trust Beneficiaries, subject to the terms of this Agreement. None of the foregoing transfers to the Litigation Trust shall constitute a merger or consolidation of any Litigation Trust Assets, each of which shall retain its separateness following the transfer for all purposes relevant to the prosecution thereof.

(b) In this Agreement, “**Litigation Trust Assets**” means (i) the Expense Fund (defined below) and (ii) Causes of Action which include, but are not limited to, Avoidance Actions and the claims and causes of action set forth on Exhibit I hereto.

<sup>1</sup>Capitalized terms used but not defined in this Agreement shall have the meanings ascribed to them in the Plan.

(c) Privileges. In connection with the Litigation Trust Assets, any attorney-client privilege, work product privilege, joint interest privilege or other privilege or immunity (collectively, the “*Privileges*”) attaching to any documents or communications (whether written or oral) shall vest in the Trustee and its representatives, and the Debtor and the Trustee are authorized to take all necessary actions to effectuate the transfer of such privileges and available defenses. The Litigation Trust’s receipt of the Privileges associated with the Litigation Trust Assets shall not operate as a waiver of other privileges possessed or retained by the Debtor.

(d) Documents. After the Effective Date, the Debtor shall (i) deliver or cause to be delivered to the Litigation Trust any and all documents reasonably requested by the Trustee and related to the Litigation Trust Assets (including those maintained in electronic format and original documents), whether held by the Debtor, NOV or its respective employees, or any of their agents, advisors, attorneys, accountants, or other professionals and (ii) provide reasonable access to employees of NOV and its and the Debtor’s agents, advisors, attorneys, accountants or any other professionals hired by the Debtor with knowledge of matters relevant to the Litigation Trust Assets.

(e) Further Assurances. As promptly as is practicable after the Effective Date, in order to evidence or effectuate the transfer of the Litigation Trust Assets and the Privileges to the Litigation Trust and the consummation of the transactions contemplated hereby and by the Plan and to otherwise carry out the intent of the parties hereunder and under the Plan, the Debtor agrees to (i) at the reasonable request of the Trustee, execute and/or deliver to the Trustee, or as otherwise directed by the Trustee, any instruments, documents, books, and records (including those maintained in electronic format and original documents as may be needed), and (ii) take, or cause to be taken, all such further actions as the Trustee may reasonably request. The Debtor agrees to cooperate with the Trustee in the analysis and prosecution of the Litigation Trust Assets to the extent reasonably requested by Trustee. Notwithstanding anything contained herein, without the express written consent of the Trustee, no Person or creditor of the Debtor shall be permitted to assert, bring, institute, or commence any Claim or Cause of Action that is transferred to the Litigation Trust pursuant to the Plan.

1.3 Title to The Litigation Trust Assets. The transfer of the Litigation Trust Assets to the Litigation Trust shall be made, as provided in the Plan and this Agreement, for the sole benefit of the Litigation Trust Beneficiaries. Upon the transfer of the Litigation Trust Assets to the Litigation Trust, the Debtor, shall have no interest in or claim to the Litigation Trust Assets or the Litigation Trust, and the Litigation Trust shall succeed to all of the Debtor’s rights, title and interests in and to the Litigation Trust Assets. To the extent that any Litigation Trust Assets cannot be transferred to the Litigation Trust because of a restriction on transferability under applicable non-bankruptcy law that is not superseded or preempted by section 1123 of the Bankruptcy Code or any other provision of the Bankruptcy Code, such Litigation Trust Assets shall be deemed to be retained by the Debtor, and the Trustee shall be deemed to have been designated as a representative of the Debtor pursuant to section 1123(b)(3)(B) of the Bankruptcy Code to enforce and pursue such Litigation Trust Assets on behalf of the Debtor, and all proceeds, income and recoveries on account of any such Litigation Trust Assets shall be assets of the Litigation Trust and paid over thereto immediately upon receipt by the Debtor, or any other

Person. Notwithstanding the foregoing, all net proceeds, income, and recoveries of or on account of such Litigation Trust Assets shall be transferred to the Litigation Trust to be distributed to the Litigation Trust Beneficiaries consistent with the terms of the Plan and this Agreement.

1.4 Nature and Purpose of the Litigation Trust.

(a) Purpose. The Litigation Trust is organized and established as a trust pursuant to which the Trustee, subject to the terms and conditions contained herein and in the Plan, shall (i) hold the Litigation Trust Assets and administer the same in accordance with this Agreement and the Plan in accordance with Treasury Regulation section 301.7701-4(d) and (ii) oversee and direct the expeditious but orderly liquidation of the Litigation Trust Assets. Accordingly, the sole purpose of the Litigation Trust is to liquidate the Litigation Trust Assets with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to preserve or enhance the liquidation value of the Litigation Trust Assets, and consistent with, the liquidating purpose of the Litigation Trust.

(b) Actions of the Trustee. Subject to the terms of this Agreement, the Trustee shall, in an expeditious but orderly manner, liquidate and convert to Cash the Litigation Trust Assets, which include, without limitation, pursuing recovery on the Litigation Trust Assets, making timely distributions and not unduly prolonging the duration of the Litigation Trust. The liquidation of the Litigation Trust Assets may be accomplished through the prosecution, compromise and settlement, abandonment or dismissal of any or all claims, rights or causes of action, or otherwise. The Trustee, with the consent of a majority of the members of the Trust Board, shall have the absolute right to pursue, settle and compromise or not pursue any and all of the Litigation Trust Assets as it determines is in the best interests of the Litigation Trust Beneficiaries, and consistent with the purposes of the Litigation Trust. The Trustee shall have no liability for the outcome of any such decision except for any damages caused by fraud, gross negligence, willful misconduct or knowing violation of law.

(c) Relationship. This Agreement is intended to create a trust and a trust relationship and the Litigation Trust is to be governed and construed in all respects as a trust. The Litigation Trust is not intended to be, and shall not be deemed to be or treated as, a general partnership, limited partnership, joint venture, corporation, joint stock company or association, nor shall the Trustee, or the Litigation Trust Beneficiaries, or any of them, for any purpose be, or be deemed to be or treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The relationship of the Litigation Trust Beneficiaries, on the one hand, to the Litigation Trust and the Trustee, on the other, shall not be deemed a principal or agency relationship, and their rights shall be limited to those conferred upon them by this Agreement and the Plan.

(d) No Waiver of Claims. In accordance with section 1123(b)(3) of the Bankruptcy Code, the Trustee may enforce all rights to commence and pursue the liquidation and conversion to cash of, as appropriate, any and all Litigation Trust Assets after the Effective Date. The Trustee shall have, retain, reserve, and be entitled to assert all such Claims, Causes of Action, rights of setoff, and other legal or equitable defenses

which the Debtor or any other party contributing claims or causes of action to the Litigation Trust Assets, had immediately prior to the Petition Date fully as if the Chapter 11 Case had not been commenced or the Litigation Trust Assets had not been transferred to the Litigation Trust in accordance with the Plan, the Confirmation Order and this Agreement, and all of the Debtor's legal and equitable rights respecting any Claim under the Plan, and the rights of any other party contributing claims or causes of action to the Litigation Trust Assets, may be asserted after the Confirmation Date to the same extent as if the Chapter 11 Case had not been commenced. Nothing in this Agreement shall be construed in a manner that is inconsistent with the Plan or the Confirmation Order.

1.5 Incorporation of Plan. The Plan and the Confirmation Order are each hereby incorporated into this Agreement and made a part hereof by this reference; *provided, however*, unless otherwise specified herein, to the extent that there is conflict between the provisions of this Agreement, the provisions of the Plan or the Confirmation Order, each such document shall have controlling effect in the following rank order: (1) the Confirmation Order; (2) the Plan; and (3) this Agreement.

1.6 Funding Expenses of the Litigation Trust. On the Effective Date, Northstar Offshore Ventures LLC shall transfer or shall have transferred \$150,000 in cash (the "**Expense Fund**") to the Litigation Trust which shall be retained by the Trustee to finance the operations and administration of the Litigation Trust and the Litigation Trust Assets. Upon liquidation of all Litigation Trust Assets, the balance of the Expense Fund, if any, shall be distributed to the Litigation Trust Beneficiaries.

1.7 Appointment as Representative. Pursuant to sections 1123(a)(5)(B) and 1123(b)(3) of the Bankruptcy Code, the Plan provides for the appointment of the Trustee as the duly appointed representative of the Debtor with respect to the Litigation Trust Assets and, as such, the Trustee succeeds to all of the rights and powers of a trustee in bankruptcy with respect to prosecution of the Litigation Trust Assets for the benefit of the Litigation Trust Beneficiaries in accordance with the terms of this Agreement, the Plan, and the Confirmation Order.

## ARTICLE 2 THE LITIGATION TRUST INTERESTS

2.1 Allocation of Litigation Trust Interests. The allocation and distribution of beneficial interests in the Litigation Trust ("**Litigation Trust Interests**") shall be accomplished as set forth in the Plan and the Confirmation Order. The aggregate number and face value of Litigation Trust Interests to be distributed pursuant to the Plan shall be equal in proportion to the pro rata share of such Trust Beneficiary's Allowed Claim (or any professional's unpaid claim) in accordance with the Plan.

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

2.3 Evidence of Beneficial Interests. The Litigation Trust Interests will not be represented by certificates, securities, receipts or in any other form or manner whatsoever, except

as maintained on the books and records of the Litigation Trust by the Trustee. The death, incapacity or bankruptcy of any Litigation Trust Beneficiary during the term of the Litigation Trust shall not (i) operate to terminate the Litigation Trust, (ii) entitle the representatives or creditors of the deceased party to an accounting, (iii) entitle the representatives or creditors of the deceased party to take any action in the Bankruptcy Court or elsewhere for the distribution of the Litigation Trust Assets or for a partition thereof or (iv) otherwise affect the rights and obligations of any of the Litigation Trust Beneficiaries hereunder.

2.4 Securities Law Registration. It is intended that the Litigation Trust Interests and the entitlements hereunder, if any, of the Litigation Trust Beneficiaries, shall not constitute “securities.” To the extent the Litigation Trust Interests or the entitlements of the Litigation Trust Beneficiaries are deemed to be “securities,” the issuance of Litigation Trust Interests to Litigation Trust Beneficiaries or the issuance to Litigation Trust Beneficiaries of any entitlements hereunder or under the Plan (and any redistribution of any of the foregoing pursuant to the Plan or otherwise) shall be exempt, pursuant to section 1145 of the Bankruptcy Code, from registration under the Securities Act of 1933, as amended (the “*Securities Act*”), and any applicable state and local laws requiring registration of securities. If the Trustee determines, with the advice of counsel, that the Litigation Trust is required to comply with registration and/or reporting requirements of the Securities Act, the Securities Exchange Act of 1934, as amended (the “*Exchange Act*”), the Trust Indenture Act of 1939, as amended (the “*Trust Indenture Act*”), or the Investment Company Act of 1940, as amended (the “*Investment Company Act*”), then the Trustee shall take any and all actions to comply with such registration and reporting requirements, if any, and file reports with the Securities and Exchange Commission (the “*SEC*”) to the extent required by applicable law. Notwithstanding the foregoing procedure, nothing herein shall be deemed to preclude the Trustee from amending this Agreement to make such changes as are deemed necessary or appropriate by the Trustee, with the advice of counsel, to ensure that the Litigation Trust is not subject to registration and/or reporting requirements of the Securities Act, the Exchange Act, the Trust Indenture Act or the Investment Company Act, except that no amendment to this Agreement may be made which would not be permitted by Article 11 of this Agreement.

2.5 Transfers.

(a) No transfer, sale assignment, distribution, exchange, pledge, hypothecation, mortgage or other disposition (each a “*Transfer*”) of a Litigation Trust Interest or any entitlement hereunder of a Litigation Trust Beneficiary may be effected or made except as hereinafter provided. Transfers of the Litigation Trust Interests or entitlements hereunder of a Litigation Trust Beneficiary and/or under the Plan may be made (i) by operation of law or by will or the laws of descent and distribution; (ii) if the Trustee has otherwise received such legal advice or other information that it, in its sole discretion, deems necessary or appropriate to assure that any other disposition shall not require the Litigation Trust to comply with the registration and reporting requirements of the Exchange Act or the Investment Company Act; or (iii) if the Trustee has determined to register under such Acts, as necessary, and/or make periodic reports in order to enable such other disposition to be made. In the event that any such disposition is allowed, the Trustee may add such restrictions upon transfer and other terms to this Agreement as are

deemed necessary or appropriate by the Trustee, with the advice of counsel, to permit or facilitate such disposition under applicable securities and other laws.

(b) The Trustee shall act as a registrar, for the purpose of recording ownership of the Litigation Trust Interests as provided for in this Agreement.

(c) The Trustee shall cause to be kept, a registry of the Litigation Trust Beneficiaries (the “*Trust Register*”) which shall be maintained pursuant to such reasonable regulations as the Trustee may prescribe. In order to determine the actual names and addresses of the Litigation Trust Beneficiaries, the Litigation Trustee may either (i) rely upon the official claims register maintained in the Debtor’s Chapter 11 Case, or (ii) deliver a notice to the Litigation Trust Beneficiaries. Such notice will include a form for each Litigation Trust Beneficiary to complete in order to be properly registered as a Litigation Trust Beneficiary and be eligible for distributions under the Litigation Trust.

2.6 Access to the Trust Register by the Litigation Trust Beneficiaries. Litigation Trust Beneficiaries and their duly authorized representatives shall have the right, upon thirty (30) days’ prior written notice to the Trustee and in accordance with the reasonable regulations prescribed by the Trustee, to inspect and, at the sole expense of the Litigation Trust Beneficiaries seeking the same, make copies of the Trust Register, in each case for a purpose reasonably related to such holder’s interest in the Litigation Trust.

2.7 Absolute Owners. The Trustee may deem and treat the holder of a Litigation Trust Interest of record in the Trust Register as the absolute owner of such Litigation Trust Interest for the purpose of receiving distributions and payment thereon or on account thereof and for all other purposes whatsoever and the Trustee shall not be charged with having received notice of any claim or demand to such Litigation Trust Interest or the interest therein of any other Person.

### ARTICLE 3 THE TRUSTEE

3.1 Litigation Trust Proceeds. Any and all proceeds, income and/or recoveries obtained on account of or from the Litigation Trust Assets, after payment of any and all expenses of the Litigation Trust, shall be added to the Litigation Trust Assets (the “*Litigation Trust Proceeds*”), held as a part thereof (and title therein shall be vested in the Trustee) and administered in accordance with the terms of this Agreement.

3.2 Collection of Income. The Trustee shall collect all income earned with respect to the Litigation Trust Assets, which shall thereupon be added to the Litigation Trust Assets, held as a part thereof (and title therein shall be vested in the Trustee) and administered in accordance with the terms of this Agreement.

3.3 Payment of Litigation Trust Expenses. The Trustee shall maintain the Litigation Trust Assets (i) as is reasonably necessary to meet contingent liabilities and to maintain the value of the Litigation Trust Assets during liquidation, (ii) to pay reasonable and necessary expenses (including but not limited to, the reasonable costs and expenses of the Trustee (including reasonable fees, costs, and expenses of professionals retained by the Trustee), any taxes imposed

on the Litigation Trust or in respect of the Litigation Trust Assets or reasonable fees and expenses in connection with, arising out of, or related to, the Litigation Trust Assets and litigation associated therewith), (iii) to pay the costs and expenses of the valuations of the Litigation Trust Assets incurred by the Trustee in accordance with Section 5.1(c) of this Agreement, (iv) to pay or reimburse amounts in accordance with Article 7 and (v) to satisfy other liabilities incurred or assumed by the Litigation Trust (or to which the Litigation Trust Assets are otherwise subject) in accordance with the Plan, the Confirmation Order and this Agreement.

3.4 Distributions. The Trustee shall make distributions of the Litigation Trust Proceeds in accordance with the provisions of Article 6 of this Agreement and the Plan.

3.5 Tenure, Removal, and Replacement of the Trustee.

(a) The Trustee will serve until the earliest of (i) the completion of all the Trustee's duties, responsibilities and obligations under this Agreement and the Plan, (ii) the Trustee's resignation and the appointment of a successor pursuant to Section 3.5(b) of this Agreement, (iii) the Trustee's removal pursuant to Section 3.5(c) of this Agreement, (iv) the Trustee's death (if applicable) and (v) the termination of the Litigation Trust in accordance with this Agreement, the Confirmation Order and the Plan.

(b) The Trustee may resign by filing a notice with the Bankruptcy Court (a "**Resignation Notice**"). Such resignation will become effective on the later to occur of: (i) the day specified in such Resignation Notice and (ii) the appointment of a successor trustee as provided in Section 3.5(d) and the acceptance by such successor trustee of such appointment in accordance with Section 3.6 of this Agreement. If a successor trustee is not appointed or does not accept his appointment within ninety (90) days following the filing of the Resignation Notice, the Trustee shall, or any holder of a Litigation Trust Interest may, file a motion with the Bankruptcy Court, upon notice and a hearing, seeking the appointment of a successor trustee.

(c) The Trustee will serve as Trustee until the earlier of the following: (i) the resignation of the Trustee, and (ii) a vote of the majority of the Trust Board to remove the Trustee. In the event of a vacancy in the position of the Trustee (whether by removal, resignation, or death, if applicable), a majority of the Trust Board may appoint a successor trustee.

(d) Immediately upon the appointment of any successor trustee, all rights, powers, duties, authority, and privileges of the predecessor Trustee hereunder will be vested in and undertaken by the successor trustee without any further act, and the successor trustee will not be liable personally for any act or omission of the predecessor Trustee. A successor trustee shall have all the rights, privileges, powers, and duties of the predecessor Trustee under this Agreement, the Confirmation Order and the Plan. The predecessor Trustee shall thereupon cease to have any further rights, powers, privileges or duties hereunder, except the right to receive unpaid compensation due as of the date of the appointment of the successor trustee pursuant to any agreement then in effect.

(e) Upon the appointment of a successor trustee, the predecessor Trustee (or the duly appointed legal representative of a deceased Trustee) shall, if applicable, when requested in writing by the successor trustee or the Bankruptcy Court, execute and deliver an instrument or instruments conveying and transferring to such successor trustee upon the trust herein expressed all the estates, properties, rights, powers and trusts of such predecessor Trustee, and shall duly assign, transfer, and deliver to such successor trustee all property and money held hereunder, and all other assets, documents, instruments, records and other writings relating to the Litigation Trust, the Litigation Trust Assets, the Litigation Trust Proceeds, the Litigation Trust Interests, and the entitlements of the Litigation Trust Beneficiaries hereunder, then in its possession and held hereunder, and shall execute and deliver such documents, instruments and other writings as may be requested by the Bankruptcy Court or a successor trustee to effect the termination of such predecessor Trustee's capacity under the Litigation Trust, this Agreement and the Plan and otherwise assist and cooperate, without cost or expense to the predecessor Trustee, in effectuating the assumption of its obligations and functions by the successor trustee.

(f) The death, resignation or removal of the 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 Trustee.

3.6 Acceptance of Appointment by Successor Trustee. Any successor trustee appointed hereunder shall execute an instrument accepting such appointment and assuming all of the obligations and duties of the predecessor Trustee on the same terms and conditions hereunder and accepting the terms of this Agreement and agreeing that the provisions of this Agreement shall be binding upon and inure to the benefit of the successor trustee and all of its heirs, and legal and personal representatives, successors and assigns, and thereupon the successor trustee shall, without any further act, become vested with all the estates, properties, rights, powers, trusts, and duties of the predecessor Trustee hereunder with like effect as if originally named herein.

3.7 Role of the Trustee. In furtherance of and consistent with the purpose of the Litigation Trust and the Plan, the Trustee, subject to the terms and conditions contained in this Agreement, in the Plan and in the Confirmation Order, shall have the power to (i) prosecute, compromise and settle, abandon or dismiss for the benefit of the Litigation Trust all Litigation Trust Assets, rights, Avoidance Actions and Causes of Action transferred to the Litigation Trust (whether such suits are brought in the name of the Litigation Trust, the Trustee or otherwise), and (ii) otherwise perform the functions and take the actions provided for or permitted in the Plan, in the Confirmation Order or in this Agreement. In all circumstances, the Trustee shall act in the best interests of the Litigation Trust Beneficiaries and in furtherance of the purpose of the Litigation Trust.

3.8 Authority of Trustee. Subject only to any limitations contained herein, the Trustee is authorized to perform any and all acts necessary or desirable to accomplish the purposes of the Litigation Trust, and is expressly authorized to:

(a) hold legal title to any and all rights of the holders of the Litigation Trust Interests in or arising from the Litigation Trust Assets, including collecting, receiving any

and all money and other property belonging to the Litigation Trust (including any Litigation Trust Proceeds) and the right to vote any claim or interest relating to a Litigation Trust Claim in a case under the Bankruptcy Code and receive any distribution thereon;

(b) exercise and perform the rights, powers and duties held by the Debtor's estate with respect to the Litigation Trust Assets, including, without limitation, the authority under section 1123(b)(3) of the Bankruptcy Code, and act in the capacity of a trustee under sections 704 and 1106 of the Bankruptcy Code, including by commencing, prosecuting or settling causes of action, enforcing contracts or asserting claims, defenses, offsets and privileges;

(c) take possession and control, administer, maintain and dispose of documents, books and records related to the Litigation Trust Assets;

(d) protect and enforce the rights to the Litigation Trust Assets by any method deemed appropriate including by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

(e) obtain reasonable insurance coverage with respect to the liabilities and obligations of the Trustee under this Agreement (in the form of an errors and omissions policy or otherwise);

(f) obtain insurance coverage with respect to real and personal property that may become assets of the Litigation Trust, if any;

(g) retain and pay such counsel and other professionals, including any professionals previously retained by the Debtor, as the Trustee shall select to assist the Trustee in its duties, on such terms as the Trustee deems reasonable and appropriate, without Bankruptcy Court approval. The Trustee may commit the Litigation Trust to, and shall pay such counsel, experts, litigation consultants, and other professionals reasonable compensation for, services rendered (including on an hourly, contingency, or modified contingency basis) and reasonable, documented out-of-pocket expenses incurred. Notwithstanding the foregoing, the approval of the majority of the Trust Board shall be required for the retention of any counsel by the Trustee on a basis other than on contingency fee basis;

(h) retain and pay an accounting firm to perform such reviews and/or audits of the financial books and records of the Litigation Trust as may be required by applicable laws (including, if applicable, securities laws) and/or this Agreement, and to prepare and file any tax returns, informational returns or periodic and current reports for the Litigation Trust as required by applicable laws (including, if applicable, securities laws) and/or by this Agreement. The Trustee may commit the Litigation Trust to and shall pay such accounting firm reasonable compensation for services rendered and reasonable and documented out-of-pocket expenses incurred;

(i) retain, enter into fee arrangements with and pay such third parties to assist the Trustee in carrying out its powers, authorities and duties under this Agreement. The

Trustee may commit the Litigation Trust to and shall pay all such Persons reasonable compensation for services rendered and reasonable and documented out-of-pocket expenses incurred, as well as commit the Litigation Trust to indemnify any such Persons in connection with the performance of services (provided that such indemnity shall not cover any losses, costs, damages, expenses or liabilities that result from the fraud, gross negligence, bad faith, willful misconduct or knowing violation of law by such Persons);

(j) in the exercise of its reasonable discretion, waive any privilege (including the Privileges) or any defense on behalf of the Litigation Trust or, with respect to the Litigation Trust Assets;

(k) investigate, analyze, initiate, compromise, settle, adjust, arbitrate, mediate, sue on or defend, pursue, prosecute, release, withdraw, abandon, dismiss, exercise rights, powers and privileges with respect to, litigate to judgment or otherwise administer, in accordance with the terms set forth herein, all causes of action, objections and Litigation Trust Assets in favor of or against the Litigation Trust without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court, except as set forth in Section 3.9, below;

(l) invest any moneys held as part of the Litigation Trust in accordance with the terms of Section 3.15 of this Agreement, limited, however, to such investments that are consistent with the Litigation Trust's status as a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d) and in accordance with Rev. Proc. 94-45, 1994-2 C.B. 684;

(m) request any appropriate tax determination with respect to the Litigation Trust, including a determination pursuant to section 505 of the Bankruptcy Code;

(n) seek the examination of any Person, subject to the provisions of Bankruptcy Rule 2004 or any other applicable law or rule;

(o) make distributions in accordance with Article 6 of this Agreement;

(p) determine and satisfy any and all liabilities created or incurred by the Litigation Trust; and

(q) take or refrain from taking any and all other actions that the Trustee reasonably deems necessary or convenient for the continuation, protection and maximization of the Litigation Trust Assets, or to otherwise carry out the purposes hereof.

### 3.9 Limitation of Trustee's Authority.

(a) Notwithstanding anything herein to the contrary, the Trustee shall not (i) be authorized to engage in any trade or business, (ii) take such actions inconsistent with the orderly liquidation of the Litigation Trust Assets as are required or contemplated by applicable law, the Plan, the Confirmation Order, or this Agreement, or (iii) be authorized to engage in any investments or activities inconsistent with the treatment of the Litigation

Trust as a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d) and in accordance with Rev. Proc. 94-45, 1994-2 C.B. 684.

(b) Notwithstanding anything herein to the contrary, the Trustee shall not be permitted to take any of the actions described below (the “*Prior Notice Actions*”) without prior notice to and, as required, the requisite approval of the Trust Board in accordance with the following terms. If the Trustee intends to take any one or more of the Prior Notice Actions, the Trustee shall provide at least ten (10) Business Days prior notice thereof to all members of the Trust Board, which notice shall reasonably describe the intended Prior Notice Action(s) and advise the Trust Board of their right to object by an objection deadline that is at least ten (10) Business Days after the date such notice is mailed. If no objections to the proposed Prior Notice Action(s) are actually received by the stated objection deadline from a majority of the members of the Trust Board, the Trustee shall be authorized to carry out the specified Prior Notice Action(s). If, on the other hand, holders of a majority of the members of the Trust Board object to the proposed Prior Notice Action(s) by objection actually received by the Trustee on or before the objection deadline, then the Trustee shall not be authorized to carry out any Prior Notice Action(s) not approved by a majority of the members of the Trust Board. For the purpose hereof, each of the following shall constitute Prior Notice Actions:

(i) any settlement or withdrawal of a Litigation Trust Asset where the amount in controversy exceeds \$75,000;

(ii) any determination to seek audited financial statements for the Litigation Trust;

(iii) any action to enter into any one or more of the following to the extent the same results in aggregate expenditures greater than \$50,000 during any fiscal year:

(A) obtaining insurance coverage of the type described in Sections 3.8(e) or 3.8(f) hereof or otherwise;

(B) any agreement to provide services to the Litigation Trust; or

(C) any non-ordinary course transaction.

(iv) any proposed distribution to Litigation Trust Beneficiaries;

(v) any proposal to terminate, declare insolvent or extend the terms of the Litigation Trust; and

(vi) any material amendment or modification to the Trustee’s compensation, as described in Section 3.13 hereof.

(c) The Litigation Trust shall not hold 50% or more of the stock (in either vote or value) of any Person that is treated as a corporation for federal income tax purposes, nor be the sole member of a limited liability company, nor have any interest in a Person that is treated as a partnership for federal income tax purposes, unless such stock,

membership interest, or partnership interest was obtained involuntarily or as a matter of practical economic necessity in order to preserve the value of the Litigation Trust Assets.

3.10 Books and Records.

(a) The Trustee shall maintain books and records relating to the Litigation Trust Assets, the status of Claims against the Litigation Trust Assets and income of the Litigation Trust and the payment of expenses and liabilities of, claims against or assumed by, the Litigation Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained on a modified cash or other comprehensive basis of accounting necessary to facilitate compliance with the tax reporting and securities law requirements, if any, of the Litigation Trust as well as the reporting requirements set forth in Article 9 of and elsewhere in this Agreement.

(b) Litigation Trust Beneficiaries and their duly authorized representatives shall have the right, upon thirty (30) days' prior written notice to the Trustee, and in accordance with the reasonable procedures prescribed by the Trustee, to inspect and, at the sole expense of such holder seeking the same, make copies of the books and records relating to the Litigation Trust on any Business Day and as often as may be reasonably be desired, in each case for a purpose reasonably related to such holder's interest in the Litigation Trust.

3.11 Inquiries into Trustee's Authority. Except as otherwise set forth in this Agreement, the Confirmation Order or the Plan, no Person dealing with the Litigation Trust shall be obligated to inquire into the authority of the Trustee in connection with the protection, conservation, administration, or disposition of the Litigation Trust Assets.

3.12 Compliance with Laws. Any and all distributions of the Litigation Trust Assets shall be in compliance with applicable laws, including applicable federal and state securities laws.

3.13 Compensation and Reimbursement of the Trustee. Notwithstanding anything to the contrary contained herein, the Trustee shall be compensated for his services at the hourly rate then in effect and applicable to other clients served by the Trustee and shall be reimbursed for his reasonable out-of-pocket expenses incurred in connection with the performance of his duties hereunder solely from the Litigation Trust Assets.

3.14 Reliance by Trustee. Except as otherwise provided herein:

(a) the 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 reasonably believed by the Trustee to be genuine and to have been signed or presented by the proper party or parties including, but not limited to, documents, analyses and information provided or to be provided by the Debtor and its professionals, whether such professionals were retained in the Chapter 11 Case or otherwise; and

(b) Persons dealing with the Trustee shall look only to the Litigation Trust Assets to satisfy any liability incurred by the Trustee to such Person in carrying out the terms of this Agreement, and the Trustee shall not have any personal obligation to satisfy any such liability.

3.15 Investment and Safekeeping of The Litigation Trust Assets. The Trustee shall invest all Litigation Trust Assets (pending distribution in accordance with Article 6 of this Agreement) only in Cash and Government securities as defined in section 2(a)(16) of the Investment Company Act; provided, however, that (a) the scope of any such permissible investments shall be further limited to include only those investments that a liquidating trust, within the meaning of Treasury Regulation section 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements, or otherwise, and (b) the Trustee may retain any Litigation Trust Proceeds received that are not Cash only for so long as may be required for the prompt and orderly liquidation of such assets in Cash.

3.16 Standard of Care; Exculpation. Neither the Trustee nor any of its duly designated agents or representatives or professionals shall be liable for any act or omission taken or omitted to be taken by the Trustee in good faith, other than (i) acts or omissions resulting from the Trustee's or any such agent's, representative's or professional's fraud, gross negligence, bad faith, willful misconduct or knowing violation of law or (ii) acts or omissions from which the Trustee or any such agent, representative or professional derived an improper personal benefit. The Trustee may, in connection with the performance of his functions, and in his sole and absolute discretion, consult with his attorneys, accountants, financial advisors and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such persons. Notwithstanding such authority, the Trustee shall be under no obligation to consult with his attorneys, accountants, financial advisors or agents, and his good faith determination not to do so shall not result in the imposition of liability on the Trustee, unless such determination is based on fraud, gross negligence, bad faith, willful misconduct or knowing violation of law. No amendment, modification or repeal of this Section 3.16 shall adversely affect any right or protection of the Trustee or any of his agents, representatives or professionals that exists at the time of such amendment, modification or repeal.

#### ARTICLE 4 LITIGATION TRUST GOVERNING TRUST BOARD

4.1 Creation of Litigation Trust Governing Trust Board. On the Effective Date, the Litigation Trust Governing Trust Board (the "**Trust Board**") shall be formed and constituted of no more than three persons, all approved by the Bankruptcy Court prior to the conclusion of the Confirmation Hearing. The initial members of the Trust Board shall be: ~~Monteo Oilfield Contractors~~; B&J Martin, Inc.; and Offshore Contract Services, LLC.

4.2 Vacancy.

(a) In the event that a member of the Trust Board becomes unable or unwilling to serve before the Effective Date, the remaining members of the Trust Board

shall as soon as reasonably practicable appoint a replacement subject to approval by the Bankruptcy Court.

(b) In the event that after the Effective Date any member of the Trust Board ceases to serve as a result of death, incapacity, resignation or removal, the vacancy shall be promptly filled by a majority vote of the remaining members of the Trust Board, subject to approval by the Trustee. In the event of a tie, the Trustee shall have the deciding vote. In the event that after the Effective Date all members of the Trust Board shall resign or otherwise cease to serve at once, no successor shall be appointed as a result of the foregoing provisions. Instead, the Trustee shall promptly file a motion with the Bankruptcy Court pursuant to which the Bankruptcy Court shall appoint successor members of the Trust Board to fill all vacancies, upon notice and hearing to the Litigation Trust Beneficiaries. The Trustee may recommend replacement members for the Bankruptcy Court's consideration.

#### 4.3 Removal.

(a) A member of the Trust Board may be removed at any time as follows:

(i) By a majority vote of the remaining Trust Board members at any meeting called and held in accordance with the provisions of this Agreement; or

(ii) By an order of the Bankruptcy Court, after application by (A) one or more Trust Board members, or (B) the Trustee. The Bankruptcy Court shall retain jurisdiction for this purpose.

(b) If the Trustee or any member(s) of the Trust Board believes that cause exists to remove any Trust Board member, such Person(s) shall give written notice thereof to the Trustee and all members of the Trust Board, specifying with particularity the basis on which that belief is based, and including copies of any documents or written materials that support that belief. The notice shall also call a meeting of the Trust Board to consider whether cause for removal exists, with the meeting to be held not less than 10 days and not more than 30 days after the notice is given.

4.4 Chairperson. The Trust Board members shall elect a Chairperson ("**Chairperson**") by majority vote.

4.5 Procedures. The Trust Board shall adopt bylaws that shall provide for the governance of the Trust Board and shall permit telephonic meetings.

4.6 Function, Duties and Responsibilities. Neither the Trust Board nor any member shall be liable for any duties or obligations except for the performance of such duties and obligations as are specifically set forth herein, and no implied covenants or obligations shall be read into this Agreement. The Trust Board shall have the following functions, duties and responsibilities:

(a) It shall meet with the Trustee upon such regular basis as the Trust Board and the Trustee deem appropriate, but in no event less frequently than quarterly (except as may be unanimously determined otherwise by the Trust Board and Trustee); and

(b) It shall consult with the Trustee regarding the carrying out of his duties, and may specify tasks and duties to be taken by the Trustee in furtherance of the administration of the Litigation Trust and consistent with the terms of the Plan and this Agreement, including (but not limited to):

- (i) administration of the Litigation Trust Assets;
- (ii) status of the Causes of Action; and
- (iii) distributions to the Litigation Trust Beneficiaries.

(c) In addition, the Trustee shall be required to obtain the consent of a majority of the Trust Board's members before taking, or refraining from taking any Prior Notice Actions set forth in Section 3.9(b) hereof.

4.7 Duration. The Trust Board shall remain in existence until the Litigation Trust is terminated.

4.8 Compensation and Expenses. The members of the Trust Board shall serve without compensation.

4.9 Meetings and Reports.

(a) During the first three (3) months following the Effective Date, the Trustee shall meet with the Trust Board at least on a monthly basis, unless the meeting is cancelled by the Trust Board in consultation with the Trustee. Beginning three (3) months after the Effective Date, the Trustee shall meet with the Trust Board no less frequently than quarterly (except as may be determined otherwise by the Trust Board). At such meetings, the Trustee shall make available to the Trust Board the Litigation Trust's books and records. Thereafter, the Trust Board shall determine, in consultation with the Trustee, whether less frequent meetings are appropriate. Two (2) members of the Trust Board shall constitute a quorum for purposes of meetings of the Trust Board.

(b) Special meetings of the Trust Board may be held at such times as may be determined by the members of the Trust Board, as called by the Chairperson, or as requested by the Trustee. The Trustee shall attend or participate in such meetings upon reasonable request of the Trust Board or the Trustee.

(c) The Trustee shall maintain contemporaneous books and records of all Litigation Trust business, transactions and affairs and may engage independent accountants to audit the Litigation Trust's financial statements.

(d) The Trustee shall provide such reporting, and allow reasonable inspection by the Trust Board of the Litigation Trust's books and records, as requested by the Trust

Board or Chairperson, from time to time. In addition to any other reporting required herein, as soon as practicable after the termination of the Litigation Trust, the Trustee shall submit a final written report and accounting to the Trust Board.

4.10 Liability; Indemnification. Neither the Trust Board, nor any of its members, designees, agents, or representatives, or any of their respective employees, shall be liable for the act or omission of any other member, designee, agent, or representative of the Trust Board, nor shall any member of the Trust Board be liable for any act or omission taken or omitted to be taken in its capacity as a member of the Trust Board, other than acts or omissions resulting from such member's fraud, willful misconduct or gross negligence. The Litigation Trust shall indemnify and hold harmless the Trust Board and its members, designees, agents, and representatives (acting in such capacity) from all liabilities, losses, damages, claims, costs and expenses (including, but not limited to attorneys' fees and costs arising out of or due to their actions or omissions, or consequences of these acts or omissions) with respect to the Litigation Trust or the implementation or administration of the Plan; *provided, however*, that no indemnification will be made to such Persons for actions or omissions as a result of fraud, willful misconduct or gross negligence.

4.11 Reliance by Trust Board. The Trust Board and its members may rely, and shall be fully protected personally in acting upon, any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order, or other instrument or document which the Trust Board/member believes to be genuine and to have been signed or presented by the proper party or parties or, in the case of facsimile transmissions or electronic mail, to have been sent by the proper party or parties, in each case without obligation to satisfy itself that the same was given in good faith and without responsibility for errors in delivery, transmission, or receipt. In the absence of fraud, willful misconduct or gross negligence on the Trust Board's part, the Trust Board and its members may rely as to the truth of any statements contained therein in acting thereon. The Trust Board may, in connection with the performance of its function, and in its sole and absolute discretion, hire and consult with attorneys, accountants, and its agents, and the Trust Board and its members shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such professionals. Notwithstanding such authority, the Trust Board and its members shall be under no obligation to consult with attorneys, accountants or its agents, and its determination to not do so shall not result in the imposition of liability on the Trust Board or its members, unless such determination is based on willful misconduct, gross negligence or fraud.

4.12 No Personal Liability. Neither the Trust Board nor any member shall have any personal liability or individual obligation to satisfy any liability incurred by the Trustee or the Litigation Trust, except to the extent that such liability results from the Trust Board's, or its relevant member's, willful misconduct, gross negligence, or fraud.

4.13 Selection and Compensation of Attorneys and Advisors. In the event that the Trust Board has reason to believe, after reasonable investigation, that the Litigation Trustee has taken actions, or failed to take actions, constituting fraud, gross negligence or willful misconduct in the administration of the Litigation Trust, the Trust Board shall be entitled (but not required) to select and employ an attorney or such other advisors to assist the Trust Board in further investigating such actions and/or omissions by the Trustee. The reasonable fees and expenses

incurred by the attorney or advisor employed by the Trust Board shall be paid solely from the Litigation Trust Assets without further order of the Bankruptcy Court. The Trust Board shall not be liable for any action taken or suffered by the Trust Board in reliance upon the advice or opinions rendered by its professionals.

## ARTICLE 5 TAX MATTERS

### 5.1 Federal Income Tax Treatment of the Litigation Trust.

(a) For all federal income tax purposes, all parties (including the Debtor, the Litigation Trust, the Trustee and the Litigation Trust Beneficiaries) shall treat the transfer of the Litigation Trust Assets to the Litigation Trust for the benefit of the Litigation Trust Beneficiaries as (a) a transfer of the Litigation Trust Assets directly by the Debtor to the Litigation Trust Beneficiaries in satisfaction of their treatment under the Plan, followed by (b) the transfer by the Litigation Trust Beneficiaries to the Litigation Trust of the Litigation Trust Assets in exchange for beneficial interests in the Litigation Trust. Accordingly, the Litigation Trust Beneficiaries shall be treated for federal income tax purposes as the grantors and owners of their respective shares of the Litigation Trust Assets. The foregoing treatment also shall apply, to the extent permitted by applicable law, for state and local income tax purposes.

(b) Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including receipt by the Trustee of a private letter ruling if the Trustee so requests, or the receipt of an adverse determination by the IRS, upon audit, or otherwise if not contested by the Trustee), the Trustee shall (i) file returns for the Litigation Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a) and in accordance with this Article 5 and Section 5.2 of the Plan and (ii) annually send to each holder of a Litigation Trust Interest a separate statement setting forth such holder's share of items of income, gain, loss, deduction, or credit and will instruct all such holders and parties to report such items on their federal income tax returns. The Trustee also shall file (or cause to be filed) any other statements, returns or disclosures relating to the Litigation Trust that are required by any governmental unit.

(c) Pursuant to the Plan, the Litigation Trustee shall apprise the Litigation Trust Beneficiaries of the value of the Litigation Trust Assets. The valuation shall be used consistently by all parties (including the Litigation Trustee and the Litigation Trust Beneficiaries) for all federal income tax purposes. Any dispute regarding the valuation of the Litigation Trust Assets shall be resolved by the Bankruptcy Court.

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

(e) The Trustee shall be responsible for payments, out of the Litigation Trust Assets and Litigation Trust Proceeds, of any taxes imposed on the Litigation Trust or the Litigation Trust Assets.

(f) The Trustee may require any of the Litigation Trust Beneficiaries to furnish to the Trustee its Employer or Taxpayer Identification Number as assigned by the IRS and the Trustee may condition any distribution or payment to any of them upon receipt of such identification number.

5.2 Allocations of Litigation Trust Taxable Income. Allocations of the Litigation Trust taxable income among the Litigation Trust Beneficiaries shall be determined by reference to the manner in which an amount of Cash equal to such taxable income would be distributed (without regard to any restrictions on distributions described in the Plan or herein) if, immediately prior to such deemed distribution, the Litigation Trust had distributed all of its other assets (valued at their tax book value) to the Litigation Trust Beneficiaries, in each case up to the tax book value of the assets treated as contributed by such holders, adjusted for prior taxable income and loss and taking into account all prior and concurrent distributions from the Litigation Trust (including all distributions held in escrow pending the resolution of Disputed Claims). 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 liquidating distribution of the remaining Litigation Trust Assets. The tax book value of the Litigation Trust Assets for this purpose shall equal their fair market value on the Effective Date as determined under Section 5.1(c) above, adjusted in either case in accordance with tax accounting principles prescribed by the Tax Code, and applicable tax regulations, and other applicable administrative and judicial authorities and pronouncements.

5.3 Tax Withholdings by Trustee. The Trustee shall be authorized to collect such tax information from the Litigation Trust Beneficiaries (including, without limitation, social security numbers or other tax identification numbers) as the Trustee, in its sole discretion, deems necessary to effectuate the Plan, the Confirmation Order, and this Agreement. The Trustee shall take reasonable steps and give reasonable notices to the Litigation Trust Beneficiaries to alert them to this requirement. In order to receive distributions pursuant to the Plan and this Agreement, all Litigation Trust Beneficiaries shall be required to identify themselves to the Trustee and provide tax information and the specifics of their holdings, to the extent the Trustee deems appropriate in the manner and in accordance with the procedures from time to time established by the Trustee for these purposes. This identification requirement applies to all Litigation Trust Beneficiaries. The Trustee may refuse to make a distribution to any Litigation Trust Beneficiary that fails to furnish such information in a timely fashion and, until such information is delivered. If any requested tax information is not furnished by a Litigation Trust Beneficiary to the Trustee within six (6) months of the original request for such information (the “**Withholding Deadline**”), no further distributions shall be made to such Litigation Trust Beneficiary; *provided, however*, that upon the delivery of such information by a Litigation Trust Beneficiary, the Trustee shall make all such distributions to which such Litigation Trust Beneficiary is entitled, without interest. If the Trustee fails to withhold in respect of amounts received or distributable to any Litigation Trust Beneficiary and the Trustee or the Litigation Trust is later determined to be liable for the amount of such withholding, such Litigation Trust Beneficiary shall reimburse the Trustee or the Litigation Trust, as appropriate, for such liability (to the extent such amounts were actually distributed to such holder).

## ARTICLE 6 DISTRIBUTIONS

6.1 Distributions; Withholding. Quarterly, the Trustee shall distribute Litigation Trust Assets that become deliverable during the preceding calendar quarter subject to the priority of distribution under Section 6.7; *provided, however*, that the Trustee must retain and reserve an escrow of such amounts as are reasonably necessary to satisfy amounts that would be distributable in respect of Disputed Claims if the Disputed Claims were allowed in the face amount of such Disputed Claims (the “***Disputed Claim Reserve***”), and any such other amounts (such as other claims or other contingent liabilities) as reasonably necessary in his business judgment to fulfill his duties under the Plan or this Agreement.

6.2 Manner of Payment or Distribution. All distributions to be made by the Trustee to the Litigation Trust Beneficiaries shall be paid quarterly. If the distribution shall be in Cash, the Trustee shall distribute such Cash by wire, check, or such other method as the Trustee deems appropriate under the circumstances.

6.3 Cash Distributions. No Cash distributions shall be required to be made to any Litigation Trust Beneficiary in an amount less than \$100.00. Any funds so withheld and not distributed shall be held in reserve and distributed in subsequent distributions. The foregoing shall not apply to the final distribution made to the Litigation Trust Beneficiaries.

### 6.4 Delivery of Litigation Trust Distributions.

(a) Except as set forth in Section 6.4(b), all distributions under this Agreement to a Litigation Trust Beneficiary shall be made at the address of such Beneficiary as set forth in the Trust Register or at such other address or in such manner as such Beneficiary shall have specified for payment purposes in a written notice to the Trustee at least twenty (20) days prior to such distribution date.

(b) If any distribution to any Litigation Trust Beneficiary is returned as undeliverable, and, after reasonable efforts by the Trustee, the Trustee has been unable to determine the then current address of such Beneficiary, such undeliverable or unclaimed distribution shall be deemed unclaimed property 120 days after the date of such returned distribution, and shall be reallocated to the remaining Litigation Trust Beneficiaries and distributed to such remaining Litigation Trust Beneficiaries in accordance with the terms of this Agreement. Any such undeliverable or unclaimed distributions shall not be subject to (i) any claims by such Litigation Trust Beneficiary or (ii) the unclaimed property or escheat laws of any state or governmental unit.

6.5 Disputed Claims Reserve. The Disputed Claim Reserve shall include assets held separately from other assets of the Litigation Trust, subject to an allocable share of all expenses and obligations for the Litigation Trust, on account of Disputed Claims. The amount of the Disputed Claim Reserve shall be equal to the amount necessary to satisfy the distributions to which the holders of the relevant Disputed Claims would be entitled to receive if all such Disputed Claims were to be subsequently allowed. The Trustee may, for U.S. federal income tax purposes (and, to the extent permitted by law, for state and local income tax purposes), (i) make an election pursuant to Treasury Regulation section 1.468B-9 to treat the Disputed Claims

Reserve as a “disputed ownership fund” within the meaning of that section (ii) allocate taxable income or loss to the Disputed Claims Reserve, with respect to any given taxable year (but only for the portion of the taxable year with respect to which such claims are Disputed Claims), and (iii) distribute assets from the Disputed Claims Reserve and distribute the same as provided in this Article 6 as, when, and to the extent, such Disputed Claims either become Allowed or are otherwise resolved. The Litigation Trust Beneficiaries shall be bound by such election, if made by the Trustee, and as such shall, for U.S. federal income tax purposes (and, to the extent permitted by law, for state and local income tax purposes), report consistently therewith.

6.6 Fees and Expenses. The Trustee must pay the operating and administrative expenses of the Litigation Trust before approving distributions to or of the benefit of Litigation Trust Beneficiaries.

6.7 Priority of Distributions. Any recovery by the Litigation Trust on account of the Litigation Trust Assets shall be applied in the following order:

(i) first, to satisfy unpaid professional fees in relation to the Chapter 11 Case and any unpaid costs and expenses of the Litigation Trust, including without limitation, the compensation of reasonable attorneys' fees and expenses and court costs; and

(ii) second, the pro rata shares of the Litigation Trust Beneficiaries' Allowed Claims.

## ARTICLE 7 INDEMNIFICATION

### 7.1 Indemnification of Trustee.

(a) To the fullest extent permitted by law, the Litigation Trust, to the extent of its assets legally available for that purpose, shall indemnify and hold harmless the Trustee, CR3 Partners, LLC, and each of its respective directors, members, shareholders, partners, officers, agents, employees, attorneys and other professionals (collectively, the “*Indemnified Persons*”) from and against any and all losses, costs, damages, reasonable and documented out-of-pocket expenses (including reasonable fees and expenses of attorneys and other advisors and any court costs incurred by any Indemnified Person) or liability by reason of anything any Indemnified Person did, does, or refrains from doing for the business or affairs of the Litigation Trust, except to the extent that the loss, cost, damage, expense or liability resulted (x) from the Indemnified Person's fraud, gross negligence, bad faith, willful misconduct or knowing violation of law or (y) from an act or omission from which the Indemnified Person derived an improper personal benefit. To the extent reasonable, the Litigation Trust shall pay in advance or reimburse reasonable and documented out-of-pocket expenses (including advancing reasonable costs of defense) incurred by the Indemnified Person who is or is threatened to be named or made a defendant or a respondent in a proceeding concerning the business and affairs of the Litigation Trust. The indemnification provided under this Section 7.1 shall survive the death, dissolution, resignation or removal, as may be applicable, of the Trustee and/or any

other Indemnified Person, and shall inure to the benefit of the Trustee's and each other Indemnified Person's heirs, successors and assigns.

(b) Any Indemnified Person may waive the benefits of indemnification under this Section 7.1, but only by an instrument in writing executed by such Indemnified Person.

(c) The rights to indemnification under this Section 7.1 are not exclusive of other rights which any Indemnified Person may otherwise have at law or in equity, including without limitation common law rights to indemnification or contribution. Nothing in this Section 7.1 will affect the rights or obligations of any Person (or the limitations on those rights or obligations) under this Agreement, or any other agreement or instrument to which that Person is a party.

## ARTICLE 8 REPORTING OBLIGATIONS OF TRUSTEE

### 8.1 Reports.

(a) The Trustee shall prepare quarterly reports and make the same available to the members of the Trust Board, and shall prepare and provide annual (fiscal year) reports to the Litigation Trust Beneficiaries (including unpaid professionals relating to the Chapter 11 Case), with respect to (i) the prosecution and resolution of the Litigation Trust Assets, (ii) the status of Claims against the Litigation Trust Assets, and (iii) expenditures, receipts, and distributions of the Litigation Trust. The Trustee shall cause to be prepared, as applicable, either at such times as may be required by the Exchange Act, if applicable, or, not less than annually, financial statements of the Litigation Trust, to be delivered to the Litigation Trust Beneficiaries together with annual income tax reporting of the Litigation Trust.

(b) Within ten (10) Business Days after the end of the relevant quarter or year for which a report is required by the Trustee pursuant to Section 8.1(a), the Trustee shall cause notice of any information reported pursuant to Section 8.1(a) to be given to the Litigation Trust Beneficiaries.

(c) All of the foregoing reports, and the information and documents upon which such reports are based, shall be made available to the Litigation Trust Beneficiaries in accordance with Section 3.10 hereof.

## ARTICLE 9 TERM; TERMINATION OF THE LITIGATION TRUST

### 9.1 Term; Termination of the Litigation Trust.

(a) The Litigation Trust shall commence on the date hereof and terminate no later than the fifth anniversary of the Effective Date; *provided, however*, that, on or prior to the date that is ninety (90) days prior to such termination, the Bankruptcy Court, upon motion by a party in interest, may extend the term of the Litigation Trust if it is necessary to the liquidation of the Litigation Trust Assets. Notwithstanding the foregoing, multiple extensions may be obtained so long as the Bankruptcy Court approval is obtained not less

than ninety (90) days prior to the expiration of each extended term; *provided, however*, that in no event shall the term of the Litigation Trust extend past the tenth (10<sup>th</sup>) anniversary of the Effective Date; *provided further* that neither this Agreement nor the continued existence of the Litigation Trust shall prevent the Debtor from closing the Chapter 11 Case pursuant to section 350 of the Bankruptcy Code and obtaining a final decree pursuant to Bankruptcy Rule 3022.

(b) The Litigation Trust may be terminated earlier than its scheduled termination if the Trustee has administered all of the Litigation Trust Assets and performed all other duties required by the Plan, the Confirmation Order, this Agreement and the Litigation Trust.

(c) If at any time, the Trustee determines that the expense of administering the Litigation Trust is likely to exceed the value of the remaining Litigation Trust Assets, the Trustee may dissolve the Litigation Trust.

9.2 Continuance of Trust for Winding Up. After the termination of the Litigation Trust and for the purpose of liquidating and winding up the affairs of the Litigation Trust, the Trustee shall continue to act as such until his duties have been fully performed. Prior to the final distribution of all of the remaining Litigation Trust Assets, the Trustee shall be entitled to reserve from such assets any and all amounts required to provide for his own reasonable costs and expenses, in accordance with the terms of this Agreement, until such time as the winding up of the Litigation Trust is completed. Upon termination of the Litigation Trust, the Trustee shall retain for a period of three years the books, records, lists of the Litigation Trust Beneficiaries, the Trust Register, and other documents and files that have been delivered to or created by the Trustee. Except as otherwise specifically provided herein, upon the termination of the Litigation Trust, the Trustee shall have no further duties or obligations hereunder.

## ARTICLE 10 AMENDMENT AND WAIVER

### 10.1 Amendment and Waiver.

(a) Subject to the other provisions of this Agreement, the Trustee may amend, supplement or waive any provision of, this Agreement, without the consent of the Litigation Trust Beneficiaries or the approval of the Bankruptcy Court: (i) upon reasonable advance notice to the Trust Board, to cure any ambiguity, omission, defect or inconsistency in this Agreement; (ii) to comply with any requirements in connection with the U.S. Federal income tax status of the Litigation Trust as a “liquidating trust;” (iii) to comply with any requirements in connection with maintaining that the Litigation Trust is not subject to registration or reporting requirements of the Exchange Act, the Trust Indenture Act or the Investment Company Act; (iv) to make the Litigation Trust a reporting entity and, in such event, to comply with any requirements in connection with satisfying the registration or reporting requirements of the Exchange Act, the Trust Indenture Act or the Investment Company Act; and (v) to evidence and provide for the acceptance of the appointment hereunder by a successor trustee in accordance with the terms of this Agreement and the Plan; *provided, however*, that notice shall be given to the

Litigation Trust Beneficiaries promptly after such amendment, supplement or waiver is effective.

(b) Any provision of this Agreement that the Trustee cannot amend pursuant to Section 10.1(a) of this Agreement may be amended or waived by the Trustee, subject to approval of a majority of the Trust Board.

(c) Notwithstanding anything contained in this Section 10.1, no amendment, supplement, or waiver may be made to this Agreement that (i) would adversely affect the payments and/or distributions to be made under this Agreement to (or on behalf or for the account of) any Litigation Trust Beneficiary, or (ii) is inconsistent with the purpose and intention of the Litigation Trust to liquidate in an expeditious but orderly manner the Litigation Trust Assets in accordance with Treasury Regulation section 301.7701-4(d).

## ARTICLE 11 MISCELLANEOUS PROVISIONS

11.1 Intention of Parties to Establish the Litigation Trust. This Agreement is intended to create a liquidating trust for federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a trust and any ambiguity herein shall be construed consistent herewith and, if necessary, this Agreement may be amended in accordance with Section 10.1 to comply with such federal income tax laws, which amendments may apply retroactively.

11.2 Litigation Costs. If, during the term of this Agreement, any dispute arises among the parties to this Agreement regarding the provisions of this Agreement or the enforcement thereof, each party shall bear its own costs and expenses, including attorneys' fees.

11.3 Laws as to Construction. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to whether any conflicts of law would require the application of the law of another jurisdiction.

11.4 Jurisdiction. Without limiting any Person's right to appeal any order of the Bankruptcy Court or to seek withdrawal of the reference with regard to any matter, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby, and (ii) any and all actions related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the parties, including the Litigation Trust Beneficiaries, hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court.

11.5 Severability. If any provision of this Agreement or the application thereof to any Person or circumstance shall be finally determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

11.6 Notices. All notices, requests or other communications to the parties hereto shall be in writing and shall be sufficiently given only if (i) delivered in person; (ii) sent by electronic mail or facsimile communication (as evidenced by a confirmed fax transmission report); (iii) sent by first class U.S. mail; (iv) sent by commercial delivery service or courier; or (v) with respect to notices to any Litigation Trust Beneficiary that has elected to receive notices electronically. Until a change of address is communicated, as provided below, all notices, requests and other communications shall be sent to the parties at the following addresses or facsimile numbers:

<b>If to the Trustee:</b>	CR3 Partners LLC Attn: James Katchadurian 450 Lexington Ave, 4 <sup>th</sup> Floor New York, NY 10017 914-646-9451 James.katchadurian@cr3partners.com
<b>If to the Litigation Trust Beneficiaries:</b>	To the name and address set forth on the registry maintained by the Trustee

All notices shall be effective and shall be deemed delivered (i) if by personal delivery, delivery service or courier, on the date of delivery; (ii) if by electronic mail or facsimile communication, on the date of receipt or confirmed transmission of the communication; and (iii) if by mail, on the date of receipt. Any Person from time to time may change his, her or its address, facsimile number, or other information for the purpose of notices to that Person by giving notice specifying such change to the Trustee.

11.7 Fiscal Year. The fiscal year of the Litigation Trust shall be a calendar year ending on December 31 of each year.

11.8 Construction; Usage.

(a) Interpretation. In this Agreement, unless a clear contrary intention appears:

- (i) the singular number includes the plural number and vice versa;
- (ii) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;
- (iii) reference to any gender includes each other gender;

(iv) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;

(v) reference to any applicable law means such applicable law as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any section or other provision of any applicable law means that provision of such applicable law from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision;

(vi) “hereunder,” “hereof,” “hereto,” and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article, Section or other provision hereof;

(vii) reference to Articles, Sections, Schedules or Exhibits herein shall be deemed to be references to the Articles, Sections, Schedules and Exhibits to this Agreement unless otherwise specified;

(viii) “including” means including without limiting the generality of any description preceding such term; and

(ix) references to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto.

(b) Headings. The headings contained in this Agreement are for the convenience of reference only, shall not be deemed to be a part of this Agreement and shall not be referred to in connection with the construction or interpretation of this Agreement.

11.9 Counterparts; Facsimile; PDF. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. Any facsimile or portable document format copies hereof or signature hereon shall, for all purposes, be deemed originals.

11.10 Confidentiality. The Trustee and each successor trustee (each a “**Covered Person**”) shall, during the period that they serve in such capacity under this Agreement and following either the termination of this Agreement or such individual’s removal, incapacity, or resignation hereunder, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any Person to which any of the Litigation Trust Assets relate or of which it has become aware in its capacity (the “**Information**”), except to the extent disclosure is required by applicable law, order, regulation or legal process. In the event that any Covered Person is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigation, demand or similar legal process) to disclose any Information, such Covered Person shall notify the Debtor reasonably promptly (unless prohibited by law) so that the Debtor may seek an appropriate protective order or other appropriate remedy or, in their discretion, waive compliance with the terms of this Section 11.10 (and if the Debtor seeks such an order, the relevant Covered Person will provide cooperation as

the Debtor shall reasonably request). In the event that no such protective order or other remedy is obtained, or that the Debtor waives compliance with the terms of this Section 11.10 and any Covered Person is nonetheless legally compelled to disclose the Information, the Covered Person will furnish only that portion of the Information, which the Covered Person, advised by counsel, is legally required and will give the Debtor written notice (unless prohibited by law) of the Information to be disclosed and exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Information.

11.11 Entire Agreement. This Agreement (including the Recitals), the Plan and the Confirmation Order constitute the entire agreement by and among the parties hereto and there are no representations, warranties, covenants or obligations except as set forth herein or therein. This Agreement, the Plan and the Confirmation Order supersede all prior and contemporaneous agreements, understandings, negotiations, discussions, written or oral, of the parties hereto, relating to any transaction contemplated hereunder. Except as otherwise specifically provided herein, in the Plan or in the Confirmation Order, nothing in this Agreement is intended or shall be construed to confer upon or to give any Entity or Person other than the parties hereto and their respective heirs, administrators, executors, permitted successors, or permitted assigns any right to remedies under or by reason of this Agreement, except that the Persons identified in Article 7 hereof are intended third party beneficiaries of Article 7 hereof and shall be entitled to enforce the provisions thereof as if they were parties hereto.

11.12 No Bond. The Trustee shall serve without bond, and notwithstanding any state or federal law to the contrary, the Trustee (including any successor trustee) shall be exempt from giving any bond or other security in any jurisdiction.

11.13 Effectiveness. This Agreement shall become effective on the Effective Date.

11.14 Investment Company Act. This Litigation Trust is organized as a liquidating entity in the process of liquidation, and therefore should not be considered, and the Litigation Trust does not and will not hold itself out as, an “investment company” or an entity “controlled” by an “investment company” as such terms are defined in the Investment Company Act.

11.15 Successor and Assigns. This Agreement shall inure to the benefit of the parties hereto and the intended third party beneficiaries identified in Section 11.11 hereof (to the extent specified therein), and shall be binding upon the parties hereto, and each of their respective successors and assigns to the extent permitted by this Agreement and applicable law.

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

11.17 No 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 holder of a Litigation Trust Interest, and no holder of a Litigation Trust Interest or any other Person can execute upon, garnish or attach the Litigation Trust Assets in any manner or compel payment

from the Litigation Trust except by an order of the Bankruptcy Court. Distributions from the Litigation Trust will be governed solely by the Plan and this Agreement.

11.18 Irrevocability. The Litigation Trust is irrevocable but is subject to amendment and waiver as provided for in this Agreement.

[SIGNATURE PAGE FOLLOWS]

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

**THE DEBTOR:**

**Northstar Offshore Group, LLC**

By:                   /s/ *Avery C. Alcorn*                  

Name: Avery C. Alcorn

Title: Chief Financial Officer and Senior Vice President

**ORIGINAL TRUSTEE:**

By:                   /s/ *James Katchadurian*                  

Name: James Katchadurian

Title: Trustee

**[SIGNATURE PAGE]**

## EXHIBIT 1

### CAUSES OF ACTION TO BE TRANSFERRED AND RETAINED BY THE LITIGATION TRUST

The Debtor operated as an oil and gas company with substantially all of its producing assets located offshore in U.S. federal and Louisiana and Texas waters in the Gulf of Mexico. The Debtor's financial condition resulted at least in part due to acts and omissions of its previous and current equity holders and entities related to them.

The Litigation Trust may pursue claims against the Debtor's previous equity holder NPX Holdings and all entities and persons related to them (collectively, "NGP")<sup>1</sup> based on their sale of the Debtor to non-credit worthy buyer Northstar GOM Holdings Group, LLC ("Holdings"), a wholly owned subsidiary of PPVA Oil and Gas LLC, which, on information and belief, is in turn wholly owned by Platinum Partners Value Arbitrage Fund LP ("PPVA"). At the time of the sale, and as a result of the structure of the transaction (including giving the Debtor a \$15 million negative working capital adjustment), the Debtor was insolvent, undercapitalized, and unable to pay its debts as they came due. After the sale, the buyer was unable to provide sufficient liquidity for the Debtor to function and the structure of the transaction ultimately doomed the Debtor's ability to meet its debts as they came due. NGP's actions may give rise to claims for fraudulent transfer, breach of fiduciary duty, fraud, negligent misrepresentation, self-dealing, negligence, conversion, embezzlement, conflicts of interest, misuse of insider information and related claims.

Additionally, the Litigation Trust may pursue claims against the Platinum Equity Holders, and all persons and entities related to them (collectively, "Platinum")<sup>2</sup> based on their domination and negligent operation of the Debtor's business, their use of the Debtor as a vehicle to promote their own self-interests, undercapitalization of the Debtor, and their failure to observe fundamental corporate formalities, such as constituting a Board of Directors, and their resulting unfettered control and domination of the Debtor. Other acts and omissions may give rise to claims for self-dealing, misappropriation of assets, diversion, usurpation and theft of corporate opportunities and assets, breach of fiduciary duty, breach of contract, embezzlement, conspiracy, fraud, negligent misrepresentation, misuse of collateral, conflicts of interest, securities violations,

<sup>1</sup> NGP Holdings means NGP X US Holdings, L.P., NGP X Holdings GP, L.L.C., NOG Royalty Holdings GP, LLC, and NOG Royalty Holdings, LP.

<sup>2</sup> Platinum Equity Holders means Holdings; PPVA Oil and Gas, LLC; PPCO; Platinum Partners Liquid Opportunity Master Fund LP; and PPVA. Platinum Partners, LP is "a Manhattan-based hedge fund," that was founded in part by, among others, Mark Nordlicht ("Nordlicht") and Murray Huberfeld ("Huberfeld"), both of whom are currently under criminal indictment. PPVA, the core Platinum fund, was founded in 2003 by Nordlicht, with investors that also included Huberfeld. Nordlicht has been the Chief Investment Officer ("CIO") and the person primarily directing Platinum's day-to-day operations. A number of other Platinum executives have played key roles in the Platinum companies, like Black Elk and Northstar, in which Platinum invested, and then dominated and controlled. Other Platinum related persons relevant to this case are: (i) David Levy ("Levy"), Huberfeld's nephew, a Managing Director and Portfolio Manager at Platinum, whom Platinum placed as CIO of the "friendly" Beechwood entities, and as the President of B Asset Manager, which was both the Administrative Agent for Black Elk's credit facility and also the investment arm of the Beechwood entities; and (ii) Daniel Small ("Small"), a Managing Director and Portfolio Manager at Platinum, an executive at Beechwood, and a member of Black Elk's Board of Managers. Levy and Small are under criminal indictment along with Nordlicht and other Platinum operatives, for, among other things, their role in the fraudulent transfer of Black Elk's assets, including the transfers to the Debtor.

misuse of insider information, fraudulently structuring security interests and thus fraudulently obtaining interest payments, causing the Debtor to purchase assets with significant financial burdens, including plugging and abandonment obligations, bonding requirements, and encumbrances from operator liens. Platinum caused the Debtor to purchase these troubled assets from other entities wholly-owned by Platinum, such as Black Elk, and sought to use the Debtor as a means to avert Black Elk's bankruptcy. In connection with the Black Elk transaction, Platinum was advised by Chardan Capital Markets Inc. ("Chardan"), which does not appear to have been an impartial or "independent" advisor, and, as such, the Litigation Trust may seek to pursue claims against such entity.

The Debtor believes that the following additional claims and causes of action may exist:

a. Claims and causes of action for avoidance and recovery under §§ 541, 542, 543, 544, 545, 547, 548, 549, 550, 553(b) of the Bankruptcy Code and all applicable state law counterparts, including claims against all parties who received payments within the ninety (90) days prior to the Petition Date, including but not limited to those parties identified in the Debtor's Statement of Financial Affairs (ECF No. 237) and Section IV.A.4, and all insiders who directly or indirectly received, or were beneficiaries of, payments within one (1) year of the Petition Date, including but not limited to those parties identified in the Debtor's Statement of Financial Affairs (ECF No. 237), NGP, and Platinum.

b. Any and all claims and causes of action against NGP and former officers, directors, and managers (i) Christopher Ray, (ii) Jesse Bomer, (iii) Tomas Ackerman, (iv) David Albin, (v) David Hayes, (vi) S. Glynn Roberts, (vii) Gaylon Freeman, (viii) Mark Stevens, (ix) James Ulm, II, (x) Thomas Maloy, Jr., (xi) Michael Rauch, and (xii) any other former officers directors, managers, control persons of the Debtor, and employees of the Debtor (other than Brian Macmillan, David Dean, Keith Krenek, and Avery Alcorn) (the "Former NGP D&Os") arising out of the sale of assets to Northstar GOM. Specifically, and without waiving the generality of the foregoing, these claims include, but are not limited to, claims for breach of fiduciary duty, fraud, negligent misrepresentation, self-dealing, breach of contract, misuse of collateral, negligence, conversion, embezzlement, conflicts of interest, misuse of insider information related to their acts and omissions or the transfers referred to herein and related claims.

c. Any and all claims and causes of action against Platinum and former officers, directors, and managers (i) S. Glynn Roberts, (ii) Gaylon Freeman, (iii) Mark Stevens, (iv) James Ulm II, (v) Kenneth Schott, (vi) Thomas Maloy Jr., (vii) Michael Rauch (viii) Sabrina Greenlee, and (ix) any other former officers directors, managers, control persons of the Debtor, and employees of the Debtor (other than Brian Macmillan, David Dean, Keith Krenek, and Avery Alcorn) (the "Former Platinum D&Os") arising out of the sale of assets to Holdings, the purchase of the Black Elk assets, the transfer of any collateral underlying any surety bonds of the Debtor, the selling of the Debtor's oil and gas hedge contracts, and the allegations in *Eleanor Fiduciary Servs., LLC v. Northstar GOM Holdings Grp., LLC et al.*, No. 654014/2016 (N.Y. Sup. Ct. Aug. 1, 2016), among others. Specifically, and without waiving the generality of the foregoing, such

claims and causes of action include, but are not limited to, claims for breach of fiduciary duty, fraud, negligent misrepresentation, self-dealing, breach of contract, misuse of collateral, negligence, conversion, embezzlement, conflicts of interest, misuse of insider information related to their acts and omissions or the transfers referred to herein and related claims.

d. Claims and causes of action against any former auditors of the Debtor and their respective insurers, including Chardan and Kerry Propper, for negligence, negligent misrepresentation, gross negligence, failure to abide by the standard of care for auditors and/or failure to institute appropriate controls and for malpractice related to false and misleading financial reporting associated with work performed from 2014 to 2016.

e. Claims and causes of action against any of the following persons or entities: Platinum, Dan Small, Stephen Silver, Zach Weiner, John Hoffman, Jeff Shulse, Jed Latkin, Dov Weiner, Chaim Nordlicht, Mark Nordlicht, David Levy, Daniel Sakes, Jamie Hartman, Ehtan Benovitz, Beechwood Asset Management, Beechwood International Bermuda, LTD, Chardan, Kerry Propper, and any affiliates or related persons of the aforementioned entities for claims for the avoidance of preferential or fraudulent transfers, conspiracy, breach of contract or warranty, civil theft, conversion, fraud, negligent misrepresentation, breach of fiduciary duty, usurpation of corporate opportunity, self-dealing, breach of contract, misuse of collateral, negligence, embezzlement, equitable subordination, conflicts of interest associated with their control of/or dealings with the Debtor and/or the transfer and receipt of the Debtor's assets and related claims;

f. Claims and causes of action against NGP, its partners, officers, directors, and affiliates, including but not limited to claims for the avoidance of preferential or fraudulent transfers, conspiracy, civil theft, conversion, fraud, negligent misrepresentation, breach of fiduciary duty, usurpation of corporate opportunity, self-dealing, breach of contract, misuse of collateral, negligence, embezzlement, equitable subordination, and conflicts of interest associated with the sale of the Debtor in September 2014;

g. Claims and causes of action against Platinum, its members, officers, directors, and affiliates, including but not limited to claims for the avoidance of preferential or fraudulent transfers, conspiracy, civil theft, conversion, fraud, negligent misrepresentation, breach of fiduciary duty, usurpation of corporate opportunity, self-dealing, breach of contract, misuse of collateral, negligence, embezzlement, equitable subordination, and conflicts of interest associated with the purchase of the Debtor in September 2014;

h. Claims and causes of action against Platinum, their officers directors, employees and affiliates, including but not limited to, claims for the avoidance of preferential or fraudulent transfers, conspiracy, civil theft, conversion, fraud, negligent misrepresentation, breach of fiduciary duty, self-dealing, breach of contract, negligence, embezzlement, equitable subordination, conflicts of interest associated with the \$30 million transferred to New Mountain Finance and interest payments made on such notes;

i. Claims and causes of action against Platinum and Chardan their officers directors, employees and affiliates, including but not limited to, claims for the avoidance of preferential or fraudulent transfers, conspiracy, civil theft, conversion, fraud, negligent misrepresentation, breach of fiduciary duty, self-dealing, breach of contract, negligence, embezzlement, equitable subordination, conflicts of interest associated with purchase of Black Elk assets in 2014;

j. Claims and causes of action against the Debtor's direct and indirect equity interest holders and their respective insurers for breach of fiduciary duty, fraudulent transfers, preferences, civil theft, conspiracy, embezzlement, self-dealing, conflicts of interest, successor liability, fraud, misrepresentation, piercing of the corporate veil associated with their role in the insolvency of the Debtor and the transfers referred to herein;

k. Any and all claims and causes of action against any present or former joint interest partner or joint venture partners, including breach of contract, breach of the duty of good faith, commercial torts, tortious interference, setoff, recoupment, fraud, fraudulent inducement, misrepresentation, fraudulent or negligent misrepresentation, fraudulent or preferential transfers arising under the Bankruptcy Code, conversion, equitable subordination, negligence, conspiracy, aiding and abetting, self-dealing, and un-commercial transactions;

l. Any and all claims and causes of action against all predecessors in interest (i.e., prior owners of properties sold to the Debtor), including breach of contract, breach of the duty of good faith, commercial torts, tortious interference, setoff, recoupment, fraud, fraudulent inducement, misrepresentation, fraudulent or negligent misrepresentation, fraudulent or preferential transfers arising under the Bankruptcy Code, conversion, equitable subordination, negligence, conspiracy, aiding and abetting, self-dealing, and un-commercial transactions;

m. Any and all claims and causes of action against the Debtor's members and former senior management related to fraud, negligence, usurpation of corporate opportunity, self-dealing, breach of confidential relationship, mismanagement, breach of fiduciary duty, and aiding and abetting breaches of fiduciary duty;

n. Any and all claims and causes of action against all creditors that initiated an involuntary petition against the Debtor, any entities that served or serve as sureties for the Debtor, including commercial torts, tortious interference, unfair competition, breach of contract, loss of income, setoff, recoupment, fraud, fraudulent inducement, misrepresentation, fraudulent or negligent misrepresentation, fraudulent or preferential transfers arising under the Bankruptcy Code, conversion, lender liability, equitable subordination, negligence, conspiracy, aiding and abetting, self-dealing, and un-commercial transactions, and breach of duty of good faith; and

o. Any and all claims and causes of action against any party that received a payment within the 90 day period prior to the filing of the Involuntary Petition or for statutory insiders within the one year period prior to the filing of the Involuntary Petition, including those parties set forth on the Debtor's Schedules and Statement of Financial Affairs.

In addition, there may be additional state or federal law causes of action which currently exist or may arise that are not set forth in this list of Causes of Action to be Transferred and Retained by the Litigation Trust because the facts that form the basis of such causes of action are not currently known by the Debtor (the "Unknown Causes of Action"). The Plan Supplement is premised on the Litigation Trust continuing the investigation of these causes. The failure to list Unknown Causes of Action in the Plan Supplement is not in any way intended to waive such Unknown Causes of Action or to limit the rights of the Litigation Trust to pursue them.

Due to the preliminary nature of the Debtor's investigation of the Causes of Action, it is currently unknown whether there will be a recovery, and if so, the likely amount of such recovery. Until further progress has been made in the investigation, and sufficient discovery undertaken, the Debtor will be unable to offer an informed and credible estimate of the likely recovery on the Causes of Action.

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